

INVITATION TO BID



**MAINTENANCE OF
STREET LIGHTS &
TRAFFIC SIGNALS
CONTRACT# SL-TS-15**

**DEPARTMENT OF PUBLIC WORKS
ENGINEERING DEPARTMENT
16 PINE STREET
STONEHAM MA 02180
(781) 438 - 0760**

1. General Information

Sealed bids are hereby being solicited by the Town of Stoneham (the Town) for maintenance of streetlights and traffic signals, which are the property of the Town.

Bidders must respond thoroughly to the requirements of the Invitation to Bid (ITB). The Bid shall be a part of the Contract resulting from this ITB. Bidders are cautioned not to make claims or statements to which they are not prepared to commit contractually.

Bids must remain in effect for at least 120 days from the submission deadline and thereafter until a contract is executed or the procurement is canceled, whichever occurs first.

1.1. Authorized Contact

MR. ROBERT E. GROVER, P.E., DIRECTOR OF PUBLIC WORKS
16 PINE STREET STONEHAM, MA 02180 – OFFICE PHONE: (781) 438-0760

1.2. Expected Duration of Contract

Any contract resulting from this ITB is expected to terminate one (1) year from the effective date, unless renewed pursuant to renewal terms described herein.

1.3. Option to Extend Contract

The Town may extend the Contract beyond the initial term for two (2) additional one (1) year periods, at the sole discretion of the Town. The Town shall exercise its option by submitting written notice to the Bidder approximately 60 days prior to the end of the previous contractual term. All extensions are subject to availability of funds.

1.4. Use of Subcontractors

None of the services to be provided pursuant to the scope of work shall be subcontracted or delegated to any other organization, association, individual, corporation, partnership or other such entity without the prior written consent of the Town. The Bidder must identify any subcontractors that will be used on this project and describe the contractual arrangement that will exist with all subcontractors. The Bidder will be considered the prime contractor and will be fully responsible for the performance of any task order, including the quality and timeliness of the work performed by subcontractors

1.5. No Guarantee of Purchase

The Town makes no guarantee, either expressed or implied, that any purchases will take place from any Contract or Agreement resulting from this ITB. Any statement made regarding past expenditures or estimated expenditures are for informational purposes only, and are not binding on the Town.

1.6. Fair and Cost Effective Competition

If a Bidder feels that any provision(s) of the ITB preclude(s) fair competition among Bidders, or unnecessarily increases the Town's cost, the Bidder should notify the Director in writing.

The letter must identify this ITB, and why, in the Bidder's opinion, the cited provision(s) preclude fair competition, or will cause the Town to incur unnecessary cost. The letter must be received on or before the fifth business day prior to the proposal submission deadline.

1.7. Submission of Bids

Sealed Bids will be received at the Department of Public Works no later than 2:00 p.m. on the submittal deadline specified in the ITB Timeline, Section 1.8 and will be opened and read aloud. A non-refundable deposit of \$30.00 is required for bid documents, or may be obtained for free at www.stoneham-ma.gov under the Departments – Department of Public Works Tab. Bidders are responsible to notify the Town of their intent to submit a proposal in order to receive addenda. Bid documents may be mailed upon receipt of bid deposit and a separate payment of a \$10.00 mailing fee.

1.8. ITB Timeline

Advertisement/ITB Available – 8:00 A.M. 3/23/2015
Deadline for Any/All Questions – 3:30 P.M. 4/2/2015
Submission Deadline for Bid – 2:00 P.M. 4/16/2015

2. Procurement Scope

2.1. Purpose

The purpose of this project is to establish a maintenance service for the approximately 1,551 overhead wired and underground fed streetlights, pedestrian lights and parking lot lights in the Town, which are identified in the attached detailed streetlight inventory in addition to the eighteen (18) traffic signal locations.

2.2. Background

The Town has taken over responsibility from NSTAR Electric/Boston Edison for maintenance of streetlights effective July 1, 2000. The purpose of any contract resulting from this ITB is to provide the maintenance and consistent operation of the streetlights identified in the attached detailed inventory. The Bidder shall provide all material, labor and equipment necessary to maintain, repair, and/or replace the streetlights and traffic signals covered by this agreement as may be required to keep them in fully operational condition. Services to be performed pursuant to this Contract shall include but not be limited to repair or replacement of failed lighting components (including, but not limited to luminaires, photocells, ballasts, starters, igniters, fuses, lenses, reflectors, connective wiring, and brackets); monthly reports of all work performed; proper disposal of all generated waste materials under Stoneham's EPA number; scheduled preventive maintenance inspections; emergency repairs, and related work. Lighting covered by this Contract includes streetlights identified in the attached detailed inventory as well as other streetlights, pedestrian lights or parking lot lights including all traffic signals that are the property of the Town or shall become the property of the Town during this Contract.

2.3. Scope of Work

All service under this Scope of Work shall be performed under the direction and subject to the approval of the Town Director of Public Works (the "Director"). In the exercise of all or any of the powers herein granted, the Director shall have the authority to delegate all or any part of his or her powers and duties with respect to the supervision and control of this work to his subordinates and assistants in the employ of the Town as he or she may determine.

2.3.1 Routine Batch Maintenance. The Town will retain responsibility for streetlight patrol and will notify the Contractor of the streetlights in need of repair. On a daily or weekly basis the Town shall transmit to the Contractor via fax, e-mail or other method acceptable to the Town a list of streetlight outages or problems of which the Town has become aware. The Town shall use its best efforts to provide the Contractor with sufficient information as to the work required and/or the pole location. The Contractor shall investigate and make repairs on all reported streetlight outages and problems during the next Routine Batch Maintenance (RBM) day.

RBM will generally be performed on a regularly scheduled day of each week. Within seven (7) calendar days from the RBM the Contractor shall submit a written report of streetlights repaired. If a reported streetlight is not repaired, the Contractor must include in its report the reason for non-repair, steps taken and estimated time required to complete repair.

2.3.2 Fixture Maintenance. The Contractor will be expected to maintain an inventory of or have readily available a supply/supplier of photo cells, street light / traffic light bulbs,

and other equipment that is routinely used for these repairs in order to perform the contract in the timeframes required.

Any time a light is serviced it will also be cleaned as necessary, broken lenses and covers replaced, and the entire fixture assembly left in a clean, fully serviceable condition.

When the repair of an outage requires replacement of the entire luminaire, it shall be replaced with an identical or equivalent fixture or a Town approved upgrade at the Director's discretion. Any newly installed fixture must meet all applicable codes.

2.3.3 Emergency Repair Service. The Contractor shall be capable of responding to emergency service requirements twenty four (24) hours/day, seven (7) days/week. Emergency service will in most cases relate to knockdowns of dedicated or non-dedicated poles. However, the Town shall retain sole discretion to determine when the need for emergency repair service exists. When such determination is made, a representative of the Department of Public Works or the Stoneham Police Department will notify the Contractor via a Contractor supplied twenty four (24) hour emergency telephone number.

The Contractor must have workforce and equipment deployed to the emergency location three (3) hours following notification. A more rapid response shall be provided if so directed by the Stoneham Police Department in extreme cases. In such instances, the response time shall be within one (1) hour. Concurrent with notification to the Contractor, the Town will use best efforts to notify Eversource of the emergency. However, it shall be the Contractor's responsibility to conduct such follow up and/or additional communication with Eversource to affect a complete response to the emergency service requirement.

2.3.3.1 Dedicated Pole. In the event of a knockdown of a dedicated pole, the Contractor shall coordinate with Eversource regarding disconnection of power, remove and dispose of the pole and lighting fixture, retaining any salvageable components, and ensure the site is secured in a safe manner.

2.3.3.2 Non-Dedicated Pole. In the event of a knockdown of a non-dedicated pole, the Contractor shall coordinate with Eversource, Verizon or any other facility owner, as applicable, regarding the emergency cleanup and in particular the retrieval of Town-owned lighting components.

2.3.3.3 Non-Knockdown Emergency. In the event of emergency service not involving a knockdown, the Contractor shall perform such work necessary to secure the location in a safe manner.

2.3.3.4 Insurance Reimbursement. The Contractor shall provide sufficient information to ensure reimbursement for all costs of repair work under Section 2.3.3 Emergency Repair Service.

2.3.3.5 Emergency Communication. The Contractor shall notify a designated Town representative, at a twenty four (24) hour emergency number as soon as response to the emergency service request has been completed. If for any reason a site cannot be secured in a safe manner, the Contractor shall notify the Stoneham Police Department. The Contractor's personnel shall not depart the location until an officer has arrived at the scene to undertake necessary public safety measures.

2.3.3.6 Emergency Follow Up. Within five (5) working days following the date of emergency response, The Contractor shall supply to the Town a detailed written quotation of the cost and time required to restore the affected light fixture or traffic signal to fully operable condition, including re-installation of the dedicated pole where applicable. The Contractor shall commence such repairs following notification to proceed from the Director.

2.3.4 Dedicated Poles. Dedicated poles have only a light bracket and fixture attached to them, and apart from the feed from the power source, support no electric distribution or other wires. With respect to "underground fed" dedicated poles, the Contractor shall be responsible for all maintenance from the point of connection at the electrical distribution network to the lighting equipment, including any required maintenance to underground wiring from the transformer. In the case of "overhead fed" poles, the Contractor will be responsible for all maintenance from the electrical distribution network to the lighting equipment.

2.3.5 Eversource Coordination. The Contractor will be required, in appropriate circumstances, to coordinate streetlight repair and maintenance activities with Eversource.

When required to perform service, the making and breaking of the electrical connection to the electrical distribution network (whether on a dedicated or non-dedicated pole and whether for routine or emergency service) must be performed by Eversource. The Contractor shall be responsible for all coordination with Eversource in the event that repair of a streetlight outage requires involvement by the utility. If the Contractor is unable to complete a repair as the result of action or inaction by Eversource, the Contractor shall so note on its weekly report and include the date, time and contact of all verbal and written communication with Eversource. The Contractor shall be required to establish written communication a minimum of three (3) times, with a minimum of one (1) week between attempts, over a sixty (60) day period in an effort to resolve streetlight problems. The Director shall be copied on all correspondence between the Contractor and Eversource relating to the performance of this Contract.

In the event a light fixture which has an overhead drop from the Eversource power source is disconnected to perform service, the CONTRACTOR shall ensure that upon

completion of service it has furnished and installed sufficient wire to allow Eversource to complete connection to the distribution network. This work shall conform to Eversource's requirements for the overhead feed.

2.3.6 Monthly Reports. Throughout the term of this Contract, the Contractor shall submit electronic monthly reports of its activity in a format agreed upon and acceptable to the Director with a copy sent to the Department of Public Works 16 Pine Street Stoneham, MA 02180. The Town will no longer accept hand written or faxed reports. Separate reports shall be submitted for routine maintenance, emergency work, and traffic signal work. For each work category the minimum information to be supplied monthly shall include:

- Dates and descriptions of all work performed;
- Location (by address and pole number) of each light upon which work was performed;
- Type and quantity of all materials used;
- List of all reported outages returned to service during the month;
- Status of all outages not returned to service including steps taken and time required to complete; and
- All open service requests dependent upon Eversource, including date, time, contact and copies of related communication.
- Updates for the electronic data base of the street light inventory for upgraded fixtures

2.3.7 Material Waste Disposal. The Contractor shall dispose of all waste materials generated through the routine maintenance program, knockdowns and/or other emergency service in accordance with all applicable laws and regulations. The Town will receive all salvageable equipment. All disposal costs shall be borne by the Contractor. The Contractor will provide the Town with a copy of disposal reports on a semi-annual basis.

2.3.8 Police Details. The Town will be responsible for the cost of police details to the extent they are needed. If the contractor determines that a police detail is required, the Contractor must notify the Director of the need for the police detail and time required a minimum of forty eight (48) hours in advance. A police detail shall be provided only if the Town, by and through the Director, and/or if his designee, concurs with the Contractor's determination that the respective police detail is needed Said determination by the Director shall not be unreasonably made. In event of a scheduling change for any reason, the Contractor will be responsible for cancellation of any police detail at least two (2) hours in advance of the scheduled detail time. The Contractor will pay for any details which they fail to cancel in a timely fashion.

2.3.9 Traffic Maintenance. The Contractor shall conduct its operations so as to cause the least possible obstruction and inconvenience to public traffic. To the extent possible, all

traffic shall be permitted to pass through the work area. The Contractor shall furnish, erect, and maintain sufficient warning and directional signs, barricades and lights and furnish adequate warning to the public at all times of any dangerous condition to be encountered. The Contractor's vehicles and equipment shall be clearly marked with the Contractor's name or logo and be easily identifiable and be equipped with suitable warning lights and reflectorized markings for working in daylight and dark. All safety signs and equipment shall comply with the latest edition of the Manual on Uniform Traffic Control Devices (MUCTD).

2.3.10 Facility Damage Repair. If while servicing a fixture located on a non-dedicated pole, the Contractor damages any co-located wire, cable or other facilities, the Contractor shall immediately notify the Owner of such facilities and the Town. The Contractor shall be responsible at its own expense for making all necessary repairs in accordance with the requirements of the Owner of the damaged facilities.

3. Procedural Information

3.1. General

All terms, conditions, requirements, and procedures included in this ITB must be met for a response to be acceptable. If a Bidder fails to meet any material term, condition, requirement, or procedure, its response may be deemed unresponsive and disqualified. The Town may reject as informal, bids which are incomplete, conditional, or obscure, or which contain additions not called for, erasures not properly initialed, alterations, or irregularities of any kind, or the Town may waive such informalities.

If any term, condition or specification in this ITB needs to be changed in order for the Bidder to submit a responsive proposal, please provide such information in writing to the Director at least ten (10) calendar days before the proposal due date.

3.2. Inquires

Bidders may submit written questions concerning this ITB to the Department of Public Works no later than the date and time specified in the ITB Timeline. All inquiries must be in writing and may be mailed, faxed, or hand delivered. Written inquiries received after the deadline for written inquiries will not be considered.

The Director or designee will review and consolidate inquiries received before the deadline, prepare written answers, and mail them to all Bidders that have requested copies for this ITB. When submitting written inquiries always make reference to the number(s) in the ITB.

This inquiry procedure provides the means by which a Bidder may request information and/or request changes to the requirements of this ITB. Bidders are cautioned that an

inquiry should be written in the generic terms and must not contain any cost data. The inclusion of cost information in an inquiry may result in the Bidder's disqualification.

3.3. Addenda to ITB

If it becomes necessary to revise any part of this ITB, or if additional data is necessary to clarify any of its provisions, an addendum will be sent to all Bidders who have obtained a copy of this ITB from the Town.

The Town intends to adhere to the schedule and dates specified in the ITB Timeline. However, if it is necessary, due to revisions made to this ITB, the bid due date and all subsequent dates may be extended with written notice of such changes sent to all Bidders who have requested a copy of this ITB from the Town.

3.4. Submission of Bids

Sealed bids with "Street Light & Traffic System Maintenance Contract #SL-TS-15" written on the outside will be received at the Department of Public Works 16 Pine Street Stoneham, MA 02180 no later than the submittal deadline specified in the ITB Timeline, section 1.8. Bids received after the deadline will not be considered.

The Town reserves the right to reject any and all bids.

3.5. Bid Preparation Costs

Bidders must bear all costs associated with their bids including preparation, copying, postage, and delivery costs. The Town will not be responsible for any costs or expenses incurred by Bidders responding to this ITB.

3.6. Cancellation of Solicitation

The Town retains the rights to cancel this solicitation at any time prior to the execution and approval of a contract. If this solicitation is canceled, all bids received in response to this ITB will be rejected. All bids preparation costs remain the responsibility of the Bidder.

3.7. Return of Bids

The Town shall be under no obligation to return any bids or materials submitted by a Bidder in response to this ITB.

3.8. Availability of Bids

All Bids and related documents submitted in response to this ITB are subject to the Massachusetts Freedom of Information Law, M.G.L. Chapter 66, Section 10 and to

Chapter 4, Section 7, subsection 26, regarding public access to such documents. Statements or endorsements made by the Bidder which are inconsistent with those statutes will be disregarded.

3.9. Bid Security

Each bid must be accompanied by a bid bond in the amount of 5% or more of the bid price with a surety company satisfactory to the Town, payable to the Town of Stoneham MA, said bid bond to be returned to the bidder unless forfeited under the conditions herein stipulated.

The bid bond should be enclosed in the sealed envelope containing the bid. Such bid bond will be returned to all except the three (3) lowest responsible and eligible bidders within seven (7) calendar days, legal holidays excluded, after the formal opening of the bids. The remaining bid bonds will be returned to the three (3) lowest responsible and eligible bidders within seven (7) calendar days, legal holidays excluded, after the Town and the accepted Bidder have executed the contract. If no contract has been so executed within thirty (30) days after the date of the opening of the bids, the bid security will be returned at any time thereafter upon demand of the Bidder so long as he or she has not been notified of the acceptance of the bid. If all bids are rejected, bid security will be returned forthwith.

4. Evaluation of Bids and Contract Award

4.1. General

The contract will be awarded to the lowest responsible and eligible Bidder based upon a review of the Bid and Bidder's qualifications.

The Director will evaluate each Bid as follows:

- Bid must meet all submission requirements listed in this ITB.
- Bidder will be evaluated to determine if all the minimum requirements listed in this ITB are satisfied.
- Bidder must provide three (3) years of Total Recordable Incident Rate and DART as required on OSHA 300 logs.
- Bids will be opened, read aloud and checked for mathematical accuracy.

4.2. Minimum Requirements

The following are the Minimum Requirements for a Bid to be considered responsive:

- The Bidder will be a qualified electrical service contractor meeting all state and local licensing requirements for indoor and outdoor electrical work. A Division of

Capital Asset Management (DCAM) Electrical Contractor Certification shall be indicative of such qualification, but certification is not mandatory.

- Bid must include all material requirements listed in the ITB, including instructions for submission, content and format. Proposal must include an affirmative statement of ability to comply with each aspect of the scope of work as set forth in section 2.3.
- Firm shall have at least five (5) years of experience maintaining or installing municipal streetlights and be able to demonstrate performance of such work to the satisfaction of the local authority as an indication of successful performance.
- Firm shall have at least five (5) years of experience maintaining or installing traffic signals and be able to demonstrate performance of such work to the satisfaction of the local authority as an indication of successful performance.
- Key personnel assigned to the project shall have at least five (5) years of experience on similar projects.
- Demonstrate capacity to complete this project with the current workload with other public and private projects.
- Bids must include a statement that the contractor shall maintain the availability of parts for standard and routine replacement items including heads, photocells and streetlight / traffic signal bulbs. The Bids shall also state the lead-time necessary for securing poles or other non-routine parts.
- Certificate of Insurance pursuant to the insurance requirements set forth in (Exhibit 5) included with Bid.
- To the extent that it is necessary to interrupt the electricity supply in order to perform any streetlight maintenance, Eversource crews shall be responsible for turning the electricity off and then back on again. Proposal must confirm that the routine replacement of photocells, bulbs and heads can be completed without the need to request Eversource to perform this turn off, turn on service.
- The procedure for utilizing Eversource crews will include notifying and securing the approval of the Director, followed by the direct scheduling of such assistance by the Contractor. This procedure is important to minimize expense to the Town.

4.3. Rejection of Bids

The Town will disqualify any Bids if it determines to be unresponsive, including, but not limited to:

- Bids determined to be non-responsive to any material requirement of this ITB.
- Bids that fail to meet the Minimum Requirements listed in this ITB.
- Bids which are received after the submission deadline.
- Bids in which Bidders misrepresent goods or services or provide demonstrably false information.
- Bids submitted by a Bidder, or which identifies a subcontractor, currently subject to State or Federal debarment order or determination. If the identified subcontractor is replaced without a material effect on the Bidder's Proposal, the Bidder may be given the opportunity to select another subcontractor prior to execution of the Contract.

4.4. Comparative Criteria

Bids will be ranked based on the proposed price for first year (Year 1) of the Streetlight and Traffic Signal Maintenance Cost, and not either of the two option years. Bidders are reminded the better the proposed price(s) for each option year, the more likely it is that the Town will exercise the respective option year(s).

4.5. Clarification of Bids

The Town is not required to seek clarification of Bids; therefore, Bidders should be as clear and unambiguous as possible in their responses.

4.6. Presentation

The Town is not requiring presentations.

4.7. Negotiation of Prices, Rates, and other Performance Terms and Conditions

The Town reserves the right modify, adjust and negotiate prices, rates, and other performance terms and conditions identified in the ITB or a Bidder's Proposal at any time during the period of the contract extension(s) in order to achieve the best value for the Town. The streetlight maintenance plan, described in section 5 below in this ITB, submitted by a Bidder for providing the required services may be negotiated or revised prior to awarding a contract, and if such plan revision warrants the price may be

negotiated. Such award may be conditioned upon successful negotiation of revisions, if any.

4.8. Award Recommendation and Rule

The Director will determine the lowest responsible and eligible Bidder for initial contract award. Contract extensions shall take into consideration price and the evaluation criteria set forth in this ITB. The award may be conditioned upon successful negotiation of any revision to the streetlight maintenance plan described in section 5 below.

4.9. Notification of Award

A written Notice of Award will be sent to the awarded Bidder by the Director.

A letter will be sent to each Bidder who was not approved for award including those Bidders who were disqualified.

4.10. Amendments to the Contract

The Town reserves the right to negotiate amendments to the Contract arising from this ITB and, in particular, to add equipment or service that are consistent with the services solicited by this ITB. The right to amend applies for the term of this Contract and any extensions.

5. BUSINESS AND TECHNICAL PROPOSAL – STREETLIGHT MAINTENANCE PLAN

5.1.1. Experience and Qualifications

List the firm's experience on a minimum of five (5) other similar projects. A minimum of two (2) streetlight and two (2) traffic control projects must be included. Include a description of project, description of firm's scope of work, cost, start date, completion date, and client's representative and telephone number.

List the firm's ongoing projects including description of scope of work, start date, completion date, estimated cost, and client's representative and telephone number.

List any subcontractors the firm reasonably intends to use on this project.

List the major vehicular equipment that will be available for use during the life of the proposed contract. The list should include make, model, year and ownership status (owned, leased and/or rented) Bidder must certify that the motorized equipment devoted to the performance of this scope of work is in good operating condition, clean and professional in appearance with company name and logo prominently displayed.

5.1.2. Articles of Agreement

Three (3) copies of the attached Articles of Agreement must be completed and signed by one of the individuals named in the Bidder's Letter of Transmittal as authorized to bind the Bidder contractually. Terms and conditions must not be altered. If awarded a copy of the contract, the contract will be countersigned and returned to you.

5.1.3. Acknowledge Receipt of Addenda

Include a statement acknowledging the receipt of all addenda issued for this ITB. List all addenda received.

5.1.4. Certifications

The attached certifications must be completed and signed, in triplicate, by one of the individuals named in the Bidder's Letter of Transmittal as authorized to bind the Bidder contractually.

5.1.5. Other Materials Relevant to this Bid

The Bid may contain, with appropriate cross-references, additional materials the Bidder wishes to submit in support of its qualifications.

Promotional material not directly associated with this specific Bid is not desired and will not be considered during evaluation.

6. BID

Bidders must provide a complete Bid, including add alternates, on the attached bid forms. Bids must be initialed by a party authorized to bind the Bidder contractually.

EXHIBIT 1

Town of Stoneham Required Certification

IN WITNESS WHEREOF, the undersigned certifies, under the pains and penalties of perjury that:

- (1) The Bidder is a duly organized and legally existing entity and is qualified to do business and is in good standing in the Commonwealth of Massachusetts, with full power and authority to execute and perform this Contract.
- (2) This Contract has been duly executed and delivered on behalf of the Bidder in full compliance with the authority granted by its organizational documents and its votes or resolutions, which authority has not been amended, modified or rescinded as of the date hereof.
- (3) It is in compliance with all of the provisions, and shall remain in compliance with the provisions for the life of any contract resulting from this solicitation: That the Bidder is qualified to perform any such contract and processes, or shall obtain, all requisite licenses and permits to complete performance; shall maintain all unemployment, workers' compensation, professional and personal liability insurance policies sufficient to cover its performance under such contract; and shall comply with relevant prevailing wage rates and employments laws.
- (4) To the best of its knowledge and belief has paid all local taxes, tax titles, utilities, motor vehicle exercise taxes, water and wastewater bills to the Town of Stoneham, as required by the law.
- (5) To the best of its knowledge and belief has filed all state tax returns and paid all state taxes required by the law, and has complied with reporting of employees and contractors, and withholding and remitting of child support (M.G.L. ch. 62C, §49A).
- (6) To the best of its knowledge and belief has complied with all Massachusetts state laws relating to contributions and payments in lieu of contributions to the Employment Security System.
- (7) The bidder hereby certifies he shall comply in all respects with the contract provisions regarding non-discrimination, and affirmative action which are contained in "The Commonwealth of Massachusetts Modified Supplement Equal Employment Opportunity Anti-Discrimination and Affirmative Action Program" and the "Supplemental Provisions for Increased Participation by Minority Business Enterprises.
- (8) This bid has been made and submitted in good faith and without collusion or fraud with any other person. As used in this paragraph, "person" shall mean any natural person,

business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

- (8.1) The Bidder certifies that it has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the contract.
 - (8.2) The Bidder certifies that none of its subcontractors has given, offered or agreed to give any gift, contribution or offer of employment to the Contractor or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the subcontractor of a contract by the Bidder.
 - (8.3) The Bidder certifies that no person, corporation or other entity, other than a bona fide full time employee of the Bidder has been retained or hired by the Bidder to solicit for or in any way assist the Bidder in obtaining the contract upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the contract to the Bidder.
- (9) The Bidder acknowledges that the Town of Stoneham is a municipality for the purposes of Chapter 268A of the Massachusetts General Laws (the Massachusetts conflict of interest statute), and agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with obligations of said statute.
- (10) The Contractor receiving the award of the Contract shall be required to obtain from each of its subcontractors and submit to the Town prior to the performance of any work under said Contract a signed certification by said subcontractor, regardless of tier.

*Signature of Person Signing Bid or Proposal
(Type/Print)*

BY: Corporate Officer

Corporate Name (Full business name)

BY: Corporate Officer (Sign)

*Social Security Number (Voluntary) or
Federal Identification Number*

*State of incorporation/City of
Business (D/B/A) Registration*

EXHIBIT 2

Town of Stoneham Standard Terms and Conditions

- (1) Incorporation and Certifications. The Town of Stoneham (“Town”) Terms and Conditions form is issued by the Town for use with all Town solicitations (for purposes of this document, “solicitation” shall mean any Sealed Bid, Invitations for Quotation or Requests for Proposal) and contracts. It is incorporated by reference into any contract for commodities and services executed by the Town and the Contractor unless superseded by law or Town ordinance. Approval of a contract will not be granted unless the required certifications (Exhibit I) are signed by the bidder or proposer (“Bidder”)
- (2) Social Security or Federal Identification Numbers. Social Security or Federal Identification Numbers will be furnished to the Massachusetts Department of Revenue to determine whether the bidder has met filing or tax obligations. Bidders who do not correct filings or arrearages will not be issued contracts, contract renewals or extensions pursuant to Massachusetts General Laws, chapter 62C, section 49A.
- (3) Inquiries. All inquiries regarding any specification or solicitation must be made to the Director. Any challenges to specifications shall be made prior to the solicitation opening date, if possible.
- (4) Warranties and Guarantees. All bidders must include with their bid or proposal copies of warranties and/or guarantees for each item and related major components. Such warranties or guarantees must be assignable to the Town (Owner) by the Bidder or it must make arrangements to allow such assignment. Bidders warrant and guarantee complete functionality in all respects of the product(s) offered, work will be performed in a professional and workmanlike manner and all parts used shall be new.
- (5) Non-restricted Solicitation. Any reference to a particular trademark, trade name, patent, design, type, specification, producer, supplier, or catalogue is not intended to restrict this solicitation to any manufacturer or proprietor or to constitute an endorsement of any good or service, and the Town may consider clearly identified offers of substantially equivalent goods and services submitted in response to such reference.
- (6) Informalities. The Town reserves the right to waive any informality or to accept or reject any and all bids or proposals, in whole or in part, considered by the Director to be in the best interest of the Town.
- (7) Funds Availability. All contract awards are subject to and contingent upon fund availability.
- (8) Material Safety Data Sheets. Pursuant to M.G.L ch. 111F, sec. 8-10, any supplier who receives a contract resulting from this solicitation agrees to submit a MSDS for each toxic

or hazardous substance or mixture containing such substance when deliveries are made, agrees to comply with all federal, state, and local laws or ordinances, including environmental regulations, the National Electrical Code (NEC), the National Electrical Safety Code (NESC) and the Occupational Safety and Health Act (OSHA).

- (9) Entire Contract. The contract between the Town and the Contractor shall represent the entire and integrated agreement between the Town and the Contractor with respect to the services to be performed and products to be delivered under the contract, and shall supersede all prior negotiations, representations or agreements, either written or oral.
- (10) Confidentiality. The Contractor shall not, without the Town's prior written consent, release or disclose any information relating to the project to anyone except as necessary to perform its duties hereunder, or required to disclose by any applicable federal, state or municipal requirement.
- (11) Certifications. The Contractor shall, from time to time, make such certifications and statements to the Town as the Town shall reasonably request, and in such form as the Town shall reasonably request, provided that the Contractor determines that such certifications are true and correct based upon services performed by the Contractor under the contract.
- (12) Disputes. All claims, disputes and other matters in question between the Town and the Contractor arising out of or relating to the contract or the breach thereof shall be submitted for resolution to the Middlesex Superior Court in Woburn, Massachusetts, and if subject matter jurisdiction does not exist as said court, then any such case shall be brought at the Woburn District Court, or to any other dispute resolution mechanism agreed to by the parties. No such action shall be brought by the Contractor, however, until the completion of all services under the contract or its earlier termination as provided in the contract, the parties agreeing to negotiate in good faith any claims, disputes or other matters in question during the term of the contract before resorting to litigation.
- (13) Limited Liability. No Town board members, officers, managers, employees or agents of either party shall be liable to the other party or to any of its board members, officers, managers, employees or agents for claims for direct, indirect, incidental or consequential damages or losses connected with or resulting from performance or non-performance under this contract, including without limitation claims in the nature of lost profits. The liability of the Town shall be subject to the limitations of the Massachusetts Tort Claims Act, M.G.L. Chapter 258, including Section 2 thereof and nothing herein shall be construed as a waiver to such limitation on liability.
- (14) Force Majeure. As used in this contract, "Force Majeure" means any cause beyond the reasonable control of, and without the fault or negligence of, the party claiming Force Majeure. It shall include, without limitation, sabotage, strikes, riots or civil disturbance,

acts of God, act of public enemy, drought, earthquake, flood, explosion, fire, lightning, landslide, similarly cataclysmic occurrence or interruptions caused by the the other party which directly impact performance under this contract and which are not caused by the party claiming force majeure's negligence or failure to perform pursuant to the provisions of this contract. Economic hardship of either party shall not constitute a Force Majeure event under this contract.

- (15) Governing Law. The laws of the Commonwealth shall govern the Contract, including with respect to conflict of laws.
- (16) No Waiver. The Town's review, approval, acceptance or payment for services under the contract shall not operate as a waiver of any rights under the contract and the Contractor shall be and remain liable to the Town for all damages incurred by the Town as the result of the Contractor's failure to perform in conformance with the terms and conditions of the contract. The rights and remedies of the Town provided for under the contract are in addition to any other rights or remedies provided by law. The Town may assert a right to recover damages by any appropriate means, including but not limited to set-off, suit, withholding, recoupment, or counter-claim either during or after performance of the Contract.
- (17) Reports, Drawings, etc. Under the contract awarded, the Contractor's bid, and all reports, inventories, drawings, plans and other data and material, including data and material stored on electronic media, furnished during the course of the project (collectively "Materials") shall become the Town's property and may be used by the Town (or such parties as the Town may designate) thereafter in such manner and for such purposes as the Town (or such parties as the Town may designate) may deem advisable, without further employment of or additional compensation to the Contractor.
- (18) Indemnity. Unless otherwise provided by law, the Contractor will indemnify, defend, and hold harmless the Community against any and all liability, loss, damages, costs or expenses for personal injury or death or damage to real or tangible personal property that the Town, its officials, employees and/or agents may sustain, incur or be required to pay, arising out of or in connection with the performance of the Contract by reason of any alleged negligent action/inaction or willful misconduct by the Contractor, its agents, servants or employees, including any sub-contractor or anyone directly or indirectly employed by them or anyone for whose acts they may be liable or any claim therefore or related thereto, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

In case of claims or suits for damages, the Town may withhold such portions or any payments that may be due hereunder as may be considered necessary by the Town to cover said claims or suits, until they have been settled and satisfactory evidence to that effect has been furnished to the Town.

- (19) Compliance with Law and Regulation. Under the contract awarded, it is the Contractor's responsibility that the contract be conducted, and that all services and other work performed by the Contractor under the contract be performed so as to comply with all applicable federal, state and municipal laws, regulations, codes, and bylaws including prevailing wage laws as applicable.
- (20) Liquidated Damages. If the contractor shall neglect, fail or refuse to repair outages in accordance with the scope of work specified within this contract, at the next Regular Batch Maintenance day following the Town's reporting required pursuant to section 2.3.6 or neglect, fail or refuse to provide the quotation within the five (5) business days as required in section 2.3.3.6, or fail to respond to an emergency repair request within three (3) hours as required in section 2.3.3, or neglect, fail or refuse to replace a pole within the time specified by the Director, or as of the date of any proper extensions granted by the Director, the Contractor agrees, that as a part of the consideration for the execution of this contract by the Town, to pay the Town not as a penalty, liquidated damages for breach of contract, as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the contract for completion of the work.

The said amount is so fixed and agreed upon because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Town would in such event sustain, and said amount is agreed to be the amount of damages which the Town would sustain. These liquidated damages are two hundred and fifty (\$250.00) per day. The Town, as its option, may deduct said liquidated damages from payments due to the contractor each month.

Before determining that liquidated damages will be applied herein under this Exhibit, the Town shall notify the Contractor in writing as to the particular provision of the contract the Contractor is not in compliance with and the reasons. Within ten (10) calendar days, legal holidays excluded, of said written notice, the Contractor shall respond. The Contractor's response may include: a description of any lack of information from the Town regarding the location of the pole or work required, other factors which may have affected the Contractor's ability to perform and a proposal to remedy any compliance issues. At the end of said ten (10) day period, the Town shall make its determination.

- (21) Non-Compliance. If the Town at any time during the term of this contract determines that the Contractor is not in compliance with any of the provisions of this contract, the Town may notify the Contractor of this determination in writing. Said written notice shall state the reasons for this determination and shall identify the particular provisions of this contract that are at issue. Within ten (10) calendar days of said written notice,

the Contractor shall come into compliance with the provisions identified in the written notice.

If at the end of said ten (10) day period, the Town determines that the Contractor is still not in compliance, the Town may deduct from the payments due the Contractor under this contract liquidated damages in the amount of two hundred and fifty (\$250.00) dollars per provision for each day thereafter that the Contractor fails to comply with each such provision.

- (22) Personnel. The Town may require the Contractor to relieve any of the Contractor's personnel from any further work under the contract if in its sole opinion the individual does not perform at the applicable skill level or deliver work which conforms to the performance standards generally associated with good utility practices.

Employees of the contractor are expected to exhibit the utmost courtesy when dealing with the public and/or Town personnel. Repeated complaints regarding conduct of the Contractor's personnel may be ground for termination of the contract.

- (23) Subcontractors. No subcontract or delegation to which the Town may assent shall relieve or discharge the Contractor from any obligation or liability under the contract. The Contractor shall be as fully responsible to the Town for the acts and omissions of its subcontractor and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly or indirectly employed by it.

- (24) Contract Transfer. The Contractor must agree that it will not sell, assign or transfer the Contract or any part thereof or interest therein without the prior written consent of the Town.

- (25) Eversource Compliance. The Contractor must comply fully with the terms of the licensing agreement with Eversource except as may be separately negotiated with the utility and as agreed to by the Town.

- (26) Wage Rates. The wage rates and classifications of labor employed on this contract shall be kept on file in order that they may be available for inspection by the Town. The Contractor and all subcontractors must, on a monthly basis, throughout the term of the contract, provide to the Town certified payroll records in conformance with M.G.L. c.149, Sec. 27, 27A and 27B. The Contractor must maintain accurate and complete records, including payroll records, during the contract term and for three (3) years thereafter. All wage rates shall comply with the minimum wage rates stipulated by the Department of Labor and Industries, as applicable.

- (27) Time. Under the contract awarded, the Contractor must adhere to the time requirements and schedules included in this scope of work; to perform its services as expeditiously as is consistent with the standard of professional skill and care required

hereby; and to perform its services in coordination with the operations of the Town on this scope of work and with any party engaged by the Town in connection with the scope of work. It shall be the obligation of the Contractor to request any information necessary for the performance of its services.

EXHIBIT 3

OHSA CERTIFICATION

A Contractor will not be eligible for award of a contract unless such Contractor has submitted the following certification, which is deemed a part of the resulting Contract.

_____, 20__

_____ certifies that:
(Name of Authorized Representative)

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

Signature of Authorized Representative of Contractor)

(Title)

(Company Name)

EXHIBIT 4

Minimum Wage Statement of Compliance Certification

_____, 20____

_____, _____ do hereby state:
(Name of Authorized Representative) (Title)

That I will pay or supervise the payment of the persons employed by

_____ on the _____
(Contractor, Subcontractor or Public Body) (Contract Name & ID)

And that all mechanics and apprentices, teamsters, chauffeurs and laborers employed on said project will be paid in accordance with wages determined under the provisions of sections twenty six (26) and twenty seven (27) of chapter one hundred and forty nine (149) of the General Laws.

Signature of Authorized Representative of Contractor)

(Title)

(Company Name)

EXHIBIT 5
Additional Articles of Agreement

This Agreement is made and entered into this _____ day of _____, 20____ by and between the Town of Stoneham (“the Town”), a municipal corporation and existing under the laws of the Commonwealth of Massachusetts, and _____ (“the Contractor”) a corporation duly organized and existing under the laws of the Commonwealth / State of _____ OR as a D/B/A duly registered at: _____.

Address: _____

Telephone/Facsimile _____

ARTICLE 1 – DEFINITION

“Contract” as used herein shall mean that these Articles of Agreement and the bid documents which include, without limitation, the instructions to bidders, the Contractor’s bid, the specification, terms and conditions, requirements, the applicable addenda, any final documents representing negotiated terms, and all documents and forms submitted with the Contractor’s bid or proposal.

“Director” as used herein shall mean the Director of the Public Works Department in the Town of Stoneham, Massachusetts or duly authorized representative.

ARTICLE 2 – CONDITIONS OF ENFORCEABILITY AGAINST TOWN

2.1 This Contract in only binding upon and enforceable against the Town if:

- (a) The Contract is signed by the Town Administrator; and
- (b) Endorsed with approval by the Town Accountant as to appropriation or availability of funds; and
- (c) Endorsed with the approval of the Town Counsel as to legal form.

ARTICLE 3 – DURATION

3.1 The Contractor shall commence the performance of this Contract on or as soon thereafter as this agreement is fully executed. The initial term of the Contract will be for a year from May 1, 2015, "the Effective Date", through April 30, 2016.

- 3.2 The Town shall have the option, at its sole discretion, to renew this Contract for two (2) additional one (1) year terms. All extensions are subject to availability of funds.

ARTICLE 4 – SCOPE OF WORK / SPECIFICATIONS

- 4.1 The Contractor shall provide all labor, supervision, equipment, materials, transportation, and other means necessary to provide all services in accordance with the ITB documents and the scope of work described in Bidder’s response to the ITB attached hereto and incorporated herein.

ARTICLE 5 – WORKMANSHIP

- 5.1 All workmanship shall be of the highest quality. Any workmanship determined to be below the high standards of the particular craft involved will not be accepted, and will be corrected and/or replaced by the Contractor as required by the Director.

ARTICLE 6 – PERFORMANCE

- 6.1 The Contractor certifies that it has the ability and experience to perform the subject work and that it has sufficient capital and equipment to enable it to prosecute the work successfully and to complete it within the time named in the Contract.

ARTICLE 7 – AMOUNT OF SERVICES AND PAYMENT

- 7.1 The amount of services required of the Contractor shall be solely determined by the Director and shall not affect the contract price as set out in the Bid and this Contract.
- 7.2 Payment shall be at the unit and hourly price bid in the Contractor’s bid and shall be complete payment for the entire item including furnishing, preparation, and placing of materials, labor and equipment to be used to perform the work required by the Director.
- 7.3 Payment at the unit and hourly price bid shall include, but not be limited to, all loss or damage arising out of the nature of the work or from the action of the elements or from any unforeseen obstructions or difficulties which may be encountered in the prosecution of the work and for all reasons of every description connected therewith.
- 7.4 The Contractor shall have no claim for damages of any kind on account of any delay or suspension in the commencement of work.
- 7.5 The Contractor shall submit invoices every thirty (30) days for the services performed during the preceding thirty (30) day period. Invoices shall include a description of services performed in such form and detail and with such supporting data as the Town may reasonably require the Contractor to demonstrate the computational basis for all charges. The Contractor shall keep records pertaining to services performed employing

sound bookkeeping practices and in accordance with generally accepted accounting principles.

- 7.6 The Town shall endeavor to agree on standardized reports to simplify the reporting as much as possible.
- 7.7 The Town will use best efforts to pay invoices within thirty (30) days following receipt.

ARTICLE 8 – EXEMPTION FROM TAXES

- 8.1 The Contractor shall not pay, and the Town shall not reimburse nor pay the Contractor nor any other party, either directly or indirectly for any tax for which an exemption is provided under law. The Town is exempt from Massachusetts State Sales Tax. The Town will provide a tax exemption number to the Contractor upon request.

ARTICLE 9 – MINIMUM WAGE RATES

- 9.1 In conformity with the provisions of the laws of the Commonwealth of Massachusetts, the minimum wages paid to workers shall not be less than those established by a schedule which has been prepared by the Department of Labor and Industries or as otherwise allowed by law. Payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans under collective bargaining agreements or understandings between organized labor and employers shall be included for the purpose of establishing minimum wage rates as herein provided. The Town shall assume no responsibility for the accuracy of the rates set forth in the schedule and no claims for additional compensation will be considered because of any inaccuracy in the rates so set forth. The schedule of wages referred to above are minimum rates only, the Town will not consider any claim for additional compensation made by the Contractor because of any payment by the Contractor of any wage rate in excess of said minimum rates. All substantive and procedural requirements of the minimum wage rate laws shall be met. The schedule of wages shall be kept posted in a conspicuous place at the site of the work. (MINIMUM WAGE STATEMENT – EXHIBIT 4)

ARTICLE 10 – PERFORMANCE BOND OR CERTIFIED CHECK

- 10.1 The Contractor shall obtain and deposit with the Town a performance bond or certified check in the amount of **Five Hundred (\$500.00) Dollars** which shall guarantee the faithful performance by the Contractor of all its obligations under this Contract. The performance bond shall be executed by a surety authorized to issue such a bond in the Commonwealth of Massachusetts and acceptable to the Town and shall be with sureties satisfactory to the Town. Each bond shall incorporate by reference the terms of this Contract.

ARTICLE 11 – RESPONSIBILITY OF TOWN

See Bid Document Section 2.3.8 Police Details.

ARTICLE 12 – LIABILITY OF TOWN OFFICIALS AND EMPLOYEES

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

ARTICLE 13 – PERSONNEL

13.1 Contractor represents that there has been or will be secured all personnel required for the performance of the work, services and/or items to be provided under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Town. All of the services required hereunder shall be performed by the Contractor or under the supervision of the Contractor, and all personnel engaged in the work shall be fully qualified.

ARTICLE 14 – RESPONSIBILITY FOR WORKERS

14.1 The Contractor and employees, agents, servants, or other persons for whose conduct the Contractor is responsible shall not be deemed to be employees of the Town and shall not file any claim or bring any action for any worker's compensation or unemployment benefits and compensation against the Town.

ARTICLE 15 – INDEPENDENT CONTRACTORS / NO PRIVILEGE BETWEEN TOWN AND OTHERS

15.1 The Contractor is not an employee or agent of the Town, but is an independent contractor. Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the Town and any person or entity other than the Contractor.

ARTICLE 16 – INDEMNIFICATION

16.1 Unless otherwise provided by law, the Contractor will indemnify, defend, and hold harmless the Community against any and all liability, loss, damages, costs or expenses for personal injury or death or damage to real or tangible personal property that the Town, its officials, employees and/or agents may sustain, incur or be required to pay, arising out of or in connection with the performance of the Contract by reason of any alleged negligent action/inaction or willful misconduct by the Contractor, its agents, servants or employees, including any sub-contractor or anyone directly or indirectly employed by them or anyone for whose acts they may be liable or any claim therefore or related

thereto, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

- 16.2 In case of claims or suits for damages, the Town may withhold such portions or any payments that may be due hereunder as may be considered necessary by the Town to cover said claims or suits, until they have been settled and satisfactory evidence to that effect has been furnished to the Town.

ARTICLE 17 – COMPLIANCE WITH THE LAWS

- 17.1 The Contractor shall keep himself fully informed of all existing and future State and National laws and municipal ordinances and regulations, which affect, in any manner, those engaged or employed in the work, or the materials used in the work, or in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.
- 17.2 If any discrepancy or inconsistency is discovered in the plans, drawings, specifications or Contract for this work in relation to any such law, ordinance, regulations, order, or decree, he shall forthwith report the same to the Director in writing.
- 17.3 The Contractor shall at all times observe and comply with, and cause all agents and employees to observe and comply with, all such existing and future laws, ordinances, regulations, orders and decrees; and shall protect and indemnify the Town, its officers and agents against any claim or liability arising from or based upon violation of any such law, ordinance, regulation, order or decree, whether by himself or his employees.

ARTICLE 18 – EQUAL EMPLOYMENT OPPORTUNITY

- 18.1 In connection with the performance of work under the Contract awarded, the Contractor shall not discriminate against any employee, or applicant for employment because of race, color, religion, creed, national origin, ancestry, gender, age or handicap. The contractor shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Massachusetts Commission Against Discrimination (MCAD), One Ashburton Place, Boston, MA 02108, Tel. (617) 727-3990, setting forth the provisions of the Fair Employment Practices Law of the Commonwealth. The Contractor shall comply with all applicable laws and regulations pertaining to non-discrimination, equal opportunity and affirmative action, including without limitation executive orders and rules and regulations of federal and state agencies of competent jurisdiction.

ARTICLE 19 – ADJUSTMENT OF CONTRACT PRICE WHERE SITE CONDITIONS DIFFER SUBSTANTIALLY OR MATERIALLY THAN CONDITIONS INDICATED IN PLANS OR CONTRACT DOCUMENTS

- 19.1 To the extent applicable in accordance with M.G.L. Ch. 30, Sec. 39N, the parties hereby agree:

If, during the progress of the work, the contractor or the awarding authority discover that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the contract documents either the contractor or the Streetlight Maintenance contracting authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a contractor, or upon its own initiative, the contracting authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the contracting authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly.

ARTICLE 20 – AWARDING AUTHORITY MAY ORDER GENERAL CONTRACTOR TO SUSPEND, DELAY, ETC. WORK; ADJUSTMENT IN CONTRACT PRICE; SUBMISSION OF CLAIMS

- 20.1 To the extent applicable in accordance with Mass. General Laws, Chap. 30, Section 39O the following paragraphs are binding upon the Town and Contractor:

- (a) The awarding authority may order the general contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the awarding authority; provided however, that if there is a suspension, delay or interruption for fifteen days or more or due to a failure of the awarding authority to act within the time specified in this contract, the awarding authority shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the general contractor on such increase; and provided further, that the awarding authority shall not make any adjustment in the contract price under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provisions.
- (b) The general contractor must submit the amount of a claim under provision (a) to the awarding authority in writing as soon as practicable after the end of the

suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this contract and, except for costs due to a suspension order, the awarding authority shall not approve any costs in the claim incurred more than twenty days before the general contractor notified the awarding authority in writing of the act or failure to act involved in the claim.

- (c) In the event a suspension, delay, interruption or failure to act of the awarding authority increases the cost of performance to any subcontractor, the subcontractor shall have the same rights against the general contractor for payment for an increase in the cost of his performance as provisions (a) and (b) give the general contractor against the awarding authority, but nothing in provisions (a) and (b) shall in any way change, modify or alter any other rights that the general contractor or the subcontractor may have against each other.

ARTICLE 21 – REQUESTS FOR INTERPRETATIONS AND APPROVALS; SUBSTANTIAL DEVIATIONS FROM PLANS AND SPECIFICATIONS (M.G.L. 30 § 39P)

21.1 To the extent applicable in accordance with Mass. General Laws, Chap. 30, Section 39P the following paragraphs are binding upon the Town and Contractor:

- (a) Whenever the OWNER, awarding authority, engineer or architect is requested to make a decision on interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, he shall make that decision promptly and, in any event, no later than thirty days after the written submission for decision. However, if such decision requires extended investigation and study, the person making the decision shall, within thirty days after receipt of the submission, give the party making the decision written notice of the reasons why the decision cannot be made within the thirty day period and the date by which the decision will be made.
- (b) The CONTRACTOR must perform all the work in conformity with the contract plans and specifications. Substantial deviations, or change orders, may be made only as provided by M.G.L. Ch. 30, Sec. 39I and M.G.L. Ch. 44, Sec. 31C, and as provided herein. Change orders must be in writing and authorized by the OWNER, awarding authority or by the architect or engineer in charge of the work who is duly authorized by the awarding authority to approve such deviations. In order to avoid delays in performance of the work, within thirty days after an authorized written change order, the written order shall be confirmed by a certificate of the awarding authority stating: (1) If such deviation involves any substitution or elimination of materials, fixtures or equipment, the reasons why such materials, fixtures or equipment were included in the first instance and the reasons for substitution or elimination and, if the deviation is of any other nature, the reasons for such deviation, giving justification therefor; (2) that the specified deviation does not materially injure the project as a whole; (3) that

either the work substituted for the work specified is of the same cost and quality, or that an equitable adjustment has been agreed upon between the OWNER and the CONTRACTOR and the amount in dollars of such adjustment and (4) that the deviation is in the best interest of the OWNER. The certificate shall be signed under the pains and penalties of perjury and shall be a permanent part of the file record of the work contracted for.

- (c) M.G.L. Ch. 44, Sec. 31C provides that no change order as provided for in subsection (b) above which results in additional cost shall be deemed to have been given until the auditor or accountant or other officer of the TOWN having similar duties has certified thereon that an appropriation in the amount of such order is available therefor; but such certificate shall not be construed as an admission by the TOWN of its liability to pay for such work; rather, such certification shall bar any defense by the TOWN on the grounds of insufficient appropriation.

ARTICLE 22 – CONFLICT OF INTEREST

- 22.1 Both the Town and the Contractor stipulate to the applicability of the State Conflict of Interest Law (General Laws Chapter 268A) and this contract expressly prohibits any activity which would constitute a violation of that law. The Contractor shall be deemed to have investigated the applicability of the Conflict of Interest Law to the performance of this contract; and by executing this contract, the Contractor certifies to the subcontractors are in violation of said law. The Contractor warrants that neither it nor its employees, agents, officers, directors or trustees have offered or attempted to offer anything of value to any official or employee of the Town in connection with this Contract. The Contractor further warrants that no official or employee of the Town including unpaid members or Town boards and commissions, serves as an officer, director, trustee or employee of Contractor, and that no official or employee of the Town has or will have a direct or indirect financial interest in this Contract. The Contractor shall not during the term of this Contract hire or employ on either a full-time or part-time basis any person or persons employed by the Town unless such hire or employment is determined by the Town not to be in violation of the Conflict of Interest Law and is otherwise approved in writing by the Town.

ARTICLE 23 – PROVISION REQUIRED BY THE LAW DEEDMED INSERTED

- 23.1 Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

ARTICLE 24 – INSURANCE

24.1 The Contractor shall purchase and maintain, at its sole cost, including, but not limited to all premium costs and the cost of all deductibles, insurance in a company or companies lawfully authorized to do business in the Commonwealth of Massachusetts and approved by the Town 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 are by the Contractor, an agent of the Contractor, a Subcontractor or by anyone for whose acts any of them may be liable:

- (a) Claims under Workers' Compensation disability benefit; and other similar employee benefit acts;
- (b) Claims for damages because of bodily injury, occupational sickness or disease, or death;
- (c) Claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees covered by Workers' Compensation Insurance;
- (d) Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

24.2 The Insurance required by the above shall be written for not less than the following minimum limits of liability:

- (a) Commercial General Liability Insurance (which shall be written on an "occurrence basis"):

Personal Injury and Property Damage
Per Occurrence - One Million (\$1,000,000.)
Aggregate - Two Million (\$2,000,000.)

The Commercial General Liability Policy shall provide insurance for the Contractor for Bodily Injury and Property Damage to third parties arising out of:

Work Performed by the Contractor Himself with His Own Employees: Premises operations and products and completed operation.

Work Performed by his Subcontractors, Contractor's Protective Liability: ("sublet work" or "Independent Contractors") line. Use of subcontractors may be subject to provision within the specifications regarding prior approval by the Town. All subcontractors performing work under this contract shall name the Town of Stoneham as additional insured on all liability insurance.

The Contractor's Liability Assumed Under the Contract Terms: "Hold Harmless" or "Indemnity Agreement" line also known as Contractual Liability Insurance. This

coverage must be explicitly stated on the contractor's insurance certificate. The Town of Stoneham must be listed as additional insured or co-insured on the liability insurance policy.

Coverage shall be extended to include protection against property damage caused by explosion (including blasting), and collapse of structures and damage to underground pipes and utilities.

- (b) Comprehensive Automobile Liability:
 - Bodily Injury and Accidental Death
 - Per Person – Five Hundred Thousand Dollars (\$500,000.)
 - Per Occurrence – One Million Dollars (\$1,000,000.)
 - Property Damage - \$300,000
- (c) Excess liability, written on an occurrence basis, in the minimum amount of Two Million Dollars (\$2,000,000) in umbrella form over all other liability insurance required above .
- (c) Workers' Compensation - as required by law.

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

- (a) Additional Insured - The Town shall be named as an additional insured on the Comprehensive General Liability and Comprehensive Automobile Liability Policies. In no event shall the Town be responsible for the payment of the contractor's premium payment liability. Eversource Energy (or current Licensor) shall be also be named as additional insured parties on all liability insurance policies obtained by the Contractor, unless specifically waived by the Town, by its Director, in writing.
- (b) Certificates of Insurance - Certificates of Insurance acceptable to the Town shall be addressed to and filed with the Town prior to the commencement of work by the Contractor for all insurance required above. Renewal certificate shall be addressed to and filed with the Town at least thirty (30) days prior to the expiration date of required policies.
- (c) Subcontractors - The Contractor shall not allow any subcontractor to commence work until the Contractor has obtained and evidenced, to the satisfaction of the Town.
- (d) Non-Waiver – The insurance policies required by this Contract shall not be construed to excuse the faithful performance by the Contractor or limit the liability of the Contractor.

- (e) Such insurance shall be primary with respect to any insurance maintained by the Town and shall not call on the Town’s insurance for contributions.
- (f) Such insurance shall be obtained from brokers or carriers authorized to transact insurance business in the State.
- (g) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those required herein.
- (h) The Contractor’s failure to obtain, to procure or maintain the required insurance shall constitute a material breach of the contract under which the Town may immediately suspend operations of the contractor, without further payment or consideration of the Contractor.
- (i) The Licensee shall be responsible for all deductibles.
- (j) The Town, its officials, and employees shall be named as “additional insureds” on all liability insurance policies.
- (k) Neither this insurance section, nor the provision of insurance or insurance proceeds pursuant to this section 10.1, shall limit the liability of the Contractor pursuant to this contractor.
- (l) The Contractor shall provide the Town with certificate(s) of insurance for all policies required herein upon expiration of the policies. All certificates shall contain, at a minimum, a thirty (30) day notice of cancellation or reduction in the coverage amount(s).

ARTICLE 25 – ASSIGNABILITY

25.1 Neither party shall assign, sell, subcontract, or transfer any interest in this Contract without the prior written consent of the other party.

ARTICLE 26 – GENERAL GUARANTY

26.1 Contractor guarantees that the work and services to be performed under the Contract, and all workmanship, materials and equipment performed, furnished, used or installed in the construction of the same shall be free from defects and flaws, and shall be performed and furnished in strict accordance with the drawings, specifications, manufacturer’s recommendations and other contract documents, that all parts of all manufactured equipment shall be adequate and as specified and that the performance shall be as stated. This guarantee shall be for a period of one (1) year from and after the date of installation.

ARTICLE 27 – WARRANTY

27.1 Regardless of the provision of any express warranty by the Contractor or any other party, the warranty of general merchantability and the warranty of fitness for a particular purpose shall not be, and are not, waived. In addition, all warranties provided by other parties, including manufacturer’s warranties, shall be provided, and assigned if necessary, to the Town, by the Contractor, prior to the completion of the contract work.

ARTICLE 28 – AUDIT, INSPECTION, RECORD KEEPING

28.1 At any time during normal business hours, and as often as the Town may deem necessary, there shall be made available to the Town for the purpose of audit, examination and/or to make excerpts or transcripts, all records, contracts, invoices, materials, payrolls, records of personnel, condition of employment and other data relating to all matters covered by this Agreement. For a period of three (3) years after final payment of this Contract or any extension thereof, the Contractor shall make its work papers, records and other evidence of audit available to the Town or its duly authorized representatives. The Town shall be entitled to reproduce any or all such documents at its own expense, for which provision shall be made at the time the need for reproduction arises.

ARTICLE 29 – LIQUIDATED DAMAGES

29.1 The Town and Contractor recognize time is of the essence of this agreement. They also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by the Town if the work is not completed on time. Accordingly, instead of requiring such proof, the Town and Contractor agree that the amount is so fixed and agreed upon to be the amount of damages which the Town would sustain. These liquidated damages (not as a penalty) are Two Hundred Fifty Dollars (\$250.00) per day. The Town, as its option, may deduct said liquidated damages from payments due to the contractor each month.

ARTICLE 30 – DAMAGES

30.1 From any sums due to the Contractor for services performed, the Town may keep for its own the whole or any part of the amount for expenses, losses, and damages as directed by the Town Administrator, incurred by the Town as a consequence of procuring services or repairs as a result of any event of default, failure, omission, or mistake of the Contractor in providing services as provided in this contract.

ARTICLE 31 – BREACH AND REMEDY

- 31.1 Failure of the Contractor to comply with any material term, provision or condition of this Contract shall be deemed a breach of the Contract, and the Town shall have all rights and remedies provided under law, including, but not limited to, the right to immediately cancel, terminate, or suspend the contract in whole or in part upon written notice to the Contractor, 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 and specific performance, and the right to select any or all of the remedies available to it.
- 31.2 Upon any termination, unless otherwise directed by the Town, the Contractor shall promptly discontinue all contractual obligations required under the Contract and incur no further obligations in connection with the services. The Contractor shall also terminate outstanding orders and subcontracts and settle liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee. The Town shall be responsible to the Contractor for not greater than the reasonable value of goods and/or materials provided to the Town, not to exceed the pro-rata contract price, minus any cost incurred by the Town as a result of the Contractor's contract performance, subject, also to the legal rights and remedies the Town may have under law.

ARTICLE 32 – TERMINATION

- 32.1 For Cause: If, for any cause, the Contractor fails to fulfill in a timely manner its obligations under this Agreement, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the Town shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date of such termination. Such notice shall be given not less than five (5) days prior to the effective date of termination. In the event of termination, all finished or unfinished documents, data, studies, reports or other materials prepared by the Contractor under this Agreement, shall at the option of the Town, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.
- 32.2 For Non-Appropriation: The obligations of the Town under this Agreement are subject to the appropriation of the necessary funds. If for any fiscal year or any part thereof during the term of this Agreement, funds for the discharge of the Town's obligations under this Agreement are not appropriated and authorized, or funds so appropriated and authorized are reduced or withdrawn, then this Agreement shall terminate. A termination due to non-appropriation or withdrawal of funds shall be communicated in writing and will be effective as of the last day of the fiscal year in which such non-appropriation or decision to withdraw funding occurred, or as of the date when such appropriated and authorized funds are exhausted or withdrawn, whichever is later,

without liability to the Town for damages, penalties or other charges on account of termination.

- 32.3 In the event of a termination due to non-appropriation or withdrawal of funds, services will be paid for up to the effective date of termination. In the event of termination for non-appropriation, all finished or unfinished documents and other materials as described above shall, at the option of the Town, become its property.

ARTICLE 33 – CLAIMS AND DISPUTES

- 33.1 All claims, disputes and other matters in question between the Town and the Contractor arising out of or relating to the contract or the breach thereof shall be submitted for resolution to Superior Court of Massachusetts in Middlesex County, East Cambridge or the District Court of Massachusetts, the Woburn Division or to any other dispute resolution mechanism agreed to by the parties. No such action shall be brought, however, until the completion of all services under the contract or its earlier termination as provided in the contract, the parties agreeing to negotiate in good faith any claims, disputes or other matters in question during the term of the contract before resorting to litigation.

ARTICLE 34 – FAILURE OR OMISSION OF BIDDER

- 34.1 The failure or omission of any Contractor to receive or exam and become familiar with any form, instrument or document shall in no way relieve the Contractor of any obligation in respect to his proposal.

ARTICLE 35 – ASSURANCE

- 35.1 Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- 35.2 Contractor has visited the Site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, and performance for the work.
- 35.3 Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress and performance of the work.
- 35.4 Contractor has made or caused to be made examinations, investigations, and tests and studies of such reports and related data in addition of those referred to in the above paragraphs as he deems necessary for the performance of the work at the Contract price within the Routine Batch Maintenance and in accordance with the other terms and conditions of the Contract documents; and no additional examinations, investigations, and/or tests and similar are or will be required by him for such purpose.

- 35.5 Contractor does not consider that any further examinations, investigations, explorations, tests, studies or data are necessary for the performance of the work at the Contract price, within Contract times and in accordance with the other terms and conditions of the Contract documents.
- 35.6 Contractor is aware of the general nature of work to be performed by the Town and others that relates to the work as indicated in the Contract Documents.
- 35.7 Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports, and drawings identified in the Contract documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- 35.8 Contractor has given the Town written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by the Town is acceptable to Contractor.
- 35.9 The Contract documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the work.

ARTICLE 36 – PERMITS, LICENSES, APPROVALS

- 36.1 All permits, licenses, approvals and other legal or administrative pre-requisites to the performance of this Contract shall be secured and paid for by the Contractor.

ARTICLE 37 – AMENDMENT / WAIVER PROCEDURE

- 37.1 Changes to any of the provisions specified in this Contract may occur only when mutually agreed upon by the Contractor and the Town, set forth in writing and signed both by the Contractor and the Town. All conditions, covenants duties and obligations contained in this Contract may be waived only by written agreement by the parties. Forbearance or indulgence in any form or manner by the Town shall not be construed as a waiver, nor in any manner limit the legal or equitable remedies available to the Town. No waiver by the Town of any default or breach shall constitute a waiver of any subsequent default or breach by the Contractor.

ARTICLE 38 – STANDARD TERMS AND CONDITIONS

- 38.1 The standard terms and conditions described in Exhibit 2 of the ITB are hereby incorporated by reference.

ARTICLE 39 – CONTRACT DOCUMENTS

39.1 The Contract Documents which comprise the Contract between the Town and Contractor are attached hereto and made a part hereof and consist of the following:

39.1.1 Invitation to Bid

39.1.2 Bid Form

39.1.3 Bid Bond

39.1.4 Bidder’s Qualification Statement

39.1.5 Exhibit 1 through 4

39.1.6 Exhibit 5 Additional Articles of Agreement

39.1.7 Exhibit 6 Add Alternate Scope of Work

ARTICLE 40 – CONFLICT

40.1 In the event that there is a conflict between these Articles and the bid documents, the bid documents shall supersede these Articles.

ARTICLE 41 – CAPTIONS AND HEADINGS

41.1 The captions and headings in this Contract are for convenience and reference only and in no way define or limit the scope or content of this Contract or in any way affect its provisions or their interpretation.

ARTICLE 42 – SEVERABILITY

42.1 If any provision of this contract is held invalid by any court or body of competent jurisdiction, the remainder of this Contract shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Contract, a sealed instrument, this

_____ day of _____, 20_____.

CONTRACTOR

TOWN OF STONEHAM

Signature: _____

David Ragucci
Town Administrator

Print Name: _____

Title: _____

(See above as to Contractor's Certifications)

**PUBLIC WORKS
DEPARTMENT REVIEW**

Contractor's Federal Tax I.D. No.
(Required)

Robert E. Grover
Director of Public Works

**Certification as to Availability
of Funds:**

Ronald Florino
Town Accountant

Approved as to legal form:

William Solomon
Town Counsel

Item 4: Pole Transfers Each Location

Due to system upgrades by EVERSOURCE, Verizon or other facility owners, the Town is required to perform transfers of the existing streetlight from the existing pole to a new pole provided by the utilities. The work under this item consists of the removal, installation and rewiring of existing street light apparatus to new poles.

Item 5: LED Streetlight - 4,000 Lumen HPS Equivalent Each

Scope:

The work under this item consists of converting existing 4,000 Lumen High Pressure Sodium (HPS) street lights to Light Emitting Diodes (LED). Price will include all labor, material and equipment required to remove existing HPS streetlight and install a LED streetlight. Existing streetlight will be stored at the Department of Public Works located at 16 Pine Street. LED streetlight to be approved by the Director.

Materials:

LED streetlights will be manufactured by one of the following companies or approved equal:

Cree Inc
General Electric
Philips

Measurement & Payment:

The work under this item shall be measured by each light installed and include all necessary labor, equipment and materials.

Item 6: LED Streetlight - 9,500 Lumen HPS Equivalent Each

Scope:

The work under this item consists of converting existing 9,500 Lumen High Pressure Sodium (HPS) street lights to Light Emitting Diodes (LED). Price will include all labor, material and equipment required to remove existing HPS streetlight and install a LED streetlight. Existing streetlight will be stored at the Department of Public Works located at 16 Pine Street. LED streetlight to be approved by the Director.

Materials:

LED streetlights will be manufactured by one of the following companies or approved equal:

Cree Inc
General Electric
Philips

Measurement & Payment:

The work under this item shall be measured by each light installed and include all necessary labor, equipment and materials.

Item 7: LED Streetlight - 16,000 Lumen HPS Equivalent Each

Scope:

The work under this item consists of converting existing 16,000 Lumen High Pressure Sodium (HPS) street lights to Light Emitting Diodes (LED). Price will include all labor, material and equipment required to remove existing HPS streetlight and install a LED streetlight. Existing streetlight will be stored at the Department of Public Works located at 16 Pine Street. LED streetlight to be approved by the Director.

Materials:

LED streetlights will be manufactured by one of the following companies or approved equal:

Cree Inc
General Electric
Philips

Measurement & Payment:

The work under this item shall be measured by each light installed and include all necessary labor, equipment and materials.

Item 8: LED Streetlight - 25,000 Lumen HPS Equivalent Each

Scope:

The work under this item consists of converting existing 25,000 Lumen High Pressure Sodium (HPS) street lights to Light Emitting Diodes (LED). Price will include all labor, material and equipment required to remove existing HPS streetlight and install a LED streetlight. Existing streetlight will be stored at the Department of Public Works located at 16 Pine Street. LED streetlight to be approved by the Director.

Materials:

LED streetlights will be manufactured by one of the following companies or approved equal:

Cree Inc
General Electric
Philips

Measurement & Payment:

The work under this item shall be measured by each light installed and include all necessary labor, equipment and materials.