

INVITATION TO BID



CATCH BASIN & STORM DRAIN CLEANING CONTRACT# CB-SD-16

**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 Catch Basin Cleaning, 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. 3/3/2016
Deadline for Any/All Questions – 3:30 P.M. 4/4/2016
Submission Deadline for Bid – 2:00 P.M. 4/14/2016

2. Procurement Scope

2.1. Purpose

The purpose of this contract is to establish a supplemental support service for catch basin cleaning and storm drain system cleaning that the Town is unable to perform for various reasons.

2.2. Background

The Town from time to time is unable to perform all of the necessary catch basin cleaning and storm drain system cleaning services required and will supplement its forces with an outside Contractor.

The purpose of any contract resulting from this ITB is to provide catch basin cleaning and storm drain system cleaning services as ordered by the Director on a scheduled or emergency basis.

The Bidder shall provide all material, labor and equipment necessary to perform work as required by this agreement.

2.3. Scope of Work

All services 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.

Services will generally be performed on a regularly scheduled workday following a forty eight (48) hour notice to the Town. It should be understood that catch basins listed in Exhibit 6 as chapter 90 (CH-90) roads will have to be done during off peak traffic times. The Contractor will not receive additional compensation and the times and day to be approved by the Director. Contractor will not be paid “travel time” to or from the Town or other extras. Initial yearly catch basin cleaning shall be completed during a single continuous thirty (30) day period following written notification to proceed.

Each Catch Basin is to be thoroughly cleaned of sand, silt, and debris from the lower portion of the basin (i.e. basin sump) and gutter mouth of curb inlets by mechanical means or hand labor. Jetting or rodding may be required to loosen debris materials to assure complete removal. A basin which cannot be cleaned due to a structural defect or absence of a sump will not be measured for payment.

During the operation, care shall be taken by the contractor not to damage any grate, frame, catch basin, pipe or curbing. If damaged is caused by the negligence of the Contractor the damaged parts shall be satisfactory repaired or replaced at the Contractor’s expense.

The material removed from the catch basins shall be transported immediately to the approved disposal area in trucks that will not spill or leak the material along the

roadway. Any material falling on the roadway shall be reported to the Town and cleaned immediately.

The catch basin shall be considered clean when remaining material in the catch basin is not more than four (4) inches in depth, if leveled. The Town will conduct a performance evaluation at a minimum of forty (40) catch basins or two (2) percent of the number cleaned, whichever is greater. Basins not satisfactorily cleaned will be brought to the Contractor's attention and re-cleaned at no additional cost. The Town reserves the right to order the Contractor to re-clean all of the catch basins at no additional cost if more than fifty (50) percent of the catch basins examined during the performance evaluation are not considered clean. In the event an order to re-clean all of the catch basins is given it will be done under DPW personnel oversight and subject to liquidated damages.

The Contractor shall notify the Director of any broken grates or frames, undermined basins, plugged or broken pipe connections, or any suspicious pipe inlets observed during cleaning operations. Any deficiencies shall be noted in a weekly report approved by the Director. If a basin does not have a sump it shall also be noted in the report.

The Contractor shall mark the top of the catch basin grate with paint in a color specified or approved by the Director after it has been cleaned. Any catch basin which cannot be cleaned shall be marked in a different color specified or approved by the Director and noted in a weekly report.

2.3.1 Clam Truck Method. The Clam Truck Method shall consist of cleaning each catch basin in accordance with the Scope of Work under Section 2.3 while utilizing an orange peel clam bucket or approved equal.

2.3.2 Vacuum Truck Method. The Vacuum Truck Method shall consist of cleaning each catch basin in accordance with the Scope of Work under Section 2.3 while utilizing an "Vac – truck" with a minimum collector body size of six (6) cubic yards and hydraulic boom capabilities up to twenty (20) feet or approved equal.

2.3.3 Storm Drain Pipe Cleaning Services. The Town may request separate storm drainage pipe cleaning services during the term of the Contract at a daily rate. The Contractor shall use a truck with the capability to water jet clean drainage pipe ranging from eight (8) inches to twenty four (24) inches in diameter. The truck shall contain; all hosing necessary for cleaning operations; all necessary heads for cleaning and cutting roots; water tanks able to hold a minimum of one thousand five hundred (1,500) gallons for water jetting; and a minimum of three hundred (300) feet for water jet cleaning.

The Town will supply all necessary water. The Contractor is required to coordinate tank filling with DPW personnel who shall operate fire hydrants. Under no circumstance shall the Contractor attempt to operate a Town fire hydrant.

2.3.4 Vacuum Truck Services. The Town may request separate vacuum truck services, separate from Section 2.3.2, during the term of the Contract at an hourly rate. The Contractor shall use a truck with a minimum collector body size of six (6) cubic yards and with hydraulic boom capabilities up to twenty (20) feet. Contractor shall receive a minimum of four (4) hours per call.

2.3.5 Additional Coordination. At this time the Contractor will not be required to coordinate catch basin & storm drain cleaning with any other entity other than the Town.

2.3.6 Weekly Reports. Throughout the term of this Contract, the Contractor shall submit weekly 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. For each report the minimum information to be supplied weekly shall include:

- Dates where work was performed at each location (by street);
- Location (by street) of each catch basin cleaned;
- Nearest address of each catch basin **NOT** cleaned and description why;
- Number of truckloads of material and estimated volume per day;
- Address of each catch basin having deficiencies and description of them;

2.3.7 Material Waste Disposal. The Contractor shall dispose of all waste materials generated through the performance of this agreement at a location within the Town determined by the Director.

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 performing work the Contractor damages any 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 “Catch Basin & Storm Drain Cleaning Contract #CB-SD-16” 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:

- 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 performing catch basin and/or storm drain pipe cleaning services and be able to demonstrate performance of such work to the satisfaction of the local authority as an indication of successful performance.
- Personnel assigned to the project shall have at least five (5) years of experience on similar projects or be supervised by a Person with at least ten (10) years of experience.
- Certificate of Insurance pursuant to the insurance requirements set forth in (Exhibit 5) included with Bid.

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 base bid price for first year (Year 1) of Catch Basin & Storm Drain Cleaning cost, and not either of the two option years or add alternates. 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). Bidders are also reminded the Town may elect to utilize the Add Alternates in place of base bid items.

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. 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.

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 – CATCH BASIN & STORM DRAIN CLEANING

5.1.1. Experience and Qualifications

The Town reserves the right to request a list of the firm's experience on a minimum of three (3) other similar projects. 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 any subcontractors the firm reasonably intends to use on this project.

The Town reserves the right to request a list of 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 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 clean catch basins in accordance with the scope of work specified within this contract or neglect, fail or refuse to perform such work 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 catch basin or storm drain cleaning 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) 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.

- (26) 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 is 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, 2016, "the Effective Date", through April 30, 2017.
- 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 is required to obtain and deposit with the Town a one hundred (100) percent Payment Bond from a surety company satisfactory to the Town, payable to the Town of Stoneham MA.

The Contractor is **NOT** required to obtain and deposit with the Town a performance bond.

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, privilege 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.
- (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. This guarantee shall be for a period of one (1) year from and after the date of performance.

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 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 Catch Basin Cleaning Locations

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:**

Donald Piatt
Town Accountant

Approved as to legal form:

William Solomon
Town Counsel