

**SENIOR CENTER
CRAWLSPACE REPAIRS AND RENOVATIONS
169 SKYLINE TRAIL
MIDDLEFIELD, MASSACHUSETTS**

PROJECT MANUAL

June 14, 2022



**B T A
28 VINCENT RD
MENDON, MASSACHUSETTS 01756
(508) 634 8401**

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**INVITATION FOR BID
IFB # 003**

SENIOR CENTER

CRAWLSPACE REPAIRS AND RENOVATIONS

MIDDLEFIELD, MA

June 23, 2022

BIDS DUE:

July 14, 1:00 P.M.

Late Proposals Will Be Rejected

DELIVER COMPLETED SUBMISSIONS TO:

**Town of Middlefield, MA
Selectboard Office
Attn: Select Board
188 Skyline Trail, Middlefield, MA 01243
Phone: 978-623-2079
e-mail: selectboard@middlefieldma.net**

TOWN OF MIDDLEFIELD MASSACHUSETTS

INVITATION TO BID

Sealed bids for furnishing the following will be received at the Select Board Office, Middlefield Town Offices, 188 Skyline Trail, Middlefield Massachusetts 01243 until the time specified below at which time the bids will be publicly opened and read. The time received will be stamped on each bid and for a consistency of time, the time stamp clock in the Purchasing Office will be the determining time.

ITEM BID OPENING

IFB No. 003 Senior Center Crawlspace Repairs and Renovations July 14, 2022 1:00 PM
TOWN OF MIDDLEFIELD
SELECT BOARD OFFICE
TOWN HALL
188 SKYLINE TRAIL
MIDDLEFIELD, MA 01243

DCAM Certification for GENERAL CONSTRUCTION is required on this bid.

Bid Documents and bid forms may be obtained at the Select Board Office, Town Hall 188 Skyline Trail Middlefield, MA 01243 on Tuesday, Wednesday, and Thursday from 9:00AM to 1:00 P.M. and also on the Town website at <https://middlefieldma.net>. The deadline for questions on the documents is July 1, 2022 at 12:00 noon. Bids will be opened in the Select Board Office located in the Middlefield Town Hall 188 Skyline Trail Middlefield, MA 01243 on July 14, 2022 at 1:00 P.M. Each bid must be accompanied by a bid security of **CASH, CERTIFIED CHECK, or BID BOND** issued by a responsible bank or trust company licensed to do business in the State of Massachusetts in the amount of 5% of the total bid.

A Pre-Bid Site Visit will be held for all interested parties on June 29, 2022 @ 10:00 AM. at the front entrance to the Senior Center, 169 Skyline Trail Middlefield, MA 01243. The deadline for questions on the documents is July 1, 2022 at 12:00 noon.

Attention is directed to the minimum wage rates to be paid as determined by the Department of Labor and Workforce Development under the provisions of Massachusetts General laws, Chapter 149, Sections 26 to 27D inclusive.

A bond of an amount equal to 100 per cent of the total amount of the bid with a surety company satisfactory to the Town, as surety, will be required for the faithful Performance of the contract and the Payment for all labor and materials used in the work. Such bonds shall be prepared on forms provided by the Owner and supplied by a surety company licensed to do business in the Commonwealth of Massachusetts.

No bidder may withdraw his bid for a period of thirty (30) days, excluding Saturdays, Sundays, and legal holidays after the date set for the opening thereof.

The bidding and award of this Contract will be under the provisions of M.G.L. Chapter 149, Section 44A, et seq.

Middlefield is an affirmative action/equal opportunity purchaser. The Town reserves the right to accept or reject, in whole or in part, any or all bids or take whatever other action may be deemed necessary to be in the best interest of the Town.

BID #003
Town of Middlefield, Massachusetts

COVER SHEET

The Town of Middlefield reserves the right to reject any or all Bids, to omit any item or items called for, or to accept the bids(s) deemed in the best interest of the Town. One Original and One (1) copy of the bids must be submitted **on or before 1:00 PM on Thursday, July 14, 2022** to:

Town of Middlefield
Select Board Office
Middlefield Town Hall
188 Skyline Trail
P.O. Box 2381
Middlefield, Massachusetts 01243

Bids for this project must be mailed to the select board. The envelope containing the Bid and required information must be sealed and marked with Proposer's name, title of proposal, Bid number, and date of opening. The Proposer must sign all required signature pages in order for the proposal to be considered.

The Proposer acknowledges receipt of the following **ADDENDA #** _____

BUSINESS/INDIVIDUAL

NAME _____

ADDRESS _____

CITY, STATE, ZIP CODE _____

TELEPHONE _____

EMAIL _____

INDIVIDUAL/AUTHORIZED SIGNATURE _____

AUTHORIZED OFFICER NAME (print) _____

DATE _____

By signing above, the authorized officer is certifying that a complete examination of all bid/rfp documents has been made and that the goods/services will be delivered within the time specified and at the prices stated.

All bidders must sign and submit with their bid the attached Certificate of Good Faith and Tax Attestation Form. Failure to do so will result in the bid being unresponsive and rejected.

If bidder/proposer is a co-partnership, all partners must execute both copies of the bid/proposal, unless one partner has been authorized to sign for the co-partnership, in which case evidence of such authority shall be submitted.

If bidder/proposer is a corporation, the authorized agent shall execute both copies of the bid/proposal. Evidence of authority to sign must be submitted.

The Town of Middlefield reserves the right to reject any or all bids/proposals and waive any informalities deemed to be in the best interests of the Town.

INSTRUCTIONS TO BIDDERS
BID NO. 003

1.01 - PROPOSAL

1. Sealed bids will be received at the time and place as designated by the Owner in the “Invitation For Bid”.
2. If, at the time of the scheduled bid opening, the Town Offices are closed due to inclement weather or other unforeseeable events, the bid opening will be postponed until the same time as specified in the bid documents on the next normal business day. Bids will be accepted until that date and time.
3. Proposal envelopes shall be clearly marked **“Sealed Bid” Senior Center Crawlspace Repairs and Renovations IFB#003** and addressed to: Town of Middlefield, Select Board P.O. Box 238 Middlefield, MA 01243.
4. Proposals shall be submitted in duplicate. Proposal envelopes shall have bidder’s company name and address on the outside.
5. No claims for immunity or exceptions predicated upon misunderstanding or failure to correctly interpret the “Invitation for Bid” or the contract Documents will be allowed.

1.02 - BID SETS

1. Bid sets will be available at the Selectboard Office, Town Hall, 188 Skyline Trail, Middlefield, Massachusetts on Tuesday, Wednesday, and Thursday from 9:00AM to :00PM. as well as on the Town website at <http://middlefieldma.net>. There is no cost for one copy of the bid sets.

1.03 – PRE-BID CONFERENCES AND SITE VISITS

1. A pre-bid meeting/site visit is scheduled for this project for Wednesday June 29, 2022 at 10:00 AM at the entrance to the Senior Center located at 169 Skyline Trail in Middlefield, MA 01243.

1.04 - QUALIFICATION AND LICENSING

1. All General Bidders are notified that they must provide an Update Statement and Certificate of Eligibility for GENERAL CONSTRUCTION from the Massachusetts Division of Capital Asset Management (DCAM)

in accordance with Massachusetts General Laws Chapter 149-Section 44D and as amended by Section 46 of Chapter 48 of the Acts of 1984 when specified in the Invitation to Bid.

A. General Bidders shall submit with their bid proposal a Certificate of Eligibility and an Update Statement as issued by the Division of Capital Asset Management for GENERAL CONSTRUCTION.

2. All Bidders are notified that they must be licensed under prevailing state and local laws and regulations governing the proposed work.
3. All work and materials shall comply in every respect with the building laws, state and town regulations, and the directions of the inspector of buildings and such building laws, regulations and directions are to be considered as a part of the Contract to which it relates.

1.05 - BID WITHDRAWAL

3. Withdrawal or modifications to bids will be allowed only if written notice of a Bidder's desire to withdraw or modify his/her bid is filed prior to the time of bid opening and at the place specified in the request for bids. A notice of a Bidder's desire to withdraw or modify a bid must be signed by the Bidder or his/her designated representative.
4. No bid may be withdrawn for a period of thirty (30) days after the scheduled closing time for the receipt of bids. The Owner reserves the right to accept or reject in whole or in part any or all bids, or take whatever other action that may be deemed to be in its best interest.

1.06 - LOCATION OF SITE

1. The project location is at the Middlefield Senior Center 169 Skyline Trail Middlefield, MA 01243.

1.07 – BID/CONTRACT DOCUMENTS

1. The Contract Documents consist of the following:
 1. Specifications/Scope of Services.
 2. Drawings as indicated in the Specifications, if applicable.
 3. Addenda to Specifications and drawings, if any.
 4. The sample construction contract agreement and contract supplement "C".
 5. The Town issued Purchase Order.

1.08- OWNER

1. Where the term Owner is used in these Specifications, and other Contract Documents, same refers to Town of Middlefield, Massachusetts, or its authorized representative.

1.09 – ENGINEER/ARCHITECT

1. Where the term Engineer/Architect appears in these Specifications, same refers to Town of Middlefield or their authorized representative.

1.09- CONTRACTOR

2. Where the term Contractor or General Contractor is used in the Specifications, it shall mean the Contractor mentioned as such in the Agreement.
3. Where reference is made to Subcontractors, such reference is intended for reasons of clarification and the relationship between the Contractor and said Subcontractors shall be in accordance with the General Conditions.

1.11 - EXPLANATION TO BIDDERS

1. No oral interpretation will be made. Any interpretations made to bidders will be in the form of an addendum to the Specifications and Drawings that will be forwarded to all bidders.
2. Discrepancies, omissions or doubts as to the meaning of Specifications and drawings should be communicated at once to the Town Administrator for interpretation. This request for clarification must be made in writing, via email (twatkins@andoverma.gov), prior to the bid opening. Bidders should act promptly and allow sufficient time for a reply to reach them before the submission of their bids and any interpretation made by the Town Administrator, his designee and/or the Engineer/Architect prior to receipt of bids shall be made a part of the Contract.
3. Requests for clarifications by a prospective Bidder regarding the specifications, or other bid documents must be presented in writing, via email, to the Town Administrator before the bids are opened. Requests shall include the project specification name and date, and shall be directed to the Purchasing Agent.
4. Verbal explanations or instructions will not be binding during the bidding process. Only written addenda are binding. Written addenda resulting from requests for clarifications will be delivered to all listed holders of the Bid Documents no later than (3) business days prior to the bid opening. Addenda may be issued after this date if deemed to be in the best interests of the Town by the Town Administrator or designee. All Bidders shall acknowledge the receipt of all addenda when submitting their bids.
5. In the absence of an interpretation by the Town Administrator and/or Engineer/Architect should the Specifications disagree in themselves or with the drawings, the better quality or the greater quantity of work or materials shall be estimated upon and, unless otherwise ordered, shall be furnished.

1.12- CONDITIONS OF WORK

1. Each bidder shall carefully examine the Contract Documents, shall visit the site, and fully inform himself as to all existing and controlling conditions and limitations. The submission of a bid shall be conclusive evidence that the Bidder is familiar with all such conditions, including the nature, amount, and location of the work, the type of facilities needed preliminary to and during the execution of the work, the general and local conditions, labor conditions, and all other matters which might in any way affect or have a bearing on the work or its cost.
2. The Contractor shall include all charges for labor, material, tools, staging, equipment and supervision that he/she deems necessary in order to complete, in a thoroughly professional and expeditious manner, all the work described hereafter. All work shall be according to code and approved by the proper authority. Material having salvage value shall become the property of the Town of Middlefield. All other material and debris accumulated as a result of this operation shall become the property of the contractor and shall be removed from the premises by him/her. The premises are to be clean and neat, to the satisfaction of the Town of Middlefield and/or designated Consultant.

1.13 - PERMITS, FEES AND NOTICES

1. The successful bidder shall secure all permits and licenses necessary for the proper execution and completion of the work.
2. The Owner will waive or pay for, as applicable, fees for all necessary permits.

1.14 - COOPERATION AND COORDINATION

1. The Owner has entered, or may enter, into separate contracts for work related to the work under this specification.
2. The successful bidder shall cooperate with said contractors and coordinate his work with the work of other trades so that construction will proceed in a rapid and orderly fashion.

1.15 - TIMELY COMPLETION AND LIQUIDATED DAMAGES

1. The Contractor shall start the work under this Contract on written notice from and on date set by the Owner. The Contractor shall start the work at the building on the date set by the Owner and shall continue, without interruption, to completion with all the practical dispatch and regularity. The project is expected to begin on or about July, 15 2022 and shall be completed in full no later than October 30, 2022.
2. Liquidated damages in the amount of \$500 per day may be enforced should the Contractor not complete the work in full by the dates stated.

1.16 - CONTRACT FORM

1. The successful Bidder will be notified of the award of the Contract in writing, and shall properly execute a contract in accordance with the construction contract agreement and contract supplement "C" provided herein, within five (5) working days after receipt of such notification.

1.17 - ADDENDA

1. The Owner may, during the bidding period, advise the Bidders by addenda of additions, omissions, or alterations in the Specifications and drawings. All such changes shall become a part of the contract and shall be included in the work covered by the Proposal.
2. No addenda will be issued later than **three (3) days** prior to the date set for receipt of bids, unless deemed to be in the public's best interest to do so by the Town Administrator or designee.

1.18 - TAXES

1. The Owner is exempt from all purchaser taxes. Tax Exempt Number will be supplied to the successful bidder.

1.19 - PROPOSAL SECURITY

1. Each Bidder shall submit with his bid a Bid Security in the amount of five percent (5%) of the total bid price. The Bid Security shall consist of Cash, Certified Check, or Bidder's Bond.

1.20 – PERFORMANCE AND LABOR & MATERIALS PAYMENT BOND

1. Before Contract signing, the Contractor shall furnish the Owner with a Labor & Materials Payment Bond AND a Performance Bond, each in the amount of one hundred percent (100%) of the Contract price, to insure completion of work and payment for all labor and materials furnished on the project. 2. All bonds shall be written in conformance with Massachusetts General Laws, Chapter 149, Section 29, as amended.

1.21 – CONTRACTOR’S LIABILITY INSURANCE

2. See the insurance requirements and minimum coverage amounts listed in both the specifications and Contract Supplement “C”.

1.22 – COMPETENCY OF BIDDERS AND REFERENCES

1. No contract will be awarded to any person, firm, or corporation that is in arrears or is in default to the Owner upon any debt or contract, or that is a defaulter, as surety or otherwise, upon any obligation to the Owner, or has failed to perform faithfully any previous contract with the Owner.
2. All Bidders must supply a list of references for similar projects performed over the last three years providing names, addresses and contract person with telephone number on each project. **This reference list is to be submitted with the bid.**

1.23 - AWARD OF CONTRACT

1. This contract shall be awarded to the lowest responsible and eligible bidder based upon the grand total as indicated on the bid price sheet and as in accordance with MGL Ch. 149. Such a bidder must possess the skill, ability and integrity necessary for the faithful performance of the work and shall establish his ability to comply with the schedule of work outlined in the Contract section. The term “lowest responsible and eligible bidder” as used herein shall mean the bidder whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the faithful performance of the work within the time limit allowed.

1.24 – PAYMENT OF MA PREVAILING WAGE

1. Attached copies of Prevailing Wage Rates and the Statement of Compliance from Mass. Dept. of Labor and Industries shall apply to the labor required to perform all work. Those rates must be reviewed and complied with. Certified Weekly Payroll documents shall be sent to the Middlefield Select Board P.O. Box 238 Middlefield, MA 01243.. They shall be sent Three (3) business days after the close of the previous workweek.

1.25 – CRIMINAL OFFENDER RECORD INFORMATION (CORI)

1. Within one week upon request by the Town of Middlefield, the company shall submit, in writing, the names of all persons authorized to perform the work as described in the Scope of Services under this contract. Accompanying each name shall be a completed CRIMINAL OFFENDER RECORD INFORMATION (CORI) ACKNOWLEDGEMENT FORM (See Attached) and a photocopy of the driver’s current appropriate license. Only those persons submitted to the Town may perform the work as needed.

1.26 – EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION REQUIREMENTS

1. The Contractor is required to comply with the Anti-Discrimination, Affirmative Action, and Minority or

Women Business Enterprise requirements specified in this Bid Manual as set forth and included herein as the Compliance Contract Supplement.

Middlefield, MA
SENIOR CENTER
CRAWLSPACE REPAIRS AND RENOVATIONS
Bid Number 003

BID PRICE SHEET

Provide a lump sum total price to complete, in full, all of the work as described in the project specifications and drawings for the Senior Center Crawlspace Repairs and Renovations.

LINE 1 - TOTAL: \$ _____ (in numerics)

\$ _____
_____ (in words)

GRAND TOTAL: \$ _____ (in numerics)

\$ _____
_____ (in words)

Should there be a discrepancy between the price provided in numerics and in words, the price in words shall prevail.

Company Name: _____

Address: _____

City, State, Zip: _____

Contact Person: _____

Federal Tax ID: _____

PAYMENT BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENT, that we _____ with a place of business at _____, as Principal (the "Principal"), and _____, a corporation qualified to do business in the Commonwealth of Massachusetts, with a place of business at _____

_____ as Surety (the "Surety"), are held and firmly bound unto the Town of Middlefield, Massachusetts as Obligee (the "Obligee"), in the sum of _____ lawful money of the United States of America, to be paid to the Obligee, for which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these present.

WHEREAS, the Principal has assumed and made a contract with the Obligee, bearing the date of _____, for the construction of _____.

NOW, THE CONDITIONS of this obligation are such that if the Principal and all subcontractors under said contract shall pay for all labor performed or furnished and for all materials used or employed in said contract and in any and all duly authorized modifications, alterations, extensions of time, changes or additions to said contract that may hereafter be made, notice to the Surety of such modifications, alterations, extensions of time, changes or additions being hereby waived, the foregoing to include, but not be limited to, any other purposes or items set out in, and to be subject to, the provisions of Massachusetts General Laws, Chapter 30, Section 39M, and Chapter 149, Section 29, as amended then this obligation shall become null and void; otherwise, it shall remain in full force and virtue.

IN WITNESS WHEREFORE, the Principal and Surety have hereto set their hands and seals this _____ day of _____.

PRINCIPAL

_ [Name and Seal]

_ [Title]

Attest: _____

SURETY

_ [Attorney-in-fact] [Seal]

_ [Address]

_ [Phone]

Attest: _____

PERFORMANCE BOND

Bond No. _____

KNOW ALL MEN BY THESE PRESENT, that we _____ with a place of business at _____, as Principal (the "Principal"), and _____, a corporation qualified to do business in the Commonwealth of Massachusetts, with a place of business at _____

_____ as Surety (the "Surety"), are held and firmly bound unto the Town of Middlefield, Massachusetts as Obligee (the "Obligee"), in the sum of _____ lawful money of the United States of America, to be paid to the Obligee, for which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these present.

WHEREAS, the Principal has assumed and made a Contract with the Obligee, bearing the date of _____, for the construction of _____.

NOW THE CONDITIONS of this obligation are such that if the Principal (and all Subcontractors under said contract) shall well and truly keep and perform all the undertakings, covenants, agreement, terms and conditions of said contract on its part to be kept and performed during the original term of said contract and any extensions thereof that may be granted by the Obligee, with or without notice to the Surety, and during the life and any guarantee required under the contract, and shall also well and truly keep and perform all the undertakings, covenants, agreements, terms and conditions of any and all duly authorized modifications, alterations, changes or additions with notice to the Surety being hereby waived, then this obligation shall become null and void; otherwise, it shall remain in full force and virtue.

IN THE EVENT the Contract is abandoned by the Principal, or is terminated by the Town of Andover, Massachusetts under the applicable provisions of the Contract, the Surety hereby further agrees that the Surety shall, if requested in writing by the Town of Middlefield, Massachusetts promptly take such action as is necessary to complete said Contract in accordance with its terms and conditions.

IN WITNESS WHEREOF, the Principal and Surety have hereto set their hands and seals this _____ day of _____.

PRINCIPAL _____ [Name and Seal]

_____ [Title]

Attest: _____

SURETY

_ [Attorney-in-fact] [Seal]

_ [Address]

_ [Phone]

Attest: _____

AFFIDAVIT OF OSHA COMPLIANCE

The undersigned agrees that if he is selected as the contractor, he will comply with the provisions of M.G.L. Chapter 30, Section 39S.

The undersigned certifies, under penalties of perjury, that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; that 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 who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and that all employees to be employed in the work subject to this bid 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.

Date _____

(Name of General Bidder)

By _____
(Name of person Signing Bid and Title)
Signature is required

(Business Address)

(City and State)

(Telephone Number)

**SENIOR CENTER CRAWLSPACE REPAIR AND RENOVATIONS
MIDDLEFIELD, MA**

IFB No. 003

REFERENCES FORM

Bidders Name: _____

Bidders Address: _____

Bidder must provide references for similar type projects performed within the past three years.
Attach additional pages if necessary.

Reference: _____ Contact: _____

Address: _____ Phone: _____

_____ Fax: _____

Description and date of Project: _____

Reference: _____ Contact: _____

Address: _____ Phone: _____

_____ Fax: _____

Description and date of Project: _____

Reference: _____ Contact: _____

Address: _____ Phone: _____

_____ Fax: _____

Description and date of Project: _____

Reference: _____ Contact: _____

Address: _____ Phone: _____

_____ Fax: _____

Description and date of Project: _____

_ USE ADDITIONAL PAGES IF NECESSARY

SIGNATURES

(IF AN INDIVIDUAL)

Date, _____

Signature of Bidder (SEAL) _____
(Owner and Proprietor)

Business Name D/B/A _____

Business Address

-(IF A CO-PARTNERSHIP)

Date, _____

Firm Name (SEAL) _____

By (SEAL)

Business Address _____

Names and Addresses

of all

Members of Firm

(IF A CORPORATION)

Date, _____

Corporate Name _____

By
President or Authorized Agent* _____

Business Address _____

*Statement of authorization, duly signed by proper authority, to be attached hereto.

CORPORATE VOTE

At a duly authorized meeting of the Board of Directors of _____
_____ held on _____ at which all the Directors were
present or waived notice, it was voted that _____,
_____ of this company, be and he/she hereby is authorized to execute contracts and
bonds in the name and behalf of said company, and affix its Corporate Seal thereto, and such execution of any
contract or obligation in this company's name on its behalf by _____,
shall be binding upon this company.

A TRUE COPY ATTEST:

Clerk,

-Date of this Contract

I hereby certify that I am the Clerk of _____, that
_____ is duly elected _____ of said company, and
the above vote has not been amended or rescinded and remains in full force and
effect as of the date of this contract.

Clerk Corporate Seal

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____,

Notary Public

If a corporation, complete above or attach to each signed copy of the bid/written request/quotation, a notarized copy of vote of corporation authorizing the signatory to sign this bid/written request/quotation form. If attesting clerk is the same person as the individual executing this contract, have signature notarized above.

CERTIFICATION OF GOOD FAITH & NON-COLLUSION

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

CERTIFICATE OF STATE TAX COMPLIANCE

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature of authorized individual submitting bid/proposal

Printed Name

Name of Business (if applicable)

Social Security or Federal Tax Identification Number

BIDDER'S CHECKLIST

The following forms are to be completed and signed (where applicable) and submitted with the proposer's bid. Failure to include these completed forms may result in rejection of the bid.

- 1. Cover Sheet**
- 2. Bid Price Sheet**
- 3. Affidavit of OSHA Compliance**
- 4. Reference Form**
- 5. Signatures Page**
- 6. Corporate Vote**
- 7. Certification of Good Faith and State Tax Compliance**
- 8. 5% Bid Security**
- 9. DCAMM Update Statement and Certificate of Eligibility in GENERAL
CONSTRUCTION**

TOWN OF MIDDLEFIELD
SAMPLE CONTRACT DATE:

This Contract is entered into on _____, or as of, this date by and between the Town of Middlefield (the “Town”), and

[“Contractor”]

[Address of the Contractor]

_____ [Telephone Number]
[FAX Number]

1. This is a Contract for the procurement of the following:

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

3. Payment will be made as follows:

4. Definitions:

4.1 Acceptance: All Contracts require proper acceptance of the described goods or services by the Town of Middlefield. Proper acceptance shall be understood to include inspection of goods and certification of acceptable performance for services by authorized representatives of the Town to insure that the goods or services are complete and are as specified in the Contract.

4.2 Contract Documents: All documents relative to the Contract including (where used) Instructions to Bidders, Proposal Form, General Conditions, Supplementary General Conditions, General Specifications, Other Specifications included in Project Manual, Drawings, and all Addenda issued during the bidding period. The Contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of the document is to include all labor and materials, equipment and transportation necessary for the proper performance of the Contract.

4.3 The Contractor: The “other party” to any Contract with the Town. This term shall (as the sense and particular Contract so require) include Vendor, Contractor, Engineer, or other label used to identify the other party in the particular Contract. Use of the term “Contractor” shall be understood to refer to any other such label used.

4.4 Date of Substantial Performance: The date when the work is sufficiently complete, the services are performed, or the goods delivered, in accordance with Contract documents, as modified by approved Amendments and Change Orders.

4.5 Goods: Goods, Supplies or Materials.

4.6 SubContractor: Those having a direct Contract with the Contractor. The term includes one who furnished material worked to a special design according to the Drawings or Specifications of this work, but does not include one who merely furnishes material not so worked.

4.7 Work: The services or materials contracted for, or both.

5. Term of Contract and Time for Performance:

This Contract shall be fully performed by the Contractor in accordance with the provisions of the Contract Documents on or before _____, unless extended pursuant to a provision for extension contained in the Contract documents at the sole discretion of the Town, and not subject to assent by the Contractor, and subject to the availability and appropriation of funds as certified by the Town Accountant. The time limits stated in the Contract documents are of the essence of the Contract.

6. Subject to Appropriation:

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

7. Permits and Approvals:

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

8. Termination and Default:

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

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

actual receipt by the Contractor.

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

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

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

Failure of the Contractor to comply with any of the terms or conditions of this Contract shall be deemed a material breach of this Contract, and the Town of Andover shall have all the rights and remedies provided in the Contract documents, the right to cancel, terminate, or suspend the Contract in whole or in part, the right to maintain any and all actions at law or in equity or other proceedings with respect to a breach of this Contract, including damages and specific performance, and the right to select among the remedies available to it by all of the above.

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

10. Statutory Compliance:

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

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

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

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

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

10.3 The Contractor shall give all notices and comply with all laws and regulations bearing on the performance of the Contract. If the Contractor performs the Contract in violation of any

applicable law or regulation, the Contractor shall bear all costs arising therefrom.

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

11. Conflict of Interest:

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

12. Certification of Tax Compliance

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

13. Discrimination

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151B (Law Against Discrimination) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended.

14. Assignment:

Assignment of this Contract is prohibited, unless and only to the extent that assignment is provided for expressly in the Contract documents.

15. Condition of Enforceability Against the Town:

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

16. Corporate Contractor:

If the Contractor is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate certifying the corporate capacity and authority of the party signing this Contract for the corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the Contract is executed by the Contractor. This

Contract shall not be enforceable against the Town of Middlefield unless and until the Contractor complies with this section.

The Contractor, if a foreign corporation, shall comply with the provisions of the General Laws, Chapter 181, Sections 3 and 5, and any Acts and Amendments thereof, and in addition thereto, relating to the appointment of the Commissioner of Corporations as its attorney, shall file with the Commissioner of Corporations a Power of Attorney and duly authenticated copies of its Charter or Certificate of Incorporation; and said Contractor shall comply with all the laws of the Commonwealth.

17. Liability of Public Officials:

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

18. Indemnification:

The Contractor shall indemnify, defend and save harmless the Town, the Town's officers, agents and employees, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including reasonable attorneys' fees) that may arise in whole or in part out of or in connection with the work being performed or to be performed, or out of any act or omission by the Contractor, its employees, agents, subcontractors, material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder. The Contractor further agrees to reimburse the Town for damage to its property caused by the Contractor, its employees, agents, subcontractors or material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including damages caused by his, its or their use of faulty, defective, or unsuitable material or equipment, unless the damage is caused by the Town's gross negligence or willful misconduct. The existence of insurance shall in no way limit the scope of the Contractor's indemnification under this contract.

19. Workers Compensation Insurance:

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

Failure to provide and continue in force such insurance during the period of this Contract shall be deemed a material breach of this Contract, shall operate as an immediate termination thereof, and Contractor shall indemnify the Town for all losses, claims, and actions resulting from the failure to provide the insurance required by this Article.

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

20. Documents, Materials, Etc.

Any materials, reports, information, data, etc. given to or prepared or assembled by the Contractor under this Contract are to be kept confidential and shall not be made available to any individual or organization by the Contractor (except agents, servants, or employees of the Contractor) without the prior written approval of the Town, except as otherwise required by law. The Contractor shall comply with the

provisions Chapter 66A of the General Laws of Massachusetts as it relates to public documents, and all other state and federal laws and regulations relating to confidentiality, security, privacy and use of confidential data.

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

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

21. Audit, Inspection and Recordkeeping

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

22. Payment

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

23. Waiver and Amendment

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

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

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

24. Forum and Choice of Law

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

25. Notices

Any notice permitted or required under the provisions of this Contract to be given or served by either of the parties hereto upon the other party hereto shall be in writing and signed in the name or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified or registered mailing properly addressed. Notice to the Contractor shall be deemed sufficient if sent to the address set forth in the Contract and to the Town of Middlefield by being sent to the Town Administrator, Town Hall, 188 Skyline Trail Middlefield, MA 01243.

26. Binding on Successors:

This Contract shall be binding upon the Contractor, its assigns, transferees, and/or successors in interest (and where not corporate, the heirs and estate of the Contractor).

27. Complete Contract:

This instrument, together with its endorsed supplements, and the other components of the contract documents, constitutes the entire contract between the parties, with no agreements other than those incorporated herein.

28. Supplemental Conditions:

The foregoing provisions apply to all contracts to which the Town of Middlefield shall be a party. One of the following "Supplements" *must* be "checked" as applicable to this Contract, shall be attached hereto, and shall in any event apply as the nature of the Contract requires. The Supplement contains additional terms governing the Contract:

GOODS

SUPPLEMENT "G" - Applicable to Contracts for the procurement of Goods (governed by the provisions of General Laws Chapter 30B)

SERVICES

SUPPLEMENT "S" - Applicable to Contracts for the procurement of Services (governed by the provisions of General Laws Chapter 30B)

CONSTRUCTION

SUPPLEMENT "C" - Applicable to Contracts for Construction

IN WITNESS WHEREOF the parties have hereto and to two other identical instruments set forth their hands the day and year first above written.

THE TOWN THE CONTRACTOR

_____ Division/Department Head Company Name

Date
Contract Manager

_____ Select Board Chair
Signature Date

CERTIFICATION AS TO AVAILABILITY OF FUNDS:

_____ Town Accountant _____ Date

_____ Org/Obj Codes or Warrant Article No.

SUPPLEMENT “C”

CONSTRUCTION

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

(1) Public Buildings and Public Works
(governed by the provisions of General Laws Chapter 30B);

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

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

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

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

such visits and on the basis of these observations while at the site, the Project Representative will keep the Town informed on the progress of the work, will endeavor to guard the Town against defects and deficiencies in the work of contractors, and may condemn structural work as failing to conform to the Contract Documents. The Project Representative shall have authority to act on behalf of the Town only to the extent expressly delegated by the Town, which shall be shown to the Contractor, and shall have authority to stop the work whenever such stoppage may reasonably be necessary to insure the proper execution of the Contract.

12.2. In connection with the work, the Project Representative shall not be responsible for construction methods, means, techniques, sequences or procedures employed by the Contractor or the Contractor's safety programs, requirements, regulations, or precautions.

13. Decisions of the Project Representative

13.1. The Project Representative shall, within a reasonable time, make decisions on all claims of the Town or the Contractor and on all other matters relating to the execution and progress of the structural work or the interpretation of the Contract Documents.

13.2. The Project Representative's decision, in matters relating to the project, shall be final, if within the terms of the Contract Documents.

13.3. If, however, the Project Representative fails to render a decision within ten days after the parties have presented their evidence, either party may then avail itself of the remedies provided in this contract or available to it by law. If the Project Representative renders a decision after such remedies have commenced, such decision may be entered as evidence but shall not disturb or interrupt such proceedings except where such decision is acceptable to the parties concerned.

14.1 Use of Premises by the Contractor:

14.1. The Contractor shall confine its apparatus, the storage of materials and the operations of its workmen to limits indicated by law, by-laws, permits or directions of the Town and shall not unreasonably encumber the premises with its materials.

14.2. The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.

15. Maintenance of Premises:

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

16. Right to Terminate

If the Contractor should (1) be adjudged a bankrupt, (2) make a general assignment for the benefit of creditors, (3) have a receiver appointed on account of its insolvency, (4) persistently or repeatedly refuse or fail to supply enough personnel and resources to perform the contract, (5) fail to make prompt payment to subcontractors or to providers of materials or labor, (6) persistently disregard laws and regulations or lawful directives of the Town, or (7) be guilty of a substantial violation of any provision of the Contract, then the Town may, without prejudice to any other right or remedy and after giving the Contractor (or any surety) seven days written notice, terminate the contract and the employment of the

Contractor and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method it deems appropriate.

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

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

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

17. Progress Payments:

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

17.2. The Contractor shall, before the first application, submit to the Town a schedule of values of the various parts of the work, including quantities aggregating the total sum of the Contract, divided so as to facilitate payments to Subcontractors, made out in such form as the Town and the Contractor may agree upon, and, if required, supported by such evidence as to its correctness. This schedule, when approved by the Town, shall be used as a basis for payment, unless it is found to be in error. If applying for payments, the Contractor shall submit a statement based upon this schedule.

18. Withholding of Payments

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

18.1.1. Defective work not remedied.

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

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

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

18.1.5. Damage to another contractor.

18.1.6. Delays resulting in liquidated damages.

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

19. Claims by Contractor and Liability of Town

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

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

20. Liquidated Damages:

Because both parties recognize (1) that the time for completion of this Contract is of the essence, (2) that the Town will suffer loss if the work is not completed within the contract time specified, plus any extension thereof allowed in accordance with the provisions of this contract, and (3) the delays, expense and difficulties involved in a legal proceeding to determine the actual loss suffered by the Town if the work is not completed in time, it is agreed that the Contractor will pay the Town as liquidated damages representing an estimate of delay damages, not as a penalty, the sum of Five Hundred Dollars (\$500.00) per day for each calendar day of delay until the work is completed, whether the work is completed by the Contractor or some other person. The Town's right to impose liquidated damages shall in no way prohibit or restrict the Town's right to bring a legal action for damages in lieu of or in addition to its option to impose liquidated damages. The Town may deduct any liquidated damages from money due the Contractor, and if such payment is insufficient to cover the liquidated damages, then the Contractor shall pay the amount due.

21. The Contractors' Mutual Responsibility:

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

22. Separate Contracts:

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

22.2. If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the Town any defects in such work that render it unsuitable for such proper execution and results. Failure of the

Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of its work except as to defects which may develop in the other contractor's work after the execution of its work.

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

23. Subcontracts:

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

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

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

24. Contractor-Subcontractor Relations:

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

25. Indemnification:

25.1. The Contractor shall indemnify, defend and save harmless the Town, its officers, agents and employees from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, recoveries and judgments of every nature and description (including reasonable attorneys' fees) brought or recovered against them that may arise in whole or in part out of or in connection with the work being performed or to be performed, or out of any act or omission by the Contractor, its employees, agents, subcontractors, material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder. The Contractor further agrees to reimburse the Town for damage to its property caused by Contractor, its employees, agents, subcontractors or material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including damages caused by his, its or their use of faulty, defective or unsuitable material or equipment, unless the damage is caused by the Town's gross negligence or willful misconduct. The existence of insurance shall in no way limit the scope of the Contractor's indemnification under this Contract.

25.2. In any and all claims against the Town or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Workmen's Compensation Acts, disability benefit acts or other employee benefit acts.

25.3. The intent of the Specifications regarding insurance is to specify minimum coverage and

minimum limits of liability acceptable under the Contract. However, it shall be the Contractor's responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and the Town from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the Work.

26. The Contractor's Insurance:

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

26.1.1. Claims under Worker's Compensation, disability benefit and other similar employee benefit acts;

26.1.2. Claims for damages because of bodily injury, occupational sickness or disease, or death of its employees, and claims insured by usual personal injury liability coverage;

26.1.3. Claims for damage because of bodily injury, sickness or disease, or death of any person other than its employees, and claims insured by usual personal liability coverage;

26.1.4. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

26.2. The insurance required by the above shall be written for not less than the following minimum limits of liability:

26.2.1. Worker's Compensation Insurance Requirements

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

(b) Claims under Workmen's Compensation, disability benefit and other similar employee benefit acts;

© Claims for damages because of bodily injury, occupational sickness or disease, or death of its employees, and claims insured by usual personal injury liability coverage;

(d) Claims for damage because of bodily injury, sickness or disease or death of any person other than its employees, and claims insured by usual personal injury liability coverage;

(e) Claims for damages because of injury to destruction of tangible property, including Loss of use resulting there from.

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

Workmen's Compensation: Statutory Requirements

Employer's Liability: \$1,000,000

Comprehensive General Liability:

Bodily Injury

Each person/each occurrence: \$1,000,000

General Aggregate per project: \$2,000,000 Or a Combined Single Limit of \$2,000,000

Property Damage

Each Occurrence: \$1,000,000

General Aggregate per project: \$2,000,000 Or a Combined Single Limit of \$2,000,000

Comprehensive Automobile Liability:

Bodily Injury

Each person/each occurrence: \$1,000,000 Or a Combined Single Limit of \$1,000,000

Property Damage

Each occurrence: \$1,000,000 Or a Combined Single Limit of \$1,000,000

Excess Liability (Umbrella): \$1,000,000

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

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

26.3.2. Certificates of Insurance acceptable to the Town shall be addressed to and filed with the Town prior to commencement of the work. Renewal certificates shall be addressed to and filed with the Town at least ten (10) days prior to the expiration date of required policies.

26.3.3. No insurance coverage shall be subject to cancellation without at least thirty (30) days prior written notice forwarded by registered or certified mail to the Town. The Town shall also be notified of the attachment of any restrictive amendments to the policies.

26.3.4. All Certificates of Insurance shall be on the "MIIA" or "ACORD" Certificate of Insurance form, shall contain true transcripts from the policies, authenticated by the proper officer of the Insurer, evidencing in particular those insured, the extent of coverage, the location and operations to which the insurance applies, the expiration date and the above-mentioned notice clauses.

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

26.3.6. All insurance shall be written on an occurrence basis. Coverages shall be maintained without interruption from date of the Contract until date of final payment and termination of any coverage required to be maintained after payment.

26.3.7. The Town shall be named as an additional insured on the Contractor's Liability Insurance Policies.

27. Protective Liability Insurance:

27.1. The Contractor shall purchase and maintain such insurance as described in the preceding

paragraph as will protect the Town from claims which may arise from operations under the Contract, including operations performed for the named insureds by independent contractors and general inspection thereof by the named insureds.

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

27.3. The limits of liability for coverage required under the preceding paragraphs shall be as specified under the provisions hereof governing the Contractor's General Liability Policy.

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

28. Liens:

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

29. Guarantees:

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

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

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

This Agreement is intended to take effect as a sealed instrument. Witness our hands and seals hereto: Dated: _____

The Town of Middlefield by: _____
Middlefield Select Board Chair

Department/Division Head

Town Accountant
Certified as to Appropriation

Town Counsel
Certified as to Form

The Contractor by: _____ (authority or
agency)

COMPLIANCE CONTRACT SUPPLEMENT

EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION AND MINORITY/WOMEN BUSINESS ENTERPRISE REQUIREMENTS FOR THE TOWN OF MIDDLEFIELD

ARTICLE I TOWN OF MIDDLEFIELD ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM

1.01. Definitions

For the purposes of this Compliance Contract Supplement, (i) “minority” refers to Asian-Americans, Blacks, Spanish Surnamed Americans, North American Indians, and Cape Verdeans; (ii) “Commission” refers to the Massachusetts Commission Against Discrimination; (iii) “Town” hereinafter refers to the Town of Middlefield; and (iv) “Contractor” refers to the General Contractor awarded the contract for construction of the project.

1.02 General

The Contractor is required to comply with the following Anti-Discrimination, Affirmative Action requirements. The Contractor shall be held responsible for the project’s overall compliance with the following requirements of the Anti-Discrimination, Affirmative Action Programs in all cases.

1.03. Anti-Discrimination/Affirmative Action

During the performance of this contract, the Contractor for itself, its assignees, and successors in interest, agree as follows:

A. In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age, or sex. The aforesaid provision shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment advertising, recruitment, layoff or termination; rates of pay or other forms of compensation; conditions or privileges of employment; and selection of apprenticeship or other training categories. The Contractor shall post hereafter in conspicuous places, available for employees and applicants for employment, all notices provided by the Town setting forth the provisions of the Fair Employment Practices Law of the Commonwealth (M.G.L. Chapter 151B).

B. In connection with the performance of work under this contract the Contractor shall undertake in good faith affirmative action measures designed to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, age or sex, and to eliminate and remedy any effects of such discrimination in the past. Such affirmative action shall entail positive and aggressive measures to ensure equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, and in-service or apprenticeship training programs. This affirmative action shall include all actions required to guarantee equal opportunity in employment for all persons, regardless of race, color, religious creed, national origin, age or sex. A purpose of this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for this and future Town public construction projects.

1.04. Compliance

A. As part of its obligation of remedial action under the foregoing section, the Contractor shall maintain on this project a not less than 5% ratio of minority employee work-hours to total work-hours in each job category including but not limited to brick-layers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those trades that appear on the list of “Classification and Minimum Wage Rates” as determined by the Commissioner of Labor and Industries under the provisions of M.G.L. c. 149, §§26 - 27G.

B. In the hiring of minority journeymen, apprentices, trainees, and advanced trainees, the Contractor shall rely on referrals from a multi-employer affirmative action program approved by the Town, traditional referral methods utilized by the construction industry, and referrals from agencies, not more than three in number at any one time, designated by the Town.

1.05. Administration

A. At the discretion of either the Commission or the Town there may be established for the life of this contract a body to be known as the Liaison Committee. The Liaison Committee shall be composed of one representative from the Town agency or department administering this project (hereinafter referred to as the “administering agency”) and such other members as may be designated by the Town Manager.

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

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

D. Records of employment referral orders, prepared by the Contractor and all of its subcontractors, shall be available to the Town and to the Liaison Committee on request.

E. The Contractor and all of its subcontractors shall prepare weekly reports in a form approved by the Town of hours worked in each trade by each employee, identified as minority or non-minority. Copies of these shall be provided at the end of each week to the Town and to the Liaison Committee.

1.06. Subcontractors

If the Contractor shall use any subcontractor on any work performed under this contract, it shall take affirmative action to negotiate with qualified minority subcontractors. This affirmative action shall cover both pre-bid and post-bid periods.

1.07. Recruitment

In the employment of journeymen, apprentices, trainees and advanced trainees, the Contractor shall give preference, first, to citizens of the Commonwealth who have served in the armed forces of the United States in time of war and have been honorable discharged therefrom or released from active duty therein, and who are qualified to perform the work to which the employment relates, and secondly, to citizens of the Commonwealth generally, and, if such cannot be obtained in sufficient number then to citizens of the United States.

1.08. Access

A designee of the Town and a designee of the Liaison Committee shall each have right of access to the construction site.

1.09. Compliance with Requirements

The Contractor shall comply with the provisions of Executive Order No. 74, as amended by Executive Order No. 116 dated May 1, 1975, and of Chapter 151B as amended, of the Massachusetts General Laws, both of which are herein incorporated by reference and made a part of the contract.

1.10. Non-Discrimination

The Contractor, in the performance of all work after award, and prior to completion of the contract work, will not discriminate on grounds of race, color, religious creed, national origin, age or sex in employment practices, in the selection or retention of subcontractors, or in the procurement of materials and rentals of equipment.

1.11. Solicitations for Subcontractors, and for the Procurement of Material and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential subcontractor supplier shall be notified in writing by the Contractor of the Contractor's obligations under this contract relative to non-discrimination and affirmative action. Contractors on projects awarded pursuant to M.G.L. c.149, §§44A - J and M.G.L. c. 30, §§39A - 40 shall encourage the inclusion in all subcontracts entered into for construction pursuant to the prime contract specific reference to this Compliance Contract Supplement and all related requirements, so that they shall be binding contractual obligations for all tiers of the work.

1.12. Contractor's Certification

The Contractor's certification in the form attached must be signed by all successful low bidder(s) prior to award by the contracting agency. 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 certification by said subcontractor, regardless of tier, that it will comply with the minority manpower action and specific affirmative action steps contained in this Compliance Contract Supplement.

1.13. Compliance-Information, Reports and Sanctions

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

B. Whenever the administering agency, the Town or the Liaison Committee believes the General Contractor or any subcontractor may not be operating in compliance with the terms of this Section, the Town directly or through its designated agent, shall conduct an appropriate investigation, and may confer with the parties, to determine if such Contractor is operating in compliance with the terms of this

Section. If the Town or its agent finds the General Contractor or any subcontractor not in compliance, it shall make a report on noncompliance, and notify such Contractor in writing of such steps as will in the judgment of the Town or its agent bring such Contractor into compliance. In the event that such Contractor fails or refuses to fully perform such steps within fourteen (14) days after the issuance of such report of non-compliance, the Town may impose one or more of the following sanctions, as it may deem appropriate to attain full and effective enforcement:

- (1) The recovery by the Town from the General Contractor of 1/100 of 1% of the contract award price or \$1,000 whichever sum is greater, in the nature of liquidated damages, or, if any Subcontractor is in non-compliance, the recovery by the administering agency from the General Contractor, to be assessed by the General Contractor as a back charge against the Subcontractor, of 1/10 of 1% of the subcontract price, or \$400. whichever is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply;
- (2) The suspension of any payment or part thereof due under the contract until such time as the General Contractor or any Subcontractor is able to demonstrate its compliance with the terms of the contract;
- (3) The termination or cancellation of the contract, in whole or in part, unless the General Contractor or any Subcontractor is able to demonstrate within a specified time its compliance with the terms of the contract;
- (4) The denial to the General Contractor or any Subcontractor of the right to participate in any future contracts awarded by the administering agency for a period of up to three years.

C. If at any time after the imposition of one or more of the above sanctions a Contractor is able to demonstrate that it is in compliance with this Section, it may request that the Town suspend the sanctions conditionally, pending a final determination by the Town as to whether the Contractor is in compliance. Upon final determination of the Town, the Town may continue the sanctions, lift the sanctions, or reimpose them.

1.14. Severability

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

ARTICLE II SUPPLEMENTAL MINORITY/WOMEN BUSINESS ENTERPRISE REQUIREMENTS

2.01. Minority/Women Business Enterprise Participation Program

A. The Contractor is required to comply with the following Minority/Women Business Enterprise Participation Program requirements. The Contractor shall be held responsible for the project's overall compliance with the following requirements of the Minority/Women Business Enterprise Participation Programs in all cases.

2.02 Definitions

A. "Minority Person" means a person who is a citizen or permanent resident of the United States and who is:

- (1) Black - All persons having origins in any of the Black racial groups of Africa.

(2) Hispanic - All persons of Mexican, Puerto Rican, Cuban, Central or South American origin.

(3) Native American - All persons having origins in any of the original peoples of North America and who are recognized as native Americans by tribal organization.

(4) Eskimo & Aleut - All persons having origins in any of the peoples of Northern Canada, Greenland, Alaska, and Eastern Siberia.

(5) Asian - All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands. This area includes for example: China, Japan, Korea, the Philippine Islands, and Samoa.

(6) Cape Verdean - All persons having origins in any of the original peoples of the Cape Verde Islands who are of Black African origin.

B. "General Bidder" means any contractor who files a general bid for this project under the provision of M.G.L., Chapter 149, Section 44A -44J or under Chapter 30, Section 39M.

C. "General Contractor" means any successful general bidder to whom the Town makes the contract award.

D. "SDO" means the Commonwealth's Supplier Diversity Office established by M.G.L. c. 23A, §39-44.

E. "Minority Owned Business Enterprise" ("MBE") means any business organization certified by SDO as an MBE.

F. "Women Owned Business Enterprise" ("WBE") means any business organization certified by SDO as a WBE.

G. "Amount of Participation" means the actual dollar amount which will be paid to MBE or WBE firms for work they performed on this Contract.

2.03. MBE/WBE Certification

A. The criteria for MBE/WBE, certification is set forth in 425 CMR 2.00. See Section 2.06 below for certification procedures.

2.04. Joint Ventures

A. Whenever a general bid is filed by a joint venture with a certified MBE or WBE participant in the joint venture that does not exercise more than 51% control over management and profits, that joint venture shall be entitled to credit as a MBE or WBE for the lesser of the following amounts: (1) that proportion of the joint venture's Item 1 price, as set forth in the Schedule for Participation by Minority/Women Business Enterprise submitted by such General Bidder, equal to the MBE or WBE participation in the joint venture or (2) 25% of the MBE/WBE requirement under Section 2.05A hereof.

B. Whenever a joint venture with a certified MBE or WBE participant files a general bid or sub-bid, and requests a credit as an MBE or WBE, that general bid or sub-bid must be accompanied by the pre bid joint venture agreement for that joint venture.

2.05. Percentage Participation

A. The portion of the work of the project reserved for MBE's and WBE's collectively shall be not less than five percent (5%) of the Base Bid cost of the project.

B. Filed subcontractors are encouraged to subcontract portions of their work to MBE and WBE subcontractors approved by SDO. Supplementary sub-bid forms will be available to all filed sub bidders to list those MBE and WBE subcontractors with whom they wish to subcontract and the dollar amount or percentage of those proposed subcontracts.

C. Material suppliers will not be considered for compliance under Section 2.05A hereof.

2.06. Determination of MBE and WBE Status

A. Any contractor, subcontractor or sub-subcontractor may apply to SDO for MBE or WBE Status. Applications must be made on the MBE or WBE application form prepared by SOMWBA. Applicants can be certified only by SDO.

B. SDO is responsible for preparing, publishing, and updating a list of certified MBE and WBE contracting and subcontracting businesses. Bidders shall rely on the list that is current at the time work is advertised and shall use it as reference source to assist such bidders in meeting the requirements of these conditions.

C. Submission of an application to SDO does not constitute certification by SDO. SDO requires a minimum of thirty (30) days from the receipt of a completed application to make its decision regarding the certification of an MBE or WBE applicant.

2.07. Bidding Requirements

A. As part of its proposal, each General Bidder submitting a bid on this project is encouraged to attach a Schedule for Participation by Minority Business Enterprise ("MBE Participation Schedule") and/or a Schedule for Participation by Women Business Enterprise ("WBE Participation Schedule") in the forms attached. The MBE Participation Schedule and/or the WBE Participation Schedule shall list those MBE and/or WBE contractors that were listed by a filed sub-bidder and carried by the General Bidder under Item 2 of its bid proposal. Said MBE Participation Schedule and/or WBE Participation Schedule shall state the total price to be paid to each MBE and/or WBE contractor as taken from each commitment form submitted with the bid. All MBE and WBE contractors listed in said MBE Participation Schedule and WBE Participation Schedule must be on the SDO list of approved MBE and WBE contractors described in Section 2.06B hereof.

2.08. Compliance

A. Within 5 working days after receipt of bids, the apparent low bidder must submit to the Town a completed MBE Participation Schedule and/or WBE Participation Schedule as described in Section 2.07 hereof, and "Letters of Intent" covering each MBE and WBE used in the development of the commitment. These letters shall include among other things, the contract items the MBE or WBE contractor is proposing to perform and the prices the MBE or WBE contractor proposes to charge for the work.

B. Within 10 days after receipt of bids, the Town shall review the MBE Participation Schedule, WBE Participation Schedule, and Letters of Intent submitted by the low bidder, and shall determine if they

comply with the MBE/WBE participation requirements in Section 2.05A hereof. If the low bidder's MBE Participation Schedule, WBE Participation Schedule and Letters of Intent do not meet the MBE/WBE requirements in Section 2.05A hereof, or if no Participation Schedules or Letters of Intent are submitted, the low bidder may be considered ineligible for award of the contract and the Town may require the second low bidder to provide the information required in Section 2.08A hereof.

C. The Town may elect to either reserve a lesser portion of the project for MBE's and/or WBE's or waive the participation requirement, if it finds that the low bidder has taken every possible measure to comply with these Article II requirements or that some other justifiable reason exists for waiving these Article II requirements in whole or in part. If the low bidder wishes to request an adjustment in the participation percentage or a waiver of these Article II requirements, it shall submit within the five (5) day period under subsection A hereof a written request for such reduction in percentage or waiver, together with evidence of every possible measure to comply with these Article II requirements as described in the second sentence of Section 2.09D hereof.

D. The contract amount indicated in the Letter of Intent shall not be less than the amount shown on the MBE or WBE Participation Schedule submitted with the bid.

E. The MBE's and WBE's for whom Letters of Intent are submitted must be identical to the ones listed on the MBE Participation Schedule and WBE Participation Schedule. No substitution shall be made without the written approval of the Town and notification to SDO.

F. Within 30 days of the contract award, the general bidder receiving the award shall furnish to the Town and SDO signed copies of all subcontracts which have been executed between it and each of the MBE's and WBE's listed on the MBE Participation Schedule and WBE Participation Schedule.

G. The Town reserves the right to waive minor defects, as determined by the Town, in documents or time limits required under this Section 2.08.

H. The Contractor shall not perform with its own organization, subcontractor, or assign to any other contractor or subcontractor work designated by the name MBE on the MBE Participation Schedule or WBE on the WBE Participation Schedule or Letter of Intent required to be submitted under this Section 2.08 without the written approval of the Town, nor subcontract without such approval.

I. A Contractor's compliance with the MBE/WBE percentage requirement of Section 2.05A hereof shall be determined by reference to the required percentage of the estimated construction cost even though the Contractor's bid price may be greater or less than the estimated construction cost.

J. Any changes or substitutions of the officers or stockholders in the MBE or WBE that reduces the Minority Person or Woman ownership or control to less than the requisite percentage will result in the automatic revocation of the MBE's or WBE's certified status.

K. If an MBE or WBE listed on the MBE or WBE Participation Schedule or Letter of Intent has its certified status revoked, the Contractor shall consider its compliance with Section 2.05A hereof terminated and must proceed as outlined in the following paragraph L of this Section 2.08.

L. If the Contractor desires to comply with Section 2.05A hereof and the foregoing paragraphs of this Section 2.08, but for reasons beyond its control cannot do so in accordance with the MBE or WBE Participation Schedule it submitted under Section 2.08A, it must submit to the Town the reasons for its inability to comply with its MBE or WBE Participation Schedule and its proposed revisions to the Participation Schedule, stating how it intends to meet its obligations under these conditions.

M. If an MBE or WBE listed by the General Bidder in its MBE or WBE Participation Schedule fails to obtain a performance or payment bond if required by the General Bidder to do so, said failure shall not entitle the General Bidder to avoid the requirements of Section 2.05A and this Section 2.08. After a General Bidder has been awarded the contract, it shall not change the MBE or WBE listed in its MBE or WBE Participation Schedule at the time of the award or make any other such substitutions without the written approval of the Town.

2.09. Sanctions

A. If the Contractor fails to comply with these Article II requirements, the Town may:

(1) Suspend any payment for the work that should have been performed by an MBE or WBE pursuant to the MBE or WBE Participation Schedule,

or,

(2) Require specific performance of the Contractor's obligation under Sections 2.05A and Section 2.08 hereof by requiring the Contractor to subcontract with an MBE or WBE for any contract or specialty item at the contract price established for that item in the bid proposal submitted by the Contractor.

B. To the extent the Contractor has not complied with these Article II requirements, the Town may retain from the Final Payment an amount determined by multiplying the estimated construction cost of the project by the percentage in Section 2.05A hereof and subtracting the amount already paid to MBE's and WBE's for work performed under the contract and any payments already suspended under paragraph A of this Section 2.09.

C. In addition, or as an alternative, to the remedies under paragraphs A and B of this Section 2.09, the Town may suspend, terminate, or cancel this contract in whole or in part, or may call upon the Contractor's surety to perform all terms and conditions in the contract unless the Contractor is able to demonstrate its compliance with these Article II requirements.

D. The Town may elect not to impose sanctions if it finds the Contractor has taken every possible measure to comply with these Article II requirements or that some other justifiable reason exists for waiving these Article II requirements in whole or in part. To demonstrate every possible measure, the Contractor shall furnish evidence showing the name of each firm solicited for quotation on each subcontract, the price quoted by each, whether or not the firm solicited was an MBE or WBE, the reason for not subcontracting with an MBE or WBE firm when applicable; efforts by the contractor to supplement its own and SDO lists of MBE and WBE sources by contacting the Small Business Administration, trade organizations, the General Services Administration (US Government), minority contractors organizations, community organizations and other likely sources of names of additional minority business firms capable of performing the work, to demonstrate the contractors substantial efforts to comply with this commitment as required by these provisions in order to show that no such substitute minority contractors exist.

E. Any bidder or Contractor shall provide such information as is necessary in the judgment of the Town to ascertain its compliance with the terms of these conditions.

2.10. Hearing And Appeals

A. The Town shall not impose any sanctions under Section 2.09 hereof unless the Contractor and any other interested party has been given the opportunity to present evidence in support of its position at a hearing held by the Town, and the Town has concluded upon review of all of the evidence that sanctions are justified. Such hearing shall be informal and not subject to the provisions of M.G.L., c. 30A.

B. If at any time after the imposition of one or more of the sanctions under Section 2.09 hereof, a Contractor is able to demonstrate that it is in compliance with the requirements of this Article II, it may request that the Town suspend the sanctions conditionally, pending a final determination by the Town as to whether the Contractor is in compliance. Upon final determination of the Town, the Town may continue the sanctions, lift the sanctions, or reimpose them.

MIDDLEFIELD, MASSACHUSETTS
Minority/Women Business Enterprise Participation Letter of Intent

(To Be Completed by MBE/WBE and Submitted by the General Bidder)

Project Bid Number: _____

Project Location: Middlefield, Massachusetts

TO:
(Name of General Bidder)

I. My company intends to perform work in connection with the above project as:

- an individual
- a partnership
- a corporation
- a joint venture with
- other (explain)

2. My company has been certified by SDO as a MBE/WBE and it has not changed its minority or women ownership, control, or management without notifying SDO within thirty (30) days of such a change.

3. My company understands that if your company is awarded the contract, your company intends to enter into an agreement with my company to perform the activity described below for the prices indicated. My firm also understands that your firm, as General Bidder, will make substitutions only as allowed by Section 2.08D of this Compliance Contract Supplement.

MBE/WBE PARTICIPATION

Description of Activity (With
Item Number Notation such as "Labor Only
(If Applicable) "Materials Only", etc.) QUANTITY PRICE AMOUNT

MBE/WBE Authorized Agent MBE/WBE Company Name

NOTE: To be submitted by the General MBE/WBE Address
Contractor, to the Town within
(5) FIVE DAYS after the MBE/WBE Telephone No.
opening of General Bids

MIDDLEFIELD, MASSACHUSETTS

Schedule for Participation by Minority Business Enterprise

The bidder must indicate the MBE it intends to utilize in this document as follows: (Attach sheet if additional space(s) required.)

1. ITEM 1 - MBE Participation from Work of the General Contractor

Name & Address Nature of Dollar Value
of MBE Participation of Participation

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

2. Total MBE Commitment from Item 1 Work:

3. Total MBE Commitment from Item 2 Work (information published in the Division's Filed Sub-Bidders List): _____

4. Grand Total of MBE Commitment (Add Items 1 & 2):

Percentage MBE Participation _____

The bidder(s) agree to furnish implementation reports as required by the Town to indicate the MBE(s) which it has or intends to use. Breach of this commitment constitutes a breach of the bidder's contract.

Date General Contractor

Authorized Signature Business Address

NOTE: To be submitted by the General Contractor to the Town within (5) FIVE DAYS after the opening of General Bids.

This form may be Xeroxed or emailed.

MIDDLEFIELD, MASSACHUSETTS

Schedule for Participation by Women Business Enterprise

The bidder must indicate the WBE it intends to utilize in this document as follows: (Attach sheet if additional space(s) required.)

1. ITEM 1 - WBE Participation from Work of the General Contractor

Name & Address Nature of Dollar Value
of WBE Participation of Participation

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

2. Total WBE Commitment from Item 1 Work:

3. Total WBE Commitment from Item 2 Work (information published in the Division’s Filed Sub-Bidders List): _____

4. Grand Total of WBE Commitment (Add Items 1 & 2):

Percentage WBE Participation _____

The bidder(s) agree to furnish implementation reports as required by the Town to indicate the WBE(s) which it has or intends to use. Breach of this commitment constitutes a breach of the bidder’s contract.

Date General Contractor _____

Authorized Signature/ Business Address _____

NOTE: To be submitted by the General Contractor to the Town within (5) FIVE DAYS after the opening of General Bids.

This form may be Xeroxed or emailed.

MIDDLEFIELD, MASSACHUSETTS

A. Contractor's 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.

CONTRACTOR'S CERTIFICATION

_____certifies that:

1. It intends to use the following listed construction trades in the work under the contract.
2. It will comply with the minority manpower ratio and specific affirmative action steps contained herein
3. It will obtain from each of the contractors prior to the award of any contract under this contract the subcontractor certification required by these bid conditions.

(Signature of authorized representative of contractor)

NOTE: To be submitted by the General Contractors to the Town within (5) FIVE DAYS after the opening of General Bids.

This form may be Xeroxed or emailed.

MIDDLEFIELD, MASSACHUSETTS

B. Subcontractor's Certification

Prior to the award of any subcontract, regardless of tier, the prospective subcontractor must execute and submit to the Prime Contractor the following certification, which will be deemed a part of the resulting subcontract:

SUBCONTRACTOR’S CERTIFICATION

certifies that:

1. It intends to use the following listed construction trades in the work under the contract

and

2. It will comply with the minority manpower ratio and specific affirmative action steps contained herein; and

3. It will obtain from each of the subcontractors prior to the award of any subcontract under this subcontract the subcontractor certification required by these bid conditions.

Signature of authorized representative of subcontractor)

In order to ensure that the said subcontractor’s certifications becomes a part of all subcontracts under prime contract, no subcontract shall be executed until an authorized representative of the Town agency (or agencies) administering this project has determined, in writing, that the said certification has been incorporated in such subcontract, regardless of tier. Any subcontract executed without such written approval shall be void.

NOTE: To be submitted by the General Contractors to the Town within (5) FIVE DAYS after the opening of General Bids.

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