

INVITATION FOR BID
NEW BEDFORD HARBOR DEVELOPMENT COMMISSION
NEW BEDFORD HARBOR
LOWER HARBOR CAD CELL
New Bedford, Massachusetts

CONTRACT NO. HDC-FY12-006

ISSUED FOR BID

Prepared for:



New Bedford Harbor Development Commission
106 Co-Op Wharf
P.O. Box 50899
New Bedford, MA 02745

Prepared by:



Apex Companies, LLC
1 Wamsutta Street, Suite 8
New Bedford, Massachusetts 02740

Prepared:

Prepared by

NEW BEDFORD HARBOR DEVELOPMENT COMMISSION
INVITATION FOR BID: NEW BEDFORD HARBOR
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CONTRACT NO. HDC-FY12-006

Issued for Bid



Jonathan F. Mitchell
Mayor

Harbor Development Commission
52 Fisherman's Wharf
New Bedford, MA 02740



*Apex Companies, LLC
1 Wamsutta Street, Suite 8
New Bedford, MA 02740*

New Bedford Harbor
LOWER HARBOR CAD CELL
New Bedford Harbor Development Commission
New Bedford, Massachusetts
Contract Documents

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SECTION 00050

BID CHECKLIST

**New Bedford Harbor Development Commission
New Bedford, Massachusetts**

Invitation for Bid - Contract No. HDC-FY12-006

(Contractor Name)

(Date/Time Bid Received)

	Section-Page(s)		Check if Present
	Requirement	Form	
Submittal Items:			
Bid Form with Valid Signature	00200-2	00400-3,4,5,6	
Acknowledgement of all Addenda	00200-3	00400-3	
Bid Guaranty	00200-2,5	00430-1,2	
Ineligible Contractors Certification	00200-10	00400-9	
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Non-Collusion/Tax Compliance Forms	00200-3,11	00400-11	
Right-to-Know Certification	00200-11	00400-12	
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Const. Equip. Std. Compl. Cert.	00200-11	00400-16	
Undocumented Workers Certification	(refer to form)	00400-10	
OSHA Certification Requirement	(refer to form)	00400-13	
Business References	00200-11	(Contractor)	
Project References	00200-12	(Contractor)	
Qualifications and Experience	00200-12	(Contractor)	
Plant & Equipment Schedule/Survey	01000-1	01000-2	
Dredge Process Detailed Description	01000-1 Part 1.2.1.C	(Contractor)	
Deviations from Technical Specifications (if applicable)	01000-1 Part 1.2.1	(Contractor)	
Detailed Project Schedule	01000-1 Part 1.2.1	(Contractor)	

EEO Submittal Forms:

Bidders Certificate of Understanding	EEO-AA.11-12	EEO - App. A -22	
Schedule of Participation MBE/WBE/DBE Enterprises	EEO-AA.11-12	EEO - App. A -23	
Letters of Intent (by the MBE/WBE/DBE)	EEO-AA.11-12	EEO - App. A -24	
MBE/WBE Contractor Identification Statements	EEO-AA.11-12	EEO - App. A -25	
Bidders Certification (by GC & each MBE/WBE/DBE)	EEO-AA.11-12	EEO - App. A -26	
MBE/WBE/DBE Unavailability Certification (if applic.)	EEO-AA.11-12	EEO - App. A -27	
Request for Waiver (if applicable)	EEO-AA.11-12	EEO - App. A -28	

FINAL ITEM: For assistance, you may call **Chet Myers at 617-908-5778 to discuss submittal checklist prior to submission of bid.**

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SECTION 00100

NOTICE TO BIDDERS

Sealed Bids for New Bedford Harbor Development Commission Contract No. HDC-FY12-006, New Bedford Harbor, Lower Harbor CAD Cell will be received by the Executive Director of the New Bedford Harbor Development Commission at 52 Fisherman's Wharf, New Bedford, Massachusetts 02745, until X:XX PM on XXXXXX, XXXXXX XX, 2012. Immediately thereafter, in a designated room, the Bids will be opened and read publicly.

The Lower Harbor CAD Cell Work includes the construction of a confined aqueous disposal cell (CAD Cell) in the harbor with dredging and transport of contaminated sediments for disposal into an existing CAD Cell and dredging and transport of sediment suitable for offshore disposal to CCDS or RISDS. Bidders shall meet the qualifications and experience requirements for environmental dredging as detailed in Section 00200.

Bidding Documents may be obtained from the Office of the New Bedford Harbor Development Commission, 52 Fisherman's Wharf, New Bedford, Massachusetts 02745, from 8:30 AM to 4:00 PM, Monday through Friday. The Bidding Documents will be made available for purchase on _____, at a charge of \$25.00 per copy. ONLY FULL SETS OF THE BIDDING DOCUMENTS (DRAWINGS AND PROJECT MANUAL/SPECIFICATIONS) WILL BE MADE AVAILABLE FOR PURCHASE. CHARGES ARE NON-REFUNDABLE. Upon request, Bidding Documents can be forwarded to a requestor for an additional fee of \$25.00. Bidding Documents will not be mailed until a check has been received at the Office of the Harbor Development Commission.

Bidding procedures and the award of the Contract and Subcontracts will be in accordance with the provisions of Chapter 30, Section 39M of the General Laws of the Commonwealth of Massachusetts. Accordingly, the project will be awarded to the lowest eligible, responsible and responsive bidder.

Bidders attention is directed to the Equal Employment Opportunity (EEO) documents as listed below, which can be found within Section 00800 - Supplementary Conditions as included in the Contract Documents.

City of New Bedford "Instructions to Bidders for Affirmative Action Issues" contained with the EEO Documents attached

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order No. 11246)

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order No. 11246)

Supplemental Equal Employment Opportunity Anti-Discrimination and Affirmation Action Program (The Commonwealth of Massachusetts)

Bidders will be required to comply with Federal Equal Employment Opportunity Regulations and the President's Executive Order No. 11246 and any amendments or supplements thereto.

Bidders will affirmatively ensure that in regard to any contract entered into

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pursuant to this solicitation, minority and female construction contractors will be afforded full opportunity to submit Bids and will not be discriminated against on the grounds of race, color, religion, sex, age, or national origin in consideration for an award.

A prebid conference will be held by the New Bedford Harbor Development Commission on XXXXXXXX, XXXXXXXX XX, 2012 at 11:00 AM at the Office of the New Bedford Harbor Development Commission, 52 Fisherman's Wharf, New Bedford, Massachusetts. Bidders and their subcontractors are strongly advised that they should have representation at this prebid conference as no additional prebid conferences are scheduled.

Request for interpretation of the Drawings and Specifications shall be submitted in writing at the prebid conference. Additional requests for interpretation of the Drawing and Specifications may be submitted in writing no later than [REDACTED]. All requests shall be submitted in writing to the Executive Director of the New Bedford Harbor Development Commission at 52 Fisherman's Wharf, New Bedford, Massachusetts 02740. Verbal requests for interpretation of the Drawings and Specifications will not be taken or given consideration. Responses to requests for interpretation of the Drawings and Specifications will be addressed individually and included in Addenda in a question and answer format.

Bidders will be required to certify as part of their Bids that they are able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the Work.

This Contract is subject to minimum State wage rates and Federal Davis-Bacon prevailing wage rates, whichever is higher, and all other applicable labor laws.

A Bid Guaranty will be required and shall consist of a Bid Deposit in the amount of five percent (5%) of the value of the Bid, in the form of a Bid Bond, cash, certified check, treasurer's or cashier's check.

The successful Bidder shall be required to furnish a Performance Bond, and a Labor and Materials Payment Bond. Each bond shall be for the full amount of the Contract price.

The New Bedford Harbor Development Commission reserves the right to reject any or all Bids, to waive informalities, to advertise for new Bids or proceed to do the Work otherwise, as may be deemed to be in the best interests of the New Bedford Harbor Development Commission.

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Bid Documents may also be viewed at the following locations:

New Bedford Harbor Development Commission
52 Fisherman's Wharf
New Bedford, MA 02745

NEW BEDFORD HARBOR DEVELOPMENT COMMISSION

Date: XXXXXXXXXX, 2012

By: Edward Anthes-Washburn
Acting Executive Director
New Bedford Harbor Development Commission

END OF SECTION

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SECTION 00200

INSTRUCTIONS TO BIDDERS

ARTICLE 1 - INTERPRETATION OF BASIC ESTIMATED QUANTITIES

- 1.1 Bids will be compared on the estimated quantities of work to be done, as shown on the Bid Form.
- A. Quantities in the Bid Form are approximate only, being given as a basis for the comparison of Bids. The New Bedford Harbor Development Commission (Commission) does not expressly or by implication agree that the actual amount of Work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the Work, as may be deemed necessary or expedient by the Commission.
- 1.2 Bidders shall submit their bid upon the following express condition, which shall apply to and become part of every bid received.
- A. An increase or decrease in the quantity for any item shall not be regarded as cause for an increase or decrease in the Contract unit prices, nor in the time allowed for the completion of the Work, except as provided in the Contract.
1. Also, see the General Conditions, Articles 2.03, 2.05, 7.03 and 7.04.

ARTICLE 2 - EXAMINATION OF CONTRACT DOCUMENTS AND SITE OF WORK

- 2.1 Before submitting a Bid, each prospective Bidder shall do the following:
- A. Examine the Contract Documents thoroughly.
- B. Visit the sites to become familiar with observable conditions that may in any manner affect cost, progress, or performance of the Work.
- C. Be familiar with Federal, State, and local laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the Work.
- D. Study and correlate information thus determined with the Contract Documents.
- 2.2 By submitting a Bid, the Bidder represents that every requirement of this Article and the following Article (Article 3, Subsurface Conditions Data) has been complied with and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Work. The Subsurface Conditions Data will be submitted to the Bidder as an addendum to the Contract Documents.

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- 2.3 A prebid conference and an inspection tour will be held by the Commission at dates, times and locations as specified in the Notice to Bidders.
- 2.4 In addition to visiting the sites for the purposes as specified above the Bidders shall visit the sites to ascertain pertinent local conditions readily determined by inspection and inquiry, such as the location, accessibility, traffic conditions and general character of the sites, labor conditions, the character and extent of existing work within or adjacent thereto, and any other work being performed.
- 2.5 The Commission does not guarantee or represent that existing construction or conditions conform to the Drawings. The Bidder shall visit the sites and satisfy himself as to existing conditions. All necessary information shall be verified in the field before fabrication of new products/material. No claim for extra cost will be allowed by the Commission because of the Bidder's/Contractor's unfamiliarity with site conditions.

ARTICLE 3 - SUBSURFACE CONDITIONS DATA

- 3.1 Where investigation of the subsurface conditions and rock conditions has been conducted for the Commission by independent soil engineering consultants in those areas where the project work is to be performed, prospective Bidders may inspect the records of such geotechnical investigations including the soil and rock samples and cores as are available at the locations within the "Data Report - Lower Harbor CAD Cell" attached to Section 0800 of the Contract Documents, or as otherwise stated in the Contract Documents.
- 3.2 In addition to any geotechnical information presented above, the results of relevant environmental testing performed during the subsurface investigation program is included within the Subsurface Conditions Report, or as otherwise stated in the Contract Documents.
- 3.3 Test boring logs for test borings indicated and identified on the Drawings is included within the Subsurface Conditions Report, or as otherwise stated in the Contract Documents.
- 3.4 The cost of subsurface conditions data issued with the Bidding Documents in the Addendum to the Contract Documents is included in the cost of the Bidding Documents and is non-refundable.

ARTICLE 4 - PREPARATION OF BIDS

- 4.1 Bid Prices
 - A. The Bidder shall submit his bid on the Bid Form. The bidder shall submit one original and one copy of the bid. The bidder shall submit the bid package in one sealed envelope. The Bid Form, the Bid Guaranty, and all other forms provided and other documents as may be required shall be executed and submitted by the Bidder with the Bid Form and the Bid Guaranty. The Bid Form with the Schedule of Bid Prices, the Bid Guaranty, the forms specified in Section 00050 - Bid Checklist, certifications, and documents constitute the Bid.

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1. All blank spaces for Bid prices in the Schedule of Bid Prices shall be filled in with a unit price or a lump sum as applicable to the item.
 2. The total amount of the Bid shall be obtained by adding the dollar amounts of the individual Bid items as shown in the Schedule of Bid Prices.
- B. All words and figures shall be in black ink or be type written. Bid prices of each item in the Schedule of Bid Prices shall be stated in written words and numbers.
1. In case of conflict between written words and numbers; the written words shall govern.
 2. In the event that there is an error in the computed totals based upon the unit prices and estimated quantities, the unit prices shall govern.
 3. If erasures or changes appear in the Bid Form and the Schedule of Bid Prices; each erasure or change shall be initialed and date by the individual signing the Bid Form.
- C. The price for any item, bid and contracted for, unless otherwise noted or specified shall include full compensation for all products/materials equipment, tools, labor, testing and incidental work necessary to complete the item to the satisfaction of the Engineer. Attention is drawn to the fact that this project is subject to Massachusetts Prevailing Wage Rates and the Federal Davis Bacon Wage Rates, as applicable, of which the higher of the two shall prevail for each category of work. Prices, without exception, shall be net, not subject to discount, and shall include all royalties and costs arising from patents, trademarks and copyrights in any way involved in the Work.
- D. The Schedule of Bid Prices included in the Bid Form will be used for the indicating of the Bid price information specified above.
- E. All bid prices submitted in response to this Invitation for Bid (IFB) must remain firm for sixty (60) days following the bid opening.
- 4.2 Non-Collusion
- A. The Bidder must furnish a certified Non-Collusion statement. Also, see Article 27.
- 4.3 Addenda
- A. If any changes are made to this IFB, an addendum will be issued. Addenda will be sent by mail, fax or email with return receipt requested to all that obtained Bid Documents (Drawings and Specifications). Alternately, the addenda may be faxed to all that obtained Bid Documents. All addenda so issued will become

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part of the Bid Documents. Additionally, addenda may be handed out at the pre-bid meeting, at which time each bidding entity representative will be required to sign a list indicating they received the addenda.

- B. The Bidder shall acknowledge receipt of Addenda by writing in the numbers of the Addenda received in the Bid Form.

4.4 Signatures

- A. The Bid shall be signed in ink in the proper place provided as follows.

1. If the Bid is made by an individual, that person's name and post office address shall be stated.
2. If the Bid is made by a firm, partnership or corporation it shall be signed by a person having such legal authority from such firm, partnership or corporation and the person so signing the Bid shall give his own name and title, if any, in addition to the name and address of the firm, partnership or corporation. If the Bid is made by a firm or partnership, the names and addresses of the individual members shall be given.
3. If the Bid is made by a corporation, the name of the State under the laws of which the corporation was chartered and the names and titles of the President, Treasurer and Secretary or Clerk of the corporation shall be given.
4. If the Bid is made by two or more individuals, partnerships or corporations, or any combination thereof, each party joining to make the Bid shall submit, attached to and made a part of the Bid, information and signatures in compliance with the foregoing provisions applicable to an individual, firm, partnership or corporation. In addition, if any members of the joint venture are a corporation, an attested copy of the vote of the corporation authorizing such joint venture shall be attached to the Bid.

4.5 Filed Sub-Bids

- A. Not Applicable

4.6 Certification

- A. Not Applicable

4.7 Qualifications of Bidders

- A. Bidders shall have a minimum of three (3) years experience performing similar work.

ARTICLE 5 - DELIVERY OF BIDS

- 5.1 Prior to the time set for the opening of Bids, the Bidder shall submit

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the Bid as follows:

- A. If delivered by hand, the Bidder shall submit the Bid properly sealed in an envelope and delivered in person. Written on the envelope shall be the following:
 - 1. Bid for the New Bedford Harbor Development Commission.
 - 2. Date and time of Bid opening.
 - 3. Name, address and contract number of the project being bid.
 - 4. Name and address of Bidder.

- B. If mailed, the Bidder shall submit the Bid by registered mail, certified mail with return receipt requested or a private delivery service such as Federal Express or United Parcel that requires evidence of receipt. The Bid shall be placed in an envelope and placed in the mailing envelope, with both envelopes properly sealed.
 - 1. The words BID FOR THE NEW BEDFORD HARBOR DEVELOPMENT COMMISSION, with the BID # of the project being bid, shall be written on the outside envelope (mailer).
 - 2. The inside envelope, containing the Bid, shall have the following information written on it:
 - a. Bid for the New Bedford Harbor Development Commission.
 - b. Date and time of Bid opening.
 - c. Name, address and contract number of the project being bid.
 - d. Name and address of Bidder.

- C. A Bid may also be modified or withdrawn in person by a Bidder or the Bidder's authorized representative, provided the Bidder's identity is made known and the Bidder signs a receipt for the Bid, but only if the modification or withdrawal is made prior to the time set for receipt of Bids. Also, see Article 7.

- D. The only acceptable evidence to establish the date and time of receipt of a Bid at the location stated in the Notice to Bidders shall be the date/time stamp of the Commission on the envelope or other documentary evidence of receipt maintained by the Commission.

- E. Bids received after the stated time for the Bid opening will not be accepted by the Commission and will be returned to the Bidder unopened.

ARTICLE 6 - BID GUARANTY REQUIRED

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- 6.1 In order to insure the faithful fulfillment of its term, each Bid shall be accompanied by a Bid Guaranty. The Bid Guaranty shall be in the amount as stated in the Notice to Bidders in the form of an acceptable bid bond, cash, certified check, treasurer's or cashier's check issued to the New Bedford Harbor Development Commission by a responsible bank or trust company or by a surety or insurance company licensed or authorized by the Massachusetts Division of Insurance to engage in the business of surety in the Commonwealth and satisfactory to the Commission.
- A. The Bid Guaranty shall be enclosed in a sealed envelope and be submitted with the Bid.
1. The envelope, containing the Bid Guaranty, shall have the following information written on it:
- a. Bid Guaranty for the Commission.
 - b. Date and time of Bid opening.
 - c. Name, address and contract number of the project being bid.
 - d. Name and address of Bidder.

ARTICLE 7 - WITHDRAWAL OF BIDS

- 7.1 A Bidder may withdraw its Bid provided the request is in writing and is in the hands of the Commission prior to the time set for receipt of Bids.
- A. If not earlier returned, when any such Bid is reached during the opening of the Bids, it will be returned to the Bidder unread.
- B. Also, see Article 5.

ARTICLE 8 - PUBLIC OPENING OF BIDS

- 8.1 Bids will be publicly opened and the total price of each bid read at the time and the location stated in the Notice to Bidders.
- 8.2 Any person may at reasonable times, and in the presence of a duly authorized representative of the Commission, examine any or all of the Bids after they have been opened and read.

ARTICLE 9 - REJECTION OF BIDS

- 9.1 Bids that fail to meet the requirements of Articles 4, 5 and 6 or that are incomplete, conditional or obscure, or that contain additions/deletions not called for, erasures, alterations or irregularities of any kind or in which errors occur, or that contain abnormally high or abnormally low prices for any class or item of work may be rejected as informal.
- 9.2 Chapter 149, Section 44A through Section 44I, inclusive, of the General Laws of the Commonwealth of Massachusetts shall apply to the Work as

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indicated in the Notice to Bidders, the Commission reserves the right to reject any or all bids, and to reject any general or filed sub-bid that fails to be in accordance with the statutory requirements.

- 9.3 More than one Bid from the same Bidder, whether or not the same name or different names appear on the signature page, will not be considered. Reasonable proof for believing that a Bidder is interested in more than one Bid for the Work contemplated will cause the rejection of all Bids made by the Bidder directly or indirectly.
- 9.4 Any or all Bids will be rejected if there is reason for believing that collusion exists among Bidders.
- 9.5 Bidders are advised that the Bid Form's Schedule of Bid Prices shall include a Bid price for each of the items listed in the Schedule of Bid Prices. The omission of a Bid price for any of the items is cause for rejection of all Bid prices in the Bid and the Bid itself.
- 9.6 On federally assisted (financed) projects, Bids will be rejected from any Bidder whose name appears on the US Comptroller General's list of ineligible contractors for federally financed and assisted construction.
- 9.7 See also Articles 24 through 31.

ARTICLE 10 - DISQUALIFICATION OF BIDDERS

- 10.1 Bidders whose Bids have been rejected because of evidence of collusion will not be considered in future Bids for the same work and such Bidders may be disqualified from bidding on future work. Also, see Article 9.

ARTICLE 11 - MATERIAL GUARANTY

- 11.1 The Bidder may be required to furnish, at no additional cost to the Commission, a complete statement of the origin, composition and manufacture of any or all products/materials proposed to be used in the construction of the Work, together with samples that may be subject to testing as determined by the Commission to determine the quality and fitness of the products/materials.

ARTICLE 12 - CONSIDERATION OF BIDS

- 12.1 The Commission reserves the right to reject any or all Bids, to waive technicalities, to advertise for new Bids, or proceed to do the Work as may be deemed to be in the best interests of the Commission.

ARTICLE 13 - AWARD OF CONTRACT

- 13.1 It is the intention of the Commission to award the Contract, subject to the reservations of Article 12, within 30 days after the opening of Bids, to the lowest responsible and eligible Bidder who's Total Estimated Contract Bid Price, based on the Schedule of Bid Prices is the lowest Bid received. See also Article 4.
- 13.2 For Contracts requiring concurrence by State of Federal agencies, it is

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the intention of the Commission to award the Contract 45 days from the opening of the Bids.

- 13.3 The successful Bidder will be notified in writing by registered mail or certified mail with return receipt requested that their Bid has been accepted and that the Contract has been awarded.
- 13.4 The award of the Contract is predicated upon the Commission receiving funding for the project through a grant from the United States Environmental Protection Agency. The Contract will not be awarded if funds are not available to the Commission for the award of the contract.

ARTICLE 14 - CANCELLATION OF AWARD

- 14.1 The Commission reserves the right to cancel the award of any contract at any time before the execution of the said contract by all parties without any liability against the Commission.

ARTICLE 15 - RETURN OF BID GUARANTY

- 15.1 The Bid Guaranty in the form specified in Article 6 will be returned within seven (7) calendar days following the opening of the Bid, except for the Bid Guaranty of the three lowest, eligible, responsible and responsive Bidders.
- 15.2 The Bid Guaranties of three lowest, eligible, responsible, and responsive Bidders will be retained until execution of the Contract, previous to which, however, any of the three Bidders who submitted cash, certified check, treasurer's or cashier's check as Bid Guaranty, may substitute a bid bond in an acceptable form furnished by a surety or insurance company licensed or authorized by the Massachusetts Division of Insurance to engage to the business of surety in the Commonwealth and satisfactory to the Commission.
- A. The Bid Guaranties submitted by the three lowest, eligible, responsible and responsive Bidders in the form of cash, certified check, treasure's or cashier's check will be deposited into escrow accounts by the Commission.
- 15.3 If after 60 days from the opening of the Bids the Contract is not awarded by the Commission, any or all of the three lowest, eligible, responsible and responsive Bidders may request in writing that their Bid Guaranty be returned. Bidder's who's Bid Guaranty is returned will not be considered for the awarding of the Contract.

ARTICLE 16 - CONTRACT BONDS REQUIRED

- 16.1 The Performance Bond in the full amount of the Contract will be required by the Commission to ensure faithful performance of the Contract.
- 16.2 The Labor and Materials Payment Bond in the full amount of the Contract will be required to be furnished by the Contractor to the Commission as security for payment by the Contractor and subcontractors for labor, products/materials and rental of equipment.

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- A. The Labor and Materials Payment Bond shall remain in force until the validity of all claims is determined and if valid, are paid by the Surety.
- 16.3 The name of the agency or agent writing these bonds shall be identified with or on the bond.
- A. The surety may be a bond in an acceptable form furnished by a Surety or insurance company licensed or authorized by the Massachusetts Division of Insurance to engage in the business of surety in the Commonwealth and satisfactory to the Commission.
- B. All modifications, extensions of time, extra work and other changes authorized under the Contract Documents may be made without obtaining the consent of the Surety of the Contract Bonds.

ARTICLE 17 - EXECUTION OF THE CONTRACT

- 17.1 The successful Bidder shall execute and deliver the Contract and furnish the required surety and the certificates of insurance to the Commission within seven (7) calendar days after the Notice of Award.
- 17.2 The Contract shall be in writing and shall be executed in the number of copies required by the Commission.
- 17.3 One fully executed copy of the Contract will be delivered to the Contractor.

ARTICLE 18 - FAILURE TO EXECUTE THE CONTRACT

- 18.1 Should the successful Bidder fail to execute the Contract and furnish the surety and certificates of insurance within the time stipulated, the Commission may at its option, determine that the Bidder has abandoned the Contract and thereupon the Bid and acceptance shall be null and void.
- 18.2 The Bid Guaranty accompanying the Bid will be retained and collected by the Commission.
- 18.3 It is agreed that this Article shall not be construed and treated by the parties to the Contract not as imposing a penalty upon said Bidder for failing to fully execute the Contract as agreed on or before the time stated in the Contract Documents, but as liquidated damages to compensate the Commission for all additional costs incurred by the Commission because of the failure of the Bidder to fully execute the Contract on or before the time specified in the Contract Documents.

ARTICLE 19 - INTERPRETATION OF BID DOCUMENTS

- 19.1 Request for interpretation of the Bid Documents (Drawings and Specifications) shall be submitted in writing at the prebid conference. Additional requests for interpretation of the Bid Documents (Drawing and Specifications) may be submitted in writing no later than **X:XX PM** . All requests shall be submitted in writing

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to the Executive Director of the New Bedford Harbor Development Commission at 52 Fisherman's Wharf, New Bedford, Massachusetts 02740. Verbal requests for interpretation of the Bid Documents (Drawings and Specifications) will not be taken or given consideration. Responses to requests for interpretation of the Drawings and Specifications will be addressed individually and included in Addenda in a question and answer format.

- 19.2 Obvious discrepancies in Bid Documents that are not addressed by a Bidder in accordance with the above procedure will be construed against the successful Bidder should a dispute arise.
- 19.3 Addenda will be sent by mail, fax or email with return receipt requested to all that obtained Bid Documents (Drawings and Specifications). Alternately, the addenda may be faxed to all that obtained Bid Documents. All addenda so issued will become part of the Bid Documents. Additionally, addenda may be handed out at the pre-bid meeting, at which time each bidding entity representative will be required to sign a list indicating they received the addenda.

ARTICLE 20 - MASSACHUSETTS SALES AND USE TAX LAW OF 1967

- 20.1 The attention of the Bidders is directed to the Massachusetts Sales Tax, Chapter 64H, Section 6 and the Massachusetts Use Tax, Chapter 64I, Section 7, which states that these taxes are not applicable to the sales of construction materials and supplies incorporated, consumed, employed or expended in construction projects of the Commission. This exemption is also applicable to rental charges for construction vehicles, equipment, and machinery rented, specifically for use on the site of the Commission's construction projects. Bidders are directed to exclude any allowance for Sales or Use Tax from their Bid Form as said tax would relate to the foregoing specific categories.

ARTICLE 21 - DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION PROVISION

- 21.1 Bidder's attention is directed to the "Instructions to Bidders for Affirmative Action Issues", which set forth employment and MBE/WBE (Minority/Women Business Enterprise) participation goals, which is attached to Section 00800 - Supplementary Conditions.

ARTICLE 22 - BUY AMERICA

- 22.1 Not Included.

ARTICLE 23 - PREBID CONFERENCE AND INSPECTION TOUR

- 23.1 A Prebid Conference and Inspection Tour are scheduled for XXXXX, [REDACTED] at the Office of the New Bedford Harbor Development Commission at 52 Fisherman's Wharf, New Bedford, Massachusetts 02740. See Notice to Bidders for additional information.

ARTICLE 24 - CERTIFICATION PERTAINING TO INELIGIBLE CONTRACTORS

- 24.1 Bidders are advised that the Certification Pertaining to Ineligible Contractors included in the Bid Form shall be completed in its entirety and submitted with the Bid.

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24.2 Failure to comply fully and submit the required Certification may render the Bid non-responsive.

ARTICLE 25 - EQUAL EMPLOYMENT OPPORTUNITY

25.1 Attention of all Bidders is directed to the Equal Employment Opportunity documents, which are made part of the Contract Documents, and are found within the Supplementary Conditions, and the "Instructions to Bidders for Affirmative Action Issues", which set forth employment and MBE/WBE (Minority / Women Business Enterprise) participation goals. Bidders will affirmatively ensure that, at the time of the bid, and in regard to any contract entered into pursuant to this solicitation, minority and women construction contracts will be afforded full opportunity to submit bids and will not be discriminated against on the grounds of race, color, religion, sex, age, or national origin, in consideration of an award. Compliance with EEO provisions requires the completion in full of the certification contained in the Bid Form. See Bid Checklist for additional information.

25.2 Failure to comply fully and submit the required Certification may render the Bid non-responsive.

ARTICLE 26 - BIDDER STATUS IDENTIFICATION

26.1 The Bidder's attention is directed to the Bid Form and information to be furnished regarding status identification (Corporation, Partnership, Individual, Individual Doing Business Under a Firm Name and Joint Venture).

26.2 Bidders are advised that the applicable section regarding status identification shall be complete in its entirety.

26.3 Failure to comply fully and submit the required status identification information may render the Bid non-responsive.

ARTICLE 27 - NON-COLLUSION AFFIDAVIT

27.1 Bidders are advised that the Non-Collusion Affidavit included in the Bid Form shall be completed in its entirety and submitted with the Bid.

27.2 Failure to comply fully and submit the required affidavit may render the Bid non-responsive.

ARTICLE 28 - RIGHT-TO-KNOW LAW CERTIFICATION

28.1 Bidders are advised that the Right-to-Know Law Certification included in the Bid Form shall be completed in its entirety and submitted with the Bid.

28.2 Failure to comply fully and submit the required Certification may render the Bid non-responsive.

ARTICLE 29 - CERTIFICATION OF DUMPING FACILITIES

29.1 Bidders are advised that the Certification of Dumping Facilities

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included in the Bid Form shall be completed in its entirety and submitted with the Bid. The Contractor is not required to certify any CAD Cell or ocean disposal site.

- 29.2 Failure to comply fully and submit the required Certification may render the Bid non-responsive.

ARTICLE 30 - CERTIFICATION OF EXAMINATION OF AVAILABLE SUBSURFACE DATA

- 30.1 Refer to Article 3 and Technical Specifications for additional information.

ARTICLE 31 -- CERTIFICATION OF CONSTRUCTION EQUIPMENT STANDARD COMPLIANCE

- 31.1 Bidders are advised that the Certification of Construction Equipment Standard Compliance included in the Bid Form shall be completed in its entirety and submitted with the Bid.

- 31.2 Failure to comply fully and submit the required Certification may render the Bid non-responsive.

ARTICLE 32 - INFORMATION TO BE PROVIDED BY BIDDERS

- 32.1 With the bid, all Bidders shall submit to the Commission a list of references. The list of references shall include the following:

A. Business References

1. Submit three (3) business references. The business references shall include the following information:

- a. Name
- b. Title
- c. Company name
- d. Company address
- e. Telephone number
- f. Relationship to Bidder

B. Project References and Project Contacts

1. Submit five (5) project references with their respective project contacts. The projects shall have been completed within the last five (5) years and shall have been of a similar type of work, scope and construction contract dollar value. The contacts shall have been involved in the project as part of the Owner's project team and have knowledge of the overall project.

- a. The project references shall include the following information:

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- i. Name of Owner
 - ii. Address of Owner
 - iii. Name of project
 - iv. Address of project
 - v. Type of project
 - vi. Construction contract dollar value
 - vii. Start and end dates of the work
 - viii. Summary of change orders for each contract and a brief explanation of the basis of each change order.
- b. The project contacts shall include the following information:
- i. Name of contact
 - ii. Title
 - iii. Project responsibility
 - iv. Address of contact
 - v. Telephone number

C. Qualifications and Experience

1. Provide written references for at least three (3) environmental (i.e. contaminated soils/sediments) dredging projects completed in the past five (5) years.
2. Provide written documentation regarding your company's environmental compliance on previous projects. Provide a summary of fines for violation of environmental permit conditions, and/or commendations for exceeding permit conditions.
3. Provide written documentation regarding your company's Health and Safety program, and your company's EMR index for the past five (5) years. Provide a summary of OSHA recordable incidences.
4. Provide documentation regarding your company's management, labor resources and equipment/fleet capabilities. Identify the specific resources that will be dedicated to this project, and their specific environmental dredging experience.
5. Provide a narrative of your implementation plan to comply with the project schedule. Describe your planning efforts

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for contingencies.

6. The Contractor must clearly demonstrate within their proposal the capability to successfully address all the following technical aspects of the work.
 - a. Ability to minimize over-dredging.
 - b. Operator experience in the use of an environmental or enclosed bucket.
 - c. Minimization of free water during the dredging.
 - d. Environmental and water quality control during dredging and disposal operations.
7. Provide and additional information regarding your company's resources and capabilities which are pertinent to this solicitation.

D. Responsive Bidder

1. A company which has submitted a bid that conforms in all respects to the Instructions to Bidders.

E. Responsible Bidder

1. A company which has the capability to perform fully the contract requirements, and which has the integrity and reliability which assure good faith. Quality requirements and references will be considered in determining the Responsible Bidder. Awarding authority reserves the right to consider the recommendations of any Federal, State and/or local regulatory agency (i.e. MADEP or USEPA) to determine the Bidder's eligibility.

END OF SECTION

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SECTION 00400

BID FORM

Note: This Bid Form must be submitted (along with Section 01000 - Bidding Schedule of the technical specifications) in a sealed envelope. Bidders must make certain they print their name and the contract number on the outside of the envelope.

The undersigned hereby declares to have carefully examined the annexed form of Contract, Documents therein referred to and also the sites upon which the Project Work is to be performed.

The undersigned proposes to furnish all labor, products/materials, testing and equipment required for New Bedford Harbor Development Commission Contract No. HDC-FY12-006, New Bedford Harbor, Lower Harbor CAD Cell for the New Bedford Harbor Development Commission (Commission) in accordance with the Contract Documents prepared by Apex Companies, LLC, 1 Wamsutta Street, Suite 8, New Bedford, MA 02740 for the unit price, lump sum and allowance prices specified in the Schedule of Bid Prices, subject to additions and deductions according to the terms of the Specifications.

Accompanying this Bid Form is a Bid Guaranty in the amount of five percent (5%) of the value of the Bid that shall become the property of the Commission if, in case this Bid shall be accepted by said Commission, the undersigned fails to comply with the applicable statutes or fails as required to execute the Contract with, and furnish bonds and certificates to, said Commission, within the time provided.

The undersigned also hereby declares that he is the only person interested in this Bid; that it is made without any connection with any other persons making any Bid for the same Work; that no person acting for, or employed by, the Commission is directly or indirectly interested in this Bid, or in any contract which may be made under it, or in expected profits to arise therefrom; and it is made without directly or indirectly influencing or attempting to influence any other person or corporation to bid or to refrain from bidding or to influence the bid of any other person or corporation and that this Bid is made in good faith, without collusion or connection with any person bidding for the same work; and that this Bid is made with distinct reference and relation to the Contract Documents prepared for this project and herein mentioned. The undersigned declares that in regard to the conditions affecting the work to be done and the labor and materials needed, this Bid is based solely on his own investigation and research and not in reliance upon any plans, surveys, measurements, dimensions, calculations, estimates or representations of any employee, officer, or agent of the Commission.

If the Bidder is a foreign corporation it agrees, in case this Bid is accepted, to comply with the applicable provisions of Massachusetts General Laws, Chapter 156, Section 15.01 before the time for execution of the Contract, as hereinafter provided, occurs.

The undersigned proposes and agrees that, if within sixty (60) calendar days after the opening of Bids, notice that the Bid has been accepted by the

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Commission shall be mailed to him at the business address given below, he shall execute the Contract and furnish a Performance Bond and also a Labor and Materials Payment Bond for the full amount of the Contract price, within seven (7) calendar days after the date of the Notice of Award.

The undersigned agrees to commence work within seven (7) calendar days from the date of the mailing of the executed Contract to the Contractor unless otherwise directed in writing by the Commission; and he shall complete the entire Work, fully and acceptably, in accordance with the schedule presented by the Contractor in association with Section 01310, "CONSTRUCTION PROGRESS SCHEDULES" of the technical specifications.

The undersigned agrees to maintain and hold the Bid Price(s) stated in his bid for period of sixty (60) days from the date of the bid opening.

The undersigned covenants that he has not employed or retained any company or person (other than a full time bona fide employee working for the Contractor) to solicit or secure this Contract, and that he has not paid or agreed to pay any company or person (other than such an employee) any gift, fee, contribution, percentage, or brokerage fee contingent upon or resulting from the award of this Contract.

The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereinafter defined, participates in or cooperates with an international boycott, as defined in Section 999 (b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or engages in conduct declared to be unlawful by Section 2 of Chapter 151E, Massachusetts General Laws. If there shall be a breach in the warranty representation and agreement contained in this paragraph, then without limiting such other rights as it may have, the Commission shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least fifty-one percent (51%) of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least fifty-one percent (51%) of the ownership interests of the Contractor, or which directly or indirectly owns at least fifty-one percent (51%) of the ownership interest of the Contractor.

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This Bid includes ADDENDA numbered: _____

The TOTAL ESTIMATED CONTRACT BID PRICE based upon the Schedule of Bid Prices is:

_____ Dollars
** Amount in Words

\$ _____
** Amount in Figures

(Name and Address of Bidder)

USE BLACK INK OR TYPEWRITER IN COMPLETION OF BID FORM, THE SCHEDULE OF BID PRICES, AFFIDAVIT AND CERTIFICATIONS.

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**SCHEDULE OF BID PRICES
(BASE BID ITEMS)**

THE SCHEDULE OF THE TOTAL ESTIMATED BASE BID ITEMS IS AS FOLLOWS:

Base Bid Item No.	Description	Estimated Quantity*	Unit	Unit Price	Estimated Amount
0001**	Mobilization and Demobilization	1	L.S.	L.S.	\$ _____
0002	Dredging of Top of Lower Harbor CAD Cell Phase I and Disposal of Material Within CAD Cell #2 Disposal Area	20,000	C.Y.	\$ _____	\$ _____
0003	Dredging of Bottom of Lower Harbor CAD Cell Phase I and Disposal of Material Offshore at CCDS or RISDS	102,400	C.Y.	\$ _____	\$ _____
0004	Debris and Obstruction Removal and Offsite Disposal	50	Tons	\$ _____	\$ _____
SUB-TOTAL BASE BID ITEMS IN NUMBERS***:					\$ _____
SUB-TOTAL BASE BID ITEMS IN WORDS***:					

Notes:

* Dredge material volumes represent maximum allowable dredge volume including design depth volume plus allowable overdredge volume. Volumes are estimates for bid purposes only, and may be revised upon preparation of contract with Contractor.

** See Section 01025, Measurement and Payment. Total for Mobilization and Demobilization is limited to 5% of the Total Base Bid amount.

*** Alternate bid items may or may not be included in the contract. At the time of bid evaluation, the Owner will first open the bids, then select which Alternate Bid Items will be awarded with the Base Bid Items, and then the low bidder will be determined by adding the selected Alternate Bid Items to the Sub-Total of the Base Bid Items. Alternate Bid Items will be selected sequentially (beginning from Alternate Bid Item No. 1) by the Owner, if any are selected.

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THE SCHEDULE OF THE ESTIMATED ALTERNATE BID ITEMS IS AS FOLLOWS:

Alternate Bid Item No.***	Description	Estimated Quantity*	Unit	Unit Price	Estimated Amount
0001	Dredging of Top of Lower Harbor CAD Cell Phase II and Disposal of Material Within Lower Harbor CAD Cell Phase I Disposal Area	41,300	C.Y.	\$ _____	\$ _____
0002	Dredging of Bottom of Lower Harbor CAD Cell Phase II and Disposal of Material Offshore at CCDS or RISDS	343,700	C.Y.	\$ _____	\$ _____
SUB-TOTAL OPTIONAL BID ITEMS IN NUMBERS***:					\$ _____
SUB-TOTAL ALTERNATE BID ITEMS IN WORDS***:					

Notes:

* Dredge material volumes represent maximum allowable dredge volume including design depth volume plus allowable overdredge volume.

*** Alternate bid items may or may not be included in the contract. At the time of bid evaluation, the Owner will first open the bids, then select which Alternate Bid Items will be awarded with the Base Bid Items, and then the low bidder will be determined by adding the selected Alternate Bid Items to the Sub-Total of the Base Bid Items. Alternate Bid Items will be selected sequentially (beginning from Alternate Bid Item No. 1) by the Owner, if any are selected.

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It is a condition of this Contract, and shall be made a condition of each subcontract entered into pursuant to this Contract, that the Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1518, published in the Federal Register on April 17, 1971) promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act, (83 Stat. 96).

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work.

The Bidder hereby certifies he shall comply with the minority manpower ratio and specific action steps contained in Section 00800 – Supplementary Conditions of this Contract. The Contractor receiving the award of the Contract shall be required to obtain from each of its subcontractors and submit to the Contracting or administering agency 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 ratio and specific affirmative action steps contained in the Supplementary Conditions.

The Bidder also certifies and assures that he will make sufficient reasonable efforts to meet the Disadvantaged Business Enterprise (DBE) stated goal established for this Contract.

Full name and address of the individual or concern submitting this Bid:

Date: _____, 20 _____

Name of Bidder: _____

Signed: _____

Title: _____

Address: _____

NOTICE: Bid should be signed in ink by a person having proper legal authority, and the person's title should be given, such as "owner" in the case of an individual, "partner" in the case of a general partnership, "president", "treasurer" or other authorized officer in the case of a Corporation.

NOTE: BIDDERS MUST SET FORTH, ACCURATE AND COMPLETE INFORMATION AS REQUIRED BY THIS SOLICITATION. FAILURE TO DO SO MAY RENDER THE OFFER NON-RESPONSIVE OR UNACCEPTABLE.

ATTACH BID DEPOSIT HERE.

BIDDER STATUS IDENTIFICATION

NOTE: IF THE BIDDER IS A CORPORATION, INDICATE STATE OF INCORPORATION; IF A PARTNERSHIP, GIVE FULL NAMES AND ADDRESSES OF ALL PARTNERS; IF AN INDIVIDUAL, GIVE RESIDENTIAL ADDRESS IF DIFFERENT FROM BUSINESS ADDRESS; AND IF JOINT VENTURES, GIVE NAMES AND ADDRESSES OF ALL FIRMS OF THE JOINT VENTURE.

If a CORPORATION:

Incorporated in what State: _____

President: _____

Treasurer: _____

Secretary: _____

If a PARTNERSHIP (Name all Partners):

Name of Partner: _____

Residence: _____

Name of Partner: _____

Residence: _____

If an INDIVIDUAL:

Name: _____

Residence: _____

If an INDIVIDUAL DOING BUSINESS UNDER A FIRM NAME:

Name of Firm: _____

Name of Individual: _____

Business Address: _____

Residence: _____

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If a JOINT VENTURE:

Name of Venture: _____

Business Address: _____

Name of Firm or Corporation: _____

Address: _____

If any of the joint ventures is a corporation, a copy of the vote of the corporation authorizing the joint venture should be attached hereto.

The proposed Surety on the bond to be given is:

Name: _____

Home office Address: _____

Massachusetts Address (If Different): _____

CERTIFICATION PERTAINING TO INELIGIBLE CONTRACTORS

Date: _____, 20 _____

A. The _____
(Name and Address of Bidder)

hereby certifies that it is not included on the Commonwealth of Massachusetts -
EOAF/DCPO - List of Debarred or Suspended Contractors, or the Concerns on
Debarment List from the Massachusetts Attorney General's Fair Labor and Business
Practices Division.

(Signature of Authorized Representative of Bidder)

(Title)

OR

B. The _____
(Name and Address of Bidder)

hereby Certifies that it is included on the Commonwealth of Massachusetts -
EOAF/DCPO - List of Debarred or Suspended Contractors, or the Concerns on
Debarment List from the Massachusetts Attorney General's Fair Labor and Business
Practices Division.

(Signature of Authorized Representative of Bidder)

(Title)

NOTE: A BIDDER WILL NOT BE ELIGIBLE FOR AWARD OF A CONTRACT UNDER
THIS NOTICE TO BIDDERS BIDS UNLESS SUCH BIDDER HAS SUBMITTED
AS A PART OF ITS BID THE FOLLOWING CERTIFICATION PERTAINING TO
INELIGIBLE CONTRACTORS WHICH WILL BE DEEMED A PART OF THE
RESULTING CONTRACT.

CERTIFICATION PERTAINING TO UNDOCUMENTED WORKERS

As evidenced by the signature of the Contractor's Authorized signatory below, the Contractor certifies under the pains and penalties of perjury that the Contractor shall not knowingly use undocumented workers in connection with the performance of any Commission contract; that pursuant to federal and state requirements, the Contractor shall verify the immigration status of all workers assigned to such contracts without engaging in unlawful discrimination; and that the Contractor shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker(s). The Contractor understands and agrees that breach of any of these terms during the period of each contract may be regarded as a material breach, subjecting the Contractor to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination.

Contractor Authorized Signature

Printed Name

Date

Title _____ Telephone: _____

Fax: _____ Email: _____

NON-COLLUSION AND TAX COMPLIANCE FORM

CERTIFICATE OF NON-COLLUSION

The undersigned certified under 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.

Signature of individual submitting bid

Name of business/organization

TAX COMPLIANCE CERTIFICATION

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 contractor, and withholding and remitting child support.

Signature of person submitting bid

Name of business

RIGHT-TO-KNOW LAW CERTIFICATION

The Bidder hereby certifies that, if awarded this Contract, he will fully comply with the Massachusetts Right-to-Know Law, c. 470 of the Acts of 1983, (the Act.). In addition, he shall:

1. Obtain a Material Safety Data Sheet, (MSDS), for all substances or mixtures of substances which appear on the Massachusetts Substance List that he or any of his subcontractors brings to or uses on the work site and will keep a copy of that MSDS on the work site of this Contract.
2. Label each container of a substance or mixture of substances on the Massachusetts Substance List as required in §7 of the Act.
3. Provide the same training and non-technical instruction that he is required to provide under §15 of the Act to all New Bedford Harbor Development Commission representatives and their authorized representatives who are exposed to the substance or to the mixture of substances. Training shall include instruction on the nature and effects of any substance or mixture of substances listed on the Massachusetts Substance List which the Bidder or any of his subcontractors brings to or uses on the work site. Training and non-technical instruction shall be provided to all New Bedford Harbor Development Commission representatives and their authorized representatives, at no additional cost to the Commission.
4. Provide to the New Bedford Harbor Development Commission representatives and their authorized representatives on the work site the same protective equipment that the Bidder or any of his subcontractors provides to his employees. Equipment shall be provided to all New Bedford Harbor Development Commission representatives and their authorized representatives, at no additional cost to the Commission.

Date: _____, 20 _____

Signature of Authorized Representative of Bidder

Name and Address of Bidder

NOTE: A BIDDER WILL NOT BE ELIGIBLE FOR AWARD OF ANY CONTRACT UNDER THIS INVITATION FOR BIDS UNLESS SUCH BIDDER HAS SUBMITTED AS PART OF ITS BID THE FOLLOWING CERTIFICATION WHICH WILL BE DEEMED A PART OF THE RESULTING CONTRACT.

OSHA CERTIFICATION REQUIREMENT

Effective **July 1, 2006**, all employees of a contractor to be employed on **public building and public works** worksites must have successfully completed at least a 10 hour course in construction safety and health approved by OSHA at the time the employee begins work.

I, _____, as _____, of the
(Print Name) (Position with the entity submitting bid)

joint venture/corporation/partnership or other legal entity submitting this bid for a public works project falling under §39M of Chapter 30 of the Massachusetts General Laws and Chapter 149 of the same, do hereby certify that any and all employees found on my worksite for this project have, or will have by the start of their work on the project, successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that was at least 10 hours in duration.

A copy of the OSHA completion cards for each employee must be submitted to the New Bedford Harbor Development Commission before work on this project is to begin and must be supplemented as new employees are hired or contracted to work on this project.

_____, as
Signature

_____, of
Position

_____, on
Company/Corporation/Joint Venture/Partnership/Etc.

Date

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CERTIFICATION OF DUMPING FACILITIES

I, _____
(Name and Address of Bidder)

certify that I have adequate dumping facilities available at; _____

(Name and Address of Disposal Site)

and that these facilities are to be used in connection with work undertaken on this Contract and that such use is to be in a manner compliant with State and Local requirements.

Date: _____, 20 _____

Signature of Authorized Representative of Bidder

Name and Address of Bidder

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CERTIFICATION OF EXAMINATION OF AVAILABLE SUBSURFACE DATA

Bidder certifies that it has either examined (yes) or not examined (no) the available Subsurface Conditions Data listed in Article 3 of Section 00200 – Instruction to Bidders as follows:

A. SUBSURFACE CONDITIONS DATA

1. Data Report - Lower Harbor CAD Cell

Yes _____ No _____

Date: _____, 20 _____

Signature of Authorized Representative of Bidder

Name and Address of Bidder

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CERTIFICATION OF CONSTRUCTION EQUIPMENT STANDARD COMPLIANCE

The, _____
(Name and Address of Bidder)

hereby certifies that all diesel construction equipment used in this Contract has emission control devices installed, such as oxidation catalysts or particulate filters on the exhaust system side of the diesel combustion engine equipment.

Date: _____, 20 _____

Signature of Authorized Representative of Bidder

Name and Address of Bidder

END OF SECTION

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SECTION 00430

BID BOND

BID BOND

KNOW ALL MEN BY THESE PRESENTS: that _____

(Insert Full Name and Address and Legal Title of Contractor)
as Principal, hereinafter called Contractor, and _____

(Insert Full Name and Address or Legal Title of Surety)

a corporation duly organized under the laws of the State of _____
as Surety, hereinafter called Surety, are held and firmly bound unto the New Bedford Harbor
Development Commission as Oblige, hereinafter called Commission, in the amount of _____

_____ Dollars (\$ _____)
for the payment of which sum well and truly to be made, the said Contractor and the said
Surety, bind themselves, their heirs, executors, administrators, successors and assigns, jointly
and severally, firmly by these presents.

WHEREAS, Contractor has submitted a bid to the Commission for Contract No. _____

HDC-FY12-006, Lower Harbor CAD Cell, New Bedford Harbor

(Insert Contract No. and Full Name, Address and Description of the Project)

NOW, THEREFORE, if the Commission shall accept the Bid of the Contractor and the
Contractor shall enter into a Contract with the Commission in accordance with the terms of such
Bid, and give such bonds or bonds as may be specified in the bidding or Contract Documents
with good and sufficient surety for the faithful performance of such Contract and for the prompt
payment of labor and material furnished in the prosecution thereof, or in the event of the failure
of the Contractor to enter such Contract and give such bond or bonds, if the Contractor shall
pay to the Commission the difference not to exceed the penalty hereof between the amount
specified in said Bid and such larger amount for which the Commission may in good faith
contract with another party to perform the Work covered by said Bid, then this obligation shall be
null and void, otherwise to remain in full force and effect.

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Signed and sealed this _____ day of _____, 20 ____ .

WITNESS:

PRINCIPAL:

(Title)

(Seal)

WITNESS:

SURETY:

* _____

(Title)

(Seal)

* Attach hereto proof of authority of officers or agents to sign the bond.

END OF SECTION

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SECTION 00525

AGREEMENT - CORPORATION FORM

AGREEMENT

Corporation Form

THIS AGREEMENT, made this _____ day of _____, 20____, between the New Bedford Harbor Development Commission and _____

_____ herein called the Contractor.

WITNESSETH, that the parties to this agreement, each in consideration of the agreement on the part of the other herein contained, do hereby agree, the New Bedford Harbor Development Commission for itself, and said Contractor for itself and its successors and assigns, as follows:

The Contractor agrees to furnish all equipment, machinery, tools and labor, to furnish and deliver all materials required to be furnished and delivered in and about the improvement and to do and perform all work under Contract No. HDC-FY12-006, Lower Harbor CAD Cell _____

_____ in strict conformity with the provisions herein contained and of the Bid Form, General Conditions, Supplementary Conditions, Addenda (No. (s) _____), and Specifications hereto attached, and with the Drawings referred to therein. All Drawings, Specifications, General Conditions, Supplementary Conditions, Performance Bond, Labor and Material Payment Bond, Addenda, and Bid Form are hereby specifically made a part of this Contract as fully and to the same effect as if the same had been set forth at length herein.

IN CONSIDERATION of the foregoing premises the New Bedford Harbor Development Commission agrees to pay and the Contractor agrees to receive as full compensation for everything furnished and done by the Contractor under this Contract, including all work required but not shown on the Drawings for the items herein mentioned, and also for all loss or damage arising out of the nature of the work aforesaid, or from the action of the elements (except as excluded in the General Conditions or the Supplementary Conditions thereto) or from any delay or from an unforeseen obstruction or any difficulty encountered in the prosecution of the work, and for all risks of every description connected with the work, and for all expenses incurred by or in consequence of the suspension or discontinuance of the work as herein specified, and for well and faithfully completing the work, and the whole thereof, as herein provided, such prices as are set out in the accompanying Bid Form, and for all work required, for which there is no item in the Bid Form, such compensation as is provided for in the aforesaid documents.

NEW BEDFORD HARBOR
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IN WITNESS WHEREOF, the said Contractor has caused these presents to be signed in its name and behalf and its corporate seal to be hereto affixed by _____

_____ its _____ (Title)

and _____ its _____ (Title)

thereto duly authorized, and the said New Bedford Harbor Development Commission has executed these presents by its authorized representatives on the year and day above written.

CONTRACTOR

By: _____

Title: _____

(Contractor's Seal)

NEW BEDFORD HARBOR
DEVELOPMENT COMMISSION

By: _____

Title: _____

NEW BEDFORD HARBOR
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VOTE OF CORPORATION AUTHORIZING EXECUTION OF CONTRACT

At a meeting of the Board of Directors of _____ duly called and held on _____ at which a quorum was present and acting throughout, the following vote was duly adopted.

VOTED: That _____ of the corporation be and hereby is authorized to sign the contract and deliver in the name and on behalf of corporation a contract with:

NEW BEDFORD HARBOR DEVELOPMENT COMMISSION

For performing services, all in such form and on such terms and conditions as he/she, by the execution thereof, shall deem proper.

A true copy:

ATTEST:

If the vendor accepts this contract and then fails to supply the commodity/service as ordered by the New Bedford Harbor Development Commission, and if the Commission decides to legally pursue this non-supply, then the vendor agrees to the jurisdiction of the appropriate court in the of Massachusetts.

(Affix Corporate Seal)

Clerk of the Corporation

END OF SECTION

NEW BEDFORD HARBOR
LOWER HARBOR CAD CELL

SECTION 00610

PERFORMANCE BOND

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that _____

(Insert Full Name and Address and Legal Title of Contractor)
as Principal, hereinafter called Contractor, and _____

(Insert Full Name and Address and Legal Title of Surety)
as Surety, hereinafter called Surety, are held and firmly bound unto the New Bedford Harbor
Development Commission as Obligee, hereinafter called Commission, in the amount of _____

_____ Dollars (\$ _____)
for the payment whereof Contractor and Surety bind themselves, their heirs, executors,
administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Contractor has by written agreement dated _____, 20 _____,

entered into a contract with the Commission for Contract No. HDC-FY12-006 which Contract is
by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Contractor shall
promptly and faithfully perform said Contract, then this obligation shall be null and void;
otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the
Commission.

Whenever Contractor shall be, and is declared by the Commission to be in default under the
Contract, the Commission having performed Commission's obligations thereunder, the Surety
may promptly remedy the default, or shall promptly

1. Complete the Contract in accordance with its terms and conditions, or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and
conditions, and upon determination by Surety of the lowest responsible bidder,
or, if the Commission elects, upon determination by the Commission and the
Surety jointly of the lowest responsible bidder, arrange for a contract between
such bidder and the Commission, and make available as Work progresses (even
though there should be a default or a succession of defaults under the contract or
contracts of completion arranged under this paragraph) sufficient funds to pay

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the cost of completion less the balance of the Contract price; but not exceeding, the amount set forth in the first paragraph hereof. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable by the Commission to the Contractor under the Contract and any amendments thereto, less the amount properly paid by the Commission to Contractor.

Any suit under this bond must be instituted before the expiration of 2 years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Commission or the heirs, executors, administrators or successors of the Commission.

Signed and sealed this _____ day of _____, 20 ____ .

WITNESS:

CONTRACTOR:

(Title)

(Seal)

WITNESS:

SURETY:

* _____

(Title)

(Seal)

* Attach hereto proof of authority of officers or agents to sign the bond.

END OF SECTION

NEW BEDFORD HARBOR
LOWER HARBOR CAD CELL

SECTION 00611

LABOR AND MATERIALS PAYMENT BOND

LABOR AND MATERIALS PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that _____

(Insert Full Name and Address and Legal Title of Contractor)
as Principal, herein after called Contractor, and _____

(Insert Full Name and Address and Legal Title of Surety)
as Surety, are held and firmly bond unto the New Bedford Harbor Development Commission as
Obligee, hereinafter called the Commission, in the amount of _____

_____ Dollars (\$ _____)
to be paid to the Commission, for which payments, well and truly to be made, we bind
ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and
severally, firmly by these presents.

WHEREAS, the said principal has made a Contract with the Commission for the construction of
Contract No. HDC-FY12-006. Now the condition of this obligation is such that if the principal and
its subcontracts shall pay for all labor performed or furnished and for all materials and
equipment used or employed in said Contract and in any and all duly authorized modifications,
alterations, extensions, changes or additions thereto, all as set forth in Massachusetts General
Laws, Chapter 149 Section 29 and Chapter 30 Section 39A, then this obligation shall become
null and void; otherwise it shall remain in full force and virtue, the rights and obligations of the
principal, the Surety and claimants being as set forth in said M.G.L. c. 149 § 29.

The Surety hereby stipulates and agrees that no change or modification in, or extension of time
or alterations or additions to the Contract or in the Work shall in any way affect its obligation on
this bond and does hereby waive notice of any such change, modification, extension, alteration
or addition.

In witness whereof we set our hands and seals this _____ day of _____ 20 _____ .

(Type/Print Name of Contractor/Principal)

By: _____
(Signature)

(Title)

(Seal)

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(Type/Print Name of Surety)

By: _____
(Signature)

(Title)

(Seal)

Business Address _____

Countersigned Massachusetts Resident Agent by _____

Address _____

Telephone No. _____

Attach hereto proof of authority of officers or agents to sign the bond.

END OF SECTION

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SECTION 00700

GENERAL CONDITIONS

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GENERAL CONDITIONS

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GENERAL CONDITIONS

ARTICLE 1 - DEFINITION OF TERMS

1.01 DEFINITION OF TERMS

- A. Wherever in the Bid or Contract Documents the following terms, or pronouns in place of them, are used, the intent and meaning shall be as follows:
1. Acceptance: Formal written acceptance by the Commission of the completed Work.
 2. Addenda: Written interpretation of and/or revisions to the Bid Documents issued by the Commission prior to opening of Bids.
 3. Alteration: A change or substitution in the form, character, or detail of the Work done or to be done within the original scope of the Contract.
 4. Award: Award by the Commission of a Contract
 5. Bid: Offer of the Bidder for the Work when submitted on the prescribed Bid Form, properly signed, dated, and guaranteed, and which includes the Schedule of Bid Prices.
 6. Bid Bond (Bid Security, Bid Guaranty, Bid Deposit): The cash, cashier's or treasurer's check, certified check, or Bidder's Bond accompanying the Bid submitted by the Bidder, as a guaranty that the Bidder will enter into a Contract with the Commission for the performance of the Work and furnish acceptable bonds and insurance if the Contract is awarded to the Bidder.
 7. Bid Documents: Documents provided by the Commission for the purpose of soliciting Bids for the Work. Bid Documents will include, as applicable, Notice to Bidders, Instructions to Bidders, Contract Specifications, Contract Drawings, Geotechnical Data Reports, and Addenda.
 8. Bid Form: Form(s) issued by the Commission for the submittal of a Bid for a specific project and includes the Schedule of Bid Prices, certifications, affidavits and other forms.
 9. Bidder: An individual, firm, partnership, corporation, or combination thereof, submitting a Bid for the Work on the prescribed Bid Form.
 10. Change Order: A document executed and issued to the Contractor by the Commission amending the Contract.
 11. Commission: The New Bedford Harbor Development Commission.
 12. Commonwealth: Commonwealth of Massachusetts

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13. Contract: The written agreement executed by the Commission and the Contractor, setting forth the obligations of the Parties thereunder.
14. Contract Administrator: The New Bedford Harbor Development Commission designee.
15. Contract Bonds:
 - a. Performance Bond: A bond executed by the Contractor and the Contractor's Sureties in the full amount of the Contract to ensure the faithful performance of the Contract.
 - b. Labor and Materials Payment Bond: A bond executed by the Contractor and the Contractor's Sureties in the full amount of the Contract to ensure the payment of labor, materials, and rental of equipment.
16. Contract Documents: The Contract Specifications and Contract Drawings with revisions made during the Bid period by Addenda and information included in the Bid accepted by the Commission and all authorized changes to the Contract issued subsequent to the execution of the Contract.
17. Contract Drawings (Drawings): Plans, profiles, typical cross sections, general cross sections, elevations, and details referenced in the Contract Documents, or Addenda thereto, and shop drawings approved by the Engineer, all of which show locations, character, dimensions, and details of the Work.
18. Contract Item: A specifically described unit of work for which a price is provided in the Contract.
19. Contract Specifications: A set of documents issued by the Commission for the intended Work which includes the Bid Form, Contract Forms, Contract Bonds, General Conditions, Supplementary Conditions, technical provisions including Divisions 1 through 16, and other requirements, forms and exhibits identified therein.
20. Contract Time: Number of calendar days allowed or specified date(s) for completion of the Contract.
21. Contractor: The individual, firm, partnership, corporation, or combination thereof, private, municipal or public, including joint ventures, which, as an independent contractor, has entered into a Contract with the Commission, as Party or Parties of the Second Part, and who is referred to throughout the Contact Documents by singular number.
22. Days: Every day shown on the Calendar, Saturdays, Sundays and holidays included.

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23. Director: Executive Director of The New Bedford Harbor Development Commission.
24. Engineer: The New Bedford Harbor Development Commission designee acting within the scope of the particular duties entrusted to this person.
25. Engineer's Estimate of Quantities: List of quantities of work estimated to be performed as contained in the Schedule of Bid Prices in the Bid Form.
26. Extra Work: Work which is not included in the Contract as awarded, but found to be necessary for the satisfactory completion of the Contract within its intended scope; and bears a reasonable subsidiary relation to the full execution of the Work originally described in the Contract.
27. Extra Work Order: An order in writing issued by the Engineer to the Contractor prior to performing the Extra Work, setting forth the Extra Work to be done, the basis of payment and time adjustments, if any. Following the issuance of an Extra Work Order, a Change Order will be executed to amend the Contract Documents.
28. General Terms: Wherever the words "required," "determined," "directed," "specified," "authorized," "ordered," "given," "designated," "considered necessary," "deemed necessary," "permitted," "reserved," "suspended," "established," "approval," "approved," "disapproved," "acceptable," "unacceptable," "suitable," "accepted," "satisfactory," "unsatisfactory," "sufficient," "insufficient," "rejected," "condemned," or words like import are used, they shall be understood to imply "by the Engineer" or "to the Engineer," unless the context clearly indicated a different meaning.
29. Indicated: A term meaning as shown on the Contract Drawings (Drawings), as described in the Specifications, or as required by other Contract Documents.
30. Instructions to Bidders: Explanation of procedures to be followed in preparing and submitting Bids.
31. Notice to Bidders: Advertisement for Bids for a specific Contract. Notice to Bidders will indicate time and place for submitting and for opening of Bids, location of the Work, a brief description of the Work to be provided, and bid security required.
32. Notice to Proceed: Written notice from the Commission to the Contractor to proceed with the Work.
33. Project: The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.
34. Provide: In reference to Work to be performed by the Contractor, "provide" means furnish, install, and (as applicable) test complete in place.

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35. Reference Utility Standards: Drawings and specifications, published by municipalities, utility companies, railroads and other responsible agencies/entities which are included or referenced in the Contract Documents.
36. Specifications: Directions, provisions, and requirements contained in the Contract Specifications.
37. Subcontractor: The individual, firm, partnership, corporation, vendor, supplier, or combination thereof to whom the Contractor, with written approval of the Commission, sublets any part of the Contract.
38. Supplementary Conditions: Supplements and additions to the General Conditions.
39. Surety: Corporate body bound with and for the Contractor for the full and complete performance of the Contract and for the payment of all legal debts pertaining to the Work, and who executed the Contract Bonds.
40. Value Engineering: The systematic application of recognized techniques which identify the function of a product or service, and provide the necessary function or service reliably at lower overall cost.
41. Work: All the construction, materials, equipment, and contractual requirements as specified, shown, or indicated in the Contact Documents, including all alterations, amendments, or extensions thereto made by authorized changes.
42. Shop Drawings: Supplementary drawings or similar data which the Contractor is required to submit to the Engineer for approval, including but not necessarily limited to erection, falsework, and formwork drawings; dewatering; bending diagrams and bar schedules for reinforcing steel; calculations; and manufacturers' catalog information and data.

END OF ARTICLE 1

ARTICLE 2 - SCOPE OF WORK

2.01 INTENT OF THE CONTRACT

- A. Intent of the Contract is to provide for the construction and completion in every detail of the Work. The Contractor shall complete the Work to the satisfaction of the Engineer at the prices set forth and agreed upon. Where portions of the Work are described in general terms, but not in complete detail, the best general practice shall be followed. Only materials and workmanship of best standard quality shall be used. The Contractor shall, unless otherwise specified, furnish all labor, superintendence, materials, tools, equipment and incidentals necessary to complete the Work in a proper, thorough, and workmanlike manner.

2.02 CHANGES IN THE WORK

- A. The Commission reserves the right at any time during the progress of the Work to make alterations to, deviations from, additions to, and deletions from the Contract Drawings and Specifications. Such changes shall not invalidate the Contract nor release the Surety. The Contractor agrees to accept the Work as changed, the same as if it had been a part of the original Contract. Such changes will be authorized in writing by the Engineer. The Contractor shall accept as full compensation for Work, except as specified in paragraph "B" and paragraph "C" of this Article, the Contract unit prices stipulated in the Contract for the actual quantity of Work provided in an acceptable manner. Such changes shall not invalidate the Contract, nor any part thereof.
- B. Wherever an alteration, deviation, addition, or deletion involves a change in the nature of design or in the type of construction which increases or decreases the cost of performance of the Work or requires the Contractor to furnish materials or provide work of a kind not susceptible of classification for payment under any of the items scheduled in the Bid, the Commission and the Contractor may enter into Supplementary Agreements covering the Work to be done and the manner and method of payment therefor. If the Contractor and the Commission disagree on increased or decreased costs, the changes shall be by a Change Order.
- C. If the changes, in the opinion of the Engineer, are of sufficient magnitude as to require additional time to complete the Contract, such time adjustment may be made in accordance with the provisions of Article 6.08.

2.03 EXTRA WORK

- A. The Contractor shall do any work not herein provided for when and as ordered in writing by the Engineer, such written order to contain particular preference to this Article and to designate the Work to be done as Extra Work.
- B. Unless specifically noted in the Change Order, Extra Work will not extend the time of completion of the Contract as stipulated in Article 6.08.A.6.
- C. Determination of the Engineer will be final upon all questions concerning the amount and value of Extra Work, except as provided in Article 5.19.

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D. Payment for Extra Work will be in accordance with Article 7.04.

**2.04 VALUE ENGINEERING - CONTRACTOR COST REDUCTION PROPOSALS
(APPLICABLE TO CONTRACTS IN EXCESS OF \$200,000)**

A. This Article defines the conditions and requirements that apply to Value Engineering Cost Reduction Proposals (VECRP) that are initiated, developed and submitted by the Contractor to change the Contract Drawings, Contract Specifications or other requirements of the Contract. The purpose of a VECRP is to encourage the Contractor to submit recommended changes to the requirements specified in the Contract Documents, based on the Contractor's experience and knowledge of alternative cost reducing means, methods, materials and technologies.

Value Engineering is the systematic application of recognized techniques that identify the function of a product or service, establish a value for that function, and provides the necessary function reliability at the lowest practical life-cycle cost.

An VECRP submitted under the Contract shall require a change to the Contract Drawings, Contract Specifications or other requirements of the Contract Documents. As described in paragraph D, the incentive to the Contractor provided under this Article is to share the net savings resulting from acceptance of a VECRP on the basis of 50 percent for the Contractor and 50 percent for the Commission. In order to be considered for acceptance under this Article, each VECRP shall:

1. Be identified by the Contractor at the time of submittal to the Engineer as submitted pursuant to this Article.
2. Yield a net savings as defined in paragraph D, in excess of \$10,000.
3. Maintain the specified items required functions as to service life, reliability, economy of operation, ease of maintenance, and necessary standardized features and appearance.
4. Shall not require a unacceptable extension of Contract Time(s) or Contract Milestone(s).

B. An VECRP the Contractor submits shall be in sufficient detail to clearly define the proposed change. The Contractor's failure to provide material of the type, detail and in a format acceptable to the Engineer, and necessary to facilitate the Engineer's review, will be sufficient cause for rejection of the VECRP. Information provided by the Contractor shall include, but not be limited to, the following:

1. A description of the difference between the existing Contract requirements and the proposed Contract requirements, and the comparative advantages and disadvantages of each.
2. Contract requirements recommended to be changed if the VECRP is

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accepted.

3. A detailed estimate of the amount of anticipated gross savings resulting from, and the Contractor's costs incurred in, implementing and developing the VECRP, as defined in paragraph D.
 4. Changes in the Contract Time(s) or Contract Milestone(s) that will result from acceptance of the VECRP.
 5. A statement of the time by which the VECRP must be accepted so as to obtain the maximum price reduction, noting any effect upon Contract Time(s) or Contract Milestone(s).
- C. The Engineer may accept or reject part or all of a VECRP by giving the Contractor written notice thereof. However, approval of the VECRP does not occur until a modification in the form of a Change Order incorporating the VECRP is issued by the Commission. Until such Change Order is issued, the Contractor shall remain obligated to perform the Work in accordance with the terms of the Contract Documents. The VECRP will be processed expeditiously. The Commission shall not be held liable for any delay in acting upon a VECRP submitted pursuant to this Article. The decision of the Engineer as to acceptance of a VECRP shall be final.

The Contractor has the right to withdraw part or all of a VECRP at any time prior to acceptance by the Engineer. The withdrawal of a VECRP by the Contractor shall be made in writing to the Engineer. The Contractor shall state the period of time from the date of submittal of the VECRP that the VECRP shall remain valid. Revision of this validity period shall be allowed only by mutual agreement of the Contractor, the Commission and the Engineer. If the Contractor desires to withdraw the VECRP prior to the expiration of the validity period, the Contractor shall be liable for the costs incurred by the Commission in reviewing the VECRP.

If the Contractor withdraws the VECRP, the Commission reserves the right to proceed with the VECRP or any portion of the VECRP as a normal change and the Contractor waives any and all rights to share in net savings hereunder. For purposes of this provision, expiration of the time established by the Contractor for approval shall be considered as withdrawal by the Contractor if the Commission requests an extension of that time and the Contractor does not provide a written extension.

- D. When a VECRP submitted pursuant to this Article is accepted by the Engineer the following will occur:
1. A Change Order, covering an equitable adjustment in the Contract price and modifications to other affected provisions of the Contract will be issued.
 2. Any net savings in the cost of the VECRP to the Commission, as determined by the Engineer, resulting from the VECRP will be shared between the Contractor and the Commission on the basis of 50 percent for the Contractor and 50 percent for the Commission.

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3. Net savings in the cost of the VECRP will be determined by deducting from the estimated gross savings:
 - a. The Contractor's costs of developing the proposal for the accepted VECRP.
 - b. The Commission's estimated additional costs incurred by processing and accepting the VECRP that includes, but is not limited to, anticipated increased costs to the Commission on other contracts and anticipated follow-on increased costs to the Commission.

Estimated gross savings is the difference between the cost of implementing the requirements of the VECRP and the accepted changes. Gross savings shall include the Contractor's labor, material, equipment, overhead, profit and bonds. The Contractor's cost shall include additional costs including, but not limited to, amounts attributable to a subcontractor, such as preparation of design documents, incurred in developing and implementing the VECRP. The Commission's costs will include, but not be limited to, additional costs incurred by the Engineer and its subconsultants or subcontractors in processing, reviewing and incorporating the VECRP into the Contract, all anticipated increased costs to the Commission on other contracts and anticipated follow-on increased costs to the Commission. The Commission's costs may also include, but not be limited to, implementation, inspection, related items and Commission furnished material. The Contractor's share in the net savings to the Contract shall be effected by a change in the Contract price that shall be reduced by the amount of the Commission's share of the net savings and the Commission's costs.

Upon review of the VECRP, the Commission and the Engineer may determine that the VECRP has sufficient merit that requires further development in order to permit a final approval or disapproval. In such instances the Commission may request that the Contractor provide further development and/or design information. The Commission, at its sole discretion, may decide to share in up to one-half of the Contractor's reasonable and actual development costs, but only for costs expressly preapproved by the Commission in writing, incurred to provide the additional development and/or design information. If the VECRP is approved, such development costs shall be included in the net savings calculation. If the VECRP is not approved by the Commission, the Commission will not require reimbursement for the share of development and/or design information costs it incurred.

Approval of the VECRP does not occur until a modification to the Contract Documents incorporating the VECRP is issued by the Commission in the form of a Change Order. The estimated net savings determination, conditions placed on the VECRP by the Commission, or the VECRP design or any other aspect of the VECRP may be changed at any time prior to approval, without obligation of the Commission. If additional

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design development or additional time or cost impact analysis will be required after approval, the VECRP shall be included in the Contract Documents by Change Order and it shall include statements identifying that the estimated net savings and the final design is subject to adjustment. If changes are required during the final design development that impact the estimated net savings, the net savings calculation shall be reviewed and adjusted. Increases to the net savings will be shared equally between the Commission and the Contractor. Decreases in the net savings will also be shared equally, except the Contractor's share of decreased net savings will be limited to its share of the initially estimated total net savings.

4. The Contractor is entitled to share in VECRP savings only to the full extent provided for in this Article. The Contractor does not share in savings on follow-on contracts or in savings other than those of the VECRP, except to the extent such savings may decrease follow-on costs to the Commission. For purposes of sharing under paragraph D.1, the term VECRP shall not include supplemental agreements to or other modifications to the Contract Documents, executed subsequent to acceptance of the particular VECRP, by which the Commission increases the quantity of any item or adds any item of work.
- E. The Contractor shall use its best efforts to include VECRP arrangements in subcontracts, which in the Contractor's judgement, appears to offer sufficient VECRP potential.
- F. An VECRP identical to one submitted under any other contract, by this Contractor or any other contractor may be submitted under this Contract.
- G. The Contractor may restrict the Commission's right to use any portion of the Contractor's VECRP by marking it with the following statement:

This data furnished pursuant to Article 2.04 of the General Conditions of Contract No. HDC-FY12-006 may not be duplicated, used or disclosed, in whole or in part, for any purpose except for evaluation, unless the VECRP is accepted by the Commission. This restriction does not limit the Commission's right to use information contained in this data if it is or has been obtained, or is otherwise available, from the Contractor or from another source, without limitations. When this VECRP is accepted by the Commission, the Commission will have the right to duplicate, use, and disclose any data in any manner and for any purpose whatsoever, and have others do so whether under this or any other Commission contract.

2.05 INCREASED OR DECREASED CONTRACT QUANTITIES

- A. When the accepted quantities of work vary from the quantities in the Bid Form, the Contractor shall accept as payment in full, so far as Contract Items are concerned, payment at the original contract unit prices for the accepted quantities of work done. An adjustment, as determined by the Engineer, will be made by means of a Change Order to credit the Commission with any reduction in cost or to compensate the Contractor for any increase in cost resulting from

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such change in quantity only when the accepted quantities of work vary by an amount equal to or greater than plus 25 percent or minus 25 percent from the quantities in the Bid Form.

- B. The Engineer may order omitted from the Work any items or portions of Work. Such omission shall not operate as a waiver of any conditions of the Contract nor invalidate any of the provisions thereof, nor shall the Contractor have any claim for anticipated profit. Also, see Article 7.05
- C. Except as specified herein, no allowance will be made for any increased expenses, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor resulting either directly or indirectly from such increased or decreased quantities or from unbalanced allocation, among the Contract Items of overhead expenses on the part of the Contractor and subsequent loss of expected reimbursement therefor, or from any other cause.

2.06 RIGHTS IN THE USE OF MATERIALS FOUND ON THE WORK

- A. The Contractor, with prior written approval of the Engineer, may take suitable ledge, gravel, sand, loam, clay, or other material from within the location lines of the Contract and use it on the same Contract for other purposes than for forming embankments. If such use necessitates securing additional material for forming embankments, the Contractor shall replace, at not additional expense to the Commission, material of at least similar quality. The Contractor shall not excavate or remove any material that is not within the excavation as indicated by the Contract Documents without written approval. Excavated material suitable for use shall not be wasted, unless otherwise directed.

2.07 ARCHEOLOGICAL AND PALEONTOLOGICAL SALVAGE

- A. The Contractor's attention is directed to the United States Department of Transportation, Federal Highway Administration, Federal Aid Highway Program Manual, Volume 7, Chapter 7, Section 4, subject "Archaeological and Paleontological Salvage", incorporating Policy and Procedure Memorandum 20-7, dated March 31, 1979, and to the Commonwealth of Massachusetts, Acts of 1973, Chapter 1155.
- B. In compliance with these procedures and legislation, the Contractor shall exercise special care during his operations to avoid injury to underground prehistoric and historic archaeological remains or paleontological remains. Should any archaeological or paleontological remains be encountered during any phase of construction, the Contractor shall immediately suspend all work in the area and shall notify the Engineer. The Engineer shall immediately notify the State Archaeologist and the Massachusetts Historical Commission. All construction work in that area will be temporarily delayed while the State Archaeologist and representatives of Massachusetts Historical Commission inspect the site to determine the importance of the discovery. Areas of prehistorical, historical, or paleontological significance shall be carefully protected in accordance with the above referenced manual and shall not be disturbed by the Contractor until so directed by the Engineer.

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- C. Contractor shall receive no extra compensation for such special care, unless said compensation is authorized in writing by the Engineer as provided for in Article 7.04. Material from such areas shall be carefully protected, and if necessary to remove specimens, the Contractor shall do so only at the Engineer's direction, and after an authorized agent has witness or otherwise referenced their locations.

2.08 WARRANTY OF WORK

- A. Neither final acceptance, final payment nor any provision in the Contract Documents nor partial or entire operation or occupancy of the Work by the Commission shall constitute an acceptance of the Work not done in accordance with the Contract Documents or relieve the Contractor of liability with respect to any express warranties or responsibility for faulty materials or workmanship.
- B. Except where longer periods of warranty are specified for certain items, the Contractor warrants all Work done under the Contract to be free from faulty materials and workmanship until acceptance of the post-dredge survey and signature of the contractor's final pay application and release by the Owner of any retainage associated with the contract, in accordance with the contract terms.
- C. Upon receiving notification from the Commission, the Contractor shall immediately make the required repairs or replacements to any work found defective. If repairs or replacement are not started within 10 days from the date of notification and prosecuted to completion, the Commission reserves the right to employ others to complete the Work. The Contractor agrees, upon demand, to pay the Commission all amounts that it expends for such repairs or replacements.
- D. All remedied work shall carry the same warranty as the original work starting with the date of acceptable replacement or repair.

2.09 CHANGED CONDITIONS

In accordance with Chapter 30, Section 39N of the General Laws of the Commonwealth, as amended, the following paragraph shall apply to the Contract:

- A. If during the progress of the Work, the Contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those indicated in the Contract Documents either the Contractor or the Commission may request an equitable adjustment in the Contract price of the Contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a Contractor, or upon its own initiative, the Commission will make an investigation of such physical conditions, and, if they differ substantially or materially from those indicated in the Contract Documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents and are of such a nature as to

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cause an increase or decrease in the cost of performance of the Work or a change in the construction methods required for the performance of the Work which results in an increase or decrease in the cost of the Work, the Commission will make an equitable adjustment in the Contract price and the Contract will be modified in writing accordingly.

1. Filing, investigation, and settlement of all claims made under said Chapter and Section shall be as follows:
 - a. The Contractor shall promptly, and before such conditions are disturbed, notify the Engineer in writing describing in full detail the subsurface or latent physical conditions at the site where it is maintained, that conditions differ substantially or materially from those conditions indicated in the Contract Documents. The Engineer will promptly investigate the conditions and will promptly submit a written report of its findings and determinations to the Contractor, and if it is found that such conditions as have been described in detail by the Contractor do exist and in fact do so differ materially or substantially, an equitable adjustment will be made and the Contract modified in writing accordingly. No such claim of the Contractor will be allowed unless the Contractor has given the detailed notice specified, nor shall it be allowed if such conditions are disturbed prior to their investigation by the Engineer.
 - b. No adjustment or allowance of any kind except as provided in Article 6.08 will be made to the Contractor due to delay or suspension of the Work or any portion thereof where the actual subsurface or latent physical conditions encountered at the site differ substantially and materially from those indicated in the Contract Documents.
 - c. No claim will be approved and no adjustment or allowance made when encountering subsurface or latent physical conditions at the site that differ substantially and materially from those indicated in the Contract Documents unless such conditions were in existence at the time of the Award of the Contract.
 - d. Any dispute concerning a question of changed conditions under this Article that is not disposed of by agreement shall be decided by the Consultant. If a Consultant has not been retained by the Commission for this project, said dispute shall be decided by the Engineer. The decision of the Consultant or Engineer shall be final.
 - e. If as provided in "a" of this Subsection an equitable adjustment is to be made or contemplated, the Contractor shall submit promptly in writing to the Engineer an itemized statement of the details and amount of work together with his estimated costs for the same and the Engineer shall require the Contractor to keep actual costs and certify the same to the Commission in writing.

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- B. If the Contractor and the Commission fail to agree on an equitable adjustment to be made under this Article, then the Contractor shall accept as full payment for the Work in dispute an amount determined in accordance with Article 7.03.B.

2.10 CONTRACTOR PROPOSED CHANGES

- A. Contractor may at any time submit to the Engineer for the Engineer's review and approval or denial, proposed changes to the Contract Documents that will benefit the Commission. Upon acceptance of the proposed changes, the provisions of Article 2.02 and/or 2.04 (as applicable) shall apply. Denial of a proposed change shall neither provide the Contractor with any basis for claim for damages nor release the Contractor from contractual responsibilities.

2.11 COMMUNITY RELATIONS

- A. The Contractor shall establish and maintain a continuing liaison with persons residing or doing business in the vicinity of the Project site, for the purpose of minimizing inconveniences resulting from construction, and shall appoint a representative, acceptable to the Engineer, for community relations. The representative shall have the authority to act directly, or through the Contractor's approved Superintendent, regarding all valid requests or complaints. Information as to their disposition by the Contractor shall be furnished to the Engineer. The name and telephone number of the Contractor's community relations representative shall be furnished to those residents or businessmen in the community who might reasonable be expected to be affected by the construction.

END OF ARTICLE 2

ARTICLE 3 - CONTROL OF WORK

3.01 AUTHORITY OF THE ENGINEER

- A. The Engineer will decide all questions relating to interpretation of the Contract Documents, and may alter, adjust, and approve same when necessary; all questions relating to quality, quantity, value, and acceptability of materials to be furnished and work provided or to be provided; all questions relating to progress of the Work and need for and manner of correcting same, and also the need for and terms of delay and suspensions; all questions relating to the need for and terms of Extra Work; all questions relating to the supervision, control and director of Work on the site and the use thereof; and all questions as to the acceptable fulfillment of the Contract by the Contractor.
- B. Attention of the Contractor is directed to the following limitations on the scope of the duties entrusted to the Engineer.
 - 1. Engineer will not supervise, direct, control or have authority over or be responsible for the Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of the Contractor to comply with laws and regulations applicable to the furnishing or performance of the Work. Engineer will not be responsible for the Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

3.02 CONTRACT DRAWINGS

- A. Contract Drawings showing the general arrangement and such details as necessary to give a comprehensive idea of the construction contemplated will be furnished by the Commission. As work progresses, the Contract Drawings may be supplemented by the Engineer as required to amplify or control the work. The Contractor shall perform the work required by such supplements without additional compensation, except as provided by the Contract.

3.03 CONFORMITY WITH DRAWINGS AND SPECIFICATIONS

- A. Attention is directed to Chapter 30, Section 39I of the General Laws of the Commonwealth that provides that no willful and substantial deviation from Contract Drawings and Specifications shall be made unless directed in writing by the Engineer duly authorized by the Commission to approve such deviation. Chapter 30, Section 39I further provides that in order to avoid delays in the prosecution of the Work, such deviation may be authorized by a written order of the Engineer authorized to approve such deviation, and that within 30 days thereafter such written order shall be confirmed by a certificate of the Commission.
- B. All work provided and all materials furnished shall be in conformity with the lines, grades, cross sections, dimensions, details, gradations, physical, and chemical characteristics of materials and other specific requirements of the Contract.
- C. Where definite tolerances are specified in the Contract, such tolerances shall fix

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the limits of conformity. Where tolerances are not specified in the Contract, the Engineer will determine the limits of conformity in each individual case and such determination shall be final and conclusive and mutually accepted by all parties.

- D. If materials or the finished product in which the materials are used are not within conformity with the Contract Documents, but acceptable work has been produced, the Engineer will make a determination whether the work shall be accepted and remain in place. The Engineer will document the basis of acceptance by Contract modification that will provide for an appropriate adjustment in the Contract price for such work or materials as he deems necessary to conform to his determination based on engineering judgment, and in accordance with current construction practices.
- E. If the Engineer finds the materials, or the finished product in which the materials are used or the work provided, are not in conformity with the Contract Documents and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by the Contractor, at no additional cost to the Commission.
- F. Deviations from the Contract Drawings and approved Shop or Working drawings, that may be required by the need of the construction, will be determined by the Engineer and authorized by him in writing.

3.04 COORDINATION OF CONTRACT DRAWINGS AND CONTRACT SPECIFICATIONS

- A. Contract Drawings, Contract Specifications and all supplementary documents are essential parts of the Contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete Work. In the event of any discrepancy between a Drawing and figures written thereon, the figures, unless obviously incorrect, are to govern over scaled dimensions. Contract Drawings will govern over Contract Specifications. Where work is to be accepted by a municipality, utility company, railroad or responsible agency/entity the Reference Utility Standards that apply to their materials and workmanship will govern.
- B. The Contractor shall take no advantage of any apparent error or omission in the Contract Documents. If the Contractor discovers such an error or omission, the Engineer shall be notified immediately. The Engineer will then make such corrections and interpretations as may be deemed necessary to fulfill the intent of the Contract.

3.05 COOPERATION BY CONTRACTOR

- A. The Contractor will be given 3 copies of the Contract Documents with full size Contract Drawings. The Contractor may request up to 5 additional copies of the Contract Documents. The Commission will furnish said additional copies of the Contract Documents with Contract Drawings, either full or half-size, as requested by the Contractor, at no cost to the Contractor. The Contractor shall have 1 copy of the Contract Documents on the work site and available for reference at all times during the prosecution of the Work.

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1. Additional copies of the Contract Documents beyond the stated number may be requested by the Contractor and will be furnished by the Commission at the expense of the Contractor.
- B. Prior to starting Work the Contractor shall designate in writing the name, title, qualifications, and experience of his proposed representative (job superintendent) who, upon approval by the Commission, shall have complete authority to represent and to act for the Contractor. A facsimile of the authorized representative's signature shall be furnished to the Engineer. The authorized representative or a substitute acceptable to the Engineer shall be present at the work site at all times while work is actually in progress on the Project. Arrangements for responsible supervision acceptable to the Engineer shall be made for emergency work that may be required during periods when Work is suspended. The Contractor shall notify the Engineer, in writing, of any proposed change of his representative, and shall provide identical information for approval of the new representative.
1. The job superintendent shall have the following minimum qualifications and experience:
 - a. A Commonwealth of Massachusetts, Department of Public Safety, License for Construction Supervisor without any restrictions.
 - b. A minimum of 10 years of related construction experience.

The requirements for a licensed construction supervisor and the number of years of related construction may be waived or modified only by the Executive Director of the Commission.
- C. The Contractor shall ascertain that the materials and workmanship are in accordance with the Contract Documents. The Contractor shall preserve baseline monuments, benchmarks, and other controls for the Work.
- D. The Contractor shall carry on his work under the direction of the Engineer such that representatives of utility owners, state, or municipal departments may enter on the work site without interference to make changes in their facilities which may be affected by the Work. The Contractor shall have no claim for, or because of any delay that may be due to or result from work of utility owners, state or municipal departments. No allowance of any kind will be made except as provided in Article 6.08. Nothing contained herein shall be construed to hold the Contractor responsible for any acts or omissions by such utility owners, state or municipal departments, or their contractors.
- E. The Contractor shall maintain and staff an office near the project site from the time of commencement of the Work under this Contract until such time as the Work has been completed and accepted. The Contractor's office staff shall include a job superintendent solely for the Work to be performed under this Contract and he shall be headquartered in the proximate area of the project site within 30 days after the execution of the Contract.
- F. The Contractor shall confine his equipment, the storage of materials and the

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operation of his workmen to limits shown on the Drawings, established by law, ordinances, permits or directions of the Engineer. The Contractor shall not unreasonably encumber the project site with his materials. All flammable or combustible materials shall be properly stored to prevent, by effective measures, fire.

3.06 ADJACENT CONTRACTS

- A. The Commission reserves the right at any time to contract for and perform other or additional work on or near the Work covered by the Contract. The intent of this Article is to provide for the cooperation of contractors where the Commission deems it expedient or necessary and in the best interest of the Commission to let separate contracts for the performance of other work on or near the location of the Work being performed under the Contract, but it is not intended to indicate an intention on the part of the Commission to let separate contracts for work within the scope of or necessary for the successful completion of the Contract.
- B. When separate contracts are let within the limits of any one project (either prior to Award of Contract, as specified in the Bid, or as specified above), each contractor shall conduct their work so as not to interfere with or hinder the progress or completion of the work being performed by other contractors.
 - 1. Contractors working within the same area shall cooperate with each other as directed and shall coordinate work schedules through the Engineer to minimize conflicts.
- C. Each contractor involved shall assume all liability, financial or otherwise, in connection with its contract and shall protect and save harmless the Commission from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced because of the presence and operations of other contractors working within the limits of the same project. No allowance of any kind will be made except as provided in Article 6.08.
 - 1. Work beyond the limits of the project that is reasonably related to or inferred from the Work required by the Contractor that is due to the work of adjacent contractors within the limits of the project shall be performed by the Contractor, at no additional cost to the Commission.
- D. The Contractor shall arrange the work and shall place and dispose of the materials being used so as not to interfere with the operations of other contractors within the limits of the same Project. The Contractor shall join the work with that of others in an acceptable manner and perform the work in proper sequence to that of others.

3.07 LINE AND GRADE

- A. The Commission will establish primary control for the Work, both horizontal and vertical. The Commission will provide the Contract or Project centerline and such benchmarks and basic tie-in points on or near construction site as, in its judgement, are necessary for the proper control of the Work. Monuments, stakes, and marks set by the Commission shall be preserved by the Contractor.

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If such monuments, stakes, or marks are destroyed or damaged, they may be replaced by the Commission. The Contractor will be charged the cost of replacing monuments, stakes, or marks destroyed or damaged by reason of his operations. The replacement cost will be deducted from payment for the Work.

- B. The Contractor shall proceed from the controls established by the Commission to make all surveys and layouts necessary to conform all of the work to the requirements of the Contract Documents; shall provide qualified engineering and other personnel for the purpose; and shall be solely responsible for the accuracy of the line and grade features of his Work.
- C. The Commission will make such checks, as necessary, of the control work established by the Contractor as the Work progresses. The Contractor will be informed of results of such checks, but the Commission by so doing will in no way relieve the Contractor of responsibility for accuracy of the Contract control. The Contractor shall provide such assistance, at no cost to the Commission, as may be required for checking purposes when requested by the Commission.
- D. The Contractor shall notify the Commission a reasonable time in advance of his needs, of the time and place the Contractor plans to provide the Work for which such primary control will be needed. The Commission will furnish the Contractor with such primary lines, grades, and elevations as it deems necessary by such time so as not to delay the Contractor's operations. The Commission, however, will not be held responsible for any delay resulting from lack of such information if the Contractor fails to notify the Commission sufficiently in advance of the Contractor's needs.

3.08 AUTHORITY AND DUTIES OF ENGINEER'S ASSISTANTS

- A. The Engineer may appoint assistants and representatives. The assistants and representatives are authorized to inspect work and materials, to give directions pertaining to the Work or to the safety and convenience of the public, to approve or reject materials and to make measurements of quantities.
- B. In case of any dispute arising between the Contractor and the Engineer's assistants, as to materials furnished or the manner of providing work, the Engineer's assistants are authorized to reject materials or to suspend work until the dispute is referred to and decided by the Engineer.
- C. The Engineer's assistants are not authorized to revoke, alter, enlarge, relax, or release any requirements of these Specifications nor to issue instructions contrary to the Contract Drawings and Specifications.
- D. The Engineer's assistants will not act as foremen or perform other duties for the Contractor.
- E. Employees of the Commission are not authorized to request work to be performed or services to be provided. The Commission will not accept responsibility whatsoever for Extra Work performed for which there is no specific proper written authorization.

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3.09 INSPECTION OF WORK

- A. All materials and each part or detail of the Work shall be subject to inspection by the Engineer. The Engineer shall at all times have access to the Work and be furnished with information and assistance by the Contractor as required, at no additional cost to the Commission, to make a complete and detailed inspection.
- B. The Contractor, if requested by the Engineer, shall before acceptance of the Work, remove or uncover such portions of the finished work as directed. After examination, the Contractor shall restore said work to the standard required by the Contract Documents. Should work exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as Extra Work. Should work exposed or examined prove unacceptable, the uncovering or removing and the replacing of the covering or making good of the parts removed, will be at no additional cost to the Commission.
- C. Any work done or materials used without authorization by the Engineer may be ordered removed and replaced, at no additional cost to the Commission.
- D. The Contractor shall furnish written information to the Engineer stating the original sources of supply of all materials manufactured away from the Work site. This information shall be furnished at least two weeks (or as otherwise required by the Engineer) in advance of the incorporation in the Work of such materials.
- E. When any unit of government or political subdivision is to pay a portion of the cost of the Work, its respective representatives shall have the right to inspect the Work. Such inspection shall in no sense make any unit of government or political subdivision a party to this Contract, and shall in no way interfere with the rights of either party hereunder.
- F. Inspection of Work shall not relieve the Contractor of any of his obligations to fulfill the requirements of the Contract Documents.
- G. Failure to reject any defective work or materials shall not in any way prevent later rejection when such defect is discovered, nor obligate the Commission to make final acceptance.
- H. The Contractor shall give prior notice to the Engineer when work on the various items is to be performed by him or his subcontractors. If work is suspended on any item, prior notice shall be given to the Engineer before resumption of such work. Except in the case of an unforeseen emergency, neither the Contractor nor any subcontractor shall perform any Work requiring inspection at hours other than during the normal work day without prior approval of the Engineer.

3.10 REMOVAL OF DEFECTIVE OR UNAUTHORIZED WORK

- A. Defective work shall be promptly remedied, or removed and replaced, notwithstanding that such work has previously been inspected and approved or estimated for payment. If the work or any part thereof shall be found defective at any time, the Contractor shall, at no additional cost to the Commission, make

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good such defect in a satisfactory manner.

- B. Work performed beyond the lines and grades shown on the Contract Drawings or established by the Engineer, and Extra Work done without written authorization, will be considered unauthorized work and the Contractor will receive no compensation therefor. If required by the Engineer, unauthorized work shall be remedied, removed, or replaced, at no additional cost to the Commission.
- C. Upon failure of the Contractor to remedy, remove, or replace defective or unauthorized work, or to comply promptly with any requirement of the Engineer made under this Article, the Commission may cause defective or unauthorized work to be remedied, removed, or replaced by others and deduct the costs thereof from any monies due or to become due the Contractor.

3.11 FINAL ACCEPTANCE

- A. Upon substantial completion of the Work, the Contractor shall present, in writing, to the Commission its certification that the Work has been substantially completed. Within 21 days thereafter, the Commission as a result of its inspection of the Work will present to the Contractor either a written declaration that the Work has been substantially completed or an itemized list of incomplete or unsatisfactory Work items required by the Contract sufficient to demonstrate that the Work has not been substantially completed. The Commission may include with such list a notice setting forth a reasonable time, which shall not in any event be prior to the Contract completion date, within which the Contractor must achieve substantial completion of the Work. If the Commission fails to respond, by presentation of a written declaration or itemized list as aforesaid, to the Contractor's certification within the 21 day period, the Contractor's certification shall take effect as the Commission's declaration that the Work has been substantially completed.
- B. If the Work or any part thereof is not acceptable to the Engineer at the time of the inspection, the Contractor will be notified in writing of the particular defects or parts to be remedied before final acceptance. If the Contractor has not arranged within a period of 5 days after the date of transmittal of such notice of non-acceptability, to complete the Work as directed by the Engineer, the Commission may, without further notice and without in any way affecting the Contract, make such other arrangements as may be considered necessary to insure satisfactory completion of the Contract. The cost of completing such Work will be deducted from any moneys due or which may become due to the Contractor under the Contract.
- C. Substantial completion, for the purposes of this Article, shall mean either that the Work required by the Contract has been completed except for Work having a Contract price of less than 1 percent of the then adjusted total Contract price, or substantially all of the Work has been completed and opened to public use, or ready to be used/occupied by the Commission or an operating contractor except for minor incomplete or unsatisfactory Work items that do not materially impair the usefulness of the Work required by the Contract.
- D. Also, see Article 5.24.

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E. Also, see Article 7.09.

END OF ARTICLE 3

ARTICLE 4 - CONTROL OF MATERIALS

4.01 TRADE NAMES AND ALTERNATIVES

- A. An item equal to that named or described in the Specifications may be furnished by the Contractor, and the naming of any commercial name, trademark, or other identification shall not be construed to exclude any item or manufacturer not mentioned by name or as limiting competition, but shall establish a standard of equality only. An item will be considered equal to the item so named or described if all of the following requirements are met:
1. It is at least equal in quality, durability, appearance, strength, safety, reliability, operability, maintainability, and design.
 2. It will perform at least equally the function imposed by the general design for the Work being contracted for.
 3. It conforms substantially, even with deviations, to the detailed requirements for the item specified.
- B. For each item of material the specifications shall provide for either a minimum of three brands of material or a description of material which can be met by a minimum of three manufacturers or produces, and for the equal of any one of said named or described materials.
- C. Burden of proof as to the quality and suitability of alternatives shall be upon the Contractor. The Contractor shall furnish, in writing, all information necessary as required by the Engineer, at no additional cost to the Commission. Requests for review of alternative materials will not be accepted by the Engineer from anyone other than the Contractor. The Engineer will be the sole judge as to the quality and suitability of alternative materials and the Engineer's decision will be final.
- D. Information furnished shall state whether or not acceptance of the alternative material for use in the Work will require a change in the Contract Drawings or Specifications to adapt the design to the alternative and whether or not incorporation or use of the alternative in connection with the Work is subject to payment of any license fee or royalty. The Commission does not pay license fees and royalties. Where use of an alternative material involves redesign of or changes to other parts of the Work, the cost and the time required to effect such redesign or changes will be considered in evaluating the suitability of the alternative material and the Contractor shall pay charges incurred by the Commission for such redesign or change.
- E. No tests nor action relating to the approval of alternative materials will be made until the request for substitution is made in writing by the Contractor accompanied by complete data as to the equality of the materials proposed. Such request shall be made in ample time to permit approval without delaying the Work, but such requests need not be made less than 30 days after receipt of Notice to Proceed.
- F. Whenever classification, rating, or other certification by a body, such as

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Underwriters Laboratories, Inc. (UL), or National Electrical Manufacturers Association (NEMA) is a part of the specification for any material, proposals for use of alternative materials shall be accompanied by reports from the listed or equivalent independent testing laboratory indicating compliance with specification requirements.

- G. The Contractor shall pay costs of testing required to prove equality of the material proposed.
- H. Approval of an alternative material shall be only for the characteristics or use named in such approval, and shall not be used to change or modify any Contract requirement, or to establish a basis for subsequent approval for material to be used on any other phase of the Work.

4.02 CERTIFICATE OF COMPLIANCE

- A. The use of certain products/materials on the basis of a notarized Certificate of Compliance may be allowed under the following conditions:

Before such products/materials are incorporated into the Work, the Contractor shall submit to the Engineer, for approval, copies of the manufacturer's or supplier's statement for each kind of such product/material furnished. The statement shall contain the following information:

1. Contract to which the product/material is consigned.
2. Name of the Contractor to which the product/material is supplied.
3. Kind of product/material supplied.
4. Quantity of product/material represented by the certificate.
5. Means of identifying the consignment including, but not limited to, labeling, marking or seal number.
6. Date and method of shipment.
7. Statement to the effect that the product/material has been tested and found in conformity with the pertinent parts of the Contract.
8. Results of all required tests including the chemical analysis in the case of metal; or in lieu of furnishing the results a statement that the results of all required tests pertinent to the certificate and not submitted shall be maintained available by the undersigned for a period of not less than 3 years from date of final acceptance.
9. Signature of a person having legal authority to bind the manufacturer or supplier.

- B. If the Contractor has new products/materials purchased for use on a previous Commission contract which have never been used and which comply with the

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Contract Documents, these products/materials may be furnished and installed in the Work provided the Contractor submits his own sworn statement certifying that such products/materials were purchased for use on a previous contract (name and identifying such contract) and that Certificates of Compliance were furnished for such products/materials on the previous contract, to which reference can be made.

1. Costs involved in furnishing the certificates shall be borne by the Contractor.
2. Products/materials used on the basis of a Certificate of Compliance may be sampled and tested at any time. The fact that a product/material is used on the basis of a Certificate of Compliance shall not relieve the Contractor of responsibility for incorporating products/materials in the Work which conforms to the requirements of the Contract Documents and Specifications any such products/materials not conforming to such requirements will be subject to rejection, whether in place or not.
3. The Engineer reserves the right to refuse to permit the use of products/materials on the basis of a Certificate of Compliance alone.

4.03 COMMISSION FURNISHED MATERIALS

- A. Materials furnished by the Commission will be available at locations designated in Supplementary Conditions of the Contract Specifications or, if not so designated, they will be delivered to the Work site. Commission furnished materials shall be stored and transported to the place of use by the Contractor at his expense, including all necessary loading and unloading. The Contractor's costs of storing, handling, and installing Commission furnished material shall be considered as included in the Contract price paid for the item involving such Commission furnished material.
- B. Contractor shall be responsible for all materials furnished to him, and shall pay all demurrage and storage charges as a result of his failure to take delivery of Commission furnished material. The Contractor shall be liable to the Commission for the Cost of replacing or repairing Commission furnished material lost or damaged from any cause whatsoever after receipt by the Contractor. The costs will be deducted from any moneys due or to become due the Contractor, except those amounts when covered under any claims' payments made under insurance policies furnished by the Commission.
- C. Also, see Article 3.06.

4.04 DEFECTIVE MATERIALS

- A. Contractor furnished materials not conforming to the requirements of the Contract Documents will be rejected, whether in place or not. Rejected material shall be removed immediately from the site of the Work unless otherwise permitted by the Engineer. No rejected material, the defects of which have been subsequently corrected, shall be used in the Work unless approved in writing by

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the Engineer. If the Contractor fails to comply promptly with a request by the Engineer, made under the provisions of this Article, the Engineer may cause the removal and replacement of rejected material and the cost thereof will be deducted from any moneys due or to become due the Contractor.

4.05 ASBESTOS MATERIALS

- A. The Contractor shall not furnish or install asbestos or materials containing asbestos under this Contract.

4.06 BANNED MATERIALS

- A. Lead Paint
 - 1. The Contractor shall not furnish or apply lead containing paint on surfaces within the limits of the Contract.
 - a. A lead containing paint is defined by the Consumer Product Safety Commission's Lead Containing Paint Poisoning Prevention Act of 1979 as any coating whose dried film contains greater than 0.06 percent by weight of lead.

END OF ARTICLE 4

ARTICLE 5 - LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

5.01 LAWS TO BE OBSERVED

- A. The Contractor shall keep fully informed concerning all requirements of law, including all state and federal laws, county and municipal ordinances, and regulations which in any manner affect those engaged or employed in the Work, or the materials used, in the Work, or such orders and decrees of bodies or tribunals having jurisdiction or authority over the same. The Contractor shall protect, indemnify and hold harmless the Commission and the Engineer, and all of their officers, agents, and employees against all claims and liabilities arising from or based on the violation of any such requirement of law whether by the Contractor, his employees, agents, or subcontractors. If any discrepancy or inconsistency is discovered in the Contract Documents in relation to any such requirements of law, the Contractor shall immediately report the facts to the Engineer in writing. The Contract shall be governed by the laws of the Commonwealth.
- B. The Contractor, if a foreign corporation (a corporation established, organized, or chartered under laws other than those of the Commonwealth) shall comply with the provisions of Chapter 181 of the General Laws as amended. The Contractor shall file with the Commission a certificate of the State Secretary stating that such corporation has complied with Chapter 181 and the date of such compliance.
- C. Other out-of-state business organizations, such as individual proprietorship, partnership and joint ventures, shall appoint an agent in this Commonwealth for the service of legal process and furnish a copy of such appointment to the State Secretary prior to the issuance of a contract by the Commission.
- D. Work shall be in accordance with the Massachusetts State Building Code.
1. The Contractor shall protect and indemnify the Commission and its representatives against any claim or liability arising from or based on the violation of any law, ordinance, safety code, regulation, order or decree whether caused by the Contractor, its employees or its subcontractors employed on the Project.
 2. Such laws, ordinances, codes, regulations, orders, or decrees may restrict and limit the Contractor's working hours or use of certain types of equipment on the Project. The Contractor shall become familiar with such restrictions and limitation prior to submitting a Bid.
 3. The Contractor shall give all necessary notices, obtain all permits as required and pay all government taxes, fees, and other costs in connection with the Work. The Contractor shall file all necessary drawings, prepare all documents, and obtain all necessary approvals of all governmental departments that have jurisdiction. The Contractor shall obtain all required Certificates of Inspection prior to acceptance and final payment for the Work. Compensation for conforming to all provisions of this Article, except as may be provided otherwise in Supplementary

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Conditions, shall be considered as included in the prices for the various Contract Items of Work and no additional compensation will be allowed therefor.

- E. Without limiting the Contractor's responsibility for ascertaining and complying with all applicable laws, ordinances, regulations, orders, and decrees, the Contractor's attention is called particularly to the requirements stated in the Sections of Division 1, General Requirements, specifying the general requirements for furnishing, installing and operating temporary controls during construction.

5.02 PERMITS AND LICENSES

- A. The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes and give all notice necessary and incidental to the due and lawful prosecution of the Work.
- B. Permits and licenses shall be in the name of the Commission.

5.03 MOTOR VEHICLES

- A. Motor vehicles (except vehicles used solely for transporting employees to and from the Contract location) used wholly or in part within the Commonwealth by the Contractor or a subcontractor, or by a person directly or indirectly employed by them in the execution of the Contract, shall be registered in the Commonwealth and bear Massachusetts registration plates.
- B. Motor vehicles used solely for transporting employees to and from the Contract location shall be registered as required under Chapter 90, Section 3, of the General Laws of the Commonwealth, as amended.
- C. A vehicle shall not be driven on any way, as defined in Section 1 of Chapter 90 of the General Laws of the Commonwealth, unless it is constructed or loaded so as to prevent any of its load from dropping, shifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on such a way in cleaning or maintaining the same. (Chapter 85, Section 30, of the General Laws of the Commonwealth as amended.)
- D. All diesel construction equipment shall have emission control devices installed, such as oxidation catalysts or particulate filters on the exhaust system side of the diesel combustion engine equipment.

5.04 INSURANCE REQUIREMENTS

- A. The Contractor shall carry Commercial General Liability Insurance for personal injury, bodily injury and property damage with limits not less than \$1,000,000 per occurrence, \$2,000,000 aggregate covering all work performed under this Contract. The insurance should include the following:
 - 1. All operations.

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2. Contractual liability.
3. Coverage for the so-called "X, C, U" hazards, i.e., collapse of building, blasting, and damage to underground property.
4. Completed operations hazard for a period of at least 2 years following acceptance by the Commission of the completed Contract.
5. Use of watercraft, aircraft when applicable.

B. Pollution Liability Insurance

1. The Contractor or his designated subcontractor shall carry Pollution Liability in an amount not less than \$1,000,000 per occurrence and \$5,000,000 aggregate, for sudden and gradual occurrences arising out of the work being performed under this Contract including, but not limited to, all hazardous material identified under this Contract.
2. The Contractor shall designate the disposal site and furnish a Certificate of Insurance from the Disposal Facility for Environmental Impairment Liability insurance covering liability for sudden and accidental occurrences in the amount of not less than \$3,000,000 per occurrence and \$6,000,000 aggregate and shall also include liability for non-sudden occurrences in the amount of not less than \$5,000,000 per occurrence and \$10,000,000 aggregate.
3. The Contractor shall designate the hauler and furnish a Certificate of Insurance from the hauler for Automobile Liability insurance with endorsement MCS90 for the liability arising out of the transportation of hazardous material with an amount not less than \$5,000,000 annual aggregate.
4. Certificates of Insurance shall clearly state the hazardous materials exposure identified under the Contract.

C. Automobile Liability Insurance

1. Include the use of all vehicles; owned, leased, hired and non-owned, with limits not less than \$1,000,000 combined single limit covering all work performed under the Contract.

D. The Contractor shall carry Worker's Compensation Insurance, including Employers Liability Insurance as provided by Chapter 152, as amended, of the General Laws of the Commonwealth covering all work performed by him under the Contract.

E. The Contractor shall carry Umbrella Liability Coverage with limits of not less than \$10,000,000 per occurrence, covering all work performed by him under this Contract.

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- F. The Contractor shall carry Builder's Risk Insurance ("All Risks" form) on a 100 percent completed value basis for the full insurable portion of such Work for the benefit of the Commission, the Contractor and all subcontractors.
- G. The required insurance coverages hereinbefore specified shall be placed with insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of B+ or better, shall be taken out before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, shall be primary to and non-contributory to any coverages maintained by the Commission, and shall require that the Commission be given at least 30 days advance written notice in the event of any cancellation or materially adverse change in coverage. All such required insurance, with the possible exception of Pollution Liability Insurance, shall be written on an occurrence basis form, as opposed to a claims made basis form. The Commission shall be named as an additional insured under the Commercial General Liability, Automobile Liability, Umbrella, Pollution Liability, and Builder's Risk Insurance Policies. The Workers' Compensation and Employers' Liability Insurance Policies shall include a waiver of subrogation in favor of the Commission. All such insurance as is required of the Contractor shall be provided by or in behalf of all subcontractors to cover their operations performed. The Contractor shall be held responsible for any modifications, deviations or omissions in the compliance with these requirements by the subcontractors. At the inception date of the Contract and throughout the term of the Contract, the Commission shall be provided with certificates of insurance evidencing that such insurance policies are in place and provide coverage as required. The following statement affirming that coverage completely complies with contract requirements shall be included in the special items section of the certificate or in an attached special items addendum page:

The aforementioned insurance coverages completely comply with Article 5.04, Insurance Requirements, paragraphs A through H, inclusive, of New Bedford Harbor Development Commission Contract No. HDC-FY12-006.

- H. In the event it is determined during excavation or construction that an asbestos condition does exist, a licensed asbestos specialist shall be employed by the Contractor to perform the asbestos containment and abatement work. Prior to asbestos containment and abatement work, the Contractor shall, through the licensed asbestos specialists, obtain insurance in amounts and types specified by the Commission, naming the Commission as an additional insured as its interest appears under this Contract. Payment for this work will be made in accordance with Article 7.04.

5.05 PATENTED DEVICES, MATERIAL AND PROCESSES

- A. The Contractor shall indemnify and save harmless the Commission and all persons acting for or on behalf of the Commission from all claims and liability of any nature or kind, and all damages, cost and expenses, including attorney's fees, arising from or occasioned by an infringement or alleged infringement of any patents or patent rights on any invention, process, material, equipment, article, apparatus, or any part thereof, furnished and installed by the Contractor,

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or arising from or occasioned by the use of manufacture thereof, including their use by the Commission. In case such materials, equipment, devices, or processes are held to constitute an infringement and their use enjoined, the Contractor, at his expense, shall:

1. Secure for the Commission the right to continue using said materials, equipment, devices, or processes by suspension of the injunction or by procuring a license or licenses; or
 2. Replace such materials, equipment, devices, or processes with non-infringing materials, equipment, devices, or processes; or
 3. Modify them so that they become non-infringing, or remove the enjoined materials, equipment, devices, or processes and refund the sums paid therefor without prejudice to any other rights of the Commission or the Engineer.
- B. When Federal funds are involved, patent rights to any patentable result arising out of the Work, as well as all information, designs, specifications, know-how, data, and findings, shall be made available to the Government for public use, unless the Federal Department involved shall, in specific cases where it is legally permissible, determine that it is in the public interest that it not be so made available.

5.06 RESTORATION OF SURFACES OPENED BY PERMIT

- A. Contractor shall not allow any party to make an opening in a street or highway for any purpose except upon the direction of the Engineer and the presentation of a duly authorized permit or other instrument. The holder of such a permit or instrument shall be considered in the same class as a contractor on an adjacent contract and the provisions of Articles 3.05 and 3.06 shall apply.

5.07 FEDERAL PARTICIPATION

- A. This Article is applicable only to contracts where the cost of any portion thereof is paid out of Federal funds.
- B. Attention is directed to the provisions of the Urban Mass Transportation Act of 1964 (U.S. Public Law 88-365), as modified or amended, and any other provision of law, or amendments thereto whereby such federal participation is authorized, and any regulations properly and lawfully promulgated thereunder, under which the United States shall aid the individual states in the development of efficient and coordinated mass transportation systems. When the United States government is to pay any portion of the cost of the Contract, the above act of Congress provides that the construction work and labor in each State shall be done in accordance with the laws of that State and applicable federal laws. The Work embraced in the Contract will, therefore, be subject to such inspection by representatives of the U.S. Department of Transportation or other such Federal Agency as may be necessary to meet the above requirements. Such inspection shall, however, in no sense make the United States government a party to the

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Contract, and will in no way interfere with the rights of either party hereunder.

5.08 RELATIONS WITH RAILROAD AND RESPONSIBILITY FOR DAMAGE TO RAILROAD

- A. Provisions in these General Conditions, which require the Contractor to protect property against damage, and which place upon the Contractor all responsibility for damage to property, injury to persons, and loss, expense, and delay to the owners of property and others, shall also apply to railway lines or railroads, their tenants, licenses, and utility companies which jointly own or use facilities with a railroad company (hereinafter collectively and severally referred to as "Railroad"), the same as in connection with other kinds of property.
- B. General and special requirements concerning the Contractor's relations with Railroad will be set forth in the Supplementary Conditions. The Contractor shall conform to those requirements in the conduct of his work under the Contract.
- C. The Contractor shall be solely and directly responsible to the owners and operators of such properties for any damage, injury expense, loss, or delay which may result from the carrying out of the Work to be done under the Contract; and if specified in the Supplementary Conditions, the Contractor shall give bond or insurance of the kind and in the amount therein specified to each corporation, company, partnership, or individual owning or operating any of the properties affected, in guarantee of this responsibility. Any extension of time granted the Contractor in which to complete the Contract shall not relieve him or his Surety from this responsibility.
- D. If any of the Work required to be done by the Contractor may obstruct the tracks of a Railroad or in any way endanger the operation of its trains, and the services of a flagman or flagmen or other railroad protective personnel are required by the Chief Engineer of the Railroad and men assigned by him for the protection of the property and traffic of the Railroad against hazards capable of being caused by the Contractor, the cost of all such flagging and protective services shall be borne by the Contractor and no compensation therefor will be made other than that provided by the Contract unit prices.

5.09 USE OF EXPLOSIVES

- A. Explosives, when necessary for use in the Work, shall not be brought within the Contract limits or onto property under the jurisdiction of the Commission, without the prior approval of the Commission.
- B. Explosives shall be stored safely under lock and key. The storage places shall be marked conspicuously DANGEROUS - EXPLOSIVES and be in the care of a competent watchman at all times. Storage, handling, and use of explosives shall conform to the regulations of the Massachusetts Department of Public Safety, federal regulations and local ordinances relating thereto.
- C. The Contractor shall be responsible for all damages resulting from the use of explosives. The Contractor shall exercise care not to endanger life and property, including new Work. When directed, the number and size of the charges shall be

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reduced. Flagmen shall be provided, when directed, to warn and keep traffic from the danger area. All persons within the danger area shall be warned and given time to withdraw.

- D. Prior to start of the blasting, the Contractor shall give at least a 48 hour notice and a schedule of his operations thereof to the operating official, company, or companies leasing, owning, or responsible for pipes, conduits, poles, wires, railroad tracks, or any other public or private utility which may be endangered by the blasting in order that a representative of said owner or lessee may be present at the site. The Contractor shall take proper precautions to prevent injury to said properties during all blasting operations.

5.10 PROTECTION AND RESTORATION OF PROPERTY

- A. Compensation for conforming to all provisions of this Article, unless compensation is authorized in writing by the Engineer, as specified in Article 2.03, or as may be provided otherwise in the Supplementary Conditions, shall be considered as included in the prices for the various Contract items of Work and no additional compensation will be allowed therefor.
- B. Prior to commencing Work, the Contractor shall record the existing condition of abutting property. The Contractor shall obtain the necessary permission for entry and cause a detailed examination to be made of such abutting property as the Contractor deems necessary, as required in the Supplementary Conditions, or as directed by the Engineer. The Contractor shall invite the owner, in writing by certified mail with return receipt, to be present during the examination. A representative of the Commission shall also be invited. A complete report of the existing conditions, including photographs and video tapes, if required, shall be made in triplicate, and signed by the Contractor. One copy shall be delivered to the owner, one to the Commission, and one shall be retained by the Contractor. If at any time thereafter a claim for damages or alleged damages is filed by the owner or tenant, the Contractor shall make further detailed examinations. A representative of the Commission shall be invited to attend. All facts as to changes between the then existing conditions of said property and those which existing at time of the original examination shall be noted and recorded in triplicate. One copy of this report shall be delivered to the owner, one to the Commission, and one shall be retained by the Contractor.
1. In the event that the Contractor cannot obtain from the owner of such abutting property permission to enter upon the property for such examination, the Contractor shall immediately notify the Commission.
 2. For these detailed examinations, the Contractor shall employ an independent person who has had previous experience in examining or surveying the conditions of the property and who shall be approved by the Commission.
- C. The Contractor shall confine his movements and operations insofar as possible to the area within the limits of the Work, and the area outside the limits of the Work shall not be disturbed except as directed.

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- D. The Contractor shall, at no additional cost to the Commission, preserve and protect from injury all property either public or private along and adjacent to the proposed Work. The Contractor shall be responsible for and shall repair, at no additional cost to the Commission, any and all damage and injury thereto, arising out of or in consequence of any act or omission, neglect or misconduct in the execution of the Work, or in consequence of the non-execution thereof by the Contractor or his employees or subcontractors in the performance of the Work covered by the Contract prior to completion and acceptance thereof. The Contractor shall be solely responsible for any trespass upon adjacent property or injury thereto, resulting from or in connection with his operations. The Contractor shall be liable for any claims that may be made on account of the felling of trees or the deposit of debris of any kind upon private property. Special care shall be exercised during blasting operations to avoid injury to underground structures and utilities.
- E. Although the Contract Drawings may indicate the approximate location of existing subsurface utilities in the vicinity of the Work, accuracy and completeness of the information is not guaranteed by the Commission. Before commencing any work or operations that may endanger or damage subsurface structures, the Contractor shall carefully locate all such structures and conduct his operations in such manner as to avoid damage thereto. When necessary, the Contractor shall cooperate with representatives of public service and utility companies in order to avoid damage to their structures by furnishing and erecting suitable supports, props, shoring, or other means of protection. The Contractor shall not interrupt live services until new services have been provided. All abandoned services shall be plugged or otherwise made safe and secure.
- F. If the Contractor desires to temporarily relocate a utility, other than those contemplated by the Commission, he shall make the necessary arrangement with the appropriate utility company and make reimbursement for the cost thereof, at no additional cost to the Commission.
- G. Access to fire hydrants and fire alarm boxes shall be maintained by the Contractor throughout the prosecution of the Work. Hydrants, alarm boxes, and standpipe connections shall be kept clear of obstructions and kept visible at all times. If visibility cannot be maintained, the Contractor shall provide clearly visible signs and lights showing the locations of fire hydrants, fire alarm boxes, or standpipe connections. Utility companies and municipal agencies having facilities within the limits of the Work shall have access to their facilities at all times for inspection and repair.
- H. Land monuments and property marks shall be carefully protected by the Contractor and if necessary to remove the same, he shall do so only at the Engineer's direction and after a registered land surveyor has witnessed or otherwise referenced their location. If land monuments and/or property marks are removed by the Contractor, they shall be replaced by a registered land surveyor.
1. All costs associated with the removal, witnessing and replacement of land monuments and/or property marks shall be borne by the Contractor, at no additional cost to the Commission.

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- I. The Contractor shall protect and preserve natural surroundings and roadside growth either within or adjacent to the project site from damage or injury due to these operations. The Contractor shall not, except by written permission of the Engineer, remove, destroy, or trim roadside trees or shrubs. Trees or landscape features carelessly scarred or damaged by the Contractor's operations shall be removed and replaced or neatly trimmed and restored to their original condition as required by the Engineer. The Contractor shall be responsible for all damage to roadside growth due to his operations and shall, without compensation, satisfactorily repair or replace all such damaged growth. Scars on trees shall be painted as soon as possible with an approved tree paint.
- J. The Contractor shall protect existing structures, shall provide lights and fences and take all other precautions that may be necessary to protect life and property, at no additional cost to the Commission. The Contractor shall carry on all operations and use equipment of such types that noise resulting from construction operations will be kept to a minimum. Barriers and bridges shall be provided for the protection and use of the public and for the protection of the Work as necessary. The Contractor shall provide and maintain access for occupant and customer entrance to and exit from all adjacent buildings and property at all times. All temporary facilities required for the general protection of the public and the Work shall be subject to approval of the Commission.
- K. Written notice shall be given by the Contractor to all utility owners or officials and to all others concerned with or having charge of public or private owned utilities, of his intention to commence operations affecting such utilities at least 1 week in advance of the beginning of such operations. The Contractor shall at the same time file a copy of said notices with the Engineer.

5.11 PROTECTION OF PUBLIC LANDS

- A. In the execution of any Work within or adjacent to any state or national forest, park, or other public or private lands, the Contractor shall comply with all of the regulations of the appropriate authorities having jurisdiction over such forest, park, or lands. The Contractor shall keep the areas in his construction operations in an orderly condition and properly dispose of all refuse and discarded materials.
- B. The Contractor shall obtain construction permits that may be required for Contract operations, not a part of the Contract, in accordance with the requirements of the regulations of the appropriate authorities.
- C. The Contractor shall take all reasonable precautions to prevent and suppress open fires in any area involved in his construction operations or occupied by him as a result of such operations. The Contractor shall cooperate with the proper authorities of the state and federal governments in reporting, preventing, and suppressing any open forest fires.

5.12 PROTECTION OF FENCES

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- A. By constructing temporary fences, or by other adequate means, the Contractor shall restrain stock from leaving the lands wherein they are confined or from trespassing which would be made possible by, or which might result from, the removal or destruction of existing fences or the carrying out of any part of the Work under the Contract. The Contractor shall be responsible for all loss, injury, or damage that may result from the Contractor's failure to restrain stock as above provided. Compensation for erecting and maintaining temporary fences and for otherwise providing for the restraint of stock shall be considered as included in the prices for the various Contract Items and no additional compensation will be allowed therefor.
- B. If the Contractor is ordered by the Engineer to construct new right-of-way fences or to move and reconstruction existing fences, such Work shall be paid for at the unit price bid for same, or as Extra Work.
- C. The Contractor shall use care to avoid damaging existing fences. The Contractor shall repair or replace, at no additional cost to the Commission, and to the satisfaction of the Engineer, all fences that are in any way damaged by Contract operations.
- D. Tearing down and removal of fences occurring within the right-of-way limits shall be considered to be a part of the clearing and grubbing work as set forth in the Contract Specifications, and payment therefor included in the payment for clearing and grubbing.

5.13 SAFEGUARDING OF EXCAVATIONS

- A. Contractor shall provide safeguards and protections around and in the vicinity of excavations necessary to prevent and avoid the occurrence of damage, loss, injury, and death to property, animals, and persons because of such excavations. Liability for any such damage, loss, injury, or death shall rest with the Contractor.

5.14 DISPOSAL OF MATERIALS OUTSIDE THE WORK SITE

- A. Unless otherwise specified in the Contract Specifications, the Contractor shall make his own arrangement for disposing of waste and excess materials outside the work site, at no additional cost to the Commission.
- B. Prior to disposing of material outside the Work site, the Contractor shall obtain written permission from the owner on whose property the disposal is to be made. The Contractor shall file with the Engineer the permit, or a certified copy thereof, together with a written release from the property owner absolving the Commission from any and all responsibility with the disposal of material on said property.
- C. Unless otherwise provided in the Contract Specifications, full compensation for all costs involved in disposing of materials as above specified, including all costs of hauling, shall be considered as included in the price paid for the Contract Item involving such materials and no additional compensation will be allowed therefor.
- D. In the disposal of excavated material, and other waste and excess materials, the

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Contractor shall adhere to all applicable laws of the Commonwealth of Massachusetts and to municipal and local ordinances and regulations. All routes to be used by the Contractor for hauling excavated and other materials shall be approved in advance by applicable agencies having jurisdiction. Excess excavated material stockpiled at the site after the demands of this Contract have been fulfilled shall be removed from the site by the Contractor and legally disposed of off-site. The Contractor shall restore the site to its original condition, prior to stockpiling, subject to direction by the Engineer, at no additional cost to the Commission.

5.15 SAFETY AND FIRST AID REQUIREMENTS

- A. The Contractor shall adhere to all precautions necessary to the safety and health of the workmen in accordance with provision of Federal Regulation 29 CFR Parts 1926.58 and 1910.1001, and Massachusetts Regulations 453 CMR 6.00.
- B. The Contractor's safety program shall be submitted in writing to the Engineer for review within five (5) days after receipt of a Notice of Award. The proposed safety program shall include the name, experience, and qualifications of the Contractor's proposed safety representative. No work at the job site shall begin until the Engineer has reviewed the Contractor's safety program and safety representative. Implementation and enforcement of the safety program for the forces of the Contractor and all subcontractors shall be the responsibility of the Contractor.
- C. The Contractor's full-time safety representative shall have a thorough knowledge of construction safety and OSHA regulations. If, in the opinion of the Engineer, the Contractor's safety representative is not effective in carrying out the duties assigned and as described below, the Engineer may request, in writing, that the Contractor replace the safety representative.
- D. The duties of the safety representative shall include maintenance of the Contractor's safety program, enforcement of safe practices, and the use of safety equipment and personal protection equipment, and other such activities as may be required by OSHA to maintain job safety and accident prevention. The safety representative shall not be changed, terminated, nor reassigned without the written approval of the Engineer.
- E. Attention of the Contractor is specifically directed to the General and Supplemental Conditions of this Contract, which shall be made a condition of each subcontract entered into pursuant to the Contract. Further, that the Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1518, Published in the Federal Register on April 17, 1971) promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96).
- F. The Commission may stop any work that it considers to be unsafe.

5.16 RESPONSIBILITY FOR DAMAGE CLAIMS

- A. The Contractor shall indemnify, defend, and save harmless the Commission and all its officers, agents, and employees against all suits, claims, or liability of every name and nature, for or due to any injuries to persons or damage to property arising out of or in consequence of the acts of the Contractor in the performance of the Work covered by the Contract or failure comply with the terms and conditions of said Contract, whether by the Contractor or the Contractor's employees or subcontractors.
- B. The Contractor shall be held responsible for any and all claims for damage to underground structures and utilities due to Contractor's operations or to the operations of any of the Contractor's subcontractors.
- C. The Commission agrees to indemnify the Contractor against loss by reason of the liability to pay damages to others for entry upon any land included within and adjoining the boundaries of the area within which the Work is to be provided as set forth in the Contract Documents applying to such Contract or any approved changes thereof or for damage sustained upon any lands adjoining said land by reason of the flowage or drainage of water thereto or therefrom, in any case wherein such damages an interest or easement in such adjoining area, provided that the Commission acting by an authorized representative thereof has issued a notice in writing to the Contractor prior to the making of any entry upon such premises directing or permitting the Contractor to proceed with the Contract and to make such entry upon the premises for the purpose of providing the Work required by said Contract, or any approved alteration thereof, and provided, further, that the Contractor has given notice in writing to the Commission within 15 days after receiving notice of any claim to come in and settle the same and upon the commencement of any action against the Contractor to come in and defend said action, but in no event shall any such damage claim be compromised or adjusted without the written consent of the Commission. The provisions of this Article shall in no way relieve the Contractor from any liability for damage to property of others caused by the Contractor's negligence or that of the Contractor's employees nor shall they be construed to require the Commission to indemnify the Contractor against any loss resulting from such acts of negligence.

5.17 CLAIMS AGAINST CONTRACTOR FOR PAYMENT OF LABOR AND MATERIALS

- A. The Contractor shall be responsible for prompt payment for all services, labor, equipment, and materials furnished by or through the Contractor for purposes of the Contract.
 - 1. Forthwith after the Contractor receives payment for a periodic estimate, the Contractor shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by that subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the Contractor.

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2. Not later than 65 days after each subcontractor substantially completes its work in accordance with the Contract Documents, the entire balance due under the subcontract less amounts retained by the Commission as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and the Commission will pay that amount to the Contractor. The Contractor shall forthwith pay to the subcontractor the full amount received from the Commission less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the Contractor.
3. Each payment made by the Commission to the Contractor pursuant to subparagraphs "1" and "2" of this Article for the labor performed and the materials furnished by a subcontractor shall be made to the Contractor for the account of that subcontractor; and the Commission will take reasonable steps to compel the Contractor to make each such payment to each such subcontractor. If the Commission has received a demand for direct payment from a subcontractor for any amount which has already been included in a payment to the Contractor or which is to be included in a payment to the Contractor for payment to the subcontractor as provided in subparagraphs "1" and "2", the Commission shall act upon the demand as provided in this Article.
4. If, within 70 days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the Contractor the balance due under the subcontract, including any amount due for extra labor and materials furnished to the Contractor, less any amount retained by the Commission as the estimated cost of completing the incomplete and unsatisfactory items of Work, the subcontractor may demand direct payment of that balance from the Commission. The demand shall be by a sworn statement delivered to or sent by certified mail to the Commission, and a copy shall be delivered to or sent by certified mail to the Contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the subcontractor has substantially completed the subcontract work. Within 10 days after the subcontractor has delivered or so mailed the demand to the Commission and delivered or so mailed a copy to the Contractor, the Contractor may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the Commission and a copy shall be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract, including any amount due for extra labor and materials furnished to the Contractor and of the amount due for each claim made by the Contractor against the subcontractor.
5. Within 15 days after receipt of the demand by the Commission, but in no event prior to 70 days after substantial completion of the subcontract work, the Commission will make direct payment to the subcontractor of the balance due under the subcontract, including any amount due for

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extra labor and materials furnished to the Contractor, less any amount (1) retained by the Commission as the estimated cost of completing the incomplete or unsatisfactory items of work, (2) specified in any court proceedings barring such payment, or (3) disputed by the Contractor in the sworn reply; provided, that the Commission will not deduct from a direct payment any amount as provided in part (3) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph "4". The Commission will make further direct payment to the subcontractor forthwith after the removal of the basis for the deductions from direct payments made as provided in parts (1) and (2) of this subparagraph.

6. The Commission will forthwith deposit the amount deducted from a direct payment as provided in part (3) of subparagraph "5" in an interest bearing joint account in the names of the Contractor and the subcontractor in a bank in Massachusetts selected by the Commission or agreed upon by the Contractor and the subcontractor and shall notify the Contractor and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the Contractor and the subcontractor or as determined by decree of a court of competent jurisdiction.
7. All direct payments and all deductions from demands for direct payments deposited in an interest bearing account or accounts in a bank pursuant to subparagraph "6" shall be made out of amounts payable to the Contractor at the time of receipt of a demand for direct payment from a subcontractor and out of amounts which later became payable to the Contractor and in the order of receipt of such demands from subcontractors. All direct payments will discharge the obligation of the Commission to the Contractor to the extent of such payment.
8. The Commission will deduct from payments to the Contractor amounts which, together with the deposits in interest bearing accounts pursuant to subparagraph "6", are sufficient to satisfy all unpaid balances of demands for direct payment received from subcontractors. All such amounts shall be earmarked for such direct payments, and the subcontractors shall be a right in such deductions prior to any claims against such amounts by creditors of the Contractor. Subcontractor, for contracts awarded as provided in paragraph (a) of Section 39M, Chapter 30 of the General Laws of the Commonwealth shall mean a person approved by the Commission in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the Contractor.

5.18 PAYMENT OF TAXES

- A. Contract prices paid for the Work shall include full compensation for all taxes which the Contractor is required to pay whether imposed by federal, state, or local government, including, without being limited to, federal excise tax.
 1. Fines and penalties, including interest, are the responsibility of the

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Contractor and all costs associated therewith shall be borne by the Contractor, at no additional cost to the Commission.

- B. The Massachusetts Sales Tax, Chapter 64H, Section 6 and the Massachusetts Use Tax, Chapter 64I, Section 7, states that these taxes are not applicable to the sales of construction materials and supplies incorporated, consumed, employed or expended in construction projects of the Commission. This exemption is also applicable to rental charges for construction vehicles, equipment, and machinery rented, specifically for use on the site of the Commission's construction projects. Bidders are directed to exclude any allowance for Sales or Use Tax from their Bid Form as said tax would relate to the foregoing specific categories.

5.19 CLAIMS OF CONTRACTOR FOR COMPENSATION

- A. No person or corporation, other than the signer of the Contract as Contractor, now has any interest hereunder, and no claim shall be made or be valid; and neither the Commission nor any member, agent, or employee thereof, shall be liable for, or be held to pay, any money except as provided in Articles 2.02, 2.03, 2.04, 2.05, 7.02 and the Agreement.
- B. All claims of the Contractor for compensation other than as provided for in the Contract due to any act of omission or commission by the Commission or its agents must be made in writing to the Engineer within 10 days after the beginning of any work or the sustaining of any damage due to such act. Such written statement shall contain a description of the nature of the Work provided or damage sustained; and the Contractor, shall on or before the 15th day of the month succeeding that in which such Work is performed or damage sustained file with the Engineer an itemized statement of the details and amount of such work or damage. Unless such statement shall be made as required, the claim for compensation shall be forfeited and invalidated, and the Contractor shall not be entitled to payment due to any such work or damage. Such notice by the Contractor and the keeping of costs by the Engineer shall not in any way be construed as proving the validity of the claim. The provisions of this paragraph shall not apply to changes in quantities as provided under Article 2.05 or to Extra Work ordered by the Engineer in writing.
- C. On the basis of information provided in writing by the Contractor's own employees, servants, or agents, the Contractor shall certify, in writing, that the Work for which he is claiming payment, other than as provided for in the Contract, is work actually performed, and the costs as shown are the amounts legally due for providing such Work for which payment is claimed.
- D. The Engineer will determine all questions as to the amount and value of such Work, and the fact and extent of such damage and will notify the Contractor in writing of this determination.
- E. Acceptance by the Contractor of the final payment made under the provisions of Article 7.09 shall operate as and shall be a release to the Commission and every member, agent, and employee thereof, from all claim and liability to the Contractor for anything done or furnished for, or relating to, the Work, or for any act or neglect of the Commission or of any person relating to or affecting the

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Work except the claim against the Commission for the remainder, if any there be, of the amounts kept or retained as provided in Article 5.17. For claims for extensions of time, see Article 6.08.

5.20 OPENING PORTIONS OF CONTRACT FOR OPERATION OR OCCUPANCY

- A. Any portion of the Work which is in acceptable condition for operation or occupancy may be opened for operation or occupancy as directed in writing by the Commission, but such operation or occupancy shall not be construed as an acceptance of the Work or part thereof, nor shall it act as a waiver of any of the provisions of the Contract Specifications or of the Contract; provided, however, that on such portions of the Work as are opened for such use, the Contractor shall not be required to assume any expense entailed in maintaining that portion of the Work opened for operation or occupancy. The Commission will be responsible for maintenance and any damage to the Work caused solely by the operation or occupancy of any portion of the Contract which has been opened to operations or occupancy as stipulated above, and it may order the Contractor to repair or replace such damage, whereupon the Contractor shall make such repairs at Contract unit prices so far as the same are applicable, or as Extra Work under the provisions of Article 2.03, if there are no applicable items in the Contract.

- B. If the Contractor is dilatory in completing shoulders, drainage structures or other similar items of the Work, the Engineer may order all or a portion of the Work open to traffic, but in such event the Contractor shall not be relieved of his liability and responsibility during the period the Work is so opened prior to final acceptance. The Contractor shall conduct the remainder of his construction operations so as to cause the least obstruction to traffic. Additional costs incurred by the Contractor in conducting the remainder of his operations due to his being dilatory with parts of the Work shall be assumed by the Contractor, at no additional cost to the Commission.

5.21 CONTRACTOR'S RESPONSIBILITY FOR THE WORK

- A. Until final written acceptance of the Work, the Contractor shall have the charge and care of the Work. The Contractor shall take every necessary precaution against injury or damage to the Work by action of the elements, or from any other cause, whether arising from the execution of the non-execution of the Work, and especially when blasting is to be done.

- B. Except as provided in Article 2.09, the Contractor shall bear all losses resulting from or due to the amount or the character of the Work or because the nature of the land in or on which the Work is done is different from that which was estimated or expected, or due to bad weather or other causes.

- C. The Contractor shall rebuild, repair, restore, and make good all injuries or damages to any portion of the Work occasioned by any cause before its completion and final acceptance, and shall bear the expense thereof, except damage to the Work due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing, to "Acts of God" (limited to hurricane, tornado, cyclone and earthquake as

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classified by the United States Weather Bureau for the particular locality and for the particular season of the year, and in addition thereto, damages resulting directly from flooding from any of the aforementioned "Acts of God"). The repair of such damages shall be done by the Contractor and paid for at the respective Contract unit prices for the quantity and items of Work involved. In any case in which the estimate for replacing such Work or repairing such damage caused by war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to the foregoing, or an "Act of God" combined with any previously authorized Extra Work results in a change of such magnitude as to be incompatible with competitive bid status, the Commission reserves the right to terminate the Contract and to call for new bids and award a new Contract for such Work. In the event a Contract is terminated for such reason, the Commission will pay the Contractor such sum as may be due for Work performed up to the date of the "Act of God," or of damage directly due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing and will also take over and pay for any material stored at the site of the Work provided said material was intended to be and could have been incorporated into the Work; the Commission will also take over and pay for any material which was being especially fabricated for incorporation into the Work, provided, however, that as a condition precedent to the Commission's liability for such material, the Contractor is legally liable therefor and the material was intended to be and could have been incorporated in the Work.

- D. Issuance of an estimate of any part of the Work done will not be construed as final acceptance of any Work completed up to that time.
- E. Should the Contractor fail to take prompt action whenever conditions make it necessary, the Commission will make emergency repairs or cause the same to be made, with the stipulation that the costs for such repairs shall be charged against the Contractor and deducted from moneys due the Contractor.
- F. In case of suspension of Work from any cause whatever, the Contractor shall be responsible for the Contract and shall take such precautions as may be necessary to prevent damage to the Work, provide suitable drainage, and shall erect any necessary temporary structures, signs, or other facilities, at no additional cost to the Commission. The Contractor shall also maintain in an acceptable growing condition all living material in newly established plantings, seedings, and soddings furnished under the Work, and take adequate precautions to protect new tree growth and other important vegetative growth against injury.

5.22 CONFLICT OF INTEREST

- A. It is understood and agreed that no gift, loan, or other thing of value has been or shall be given to any employee, agent, or officer of the Commission in connection with the award or performance of the Contract. Also no employment shall be given to and no renting, leasing, or purchasing of equipment, supplies, or materials shall be arranged or made with or through any employee, agent, or office of the Commission by the Contractor.

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- B. No board member, officer or employee of the Commission, officer or employee of any independent authority, political subdivision of the Commonwealth of Massachusetts, officer, employee or elected official or any city, county, or town authority within the Commonwealth of Massachusetts, during his/her tenure and for 1 year thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.
- C. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

5.23 PERSONAL LIABILITY OF COMMISSION OFFICIALS

- A. In carrying out any of the provisions of the Contract Documents, or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Director, Engineer, or their authorized representatives, either personally or as officials of the Commission, it being understood that in all such matters they act solely as agents and representatives of the Commission.

5.24 NO WAIVER OF LEGAL RIGHTS

- A. Commission shall not be precluded or stopped by any measurement, estimate, or certificate made either before or after the completion and acceptance of the Work and payment therefor, from showing the true amount and character of the Work provided and materials furnished by the Contractor, nor from showing that any such measurement, estimate, or certificate is untrue or is incorrectly made, nor that the Work or materials do not in fact conform to the Contract. The Commission shall not be precluded or estopped, notwithstanding any such measurement, estimate, or certificate and payment in accordance therewith, from recovering from the Contractor or the Contractor's Sureties, or both, such damage as it may sustain by reason of the Contractor's failure to comply with the terms of the Contract. Neither the acceptance by the Commission, or any representative of the Commission, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of time, nor any possession taken by the Commission, shall operate as a waiver of any portion of the Contract or of any power herein reserved, or of any right to damages. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach. Any remedy provided in the Contract shall be taken and construed as cumulative, that is, in addition to each and every other remedy herein provided; and the Commission shall also be entitled as of right to writ of injunction against any breach of any of the provisions of the Contract.

5.25 LABOR, LODGING, BOARD, MAXIMUM HOURS OF EMPLOYMENT, KEEPING OF PAYROLL RECORDS

- A. Every employee in public work shall lodge, board, and trade where and with whom the employee elects; and no person or person's agents or employees under contract with the Commission for the doing of public work, shall directly or indirectly require as a condition of employment therein, that the employee shall lodge, board, or trade at a particular place or with a particular person (Chapter 149, Section 25 of the General Laws of the Commonwealth).

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- B. No laborer, workman, mechanic, foreman, or inspector working within this Commonwealth, in the employ of the Contractor, subcontractor, or other person doing or contracting to do the whole or a part of the Work contemplated by the Contract, shall be required or permitted to work more than 8 hours in any one day or more than 48 hours in any one week, or more than six days in any one week, except in cases of emergency. The Commission or the Contractor or any subcontractor may employ laborers, workmen, mechanics, foremen, and inspectors for more than 8 hours in any day in the work to be done or under the Contract when, in the opinion of the Director of the Department of Labor and Workforce Development, public necessity so requires. (Chapter 149, Section 34 of the General Laws of the Commonwealth, as amended.)
- C. Upon request of the Engineer or the Massachusetts Department of Labor and Industries, the Contractor shall furnish certified copies of any or all payrolls for the Contract, showing the name, address, and occupational classification of each employee on said Works, and the hours worked by, and the wages paid to each such employee. Such payroll shall also include the rates paid for rented trucks or rental equipment of any kind used on the Work. This requirement shall also apply to the work of any subcontractor, having a subcontract for any of the Work performed on the Contract. Such records shall be kept in such manner as the Director of the Department of Labor and Workforce Development shall prescribe, and shall be open to inspection by the Engineer or any authorized representative of the Department of Labor and Workforce Development at any reasonable time and as often as may be necessary.
- D. In case the Work covered by the Contract is financed from federal funds, the above provisions relative to the hours of employment shall be subject to such revision and amendment as are required by the rules and regulations controlling the expenditures of such federal funds.

5.26 EQUAL OPPORTUNITY CLAUSE

During the performance of the Contract, the Contractor agrees as follows:

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment, without regard to race, creed, color, religion, sex, or national origin.

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- C. The Contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts of investigation to ascertain compliance with such rules, regulations, and orders.
- F. In the event of the Contractor's noncompliance with the nondiscrimination clauses of the Contract or with any of the said rules, regulations, or orders, the Contract may be cancelled, terminated, or suspended in whole or in part; and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rules, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.
- G. The Contractor shall include the portion of the sentence immediately preceding paragraph "A" and the provisions of paragraphs "A" through "G" in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provision shall be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.
- H. Applicable Massachusetts and Federal Anti-Discrimination Requirements are contained in the Supplementary Conditions.

5.27 REQUIREMENTS OF CHAPTER 30, SECTION 39R OF THE GENERAL LAWS OF THE COMMONWEALTH OF MASSACHUSETTS

- A. The words defined below shall have the meaning stated whenever they appear in this subsection:

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1. "Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a contract pursuant to Section 39M of Chapter 30 of the General Laws of the Commonwealth.
2. "Contract" means any contract awarded or executed pursuant to Section 39M of Chapter 30 of the General Laws of the Commonwealth.
3. "Records" means books of original entry, accounts, checks, bank statements and all other banking documents, correspondence, memoranda, invoices, computer printouts, tapes, discs, papers and other documents or transcribed information of any type, whether expressed in ordinary or machine language.
4. "Independent Certified Public Accountant" means a person duly registered in good standing and entitled to practice as a certified public accountant under the laws of the place of this person's residence or principal office and who is in fact independent. In determining whether an accountant is independent with respect to a particular person, appropriate consideration should be given to all relationships between the accountant and that person or any affiliate thereof. Determination of an accountant's independence shall not be confined to the relationships existing in connection with the filing of reports with the awarding authority.
5. "Audit", when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards for the purpose of expressing a certified opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons.
6. "Accountant's Report", when used in regard to financial statements, means a document in which an independent certified public accountant indicates the scope of the audit which he/she has made and sets forth his/her opinion regarding the financial statements taken as a whole with a listing of noted exceptions and qualifications, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed the reason therefor shall be stated. An accountant's report shall include as a part thereof a signed statement by the responsible corporate officer attesting that management has fully disclosed all material facts to the independent certified public accountant, and that the audited financial statement is a true and complete statement of the financial condition of the Contractor.
7. "Management", when used herein, means the chief executive officers, partners, principals or other person or persons primarily responsible for the financial and operational policies and practices of the Contractor.
8. Accounting terms, unless otherwise defined herein, shall have a meaning in accordance with generally accepted accounting principles and auditing standards.

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- B. Subsection A2 hereof notwithstanding, every agreement or contract awarded or executed pursuant to Section 39M of Chapter 30 of the General Laws of the Commonwealth shall provide that:
1. The Contractor shall make, and keep for at least 6 years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Contractor, and
 2. Until the expiration of 6 years after final payment, the awarding authority, office of inspector general, and the deputy commissioner of capital planning and operations shall have the right to examine any books, documents, papers or records of the Contractor or his/her subcontractors that directly pertain to, and involve transactions relating to, the Contractor or his/her subcontractors, and
 3. If the agreement is a contract as defined herein, the Contractor shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the awarding authority, including in his/her description the date of the change and reasons therefore, and shall accompany said description with a letter from the Contractor's independent certified public accounting approving or otherwise commenting on the changes, and
 4. If the agreement is a contract as defined herein, the Contractor has filed a statement of management on internal accounting controls as set forth in paragraph "C" below prior to the execution of the contract, and
 5. If the agreement is a contract as defined herein, the Contractor has filed prior to the execution of the contracts and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in paragraph "D" below.
- C. Every Contractor awarded a contract shall file with the awarding authority a statement of management as to whether the system of internal accounting controls of the Contractor and its subsidiaries reasonably assures that:
1. Transactions are executed in accordance with management's general and specific authorization.
 2. Transactions are recorded as necessary:
 - a. To permit preparation of financial statements in conformity with generally accepted accounting principles, and
 - b. To maintain accountability for assets;
 3. Access to assets is permitted only in accordance with management's general or specific authorization; and

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4. The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.

Every Contractor awarded a contract shall also file with the awarding authority a statement prepared and signed by an independent certified public accountant, stating that he/she has examined the statement of management on internal accounting controls, and expressing an opinion as to

5. Whether the representation of management in response to this paragraph and paragraph "B" above are consistent with the result of management's evaluation of the system of internal accounting controls; and
 6. Whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statements.
- D. Every Contractor awarded a contract by the Commonwealth or by any political subdivision thereof shall annually file with the awarding authority during the term of the contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report.
- E. The office of inspector general, the deputy commissioner for capital planning and operations and any other awarding authority shall enforce the provisions of this section. The deputy commissioner of capital planning and operations may after providing an opportunity for the inspector general and other interested parties to comment, promulgate pursuant to the provisions of Chapter 30A of the General Laws of the Commonwealth such rules, regulations and guidelines may be applicable to all awarding authorities. A Contractor's failure to satisfy any of the requirements of this section may be grounds for disqualification pursuant to Section 44C of Chapter 149 of the General Laws of the Commonwealth.

Note: The record retention aspects of this subsection apply to all contracts awarded by the Commission regardless of value. The requirements relative to the internal auditing and management controls, including the filing of an annual statement, apply to contracts awarded with a value greater than \$100,000.

END OF ARTICLE 5

ARTICLE 6 - PROSECUTION AND PROGRESS

6.01 SUBLETTING OR ASSIGNMENT OF CONTRACT

- A. The Contractor shall give personal attention to the fulfillment of the Contract and shall keep the Work under control.
- B. The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof, or of the Contractor's right, title, or interest therein, without written consent of the Commission. If consent is given, the Contractor shall be permitted to sublet a portion thereof, but shall provide with the Contractor's own organization, Work amounting to not less than 50 percent of the original total Contract amount, except that any items designated in the Contract as Filed Sub-Bid Classes of Work shall be provided by Filed Sub-Bid Subcontractors and the amount of any such Filed Sub-Bid Classes of Work provided by Filed Sub-Bid Subcontractors may be deducted from the total amount in computing the amount of Work required to be provided by the Contractor's own organization. No subcontracts, or transfer of contract, shall in any case release the Contractor from liability under the Contract and bonds.
 - 1. The provisions of Chapter 149, Section 44A through Section 44I, inclusive, of the General Laws of the Commonwealth of Massachusetts with respect to sub-bidders on buildings will apply when so indicated in the Notice to Bidders.
- C. Consent to sublet any part of the Work shall not be construed to be an approval of the said subcontract or of any of its terms, but shall operate only as an approval of the making of a subcontract between the Contractor and subcontractor.
- D. A subcontractor (vendor, or supplier) will be recognized only in the capacity of an employee or agent of the Contractor, and the subcontractor's removal may be required as in the case of an employee.
- E. As soon as practicable after execution of the Contract, the Contractor shall submit to the Commission applications for approval of subcontractors for any part of the Work it is proposed to sublet. In addition to stating the name and address of the proposed subcontractor, each application shall give the items, or any portions thereof, proposed to be sublet by item number and description, and the total value of the Work proposed to be sublet based on the primary contract unit prices where established, or, where not established, on the approved breakdown estimate of a lump sum price required under Article 7.06 and not on the amount of the subcontract. The application shall also show pertinent information in order to enable the Commission to ascertain whether the proposed subcontractor is reliable and able to perform the work.
- F. The Contractor shall direct the attention of subcontractors to the requirements of:
 - 1. Article 5.04 regarding insurance requirements, the minimum wage rates as determined by the Division of Occupational Safety of the Department of Labor and Workforce Development, and the provisions of Articles 5.25

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and 5.26.

2. Chapter 30, Section 39L, of the General Laws of the Commonwealth, requires under "1" above that the Commonwealth and every county, city, town, district, board, commission shall not enter into a contract for such Work with, and shall not approve as a subcontractor furnishing labor and materials for a part of any such Work, a foreign corporation which has not filed with the Commission a certificate of the State Secretary stating that such corporation has complied with Sections 3 and 5 of Chapter 181 and the date of such compliance. Chapter 181, Section 3, requires foreign corporations to appoint the Secretary of the Commonwealth as an attorney for service of process, and Section 5, Chapter 181, requires foreign corporations to file certain documents with the Secretary of State which will permit them to do business in Massachusetts.

- G. The Contractor shall direct the attention of subcontractors and all suppliers of material to the requirements of Article 3.09.

6.02 PROSECUTION OF WORK

- A. The Contractor shall commence Work within 15 calendar days from the date of the mailing of the executed Contract by the Commission to the Contractor, unless otherwise directed in writing by the Commission. The Contractor shall complete the Work within the days specified.
- B. Should the prosecution of the Work for any reason be discontinued, the Contractor shall notify the Engineer at least 24 hours in advance of resuming operations.
- C. If in the Commission's judgement it is necessary at any time, the Contractor shall when directed, employ such forces and equipment for one or more additional shifts as will be required to insure the proper and timely completion of the Work.
- D. The Contractor shall not provide work at any time when conditions are unsuitable for its execution, safety, and permanence. This provision shall not be interpreted as constituting any waiver, release or lessening of the Contractor's obligation to bring the Work to entire completion within the Contract time stipulated therefor.
- E. The Contractor shall not receive any additional compensation for the requirements of this Article.

6.03 REMOVAL OR DEMOLITION OF BUILDINGS AND LAND TAKINGS

- A. When the removal or demolition of buildings within the Contract limits is done under other and separate contracts, the provisions of Article 3.06 shall apply. The Commission will not be held liable for any expense to the Contractor due to any delay or interference with his Work, due to removal or demolition of the buildings, or due to any failure to remove or demolish any buildings, or due to the necessary land takings.
- B. No allowance of any kind will be made except as provided in Article 6.08.

6.04 LIMITATIONS OF OPERATIONS

- A. The Contractor shall conduct the Work at all times in such a manner and in such sequence as will assure the least interference with vehicular, marine, and pedestrian traffic, operations of railroads, and occupant and consumer entrance to and exit from adjacent buildings and property. The Contractor shall have due regard to the location of detours and to the provisions for handling traffic. The Contractor shall not open up work to the prejudice or detriment of work already started.
- B. Public ways shall be maintained clean and clear of spillage from trucks hauling concrete, excavated material, fill, and other construction materials to and from the construction site. Demolition materials, excavation, and other materials hauled to and from the site shall be contained in enclosed vehicles that will prevent spillage onto streets.
 - 1. The Contractor shall make maximum effort to minimize the amount of traffic to and from the site, which may include scheduling of deliveries, maximizing loads per delivery or other measures as may be required to avoid public nuisance.
 - 2. Maintain the existing pedestrian crosswalks and pedestrian sidewalk circulation.
- C. Maintenance of Marine Traffic
 - 1. Where the Work involves dredging, other construction activities, or the use of floating equipment in navigable waters, the Work shall be so conducted as to cause no unnecessary delay or obstruction to the free passage of marine traffic.
 - 2. The Work shall be conducted in accordance with the applicable regulations of the United States Army Corps of Engineers and the United States Coast Guard.

6.05 CHARACTER OF WORKMEN, METHODS AND EQUIPMENT

- A. The Contractor shall at all times employ sufficient labor and equipment to prosecute the several classes of work to full completion in the manner and time required by the Contract Documents.
- B. The Contractor shall provide all cutting, fitting, and patching of the work that may be required to make its several parts fit together properly, and shall not endanger any work by cutting, excavating, or otherwise altering the work in any part thereof.
- C. The Contractor shall employ only competent persons and subcontractors to do the Work. In addition, the Contractor shall hire persons, who, in the opinion of the Engineer are well qualified to direct, advise or perform certain specialized types of work as described in the Specifications.

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- D. All workmen shall have sufficient skill and experience to perform the Work assigned to them. Workmen engaged in special work or skilled work shall have sufficient experience in such work and in the operations of the equipment required to perform all work properly and satisfactorily.
- E. Any person employed by the Contractor or by any subcontractor who, in the Engineer's judgement, does not perform the work in a proper and skilled manner or is intemperate or disorderly or otherwise unsatisfactory or not employed in accordance with the provisions of Article 5.25, shall at the written request of the Engineer, be removed by the Contractor or subcontractor employing such person, and shall not be employed again in any portion of the Work without the approval of the Engineer.
- F. Should the Contractor fail to take the necessary action to remove such person or persons as required above, or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work, the Engineer may suspend the Work by written notice until such orders are complied with.
- G. The Contractor shall employ engineers registered in the Commonwealth of Massachusetts, qualified superintendents, foremen, and other supervisory employees to plan all construction operations and to represent the Contractor at all of the several parts of the Work and they shall be present at all times while the Work entrusted to them is in progress and shall be informed thoroughly regarding the Work.
- H. All equipment used on the Work shall be of sufficient size and in such mechanical condition as to meet the requirements of the Work and to produce a satisfactory quality of work. Equipment used on any portion of the Work shall be such that no injury to city streets, highways, or adjacent property will result from its use.
- I. When methods and equipment to be used by the Contractor in accomplishing the construction are not prescribed in the Contract, the Contractor may use any methods or equipment that demonstrate to the satisfaction of the Engineer the ability to accomplish the Work in conformity with the requirements of the Contract.
- J. When the Contract Documents specify the methods and equipment by which the construction shall be performed, such methods and equipment shall be used unless otherwise authorized in writing by the Engineer. If the Contractor desires to use a method or type of equipment other than that specified, such approval should be requested in writing from the Engineer. The request shall include a full description of the methods and equipment proposed to be used as an explanation of the reasons for desiring to make the change. If written approval is given, it will be on the condition that the Contractor shall be fully responsible for producing construction work in conformity with the Contract requirements. If after trial use of the substituted methods or equipment, the Engineer determines that the Work produced does not meet Contract requirements, the Contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the specified methods and equipment. The

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Contractor shall remove the deficient Work and replace it with Work of specified quality, or take such other corrective action as the Engineer may direct. No changes will be made in basis of payment for the construction items involved nor in Contract time as a result of authorizing a change in methods or equipment under these provisions.

6.06 DELAY AND SUSPENSION OF WORK

- A. The Engineer has the authority to delay the commencement of the Work and delay or suspend any portion thereof, for such period or periods as it may be deemed necessary, because of conditions beyond the control of the Commission or the Contractor, for the failure of the Contractor to correct conditions unsafe for the general public; for failure to carry out provisions of the Contract; for failure to carry out orders; for causes and conditions considered unsuitable for the prosecution of the Work; for acts of third persons not a party to the Contract; or for any other cause, condition, or reason deemed to be in the public interest.

- B. Upon receipt of written order of the Engineer, the Contractor shall immediately delay the commencement of the Work or delay or suspend any portion thereof in accordance with said order. Work shall not be suspended or delayed without prior written approval or order of the Engineer. The work shall be resumed when conditions warrant or deficiencies have been corrected and the conditions of the Contract satisfied as ordered or approved in writing by the Engineer. The Contractor's attention is also directed to the requirements of Article 5.21 and the public safety and convenience requirements of Sections of Division 1, General Requirements, that shall govern during any period of temporary or partial suspension of work.

6.07 CLAIM FOR DELAY OR SUSPENSION OF WORK

- A. The Contractor shall have no claim for damages of any kind due to any delay in commencement of the Work or any delay or suspension of any portion thereof, except as hereinafter provided.
 - 1. Attention is directed to Section 39O of Chapter 30 of the General Laws of the Commonwealth which requires that every contract subject to the provisions of Section 39M of Chapter 30 contain the following provisions "a" and "b" in their entirety and, in the event of suspension, delay, interruption, or failure to act by the Commission increases the cost of performance to any subcontractor, that subcontractor shall have the same rights against the Contractor for payment for an increase in the cost of his performance as provisions "a" and "b" give the Contractor against the Commission, but nothing in provisions "a" and "b" shall in any change, modify, or alter any other rights which the Contractor or the subcontractor may have against each other.
 - a. The Commission may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of the Commission; provided, however, that if there is a suspension, delay, or interruption for 15 days or more or due to a failure of the

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Commission to act within the time specified in the Contract, the Commission will make an adjustment in the Contract price for any increase in the cost of the Contract but shall not include any profit to the Contractor on such increases; and provided further, that the Commission will not make any adjustment in the Contract price under this provision for any suspension, delay, interruption, or failure to act to the extent that such is due to any cause for which this Contract provides for an equitable adjustment of the Contract price under any other Contract provision.

- b. The Contractor shall submit the amount of a claim under provision "a" to the Commission in writing as soon as practicable after the end of the suspension, delay, interruption, or failure to act and, in any event, not later than the date of final payment under the Contract and, except for costs due to a suspension order, the Commission shall not approve any costs in the claim incurred more than 20 days before the Contractor notified the Commission in writing of the act or failure to act involved in the claim.

6.08 DETERMINATION AND EXTENSION OF CONTRACT TIME FOR COMPLETION

- A. The Contractor shall complete, entirely, and in an acceptable manner, the Work required under the Contract within the time stated in the Bid Form, except that the Contract time for completion shall be adjusted as follows:
 1. If the Contract is not awarded as contemplated by the Instructions to Bidders, then the number of days allowed for the completion of the Work will be computed from the date of mailing of the executed Contract to the Contractor or the date on which the Contractor was directed to commence Work whichever is later. If the Contract specifies a specific calendar date for completion and the Contract is not awarded as contemplated by the Instructions to Bidders, then the Contractor will be entitled to an extension of time equivalent to the number of days elapsed from 60 days (45 days if Federal funds are involved) after the opening of bids up to and including the day of mailing of the executed Contract by the Commission or the date on which the Contractor was directed to commence Work whichever is later.
 2. In case commencement of Work is delayed or any part thereof is delayed or suspended by the Commission (except for unsuitable weather, winter months, or reasons caused by the fault or neglect of the Contractor), the Contractor will be granted an extension of time in which to complete the Work or any portion of the Work required under the Contract equivalent to the duration of the delay less a reasonable period of time within which the Contractor could have done necessary preliminary work.
 3. When delay occurs due to reasonable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to "Acts of God," to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing, acts of the Government, acts of the state or any

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political subdivision thereof, acts of other contracting parties over whose acts the Contractor has no control, fires, floods, epidemics, abnormal tides, (not including spring tides), severe coastal storms accompanied by high winds or abnormal tides, freezing of streams and harbors, abnormal time of winter freezing or spring thawing, interference from recreational boat traffic, use of beaches and recreational facilities for recreational purposes during the summer season, abnormal ship docking and berthing, unanticipated use of wharves and storage sheds, strikes except those caused by improper acts or omissions of the Contractor, extraordinary delays in delivery of materials caused by strikes, lockouts, wrecks, freight embargoes, the time for completion of the Work shall be extended as determined by the Engineer to be equitable.

4. An "Act of God" as used in this Article is understood to imply an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of the Contractor to foresee or make preparation in defense of. A rain, windstorm or other natural phenomenon of normal intensity, based on United States Weather Bureau reports, for the particular locality and for the particular season of the year in which the Work is being prosecuted, shall not be construed as an "Act of God" and no extension of time will be granted for delays resulting therefrom. Within the scope of acts of the Government, consideration will be given to properly documented evidence that the Contractor has been delayed in obtaining any material or class of labor because of any assignment of preference ratings by the Federal Government or its agencies to other contracts.
 5. In case the Work is delayed by public or private utility owners or municipal departments, see Article 3.05.
 6. Each Extra Work Order or Change Order as issued will include a statement of additional time, if any, that is agreed upon by the Contractor and the Engineer required for the completion of the Contract by reason of this Extra Work Order or Change Order, and no other time allowance due to the performance of the Work covered by such Extra Work Order or Change Order will be allowed.
- B. An extension of time will not be granted for any delay or any suspension of the Work due to the fault of the Contractor, nor if a written request for an extension of time on account of delay due to any of the aforesaid causes is not filed within 15 days of the date of the commencement of the delay nor if the request is based on any claim that the Contract period as originally established was inadequate.
 - C. Contract period has been carefully considered and has been established for reasons of importance to the Commission. This time limit will be enforced.
 - D. The probable slow-down or curtailment of Work during inclement weather and winter months has been taken into consideration in determining the total time required to complete the Contract; hence no extension of time will be allowed due to this reason.

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1. No extension of time will be allowed for winter conditions and weather conditions, except as described in Article 6.08.A.3.

6.09 FAILURE TO COMPLETE WORK ON TIME

- A. On or before the expiration of the calendar days stated in Article 6.02 appearing herein before completion, or the date to which the time of completion will have been extended under the provisions of Article 6.08, the Work shall have been performed in accordance with the terms of the Contract. The time in which the various portions and whole of the Contract are to be provided and the Work is to be completed is an essential part of the Contract. The Contractor shall be responsible for and shall compensate the Commission in full for all costs incurred by the Commission due to the failure of the Contractor to complete all the work specified within the period of time as specified in Article 6.02; and for the case of the failure of the Contractor to complete the entire work within the time fixed in the Contract or any extension thereof.

- B. In case the Work has not been substantially and physically completed by the time stipulated in the Contract Specification (or by the date in which the completion time may have been extended in accordance with Article 6.08), the Contractor shall pay to the Commission a designated sum per day for the entire period of overrun in accordance with the following Schedule of deductions unless a different amount is stated in the Supplementary Conditions.

SCHEDULE OF DEDUCTIONS

VALUE OF CONTRACT

FOR MORE THAN	TO AND INCLUDING	CHARGES PER CALENDAR DAY
\$0	\$25,000	\$60
\$25,000	\$50,000	\$150
\$50,000	\$100,000	\$225
\$100,000	\$500,000	\$300
\$500,000	\$1,000,000	\$450
\$1,000,000	\$2,000,000	\$600
\$2,000,000	\$3,000,000	\$900
\$3,000,000	\$3,500,000	\$1,050
\$3,500,000	\$4,000,000	\$1,200
\$4,000,000	\$4,500,000	\$1,350
\$4,500,000	\$5,000,000	\$1,500
\$5,000,000		\$2,000

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- C. Whatever the sum of money may become due and payable to the Commission by the Contractor under this Article may be retained out of money belonging to the Contractor in the hands and possession of the Commission. This Article shall be construed and treated by the parties to the Contract not as imposing a penalty upon the Contractor for failing fully to complete the Work as agreed on or before the time specified in the Contract Specification (as it may have been extended in accordance with Article 6.08), but as liquidated damages to compensate the Commission for all additional costs incurred by the Commission because of the failure of the Contractor fully to complete said Work on or before the date of completion specified in the Contract Specification (as it may have been extended).
- D. Permitting the Contractor to continue and finish the Work or any part of it after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall not operate as a waiver on the part of the Commission of any of its rights under the Contract.

6.10 TERMINATION OF CONTRACT

- A. If the Contractor shall be adjudged bankrupt, or make a general assignment for the benefit of creditors, or if a receiver shall be appointed of the Contractor's property, or if the work to be done under the Contract shall be abandoned, or if the Contract or any part thereof shall be sublet without the previous written consent of the Commission, or if the Contract or any claim thereunder shall be assigned by the Contractor otherwise than as herein specified, or at any time the Engineer certifies in writing to the Commission that the Work, or any part thereof, is unnecessarily or unreasonably delayed, or that the Contractor has violated any of the provisions of the Contract, the Commission may, by written notice, instruct the Contractor to discontinue the Work, or any part thereof, and thereupon the Contractor shall discontinue such Work or such part thereof, as the Commission may designate, and the Commission will require the Surety or Sureties to complete the Contract.
- B. If the Engineer determines that the rate of progress as reflected by the Contractor's CPM submitted and approved in accordance with the requirements specified in the Sections of Division 1, General Requirements, is not satisfactory, the Commission, instead of notifying the Contractor to discontinue the Work or any part thereof, may notify the Contractor from time to time to increase the force, equipment, and plant, or any of them, employed on the whole or any part of the Work, stating the amount of increase required; and unless the Contractor shall, within 5 working days after such notice, increase such force, equipment, and plant to the extent required therein, and maintain and employ the same from day to day until the completion of the Work or such part thereof or until the conditions as to the rate of progress shall, in the Engineer's judgement, be fulfilled; or unless the Contractor submits and receives approval of a revised CPM indicating the Work being completed on time, the Commission may employ and direct the labors of such additional force, equipment, and plant as may, in the Engineer's judgement, be necessary to insure the completion of the Work or such part thereof within the time specified, or at the earliest possible date

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thereafter, and charge the expense thereof to the Contractor. Neither the notice from the Commission to the Contractor, to increase the force, equipment, or plant, nor the employment of additional force, equipment, or plant by the Commission shall be held to prevent a subsequent notice from the Commission to the Contractor to discontinue Work under the provisions of the preceding portion of this Article.

- C. The Engineer may exercise the rights under this paragraph to rectify adverse conditions described in Article 3.10 and Article 4.04, and/or notify the Contractor's bonding company to take the necessary appropriate action to remedy the situation. It shall be understood that when the Commission exercises its rights hereinbefore described, the breach of Contract by the Contractor does not itself constitute termination unless stipulated by the Commission. The Contractor shall, as directed by the Engineer, continue other works of the Contract.
- D. All expenses charged under this Article will be deducted and paid by the Commission out of any moneys then due or to become due the Contractor under the Contract, or any part thereof, and in such accounting, the Commission will not be held to obtain the lowest figures for the Work of completing the Contract or any part thereof, or for insuring its proper completion, but all sums actually paid therefor shall be charged to the Contractor. In case the expenses so charges are less than the sum which would have been payable under the Contract if the same had been completed by the Contractor, the Contractor will be entitled to receive the difference; and in case such expenses shall exceed the said sum, the Contractor shall pay the amount of the excess to the Commission upon completion of the Work without further demand being made therefor.

6.11 TERMINATION FOR CONVENIENCE

- A. If the Commission determines that it is in the public interest to do so, the Commission may notify the Contractor to discontinue all work, or any part thereof. Such notice shall be given to the Contractor in writing and thereupon the Contractor shall discontinue such work, or such part thereof, as the Commission may designate.
- B. If the Commission notifies the Contractor to discontinue all work, or any part thereof, the Commission shall pay and the Contractor shall accept, as full payment for all work done and materials provided, the following sums:
 - 1. For all completed items of work for which there are unit prices provided in the Contract.
 - a. The original contract unit prices.
 - 2. For all work on partially completed items.
 - a. A sum agreed to by the Contractor and the Engineer; or
 - b. The sum of items i through vi.

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- i. The actual cost for direct labor, materials (less salvage value, if any) and use of equipment plus 10 percent of this total for overhead; and
 - ii. The actual cost for Worker's Compensation and Employer's Liability Insurance, Health, Welfare and Pension Benefits, Social Security Deduction, and Employment Security Benefits; and
 - iii. Six percent of the total of i and ii for profit; and
 - iv. The estimated proportionate cost of surety bonds; and
 - v. The actual cost to the Contractor for work performed by a subcontractor plus 10 percent of such cost.
 - vi. No allowance will be made for general superintendence and the use of small tools and manual equipment.
3. For costs of settlement as:
- a. Reasonable and necessary accounting, legal, clerical and other costs of work discontinuance; and reasonable and necessary storage, transportation and other costs incurred for the preservation, protection or disposition of the discontinued work.
 - b. When requested by the Commission, the Contractor shall furnish itemized statements of the cost of the work performed and shall give the Commission access to all accounts, bills and vouchers relating thereto and unless the Contractor, when requested, shall furnish such itemized statements and access to all accounts, bills and vouchers, he shall not be entitled to payment for the work for which such information is sought by the Commission.
 - c. The Contractor shall not be paid and the Contractor shall not have any claims for loss of anticipated profits, for loss of expected reimbursement or for any increased expenses resulting directly or indirectly from the discontinuance of any or all work or from unbalanced allocations, among the Contract items, of overhead expense on the part of the Bidder and subsequent loss of expected reimbursement therefore or for any other cause.
 - d. The Contractor shall incorporate the provisions of this Article and provisions in its Contracts with each of its subcontractors.

6.12 CLAIM FOR INEFFICIENCIES

- A. The Contractor shall have no claim for inefficiencies of any kind due to items including, but not limited to, the work, operations or schedule of this Contract or adjacent contracts, except as hereinafter provided.

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1. The cost of the work as related to inefficiencies shall be included with all other costs as associated with the Extra Work as authorized by the Extra Work Order and included in the Change Order.
2. Additional claims for inefficiencies shall be brought by the Contractor within 30 days of the start of the work as authorized by the Extra Work Order.
 - a. Inefficiency claims brought by the Contractor after the 30 day period will be rejected by the Commission and the Engineer.

END OF ARTICLE 6

ARTICLE 7 - MEASUREMENT AND PAYMENT

7.01 MEASUREMENT OF QUANTITIES

- A. Quantities of various items of work shall be determined, for purposes of payment, by the Engineer and by the Contractor. Measurements will be made according to United States standard units of measurement.
- B. Upon completion of the Work and before final payment is made the Engineer will make final measurements to determine quantities of various items of work performed as the basis for final settlement. Measurements will be made according to United States standard units of measurement.
- C. Method of measurement and computations to be used in determination of quantities of material furnished and of work provided under the Contract will be those methods generally recognized as conforming to good engineering practice.
- D. The Contractor shall provide assistance to the Engineer, as requested by the Engineer, for the purpose of the measurement of quantities, at no additional cost to the Commission.

7.02 SCOPE OF PAYMENTS

- A. The Commission will pay and the Contractor shall receive and accept the compensation as provided in the Schedule of Bid Items, in full payment for furnishing all materials, labor, tools and equipment, and for performing all work contemplated and embraced under the Contract; also for all loss or damage arising out of the nature of the Work, or from the action of the elements (except as specified in Article 5.21), or from any unforeseen difficulties or obstructions which may arise or be encountered during the prosecution of the Work (except as set forth in Article 2.09) until its final approval by the Commission, and for all risks of every description connected with the prosecution of the Work; also for all expenses incurred by or in consequence of the suspension or discontinuance of the said prosecution of the Work (except as provided in Article 6.07), and for any infringement of patent, trademark or copyright, and for completing the Work in an acceptable manner according to the Contract Documents.
- B. Payment of any current estimate or any retainage percentage shall in no way constitute an acknowledgement of the acceptance of the Work or in no way or degree prejudice or affect the obligation of the Contractor, at his own cost and expense, to repair, correct, renew or replace any defects and imperfections in the construction of, or in the strength of, or quality of materials used in or about the construction of the Work under Contract and its appurtenances, as well as damages due or attributable to such defects; which defects, imperfections or damages shall have been discovered on or before the expiration of the guaranty period specified in Article 2.08. The Engineer shall be the sole judge of such defects, imperfections, or damages and the Contractor shall be liable to the Commission for failure to correct the same as provided herein. Also, see Article 5.24.
- C. If the requirements of the Measurement and Payment Part or Article in the Contract Specifications relating to any price in the Schedule of Bid Items requires

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that said price cover and be considered compensation for certain work or material essential to the item, this same work or material will not also be measured or paid for under any other pay item which may appear elsewhere in the Contract Specifications.

- D. Except as specifically provided otherwise, no separate payment will be made for any work in fulfillment of the requirements specified in the Sections of Division 1, General Requirements, and all costs thereof shall be included in the various prices bid or the pay items shown in the Schedule of Bid Items.

7.03 COMPENSATION FOR ALTERED QUANTITIES

- A. When the accepted quantities of Work vary from the estimated quantities set forth in the Contract, and whether or not there have been any changes to the Contract Drawings, the Contractor shall accept as payment in full, so far as Contract items are concern, payment at the original Contract prices for the accepted quantities of work done. No allowance or other adjustment except as provided in Article 2.05 shall be made for any increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor resulting either directly from such alterations or indirectly from unbalanced allocation among the Contract items of overhead expense on the part of the Contractor and subsequent loss of expected reimbursements therefor or from any other cause except the said payment for the actual quantity done at the original Contract unit price.
- B. Alteration of the Contract Drawings or of the character of work involving Supplemental Agreements or Extra Work Orders as provided in Article 2.02 and 2.03 will be paid for at the prices for such items set forth therein. If prices can not be agreed upon, the Contractor shall proceed with the performance of the work on a force account basis in accordance with the Article 7.04.B.

7.04 PAYMENT FOR EXTRA WORK

- A. Payment for work for which there is a unit price provided for in the Contract:
1. Where the Contract contains a unit price for work and the Engineer orders Extra Work for work of the same kind as other work contained in the Contract and it is provided under similar physical conditions, the Contractor shall accept full and final payment at the Contract unit prices for the accepted quantities of Extra Work done.
 2. No allowance will be made for any increased expenses or any damages whatsoever.
- B. Payment for work or materials for which no price is contained in the Contract.
1. If the Engineer directs, the Contractor shall submit promptly in writing to the Engineer an offer to do the required work on a lump sum or unit price basis, as specified by the Engineer. Unless otherwise directed, the stated price shall be divided so as to show that it is the sum of: (a) estimated cost of direct labor, materials, and the use of equipment, plus 10 percent

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of this total for overhead; (b) actual cost of Workmen's Compensation and Employer's Liability Insurance, Health, Welfare and Pension Benefits, Social Security deductions, and Employment Security Benefits and such additional fringe benefits which the Contractor is required to pay as a result of Union Labor Agreements and/or is required by authorized governmental agencies; (c) a reasonable percent of the total (a) and (b) shall be negotiated for profit utilizing the procedure outlined under this Article, paragraph B.3; (d) the estimated proportionate cost of surety bonds.

2. Unless an agreed lump sum and/or unit price is obtained from above and is so stated in a Supplemental Agreement or an Extra Work Order the Contractor shall accept as full payment for work or materials for which no price agreement is contained in the Contract an amount equal to the following: (a) the actual cost for direct labor, material (less value of salvage, if any) and use of equipment (see below), plus 10 percent of this total for overhead; (b) actual cost of Workmen's Compensation and Employer's Liability Insurance, Health, Welfare and Pension Benefits, Social Security deductions, and Employment Security Benefits and such additional fringe benefits which the Contractor is required to pay as a result of Union Labor Agreements and/or is required by authorized governmental agencies; (c) a reasonable percent of the total (a) and (b) shall be negotiated for profit utilizing the procedure outlined under this Article, paragraph B.3; (d) the estimated proportionate cost of surety bonds. The actual cost of use of equipment (except small tools and manual equipment) will be the actual and necessary operating expenses of such power equipment and fuel for the same, and a reasonable rental for the same as determined by the Engineer.

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3. A reasonable percent of the total (a) and (b) for Items 1 and 2 above shall be negotiated for profit on each Extra Work Order utilizing the following weighted guidelines:

(a) Breakdown:

PROFIT CALCULATION SUMMARY CHART

FACTOR	WEIGHT (W)	RATE FACTOR	PROFIT VALUE
		(R=0.03 to 0.08)	
1. Degree of Risk			
General Issues of Concern	10 x		=
Labor Productivity	15 x		=
Pricing	15 x		=
Availability of Materials	5 x		=
2. Relative Difficulty of Work	15 x		=
3. Size of Job	15 x		=
4. Period of Performance	15 x		=
5. Subcontracting	10 x		=
TOTAL	100		

- (b) Based on the Factors for each Work Order, the Weight (W) for each Factor shall have a Rate Factor (R) from 0.03 to 0.08 as indicated below. The Profit Value (V) shall be obtained by multiplying the Rate Factor (R) by the Weight (W). The sum of the Profit Value column represents the fair and reasonable profit percentage as determined by the Factors of the particular Extra Work Order.

DEFINITION OF PROFIT RATE FACTORS

1. Degree of Risk:

Where the work associated with a Extra Work Order involves no risk to the Contractor, or the degree of risk is very small, the Rate Factor should be 0.03; as the degree of risk increases, the Rate Factor should be increased up to a maximum of 0.08. The Degree of Risk has been determined to include but not limited to the following major factors:

- a. General Issues of Concern
- b. Labor Productivity
- c. Pricing
- d. Availability of Materials

2. Relative Difficulty of the Work Involved:

If the modified work is most difficult and complex the Rate Factor should be 0.08 and should be proportionately reduced to 0.03 on the simplest of jobs.

3. Size of Job:

If the sum of the modified work (direct costs) is not in excess of 5 percent of the base Contract work or \$25,000, the Rate Factor shall be 0.08. Work greater than 10 percent of the base Contract Work or \$50,000 shall have a Rate Factor of 0.03. Work estimated between 5 percent (\$25,000) and 10 percent (\$50,000) shall be proportionately rated from 0.08 to 0.03.

4. Period of Performance:

A change during the early phases of a contract shall have a Rate Factor of 0.03 and should be proportionately increased to 0.08 as the period of impact approaches the substantial completion.

Additionally, the Rate Factor shall be 0.03 for a time extension less than 10 days to a defined Milestone and as the potential time extension to a defined milestone increases the Rate Factor shall also proportionately increase to 0.08.

5. Subcontracting:

The Rate Factor shall be inversely proportional to the amount of subcontracting. Where 66 percent or more of the Work is to be subcontracted, the Rate Factor shall be 0.08 and where 90 percent to 100 percent of the Work is performed by the Contractor's own forces the Rate Factor shall be 0.03. If the amount of subcontracting is estimated between 11 percent and 65 percent of the Work, the Rate Factor shall be proportionately rated from 0.08 to 0.03.

6. Equipment Rates:

In the event there arises the need for determination of costs for use of equipment as part of "actual costs" or "cost of performance" or "damages" under Articles

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2.09, 5.19, 6.07, 7.02 and/or 7.04; or under Chapter 30 of the General Laws of the Commonwealth, such costs for use of equipment shall be established in accordance with the following:

1. "Construction equipment" as used herein means equipment in sound workable condition, either owned or controlled by the Contractor or the subcontractor at any tier, or obtained from a commercial rental source, and furnished for use under the Contract.
2. Allowable hourly ownership and operating costs for Contractor owned or subcontractor owned equipment shall be determined as follows:
 - a. Actual cost data from the Contractor's accounting and operating records shall be used whenever such data can be determined for hourly ownership and operating costs for each piece of equipment, or groups of similar serial or series equipment. Actual costs shall be limited to booked costs of the annual accounting period or periods during which the equipment was utilized on the Contract, and will not include estimated costs not recorded and identifiable in the Contractor's formal accounting records. The Contractor shall afford Commission auditors full access to all accounting, equipment usage, and other records necessary for development or confirmation of actual hourly cost rates for each piece of equipment, or groups of similar serial or series equipment. The Contractor's refusal to give such full access shall invalidate any request or claim for payment of the equipment costs. When costs cannot be determined from the Contractor's records, hourly equipment cost rates may be determined under "b" below.
 - b. When the Engineer ascertains that it is not practicable to determine actual equipment cost rates or elements thereof from the Contractor's records, hourly equipment cost rates or elements shall be determined by the use of rate schedules or the formula developed from the "Rental Rate Blue Book" (Volume 1) published by Dataquest, Inc.:
 - (1) Hourly rates shall be developed by dividing monthly rates by 176 hours per month (the "weekly," "hourly" and "daily" rates listed in the "Blue Book" will not be used);
 - (2) Rates shall in all cases be adjusted by application of Rate Adjustment Tables (machine age adjustment) plus adjustment to eliminate Equipment Overhead plus Regional Adjustment; and
 - (3) Rates shall be further reduced by 20 percent to eliminate duplicate and excessive costs, except that the rates shall instead be reduced by 75 percent to determine standby rates.

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The number of hours to be paid for shall be the number of hours that the equipment is actually used on a specific force account activity. The "current revisions" to the Blue Book will be used in establishing rates. The "current revision" applicable to specific force account work will be the "current revision" as of the first day of work performed on that force account work and that rate will apply throughout the period the force account work is being performed. In all cases, the Engineer reserves the right to utilize, in preference to Blue Book rates, equipment cost rates based upon actual costs per accounting records or hybrid rates as described above.

- c. In those cases where a 10 percent additive for overhead is to be superimposed on the equipment costs provided in Article 2.09, and this Article, equipment cost rates determined under (a) and (b) shall exclude any overhead costs such as equipment insurance, licenses or taxes. The 10 percent additive shall compensate the Contractor for all overhead costs, including equipment overhead, general superintendence, small tools, manual equipment, field overhead and central office overhead. Where the 10 percent overhead additive is not applicable, overhead items clearly related to equipment, (equipment insurance, licenses, taxes), shall be included in the equipment rates; provided, however, that such costs shall be identified and eliminated from any other direct or indirect costs or damages payable by the Commission under the Contract. No element of profit shall be allowable in equipment cost rates for Contractor owned equipment; it being understood that a reasonable percent of profit in accordance with paragraph B, item 3, of this Article will be superimposed upon equipment costs when called for by the Contract.
3. Reasonable hourly costs of renting equipment are allowable subject to Contractor providing auditable records supporting actual costs incurred, provided further that:
 - a. Costs such as fuel, lubricants, and minor or running repairs incident to operating such rented equipment that are not included in the rental rate are allowable.
 - b. Costs incident to major repair and overhaul of rental equipment are not allowed.
 - c. Charges for equipment leased or rented from any division, subsidiary organization under common control, or business under common ownership, ordinarily will be reimbursable to the extent that they do not exceed the actual costs of ownership and operating costs determined as in "2", above. Rental cost of equipment leased or rented from any division, subsidiary, affiliate of the Contractor under common control, or business under common ownership, that has an established practice of renting out

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the same or similar equipment to unaffiliated parties, shall be allowed at rates higher than actual ownership and operating costs, provided that the Contractor furnishes the Commission adequate documentation, including the rental and usage records for the same or similar equipment items, demonstrating a reasonable likelihood that the equipment would have been rented out if not used on this Contract, and that the rental rates charged are consistent with rates charged to unaffiliated parties and going market rates. Rental costs under a sale and leaseback arrangement will be allowable only up to the amount the Contractor would be allowed if the Contractor retained title.

4. Equipment cost rates determined in "2" and "3" above shall be exclusive of labor cost of equipment operators. Such costs shall be reimbursable subject to Contractor production of auditable payroll and other records sufficient for determination of hours, pay rates, and reimbursable fringe costs as defined in Article 2.09 and above.
 5. Except in cases of unit price or lump sum Extra Work Orders approved by the Engineer before the work is done, actual reimbursable hours of equipment usage and operator time must be adequately documented by the Contractor's field and office records maintained during performance of the work in a manner acceptable to the Engineer. Failure of the Contractor to so maintain time records which adequately segregate added equipment hours caused by Extra Work required by the Engineer, or caused by other Commission actions cited in the Contractor's claim for damages, from other equipment time worked on the Contract, when maintenance of such records would have been feasible, shall constitute a cardinal omission of the Contractor, invalidating any claim for equipment cost reimbursement.
- C. Payment for specialized engineering services which may be required in the performance of Extra Work and which is not otherwise provided for in the Contract shall be for actual costs to be incurred that comply with the standards of the Federal Acquisition Regulations, Part 31, including (a) direct labor based on hours worked on the Contract at the hourly rates paid; (b) overhead costs based on audited financial statements and other data as may be required by the Commission; (c) 10 percent of the total of (a) and (b); and (d) other direct expenses related to the Contract.

7.05 OMITTED ITEMS

- A. Should any item or items of Contract Work be determined unnecessary for the proper completion of the Work, the Commission may, upon written notice to the Contractor, eliminate such item or items from the Contract and allowance will not be made for such items so eliminated in making final payment to the Contractor, except for such actual work as shall be done and materials purchased, including the cost of moving in and out the special equipment necessary for work on the eliminated item or items, prior to notification of the elimination of such item or items. The amount of the credit to the Commission shall be determined in a similar manner as described in Article 7.04.

7.06 PARTIAL PAYMENTS

- A. Monthly, the Engineer will make an estimate in writing of the total amount of the work done to the date of such estimate and the value thereof, including advance payments on products/materials stored or on hand but not yet incorporated in the Work which may be made as provided in Article 7.07. The Commission will retain the following from these payments:
1. Five percent of the approved amount of the payment to secure satisfactory performance of the Contract Work.
 2. An amount sufficient to cover claims it has against the Contractor.
 3. An amount sufficient to cover all demands for direct payment filed by subcontractors under Section 39F of Chapter 30 of the General Laws of the Commonwealth.
 4. Five percent of the value of all items to be planted in the ground.

The Commission will pay monthly to the Contractor while carrying on the Work the balance not retained as hereinbefore provided. No such estimates or payment shall be required to be made when, in the Engineer's judgement, the Work is not proceeding in accordance with the provisions of the Contract, or when in the Engineer's judgement the total value of the Work done since the last estimate amounts to less than \$500.00.

- B. The Commission may, at its option, after 50 percent of the Work has been completed and (1) if the Work is proceeding in accordance with the approved CPM Construction Plan submitted under the requirements specified in the Sections of Division 1, General Requirements, and (2) is being performed in accordance with the Contract Documents, not retain the 5 percent to secure satisfactory performance of the Contract Work as provided in Article 7.06.A on any subsequent payments. However, if the Commission does not retain these monies, it will reimpose this 5 percent retainage on all subsequent payments should the Contractor fail to maintain progress in accordance with the Contract and approved schedule or fail to execute the Work as required by the Contract Documents. Retainages withheld under Articles 7.06.A.2 and 7.06.A.3 will remain in effect throughout the Contract Work period as detailed therein. Retainage withheld under Article 7.06.A.4 for plantings will be retained until Final Acceptance (see Article 7.09).
- C. Partial payments will be made on lump sum contracts and on lump sum items of a contract if the Contractor requests partial payment of such an item, in accordance with a schedule of the quantities and unit prices for the major components of a lump sum contract or of the lump sum items of a contract to be submitted by the Contractor and approved by the Engineer prior to making partial payments for such contract or for such items.
1. For lump sum contracts, this schedule of major components shall approximate the activities shown on the CPM Construction Plan required under the Sections of Division 1, General Requirements.

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2. Each component part shall be considered as including all its concomitance so that the total cost listed for the components is the contract cost for the item.
 3. Approval of the schedule by the Engineer shall not be considered as a guarantee to the Contractor that the quantities shown on the schedule are the approximate quantities actually included in the lump sum item.
 4. The schedule is only for the purpose of estimating partial payments and it shall not affect the Contract terms in any way.
- D. The Contractor shall certify in writing by means of a Certification of Work that the work for which payment is included in the estimate in question has in fact been done. The Certification of Work form shall be developed by the Contractor and approved by the Engineer. The Certification of Work form shall be completed and signed by an authorized representative of the Contractor and it shall be submitted to the Commission with each payment request.
- E. Whenever the Work is substantially complete, the Commission may, if it considers the amount retained to be in excess of the amount adequate for its protection, at its discretion, release to the Contractor all or a portion of such excess amount and may cause the Contractor to be paid such portion of the retainage as it deems prudent.
- F. When the first partial payment estimate is prepared, the Contractor shall submit to the Engineer a cash drawdown forecast indicating the estimated amount of each partial payment by month, projected through completion of the project. The Contractor shall, with each succeeding partial payment estimate, submit updated cash drawdown forecasts to the Engineer. The forecast is for the purpose of estimating cash requirements.
- G. The Contractor shall develop a Statement of Payment to Subcontractor Form and the Engineer shall approve the form. The Statement of Payment to Subcontractor Form shall be completed and signed by an authorized representative of the Contractor and it shall be submitted to the Commission with each payment request.

7.07 PAYMENT FOR PRODUCTS/MATERIALS STORED OR ON HAND

- A. When requested in writing by the Contractor allowance may be made on partial payments for certain products/materials stored or on hand, but not incorporated in the Work, subject to the following terms and conditions:
1. Upon presentation to the Engineer by the Contractor of copies of paid invoices, advance payments may be made for acceptable reinforcing steel, structural steel, piles, pipe, guard rail, precast concrete items, costly machinery items and other similar non-perishable products/materials purchased expressly for the Work and delivered to and stored in the approved storage places at the site, but which products/materials are not considered as installed, erected or complete in place under the terms of the Contract and for which partial payment would not otherwise be made

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until such items were installed, erected or complete in place.

2. The amount to be included in the estimate will be the value of the products/materials as shown on the certified copies of paid invoices including transportation and handling costs. However, the Engineer reserves the right to limit payment for such products/materials when payment is based upon a standard unit of measure. When Contract payments are made on the basis of estimated quantities, payment for products/materials stored or on hand may be limited to an amount not to exceed the value of 90 percent of the estimated Contract quantity.
3. Before any advance on products/materials is made as hereinbefore provided, the Commission will require, as security for the incorporation of the products/materials in the Work, documents from the Contractor transferring to the Commission the absolute legal title to such products/materials.
4. However, the transfer of title and the partial payment for such products/materials shall not in itself constitute acceptance of same nor void the right to reject products/materials subsequently found unsatisfactory as provided in Article 4.04, nor in any way relieve the Contractor of his responsibility for satisfactorily furnishing and installing/placing the products/materials in the Work in accordance with the terms of the Contract.
5. In the event any of such products/materials subsequently becomes lost, stolen, impaired or damaged the monetary value of the lost, stolen, impaired or damaged products/materials as may have been paid for in a current estimate will be deducted from the next estimate and no further payment will be made therefor until such products/materials have been satisfactorily replaced with products/materials conforming to the Specifications.
6. If it is impossible due to lack of area on the site or other valid reason, the Contractor may request in writing permission from the Engineer to store products/materials off the site and still have the products/materials paid for as products/materials on hand and the Engineer may approve payment. However, no advance payment for products/materials stored off the site will be made until written approval of the Engineer has been given. This request will state the reason(s) for the request, location of the storage area(s), and shall also state the methods that will be employed to insure that the products/materials are properly protected and the products/materials will be used on the Contract that the request is made for. The amount to be included in the estimate for products/materials stored off site will be limited to 80 percent of the value of the products/materials as shown by the certified copies of paid invoices including transportation and handling costs.
7. In the case of property not owned or controlled by the Commission, the Contractor shall also lease, or procure a lease, free from encumbrances to the Commission, such lease to be in a form approved by the

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Commission and to contain provisions for the protection and indemnification by the Contractor of the Commission, its employees and agents, against all claims by reason of such lease or by reason of anything done or permitted in or upon the leased site(s). The Contractor shall also take such steps as the Commission may require for the purpose of security and assuring to the Commission the control of such products/materials, particularly the right to enter upon the property, take possession of such products/materials and use the same.

- a. No advance payment for products/materials stored or on hand, but not incorporated in the Work, will be made in an estimate when the value therefor amounts to less than \$10,000 per Contract Bid Item and represents the value of at least 50 percent of the estimated quantity involved as shown on the Schedule of Bid Items or as determined by the Engineer.
- b. Deductions at rates and in amounts that are equal to the advance payments will be made under the appropriate Contract Pay Items in estimates as the products/materials are incorporated in the Work.

7.08 SEMI-FINAL ESTIMATE

- A. A semi-final estimate may be made, at the discretion of the Commission, under the following conditions:
 1. If, after final inspection has been made, there are any payments or Extra Work items that are still in dispute between the Contractor and the Commission, either as to the quantity or value of work provided thereunder, such items or claims may be excluded from the final estimate, and payment for such disputed items may be deferred until such time as agreement has been reached between the Contractor and the Commission or until such claim has been adjudicated. In such case, a semi-final estimate shall be prepared within a period of 65 days after substantial completion of the Contract Work covering the value of Work provided and retained percentage on items of the Contract that are not in dispute and with disputed items or claims excluded but subject to deduction and retention of a sum sufficient to satisfy any and all outstanding claims or liens that have been duly filed by subcontractors and materialmen against the Contractor, or to cover amount of such claims or liens that may have been paid by the Commission directly to others for the Contractor's account (see Article 5.17), and subject to deduction and retention from such payment any other amounts to be deducted and retained in accordance with the terms of the Contract. The existence of a dispute between the Contractor and the Commission as to any payment item or items shall not be considered a valid reason for delaying preparation of a semi-final estimate as provided herein.
 2. In the event the Contract has been substantially completed and the Contract has been opened for operation or occupancy as directed in writing by the Commission, but final acceptance of the Work is subject to

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delay because of minor uncompleted items which do not impair the usefulness of the Contract, a semi-final estimate shall also be prepared within a like period of 65 days after the Contract has been substantially completed and opened for operation or occupancy. Such semi-final estimate shall include an estimate of the value of all Work provided in accordance with the terms of the Contract, including the amount of retained percentage withheld by the Commission from previous periodic payments, but excluding (a) the same deductions and retainage sufficient to cover subcontractors' and materialmen's claims and other amounts to be deducted and retained in accordance with the terms of the Contract as provided by the first paragraph of this Article; (b) an amount equal to the estimated value of the work remaining to be performed; and (c) any items or claims for Extra Work, or parts thereof, that may be in dispute; and payment for such excluded items or portions thereof, may be deferred until such remaining work has been satisfactorily completed, or in the case of disputed items or claims until such time as agreement has been reached thereon or such claims have been adjudicated.

7.09 FINAL ACCEPTANCE AND FINAL PAYMENT

- A. When all of the physical work covered by the Contract has been substantially completed (see Article 3.11), the Commission will inform the Contractor in writing of the date of such final acceptance. Upon said date the Contractor's responsibility shall cease except as provided in his Bond(s) and as provided in Articles 2.08 and 5.24.
- B. The Engineer shall, as soon as practicable after the satisfactory completion of the Contract, make a final estimate of the amount of Work done thereunder and the value of such Work. Within 65 days from and after the date the Work has been accepted by the Engineer, the Commission will forward to the Contractor a copy of the final estimate or semi-final estimate, as stipulated in Section 39G of Chapter 30 of the General Laws of the Commonwealth, which will include an agreement form for the Contractor's acceptance. After such acceptance has been filed with the Engineer, payments of the entire sum will be made, so found to be due thereunder after deducting therefrom all previous payments and all amounts to be kept and all amounts to be retained under the provisions of the Contract. All prior partial estimates and payments will be subject to correction in the final estimate and payment. If within 6 months from the date the final estimate is forwarded to the Contractor, the Contractor has not filed a valid, as determined by the Engineer, written reason(s) for not accepting the final estimate, the final estimate will be considered acceptable to the Contractor and payment of final estimate made.
- C. Acceptance by the Contractor of the final payment shall operate as and will be a release to the Commission and every member, agent and employee thereof, from all claims and liability to the Contractor for anything done or furnished for, or relating to, the Work, or for any act or neglect of the Commission or of any person relating to or affecting the Work, except the claim against the Commission for the remainder if any there be, of the amounts kept or retained to satisfy liens or claims pending against the Contractor.

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END OF ARTICLE 7

END OF SECTION

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SECTION 00800

SUPPLEMENTARY CONDITIONS

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SUPPLEMENTARY CONDITIONS

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SUPPLEMENTARY CONDITIONS

GENERAL

- A. Further supplementing the General Conditions, the following Supplementary Conditions will apply.
- B. References to Article Numbers in the following Supplementary Conditions unless otherwise stated are to the General Conditions. In case of conflict between these Supplementary Conditions and the General Conditions, these Supplementary Conditions will take precedence and shall govern.
- C. The Supplementary Conditions are included herein to augment the General Conditions, with additional requirements/information that is applicable to this project.
- D. The enforcement of the requirements of any of the following Supplementary Conditions of the General Conditions shall not be construed as waiving any of the rights of the Commission contained in any of the other conditions of the Contract.

ARTICLE 1 - DEFINITION OF TERMS

1.01 DEFINITION OF TERMS

- A. Add the following terms to the list of definitions:
 - 24.a. Design Engineer of the New Bedford Harbor Lower Harbor CAD Cell is Apex Companies, LLC, 1 Wamsutta Street, Suite 8, New Bedford, MA 02740.
 - 24.b. A Consultant has been retained by the Commission as engineering consultant during the construction of New Bedford Harbor Lower Harbor CAD Cell. The Consultant is Apex Companies, LLC, 1 Wamsutta Street, Suite 8, New Bedford, MA 02740.
 - 24.c. The New Bedford Harbor Development Commission designee acting on behalf of the Commission as Engineer for New Bedford Harbor Lower Harbor CAD Cell is Apex Companies, LLC, 1 Wamsutta Street, Suite 8, New Bedford, MA 02740
 - 24.d. The terms "Design Engineer," "Owner's Representative," "Owners Representative", "Consultant," and "Engineer" are interchangeable.
- 43. USEPA: The United States Environmental Protection Agency

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44. Remedial Project Manager for the USEPA: Representative from USEPA most responsible for administration of the Work associated with the Contract Documents. Contractor shall note that the RPM is not the Owner, nor the Owner's Representative; however, the RPM represents the ultimate funding source for the project (USEPA), and provides regulatory oversight for the project under CERCLA. The terms "RPM", "EPA RPM", or "EPA RPM, or his/her designee" are interchangeable with the term "Remedial Project Manager for the USEPA".

ARTICLE 2 - SCOPE OF WORK

2.01 - INTENT OF THE CONTRACT

- A. Add the following new paragraph:
- B. The intent of the dredging is to complete construction of the Lower Harbor CAD Cell, which is a part of the Record of Decision for USEPA. The Lower Harbor CAD Cell will be constructed in two phases. Lower Harbor CAD Cell Phase I will be constructed to hold the top of Lower Harbor CAD Cell Phase II. The Top of Lower Harbor CAD Cell Phase I will be placed into CAD Cell #2, after which the Bottom of Lower Harbor CAD Cell Phase I will be constructed. The Top of Lower Harbor CAD Cell Phase II will be placed into the completed Lower Harbor CAD Cell Phase I, after which the Bottom of Lower Harbor CAD Cell Phase II will be constructed. The Lower Harbor CAD Cell Phase II is intended to have a working capacity of approximately 300,000 cubic yards. The Lower Harbor CAD Cell Phase II will hold PCB contaminated material from the Superfund Cleanup. The Work of this project consists of dredging the sediment from the design footprint of the two phases of the proposed CAD Cell, north of Pope's Island, in New Bedford, Massachusetts. The Work includes temporary storage of dredge material on scows to allow for settling; removal, filtering and discharge of standing water. Several alternate locations are supplied for offsite disposal of the "Bottom" sediment from each of the two phases. The work includes removal and off-site disposal of debris and artificial obstructions encountered during the dredging operations.

2.02 - CHANGES IN THE WORK

- A. Add the following new paragraph.
- D. AIA Form G702, Change Order, will be used by the Commission for Change Order work.

2.04 - VALUE ENGINEERING - CONTRACTOR COST REDUCTION PROPOSALS (APPLICABLE TO CONTRACTS IN EXCESS OF \$200,000)

- A. Add to the end of the second paragraph of paragraph C the following text:

The cost incurred by the Commission will be recovered by the issuance of a Change Order to reimburse the Commission from monies due the Contractor and

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payable to the Contractor as shown on the monthly payment application.

- B. Add the following new paragraph.
 - H. All VECRP shall be submitted to the Engineer within seven days after the award of the Bid, prior to execution of the Contract.
 - 1. VECRP submitted after the seven day period and execution of the Contract will be rejected by the Commission and the Engineer.

2.08 - WARRANTY OF WORK

- A. Except where longer periods of warranty are specified for certain items, the Contractor warrants all Work done under the Contract to be free from faulty materials and workmanship for a period of one (1) year from date of acceptance thereof.

2.11 COMMUNITY RELATIONS

- A. Add the following new paragraph:
 - B. The Contractor shall attend public meetings associated with the Work. It is anticipated that the frequency of such meetings will be monthly at a minimum. The meetings are anticipated to take place in the evening within the City of New Bedford at a location to be determined. The Contractor shall provide a representative capable of describing the status of the ongoing Work and answering questions posed by the public regarding the project. The EPA Remedial Project Manager (RPM) shall determine the date and time of each public meeting and will transmit that information to the Contractor either directly or through the Owner's Representative. The Contractor shall receive no additional compensation for attendance at these meetings.

ARTICLE 3 - CONTROL OF WORK

3.03 - CONFORMITY WITH DRAWINGS AND SPECIFICATIONS

- A. Add the following new paragraphs:
 - G. The Contractor shall, without extra cost, make necessary modifications to prevent conflicts with the existing work of others or as necessary to insure a proper installation. This may require the preparation of composite drawings that are drawn to suitable scale and that show the necessary work to be done.

3.05 - COOPERATION BY CONTRACTOR

- A. Add the following new paragraph:
 - G. This Contract is expected to be proceeding concurrently with others in the vicinity and within the limit of the Contract. The Contractor shall cooperate fully with the other contractors in expediting the work of all. The Contractor shall secure and anchor the work and avoid damage to the work of the other contractors.

The Contractor shall not interfere with the harbor traffic, especially active traffic in the vicinity of the Route 6 Bridge. The Contractor shall coordinate with the Marine Superintendent of the New Bedford Harbor District Commission regarding the Route 6 Bridge operating schedule.

3.06 - ADJACENT CONTRACTS

- A. Add the following new paragraphs:
 - E. Listing of Adjacent Construction Contracts and Contracts Requiring Coordination
 - 1. The Contractor's attention is drawn to adjacent construction contracts that will be on going simultaneously with the New Bedford Harbor Lower Harbor CAD Cell and will require coordination. The other Adjacent Construction Contracts that will Require Coordination are as follows.

<u>Contract Name and Number</u>	<u>Description</u>
New Bedford Marine Commerce Terminal	Terminal that will involve construction of CAD Cell #3, and will dispose of material into CAD Cell #2. CAD Cell #3 will be adjacent to the work completed by the Contractor.

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Material placed within CAD Cell #2 may interfere with construction of CAD Cell #3 if placed inappropriately. Contractor shall coordinate closely with owner, engineer, and contractor associated with New Bedford Marine Commerce Terminal to prevent any interference with the New Bedford Marine Commerce Terminal project.

Route 6 Bridge Rehabilitation

Work on the Route 6 bridge by MassDOT

2. In addition to the above contracts, the Commission may put out for bid during this Contract period; other contracts to be coordinated with this Contract, including but not limited to, the following:

Contract Name
and Number

Description

None planned.

- F. The Contractor shall attend weekly coordination meetings with the contractors of the adjacent contracts and contracts requiring coordination. The weekly coordination meetings will be held in conjunction with the weekly construction meeting(s), if possible. The Owner, the Owner's Representative, and the RPM and his designee shall be invited to these meetings. The purpose of these meetings is to inform each contractor of the upcoming work by other contractors and to coordinate the use of CAD Cell #2, operation within the project area, use of potential mooring areas, and overall maintenance and protection of pedestrian, marine, and vehicular traffic in the project area(s). The content of these meetings will include the following:

1. An overview of the progress of each contract and the anticipated major items of work to occur in the upcoming 3 months.
2. Maintenance of pedestrian, marine and vehicular traffic, including existing and proposed lane closing and detours, hauling routes, and other related issues.
3. Other items of concern to the contractors, the Commission, and other interested parties.

3.07 - LINE AND GRADE

- A. Delete first two sentences of paragraph A and substitute the following:

The Contractor will be responsible to provide benchmark and basic control points on or near the construction site for the primary vertical and horizontal control as shown on the Drawings. The Contractor shall be required to set all base lines

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and grade stakes from these basic control points and benchmarks. The Contractor shall employ a surveyor or engineer registered in the Commonwealth of Massachusetts for this purpose. The Contractor shall be responsible for the preservation of these control points and if they are destroyed or disturbed the Contractor shall replace them, at no additional cost to the Commission. The Contractor shall also establish field ties to the critical points of the base line in order that these can be reproduced after the subgrade work is complete. Information on the field ties shall be submitted to the Engineer.

ARTICLE 4 - CONTROL OF MATERIALS

4.02 - CERTIFICATE OF COMPLIANCE

- A. Add the following new paragraph:
- C. Certificate of compliance shall be furnished for all products/materials as specified throughout the construction specifications.

ARTICLE 5 - LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC

5.02 – PERMITS AND LICENSES

- A. Delete paragraphs A and B and replace with the following:
 - A. No Federal, State, or local permits shall be required for the portion of any removal or remedial action conducted entirely on-site; however, the Contractor will be obligated to comply with Applicable or Relevant and Appropriate Requirements (ARARs) as stipulated within the Performance Standards (attached to Section 00800), the Record of Decision (ROD) for the New Bedford Harbor Superfund Site (USEPA, 1998) and subsequent Explanations of Significant Differences (ESDs). The 1998 ROD and subsequent ESDs may be viewed on the New Bedford Harbor Superfund website (www.epa.gov/nbh) and the Lower Harbor CAD Cell ESD is attached to Section 00800 for the Contractor's reference. The Contractor shall be obligated to comply with the conditions of any permits obtained by the Owner for the purposes of this work, which includes permits for offshore disposal of sediment at CCDS or RISDS (see Section 02492 and attachments to Section 00800 for permits). For the purposes of this Section, "on-site" is defined as the New Bedford Harbor Superfund Site in New Bedford and Fairhaven, Massachusetts.

5.04 – INSURANCE REQUIREMENTS

- A. Paragraph G shall now read:
 - G. The required insurance coverages hereinbefore specified shall be placed with insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of B+ or better, shall be taken out before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, shall be primary to and non-contributory to any coverages maintained by the Commission, and shall require that the Commission be given at least 30 days advance written notice in the event of any cancellation or materially adverse change in coverage. All such required insurance, with the possible exception of Pollution Liability

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Insurance, shall be written on an occurrence basis form, as opposed to a claims made basis form. The Commission shall be named as an additional insured under the Commercial General Liability, Automobile Liability, Umbrella, Pollution Liability, and Builder's Risk Insurance Policies. The Workers' Compensation and Employers' Liability Insurance Policies shall include a waiver of subrogation in favor of the Commission. All such insurance as is required of the Contractor shall be provided by or in behalf of all subcontractors to cover their operations performed. The Contractor shall be held responsible for any modifications, deviations or omissions in the compliance with these requirements by the subcontractors. At the inception date of the Contract and throughout the term of the Contract, the Commission shall be provided with certificates of insurance evidencing that such insurance policies are in place and provide coverage as required. The following statement affirming that coverage completely complies with contract requirements shall be included in the special items section of the certificate or in an attached special items addendum page:

The aforementioned insurance coverages completely comply with Article 5.04, Insurance Requirements, paragraphs A through J, inclusive, of New Bedford Harbor Development Commission Contract No. HDC-FY12-006.

B. Add the following new paragraphs:

- I. The Contractor's policy shall be endorsed to cover United States Longshoreman & Harborworkers Act (USL&HW) as mandated, Maritime/Jones Act, and/or Federal Employer's Liability Act to federal statutory limits covering all work conducted upon the Navigable Waters of the United States.
- J. Hull and Property Indemnity
 - 1. Include the use of all marine vessels; owned, leased, hired and non-owned, with limits not less than \$1,000,000 combined single limit covering all work performed under the Contract.

5.10 - PROTECTION AND RESTORATION OF PROPERTY

A. Add the following new subparagraph to paragraph K:

- 1. The written notice to be served to utility owners or officials and to all others concerned with or having charge of public or private owned utilities shall include, but not be limited to, the following:

UTILITIES, DIGSAFE	1-800-344-7233
	1-800-DIGSAFE

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TELECOMMUNICATIONS

Verizon
1116 Shawmut Avenue, 2nd Floor
New Bedford, MA 02746

Paul Bourque
(508) 991-3530

NSTAR (Electric and Gas)
New Bedford Dispatcher
24 – 7 Emergency Line

Tim McGonagle
(508) 441-5113
(800) 592-2000

WATER – SEWER - HIGHWAYS

City of New Bedford
Department of Public Infrastructure
1105 Shawmut Avenue
New Bedford, MA 02746

Ronald Labelle
(508) 979-1556

2. There exist multiple utilities within, below, and crossing New Bedford Harbor. It is the Contractor's sole responsibility to conduct its own due diligence concerning the presence of utilities within all work areas and in any area the Contractor plans to (or does) moor, drop anchors, travel over, stop at, or other have equipment located in the vicinity of. In addition, for the potential for utilities in or below the bottom throughout the harbor, the Contract is advised that there are several utility lines running across the harbor to the south of the Route 6 Bridge, including several telecommunication cables and other utilities. It is the Contractor's sole responsibility to protect all utilities (at all times) from damage (of any kind) as a result of the Contractor's activities, whether these utilities are located within dredge areas or located at any other locations within, adjacent to, or otherwise in the vicinity of New Bedford Harbor.

The Contractor is responsible to repair any utilities that are damaged as a result of its activities (negligent or otherwise) within 4 hours of the damage occurring, or within a period as determined by, or otherwise negotiated with, the Commission and/or the City of New Bedford. Should the Commission and/or the City of New Bedford deem it necessary to repair the damaged utility – either because the Contractor cannot or will not respond and/or otherwise repair the damage within the allotted or determined time frame, or because the City of New Bedford and/or the Commission represents either a safety or environmental hazard and/or represents an emergency condition – the City of New Bedford and/or the Commission may act to repair the damage utilizing either its own personnel and equipment or an independent Contractor of the City of New Bedford's or the Commission's choosing. Should the Commission and/or the City of New Bedford find it necessary to take such action to repair or otherwise respond to the damage incident (including overseeing or inspecting the Contractor's investigation and repair), the Contract shall reimburse the City and/or Commission for an amount not less than two times (2x) the City and/or Commission's cost (including the cost of City labor, equipment, subcontractors, and any other direct costs associated

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with the incident).

- B. Add the following new paragraphs:
- L. The Engineer reserves the right, at no additional cost to the Commission, to direct the Contractor to modify construction procedures or to mitigate measures, that in the opinion of the Engineer indicate a significant risk of damage to adjacent structures, utilities, roadways, and other facilities.
 - M. The Contractor shall assure that no exits from adjacent buildings are obstructed, that appropriate safety barriers are established to prevent access, and that work areas are kept neat, clean and safe.
 - N. The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.
 - O. All surrounding work including, but not limited to, fixtures, sewers, drains, water pipes, telephone lines, signal lines, gas pipes, electrical conduit and utilities that are to remain in place shall be carefully protected and, if disturbed or damaged, shall be repaired or replaced as directed by the Engineer, at no additional cost to the Commission.
 - P. Existing (exposed or concealed) sewers, drains, water and gas pipes, signal, telephone and electric conduits and wires, or similar utilities of every description which are disturbed or damaged due to the performance of the Work of the Contractor shall be repaired or replaced to original conditions, at no additional cost to the Commission.
 - Q. Any damage which occurs to structures, walls, ceilings, floors, furnishings or items as a result of the Contractor's work shall be repaired as directed by the Engineer, at no additional cost to the Commission.

5.15 - SAFETY AND FIRST AID REQUIREMENTS

- A. Delete paragraphs B through F and replace with the following:
- B. The Contractor shall have a full time (all working hours/one each shift) on-site experienced Safety Supervisor/Representative. The Contractor shall submit, within 5 working days after receipt of notification of Contract award, to the Engineer a detailed site specific Safety Program, including the name, experience, and qualifications of the Contractor's full time, on site Safety Supervisor/Representative and alternate. In the absence of the Safety Representative (e.g. vacation, sick leave, short term shift work not exceeding 2 weeks) the Contractor shall assign a full time Commission approved alternate Safety Supervisor/Representative to this Contract. All safety submittals shall be submitted for review to the Engineer prior to the start of construction. No work at the job site shall begin until the Engineer has reviewed and commented on the Contractor's Safety Program, and Safety Supervisor/Representative and alternate. Implementation and enforcement of the Safety Program for the

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forces of the Contractor and all subcontractors shall be the responsibility of the General Contractor.

- C. The Contractor's Safety Supervisor/Representative shall have a thorough knowledge of construction safety and OSHA regulations. If, in the opinion of the Engineer, the Contractor's Safety Supervisor/Representative is not effective in carrying out the assigned duties as described below, the Engineer may request, in writing, that the Contractor replace the Safety Supervisor/Representative.

Contractors Safety Supervisors/Representatives and alternate are classified into levels with their qualifications based upon the, extent of their construction safety supervisory experience and capabilities, and the nature of each individual contract. All contracts require a Class III full time Safety Supervisor/Representative unless otherwise specified. Qualifications for each classification shall include, as a minimum:

Class I:

Basic safety and health training.

Minimum requirement: Successful completion of OSHA 10 hour Construction Safety and Health Training Course. **(See OSHA Certification Requirement in Section 00400 – Bid Forms.)**

- Two years experience as a construction safety supervisor where safety was 100 percent of the position responsibility.
- Working knowledge of safety regulations and hazard control measures.
- Demonstrated ability to conduct safety training.
- Working knowledge of safety specific contract hazardous work procedures.
- Physically able to perform the job.

Class II:

Five years experience as a construction safety supervisor, 3 years of which include full time on-site construction safety experience.

Minimum requirement: Successful completion of OSHA 30 hour Construction Safety and Health Training Course.

- Specialized safety training relevant to the project.
- Demonstrated ability in creating a safe work environment.
- Working knowledge of safety regulations and hazard control measures.
- Demonstrated ability to conduct safety training.
- Working knowledge of safety specific contract hazardous work procedures.
- Physically able to perform the job.

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Class III:

Seven years experience as a construction safety supervisor, 5 years of which include full time on-site construction safety experience.

Minimum requirement: Successful completion OSHA 30 hour Construction Safety and Health or OSHA's Instructor #500 Training Course.

- Specialized safety training relevant to the project, especially on environmental dredging projects with contaminated and non contaminated soils.
- Demonstrated ability in creating a safe work environment.
- Working knowledge of safety regulations and hazard control measures.
- Demonstrated ability to conduct safety training.
- Working knowledge of safety specific contract hazardous work procedures.
- Physically able to perform the job.

- D. The duties of the Safety Supervisor/Representative shall include maintenance of the Contractor's Safety Program, enforcement of safe practices, and the use of safety equipment and personal protective equipment, and other such activities as may be required by OSHA and the Contractor's Safety Program to maintain job safety and accident prevention. The Safety Supervisor/Representative shall not be replaced, terminated, nor reassigned without the written approval of the Engineer. A minimum transition of 2 weeks shall occur. Vacancies in these positions shall be filled within 2 weeks of the vacancy occurring. The Safety Supervisor/Representative shall be assigned full time to the Contract and shall not be utilized concurrently on any other Commission contract or any other projects outside this Commission Contract.
- E. Attention of the Contractor is, specifically directed to the General and Supplementary Conditions of this Contract, which shall be made a condition of each subcontract entered into pursuant to the Contract. Further, that the Contractor and any subcontractor shall not require any laborer or mechanic employed in performance of the Contract to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to health or safety, as determined under construction safety and health standards (Title 29, Code of Federal Regulations, Part 1518, Published in the Federal Register on April 17, 1971) promulgated by the United States Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96). This Contract will require all contractors and subcontractors to comply 100 percent with OSHA's fall protection standard.

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- F. The Commission may stop any work that it considers to be unsafe.
- G. The Contractor shall notify the Engineer 48 hours prior to bringing in any hoisting equipment including, but not limited to, cranes, scissor lifts and telescopic boom aerial lifts on the project site.
- H. The Contractor shall assume full responsibility for the safety of all his work. He shall perform work in a manner that will insure the safety of personnel and the work; and not expose personnel and equipment to hazardous or potentially hazardous conditions. All work in the construction of the project shall be in accordance with the requirements of the U.S. Department of Labor Occupational Safety and Health Administration (OSHA) provisions, as well as those of State and local regulations. Safe breathing levels shall be in accordance with the OSHA Respiratory Protection Standard 29 CFR 1910.134 and/or Massachusetts Department of Environmental Protection (DEP) standards. In the case of conflict of regulations, the most stringent regulations shall apply.
- I. The Contractor shall provide at the site such equipment and medical facilities as are necessary to supply first-aid service to any person who may be injured in the progress of the Work. At least one individual member of the Contractor's staff, properly qualified with current certification (Red Cross or equivalent) in basic first aid and cardiopulmonary resuscitation (CPR), shall be continuously present, on the site at all times when work is in progress. This individual shall also have a general knowledge regarding blood borne pathogens. First-aid equipment shall be complete in all respects. The Contractor shall also have standing arrangements for the removal and hospital treatment of any employee who may be injured or who may become ill.
- J. The Contractor shall promptly report in writing to the Commission and the Engineer all accidents whatsoever arising out of or in connection with the performance of the Work, whether on or adjacent to the site, which cause death, personal injury or property damage, giving full details and statements of witnesses. In addition, if death, or serious injuries or serious damages are caused, the accident shall be reported immediately by telephone to the Commission and the Engineer.
- K. If any claim is made by any third person against the Contractor or any subcontractor on account of any accident, the Contractor shall promptly report the fact in writing to the Commission and the Engineer, giving full details of the claim.
- L. The Contractor shall comply with the applicable requirements of the Environmental Protection Agency's National Emission Standards for Hazardous Air Pollutants, Part 51, Chapter 1, Title 40, Code of Federal Regulations, Subpart B, effective April 6, 1973, and as amended October 5, 1975 (Published October 14, 1975, in the Federal Register), and also subpart M published in June 1984.

5.18 - PAYMENT OF TAXES

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- A. Add the following new paragraph:
- C. The Commission's Sales Tax Exemption Number is 046-001-402.

5.25 - LABOR, LODGING, BOARD, MAXIMUM HOURS OF EMPLOYMENT, KEEPING OF PAYROLL RECORDS

- B. Not Applicable.
- E. Wage Rate Requirements under Section 104(g) of CERCLA

For the purposes of this Section, the terms “Recipient”, “recipient”, or “recipients” means the New Bedford Harbor Development Commission (NBHDC). Also for the purposes of this section, “contractor”, “contractors”, “subcontractors” or “employer” shall mean the Contractor and all subcontractors utilized by the Contractor for completion of the Work. As the Contractor will be receiving funds from USEPA through NBHDC, they will be obliged to comply with the wage rate requirements of this section.

Section 104(g) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) requires that all laborers and mechanics employed by contractors and subcontractors in the performance of construction, repair, or alteration work funded in whole or in part under CERCLA Section 104 shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with Sections 3141-3144, 3146, and 3147 of Title 40 of the United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR Parts 1, 3, and 5 to implement the Davis-Bacon and Related Acts (DB). Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the CERCLA 104 shall ensure that the standard Davis-Bacon (DB) contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

The Secretary of Labor retains final coverage authority for DB under Reorganization Plan Number 14.

DAVIS BACON PREVAILING WAGE TERM AND CONDITION

The following terms and conditions specify how recipients (and the Contractor) will assist EPA in meeting its DB responsibilities when DB applies to EPA awards of financial

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assistance under CERCLA 104. If a Recipient (or the Contractor) has questions regarding when DB applies, obtaining the correct DB wage determinations, DB contract provisions, or DB compliance monitoring, it may contact Valerie Marshall, EPA, Region 1, Office of Administration and Resource Management at (617) 918-1674 for guidance. The Recipient may also obtain additional guidance from DOL's web site at: <http://www.dol.gov/esa/whd/contracts/dbra.htm>

1. Applicability of the Davis Bacon prevailing wage requirements.

For the purposes of this term and condition, EPA has determined that all construction, alteration and repair activity involving the remediation of hazardous substances, including excavation and removal of hazardous substances, construction of caps, barriers, structures which house treatment equipment, and abatement of contamination in buildings, is subject to DB. If recipient (or the Contractor) encounters a unique situation at a site that presents uncertainties regarding DB applicability, the recipient (or the Contractor) must discuss the situation with EPA before authorizing work on that site.

2. Obtaining Wage Determinations.

(a) Recipients (and the Contractor and its subcontractors) must obtain wage determinations (WD) for specific localities at www.wdol.gov.

(b) DOL issues DBA WDs reflecting prevailing wages and benefits paid by the construction industry within specific localities. The DBA WDs are further classified by the nature of the construction projects performed, specifically listed as "schedules": residential, building, highway, and heavy construction. Details and examples of wage classification schedules may be found in DOL's "All Agency Memorandum No. 130 and 131", available at <http://www.dol.gov/esa/whd/programs/dbra/docs/memo-131.pdf>. Unless otherwise instructed by EPA on a project specific basis, the Recipient (and the Contractor) shall use the following DOL General Wage Classifications schedule for the locality in which the construction activity subject to DB will take place:

(i) When soliciting competitive contracts or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments) for, the excavation and removal of hazardous substances, construction of caps, barriers, Recipient (and the Contractor) shall use the "Heavy Construction" Classification.

(ii) When soliciting competitive contracts or issuing ordering instruments for the construction of structures which house treatment equipment, and abatement of contamination in buildings (other than residential structures less than 4 stories in height) Recipient (and the Contractor) shall use "Building Construction" classification.

(iii) When soliciting competitive contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height the Recipient (and the Contractor) shall use "Residential Construction" classification.

Recipients (and the Contractor) must discuss unique situations that may not be covered by the General Wage Classifications described above with EPA. If, based

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on discussions with a Recipient (or the Contractor), EPA determines that DB applies to a unique situation the Agency will advise the Recipient which General Wage Classification to use based on the nature of the construction activity at the site.

(c) Recipients (and the Contractor) shall obtain the wage determination for the locality in which a Superfund cleanup activity subject to DB will take place prior to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the Recipient shall monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The Recipient shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Recipient may request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency's finding to the Recipient.

(ii) If the Recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless EPA, at the request of the Recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Recipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(iii) If the Recipient carries out Superfund activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the Recipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(d). Recipients (and the Contractor) shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(e) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a Recipient's (and the Contractor's) contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Recipient (and the Contractor) has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the Recipient (and the Contractor) shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Recipient's (and the Contractor's) contractor

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must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract Provisions.

(a) The Recipient (and the Contractor) shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to DB, the following labor standards provisions (which are hereby incorporated into these Contract Documents by reference).

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor which the recipient obtained under the procedures specified in Item 2, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. Recipients (and the Contractor) shall require that the contractor and subcontractors include the name of the Recipient employee or official responsible for monitoring compliance with DB on the poster.

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(ii)(A) The Recipient (and the Contractor), on behalf of EPA, shall require that contracts and subcontracts entered into under this agreement provide that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the recipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the recipient to the EPA Award Official. The Award Official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the award official or will notify the award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Recipient do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the Award Official within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request

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of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The Recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause the to withhold from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, EPA may, after written notice to the contractor, or recipient take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Recipient who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The

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required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Recipient for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the recipient.

(B) Each payroll submitted to the Recipient shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, EPA may, after written notice to the contractor, Recipient, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

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(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the

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Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this term and condition.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors), the recipient, borrower or subgrantee and EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

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(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provisions for Contracts in Excess of \$100,000

(a) Contract Work Hours and Safety Standards Act. The Recipient (and the Contractor) shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act (and are hereby inserted into these Contract Documents by reference). These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR [4.6](#). As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The Recipient (or the Contractor, if applicable) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the

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clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in [29](#) CFR 5.1, the Recipient shall insert a clause (which is hereby inserted into the Contract Documents by reference) requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Recipient shall insert in any such contract a clause (which is hereby inserted into the Contract Documents by reference) providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

The Contractor shall comply with the following actions that will be taken by the Recipient to verify the Contractor's compliance with this Section.

(a) The Recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The recipient must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the recipient must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Recipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c). The Recipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The Recipient shall establish and follow a spot check

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schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the Recipient must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Recipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the recipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The recipient shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/esa/contacts/whd/america2.htm>

5.28 – PERFORMANCE STANDARDS

A. Add the following new article:

5.28 PERFORMANCE STANDARDS

- A. The Contractor shall comply with the Performance Standards for this project, attached to Section 00800 and other restrictions and requirements placed on the Work.
1. A copy of the Performance Standards is included in the Supplementary Conditions.

ARTICLE 6 - PROSECUTION AND PROGRESS

6.01 - SUBLETTING OR ASSIGNMENT OF CONTRACT

A. Not Applicable.

6.02 - PROSECUTION OF WORK

- A. Delete paragraph A in its entirety and substitute the following:
1. The Contractor shall commence Work within 7 calendar days from the date of the mailing of the executed Contract by the Commission to the Contractor, unless otherwise ordered in writing by the Commission. The Contractor shall complete the specified milestones within the days

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specified below from the date of the mailing of the executed Contract to the Contractor by the Commission or, after the date on which the Contractor is directed in writing by the Commission to commence Work, whichever is later.

In the event the Contractor fails to complete the specified milestones within the days specified, liquidated damages will be assessed pursuant to Article 6.09 of the General Conditions for each calendar day of delay in the completion of the specified milestones as follows:

<u>MILESTONE</u>	<u>CALENDAR DATE</u>	<u>LIQUIDATED DAMAGES</u>
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None presently issued.

Refer to Section 01010, "Summary of Work" of the technical specifications for details regarding schedule milestones.

Engineer will perform field survey within 24 hours of Contractor notification of Milestone completeness to determine completeness and applicability of bonuses or liquidated damages.

- B. **Overdredge within the dredge footprint below the overdredge depth will not be eligible for compensation and will be subject to liquidated damages in the amount of \$50 per cubic yard. Overdredge consisting of dredging outside of the limits of dredging (dredge footprint) is not allowed. Dredging outside of the dredge footprint will result in a liquidated damages penalty assessed to the Contractor of \$50.00 per cubic yard of material dredged outside the limits of the dredge footprint of this contract.**

6.04 - LIMITATIONS OF OPERATIONS

- A. Not Applicable.

ARTICLE 7 - MEASUREMENT AND PAYMENT

7.06 - PARTIAL PAYMENTS

- A. Add the following new paragraphs.
- H. AIA Form G702, Application and Certification for Payment will be used by the Commission for payment application and certification of work.
- I. Field notes, bills of lading, photographs, and other supporting field documentation slides and videotapes shall be submitted with each payment application.
1. The Engineer will review the contractor's survey records (pre- & post-dredge) as-built drawings for completeness to date and the procedures being used to show changes.

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2. If the field notes, bills of lading, photographs, and other supporting field documentation are not submitted with the payment application, the Engineer will not approve the payment application and the Commission will not approve and process the payment application for payment.
3. The requirement for the submittal of the field notes, bills of lading, photographs, and other supporting field documentation may be waived by the Commission, at its discretion, on a monthly basis.

EQUAL EMPLOYMENT OPPORTUNITY (EEO)

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER NO. 11246)

1. As used in these specifications:
 - a. "Covered Area" means the geographical area described in the solicitation from which this Contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer Identification Number" means the Federal Social Security Number used on the employer's quarterly Federal tax return, US Treasury Department Form 941;
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in the solicitation from which this Contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR § 60-4.5) in a hometown plan approved by the US Department of Labor in the covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals and timetables) shall be in accordance with that plan for those trades which have unions participating in the plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such hometown plan. Each contractor or subcontractor participating in an approved plan is individually

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required to comply with its obligations under the EEO Clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved plan does not excuse any covered contractor's or subcontractor's failure to make good faith efforts to achieve the plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs (7)(a) through (p) of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should be reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs Office or from Federal Procurement Contracting Officers. The Contractor is expected to make substantially uniform progress toward its goal in each craft during the period specified.
5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order No. 11246, or the regulation promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notice to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

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- c. Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under (7)(b) above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the Company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the Company's EEO policy and affirmative action obligations under these specifications with all employees having responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as superintendents, general foreman, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month

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prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notice to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of the Contractor's work force.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations that assist in fulfilling one or more of their affirmative action obligations set forth in paragraphs (7)(a) through (p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under paragraphs (7)(a) through (p) of these specifications, provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to

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take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (even though the Contractor has achieved its goal for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order No. 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the equal opportunity clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order No. 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order No. 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (7) of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR § 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the Company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the extent that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE
EQUAL EMPLOYMENT OPPORTUNITY
(EXECUTIVE ORDER NO. 11246)**

- (1) The Offeror's or Bidder's attention is called to the "equal opportunity clause" and the "standard federal equal employment specifications" set forth herein.
- (2)(a) The goals and the timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate work force in each trade on all construction work in the covered area, are as follows:

Timetables and Goals for Minority Participation in Each Trade See the following: The Commonwealth of Massachusetts Supplemental Equal Employment Opportunity Anti-Discrimination and Affirmative Action Program	Goals for Female Participation in Each Trade 6.9%
Goals for Each Year See the following: The Commonwealth of Massachusetts Supplemental Equal Employment Opportunity Anti-Discrimination and Affirmative Action Program	Goals for Each Year 6.9%

- (2)(b) These goals are applicable to all the Contractor's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction.
- (2)(c) The Contractor's compliance with the Executive Order and the regulations at 41 CFR § 60-4 shall be based on its implementation of the equal opportunity clause, specific affirmative action obligations required by the specifications set forth at 41 CFR § 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the Contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employee or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order, and the regulations at 41 CFR § 60-4. Compliance with the goals will be measured against the total work hours performs.
- (3) The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the Contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
- (4) As used in this Notice, and in the Contract resulting from this solicitation, the "covered area" is City of New Bedford and New Bedford Harbor.

THE COMMONWEALTH OF MASSACHUSETTS

SUPPLEMENTAL EQUAL EMPLOYMENT OPPORTUNITY ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM

- I. FOR PURPOSES OF THIS CONTRACT, "minority" refers to Asian-Americans, Blacks, Spanish Surnamed Americans, North American Indians, and Cape Verdeans. "Commission" refers to the Massachusetts Commission Against Discrimination.
- II. During the performance of this Contract, the Contractor and all of (his) subcontractors (hereinafter collectively referred to as the Contractor), for himself, his assignees, and successors in interest, agree as follows:
 1. 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; termination; rates of pay or other forms of compensation, conditions or privileges of employment; and selection for apprenticeship. The Contractor shall post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Commission setting forth the provisions of the Fair Employment Practices Law of the Commonwealth (M.G.L. Chapter 151B).
 2. 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 action required to guarantee equal employment opportunity 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 Commonwealth public construction projects.
- III.
 1. As part of his obligation of remedial action under the foregoing section, the Contractor shall maintain on this project a not less than eighteen percent (18%) ratio of minority employee man hours to total man hours in each job category, including but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those "classes of work enumerated in Section 44F of Chapter 149 of the General Laws of the Commonwealth.
 2. In the hiring of minority journeymen, apprentices, trainees and advanced trainees, the Contractor shall rely on referrals from a multi employer affirmative

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action program approved by the Commission, 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 Liaison Committee or the Commission.

- IV. 1. At the discretion of the Commission 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 each from the agency or agencies administering this project, herein after called the administrating agency, the Commission and such other representatives as may be designated by the Commission in conjunction with the administrating agency.
2. The Contractor (or his agent, if any, designated by him the on-site equal 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.
3. The Contractor 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 Commission and Liaison Committee.
4. Records of employment referral orders, prepared by the Contractor, shall be made available to the Commission and to the Liaison Committee on request.
5. The Contractor shall prepare weekly reports in a form approved by the Commission 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 such week to the Commission and to the Liaison Committee.
- V. If the Contractor shall use any subcontractor on any work performed under this Contract, he shall take affirmative action to negotiate with qualified minority subcontractors. This affirmative shall cover both pre-bid and post-bid periods. It shall include notification to the Office of Minority Business Assistance (within the Executive Office of Communities and Development) or its designee, when bids are in preparation, of all products, work or services for which the Contractor intends to negotiate bids.
- VI. In the employment of journeymen, apprentices, trainees and advances 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 honorably 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 numbers, then to citizens of the United States.
- VII. A designee of the Commission and a designee of the Liaison Committee shall each have right of access to the construction site.

VIII. Compliance with Requirements

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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 this Contract.

IX. 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.

X. Solicitation for Sub-Contracts, and for the Procurement of Materials and Equipment

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

XI. Bidders Certification Requirement

For Bidders certification requirements, please refer to the Form for Bid included in the Proposal Form for this Contract.

XII. Contractor's Certifications

The Contractor's Certification Form must be signed by all successful low Bidder(s) prior to award by the contracting agency.

XIII. Compliance – Information, Reports and Sanctions

1. The Contractor will provide all information and reports required by the administering agency or the Commission 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 Commission to affect the employment of personnel. This provision shall apply only to information pertinent to the Commonwealth'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 Commission as appropriate and shall set forth what efforts he has made to obtain the information.
2. Whenever the administering agency, the Commission, or the Liaison Committee believes the General Contractor or any subcontractor may not be operating in compliance with the terms of this Section, the Commission 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 Commission or its agent finds the General Contractor or any subcontractor not in compliance, it shall make a preliminary

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report on non-compliance, and notify such Contractor in writing of such steps as will in the judgement of the Commission or its agent bring such Contractor into compliance. In the event that such Contractor fails or refuses to fully perform such steps, the Commission shall make a final report of non-compliance, and recommend to the administering agency the imposition of one or more of the sanctions listed below. If, however, the Commission believes the General Contractor or any subcontractor has taken or is taking every possible measure to achieve compliance, it shall not make a final report of non-compliance. Within fourteen days of the receipt of the recommendations of the Commission, the administering agency shall move to impose one or more of the following sanctions, as it may deem appropriate to attain full and effective enforcement:

- (a) The recovery by the administering agency from the General Contractor of 1/100 of 1% of the Contract award price or \$1000 whichever sum is greater, in the nature of liquidated damages or, if a 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 sum is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply;
 - (b) 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 his compliance with the terms of the Contract;
 - (c) 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 his compliance with the terms of the Contract;
 - (d) 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.
3. If at any time after the imposition of one or more of the above sanctions a Contractor is able to demonstrate that he is in compliance with this Section, he may request the administering agency, in consultation with the Commission to suspend sanctions conditionally, pending a final determination by the Commission as to whether the Contractor is in compliance. Upon final determination of the Commission, the administering agency, based on the recommendation of the Commission, shall either lift the sanctions or reimpose them.
4. Sanctions enumerated under Section XIII-2 shall not be imposed by the administering agency except after an adjudicatory proceeding, as that term is used M.G.L. c. 30A, has been conducted. No investigation by the Commission or its agent shall be initiated without prior notice to the Contractor.

XIV. Severability

The provisions of this section are severable, and if any of those provisions shall be held

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unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

XV. Goals

Minority Manpower Utilization (MMU) percent is eighteen percent (18%) for participation in each trade for each year.

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XVI. 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

(Name of Contractor)

Certifies that:

1. It intends to use the following listed construction trades in the Work under the Contract

_____ and

2. will comply with the minority manpower ratio and specific affirmative action steps contained herein; and
3. will obtain from each of its subcontractors and submit to the contracting or administering agency prior to the award of any subcontract under this Contract the subcontractor certification required by these Bid considerations.

(Signature of Authorized Representative of the Contractor)

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XVII. 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

(Name of Subcontractor)

Certifies that:

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

_____ and
2. will comply with the minority manpower ratio and specific affirmative action steps contained herein; and
3. will obtain from each of the subcontractors prior to the award of any subcontract under this subcontract the subcontractor certification required by these Bid considerations.

(Signature of Authorized Representative of the Subcontractor)

In order to ensure that the said Subcontractor's Certification becomes a part of all subcontracts under the Prime Contract, no subcontract shall be executed until an authorized representative of the state agency (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.

END OF SECTION

ATTACHMENTS TO SECTION 00800

SUPPLEMENTARY CONDITIONS

EQUAL EMPLOYMENT OPPORTUNITY (EEO) INSTRUCTIONS

PREVAILING WAGE RATES

PERFORMANCE STANDARDS

CAD CELL #2 TSCA 731.61 (c) DETERMINATION

OFFSHORE DISPOSAL PERMITS

DATA REPORT - LOWER HARBOR CAD CELL

EQUAL EMPLOYMENT OPPORTUNITY (EEO) INSTRUCTIONS

**City of
New Bedford**

**INSTRUCTIONS TO BIDDERS
For
AFFIRMATIVE ACTION ISSUES**

for Public Works and Construction Projects

Office of Equal Opportunity & Contract Compliance
133 William Street, Room 208
New Bedford, Massachusetts 02740
ph: 508-979-1446 / fax: 508-991-6148
Revised April 2007

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AA.01: Definitions

relevant to the requirements set forth in this bidding document

Construction Bidding Statutes*

Public Works Projects

Governed under Massachusetts General Laws, ch. 30, sec. 39M.

and/or Includes all municipal contracts for construction, reconstruction, alteration, remodeling, repair/s estimated to cost more than \$5,000 which does not include work on a building. Includes the construction and repair of roads, bridges, water mains, sewers, and the like, as well as improvement to public land (i.e.: operation of a municipal landfill, removal of waste materials, grading, erosion control, and other forms of improvement and maintenance.

Also governs contracts of \$5,000 - \$25,000 for construction, reconstruction, installation, demolition, maintenance, or repair work on a building.

Building Projects

Governed under Massachusetts General Laws, Ch. 149, sec. 44.

Includes all contracts for the construction, reconstruction, installation, demolition, maintenance, or repair of a building at an estimated cost of more than \$25,000.

Lowest Eligible & Responsible Bidder*

Massachusetts G.L. c. 30, sec. 39M; c. 149, sec. 44A state that the contract be awarded to the lowest eligible and responsible bidder.

Eligible means the bidder meets all the requirement set forth in the bidding documents.

Responsible means the bidder possesses the skill, ability, and integrity to complete the job.

Reasonable Accommodations

Any change in work environment or the way job duties are customarily performed that enables individuals with disabilities to perform the essential functions of the job in issue, or that ensures equal opportunity for individuals with disabilities with respect to the application process or the enjoyment of benefits and privileges of employment.

Administering Agency

The agency that administers the state, state-assisted, or federally assisted contract awarded by the contracting agency

Contracting Agency

The agency that directly awards the contract

Contractor

Any general contractor and all subcontractors

* This information is taken directly from Designing and Constructing Municipal Facilities: Legal Requirements; Recommended Practices; Sources of Assistance Published by, William Francis Galvin, Secretary of the Commonwealth, Office of the Inspector General, Oct. 1989.

AA.01: continued

Minority / Women Business Enterprise

As defined by the Massachusetts State Office of Minority/Women Business Assistance (SOMWBA). In summary, an MBE/WBE is a business at least fifty-one percent (51%) owned or controlled by minority/women group members, or an individual contractor or professional who is a minority/women group member (as defined by SOMWBA).

Minority refers to:

Native American

A person having origin in any of the original people of North America, who is recognized as American Indian by a tribe or tribal organization or is recognized as such within his/her community

Asian

A person having origin in any of the original people of the Far East, Southeast Asia, Indian Subcontinent, Korea, Philippines, and Samoa

Black

A person having origin in any of the black racial groups of Africa

Cape Verdean

A person having origin in any of the original people of the Cape Verde Islands

Eskimo / Aleut

A person having origin in any of the original people of Northern Canada, Greenland, Alaska, and East Siberia

Hispanic

A person of Spanish descent and culture having origin in Mexico, the Island of the Caribbean, Central America or South America



City of New Bedford
133 William Street
New Bedford, MA 02740

EEO/AA POLICY STATEMENT

City of New Bedford has a statutory mandate under law to guarantee equal treatment for all who seek access to its services or opportunities for employment and advancement. No discrimination will be tolerated on the basis of race, creed, political affiliation, color, sex, national origin, age, or handicap. The ultimate goal is for personnel of this organization to reflect the proportions of minority, female, and handicapped persons in the populations they serve.

City of New Bedford will meet its legal, moral, social, and economic responsibilities for Equal Employment Opportunity/Affirmative Action as authorized and required by all pertinent state and federal legislation, executive orders and rules and regulations, including the following:

1. Title II of the Civil Rights Act of 1964 (42 USC s2000e et seg, which prohibits discrimination in employment on the basis of race, color, religion, sex, or national origin; and
2. The Age Discrimination in Employment Act of 1967 (29 USC s621 et seg.), which prohibits discrimination in employment on the basis of age with regard to those individuals who are at least 40 years of age, but less than 65 years of age; and
3. Section 504 of the Rehabilitation Act of 1973 (29 USC s794), and the regulations promulgated pursuant thereto (45 CFR Part 84), which prohibit discrimination against qualified handicapped individuals on the basis of handicap and requires employers to make reasonable accommodations to known physical or mental limitations of otherwise qualified handicapped applications and employees; and
4. M.G.L. c. 151B s4 (1), as amended by Chapter 533, 1983, which prohibits discrimination in employment on the basis of race, color, sex, religious creed, national origin, ancestry, age or handicap,

In addition, the Provider agrees to be familiar with and abide by:

- * Massachusetts Executive Order 524
- * Massachusetts Executive Order 526
- * Equal Pay Act of 1963
- * Massachusetts Architectural Barriers Board Act
- * Federal Executive Orders 11246 and 11375 as amended.
- *

All employees, unions, sub contractors and vendors must make genuine and consistent efforts:

1. To ensure equal employment opportunities for present and future employees, and
2. To implement affirmative action, as legally required, to remedy the effects of past employment discrimination and social inequalities.

The responsibility for implementing and monitoring this policy has been delegated to:

EEO Contract Compliance Officer

Name and Title of Employee

Furthermore, City of New Bedford

prohibits that any employee, or applicant, be subjected to coercion, intimidation, interference or discrimination for filing a complaint or assisting in an investigation under this program. No portion of this Equal Employment Opportunity/Affirmative Action Policy shall be construed as conflicting with any existing or future judicial or legislative mandate where a constriction consistent with that mandate is reasonable.



Signature of Chief Executive

Mayor

Title of Chief Executive

2/10/12
Date

AA.02: Statement of Policy

MINORITY/WOMAN BUSINESS ENTERPRISE PROGRAM

It is the policy of the government of the United State of America, the Commonwealth of Massachusetts and the City of New Bedford, that no person shall be discriminated against in any manner whatsoever, on the grounds of race, color, age, national origin, disability, religion, or sex.

Under this policy, the minority and woman business enterprises shall have the maximum practicable opportunity to participate in federally assisted projects, and shall not be excluded from such participation, nor denied the benefits of or be subjected to discrimination under any program or activity receiving federal assistance.

The City of New Bedford unequivocally ascribes to said policies as the recipient of Federal and state financial assistance, in connection with its activities, and may receive further Federal and State financial assistance in the future.

The City of New Bedford strongly affirms that it will not discriminate in any contractual procedure against any person because of race, color, age, national origin, disability, religion, or sex, or any other condition that is a bona fide qualification. This policy shall be administered at all levels with a positive, aggressive and supportive attitude by all department heads.

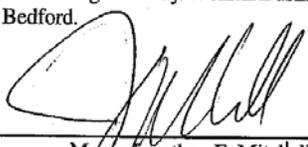
It is the responsibility of all department heads and employees to take affirmative steps to implement this policy to ensure equality of opportunity in conducting the affairs of the City of New Bedford, including notifying those persons and businesses doing business with the City of New Bedford, that contracts for goods and services and construction, shall be made without, reference to race, color, age, national origin, disability, religion or sex.

This Minority/Woman Business Enterprise Program sets forth the administrative standards for the further implementation of the City of New Bedford's policy for the utilization of minority and female contractor, subcontractors, and suppliers.

Each department shall ensure that all solicitation in advertisements includes a statement of the City's affirmation action policy, in an approved format.

The city's Equal Opportunity Officer shall be responsible for ensuring that all aspects of the MBE/WBE program are initiated and undertaken. By virtue of the delegation of this responsibility and authority to direct the program, the Contract Compliance Officer will report directly to the Mayor on equal opportunity matters. The Equal Opportunity Officer shall be responsible for the development, administration, and monitoring of all activities necessary to ensure the accomplishment and success of this program.

NOW, THEREFORE IT IS HEREBY RESOLVED that the following Minority/Woman Business Enterprise Program is instituted for and in behalf of the City of New Bedford.



Mayor Jonathan F. Mitchell

Date

2/15/12

AA.03: City of New Bedford Ordinances - Synopsis

See *Appendix A* for complete City Ordinances relevant to this bid document

(1) Residency Requirements for Certain City-Supported Construction Projects, Chap. 10, Article II.

(a) Not Applicable.

(2) Contractor Qualifications and Sanctions, a.k.a. "The Responsible Employer Plan", Chap. 10-77.

(a) shall apply to all bidders and subcontractors for projects subject to MGL c. 149

(b) not applicable to construction projects where the low general bid was less than \$100,000; to subcontracts bid for less than \$25,000; or to re-bids for which the City receives fewer than three (3) qualified bidders in the original bid

(c) must pay appropriate lawful prevailing wage rates to employees

(d) must classify all employees as employees rather than independent contractors, and treat accordingly regarding workers' compensation, unemployment taxes, social security taxes and income tax withholding.

AA.04: Contractors Agreements under Executive Order 11246, as Amended by Executive Order 11375

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment of compensation; and selection of training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

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

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of Sept. 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of Sept. 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

AA.05: Dept. of Labor, 41 Code of Federal Regulations Parts 60-1, 60-6 - Government Contractors, Affirmative Action Requirements, Executive Order 11246

(1) Segregated Facilities. The contractor hereby certifies that it does not and will not maintain or provide any facilities for its employees in a segregated manner, or permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. Further, the contractor shall obtain a similar certification of nonsegregated facilities prior to the award of any contract or subcontract, which is subject to Executive Order 11246, and shall provide a copy thereof to the Association.

This clause prohibits segregation on the basis of race, color, religion, national origin, or sex, and applies to all contracts regardless of the amount thereof. The term facilities includes, but is not limited to, waiting rooms, work areas, restaurants and other eating areas, time clock, parking lots, drinking fountains, recreation or entertainment areas, transportation, employer-provided housing, washrooms, locker rooms or other storage or dressing areas.

(2) Affirmative Action Compliance Program. The contractor certifies that it has developed a written affirmative action compliance program for each of its establishments consistent with the rules and regulations published by the Department of Labor in 41 CFR Chapter 60, and agrees to require a similar certification from each of its nonexempt subcontractors. Such an affirmative action program shall contain a set of specific and result-oriented procedures, the objective of which shall be the achievement of equal employment opportunity. An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women and further, goals and timetables to which the contractor's good faith efforts must be directed to correct any deficiencies and, thus, to achieve prompt and full utilization of minorities and women, at all levels and in all segments of his work force where deficiencies exist.

The contractor's affirmative action plan shall be summarized and updated annually and the program summary shall be submitted to the Office of Federal Contract Compliance Programs (OFCCP) on the anniversary date of the contractor's affirmative action program.

(3) Contractor's Compliance with Exec. Order and 41 CFR Par 60-4. The contractor's compliance with E.O. 11246 and 41 C.F.R. Part 60-4, shall be based on its implementation of the Equal Opportunity clause, specific affirmative action obligations required by the specifications set forth in 41 C.F.R. 60-4.3, and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed.

AA.06: Section 503 of the Rehabilitation Act of 1973

(Dept. of Labor, 41 Code of Federal Regulations, Parts 60-250 and 60-741, Affirmative Action & Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals with Disabilities, Disabled Veterans, and Veterans of Vietnam Era)

Parties holding a Government contract or subcontract in excess of \$10,000 must take affirmative action to employ and advance in employment-qualified individuals with disabilities. Contractors are required to use effective practices to recruit qualified individuals with disabilities.

Applicants with disabilities must be provided a reasonable accommodation if they are qualified with respect to the application process (e.g.: if they present themselves at the correct location and time to fill out an application).

AA.07: MBE / WBE Policy (for the life of the project)

(1) **Eleven (11) percent** of the work on this project shall be performed by **Minority Business Enterprises (MBEs)** and **five (5) percent** of the work shall be performed by **Women Business Enterprises (WBEs)** for a total of 16% overall. **Four (4%) percent** of all Airport projects shall be performed by **Disadvantaged Business Enterprises (DBE)**. Proven documentation of nonavailability of either one of these entities provides that the available businesses may be awarded no less than 16% of the total contract dollar value for most City projects and 4% of Airport projects.

(2) The Bidder must submit with the bid the necessary certification setting forth the bidder's compliance with the MBE/WBE contractors or the DBE contractors when required. FAILURE TO SUBMIT THESE CERTIFICATIONS AT THE TIME OF THE BID MAY RESULT IN THE BID BEING CONSIDERED NONRESPONSIVE.

(3) If it is determined that one or more of the MBE/WBE or DBE contractors, as submitted by the Contractor on the EEO forms, is not SOMWBA certified or certified by the Local Government Unit, in accordance with the provision of Executive Order 237, the bidder shall have five (5) working days following notification to either find a certified MBE/WBE/DBE contractor to perform work equal to or greater than that of the uncertified contractor, or to submit a waiver request.

(4) The contractor shall not enter into any subcontract with any person or firm debarred from government contracts, pursuant to Executive Order 11246.

AA.08: Workforce Utilization (for the life of the project)

(1) Minimum percentages for **employment (workforce utilization)** on the project are at **18% minority** and **6.9% female** participation. The employment percentages shall apply to the contractor and to all subcontractors, regardless of tier, for all on-site work.

A single goal for minorities and a separate goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Exec. Order if a specific minority group of women is under-utilized.)

(3) The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

AA.09: Contractor's EEO / Records Monitor

The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions

hereof, as may be required by the Government, and to keep records which shall at least include, for each employee, the name, address, telephone numbers, social security number, race, sex, status, (e.g.: mechanic, apprentice, trainee, helper, or laborer) dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents.

AA.10: Bidder's Eligibility

The lowest responsible and eligible bidder shall mean the General Bidder whose bid is the lowest of those bidders demonstrating possession of the skill, ability and integrity necessary for the faithful performance of the work, and

- (a) who shall certify that he/she is able to furnish labor that can work in harmony with other labor employed on the work;
- (b) who shall certify that he/she will comply with the minority workforce goal (18%) the woman workforce goal (6.9%) and, for projects \$100,000+, NB residency goal of 50%; the insurance that all subcontractors and/or sub-subcontractors are also in compliance with workforce utilization goals; including compliance with the minority business goal (11%) and woman business goal (5%), for a total of 16% (or 4.0% for Airport projects) of the total dollar amount of the contract, and will certify that it will meet all applicable City Ordinances in accordance with this contract provision.

AA.11: Bid Submission Requirements

(1) Required bid forms that must be completed, signed, and submitted with the bid at the time of the bid opening, are as follows:

- (a) Certificate of Understanding; Certification of Compliance w/ Exec. Order 11246
- (b) Schedule of Participation for MBE/WBE or DBE as required
- (c) Letter of Intent (for each MBE/WBE/DBE participation)
- (d) MBE/WBE/DBE Contractor Identification Statement (for each MBE/WBE/DBE)
- (e) Bidder's Certification (to be completed by both the General Contractor *and* each MBE/WBE/DBE)
- (f) If applicable, a completed and signed MBE/WBE/DBE Unavailability Certification in the event that the work listed on the Schedule is not sufficient to fulfill the requirement for MBE/WBE/DBE Participation. This certification must include a statement by the bidder of the reasons why it believes it is in compliance with this provision, and a list of the names, addresses, telephone numbers and reason given for unavailability of the Minority/Women Contractor contacted by the bidder with respect to the performance of work under the contract.

(2) The successful bidder will also be required to submit, prior to award, its estimates of labor (permanent and trainee) and material required to carry out its work under the contract, for review by the City, so as to establish maximum feasible goals for the utilization of City residents and business concerns. These goals, and the basis for monitoring and reporting progress toward meeting them, will be established by mutual agreement, with the assistance of the City's Contract Compliance Officer, and discussed in the Pre-Construction or Pre-Award Conference.

AA.12: Bid Approval or Disapproval

- (1) Failure to submit any of the required MBE/WBE/DBE forms and percentages at the time of the bid, will have the Bid/Proposal eliminated. Failure to meet the required percentages, or to fully complete any of the submitted paperwork, at the time of the bid opening, the bidder will have five (5) days, from the date of the bid opening, to comply with the requirements. Failure to meet these requirements within the five days will have the Bid/Proposal disapproved by the Office of Equal Opportunity.
- (2) Each bidder, as part of its bid submission, must agree to contract with minority and woman owned businesses, as defined by the State Office of Minority and Woman Business Assistance (SOMWBA) and the City of New Bedford's affirmative action policies. The amount of participation reserved for such enterprises shall not be less than 16% of the total bid amount, of which at least 11% of the total bid amount applies to minority businesses. The balance 5% is applied to women-owned businesses. Proven documentation of non-availability of either one of these entities provides that the available business may be awarded no less than 16% of the total contract dollar value.
- (3) If the general bidder is either an MBE or WBE and is responsible for 100% of the project work, the 16% is fulfilled. If said MBE/WBE contractor is a joint venture, the MBE/WBE must be responsible for at least 51% of the project.
- (4) The general contractor must submit, as part of its bid and as a condition of contract approval, signed Letters of Intent with all subcontractors and material suppliers listed on the participation schedule. Sub-bidders must submit the participation schedule with their bid and a participation schedule if they intend to sub-sub work.

AA.13: Steps to Ensure a Responsive Bid

The total price for work to be performed by Minority/Woman or Disadvantaged Contractors, as indicated in each bidder's bid submission, is required to be sufficient to fulfill the MBE/WBE/DBE requirements, unless the bidder shall demonstrate to the satisfaction of the Awarding Authority that:

- (1) it has made every possible effort to contact and negotiate with Minority/Women or Disadvantaged Contractors in an attempt to subcontract work, including every possible effort to select the portions of the work proposed to be subcontracted in order to meet the requirements;
- (2) it was unable, notwithstanding such efforts, to achieve the stated requirement because Minority/Woman or Disadvantaged Contractors were not qualified or were unavailable.

(any proven nonavailability of MBE/WBE/DBE must make up the difference to still fulfill the 16% goals with the available MBE or WBE or 4.0% DBE. If neither category is available to fulfill the goal, it must have a SOMWBA statement as to no business listed);
- (3) it included in its Schedule of Participation such proposed agreements as could be made with such efforts;
- (4) the general contractor is an MBE or WBE and said contractor is performing 16% of work or the general contractor is a DBE and is performing 4.0% of the work and therefore, will be deemed as fulfilling the affirmative action bidding requirements;
- (5) for contractors under \$50,000, that can demonstrate all work will be completed under the contractor's own workforce, the contractor must be able to demonstrate how this will be

accomplished and submit, at the time of the bid a statement requesting a waiver of the 16% MBE/WBE or 4.0% DBE participation goal. Employment percentages must still be met.

AA.14: Bid Award or Rejection

- (1) The Awarding Authority will be responsible for awarding or rejecting any bid, with the approval/disapproval of the Office of Equal Opportunity & Contract Compliance in its decision. The Awarding Authority also reserves the right to reject any or all bids, or to accept any other than the lowest bidder, should it be deemed to be in the best interest of the City of New Bedford, Massachusetts, to do so.
- (2) The Awarding Authority shall reject, as non-responsive, any bid, which it determines, fails to comply with the applicable requirements of this contract provision. Nothing, herein, shall relieve any bidder or any contractor performing any work under the contract, from any of the terms, conditions, or requirements of the contract.

AA.15: Awarded Contractor's Obligations

- (1) The Contractor shall specifically ensure that the company's EEO policy and affirmative action obligations under this contract provision, is reviewed with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decision, including specific review of these terms with on-site supervisory personnel, prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (2) Minority/Woman Work Hours must be maintained for the life of this project (at a minimum ratio of 18% minority work hours and 6.9% woman work hours to total work hours in each job category, including, but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those classes of work identified in Section 44C of M.G.L. ch. 149). *(Please note the City of New Bedford's Residency Ordinance requiring 50% City of New Bedford residents on projects of \$100,000+)*
- (3) Apprentices and Trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability, in order for the apprentices and trainees to be counted toward the minority/woman work hour percentage goals.
- (4) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement to refer either minorities or women, shall excuse the contractor's obligation under these specifications, Exec. Order 11246, or the regulations promulgated pursuant thereto.
- (5) In the employment of journeymen, apprentices, teamsters and laborers, 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 honorably discharged therefrom or released from active duty therein, and who are qualified to perform the work which the employment relates, and secondly, to citizens of the City of New Bedford, and if such cannot be obtained in sufficient numbers, the Commonwealth generally, then to citizens of the United States.
- (6) Reports to Be Submitted to the Office of Equal Opportunity & Contract Compliance include:
 - (a) Licensing Statutes: Every contractor and subcontractor must submit, before starting work, a plan by which he/she will satisfy the requirements of licensing statutes, including the following, where applicable: MGL Ch. 149, Sec. 6 (painters); Ch. 146, Sec. 53 (hoisting

engineers); Ch. 149, Sections 6B-6F (asbestos abatement workers, supervisors & contractors); Ch. 146, Sec. 3 & 3B (plumbers & gas fitters); Ch. 141, Sec. 1 (electricians); Ch. 14, Sec. 84 (pipefitters & sprinkler fitters); and Ch. 143, Sec. 94 (construction supervisor).

(b) Work Hour Reports: The contractor and each subcontractor shall prepare weekly reports in an approved form, of the hours worked in each trade by each employee, identified as minority or non-minority, and/or female, and/or resident. Copies of these shall be provided at the end of each such week to the City's Office of Equal Opportunity & Contract Compliance.

(c) Projected Manning Tables: The contractor 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 City. A copy of the certified payroll will be submitted with these reports.

(d) Billing Reports: The contractor shall prepare and submit monthly billing reports of amounts paid to MBEs, WBEs and/or DBEs each monthly billing period, as well as the record of final payment accompanied by canceled checks.

(e) Payroll Reports: Every contractor and subcontractor shall submit weekly payroll reports to the City, indicating the following information for each employee and/or independent contractor employed on the project; name, address, hours worked, occupational classification, wages, and fringe benefit payments, if any. Said reports shall be signed by the employer or his authorized agent under the penalties of perjury (see MGL Ch. 149, Section 27B).

AA.16 Recruitment/Referral Responsibilities

(1) In the hiring of minority/woman journeymen, apprentices, teamsters, and laborers, the contractor shall rely on referrals from a multi-employer affirmative action program approved by the City, traditional referral method utilized by the construction industry, and referrals from agencies, not more than three in number at any one time, designated by the City's Equal Opportunity Officer.

(2) Records of employment referral orders, prepared by the contractor, shall be made available to the awarding authority.

(3) The contractor will maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization, and of what action was taken with respect to each such individual.

(4) If such individual was sent to the union hiring hall for referral, and was not referred back to the contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the contractor may have taken.

(5) The contractor will document and maintain a record of all solicitations of offers for subcontractors from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractors □ associations and groups.

(6) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without

regard to race, color, religion, sex or national origin, and maintain a record thereof.

AA.17: Subcontracts

(1) The Contractor receiving the award of the contract shall be required to obtain from each of its subcontractors (filed or non-filed) and submit to the Authority prior to the performance of any work under said subcontract, a certification by said subcontractor, regardless of tier, that it will comply with the minority and women work hours/employee ratio and specific affirmative action steps, and to submit this information to the Office of Equal Opportunity, prior to the subcontractor's performance on the project.

(2) In order to ensure that the said subcontractor's certification becomes a part of all subcontracts under the prime contract, no subcontract shall be executed until an authorized representative of the Authority 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.

(3) Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000, the contract provisions listed in this Instructions to Bidders for Affirmative Action Issues , and the applicable goals for minority and female participation and which is set forth in the solicitation form which the contract resulted.

(4) Noncompliance of a subcontractor in compliance with these provisions, will result in the contractor taking such action, with respect to any subcontract or purchase order, as the administering agency may direct, as a means of enforcing such equal opportunity provisions; provided that, in the event a contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor, as a result of such direction, the contractor may request the United States, the State of Massachusetts or the City of New Bedford, to enter into such litigation to protect the interests of the U.S., the State or the City.

AA.18: Wage Rates

(1) Attention is called to Labor Standards provisions regarding conditions of employment, including State and Federal Wage Rates, the Davis-Bacon Act, the Copeland Anti-Kickback Act, and the Contract Work Hours and Safety Standards Act. Where Federal and State wage rates differ, the higher rates shall be used as a minimum.

(2) The rate per hour of the wages to be paid to mechanics, apprentices, teamsters, chauffeurs, and laborers employed on the work shall be not less than the rate of wages in Minimum Wage Rates as determined by the Commissioner of Labor and Industries, as required by M.G.L. Chapter 149, Sections 26 & 27-27h. This schedule shall be in place for said employees during the life of this contract.

(3) Contractor shall keep posted on the site, a legible copy of said schedule. Keep on file wage rates and classifications of labor employed on this work, in order that they may be available for inspection by the Administrator, the Office of Equal Opportunity, or the Architect.

(4) Apprentices employed pursuant to this determination of wage rates must be registered and approved by the State Apprenticeship Council, wherever rates for journeymen or apprentices are not listed.

(5) Pay reserve police officers employed on this work the prevailing rate of wages paid to regular police officers, as required by M.G.L. Chap. 149, Sec. 34B, as amended. Such police officers shall be covered by Workmen's Compensation Insurance and Employer's Liability Insurance by the Contractor.

(6) Noncompliance by the contractor or any subcontractor will result in the City's Contract Compliance Office and/or Legal Office, to consult with the Department of Labor and Industries, and will result in the contractor or subcontractor receiving notification of such, and subsequently must respond to the City of New Bedford within five (5) business days.

AA.19: Access to Compliance Information & Reports

(1) The contractor will provide all information and reports, required by the administering agency or the City of instructions issued by either of them, and will permit access to its facilities and any books, records, accounts, and other sources of information pertinent to the City's affirmative action contract requirements.

(2) Where the 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 City, and shall set forth what efforts he/she has made to obtain the information.

AA.20: Noncompliance

(1) Investigation

Whenever the administering agency or the City believe the general contractor or any

subcontract may not be operating in compliance with the terms of this provision, the City 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 contract provision. If noncompliance is found, then a preliminary report on noncompliance will be made, and the City or its agent will notify such contractor, in writing, of such steps as will, in the judgment of the city or its agent, bring such contractor into compliance.

(2) Report of Noncompliance

In the event that such contractor fails or refuses to fully perform such affirmative action steps, the City shall make a final report of non-compliance, and recommend to the administering agency, the imposition of one or more of the sanctions identified in these provisions. Within fourteen (14) days of the receipt of the recommendations of the City, the administering agency shall move to impose one or more of the following sanctions as it may deem appropriate to attain full and effective enforcement.

(3) Any disagreement between the City and a contractor or subcontractor shall be submitted for a hearing pursuant to the provisions of Chapter 30A. The City shall impose one or more of the following sanctions, as it may deem appropriate, to attain full and effective enforcement.

AA.21: Sanctions

- (1) The recovery by the administering agency from the general contractor of 1/100 of 1% of the contract award price, or \$1,000.00, whichever sum is greater, in the nature of liquidated damages, or if a subcontractor is in non-compliance, the recovery by the administering agency from the general contractor, a back charge against the subcontractor, of 1/10 of 1% of the subcontract price or \$400.00, whichever sum 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 as the general contractor or any subcontractor is able to demonstrate his/her compliance with the terms of the preceding sections of the contract.
- (3) The termination of employment of the contractor and taking possession of the site and finishing the work by whatever method he/she may deem expedient, upon giving the contractor and his/her surety, if any, seven days written notice.
- (4) The termination or cancellation of the contract, in whole or in part.
- (5) The denial to the general contractor and any subcontractor of the right to participate in any future contract awarded by the administering agency for a period of up to three years.
- (6) Other sanctions to be applied, as stipulated in the City of New Bedford Ordinances and other local, state, and federal laws and regulations, as applicable.

AA.22: Appeal of Sanctions

If, at any time after imposition of one or more of the sanctions listed in these provisions, the contractor or subcontractor is able to demonstrate that it is in compliance with the EEO/AA program, the contractor or subcontractor may request the administering or contracting agency, in consultation with the City's Office of Equal Opportunity, to conditionally suspend the sanction, pending final determination by the investigating officer, whether the contractor is in compliance. Upon final determination by the investigating office, the administering or contracting agency, based on the

investigating officer's recommendation, shall either lift the sanctions or impose them.

Sanctions shall not be imposed by the contracting agency or administering agency except after an adjudicatory proceeding, as defined by M.G.L. Chapter 30A, has been conducted. No investigation by the Office of Equal Opportunity shall be initiated without prior notice to the contractor or the subcontractor.

AA.23: Severability

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

APPENDIX A
BID SUBMISSION DOCUMENTS

Bid Submission Checklist

THE GENERAL BIDDER SHALL SUBMIT ALL THE FOLLOWING FORMS AS A PART OF ITS BID SUBMISSION, AND SHALL SUBMIT A COPY OF SUCH TO:

The City of New Bedford
Office of Equal Opportunity
133 William Street Room 208
New Bedford, MA 02740
ph: 979-1446 / fax: 508-991-6148

- (1) Certificate of Understanding: Certification of Compliance with Executive Order 11246"
- (2) Schedule of Participation for Minority, Woman & Disadvantaged Business Enterprises
- (3) Letter of Intent - for each MBE/WBE/DBE Participation
- (4) MBE/WBE Contractor Identification Statement - for each MBE/WBE/DBE
- (5) Bidder's Certification - must be completed and signed by the General Contractor and all Subcontractors who will work on the project (to include MBE/WBE/DBE **and** non-MBE/WBE/DBEs)
- (6) If applicable, a completed and signed MBE/WBE/DBE Unavailability Certification in the event that the work listed on the Schedule is not sufficient to fulfill the Requirement for MBE/WBE/DBE Participation. This certification must include a statement by the bidder of the reasons why it believes it is in compliance with this Provision, and a list of the names, addresses, telephone numbers and reason given for unavailability of the Minority /Woman/ Disadvantaged Contractor who was contacted by the Bidder with respect to the performance of work under the contract.

NOTE: FAILURE TO FULLY COMPLETE AND/OR TO SUBMIT ANY OF THE ABOVE-REFERENCED DOCUMENTS AT THE TIME OF THE BID SUBMISSION MAY RESULT IN THE BID BEING CONSIDERED DISAPPROVED.

Commonwealth of Massachusetts

BIDDERS CERTIFICATE OF UNDERSTANDING

Equal Employment Opportunity Provisions

Contractor _____ Project _____

Address _____ Tel. # _____ Project # _____

_____ Fax # _____

I, the undersigned, understand that:

- A. Minority Business Enterprises are to be awarded at least 11% of the total contract amount for construction/public works projects.
- B. Woman Business Enterprises are to be awarded at least 5% of the total contract amount for construction/public works projects.
- C. Disadvantaged Business Enterprises are to be awarded at least 4% of the total contract amount for airport projects.
- D. All required MBE/WBE/DBE forms included in Instructions to Bidders are to be completed and submitted with the bid.
- E. Prior to award of the contract, a pre-construction conference must be held (to be attended by the general contractor and all subcontractors, regardless of tier) at which time the following requirements will be discussed:
 - 1. Weekly Workforce Utilization Reports (Form CAD85) are to be submitted weekly with payroll reports within five (5) days of last payroll;
 - 2. Quarterly Manpower Projection Tables (Form CAD85-1) are to be submitted with the Start of Construction notification;
 - 3. A minimum goal of 18% minority manpower utilization, in terms of total work hours in the aggregate workforce, in each trade or craft, on each project, will be maintained. The goal for female manpower utilization will be maintained at 6.9% according to regulations;
 - 4. Minority and female work hours are to be uniform in each trade, and minorities and females are to be employed evenly on each project;
 - 5. Minority or female employees are not be transferred from project to project for the purpose of meeting goals;
 - 6. A roster of all minority and/or female applicants for employment must be maintained at each project site (Federal & Non-Federal) in the New Bedford Hometown Plan Area.
- E. The submission of the above reports and adherence to hiring practices and equal opportunity performance of subcontractors is the responsibility of the prime contractor.

The bidder hereby certifies that he/she shall comply with the minority manpower ratio and specific affirmative action steps contained in the EEO above, including compliance with the minority contractor compliance specifications. The Contractor receiving the award of the contract shall be required to obtain from each of its subcontractors, and submit to the contracting or administering agency prior to the performance of any work under said contract, a certification by said sub-contractor, regardless of tier, that it will comply with the minority manpower ratio and specific affirmative action steps contained in this appendix.

Authorized Signature

Date

Name (Please Print or Type)

Title

**SCHEDULE OF PARTICIPATION
DISADVANTAGED/MINORITY / WOMAN BUSINESS ENTERPRISES
to be completed by the Bidder**

Item I - Minority Or Disadvantaged Business Enterprise Participation

1. Name: _____

Address: _____

Nature of Participation: _____

Dollar Value / % of Bid: _____

2. Name: _____

Address: _____

Nature of Participation: _____

Dollar Value / % of Bid: _____

TOTAL BID PRICE	TOTAL DBE or MBE COMMITMENT	
\$ _____	\$ _____	_____ %

Item II - Woman Or Disadvantaged Business Enterprise Participation

1. Name: _____

Address: _____

Nature of Participation: _____

Dollar Value / % of Bid: _____

2. Name: _____

Address: _____

Nature of Participation: _____

Dollar Value / % of Bid: _____

TOTAL BID PRICE	TOTAL WBE or DBE COMMITMENT	
\$ _____	\$ _____	_____ %

The bidder agrees to furnish implementation reports, as required by the awarding authority, to indicate the MBE/WBE or DBE which it has used or intends to use. Breach of this commitment constitutes a breach of the contract.

General Bidder: _____

Signature: _____ Date: _____

LETTER OF INTENT

to be completed by the DBE/MBE/WBE

This form is to be completed by the DBE or MBE and WBE and must be submitted by the General Bidder as part of the Bid Proposal. A separate form must be completed for each MBE, WBE or DBE involved in the project.

Project Title: _____ Project Location: _____

To: _____
(Name of Bidder)

From: _____
(Name of DBE/MBE/WBE) _____ Indicate DBE/MBE/WBE status

I / we intend to perform work in connection with the above project as (Check One)

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

It is understood that if you are awarded the contract, you intend to enter into an agreement to perform the activity described below for the prices indicated.

DBE/MBE/WBE PARTICIPATION:

Description of Activity	Project Start Date	\$ Amount	% of Bid Price
_____	_____	_____	_____

The undersigned certify that they will enter into a formal agreement upon execution of the contract for the above-referenced Project

BIDDER		DBE/MBE / WBE	
Authorized Signature	Date	Authorized Signature	Date
_____	_____	_____	_____
Address		Address	
_____		_____	
Telephone / Fax		Telephone / Fax	
_____		_____	

MINORITY / WOMAN BUSINESS ENTERPRISE PROGRAM

CONTRACTOR IDENTIFICATION STATEMENT

Project Name: _____ Project #: _____

Total Bid Price: \$ _____ Bid Date: _____

In accordance with the New Bedford Minority Business Enterprise Program, the undersigned bidder certifies that he/she:

- 1. _____ is a bona fide Minority/Woman/Disadvantaged Business Enterprise currently certified by the State Office of Minority/Woman Business Assistance (SOMWBA); and such SOMWBA certification has not changed; and in the event of said status changing, it will immediately forward written notification to the City of New Bedford and SOMWBA; and
- 2. _____ intends to perform certain work (specified by formal bid proposal) under a contract in connection with the above-named project, and that work will not be sublet to any company at any tier; and
- 3. _____ will comply with the minority/woman workforce ratio and specific affirmative action steps contained in the EEO/AA Contract Provisions and shall obtain from each of its subcontractors a copy of the bidder's certification and submit to the administering agency, prior to the award of such subcontract, regardless of tier, that he/she will comply with the minority/woman workforce ratio and specific affirmative action steps contained in these and the EEO/AA Contract Provisions.

SOMWBA CERTIFICATION CATEGORY: _____

CONTRACTORS NAME: _____
{ } MBE { } WBE { } DBE

ADDRESS: _____

TELEPHONE #: _____ FAX #: _____

REPRESENTATIVE NAME & TITLE: _____

AUTHORIZED SIGNATURE: _____

GENERAL BIDDERS NAME: _____

BIDDERS CERTIFICATION

to be completed by General Contractor & each of its Subcontractors (MBE/WBE/DBE and non-MBE/WBE/DBE)

The undersigned bidder hereby certifies that he/she will comply with the Minority/Woman Workforce Ratio and Specific Affirmative Action Steps contained in the EEO/AA Provisions of this contract, including compliance with the Minority/Woman/Disadvantaged Business Enterprise as required under these contract provisions.

The contractor receiving the award of the contract shall be required to obtain, from each of its subcontractors, regardless of tier, a copy of this Bidder's Certification indicating that it will comply with the Minority/Woman Workforce Ratio and Specific Affirmative Action Steps contained in these EEO/AA Contract Provisions, and submit it to the contracting agency prior to the award of such contract and subcontract.

Name of General Contractor

Name of Subcontractor
{ } MBE { } WBE { } DBE { } Non-MBE/WBE

Signature of Authorized Representative

Signature of Authorized Representative

Name & Title (Printed or Typed)

Name & Title (Printed or Typed)

Date

Date

**MINORITY / WOMAN BUSINESS ENTERPRISES
UNAVAILABILITY CERTIFICATIONS**

to be completed by General Contractor

*(the Bidder shall prepare additional copies of this information form
in the quantity necessary to comply with the bidding requirements)*

I, _____, _____
Name Title

of _____
Contractor Name

certify that on _____, I contacted the below listed MBE/WBE/DBE
Date of Contact
requesting a bid for

Project _____ as an MBE, WBE or DBE for the provision of
 Goods & Services or Labor to accomplish _____
Subcontract Work Offered to this MBE/WBE/DBE Company

Name of Prospective Sub-Contractor

Address City and State Telephone #

Contact was made by Telephone In Person

Said sub-contractor was unavailable for work on this project or unable to prepare a bid for the following reason(s): (check appropriate answer):

MBE/WBE/DBE Firm Declined Job

MBE/WBE/DBE Firm offered to do a job at the price of \$ _____, which was not acceptable because: _____

Other _____

The above information is accurate and complete, to the best of my knowledge and belief. Signed under the pains and penalties of perjury.

Signature of Authorized Representative, General Contractor Date

MINORITY / WOMAN/DISAVANTAGED BUSINESS ENTERPRISES

REQUEST FOR WAIVER

Upon exhausting all known sources and making every possible effort to meet the minimum requirements for MBE/WBE/DBE participation, the Contractor may seek relief from these requirements by filing this form (completed) NO LATER THAN FIVE (5) working days following the bid opening. Failure to comply with this process shall be cause the bidder to be rejected, thereby rendering the contractor not eligible for award of the contract.

General Information

Project Title: _____ Location: _____

Bid Opening (time/date): _____ Location: _____

Bidder: _____

Mailing Address: _____

Contact Person: _____

Telephone No.: (_____) _____ Ext. _____

Minimum Requirements

The contractor must show that good faith efforts were undertaken to comply with the percentage goals, as specified. The bidder seeking relief must show that such efforts were taken appropriately, in advance of the time set for opening bid proposals, to allow adequate time for response(s) by submitting the following: *(please check all that apply and attach applicable documentation)*

- A. A detailed record of the effort made to contact and negotiate with minority, woman or disadvantaged business enterprises, to include:
 - () 1. Names, addresses and telephone numbers of all such companies contacted;
 - () 2. Copies of written notice(s) which were sent to MBE/WBE/DBE potential subcontractors prior to bid opening;
 - () 3. Copies of advertisements prior to bid opening, as appearing in general publications, trade-oriented publications, and applicable minority/women focused media detailing the opportunities for participation;
 - () 4. A detailed statement as to why each subcontractor contacted (a) was not willing to do the job or (b) was not qualified to perform the work as solicited; and
 - () 5. In the case(s) where a negotiated price could not be reached, the bidder should detail what efforts were made to reach an agreement on a competitive price
 - () 6. Contractor certifies that 100% of the project is to be carried out with his/her own workforce. no subcontractors are to be utilized.

- B. The Agency may require the contractor to produce such additional information, as it deems appropriate and may obtain whatever other information it deems necessary to reach a conclusion from any source.
- C. No later than fifteen (15) days after receipt of all necessary information and documentation, a decision will be made in writing to the bidder. If the waiver request is denied, the facts upon which a denial is based will be set forth. A contractor who is dissatisfied with the decision may then appeal that decision to the Equal Opportunity Employment Agency.

Certification

The undersigned herewith certified that the above information and appropriate attachments are true and accurate to the best of my ability, and that I have been authorized to act on behalf of the bidder in this matter.

(authorized original signature)

Date

Submit to: Equal Employment Opportunity
Compliance Officer
133 William Street, Room 208
New Bedford, MA 02740

To be completed by the City of New Bedford's EEO

Bid Date

Date Received by EEO

Initials

PREVAILING WAGE RATES

PERFORMANCE STANDARDS

New Bedford Harbor Lower Harbor CAD Cell Performance Standards

Contractor shall, at a minimum, abide by the requirements contained within the document entitled "March 2011 Final – Fourth Explanation of Significant Differences for Use of a Lower Harbor CAD Cell (LHCC), New Bedford Harbor Superfund Site, Operable Unit #1, New Bedford, Massachusetts", which is included within the "Lower Harbor CAD Cell Data Report", attached to Section 00800 of the Contract Documents. The requirements listed below apply to both Phase I and Phase II of the Lower Harbor CAD Cell, and the term "Lower Harbor CAD Cell" or "LHCC" refers to both Lower Harbor CAD Cell Phase I and Lower Harbor CAD Cell Phase II.

A. Use of Silt Curtains

Silt curtains shall be utilized for dredging and disposal within New Bedford Harbor that takes place between January 15 and June 15 of any year, and in the case that the Water Quality Performance Standards (see Section C below) are exceeded.

1. The silt curtain shall be extended around the complete perimeter of the LHCC. The only opening shall be a "door" to allow vessel traffic into and out of the LHCC area; this "door" shall be returned to the closed position during all dredged material placement into the LHCC. The silt curtain shall extend from the water surface to within approximately six inches of the harbor bottom at mean lower-low water, unless it is determined via monitoring that the curtain needs to be deepened (for higher tides) to better contain dredged material in the CAD cell. Note that a deeper curtain would rest on the harbor bottom at lower tides and could thus generate water column turbidity as a result.
2. The silt curtain shall be securely anchored by using sheet pilings (or equivalent) at appropriate spacing, and be of sufficiently strong material construction, to withstand high winds, storm-driven waves, large vessel wake, etc. The silt curtain shall be anchored along its bottom as necessary to maintain its position. Sheet piles shall be fitted with lighted navigational aids to avoid vessel strikes.
3. The separate sections making up the perimeter silt curtain shall be sufficiently overlapped (minimum of five feet) to prevent releases of any turbidity plumes or oil sheens between sections. The top foot of the curtain shall be a solid material to similarly prevent/minimize releases of oil sheen. The mesh size opening of the rest of the silt curtain shall be the smallest commercially available for such applications (typically an Equivalent Opening Size (EOS) of 100 - 0.0059 inch or 0.15mm mesh opening).
4. An oil-absorbent boom shall be placed along the entire interior of the silt curtain during placement operations. This boom shall be overlapped as specified in 3 above, and shall be replaced per manufacturer's direction or as needed to retain the ability to absorb any oil sheens that may be present.
5. Silt curtains placed around CAD Cell #2 shall have as many "doors", which will be as wide as necessary, to accommodate the construction and filling of CAD Cell #3 (associated with the New

Bedford Marine Commerce Terminal project), which may or may not take place simultaneously as the Lower Harbor CAD Cell project, and will be located immediately to the north of CAD Cell #2. Additional information associated with the construction of CAD Cell #3 may be provided to the Contractor upon request.

B. Use of an Environmental Bucket

For the mechanical dredging of Superfund sediments (or for surficial, fine-grained, silty sediments) to be placed into the LHCC, an environmental bucket shall be used, to the extent practicable, that is specifically designed for environmental rather than navigational dredging. The environmental bucket shall be designed to minimize sediment re-suspension and the loss of dredged material and related seawater during dredging. If an environmental bucket cannot be used due to site restrictions (such as the pre-dredging removal of debris) water quality controls and monitoring will maintain the protectiveness of the operation. The environmental (or other) bucket shall be rinsed in a wash tank after release of each bucket load into the scow/hopper. The dredging process will be operated in a careful, well-designed manner so that the project-specific turbidity criterion of 50 nephelometric turbidity units (ntu) above background measured 300 feet down-current of the dredge area is not exceeded (see Section C below).

Free-standing water collected in the scows/hoppers shall be decanted and filtered using activated carbon to ensure compliance with this same 50 ntu turbidity criterion.

During placement of dredged material into the LHCC, if the material is to be placed via bucket (rather than split-hull scow) the bucket shall be lowered into the water column as far as possible (if mechanically-armed) or a minimum of 10 feet (if cable supported) prior to release to minimize sediment resuspension. If additional measures are required to completely empty sediments from the scow (e.g., for the final scow load), they will be conducted in a manner that maintains compliance with the project turbidity criterion.

C. Water Quality Performance Standards

All in-water activities associated with the LHCC (e.g., installing the silt curtain, excavating the cell, dredging Superfund dredge areas, passive sediment dewatering, placing material into the cell, capping the cell) shall comply with the NBH Site-specific turbidity-based water quality performance standard of 50 ntu above background measured 300 feet down-current of the management activity, as compared to a reference sample collected from a reference station located approximately 1,000 feet up-current of dredging operations to provide for background conditions. Compliance and implementation of this standard shall follow the approach outlined on Figure 5 of the Water Quality Monitoring Summary Report for the 2009 dredge season (WHO, 2010, included within the "Lower Harbor CAD Cell Data Report", attached to Section 00800 of the Contract Documents).

D. Air Quality

A Site-specific air monitoring and tracking program already in place and operated by EPA will be continued for LHCC Top of CAD dredging and placement activities, and additional air monitoring location(s) will be used to account for the lower harbor locus of these activities. In addition, to avoid

generation of airborne dust, mechanically dredged sediment placed in hoppers/scows and awaiting placement into the LHCC shall not be allowed to dry out prior to placement. Additional measures to reduce the potential for airborne PCBs will be implemented, depending on the results of the air monitoring and tracking program. Please note that significant air quality impacts from LHCC activities are not expected; however, should air monitoring results for PCBs exceed established standards, the Contractor will be ordered to halt or modify construction operations.

Air monitoring and, if appropriate, dust suppression measures shall be implemented to ensure that airborne PCB levels from the mechanical dredging, barge-transport, passive dewatering, and CAD cell operations are below levels of concern, as established in the Superfund harbor cleanup Public Exposure Tracking System (see the USEPA's New Bedford Superfund Site website located at: www.epa.gov/nbh under the section entitled "Cleanup Plans and Data").

E. Special Conditions

1. Dredge material shall be transported to suitable disposal facilities; unregulated dumping of dredge materials is not permitted.
2. The Contractor shall develop and implement a Navigation Plan to address and mitigate temporary impacts to navigation during dredging activities.
3. The Contractor shall provide and maintain in good working order appropriate United States Coast Guard (USCG) approved navigation aids (for example, buoys and/or lights, as appropriate) to assist mariners in avoiding work areas as required by the USCG.
4. The Contractor shall maintain vehicular access to water-dependent users throughout construction activities.
5. The Contractor shall remove and properly dispose of all temporary structures no later than three (3) months after completion of the dewatering and amendment of the sediments. Temporary structures are defined as berms and dikes; lime silo; dewatering tanks, erosion and sediment control systems, pipes, and siltation curtains.

CAD CELL #2 TSCA 731.61 (c) DETERMINATION

Appendix A - TSCA 761.61(c) Determination

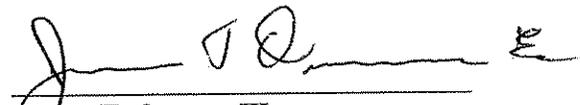
Consistent with Section 761.61(c) of the Toxic Substances Control Act (TSCA) I have reviewed the pertinent documents regarding the state enhanced remedy for the New Bedford Harbor site and considered the proposed confined aquatic disposal cells (CAD cells) for the dredged PCB-contaminated sediments set out in the draft April 2007 CAD Cell #2 Pre-Design Work Plan and Section 01135 of the November 2008 Phase III Contact Specifications for the New Bedford Harbor navigational dredging. I have also reviewed a map of the location of the CAD cells which is attached hereto as Attachment A. As required by that section of TSCA, I have determined that the proposed method of disposing of the PCB-contaminated sediments in a CAD cell(s) north of Route 6 in New Bedford Harbor does not pose an unreasonable risk to human health or the environment as long as the following conditions are met:

1. Compliance with the Work Plan's and Contract Specification's water quality and turbidity performance standards is maintained during all dredging and disposal activities;
2. Any dredged material that accidentally comes to be located outside of CAD cell #1 or #2 during disposal (e.g., "missing" the cell during placement or from "surge" related overflow during placement) is removed and placed into the CAD cell(s);
3. The CAD cells are capped with clean, suitable material of sufficient thickness to isolate the PCB-contaminated sediments physically, chemically and biologically from the surrounding benthic environment. The placement of these underwater caps shall be timed such that sufficient consolidation of the underlying dredged material has taken place to physically support the cap material. A bathymetric survey shall be performed upon completion of the cap placement;
4. The CAD cell caps are monitored to demonstrate their physical, chemical and biological quality. This monitoring shall include bathymetric surveys, chemical sampling and sediment camera work (as an alternative to benthic faunal enumeration). The frequency of this cap monitoring shall be at least annually for the first three years after cap placement, unless otherwise directed by EPA New England. After three years, the Commonwealth may propose a revised schedule for monitoring;
5. An annual report summarizing the CAD cell cap placement or CAD cell cap monitoring shall be submitted to EPA New England beginning with placement of the cap material. This report shall include a summary discussion of all activities associated with the cap placement or cap monitoring, and shall include if needed any recommendations for corrective action to maintain the physical, chemical or biological quality of the caps. A draft and final version of each such annual report shall be submitted, with the final version incorporating all comments received from EPA New England.
6. Corrective actions recommended in the annual reports, or alternatively, those required by EPA New England based on information in the annual reports, shall be implemented in a timely manner. Corrective actions could include, but not be limited to, installation of additional controls or excavation and disposal of dredged PCB-contaminated sediments from the CAD cells

if information indicates that the CAD cells are not effective in isolating and/or controlling migration of PCBs from the CAD cells into the harbor.

7. The City of New Bedford/Harbor Development Commission shall coordinate with the Department of Commerce through the National Oceanic and Atmospheric Administration, National Ocean Service and the U.S. Coast Guard to ensure that the as-built locations of the CAD cells become included in all future nautical charts of New Bedford Harbor.

This determination is based on the information contained in the April 2007 Work Plan and the November 2008 Contract Specifications. Any proposed change(s) to the Work Plan's or Contract Specifications shall be provided to EPA. Upon review, EPA may find it necessary to revised this determination or issue a new TSCA determination based on the proposed change(s).



James T. Owens, III
Director, Office of Site Remediation and Restoration

11-12-08
Date

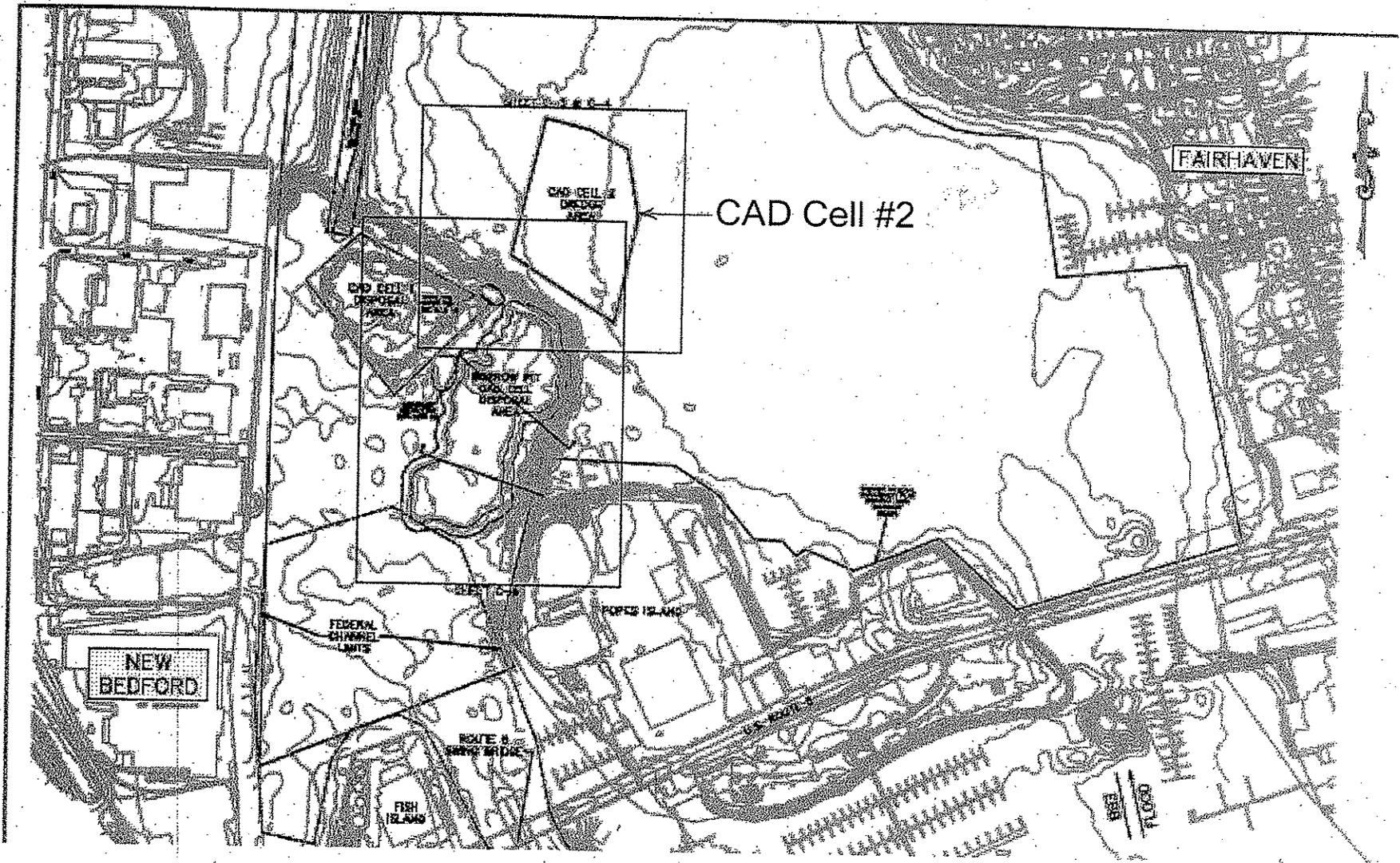


Figure 1: CAD #2 Location

OFFSHORE DISPOSAL PERMITS



DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

REPLY TO:
ATTENTION OF:

November 4, 2011

Regulatory Division
CENAE-R-PEA
File Number: NAE-2007-2709

Ms. Kristin Decas
City of New Bedford – Harbor Development Commission
52 Fisherman's Wharf
New Bedford, Massachusetts 02745

Dear Ms. Decas:

We have reviewed the application, submitted on your behalf by Apex Companies, LLC, to dispose of approximately 750,000 cubic yards of clean dredged/excavated sediments (consisting of silt, sand and some gravel parent material underlying the surficial human impacted materials) from the harbor bottom in New Bedford Harbor at the area designated as "North of Pope's Island – Area of Potential CAD Cells". This disposal operation will occur in the waters of Cape Cod Bay at the Cape Cod Bay Disposal Site (CCBDS). This application is only for the disposal of the material at the CCBDS that will be excavated from the referenced area of New Bedford Harbor to create the CAD Cells. This is because the dredging/excavation itself is authorized under the Record of Decision (ROD) for the New Bedford Harbor Superfund Site Upper and Lower Harbor Operable Unit developed in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. Section 9601 et. seq., and is not subject to Corps of Engineers approval. The location of the CCBDS is shown on the attached drawing.

We reviewed test results from the proposed dredging/excavation of an area of 8.3 acres identified on the drawings as the Area of Potential CAD Cells. Our understanding is that the surficial material from the CAD Cell 3 excavation will be dredged and set aside for disposal in an existing CAD cell. The test results indicate that the surficial layer averages approx. 2 feet in thickness and therefore the top 2 feet should be stored for disposal in the completed CAD cell or placed in an existing CAD cell that is not yet at capacity.

Based on the information you have provided, we have determined that the proposed discharge of dredged material into waters of the United States (Cape Cod Bay), will have only minimal individual or cumulative environmental impacts. Therefore, this disposal activity is authorized as a Category 2 activity under the attached Federal permit known as the Massachusetts General Permit (GP). This work must be performed in accordance with the terms and conditions of the GP and also in compliance with the following special conditions:

1. The Coast Guard, Sector Southeastern New England, Waterways Management Division, (401) 435-2351, shall be notified, at least ten working days in advance of the intended start date, of the location and estimated duration of the dredging and disposal operations. An alternate contact is the Coast Guard Command Center, Woods Hole, (508) 457-3211.

2. Except when directed otherwise by the Corps for site management purposes, all disposal of dredged material shall adhere to the following:

a. The permittee shall release the dredged material at a specified set of coordinates within the disposal site with the scow at a complete halt.

b. When a disposal buoy is present at the specified coordinates, disposal shall occur with the side of the scow no closer than 100 feet and no greater than 200 feet from the buoy to minimize collisions with the buoy.

These requirements must be followed except when doing so will create unsafe conditions because of weather or sea state, in which case disposal with the scow moving only fast enough to maintain safe control (generally less than one knot) is permitted. Disposal is not permitted if these requirements cannot be met due to weather or sea conditions. In that regard, special attention needs to be given to predicted conditions prior to departing for the disposal site.

3. Silent Inspector System Requirements

a. Every discharge of dredged material at the disposal site requires monitoring by the contractor. This disposal monitoring of dredging projects must be performed using the Dredging Quality Management (DQM) system software and hardware system [formerly Silent Inspector (SI)] developed by the Corps. The DQM system must have been certified by the Corps within a year of the disposal activity. See the National DQM Support Center site <https://si.usace.army.mil> for additional DQM information. Questions regarding certification should be addressed to the DQM Point of Contact at the Corps New England District [Norm Farris, (978) 318-8336].

b. The permittee is responsible for ensuring that the system is operational throughout the project and that project data are submitted to the National DQM Support Center in accordance with the specifications provided at the aforementioned website. If any component of the system is inoperable, disposal may not take place unless otherwise authorized by the Corps New England District DQM Point of Contact.

c. The DQM system used by the permittee must be capable of providing the information necessary for the Scow Monitoring Profile Specification. The permittee is also responsible to provide the Corps (see below for submittal information) with a record of estimated barge volume for each trip. If barge volume information is not provided through the DQM system utilized, the permittee must submit a weekly report to Corps that provides estimated volume (cubic yards), date and disposal time for each trip. The data collected by the DQM system shall, upon request, be made available to the Corps.

d. For the initiation of disposal activity and any time disposal operations resume after having ceased for one month or more, the permittee or the permittee's representative must notify the Corps at least ten working days before the date disposal operations are expected to begin or resume. See below for contact information. The information to be provided in this

notification is: permit number, permittee name, address and phone number, phone number of the dredging contractor, name, address and phone number of towing contractor, estimated dates dredging is expected to begin and end, name of all disposal vessels to be employed in the work, scow capacities in cubic yards, copies of the scow certification documents, name of disposal site, and estimated volume of material to be dredged. **Disposal operations shall not begin or resume until the Corps issues a letter authorizing the initiation or continuation of open-water disposal.** The letter will include disposal point coordinates to use for this specific project at that time. These coordinates may differ from those specified for other projects using the same disposal site or even from those specified earlier for this project. It is not necessary to wait ten days before starting disposal operations. They may start as soon as this letter is issued.

4. If any material is released beyond the limits specified in this permit, the Captain or the permittee must notify the Corps immediately by phone (see below for contact information). Information provided shall include disposal coordinates, permit number, volume disposed, date and time of disposal, circumstances of incident, disposal vessel name, name of caller, and phone number of caller. If no person is reached at the number above, a voice message with the relevant information should be provided. In addition, a detailed written report must be provided to the Corps within 48 hours following any such incident.

5. Unless otherwise stated, all submittals and coordination related to these special conditions shall be submitted via: a) MAIL: PATS Branch - Regulatory Division, Corps of Engineers, New England District, 696 Virginia Road, Concord, MA 01742-2751, b) EMAIL: charles.n.farris@usace.army.mil; or c) FAX: (978) 318-8303. Direct dredge related questions to (978) 318-8336 or (978) 318-8338. Documents which are not addressed in this manner may not reach their intended destination and do not comply with the requirements of this permit.

6. Disposal of dredged material at the Cape Cod Bay Disposal Site (CCBDS) shall not occur between January 1 and May 15, of any year, in order to protect right whales.

7. A marine mammal/turtle observer approved by National Marine Fisheries Service (NMFS) shall be present on the towing vessel for all disposal activities.

8. In the event that marine mammals or turtles are sighted within 1,500 feet of the specified disposal location, the tug captain and observer shall abide by the following applicable disposal procedures:

- a. If the animals are sighted within 1,500 feet of the specified disposal location, note species, number of animals, direction of travel, and behavior (feeding, in transit, etc.).
- b. If the animals are within 1,500 feet of the specified disposal location and appear to be moving away from it, wait until they have cleared the specified disposal location by 1,500 feet and then proceed with disposal at the specified disposal location.
- c. If the animals are within 1,500 feet of the specified disposal location and appear to be remaining stationary, or are outside 1,500 feet but appear to be moving towards the

specified disposal location, proceed to the alternate disposal location, as specified in the Corps letter authorizing the initiation or continuation of open-water disposal.

9. If the disposal occurs in darkness or otherwise limited visibility, the tug shall employ its searchlight for the benefit of the observer beginning 2,000 feet from the disposal location.

10. Under no circumstances shall disposal occur within 1,500 feet of a sighted marine mammal or turtle.

11. The observer shall document each trip using the sighting log form that the Corps will supply when disposal coordinates are specified.

The Corps of Engineers has consulted with the National Marine Fisheries Service (NMFS) regarding the effects of your project on Essential Fish Habitat (EFH) as designated under the Magnuson-Stevens Fishery Conservation and Management Act. The NMFS has not provided EFH conservation recommendations.

You are responsible for complying with all of the GP's requirements. Please review the attached GP carefully, in particular the GP conditions beginning on Page 5, to familiarize yourself with its contents. You should ensure that whoever does the work fully understands the requirements and that a copy of the permit document and this authorization letter are with the towing vessel when disposal operations are underway.

This determination becomes valid only after the Massachusetts Department of Environmental Protection (MassDEP) issues or waives Water Quality Certification (WQC) as required under Section 401 of the Clean Water Act. In the event the DEP denies the 401 WQC, this determination becomes null and void. The address of the MassDEP Regional office for your area is provided in the attached GP.

Your project is located within, or may affect resources within the coastal zone. The Massachusetts Office of Coastal Zone Management (CZM) has already determined that no further Federal Consistency Review is required.

This GP expires on January 21, 2015. Activities authorized under this GP that have commenced (i.e., are under construction) or are under contract to commence before this GP expires will have until January 21, 2016 to complete the activity under the terms and general conditions of the current GP. For work within Corps jurisdiction that is not completed by January 21, 2016, you will need to reference any reissued GP to see if your project is still authorized under Category 1 (no application required), or Category 2 (application required). If it is no longer authorized you must submit an application and receive written authorization before you can continue work within our jurisdiction. Please contact us immediately if you change the plans or construction methods for work within our jurisdiction. This office must approve any changes before you undertake them.

This authorization requires you to complete and return the attached Work Start Notification Form to this office at least two weeks before the anticipated starting date. You must also complete and return the enclosed Compliance Certification Form within one month following the completion of the authorized work.

This authorization presumes that the disposal operation as described above is in waters of the U.S. Should you desire to appeal our jurisdiction, submit a request for an approved jurisdictional determination in writing to this office.

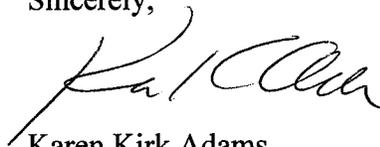
This permit does not obviate the need to obtain other federal, state, or local authorizations required by law, as listed on Page 2 of the GP. Performing work not specifically authorized by this determination or failing to comply with any special conditions provided above or all the terms and conditions of the GP may subject you to the enforcement provisions of our regulations.

As of the time of issuance of this general permit authorization letter, we are also reviewing your simultaneous request to dispose of this same excavated material at the Rhode Island Sound Disposal Site (RISDS) that was authorized for disposal of suitable clean material. The RISDS is closer to New Bedford Harbor than the CCBDS, does not necessitate traversing the Cape Cod Canal, and does not have as many limitations on its use as the CCBDS. Therefore, the RISDS is more preferable to you. However, in case issues arise that prevent the timely issuance of approval for the RISDS or in case the approval is granted and subsequent unanticipated actions or events prevent the use of the RISDS this separate approval for disposal at the CCBDS (under the same file number) is being issued.

We continually strive to improve our customer service. In order for us to better serve you, we would appreciate your completing our Customer Service Survey located at <http://per2.nwp.usace.army.mil/survey.html>

Please contact Mr. Brian Valiton, of my staff at 978-318-8166 if you have any questions.

Sincerely,



Karen Kirk Adams
Chief, Permits & Enforcement Branch
Regulatory Division

Attachments
Copies Furnished:

Ed Reiner, U.S. EPA, Region 1, Boston, Massachusetts, reiner.ed@epa.gov
Christopher Boelke, National Marine Fisheries Service, Gloucester, Massachusetts,
christopher.boelke@noaa.gov

Elizabeth F. Kouloheras, DEP SERO, Wetlands and Waterways, Lakeville, Massachusetts,
c/o lisa.ramos@state.ma.us (DEP Permit # 10335)

Ken Chin, Mass. DEP, One Winter Street, Boston, Massachusetts 02108

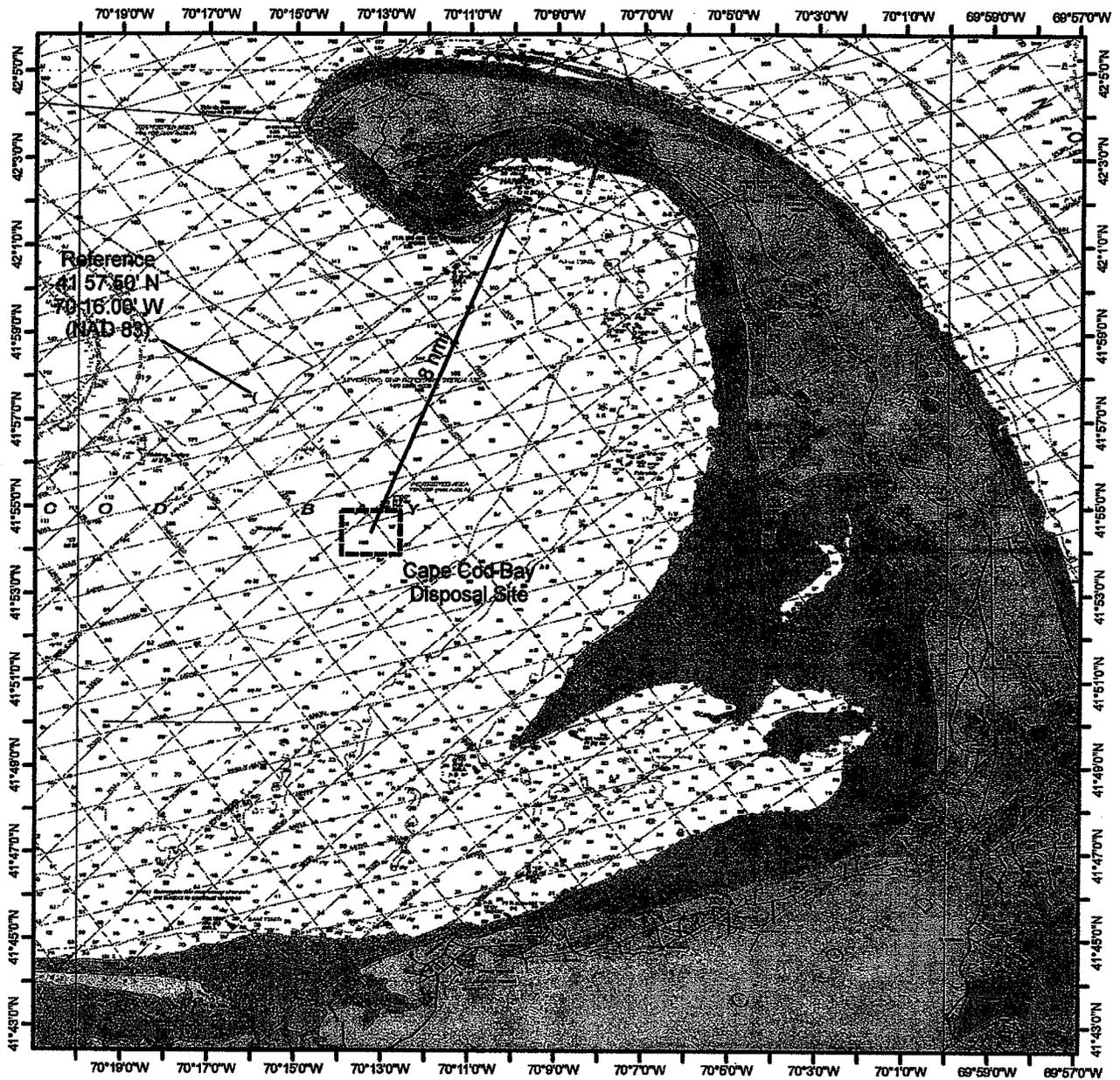
Robert Boeri, Coastal Zone Management, Boston, Massachusetts, Robert.Boeri@state.ma.us

Steve Pothier, First Coast Guard District (dpw-2), Boston, Massachusetts,
steven.r.pothier@uscg.mil

Chris Morris, Apex Companies, LLC, 184 High Street, Suite 502, Boston, Massachusetts 02110

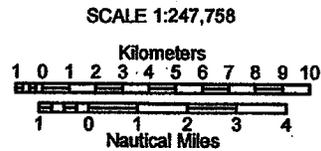
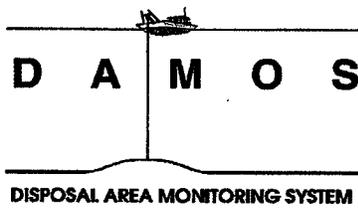
Edward LeBlanc, U.S. C.G., Marine Safety Office, 20 Risho Avenue, East Providence, RI
02914-1208

Sarah Porter, New Bedford Conservation Commission, 133 William Street, New Bedford,
Massachusetts 02744

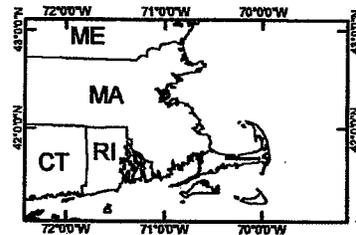


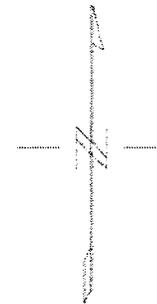
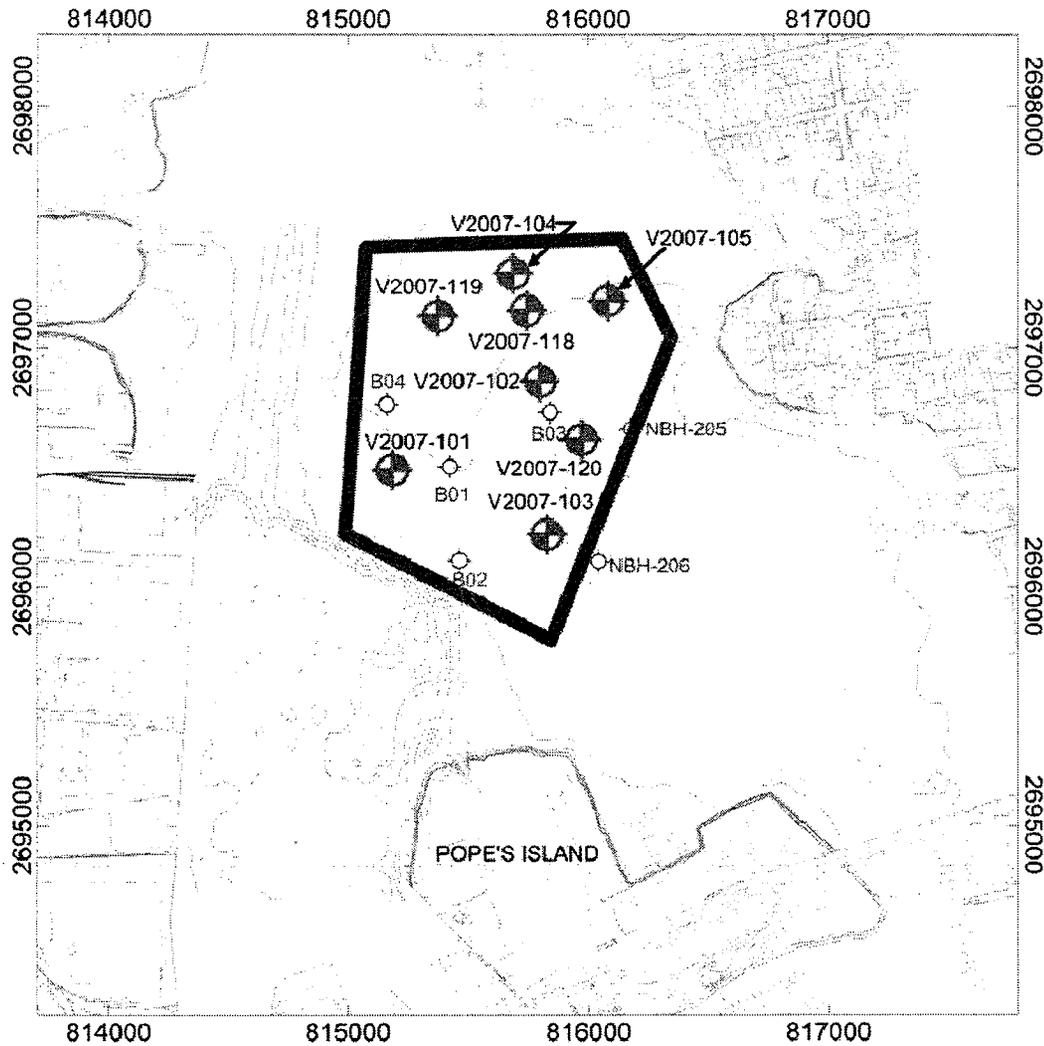
CAPE COD BAY DISPOSAL SITE

Description: The Cape Cod Bay Disposal Site (CCBDS) is centered at coordinates 41°54.406' N, 70°13.268' W (NAD 83) and is located 8.0 nmi (14.9 km) southwest of Long Point, Provincetown, Massachusetts. The site has a relatively flat, featureless seafloor with an average water depth of 102 ft (31 m). The authorized disposal point (within the overall disposal area) is specified for each dredging project in other project documents



NOTE: This chart is not intended for use in navigation.

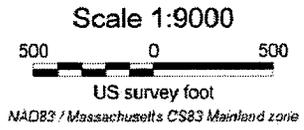




1. COORDINATES ARE SHOWN IN THE STATE PLANE COORDINATE SYSTEM, MASSACHUSETTS MAINLAND ZONE 2001 REFERENCED TO THE 1983 NORTH AMERICAN DATUM (NAD83) VERTICAL DATUM REFERENCED TO MLLW.

2. BATHYMETRIC CONTOURS FROM USACE HYDROGRAPHIC SURVEY, CONTOUR INTERVAL IS 1 FOOT.

3. THIS MAP IS FOR PLANNING PURPOSES ONLY AND SHOULD NOT BE USED FOR NAVIGATION. ANY UNAUTHORIZED USE OF THIS MAP IS STRICTLY PROHIBITED.



-  Vibracore Borings for Suitability Testing
-  Other Related Geotechnical Borings from the Proposed CAD Area
(B01 thru B04 = Deep Borings)
(NBH-205, NBH-206 = Maguire Original DMMP Deep Borings)

NEW BEDFORD HARBOR- NAVIGATION DREDGING

**NORTH OF POPE'S ISLAND
AREA OF POTENTIAL CAD CELLS**

Apex Companies, LLC



**US Army Corps
of Engineers**®
New England District

**GENERAL PERMIT
WORK-START NOTIFICATION FORM**
(Minimum Notice: Two weeks before work begins)

* MAIL TO: U.S. Army Corps of Engineers, New England District *
* Permits and Enforcement Branch *
* Regulatory Division *
* 696 Virginia Road *
* Concord, Massachusetts 01742-2751 *

Corps of Engineers Permit No. NAE 2007--2709 was issued to the New Bedford Harbor Development Commission, on November 2, 2011. This disposal of excavated/dredged material is to be at the Cape Cod Bay Disposal Site in Cape Cod Bay. The permit authorized the permittee to dispose of up to 850,000 cubic yards of dredged/excavated material from the creation of CAD Cells from an area of New Bedford Harbor.

The people (e.g., contractor) listed below will do the work, and they understand the permit's conditions and limitations.

PLEASE PRINT OR TYPE

Name of Person/Firm: _____

Business Address: _____

Telephone Numbers: () _____ () _____

Proposed Work Dates: **Start:** _____ **Finish:** _____

Permittee/Agent Signature: _____ **Date:** _____

Printed Name: _____ **Title:** _____

Date Permit Issued: _____ **Date Permit Expires:** _____

FOR USE BY THE CORPS OF ENGINEERS

PM: Brian Valiton **Submittals Required:** Notifications for endangered species observer.

Inspection Recommendation: None. There is nothing to see at the disposal site. We will check our information relative to the Silent Inspector disposal program during the project.



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

November 15, 2011

Regulatory Division
CENAE-R-PEA
File Number: NAE-2007-2709

Ms. Kristin Decas
City of New Bedford – Harbor Development Commission
52 Fisherman's Wharf
New Bedford, Massachusetts 02745

Dear Ms. Decas:

We have reviewed the application, submitted on your behalf by Apex Companies, LLC, to transport dredged material from New Bedford Harbor for the purpose of disposing of it in the waters of Rhode Island Sound at the Rhode Island Sound Disposal Site (RISDS) which is a USEPA Designated Ocean Disposal Site. The material consists of approximately 750,000 cubic yards of clean dredged/excavated sediments (consisting of silt, sand and some gravel parent material underlying the surficial human impacted materials) from the harbor bottom in New Bedford Harbor at the area designated as "North of Pope's Island – Area of Potential CAD Cells". This application is only for the disposal of the material at the RISDS that will be excavated from the referenced area of New Bedford Harbor to create the CAD Cells. This is because the dredging/excavation itself is authorized under the Record of Decision (ROD) for the New Bedford Harbor Superfund Site Upper and Lower Harbor Operable Unit developed in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended, 42 U.S.C. Section 9601 et. seq., and is not subject to Corps of Engineers approval. The location of the RISDS is shown on the attached drawing.

Based on the information you have provided, we have determined that the proposed discharge of dredged material into ocean waters (Rhode Island Sound), will have only minimal individual or cumulative environmental impacts on ocean waters. Therefore, this disposal activity is authorized as a Category 2 activity under the attached Federal permit known as the Massachusetts General Permit (GP). This work must be performed in accordance with the terms and conditions of the GP and also in compliance with the following special conditions:

1. The Coast Guard, Sector Southeastern New England, Waterways Management Division, (401) 435-2351, shall be notified, at least ten working days in advance of the intended start date, of the location and estimated duration of the dredging and disposal operations. An alternate contact is the Coast Guard Command Center, Woods Hole, (508) 457-3211.
2. Except when directed otherwise by the Corps for site management purposes, all disposal of dredged material shall adhere to the following:

a. The permittee shall release the dredged material at a specified set of coordinates, which the Corps will provide, within the disposal site with the scow at a complete halt.

b. When a disposal buoy is present at the specified coordinates, disposal shall occur with the side of the scow at least 100 feet and no greater than 200 feet from the buoy to minimize collisions with the buoy.

These requirements must be followed except when doing so will create unsafe conditions because of weather or sea state, in which case disposal with the scow moving only fast enough to maintain safe control (generally less than one knot) is permitted. Disposal is not permitted if these requirements cannot be met due to weather or sea conditions. In that regard, special attention needs to be given to predicted conditions prior to departing for the disposal site.

3. Silent Inspector System Requirements

a. Every discharge of dredged material at the disposal site requires monitoring by the contractor. This disposal monitoring of dredging projects must be performed using the Dredging Quality Management (DQM) system software and hardware system [formerly Silent Inspector (SI)] developed by the Corps. The DQM system must have been certified by the Corps within a year prior to the disposal activity. See the National DQM Support Center site <https://si.usace.army.mil> for additional DQM information. Questions regarding certification should be addressed to the DQM Point of Contact at the Corps New England District [Norm Farris, (978) 318-8336].

b. The permittee is responsible for ensuring that the system is operational throughout the project and that project data are submitted to the National SI Support Center in accordance with the specifications provided at the aforementioned website. If any component of the system is inoperable, disposal may not take place unless otherwise authorized by the Corps New England District DQM Point of Contact.

c. The DQM system used by the permittee must be capable of providing the information necessary for the Scow Monitoring Profile Specification. The permittee is also responsible to provide the Corps (see below for submittal information) with a record of estimated barge volume for each trip. If barge volume information is not provided through the SI system utilized, the permittee must submit a weekly report to Corps that provides estimated volume (cubic yards), date and disposal time for each trip. The data collected by the DQM system shall, upon request, be made available to the Corps.

d. For the initiation of disposal activity and any time disposal operations resume after having ceased for one month or more, the permittee or the permittee's representative must notify the Corps at least ten working days before the date disposal operations are expected to begin or resume. See below for contact information. The information to be provided in this notification is: permit number, permittee name, address and phone number, phone number of the dredging contractor, name, address and phone number of towing contractor, estimated dates dredging is expected to begin and end, name of all disposal vessels to be employed in the work and copies of their certification documents, name of the disposal site, and estimated volume of material to be dredged. **Disposal operations shall not begin or resume until the Corps issues a letter authorizing the initiation or continuation of open-water disposal.** The letter will

include disposal point coordinates to use for this specific project at that time. These coordinates may differ from those specified for other projects using the same disposal site or even from those specified earlier for this project. It is not necessary to wait ten days before starting disposal operations. They may start as soon as this letter is issued.

4. If any material is released beyond the limits specified in this permit, the Captain or the permittee must notify the Corps immediately by phone (see below for contact information). Information provided shall include disposal coordinates, permit number, volume disposed, date and time of disposal, circumstances of incident, disposal vessel name, name of caller, and phone number of caller. If no person is reached at the number above, a voice message with the relevant information should be provided. In addition, a detailed written report must be provided to the Corps within 48 hours following any such incident.

5. Unless otherwise stated, all submittals and coordination related to these special conditions shall be submitted via: a) MAIL: PATS Branch - Regulatory Division, Corps of Engineers, New England District, 696 Virginia Road, Concord, MA 01742-2751, b) EMAIL: charles.n.farris@usace.army.mil; or c) FAX: (978) 318-8303. Direct dredge related questions to (978) 318-8336 or (978) 318-8338. Documents which are not addressed in this manner may not reach their intended destination and do not comply with the requirements of this permit.

6. A copy of this permit authorization letter shall be placed in a conspicuous place in the vessel which will be used for the transportation or dumping authorized by this decision.

7. The surficial material from the CAD Cell 3 excavation (approximately the top 2 feet of material) from the 8.3 acre area we reviewed, cannot be disposed of at the RISDS. This area is shown on the attached drawing titled "NEW BEDFORD HARBOR – NAVIGATION DREDGING NORTH OF POPE’S ISLAND AREA OF POTENTIAL CAD CELLS APEX COMPANIES LLC". This surficial material should be placed in a CAD cell.

The Corps of Engineers has consulted with the National Marine Fisheries Service (NMFS) regarding the effects of your project on Essential Fish Habitat (EFH) as designated under the Magnuson-Stevens Fishery Conservation and Management Act. The NMFS has not provided EFH conservation recommendations.

You are responsible for complying with all of the GP’s requirements. Please review the attached GP carefully, in particular the GP conditions beginning on Page 5, to familiarize yourself with its contents. You should ensure that whoever does the work fully understands the requirements and that a copy of the permit document and this authorization letter are at the project site throughout the time the work is underway.

Your project is located within, or may affect resources within the coastal zone. The Massachusetts Office of Coastal Zone Management (CZM) has already determined that no further Federal Consistency Review is required.

The time limit for completion of the open-water disposal authorized by this GP is three years from the date of this letter. There shall be no open-water disposal after that completion date without further authorization in writing from the Corps.

This authorization requires you to complete and return the attached Work Start Notification Form to this office at least two weeks before the anticipated starting date. You must also complete and return the enclosed Compliance Certification Form within one month following the completion of the authorized work.

This authorization presumes that the work as described above and as shown on your plans noted above is in waters of the U.S. Should you desire to appeal our jurisdiction, submit a request for an approved jurisdictional determination in writing to this office.

This permit does not obviate the need to obtain other federal, state, or local authorizations required by law, as listed on Page 2 of the GP. Performing work not specifically authorized by this determination or failing to comply with any special conditions provided above or all the terms and conditions of the GP may subject you to the enforcement provisions of our regulations.

We continually strive to improve our customer service. In order for us to better serve you, we would appreciate your completing our Customer Service Survey located at <http://per2.nwp.usace.army.mil/survey.html>

Please contact Mr. Brian Valiton, of my staff at 978-318-8166 if you have any questions.

Sincerely,



Karen Kirk Adams
Chief, Permits & Enforcement Branch
Regulatory Division

Attachments

Copies Furnished:

Ed Reiner, U.S. EPA, Region 1, Boston, Massachusetts, reiner.ed@epa.gov

Christopher Boelke, National Marine Fisheries Service, Gloucester, Massachusetts,
christopher.boelke@noaa.gov

Elizabeth F. Kouloheras, DEP SERO, Wetlands and Waterways, Lakeville, Massachusetts,
c/o lisa.ramos@state.ma.us (DEP Permit # 10335)

Ken Chin, Mass. DEP, One Winter Street, Boston, Massachusetts 02108

Robert Boeri, Coastal Zone Management, Boston, Massachusetts, Robert.Boeri@state.ma.us

Steve Pothier, First Coast Guard District (dpw-2), Boston, Massachusetts,
steven.r.pothier@uscg.mil

Chris Morris, Apex Companies, LLC, 184 High Street, Suite 502, Boston, Massachusetts 02110

Edward LeBlanc, U.S. C.G., Marine Safety Office, 20 Risho Avenue, East Providence, RI
02914-1208

Sarah Porter, New Bedford Conservation Commission, 133 William Street, New Bedford,
Massachusetts 02744

MEMORANDUM THRU

Ruth M. Ladd, Chief, Policy Analysis and Technical Support Branch

FOR: Brian Valiton, Project Manager, CENAE-R-PEA

SUBJECT: Suitability Determination for New Bedford Harbor Development Commission, New Bedford Harbor, New Bedford and Fairhaven, Massachusetts, Application #2007-2709.

1. Project Description:

The applicant is proposing to dredge an area of approximately **8.3 acres** in New Bedford Harbor to construct a Confined Aquatic Disposal (**CAD**) cell. The surficial material will be dredged and set aside for disposal in the CAD cell while the underlying parent material, a volume of approximately **110,000 cu. yds.** of silt and sand, will be mechanically dredged and disposed of at Cape Cod Bay Disposal Site (**CCDS**), used as cap material on nearby projects, or used as beach nourishment.

A sampling plan for this project was prepared on 7 November 2007. The plan called for six cores to be taken from the project area. Each core was cut horizontally into subsamples and each subsample was analyzed for grain size, chromium, copper and zinc.

The applicant's agents followed the sampling plan, except to take 8 samples instead of 6 and to move the sample locations slightly. These changes are acceptable. The Apex Companies produced a final report dated 3 March 2008 for our review.

2. Summary:

This memorandum addresses compliance with the regulatory evaluation and testing requirements of 40 CFR Section 230.60 and 230.61, subpart G under the Clean Water Act 404(b)(1) guidelines. This evaluation confirms that sufficient information was obtained to properly evaluate the suitability of this material for open water disposal under the guidelines and finds the sediments suitable for disposal as proposed.

3. Clean Water Act Regulatory Requirements:

The disposal of sediments waterward of the high tide line in Cape Cod Bay is regulated under Section 404 of the Clean Water Act. Subpart G of the Section 404(b)(1) guidelines describes the procedures for conducting this

CENAE-R-PT

SUBJECT: Suitability Determination for New Bedford Harbor Development Commission, New Bedford & Fairhaven, MA, Application #2007-2709.

evaluation, including any relevant testing that may be required.

§230.60 General Evaluation of Dredged or Fill Material

(a) Testing was considered necessary as it could not be determined with the existing information that the sediment is not a carrier of contaminants. We did not know if the sediment proposed for disposal at CCDS was sand or coarser and New Bedford Harbor does not have high current or wave energy. This subsection therefore does not apply.

(b) New Bedford Harbor is an industrial harbor with many outfalls and past spills; in particular, PCBs from an upstream factory. Surficial sediments within the harbor have been previously found to be unsuitable for unconfined open water disposal based upon the results of biological testing. However, the underlying glacial is sufficiently removed from sources of contaminants as shown by the test data and this subsection applies to them.

Six of the eight cores have a thin layer of organic silt over a thicker layer of sand or of sand and inorganic silt. One of the cores has a thin layer of organic silt over silt layers with no sand, while one core has a thin layer of organic silt over 9.4 feet of sand and silt and a layer of peat at the bottom.

Each of the cores show a rapid decrease in the concentration of copper, chromium and zinc with in one to two feet of the surface. See the attached graphs. Therefore, the top two feet of sediments in the proposed CAD cell should be dredged and stored for disposal in the completed CAD. The underlying sediments are suitable for unconfined disposal at CCBDS.

(c) The material to be dredged and the material at the disposal site are not adjacent, composed of the same materials and subject to the same sources of contaminants. This subsection therefore does not apply.

(d) This subsection states that further testing may not be necessary if the material to be dredged is constrained to reduce contamination within the disposal site and to prevent transport of contaminants beyond the boundaries of the disposal site. As such constraints in handling are not proposed, this subsection does not apply.

§230.61 Chemical, Biological and Physical Evaluation and Testing

(a) This subsection describes the purpose of §230.61 and does not give any criteria for the evaluation of sediments.

(b) Water column and benthic bioassay testing is not needed as it was

CENAE-R-PT

SUBJECT: Suitability Determination for New Bedford Harbor Development Commission, New Bedford & Fairhaven, MA, Application #2007-2709.

determined, on the basis of evaluation of §230.60, that the likelihood of contamination is low.

(c) An inventory of the total concentration of contaminants is not of value in comparing sediment at the disposal and dredging sites as the materials have already been determined to be suitable in section 230.60(b) above.]

CENAE and the federal agencies did not think an analysis of biological community structure was needed for this project.

(d) The physical effects of the disposal of the dredged material at the disposal site should be minimal. Although some benthic marine organisms will be buried by the disposal, the disposal site should be rapidly re-colonized.

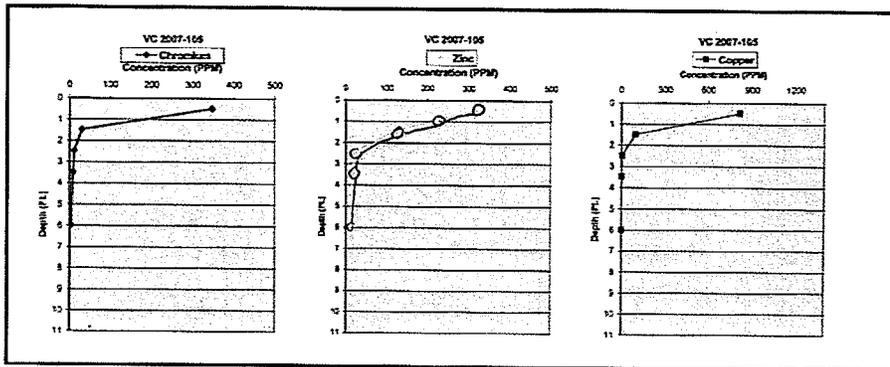
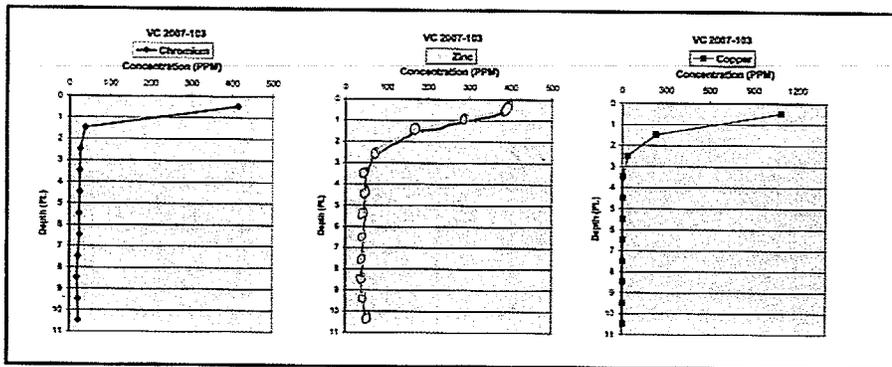
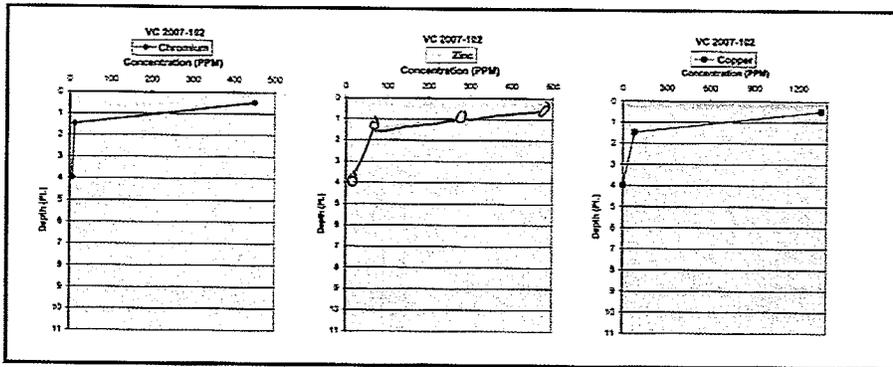
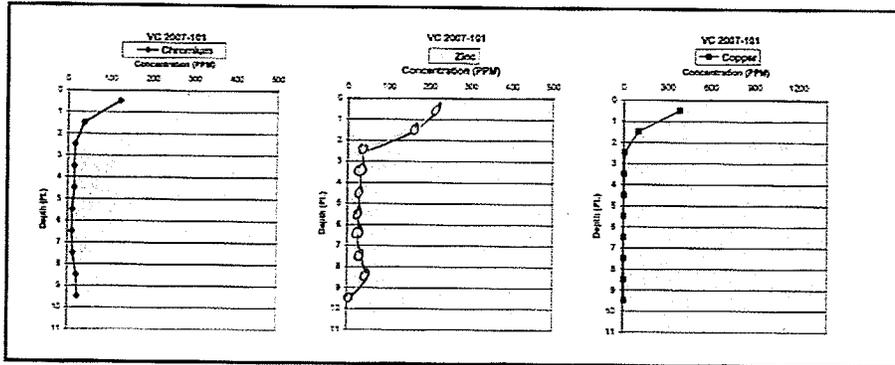
4. Copies of the above mentioned data and of the draft suitability determination were sent to the State DEP, US EPA, and US NMFS for their review. The federal agencies each responded to say that they concur with the determination.

5. If you have any questions, please contact me at (978) 318-8660.

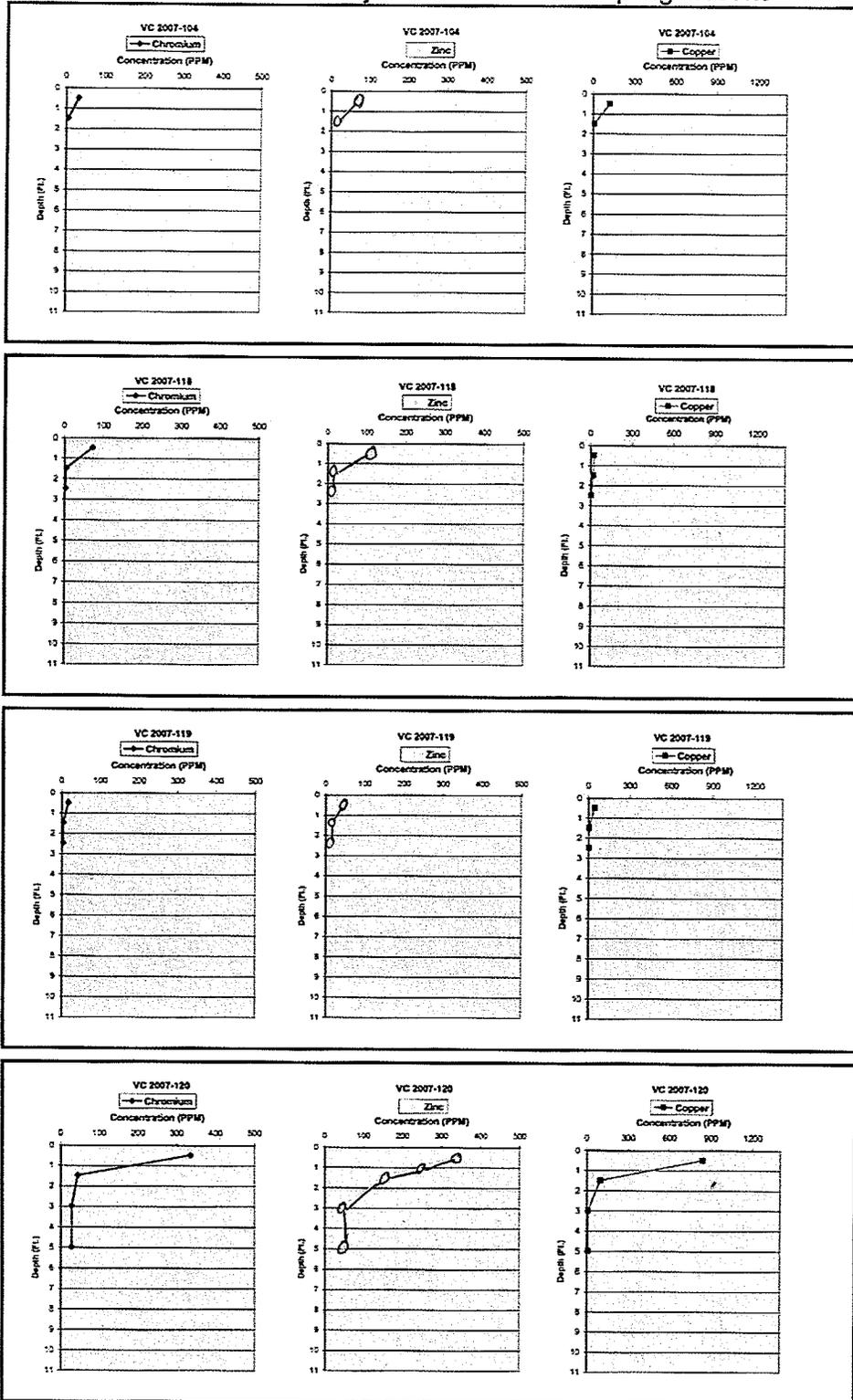


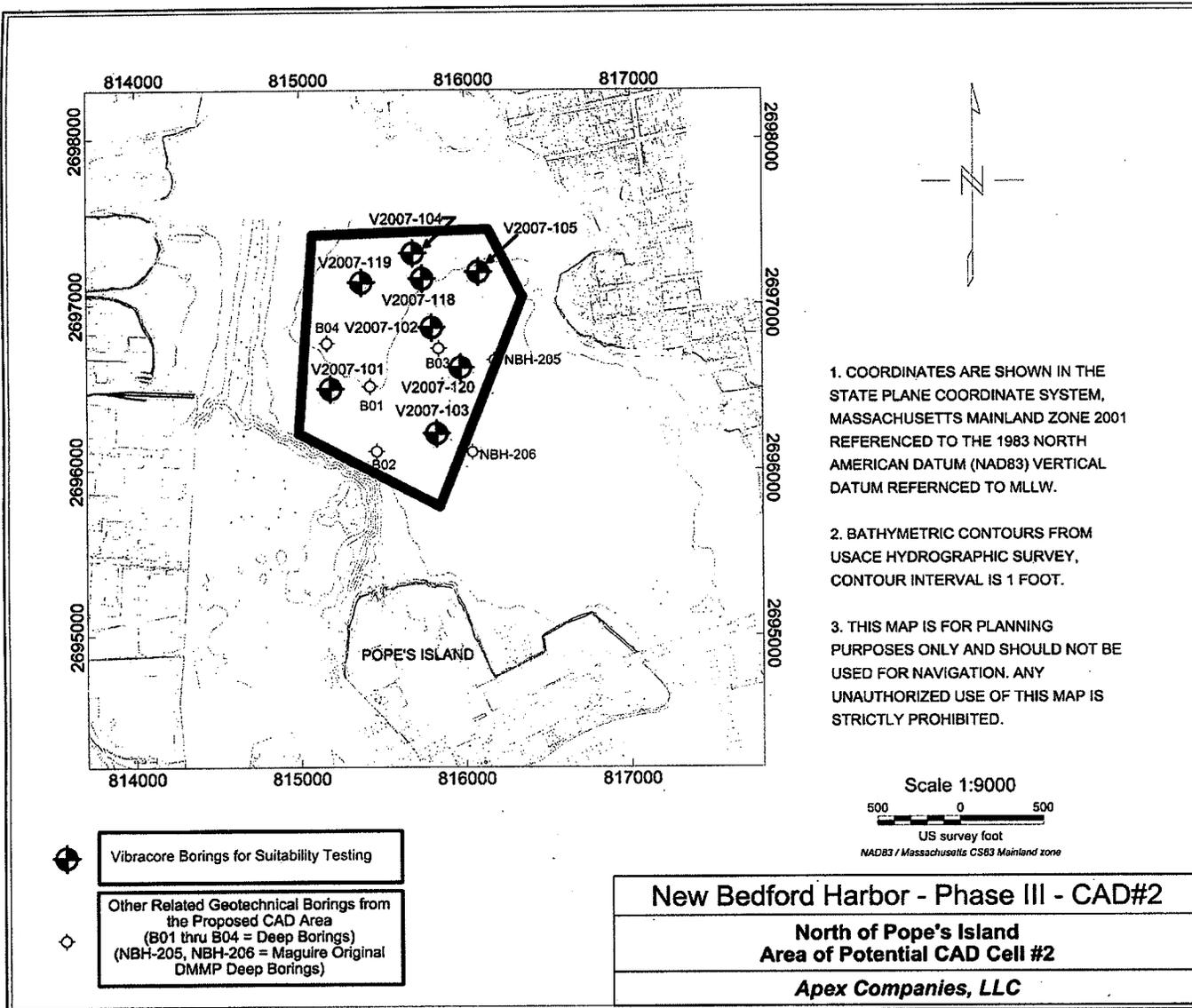
PHILLIP NIMESKERN
Project Manager,
Marine Analysis Section

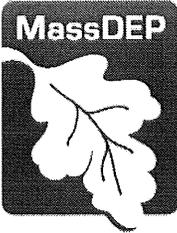
CAD Cell #2 Suitability Determination Sampling Results



CAD Cell #2 Suitability Determination Sampling Results







Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

One Winter Street Boston, MA 02108 • 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

RICHARD K. SULLIVAN JR.
Secretary

KENNETH L. KIMMELL
Commissioner

February 13, 2012

Ms. Kristin Decas
City of New Bedford Harbor Development Commission
104-106 Co-op Wharf
New Bedford, MA 02745

Re: **401 WATER QUALITY CERTIFICATION**
Application for BRP WW 07, Disposal at CCBDS and RIDS

From: New Bedford Harbor, NEW BEDFORD/FAIRHAVEN

401 WQC Transmittal No: X241327
Wetlands File No:
ACoE Application No: NAE-2007-2709

Dear Ms. Decas:

The Department has reviewed your application for Water Quality Certification, as referenced above. In accordance with the provisions of Section 401 of the Federal Clean Water Act as amended (33 U.S.C. §1251 et seq.), MGL c.21, §§ 26-53, and 314 CMR 9.00, The Department has determined there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law.

The waters of New Bedford Harbor are designated in the Massachusetts Surface Water Quality Standards as Class SB Waters. Such waters are intended "as habitat for fish, other aquatic life and wildlife and for primary and secondary contact recreation." Anti-degradation provisions of these Standards require that "existing uses and the level of water quality necessary to protect the existing uses shall be maintained and protected."

Background: On May 9, 2005, the Department issued a 401 Water Quality Certification (WQC), Transmittal No. W062451, to the City of New Bedford Harbor Development Commission to dredge up to 135,000 yd³ of sediment for the construction of a Confined Aquatic Cell (CAD) (hence referred to as CAD 1) located in New Bedford Harbor. The surface area of CAD 1 was approximately 182,400 ft² to a depth of -60 ft Mean Low Water (MLW). The expiration date of the WQC was May 9, 2010.

On July 7, 2008, the Department issued Amendment No. 1, Transmittal No. W226782. Under the Dredge Material Management Plan (DMMP) for New Bedford and Fairhaven, it was

anticipated that a "Super CAD cell" would need to be constructed within the footprint or boundary of the DMMP for the management of contaminated sediment in New Bedford Harbor. However, the available funding could only support construction of a series of smaller CAD Cells within the DMMP footprint. The first of the smaller CAD Cell expansions was referred to as CAD Cell No. 2 and was needed because CAD Cell No. 1 was near its full capacity. The authorized expanded CAD cell footprint under the DMMP was increased by 7,744,960 ft² and the dredge volume was increased by 865,000 yd³ to a total of 1,000,000 yd³ by the 2008 amendment. This volume represents the deeper portion sediment or the native geologic material (i.e. not contaminated with PCB). The sediment was authorized to be disposed of at the Cape Cod Bay Disposal Site (CCBDS) contingent upon receiving a suitability determination from the Army Corps of Engineers (ACoE). Amendment 1 also explicitly stated that the expiration date of the May 9, 2005 WQC was May 9, 2010.

CAD 2 has been constructed and is partially filled. The remaining capacity is reserved for the contaminated sediment expected from constructing CAD Cell 3, which has been designed and is dedicated to the South Terminal Navigation in New Bedford Harbor.

CAD Cell 4 is in the planning stage and is tentatively dedicated to the federal navigation channel in New Bedford Harbor.

The New Bedford Harbor Development Commission (NBHDC) has been working with the ACoE to conduct sampling of the sediment of the remaining and expanded portion of the DMMP area, approximately 36 acres. The purpose of the sampling is to determine if all the native geologic sediment (i.e. deeper portion of sediment) within the DMPP area is suitable for unconfined ocean disposal. ACoE has determined that the sediment within the area lying North of Popes Island (also referred to as the Existing Feasibility Determination Area) is suitable for unconfined ocean disposal. This volume from this area is the same volume authorized under the 401 WQC and Amendment 1 (1,000,000 yd³).

Proposed project: The May 9, 2005 WQC expired on May 9, 2010. In order for the NBHDC to dispose of the native geologic material as a result of construction of the CAD Cell 3 (and potentially CAD Cell 4) at the CCBDS, a new 401 WQC is required. In addition, the Rhode Island Sound Disposal Site (RISDS) will be an alternate unconfined ocean disposal site. The total authorized volume for unconfined ocean disposal is 1,000,000 yd³.

It is anticipated that a portion of native sediment generated as a result of construction of CAD Cell 3 will be disposed of either at the CCBDS or RISDS. The remaining portion will be beneficially reused as capping material for the CAD Cells that are either at full capacity or will be full within the term of this WQC.

Massachusetts General Permit (MGP): On November 4, 2011, the ACoE issued a Category II MGP to the NBHDC for the disposal of 750,000 yd³ of sediment at the CCBDS. The ACoE previously approved 250,000 yd³ of sediment to be disposed at the CCBDS. A time-of-year (TOY) restriction for activities between January 1st and May 15th of any year to protect the right whales is included as a condition in the MGP.

In a separate approval dated November 15, 2011, the ACoE also approved sediment disposal at the RISDS. There is no TOY restriction for sediment disposal at the RISDS.

Beneficial Reuse of sediments: A portion of the native dredged material sediment will be beneficially reused as capping material for the previously constructed CAD Cells.

Dredged Material Disposal: The remaining portion of the native dredged material will be disposed of either at the CCBDS or the RISDS.

Public Notice: The 401 WQC application public notice was published in the New Bedford Standard Time on December 6, 2011, and the Department received no comment during the 21-day public comment period, which ended on December 27, 2011.

Therefore, based on information currently in the record, the Department grants a 401 Water Quality Certification for this project subject to the following conditions to maintain water quality, to minimize impact on waters and wetlands, and to ensure compliance with appropriate state law. The Department further certifies in accordance with 314 CMR 9.00 that there is reasonable assurance the project or activity will be conducted in a manner which will not violate applicable water quality standards (314 CMR 4.00) and other applicable requirements of state law. Finally, the Department has determined that upon satisfying the conditions and mitigation requirements of this approval, the project provides a level of water quality necessary to protect existing uses and accordingly finds that the project to be implemented satisfies the Surface Water Quality Standards at 314 CMR 4.00.

1. The Contractor shall take all steps necessary to assure that the proposed activities will be conducted in a manner that will avoid violations of the anti-degradation provisions of Massachusetts Surface Water Quality Standards that protect all waters, including wetlands.
2. Prior to the start of work or any portion of the work thereafter, the Department shall be notified of any change(s) in the proposed project or plans that may affect waters or wetlands. The Department will determine whether the change(s) require a revision to this Certification.
3. Work in waters and wetlands shall conform substantially to plans submitted in application to this Department: a single plan titled Potential Cad Cell Location, prepared by Apex Environmental, Inc., dated November 8, 2011, unsigned and unstamped and undated. The Department shall be notified if there are modifications and or deletions of work as specified in the plans. Depending on the nature and the scope of any change, approval by the Department may be required.
4. Dredging in accord with this Certification may begin following the 21-day appeal period and once all other permits have been received.
5. The Department shall be notified, attention Ken Chin 617-292-5893, one week prior to the start of in-water work so that Department staff may inspect the work for compliance with the terms and conditions of this Certification.
6. The Certification remains in effect for the same duration as the federal permit that requires it or five years from the date of issuance of this Certification whichever comes first.
7. Except for material disposed of at the RISDS, all dredged material shall be disposed of at Cape Cod Bay Disposal Area as per the following:
 - a. At least ten working days in advance of the start date, the First Coast Guard District, Aids to Navigation Office, 617-223-8356, shall be notified of the location and estimated

duration of the dredging and disposal operations.

- b. Prior to disposal, the Department of Environmental Management, Office of Waterways, 349 Lincoln Street, Building 45, Hingham, MA 02043 shall be notified of the anticipated start date for disposal of dredged material at the CCBDS.
- c. It is the Contractor's responsibility to comply with the ACoE's Dredge Quality Management (DQM) system software and hardware system developed by the ACoE.
- d. For each dredging season during which work is performed the applicant must notify the Corps upon completion of dredging for the season by completing and submitting the form that the Corps will supply for this purpose when disposal-point coordinates are specified. A copy of the disposal inspection report (scow log) for disposal at the CCBDS shall be sent to the Department and to the Massachusetts Department of Conservation Recreation, Office of Waterways, 349 Lincoln Street, Building 45, Hingham, MA 02043, and
- e. Except when directed otherwise by the ACoE, all disposal of dredged material shall adhere to the following: The applicant shall release the dredged material at a specified set of coordinates within the disposal site. All disposal shall occur at the buoy or specified coordinates with the scow at a complete halt. This requirement must be followed except when doing so will create unsafe conditions because of weather or sea state. In such a case, disposal shall be within **100** feet of the buoy or specified coordinates with the scow moving only fast enough to maintain safe control (generally less than one knot) is permitted. Disposal is not permitted if these requirements cannot be met due to weather or sea conditions. In that regard, special attention needs to be given to predicted conditions prior to departing for the disposal site.
- f. Disposal of dredged material at the CCBDS shall not occur between January 1 and May 15 of any year in order to protect right whales.
- g. A marine mammal/turtle observer approved by National Marine Fisheries Service (NMFS) shall be present on the towing vessel for all disposal activities. The observer may be the dredged material disposal inspector (if required by the ACoE) provided that he or she is also approved by NMFS.
- h. In the event that marine mammals or turtles are sighted within 1,500 feet of the specified disposal location, the tug captain and observer shall observe the following disposal procedure:
 - i. If marine mammals or turtles are sighted within 1,500 feet of the specified disposal location, note species, number of animals, direction of travel, and behavior (feeding, in transit, etc.).
 - ii. If the animals are within 1,500 feet of the specified disposal location and appear to be moving away from the buoy, ceased activities and wait until they have cleared the buoy by 1,500 feet and then proceed with disposal at the specified disposal location.
 - iii. If the animals are within 1,500 feet of the specified disposal location and appear to be remaining stationary, or are outside 1,500 feet but appear to be

moving towards the specified disposal location, proceed to the alternate disposal location and discharge the material at the position specified by the ACoE.

- i. If the disposal occurs in darkness or otherwise limited visibility, the tug shall employ its searchlight for the benefit of the observer beginning 2,000 feet from the disposal buoy.
 - j. In all cases, no disposal shall occur within 1,500 feet of a sighted marine mammal or turtle.
 - k. The observer shall document each trip using the sighting log form supplied by the Corps of Engineers. The applicant must ensure that these sighting log forms are fully completed and received by the Corps' New England District within one week of the trip date. Address the submittals to: U.S. Army Corps of Engineers, New England District, Regulatory Division, Policy Analysis and Technical Support Branch, 696 Virginia Road, Concord, MA 01742-2751. A copy of the sighting log form shall also be sent to the Department and to the Massachusetts Department of Conservation and Recreation, Office of Waterways, 349 Lincoln Street, Building 45, Hingham, MA 02043.
8. No later than four weeks after issuance of the Permit, the applicant shall submit a notification procedure outlining the reporting process to the Department for incidents, relating to the dredging activities, impacting surrounding resource areas and habitats such as, but not limited to, observed dead or distressed fish, or other aquatic organisms, observed oily sheen on surface water, sediment spill, turbidity plume beyond the deployed BMP's, and barging or equipment accident/spill. If at any time during implementation of the project, all site related activities impacting the water shall cease until the source of the problem is identified and adequate mitigating measures employed to the satisfaction of the Department.

This certification does not relieve the applicant of the obligation to comply with other applicable state or federal statutes or regulations. Any changes made to the project as described in the previously submitted Notice of Intent, 401 Water Quality Certification application, or supplemental documents will require further notification to the Department.

Certain persons shall have a right to request an adjudicatory hearing concerning certifications by the Department when an application is required:

- a. the applicant or property owner;
- b. any person aggrieved by the decision who has submitted written comments during the public comment period;
- c. any ten (10) persons of the Commonwealth pursuant to M.G.L. c.30A where a group member has submitted written comments during the public comment period; or
- d. any governmental body or private organization with a mandate to protect the environment that has submitted written comments during the public comment period.

Any person aggrieved, any ten (10) persons of the Commonwealth, or a governmental body or private organization with a mandate to protect the environment may appeal without having submitted written comments during the public comment period only when the claim is based on new substantive issues arising from material changes to the scope or impact of the activity and not apparent at the time of public notice. To request an adjudicatory hearing pursuant to M.G.L.

c.30A, § 10, a Notice of Claim must be made in writing, provided that the request is made by certified mail or hand delivery to the Department, with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form within twenty-one (21) days from the date of issuance of this Certificate, and addressed to:

Case Administrator
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108.

A copy of the request shall at the same time be sent by certified mail or hand delivery to the issuing office of the Wetlands and Waterways Program at:

Department of Environmental Protection
One Winter Street, 6th Floor
Boston, MA 02108.

A Notice of Claim for Adjudicatory Hearing shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6), and shall contain the following information pursuant to 314 CMR 9.10(3):

- a. the 401 Certification Transmittal Number and DEP Wetlands Protection Act File Number;
- b. the complete name of the applicant and address of the project;
- c. the complete name, address, and fax and telephone numbers of the party filing the request, and, if represented by counsel or other representative, the name, fax and telephone numbers, and address of the attorney;
- d. if claiming to be a party aggrieved, the specific facts that demonstrate that the party satisfies the definition of "aggrieved person" found at 314 CMR 9.02;
- e. a clear and concise statement that an adjudicatory hearing is being requested;
- f. a clear and concise statement of (1) the facts which are grounds for the proceedings, (2) the objections to this Certificate, including specifically the manner in which it is alleged to be inconsistent with the Department's Water Quality Regulations, 314 CMR 9.00, and (3) the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written Certification; and
- g. a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant, the owner (if different from the applicant), the conservation commission of the city or town where the activity will occur, the Department of Environmental Management (when the certificate concerns projects in Areas of Critical Environmental Concern), the public or private water supplier where the project is located (when the certificate concerns projects in Outstanding Resource Waters), and any other entity with responsibility for the resource where the project is located.

The hearing request along with a DEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox

P.O. Box 4062
Boston, MA 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory-hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

No activity may begin prior to the expiration of the appeal period or until a final decision is issued by the Department if an appeal is filed.

Failure to comply with this certification is grounds for enforcement, including civil and criminal penalties, under MGL c.21 §42, 314 CMR 9.00, MGL c. 21A §16, 310 CMR 5.00, or other possible actions/penalties as authorized by the General Laws of the Commonwealth.

If you have questions on this decision, please contact Ken Chin at 617-292-5893.

Sincerely,



Beth Card
Assistant Commissioner
Bureau of Resource Protection

enclosure: Departmental Action Fee Transmittal Form

cc:

Karen Adams, Regulatory/Enforcement Division, U.S. Army Corps of Engineers, 696 Virginia Road,
Concord, MA 01742-2751
Robert Boeri, CZM, 251 Causeway Street, Suite 800, Boston, MA 02114
Eileen Feeney, DMF, 1213 Purchase St., 3rd floor, New Bedford, MA 02740-6694
Dave Hill, Liz Kouloheras DEP SERO
Chris Morris, Apex Environmental, Inc., 184 High Street, Suite 502, Boston, MA 02110
New Bedford Conservation Commission, Williams Street, New Bedford, MA 02740
Paul Craffey DEP, Boston Office

KC/X241327



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

DEVAL L. PATRICK
Governor

TIMOTHY F. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

MAY 18 2009

New Bedford Harbor Development Commission
C/o Apex Companies, LLC
115 Broad Street, Suite 200
Boston, MA 02110

Attention: Edward Pickering

RE: ISSUANCE OF CHAPTER 91 WATERWAYS PERMIT
Waterways Permit Application No. W08-2412 Permit No. 12352
New Bedford Harbor Development Commission, New Bedford Harbor,
New Bedford/Fairhaven, Bristol County

Dear Mr. Pickering,

The Department of Environmental Protection hereby issues the above-referenced Waterways Permit, enclosed, authorizing you to perform certain activities pursuant to M.G.L. c. 91, the Public Waterfront Act and its regulations 310 CMR 9.00. Any change in use or alteration of any structure or fill not authorized by this permit shall render this license void.

This Permit is not final until all administrative appeal periods from this License have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed. The appeal period is for twenty-one (21) days.

APPEAL RIGHTS AND TIME LIMITS

The following persons shall have the right to an adjudicatory hearing concerning the Department's decision to grant or deny a license or permit: (a) an applicant who has demonstrated property rights in the lands in question, or which is a public agency; (b) any person aggrieved by the decision of the Department to grant a license or permit who has submitted written comments within the public comment period; (c) ten (10) residents of the Commonwealth, pursuant to M.G.L. c.30A, §10A, who have submitted written comments within the public comment period; (d) the municipal official in the affected municipality who has submitted written comments within the public comment period; (e) CZM, for any project in the coastal zone, if it has filed a notice of participation within the public comment period; and (f) CZM, for any project in an Ocean Sanctuary, if it has filed a notice of participation within the public comment period.

To request an adjudicatory hearing, a Notice of Claim must be made in writing and sent by certified mail or hand delivery to the Department with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form, within twenty-one (21) days of the date of issuance of this decision and addressed to:

RE: ISSUANCE OF CHAPTER 91 WATERWAYS LICENSE
Waterways License Application No. W08-2412 Permit No. 12352
New Bedford Harbor, New Bedford

Case Administrator
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

A copy of the Notice of Claim must be sent at the same time by certified mail or hand delivery to the applicant, the municipal official of the city or town where the project is located, and the issuing office of the DEP at:

Department of Environmental Protection
Waterways Regulation Program
One Winter Street, 5th Floor
Boston, MA 02108.

CONTENTS OF APPEAL REQUEST

Under 310 CMR 1.01(6)(b), the Notice of Claim must state clearly and concisely the facts that are the grounds for the request and the relief sought. Additionally, the request must state why the decision is not consistent with applicable laws and regulations.

Pursuant to 310 CMR 9.17(3), any Notice of Claim for an adjudicatory hearing must include the following information:

- (a) the DEP Waterways Application File Number;
- (b) the complete name, address, fax number and telephone number of the applicant;
- (c) the address of the project;
- (d) the complete name, address, fax number, and telephone number of the party filing the request and, if represented by counsel, the name, address, fax number, and phone number of the attorney;
- (e) if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of "person aggrieved" found in 310 CMR 9.02;
- (f) a clear statement that a formal adjudicatory hearing is being requested;
- (g) a clear statement of the facts which are the grounds for the proceedings, the specific objections to the DEP's written decision, and the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written decision; and
- (h) a statement that a copy of the request has been sent to: the applicant and the municipal official of the city or town where the project is located.

APPEAL FILING FEE AND ADDRESS

A copy of the Notice of Claim along with a DEP Fee Transmittal Form and a valid check payable to the Commonwealth of Massachusetts - DEP in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lock Box
P.O. Box 4062
Boston, Massachusetts 02211

The DEP Fee Transmittal Form is available at the following website:

<http://www.mass.gov/dep/service/adr/adjherfm.doc>. The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or is granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory

RE: ISSUANCE OF CHAPTER 91 WATERWAYS LICENSE
Waterways License Application No. W08-2412 Permit No. 12352
New Bedford Harbor, New Bedford

hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

Please feel free to contact Mitch Ziencina of the Waterways Regulation Program, (508) 946-2734, if you have any questions pertaining to your Waterways permit.

Sincerely,

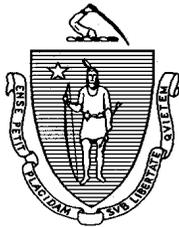


Elizabeth Kouloheras, Program Chief
Waterways Regulation Program

cc: Ben Lynch, Section Chief, Boston
Kristin Decas, Executive Director, Harbor Development Commission
MCZM

Ecc: EOEEA, MEPA Unit File #11669

Enclosure(s) Waterways Permit No. 12352



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
SOUTHEAST REGIONAL OFFICE
20 RIVERSIDE DRIVE, LAKEVILLE, MA 02347 508-946-2700

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

PERMIT NO. 12352

Name and Address of Permittee:

City of New Bedford – Harbor Development Commission
106 Co-Op Wharf
New Bedford, MA 02745

ISSUED: May 18, 2009
EXPIRES: May 18, 2019

Permission is hereby given by the Department of Environmental Protection to: dredge approximately 1,000,000 cubic yards of sediment in the development of Confined Aquatic Disposal cell 2 (CAD). Dredge material will be barged to the Cape Cod Disposal site.

All work authorized herein shall be in the location shown and to the dimensions indicated in the permit plans titled: "New Bedford Harbor CAD Cell 2 Top Of CAD Cell, The New Bedford Harbor Development Commission And The Town of Fairhaven, Massachusetts", (1sheet).

STANDARD WATERWAYS PERMIT CONDITIONS

1. Acceptance of this Waterways Permit shall constitute an agreement by the Permittee to conform to all terms and conditions stated herein.
2. This Waterways Permit is issued upon the express condition that any and all other applicable authorizations necessitated due to the provisions hereof shall be secured by the Permittee prior to the commencement of any activity authorized pursuant to this Permit.

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD# 866-539-7622 or 617-574-6868.

DEP on the World Wide Web: <http://www.mass.gov/dep>

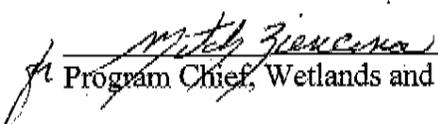
Printed on Recycled Paper

3. This Waterways Permit shall be revocable by the Department for noncompliance with the terms and conditions set forth herein. This Permit may be revoked after the Department has given written notice of the alleged noncompliance to the Permittee, or his/her agent, and those persons who have filed a written request, with the Department, for such notice and has afforded the Permittee a reasonable opportunity to correct said noncompliance. Failure to correct said noncompliance after the issuance of a written notice by the Department shall render this Waterways Permit void.
4. This Waterways Permit is issued subject to all applicable federal, state, county, and municipal laws, ordinances, by-laws, and regulations, as prescribed under the **State Enhanced Remedy**. In particular, this issuance is subject to the provisions of Sections 52 to 56, inclusive of Chapter 91 of the General Law and its Regulations 310 CMR 9.40(5), which provides, in part, that the transportation and dumping of dredge material shall be done under the supervision of the Department, and, when required, the Permittee shall provide at his/her expense a dredge inspector approved by the Department.
5. This Waterways Permit is issued upon the express condition that dredging and transportation and disposal of dredge material shall be in strict conformance with the Water Quality Certification issued by the Department of Environmental Protection.
6. All subsequent maintenance dredging and transportation and disposal of this dredge material, during the term of this Permit, shall conform to all standards and conditions applied to the original dredging operation performed under this Permit.
7. After completion of the work authorized, the Permittee shall furnish to the Department a suitable plan showing the depths at mean low water over the area dredged. Dredging under this Permit shall be conducted so as to cause no unnecessary obstruction of the free passage of vessels, and care shall be taken to cause no shoaling. If, however, any shoaling is caused, the Permittee shall, at his/her expense, remove the shoal areas. The Permittee shall pay all costs of supervision, and if at any time the Department deems necessary a survey or surveys of the area dredged, the Permittee shall pay all costs associated with such work. Nothing in this Permit shall be construed to impair the legal rights of any persons, or to authorize dredging on land not owned by the Permittee without consent of the owner(s) of such property.
8. The Permittee shall assume and pay all claims and demands arising in any manner from the work authorized herein, and shall save harmless and indemnify the Commonwealth of Massachusetts, its officers, employees, and agents from all claims, audits, damages, costs and expenses incurred by reason thereof.
9. The Permittee shall, at least three days prior to the commencement of any dredging in tide water, give written notice to the Department of the time, location and amount of the proposed work.
10. Whosoever violates any provisions of this Permit shall be subject to a fine of \$25,000 per day for each day such violation occurs or continues, or by imprisonment for not more than one year, or both such fine and imprisonment; or shall be subject to civil penalty not to exceed \$25,000 per day for each day such violation occurs or continues.

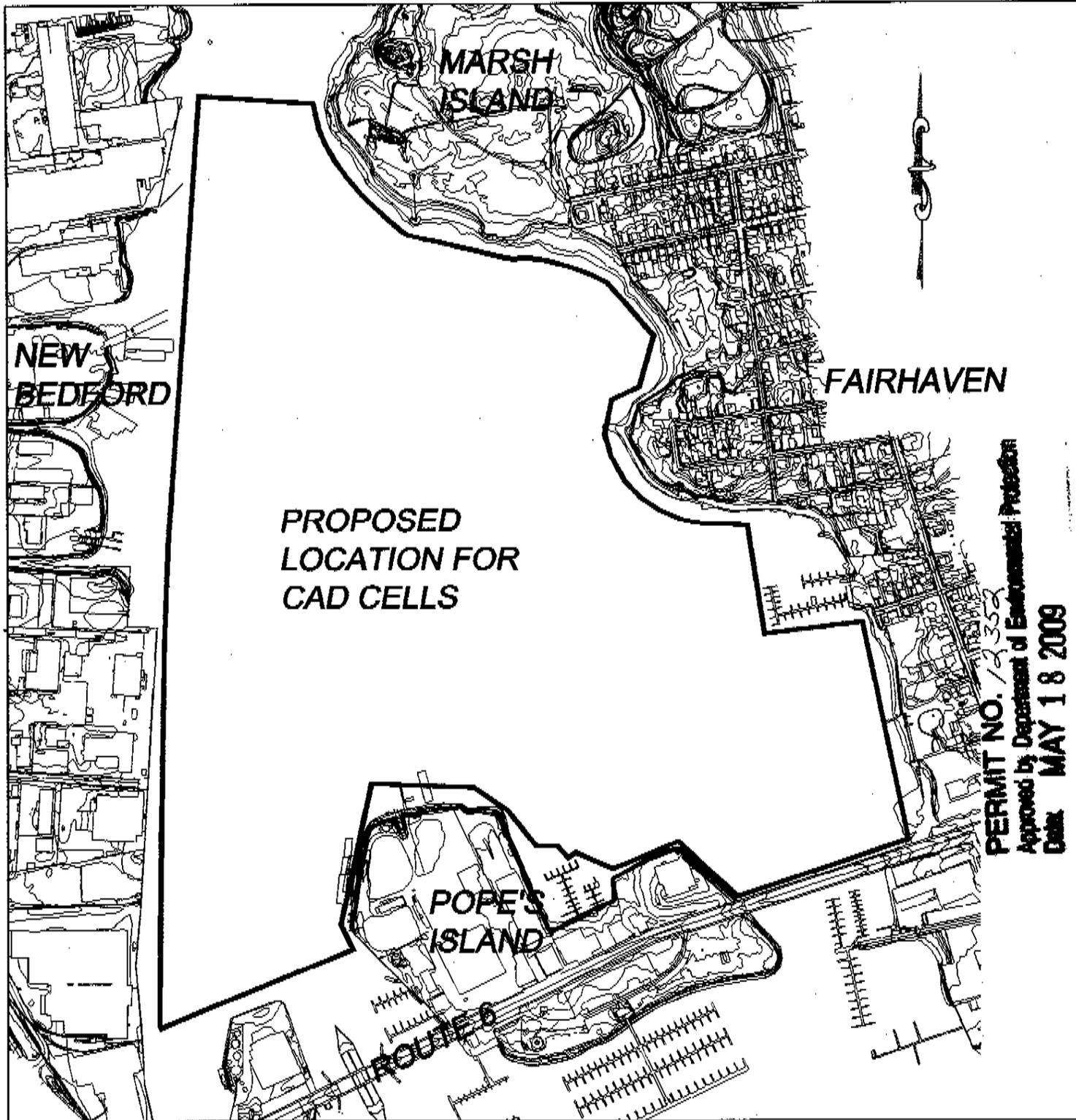
SPECIAL WATERWAYS PERMIT CONDITIONS

1. Dredging shall be performed by mechanical methods.
2. Dredging in the area identified on Permit Plan No. 12352 shall be to a maximum of 60.0 feet below the mean low water (MLW) datum with an allowable one (1) foot over dredge.
3. Disposal of dredge material at the Cape Cod Disposal Site (CCDS) shall not occur between January 1st and May 15th of any year in order to protect the right whales.
4. CAD cell development/dredging may be performed for a period of ten (10) years subsequent to the date of issuance of this permit.
5. After completion of the work authorized, the Permittee shall furnish to the Department a suitable plan showing the maximum depths of excavation of the CAD cells, at mean low water, over the area dredged and the depth of the cap within 90 days of completion of filling the cells.

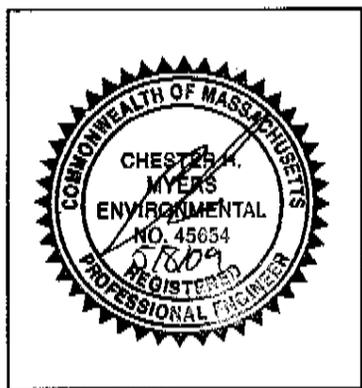
DEPARTMENT OF ENVIRONMENTAL PROTECTION



Program Chief, Wetlands and Waterways



PERMIT NO. 12350
 Approved by Department of Environmental Protection
 Date: MAY 18 2009



LEGEND

— FOOTPRINT OF PROPOSED FUTURE CAD CELL AREAS (AS OUTLINED IN THE NOTICE OF PROJECT CHANGE FOR THE DREGGED MATERIAL MANAGEMENT PLAN DATED MARCH, 2008)



NEW BEDFORD HARBOR

CHAPTER 91 LICENSE APPLICATION
 DISPOSAL OF MATERIAL AT CAPE COD BAY DISPOSAL SITE
 CONSTRUCTION OF CAD CELLS IN DMMP AREA

New Bedford Harbor, Massachusetts
 Apex Companies, LLC



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Southeast Regional Office • 20 Riverside Drive, Lakeville MA 02347 • 508-946-2700

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

RICHARD K. SULLIVAN JR.
Secretary

KENNETH I. KIMMELL
Commissioner

PERMIT NO. 13228

Name and Address of Permittee:

City of New Bedford – Harbor Development Commission
53 Fishermans Wharf
P.O. Box 50899
New Bedford, MA 02745

ISSUED: March 16, 2012
EXPIRES: May 18, 2019

Permission is hereby given by the Department of Environmental Protection to: amend Permit No. 12352 for the inclusion of the Rhode Island Sound Disposal Site (RISDS) as an alternative unconfined ocean disposal location for the approximately 1,000,000 cubic yards of sediment dredged in the development of Confined Aquatic Disposal Cells in New Bedford Harbor/Acushnet River, New Bedford and Fairhaven. Dredge material will also be disposed at the Cape Cod Bay Disposal Site.

All work authorized herein shall be in the location shown and to the dimensions indicated in the permit plans titled: "New Bedford Harbor Dredge Material Management Plan", Apex Companies, LLC, dated 10/5/11, (1sheet).

STANDARD WATERWAYS PERMIT CONDITIONS

1. Acceptance of this Waterways Permit shall constitute an agreement by the Permittee to conform to all terms and conditions stated herein.
2. This Waterways Permit is issued upon the express condition that any and all other applicable authorizations necessitated due to the provisions hereof shall be secured by the Permittee prior to the commencement of any activity authorized pursuant to this Permit.

3. This Waterways Permit shall be revocable by the Department for noncompliance with the terms and conditions set forth herein. This Permit may be revoked after the Department has given written notice of the alleged noncompliance to the Permittee, or his/her agent, and those persons who have filed a written request, with the Department, for such notice and has afforded the Permittee a reasonable opportunity to correct said noncompliance. Failure to correct said noncompliance after the issuance of a written notice by the Department shall render this Waterways Permit void.
4. This Waterways Permit is issued subject to all applicable federal, state, county, and municipal laws, ordinances, by-laws, and regulations, as prescribed under the **State Enhanced Remedy**. In particular, this issuance is subject to the provisions of Sections 52 to 56, inclusive of Chapter 91 of the General Law and its Regulations 310 CMR 9.40(5), which provides, in part, that the transportation and dumping of dredge material shall be done under the supervision of the Department, and, when required, the Permittee shall provide at his/her expense a dredge inspector approved by the Department.
5. This Waterways Permit is issued upon the express condition that dredging and transportation and disposal of dredge material shall be in strict conformance with the Water Quality Certification issued by the Department of Environmental Protection.
6. All subsequent maintenance dredging and transportation and disposal of this dredge material, during the term of this Permit, shall conform to all standards and conditions applied to the original dredging operation performed under this Permit.
7. After completion of the work authorized, the Permittee shall furnish to the Department a suitable plan showing the depths at mean low water over the area dredged. Dredging under this Permit shall be conducted so as to cause no unnecessary obstruction of the free passage of vessels, and care shall be taken to cause no shoaling. If, however, any shoaling is caused, the Permittee shall, at his/her expense, remove the shoal areas. The Permittee shall pay all costs of supervision, and if at any time the Department deems necessary a survey or surveys of the area dredged, the Permittee shall pay all costs associated with such work. Nothing in this Permit shall be construed to impair the legal rights of any persons, or to authorize dredging on land not owned by the Permittee without consent of the owner(s) of such property.
8. The Permittee shall assume and pay all claims and demands arising in any manner from the work authorized herein, and shall save harmless and indemnify the Commonwealth of Massachusetts, its officers, employees, and agents from all claims, audits, damages, costs and expenses incurred by reason thereof.
9. The Permittee shall, at least three days prior to the commencement of any dredging in tide water, give written notice to the Department of the time, location and amount of the proposed work.
10. Whosoever violates any provisions of this Permit shall be subject to a fine of \$25,000 per day for each day such violation occurs or continues, or by imprisonment for not more than one year, or both such fine and imprisonment; or shall be subject to civil penalty not to exceed \$25,000 per day for each day such violation occurs or continues.

SPECIAL WATERWAYS PERMIT CONDITIONS

1. Dredging shall be performed by mechanical methods.
2. Dredging in the area identified on Permit Plan No. 12352 shall be to a maximum of 60.0 feet below the mean low water (MLW) datum with an allowable one (1) foot over dredge.
3. Disposal of dredge material at the Cape Cod Bay Disposal Site (CCBDS) shall not occur between January 1st and May 15th of any year in order to protect the right whales. There is no time-of-year restriction for disposal at the Rhode Island Sound Disposal Site (RISDS).
4. CAD cell development/dredging may be performed for a period of ten (10) years subsequent to May 18, 2009, the date of issuance of Permit No. 12352.
5. After completion of the work authorized, the Permittee shall furnish to the Department a suitable plan showing the maximum depths of excavation of the CAD cells, at mean low water, over the area dredged and the depth of the cap within 90 days of completion of filling the cells.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

David E. Hill

per _____
Program Chief, Wetlands and Waterways



PERMIT NO. 13229
Approved by: Department of Environmental Protection
Date: MAR 16 2012

FAIRHAVEN

DREDGE MATERIAL MANAGEMENT PLAN
PROPOSED
LOCATION
FOR CAD CELLS

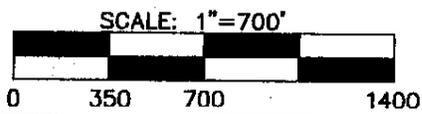
NEW BEDFORD

POPES ISLAND


APEX
184 HIGH STREET,
SUITE 502
BOSTON, MA 02110



NEW BEDFORD HARBOR DREDGE MATERIAL MANAGEMENT PLAN
CHAPTER 91 DREDGE DISPOSAL PERMIT - ACUSHNET RIVER
CCBDS AND RISDS
BY NEW BEDFORD HARBOR DEVELOPMENT COMMISSION,
NEW BEDFORD, MA



DATA REPORT - LOWER HARBOR CAD CELL
IS ATTACHED AS A SEPARATE CD TO THE SPECIFICATIONS
PACKAGE

IF YOU HAVE NOT RECEIVED A COPY OF THE DVD
CONTAINING DATA REPORT – LOWER HARBOR CAD CELL
PLEASE CONTACT THE NEW BEDFORD HARBOR
DEVELOPMENT COMMISSION AT:

52 FISHERMANS WHARF
NEW BEDFORD, MA
508-961-3000

NEW BEDFORD HARBOR
LOWER HARBOR CAD CELL

NOTE: SECTION 01000 - BIDDING SCHEDULE MUST BE SUBMITTED (ALONG WITH DIVISION 00 - SECTION 00400 - BID FORM) IN A SEALED ENVELOPE.

SECTION 01000

BIDDING SCHEDULE

PART 1 GENERAL

1.1 INSTRUCTIONS

The bidder shall submit the following information as listed below:

1. Complete all information to be provided by bidders as described in Section 00200 INSTRUCTIONS TO BIDDERS.
2. Submit all forms included in Section 00400 BID FORM.
3. Provide the additional information requested below.
4. Complete the Plant and Equipment Schedule/Survey as included below.

1.2 ADDITIONAL INFORMATION

The following information is to be submitted with the bid (see also Section 00200 INSTRUCTION TO BIDDERS):

A. Dredge/Capping Process Description

1. Type/size of dredge plant (mechanical and/or hydraulic).
2. Bucket specifications.
3. Dredge process detailed description (including production rate, schedule, control procedures and/or equipment/software for controlling dredge cuts, and estimate of free water content).
4. Method for controlling water quality including contingency plan description.
5. Method for moving and positioning dredge plant and scows for disposal.
6. Size and number of barges/scows to be utilized.
7. Method for removal, handling and disposal of artificial obstructions and debris.
8. Any deviations from the requirements included in the Technical Specifications must be clearly identified, including the reason for the deviation.
9. A detailed project schedule must also be provided that demonstrates compliance with the milestones presented in the Technical Specifications.

B. Contractor Qualifications and Experience as per Article 32 of Section 00200 Instructions to Bidders:

1. Experience summary of firm including details of representative "environmental" dredge projects completed
2. Qualifications of personnel assigned to this project, if awarded to your company.

NEW BEDFORD HARBOR
LOWER HARBOR CAD CELL

3. All other qualification and experience information required in Section 00200, especially in regard to environmental dredge projects completed, with written references.

PLANT AND EQUIPMENT SCHEDULE/SURVEY

Available Plant to be Used

(To Be Attached to Bid Form)

The bidder must complete the PLANT AND EQUIPMENT SCHEDULE listing the plant available to the Bidder and equipment proposed to be used on the work. Prior to commencement of work at the site, the Contractor will be required to submit for review copies of all applicable current inspections and certificates for all floating plants. See Section 01600 - Plant and Equipment.

BUCKET DREDGE (Clamshell/Dipper/Excavator/Dragline) (Check Type of Plant)

Number/Name	Manfactr	Age & Condition	Size of Bucket	Capacity of Plant (*) (Cu.Yds/Mo)	Swings Per Hour	Type and HP of Engine

(*) When working materials similar to those anticipated to be encountered in the performance of work.

BOATS AND BARGES/SCOWS

Number/Name	Manufacturer	Age & Condition

ATTENDANT PLANT (Give columnar information pertinent to items listed, if to be used)

	Name	No. to Be Used	HP of Engine	Length & Beam	Draft		Capacity (Cu.Yds)
					Light	Loaded	
Tug							
Tug							
Launch							
Scow							
Scow							

-- End of Section --

NEW BEDFORD HARBOR
LOWER HARBOR CAD CELL

SECTION 01010

SUMMARY OF WORK

PART 1 GENERAL

1.1 SUMMARY

The "Work" or "work" that is required by this Contract is set forth in the following documents:

A. Technical specifications titled:

NEW BEDFORD HARBOR, LOWER HARBOR CAD CELL
NEW BEDFORD, MASSACHUSETTS

B. Contract Drawings titled:

T-1 TITLE SHEET
T-2 GENERAL ARRANGEMENT PLAN - GENERAL NOTES
E-1 LOWER HARBOR CAD CELL EXISTING CONDITIONS
E-2 CAD CELL #2 EXISTING CONDITIONS
P-1 TOP OF LOWER HARBOR CAD CELL PHASE I
P-2 BOTTOM OF LOWER HARBOR CAD CELL PHASE I
P-3 TOP OF LOWER HARBOR CAD CELL PHASE II
P-4 BOTTOM OF LOWER HARBOR CAD CELL PHASE II
P-5 CAD CELL #2 DISPOSAL PLAN
P-6 LOWER HARBOR CAD CELL PHASE I DISPOSAL PLAN
P-7 LOWER HARBOR CAD CELL PHASE II DISPOSAL PLAN
C-1 LOWER HARBOR CAD CELL PHASE I CROSS SECTIONS
C-2 LOWER HARBOR CAD CELL PHASE II CROSS SECTIONS
C-3 CAD CELL #2 CROSS SECTIONS

Should existing conditions information on "Existing Conditions" drawings (Drawings E-1 through E-2) conflict with information on non-"Existing Conditions" drawings, "Existing Conditions" drawings shall take precedence over non-"Existing Conditions" drawings.

Bid addenda shall take precedence over specifications and Contract Drawings. Contract Drawings shall take precedence over specifications, except where noted in the Contract Drawings.

The Contractor shall furnish all supervision, plant, labor, equipment, appliances and materials, and carry out all operations, including monitoring and other field engineering, as necessary to accomplish the Work, complete. The Contractor shall perform the Work in strict accordance with these specifications and the contract drawings, and subject to the terms and conditions of the Contract and all applicable permits, certifications, codes and regulations and in accordance with the schedules for completion set forth herein.

1.1.1 General Description of the Work

The general description below is given to indicate the approximate scope of this project only. It does not limit the work required under the project

NEW BEDFORD HARBOR
LOWER HARBOR CAD CELL

drawings and specifications. For reference, the word "Site" shall mean the dredge and disposal areas, the waterways adjacent thereto, the structures and land adjacent thereto, temporary scow mooring area and adjacent areas, and debris stockpiling and laydown area and adjacent areas.

The Work of this project consists of construction of the Lower Harbor CAD Cell, north of Pope's Island, in New Bedford, Massachusetts.

The Work first includes removal of the "Top" of the Lower Harbor CAD Cell Phase I, which is to be placed into CAD Cell #2. The Work then includes removal of the "Bottom" of the Lower Harbor CAD Cell Phase I, which is to be disposed offshore at RISDS or CCDS. The "Top" of the Lower Harbor CAD Cell Phase II will then be dredged and disposed into the Lower Harbor CAD Cell Phase I and the "Bottom" of the Lower Harbor CAD Cell Phase II will be disposed offshore at the Rhode Island Sound Disposal Site (RISDS) or the Cape Cod Bay Disposal Site (CCDS).

Settling/temporary storage and removal/filtering/discharge of standing water is not required for "Bottom" (Bottom of Lower Harbor CAD Cell Phase I or Bottom of Lower Harbor CAD Cell Phase II) dredge material. The Work includes transportation to and disposal of "Bottom" dredge material to the appropriate (either CCDS or RISDS) offshore disposal area.

The work includes removal and off-site disposal of debris and artificial obstructions encountered during the dredging operations, which is not suitable for disposal within the existing CAD Cells or CAD Cells to be constructed as part of this contract.

The Work includes removal and off-site disposal of any debris or artificial obstructions encountered during the dredging operations, as stipulated within Section 02482 DREDGING of the specifications.

1.1.2 Quantity Determination and Breakdown

A quantity breakdown of estimated volumes of material is estimated and included in Section 00400 BID FORM. This breakdown is furnished to show the approximate distribution of material to be removed only and shall not otherwise be used to calculate payment.

The actual volume of material for measurement and payment will be calculated by comparing the pre-dredge bottom surface survey to the final post-dredge bottom surface survey (in the case of dredge areas) including side slopes. No sounding information will be gathered from underneath existing structures (i.e. piers, wharfs). Material removed from beneath existing structures due to sloughing into the dredge area will not be compensated for and should be incorporated into the unit cost for the area. The Total Volume quantity represents the anticipated allowable dredge volume, including the allowable overdredge volume at the specified overdredge depth. A slope of 3H:1V slope has been assumed for transitions between differing elevations within the dredge areas shown on the "P-4 BOTTOM OF LOWER HARBOR CAD CELL PHASE II" plan, and the "P-2 BOTTOM OF LOWER HARBOR CAD CELL PHASE I" plan.

1.2 SUBMITTALS

The following shall be submitted in accordance with Section 01300 SUBMITTAL PROCEDURES:

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Progress Schedule:

In accordance with the requirement of Section 01310 CONSTRUCTION PROGRESS SCHEDULES, the Contractor shall, within five (5) days after receipt of notice to proceed or as otherwise determined by the Owner's Representative, submit for approval a progress schedule. If changes are authorized that result in contract time changes, the Contractor shall submit a modified chart for approval by the Owner's Representative.

1.3 PROJECT/SITE CONDITIONS

1.3.1 Physical Data

Data and information furnished or referred to below is for the Contractor's information. Neither the Owner nor the Engineer shall be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

- A. Site Conditions: The indications of physical conditions on the drawings and in the specifications are the result of limited site investigations and surveys. The conditions represented prevailed at the time the investigations and surveys were made. A pre-dredge survey of the entire dredge area will be performed prior to the start of Contractor dredging operations at the site. The pre-dredge survey will be contracted for by the Owner and will be performed by an independent qualified contractor. Before commencing work at the Site, the Contractor shall verify the conditions indicated on the pre-dredge survey, drawings and in the specifications and perform all other surveys as needed or as required in the contract documents. The results of the pre-dredge survey shall be deemed conclusive.
- B. Weather Conditions: The monthly normal mean temperature and the monthly normal mean precipitation for the site may be obtained by the Contractor from the nearest U.S. National Weather Service Office.
- C. Transportation: The Contractor shall make his own investigation on the use of municipal, State and Federal highways, roads, bridges, railroads and water transport. Absent Contractor's objection, all such infrastructure shall be deemed sufficient to accomplish the work as set forth herein.
- D. Flow Data: The maximum current in New Bedford Harbor during flood and ebb is approximately 3.5 knots.
- E. Tide Conditions: The mean range of tide at New Bedford Harbor is 3.8 feet.
- F. Channel Traffic: The areas to be dredged in New Bedford Harbor are mainly used by fishing vessels, cargo-type ships and barges, and numerous small recreation and commercial craft, which may cause interference with contract operations. The Contractor shall remedy any such interference by moving its dredging equipment and any associated vessels if vessel traffic requires it, based on the determination of the Harbor Master and Marine Superintendent, at no additional charge to the City of New

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Bedford or the Owner. The Contractor shall coordinate their activities such that access and egress of vessels does not adversely impact the Work or achievement of the Mandatory Schedule Milestones.

- G. Height Limitations: The Contractor shall coordinate his construction activities with the FAA and New Bedford Airport Operations Unit as necessary. Height limitations of crane booms, hoisting equipment or other equipment used by the Contractor to complete the dredging shall conform to the ceiling heights established by the FAA. The FAA may require the Contractor to stop work in the event declining weather conditions hinder visibility to the extent that the Contractor's plant becomes a hazard to flying aircraft.

1.4 SEQUENCING AND SCHEDULING

1.4.1 Mandatory Schedule Milestone

A project schedule must be prepared and submitted by the contractor with the bid. The following Mandatory Schedule Milestone must be included in the overall schedule. The dates provided below are also listed in the Contract Supplemental Conditions.

- A. None Currently Listed

Failure to achieve completion of the work required by the mandatory scheduled milestone(s) shall subject the contractor to liquidated damages in accordance with the Section 00800 SUPPLEMENTAL GENERAL CONDITIONS.

1.4.2 Protection of Fisheries Resources Window

Note that dredging and disposal shall be conducted utilizing silt curtains for the dredge and disposal locations within New Bedford Harbor from January 15 through June 15. No dredging or disposal activities without the use of silt curtains may occur within this time frame, and the Contractor should take this into account when preparing their project schedule. These protections have been established to take into account the biological resources of the harbor

1.4.3 Harbor Master

Before beginning dredging operations and barge transport of dredged materials, the Contractor shall coordinate the Work with the Marine Superintendent, Assistant Port Director, or the Director of the New Bedford Harbor Development Commission (NBHDC), Telephone Number (508) 961-3000.

1.4.4 Docking Pilots

The Contractor shall maintain daily telephone contact with the Docking Pilot of the Northeast Marine Pilots Association, Telephone Number (800) 274-1216, Internet www.nemarinepilots.com. While dredge operations are underway the Contractor shall monitor VHF channel 16. Since vessel movements are apt to occur on a random basis, the Contractor shall provide a positive means of communication between the dredge and the towing companies such as a cell phone number.

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1.4.5 Coordination with Berth Owners

The Contractor shall coordinate the Work and reach satisfactory arrangements with the owners of berth areas a minimum of 14 days prior to dredging or other work at or adjacent to a berth area. Scheduling of dredging activities at active berth areas will require working around anticipated ship docking and waying schedules. Points of contact for berth areas are listed below:

1.4.5.1 White's Terminal

The Contractor shall coordinate his work operations with the owner of the Terminal.

Owner: Mr. Mark White
Contact: Mr. Mark White
Telephone: (508)763-8868

1.4.5.2 Fish Island Terminal

The Contractor shall coordinate his work operations with the Owner of the Terminal:

Owner: Maritime International
Contact: Pierre Bernier
Telephone: (508)996-8500

1.4.5.3 Niemiec Marine, Inc.

The Contractor shall coordinate his work operations with the Owner of the Facility:

Owner: Mr. Marty Niemiec
Contact: Mr. Marty Niemiec
Telephone: (508)997-7390

Address: 7 Conway Street, New Bedford, MA 02740
Telephone: (508)999-5831 or (508) 999-5607

1.4.5.4 USEPA

Owner: USEPA
Contact: Mr. David Lederer (617)918-1325 or
Ms. Elaine Stanley (617)918-1332

1.4.6 Weekly Schedule to Users of the Harbor

Coordination with users of the harbor is critical for timely completion of the Work. All harbor users should have knowledge of the others' potential activities. Therefore, the Contractor shall prepare a weekly schedule of dredging and disposal activities and forward it to the following:

US Coast Guard: Officer of the Day

HDC Marine Superintendent

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Massachusetts Department of Conservation and Recreation (DCR) (formerly - Massachusetts Department of Environmental Management (MADEM)): Mr. Rick Cunio (for coordination at State Pier)

This weekly schedule shall identify all anticipated dredging and disposal activities and shall be updated as appropriate.

1.4.6 New Bedford Marine Commerce Terminal Owner, Contractor, and Engineer

Coordination with the contractor, owner, and engineer for the New Bedford Marine Commerce Terminal project is required. The contractor for this project is not yet selected. The Contractor shall note that, due to the adjacent New Bedford Marine Commerce Terminal project, the use of CAD Cell #2 will be shared with the Contractor selected for that project. The New Bedford Marine Commerce Terminal involves the construction of CAD Cell #3, immediately to the north of CAD Cell #2, and also involves placement of material within CAD Cell #2. The Contractor shall cooperate and work closely with the owner, engineer, and contractor selected for the New Bedford Marine Commerce Terminal. The Contractor shall not place material within CAD Cell #2 in such a way as to impede access to CAD Cell #3, to impede navigation through and over CAD Cell #2, or to impede the ease of placement of material into CAD Cell #2. This provision may require the Contractor to add additional "doorways" to silt curtains surrounding CAD Cell #2 (if necessary).

1.4.7 Notice to Mariners - US Coast Guard

Before beginning dredging operations and barge transport of dredged materials, the Contractor shall coordinate with the United States Coast Guard Navigation Center and ensure appropriate issuance of "Notice to Mariners" regarding the Contractor's operations. Prior to submittal of the "Notice to Mariners" the Contractor shall submit one copy for review to the Owner's Representative.

1.5 SECURITY

1.5.1 Personnel Security

Contractor shall, at least one week prior to the start of work in New Bedford Harbor, provide a list of all personnel (including proof of citizenship and/or passport/visa paperwork) that will be working on the project. Guidelines concerning national security at government facilities (such as New Bedford State Pier) will be followed. Security restrictions will be communicated via Sgt. Jill Simmons, Port Security Team, New Bedford Police Department, (508) 989-2925. If, at any time, the "threat level" of the harbor changes, the Port Security Officer should be contacted to determine if any additionally security measures are required.

1.5.2 Equipment Security

The Contractor will be responsible for security of plant and equipment while that equipment is onsite. This includes 24-hour security for all equipment, including dredge plants and scows, while they are onsite. The security measures required include:

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- A. Lighting shall be provided on the barge and dredge equipment consistent with Coast Guard regulations for ships and barges - lighting must be clearly visible from a distance of at least 100-feet;
- B. Lighting must also meet OSHA requirements for safe working conditions and safe egress;
- C. Security at the dredge plant, any Contractor moored or berthed vessels, and any upland work areas are the Contractor's responsibility. The dredge plant (dredge barge(s) and associated equipment) may be manned 24-hours a day for security purposes while moored and/or operating within New Bedford Harbor, if the Contractor desires;
- D. When docked at a pier, the dredge plant/barge(s) must have sufficient barge security measures (electronic security systems or personnel guard) to ensure that unauthorized access does not occur;
- E. At all times, the Contractor is responsible to ensure that public access to the dredge plant, barge(s), and related equipment is precluded, except for authorized personnel.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

-- End of Section --

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SECTION 01025

MEASUREMENT AND PAYMENT

PART 1 GENERAL

1.1 SUBMITTALS

The following shall be submitted in accordance with Section 01300 SUBMITTAL PROCEDURES:

Weight Certificates:

Submit certified weight certificates for debris removed from New Bedford Harbor under payment item "Debris Removal".

1.2 LUMP SUM PAYMENT ITEMS

Payment items for the Work for which contract lump sum payments will be made are listed in Section 00400 BID FORM and described below. All costs for items of work, which are not specifically mentioned to be included in a particular lump sum or unit price payment item, shall be included in the listed item most closely associated with the work involved. The lump sum price and payment made for each item listed shall constitute full and final compensation for furnishing all supervision, plant, labor, materials, and equipment, and performing any associated Contractor quality control, environmental protection, meeting safety requirements, tests and reports, and for performing all work required for which separate payment is not otherwise provided.

1.3 UNIT PRICE PAYMENT ITEMS

Payment items for the work of this contract on which the contract unit price payments will be made are listed in Section 00400 BID FORM and described below. The unit price and payment made for each item listed shall constitute full compensation for furnishing all supervision, plant, labor, materials, and equipment, and performing any associated Contractor quality control, environmental protection, meeting safety requirements, tests and reports, and for performing all work required for each of the unit price items.

1.4 BIDDING SCHEDULE: BASE BID ITEMS

Payment Items for the work of this contract on which the contract progress payments will be based are listed in Section 00400 BID FORM and are described below. All costs for items of work, which are not specifically mentioned to be included in a particular Bidding Schedule payment item, shall be included in the listed item most closely associated with the work involved.

1.4.1 Base Bid Item No. 0001, "Mobilization and Demobilization"

- A. Mobilization and demobilization will be measured as the lump sum to include compensation for project preparations, procurement and assembly of all plant equipment, materials, supplies and labor

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and bonds required for the prosecution of the work not otherwise included in other pay items and upon completion of the work as specified and directed, the clean-up of the work areas, removal of equipment, materials and supplies from the work area. Payment will be made for costs associated with mobilization and demobilization for operations including all incidental work described in the specifications and contract documents. Mobilization shall include the completion of pre-construction submittals, placement and transportation of all equipment to the site, scows or barges as necessary, support equipment or vessels (including all equipment needed for debris handling, separation and disposal), purchase of materials needed for construction, temporary facilities, and construction of environmental controls.

Demobilization shall include complete restoration of all areas disturbed by the Contractor's operations to their pre-construction conditions, submittal of a complete set of record "as-built" drawings and removal of all equipment and temporary construction facilities from the site.

- B. 60% of the lump sum price for mobilization/demobilization unit will be paid to the Contractor upon completion of his mobilization. 30% will be paid upon completion of demobilization and the remaining 10% will be paid upon submission of accepted As-Built drawings for the project. Payment for this item will be limited to 5% of the Total Base Bid amount. In the event that the Owner considers the lump sum price for the bid item does not bear a reasonable relationship to the cost of the work in this contract, the Owner may require the Contractor to produce cost data to justify the price bid to the satisfaction of the Owner. If the Contractor fails to substantiate the price bid, then payment will be made for actual mobilization and demobilization costs as determined by the Owner. Payment for this item will be considered full compensation for all labor, materials, off-site disposal, and other fees, equipment, supervision, and supplies required for the work. Payment for this item shall be made on the percentage of lump sum of work completed, as determined by the Engineer.
- C. Payment for this item shall include all costs in connection to all preparatory actions associated with work designated on plans as dredging, but not limited to: obtaining any necessary permits and approvals not already in place for the work specified in accordance with the Contract, full reimbursement for the premiums actually paid for performance and payment bonds, all costs connected with the mobilization of the Contractor's plant(s) and equipment, scows, coordination, submittals and preparation for access to the disposal and area(s) as required; and any other work that is necessary in advance of the dredging operations; materials and equipment furnished for this project moving the Contractor's dredging plant(s) and equipment to the site; accomplishing the work required by the Permits with respect to protection of the environment; and the coordination with the regulatory agencies.
- D. If for any other reason, the Contractor must shut down and remove his plant from the site, then remobilize, Owners will not be responsible for payment of additional costs associated with such

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work. Demobilization shall include general preparation for transfer of plant to its home base, removal of equipment, and environmental restoration as required from construction, dredging, and disposal operations.

E. Unit of measure: lump sum.

1.4.2 Base Bid Item No. 0002, "Dredging of Top of Lower Harbor CAD Cell Phase I and Disposal of Material Within CAD Cell #2 Disposal Area"

A. The contract price per cubic yard for this item shall include all cost of removal and disposal of all maintenance material, improvement material, and debris suitable for disposal in CAD Cell #2 from the Top of Lower Harbor CAD Cell Phase I (as shown on Contract Drawing "P-1 TOP OF LOWER HARBOR CAD CELL PHASE I"), as defined and specified in Section 02482 DREDGING and otherwise indicated on the Contract Drawings. Disposal includes all costs, direct and indirect, associated with and incidental to, excavation, dredging and removal of the material, segregation of debris unsuitable for disposal within CAD Cell #2, environmental protection, coordination with the New Bedford Marine Commerce Terminal project and other navigational dredging projects as needed, meeting the Performance Standards or other relevant permitting standards, timing of work on the tidal cycle as necessary, relocation of moorings or other temporary structures, maneuvering around any temporary or permanent structures, use of silt curtains as required or necessary, barge or scow transport of the material, removal of standing water/free liquids, and ultimate disposal of the material at CAD Cell #2, as specified in Section 02482 DREDGING and related sections. Protective measures to protect existing structures and utilities shall be included.

B. The total amount of material removed and paid for under the contract for this Item, will be measured by the cubic yard in place by computing the volume between the bottom surface shown by soundings of the pre-dredge survey made immediately before dredging, and the material surface shown by the soundings of a post-dredge survey made as soon as practicable after the removal of the material, limited to that within the plan dredge limits, and within the vertical tolerances of the dredge limits (allowable overdepth as described in Section 02482 DREDGING, paragraph OVERDEPTH AND SIDE SLOPES, less any deductions that may be required for misplaced material described in paragraph DISPOSAL).

C. The contract drawings listed in Section 01010 SUMMARY OF WORK are believed to accurately represent conditions existing on the date of the last survey shown on the drawings, but the depths shown thereon will be verified and corrected by soundings taken by the Owner's qualified independent subcontractor immediately before dredging. Determination of quantities removed and the deductions made to determine quantities after having once been made by the Owner's Representative, will not be re-considered, except on evidence of collusion, fraud, or obvious error.

D. Partial payments will be based on approximate quantities determined by Contractor quality control surveys. The pre-dredge

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survey made immediately before dredging of the material and the post-dredge survey made as soon as practicable after the removal of the material will be performed by a qualified independent subcontractor under contract to the Owner at no cost to the Contractor.

E. Unit of measure: cubic yard.

1.4.3 Base Bid Item No. 0003, "Dredging of Bottom of Lower Harbor CAD Cell Phase I and Disposal of Material Offshore at CCDS or RISDS"

A. The contract price per cubic yard for this item shall include all cost of removal and disposal of all maintenance material, improvement material, and debris suitable for disposal offshore at the Cape Cod Bay Disposal Site (CCDS) or the Rhode Island Sound Disposal Site (RISDS) from the Bottom of Lower Harbor CAD Cell Phase I (as shown on Contract Drawing "P-2 BOTTOM OF LOWER HARBOR CAD CELL PHASE I"), as defined and specified in Section 02482 DREDGING and otherwise indicated on the Contract Drawings. Disposal includes all costs, direct and indirect, associated with and incidental to, excavation, dredging and removal of the material, segregation of debris unsuitable for disposal at CCDS or RISDS, transportation of dredged material in scows to CCDS or RISDS, environmental protection, coordination with the New Bedford Marine Commerce Terminal project and other navigational dredging projects as needed, meeting the Performance Standards or other relevant permitting standards, including the restrictions associated with offshore disposal of sediment at RISDS or CCDS, timing of work on the tidal cycle as necessary, relocation of moorings or other temporary structures, maneuvering around any temporary or permanent structures, use of silt curtains as required or necessary, barge or scow transport of the material, removal of standing water/free liquids, and ultimate disposal of the material at CCDS or RISDS, as specified in Section 02492 DISPOSAL AT OFFSHORE DISPOSAL SITES and related sections. Protective measures to protect existing structures and utilities shall be included.

B. The total amount of material removed and paid for under the contract for this Item, will be measured by the cubic yard in place by computing the volume between the bottom surface shown by soundings of the pre-dredge survey made immediately before dredging, and the material surface shown by the soundings of a post-dredge survey made as soon as practicable after the removal of the material, limited to that within the plan dredge limits, and within the vertical tolerances of the dredge limits (allowable overdepth as described in Section 02482 DREDGING, paragraph OVERDEPTH AND SIDE SLOPES, less any deductions that may be required for misplaced material described in paragraph DISPOSAL).

C. The contract drawings listed in Section 01010 SUMMARY OF WORK are believed to accurately represent conditions existing on the date of the last survey shown on the drawings, but the depths shown thereon will be verified and corrected by soundings taken by the Owner's qualified independent subcontractor immediately before dredging. Determination of quantities removed and the deductions

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made to determine quantities after having once been made by the Owner's Representative, will not be re-considered, except on evidence of collusion, fraud, or obvious error.

D. Partial payments will be based on approximate quantities determined by Contractor quality control surveys. The pre-dredge survey made immediately before dredging of the material and the post-dredge survey made as soon as practicable after the removal of the material will be performed by a qualified independent subcontractor under contract to the Owner at no cost to the Contractor.

E. Unit of measure: cubic yard.

1.4.4 Base Bid Item No. 0004, "Debris and Obstruction Removal and Offsite Disposal"

A. The contract price per Ton for debris removal from the areas to be dredged as part of the Work. Shall include all costs associated with the collection, separation, screening, cleaning (including collection and disposal of resulting wastes from cleaning activity), storage and handling, and the removal from the site and proper disposal of debris recovered from the bottom and all floating debris, as described in Section 02482 DREDGING. Bottom debris the Contractor might encounter may include, but is not limited to, cable, rope, netting, canisters, rags, discarded tools, miscellaneous metal, miscellaneous rubber, miscellaneous plastic, miscellaneous wood, tires, shipwrecks, large stones, abandoned mooring block and buoys, cars, trucks, abandoned piling, or ballast. Debris requiring removal and disposal includes all objects which, in the opinion of the Owner's Representative, and as described in Section 02482 DREDGING, are unsuitable for placement in either CAD Cell #2 and/or the Lower Harbor CAD Cell Phase I.

B. Unit of Measure: Ton (2,000 pounds).

1.5 BIDDING SCHEDULE: ALTERNATE BID ITEMS

Payment Items for the work of this contract on which the contract progress payments will be based are listed in Section 00400 BID FORM and are described below. All costs for items of work, which are not specifically mentioned to be included in a particular Bidding Schedule payment item, shall be included in the listed item most closely associated with the work involved.

1.5.1 Alternate Bid Item No. 0001, "Dredging of Top of Lower Harbor CAD Cell Phase II and Disposal of Material Within Lower Harbor CAD Cell Phase I Disposal Area"

A. The contract price per cubic yard for this item shall include all cost of removal and disposal of all maintenance material, improvement material, and debris suitable for disposal in the Lower Harbor CAD Cell Phase I from the Top of the Lower Harbor CAD Cell Phase II (as shown on Contract Drawing "P-3 TOP OF LOWER HARBOR CAD CELL PHASE II"), as defined and specified in Section 02482 DREDGING and otherwise indicated on the Contract Drawings.

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Disposal includes all costs, direct and indirect, associated with and incidental to, excavation, dredging and removal of the material, segregation of debris unsuitable for disposal within the Lower Harbor CAD Cell Phase I Disposal Area, as shown on Contract Drawing "P-6 LOWER HARBOR CAD CELL PHASE I DISPOSAL PLAN", environmental protection, coordination with the New Bedford Marine Commerce Terminal project and other navigational dredging projects as needed, meeting the Performance Standards or other relevant permitting standards, timing of work on the tidal cycle as necessary, relocation of moorings or other temporary structures, maneuvering around any temporary or permanent structures, use of silt curtains as required or necessary, barge or scow transport of the material, removal of standing water/free liquids, and ultimate disposal of the material at the Lower Harbor CAD Cell Phase I, as specified in Section 02482 DREDGING and related sections. Protective measures to protect existing structures and utilities shall be included.

- B. The total amount of material removed and paid for under the contract for this Item, will be measured by the cubic yard in place by computing the volume between the bottom surface shown by soundings of the pre-dredge survey made immediately before dredging, and the material surface shown by the soundings of a post-dredge survey made as soon as practicable after the removal of the material, limited to that within the plan dredge limits, and within the vertical tolerances of the dredge limits (allowable overdepth as described in Section 02482 DREDGING, paragraph OVERDEPTH AND SIDE SLOPES, less any deductions that may be required for misplaced material described in paragraph DISPOSAL).
- C. The contract drawings listed in Section 01010 SUMMARY OF WORK are believed to accurately represent conditions existing on the date of the last survey shown on the drawings, but the depths shown thereon will be verified and corrected by soundings taken by the Owner's qualified independent subcontractor immediately before dredging. Determination of quantities removed and the deductions made to determine quantities after having once been made by the Owner's Representative, will not be re-considered, except on evidence of collusion, fraud, or obvious error.
- D. Partial payments will be based on approximate quantities determined by Contractor quality control surveys. The pre-dredge survey made immediately before dredging of the material and the post-dredge survey made as soon as practicable after the removal of the material will be performed by a qualified independent subcontractor under contract to the Owner at no cost to the Contractor.
- E. Unit of measure: cubic yard.

1.5.2 Alternate Bid Item No. 0002, "Dredging of Bottom of Lower Harbor CAD Cell Phase II and Disposal of Material Offshore at CCDS or RISDS"

- A. The contract price per cubic yard for this item shall include all cost of removal and disposal of all maintenance material,

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improvement material, and debris suitable for disposal offshore at the Cape Cod Bay Disposal Site (CCDS) or the Rhode Island Sound Disposal Site (RISDS) from the Bottom of the Lower Harbor CAD Cell Phase II (as shown on Contract Drawing "P-4 BOTTOM OF LOWER HARBOR CAD CELL PHASE II"), as defined and specified in Section 02482 DREDGING and otherwise indicated on the Contract Drawings. Disposal includes all costs, direct and indirect, associated with and incidental to, excavation, dredging and removal of the material, segregation of debris unsuitable for disposal at CCDS or RISDS, transportation of dredged material in scows to CCDS or RISDS, environmental protection, coordination with the New Bedford Marine Commerce Terminal project and other navigational dredging projects as needed, meeting the Performance Standards or other relevant permitting standards, including the restrictions associated with offshore disposal of sediment at RISDS or CCDS, timing of work on the tidal cycle as necessary, relocation of moorings or other temporary structures, maneuvering around any temporary or permanent structures, use of silt curtains as required or necessary, barge or scow transport of the material, removal of standing water/free liquids, and ultimate disposal of the material at CCDS or RISDS, as specified in Section 02492 DISPOSAL AT OFFSHORE DISPOSAL SITES and related sections. Protective measures to protect existing structures and utilities shall be included.

- B. The total amount of material removed and paid for under the contract for this Item, will be measured by the cubic yard in place by computing the volume between the bottom surface shown by soundings of the pre-dredge survey made immediately before dredging, and the material surface shown by the soundings of a post-dredge survey made as soon as practicable after the removal of the material, limited to that within the plan dredge limits, and within the vertical tolerances of the dredge limits (allowable overdepth as described in Section 02482 DREDGING, paragraph OVERDEPTH AND SIDE SLOPES, less any deductions that may be required for misplaced material described in paragraph DISPOSAL).
- C. The contract drawings listed in Section 01010 SUMMARY OF WORK are believed to accurately represent conditions existing on the date of the last survey shown on the drawings, but the depths shown thereon will be verified and corrected by soundings taken by the Owner's qualified independent subcontractor immediately before dredging. Determination of quantities removed and the deductions made to determine quantities after having once been made by the Owner's Representative, will not be re-considered, except on evidence of collusion, fraud, or obvious error.
- D. Partial payments will be based on approximate quantities determined by Contractor quality control surveys. The pre-dredge survey made immediately before dredging of the material and the post-dredge survey made as soon as practicable after the removal of the material will be performed by a qualified independent subcontractor under contract to the Owner at no cost to the Contractor.
- E. Unit of measure: cubic yard.

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PRODUCTS (NOT USED)

EXECUTION (NOT USED)

-- End of Section --

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SECTION 01050

FIELD ENGINEERING

PART 1 GENERAL

1.1 SUMMARY

1.1.1 Engineering Services

The Contractor shall provide and pay for field engineering services required for the project, including:

- A. Survey work required in execution of this project, including both land surveys and hydrographic surveys, except for surveys performed by the Owner's Representative as indicated in these specifications.
- B. Civil, geotechnical, structural or other professional engineering services specified, or required to execute Contractor's construction methods.

1.1.2 Existing Control Points

The Owner's Representative will identify existing control points as required.

1.1.3 Survey Datum

Some of the contract drawings refer to National Geodetic Vertical Datum (NGVD) and some contract drawings refer to Mean Lower Low Water (MLLW). The elevation of some benchmarks within the harbor will be in NGVD 29 and some benchmarks will be in NAVD 88. In all cases, the Contractor shall determine the elevation of any datum or benchmark in NAVD 88, and shall convert that elevation to Mean Lower Low Water (MLLW). The Contractor shall (and the Owner will) then base all elevations/soundings when performing hydrographic or land surveys in MLLW.

1.2 SUBMITTALS

The following shall be submitted in accordance with Section 01300 SUBMITTAL PROCEDURES:

Field Data:

Submit sufficient field data on CD or DVD with X, Y, and Z ASCII files containing Easting, Northing, and true Elevations and any field survey notes, so that the Contractor's submittal survey plot may be reproduced by the Owner by referring only to this field data.

Survey Data:

Submit all quality control survey data and plots. Plots shall show a sufficient number of soundings or elevations along each line to indicate the general shape of the bottom along with a schedule for correcting

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deficiencies. Plots shall be submitted no more than 2 days after completion of field work.

Survey Personnel:

Furnish a complete listing of the personnel who will perform the survey work required by the contract. The listing shall include a brief summary of the land and hydrographic survey experience of each person. The list shall be submitted prior to the preconstruction conference.

Charts:

Current and tide charts for the area(s) being dredged or capped (including disposal areas) shall be submitted.

Survey Plans:

Submit survey plans specified below. Field surveys shall not begin until these plans are approved.

1.3 EXAMINATION

1.3.1 Examination of Site and Verification of Conditions

- A. Before starting operations, the Contractor shall examine site to become acquainted with conditions to be encountered.
- B. The Contractor shall verify exact locations of all above and below ground and submerged utilities including sewers, water mains, gas mains, telephone/communications lines, above or below ground and submerged electrical wires, other utilities, conduits and structures which may interfere with work.

1.3.2 Utility Company Contacts

The names and contact numbers of area utility companies are included in Section 00800 Supplementary Conditions. Additional utility companies, appurtenances, and municipal and private utilities may be present in the work areas. It is the Contractor's sole responsibility to conduct its own due diligence concerning the presence of utilities within the work area, and to protect all utilities from damage (of any kind) as a result of any of the Contractor's activities. The Contractor is responsible to contact Digsafe prior to dredging or excavation of any kind and to implement all necessary and appropriate safeguards to prevent damage or disturbance to buried utilities and appurtenances.

1.4 EASEMENTS AND RIGHTS-OF-WAY

- A. Easements and rights-of-way reasonably necessary for performance of the work, unless otherwise specified herein, will be provided by the Owner.
- B. The Contractor shall confine construction operations within limits indicated on drawings and/or within limits of approved easements or public ways.

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- C. The Contractor shall place construction tools, equipment, materials and supplies, so as to cause least possible damage to property and interference with traffic.

1.5 LAYOUT OF WORK

- A. The Owner's Representative will furnish one control point to the Contractor. The Contractor must supply additional control points as may be required in the performance of the dredging. The Contractor shall ensure that all additional control points are tied into at least three known fixed points and located within the Contractor's survey book.
- B. From these control points the Contractor shall lay out the work by establishing all lines and grades at the site necessary to control the work and shall be responsible for all measurements that may be required for the execution of the work as prescribed in the specifications and/or shown on the contract drawings. The Contractor shall place and establish such stakes and markers as may be necessary for control and guidance of his operations. All survey data shall be recorded in accordance with standard and approved methods. All field notes, sketches, recordings and computations made by the Contractor shall be available at all times during the progress of the work for ready examination by the Owner's Representative.
- C. The Contractor shall furnish, at his own expense, all such stakes, spikes, steel pins, templates, platforms, equipment, tools and material and all labor as may be required in laying out any part of the work from the control point established by the Owner. It shall be the responsibility of the Contractor to maintain and preserve all stakes and other markers established by him until authorized to remove them. If the control point(s) established at the site by the Owner are destroyed by or through the activities of the Contractor (prior to their authorized removal), said point shall be replaced by the Owner or the Owner's Representative. The expense of replacement will be deducted from any amount due or which may become due the Contractor. The Owner's Representative may require work be suspended at any time when horizontal and vertical control points established at the site by the Contractor are not reasonably adequate to permit checking the work. Such suspension will be withdrawn upon proper replacement of the control points.
- D. The dredge for the project shall be equipped with an electronic dredge positioning system the minimum standards for which will be as follows:
 - 1. Survey quality DGPS positioning system with repeatable accuracy of 1 meter or less. The antenna for the GPS will be mounted in such a way that it will give true readings without undue interference from the dredge boom or like structures.
 - 2. Electronic Compass for determining dredge azimuth in relation to the project.

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3. Logging software (Hypack Dredge-Pack or Equal), with head's up display in easy view of the operator.
4. The system shall be installed and maintained by an individual with no less than five years experience in the installation and operation of electronic dredge positioning systems. The visual display shall include the limits of the dredge cut as well as any other dredge or fill areas, as well as "cut" lanes and stationing to allow the operator visual reference to the dredge and bucket (cutterhead) at all times.

1.6 CONTRACTOR SURVEYS

1.6.1 Personnel

The Contractor survey work to be performed under this contract shall be accomplished by, reviewed and approved by survey personnel familiar with and having personal experience with hydrographic surveys and/or land surveys, as appropriate.

1.6.2 Survey Plans

Prior to the start of any work at the site, the Contractor shall prepare a plan describing the survey method(s) to be used:

1. to complete the layout and sequencing of the work
2. to conduct the progress surveys
3. to conduct the quality control surveys

1.6.3 Quality Control Surveys

The Contractor shall examine their work by conducting hydrographic surveys whenever progress payments are requested by the Contractor, upon completion of separable portions of the work, and upon completion of the entire work. The Contractor shall prepare survey maps based on the results of these surveys. These maps shall be used, by the Contractor, to satisfy himself of the effectiveness of his operations. Particular attention shall be directed to attainment of contract depth and comparison of actual progress and in-place quantities dredged with scheduled progress. See Section 02482 DREDGING for additional survey requirements.

The Contractor shall forward a copy of such survey (or electronic data representative of the soundings collected during these surveys) to the Owners' Representative. All of the electronic data shall be submitted on CD or DVD or via e-mail with X,Y, and Z ASCII files containing Easting, Northing, and true Elevations. Data sets, if collected using a "singlebeam" depthsounder shall be complete undecimated/unsorted data. If data is collected using "Multibeam" survey equipment, then the data shall be provided to the owner's representative decimated by shoalest soundings in a 3 foot grid pattern. The files shall be positioned on state plane coordinates, NAD83 Massachusetts Mainland Zone 2001 and vertical datum referenced to New Bedford / Fairhaven Harbor MLLW.

1.6.4 Method of Surveying

1.6.4.1 Hydrographic Soundings

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To assure that the method of surveying is acceptable, the Contractor shall submit a detailed survey plan setting out the proposed method of surveying. Surveys of CAD cells and other non-navigational, or maintenance areas of the project may be performed as follows: Soundings shall be referenced to Mean Lower Low Water (MLLW) and shall be performed with a depthsounder having a vertical accuracy of +/- 0.1 foot.

In general, sounding lines shall be perpendicular to the channel limits and shall extend a minimum of 3 times the channel width outside of the limits except where limited by the surrounding topography or lack of sufficient depth for the survey boat. The interval between sounding lines shall be a maximum of 25 feet.

Control points used for the surveys shall be occupied and proven by checking reference angles in the field. "Singlebeam" depth measuring equipment must use a recording depthsounder with a transducer beam angle not exceeding 8 degrees. Horizontal positioning systems shall be a Differential Global Positioning System (DGPS) or Real-Time Kinematic Global Positioning System (RTK-GPS). The positioning system shall be capable of locations accurate to 1 meter or better of the true position.

At the start of each day's soundings, following any lengthy breaks and at the end of the day's soundings a bar check shall be taken within two feet of the project depth and recorded on the depthsounder roll. Event marks shall be marked and titled on depthsounder rolls. Sounding lines shall be numbered on depthsounder rolls and plots. Event marks shall correlate horizontal position with depth and shall be marked and numbered on depthsounder rolls. They shall be taken at 30 second intervals. The Contractor will be required to submit to the Owner's Representative sufficient field data, including depthsounder rolls and digital fathometry data in a usable format, corrected for tide, and corresponding boat plots and track sheets, so that the Contractor's submitted survey plot may be reproduced by the Owner by referring only to this field data.

After completion of the Contractor's survey, the results will be plotted and reviewed by the Contractor to ensure that all work was completed in accordance with contract requirements and submitted to the Owner's Representative on CD-ROM, DVD-ROM or by electronic transfer in digital ASCII format. If deficiencies are noted, a re-survey of the area after correction of deficiencies will be required to assure that correction has been achieved. Upon completion of the project, sufficient surveys will have been performed and plots submitted to assure that the proper depth has been achieved throughout the entire project.

Submission of all Contractor quality control survey data, including plots, is required prior to performance of final examination and acceptance surveys by the Owner. The results of quality control survey should be utilized by the Contractor to ensure that work was performed in accordance with contract requirements. Final acceptance by the Owner's Representative will be in accordance with SECTION 01025 MEASUREMENT AND PAYMENT of these specifications.

Surveys shall be performed by the Contractor for all completed areas of maintenance and improvement dredging. All of the data shall be submitted on CDROM with X,Y, and Z ASCII files containing Easting, Northing, and true Elevations. "Multibeam" data shall be provided to the owner's representative decimated by shoalest soundings in a 3 foot grid pattern. The files shall

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be referenced to state plane coordinates, NAD83 Massachusetts Mainland Zone 2001, and vertical datum referenced to New Bedford / Fairhaven Harbor MLLW.

1.7 DREDGE QUANTITY SURVEYS

1.7.1 Dredge Quantity Surveys

Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed or finally in place.

1.7.2 Owner Dredge Quantity Surveys

The Owner's Representative (or a third-party surveyor) will conduct the original (pre-dredge) and final (post-dredge) surveys for the project and make all quantity computations based on those surveys. The surveys will be performed at no expense to the Contractor, except as noted in Article "Final Examination and Acceptance" below and as specified in Section 02482 DREDGING. The Contractor shall give a minimum of 3 days notice before completion of a portion of the work requiring a post-dredge survey. A minimum of 2 days will be required by the Owner for completion of each of the post-dredge surveys at the site and another 10 to 15 days for calculation of quantities removed and verification of completion of work.

1.7.3 Contractor Dredge Quantity Surveys

1.7.3.1 Progress Payment Surveys

The Contractor shall conduct the surveys for any periods for which progress payments are requested. The Contractor will make the computations based on these surveys. All progress payment surveys shall be completed by a land surveyor licensed in the Commonwealth of Massachusetts. All surveys accomplished by the Contractor shall be conducted under the direction of the Owner's Representative, unless the Owner's Representative waives this requirement for each specific instance.

1.7.3.2 Dredge Volumes

The Contractor shall conduct Contractor Quantity Surveys prior to commencement of and immediately following completion of dredging activities. Multiple surveys will be required to accommodate intermittent dredging operations. These surveys shall be submitted to the Owner's Representative for verification and approval.

The Contractor shall give a minimum of 24 hour notice prior to initiation of survey work, such that the Owner's Representative can conduct simultaneous independent survey operations for use in verification of the Contractor's survey data. A minimum of 24 hours will be required by the Owner for review of the Contractor's survey data. Dredging operations within the survey area may not resume prior to Owner's Representative's approval of the Contractor's survey data submittal.

Approved Contractor Quantity Surveys will be utilized by the Owner's Representative as a basis for determination of interim dredged volumes.

1.7.4 Field Notes

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Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey to the Owner's Representative, who shall use them as necessary to determine the amount of progress payments, or for calculation of interim dredge volumes associated with alternate bid items. The Contractor shall retain copies of all such material furnished to the Owner's Representative.

1.8 FINAL EXAMINATION AND ACCEPTANCE

1.8.1 Final Examination

As soon as practicable after the completion of the entire Work, or completion of pre-approved acceptance sections and after examination by the Contractor as described in section 1.6.4.1, the work will be thoroughly examined by the Owner's Representative. Examinations by the Owner's Representative will be made at the expense of the Owner, dredging areas will be examined by soundings, elevations, or full coverage electronic sweeping operations, or all three as determined by the Owner's Representative.

Should any shoals or other lack of contract depth (including the presence of debris above contract depth) be disclosed within dredge areas by this examination, the Contractor shall remove the debris or shoals (by dredging), or by otherwise removing the shoals or debris, at no additional fee, as directed by the Owner's Representative.

Should any shoals or other condition found to exceed or not meet the contract depth (including the presence of debris above contract depth) be disclosed within disposal areas, or outside of the Disposal Clean Up Areas associated with any disposal areas, by this examination, the Contractor shall remove the debris or shoals (by dredging), or shall add additional capping material, at no additional fee, or by otherwise removing the shoals or debris, as directed by the Owner's Representative. When the area is found to be satisfactorily cleared, it will be accepted finally. Should more than one final examination survey of an area be required, the cost of all additional surveys of that area will be deducted from amounts due or to become due the Contractor. These survey costs will be based upon a rate of \$4,000.00 per day for each day in which the Owner's Representative survey plant is engaged in sounding or sweeping operations, and/or is en route to or from the site, or held at or near the site for such operations.

1.8.2 Final Acceptance

Final acceptance of the whole or any part of the Work, and the deductions or corrections of deductions made thereon will not be reopened after having once been made, except on evidence of collusion, fraud, or obvious error.

1.9 TIDE GAGES/STAFFS/CHARTS

Contractor shall set a minimum of one standard tide board within sight of the dredge operator. Tide board elevations will be set to proper elevations by land survey using only previously established project vertical datum and control points. All tide boards will be set to the correct reference datum for this project. Tide boards shall be maintained for the duration of the dredging project. The Contractor, at his/her discretion, may also use digital tide recorder, however digital tide recorder shall not replace the tide board. Current and tide charts for the area(s) being dredged for the

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duration of the project shall be submitted by the Contractor and shall be available on site.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

-- End of Section --

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SECTION 01135

WATER QUALITY MONITORING AND CONTROL

PART 1 GENERAL

1.1 APPLICABLE REGULATORY STANDARDS

Performance Standards were established which follow EPA guidelines. The Performance Standards are included in the Attachments to Section 00800 SUPPLEMENTARY CONDITIONS. In addition to the requirements of this Section, the Contractor is required to meet the conditions of the Performance Standards at all times while completing the Work. If for any reason, the Contractor must halt the Work, the Contractor will still be required to meet the Performance Standards.

1.2 SUBMITTALS

The following shall be submitted in accordance with Section 01300 SUBMITTAL PROCEDURES:

Enclosed Bucket Performance Data:

Submit demonstrated capability of the enclosed bucket to meet the specified water quality performance standards.

Contingency Plan:

The Contractor shall submit for review and approval a Contingency Plan as specified in this section and which meets the requirements of the Performance Standards and Contract Documents. The Plan shall address mitigation measures to be taken if water quality performance standards are exceeded during either dredging or disposal operations, and related activities. The Contingency Plan shall detail specific actions to be taken by the Contractor, and the order in which they shall be employed in the event of a water quality exceedance. Such actions shall be in addition to the controls required by the Contract Documents. Contingency measures may consist of additional operational controls, alternate procedures and equipment, modification of the timing of disposal events, or combinations thereof, as necessary to achieve water quality criteria. At a minimum, the Contractor's Contingency Plan shall include the utilization of silt curtains to encircle each dredge footprint or disposal area, should operations in any or all of these locations result in an exceedances in the Performance Standards and shall also include, as a last resort, the complete halt of work by the Contractor, should successive measures implemented by the Contractor fail to control exceedances of the Performance Standards. The submittal shall include a written description of each contingency measure as well as a proposed layout plan, if appropriate. The submittal shall include details of materials, equipment, and operational controls required for each contingency measure. The Contingency Plan will be submitted to the Owner's Representative for review and approval prior to initiation of dredging activity. The Contractor shall amend his/her contingency plan to take account of any recommended modifications.

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1.3 RELATED WORK SPECIFIED ELSEWHERE

- A. Additional requirements relative to water quality monitoring and control including submittal of a Dredge Plan are specified in Section 02482 DREDGING.
- B. Additional requirements relative to water quality monitoring and control are specified in Section 1355 ENVIRONMENTAL PROTECTION.
- C. Additional requirements relative to water quality monitoring and control are specified in Performance Standards in Attachments to Section 00800 SUPPLEMENTARY CONDITIONS.

1.4 GENERAL

The Performance Standards established are set forth in this and other sections of these specifications. The referenced documents shall not be relied on for contract requirements. In the event a discrepancy is discovered between the Performance Standards and these specifications or the contract drawings, the Contractor shall notify the Owner's Representative for clarification.

1.5 SCOPE OF WORK

1.5.1 General Requirements

The Contractor shall perform all activities related to dredging and disposal required by this contract in such a manner as to minimize adverse impacts to water quality. The Contractor shall plan dredging and disposal activities, select and operate equipment in such a manner as to minimize the re-suspension of silt, clay, oil, grease, and other fine particulate matter and floatable materials. This may include changes in dredging and disposal operations such as delaying disposal activities until certain tide conditions occur.

1.5.2 Division of Responsibilities

1.5.2.1 General

The Contractor is solely responsible for maintenance of water quality criteria established in this specification while prosecuting the work required by the Contract.

1.5.2.2 Water Quality Monitoring

The Owner's Representative will be responsible for water quality sampling and testing required for monitoring the Contractor's dredging activities. The Contractor shall fully cooperate in every way with these activities. The Contractor shall provide access to the work and prior notification of the schedule for all dredge and disposal activities potentially subject to water quality monitoring. The Owner's Representative will independently tabulate, plot and interpret the monitoring data and laboratory test results. The data acquired by the Owner's Representative will be made available to the Contractor upon request in a timely manner for his/her independent assessment. At no cost to the Owner, the Contractor may observe the Owner's Representative's sampling activities, and may take supplementary samples and perform independent testing. The Contractor shall obtain

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additional data as the Contractor may consider necessary to monitor construction performance and safety aspects of the work, at no cost to the Owner.

1.5.2.3 Contract Administration Actions

Except as otherwise specified in this section, the Owner's Representative, in concert with the Remedial Project Manager (RPM) for the USEPA, will be responsible for contract administration actions relative to water quality monitoring. The Owner's Representative will require the initiation of the mitigation measures by the Contractor found in the Contingency Plan if water quality criteria are exceeded. The Contractor is required to have all materials, equipment and labor necessary for implementation of mitigation measures as detailed in the approved Contingency Plan, available at the job site in advance of commencement of dredging activities. Contractor failure to implement the Contingency Plan when directed by the Owner's Representative and/or the RPM for USEPA shall result in issuance of a stop work order, which will continue in effect until such time as mitigation measures are employed. Issuance of a stop work order shall not relieve the Contractor of his/her obligations to achieve Mandatory Schedule Milestones and associated liquidated damages related to the same.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION

3.1 DREDGING REQUIREMENTS

3.1.1 Enclosed Bucket

Dredging of Maintenance Material (as defined in Section 02482 DREDGING) shall be done using a closed, environmental, clamshell bucket. At a minimum, an enclosed bucket shall be utilized for material removed as shown on Contract Drawings "P-3 TOP OF LOWER HARBOR CAD CELL PHASE II" and "P-1 TOP OF LOWER HARBOR CAD CELL PHASE I" plans. The dredge bucket shall be designed to completely enclose the dredged sediment and water captured. The dredge bucket shall demonstrate the capability of meeting the water quality performance standards specified in this section. A conventional bucket may be used to dredge maintenance material if it can be demonstrated that water quality performance standards are not exceeded when using a conventional bucket. Hydraulic dredging methods shall not be used. An enclosed bucket must be maintained at the site in the event of water quality exceedances.

3.1.2 Bucket Control

The Contractor shall demonstrate that the dredge operator has sufficient control over bucket depth in the water and bucket closure so that sediment re-suspension from bucket contact with the bottom and due to bucket over-filling can be minimized at the same time minimizing the amount of free water contained in the bucket.

3.1.3 Silt Curtains

Silt-curtains and absorbent booms shall be deployed to enclose the dredging and disposal areas in order to minimize adverse impacts to water quality as outlined within the specifications, and shall be included (along with the total halt of work by the Contractor) within the Contractor's Contingency

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Plan as an item to be implemented should the Performance Standards be exceeded. Plans and a written description indicating layout and details of equipment and procedures for deployment of silt curtains and oil absorbent booms shall be submitted as part of the work plan as specified in Section 02482 DREDGING.

The Contractor shall further note that all in-water operations within New Bedford Harbor including, but not limited to: dredging and disposal operations (except as noted within offshore disposal permits to RISDS and/or CCDS) shall all be conducted utilizing silt curtains surrounding any of the previously listed operations for all dredging and disposal locations from January 15 through June 15.

3.1.4 Debris Management Plan

The Contractor shall follow an approved Debris Management Plan as specified in Section 02482 DREDGING. Where pilings or other debris is found to interfere with the enclosed bucket closure or equipment operation, a conventional bucket may be used to extract pilings or debris. Abandoned piles shall be cut or broken off rather than extracted, where applicable. Sediment removal during such activity shall be minimized to the greatest extent practicable.

3.1.5 Release of Oily Material

All and every reasonable attempt must be made by the Contractor to minimize the release of oily material from the sediment during dredging. All oily material released during dredging or other project activity shall be promptly collected and disposed at a licensed facility.

3.1.6 Discharge of Sediment

All barges or scows used shall be in good operating condition and shall completely contain the sediment and water placed in them to prevent discharge of sediment or water. Deck barges shall not be used to contain dredged sediments unless approval to do so has been granted by the Owner's Representative. If the Contractor has obtained approval to use deck barges, the barge must be modified to provide for complete containment of the sediments and associated free water.

3.2 WATER COLUMN MONITORING - REFERENCE DATA

Reference water column data will be collected by the Owner's Representative prior to initiation of dredging activities. Samples will be collected from the reference locations and analyzed for the following parameters: dissolved metals (arsenic, cadmium, copper, chromium, lead, mercury, nickel, zinc) and PCBs, as well as total suspended solids (TSS), turbidity and dissolved oxygen (DO). Upon request, results will be made available to the Contractor for his/her independent assessment. The Contractor may obtain supplementary samples and laboratory analyses at the Contractor's discretion, at no additional cost to the Owner.

3.3 WATER COLUMN MONITORING - DREDGING OPERATIONS

3.3.1 Turbidity Monitoring

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Turbidity will be measured at three depths within the water column at each location: near the surface, mid-depth, and near the bottom. The three measurements will be averaged together to obtain a single representative value for comparison purposes. Turbidity measured at the down-current location which exceeds the up-current reference by 50 NTU shall be considered an exceedance.

An exceedance will trigger the requirement of the Contractor to implement its Contingency Plan as well as collection of water column samples for analyses, as described below in Subpart 3.3.3.

3.3.2 Sample Locations and Depths

Two locations will be selected for turbidity monitoring: a reference location will be selected approximately 1,000 ft up current from the dredging activity, and a monitoring location shall be established 300 feet down-current from the dredging operation. If results of turbidity monitoring indicate an exceedance of the permissible turbidity increase, the Contractor shall implement its Contingency Plan. Additionally, sampling will be performed by the Owner's Representative for water column monitoring of the dredging operation. Water samples, composited over the entire water column, will be collected from both the monitoring and reference sites and submitted for analysis, as described below in Subpart 3.3.3.

3.3.3 Sample Frequency and Analytical Parameters

On the first day of dredging, turbidity monitoring will be performed by the Owner's Representative prior to the start of dredging and every two (2) hours during the initiation of dredging operations. Turbidity monitoring will be performed at random in the same manner at a rate of at least three (3) days per week during the first week of dredging and at least two (2) days per week thereafter until the conclusion of the project. This monitoring schedule may be less frequent if in-water dredging activities do not occur on a daily basis or are otherwise suspended during the course of the project. The exact schedule of monitoring activities will be determined by the Owner's Representative in consideration of the Contractor's proposed daily schedule of operations, progress of work, and if any changes in dredging procedures and/or equipment occurs. Frequency of subsequent monitoring will be established by the Owner's representative based on review of monitoring and sampling data and relative compliance with the Performance Standards. The Contractor will not be consulted in the scheduling process or notified prior to a monitoring event.

If a turbidity exceedance occurs, water column samples, composited over the entire water column, will be collected from both the monitoring and reference sites by the Owner's representative and submitted for analysis at a certified laboratory for the following analyses: TSS, DO, TPH, pH, PCBs and selected dissolved and/or total metals.

3.4 WATER COLUMN MONITORING - DISPOSAL OPERATIONS

3.4.1 Turbidity Monitoring

Turbidity will be measured at three depths within the water column at each location: near the surface, mid-depth, and near the bottom. The three measurements will be averaged together to obtain a single representative value for comparison. Turbidity monitoring data will be used as a trigger

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for the Contractor to implement its Contingency Plan as well as collection of samples for analysis of other parameters. Turbidity measured at the down-current location (Monitoring Location #2) which exceeds the up-current reference location (Monitoring Location #1) by more than 50 NTUs in two consecutive monitoring events shall be considered an exceedance, and will trigger the requirement of the Contractor to implement its Contingency Plan as well as collection of water column samples for analysis, as described below in Subpart 3.4.3.

3.4.2 Sample Locations and Depths

Turbidity monitoring will be performed by the Owner's Representative during the disposal operations at both of the following locations:

- A. Monitoring Location #1 will be obtained at a point outside the influence (e.g. up-gradient) of the disposal plume;
- B. Monitoring Location #2 will be obtained at a point approximately 300 feet down current of the disposal site at the time that the peak concentration of the plume would pass through this monitoring point.

Two sample sites will be selected for each sampling round. The Contractor shall coordinate in advance its activities and movements in the area with the water quality monitoring personnel. Samples will be obtained from a reference location outside the influence of the dredging and disposal plume (Monitoring Location #1). Samples will also be obtained from the mixing zone approximately 300 feet down current of the disposal site (Monitoring Location #2).

3.4.3 Sample Frequency and Analytical Parameters

The Contractor shall provide to the Owner's Representative the details for each disposal event a minimum of 24 hours prior to disposal of material into the CAD Cells. The Contractor shall coordinate disposal activities to meet the requirements of the monitoring. Water column turbidity monitoring of the disposal operation shall be conducted during the following disposal events, or as otherwise determined by the Owner's Representative:

- A. Disposal Monitoring Event #1 will occur following the first disposal event;
- B. Disposal Monitoring Event #2 will occur following the next disposal event that occurs during an incoming or outgoing tide (only necessary if the Disposal Monitoring Event #1 occurs during a slack tide); and
- C. Additional monitoring of the disposal operations will occur if any changes to disposal procedures, equipment, and/or discharge quantity is planned, or periodically, as determined by the Owner's Representative.

Scheduling of monitoring activities will be conducted independently by the Owner's Representative in consideration of the Contractor's proposed daily schedule of operations and progress of work. Frequency of subsequent monitoring will be established by the Owner's representative based on review of monitoring and sampling data and relative compliance with the Performance Standards. The Contractor will not be consulted in the scheduling process or notified prior to a monitoring event.

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If a turbidity exceedance occurs as defined in Subpart 3.4.1, the Contractor shall implement its Contingency Plan. Additionally, water samples, composited over the entire water column, will be collected from both the monitoring and reference sites by the Owner's representative and submitted for analysis at a certified laboratory. Samples will be analyzed for TSS, DO, TPH, pH, PCBs and selected dissolved and/or total metals.

3.5 DREDGE MATERIAL FREE LIQUID DISCHARGE MONITORING

Standing water or free liquid removed from scows before disposal shall be filtered using activated carbon prior to discharge into the harbor. The discharge effluent from the filter will be monitored for turbidity periodically by the Owner's Representative. It is the Contractor's responsibility to assure that the discharge has a turbidity of less than 50 NTUs. The Owner's Representative will perform turbidity monitoring on effluent discharge during the first discharge event and subsequently as determined by the Owner's Representative. Contractor must provide a sampling port or other suitable sampling mechanism to facilitate Owner's Representative sampling of the discharge. Monitoring of the discharge will also occur if any changes to the discharge procedures and/or equipment are implemented. If the turbidity monitoring of the discharge liquid exceeds 50 NTUs, the Contractor will stop discharging filtrate effluent until the Contractor demonstrates that turbidity of the discharge can be controlled within required limits.

3.6 EXCEEDANCES OF WATER QUALITY PROGRAM STANDARDS

3.6.1 Water Quality Program Standards

In consideration of the elevated levels of contaminants of concern present in the sediment within the project site, EPA has established site-specific water quality criteria as a dredging Performance Standard. Dredging performance relative to water quality will be evaluated by comparing laboratory analytical data for the individual parameters of concern from the down current samples with the reference, or up current sample data for each sampling round.

An exceedance of project water quality standards shall be attributed to project activities when turbidity measured at the down-current location which exceeds the up-current reference according to the values stated above in Subpart 3.3.1 for dredging operations and Subpart 3.4.1 for disposal operations.

3.6.2 Implementation of Contingency Plan

If water samples fail to meet water quality performance standards as specified above in Subpart 3.6.1 - Water Quality Program Standards, the Contractor shall immediately implement the mitigation measures included in the Contingency Plan as appropriate and as pre-approved by the Owner's Representative. If the Contractor does not follow the instruction of the Owner's Representative to immediately implement the Contingency Plan, all dredging and/or disposal activities in the affected work area shall cease. Affected activities shall not resume until the Contractor has implemented the mitigation measures included in the Contingency Plan as appropriate and

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as pre-approved by the Owner's Representative. (Refer to Subpart 1.5.2.3 - Contract Administration Actions as stated above.)

If, after the Contractor has implemented some of the mitigation measures included in the Contingency Plan, and fails to meet water quality performance standards as specified above in Subpart 3.6.1 - Water Quality Program Standards, the Contractor shall immediately implement additional mitigation measures included in the Contingency Plan, as appropriate, and as pre-approved by the Owner's Representative.

If, after the Contractor has implemented all possible mitigation measures included in the Contingency Plan, and again fails to meet water quality performance standards as specified above in Subpart 3.6.1 - Water Quality Program Standards, all dredging and/or disposal activities in the affected work area shall cease. Affected activities shall not resume until the Contractor has presented an additional proposal that is provided to and approved by the Owner's Representative, which shall then be immediately implemented. (Refer to Subpart 1.5.2.3 - Contract Administration Actions as stated above.)

-- End of Section --

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SECTION 01300

SUBMITTAL PROCEDURES

PART 1 GENERAL

1.1 RELATED DOCUMENTS

Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division 1 Specification Sections, apply to this section.

1.2 SUMMARY

This section specifies the general methods and requirements of submissions applicable to the following work-related submittals.

1. Product Data
2. Planning Documents
3. Equipment Specifications
4. Progress Schedules
5. Construction Photographs

Detailed submittal requirements are specified in the technical specifications section.

1.3 SUBMITTALS

Submittal Register:

The Contractor shall provide a complete list of all submittals included in the technical specifications for use as a submittal register to track the dates for submission, comment, resubmission and final acceptance of the project submittals.

1.4 CONTRACTOR'S RESPONSIBILITIES

The Contractor shall review product data, including those by subcontractors, prior to submission to determine and verify the following.

1. Field measurements
 2. Field construction criteria
 3. Catalog numbers and similar data
 4. Conformance with the Specifications
- A. Each submittal shall have affixed to it the following Certification Statement including the Contractor's Company name and signed by the Contractor. Certification Statement: "By this submittal, I hereby represent that I have determined and verified all field measurements, field construction criteria, materials, dimensions, catalog numbers and similar data, and I have checked and coordinated each item with other applicable approved submittals and all Contract requirements." Submittals and product data sheets 11-in X 17-in and smaller shall be bound

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together in an orderly fashion and bear the above Certification Statement on the cover sheet. The cover sheet shall fully describe the packaged data and include a listing of all items within the package. Provide to the Owner's Representative a copy of each submittal transmittal form for product data and samples at the time of submittal of said product data and samples to the Owner's Representative.

1. Submittals received "WITHOUT" Certification Statement shall not be reviewed.
- B. If a submittal shows any deviation from the requirements of the Contract Documents, the Contractor shall make specific mention of the deviations in the Transmittal Form furnished by the Owner's Representative and provide a description of the deviations in a letter attached to the submittal.
- C. The review and acceptance of samples or product data by the Owner's Representative shall not relieve the Contractor from his responsibility with regard to the fulfillment of the terms of the Contract. All risks of error and omission are assumed by the Contractor and the Owner's Representative will not have responsibility therefore.
- D. No portion of the work requiring a submittal shall be started nor shall any materials be fabricated, placed or installed prior to the acceptance or qualified acceptance of such item. Fabrication performed, materials purchased or on-site construction accomplished which does not conform to accepted submittals and data shall be at the Contractor's risk. The Owner will not be liable for any expense or delay due to corrections or remedies required to accomplish conformity.
- E. Project work, materials, fabrication, and installation shall conform with approved applicable samples and product data.
 1. Manufacturer's printed installation instructions, a part of product data submitted to the Owner's Representative will not be reviewed and are for informational purposes only.

1.5 SUBMISSION REQUIREMENTS

Make submittals promptly in accordance with approved schedule, and in such sequence as to cause no delay in the Work or in the work of any other contractor.

- A. All complete submittals shall be submitted sufficiently in advance of construction requirements to provide no less than five (5) days, excluding Saturdays, Sundays and legal holidays for review from the time received at the Owner's Representative's reviewing office. For submittals of major equipment, that require more than five (5) days to review, due to its sheer complexity and amount of detail and also requiring review by more than one engineering discipline, a letter will be sent by the Owner's Representative or his/her designee to the Contractor informing him/her of the circumstances and the date it is expected the

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submittal will be returned to the Contractor.

1.5.1 Number of submittals required

- A. Shop Drawings: Unless otherwise stated in the respective Specifications Sections, submit six (6) copies.
- B. Product Data: Unless otherwise stated in the respective Specifications submit six (6) copies.

1.5.2 Submittal Content

- A. The date of submission and the dates of any previous submissions.
- B. The Project title and number.
- C. Contractor identification.
- D. The names of:
 - 1. Contractor
 - 2. Supplier
 - 3. Manufacturer
- E. Identification of the product, with the specification section number, page and paragraph(s)
- F. Field dimensions, clearly identified as such.
- G. Relation to adjacent or critical features of the Work or materials.
- H. Applicable standards, such as ASTM or Federal Specification numbers.
- I. Identification of deviations from Contract Documents.
- J. Identification of revisions on resubmittals.
- K. An 8-in. X 3-in blank space for Contractor and Owner's Representative stamps.
- L. Each shipment of drawings shall be accompanied by a transmittal form furnished by the Owner's Representative giving a list of the drawing numbers and the names mentioned above.

1.6 REVIEW OF SHOP DRAWINGS, PRODUCT DATA, WORKING DRAWINGS AND SAMPLES

- A. The Owner's Representative's review is for general conformance with the design concept and contract drawings. Markings or comments shall not be construed as relieving the Contractor from compliance with the contract plans and specifications or from departures therefrom. The Contractor remains responsible for details and accuracy, for coordinating the work with all other associated work and trades, for selecting fabrication processes, for techniques of assembly, and for performing work in a safe

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manner.

- B. The review of shop drawings, data, and samples will be general. They shall not be construed:
 - 1. as permitting any departure from the Contract requirements,
 - 2. as relieving the Contractor of responsibility for any errors, including details, dimensions, and materials,
 - 3. as approving departures from details furnished by the Owner's Representative, except as otherwise provided herein.
- C. If the shop drawings, data or samples as submitted describe variations and show a departure from the Contract requirement which the Owner's Representative finds to be in the interest of the Owner and to be so minor as not to involve a change in Contract Price or time for performance, the Owner's Representative may return the reviewed drawings without noting an exception.
- D. Two (maximum) copies of shop drawings or product data will be returned to the Contractor.
- E. Submittals will be returned to the Contractor under one of the action codes indicated and defined on the transmittal form furnished by the Owner's Representative.
- F. Resubmittals will be handled in the same manner as first submittals. The Contractor shall direct specific attention, in writing, on the letter of transmittal and on resubmitted shop drawings by use of revision triangles or other similar methods, to revisions other than the corrections requested by the Owner's Representative, on previous submissions. Any such revisions which are not clearly identified shall be made at the risk of the Contractor. The Contractor shall make corrections to any work done because of this type revision that is not in accordance to the Contract Documents as may be required by the Owner's Representative.
- G. Partial submittals may not be reviewed. The Owner's Representative will be the only judge as to the completeness of a submittal. Submittals not complete will be returned to the Contractor, and will be considered "Rejected" until resubmitted. The Owner's Representative may at his option provide a list or mark the submittal directing the Contractor to the areas that are incomplete.
- H. If the Contractor considers any correction indicated on the shop drawings to constitute a change to the Contract Documents the Contractor shall give written notice thereof to the Owner's Representative at least seven working days prior to release for manufacture.
- I. When the shop drawings have been completed to the satisfaction of the Owner's Representative, the Contractor shall carry out the

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construction in accordance therewith and shall make no further changes therein except upon written instructions from the Owner's Representative.

1.7 GENERAL PROCEDURES FOR SUBMITTALS

1.7.1 Coordination of Submittal Times

Prepare and transmit each submittal sufficiently in advance of performing the related work or other applicable activities, or within the time specified in the individual work sections of the Specifications so that the installation will not be delayed by processing times including disapproval resubmittal (if required), coordination with other submittals, inspection, testing (off-site and on-site), purchasing, fabrication, delivery and similar sequenced activities. No extension of time will be authorized because of the Contractor's failure to transmit submittals sufficiently in advance of the Work.

1.8 CERTIFICATION FORMS

If specified in other sections of these Specifications, the Contractor shall submit the applicable certification form for each item required, and in the form attached to this section completely filled in and stamped.

1.9 PRECONSTRUCTION SUBMITTALS

At a minimum, the following submittals shall be provided in sufficient time to support the scheduled date for mobilization:

- A. Certificates of insurance.
- B. Surety bonds.
- C. List of proposed subcontractors.
- D. Construction progress schedule.
- E. Submittal register.
- F. All planning documents referenced in other sections, including, but not limited to:
 - 1. Field Data, Survey Data, Survey Personnel, Charts and Survey Plans as described in Section 01050 FIELD ENGINEERING
 - 2. Closed Bucket Performance Data and Contingency Plan as described in Section 01135 WATER QUALITY MONITORING AND CONTROL
 - 3. Detailed Construction Progress Schedule as described in Section 01310 CONSTRUCTION PROGRESS SCHEDULES
 - 4. Environmental Protection Plan as described in Section 01355 ENVIRONMENTAL PROTECTION

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5. Plant and Equipment including applicable inspections and certification as described in Section 01600 PLANT AND EQUIPMENT
6. Health and Safety Plan as described in Section 01900 GENERAL SAFETY REQUIREMENTS
7. Scow Cards as described in Section 02482 DREDGING
8. Work Plan as described in Section 02482 DREDGING
9. Debris Management Plan as described in Section 02482 DREDGING

-- End of Section --

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CERTIFICATE OF DESIGN

The undersigned hereby certifies that he/she is a Professional Engineer registered in the state of _____ and that he/she has been employed by (Name of Contractor) _____ to design _____ in accordance with Specifications Section _____ for the (Name of Project) _____. The undersigned further certifies that he/she has performed similar designs previously and has performed the design of the _____; that said design is in conformance with all applicable local, state, and federal codes, rules, and regulations and professional practice standards; that his/her signature and Professional Engineer (P.E.) Stamp have been affixed to all calculations and drawings used in, and resulting from, the design; and that the use of that stamp signifies the responsibility of the undersigned for that design.

The undersigned hereby certifies that he/she has Professional Liability Insurance or will be covered by an Employer Policy with limits of \$1,000,000.00 and a Certificate of Insurance is attached.

The undersigned hereby agrees to make all original design drawings and calculations available to the Owners representative with seven (7) days following written request therefore by the Owner.

P.E. Name

Contractor's Name

Signature

Signature

Title

Title

Address

Address

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SECTION 01310

CONSTRUCTION PROGRESS SCHEDULES

PART 1 GENERAL

1.1 RELATED DOCUMENTS

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and other Division I Specification Sections, apply to this section.

1.2 SUMMARY

- A. Contractor shall prepare and submit to Owner's Representative for review within 5 days after Notice to Proceed, a detailed construction progress schedule, in Microsoft Project software.
- B. Night work may be established by Contractor as regular procedure with written permission of the Owner. Such permission, however, may be revoked at any time by Owner if Contractor fails to maintain adequate equipment and supervision for proper prosecution and control of work at night.

1.3 FORM OF SCHEDULES

1.3.1 Prepare schedules in form of a horizontal bar chart.

- A. Provide separate horizontal bar for each trade or operation.
- B. Horizontal time Scale: Identify first work date of each week.
- C. Scale and spacing to allow space for notations and future revisions.

1.3.2 Format of Listings: Chronological order of start of each item of work.

1.3.3 Identification of Listings: By work area.

1.4 CONTENT OF SCHEDULES

1.4.1 Construction Progress Schedule

- A. Show complete sequence of construction by activity.
- B. Show dates for beginning and completion of each major element of construction and installation dates for major equipment items. Elements shall include, but not be limited to, the following:
 - 1. Receipt of submittal data from supplier/manufacturer submitted to Owner's Representative, review and return to supplier/manufacturer.
 - 2. Material and equipment order, manufacturer, delivery and installation, and checkout.
 - 3. Mobilization of dredge and disposal equipment.

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4. Dredge and disposal of each dredge area.
 5. Interim Contractor surveys of dredge footprints.
 6. 25, 50, 75 and 100 percent complete of Mandatory Schedule Milestones as specified in Section 01010 SUMMARY OF WORK, if any.
 7. Subcontractors items of work.
 8. Final cleanup.
 9. Allowance for inclement weather.
- C. Show projected percentage of completion for each item as of first day of each month.
- D. Show dates for Contractor Quantity Surveys.

1.5 SCHEDULE REVISIONS

Every 15 days Contractor shall revise construction schedule to reflect changes in progress of work and to indicate progress of each activity at date of submittal.

Changes occurring since previous submittal of schedule shall be indicated including:

- A. Changes in scope.
- B. Activities modified since previous submittal.
- C. Revised projections of progress and completion.
- D. Other identifiable changes.

Provide a narrative report as needed to define:

- A. Problem areas, anticipated delays, and impact on schedule.
- B. Corrective action recommended and its effect.
- C. Effect of changes on schedules of other affected parties.

1.6 SUBMITTAL REQUIREMENTS

For initial submittal of construction schedule and subsequent revisions thereof, furnish six (6) copies of schedule to Owner's Representative.

1.7 WEEKLY CONSTRUCTION MEETINGS

The Contractor's Project Manager shall attend weekly construction meeting(s). The RPM or his designee, the Owner, and the Owner's Representative shall be invited to the weekly meetings. The purpose of these meetings is to inform the Owner, the Owner's Representative and the RPM or his designee regarding upcoming work, the status of the overall project schedule, and the status of operations.

PART 2 PRODUCTS (NOT USED)

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PART 3 EXECUTION (NOT USED)

-- End of Section --

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SECTION 01355

ENVIRONMENTAL PROTECTION

PART 1 GENERAL

1.1 REFERENCES

The publications listed below are incorporated into these Technical Specifications by reference. The publications are referred to in the text by basic designation only.

U.S. NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

33 CFR 328	Definitions
40 CFR 68	Chemical Accident Prevention Provisions
40 CFR 129	Toxic Pollutant Effluent Standards
40 CFR 260	Hazardous Waste Management System: General
40 CFR 261	Identification and Listing of Hazardous Waste
40 CFR 302	Designation, Reportable Quantities, and Notification
40 CFR 355	Emergency Planning and Notification
49 CFR 171 - 178	Hazardous Materials Regulations

1.2 DEFINITIONS

1.2.1 Environmental Pollution

Environmental pollution is the presence of chemical, physical, or biological elements or agents which adversely affect human health or welfare; unfavorably alter ecological balances of importance to human life; affect other species of importance to humankind; or degrade the environment aesthetically, culturally and/or historically.

1.2.2 Environmental Protection

Environmental protection is the prevention/control of environmental pollution and habitat disruption that may occur to the environment during the Work. The control of environmental pollution requires consideration of land, water, and air; biological and cultural resources; and includes management of visual aesthetics; noise; solid, chemical, gaseous, and liquid waste; radiant energy and radioactive material as well as other pollutants.

1.2.3 Contractor Generated Hazardous Waste

Contractor generated hazardous waste means materials that, if abandoned or disposed of, may meet the definition of Hazardous Wastes as defined by MassDEP regulation 310 CMR 30. These waste streams could consist of

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material brought on site by the Contractor to execute work, but are not fully consumed during the course of construction. Examples include, but are not limited to, excess paint thinners (i.e. methyl ethyl ketone, toluene etc.), waste thinners, excess paints, excess solvents, waste solvents and sediment admixtures. Reasonable efforts should be made to re-use these materials for other applications on other projects if possible, before the Contractor determines that partially consumed materials are waste and must be disposed of as hazardous waste. Materials determined to be hazardous waste must be managed in accordance with MassDEP regulations at 310 CMR 30.0000; including requirements for storage, transport, disposal, and obtaining a Generator Identification Number.

1.2.4 Waters of the United States

All waters which are under the jurisdiction of the Clean Water Act, as defined in 33 CFR 328.

1.2.5 Wetlands

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, and bogs. Refer to the definition of Wetlands in MADEP regulations at 310 CMR 10.

1.3 ENVIRONMENTAL PROTECTION REQUIREMENTS

1.3.1 General

The Contractor shall minimize environmental pollution and damage that may occur as the result of construction operations. The environmental resources within the project boundaries and those affected outside the limits of permanent work shall be protected during the entire duration of this contract. The Contractor shall comply with all applicable environmental Federal, State, and local laws and regulations. The Contractor shall be responsible for any delays resulting from failure to comply with environmental laws and regulations.

1.3.2 Performance Standards

The Contractor shall comply with the terms and conditions of the Performance Standards that are applicable to the work, which are attached to Section 0800 of the Contract Documents. Such applicable terms and conditions and are specified in the various sections of these specifications and on the contract drawings. The above referenced documents shall not be relied on for contract requirements. In the event that a discrepancy is discovered between the reference documents and these specifications or the contract drawings, the contractor shall notify the Owner's Representative for clarification. The Owner's Representative will rely on requirements and conditions of the Performance Standards to resolve perceived conflicts.

1.4 SUBCONTRACTORS

The Contractor shall ensure compliance with this section by subcontractors.

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1.5 SUBMITTALS

The following shall be submitted in accordance with Section 01300 SUBMITTAL PROCEDURES:

Preconstruction Submittals:

Environmental Protection Plan:

The Environmental Protection Plan shall include the following plans as further described herein:

Spill Control Plan
Contaminant Prevention Plan

1.6 ENVIRONMENTAL PROTECTION PLAN

Prior to commencing construction activities or delivery of materials to the site, the Contractor shall submit an Environmental Protection Plan for review and approval by the Owner's Representative. The purpose of the Environmental Protection Plan is to present a comprehensive overview of known or potential environmental issues which the Contractor must address during the Work. Issues of concern shall be defined within the Environmental Protection Plan as outlined in this section. The Contractor shall address each topic at a level of detail commensurate with the environmental issue and required construction task(s). Topics or issues which are not identified in this section, but which the Contractor considers necessary, shall be identified and discussed after those items formally identified in this section. Prior to submittal of the Environmental Protection Plan, the Contractor shall meet with the Owner's Representative for the purpose of discussing the implementation of the initial Environmental Protection Plan; possible subsequent additions and revisions to the plan including any reporting requirements; and methods for administration of the Contractor's Environmental Plans. The Environmental Protection Plan shall be current and maintained onsite by the Contractor.

1.6.1 Compliance

No requirement in this Section shall be construed as relieving the Contractor of any applicable Federal, State, and local environmental protection laws and regulations. During Construction, the Contractor shall be responsible for identifying, implementing, and submitting for approval any additional requirements to be included in the Environmental Protection Plan.

1.6.2 Contents

The Environmental Protection Plan shall include, but shall not be limited to, the following:

- A. Name(s) of person(s) within the Contractor's organization who is(are) responsible for ensuring adherence to the Environmental Protection Plan.
- B. Name(s) and qualifications of person(s) responsible for managing waste to be removed from the site, if applicable.

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- C. Name(s) and qualifications of person(s) responsible for training the Contractor's environmental protection personnel.
- D. Description of the Contractor's environmental protection personnel training program.
- E. Work area plan showing the proposed activity in each portion of the site and identifying the areas of limited use or nonuse. Plan should include measures for marking the limits of use areas including methods for protection of features to be preserved within authorized work areas.
- F. The Spill Control Plan shall include the procedures, instructions, and reports to be used in the event of an unforeseen spill of a substance regulated by 40 CFR 68, 40 CFR 302, 40 CFR 355, and/or regulated under State or Local laws and regulations (such as 310 CMR 40.0000, The Massachusetts Contingency Plan). Any spill above a reportable quantity should be reported to MassDEP at (888) 304-1133. The proper notifications need to comply with 310 CMR 40.0300. This plan shall include as a minimum:
1. The name of the individual who will report any spills or hazardous substance releases and who will follow up with complete documentation. This individual shall immediately notify the Owner's Representative in addition to the legally required Federal, State, and local reporting channels (including the National Response Center 1-800-424-8802) if a reportable quantity is released to the environment. The plan shall contain a list of the required reporting channels and telephone numbers.
 2. The name and qualifications of the individual who will be responsible for implementing and supervising the containment and cleanup.
 3. A list of materials and equipment to be immediately available at the job site, tailored to cleanup work of the potential hazard(s) identified.
 4. The names and locations of suppliers of containment materials and locations of additional fuel oil recovery, cleanup, restoration, and material-placement equipment available in case of an unforeseen spill emergency.
 5. The methods and procedures to be used for expeditious contaminant cleanup.
- G. A Contaminant Prevention Plan that identifies potentially hazardous substances to be used on the job site; identifies the intended actions to prevent introduction of such materials into the air, water, or ground; and details provisions for compliance with Federal, State, and local laws and regulations for storage and handling of these materials. A copy of the Material Safety Data Sheets (MSDS) and the maximum quantity of each hazardous

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material to be on site at any given time shall be included in the Contaminant Prevention Plan. As new hazardous materials are brought on site or removed from the site, the plan shall be updated. The Contaminant Prevention Plan should be coordinated with the Dredge Material Management Work Plan included in Section 02482 DREDGING.

1.7 ENVIRONMENTAL ASSESSMENT OF CONTRACT DEVIATIONS

Any deviations, requested by the Contractor, from the drawings, plans and specifications which may have an environmental impact will be subject to approval by the Owner's Representative and may require an extended review, processing, and approval time. The Owner's Representative reserves the right to disapprove alternate methods, even if they are more cost effective, if the Owner's Representative determines that the proposed alternate method will have an adverse environmental impact.

1.8 NOTIFICATION

The Owner's Representative will notify the Contractor in writing of any observed noncompliance with Federal, State or local environmental laws or regulations, project performance standards, and other elements of the Contractor's Environmental Protection plan. The Contractor shall, after receipt of such notice, inform the Owner's Representative of the proposed corrective action and take such action when approved by the Owner's Representative. The Owner's Representative may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No time extensions shall be granted or equitable adjustments allowed to the Contractor for any such suspensions. This is in addition to any other actions the Owner's Representative may take under the contract, or in accordance with the Federal Acquisition Regulation or Federal Law.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION

3.1 GENERAL

The Contractor shall be responsible for complying with all environmental regulations required by Federal, State, Regional, and local environmental laws and regulations.

3.1.1 Work Area Limits

Prior to commencing construction activities, the Contractor shall mark the areas that need not be disturbed under this contract. Isolated areas within the general work area which are not to be disturbed shall be marked or fenced. Monuments and markers shall be protected before construction operations commence. Where construction operations are to be conducted during darkness, any markers shall be visible in the dark. The Contractor's personnel shall be knowledgeable of the purpose for marking and/or protecting particular objects.

3.1.2 Erosion and Sediment Controls

The Contractor shall be responsible for providing erosion and sediment control measures in accordance with Federal, State, and local laws and

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regulations. The erosion and sediment controls selected and maintained by the Contractor shall be such that water quality standards are not violated as a result of the Contractor's construction activities. The Contractor will be responsible for any necessary sediment controls within the proposed laydown area. No sediment or discharge waters will be allowed outside of the proposed laydown area to prevent sediment from entering nearby waters or municipal systems. The National Pollutant Discharge Elimination System (NPDES) permit program is administered in Massachusetts by the US EPA and MADEP. As authorized by the Clean Water Act, the NPDES permit program controls water pollution from construction that disturbs one (1) or more acres of land by regulating point sources discharging pollutants into surface waters. Point sources are discrete conveyances such as pipes or man-made ditches. Refer to the federal NPDES regulations at 40 CFR 122.

3.1.3 Contractor Facilities and Work Areas

The Contractor shall propose locations for field offices, staging areas, stockpile storage, and temporary buildings for approval by the Owner/Owner's Representative. Temporary movement or relocation of Contractor facilities shall be made only when approved by the Owner's Representative.

3.2 WATER RESOURCES

The Contractor shall monitor construction activities to prevent pollution of surface and ground waters. Toxic or hazardous chemicals shall not be applied to soil or vegetation. All water areas affected by construction activities shall be monitored by the Contractor. For construction activities immediately adjacent to impaired surface waters, the Contractor shall be capable of quantifying sediment or pollutant loading to that surface water as required by the Clean Water Act.

3.2.1 Wetlands

The Contractor shall not enter, disturb, destroy, or allow discharge of contaminants into any wetlands. The Contractor shall be responsible for the protection of wetlands in accordance with applicable regulations. Authorization to enter specific wetlands identified shall not relieve the Contractor from any obligation to protect other wetlands within, adjacent to, or in the vicinity of the construction site and associated boundaries.

3.3 AIR RESOURCES

Equipment operation, activities, or processes performed by the Contractor shall be in accordance with all Federal and State air emission and performance laws and standards.

3.3.1 Particulates

Dust particles; aerosols and gaseous by-products from construction activities shall be controlled at all times, including weekends, holidays and hours when work is not in progress. The Contractor shall maintain the work areas within or outside the project boundaries free from particulates which would cause the Federal, State, and local air pollution standards to be exceeded or which would cause a hazard or a nuisance. Sprinkling, chemical treatment of an approved type, baghouse, scrubbers, electrostatic precipitators or other methods will be permitted to control particulates in

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the work area. The Contractor must have sufficient, competent equipment available to accomplish these tasks. The Contractor shall implement particulate control measures whenever a particulate nuisance or hazard occurs. The Contractor shall comply with all State and local visibility regulations. Refer to MADEP regulations at 310 CMR 7.00.

3.3.2 Odors

Odors from construction activities shall be controlled at all times. The odors shall not cause a nuisance or health hazard and shall be in compliance with State regulations at 310 CMR 7.02 and/or more stringent local ordinances.

3.3.3 Sound Intrusions

The Contractor shall keep construction activities under surveillance and control to minimize environment damage by noise. The Contractor shall comply with the provisions of the Commonwealth of Massachusetts rules and policy DAQC 90-01 "Allowable Sound Emissions." The Contractor shall also comply with City of New Bedford noise regulations and requirements.

3.3.4 Additional Dust, Odor and Noise Control

If, in the opinion of the Owner's Representative, the dust, odor and noise control measures are inadequate or insufficient to meet the intent of the specification, the Contractor shall be requested to implement additional measures to control dust, odor and noise at no additional cost to the Owner. Refer to MADEP regulations at 310 CMR 7.09.

3.4 MATERIALS MANAGEMENT AND WASTE DISPOSAL

Disposal of wastes shall be as directed below, unless otherwise specified in other sections and/or shown on the drawings.

3.4.1 Solid Waste

Solid waste shall be managed in accordance with applicable regulations. Debris generated during dredging operations shall be handled in accordance with the Contractor's Debris Management Plan described in Section 02482 DREDGING.

3.4.2 Contractor Management of Hazardous Waste/Excess Hazardous Materials and Spill Response

3.4.2.1 Contractor Management of Hazardous Waste/Excess Hazardous Materials

Hazardous wastes are defined by applicable MADEP regulations at 310 CMR 30.0000 and more stringent local regulations, if any. Hazardous materials are defined in M.G.L. Chapter 21E and 49 CFR 171 - 178. The Contractor shall take sufficient measures to prevent spillage of hazardous and toxic materials during performance of the work. The Contractor shall segregate hazardous waste from other materials and wastes, shall protect it from the weather by placing it in a safe covered location, and shall take appropriate precautionary measures to prevent accidental spillage. The Contractor shall be responsible for storing, describing, packaging, labeling, marking, and placarding hazardous waste and hazardous material in accordance with all

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appropriate, relevant and applicable Federal, State, and local laws and regulations. The Contractor shall transport Contractor generated hazardous waste off Government property within thirty days in accordance with MADEP regulations at 310 CMR 30.0000 and Department of Transportation laws and regulations.

3.4.2.2 Contractor Response to a Spill or Release of Hazardous Materials

A spill or release of hazardous or toxic materials resulting from Contractor activities shall be immediately reported to the Owner's Representative. Appropriate regulatory authorities shall be notified in a timely fashion in accordance with MADEP regulations at 310 CMR 40.0000. All associated cleanup activities and cleanup costs due to such spills shall be the Contractor's responsibility. The Contractor shall coordinate the disposition of hazardous materials unearthed as a result of the dredging activity that can be attributed to prior disposal activities by a third party(ies) with the Owner's Representative. The Contractor shall provide to the Owner's Representative three quotes for the disposal of such hazardous materials for consideration of payment as a changed condition. All cleanup activities shall be conducted in conformance with the Massachusetts Contingency Plan regulations at 310 CMR 40.0000 as administered by MassDEP.

3.4.3 Fuel and Lubricants

Storage, fueling and lubrication of equipment and motor vehicles shall be conducted in a manner that affords the maximum protection against spill and evaporation. Fuel, lubricants and oil shall be managed and stored in accordance with all Federal, State, Regional, and local laws and regulations. Used lubricants and used oil to be discarded shall be stored in marked corrosion-resistant containers and recycled or disposed in accordance with 40 CFR 279, State, and local laws and regulations.

3.5 RECYCLING AND WASTE MINIMIZATION

The Contractor shall participate in State and local government sponsored recycling programs. The Contractor is further encouraged to minimize solid waste generation throughout the duration of the project.

3.6 BIOLOGICAL RESOURCES

The Contractor shall make every reasonable effort to minimize interference with, disturbance to, and damage to fish, wildlife, and plants including their habitat. The Contractor shall be responsible for the protection of threatened and endangered animal and plant species including their habitat in accordance with Federal, State, Regional, and local laws and regulations as per Section 01135 WATER QUALITY MONITORING AND CONTROL.

3.6.1 Essential Fish Habitats

In order to protect Essential Fish Habitats (EFH) in New Bedford Harbor protective measures, including the use of silt curtains for dredge and disposal locations within New Bedford Harbor, will be required between January 15th and June 15th. Additional details are provided within SECTION 02482 DREDGING.

3.7 PREVIOUSLY USED EQUIPMENT

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The Contractor shall clean all previously used construction equipment prior to bringing it onto the project site. The Contractor shall ensure that the equipment is free from soil or sediment residuals, egg deposits from plant pests, noxious weeds, and plant seeds.

3.8 TRAINING OF CONTRACTOR PERSONNEL

The Contractor's personnel shall be trained in all phases of environmental protection and pollution control, and in accordance with the provisions contained in Section 00700 General Conditions and in Section 00800 Supplementary Conditions. The Contractor shall conduct environmental protection/pollution control meetings for all Contractor personnel prior to commencing construction activities. Additional meetings shall be conducted for new personnel and when site conditions change. The training and meeting agenda shall include: methods of detecting and avoiding pollution; familiarization with statutory and contractual pollution standards; installation and care of devices, vegetative covers, and instruments required for monitoring purposes to ensure adequate and continuous environmental protection/pollution control; anticipated hazardous or toxic chemicals or wastes, and other regulated contaminants; recognition and protection of archaeological sites, artifacts, wetlands, and endangered species and their habitat that are known to be in the area.

3.9 POST CONSTRUCTION CLEANUP

The Contractor shall clean up all areas used for Construction ("Construction Areas" shall be defined as any area used by the Contractor) to their pre-construction condition. The Contractor shall, unless otherwise instructed in writing by the Owner's Representative, obliterate all signs of temporary construction facilities such as work areas, structures, construction trailers, staging areas, stockpiles of excess or waste materials, and all other vestiges of construction prior to final acceptance of the work.

-- End Of Section --

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SECTION 01451

CONTRACTOR QUALITY CONTROL

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by basic designation only.

AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM)

ASTM D 3740 (2010) Minimum Requirements for Agencies Engaged in the Testing and/or Inspection of Soil and Rock as Used in Engineering Design and Construction

ASTM E 329 (2011a) Agencies Engaged in the Testing and/or Inspection of Materials Used in Construction

1.2 SUBMITTALS

- A. Ongoing Quality System - The Contractor shall develop and implement an ongoing quality system as part of the Work. The Contractor shall document this system in a Quality Assurance Manual that the Contractor shall prepare. The plan shall be submitted within fourteen (14) days from the award of this contract for review and approval by the EPA RPM or his/her designee. The Contractor shall comply with the terms of the Quality Assurance Manual, included within the "Data Report - Lower Harbor CAD Cell" attached to Section 0800.

PART 2 PRODUCTS (NOT APPLICABLE)

PART 3 EXECUTION

3.1 GENERAL REQUIREMENTS

The Contractor is responsible for quality control and shall establish and maintain an effective quality control system. The quality control system shall consist of plans, procedures, and organization necessary to produce an end product which complies with the contract requirements. The system shall cover all construction operations, both onsite and offsite, and shall be keyed to the proposed construction sequence. The site project superintendent will be held responsible for the quality of work on the job and is subject to removal by the Owner's Representative for non-compliance with the quality requirements specified in the contract. The site project superintendent in this context shall be the highest-level manager responsible for the overall construction activities at the site, including quality and production. The site project superintendent shall maintain a physical presence at the site at all times, except as otherwise acceptable to the Owner's Representative, and shall be responsible for all construction and construction related activities at the site.

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3.2 COORDINATION MEETING

After the Preconstruction Conference, before start of construction, the Contractor shall meet with the Owner's Representative and discuss the Contractor's quality control system. During the meeting, a mutual understanding of the system details shall be developed, including the forms for recording operations, control activities, testing, administration of the system for both onsite and offsite work, and the interrelationship of Contractor's Management and control with the Owners' Quality Assurance. Minutes of the meeting shall be prepared by the Owner's Representative and signed by both the Contractor and the Owner's Representative. The minutes shall become a part of the contract file. There may be occasions when subsequent conferences will be called by either party to reconfirm mutual understandings and/or address deficiencies in the quality control system or procedures which may require corrective action by the Contractor.

3.3 CONTROL

Contractor Quality Control is the means by which the Contractor ensures that the construction, to include that of subcontractors and suppliers, complies with the requirements of the contract. At least three phases of control shall be conducted by the Contractor for each definable feature of work as follows:

3.3.1 Preparatory Phase

This phase shall be performed prior to beginning work on each definable feature of work, after all required plans/documents/materials are approved/accepted, and after copies are at the work site. This phase shall include:

- A. A review of each paragraph of applicable specifications, reference codes, and standards. A copy of those sections of referenced codes and standards applicable to that portion of the work to be accomplished in the field shall be made available by the Contractor at the preparatory inspection. These copies shall be maintained in the field and available for use by Owner's Representative until final acceptance of the work.
- B. A review of the contract drawings.
- C. A check to assure that all materials and/or equipment have been tested, submitted, and approved.
- D. Review of provisions that have been made to provide required control inspection and testing.
- E. Examination of the work area to assure that all required preliminary work has been completed and is in compliance with the contract.
- F. A physical examination of required materials, equipment, and sample work to assure that they are on hand, conform to approved shop drawings or submitted data, and are properly stored.

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- G. A review of the appropriate activity hazard analysis to assure safety requirements are met.
- H. Discussion of procedures for controlling quality of the work including repetitive deficiencies. Document construction tolerances and workmanship standards for that feature of work.
- I. A check to ensure that the portion of the plan for the work to be performed has been accepted by the Owner's Representative.
- J. Discussion of the initial control phase.
- K. The Owner shall be notified at least 48 hours in advance of beginning the preparatory control phase. This phase shall include a meeting attended by the superintendent, and the foreman responsible for the definable feature. The results of the preparatory phase actions shall be documented by separate minutes prepared by the Contractor and attached to the Contractor's daily report. The Contractor shall instruct applicable workers as to the acceptable level of workmanship required in order to meet contract specifications.

3.3.2 Initial Phase

This phase shall be accomplished at the beginning of a definable feature of work. The following shall be accomplished:

- A. A check of work to ensure that it is in full compliance with contract requirements. Review minutes of the preparatory meeting.
- B. Verify adequacy of controls to ensure full contract compliance. Verify required control inspection and testing.
- C. Establish level of workmanship and verify that it meets minimum acceptable workmanship standards.
- D. Resolve all differences.
- E. Check safety to include compliance with and upgrading of the safety plan and activity hazard analysis. Review the activity analysis with each worker.
- F. The Owner's Representative shall be notified at least 48 hours in advance of beginning the initial phase.
- G. The initial phase should be repeated for each new crew to work onsite, or any time acceptable specified quality standards are not being met.

3.3.3 Follow-up Phase

Daily checks shall be performed to assure control activities, including control testing, are providing continued compliance with contract requirements, until completion of the particular feature of work. The checks shall be made a matter of record in the Contractor's daily report. Final follow-up checks shall be conducted and all deficiencies corrected

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prior to the start of additional features of work which may be affected by the deficient work. The Contractor shall not build upon nor conceal non-conforming work.

3.3.4 Additional Preparatory and Initial Phases

Additional preparatory and initial phases shall be conducted on the same definable features of work if: the quality of on-going work is unacceptable; if there are changes in the applicable staff, onsite production supervision or work crew; if work on a definable feature is resumed after a substantial period of inactivity; or if other problems develop.

3.4 COMPLETION INSPECTION

3.4.1 Pre-Final Inspection

The Owner will perform the pre-final inspection to verify that the work is complete. An Owner Pre-Final Punch List may be developed as a result of this inspection. The Contractor shall ensure that all items on this list have been corrected before notifying the Owner, so that a Final inspection with the customer can be scheduled. Any items noted on the Pre-Final inspection shall be corrected in a timely manner. These inspections and any deficiency corrections required by this paragraph shall be accomplished within the time slated for completion of the entire work or any particular increment of the work if the project is divided into increments by separate completion dates.

3.4.2 Final Acceptance Inspection

The Contractor's superintendent or other primary management person, and the Owner's Representative's shall be in attendance at the final acceptance inspection. Additional Owner personnel may also be in attendance.

3.5 DOCUMENTATION

The Contractor shall maintain current records providing factual evidence that required quality control activities and/or tests have been performed. These records shall include the work of subcontractors and suppliers and shall be on an acceptable form that includes, as a minimum, the following information:

- A. Contractor/subcontractor and their area of responsibility.
- B. Operating plant/equipment with hours worked, idle, or down for repair.
- C. Work performed each day, giving location, description, and by whom.
- D. Test and/or control activities performed with results and references to specifications/drawings requirements. The control phase shall be identified (Preparatory, Initial, Follow-up). List of deficiencies noted, along with corrective action.

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- E. Quantity of materials received at the site with statement as to acceptability, storage, and reference to specifications/drawings requirements.
- F. Submittals and deliverables reviewed, with contract reference, by whom, and action taken.
- G. Offsite surveillance activities, including actions taken.
- H. Job safety evaluations stating what was checked, results, and instructions or corrective actions.
- I. Instructions given/received and conflicts in plans and/or specifications.
- J. Contractor's verification statement.

These records shall indicate a description of trades working on the project; the number of personnel working; weather conditions encountered; and any delays encountered. These records shall cover both conforming and deficient features and shall include a statement that equipment and materials incorporated in the work and workmanship comply with the contract. The original and one copy of these records in report form shall be furnished to the Owner daily within 24 hours after the date covered by the report, except that reports need not be submitted for days on which no work is performed. As a minimum, one report shall be prepared and submitted for every 7 days of no work and on the last day of a no work period. All calendar days shall be accounted for throughout the life of the contract. The first report following a day of no work shall be for that day only. Reports shall be signed and dated by the Contractor. The report from the Contractor shall include copies of test reports and copies of reports prepared by all subordinate quality control personnel.

3.6 NOTIFICATION OF NONCOMPLIANCE

The Owner's Representative will notify the Contractor of any detected noncompliance with the foregoing requirements. The Contractor shall take immediate corrective action after receipt of such notice. Such notice, when delivered to the Contractor at the work site, shall be deemed sufficient for the purpose of notification. If the Contractor fails or refuses to comply promptly, the Owner's Representative may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

-- End Of Section --

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SECTION 01500

TEMPORARY CONSTRUCTION FACILITIES

PART 1 GENERAL

1.1 GENERAL REQUIREMENTS

1.1.1 Site Plan

The Contractor shall propose a location for temporary construction facilities, staging areas, areas for offloading of debris or offloading and dewatering of dredge spoils, areas for dewatering dredge spoils, areas for staging materials, areas for staging debris, as necessary, or staging of equipment for the review and approval by the Owner/Owner's Representative. The Owner is not able to provide a suitable location as part of this contract; therefore, the Contractor shall determine a suitable location at no additional cost to the Owner. The Contractor shall also indicate if the use of a supplemental or other staging area is desired.

1.1.2 Identification of Employees

The Contractor shall be responsible for furnishing to each employee, and for requiring each employee engaged on the work to display identification as approved and directed by the Owner's Representative. Prescribed identification shall immediately be delivered to the Owner's Representative for cancellation upon release of any employee. When required, the Contractor shall obtain and provide fingerprints of persons employed on the project. Contractor and subcontractor personnel shall wear identifying markings on hard hats clearly identifying the company for whom the employee works.

1.1.3 Owner's and Owner's Representative's Field Offices

Contractor shall provide a reasonably new, insulated and weather tight, prefabricated, or mobile temporary office, for Owner's and Owner's Representative's exclusive use. Office shall be approximately 10-feet by 15-feet. Contractor shall provide lockable entrance(s) with dual locks, operable windows covered with security bars or expanded metal, a serviceable finish, and ADA compliant access steps and handrails. Office shall include one 4-foot tack board, first aid kit, outdoor/indoor recording thermometer), and two telephone lines. Contractor shall provide and maintain adequate heat, air conditioning, fluorescent lighting, electrical receptacles, and four (4) modular telephone jacks (one at each desk surface and one at sloped plan review table connected to one outside line and one outside line and jack for connection to a facsimile transceiver). Telephone service to Owner's/Owner's Representative's field office shall be paid by Contractor. Office equipment shall include three telephones (one desk type with speaker, one wall type with a 15-foot cord, and one cordless phone), one plain paper facsimile/copy machine, and one answering/voice mail machine with remote message retrieval and service or service contracts. Furnish a rolling/adjustable drafting stool, sloped plan table (min. 36-inches deep and 8-feet long) with extra light, one swing-arm plan storage rack with ten hangers, one locking 4-drawer (legal size) file cabinet, two desks of a minimum size of 48" by 36", and four rolling chairs. Equipment, except file cabinets, shall become Contractor's property

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at Final Completion. File cabinet will become property of Owner. Contractor shall provide maintenance of Owner's temporary office including weekly cleaning and sewage disposal. Phone hookup and long distance service and bills and supplies for facsimile/copy machine shall be paid by Contractor. If it becomes necessary during the progress of construction to relocate Owner's field office and toilet facility, notify the Owner's representative, at minimum, 10-days prior to planned move, and complete move with associated re-connections at Contractor's expense within 48-hours. Trash removal from the Owner's and Owner's Representative's Field offices shall be on a daily basis.

At Contractor's expense, a jobsite telephone to which Owner and Architect and their representatives may have free use and access during working hours while making calls in regard to Project shall be installed and maintained. Calls, including long distance calls within Massachusetts, shall be at expense of Contractor. At all times, Contractor shall maintain a separate dedicated line with a facsimile machine.

1.2 AVAILABILITY AND USE OF UTILITY SERVICES

1.2.1 Temporary Electrical Service

The Contractor, at its expense and in a manner satisfactory to the Owner's Representative, shall provide and maintain necessary temporary connections, distribution lines and disconnects, and other equipment to provide temporary electrical service for site needs. The Contractor shall coordinate with the local utility company and the New Bedford electrical inspector to obtain, operate, and pay for, the necessary electrical connection and permits. All electrical work shall conform to applicable federal, state and local electrical code requirements.

1.2.2 Sanitation

The Contractor shall provide and maintain within the construction area minimum field-type sanitary facilities approved by the Owner's Representative.

At its discretion, the Contractor may, at its expense and in a manner satisfactory to the Owner's Representative, provide and maintain necessary temporary connections, distribution lines and disconnects, and other equipment to provide temporary sanitary service for site needs. The Contractor shall coordinate with the New Bedford Department of Public Infrastructure to obtain, operate, and pay for, the necessary sanitary connection and permits. All sanitary work shall conform to applicable federal, state and local requirements.

1.2.3 Telephone

The Contractor shall make arrangements and pay all costs for telephone facilities desired.

1.2.4 Project Lighting

The Contractor shall provide adequate lighting for all activities as necessary to support nighttime/24 hour operations.

1.2.5 Water Service

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At its discretion, the Contractor may, at its expense and in a manner satisfactory to the Owner's Representative, provide and maintain necessary temporary connections, distribution lines and disconnects, and other equipment to provide temporary water service for site needs. The Contractor shall coordinate with the New Bedford Department of Public Infrastructure to obtain, operate, and pay for, the necessary water connection and permits. All water work shall conform to applicable federal, state and local requirements.

1.3 BULLETIN BOARD, PROJECT SIGN, AND PROJECT SAFETY SIGN

1.3.1 Bulletin Board

Upon beginning of work, the Contractor shall provide a bulletin board for displaying all applicable postings as required by Federal, State and local regulations. The bulletin board shall be located at the project site in a conspicuous place easily accessible to all employees, as approved by the Owner's Representative. Legible copies of the aforementioned data shall be displayed until work is completed. Upon completion of work the bulletin board shall be removed by and remain the property of the Contractor.

1.3.2 Project and Safety Signs

The Contractor will be required to construct a project sign to be displayed on the dredge plant and any additional temporary structures. The sign shall contain three logos (Owner, Owner's Representative and Contractor) of a maximum of three colors each. The specific wording and layout of the sign will be provided by the Owner's Representative at the time of award. The sign shall be erected within 15 days after receipt of the notice to proceed. Upon completion of the project, any signs shall be removed from the site.

The Contractor is responsible to provide sufficient safety signage at the entrance to the site in accordance with MA State Highway and other applicable regulations. Safety and other signs shall be provided as required to support the Contractor's work on the site.

1.4 SECURITY PROVISIONS

Adequate outside security lighting shall be provided at the Contractor's temporary facilities. The Contractor shall establish fencing around land-based portions of work associated with the project, and shall maintain adequate security measures to prevent unauthorized entry. The Contractor shall be responsible for the security of its own equipment; in addition, the Contractor shall notify the appropriate law enforcement agency requesting periodic security checks of the temporary project field office.

1.5 PLANT COMMUNICATION

Whenever the Contractor has the individual elements of its plant, vehicles, and/or equipment so located that operation by normal voice between these elements is not satisfactory, the Contractor shall install a satisfactory means of communication, such as telephone or other suitable devices. One such device shall be made available for use by the Owner's Representative.

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1.6 CLEANUP

Construction debris, waste materials, packaging material and the like shall be removed from the work site daily. Any dirt or mud which is tracked onto paved or surfaced roadways shall be cleaned away twice daily or more frequently, if requested by the Owner. Materials resulting from demolition activities which are salvageable shall be stored within the fenced area described above or at the supplemental storage area. Stored material not in trailers, whether new or salvaged, shall be neatly stacked when stored.

1.7 RESTORATION OF PROJECT AREA

Areas used by the Contractor for the storage of equipment or material, debris handling, sediment offloading, dewatering or other use, shall be restored to the original or better condition.

-- End of Section --

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SECTION 01600

PLANT AND EQUIPMENT

PART 1 GENERAL

1.1 SUBMITTALS

The following shall be submitted in accordance with Section 01300 SUBMITTAL PROCEDURES:

Plant and Equipment

Submit a schedule of the plant and equipment, which hereby includes all vehicles, vessels, plant(s), equipment, floating plant and floating equipment the Contractor intends to employ in the performance of the work of this contract. See Section 01000 Bidding Schedule where this schedule is required as part of the Bid Form. Changes proposed by the Contractor to the plant and equipment schedule considered for award of the bid are subject to the approval of the Owner's Representative. Also, submit copies of all applicable inspections and certifications for all floating plants.

1.2 PLANT AND EQUIPMENT

1.2.1 Sufficient Capacity

The Contractor shall keep on the job sufficient plant and equipment to meet the requirements of the work and to meet the schedule milestones. The plant and equipment shall be in satisfactory operating condition and be capable of safely and efficiently performing the work. The plant and equipment shall be subject to inspection by the Owner's Representative at all times.

1.2.2 Minimum Capacity

The plant and equipment listed on the Plant and Equipment Schedule submitted with the Contractor's bid is the minimum which the Contractor shall place and keep on the job unless otherwise determined by the Owner's Representative. The listing of plant and equipment is not to be construed as an agreement on the part of the Owner that the equipment is adequate to perform the required work.

1.2.3 Reduction in Capacity

No reduction in the capacity of the plant and equipment employed on the work shall be made except by written permission of the Owner's Representative. The measure of the capacity of the plant and equipment shall be its actual performance on the work covered by this contract.

1.2.4 Inspections and Certifications

Prior to commencement of work at the site, the Contractor shall submit to the Owner's Representative for review, copies of all applicable inspections and certifications of plant and equipment as required by Federal, State and local laws and regulations. Such inspections and certifications shall be current and maintained in force for the duration of this contract. Each

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item of floating plant and equipment shall have on board a waste oil management plan which details the intended disposal method for waste oil. The Contractor shall have on land a fuel and waste oil management plan which details the method for protecting fuel and waste oil from unintended releases, including secondary containment structures, and also details intended disposal method for waste oil and fuel. All equipment used in the prosecution of the work that uses fuel, oil or hydraulic fluid shall be inspected daily for leakage.

1.3 LICENSE REQUIREMENTS

Each vessel exceeding twenty-six feet in length, excluding sheer, which is used for pushing, hauling alongside, or any other method of towing, and not required by law to have a valid Certificate of Inspection by the U.S. Coast Guard, shall be under the actual direction and control of a person licensed for towing in the geographic area of the work by the U.S. Coast Guard. Licensed persons shall not perform command or other duties in excess of twelve hours in any consecutive twenty-four hour period except in an emergency.

1.4 PERMIT REQUIREMENTS

The Contractor's plant and equipment employed on the work shall meet the requirements of all applicable permits, certifications, and performance standards issued for the project as specified in these specifications.

1.5 HEIGHT LIMITATIONS

Height limitations for equipment shall conform to the FAA requirements for the various areas of the project. The Contractor is responsible for coordinating these height limitations prior to commencing with the work.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION (NOT USED)

-- End Of Section --

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SECTION 01900

GENERAL SAFETY REQUIREMENTS

PART 1 GENERAL

1.1 REFERENCES

The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by the basic designation only.

CODE OF FEDERAL REGULATIONS (CFR)

29 CFR 1910 Occupational Safety and Health Standards

29 CFR 1926 Safety and Health Regulations for Construction

NATIONAL FIRE PROTECTION ASSOCIATION (NFPA)

NFPA 70 (2011) National Electrical Code

NFPA 241 (2009) Standard for Safeguarding Construction, Alteration, and Demolition Operations

NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH

NIOSH Pub No. 85-115 (1985) Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities

1.2 REGULATORY REQUIREMENTS

Work performed under this contract shall comply with OSHA requirements in 29 CFR 1910 and 29 CFR 1926 (especially OSHA's Hazardous Waste Operations and Emergency Response Standard 29 CFR 1926.65/29 CFR 1910.120), state specific OSHA requirements (where applicable), and in accordance with the provisions contained in Section 00700 General Conditions and in Section 00800 Supplementary Conditions. Sediment contaminated by Poly-Chlorinated Biphenyls (PCBs) at a concentration in excess of 50 ppm, which may be encountered at the work site, is regulated as a hazardous material under the Federal Toxic Substances Control Act (TSCA). Matters of interpretation of standards shall be submitted to the appropriate administrative agency for resolution before starting work. Where the requirements of this specification, applicable laws, criteria, ordinances, regulations, and referenced documents vary, the most stringent requirements shall apply.

At a minimum, all work must be completed under the direction of a 40-Hour OSHA Hazardous Waste Operations (29 CFR 1910.120) trained individual. All personnel coming in contact with sediment contaminated with hazardous materials must have, or obtain, similar OSHA training.

1.3 SUBMITTAL

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Submit the following for acceptance by the Owner's Representative. Follow the administrative procedures for making submittals as specified in Section 01300 SUBMITTAL PROCEDURES.

1.3.1 Statements

A. Site Specific Accident Prevention Plan.

B. Phased Job Activity Hazard Analysis.

C. Machinery Inspection Certification:

Submit certifications that earth moving equipment, cranes, trucks, vehicles, machinery, floating plant and other mechanized equipment is in safe operating condition.

D. Modification to Equipment:

Submit manufacturer's written approval of modifications or additions to vehicles, machinery, floating plant, or hoisting equipment. Owner acceptance of submittal must be attained before such equipment can be brought on the job site.

E. Safety Meeting Report:

Submit safety meeting reports detailing the subjects discussed at safety meetings within three days after each meeting.

1.3.2 Accident Prevention Plan Submittal

Submit a plan outlining Contractor proposals for accident prevention.

A. List all major definable features of work to be completed under this contract.

B. Accident Reporting

1. All accidents shall be investigated and a report prepared that outlines basic causes and proposed actions to prevent future occurrence.

C. Submit an "Activity Hazard Analysis" for each definable feature of the work identified in paragraph A above. Submit each "Activity Hazard Analysis" a minimum of 15 days prior to the start of that phase of work. A major phase of work is defined as an operation involving a type of work presenting hazards not experienced in previous operations or where a new subcontractor or work crew is to perform. The analysis shall define all activities to be performed and identify the sequence of work, the specific hazards anticipated, and the control measures to be implemented to eliminate or reduce each hazard to an acceptable level. The activity hazard analyses shall be continuously reviewed with the quality control definable features of work and when appropriate, modified to address changing site conditions or

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operations.

D. Severe Weather Plan: The Contractor shall submit a Severe Weather Plan describing the actions to be taken to protect persons, equipment, dredge materials, hazardous materials, and property and prevent the spread of hazardous materials or dredge sediment into surface water in the event of severe weather warnings or extreme sea conditions. Submit the plan as an attachment to the Accident Prevention Plan, for review and acceptance. This plan shall include but not be limited to the following:

1. The types of storms anticipated (Winter storm, Hurricane, Tornado)
2. The time intervals before storms when action will be taken and the details of the actions to be taken.
3. List of the equipment to be used on the project and its ability to handle adverse weather.
4. Distance from the work area to a safe place in the harbor and the time required to move the equipment.
5. Method of securing equipment.
6. List of equipment to be utilized to make the move to a safe place in the harbor (tug boats, work boats, etc.), to include the name and horsepower of the equipment.
7. Methods of securing equipment not moved.
8. Plan of evacuation to include immediate reaction plans to be taken for all storm occurrences, particularly sudden storms.
9. A statement that full time monitoring of the NOAA marine weather broadcasts and other local commercial weather forecasting services will be the Contractor's primary source of information in the decision process to implement action under the severe weather plan.

1.4 UNFORESEEN HAZARDOUS MATERIAL

If unanticipated hazardous materials are encountered during construction operations that may be dangerous to human health upon disturbance, stop that portion of work and notify the Owner's Representative immediately.

PART 2 PRODUCTS (Not Applicable)

PART 3 EXECUTION

3.1 WEEKLY SAFETY MEETINGS

Prior to the start of construction and at least once a month, the Contractor shall conduct a safety meeting for all supervisors and foremen. Additionally, prior to the start of construction and at least once per

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week, the foremen of the Contractor shall conduct a safety meeting for all workers. After each safety meeting, a safety meeting report shall be completed. A copy of a suggested weekly safety meeting form is attached at the end of this section.

3.2 UNDERWATER DIVING OPERATIONS

In the event that underwater diving operations become necessary due to the work of this contract, such operations shall be conducted in accordance with Section 02482 DREDGING.

-- End of Section --

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SECTION 02482

DREDGING

PART 1 GENERAL

1.1 SCOPE

This section details dredging procedures and disposal requirements associated with the Lower Harbor CAD Cell Phase I, Lower Harbor CAD Cell Phase II, and CAD Cell #2.

The Work first includes removal of the "Top" of the Lower Harbor CAD Cell Phase I, which is to be placed into CAD Cell #2. The Work then includes removal of the "Bottom" of the Lower Harbor CAD Cell Phase I, which is to be disposed offshore at RISDS or CCDS. The "Top" of the Lower Harbor CAD Cell Phase II will then be dredged and disposed into the Lower Harbor CAD Cell Phase I and the "Bottom" of the Lower Harbor CAD Cell Phase II will be disposed offshore at RISDS or CCDS.

More specifically:

- Material to be dredged as shown on the Contract Drawing "P-1 TOP OF LOWER HARBOR CAD CELL PHASE I" shall be disposed within CAD Cell #2 as shown on the Contract Drawing "P-5 CAD Cell #2 DISPOSAL PLAN".
- Material to be dredged as shown on the Contract Drawing "P-2 BOTTOM OF LOWER HARBOR CAD CELL PHASE I" shall be dredged and disposed of offsite at either CCDS or RISDS.
- Material to be dredged as shown on Contract Drawings "P-3 TOP OF LOWER HARBOR CAD CELL PHASE II" shall be dredged and disposed into the Lower Harbor CAD Cell Phase I as shown on the Contract Drawing "P-6 LOWER HARBOR CAD CELL PHASE I DISPOSAL PLAN". and
- Material to be dredged as shown on the Contract Drawing "P-4 BOTTOM OF LOWER HARBOR CAD CELL PHASE II" shall be dredged and disposed of offsite at either CCDS or RISDS.

1.2 DEFINITIONS

1.2.1 Maintenance Material

Maintenance material is defined as the sediments which have accumulated within the areas to be dredged since the last improvement dredging project. Maintenance material includes soft to medium stiff silt and clay as well as loose to medium dense sand. Maintenance material may consist of mixed fine (silt and clay) and coarse (sand and gravel) grained material, and may contain shell hash. Maintenance material includes accumulated sediment that sloughs off the side slopes from the indicated zones of maintenance material. Maintenance material shall be removed where encountered within the dredge envelopes, as specified in this section, and as indicated on the contract drawings.

1.2.2 Improvement Material

Improvement material is defined as the native, generally undisturbed sediment underlying the maintenance material. Improvement material generally consists of medium dense to very dense sand and gravel,

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containing varying amounts of silt and cobbles. Improvement material shall be removed where encountered within the dredge envelopes, as specified in this section, and as indicated on the contract drawings.

1.3 RELATED WORK SPECIFIED ELSEWHERE

a. Additional requirements relative to water quality monitoring and testing, and submittal of Bucket Performance Data are specified in Section 01135 WATER QUALITY MONITORING AND CONTROL.

b. Additional requirements relative to providing and maintaining environmental protection measures during the life of the contract are specified in Section 01355 ENVIRONMENTAL PROTECTION.

c. Requirements relative to disposal and/or reuse of dredged material are specified in Section 02492 DISPOSAL AT OFFSHORE DISPOSAL SITES.

1.4 SUBMITTALS

The following shall be submitted in accordance with Section 01300 SUBMITTALS:

Scow Cards:

Submit scow cards for each scow to be used for contract work. Scow cards shall have information specified in paragraph "Scows."

Work Plan:

The Contractor shall submit a work plan for work of this section. The work plan shall detail the Contractor's proposed sequence, equipment and procedures for performance of the work. The work plan shall include the following:

- A. Details of equipment and procedures for dredging maintenance and improvement material, including plans and description indicating location, depth and sequence of dredge cuts. Include specifications for proposed buckets, indicating cut depths, estimated volume of free water entrained with the sediment for given cut depths and proposed method for minimizing volume of free water dredged with the sediment. Submit enclosed bucket performance data.
- B. Submit plans and written description indicating layout and details of equipment and procedures for deployment of silt curtains and oil absorbent booms. Note that dredging and disposal shall be conducted utilizing silt curtains for the dredge and disposal locations within New Bedford Harbor from January 15 through June 15.
- C. Submit Contractor's proposed method for maintaining horizontal and vertical control of dredge cuts, including proposed method for avoiding overdredging. Indicate locations of proposed control points including tide gages, ranges and buoys. Furnish proof of electronic positioning equipment calibration.

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- D. Submit plan and written description indicating layout and details of equipment and procedures for removal of standing water or free liquid from scows, filtering, and discharge of water.
- E. Submit proposed measures for protection of, or temporary or permanent relocation of, adjacent structures located in the vicinity of the dredge area such as: boat ramps, piers, bulkheads, docks, pilings, fendering systems, dolphins, fender piles, moorings, floating docks, partially submerged barges, travel-lifts, and submerged mobile dock system and rails. Special attention should be paid to the submerged EPA pipeline Floating and Fixed Docks and Boat Ramps at the Niemiec Marine Facility, and recreational and commercial moorings in the area north and west of Pope's Island. Proposed measures must include methods for dealing with debris such as nets, cables, ropes and other submerged debris that may be entangled with the structures.

Debris Management Plan:

Submit Contractor's proposed method and equipment to be used for removal of artificial obstructions and debris not suitable for disposal or capping. Identify method and locations for solid waste disposal of dredged debris and other solid waste generated by the Contractor's activities. The plan should include means and methods for cleaning debris of hazardous materials, if encountered, and the handling of the resulting waste. The plan should identify the location(s) of the temporary facilities required for debris offloading and removal operations. The Contractor shall be aware of the potential for finding archeologically significant finds while conducting dredging associated with the Lower Harbor CAD Cell Phase I or the Lower Harbor CAD Cell Phase II; the Contractor shall include within its Debris Management Plan policies and procedures for actions to be taken in the case that an archeologically significant find is located during operations. The plan shall include contact information and procedures for alerting the Owner's Representative should archeologically significant material be located during the course of the Work. The Contractor shall identify any subcontractors responsible for the transportation and disposal of solid waste. Licenses or permits shall be submitted for solid waste disposal sites that are not commercial operating facilities. Evidence of the disposal facility's acceptance of the solid waste shall be attached to this plan during construction. The Contractor shall submit to the Owner's Representative completed copies of all Bills of Lading indicating the total amount of debris in tons which was transported and accepted at the disposal facilities.

1.5 EXISTING CONDITIONS

1.5.1 Material to be Dredged

Dredged material is referred to in these specifications as "maintenance" material, "improvement" material or "debris". Elevations and thicknesses of "maintenance" material and "improvement" material will vary with location. The Contractor may encounter bottom debris such as, but not limited to, cable, rope, netting, miscellaneous metal, tires, anchors, abandoned mooring buoys and blocks, and abandoned pilings. Debris, if encountered, will be removed as part of the work

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of this contract. Cobbles and boulders may be encountered within the maintenance or improvement material. Maintenance material may be very thick or may not be present at all, depending upon the location. Excavation of intact rock is not anticipated as part of the Work.

The materials that exist in New Bedford / Fairhaven Harbor include both marine sediments and sediments and soils related to the last glacial period of the region's history and material related to the last post-glacial period of the region's history. As such, materials that could be encountered by the contractor while constructing the Lower Harbor CAD Cell could include:

- o Marine Sediments;
- o Post-glacial sediments and soils; and
- o Glacial sediments and soils, which could include glacio-fluvial deposits as well as glacial till.

As such, a wide variety of sediments may be encountered, and the contractor should be prepared to deal with the full range of potential materials that may be encountered. Additionally, the amounts of the varying materials varies greatly throughout the Harbor and within the portion of the Harbor between the Route 6 Bridge and the I-195 Bridge. The contractor shall be prepared to excavate the full range of material types that could be encountered within the area without prejudice to the amounts of any particular type of material that is encountered. The range of materials that have been encountered in other excavations and/or explorations (note the reference list of project information in the IFB package) that have been conducted in the New Bedford / Fairhaven Harbor include (but are not limited to):

Organic Silts (dark to light colored); Organic Silts with varying percentages of fine to coarse Sand and/or Gravel; Organic Silts with varying percentages of Clay, fine to coarse Sands, and/or Gravel; Inorganic Silts; Clayey Silts; Clays; Clays with varying amounts of Silt, fine to coarse Sands and/or Gravel; Peat; Peat with varying percentages of fine to coarse Sands and/or Gravel; Clayey Silts with varying percentages of fine to coarse Sands and/or Gravel; fine to coarse Sands, fine to coarse Gravels, Cobbles of varying sizes , Boulders of varying sizes up to very large, Glacial Erratics, Glacial Drop Stones, Gravel Beds, Glacial Till; dense Glacial Till; ripped up Boulders from the bedrock ledge surface. Density ranges may vary from very loose to very dense. In some places the sediments/soils may be a broad mixture of a wide range of grain sizes, in other places the sediments/soils may be dominated by a predominant grain size. Colors of the sediments/soils may vary from very light to very dark and a broad spectrum of colors is possible. As a broad range of sediment/soils types are anticipated to be present in the Lower Harbor CAD Cell Phase I and Lower Harbor CAD Cell Phase II excavation, the contractor should be prepared to excavate the full range of materials possible. Failure of the contractor to anticipate or be prepared for the varying subsurface conditions that exist within the Harbor shall not be cause for a claim of change in conditions of any kind.

1.5.2 Results of Explorations

Explorations to determine the general character of materials to be removed have been made by the Owner. Graphic logs of vibracores, geotechnical borings, geotechnical explorations and sediment chemistry data are contained in a data report titled "Data Report - Lower Harbor

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CAD Cell" attached to Section 00800 of the Contract Documents. Data is presented on figures contained in the Data Report provided as an attachment to 00800 SUPPLEMENTARY CONDITIONS. Although the results of such explorations are representative of subsurface conditions at their respective locations and for their respective vertical reaches, local variations in the subsurface materials are to be expected and, if encountered, will not be considered materially different within the purview of the contract.

Also listed within the Data Report - Lower Harbor CAD Cell are reports and historical data, relative to the Lower Harbor CAD Cell, which are available for the Contractor's review. The reports are provided for the information of the Contractor, and data and interpretations within these reports have not been independently confirmed by the Owner or the Owner's Representative. The Contractor shall interpret said data according to his/her own judgment and shall understand that conditions may differ from those recorded in the reports, drawings and shown on the borings. Advance arrangements to view the reports may be made with the Owner's Representative. See Section 00200 INSTRUCTIONS TO BIDDERS for details.

1.5.3 Debris and Artificial Obstructions

One submerged obstruction, believed to be an abandoned sunken vessel has been identified adjacent to the Borrow Pit CAD Cell. Approximate location of the submerged obstruction is shown on the Contract Drawings. The obstruction is considered a navigation hazard. Disposal limits within this contract have been designed to avoid impact to this submerged obstruction. The obstruction shall not be disturbed as part of this contract. It is the responsibility of the Contractor to field verify the location, depth and character of the submerged obstruction, and avoid impact to it during all work and conditions.

The Contractor may encounter bottom debris as indicated in paragraph 1.5.1 above. During dredging operations, the Contractor shall remove all debris encountered. Floating debris removed from the dredge area shall be separated and stockpiled for disposal. Disposal in accordance with local, Federal, and State laws and regulations shall be the responsibility of the Contractor.

1.5.4 Existing Utilities

Prior to commencement of dredging, the Contractor shall coordinate with the applicable utility companies to identify and mark the exact locations of existing utilities, and establish in detail the proposed method of protecting the existing utilities, if applicable. Identification and protection of existing utility lines is the sole responsibility of the Contractor.

Particular care shall be taken to identify the location of the USEPA pipeline running north-south within the existing State Channel, which is adjacent to the Lower Harbor CAD Cell Phase I and the Lower Harbor CAD Cell Phase II locations. In some instances, the elevation of this pipeline may be shallower than -15 MLLW. The Contractor shall identify and mark the location of this pipeline prior to construction.

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Existing utility lines that are to be retained, shall be protected from damage during dredging, and if damaged, shall be satisfactorily repaired by the Contractor at no additional cost to the Owner. Existing utility lines that are damaged as a result of the Contractor's dredging, transport, offloading, disposal or capping operations shall be satisfactorily repaired by the Contractor at no additional cost to the Owner in accordance with the provisions contained in Section 00700 General Conditions and Section 00800 Supplementary Conditions.

No dredging or spudding shall occur within an area identified as having active utilities. Other active utilities that are currently present in the harbor include but are not limited to electric, water and telecommunications between Linberg Marine and Crow Island (in Fairhaven, Massachusetts) as well as a natural gas line located immediately south of the Route 6 Bridge.

1.6 OVERDEPTH AND SIDE SLOPES

1.6.1 Required Depth

The material actually removed from within the specific areas to be dredged to a depth of not more than the required depth shown on the drawings, plus the allowable overdepth, will be estimated and paid for in accordance with the provisions contained in Section 01025 MEASUREMENT AND PAYMENT.

1.6.2 Allowable Overdepth

Conduct dredging to indicated elevations in such a manner as to minimize overdepth dredging and minimize volume of overdepth material required for disposal. The allowable overdepth for each area is one (1) foot. Allowable overdepth dredging will be permitted to the indicated depths shown on the contract drawings. Material removed to the overdepth shown on the drawings, for specific areas to be dredged, and within the dredging limits will be measured and paid for at full contract price in the same manner as specified for the overlying dredged material. Overdepth dredging will incur liquidated damages as stipulated within Article 6.02 PROSECUTION OF WORK of Section 00800 SUPPLEMENTARY CONDITIONS. The material within the TOP OF LOWER HARBOR CAD CELL PHASE I AND TOP OF LOWER HARBOR CAD CELL PHASE II footprints and above the given dredge elevations shall be placed into CAD CELL #2 or the LOWER HARBOR CAD CELL PHASE I, which have limited capacity.

1.6.3 Side Slopes

Side slopes may be dredged by dredging the space below the pay slope plane at the bottom of the slope for upslope material capable of falling into the cut. Dredge cuts of the space below the pay slope plane at the bottom of the slope shall not exceed the allowable overdepth shown on the drawings. It may be necessary to dredge upslope material which has fallen into the cut but remains above the required dredge depth. Side slopes may be dredged in the original position.

Generally, the final project slope, as shown in the Contract Drawings is 1 vertical on 3 horizontal. Material actually removed, within the limits approved by the Owner's Representative, to provide for final

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project slope as shown on the drawings at 1 vertical on 3 horizontal on the "P-4 BOTTOM OF LOWER HARBOR CAD CELL PHASE II" Plan or "P-2 BOTTOM OF LOWER HARBOR CAD CELL PHASE I" plan, and shown the drawings at 1 vertical to 5 horizontal on the "P-3 TOP OF LOWER HARBOR CAD CELL PHASE II" Plan or "P-1 TOP OF LOWER HARBOR CAD CELL PHASE I" plan, but not in excess of the amount originally lying above these limiting side slopes, will be estimated and paid for, whether dredged in the original position or by dredging the space below the pay slope plane at the bottom of the slope for upslope material capable of falling into the cut. In computing the limiting amount of side slope dredging, the indicated overdepth measured vertically will be used. The above is not to be taken as a guarantee that all slopes will stand on the slopes shown on the drawings. The Contractor shall make his/her own determination as to what the angle of repose will be on all side slopes.

1.6.4 Excessive Dredging

Material taken from beyond the limits as extended in paragraph OVERDEPTH AND SIDE SLOPES above will be deducted from the total amount dredged as excessive overdepth dredging, or excessive side-slope dredging for which payment will not be made.

The Contractor is to note that dredging below the overdredge boundary or dredging beyond the dredge footprint is prohibited. Dredging beyond the boundaries listed above and indicated on the drawings will not be paid for.

1.6.5 Protection of Existing Structures

The Contractor shall conduct the dredging operation such that it does not undermine, weaken or otherwise impair existing structures located in or near the areas to be dredged. The Contractor shall investigate the existing structures at the site and plan the dredging work accordingly. The Contractor shall be held responsible for any damage to the existing facilities resulting from dredging, and shall notify the Owner's Representative immediately upon occurrence and suspend operations until further instructions are received. The Contractor could be directed by the Owner's representative to fill overdredged areas with clean material at no cost to the Owner. The Contractor shall bear all time and expenses to satisfy additional regulatory obligations incurred with filling of overdredged areas as may be required.

Unless otherwise noted on the plans, no dredging shall occur closer than five (5) feet from any existing structure.

1.7 DEBRIS MANAGEMENT PLAN

1.7.1 General

A debris management plan shall be developed by the Contractor, reviewed for approval by the Owner's Representative. Debris removed from the bottom during dredging operations, which is not suitable for disposal, capping or upland re-use, shall be collected and removed from the site. Unsuitable materials include large items such as timbers, pilings,

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sections of piers or docks, and floating debris. Generally, all floating debris, and debris constructed from wood, rubber, rope, or plastic, will be considered unsuitable for disposal, capping or upland re-use.

The Contractor's dredging operation shall allow for separation of debris which is unsuitable for disposal. The Contractor shall present its methodology for screening debris within its bid. The Contractor's proposed methodology shall be capable of removing all rubber, plastic or wood from the dredge materials greater than 2 feet in maximum dimension. Additionally, at a minimum, the Contractor must use a debris boom to contain floating debris (if a silt curtain is not in use).

During dredging operations, the Contractor shall use a boat to collect and remove floating debris resulting from project activities. Floating debris shall also be removed from scows, if applicable. Debris removed from the bottom during dredging operations shall also be collected and removed from the site. Sediment removal during such activity shall be minimized to the greatest extent practicable. Containers for the temporary storage of the collected debris shall be maintained on the dredge or support barge.

1.7.2 Release of Oily Material

All oily material released during dredging or other project activity shall be promptly collected and disposed of at a licensed facility. Any spill above a reportable quantity should be reported to MassDEP at (888) 304-1133. The Contractor must comply with reporting and cleanup requirements of the Massachusetts Contingency Plan (MCP) at 310 CMR 40.000 if oily material is released in excess of a MCP Reportable Quantity.

1.8 FIELD MONITORING

1.8.1 General

Monitoring of dredging operations will be provided by the Owner. No dredging shall occur except in the presence of the Owner or his authorized representative. The Owner's Representative will be available to observe operations in connection with project dredging and disposal of dredge material into CAD Cell #2 or the Lower Harbor CAD Cell Phase I from 7 am to 6 pm, 7 days per week. Disposal outside of normal working hours (7 am and 6 pm daily, 7 days per week) requires written request (24-hours in advance) and written approval from the Owner's Representative. Approvals given by the Owner, his/her representatives, or by testing agencies shall not relieve the Contractor of his/her responsibility for performing the work in accordance with the contract documents.

1.8.2 Communication

Provide a system of communication between the dredge crew, the towboat, the Contractor's personnel, and the Owner's representative. Portable two-way marine radios are acceptable. The Contractor shall provide the Owner's Representative with 2 hand-held VHF radios capable of

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communicating with the Contractor's marine plant for the duration of the contract.

1.8.3 Transportation

The Contractor shall furnish, on the request of the Owner's Representative the use of such boats, boatmen, laborers, and material forming a part of the ordinary and usual equipment and crew of the equipment or marine plant as may be reasonably necessary in inspecting and monitoring the work. The Contractor shall furnish, on the request of the Owner's Representative, suitable transportation from all points on shore designated by the Owner's Representative to and from the various pieces of plant, and the work site.

PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION

3.1 DREDGING PLANT AND ASSOCIATED EQUIPMENT

3.1.1 General

Dredging shall be accomplished with approved modern equipment. Equipment shall be suitable for the proposed work, and of a design, size and capacity to effectively perform the work.

3.1.2 Dredging Plant

All dredging under this contract shall be performed using a mechanical dredge. Dredging of maintenance material shall require use of an enclosed bucket to meet water quality criteria specified in Section 01135 WATER QUALITY MONITORING AND CONTROL. A conventional bucket may be used to dredge material if it can be demonstrated that water quality criteria are not exceeded when using a conventional bucket. If so, an enclosed bucket must still be maintained at the site in the event of water quality exceedances.

3.1.3 Enclosed Bucket

The dredge bucket shall be designed to completely enclose the dredged sediment and water captured. The bucket shall be equipped with escape valves that shut when the bucket is withdrawn from the water column. An environmental bucket will meet the requirements of this section.

3.1.4 Bucket Control

The Contractor shall demonstrate that the dredge operator has sufficient control over bucket depth in the water and bucket closure so that sediment resuspension from bucket contact with the bottom and due to bucket overflowing can be minimized.

3.1.5 Tow Boats

All tow boats used for towing of scows shall be equipped with DGPS and track recording navigational equipment or approved equivalent electronic navigation equipment, radar, corrected compass, marine radio, and depth sounding equipment which is to be maintained in

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operating condition during each tow. The tow boats utilized by the Contractor for this purpose shall be of a size adequate for towing and shall have necessary reserve power for maneuvering with scows and under emergency conditions as well as for control of scows at the disposal and offloading sites.

3.1.6 Scows

a. Water and dredged materials shall not be permitted to overflow or spill out of scows when dredging. Failure to repair leaks or change the method of operation which is resulting in overflow or spillage will result in suspension of dredging operations and require prompt repair or change of operation to prevent overflow or spillage as a prerequisite to the resumption of dredging.

b. The Contractor shall provide and maintain markings on all scows clearly indicating the draft of the scow and shall provide scow cards for each scow used on the contract work. The scow cards shall show dimensions and volumes of individual pockets of scows and total volumes for varying depths below coaming or top of pockets. The Contractor shall also provide draft verses displacement curves for all scows. This is to enable the Owner's Representative to make a determination of scow volume and corresponding drafts under partial and full load conditions. These measurements are to be made at the time of initial use of each scow. This information will then be furnished to Owner's Representative to estimate scow volume from draft of scows for each scow being towed to the disposal, offloading or reuse area. The scow volume estimates are for use in connection with disposal and reuse area monitoring studies and are not intended to be used in determining quantities dredged. At the beginning of the work and as additional scows arrive on the project, sufficient time shall be allowed by the Contractor and assistance of Contractor personnel shall be made available by the Contractor for the purpose of obtaining the measurements of each scow under partial and full load conditions. During the entire period of contract work, the Contractor shall provide and maintain sufficient spot or floodlights to permit the reading of the draft on the sides of scows at bow and stern from the tow boat at night when visibility is impaired. The draft readings and each pocket/compartments measurement will be required for each scow towed to the disposal area and will be made by the Owner's Representative. Measurements are to be taken and recorded prior to departure from the dredge site and upon arrival at the disposal location. The Contractor shall insure that adequate time is allowed by the tow boat captain for these readings to be obtained.

3.2 CONDUCT OF DREDGING WORK

3.2.1 Order of Work

The Contractor shall start and complete the work as approved by the Owner's Representative. Order of Work relative to dredging associated with Alternate Bid Items shall be determined by the Contractor in accordance with approved submittals. The Contractor is required to submit for approval Contractor Quantity Surveys in accordance with Section 01050. Dredging operations may not resume in an area prior to acceptance of the Contractor Quantity Survey by the Owner's Representative. The Contractor is required to provide minimum 24 hour

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advance notice of conduct of the required Contractor Quantity Survey, such that the Owner's Representative can conduct simultaneous independent survey operations in order to verify Contractor's submittal. Allow 24 hours after submittal of the Contractor Quantity Survey for Owner's Representative's review. See Section 01010 SUMMARY OF WORK for additional requirements relative to project coordination and sequence of work.

The Contractor shall note that, due to the adjacent New Bedford Marine Commerce Terminal project, the use of CAD Cell #2 will be shared with the Contractor selected for that project. The New Bedford Marine Commerce Terminal involves the construction of CAD Cell #3, immediately to the north of CAD Cell #2, and also involves placement of material within CAD Cell #2. The Contractor shall cooperate and work closely with the owner, engineer, and contractor selected for the New Bedford Marine Commerce Terminal. The Contractor shall not place material within CAD Cell #2 in such a way as to impede access to CAD Cell #3, to impede navigation through and over CAD Cell #2, or to impede the ease of placement of material into CAD Cell #2. This provision may require the Contractor to add additional "doorways" to silt curtains surrounding CAD Cell #2 (if necessary).

3.2.2 Lights

Each night, between sunset and sunrise and during periods of restricted visibility, provide lights for floating plants, ranges, and markers. Also, provide lights for buoys that could endanger or obstruct navigation. When night work is in progress, maintain lights from sunset to sunrise for the observation of dredging operations. Lighting shall conform to United States Coast Guard requirements for visibility and color.

3.2.3 Interference with Navigation

Minimize interference with the use of channels and passages. Coordinate dredging activities as specified in Section 01010 SUMMARY OF WORK paragraph "COORDINATION".

3.2.4 Ranges, Gages, and Lines

Furnish, set, and maintain ranges, buoys, and markers needed to define the work and to facilitate inspection. Establish and maintain gages in locations observable from each part of the work so that the depth may be determined. Suspend dredging when the gages or ranges cannot be seen or followed.

3.2.5 Underwater Diving Operations

In the event that underwater diving operations become necessary due to the work of this contract, the Contractor shall submit a diving plan to the Owner's Representative for review. Such plan shall be prepared utilizing the guidance contained within the most recent version of US Army Corps of Engineers Safety and Health Requirements Manual (EM385-1-1) and OSHA Standards 29 CFR 1910. All diving operations shall be conducted by personnel qualified by training and experience, in accordance with all applicable safety regulations.

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3.3 OPERATIONAL CRITERIA RELATIVE TO DREDGING

- A. Dredge maintenance and improvement material using a mechanical dredge. Place dredged material into scows. The Contractor shall allow no overflow of the scow while it is being filled.
- B. Loading of the scows shall utilize a method to facilitate separation of debris from dredged sediment that is approved in writing by the Owners Representative. No additional loading of the scow shall occur until the debris has been removed from the scow to the satisfaction of the Owner's Representative.
- C. Dredging and disposal operations shall be accomplished in such a manner as to minimize water quality impacts. It is the Contractors responsibility to achieve water quality criteria as indicated in Section 1135 WATER QUALITY MONITORING AND CONTROL. The Contractor shall use an environmental bucket when dredging maintenance material and/or fine-grained, silty material. The Contractor shall also provide and maintain an enclosed bucket on the dredge for use in the event that water quality criteria is exceeded while using an alternate bucket for non-maintenance and/or non-fine-grained, silty material.
- D. Dredging shall be completed in such a manner as to minimize amount of free water dredged and placed into the scow. Size buckets appropriately in consideration of depth of dredge cuts, in order to minimize volume of free water dredged using an enclosed bucket. Dredging shall meet the criteria listed within the Performance Standards attached to Section 00800.

3.4 SCOW DEWATERING

- A. After filling, each scow that is to be utilized to dispose material within CAD Cell #2 or the Lower Harbor CAD Cell Phase I shall be temporarily moored in an area previously proposed by the Contractor and approved in writing by the Owner's Representative to allow for settling of the dredge material within the scow and removal of standing water prior to discharge. Each dump scow or hopper scow that is to be utilized to dispose material within CAD Cell #2 or the Lower Harbor CAD Cell Phase I shall remain moored for a minimum period of 12 hours. Upon completion of loading of the scow, the free water shall be pumped from the scow. The initial dewatering shall occur after a suitable interval (to be determined by the Contractor based on proposed dewatering method and equipment) to allow for initial separation of sediment and water in the scow as necessary to allow for pumping. The 12 hour settlement period shall begin after completion of initial dewatering of the filled scow. Confirmation of completion of initial dewatering of the filled scow shall be determined by visual inspection of the scow by the Owner's Representative. During the 12 hour settling period, on a periodic basis, free water shall be pumped out of the scow. After the 12 hour settling period is complete, the Contractor shall inspect the scow for free water. Material to be dredged in accordance with Contract Drawings "P-2 BOTTOM OF LOWER HARBOR CAD CELL PHASE I"

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and "P-4 BOTTOM OF LOWER HARBOR CAD CELL PHASE II" is not subject to this requirement.

- B. If the Owner's Representative determines that the dredged material to be disposed of within CAD Cell #2 or the Lower Harbor CAD Cell Phase I contains more than 50% fine organics, the Owner's Representative may determine that the scow must settle for an additional 12 hours. A determination by the Owner's Representative that the dredged material within the scow must settle for the full 24 hours will not be subject to Contractor dispute and shall not be cause for a claim of change in conditions of any kind.
- C. Regardless whether the scow is allowed to settle for 12 hours or 24 hours, the Contractor is responsible for meeting water quality criteria during disposal operations as indicated in Section 1135 - Water Quality Monitoring and Control.
- D. When the Contractor wishes to dispose of the material within the scow within any of the disposal areas the Contractor shall notify the Owner's Representative, who will confirm the Contractor's observations prior to disposal. All scows shall be inspected and approved by the Owner's Representative prior to disposal within CAD Cell #2 or the Lower Harbor CAD Cell Phase I.
- E. Standing water or free liquid removed from scows shall be pumped through activated carbon filtration prior to discharge. Material to be dredged in accordance with Contract Drawings "P-2 BOTTOM OF LOWER HARBOR CAD CELL PHASE I" and "P-4 BOTTOM OF LOWER HARBOR CAD CELL PHASE II" is not subject to this requirement. Discharge shall meet the criteria listed within the Performance Standards attached to Section 00800. Discharge shall meet the turbidity criteria and additional requirements indicated in Section 01135 WATER QUALITY MONITORING AND CONTROL. The activated carbon filter shall be selected, sized and maintained by the Contractor to meet water quality criteria. The activated carbon filter system shall be equipped with a sample port to allow the Owner's Representative to sample filtered liquid and test for suspended solids prior to discharge. Liquid which does not meet the requirements of Section 01135 shall not be discharged. It will be the responsibility of the Contractor to refilter the material or provide alternate treatment such that water quality criteria are met.
- F. Filtered standing water which meets water quality criteria within the Performance Standards may be discharged into New Bedford Harbor within the site limits, which includes the temporary mooring location.

3.5 DISPOSAL

- A. No dredge material disposal shall be done unless the Owner's Representative is notified and (if they so desire) present. All disposal operations shall be subject to the water quality criteria indicated in Section 1135 WATER QUALITY MONITORING AND CONTROL.

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- B. Each filled scow shall be inspected by the Owner's Representative to confirm removal of floating debris, oversize debris, and free water. The Contractor shall not remove loaded or partially loaded scows from the dredge area or temporary mooring area until the load has been measured and inspected by the Owner's Representative. Owner's Representative approval is required prior to disposal within CAD Cell #2 or the Lower Harbor CAD Cell Phase I.
- C. Deposit dredged material into CAD Cell #2 or the Lower Harbor CAD Cell Phase I utilizing a self-dumping scow or other approved methods. If an alternative method to a self-dumping scow is proposed (i.e. use of clamshell or rehandle bucket to lower material into CAD cell), a dumping plan must be submitted describing the method and the method must be approved in writing by the Owner's Representative prior to being implemented. At a minimum, material must be deposited in accordance with CAD Cell filling criteria, and in such a manner as to minimize the resuspension of dredge material.
- D. Provide for safe transportation and disposal of dredged materials.
- E. The disposal limits of CAD Cell #2 and the Lower Harbor CAD Cell Phase I are indicated on the Contract Drawings and are provided as a general location aid to the Contractor. Material shall be discharged into the CAD Cell(s) in accordance with the following general CAD Cell filling criteria:
1. Material shall be placed uniformly across the full footprint of the CAD Cell.
 2. Uniform placement within the CAD Cell shall be achieved utilizing discharge lanes, allowing for sequential disposal within a given lane with scow positioned adjacent to previous scow discharge location.
 3. Scows may not be positioned above previously discharged material until discharge has occurred over the full footprint of the CAD Cell.
 4. Maximum elevation of material placed within CAD Cell #2 and the Lower Harbor CAD Cell Phase I shall not exceed Elevation -15 ft MLLW at any location.
- F. The Contractor shall determine the disposal position of each scow in accordance with the approved CAD Cell disposal plan, and provide the coordinates of the location to the Owner's Representative a minimum of 24 hours prior to transport of the scow to the disposal area. Disposal shall be done at the specified coordinates with the scow at a complete halt. Scow positioning shall take into account tide and current conditions, scow volume, CAD Cell #2 or the Lower Harbor CAD Cell Phase I filling requirements, and water quality criteria. It is the responsibility of the Contractor to ensure that discharged material is fully contained within CAD Cell #2 or the Lower Harbor CAD Cell Phase I. Disposal events should be scheduled at slack tides, or at the lowest daily periods of low current, so that currents are minimized.

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- G. The Owner's Representative may be performing periodic bathymetric surveys as CAD Cell #2 or the Lower Harbor CAD Cell Phase I are being filled. The surveys will be used for disposal studies, and to determine remaining available disposal capacity within the cell. The surveys will also be used to confirm location within the cell of discharged dredge material. Survey data will be provided to the Contractor; the Contractor may elect to perform additional or independent surveys for his/her own use.
- H. The Disposal Cleanup Area for CAD Cell #2 and the Lower Harbor CAD Cell Phase I are indicated on the Contract Drawings. Any dredged material that is deposited outside the CAD Cell Disposal Cleanup Area of CAD Cell #2 or the Lower Harbor CAD Cell Phase I as designated on the drawings, or more than 1 foot of material deposited inside of the CAD Cell Disposal Cleanup Area of CAD Cell #2 or the Lower Harbor CAD Cell Phase I as designated on the drawings, will not be paid for and the Contractor will be required to remove such misplaced material and deposit it within the limits of CAD Cell #2 or the Lower Harbor CAD Cell Phase I at the Contractor's expense. The determination of whether material has been placed outside of any CAD Cell Disposal Cleanup Area or if more than 1 foot of material has been placed within any CAD Cell Disposal Cleanup Area will be determined by a comparison of the pre- and post- dredge surveys for the Work.
- I. The Contractor will be required to remove or reposition dredged material that is placed in CAD Cell #2 or the Lower Harbor CAD Cell Phase I which exceeds the maximum elevation within any of the CAD Cells at any location.

3.6 LOWER HARBOR CAD CELL PHASE I TO LOWER HARBOR CAD CELL PHASE II CHANNEL

The Contractor may dredge a channel 100 feet wide between the Lower Harbor CAD Cell Phase I and the Lower Harbor CAD Cell Phase II to -15 MLLW without incurring overdredge penalties under the following conditions:

- A. The bidder will not be compensated for dredging the channel between the Lower Harbor CAD Cell Phase I and the Lower Harbor CAD Cell Phase II;
- B. The Contractor shall first construct the Lower Harbor CAD Cell Phase I.
- C. Material to be dredged as shown on Contract Drawing "P-3 TOP OF LOWER HARBOR CAD CELL PHASE II" shall then be dredged and disposed into the Lower Harbor CAD Cell Phase I as shown on "P-6 LOWER HARBOR CAD CELL PHASE I DISPOSAL Plan" prior to the channel between the Lower Harbor CAD Cell Phase I and the Lower Harbor CAD Cell Phase II being dredged.
- D. Material dredged while creating the channel shall be placed by the Contractor at no cost to the Owner at CCDS or RISDS in accordance with Section 02492.

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- E. The maximum depth that the Contractor may dredge the entry channel to is -15 MLLW, for no wider than 100 feet. The contractor shall center its channel within the center of the Lower Harbor CAD Cell Phase I.
- F. Prior to the completion of the Work, the Contractor shall replace material dredged during construction of the channel to an elevation of -10 MLLW. Organic silt material will not be allowed to be used for refilling the over-dredged entry channel. The Owner shall use the post-dredge survey as a guide to determine whether the Contractor has properly replaced the material that was dredged to deepen the entry channel to an elevation of -10 feet MLLW. The Contractor shall not be required to replace material that was previously shallower than -10 MLLW. The Contractor shall ensure that slopes on the northern and southern end retain a minimum slope no shallower than 5H:1V. If the Contractor is unable to keep the dredged material at a slope no shallower than 5H:1V, the Contractor shall utilize alternate methodology, which could include geotubes or geosynthetic bags filled with sediment (or other means suggested by the contractor and approved by the Owners Representative) to stabilize the ends of the channel area. Replacing material that was dredged to deepen the entry channel will be paid at the unit rate for Base Bid Item No. 0005.
- G. If the Contractor does not utilize an alternate methodology to stabilize the ends of the channel at a slope no shallower than 5H:1V (such as geotubes, geosynthetic bags filled with sediment, or other means suggested by the contractor and approved by the Owner's Representative), the Contractor shall be required to warrantee the stability of the replacement of the material dredged to deepen the entry channel for a period of one year.

3.7 FINAL CLEANUP

Final cleanup shall include the removal of all the Contractor's plant and equipment either for disposal or reuse. Plant, equipment, and materials to be disposed of shall only be disposed in a manner and at locations approved by the Owner's Representative. The Contractor will not be permitted to abandon any equipment in the disposal area or other areas adjacent to the work site. The EPA RPM reserves the right to inspect equipment, including but not limited to scows, barges, tugs and dredge, prior to the removal of equipment in the disposal area or other areas adjacent to the work site.

-- End Of Section --

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SECTION 02492

DISPOSAL AT OFFSHORE DISPOSAL SITES

PART 1 GENERAL

1.1 DEFINITIONS

- A. Disposal Site is defined as either the Cape Cod Bay Disposal Site (CCDS) or the Rhode Island Sound Disposal Site (RISDS).
- B. CCDS is defined as the Cape Cod Bay Disposal Site, located in eastern Cape Cod Bay approximately 17.3 km south of Provincetown and 8.6 km northwest of Billingsgate Shoal near the entrance to Wellfleet Harbor.
- C. RISDS is defined as the Rhode Island Sound Disposal Site, located approximately 16.8 km south-southeast of Point Judith, Rhode Island and 21 km south of the entrance to Narragansett Bay.
- D. NAE is defined as the New England District of the Army Corps of Engineers.

1.2 RELATED WORK SPECIFIED ELSEWHERE

- A. Additional requirements relative to dredging are specified in Section 02482 DREDGING.
- B. Additional requirements relative to providing and maintaining environmental protection measures during the life of the contract are specified in Section 01355 ENVIRONMENTAL PROTECTION.
- C. Additional requirements relative to water quality monitoring and testing, and submittal of Bucket Performance Data are specified in Section 01135 WATER QUALITY MONITORING AND CONTROL.

1.3 SUBMITTALS

The following shall be submitted in accordance with Section 01300 SUBMITTALS:

- A. Submit scow cards for each scow to be used for contract work. Scow cards shall have information specified in paragraph "Scows."
- B. Submit details of equipment and procedures for transport and disposal of sediment. Provide details of the ship's navigation system which will be used to navigate to the disposal site.
- C. Submit proposed schedule for transport of dredged material to the disposal site.
- D. Submit name, identification number, and date of last certification of each plant and piece of equipment (including, but not limited to, dredge, hopper, or scow) certified to be utilized within the NAE Dredge Quality Management (DQM) system for transport and disposal of material at CCDS and/or RISDS.

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- E. Submit name of National Marine Fisheries Service (NMFS) approved marine mammal/turtle observer subcontracted for by the Contractor to be present on the towing vessel for all disposal activities, when and where required, depending on the requirements of the permit (RISDS or CCBDS) applicable for the disposal site and time of year associated with anticipated disposal events (see offshore disposal permits attached to Section 00800).

1.4 DISPOSAL MONITORING

1.4.1 Disposal Inspector

The Contractor shall furnish, in accordance with the Department of the Army permit authorizing disposal at the designated offshore disposal site, the required NMFS marine mammal/turtle observer as well as the required NAE-certified disposal inspector to be present on the towing vessel for all disposal activities. If Contractor vessels are in compliance with the NAE Silent Inspector Program, a disposal inspector will not be required to be on board the towing vessel during disposal.

1.4.2 Coordination

- A. The Contractor shall coordinate disposal operations with the Owner's Representative. The Contractor shall ensure that the marine mammal/turtle observer documentation and the disposal inspector documentation are completed and the originals provided to the Owner's Representative within 48 hours of completion of each trip. The Owner's Representative will submit the completed forms to the NAE and other applicable agencies.
- B. At least 10 working days in advance of the start date, the Contractor shall notify Coast Guard Sector Southeastern New England, Waterways Management Division, telephone number 401-435-2351, of the location and estimated duration of the dredging and disposal operations.
- C. For the initiation of disposal activity and any time disposal operations resume after having ceased for one month or more, the Contractor shall notify the NAE at least 10 working days before the date disposal operations are expected to begin or resume. Contact the Policy Analysis and Support Branch of the NAE, telephone number 978-318-8338. Information to be provided is: permit number, permittee name, name, address and telephone number of dredging and towing contractors, estimated dates dredging is expected to begin and end, name of disposal inspector, name of disposal site and estimated volume of material to be dredged. Disposal operations shall not begin or resume until the policy Analysis and Technical Support Branch issues a letter authorizing the initiation or continuation of open-water disposal. The Coast Guard, Sector Southeastern New England, Waterways Management Division shall also be notified ten working days before the date disposal operations are expected to begin or resume at (401) 435-2351.

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PART 2 PRODUCTS (NOT USED)

PART 3 EXECUTION

3.1 SCOWS AND ASSOCIATED DISPOSAL EQUIPMENT

3.1.1 Tow Boats

All tow boats used for towing to disposal areas shall be equipped with DGPS and track recording navigational equipment or approved equivalent electronic navigation equipment, radar, corrected compass, marine radio, and depth sounding equipment which is to be maintained in operating condition during each tow. The tow boats utilized by the Contractor for this purpose shall be of a size adequate for towing and shall have necessary reserve power for maneuvering with scows and under emergency conditions as well as for control of scows at the disposal and offloading sites.

3.1.2 Scows

- A. Water and dredged materials shall not be permitted to overflow or spill out of scows when transporting dredged material. Failure to repair leaks or change the method of operation which is resulting in overflow or spillage will result in suspension of disposal operations and require prompt repair or change of operation to prevent overflow or spillage as a prerequisite to the resumption of disposal.
- B. The Contractor shall provide and maintain markings on all scows clearly indicating the draft of the scow and shall provide scow cards for each scow used on the contract work. The scow cards shall show dimensions and volumes of individual pockets of scows and total volumes for varying depths below coaming or top of pockets. The Contractor shall also provide draft verses displacement curves for all scows. This is to enable the Owner's Representative to make a determination of scow volume and corresponding drafts under partial and full load conditions. These measurements are to be made at the time of initial use of each scow. This information will then be furnished to Owner's Representative to estimate scow volume from draft of scows for each scow being towed to the disposal area. The scow volume estimates are not intended to be used in determining quantities dredged.
- C. Due to the fine nature of some of the dredged material, the Contractor shall achieve proper closure and water tightness of pocket doors to eliminate seepage or leakage of material. The use of plastic material to cover cracks in scow pockets will not be allowed.

3.2 CONDUCT OF WORK

3.2.1 General

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Material dredged as part of the work of this contract will be transported by scow and disposed of at an Offshore Disposal Site in accordance with the requirements of this section and Section 02482 DREDGING. Disposal of dredged material at CCDS shall conform to the requirements of the Department of the Army suitability determination and permit for CCDS, as well as applicable portions of the Commonwealth of Massachusetts 401 Water Quality Certification, and Chapter 91 License, all of which are contained as attachments in Specification Section 00800 - Supplementary Conditions. Disposal of dredged material at RISDS shall conform to the requirements of the Department of the Army suitability determination and permit for RISDS, as well as applicable portions of the Commonwealth of Massachusetts 401 Water Quality Certification and Chapter 91 License, all of which are contained as attachments in Specification Section 00800 - Supplementary Conditions. The Contractor shall note that offshore disposal from January 1 to May 15th is restricted at the Cape Cod Bay Disposal Site (see permits for details).

3.2.2 Method of Communication

Provide a system of communication between the tow vessel, the Contractor's personnel, and the Owner's representative. Portable two-way marine radios are acceptable.

3.2.3 Scow Inspection Prior to Disposal

Each filled scow shall be inspected by the Owner's Representative at the dredge site prior to transport to the designated disposal site for disposal to observe for the presence of debris in the scow. The Contractor shall remove debris prior to transport to the disposal site. The Owner's Representative shall periodically inspect the dredge scow during dredging operations to determine if debris is inappropriately being loaded into scows, in accordance with the requirements of Section 02482 - DREDGING. Contractor shall not transport scows to the disposal area until the load has been inspected and measured by the Owner's Representative. Owner's Representative approval is required prior to transport to and disposal within the offshore disposal site.

3.2.4 Transport and Disposal

Provide for safe transportation and disposal of dredged materials. Transport and dispose of suitable dredged material at the offshore disposal site at the specified buoy or set of coordinates within the offshore disposal site, provided in the Department of the Army. Dispose of dredged material using self dumping scows. All disposal shall occur at the buoy or specified coordinates with the scow at a complete halt, except when doing so will create unsafe conditions because of weather or sea state, in which case disposal within 100 feet of the buoy or specified coordinates with the scow moving only fast enough to maintain safe control (generally less than one knot) is permitted. Disposal is not permitted if these requirements cannot be met due to weather or sea conditions.

3.2.5 Marine Mammal or Turtle Sighting

No disposal shall occur within 1,500 feet of a sighted marine mammal or turtle. In the event that marine mammals are sighted within 1,500 feet of

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the designated disposal location, the Contractor shall follow the criteria contained in the Department of the Army Permit.

-- End Of Section --