



## INVITATION TO COOPERATIVE BID GENERAL INSTRUCTIONS

### Fiscal Year 2022-2023

Dear Vendor:

Thank you for your participation in the annual chemical procurement bid process for the Fiscal Year 2022-2023. The contracts to be awarded under this bid process shall be for a period of **ONE YEAR** beginning on July 1, 2022 and continuing through June 30, 2022. This package was sent to you at your request or because you participated in the process for Fiscal Year 2021-22 or have requested a bid package.

**NOTE: Any low bid awardee that institutes a force majeure clause during the fiscal year, may be subject to rebidding of that bid item, by the Consortium, after review and vote by the affected Consortium Members.**

Please examine all the bid information carefully. There are a few changes from last year's package. Please check all the documentation carefully and submit bids as requested. Improper or incomplete bid or vendor information may result in a bid not being acceptable. Every effort has been made to avoid errors in the following documents. Should you need clarification on any portion of this package please contact: Savas Danos, Bidding Agent/Liaison: [savas.danos@pantonmcleod.com](mailto:savas.danos@pantonmcleod.com), (978) 501-6967.

Thank you again.

Hosts for the Consortium

HOST COMMUNITY: Andover MA. Water Treatment Plant, 397 Lowell St., Andover, MA 01810-4416

Karen Martin, WTP Superintendent: [kmartin@andoverma.gov](mailto:kmartin@andoverma.gov)

Phone: (978) 623-8873

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Agent/Liaison: Savas Danos, (978) 501-6967: [savas.danos@pantonmcleod.com](mailto:savas.danos@pantonmcleod.com)

## ALL BIDDERS/PROPOSERS – GENERAL INSTRUCTION

- This Bid Document and web site are Divided into Specific Sections:
  - Section I: Invitation To Bid & General Instructions (this section) – 21 pages;
  - Section II: Special Instructions and Delivery Requirements – 28 pages;
  - Section III: Chemical Quantities and Specifications – 11 pages;
  - Section IV: Official Bid Form & Signature Pages (**ONLY ITEMS TO BE RETURNED**) – 10 pages;
  - Section V: Membership Directory – 7 pages.
- Read thoroughly "Instructions to Bidders" and the legal advertisement relative to bid proposal and other details on submitting offers.
- If bidder/proposer is a co-partnership, all general partners must execute both copies of the signature pages.
- If bidder/proposer is a corporation, the authorized officer shall execute both copies of the signature pages. Such signature shall be attested to by the clerk/secretary of the corporation and the corporate seal shall be affixed to the bid.
- **NOTE: PLEASE DO NOT RETURN ANYTHING BUT ONE (1) COPY OF THE OFFICIAL BID FORM AND SIGNATURE PAGES. Also submit your bid via email, by the 3<sup>rd</sup> of June 2022 to [savas.danos@pantonmcleod.com](mailto:savas.danos@pantonmcleod.com).**

## INSTRUCTION TO BIDDERS

### 1. General

Upon submitting a proposal, each bidder shall be assumed to have made a careful examination of conditions and specifications and to have fully, informed himself as to the special conditions, contract, and other documents.

The Purchasing Agent may reject any and/or all bids. Any bid may be withdrawn prior to the scheduled time for the opening of bids. Any bid received after the time specified in the Notice to Bidders will not be considered.

No bid shall be considered which is not based upon these specifications and other contract documents attached or made part thereto. Further, no bid will be considered which contains any letters or memorandum qualifying the same, or which is not properly executed, or which is not accompanied with proposal security in the form and amount as set forth herein provided. In case of discrepancy between the numerical number and written number, the written number will be controlling and will be the actual bid of the bidder.

No oral, telegraph, telephone, fax, or electronic bids or modifications will be considered.

The prices must be quoted in the units of measure **EXACTLY** as stated on the **OFFICIAL BID FORM** and shall be completed legibly in ink or typewritten. **The unit of measure SHALL NOT be changed by the bidder;** if so, the bidder's price for that item will be rejected.

The Bid Prices shall include **all** delivery costs, overhead and profit, incurred by the vendor in supplying the product to the various delivery locations of the Communities/Utilities named. **No surcharges including fuel to unit prices will be allowed during the contract period. Care should be taken to review Special Bid Instructions for changes to requirements by member communities. Note: Any low bid awardee that institutes a force majeure clause during the fiscal year, may be subject to rebidding of that bid item, by the Consortium, after review and vote by the affected Consortium Members.**

Purchases made by the Communities/Utilities are exempt from payment of Federal Excise Taxes, Federal Transportation Tax and Commonwealth of Massachusetts Sales Tax, and any such taxes must be excluded from the prices set forth on the Bid Form. Tax exemption certificates, if required will be furnished by each Community/Utility upon execution of their respective Contract with the successful bidder.

A bidder may elect to submit prices for any single product or group of products specified on the OFFICIAL BID FORM. A bidder need not offer prices for all items requested by the Consortium. **Blanks as appearing for any item in the Unit Bid Price column shall be interpreted as a "no bid" response from any bidder. You are not required to respond "no bid" to items not being bid.**

Bidders may not exclude any Community/Utility delivery location from the list of purchasers as presented in the Specifications supplied by the Consortium for any product. Failure of the Contractor to honor any of the requirements for supply of products as set forth herein shall be

sufficient grounds for any Member to notify the Contractor that the contract may be terminated for cause. No contract will be terminated for cause unless proper written notice is given the Contractor by the Contracting officer of the Community/Utility before the date given for termination of the Contract. Bidders shall not submit separate bid priced for chemical quantities by community. Prices shall be uniform for all communities under the specific line item regardless of the quantities requested.

All bid prices shall be of the proper unit quantity and measurement to expedite bid awarding (i.e., \$ per wet lb., \$ per gallon, \$ per dry ton, etc.). **All bid prices shall be submitted valued up to 4 (four) places to the right of the decimal (IF NEEDED) in U.S. Currency.** All chemicals must meet latest AWWA & NSF 60 standards of latest edition – unless otherwise noted for wastewater use.

**Bidders must have appropriate licenses, agreements, contracts and/or other authorizations required to manufacture, sell transport and/or otherwise supply the chemicals in question.**

**Additional Note: Non-material bid items have been added to the specifications and bid form. Please take note and bid if these services are available from your company, or please let those companies involved in tank cleaning, repair and/or emergency storage know of this opportunity.**

## 2. Submission of Proposals

**ALL PROSPECTIVE BIDDERS SHALL SUBMIT SEALED PROPOSALS ON THE OFFICIAL BID FORMS ONLY!** The sealed envelope submitted by the prospective bidder shall carry the following information on the face of it: Bidder's name, address, subject matter of proposal, advertised date of bid opening, and the hour designated for bid opening as shown on the legal advertisement.

Where proposals are sent by mail to the Purchasing Agent, the bidders shall be responsible for their delivery to the Purchasing Agent before the advertised date and hour for the opening of bids. If the mail is delayed beyond the date and hour set for the bid opening, proposals thus delayed will not be considered.

**In addition, due to the unprecedented social distancing guidelines, there will be no public bid opening to the general public. In addition to mailed and sealed bids, bidders can email one copy of their bid document to: [savas.danos@pantonmcleod.com](mailto:savas.danos@pantonmcleod.com) to assure that the mailed bid was received. The mailed bid must be postmarked on or before the bid opening date of June 3<sup>rd</sup>, 2022.**

## 3. Receipt and Opening of Bids

Bids will be received and opened by the Purchasing Agent as outlined in the Invitation to Bids or by his authorized representative provided nevertheless in the sole discretion of the awarding authority the opening of bids may be delayed when due to conditions beyond the control of the awarding authority, the same may be necessary. The awarding authority shall notify all bidders of such delay and the time and place of the opening of the bid

#### 4. Signatures

Bids shall be signed with the full name of the bidder or an authorized agent of the bidder (if the bidder is a corporation, the bid shall be signed by a properly authorized officer of the corporation. The Clerk of the Corporation shall attest to the authority of the signature).

The bid shall indicate whether the bidder is an individual, a partnership, or a corporation. In case of a partnership, the full name of each individual partner shall be given. In case of a corporation, the corporation's name with the name of the State under which it is incorporated, and the names of its officers shall be given.

#### 5. Acceptance of Bid and Its Effect

5.1 Within fifteen (15) days after the opening of the bids, the Communities/Utilities will act upon them. The acceptance of a bid will be given to the successful bidder by notice in writing signed by a duly authorized representative of the Purchasing Agent. No other act of the Communities/Utilities or any official shall constitute the acceptance of a Bid. The acceptance of a bid shall bind the successful bidder to execute the contract and to be responsible for liquidated damages as herein before provided. The rights and obligations provided for in the contract shall become effective and binding upon the parties only with its formal execution of agreement of contract. The acceptance of a bid, as provided herein, shall constitute the award of the contract.

5.2 In the event of **Tie Bids**, the representatives of the vendors submitting the tie bids shall be notified of the tie and invited to attend a tie breaker session prior to acceptance of the bids. If a vendor cannot have a representative present, a representative will be selected from those present to draw for that vendor. The representative for each vendor shall have the opportunity to draw straws for the privilege of being awarded the contract to supply that chemical for the term of this contract. The vendor represented by the Long Straw drawn shall be considered the accepted bidder.

#### 6. Competency of Bidder

No proposal will be accepted from, or contract awarded to any person, firm or corporation that is in arrears or is in default to the Communities/Utilities upon any debt or contract, or that is a defaulter, as surety or otherwise, upon any obligation to said Communities/Utilities, or had failed to perform faithfully any previous contract with the Communities/Utilities.

#### 7. Obligation of Bidders

At the time of the opening of the bids, each bidder will be presumed to have read and to be thoroughly familiar with the specifications and all contract documents. The failure or omission of any bidder to receive or examine any form, instrument or document shall in nowise relieve any bidder from any obligation in respect to his proposal.

8. Time for Executing the Contract

The bidder whose bid shall be accepted will be required to execute a Contract with the respective communities and or utilities. Failure or neglect to execute a Contract within the said period of fifteen (15) days shall constitute a breach of the agreement affected by the acceptance of the bid. The individual communities and/or utilities shall then go to the next lowest bidder to execute a contract.

9. Time of Payment

The Communities/Utilities shall make payment within forty-five (45) days after delivery of any purchase made under the terms of this Contract, acceptance, and proper invoice of same is submitted and approved by the proper authority in each community.

10. Interpretation of Contract Documents

If any person contemplating submitting a proposal is in doubt as to the true meaning of any part of the specifications, he may submit to the Purchasing Agent a written request for an interpretation thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only by an addendum duly issued. A copy of such addendum will be mailed or delivered to each person receiving a set of such contract documents and to such other prospective bidder to receive a written interpretation prior to the time of the opening of bids will not be grounds for withdrawal of proposal. If, after award of contract, questions arise concerning interpretation of contract documents, it is understood that the decision of the Purchasing Agent will be final and binding.

11. Catalogs

Each bidder shall submit **only upon request** where necessary catalogs, descriptive literature, and detailed drawings, fully detailing features, designs, construction, appointments, finishes, and the like not covered in the specifications necessary to fully describe the materials or work he proposes to furnish

12. Non-Discrimination

The Contractor, in performing under this contract, shall not discriminate against any worker, employee, or applicant for employment because of race, creed, color, sex or national origin. The Contractor further agrees that each subcontract made under this contract will contain a similar provision with respect to nondiscrimination.

13. Patents

It is agreed that the Contractor shall indemnify, save and keep, jointly and severally or jointly or severally, the Communities/Utilities harmless against all liabilities, judgments, loss, costs, damages, and expenses which may in any wise come against the Communities/Utilities or its licensees, permittees, and assignees, respectively, by reason of the use or of any claim of the use of any

patented material, design, machinery, device, equipment or process furnished by the Contractor and accepted by the Communities/Utilities.

14. Inspection and Responsibility

The Communities/Utilities shall have a right to inspect, by its authorized representatives, any material as herein specified. The Communities/Utilities do not assume any responsibility for the availability of any controlled materials or other materials and equipment required under this contract.

15. Rejection of Material or Services

Equipment, supplies or services that may fail to comply with the specifications herein as regards design, material or workmanship, are subject to rejection and may, at the option of the individual communities/utilities, be rejected.

**ALL CHEMICALS PROVIDED THROUGH THIS BID AND CONTRACT SHALL COMPLY WITH THE LATEST REVISIONS OF THE AMERICAN WATER WORKS ASSOCIATION SPECIFICATIONS.**

Certain items listed herein are to be used in the treatment of **potable water** and shall contain **no soluble materials or organic substances in quantities capable of producing deleterious or injurious effect upon the health of those consuming the water which has been properly treated with these chemicals.**

Any vendor who has a quality control problem with a product awarded under this Bid shall promptly notify EACH Community/Utility who indicated their intended use of the product in question of the problem in sufficient detail for proper action.

**Product Warranty:** Any product supplied which is found to have a quality control problem, shall be warranted by the supplier and/or manufacturer for the damages or other problems resulting from use of the product.

If in the opinion of any Community/Utility, items delivered are found to be imperfect or of a grade inferior to that set forth in the specification or are found to be deficient against any other standard set forth in the contract, they will be rejected and must be replaced without expense to the Community/Utility. Final decision concerning the quality of items as delivered is to rest with the individual Community/Utility.

16. Replacement

Materials or components that have been rejected by the individual Communities/Utilities, in accordance with the terms of this contract, shall be replaced by the Contractor at no cost to the Communities/Utilities.

17. Removal

Any material or components rejected shall be removed within a reasonable time from the premises of the utility at the entire expense of the Contractor, after written notice has been mailed by the community/utility to the Contractor that such materials or components have been rejected. All vendors are required to remove all expended cylinders, equipment and materials that are no longer in use once the contract period has expired.

All Used Totes or other containers, upon request of the Consortium Member, will be removed once a reorder is shipped to the Consortium Member.

18. Delay

Should the Contractor be delayed by the Communities/Utilities for any cause, there shall be added to the Time of Completion a time equal to the period of such delay caused by the Communities/Utilities; but the Contractor shall not be entitled to claim damages or extra compensation for such delay or suspension.

19. Time of Commencement and Performance

The time of commencement, rate of progress, and the time of completion are essential conditions of this contract; however, if the time of performance of the contract is for any reason, either expressly or by implication, extended, such extension shall not affect the validity of this contract or the liability of the sureties upon the bond given for the faithful performance of the same.

20. Subletting of Contract

No contract shall be assigned or any part of the same subcontracted without the written consent of the Community/Utility; and in no case shall such consent relieve the Contractor from his obligations or change the terms of the contract.

21. Increase of Prices

The contract term shall be from **July 1, 2022 through June 30, 2023**. Prices shall be held firm for such period, including the time beforehand that bids are being considered for award and through contract execution. **Any low bid awardee that institutes a force majeure clause during the fiscal year, may be subject to rebidding of that bid item, by the Consortium, after review and vote by the affected Consortium Members.**

22. Verification of Weight

The quantity of material delivered by truck shall be ascertained from a certified weight ticket. In the case of delivery by rail, weight will be ascertained from bill of lading from originating line, but the Community/Utility reserves the right to reweigh at the nearest available scale.

23. Demurrage

Each Community/Utility will be responsible for demurrage charges only when such charges accrue because of the Communities/Utilities' negligence in unloading the material.



#### 24. Escalation

If during the term of the contract, the Contractor's price to others is below stipulated prices of this contract, the Contractor shall notify the Community/Utility promptly of all such changes and the Contractor shall give the Communities/Utilities the benefit of such reduction in prices on all material or specification applying against this contract, shipped on or after the date of such price reduction.

#### 25. Cash Billing Discount & Orders

Cash billing or percentage discounts for payment of invoices in thirty days or more, or at any time after the fifteenth of the following month will be considered in evaluating bids. Shorter discount periods will not be considered in evaluating bids; however, Communities shall be eligible for reduction for early payment, if discount is offered by Contractor. The individual Communities/Utilities will place their own orders, issue purchase orders, and make their own payments.

#### 26. Deliveries

The specific delivery points for each Community/Utility are listed elsewhere in these bid documents. Reasonable accommodation shall be made by any Contract Supplier to requests by any Community/Utility for temporary changes in delivery patterns without changing the price for the product as delivered.

DEPOSITS WILL NOT BE PAID on containers, pallets, or any other shipping media, but each Community/Utility will be liable for any loss or damage while said media are at the final delivery location under their care and control. The members will not be responsible for damage which occurs during shipment to and from each delivery location.

Each Community/Utility hereby agrees to the minimum delivery quantity of product set forth in the "Quantity Delivered" column of the detailed product list attached, including application of any overage/underage adjustments normally associated with the delivery of the specified product by the carrier/supplier for each delivery.

Incorrect orders shall be returned to the Contractor as his sole expense.

Contractors shall be required to comply with AWWA B302 and Chlorine Institute pamphlet #17, which specifically recommends valves be replaced with new or reconditioned valves, prior to each filling.

#### 27. Trade Names

In cases where an item is identified by a manufacturer's name, trade name, or catalog number or reference, it is understood that the bidder proposes to furnish the item as identified and does not propose to furnish an "equal" unless the proposed "equal" is indicated therein by the bidder.

The reference to the above catalog is intended to be descriptive but not restrictive and only to indicate to the prospective bidder articles that will be satisfactory. Bids on other makes and catalogs will be considered, provided each bidder clearly states on the face of his proposal exactly what he proposes to furnish, or forwards with his bid a cut or illustration, or other descriptive matter which will clearly indicate the character of the article covered by his bid.

Each Community/Utility hereby reserves the right to approve as an equal, or to reject as not being an equal, any article the bidder proposes to furnish having major or minor variations from specification requirements but complying substantially therewith.

28. Permits

The Contractor shall take out all permits and licenses necessary to carry out the work described in this contract. The Contractor will assume the cost of the permits.

29. Responsibility

The Contractor shall be responsible for all materials or finished work furnished under this contract up to the time of final acceptance by the Communities/Utilities.

30. Quantities

If materials in this bid and contract are on a requirement basis, then the quantities may be increased or decreased as the needs of the Communities/Utilities shall require.

31. Firm Price

Firm price bids shall be given first consideration. Firm prices shall mean a guarantee against price increases during the period of the contract.

32. Insurance

The contractors shall carry and maintain at his own expense throughout the term of the Contract, insurance as set forth below in such form as shall protect him and any subcontractor performing work covered by this Contract, and the Communities/Utilities and their employees from all claims and liability for damages for bodily injury, including accidental death and for property damage, which may arise from the operations under the Contract, whether by anyone directly or indirectly employed by either of them. The amounts of such insurance to be put into force shall be:

**Comprehensive General Liability**

For bodily injury and property damages, combined single limit of liability: \$ 1,000,000

**Umbrella Liability**

Covering overall liability policies: \$ 2,000,000

**Motor Vehicles Liability**

Bodily injury including, accidental death: \$1,000,000 each person,  
\$1,000,000 each accident  
Property damage: \$1,000,000 each occurrence

Certificates of Insurance for each Community/Utility shall be taken out for each such entity as named insured at the time of execution of the Contract, or within 30 Days of the Community/Utility notification of the recommendation for Contract award, whichever is the earlier.

Refer to contract clause PAGE 20 FOR ADDITIONAL INSURANCE DETAILS.

### 33. Training for Chemicals/Materials

All bidders awarded contracts shall provide training, for each of the chemicals they will supply to the Communities/Utilities. The training shall include instruction on the use, safe handling, proper application techniques and any other useful technical information, which may be needed regarding the products supplied under the Contract.

Within one month after notification of award by the Purchasing Agent, the bidder shall arrange for the training session. The bidder and the Community/Utility representative(s) shall mutually arrange and secure the use of a suitable training site able to accommodate the full roster of Communities/Utilities and convenience to all.

## CONTRACT CLAUSES

### 1. DEFINITIONS:

- 1.1 **Acceptance:** All contracts require proper acceptance of the described goods by the Community/Utility. Proper acceptance shall be understood to include inspection and acceptance of goods by the Community/Utility to ensure that the services are complete and are as specified in the contract.

The Authorized Representative(s) for purpose of this contract is/are:

**Karen Martin, Andover Water Treatment Plant, 397 Lowell St., Andover, MA 01810-4416.  
(978) 623-8873, kmartin@andoverma.gov**

- 1.2 **Contract Documents:** All documents relative to the contract including (where used) Instructions to Bidders, Proposal Form, Contract Clauses, General specifications, Other Specifications included in all Addenda issued during the bidding period. The Contract Documents are complementary, and what is called for by anyone shall be as binding as if called for by all. The intention of documents is to include all labor and materials, equipment, and transportation necessary for the proper performance of the contract.
- 1.3 **The Contractor:** The "other party" to any contract with the Community/Utility. This term shall (as the sense and particular contract so require) include Vendor, Contractor, Engineer, or other label used to identify the other party in the particular contract. Use of the term "contractor" shall be understood to refer to any other such label used.
- 1.4 **Date of Substantial Performance:** The date when the work is sufficiently complete and all goods are delivered in accordance with contract documents, as modified by Amendments and Change Orders.
- 1.5 **Owner:** Community/Utility, acting by and through its Superintendent, responsible for the administration of the contract.
- 1.6 **Subcontractor:** Those having a direct contract with the Contractor.
- 1.7 **Goods:** Goods, Supplies or Materials as described in the Contract. All terms used have the meaning set forth in MGL C30B as amended from time to time. This contract for purchase includes all delivery, installation or setup requirements at no additional cost as set forth herein. All goods shall be delivered within seven (7) business days from date of order. All goods shall be delivered F.O.B. destination to the community/utility location.

## **2. SUBJECT TO APPROPRIATION:**

Notwithstanding anything in the contract documents to the contrary, any and all payments, which the Community/Utility is required to make under this contract, shall be subject to annual appropriation or other availability of funds as certified by the Community/Utilities accountant.

## **3. PAYMENTS:**

The Contractor shall submit proper invoices for the services rendered and accepted by the Community/Utility. Goods delivered in conjunction with an annual contract shall be billed monthly. All other deliveries of goods shall be billed for upon inspection and acceptance of the items by the designated representative of the Community/Utility. An original invoice and one copy shall be completed and submitted.

### **SUBMIT INVOICES TO: Community/Utility**

The invoice shall contain the following information:

1. Contract number;
2. Date of delivery;
3. Item description;
4. Unit and total price;
5. Payment terms to include any prompt payment discount offered.

## **4. PERMITS AND APPROVALS:**

It is the contractor's responsibility to secure, obtain and pay for any Permits, Licenses, Approvals and all other legal or administrative prerequisites to its performance of the contract.

## **5. THE CONTRACTOR'S BREACH AND THE COMMUNITIES'/UTILITIES' REMEDIES:**

- 5.1 Failure of the Contractor to comply with any of the terms or conditions of this Contract shall be deemed a material breach of this Contract, and the Community/Utility shall have all the rights and remedies provided in the contract documents, the right to cancel, terminate, cure or cover the breach and/or suspend the contract in whole or in part, the right to maintain any and all actions at law or in equity or other proceedings with respect to a breach of the Contract including damages and specific performance, and the right to select one or more of the remedies available to it.
- 5.2 **Attorney Fees:** If any dispute arises concerning this contract or in the event of any claim, suit, action, proceeding, either judicial or administrative in nature, as a result of the default, delay, breach, wrongdoing, action or inaction of the Contractor, then the Contractor shall be liable for, and shall pay for, all reasonable costs, fees and expenses of the Community/Utility including expenses and fees for hiring experts and for attorney's fees. The obligations created herein shall arise regardless of whether an administrative proceeding, arbitration or litigation is commenced and shall include consultation, advice

or counsel sought from any attorney or expert in connection with any such default, delay, breach, wrongdoing, action, or inaction of the Contractor.

## **6. TERMINATION:**

6.1 Termination for Default: The following shall constitute default or material breach of this Contract by the Contractor entitling the Community/Utility to the remedies described in paragraph 6:

- a. any material misrepresentation made by the Contractor;
- b. any failure by the Contractor to perform any of its obligation under the contract including but not limited to (i) failure to commence performance at the time specified or if not specified, in a reasonable time, (ii) failure to complete the contract on time, (iii) failure to deliver the goods in a manner to the reasonable satisfaction of the Community/Utility, (iv) failure to re-perform, cure or correct delivery of goods which were rejected by the Community/Utility, (v) discontinuance of services, or (vi) violation of any provision of this contract and in strict conformity with the specifications.

Additionally, the Community/Utility may terminate this contract if the contractor:

- a. is bankrupt or insolvent;
- b. makes a general assignment for the benefit of his creditors;
- c. is appointed a trustee or receiver for himself or any of his property;
- d. files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or other applicable laws;
- e. disregards direction by the Community/Utility designated representative or the Purchasing Agent.

6.2 Termination for Convenience:

The Community/Utility may terminate this contract in whole or in part when and if the Purchasing Agent determines that such termination would be in the best interest of the Community/Utility. The Purchasing Agent's determination shall be by written modification delivered to the contractor. The Community/Utility will reimburse the contractor for work completed in accordance with the contract and accepted by the Community/Utility before such termination. Anticipatory profits for the portion of the contract canceled will not be paid to the contractor.

## **7. AMENDMENTS/MODIFICATION:**

No officer, official, agent, or employee of the Community/Utility shall have the power to amend, modify or alter this Agreement or waive any of its provisions or to bind the Community/Utility by making any promise or representation not contained herein except by an amendment, in writing, executed in the same manner as this Agreement is executed.

The Contractor may not rely on any conduct, statements, action, inaction, or course of conduct of the employees or of ricers of the other party as having changed, modified or amended this Agreement.

The Community/Utility shall not be construed as waiving any provision of this Agreement unless the waiver is executed in writing as an amendment to this Agreement. No waiver by the Community/Utility of any default or breach shall constitute a waiver of any subsequent default or breach. Forbearance or indulgence in any form or manner by the Community/Utility shall not be construed as waiver nor shall it limit the legal or equitable remedies available to it.

## **8. STATUTORY COMPLIANCE:**

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

General Laws Chapter 30B - Procurement of Goods and Services

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

8.3 The Contractor shall give all notices and comply with all laws and regulations bearing on the performance of the contract. If the Contractor performs the contract in violation of any applicable law or regulation, the Contractor shall bear all costs, damages and expenses arising therefrom.

8.4 The Contractor shall keep itself fully informed of all existing and future state and federal laws and municipal by-laws and regulations and of all orders and decrees of any bodies or tribunals having jurisdiction in any manner affecting those engaged or employed in the work, of the materials used in the work, or in any way affecting the conduct of the work. If any discrepancy or inconsistency is discovered in the specifications or contract for this work in violation of any such law, by-law, regulations, order or decree, the Contractor shall forthwith report the same in writing to the Community/Utility. It shall, at all times, itself observe and comply with and shall cause all its agents, employees, and subcontractors to observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and shall protect and indemnify the Community/Utility, and its duly appointed agents against any claim or liability arising from or based on any violation whether by him or its agents, employees or subcontractors or any such law, by-law, regulation or decree.

**9. CONFLICT OF INTEREST:**

Both the Community/Utility and the Contractor acknowledge the applicability of the State Conflict of Interest Law (General Laws Chapter 268A) to the relationships established by this contract. This contract expressly prohibits any activity, which shall constitute a violation of that law. The Contractor shall be deemed to have investigated its applicability to the performance of this contract; and by executing the contract documents the Contractor certifies to the Community/Utility that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.

**10. CERTIFICATION OF TAX COMPLIANCE:**

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

**11. DISCRIMINATION:**

The Contractor will carry out the obligations of this contract in full compliance with all the requirements imposed by Federal Law and any statutes, executive orders, rules, regulations and requirements of the Commonwealth of Massachusetts as they may from time to time be amended.

**12. ASSIGNMENT:**

Assignment of this contract is prohibited unless assignment is provided for expressly in the contract documents.

**13. CONDITION OF ENFORCEABILITY AGAINST THE COMMUNITY/UTILITY:**

This contract is only binding upon, and enforceable against, the Community/Utility if: (1) the contract is signed by the appropriate Community/Utility awarding office, (2) endorsed with approval by the Community/Utility Finance Director as to appropriation or availability of funds; (3) endorsed with approval by the Community/Utility Counsel as to form and legality; (4) signed by the Community/Utility Purchasing Agent as to compliance with the appropriate bid statutes; and (5) it has been formed and executed in accordance with municipal ordinances and state laws.

**14. CORPORATE CONTRACTOR:**

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



contract is executed by the Contractor. This contract shall not be enforceable against the Community/Utility unless and until the Contractor complies with this section.

The Contractor (and Subcontractors as defined in Paragraph 1-C of the General Conditions), if a foreign corporation shall comply with the provisions of the General Laws, Ch. 181, Sections 3 & 5, and any Acts and Amendments therefore, and in addition thereto, relating to the appointment of the Commissioner of Corporations as its attorney, shall file with the Commissioner of Corporations a Power of Attorney and duly authenticated copies of its Charter or Certificate of Incorporation; and said Contractor shall comply with all the laws of the Commonwealth.

**15. LIABILITY OF PUBLIC OFFICIALS:**

To the full extent permitted by law, no official, employee, agent, or representative of the Community/Utility shall be individually or personally liable on any obligation of the Community/Utility under this contract.

**16. NOTICE TO THE CONTRACTOR AND THE COMMUNITY/UTILITY:**

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

Notice to the Community/Utility shall be deemed sufficient only if sent to the Office of: **Karen Martin, WTP Superintendent, Andover Water Treatment Plant, 397 Lowell St. Andover, MA 01810-4416 with a copy to Bidding Agent: Savas Danos PO Box 1525, Charlestown, RI. 02813 (savas.danos@pantonmcleod.com).**

**17. BINDING ON SUCCESSORS:**

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

**18. COMPLETE CONTRACT:**

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

**19. PROTECTION OF PROPERTY and CONTRACTOR IDENTIFICATION:**

19.1 The Contractor shall exercise reasonable care to protect Community/Utility and individually-owned property throughout the period of this contract. If the

Contractor's failure to use reasonable care causes damage to any property, the Contractor shall repair or replace the property to such as it was prior to the incident at no additional cost to the Community/Utility or the individual. If the Contractor fails or refuses to perform repairs or replace the property, the Contractor shall be liable for the cost, which may be deducted from the contract price.

19.2 ALL Contractor's agent(s), employee(s), subcontractor(s), other persons, and transportation vehicles shall display positive identification when entering upon the premises of any Community/Utility for the purpose of executing the terms and conditions of this contract.

**20. CHANGE ORDERS:**

Change orders may not increase the quantity of services by more than twenty-five per cent, in compliance with General Laws Chapter 30B, Sec. 13.

20.1 The Purchasing Agent may, by written order, make changes in the general scope of this contract. If any such alterations result in an increase or decrease in quality or quantity that affects the cost, the Purchasing Agent shall make an equitable adjustment in the contract price. All change orders shall be authorized by the owner.

20.2 Significant changes to the quantity of the goods or supplies ordered verbally without a written authorization by the Purchasing Agent shall not be honored by the Contractor. Acceptance of such changes by the Contractor may result in nonpayment by the Community/Utility.

**21. CHANGES IN CONTRACT PRICE:**

The value of any work covered by a change order or any claim for increase or decrease in the contract price shall be determined by one or more of the following methods in the order of precedence listed below:

- (1) Unit prices previously approved;
- (2) An agreed upon lump sum;
- (3) The actual cost of labor, labor burden, and equipment necessary to complete the work. In addition, there shall be added an amount to be mutually agreed upon to cover the cost of general overhead and profit.

**22. DISPUTES:**

The Contractor shall provide written notification of any claim or dispute and shall forward such notice to the Host Community.

**23. INDEMNIFICATION:**

The Contractor hereby assumes the entire responsibility and liability for any and all injury to or death of any or all persons, including the Contractor's employees, and for any and all

damage to property caused by, resulting from or arising out of any act, omission, or neglect on the part of the Contractor or of any Subcontractor or of anyone directly or indirectly employed by any of them, or of anyone for whose acts any of them may be liable in connection with operations under the Contract.

- 23.1 The Contractor further agrees to indemnify and hold harmless the Community/Utility, including its agents, employees, and representatives, from and against all claims, damages, losses and expenses, including attorney's fees arising out of or resulting from the quality or delivery of the goods.
- 23.2 The Contractor shall be responsible for all damage or injury to property of any character in connection with the quality and delivery of the goods if caused by any act, omission, neglect, or misconduct of the Contractor.
- 23.3 In any and all claims against the Community/Utility or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Workmen's Compensation Acts, disability benefit acts or other employee benefit acts.
- 23.4 The intent of the Specifications regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor's responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and the Community/Utility from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the Work.

**24. THE CONTRACTOR'S INSURANCE:**

- 24.1 The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.
  - 24.1.1 Claims under Worker's Compensation, disability benefit and other similar employee benefit acts;
  - 24.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of its employees, and claims insured by usual personal injury liability coverage;
  - 24.1.3 Claims for damage because of bodily injury, sickness or disease, or death of any person other than its employees, and claims insured by usual personal injury liability coverage; and

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

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

24.2.1 Worker's Compensation Act requirements

24.2.2 General Liability:

Comprehensive form	\$1,000,000;
Premises and Operations	\$1,000,000;
Explosion and Collapse Hazard	\$1,000,000;
Underground Hazard:	\$1,000,000;
Products/Completed Operations Hazard	\$1,000,000;
Contractual Insurance	\$1,000,000;
Broad Form Property Damage	\$1,000,000;
Independent Contractors	\$1,000,000;
Personal Injury	\$1,000,000;
Automobile Liability:	
Comprehensive Form	\$1,000,000;
Owned	\$1,000,000;
Hired	\$1,000,000;
Non-Owned	\$1,000,000;
Excess Liability*	\$2,000,000;

\* (As needed to provide coverage minimum for each coverage listed in paragraph)

The Contractor shall furnish the Certificate of Insurance within five (5) days of notification by the Purchasing Agent.

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

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

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

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

24.3.4 All Certificates of Insurance shall contain true transcripts from the policies, authenticated by the proper officer of the insurer, evidencing in particular those insured, the extent of the coverage, the location, and operations to which the insurance applies, the expiration date and the above mentioned not notice clauses.

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

**25. PROTECTIVE LIABILITY INSURANCE:**

25.1 The Contractor shall purchase and maintain such insurance as will protect the Community/Utility from claims which may arise from operations under the Contract, including operations performed for the named insured by independent contractors and general inspection thereof by the named insured.

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

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

25.4 The said coverage shall not extend to the liability of the Community/Utility, its agents or employees arising out of (a) the preparation or approval of Maps, Drawings, Opinions, Reports, Surveys, Change Orders, Designs, or Specifications, or (b) the giving of or the failure to give directions or instructions by the Community/Utility, its agents or employees provided such giving or failure to give instructions is the primary cause of the injury or damage.

25.5 The above policies shall name the Community/Utility as additionally insured (including the employees, agents, and representatives), for the purposes of this contract.

25.6 The premium costs shall be included in the Contractor's bid and the policies issued hereunder shall be assessed to and filed with the Community/Utility.