

SUPPLEMENT "C"

1. This form supplements the Town of West Tisbury, "Contract and General Conditions," and applies only to contracts for the construction, reconstruction, alteration, remodeling or repair of public works or public buildings.
2. Wherever the law requires one contracting with a city or town to be bonded, such obligation shall be understood to be a term and condition of this Contract. The Contractor agrees to secure such bond (where required) and provide an original thereof to the Town of West Tisbury prior to the commencement of performance.
3. Equality:
 - 3.1 In the case of a Closed Specification written for a specific item or items to be furnished under the Base Bid, such Specifications shall, as applicable, be in compliance with the Massachusetts General Laws, Chapter 30F Section 39M and Chapter 149, Section 44A et seq.
 - 3.2 Where the name of an item, material or manufacturer is mentioned in the Specifications or on the Drawings, except as above noted, the intent is to establish a standard and in no way should be construed to exclude any item or manufacturer not mentioned by name, but whose product meets the Specifications as to design, utility and quality. Final decision shall rest with the Project Representative as to its acceptability.
4. Change orders to contracts governed by General Laws Chapter 30B may not increase the quantity of goods or services provided by more than twenty five percent (25.0%), in compliance with Section 13 of Chapter 30B.
5. The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151, Section 1, et seq. (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor will at all times comply with the wage rates as determined by the Commissioner of the Department of Labor and Industries, under the provisions of General Laws Chapter 149. Section 26 to 27D (Prevailing Wage) as shall be in force and as amended. The Contractor will provide documentation of compliance with prevailing wage law to the Town.
6. The Contractor shall continuously maintain adequate protection of all work from damage and shall protect the property of the Town and others, including adjacent property, from injury or loss arising in connection with the Contract. The Contractor shall make good any such damage, injury or loss, except as may be directly due to errors in the Contract Document or caused by agents or employees of the Town, or due to causes beyond the Contractor's control and not the Contractor's fault or negligence.
7. The Contractor shall take all necessary precautions for the safety of employees on the work, and shall comply with all applicable provisions of federal, state and local laws and codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed. The Contractor will erect and properly maintain at all times,

as required by the conditions and progress of the work, all necessary safeguards for the protection of workers and the public, shall post danger signs warning against the hazards created by such features of construction as pits, protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways, and falling materials; and shall designate a responsible member of its organization on the work, whose duty shall be the prevention of accidents.

8. The Town shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide suitable accommodations for such access.
9. The Contractor shall appoint a competent superintendent and any necessary assistants satisfactory to the Town.
10. The Contractor shall give efficient supervision to the work, using its best skill and attention. The Contractor shall carefully study and compare all drawings, specifications and other instructions and shall at once report to the Town any error, inconsistency or omission which shall be discovered, but will not be liable to the Town for any damage resulting from errors or deficiencies in the Contract Documents. Included in this responsibility shall be supervision of all work performed by subcontractors on the work.
11. If the Contractor should neglect to prosecute the work properly, or fail to perform the contract or any of its provisions, the Town, upon three days written notice, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.
12. Inspection by the Town's Project Representative:
 - 12.1 The Town shall have the right to designate a Project Representative who may make periodic visits to the site to familiarize the Town generally with the progress and quality of the work, and to determine in general if the work is proceeding in accordance with the Contract Documents. The Project Representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and will not be responsible for the Contractor's failure to carry out the construction work in accordance with the Contract Documents. During such visits and on the basis of these observations while at the site, the Project Representative will keep the Town informed on the progress of the work, will endeavor to guard the Town against defects and deficiencies in the work of contractors, and may condemn structural work as failing to conform to the Contract Documents. The Project Representative shall have authority to act on behalf of the Town only to the extent expressly delegated by the Town, which shall be shown to the Contractor, and shall have authority to stop the work whenever such stoppage may reasonably be necessary to insure the proper execution of the Contract.
 - 12.2 In connection with the work, the Project Representative shall not be responsible for construction methods, means, techniques, sequences or procedures employed by the Contractor or the Contractor's safety programs, requirements, regulations or precautions.
13. Decisions of the Project Representative:

- 13.1 The Project Representative shall, within a reasonable time, make decisions on all claims of the Town or the Contractor and on all other matters relating to the execution and progress of the structural work or the interpretation of the Contract Documents.
- 13.2 The Project Representatives decision in matters relating to the project, shall be final, if within the terms of the Contract Documents.
- 13.3 If, however, the Project Representative fails to render a decision, within ten (10) days after the parties have presented their evidence, either party may then avail itself of the remedies provided in this contract or available to it by law. If the Project Representative renders a decision after such remedies have commenced, such decision may be entered as evidence but shall not disturb or interrupt such proceedings except where such decision is acceptable to the parties concerned.

14. Use of Premises by the Contractor:

- 14.1 The Contractor shall confine its apparatus, the storage of materials, and the operations of its workmen to limits indicated by law, by-laws, permits or directions of the Town and shall not unreasonably encumber the premises with its materials.
- 14.2 The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.

15. Maintenance of Premises:

The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its employees or work, and at the completion of the work it shall remove all its rubbish from and about the work site and all its tool, scaffolding and surplus materials and shall leave its work "broom-clean", or its equivalent, unless more exactly specified. In case of dispute, the Town may remove the rubbish and charge the cost to the several contractors, as the Town shall determine to be just. Any paved areas disturbed during construction shall be swept by a motorized highway sweeper every two (2) work days.

16. Right to Terminate:

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

In such case, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the Contract price shall exceed the expense of

finishing the work, including compensation for additional architectural, managerial and administrative services, such excess shall be paid to the Contractor. If such expenses shall exceed such unpaid balances, the Contractor shall pay the difference to Town.

17. Progress Payments:

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

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

18. Withholding of Payments:

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

18.1.1 Defective work not remedied.

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

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

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

18.1.5 Damage to another contractor.

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

19. Damages:

Should either party to the Contract suffer damages because of any wrongful act or neglect of the other party, or of anyone employed by him, a claim shall be made in writing to the party liable within a reasonable time of the first observance of such damage and not later than the Final Payment, except as expressly stipulated otherwise in the case of faulty work or materials, and shall be adjusted by agreement, or by recourse to remedies provided by law or by provisions of the contract.

20. Liens:

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

21. The Contractors Mutual Responsibility:

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

22. Separate Contracts:

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

22.2 If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the Town any defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of its work except as to defects which may develop in the other contractor's work after the execution of its work.

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

23. Subcontracts:

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

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

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

24. Contractor-Subcontractor Relations:

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

25. Indemnification:

25.1 The Contractor 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.

25.2 The Contractor further agrees to indemnify and hold harmless the Town, including the agents, employees and representative of either, from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of , use resulting there from and (b) is caused in whole or in part by any negligent act or omission 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, regardless of whether or not it is caused in part by a party indemnified hereunder.

25.3 The Contractor shall be responsible for all damage or injury to property of any character during the prosecution of the work resulting from any act, omission, neglect, or misconduct in the manner or method of executing the work or due to the non-execution of the work or at any time due to defective work or materials.

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

25.5 The obligations of the Contractor under this paragraph shall not extend to the liability of the Town, its agents or employees arising out of (a) the preparation or approval of Maps, Drawings, Opinions, Reports, Surveys, Change Orders, Designs or Specification, or (b) the giving of or the failure to give directions or instruction by the Town, its agents or employees provided such giving or failure to give directions or instructions is the primary cause of the injury or damage.

26. The Contractor's Insurance:

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

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

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

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

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

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

26.2.1 Worker's Compensation Act requirements

26.2.2 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;
Explosion and Collapse Hazard:.....	\$1,000,000;
Underground Hazard:.....	\$1,000,000;
Products/Completed Operations Hazard:.....	\$1,000,000;
Contractual Insurance:	\$1,000,000;
Board From 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.....	(As needed to provide \$1,000,000 coverage minimum for each coverage listed in

this paragraph).

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

26.3.1 Insurance coverage for the Contractor's Comprehensive General Liability, as specified under the foregoing paragraph and for the Town's 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.

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

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

26.3.4 All Certificates of Insurance shall contain true transcripts from the policies, authenticated by the proper officer of the insurer, evidencing in particular those incurred, the extent of the coverage, the location and operations to which the insurance applies, the expiration date and the above mentioned notice clauses.

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

27. Protective Liability Insurance:

27.1 The Contractor shall purchase and maintain such insurance as will protect the Town 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.

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

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

27.4 The said coverage shall not extend to the liability of the Town, its agents or employees arising out of (a) the preparation or approval of Maps, Drawings, Opinions, Reports, Surveys, Change Orders, Designs or Specification, or (b) the giving of or the failure to give directions or instructions by the Town, its agents or

employees provided such giving or failure to give instructions is the primary cause of the injury or damage.

27.5 The above policies shall name the Town as the insured, including its employees, agents and representatives.

27.6 The premium costs shall be included in the Contractor's bid and the policies issued hereunder shall be assessed to and filed with the Town.

28. Property Insurance:

28.1 The Town may purchase and maintain property insurance upon the entire work at the site, including labor, materials, structure and contents, to the full insurable value thereof. This insurance shall include the interest of the Town, the Contractor, Subcontractors in the work and shall insure against the perils of Fire, Extended Coverage, Vandalism and Malicious Mischief.

28.2 In view of its exposure to builder's risk hazards, it shall be the Town's responsibility to purchase and maintain such other insurance coverage as it may deem necessary and coverage of its liability to the Contractor. The Contractor shall be responsible for all damage or injury to property of any character during the prosecution of the work resulting from any act omission, neglect, or misconduct in the manner or method of executing the work or due to the non-execution of the work or at any time due to defective work or materials.

28.3 Copies of the above policy or a certificate of such insurance coverage shall be filed with the Contractor and Project Representative before an exposure to loss may occur.

29. Liquidated Damages:

29.1 The Contractor and the Town recognize that the Town will suffer financial loss if this Contract is not fully performed by the time specified in Paragraph 5 of the Contract and General Conditions (the "Deadline"). The parties also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the Town if the Contract is not fully performed on time. Accordingly, notwithstanding anything to the contrary contained elsewhere herein, instead of requiring any such proof, the Contractor and the Town agree that as liquidated damages for delay (but not as a penalty), the Contractor shall pay to the Town One Hundred (\$100) Dollars for each day that expires after the Deadline.

The Town shall recover any liquidated damages to it by deducting such damage payments due to the Contractor under this Contract and if such monies are insufficient to cover the full amount of liquidated damages due to the Town, the Contractor shall pay the balance due to the Town forthwith upon demand. The assessment and/or collection by the Town of liquidated damages under this paragraph does not preclude other remedies of the Town under this Agreement or under law or equity. Allowing the Contractor to continue to perform under this Contract after the Deadline shall not operate as a waiver on the part of the Town of any of its rights under this Agreement.

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

Dated: _____

By: _____
The Town of West Tisbury
Chief Procurement Officer

By: _____
Town Accountant
Certified as to Appropriation

By: _____
Contractor, Name and Title