

TOWN OF SWAMPSCOTT, MASSACHUSETTS

**BIDDING REQUIREMENTS, BOND FORMS, CONTRACT AGREEMENT,
CONDITIONS OF THE CONTRACT AND SUPPLEMENTAL SPECIFICATIONS**

FOR

BURRILL STREET PEDESTRIAN & BICYCLE IMPROVEMENTS, SWAMPSCOTT, MA

CONTRACT No. 2023-008

APRIL 25, 2023

SWAMPSCOTT DEPARTMENT OF PUBLIC WORKS
22 MONUMENT AVENUE
SWAMPSCOTT, MA 01907

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ADVERTISEMENT FOR BID

The Public Works Office, on behalf of the Town of Swampscott, will receive sealed Bids for the Burrill Street Pedestrian & Bicycle Improvements until April 25, 2023, at 11:00 am. local time, at the Swampscott Town Hall, 22 Monument Ave, Swampscott, MA 01907 at which time and place they will be publicly opened and read.

The work under this contract includes but is not limited to: roadway resurfacing and other related work items. The Contractor shall provide all labor, materials and equipment necessary to complete the work shown on the Contract Drawings and hereinafter contained in the Specifications. The estimated project value is \$200,000.

Bidding documents will be issued electronically through the Town of Swampscott's Purchasing Department. Instructions to obtain bidding documents through this office can be obtained at <http://www.swampscottma.gov/bids>. Questions related to use of the Town's procurement site can be directed to: Natalie Swanstrom, at nswanstrom@swampscottma.gov.

Each bid shall be accompanied by a Bid Bond, a certified check, a treasurer's or cashier's check issued by a responsible bank or trust company or cash payment, in the amount of five (5) percent of the submitted bid, as Bid Security. The checks are to be made payable to the Town of Swampscott, Massachusetts.

In accordance with Massachusetts General Law Chapter 29, Section 8B, each prospective bidder proposing to bid on any work to be awarded by a municipality under the provisions of Section 34 of chapter 90, must be prequalified in accordance with 720 CMR 5.00, "Prequalification of Contractors." **Any bids submitted by contractors who are not prequalified will be rejected.**

Attention of the Bidder is called to the requirements for prevailing wage rates to be paid under this Contract. Prevailing wage rates are required as per M.G.L., Chapter 149, and Section 26 to 27H inclusive and reporting associated thereto.

The successful Bidder will be required to furnish a Payment and Performance Bond each in the full amount of the Contract.

Contract payment will be by the lump sum price and/or unit price method as indicated on the Bid Form. No Bidder may withdraw his/her Bid for a period of ninety (90) days after the date designated above for the opening.

Bids for this Contract are subject to the provisions of M.G.L., Chapter 30, Section 39M.

The Town of Swampscott reserves the right to reject any or all Bids or to accept any bid deemed by them to be in the best interest of the Town of Swampscott, and to limit the extent of the work to keep within the limits of available funds.

INFORMATION FOR BIDDERS

TOWN OF SWAMPSCOTT
BURRILL STREET PEDESTRIAN & BICYCLE
IMPROVEMENTS

CONTRACT NO. 2023-008

The foregoing Advertisement, a copy of which has been published or posted according to law, and the “General Requirements and Covenants,” under Division 1 of the 1995 Standard Specifications for Highways and Bridges shall constitute the “Information for Bidders.” Attention is directed particularly to the following quotations from these sections which govern the preparation and submission of bids.

1. Receipt and Opening of Bids

1.1 The Town of Swampscott, herein called the OWNER, acting by and through its Select Board invites sealed bids for “Burrill Street Pedestrian & Bicycle Improvements Project” in accordance with the documents herein specified.

1.2 Such bids must be submitted in sealed envelopes plainly marked in the upper left-hand corner with the Bidder’s name and address, and plainly marked in the lower left-hand corner with the date and time of opening. If forwarded by mail or any other delivery service, the sealed envelope containing the bid must be enclosed in another envelope addressed to:

Town of Swampscott
Department of Public Works
22 Monument Ave
Swampscott, MA 01907

Endorsed “Burrill Street Pedestrian & Bicycle Improvements Project, Contract 2023-008”

Delivered by: 11:00 am local time on April 25, 2023.

At which time and place, said Bids will be publicly opened and read aloud.

The Bid Security shall be attached to the signature page of the bid.

1.3 The OWNER may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities in or reject any and all Bids. Conditional or qualified Bids will not be accepted. Any Bid received after the time and date

specified shall not be considered. Should there be reasons why the Contract cannot be awarded within the specified period; the time may be extended by mutual agreement between the OWNER and the Bidder.

2. Scope of Work/Location of Work

2.1 The location, general characteristics, and principal details of the Work are indicated in the contract documents, entitled “Burrill Street Pedestrian & Bicycle Improvements Project, Contract 2023-008.”

2.2 Additional drawings showing details in accordance with which the Work is to be done will be furnished by addendum from time to time during the bidding period by the Engineer, if found necessary, and shall then become part of the Contract Documents.

2.3 The Contractor shall furnish all labor, services, materials, equipment, plant machinery, apparatus, appliances, tools, supplies and all other things necessary to perform all work required for the completion of each item of the Work and as herein specified.

2.4 The Work to be done and paid for under any item shall not be limited to the exact extent mentioned or described but shall include all incidental work necessary or customarily done for the completion of that item.

2.5 The OWNER reserves the right to eliminate certain sections of the work or parts of sections, as may be determined by them as a basis of award, to keep within the limits of available funds, or to add sections of the work previously eliminated.

3. Time for Completion and Liquidated Damages

3.1 The “Notice to Proceed” shall be issued within sixty (60) days of the effective date of the Agreement by the OWNER. Should there be reasons why the Notice to Proceed cannot be issued within such period; the time may be extended by mutual agreement between the OWNER and the successful bidder. If the “Notice to Proceed” has not been issued within the sixty (60) day period, or within the period mutually agreed upon, the successful bidder may terminate the Agreement without further liability on the part of either party.

3.2 The bidder must agree to commence work on or after the date specified in the written “Notice to Proceed” issued by the OWNER, and/or Engineer acting on behalf of the OWNER, and to fully complete the project within the time specified in the Contract, after the date specified in the “Notice to Proceed.” The bidder must further agree to pay as liquidated damages to the OWNER, the sum as specified in the Contract for each consecutive calendar day thereafter as hereafter provided in the Contract.

4. Form of Bid

4.1 Each bid must be submitted on the prescribed form, accompanied by the Bid Security and any other requested information. All blank spaces for bid prices must be filled in, in ink or typewritten,

both in words and numerical figures, and be signed by the bidder with his business address and place of residence. Where both written words and numerical figures are given, the written words shall apply in the event of a conflict. All bids shall be prepared in conformity with, and based upon and submitted subject to, all requirements of the specifications, together with all addenda thereto.

5. Bid Security

5.1 Each Bid shall be accompanied by a Bid Bond written by a surety company qualified to do business in Massachusetts, or by Cash, or a Certified Check, or Treasurer's or Cashier's Check issued by a responsible bank or trust company, as Bid Security, in the amount of five (5%) percent of the total Bid, made payable to the Town of Swampscott, MA.

5.2 The Bid Security of Bidders, except those of the three lowest responsible and eligible Bidders, shall be returned within thirty days, Saturdays, Sundays and holidays excluded, after opening of Bids. The Bid Security of said three lowest Bidders shall be returned upon execution of the Contract.

5.3 In case a party to whom a Contract is awarded shall fail or neglect to execute the Contract and furnish the satisfactory bonds within the time specified, the OWNER may determine that the Bidder has abandoned the Contract and thereupon the Bid Security accompanying the Bid shall be forfeited to the OWNER as liquidated damages for such failure or neglect, and to indemnify said OWNER for any loss which may be sustained by failure of the Bidder to execute the Contract and furnish the bonds as aforesaid. After execution of the Contract and acceptance of the bonds by the OWNER, the Bid Security accompanying the Bid of the successful Bidder will be returned.

6. Withdrawal of Bids

6.1 Once Bid is submitted and received by the OWNER for consideration and comparison with other Bids similarly submitted, the Bidder agrees that he may not and will not withdraw said Bid within a period of thirty (30) days (Saturdays, Sundays and legal holidays excluded).

6.2 Upon proper request and identification, Bids may be withdrawn only as follows:

1. At any time prior to the designated time for the opening of Bids.
2. Provided the Bid has not theretofore been accepted by the OWNER, at any time subsequent to the expiration of the period during which the Bidder has agreed not to withdraw his Bid.

6.3 Unless a Bid is withdrawn as provided above, the Bidder agrees that it shall be deemed open for acceptance until the Agreement has been executed by both parties thereto, or until the OWNER notifies a Bidder in writing that his Bid is rejected, or that the OWNER does not intend to accept it, or returns his Bid deposit. Notice of acceptance of a Bid shall not constitute rejection of any other Bid.

7. Ability and Experience of Bidder

7.1 Only Bids from CONTRACTORS experienced in the type of construction included under this Contract will be favorably considered by the OWNER, and each Bidder shall include in the space provided in the Bid, evidence of such experience with satisfactory references, and shall provide on request, information as to organization and equipment available to him for the performance of the work under this Contract.

7.2 No award will be made to any Bidder who cannot satisfy the OWNER that he/she has sufficient ability and experience in this class of work, a history of maintaining a safe work environment and sufficient capital and plant to enable him to prosecute and complete the work successfully within the time constraints. The OWNER'S decision of judgment on these matters shall be final, conclusive and binding.

7.3 The OWNER reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the Owner and that such bidder is properly qualified to carry out the obligations of the Contract and to complete the Work contemplated therein within the time stated. The OWNER's decision or judgment on these matters shall be final, conclusive, and binding for all parties involved.

8. Questions Regarding Drawings and Documents

8.1 In general, no answer will be given to prospective Bidders in reply to an oral question if the question involves an interpretation of the intent or meaning of the Drawings or other Contract Documents, or the equality or use of products or methods other than those designated or described on the Drawings or in the Specifications. Any information given to Bidders other than by means of the Drawings and other Contract Documents, including Addenda, as described below, is given informally, for information and the convenience of the Bidder only and is not guaranteed. The Bidder agrees that such information shall not be used as the basis of, nor shall the giving of any such information entitle the Bidder to assert, any claim or demand against the OWNER or account thereof.

8.2 To receive consideration, such questions shall be submitted in writing to the OWNER, at least seven days before the established date for receipt of bids. If the question involves the equality of use of products or methods, it must be accompanied by Drawings, Specifications, or other data in sufficient detail to enable the OWNER to determine the equality or suitability of the product or method. In general, the OWNER will neither approve nor disapprove particular products prior to the opening of bids. Such products will be considered when offered by the CONTRACTOR for incorporation into the work.

8.3 The OWNER will set forth as Addenda, which shall become part of the Contract Documents, such questions received as above provided as in his sole judgment are appropriate or necessary and his decision regarding each. At least three days prior to the receipt of bids, he will send a copy of these Addenda to those prospective Bidders known to have taken out sets of the Drawings and other Contract Documents.

8.4 The CONTRACTOR agrees to use the products and methods designated or described in the Specifications as amended by the Addenda.

8.5 It shall be the Bidder's responsibility to confirm the existence of Addenda with the OWNER prior to submittal of Bid.

9. Information not Guaranteed

9.1 All information given on the Drawings or in the other Contract Documents relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures, is from the best sources at present available to the OWNER. All such information is furnished only for the information and convenience of Bidders and is not guaranteed.

9.2 It is agreed and understood that the OWNER does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures encountered during construction will be the same as those indicated on the Contract Drawings, or in the other Contract Documents.

9.3 It is agreed further and understood that no Bidder or CONTRACTOR shall use or be entitled to use, any of the information made available to him or obtained in any examination made by him in any manner as a basis of or ground for any claim or demand against the OWNER, arising from or by reason of any variance which may exist between the information made available and the actual subsurface or other conditions, natural phenomena, existing pipes, or other structures actually encountered during the construction work, except as may otherwise be expressly provided for in the Contract Documents.

10. Bidder Responsibility

10.1 Bidders must satisfy themselves as to conditions existing on the project site and of the accuracy of the estimated quantities in the Bid schedule, by examination of the site and a review of the Contract Drawings and Specifications including Addenda.

10.2 Each Bidder is responsible for inspecting the site and for reading and being thoroughly familiar with the Contract Documents. The failure or omission of any Bidder to do any of the foregoing shall in no way relieve any Bidder from any obligation in respect to his Bid.

10.3 The Contract Documents contain the provisions required for the construction of the project. Information obtained from an officer, agent, or employee of the OWNER or any other person shall not affect the risks or obligations assumed by the Bidder or relieve him from fulfilling any of the conditions of the Contract.

11. Comparison of Bids

11.1 Bids will be compared on the basis of the experience and competence of the bidders and on the basis of the totals of the quantities listed in the proposal under the enumerated items at the unit prices or lump sums bid for these items. The Contract will be awarded to the lowest responsive,

responsible and eligible bidder **ON THE BASIS OF THE TOTAL BASE BID PLUS THE ADDITIVE ALTERNATE (if applicable) AS BUDGET ALLOWS**, as determined by the Owner and/or its authorized representatives or agents. However, the Owner may reject any and all bids if it is in the public interest to do so.

11.2 The term, “Lowest responsive, responsible and eligible bidder,” shall mean the bidder whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the faithful performance of the Work; who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work.

11.3 Bids should be made on each separate item of work shown in the bid with reasonable relation to the probable cost of doing the Work included in such items. The OWNER reserves the right to reject, wholly, any bid on which an item or items thereof are obviously unbalanced or appear to the OWNER to be so unbalanced as to affect or to be liable to affect adversely any interests of the OWNER. The attention of the bidder is called to the fact that unbalancing of bids may adversely affect the CONTRACTOR if certain portions for the Work are increased or decreased as provided in the Contract Documents.

11.4 A bidder shall state the proposed price for the work by which the bids will be compared. This price is to cover all expenses incidental to the completion of the work in full conformity with the Contract and Specifications. In the event that there is a discrepancy between the unit prices and the extended totals, the unit prices shall govern. In the event that there is a discrepancy between the lump-sum or unit prices written in words and numerical figures, the prices written in words shall govern. No bid will be accepted which does not contain a unit price or lump sum as indicated for each of the applicable items enumerated in the bid form.

11.5 Estimated quantities are approximate only, being given for the uniform comparison of Bids. The OWNER does not expressly, or by implication agree that the actual amount of work will correspond therewith, and the right is expressly reserved, to increase or diminish the amount of any class or portion of the work, or to omit construction in certain locations, as may be deemed necessary by the OWNER to keep within the limits of available funds.

12. Rights Reserved by Owner

12.1 The OWNER may waive any informalities or minor defects or reject any and all Bids.

12.2 The OWNER may make such investigations as it deems necessary to determine the ability of the Bidder to perform the work, and the Bidder shall furnish to the OWNER all such information and data for this purpose as the OWNER may request. The OWNER reserves the right to reject any Bid if the evidence submitted by, or investigation of such Bidder fails to satisfy the OWNER that such Bidder is properly qualified to carry out the obligations of the Agreement and to complete the work contemplated therein.

12.3 The low Bidder shall supply the names and addresses of suppliers and subcontractors when requested to do so by the OWNER.

12.4 The Owner may also reject bids which in its sole judgment are either incomplete, conditional, obscure, not responsible or which contain additions not called for, erasures not properly initialed, alterations, or similar irregularities.

13. Award of Contract

13.1 Award will be made to the lowest responsive, responsible and eligible Bidder. The party to whom the CONTRACT is awarded will be required to execute the Agreement, obtain Payment and Performance Bonds, Insurance Certificates, and a Certificate of Vote of authorization of signature on Documents, within fourteen (14) calendar days from receipt of Notice of Award. The Notice of Award shall be accompanied by the necessary Agreement and Bid Forms. In case of failure of the Bidder to execute the Agreement and provide the above mentioned Bonds, Certificates, etc., the OWNER may at his option, consider the Bidder in default, in which case the bid security accompanying the Bid shall become property of the OWNER.

14. Contract Bonds

14.1 The Bidder whose Bid is accepted agrees to furnish the Contract Bonds in the forms which follow in 00500 and 00600, titled "Performance and Payment Bonds," respectively, each in the sum of the full amount of the Bid and/or contract Price as determined by the OWNER, and duly executed and acknowledged by the said bidder as Principal and by a surety company qualified to do business under the laws of Massachusetts and satisfactory to the OWNER, as Surety, for the faithful performance of the contract and payment for labor and materials. The premiums for such Bonds shall be paid by the CONTRACTOR.

14.2 Surety Companies executing the Contract Bonds must also appear on the U.S. Treasury Department's most current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (Amended) by the Audit Staff Bureau of Accounts.

14.3 Attorneys-in-fact who sign Bid Bonds or Contract Bonds must file with each Bond a certified and effective dated copy of their Power of Attorney.

15. Contract Insurance

15.1 The CONTRACTOR will not be permitted to start any construction work until he has submitted certificates covering all insurances called for under that subsection of the AGREEMENT, titled "Insurance." The CONTRACTOR shall submit said certificates using the forms supplied by the OWNER under said subsection.

16. Laws and Regulations

16.1 The bidder's attention is directed to the fact that all applicable Federal and Commonwealth laws, municipal ordinances, and rules and regulations or authorities having jurisdiction over construction of the project, shall apply to the Contract throughout, and shall be deemed to be included in the Contract the same as though herein written out in full.

16.2 This Contract is subject to the applicable provisions of but not limited to M.G.L. Chap. 30, Section 39M.

16.3 This Contract is also subject to the dig safe requirements of M.G.L. Chap. 82, Section 40 and the applicable portions of 527 CMR 13, relating to Blasting.

17. Safety and Health Regulations

17.1 The project is subject to all of the Safety and Health Regulations as promulgated by the United States Department of Labor (Title 29, Part 1926/1910 CFR, 1985 revisions); the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) as supplemented by the Department of Labor Regulations (Title 29 CFR Part 5); and OSHA 2207, 1983 revisions; and all subsequent amendments thereto. Contractors are urged to make themselves familiar with the requirements of these regulations.

18. Sales Tax Exemption

18.1 The OWNER will provide a Massachusetts Sales Tax Blanket Exemption Certificate No. applicable to all materials to be furnished under this Contract.

18.2 Except as noted above, the successful Bidder and Subcontractors shall pay all taxes levied by law on materials, labor or services furnished by them. Payments of such levies and sales taxes will be held to be included in Contract amounts.

19. Permits and Licenses

19.1 Permits and licenses: All construction permits and licenses for work within the project shall be obtained by the successful Bidder. The Town of Swampscott will waive its fees.

20. Prevailing Wage Rates

20.1 Prevailing Wage Rates as determined by the Commissioner of the Department of Labor and Industries under the provision of the Massachusetts General Laws, Chapter 149, Sections 26 to 27D, as amended apply to this project. It is the responsibility of the CONTRACTOR, before bid opening, to request if necessary, any additional information on Prevailing Wage Rates for those tradespeople who are not covered by the following schedule of wage rates, but who may be employed for the proposed work under this Contract.

20.2 Prevailing wage rates to be used for this Contract are contained within these Bid Documents.

20.3 The Contractor shall submit certified payrolls along with the payment requisition, for the period of time reflected in the requisition, to the Owner during the progress of this Contract for each day work is performed or no payment shall be made to Contractor.

21. Guarantee

21.1 The successful bidder guarantees that the work and services to be performed under this Contract, and all workmanship, materials and equipment performed, furnished, used or installed in the construction of same, shall be free from defects and flaws, and shall be performed and furnished in strict accordance with the Specifications and other Contract Documents and that the strength of all parts shall be adequate and as specified and that the performance test requirements of the Contract shall be fulfilled. This guarantee shall be for a period of one year from and after the date of substantial completion. If part of the Work is accepted in accordance with that subsection of this Agreement titled Partial Acceptance, the guarantee for that part of the Work shall be for a period of one year from the date fixed for such acceptance.

22. Police Details

22.1 CONTRACTOR shall be responsible for developing police detail schedule. Schedule to be pre-approved by Director of Public Works. All time in excess of 8 hours per day shall be pre-approved by Director of Public Works. CONTRACTOR will be responsible for any police details that have not been pre-approved. CONTRACTOR to schedule all traffic control details through the Swampscott Police Department. All invoices will be sent to the Director of Public Works. If the CONTRACTOR fails to cancel a scheduled detail and the Police Department submits a bill, the CONTRACTOR will be responsible for same. The OWNER will not reimburse the CONTRACTOR for unnecessary detail bills.

23. Construction Hours

23.1 Construction hours are 7:00 a.m. to 5:00 p.m.

23.2 No equipment, trucks, workers, etc. shall occupy any part of the traveled way except between the hours of 7:00 A.M. and 5:00 P.M., Monday thru Friday. Except for an emergency, in no case will operations exceed the specified hours. This includes the placement of traffic control devices, vehicles, equipment or anything that restricts the flow of traffic through the construction zone.

Bid

TOWN OF SWAMPSCOTT
BURRILL STREET PEDESTRIAN & BICYCLE
IMPROVEMENTS

CONTRACT No. 2023-008

The undersigned as Bidder, declares that all persons or parties interested in this Bid as principals are named herein; that this Bid is made without collusion with any person, firm or corporations; that he has carefully examined the location of the proposed Work, read the Contract Documents, and that he proposes and agrees to contract with the Town of Swampscott in the form of a Contract to be deposited with the Owner, to provide all necessary machinery, tools, apparatus and other means of construction, and to do all the work and furnish the materials and labor, specified in the Contract, in the manner and time therein prescribed, and according to the requirements of the OWNER, as therein set forth, and that he will take in full payment therefor, the amounts resulting from the unit and/or lump sum prices which he bids in the following tabulation, when multiplied by the quantities of Work actually accomplished.

The estimated quantities shown in the following tabulation are approximate and are given to provide a uniform basis for the comparison of Bids. The OWNER does not expressly or by implication agree that the actual quantities of Work to be done will correspond thereto, and the OWNER reserves the right to increase or diminish the quantity of work, or to omit items of Work as required to keep the Work within the limits of available funds.

The bidders hereby acknowledge the receipt of, and have included in this BID, the following Addenda:

(To be filled in by Bidder, if Addendums are issued.)

Addendum No. _____, dated _____

Addendum No. _____, dated _____

Addendum No. _____, dated _____

**BURRILL STREET PEDESTRIAN & BICYCLE IMPROVEMENTS
SWAMPSCOTT, MASSACHUSETTS**

BID PRICING SHEET

<u>Item No.</u>	<u>Item Description with Unit Bid Price (Written in Words and Figures)</u>	<u>Quantity</u>	<u>Unit</u>	<u>Amount</u>
102.5	ROADSIDE TREE PROTECTION (\$ _____) per each _____ dollars and _____ cents	1	EA	\$ _____
120.1	UNCLASSIFIED EXCAVATION (\$ _____) per cubic yard _____ dollars and _____ cents	200	CY	\$ _____
142.	CLASS B TRENCH EXCAVATION (\$ _____) per cubic yard _____ dollars and _____ cents	5	CY	\$ _____
151.	CRUSHED STONE (\$ _____) per cubic yard _____ dollars and _____ cents	150	CY	\$ _____
170.	FINE GRADING AND COMPACTING (\$ _____) per square yard _____ dollars and _____ cents	400	SY	\$ _____
201.	CATCH BASIN (\$ _____) per each _____ dollars and _____ cents	2	EA	\$ _____
204.	GUTTER INLET (\$ _____) per each _____ dollars and _____ cents	1	EA	\$ _____

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SWAMPSCOTT, MASSACHUSETTS

BID PRICING SHEET

<u>Item No.</u>	<u>Item Description with Unit Bid Price (Written in Words and Figures)</u>	<u>Quantity</u>	<u>Unit</u>	<u>Amount</u>
220.	DRAINAGE STRUCTURE ADJUSTED (\$ _____) per each _____ dollars and _____ cents	2	EA	\$ _____
220.3	DRAINAGE STRUCTURE CHANGE IN TYPE (\$ _____) per each _____ dollars and _____ cents	2	EA	\$ _____
221.	FRAME AND COVER (\$ _____) per each _____ dollars and _____ cents	2	EA	\$ _____
222.1	FRAME AND GRATE - MASSDOT CASCADE TYPE (\$ _____) per each _____ dollars and _____ cents	3	EA	\$ _____
223.1	FRAME AND GRATE (OR COVER) REMOVED AND STACKED (\$ _____) per each _____ dollars and _____ cents	2	EA	\$ _____
241.12	12 INCH REINFORCED CONCRETE PIPE (\$ _____) per linear foot _____ dollars and _____ cents	85	LF	\$ _____
415.3	PAVEMENT MICRO MILLING (\$ _____) per square yard _____ dollars and _____ cents	1,900	SY	\$ _____

**BURRILL STREET PEDESTRIAN & BICYCLE IMPROVEMENTS
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BID PRICING SHEET

<u>Item No.</u>	<u>Item Description with Unit Bid Price (Written in Words and Figures)</u>	<u>Quantity</u>	<u>Unit</u>	<u>Amount</u>
440.	CALCIUM CHLORIDE FOR ROADWAY DUST CONTROL (\$ _____) per pound _____ dollars and _____ cents	60	LB	\$ _____
443.	WATER FOR ROADWAY DUST CONTROL (\$ _____) per 1000 gallons _____ dollars and _____ cents	2	MGL	\$ _____
450.22	SUPERPAVE SURFACE COURSE - 9.5 (SSC - 9.5) (\$ _____) per ton _____ dollars and _____ cents	8	TON	\$ _____
450.23	SUPERPAVE SURFACE COURSE - 12.5 (SSC - 12.5) (\$ _____) per ton _____ dollars and _____ cents	160	TON	\$ _____
450.99	SPEED PILLOWS (\$ _____) per each _____ dollars and _____ cents	8	EA	\$ _____
452.	ASPHALT EMULSION FOR TACK COAT (\$ _____) per gallon _____ dollars and _____ cents	150	GAL	\$ _____
453.	HMA JOINT ADHESIVE (\$ _____) per foot _____ dollars and _____ cents	180	FT	\$ _____

**BURRILL STREET PEDESTRIAN & BICYCLE IMPROVEMENTS
SWAMPSCOTT, MASSACHUSETTS**

BID PRICING SHEET

<u>Item No.</u>	<u>Item Description with Unit Bid Price (Written in Words and Figures)</u>	<u>Quantity</u>	<u>Unit</u>	<u>Amount</u>
504	GRANITE CURB TYPE VA4 - STRAIGHT (\$ _____) per foot _____ dollars and _____ cents	205	FT	\$ _____
504.1	GRANITE CURB TYPE VA4 - CURVED (\$ _____) per foot _____ dollars and _____ cents	170	FT	\$ _____
509.	GRANITE TRANSITION CURB FOR WHEELCHAIR RAMPS - STRAIGHT (\$ _____) per foot _____ dollars and _____ cents	60	FT	\$ _____
509.1	GRANITE TRANSITION CURB FOR WHEELCHAIR RAMPS - CURVED (\$ _____) per foot _____ dollars and _____ cents	50	FT	\$ _____
516.	GRANITE CURB CORNER TYPE A (\$ _____) per each _____ dollars and _____ cents	1	EA	\$ _____
590.	CURB REMOVED AND STACKED (\$ _____) per foot _____ dollars and _____ cents	230	FT	\$ _____
701.	CEMENT CONCRETE SIDEWALK (\$ _____) per square yard _____ dollars and _____ cents	300	SY	\$ _____

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BID PRICING SHEET

<u>Item No.</u>	<u>Item Description with Unit Bid Price (Written in Words and Figures)</u>	<u>Quantity</u>	<u>Unit</u>	<u>Amount</u>
701.2	CEMENT CONCRETE PEDESTRIAN CURB RAMP (\$ _____) per square yard _____ dollars and _____ cents	100	SY	\$ _____
715.1	USPS MAIL BOX REMOVED AND RESET (\$ _____) per each _____ dollars and _____ cents	2	EA	\$ _____
748.	MOBILIZATION (\$ _____) lump sum _____ dollars and _____ cents	1	LS	\$ _____
847.1	SIGN SUP (N/GUIDE)+RTE MKR W/1 BRKWAY POST ASSEMBLY - STEEL (\$ _____) per each _____ dollars and _____ cents	10	EA	\$ _____
832.	WARNING-REGULATORY AND ROUTE MARKER - ALUM. PANEL (TYPE A) (\$ _____) per square foot _____ dollars and _____ cents	67	SF	\$ _____
851.1	TRAFFIC CONES FOR TRAFFIC MANAGEMENT (\$ _____) per day _____ dollars and _____ cents	60	DAY	\$ _____
852.	SAFETY SIGNING FOR TRAFFIC MANAGEMENT (\$ _____) per square foot _____ dollars and _____ cents	250	SF	\$ _____

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SWAMPSCOTT, MASSACHUSETTS**

BID PRICING SHEET

<u>Item No.</u>	<u>Item Description with Unit Bid Price (Written in Words and Figures)</u>	<u>Quantity</u>	<u>Unit</u>	<u>Amount</u>
853.1	PORTABLE BREAKAWAY BARRICADE TYPE III (\$ _____) per each _____ dollars and _____ cents	3	EA	\$ _____
856.12	PORTABLE CHANGEABLE MESSAGE SIGN (\$ _____ #N/A _____ dollars and _____ cents	25	UD	\$ _____
864.04	PAVEMENT ARROWS AND LEGENDS REFL. WHITE (THERMOPLASTIC) (\$ _____) per square foot _____ dollars and _____ cents	30	SF	\$ _____
866.106	6 INCH REFLECTORIZED WHITE LINE (THERMOPLASTIC) (\$ _____) per foot _____ dollars and _____ cents	90	FT	\$ _____
866.112	12 INCH REFLECTORIZED WHITE LINE (THERMOPLASTIC) (\$ _____) per foot _____ dollars and _____ cents	790	FT	\$ _____
867.106	6 INCH REFLECTORIZED YELLOW LINE (THERMOPLASTIC) (\$ _____) per foot _____ dollars and _____ cents	440	FT	\$ _____
874.1	STREET SIGN REMOVED AND RESET (\$ _____) per each _____ dollars and _____ cents	3	EA	\$ _____

**BURRILL STREET PEDESTRIAN & BICYCLE IMPROVEMENTS
SWAMPSCOTT, MASSACHUSETTS**

BID PRICING SHEET

<u>Item No.</u>	<u>Item Description with Unit Bid Price (Written in Words and Figures)</u>	<u>Quantity</u>	<u>Unit</u>	<u>Amount</u>
874.4	TRAFFIC SIGN REMOVED AND STACKED (\$ _____) per each _____ dollars and _____ cents	1	EA	\$ _____
TOTAL OF BID				\$ _____
	(\$ _____) _____ dollars and _____ cents			

8.50 x 11.00 in

TOWN OF SWAMPSCOTT
BURRILL STREET PEDESTRIAN & BICYCLE
IMPROVEMENTS

CONTRACT NO. 2023-008

The following sections of this Bid Pamphlet contain pages that require the Bidder's Signature or the Bid will be declared informal.

The Bidder understands that all bids for this project are subject to the applicable bidding laws of the Commonwealth of Massachusetts, including General Laws Chapter 30, Section 39M, as amended.

The Contract will be awarded to the lowest responsible and eligible bidder.

Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informalities in the bidding.

The bidder agrees that this bid shall be good and may not be withdrawn for a period of 90 days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids.

Within 10 days of receipt of the written notice of acceptance of this bid, the Bidder will execute the formal agreement attached in Section 00400, AGREEMENT.

Bid security is attached in the sum of five percent (5%) of the total bid in accordance with the conditions of Section 00200, INFORMATION FOR BIDDERS. The bid security may become property of the Owner in the event the contract and bond are not executed within the time set forth above.

The selected Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract prices in accordance with Section 00500, PERFORMANCE BOND and Section 00600, PAYMENT BOND.

The foregoing prices are to include and cover the furnishing of all the materials (except as herein otherwise specified), the performing of all labor requisite or proper, and the providing of all necessary machinery, tools, apparatus and other means of construction; and the doing of all the above-mentioned work in the manner set forth, described and shown in the contract documents for the work, and in the form of contract, and the completion within timeframe stipulated in Table A of the AGREEMENT.

If this Bid shall be accepted and the undersigned shall fail to contact as aforesaid and to give a performance and payment bond in the sum to be determined as aforesaid with surety satisfactory to the Town of Swampscott within fourteen (14) calendar days from the date of the mailing of notice from the Town of Swampscott to him, according to the address herewith given, that the contract is ready for signature, the Town of Swampscott may, at his option, determine that the Bidder has abandoned the contract, and thereupon this Bid, and the acceptance thereof shall be

If bidder is a corporation, give the State in which incorporated and the names and business address of the following officers:

President Address _____

Treasurer Address _____

Clerk Address _____

State here if bid is submitted by joint ventures: _____

And 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): _____

NOTE: Please include Zip Code No. with all addresses.

AFFIDAVIT

TOWN OF SWAMPSCOTT
BURRILL STREET PEDESTRIAN & BICYCLE
IMPROVEMENTS

CONTRACT No. 2023-008

The Undersigned, under the pains and penalties of perjury, says that he is the sole owner, partner, president, treasurer, or other duly authorized agent or official of

(Name of Bidder as appearing in submitted Bid)

(Address of Bidder with Zip Code)

(Telephone Number of Bidder)

And certifies that of his own knowledge, said bidder has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this bid.

Date

Signature and Title of Person making Affidavit

CERTIFICATE OF VOTE

TOWN OF SWAMPSCOTT
BURRILL STREET PEDESTRIAN & BICYCLE
IMPROVEMENTS

CONTRACT NO. 2023-008

I hereby certify that at a meeting of the Board of Directors of the _____

(Corporation named as Contractor herein)

held at _____ on the _____ day of _____,

_____, at which a quorum was present and acting, it was voted that

_____, _____,
(Name) (Officer)

of the _____
(Corporation named as Contractor herein)

be and hereby is authorized to execute and deliver for and on behalf of the Corporation a Contract with the Select Board, Town of Swampscott, Swampscott, Massachusetts in connection with the operation and maintenance of the Town of Swampscott's water and wastewater conveyance systems and, as Principal, to execute Contract as presented to and made a part of the records of said meeting.

I further certify that _____ is the duly qualified and acting _____ of the Corporation and that said vote has not been repealed, rescinded or amended.

A True Copy of the Record

Attest: _____ (CORPORATE SEAL)

Subscribed and sworn to this _____ day of _____, 2023,

before me, _____ (SEAL)
(Notary Public)

My commission expires: _____

BIDDERS CERTIFICATION REGARDING PAYMENT OF PREVAILING WAGES

<p>TOWN OF SWAMPSCOTT BURRILL STREET PEDESTRIAN & BICYCLE IMPROVEMENTS</p> <p>CONTRACT NO. 2023-008</p>

The undersigned bidder hereby certifies, under the pains and penalties of perjury, that the foregoing bid or quote is based upon the payment to laborers employed on the project of wages in an amount no less than the applicable prevailing wage rates established for the project by the Massachusetts Department of Labor and Workforce Development. The undersigned bidder agrees to indemnify the awarding authority for, from and against any loss, expenses, damages, action or claims, including any expense incurred in connection with any delay or stoppage of the project work, arising out of or as a result of (1) the failure of the said bid to be based upon the payment of the said applicable prevailing wage rates, or (2) the failure of the bidder, if selected as the Contractor, to pay laborers employed on the project the said applicable prevailing wages.

Dated: _____

Name of Bidder: _____

By: _____

Name: _____

Title: _____

CERTIFICATE AS TO PAYMENT OF STATE TAXES

TOWN OF SWAMPSCOTT
BURRILL STREET PEDESTRIAN & BICYCLE
IMPROVEMENTS

CONTRACT No. 2023-008

Pursuant to M.G.L. Ch.62C, sec. 49A, I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all state tax returns and paid all state taxes required under law.

Social Security Number or
Federal Identification Number

Signature of Individual
or Corporate Name

By: _____
Corporate Officer
(if applicable)

CERTIFICATE AS TO CORPORATE BIDDER

TOWN OF SWAMPSCOTT
BURRILL STREET PEDESTRIAN & BICYCLE
IMPROVEMENTS

CONTRACT No. 2023-008

I, _____, certify that I am the _____ of the corporation named as bidder in the Bid included herein; that _____, who signed said Bid on behalf of the Bidder was then _____ of said corporation; that I know his/her signature; that his/her signature thereon is genuine and that said Bid was duly signed, sealed and executed for and on behalf of said corporation by authority of its governing body.

(Corporate Seal)

(Secretary - Clerk)

Dated: _____

OSHA CERTIFICATION

TOWN OF SWAMPSCOTT
BURRILL STREET PEDESTRIAN & BICYCLE
IMPROVEMENTS

CONTRACT NO. 2023-008

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

The undersigned certifies, under penalties of perjury, that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee.

Date: _____

(Name of General Bidder)

By: _____
(signature)

(Name of person signing bid and title)

(Business Address)

(City and State)

(Telephone Number)

SAMPLE AGREEMENT

TOWN OF SWAMPSCOTT
BURRILL STREET PEDESTRIAN & BICYCLE
IMPROVEMENTS

CONTRACT NO. 2023-008

THIS AGREEMENT, is executed this _____ day of _____ in the year Two Thousand and Eighteen (herein referred to as the "AGREEMENT") by and between the Town of Swampscott, Massachusetts acting by and through its Town Administrator, duly authorized therefore, which acts herein solely for said Town of Swampscott, Massachusetts and without personal liability to itself, party of the first part, and _____, a corporation with a business address at _____, party of the second part.

WITNESSETH, that the parties to these presents, each in consideration of the undertakings, promises, and agreements on the part of the other herein contained, have undertaken, promised, and agreed and do hereby undertake, promise, and agree, the Town of Swampscott for itself, its successors and assigns, and the party of the second part for himself and his heirs, executors, administrators, successors and assigns, as follows:

1. Definitions

Wherever the words hereinafter defined or pronouns used in their stead occur in the Contract Documents, they shall have the following meaning indicated which shall be applicable to both the singular and plural thereof:

1. Whenever in the Contract Documents, or upon the Drawings, the words "as directed," "as ordered," "as requested," "as required," "as permitted," "as instructed," "as designated," "as considered necessary", or words of like important are used, it shall be understood that the direction, order, request, requirement, or permission of the Owner and/or Engineer is intended. Similarly, the words "approved," "acceptable," "suitable," "satisfactory," and words of like importance shall mean approved by, acceptable to, suitable to, or satisfactory to the Owner and/or Engineer.
2. The words "herein," "hereinafter," "hereunder," and words of like import shall be deemed to refer to the Contract Documents.
3. ADDENDA - Written or graphic instruments issued prior to the opening of Bids which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS, and SPECIFICATIONS by additions, deletion, clarifications or corrections.
4. BID - The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the Work to be performed.

5. **BIDDER** - Any person, firm or corporation submitting a BID for the WORK.
6. **CHANGE ORDER** - A written order to the Contractor authorizing an addition, deletion, or revision in the Work within the general scope of the Contract Documents or authorizing an adjustment in the Contract Price or Contract Time.
7. **CONSTRUCTION SUPERINTENDENT** - That person designated by the Contractor to carry out the provisions of the Contract.
8. **CONTRACT BONDS** - Bid, Performance, and Labor and Materials Bonds and other instruments of security furnished by the Contractor and his surety in accordance with the Contract Documents.
9. **CONTRACT PRICE** - The total monies payable to the Contractor under the terms and conditions of the Contract Documents.
10. **CONTRACT TIME** - The number of calendar days stated in the Contract Documents for the completion of the Work.
11. **CONTRACTOR** - The party of the second part as above designated and the person, firm or corporation with whom the Owner has executed the Agreement.
12. **DATUM OR LEVELS** - The figures given in the Contract and Specifications or upon the Drawings after the work elevation or abbreviation of it, shall mean the distance in feet above mean sea level, the base referenced to the North American Datum (NAD 1983).
13. **DRAWINGS** - The part of the Contract Drawings that show the characteristics and scope of the Work to be performed and which have been prepared or approved by the Engineer.
14. **ELEVATION** - The figures given on the Drawings or in the other Contract Documents after the word "elevation" or abbreviation of it shall mean the distance in feet above the datum adopted by the Engineer.
15. **ENGINEER** - The person, firm or corporation duly appointed by the Owner to undertake the duties and powers herein assigned to the Engineer, acting either directly or through duly authorized representatives.
16. **FIELD ORDER** - A written order effecting a change on the WORK not involving an adjustment in the Contract Price or an extension of the Contract Time, issued by the Engineer to the Contractor during construction.
17. **OWNER** - The party of the first part as above designated acting through its authorized agents.

18. PROJECT OR CONTRACT - The undertaking to be performed in the Contract Documents.
19. PROJECT REPRESENTATIVE - The authorized representative of the Owner who is assigned to the project site or any part thereof.
20. SHOP DRAWINGS - All drawings, diagrams, illustrations, brochures, schedules, descriptive literature and other data which are prepared by the Contractor, a Sub-contractor, Manufacturer, Supplier, or distributor which illustrate how specific portions of the Work shall be fabricated and/or installed.
21. SPECIFICATIONS - A part of the Contract Documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanships.
22. SUBCONTRACTOR - An individual, firm or corporation, approved by the Owner and Engineer having a direct contract with the Contractor or with any other Sub-contractor for the performance of a part of the Work on the Project.
23. SUBSTANTIAL COMPLETION - That date as certified by the Engineer, through written notice to the Owner, when the construction of the Project or a specified part hereof is sufficiently completed in accordance with the Contract Documents so that the Project or specified part can be utilized for the purposes for which it is intended.
24. SUPPLIER - Any person or organization who supplies materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the site.
25. WORK - All labor necessary to produce the construction required by the Contract Documents, and all materials and equipment incorporated or to be incorporated in the Project.
26. WRITTEN NOTICE - Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed when posted by certified or registered mail to the said party at his last given address or delivered in person to said party or his authorized representative on the Work.

1. The Contract Documents

- A. The AGREEMENT, the INFORMATION FOR BIDDERS, the Contractor's BID as accepted by the Owner, the SPECIFICATIONS, the Drawings, and all Addenda and amendments to any of the foregoing collectively constitute the Contract Documents, and are sometimes herein referred to as the "Contract".
- B. The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. In the event of any conflict or inconsistency between the provisions

of the AGREEMENT and the provisions of any of the other Contract Documents, the provisions of the AGREEMENT shall prevail.

C. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference is specific or by implication, shall mean the edition of the standard specification, manual, code or laws or regulations identified in the reference. In the event a particular edition is not identified, the reference shall mean the latest amended edition in effect at the time of receipt of the Bid. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of the Owner, the Contractor or the Designer, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to the Engineer, or any of the Engineer's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the work or any duty or authority to undertake responsibility contrary to the provisions of the AGREEMENT.

2. Obligations and Liability of Contractor

A. The Contractor shall do the work and perform and furnish the labor, services, materials, equipment, plant, machinery, apparatus, appliances, tools, supplies and other things (except as otherwise expressly provided herein) necessary and as herein specified for the proper performance and completion of the Work in the manner and within the time hereinafter specified, in strict accordance with the Drawings, Specifications and other Contract Documents, in conformity with the directions and to the satisfaction of the Engineer, and at the prices herein agreed upon therefor.

B. All parts of the Work and all fixtures, equipment, apparatus and other items indicated on the Drawings and not mentioned in the Specifications, or vice versa, and work and material usual and necessary to make the work complete in all its parts, including incidental work necessary to make it complete and satisfactory and ready for use and operation, whether or not they are indicated on the Drawings or mentioned in the Specifications, shall be furnished and executed the same as if they were called for both by the Drawings and by the Specifications.

C. The Contractor shall coordinate his operations with those of any other contractors who may be employed on other work of the Owner, shall avoid interference therewith, and shall cooperate in the arrangements for storage of materials and equipment.

D. The Contractor shall conduct his work so as to interfere as little as possible with private business and public travel. Wherever and whenever necessary or required, he shall maintain fences, furnish watchmen, maintain lights, and take such other precaution as may be necessary to protect life and property.

E. The Contractor shall indemnify and save harmless the Owner and the Engineer and their officers, agents, servants and employees, from and against any and all claims, demands, suits, proceedings, liabilities, judgments, awards, losses, damages, costs and expenses, including attorneys' fees, on account of bodily injury, sickness, disease or death sustained by any person or persons or injury or damage to or destruction of any property, directly or indirectly arising out of,

relating to or in connection with the Work, whether or not due or claimed to be due in whole or in part to the active, passive or concurrent negligence or fault of the Contractor, his officers, agents, servants or employees, any of his subcontractors, the Owner, the Engineer or any of their respective officers, agents, servants or employees and/or any other person or persons, and whether or not such claims, demands, suits or proceedings are just, unjust, groundless, false or fraudulent; and the Contractor shall and does hereby assume and agrees to pay for the defense of all such claims, demands, suits and proceedings, provided, however, that the Contractor shall not be required to indemnify the Engineer, his officers, agents, servants or employees, against any such damages occasioned solely by defects in maps, drawings, designs or specifications prepared, acquired or used by the Engineer and/or solely by the negligence or fault of the Engineer; and provided further, that the Contractor shall not be required to indemnify the Owner, his officers, agents, servants or employees, against any such damages occasioned solely by acts or omissions of the Owner other than supervisory acts or omissions of the Owner in the Work.

F. The Contractor shall have complete responsibility for the Work and the protection thereof, and for preventing injuries to persons and damage to the Work and property and utilities on or about the Work, until final completion and final acceptance thereof. He shall in no way be relieved of his responsibility by and right of the Engineer to give permission or directions relating to any part of the Work, by any such permission or directions given, or by failure of the Engineer to give such permission or directions. The Contractor shall bear all costs, expenses, losses and damages on account of the quantity or character of the Work or the nature of the land (including but not limited to subsurface conditions) in or under or on which the Work is done being different from that indicated or shown in the Contract Documents or from what was estimated or expected, or on account of the weather, elements, or other causes.

G. The Contractor shall conduct his operations so as not to damage existing structures or work installed either by him or by other contractors. In case of any such damage resulting from his operations, he shall repair and make good as new the damaged portions at his own expense with the consent of the damaged party. In the event that consent is not given, the Contractor shall continue to be liable for the damage caused.

H. The Contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractors, their officers, agents, servants and employees as he is for his own acts and omissions and those of his own officers, agents, servants and employees.

I. Should the Contractor sustain any loss, damage or delay through any act or omission of any other contractor or any subcontractor of any such other contractor, the Contractor shall have no claim against the Owner therefore, other than for an extension of time, but shall have recourse solely to such other contractor or subcontractor.

J. If any other contractor or any subcontractor of any such other contractor shall suffer or claim to have suffered loss, damage or delay by reason of the acts or omissions of the Contractor or of any of his subcontractors, the Contractor agrees to assume the defense against any such claim and to reimburse such other contractor or subcontractor for such loss or damage.

K. The Contractor agrees to and does hereby indemnify and save harmless the Owner from and against any and all claims by such other contractors or subcontractors alleging such loss, damage or delay from and against any and all claims, demands, suits, proceedings, liabilities, judgments, awards, losses, damages, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from such claims.

L. The Contractor shall promptly pay all federal, Commonwealth and local taxes which may be assessed against him in connection with the Work or his operations under the AGREEMENT and/or the other Contract Documents, including, but not limited to, taxes attributable to the purchase of material and equipment, to the performance of services, and the employment of persons in the prosecution of the Work.

3. Authority of the Engineer / DPW Director

A. The Engineer / DPW Director shall be the sole judge of the intent and meaning of the Drawings and Specifications and his decisions thereon and his interpretation thereof shall be final, conclusive and binding on all parties.

B. The Engineer / DPW Director shall be the Owner's representative during the life of the Contract and he shall observe the Work in progress on behalf of the Owner. He shall have authority (1) to act on behalf of the Owner to the extent expressly provided in the Contract or otherwise in writing; (2) to determine the amount, quality, acceptability and fitness of all work, materials and equipment required by the Contract; and (3) to decide all questions which arise in relation to the Work, the execution thereof, and the fulfillment of the Contract.

C. The Contractor shall proceed without delay to perform the work as directed, instructed, determined or decided by the Engineer and shall comply promptly with such directions, instructions, determinations or decisions. If the Contractor has any objection thereto he may, within 10 days of having received any such direction, instruction, determination or decision, require that any such direction, instruction, determination or decision be put in writing and within 10 days after receipt of any such writing he may file a written protest with the Owner stating clearly and in detail his objections, the reasons therefor, and the nature and amount of additional compensation, if any, to which he claims he will be entitled thereby. A copy of such protest shall be filed with the Engineer at the same time it is filed with the Owner. Unless the Contractor requires that any such direction, instruction, determination or decision be put in writing within 10 days of having received such direction, instruction, determination or decision and unless the Contractor files such written protest with the Owner and Engineer within such 10 day period, he shall be deemed to have waived all grounds for protest of such direction, instruction, determination, or decision and all claims for additional compensation or damages occasioned thereby, and shall further be deemed to have accepted such direction, instruction, determination, or decision as being fair, reasonable, and finally determinative of his obligations and rights under the Contract.

4. Supervision of Work

A. The Contractor shall be solely responsible for supervision of the Work, shall give the Work the constant attention necessary to ensure the expeditious and orderly progress thereof, and shall cooperate with the Engineer in every possible way.

B. At all times, the Contractor shall have as his agent on the Work a competent superintendent capable of reading and thoroughly understanding the Drawings and Specifications, with full authority to execute the directions of the Engineer without delay and to supply promptly such labor, services, materials, equipment, plant, apparatus, appliances, tools, supplies and other items as may be required. Such superintendent shall not be removed from the Work without the prior written consent of the Engineer. If, in the opinion of the Engineer, the superintendent or any successor proves incompetent, the Contractor shall replace him with another person approved by the Engineer; such approval, however, shall in no way relieve or diminish the Contractor's responsibility for supervision of the Work.

5. Insurance

A. Before starting and until final completion and acceptance of the Work and expiration of the guarantee period provided for in the AGREEMENT the Contractor shall procure and maintain insurance of the types specified in paragraphs (1) to (14), inclusive, below, and to the limits for this insurance specified in Table A at the end of this section. All insurance shall be obtained from companies satisfactory to the Owner.

B. Insurance shall be in such forms as will protect the Contractor from all claims and liability for damages for bodily and personal injury, including accidental death, and for property damage, which may arise from operations under the Contract, whether such operations be by himself, his subcontractors, or by anyone directly or indirectly employed or engaged by him.

C. The Town of Swampscott shall be named as an "additionally insured."

D. The following types of insurance shall be provided on all policies:

1. Worker's Compensation and Employer's Liability Insurance.
2. Bodily Injury Insurance for operations and completed operations and Contractor's Protective Bodily Injury Insurance.
3. Property Damage Insurance for operations and completed operations and Contractor's Protective Property Damage Insurance, each including coverage for injury to or destruction of wires or pipes and similar property and appurtenant apparatus and the collapse of or structural injury to any building or structure except those on which work under the Contract is being done. Blasting and explosion coverage shall be obtained if there is a need for blasting under the Contract and no blasting shall be performed until such insurance has been secured.
4. Bodily Injury Insurance covering the operation of all motor vehicles owned by the Contractor.

5. Personal Injury Insurance to cover claims for personal injury and including claims brought by employees.
6. Property Damage Insurance covering the operation of all motor vehicles owned by the Contractor.
7. Insurance to cover bodily injuries and property damage resulting from the use of motor vehicles not owned by the Contractor, while such vehicles are being operated in connection with the prosecution of the Work.
8. Contractual Liability Insurance covering the liability assumed by the Contractor under the fifth paragraph of that subsection titled "Obligations and Liability of Contractor" of this AGREEMENT.
9. Owner's Protective Liability and Property Damage Insurance to protect the Owner and the Engineer against claims for Property damage and for bodily injuries, including accidental death, caused by the operations of the Contractor or his subcontractors on the Work. The policy shall indicate the Owner and the Engineer as the named insured. A copy of the policy shall be furnished to the Owner and a Certificate of Insurance shall be furnished to the Engineer.
10. All policies shall be so written that the Owner will be notified in writing of cancellation or restrictive amendment at least 30 days prior to the effective date of such cancellation or amendment.
11. Certificates from the Contractor's insurance carriers stating the coverage provided, the limits of liability, and expiration dates shall be filed in triplicate with the Owner before operations are begun. Such certificates shall be on the form furnished by the Owner.
12. Certificates from the Contractor naming the Town of Swampscott as additionally insured must be received by the Owner prior to initiating the work.
13. Renewal certificates must be furnished by the Contractor prior to the expiration date of any of the initial insurances.
14. No insurance required or furnished hereunder shall in any way relieve the Contractor of or diminish any of his responsibilities, obligations and liabilities under the Contract.

6. Patents

A. The Contractor's attention is directed to the following "Patent Indemnity Clause" illustrating the format and/or required wording therefore which shall be used by all manufacturers and/or suppliers, as deemed necessary by the Owner and Engineer, as an Indemnification and Hold Harmless Agreement.

B. This Agreement shall be accepted and approved in form by the Owner and Engineer prior to the approval and/or installation of the product.

PATENT INDEMNIFICATION

"In Consideration for their purchase and use of the (Name of product and/or equipment) manufactured by (name of Manufacturer) and for other good and valuable consideration, (Name of Manufacturer) agrees to defend and hold harmless (Name of Contractor), BETA Group, Inc., and the (Name of Owner), and their employees and agents, from and against any liability, loss, cost, expense or damage including reasonable attorneys' and accountants' fees incurred by these entities in defending or prosecuting any claim for such liability, loss, cost, expense or damage resulting or arising out of a claim that the use of the above mentioned product and/or equipment delivered hereunder directly infringes any United States Patent, provided that (Name of Manufacturer) is given authority, information, and assistance for the defense of such suit, and (Name of Manufacturer) shall pay all damages and costs assessed against the above named entities for the use of such product and/or equipment provided, however, that this indemnification shall not apply to equipment of (Name of Contractor) design, and provided further that if the use of such product and/or equipment is enjoined in any suit, (Name of Manufacturer) shall at its own expense and its option either procure for (name of Contractor) the right to continue the normal use of such produce and/or equipment, replace said product and/or equipment, modify said equipment or refund the purchase price thereof; and provided further that (Name of Manufacturer) indemnity as to use shall not apply to infringement resulting from the use of the product and/or equipment delivered hereunder in combination with other items where use of the product and/or equipment per se does not constitute infringement."

7. Compliance with Laws

A. The Contractor shall keep himself fully informed of all existing and future federal, state, and local laws, ordinances, rules, and regulations affecting those engaged or employed on the Work, the materials and equipment used in the Work or the conduct of the Work, and of all orders, decrees and other requirements of bodies of tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the Drawings, Specifications or other Contract Documents in relation to any such law, ordinance, rule, regulation, order, decree or other requirement, the Contractor shall forthwith report the same to the Engineer in writing. The Contractor shall at all times observe and comply with, and cause all his agents, with all such existing and future laws, ordinances, rules, regulations, orders, decrees and other requirements, and he shall protect, indemnify and save harmless the Owner, its officers, agents, servants and employees, from and against any and all claims, demands, suits, proceedings, liabilities, judgments, penalties, losses, damages, costs and expenses, including attorneys' fees, arising from or based upon any violation or claimed violation of any such law, ordinance, rule, regulation, order, decree or other requirement, whether committed by the Contractor or any of his agents, servants, employees or subcontractors.

8. Provisions Required by Law Deemed Inserted

A. Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted herein, and the Contract shall be read and enforced as though they were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

9. Permits

A. The Contractor shall, at his own expense, take out and maintain all necessary permits from the county, municipality, or other public authorities; shall give the notices required by law; and shall post all bonds and pay all fees and charges incident to the due and lawful prosecution of the Work.

10. Not to Sublet or Assign

A. The Contractor shall constantly give his personal attention to the faithful prosecution of the Work, shall keep the same under his personal control, shall not assign the Contract or sublet the Work or any part thereof without the previous written consent of the Owner, and shall not assign any of the moneys payable under the Contract, or his claim thereto, unless by and with the like written consent of the Owner and the Surety on the Contract Bonds. Any assignment or subletting in violation hereof shall be void and unenforceable.

B. The Contractor shall not sublet or assign work to a subcontractor(s), for a total in excess of fifty (50) percent of the Contract Price, without prior written approval of the Owner and Engineer.

C. The Contractor shall be fully responsible to the Owner for the acts and omissions of his subcontractors, suppliers, and of persons either directly or indirectly employed by them as he is for the acts and omissions of persons directly employed by him.

D. The Contractor shall cause appropriate provisions, and applicable Commonwealth or Federal regulations, to be inserted in all subcontractors relative to the work to bind subcontractors to the Contractor by the terms of the Contract Documents insofar as applicable to the work of subcontractors, and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the Contract Documents.

E. The Contractor's attention is directed to the fact that nothing contained in this Contract shall create any contractual relation between any subcontractor and the Owner.

11. Delay by Owner

A. The Owner may delay the beginning of the Work or any part thereof if the necessary lands or rights-of-way for such work shall not have been obtained. The Contractor shall have no claim for additional compensation or damages on account of such delay, but shall be entitled only to any extension of time as hereinafter provided.

12. Time for Completion

A. The rate of progress shall be such that the Work shall be performed and completed in accordance with the Contract before the expiration of the time limit stipulated in Table A at the end of this section, except as otherwise expressly provided herein.

B. It is agreed that the rate of progress herein required has been purposely made low enough to allow for the ordinary and foreseeable delays incident to construction work of this character. No extension of time will be given for ordinary or foreseeable delays, inclement weather, or accidents and the occurrence of such will not relieve the Contractor from the necessity of maintaining this rate of progress and completing the Work within the stipulated time limit.

C. If delays are caused by acts of God, acts of Government, unavoidable strikes, extra work, or other cause or contingencies clearly beyond the control or responsibility of the Contractor, the Contractor may be entitled to additional time to perform and complete the Work, provided that the Contractor shall, within 10 days from the beginning of such delay notify the Owner in writing, with a copy to the Engineer, of the cause and particulars of the delay. Upon receipt of such notification, the Owner shall review and evaluate the cause and extent of the delay. If, under the terms of the AGREEMENT, the delay is properly excusable, the Owner will, in writing, appropriately extend the time for completion of the Work. (This paragraph will be interpreted to include delays in receipt of equipment provided that the Contractor placed his order and submitted shop drawings for such equipment promptly after execution of the Contract, that he has shown due diligence in following the progress of the order, and that the time required for delivery is in accordance with conditions generally prevailing in the industry.) The Contractor agrees that he shall not have or assert any claim for nor shall he be entitled to any additional compensation or damages on account of such delays.

D. The time in which the Work is to be performed and completed is of the essence of this AGREEMENT.

13. Liquidated Damages

A. In case the Contractor fails to complete the Work satisfactorily on or before the date of completion fixed herein or as duly extended as hereinbefore provided, the Contractor agrees that the Owner shall deduct from the payments due the Contractor each month the sum set forth in Table A at the end of this section for each calendar day of delay, which sum is agreed upon not as a penalty, but as fixed and liquidated damages for each day of such delay. If the payments due the Contractor are less than the amount of such liquidated damages, said damages shall be deducted from any other moneys due or to become due the Contractor, and, in case such damages shall exceed the amount of all moneys due or to become due the Contractor, the Contractor or his Surety shall pay the balance to the Owner.

14. Night, Saturday and Sunday Work

A. No work shall be done at night or on Saturday or Sunday except (1) usual protective work, such as pumping and the tending of lights and fires, (2) work done in case of emergency threatening

injury to persons or property, or (3) if all of the conditions set forth in the next paragraph below are met.

B. No work other than that included in (1) and (2) above shall be done at night except when (a) in the sole judgment of the Owner, the work will be of advantage to the Owner and can be performed satisfactorily at night, (b) the work will be done by a crew organized for regular and continuous night work, (c) in the sole judgment of the Owner and Engineer, adequate noise prevention measures are incorporated into the Work by the Contractor to minimize any noise impact within the work area and (d) the Engineer has given written permission for such night work.

15. Employ Competent Persons

A. The Contractor shall employ only competent persons on the Work and shall not employ persons or means which may cause strikes, work stoppages or any disturbances by persons employed by the Contractor, any subcontractor, the Owner, the Engineer or any other contractor. Whenever the Engineer notifies the Contractor in writing that in his opinion any person on the Work is incompetent, unfaithful, disorderly, or otherwise unsatisfactory, or not employed in accordance with the provisions of the Contract, such person shall be discharged from the Work and shall not again be employed on it, except with the written consent of the Engineer.

16. Employ Sufficient Labor and Equipment

A. If in the sole judgment of the Engineer the Contractor is not employing sufficient labor, plant, equipment or other means to complete the Work within the time specified, the Engineer may, after giving written notice, require the Contractor to employ such additional labor, plant, equipment and other means as the Engineer deems necessary to enable the Work to progress properly.

17. Intoxicating Liquors and/or Drugs

A. The Contractor shall not sell and shall neither permit nor suffer the introduction and/or use of intoxicating liquors and/or drugs upon or about the Work.

18. Access To Work

A. The Owner, the Engineer, and their officers, agents, servants and employees may at any and all times and for any and all purposes, enter upon the Work and their site thereof and the premises used by the Contractor, and the Contractor shall at all times provide safe and proper facilities therefor.

19. Examination of Work

A. The Engineer shall be furnished by the Contractor with every reasonable facility for examining and inspecting the Work and for ascertaining that the Work is being performed in accordance with the requirements and intent of the Contract, even to the extent of requiring the uncovering or taking down portions of furnished work by the Contractor.

B. Should the work thus uncovered or taken down prove satisfactory, the cost of uncovering or taking down and the replacement thereof shall be considered as extra work unless the original work was done in violation of the Contract in point of time or in the absence of the Engineer or his inspector and without his written authorization, in which case said cost shall be borne by the Contractor. Should the work uncovered or taken down prove unsatisfactory, said cost shall likewise be borne by the Contractor.

C. Examination or inspection of the Work shall not relieve the Contractor of any of his obligations to perform and complete the Work as required by the Contract.

20. Defective Work, Etc.

A. Until acceptance and during the applicable guarantee period thereafter, the Contractor shall promptly, without charge, repair, correct or replace work, equipment, materials, apparatus or parts thereof which are defective, damaged or unsuitable or which in any way fail to comply with or be in strict accordance with the provisions and requirements of the Contract or applicable guarantee and shall pay to the Owner all resulting costs, expenses, losses or damages suffered by the Owner.

B. If any material, equipment, apparatus or other items brought upon the site for use or incorporation in the Work, or selected for the same, is rejected by the Engineer as unsuitable or not in conformity with the Specifications or any of the other Contract Documents, the Contractor shall forthwith remove such materials, equipment, apparatus and other items from the site of the Work and shall at his own cost and expense make good and replace the same and any material furnished by the Owner which shall be damaged or rendered defective by the handling or improper installation by the Contractor, his agents, servants, employees or subcontractors.

21. Protection Against Water and Storm

A. The Contractor shall take all precautions necessary to prevent damage to the Work by storms or by water entering the site of the Work directly or through the ground. In case of damage by storm or water, the Contractor shall at his own cost and expense make such repairs or replacements or rebuild such parts of the Work as the Engineer may require in order that the finished Work may be completed as required by the Contract.

22. Right to Materials

A. Nothing in the Contract shall be construed as vesting in the Contractor any right of property in the materials, equipment, apparatus and other items furnished after they have been installed or incorporated in or attached or affixed to the Work or the site, but all such materials, equipment, apparatus and other items shall, upon being so installed, incorporated, attached or affixed, become the property of the Owner. Nothing in this subsection shall relieve the Contractor of his duty to protect and maintain all such materials, equipment, apparatus and other items.

23. Changes

A. The Owner, through the Engineer, may make changes in the Work and in the Drawings and Specifications therefor by making alterations therein, additions thereto or omissions therefrom. All work resulting from such changes shall be performed and furnished under and pursuant to the terms and conditions of the Contract. If such changes result in an increase or decrease in the Work to be done hereunder, or increase or decrease the quantities thereof, adjustment in compensation shall be made therefor at the unit prices stipulated in the Contract for such work, except that if unit prices are not stipulated for such work, compensation for additional or increased work shall be made as provided hereinafter under the subsection titled "Extra Work"; and for eliminated or decreased work the Contractor shall allow the Owner a reasonable credit as determined by the Engineer.

B. Except in an emergency endangering life or property, no change shall be made unless in pursuance of a written order from the Engineer authorizing the change and no claim for additional compensation shall be valid unless the change is so ordered.

C. The Contractor agrees that he shall neither have nor assert any claim for or be entitled to any additional compensation for damages or for loss of anticipated profits on work that is eliminated.

24. Extra Work

A. The Contractor shall perform any extra work (work in connection with the Contract but not provided for herein) when and as ordered in writing by the Engineer, at the unit prices stipulated in the Contract for such work or, if none are so stipulated, either (a) at the price agreed upon before such work is commenced and named in the written order for such work, or (b) if the Engineer so elects, for the reasonable cost of such work, as determined by the Contractor and approved by the Engineer, plus a percentage of such cost, as set forth below. No extra work shall be paid for unless specifically ordered as such in writing by the Engineer.

The cost of extra work done under (b) above shall include the reasonable cost to the Contractor of materials used and equipment installed, common and skilled labor, and foremen, and the fair rental of all machinery and equipment used on the extra work for the period of such use.

At the request of the Engineer, the Contractor shall furnish itemized statements for the cost of the extra work ordered as above and give the Engineer access to all records, accounts, bills and vouchers and correspondence relating thereto.

The Contractor may include in the cost of extra work the amounts of additional premiums, if any, (other than premiums on bonds) paid on the required insurance on account of such extra work, of Social Security or other direct assessments upon the Contractor's payroll by Federal or other properly authorized public agencies, and of other approved assessments when such assessments are not normally included in payments made by the contractor directly to his employees, but in fact are, and are customarily recognized as, part of the cost of doing work.

The fair rental for all machinery shall be based upon the most recent edition of "Compilation of Rental Rates for Construction Equipment," published by the Associated Equipment Distributors,

or a similar publication approved by the Engineer. Rental for machinery and equipment shall be based upon an appropriate fraction of the approved monthly rate schedule. If said extra work requires the use of machinery or equipment not already on the site of the Work, the cost of transportation, not exceeding a distance of 100 miles, of such machinery or equipment to and from the Work shall be added to the fair monthly rental; provided however, that this shall not apply to machinery and equipment already required to be furnished under the terms of the Contract.

The Contractor shall not include in the cost of extra work any cost or rental of small tools, building, or any portion of the time of the Contractor, his superintendent, or his office and engineering staff.

To the cost of extra work done by the Contractor's own forces under (b) above (determined as stated above), the Contractor may add 15 percent to cover his overhead, use of capital, the premium on the Bonds as assessed upon the amount of this extra work, and profit.

In the case of extra work done under (b) by a subcontractor, the subcontractor shall compute, as above, his cost for the extra work, to which he may add 15 percent as in the case of the Contractor. The Contractor shall be allowed an additional 5 percent of the subcontractor's initial cost for the extra work prior to the 15 percent adjustment, to cover the costs of the Contractor's overhead use of capital, the premium on the Bonds as assessed upon the amount of this work, and profit. Said subcontractor's cost must be reasonable and approved by the Engineer.

If extra work is done under (b) above, the Contractor and/or subcontractor shall keep daily records of such extra work. The daily record shall include the names of men employed; the nature of the work performed, and hours worked, materials and equipment incorporated, and machinery or equipment used, if any, in the prosecution of such extra work. This daily record, to constitute verification that the work was done, must be signed both by the Contractor's authorized representative and by the Engineer. A separate daily record shall be submitted for each extra Work Order.

25. Extension of Time on Account of Extra Work

A. When extra work is ordered near the completion of the Contract or at any time during the progress of the Work that unavoidably increases the time for the completion of the Work, an extension of time shall be granted as hereinbefore provided.

26. Changes not to Affect Bonds

A. It is distinctly agreed and understood that any changes made in the Work or the Drawings or Specifications therefor (whether such changes increase or decrease the amount thereof or the time required for its performance) or any changes in the manner of time of payments made by the Owner to the Contractor, or any other modifications of the Contract, shall in no way annul, release, diminish or affect the liability of the Surety on the CONTRACT BONDS given by the Contractor, it being the intent hereof that notwithstanding such changes the liability of the Surety on said bonds continue and remain in full force and effect.

27. Claims for Damages

A. If the Contractor makes claim for any damages alleged to have been sustained by breach of contract or otherwise, he shall, within 10 days after occurrence of the alleged breach or within 10 days after such damages are alleged to have been sustained, whichever date is the earlier, file with the Engineer a written, itemized statement in triplicate of the details of the alleged breach and the details and amount of the alleged damages. The Contractor agrees that unless such statement is made and filed as so required, his claim for damages shall be deemed waived, invalid and unenforceable, and that he shall not be entitled to any compensation for any such alleged damages. Within 10 days after the timely filing of such statement, the Engineer shall file with the Owner one copy of the statement, together with his recommendations for action by the Owner.

B. The Contractor shall not be entitled to claim any additional compensation for damages by reason of any direction instruction, determination or decision of the Engineer, nor shall any such claims be considered, unless the Contractor shall have complied in all respects with the third paragraph of that subsection above of this AGREEMENT titled "Authority of the Engineer," including, but not limited to the filing of a written protest in the manner and within the time therein provided.

28. Abandonment of Work or Other Default

A. If the Work shall be abandoned, or any part thereof shall be sublet without previous written consent of the Owner, or the Contractor or any moneys payable hereunder shall be assigned otherwise than as herein specified, or if at any time the Engineer shall be of the opinion, and shall so certify in writing, that the conditions herein specified as to rate of progress are not being complied with, or that the Work or any part thereof is being unnecessarily or unreasonably delayed, or that the Contractor has violated or is in default under any of the provisions of the Contract, or if the Contractor becomes bankrupt or insolvent or goes or is put into liquidation or dissolution, either voluntarily or involuntarily, or petitions for an arrangement or reorganization under the Bankruptcy Act, or makes a general assignment for the benefit of creditors or otherwise acknowledges insolvency, the happening of any of which shall be and constitute a default under the Contract, the Owner may notify the Contractor in writing, with a copy of such notice mailed to the Surety, to discontinue all Work or any part thereof; thereupon the Contractor shall discontinue such Work or such part thereof as the Owner may designate; and the Owner may, upon giving such notice, by contract or otherwise as it may determine, complete the Work or such part thereof and charge the entire cost and expense of so completing the Work or such part thereof to the Contractor. In addition to the said entire cost and expense of completing the Work, the Owner shall be entitled to reimbursement from the Contractor and the Contractor agrees to pay to the Owner any losses, damages, costs and expenses, including attorney's fees, sustained or incurred by the Owner by reason of any of the foregoing causes. For the purposes of such completion the Owner may for itself or for any Contractors employed by the Owner take possession of and use or cause to be used any and all materials, equipment, plant, machinery, appliances, tools, supplies and such other items of every description that may be found or located at the site of the Work.

B. All costs, expenses, losses, damages, attorney's fees and any and all other charges incurred by the Owner under this subsection shall be charged against the Contractor and deducted and/or

paid by the Owner out of any moneys due or payable or to become due or payable under the Contract to the Contractor; in computing the amounts chargeable to the Contractor the Owner shall not be held to a basis of the lowest prices for which the completion of the Work or any part thereof might have been accomplished, but all sums actually paid or obligated therefore to effect its prompt completion shall be charged to and against the account of the Contractor. In case the costs, expenses, losses, damages, attorney's fees and other charges together with all payments theretofore made to or for the account of the Contractor are less than the sum which would have been payable under the Contract if the Work had been properly performed and completed by the Contractor, the Contractor shall be entitled to receive the difference, and, in case such costs, expenses, losses, damages, attorneys' fees and other charges, together with all payments theretofore made to or for the account of the Contractor, shall exceed the said sum, the Contractor shall pay the amount of the excess to the Owner.

29. Prices for Work

A. The Owner shall pay and the Contractor shall receive the prices stipulated in the BID made a part hereof as full compensation for everything performed and furnished and for all risks and obligations undertaken by the Contractor under and as required by the Contract. Moneys May be Retained

A. The Owner may at any time retain from any moneys which would otherwise be payable hereunder so much thereof as the Owner may deem necessary to complete the Work hereunder and to reimburse it for all costs, expenses, losses, damage and damages chargeable to the Contractor hereunder.

30. Formal Acceptance

A. This Agreement constitutes an entire contract for one whole and complete Work or result. Fixing of the date of completion and acceptance of the Work or a specified part thereof shall only be effective when accomplished by a writing specifically so stating and signed by the Owner.

31. Progress Estimates

A. Once a month, except as hereinafter provided, the Engineer shall make an estimate in writing of the total amount and value of the work done to the first of the month by the Contractor. The Owner will check the estimate to ensure total amount of work and value of work done are justified. The Owner shall retain a percentage of such estimated value, as set forth in Table A at the end of this section, as part security for fulfillment of the Contract by the Contractor and shall deduct from the balance all previous payments made to the Contractor, all sums chargeable against the Contractor and all sums to be retained under the provisions of the Contract. The Owner shall pay monthly to the Contractor in accordance with General Laws Chapter 30, Section 39, as amended:

1. Within 15 days (24 days in the case of the Commonwealth) after receipt from the Contractor, at the place designated by the Owner if such a place is so designated, of a periodic estimate requesting payment of the amount due for the preceding month, the Owner will make periodic payment to the Contractor for the work performed during the preceding month and for the materials not incorporated in the work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the Contractor has title or to which a subcontractor has title and has authorized the Contractor to transfer title to the Owner, less (1) a retention based on its estimate of the fair value of its claims against the Contractor and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section 39 F and less (3) a retention not exceeding five percent of the approved amount of the periodic payment. After the receipt of a periodic estimate requesting final payment and within 65 days after (a) the Contractor fully completes the work or substantially completes the work so that the value of the work remaining to be done is, in the estimate of the awarding authority, less than one percent of original contract price, or (b) the Contractor substantially completes the work and the Owner takes

possession for occupancy, whichever occurs first, the Owner shall pay the Contractor the entire balance due on the contract less (1) a retention based on its estimate of the fair value of its claims against the Contractor and of the cost of completing the incomplete and unsatisfactory items of work and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section 39 F, or based on the record of payments by the Contractor to the subcontractors under this contract if such record of payment indicates that the Contractor has not paid subcontractors as provided in section 39 F. If the Owner fails to make payment as herein provided, there shall be added to each such payment daily interest at the rate of three percentage points above the rediscount rate than charged by the Federal Reserve Bank of Boston commencing on the first day after said payment is due and continuing until payment delivered or mailed to the Contractor; provided, that no interest shall be due, in any event, on the amount due on periodic estimate for final payment until 15 days (24 days in the case of the Commonwealth) after receipt of such a periodic estimate from the Contractor, at the place designated by the Owner if such a place is so designated. The Contractor agrees to pay to each subcontractor a portion of any such interest in accordance with the amount due each subcontractor.

2. Forthwith after the Contractor receives payment on account of 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.
3. Not later than the 65th day after each subcontractor substantially completes his work in accordance with the specifications, the entire balance due under the subcontract less amounts retained by the Owner as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and the Owner shall pay that amount to the Contractor. The Contractor shall forthwith pay to the subcontractor the full amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the Contractor.
4. Each payment made by the Owner to the Contractor pursuant to subparagraphs (2) and (3) of this paragraph 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 Owner shall take reasonable steps to compel the Contractor to make each such payment to each such subcontractor. If the Owner 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 (2) and (3), the Owner shall act upon the demand as provided in this section.
5. 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 Owner as the estimated cost of completing

the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the Owner. The demand shall be by a sworn statement delivered to or sent by certified mail to the Owner, 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 and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the 70th day after the subcontractor has substantially completed the subcontract work. Within ten days after the subcontractor has delivered or so mailed the demand to the Owner 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 Owner 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.

6. Within 15 days after receipt of the demand by the Owner, but in no event prior to the 17th day after substantial completion of the subcontract work, the Owner shall make direct payment to the subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the Contractor, less any amount (i) retained by the Owner as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the Contractor in the sworn reply; provided, that the Owner shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph (5). The Owner shall make further direct payments to the subcontractor forthwith after the removal of the basis for deductions from direct payments made as provided in parts (i) and (ii) of this subparagraph.
7. The Owner shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of subparagraph (6) in an interest-bearing joint account in the names of the Contractor and the subcontractor in a bank in Massachusetts selected by the Owner 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.
8. 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 (7) 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 become payable to the Contractor and in the order of receipt of such demands from subcontractors. All direct payments shall discharge the obligation of the Owner to the Contractor to the extent of such payment.

9. The Owner shall deduct from payments to a Contractor amounts which, together with the deposits in interest-bearing accounts pursuant to subparagraph (7), 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 have a right in such deductions prior to any claims against such amounts by creditors of the Contractor.
10. If the subcontractor does not receive payment as provided in subparagraph (2) or if the Contractor does not submit a periodic estimate for the value of the labor or materials performed or furnished by the subcontractor and the subcontractor does not receive payment for same when due less the deductions provided for in subparagraph (2), the subcontractor may demand direct payment by following the procedure in subparagraph (5) and the Contractor may file a sworn reply as provided in that same subparagraph. A demand made after the first day of the month following that for which the subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on a periodic estimate from the Contractor. Thereafter the Owner shall proceed as provided in subparagraph (6), (7), (8), and (9).

32. Partial Acceptance

- A. The Owner may, at any time in a written order to the Contractor (1) declare that he intends to use a specified part of the Work which in his opinion is sufficiently complete, in accordance with the Contract Documents, to permit its use; (2) enclose a tentative list of items remaining to be completed or corrected, and (3) fix the date of acceptance of that specified part of the Work.
- B. Within 45 days after acceptance under this subsection, the Engineer shall make an estimate in writing of the amount and value of the part of the Work so accepted. The Owner shall pay said amount to the Contractor after deducting therefrom all previous payments, all charges against the Contractor as provided for hereunder, and all amounts to be retained under the provisions of the Contract, said payment to be made at the time of the next monthly progress estimate.
- C. Acceptance by the Owner under this subsection shall not relieve the Contractor of any obligations under the Contract Documents except to the extent agreed upon in writing between the Owner and the Contractor.
- D. The Owner shall have the right to exclude the Contractor from any part of the Work which has been accepted, but the Owner will allow the Contractor reasonable access thereto to complete or correct items on the tentative list.

33. Final Estimate and Payment

- A. All quantities shown on progress estimates and all prior payments shall be subject to correction in the final estimate and payments as determined by the Engineer.

B. The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Contractor under or by virtue of this Agreement; and upon satisfactory completion of the work performed under this Agreement, as a condition before final payment under this Agreement or as a termination settlement under this Agreement the Contractor shall execute and deliver to the Owner a release of all claims against the Owner arising under or by virtue of, this Agreement, except claims which are specifically exempted by the Contractor to be set forth herein. Unless otherwise provided in this Agreement, by Commonwealth law or otherwise expressly agreed to be the parties to this Agreement, any payment, including final payment under, this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of the Owner's claims against the Contractor or his sureties under this Agreement or applicable Performance and Labor and Materials Bonds.

34. Liens

A. If at any time any notices of lien are filed and labor performed or materials or equipment manufactured, furnished, or delivered to or for the Work, the Contractor shall, at its own cost and expense, promptly discharge, remove or otherwise dispose of the same, and until such discharge, removal or disposition, the Owner shall have the right to retain from any moneys payable hereunder an amount which, in its sole judgment, it deems necessary to satisfy such liens and pay the costs and expenses, including attorneys' fees, of defending any actions brought to enforce the same, or incurred in connection therewith or by reason thereof.

35. Claims

A. If at any time there be any evidence of any claims for which the Contractor is or may be liable or responsible hereunder, the Contractor shall promptly settle or otherwise dispose of the same, and until such claims for settled or disposed of, the Owner may retain from any moneys which would otherwise be payable hereunder so much thereof as, in its sole judgment, it may deem necessary to settle or otherwise dispose of such claims and to pay the costs and expenses, including attorney's fees, of defending any actions brought to enforce such claims, or incurred in connection therewith or by reason thereof.

36. Application of Moneys Retained

A. The Owner may apply any moneys retained hereunder to reimburse itself for any and all costs, expenses, losses, damage and damages, liabilities, suits, judgments and awards incurred, suffered or sustained by the Owner and chargeable to the Contractor hereunder or as determined hereunder.

37. No Waiver

A. Neither the inspection by the Owner or the Engineer, nor any order, measurement, approval, determination, decision or certificate by the Engineer, nor any order by the Owner for the payment of money, nor any payment for or use, occupancy, possession or acceptance of the whole or any part of the Work by the Owner, nor any extension of time, nor any other act or

omission of the Owner or of the Engineer shall constitute or be deemed to be an acceptance of any defective or improper work, materials, or equipment nor operate as a waiver of any requirement or provision of the Contract, nor of any remedy, power or right of or herein reserved to the Owner, nor of any right to damages for breach of contract. Any and all rights and/or remedies provided for in the Contract are intended and shall be construed to be cumulative; and, in addition to each and every other right and remedy provided for herein or by law, the Owner shall be entitled as of right to a writ of injunction against any breach or threatened breach of the Contract by the Contractor, by his subcontractors or by any other person or persons.

38. Liability of Owner

A. No person, firm or corporation, other than the Contractor who signed this Contract as such, shall have any interest herein or right hereunder. No claim shall be made or be valid either against the Owner or any agent of the Owner and neither the Owner nor any agent of the Owner shall be liable for or be held to pay any money, except as herein provided. The acceptance by the Contractor of the payment as fixed in the final estimate shall operate as and shall be a full and complete release of the Owner and of every agent of the Owner of and from any and all claims, demands, damages and liabilities of, by or to the Contractor for anything done or furnished for or arising out of or relating to or by reason of the Work or for or on account of any act or neglect of the Owner or of an agent of the Owner or of any other person, arising out of, relating to or by reason of the Work, except the claim against the Owner for the unpaid balance, if any there be, of the amounts retained as herein provided.

39. Guarantee

A. The Contractor guarantees that the Work and services to be performed under the Contract, and all workmanship, materials and equipment performed, furnished, used or installed in the construction of the same, shall be free from defects and flaws, and shall be performed and furnished in strict accordance with the Drawings, Specifications, and other Contract Documents, that the strength of all parts of all manufactured equipment shall be adequate and as specified and that the performance test requirements of the Contract shall be fulfilled. This guarantee shall be for a period of one year from and after the date of completion and acceptance of the Work as stated in the final estimate. If part of the Work is accepted in accordance with that subsection of this AGREEMENT titled "Partial Acceptance", the guarantee for that part of the Work shall be for a period of one year from the date fixed for such acceptance.

B. If at any time within the said period of guarantee any part of the Work requires repairing, correction or replacement, the Owner may notify the Contractor in writing to make the required repairs, correction, or replacements. If the Contractor neglects to commence making such repairs, correction, or replacements to the satisfaction of the Owner within 3 days from the date of receipt of such notice, or having commenced fails to prosecute such Work with diligence, the Owner may employ other persons to make the same, and all direct and indirect costs of making said repairs, correction or replacements, including compensation for additional professional services, shall be provided for and guaranteed by the Contractor's Payment and Performance Bond.

40. Return of Drawings

A. All Drawings furnished by the Owner or the Engineer to the Contractor may be used only in connection with the prosecution of the Work and shall be returned by the Contractor upon completion of the Work.

41. Cleaning Up

A. The Contractor at all times shall keep the site of the Work free from rubbish and debris caused by his operations under the Contract. When the Work has been completed, the Contractor shall remove from the site of the Work all of his plant, machinery, tools, construction equipment, temporary work, and surplus materials so as to leave the Work and the site clean and ready for use.

42. Legal Address of Contractor

A. The Contractor's business address and his office at or near the site of the Work are both hereby designated as places to which communications shall be delivered. The depositing of any letter, notice, or other communication in a postpaid wrapper directed to the Contractor's business address in a post office box regularly maintained by the Post Office Department or the delivery at either designated address of any letter, notice, or other communication by mail or otherwise shall be deemed sufficient service thereof upon the Contractor, and the date of such service shall be the date of receipt. The first-named address may be changed at any time by an instrument in writing, executed and acknowledged by the Contractor delivered to the Engineer. Service of any notice, letter, or other communication upon the Contractor personally shall likewise be deemed sufficient service.

43. Headings

A. The headings or titles of any section, subsection, paragraph, provision, or part of the Contract Documents shall not be deemed to limit or restrict the content, meaning or effect of such section, subsection, paragraph, provision or part.

44. Modification or Termination

A. Except as otherwise expressly provided herein, the Contract may not be modified or terminated except in writing signed by the parties hereto.

45. Direct Labor Cost

A. Direct labor cost percentage for change orders shall be established by the nature of the work and shall be agreed to by the Contractor and the Owner prior to the commencement of the additional work.

46. Massachusetts Tax Laws

A. The Contractor shall provide a statement that indicates compliance with all the requirements of Massachusetts General Law Chapter 233.

47. Termination for Convenience

A. This Agreement may also be terminated by the Owner upon not less than seven days written notice for the Owner’s convenience. In the case of termination for convenience, the Owner shall be responsible for amounts due for work performed through the date of termination, provided that the Contractor shall submit a request for payment in accordance with the provisions hereof. The Contractor shall have no other claim for payments due with respect to such termination including any claim for lost profits with respect to the balance of the project.

IN WITNESS HEREOF, the parties to this AGREEMENT have hereunto set their hands and seals as of the day and year first above written.

TOWN OF SWAMPSCOTT
BOARD OF SELECTMEN

NAME OF CONTRACTOR

By: _____
Sean R. Fitzgerald,
Town Administrator

By: _____
Its Duly Authorized Officer or Agent

In accordance with M.G.L. c. 44, section 31C, this is to certify that an appropriation in the amount of this contract is available, therefore, and that the Town Accountant has been authorized to execute the contract and approve all requisitions and change orders.

Amy L. Sarro, Director of Administration & Finance

**CERTIFICATE OF ACKNOWLEDGMENT OF CONTRACTOR IF A CORPORATION
FOR AGREEMENT**

TOWN OF SWAMPSCOTT
BURRILL STREET PEDESTRIAN & BICYCLE
IMPROVEMENTS

CONTRACT No. 2023-008

State of _____)
County _____) ss

On this _____ day of _____, 20_____, before me personally
came _____ to me known, who being me duly sworn, did
depose and say as follows:

That he resides at _____
and is the _____
of _____

the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to the foregoing instrument is such corporate seal and it was so affixed by order of the Board of Directors of said corporation; and that by the like order he signed thereto his name and official designation.

Notary Public (Seal)

My commission expires _____

TABLE A

Agreement Subsection Reference	Item	Minimum Limits
6	Worker's Compensation and Employers's Liability Insurance in accordance with provisions of M.G.L. c 149, S. 34A	As required by the Commonwealth of Massachusetts
6	Public Liability including Contractor's Protective, Completed Operations and Contractual Liability	<p>Bodily Injury: \$1,000,000 each occurrence \$2,000,000 aggregate</p> <p>Property Damage Including C.U. Coverage \$2,000,000 each occurrence \$2,000,000 aggregate</p> <p>Blasting and explosion coverage shall be obtained if there is a need for blasting under the contract.</p>
6	Personal Injury Insurance	\$2,000,000 aggregate
6	Automobile Liability including coverage for owned, hired or borrowed vehicles	<p>Bodily Injury \$1,000,000 each person \$1,000,000 each occurrence</p> <p>Property Damage \$1,000,000 each occurrence</p>
6	Owner's Protective Liability & Property Damage	<p>Bodily Injury \$1,000,000 each occurrence \$1,000,000 aggregate</p>

		Property Damage \$1,000,000 each occurrence
--	--	---

TABLE A, CONTINUED

13	Time of Completion	120 Days from Notice to Proceed
14	Liquidated Damages for each calendar day or delay in completion time	\$100
33	Percentage of Progress Estimates to be retained	5%
33	Amount of Minimum Progress Estimates	\$5,000

INSURANCE CERTIFICATE

SHEET 1 OF 2

Issued to

Contract Reference: Town of Swampscott – Burrill Street Pedestrian & Bicycle Improvements

This is to certify that this Company, _____, (Name of Insurance Company) has enforced the following policies covering all work and operations of _____ (Name of Contractor), as the designated Contractor under a Contract with the Town of Swampscott, Massachusetts dated _____ for the FY23 Roadway Resurfacing Project.

POLICY NUMBER EFFECTIVE AND KINDS OF INSURANCE	LIMITS	EXPIRATION DATE
Worker's Compensation and Employers Liability and Harbor Workers Coverage*		Number: _____ Effective: _____ Expires: _____
Public Liability including Contractor's Protective Personal Injury, Completed Operations, and Contractual Liability** ***Note: Explosion Collapse and underground coverage is provided	Bodily Injury \$ _____ each occurrence \$ _____ aggregate Property Damage \$ _____ each occurrence Including C.U. \$ _____ aggregate Coverage *** Personal Injury \$ _____ aggregate	Number: _____ Effective: _____ Expires: _____

* Longshoremen's and Harbor Workers' Coverage may be deleted if not required by contract.

** Contractual Liability covers the liability assumed by the Contractor under paragraph E of that subsection entitled "Obligations and Liability of Contractor" of the AGREEMENT, as required by Subsection 1.03 of the Contract.

*** Blasting coverage is provided.

INSURANCE CERTIFICATE

SHEET 2 OF 2
Issued to

Contract Reference: Town of Swampscott – Burrill Street Pedestrian & Bicycle Improvements

POLICY NUMBER EFFECTIVE AND KINDS OF INSURANCE	LIMITS	EXPIRATION DATE
Automobile Liability including Coverage for hired or borrowed vehicles	Bodily Injury \$ _____ each occurrence \$ _____ aggregate Property Damage \$ _____ each occurrence	Number: _____ Effective: _____ Expires: _____
Owner's Protective Liability and Property Damage	Bodily Injury \$ _____ each occurrence \$ _____ aggregate Property Damage \$ _____ each occurrence \$ _____ aggregate	Number: _____ Effective: _____ Expires: _____

Note: A copy of the Owner's Protective Policy for the Owner is to be furnished with the completed certificates.

Other		Number: _____ Effective: _____ Expires: _____
Builder's Risk with All Risk Installation Floater including fire and extended coverage as required by the above referenced Contract	\$ _____	

Note: A copy of the Builder's Risk Insurance Policy for the Owner shall be furnished with the completed certificates.

It is agreed that thirty (30) days notice of cancellation or restrictive amendment of said policies shall be mailed to the Owner

Insurance Company

Insurance Agent

By: _____
Authorized Agent or Officer

Date: _____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that we _____ a
_____ hereinafter called "Principal" and
_____ of _____, Commonwealth of
_____, hereinafter called "Surety", are held and firmly bound unto
the Town of Swampscott, Massachusetts, 22 Monument Avenue, Swampscott, MA 01907
hereinafter called OWNER, in the penal sum of _____ dollars
(\$ _____) in lawful money of the United States, for the payment of which sum well
and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by
these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a
certain contract with the OWNER, dated the _____ day of _____, 20____,
a copy of which is hereto attached and made part hereof for:

Town of Swampscott – Burrill Street Pedestrian & Bicycle Improvements

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the
undertakings, covenants, terms, conditions, and agreements of said contract during the original
term thereof, and any extensions thereof which may be granted by the OWNER, with or without
notice to the Surety, and during the one year guaranty period, and if he shall satisfy all claims and
demands incurred under such contract, and shall fully indemnify and save harmless the OWNER
from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse
and repay the OWNER all outlay and expense which the OWNER may incur in making good any
default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that
no change, extension of time, alteration or addition to the terms of the contract or to the WORK to
be performed thereunder or the CONTRACT DOCUMENTS accompanying the same shall in any
way affect its obligation on this BOND, and it does hereby waive notice of any such change,
extension of time, alteration or addition to the terms of the contract or to the WORK or to the
CONTRACT DOCUMENTS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR
shall abridge the right of any beneficiary thereunder, whose claim may be unsatisfied.

IN WITNESS, WHEREOF, this instrument is executed in SIX (6) counterparts, each one of which shall be deemed an original, this the _____ day of _____, 20_____.

ATTEST:

(Principal)

(Principal Secretary) By _____ (s)

(Seal)

(Witness as to Principal) _____
(Address)

(Address) _____

(Surety)

ATTEST:

(Surety) Secretary

(Seal)

(Witness as to Surety) By _____
(Attorney-in-Fact)

(Address) _____
(Address)

Note: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners should execute BOND.

Important: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that we _____ a
_____ hereinafter called "Principal" and
_____ of _____, Commonwealth of
_____, hereinafter called "Surety", are held and firmly bound unto
the Town of Swampscott, Massachusetts, 22 Monument Avenue, Swampscott, MA 01907
hereinafter called OWNER, in the penal sum of _____ dollars
(\$ _____) in lawful money of the United States, for the payment of which sum well
and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by
these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a
certain contract with the OWNER, dated the _____ day of _____, 20____,
a copy of which is hereto attached and made part hereof for:

Town of Swampscott – Burrill Street Pedestrian & Bicycle Improvements

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms,
SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the
prosecution of the WORK provided for in such contract, and any authorized extension or
modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and
coke, repairs on machinery, equipment and tools, consumed or used in connection with the
construction of such WORK, and all insurance premiums on said WORK, and for all labor
performed in such WORK, and all insurance premiums on said WORK, and for all labor performed
inn such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void,
otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received hereby stipulates and agrees that
no change, extension of time, alteration or addition to the terms of the contract or to the WORK to
be performed thereunder or the CONTRACT DOCUMENTS accompanying the same shall in any
way affect its obligation on this BOND, and it does hereby waive notice of any such change,
extension of time, alteration or addition to the terms of the contract or to the WORK or to the
CONTRACT DOCUMENTS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR
shall abridge the right of any beneficiary thereunder, whose claim may be unsatisfied.

IN WITNESS, WHEREOF, this instrument is executed in SIX (6) counterparts, each one of which
shall be deemed an original, this the _____ day of _____, 20_____.

ATTEST:

(Principal)

(Principal Secretary)

By

(s)

(Seal)

(Witness as to Principal)

(Address)

(Address)

(Surety)

ATTEST:

(Surety) Secretary

(Seal)

(Witness as to Surety)

By

(Attorney-in-Fact)

(Address)

(Address)

Note: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners should execute BOND.

Important: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the PROJECT is located.

SPECIAL PROVISIONS

BURRILL STREET PEDESTRIAN & BICYCLE IMPROVEMENTS SWAMPSCOTT, MASSACHUSETTS

DIVISION I – GENERAL CONDITIONS

SCOPE OF WORK

All work under this Contract shall be done in conformance with the MassDOT *2023 Standard Specifications for Highways and Bridges*, the *Supplemental Specifications* contained in this book, the *2017 Construction Standard Details*, the *Traffic Management Plans and Detail Drawings*, *MassDOT Work Zone Safety Temporary Traffic Control*, the *1990 Standard Drawings for Signs and Supports*; the *2015 Overhead Signal Structure and Foundation Standard Drawings*, the *2009 Manual on Uniform Traffic Control Devices (MUTCD)* with Massachusetts Amendments; the *1968 Standard Drawings for Traffic Signals and Highway Lighting*; *The American Standard for Nursery Stock*; the Plans and these Special Provisions.

The work to be done under this Contract consists of the pedestrian and bicycle improvements along Burrill Street from Columbia Street to the intersection of Railroad Avenue/Middlesex Avenue. The proposed work will consist of milling and overlay pavement, installation of curb ramps, sidewalks, curbing, sharrows, drainage improvements, a HMA island on Railroad Avenue and signage and pavement markings and other incidental items included in the Contract documents.

EXAMINATION OF PLANS AND THE LOCATIONS

(Supplementing Subsection 2.03)

The plans for this Contract have been prepared in part from an on the ground instrument field survey, utility company plans and other available sources. The accuracy and/or precision of this information are not guaranteed to be correct. Accordingly, it is the responsibility of the Contractor to verify all measurements and features of the project area by their own investigation and research.

PROPOSAL GUARANTY REQUIRED

(Supplementing Subsection 2.06)

For the purpose of the work under this Contract, the phrase "...authorized to do business in the Commonwealth of Massachusetts..." shall mean licensed by the Division of Insurance for the

purpose of writing bid bonds or authorized to do business in the Commonwealth as a surplus lines insurance company by the Division of Insurance for the purpose of writing bid bonds.

GUARANTEE AFTER FINAL ACCEPTANCE

(Supplementing Section 2.13)

The Contractor shall, at his own expense, replace any work performed under this Contract found to be defective in workmanship, material, or manner of functioning within twelve (12) months from date of final acceptance of all the installations under this Contract.

CONTRACT BONDS REQUIRED

(Supplementing Subsection 3.04)

The Contractor will be required to furnish and pay for a Performance Bond and also a Labor and Material or Payment Bond, each of a surety company qualified to do business under the laws of the Commonwealth of Massachusetts in the sum of one hundred percent (100%) of the Contract Sum Bid Price to perform the work shown on the Plans. Additionally, the Contractor will be required to furnish and pay for a Statutory Lien Bond under Massachusetts General Laws c.254.

CONCURRENT WORK BY OTHERS WITHIN PROJECT LIMITS

(Supplementing Section 5.06)

Concurrent work may be in progress in the project area by the County, the local municipality, by utility companies, by another Contractor hired by the Owner, or by other Contractors hired by private parties. The Contractor is required to coordinate their activities with these parties.

No additional payments will be allowed for any disruption of work schedule caused by or required for coordinating work in this Contract with work to be performed by others, as described above or which may be encountered during the prosecution of the work.

COOPERATION OF THE CONTRACTOR

(Supplementing Subsections 5.05 and 5.06)

Agents of various public service agencies, municipal and State Departments and private site Contractors may be entering the work site to remove existing utilities, construct or place new utilities or make alterations to existing utilities.

The Contractor shall perform the work in cooperation with the various agencies in a manner which causes the least interference with the operations of the aforementioned agencies and shall have no claim for delay which may be due to or result from said work of these agents.

CONSTRUCTION STAKINGS

(Supplementing Subsection 5.07)

It will be the Contractor's responsibility to provide survey control and construction stakes for grading, alignment, drainage, etc. to allow for proper prosecution of the proposed work. Control stakes for horizontal and vertical alignment (line and grade) of curbing, edging, catch basins, manhole, traffic signal foundations, headwalls, gutterline and centerline grades at 50 stations, low points, top and bottom of slope and at other complicated locations shall be provided. The Contractor shall furnish and set, at their own expense, all stakes (such as batter boards, slope stakes, pins, offset stakes, etc.) required for the construction operations and he shall be solely responsible for the accuracy of the line and grade of all features of his/her work. The Contractor shall establish all record baselines and construction baselines as shown on the plans at their own expense.

The Contractor shall be held responsible for the preservation of all stakes and marks. If any of such stakes or marks are disturbed or destroyed the cost of replacing them shall be at the Contractor's expense.

All survey work will be in accordance with customary standards and be performed by a licensed Professional Land Surveyor registered in the Commonwealth of Massachusetts. The cost of survey work shall be deemed to be included in the Contract Sum Bid Price and no additional payment shall be made therefore.

INSPECTION OF WORK

(Supplementing Subsection 5.09)

For the purpose of observing work that affects their respective properties, inspectors for the Municipality, public agencies, and the utility companies shall be permitted access to the work, but all official orders and directives to the Contractor will be issued by the Owner.

DELIVERY AND STORAGE OF MATERIALS

Replace Subsection 6.03 with the following:

Materials and equipment shall be progressively delivered to or removed from the site so that there will be neither delay in the progress of the work nor an accumulation of materials that are not to be used or removed within a reasonable time. All materials shall be stored in pre-approved locations per the conditions of the property owner.

Delivered materials and materials originating from the site, shall be stored to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located to facilitate their prompt inspection.

Approved portions of the Town Layout may be used for storage of project materials and for the placing of the Contractor's plant and equipment upon obtaining approval from the Town. All storage sites shall be restored to their original condition by the Contractor. No additional

compensation shall be given for the design, construction, preparation, or restoration of the storage site(s) or obtaining the access permit which may include but is not limited to a Traffic Management Plan (TMP), utilities, and lighting.

Any additional space required must be provided by the Contractor at their expense. Municipal, private, or other state-owned property shall not be used for storage purposes without written permission of the owner or lessee, and copies of such written permission shall be furnished to the Engineer.

LAWS TO BE OBSERVED

(Supplementing Subsection 7.01)

The Contractor shall comply with the provisions of the rules and regulations for the control of air pollution adopted under Section 142B and 142D, Chapter 111 of the General Laws pertaining to air pollution control in the applicable Air Pollution Control District.

COMPLIANCE WITH THE NATIONAL DEFENSE AUTHORIZATION ACT

(Supplementing Subsection 7.01)

On all projects, the "Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment" Regulation (2 CFR 200.216) prohibits the Contractor from using or furnishing the following telecommunications equipment or services:

- Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- Telecommunications or video surveillance services provided by such entities or using such equipment.
- Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

This prohibition applies to all products manufactured by the aforementioned companies, including any individual components or parts.

By submitting a bid on a project, the Contractor certifies that all work will be in compliance with the terms of 2 CFR 200.216. The Contractor shall submit a COC indicating compliance with the above provisions for all telecommunications equipment or services included in the Contract.

Payment for the item in which the materials are incorporated may be withheld until these COCs are received. Any cost involved in furnishing the certificate(s) shall be borne by the Contractor.

PERMITS AND LICENSES

Replace Subsection 7.03 in its entirety with the following:

The Contractor shall procure all required permits and licenses, pay all charges, fees and taxes and shall give all notices necessary and incidental to the due and lawful prosecution of the work. The cost thereof shall be included in the prices bid for the various items listed in the Proposal. Copies of all required permits and licenses shall be filed with the Engineer prior to the beginning of work.

For overweight vehicles in excess of 130,000 lbs., the Contractor shall provide a copy of each overweight vehicle permit to the Engineer prior to arrival or delivery of the vehicle to a project site. This requirement is for all Contractors, their subcontractors, equipment suppliers and material suppliers.

The Contractor's attention is directed to the provisions of General Laws, Chapter 90, Section 9 as amended, in which it is provided that earth-moving motor vehicles which exceed certain dimensions or weight limits as specified in said Act, and which are used exclusively for building, repair and maintenance of highways, may be operated without registration for a distance not exceeding 300 yd on any way adjacent to any highway or toll road being constructed, relocated or improved provided a permit, authorizing such use, to be issued by the Commissioner of Public Works or by the Board or officer having charge of such way, has been procured by the Contractor.

INSURANCE

(Supplementing Subsection 7.05)

The Owner and Engineer shall be named as additionally insured on the Contractor's Public Liability Insurance policy, and a full original copy shall be delivered to the Owner and the Engineer.

HOLIDAY WORK RESTRICTIONS

(Supplementing Subsection 7.09)

The Town may authorize work to continue during these specified time periods if it is determined that the work will not negatively impact the traveling public. The Town may allow work in those areas on a case by case basis and where work is behind barrier and will not impact traffic

Below are the holiday work restrictions:

New Years Day (Federal Holiday)

No work on major arterial roadways from 5:00 AM on the day before until the normal start of business on the next subsequent business day. No work on local roadways on the holiday without permission by the Town and the local police chief.

Martin Luther King's Birthday (Federal Holiday)

No work restrictions due to traffic concerns, however work on local roadways requires permission by the Town and local police chief.

President's Day (Federal Holiday)

No work restrictions due to traffic concerns, however work on local roadways requires permission by the Town and local police chief.

Evacuation Day (Suffolk County State Holiday)

No work restrictions due to traffic concerns.

Mother's Day

No work restrictions due to traffic concerns.

Memorial Day (Federal Holiday)

No work on major arterial roadways from 5:00 AM on the Friday before, until the normal start of business on the following day.

Bunker Hill Day (Suffolk County State Holiday)

No work restrictions due to traffic concerns.

Juneteenth

No work restrictions due to traffic concerns, however work on local roadways requires permission by the Town and local police chief.

HOLIDAY WORK RESTRICTIONS (Continued)
(Supplementing Subsection 7.09)

Independence Day (Federal Holiday)

No work on major arterial roadways from 5:00 AM on the day before until the normal start of business on the next subsequent business day. No work on local roadways on the holiday without permission by the Town and the local police chief.

Labor Day (Federal Holiday)

No work on major arterial roadways from 5:00 AM on the Friday before, until the normal start of business on the following day.

Columbus Day (Federal Holiday)

No work on major arterials from 5:00 AM on the Friday before, until the normal start of business on the following day.

Veterans' Day (Federal Holiday)

No work restrictions due to traffic concerns.

Thanksgiving Day (Federal Holiday)

No work on major arterials from 5:00 AM two days before until the normal start of business on the following Monday.

Christmas Day (Federal Holiday)

No work on major arterial roadways from 5:00 AM on the day before until the normal start of business on the next subsequent business day.

NOTICE TO OWNERS OF UTILITIES

(Supplementing Subsection 7.13)

Written notice shall be given by the Contractor to all public service corporations or officials owning or having charge of publicly or privately owned utilities of the Contractor's intention to commence operations affecting such utilities at least one (1) week in advance of the commencement of such operations in accordance with Chapter 82, Section 40 of the General Laws, as amended, and the Contractor shall at that time file a copy of such notice with the Engineer.

The Plans Indicate the approximate location of known utilities in the vicinity of the work. The accuracy and completeness of the information is not guaranteed.

Any damage to these utilities caused by the Contractor's operations shall be repaired by the Contractor at their own expense and to the satisfaction of the Engineer.

It is the intent of these Special Provisions that the Contractor having been given due notice hereof will safeguard the utilities during construction and shall assume liability for damage, relieving the Municipality from any liability.

A list of public and private utilities can be found on the MassDOT website at:
<https://www.mass.gov/info-details/utility-contacts-by-district-and-municipality>

Select Utility Contacts by District/Municipality

Select District 4

Select Springfield

Locate the utility contact

Following are the names and addresses of the utilities, which may be affected, but the completeness of the list is not guaranteed.

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

MassDOT District 4

519 Appleton Street

Arlington, MA 02476

Contact: Paul Stedman
District Highway Director

Phone: 857-368-4000

Email: Paul.Stedman@dot.state.ma.us

UTILITY COMPANIES

Electric

National Grid Electric
40 Sylvan Road
Waltham, MA 02451
Contact: Murli Gupta
Phone: 781-296-6483
Email: Murli.Grupta@nationalgrid.com

Gas

National Grid Gas
40 Sylvan Road
Waltham, MA 02451
Contact: Melissa Owens
Phone: 781-907-2845
Email: Melissa.Owens@nationalgrid.com

Telephone

Verizon
385 Myles Standish Boulevard
Taunton, MA 02780
Contact: Karen Mealey
Phone: 774-409-3160
Email: karen.m.mealey@verizon.com

AT&T/ Teleport Communications America, c/o Siena Engineering Group
50 Mall Road – Suite 203
Burlington, MA 01803
Contact: Erica Hudson
Email: erica.hudson@sienaengineeringgroup.com

Water

MWRA
2 Griffin Way
Chelsea, MA 02150
Contact: Ralph Francesconi
Phone: 617-461-3573
Email: Ralph.Francesconi@mwra.com

Swampscott DPW
22 Monument Avenue
Swampscott, MA 01907
Contact : Gino Cresta, Jr.
Phone : 781-596-8860
Email : gcresta@town.swampscott.ma.us

Sewer

Swampscott DPW
22 Monument Avenue
Swampscott, MA 01907
Contact: Gino Cresta, Jr.
Phone: 781-596-8860
Email: gcresta@town.swampscott.ma.us

Railroad

MBTA Document Control Group
500 Arborway
Boston, MA 02130
Contact: Connor Campbell
Email: ccampbell2@mbta.com

Cable

Comcast Cable Corporation
PO Box 6505, 5 Omni Way
Chelmsford, MA 01824
Contact: Wendy Brown
Phone: 978-848-5163
Email: Wendy_Brown@comcast.com

Crown Castle
80 Central Street
Boxborough, MA 01719
Contact: Mark Bonanno
Phone: 508-616-7818
Email: mark.bonanno@crowncastle.com

Fire Alarm
Swampscott Fire Department
76 Burrill Street
Swampscott, MA 01907

Contact: Deputy Chief James Potts
Phone: 781-598-2056
Email: jpotts@swampscottma.gov

Swampscott Department of Public Works

22 Monument Avenue
Swampscott, MA 01907
Contact: Gino Cresta, Jr.
Phone: 781-596-8860
Email: gcresta@town.swampscott.ma

Other

Verizon Wireless Small Cell
20 Alexander Drive
Wallingford, CT 06492
Contact: Liz Glidden
Email: elizabeth.glidden@verizonwireless.com

WORK SCHEDULE

(Supplementing Section 8.00)

Work involving lane restrictions is not permitted during the weekday peak hours from 6:00 AM to 9:00 AM and 3:00 PM to 6:00 PM. One lane in each direction shall be maintained along Burrill Street during the above times.

Particular care shall be taken to establish and maintain methods and procedures that will not create unnecessary or unusual hazards to public safety. Traffic control shall be implemented as shown on the Plans and detours shall not be implemented without prior approval from the Town and Engineer. Traffic control devices required only during working hour operations shall be removed at the end of each working day.

CONTRACTOR QUESTIONS AND ADDENDUM ACKNOWLEDGEMENTS

Prospective bidders are required to submit all questions to DPW Director, Gino Cresta by 3:00 P.M. on the Thursday of the previous week before the scheduled bid opening date. Any questions received after this time will not be considered for review by the Municipality.

Contractors should email questions and addendum acknowledgements to the following email address: nswanstrom@swampscottma.gov. The project name is to be placed in the subject line.

PROMPT PAYMENT AND RELEASE OF RETAINAGE TO SUBCONTRACTORS

The Contractor agrees to pay each Subcontractor under this prime contract for satisfactory performance of subcontract work not later than ten (10) business days from the receipt of each payment the Prime Contractor receives from the Owner. Failure to comply with this requirement may result in the withholding of payment to the Prime Contractor until such time as all payment due under this provision has been received by the Subcontractor(s).

The Contractor further agrees to make payment in full, including retainage, to each Subcontractor not later than ten (10) business days after the Subcontractor has completed all of the work required under its subcontract and said retainage has been released by the Owner.

BIDDERS LIST

Pursuant to the provisions of 49 CFR Part 26.11 all official bidders will be required to report the names, addresses and telephone numbers of all firms that submitted bids or quotes in connection with this Project. Failure to comply with a written request for this information within 15 business days may result in a recommendation to the Prequalification Committee that prequalification status be suspended until the information is received.

The Municipality will survey all firms that have submitted bids or quotes during the previous year prior to setting the annual goal and shall request that each firm report its age and gross receipts for the year.

BUY AMERICA PROVISIONS

The Buy America Provisions of Subsection 7.01 G. of the Standard Specifications shall apply to steel used for temporary support of excavation, including H piles, soldier piles, and sheeting when the steel is required to be left in place. Temporary steel shall remain in place when it falls within the influence zone of the soil supporting any structure or railroad tracks. The influence line is defined by a line extending out at 45° from the toe of structure being supported.

EQUIVALENT SINGLE AXLE LOADS (ESALS)

The estimated traffic level to be used for SUPERPAVE HMA mixture designs for this Contract, expressed in Equivalent Single Axle Loads (ESALs) for the design travel lane over a 20-year period, is 0.1 Million 18-kip (80-kn) ESALs.

CONTRACTOR ACTIVITY ADJACENT TO WETLANDS

The Contractor shall not stockpile material or equipment, perform maintenance, or refuel equipment in a wetland area, within 100 feet of a wetland, or with 200 feet of a river, stream, pond, or other similar open body of water.

EROSION CONTROL

The erosion controls shall be installed per plan and maintained per the approved SWPPP requirements. It is imperative that adequate erosion control measures are installed and maintained throughout construction to assure that wetland impacts do not occur.

GENERAL REQUIREMENTS FOR STREET LIGHTING INSTALLATIONS

The work under this heading shall consist of furnishing & installing and removing & relocating various components of the street lighting system. The complete system shall include luminaries, posts, lamps, controllers (as required), all wire and connections, and any other equipment to complete the installation. The Contractor shall also coordinate his materials and installation procedures with the Municipality.

All underground installations, including any required wiring, must be completed before the finished surface is placed on the roadways, lawns, driveways, and sidewalks.

The Contractor is responsible for all equipment and electricity costs until final acceptance of the Contract.

SERVICE CONNECTIONS

The Contractor shall be responsible for the payment of all fees for services rendered in conjunction with service connections by utility companies under this Project. The cost thereof shall be included in the various Contract items.

No work is to be performed in the immediate vicinity of any electric or telephone company utility poles, structures, or wires without prior notice (at least 48 hours) to the affected company.

MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION FILE NUMBER SIGN

This Project is subject to Massachusetts General Laws, Chapter 131, Section 40 as amended. Signs shall be in accordance with the latest MassDOT Construction Standards. All costs for the manufacture, erection, maintenance, moving, and removal of the signs shall be absorbed by the Contractor with no additional compensation other than the Contract unit prices.

SHEETING AND BRACING

The Contractor shall furnish, place, and remove (unless otherwise noted) all sheeting and bracing required to support the sides of all trenches or other excavations for this Project.

The Contractor shall be solely responsible for the safety of the workmen and the adjacent facilities from danger of caving and sliding. All work to be done shall be in strict accordance with the Department of Labor, Occupational Safety and Health Administration regulations and suggested practices for construction excavations and/or other applicable codes and regulations. Special precautions shall be taken to guard against any damage to or settlement of pavements, buildings, walls, pipes, ducts or other structures and facilities which are adjacent to the work.

The cost of providing and removing sheeting, shoring, and bracing shall be included in the cost of the various items of work under this Contract in accordance with Subsection 140.81.

ARCHITECTURAL ACCESS BOARD TOLERANCES

The Contractor is hereby notified that they are ultimately responsible for constructing all project elements in strict compliance with the current AAB/ADA rules, regulations and standards. All construction elements in this project associated with sidewalks, walkways, curb ramps and curb cuts are controlled by 521CMR - Rules and Regulations of the Architectural Access Board (AAB).

The AAB Rules and Regulations specify maximum slopes and minimum dimensions required for construction acceptance. There is no tolerance allowed for slopes greater than the maximum slope or for dimensions less than the minimum dimensions.

Contractors shall establish grade elevations at all curb ramp locations, and shall set transition lengths according to the appropriate table in the Construction Standards (or to the details shown on the plans).

All curb ramp joints and transition sections which define grade changes shall be formed, staked and checked prior to placing cement concrete. All grade changes are to be made at joints.

MATERIAL REMOVED AND STACKED

Contractor shall coordinate with the Municipality regarding the location of where to stack materials suitable for reuse. The Contractor shall carefully remove, transport, off-load, and stack these materials on pallets at the location determined, and stacked at the direction of the yard foreman.

If the Engineer determines that any such part of the stacked material is unsuitable for reuse, or if Owner decides to abandon part or all of such materials, said materials shall become the property of the Contractor, and he/she shall legally and properly dispose of the material away from the site.

The Contract prices for the various items to be removed and stacked shall include full compensation for the services rendered.

ENVIRONMENTAL COMPLIANCE

The Contractor is advised that if field conditions and/or Contractor-suggested methodologies warrant either amending or obtaining environmental permits, the Contractor must notify the Resident Engineer prior to commencement of the proposed activity. MassDOT Environmental Section will coordinate all contact with State or Federal environmental agencies. The Contractor is further advised that any and all-time delays as a result of filing for and obtaining or modifying permits are not subject to a claim. The Contractor may also be required to submit additional information with respect to proposed work subject to environmental regulations.

OIL AND HAZARDOUS MATERIAL SPILL PREVENTION

Measures must be taken by the Contractor to prevent spills and leaks of oils and other hazardous materials to the environment. Such measures include but are not limited to properly maintaining construction equipment, establishing fuel and hazardous material handling areas that are designed to prevent releases to the environment (include containment structures if needed), instructing personnel in proper waste handling procedures and strictly prohibiting disposal into drains, water ways or receptacles, such as dumpsters, designed for non-hazardous waste. Spills or leaks of oil or hazardous materials must be reported to the DEP in accordance with the reportable quantities and criteria for "spills" as designed by the DEP in 310 CMR 40.370. Notification to the Engineer and to DEP must be made as soon as possible, but not more than two (2) hours after a spill or leak occurs.

The work under this Item shall conform to the relevant provisions of Subsection 771 of the Standard Specifications and shall be for furnishing and installing temporary tree trunk protection and for minor limb pruning or removal of lower tree limbs to prevent injury to the tree from construction equipment and activities.

Trunk armoring is for instances where construction activity (the use of heavy equipment) comes close enough to potentially damage the tree trunk or limbs. It is to be used where shown on the plans and as required by the Engineer.

REFERENCES

If requested, the Contractor shall provide to the Engineer one copy of the latest edition of the American National Standards Institute (ANSI) A300 Standard Practices for Tree, Shrub, and Other Woody Plant Maintenance: Part 1-Pruning and Part 5-Construction Management Standard. Provision of reference shall be incidental to this Item.

MATERIALS

Trunk armoring shall be such that it prevents damage to the trunk from construction equipment. Selected material shall be such that installation and removal will not damage the trunk.

Acceptable materials include 2x4 wood cladding with wire or metal strapping, or, for instances when duration of construction activities is less than three months, corrugated plastic pipe mounted with duct tape. Height of cladding shall be from base of tree (including root flare) to the bottom of the first branch, eight feet above the ground, or as required by the Engineer. Material and methods shall be approved by the Engineer.

Other materials or methods may be acceptable if approved by the Municipality and/or Landscape Architect (if included in the Contract).

METHODS OF WORK

Prior to construction activities, the Engineer, the Contractor, the Municipality, and the Landscape Architect (if item is included in the Contract), shall review trees noted on the plans to be protected. Final decision as to trees armored and/or pruned shall be per the Engineer.

Care shall be taken to avoid damage to the bark during installation and removal of armoring. Trunk armoring shall be replaced and maintained such that it is effective for as long as required and shall be removed immediately upon completion of work activities adjacent to trees.

Pruning of limbs shall conform to the techniques and standards of the most recent ANSI A300 standards.

DAMAGES

If trees designated for protection under this Item are damaged, including root damage from unapproved trespassing onto the root zone, the Contractor shall, at his own expense obtain an Arborist. The Arborist shall be approved by the Municipality.

If, based on the recommendations of the Arborist, the Engineer determines that damages can be remedied by corrective measures, such as repairing trunk or limb injury, soil compaction remediation, pruning, and/or watering, the damage will be repaired as soon as possible within the appropriate season for such work and according to industry standards.

If the Engineer determines that damages are irreparable, the Contractor shall pay for the damages in the amount of \$500.00 per diameter inch at breast height (DBH) per tree.

Additionally, if the Engineer determines that the damages are such that the tree is sufficiently compromised as to pose a future safety hazard, the tree shall be removed. Tree removal will include clean up of all wood parts, grinding of the stump to a depth sufficient to plant a replacement tree or plant, removal of all chips from the stump site, and filling the resulting hole with topsoil.

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

Item 102.51 will be measured and paid at the Contract unit price per EACH. This will include full compensation for all labor, equipment, materials, and incidentals for the satisfactory completion of the work and the subsequent removal and satisfactory disposal of the protective materials upon completion of the Contract.

In the event of tree damage, cost of Arborist services, of remediation measures, and/or tree removal will be borne by the Contractor.

Payment under this Item will be scheduled throughout the length of Contract:

- 40% of value shall be paid upon installation of trunk armoring and completion of pruning work, if required.
- 60% shall be paid at the end of construction operations that would damage the tree and after protection materials have been removed and properly disposed of by the Contractor.

In the event of repairable damages, payment shall be made after the completion of remediation measures.

In the event of irreparable damage due to lack of proper protective measures being taken, there will be no compensation in addition to the \$500.00 per diameter inch cost.

The work under this item shall conform to the relevant requirements of Section 201 of the Standard Specifications and the following:

The gutter inlet shall be constructed at location specified on plans. The work involves the change in type of an existing catch basin structure to a manhole and the addition of the gutter inlet as shown in the detail on the plans.

METHOD OF MEASUREMENT

Item 204. Gutter Inlet, will be measured per each structure constructed, complete in place.

BASIS OF PAYMENT

Payment for the work specified herein will be at the contract unit price per each structure constructed, complete in place.

ITEM 223.1 FRAME AND GRATE (OR COVER) REMOVED AND STACKED EACH

All work under this item shall conform to the relevant provisions of Section 220 of the Standard Specifications and the following:

The Contractor shall remove, transport, and stack frames and grates (or covers) at locations specified on the plans.

The Contractor shall coordinate with the Municipality regarding the stacking location. The Contractor shall carefully remove, transport, off-load, and stack these materials on pallets at the location determined, and stacked at the direction of the Municipality.

If the Engineer determines that any such part of the stacked material is unsuitable for reuse, or if Owner decides to abandon part or all of such materials, said materials shall become the property of the Contractor, and he/she shall legally and properly dispose of the material away from the site.

METHOD OF MEASUREMENT

Item 223.1 Frame and Grate (or Cover) Removed and Stacked, will be measured per each frame and grate successfully removed and stacked.

BASIS OF PAYMENT

Payment for the work specified herein will be at the contract unit price per each frame and grate (or cover) removed and stacked.

All work under this item shall conform to the relevant provisions of Section 450 of the Standard Specifications and the following:

This work includes the installation of bituminous concrete speed pillows to serve as traffic calming devices. Work includes but is not necessarily limited to sawcutting, removal and disposal of bituminous pavement, installing bituminous pavement, striping and any incidental work required. This work shall be in accordance with MassDOT 2023 Standard Specifications for Highways and Bridges.

Class 9.5 HMA for Miscellaneous Work is the hot mix asphalt item for speed pillow material installation.

Pavement markings shall use white thermoplastic as shown in the plans.

METHOD OF MEASUREMENT

Each set of speed pillows will be measured as "Each". All speed pillows will be measured individually at each location.

BASIS OF PAYMENT

"Speed Pillows" will be paid for at the contract unit price per "Each". The price so stated constitutes full compensation for all labor, equipment, tools, including sweeping, tack coat, which shall be applied to all surfaces where the speed pillow will contact existing pavement or gravels and to compact and clean the area.

ITEM 590. CURB REMOVED AND STACKED FEET

All work under this item shall conform to the relevant provisions of Section 580 of the Standard Specifications and the following:

The Contractor shall coordinate with the Municipality regarding the stacking location. The Contractor shall carefully remove, transport, off-load, and stack these materials on pallets at the location determined, and stacked at the direction of the Municipality.

If the Engineer determines that any such part of the stacked material is unsuitable for reuse, or if Owner decides to abandon part or all of such materials, said materials shall become the property of the Contractor, and he/she shall legally and properly dispose of the material away from the site.

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

Payment for curb removed and stacked will be at the contract unit price per linear foot and will be full compensation for all work associated with this item.

The work under this item shall conform to the relevant provisions of Section 715 of the MassDOT Standard Specifications for Highways and Bridges and the following:

The Contractor shall coordinate with the United States Postal Service (USPS) Post Master General for the removal, relocation and resetting of the blue USPS mailboxes. The Contractor shall remove and reset the blue USPS mailbox if the USPS is unable to do so, under the direction and agreement with the United States Postal Service.

The Contractor shall carefully remove all existing mailboxes as shown on the plans and as required by the Engineer.

Mailboxes shall be satisfactorily stored and protected until reset in the proposed work.

Mailboxes and concrete support foundation lost, damaged, or otherwise made unsuitable for reuse while being removed, transported, stored, or reset shall be replaced with new material at no additional cost. New attachment hardware shall be furnished and installed as necessary to replace any missing or unusable existing hardware.

METHOD OF MEASUREMENT AND BASIS OF PAYMENT

USPS Mailbox Removed and Reset will be paid for at the Contract unit price per each, which price shall include all labor, materials, equipment, and incidental costs required to complete the work.

This work shall consist of removing and resetting street signs and posts where shown on the plans and where designated by the Engineer in accordance with the relevant provisions of Sections 828 and 840, amended or supplemented as follows:

Where required to be reset, the existing posts shall be carefully removed and reset at the locations established by the Engineer in accordance with the details shown on the plans.

The Contractor shall repair and/or replace the street sign, at their own expense, if the sign or the support becomes damaged as a result of construction activities.

METHOD OF MEASUREMENT

Measurements for posts and street signs removed and reset shall be made for the actual number installed complete in place.

BASIS OF PAYMENT

Payment for removing and resetting existing posts and street signs shall be made for the quantities as above determined, measured by the unit per each, which unit price and payment shall be full compensation for the satisfactory removal, stockpiling and resetting of existing posts; installation of concrete base as required; hanging of street signs and for all other excavation (except rock) and backfill; and for furnishing all labor, tools, equipment and any other incidentals necessary to complete the work.

This work shall consist of removing and resetting traffic signs and posts where shown on the plans and where designated by the Engineer in accordance with the relevant provisions of Sections 828 and 840, amended or supplemented as follows:

Where required to be reset, the existing posts shall be carefully removed and reset at the locations established by the Engineer in accordance with the details shown on the plans.

The Contractor shall repair and/or replace the sign, at their own expense, if the sign or the support becomes damaged as a result of construction activities.

METHOD OF MEASUREMENT

Measurements for posts and signs removed and reset shall be made for the actual number installed complete in place.

BASIS OF PAYMENT

Payment for removing and resetting existing posts and signs shall be made for the quantities as above determined, measured by the unit per each, which unit price and payment shall be full compensation for the satisfactory removal, stockpiling and resetting of existing posts; installation of concrete base as required; hanging of signs and for all other excavation (except rock) and backfill; and for furnishing all labor, tools, equipment and any other incidentals necessary to complete the work.

AFFIRMATIVE ACTION GUIDELINES

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 Surname 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 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 not less than the percent 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 44C of Chapter 149 of the Massachusetts General Laws. The percentage ratio for this project is 5%.

2. In the hiring of minority journeymen, apprentices, trainees and advanced trainees, the Contractor shall rely on referrals from a multi-employer affirmative action program approved by the 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 the 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, hereinafter called the administering agency, the Commission and such other representatives as any be designated by the Commission in conjunction with the administering agency.
2. The Contractor (or his agent, if any, designated by him as the on-site equal employment opportunity officer) shall recognize the Liaison Committee as an affirmative action body, and shall establish a continuing working relationship with the Liaison Committee, consulting with the Liaison Committee on all matters related to minority recruitment, referral, employment and training.
3. The Contractor shall prepare projected manning tables on a quarterly basis. These shall be broken down into projections, by week, or 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 and any work performed under this contract, he shall take affirmative action to negotiate with qualified minority subcontractors. This affirmative action 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, while 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 advanced trainees, the Contractor shall give preference, first, to citizens of the Commonwealth who have served in the armed forces of the United States in time of war and have been honorably discharged there from or released from active duty therein, and who are qualified to perform the work

to which the employment relates, and, secondary, to citizens of the Commonwealth generally, and, if such cannot be obtained in sufficient numbers, then to citizens of the United States. The requirements of the above paragraph do not apply to any project or part thereof, financed in whole or in part with Federal Funds.

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

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 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. Solicitations for Subcontracts, and for the Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential subcontract or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this contract relative to nondiscrimination and affirmative action.

XI. 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 report of noncompliance, and notify such Contractor in writing of such steps, as will in the judgment 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 \$1,000 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 Subcontractor 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 a 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 the 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 re-impose them.
 4. Sanctions enumerated under Sections XI-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.

XII. 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.

XIII. A. Bidder's Requirements

The bidder will comply with the minority manpower ratio and specific affirmative action steps contained herein; and 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 conditions.

1. Subcontractor's Certification Prior to the award of any subcontract under this Invitation for Bids, 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:

SUBCONTRACTORS' CERTIFICATION

_____ certifies that:

1. It tends to use the following listed construction trades in the work under the subcontract:

2. Will comply with the minority manpower ratio and specific affirmative action steps contained herein:

(Signature of Authorized Representative or Subcontractor)

In order to ensure that the said subcontractors' certification becomes a part of all subcontractors under the prime contract, no subcontract shall be executed until an authorized representative of the MASSACHUSETTS HIGHWAY DEPARTMENT 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.

B. Materiality

The requirements made of the bidder pursuant to these bid conditions are material and will govern the bidders performance on the project and will be made a part of his bid.

**MINIMUM MINORITY PERCENTAGES TO BE APPLIED TO
STATE AND STATE-ASSISTED CONTRACTS
WITHIN THE COMMONWEALTH OF MASSACHUSETTS**

The following percentages shall apply:	Not Less Than
Boston: Impact Area (Jamaica Plain (part)), Mattapan, South Cove, Chinatown, Bay Village, Roxbury, Dorchester, South End)	30%
Cambridge	12%
New Bedford	18%
Springfield	10%
All Other Cities and Towns	5%

MINORITY BUSINESS ENTERPRISE CONTRACT PROVISION

It is the policy of the Town of Swampscott that Minority Business Enterprises (MBEs), as defined in the Code of Federal Regulations, 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of this contract. Consequently, the MBE requirements of 49 CFR Part 23 applies to this contract.

The contractor agrees to ensure that MBEs, as defined in 49 CFR Part 23, have the maximum opportunity to participate in the performance of the contract. In this regard, the contractor shall take all necessary and reasonable steps in accordance with 49 CFR 23 to ensure that MBEs have the maximum opportunity to complete for and perform contracts. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract.

Failure to carry out the above requirements shall constitute a breach of contract and, after notification, may result in termination of the contract or such remedy as the Town deems appropriate.

PREVAILING WAGE RATES

SEE SEPARATE DETAIL IN ADDENDUMS