

**TOWN OF SWAMPSCOTT, MASSACHUSETTS**

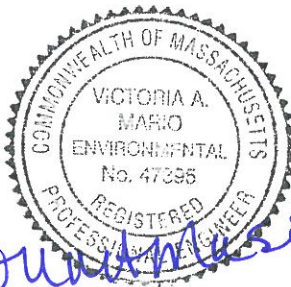
**BIDDING REQUIREMENTS, BOND FORMS, CONTRACT AGREEMENT,  
CONDITIONS OF THE CONTRACT AND SUPPLEMENTAL SPECIFICATIONS**

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**FOR  
BURRILL STREET, BRADLEE AVENUE, PHILLIPS BEACH AVENUE  
AND FOURTEEN VARIOUS  
ROADWAY RESURFACING**

**CONTRACT No. 7P  
AUGUST 24, 2010**

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Victoria A. (Mario) Masone, P.E.  
Professional Registration No.: MA. 47395

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

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## **ADVERTISEMENT FOR BID**

The Town of Swampscott through its Board of Selectmen will receive sealed Bids for the Burrill St., Bradlee Ave., Phillips Beach Ave. and Fourteen Various Roadway Resurfacing Project until Wednesday, September 22, 2010 at 10:00 A.M. local time, at the Office of the City Purchasing Agent, 120 Washington Street, 3<sup>rd</sup> Floor, Salem MA 01970 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 \$825,000.00.

Bidding information may be reviewed at and/or obtained from the **Office of the City Purchasing Agent, 120 Washington Street 3<sup>rd</sup> Floor, Salem, MA after 10:00 AM on August 24<sup>th</sup>, 2010.** Office Hours are Mon., Tues., Wed., 8:00 AM – 4:00 PM, Thurs. 8:00 AM – 7:00 PM, and Fri. 8:00 AM to 12:00 Noon.

A refundable bid document deposit in the form of a money order, certified, cashiers, or treasurers check made payable to the City of Salem, Massachusetts in the amount of Fifty Dollars (\$50.00) shall be required for the plans and specifications. There will be an additional Twenty-five Dollar (\$25.00) non-refundable charge for mailing of bid documents. No cash will be accepted.

Bid documents may also be viewed and printed from [www.comm-pass](http://www.comm-pass), search for solicitation # 11-02 or [www.salem.com](http://www.salem.com) within the Purchasing Department under bids and RFPs., 11-02.

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.

A pre-bid meeting will be held on Tuesday, August 31, 2010 at 10:00 A. M. at the Swampscott Town Hall, located at 22 Monument Avenue in Swampscott in the First Floor Conference Room. Interested bidders are urged to attend to observe the existing conditions of the roadways, and evaluate required miscellaneous work.

In accordance with Massachusetts General Law Chapter 29, Section 8B, Contractors intending to bid on this project must first obtain an "Application for Prequalification" (for determination of Contractor's pre-qualifications) from the Massachusetts Highway Department Contract Office, Room 6260 at 10 Park Plaza, Boston, Massachusetts. The form can also be downloaded at <http://www.mhd.state.ma.us>. This form must be completed and submitted to the Massachusetts Highway Department for approval, at which time the Massachusetts Highway Department will issue a "Certificate of Approval" form to the Contractor. **The Certificate of Approval must be furnished**

**in order to obtain an official bidders set from the City and in order to submit a bid. Any bids submitted without a Certificate of Approval on file with the Swampscott Department of Public Works 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.

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Gino A. Cresta, Jr.  
Town of Swampscott  
Director of Public Works

Victoria A. Masone, P.E.  
Town of Swampscott  
Assistant Engineer

## INFORMATION FOR BIDDERS

TOWN OF SWAMPSCOTT  
BURRILL STREET, BRADLEE AVENUE, PHILLIPS BEACH AVENUE  
AND FOURTEEN VARIOUS  
ROADWAY RESURFACING

CONTRACT No. 7P

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 Board of Selectmen invites sealed bids for "Burrill Street, Bradlee Avenue, Phillips Beach Avenue and Fourteen Various Roadway Resurfacing Project, Contract No. 7P," 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:

Office of the City Purchasing Agent  
120 Washington Street, 3<sup>rd</sup> Floor  
Salem, MA 01970

Endorsed: "Burrill Street, Bradlee Avenue, Phillips Beach Avenue and Fourteen Various Roadway Resurfacing Project, Contract No. 7P,"

Delivered by: 10:00 A.M. local time on September 22, 2010.

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, Bradlee Avenue, Phillips Beach Avenue and Fourteen Various Roadway Resurfacing Project.”

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.

4.2 Bidders shall not remove and submit the Bid pages separate from the volume of Contract Documents, but shall submit their Bids bound with the complete volume of attached Contract Documents, including all pages correctly assembled. All erasures or other changes in the Bid must be properly initialed by an authorized representative of the Bidder.

## **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 the ENGINEER or account thereof.

8.2 To receive consideration, such questions shall be submitted in writing to the OWNER, with a copy to the ENGINEER, 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 ENGINEER to determine the equality or suitability of the product or method. In general, the ENGINEER 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 ENGINEER 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 ENGINEER 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 or the ENGINEER, 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 BASE BID PLUS ALTERNATE 1**, 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 the 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 ENGINEER, 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 ENGINEER 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. OWNER 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, BRADLEE AVENUE, PHILLIPS BEACH AVENUE  
AND FOURTEEN VARIOUS  
ROADWAY RESURFACING

CONTRACT NO. 7P

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 \_\_\_\_\_

**BASE BID**

Item No.	Item with Unit Bid Price Written in Words (and figures)	Quantity	Amount
1	Asphalt Pavement Excavation by Cold Planer, per square yards  _____ dollars And _____ cents (\$ _____)	49,000 SY	\$ _____
2	Hot Mix Asphalt, per ton  _____ dollars And _____ cents (\$ _____)	5,400* TON	\$ _____
3	Hot Mix Asphalt Berm, per linear foot  _____ dollars And _____ cents (\$ _____)	1,000 LF	\$ _____
4	Hot Mix Asphalt for Miscellaneous Work, per ton  _____ dollars And _____ cents (\$ _____)	100** TON	\$ _____
5	Sawing Pavement, per linear feet  _____ dollars And _____ cents (\$ _____)	1,200 LF	\$ _____
6	Drainage Structures Adjusted, per each  _____ dollars And _____ cents (\$ _____)	57 EA	\$ _____
7	Sanitary Structures Adjusted, per each  _____ dollars And _____ cents (\$ _____)	93 EA	\$ _____
8	Gate Box Adjusted, per each  _____ dollars And _____ cents (\$ _____)	95 EA	\$ _____
9	Hot Poured Rubberized Asphalt Sealer, per linear feet  _____ dollars And _____ cents (\$ _____)	1,200 LF	\$ _____

**BASE BID CONTINUED**

Item No.	Item with Unit Bid Price Written in Words (and figures)	Quantity	Amount
10	Bitumen for Tack Coat, per gallon _____ dollars And _____ cents (\$_____)	4,900 GAL	\$ _____

Total of BASE BID in figures \$ \_\_\_\_\_

Total of BASE BID in words \_\_\_\_\_

---

\* Pricing for Hot Mix Asphalt shall be adjusted monthly in accordance with **MassDOT Document 00811, Special Provisions, Monthly Price Adjustment for Hot Mix Asphalt Mixtures, Revised 2/02/2009** and included in these Bid Documents.

\*\* Indeterminate

**ALTERNATE 1**

Item No.	Item with Unit Bid Price Written in Words (and figures)	Quantity	Amount
1	Asphalt Pavement Excavation by Cold Planer, per square yards  _____ dollars And _____ cents (\$ _____)	2,000 SY	\$ _____
2	Hot Mix Asphalt, per ton  _____ dollars And _____ cents (\$ _____)	200 TON**	\$ _____
6	Drainage Structures Adjusted, per each  _____ dollars And _____ cents (\$ _____)	3 EA	\$ _____
7	Sanitary Structures Adjusted, per each  _____ dollars And _____ cents (\$ _____)	2 EA	\$ _____
8	Gate Box Adjusted, per each  _____ dollars And _____ cents (\$ _____)	0 EA	\$ _____
10	Bitumen for Tack Coat, per gallon  _____ dollars And _____ cents (\$ _____)	200 GAL	\$ _____

Total of ALTERNATE 1 in figures \$ \_\_\_\_\_

Total of ALTERNATE 1 in words \_\_\_\_\_

\* Pricing for Hot Mix Asphalt shall be adjusted monthly in accordance with **MassDOT Document 00811, Special Provisions, Monthly Price Adjustment for Hot Mix Asphalt Mixtures, Revised 2/02/2009** and included in these Bid Documents.

Total Base Bid plus Alternate 1 Bid:

Total of BASE BID plus ALTERNATE 1 in figures \$ \_\_\_\_\_

Total of BASE BID plus ALTERNATE 1 in words \_\_\_\_\_

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Name of Firm \_\_\_\_\_

An unbalanced or unreasonable unit or lump sum price submitted herein may be grounds for rejection of bid.

Specific items of this Contract may be eliminated or reduced in quantity to keep within limits of available funding, at OWNER's option.

## SIGNATURES REQUIRED

TOWN OF SWAMPSCOTT  
BURRILL STREET, BRADLEE AVENUE, PHILLIPS BEACH AVENUE  
AND FOURTEEN VARIOUS  
ROADWAY RESURFACING

CONTRACT NO. 7P

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



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, BRADLEE AVENUE, PHILLIPS BEACH AVENUE  
AND FOURTEEN VARIOUS  
ROADWAY RESURFACING

CONTRACT NO. 7P

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, BRADLEE AVENUE, PHILLIPS BEACH AVENUE  
AND FOURTEEN VARIOUS  
ROADWAY RESURFACING

CONTRACT NO. 7P

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 Board of Selectmen, 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 \_\_\_\_\_, 2010,

before me, \_\_\_\_\_ (SEAL)  
(Notary Public)

My commission expires: \_\_\_\_\_

**BIDDERS CERTIFICATION REGARDING PAYMENT OF PREVAILING WAGES**

TOWN OF SWAMPSCOTT  
BURRILL STREET, BRADLEE AVENUE, PHILLIPS BEACH AVENUE  
AND FOURTEEN VARIOUS  
ROADWAY RESURFACING

CONTRACT NO. 7P

The undersigned bidder or quoter 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 or quoter 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 or quote to be based upon the payment of the said applicable prevailing wage rates, or (2) the failure of the bidder or quoter, 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, BRADLEE AVENUE, PHILLIPS BEACH AVENUE  
AND FOURTEEN VARIOUS  
ROADWAY RESURFACING

CONTRACT NO. 7P

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, BRADLEE AVENUE, PHILLIPS BEACH AVENUE  
AND FOURTEEN VARIOUS  
ROADWAY RESURFACING

CONTRACT NO. 7P

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the corporation named as bidder or quoter in the Bid or Quote included herein; that \_\_\_\_\_, who signed said Bid or Quote on behalf of the Bidder or Quoter was then \_\_\_\_\_ of said corporation; that I know his/her signature; that his/her signature thereon is genuine and that said Bid or Quote 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, BRADLEE AVENUE, PHILLIPS BEACH AVENUE  
AND FOURTEEN VARIOUS  
ROADWAY RESURFACING  
  
CONTRACT NO. 7P

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)

## MONTHLY PRICE ADJUSTMENT FOR HOT MIX ASPHALT MIXTURES

TOWN OF SWAMPSCOTT  
BURRILL STREET, BRADLEE AVENUE, PHILLIPS BEACH AVENUE  
AND FOURTEEN VARIOUS  
ROADWAY RESURFACING

CONTRACT NO. 7P

DOCUMENT 00811  
SPECIAL PROVISIONS  
MONTHLY PRICE ADJUSTMENT FOR HOT MIX ASPHALT (HMA) MIXTURES  
ENGLISH UNITS  
Revised: 02/02/2009

This provision applies to all projects using greater than 100 tons of hot mix asphalt (HMA) mixtures containing liquid asphalt cement as stipulated in the Notice to Contractors section of the bid documents.

The Price Adjustment will be based on the variance in price for the liquid asphalt component only from the Base Price to the Period Price. It shall not include transportation or other charges. This Price Adjustment will occur on a monthly basis.

### **Base Price**

The Base Price of liquid asphalt on a project as listed in the Notice to Contractors section of the bid documents is a fixed price determined at the time of bid by the Department by using the same method as for the determination of the Period Price detailed below.

### **Period Price**

Please note that, starting December 15, 2008, two sets of period prices will be posted each month on the MassHighway website at <http://www.mhd.state.ma.us/>. They will be labeled "New Asphalt Period Price Method" and "Old Asphalt Period Price Method".

### **New Asphalt Period Price Method**

The "New Asphalt Period Price Method" is for contracts bid after December 15, 2008 and will show the Period Price of liquid asphalt for each monthly period as determined by MassHighway using the average selling price per standard ton of PG64-28 paving grade (primary binder classification) asphalt, FOB manufacturer's terminal, as listed under the "East Coast Market - New England, Boston, Massachusetts area" section of the Poten & Partners, Inc. "Asphalt Weekly Monitor". This average selling price is listed in the issue having a publication date of the second Friday of the month and will be posted as the Period Price for that month. MassHighway will post this Period Price on this website within two (2) business days following their receipt of the relevant issue of the "Asphalt Weekly Monitor". Poten and Partners has granted MassHighway the right to publish this specific asphalt price information sourced from the Asphalt Weekly Monitor.

**Old Asphalt Period Price Method**

The “Old Asphalt Period Price Method” Period Price will be for contracts bid on or before December 15, 2008 and will contain liquid asphalt prices as determined by the old or previous method. These prices will continue to be posted on MassHighway’s website until all contracts using the “Old Asphalt Period Price Method” Period Price have been closed.

**New and Old Asphalt Period Price Methods**

The paragraphs below apply to both the New and the Old Asphalt Period Price Methods.

The Contract Price of the hot mix asphalt mixture will be paid under the respective item in the Contract. The price adjustment, as herein provided, upwards or downwards, will be made after the work has been performed, using the monthly period price for the month during which the work was performed.

The Price Adjustment applies only to the actual virgin liquid asphalt content in the mixture placed on the job in accordance with the Standard Specifications for Highways and Bridges, Division III, Section M3.11.03.

The Price Adjustment will be a separate payment item. It will be determined by multiplying the number of tons of hot mix asphalt mixtures placed during each monthly period times the liquid asphalt content percentage times the variance in price between Base Price and Period Price of liquid asphalt.

This Price Adjustment will be paid only if the variance from the Base Price is 5% or more for a monthly period. The complete adjustment will be paid in all cases with no deduction of the 5% from either upward or downward adjustments.

No Price Adjustment will be allowed beyond the Completion Date of this Contract, unless there is a Department-approved extension of time.

\*\*\*\*\* END OF DOCUMENT \*\*\*\*\*

***Period Price – 2010***

Adjustment Period	Liquid Asphalt		Diesel		Gasoline		Portland Cement	
	Ton	Megagram	Gallon	Liter	Gallon	Liter	Ton	Megagram
August New Method	\$495.00	\$545.74					\$96.00	\$105.84

source: <http://www.mhd.state.ma.us/default.asp?pgid=content/fuelPrices&sid=about>

## **SAMPLE AGREEMENT**

TOWN OF SWAMPSCOTT  
BURRILL STREET, BRADLEE AVENUE, PHILLIPS BEACH AVENUE  
AND FOURTEEN VARIOUS  
ROADWAY RESURFACING

CONTRACT NO. 7P

THIS AGREEMENT, is executed this \_\_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand Ten (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.

## **2. 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.

### **3. 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.

#### **4. Authority of the Engineer**

A. The Engineer 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 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. She 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.

#### **5. 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.

## **6. 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 (10), 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.

## **7. 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."

## **8. 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.

## **9. 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.

## **10. 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.

## **11. 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.

## **12. 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.

### **13. 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.

### **14. 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.

## **15. 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.

## **16. 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.

## **17. 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.

## **18. 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.

## **19. 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.

## **20. 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.

## **21. 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.

## **22. 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.

### **23. 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.

### **24. 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.

### **25. 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.

#### **26. 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.

#### **27. 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.

#### **28. 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.

## **29. 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.

### **30. 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. Pricing for Hot Mix Asphalt shall be adjusted monthly in accordance with **MassDOT Document 00811, Special Provisions, Monthly Price Adjustment for Hot Mix Asphalt Mixtures, Revised 2/02/2009** and included as an attachment to this Agreement.

### **31. 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.

### **32. 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.

### **33. 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 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).

### **34. 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.

### **35. 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.

### **36. 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.

### **37. 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.

### **38. 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.

### **39. 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.

### **40. 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.

#### **41. 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.

#### **42. 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.

#### **43. 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.

#### **44. 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.

#### **45. 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.

#### **46. 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.

#### **47. 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.

#### **48. Massachusetts Tax Laws**

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

#### **49. 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: \_\_\_\_\_  
Andrew W. Maylor,  
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.

\_\_\_\_\_  
David Castellarin, Town Accountant

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

<p>TOWN OF SWAMPSCOTT BURRILL STREET, BRADLEE AVENUE, PHILLIPS BEACH AVENUE AND FOURTEEN VARIOUS ROADWAY RESURFACING</p> <p>CONTRACT NO. 7P</p>
---

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**

<b>Agreement Subsection Reference</b>	<b>Item</b>	<b>Minimum Limits</b>
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	Bodily Injury: \$1,000,000 each occurrence \$2,000,000 aggregate  Property Damage Including C.U. Coverage \$2,000,000 each occurrence \$2,000,000 aggregate  Blasting and explosion coverage shall be obtained if there is a need for blasting under the contract.
6	Personal Injury Insurance	\$2,000,000 aggregate
6	Automobile Liability including coverage for owned, hired or borrowed vehicles	Bodily Injury \$1,000,000 each person \$1,000,000 each occurrence  Property Damage \$1,000,000 each occurrence
6	Owner's Protective Liability & Property Damage	Bodily Injury \$1,000,000 each occurrence \$1,000,000 aggregate  Property Damage \$1,000,000 each occurrence

**TABLE A, CONTINUED**

13	Time of Completion	Within 120 consecutive calendar days after the date of formal authorization to proceed from the Town, excluding the mandatory Winter Break, which shall occur between November 25 <sup>th</sup> , 2010 and April 1, 2011.
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

The Town of Swampscott, Massachusetts

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 Puritan Road, Greenwood Avenue, and Eight Various 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: Puritan Road, Greenwood Avenue, and Eight Various  
Roadway Resurfacing Project

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

By: \_\_\_\_\_  
Authorized Agent or Officer

\_\_\_\_\_  
Insurance Agent

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, 837 Humphrey Street, 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:

Puritan Road, Greenwood Avenue, and Eight Various Roadway Resurfacing Project, Contract 5P

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, 837 Humphrey Street, 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:

Puritan Road, Greenwood Avenue, and Eight Various Roadway Resurfacing Project, Contract 5P

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

TOWN OF SWAMPSCOTT  
 BURRILL STREET, BRADLEE AVENUE, PHILLIPS BEACH AVENUE  
 AND FOURTEEN VARIOUS  
 ROADWAY RESURFACING

CONTRACT No. 7P

THE BASE PROJECT IS FUNDED WITH A CHAPTER 90 FUNDING. THE MINORITY EMPLOYEE PERCENTAGE RATIO TO BE APPLIED TO THIS PROJECT SHALL BE NOT LESS THAN FIVE (5) PERCENT. (SEE AFFIRMATIVE ACTION REQUIREMENTS ATTACHED)

BIDDERS ARE CAUTIONED TO READ THE NEW SPECIAL PROVISIONS FOR PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES.

### 1. Scope of Work

The work to be done under this Contract consists of: Sawcutting of proposed work limits, pavement cold planing and resurfacing with a 2” finish course, adjustments of utility structures and other incidental items of work listed in the bid and as described within the specifications.

The project limits of the Base Project and Alternate 1 are depicted in **Appendix A, 2010 Paving Scope of Work** and listed in Tables 1 & 2 respectively:

**Table 1: Project Limits of Base Project**

<b>Street Name</b>	<b>From</b>	<b>To</b>
Blodgett Avenue	Shepard Avenue	Atlantic Avenue
Bradlee Avenue	Humphrey Street	Phillips Avenue
Burrill Street	New Ocean Street	Humphrey Street
Cedar Road	Nason Road	End
Cherry Street	Essex Street	Buena Vista Avenue
Morton Road	Humphrey Street	Bradlee Avenue
Northstone Road	Atlantic Avenue	End
Ocean View Road	Pleasant Street	End
Phillips Beach Avenue	Puritan Road	Little’s Point Road
Pine Street	Railroad Avenue	New Ocean Street
Prospect Street	Minerva Street	Eastman Avenue
Puritan Road	Atlantic Avenue	Gale Road
Railroad Avenue	Burrill Street	Pine Street
Sheridan Terrace	Sheridan Road	End
Stanley Road	Salem Street	Linden Avenue
Tidd Street	Foster Road	Jessie Street

**Table 2: Project Limits of Alternate 1**

<b>Street Name</b>	<b>From</b>	<b>To</b>
Pierro Terrace	Tidd Street	End
Tip Top Road	Phillips Beach Avenue	End

Work under this Contract shall be paid for at the Contract Unit Price bid under each item, which price and payment shall constitute full compensation for furnishing all materials, labor, equipment, etc., required for the satisfactory completion and acceptance of the work in accordance with the 1995 Standard Specifications for Highways and Bridges, the English edition of the Supplemental Specifications dated June 6, 2006, the amendments to the Standard and Supplemental Specifications, the 1977 Construction Standards, the English Edition of the Supplemental Drawings dated April 2003, the 2003 “Manual on Uniform Traffic Control Devices for Street and Highways” with the latest revisions and the American Standard for Nursery Stock (ANSI Z-60.1-1986), as amended, and these Special Provisions.

**2. Work Schedule**

Work on this project is restricted to a normal eight-hour day, five-day week, with the Prime Contractor and all subcontractors working on the same shift.

No work shall be done on this contract on Saturdays, Sundays and Holidays without prior approval by the Engineer.

Work shall cease for the period between November 25, 2010 and March 30, 2011 due to winter weather. Work shall be allowed to commence on April 1, 2011.

**3. Preconstruction Conference**

A conference will be held at the Swampscott Town Hall located at 22 Monument Avenue in Swampscott, Massachusetts at a date following the awarding of the Contract. At that time the Contractor will be required to submit a plan showing his schedule of operations and how he intends to provide for the flow of traffic through the area. Present at this meeting will be Town officials and representatives of the various utility companies involved in the project. The purpose of the meeting will be to enable the various agencies to offer suggestions to the Contractor concerning his proposed schedule in order that full cooperation may be reached between the Contractor and the various agencies.

**4. Provisions for Travel and Prosecution of Work**

Before starting any work under this Contract, the Contractor shall submit a Schedule of Operation to the Town of Swampscott. This work schedule shall include a plan of his construction procedures, scheduling details for completing the work, proposed detours, and the safety measures he will use during the prosecution of the work as set forth in Section 850 of the Standard Specifications for Highways and Bridges. Approval of the construction schedule by the Town of Swampscott is required prior to commencement of any construction activity.

The Contractor shall coordinate his work with the work to be done by the Public Utilities or other agencies, and he shall so schedule his operations as to cause the least interruption to the normal flow of traffic in existing roads.

Prior to commencement of work, the Contractor shall be responsible for obtaining all necessary local permits. Attention is further directed to the following provisions unless otherwise directed by the Engineer:

1. Working hours for this project are from 7:00 AM to 5:00 PM, Monday through Friday, overtime is not permitted.
2. No work shall be done on this Contract on Saturdays, Sundays and Holidays.
3. No detouring of traffic shall be allowed without permission of the Town of Swampscott.

The Contractor may be required to temporarily suspend operations when such are considered by the Engineer to be a hazard to traffic. Particular care shall be taken to establish and maintain methods and procedures, which will not create unnecessary or unusual hazards to public safety. All normal pedestrian and vehicular traffic on existing streets shall be maintained by proper scheduling of work. The convenience of the general public along and adjacent to the street shall be provided for in an adequate and satisfactory manner. Access shall be maintained to all buildings in use. The placement of necessary devices will be for daily work periods and shall be removed immediately after the conclusion of work operations. Signs having messages that are irrelevant to normal traffic conditions will be removed or properly covered at the end of each work period. Signs are to be kept clean at all times, and legends shall be distinctive and unmarred.

The Contractor shall provide, place and erect all necessary barricades and warning signs and maintain adequate lights and illumination therefore. He shall be held responsible for all damage to the work due to any failure of signs and barricades needed to protect the work from traffic, pedestrians or other causes.

The castings of all structures, which are required to be set or reset under the pertinent items of this Contract or by others, shall not be set complete in place to the established grade until after the bituminous concrete binder course has been completed in place as directed.

The Contractor shall not proceed with surfacing operations without the specific written approval of the Engineer.

The Contractor shall provide for the removal of all material spilled from his trucks on existing pavement over which it is hauled, or otherwise deposited thereon whenever, in the judgment of the Engineer, the accumulation is sufficient to cause the formation of mud or dust, or interfere with drainage or create a traffic hazard.

## **5. Cooperation by Contractor**

Attention is directed to the provisions relating to rights of public corporations and municipal departments to enter the site of the improvement and alter, replace, and/or install facilities at some time when the Contractor will be prosecuting other required work contiguous thereto.

## **6. Construction (Stakes) Stakings**

The Contractor shall employ, at his own expense, a competent civil engineer registered within the Commonwealth as a Professional Engineer or Land Surveyor. The Contractor shall require said engineer to establish all lines, elevations, stakes, reference marks, batter boards, etc., needed by the Contractor during the progress of the Work, and from time to time, to verify such marks by instrument or other appropriate means.

The Engineer shall be permitted at all times to check the lines, elevations, reference marks, stakes, batter boards, etc., set by the Contractor, who shall correct any errors in lines, elevations, stakes, reference marks, batter boards, etc. disclosed by such check. Such a check shall not be construed to be an approval of the Contractor's work and shall not relieve or diminish in any way the responsibility of the contractor for the accurate and satisfactory construction and completion of the entire Work.

The Contractor shall make, check, and be responsible for all measurements and dimensions necessary for the proper construction of and the prevention of misfittings in the Work.

## **7. Inspection of Work**

The Contractor is advised that the Town of Swampscott, Department of Public Works will be provided with a schedule of operations and will, at various times, be on-site to inspect procedures and give directions. For the purpose of observing work that affects their respective properties, inspectors for public agencies and utility companies shall be permitted access to the work, but all official orders and directives to the Contractor will be issued by the Resident Engineer appointed by the Town. The Contractor shall be responsible for the cost of any and all electrical inspections.

## **8. Planning and Progress Schedules**

A. Before starting the Work and from time to time during its progress, as the Engineer may request, the Contractor shall submit to the Engineer a written description of the methods he plans to use in doing the Work and the various steps he intends to take.

B. Within 14 calendar days after the date of formal execution of the AGREEMENT, the Contractor shall prepare and submit to the Engineer (a) a written schedule fixing the dates on which additional drawings, if any, will be needed by the Contractor and (b) a written schedule fixing the respective dates for the start and completion of various parts of the Work. Each such schedule shall be subject to review from time to time during the progress of the Work.

C. Reference is hereby made to other scheduling requirements of the Contract as specified under the applicable sections of this document.

## **9. Work to Conform**

A. During its progress and on its completion, the Work shall conform truly to the lines, elevations, levels, and grades given by the Engineer and shall be built in a thoroughly substantial and workmanlike manner, in strict accordance with the Contract Documents and the directions given from time to time by the Engineer.

B. All work done without instructions having been given therefore by the Engineer, without proper lines or levels, or performed during the absence of the Engineer, will not be estimated or paid for except when such work is authorized by the Engineer in writing. Work so done may be ordered, uncovered or taken down, removed, and replaced at the Contractor's expense.

## **10. Buy America Provisions (23 CFR 635.410)**

Federal Law requires that all manufacturing processes for steel and iron to be permanently incorporated in Federal-Aid highway construction projects must occur in the United States. Foreign steel and iron can be used if the cost of the material does not exceed 0.1% of the total contract cost or \$2,500 whichever is greater. The action of applying a coating to a covered material (i.e. steel and iron) is deemed a manufacturing process subject to Buy America. Coating includes epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of a material subject to requirements of Buy America.

The law permits the use of pig iron and processed, palletized, and reduced iron ore manufactured outside of the United States to be used in the domestic manufacturing process for steel and/or iron materials used in Federal-Aid construction projects.

## **11. Occupying Private Land**

The Contractor shall not (except after written consent from the proper parties) enter or occupy with men, tools, materials, or equipment, any land outside the rights-of-way or property of the Owner. A copy of the written consent shall be given to the Engineer.

## **12. Interference with and Protection of Streets**

A. The Contractor shall not close or obstruct any portion of a street, road, or private way without obtaining permits therefore from the proper authorities. If any street, road or private way shall be rendered unsafe by the Contractor's operations, he shall make such repairs or provide such temporary ways or guards as shall be acceptable to proper authorities.

B. Streets, roads, private ways, and walks not closed shall be maintained passable and safe by the Contractor, who shall assume and have full responsibility for the adequacy and safety of provisions made therefore.

C. The Contractor shall, at least 24 hours in advance, notify the Police and Fire Departments and Department of Public Works in writing, with a copy to the Engineer, if the closure of a street or road is necessary. He shall cooperate with all Departments in the establishment of alternate routes and shall provide adequate detour signs, plainly marked and well lighted, in order to minimize confusion.

D. Should deem necessary, uniformed officers will be assigned to direct traffic. The Contractor shall make all arrangements in obtaining uniformed officers required.

E. Nothing contained herein shall be construed as relieving the Contractor of any of his responsibilities for protection of person and property under the terms of the Contract.

### **13. Public Safety**

The contractor shall be required to provide safe and convenient access to all abutters during the prosecution of work. Necessary access for fire apparatus and other emergency vehicles shall be maintained at all times.

Trenches shall not be excavated in traveled ways until all materials and equipment required for such work are at the site and available for immediate use. When work is not in progress, trenches in areas subject to public travel shall be covered with steel plates capable of safely sustaining a 36.5 ton truckload with impact without additional compensation. The work in each trench shall be practically continuous, with the placing of conduit or pipe, backfilling and patching of the surface closely following each preceding operation.

Particular care shall be taken to establish and maintain methods and procedures, which will not create unnecessary or unusual hazards to public safety. The contractor may be required to temporarily suspend operations when such are considered by the Town of Swampscott to be a hazard to traffic.

The contractor shall provide and use all necessary warning devices, barricades, signs, special apparel, etc., in the performance of the work, as set forth in Section 850 of the Massachusetts Standard Specifications for Highways and Bridges.

The contractor shall provide, place and erect all necessary barricades and warning signs and maintain adequate lights and illumination therefore. He shall be held responsible for all damage to the work due to any failure of signs and barricades needed to protect the work from traffic, pedestrians or other causes.

Signs having messages that are irrelevant to normal traffic conditions will be removed or properly covered at the end of each work period. Signs are to be kept clean at all times, and legends shall be distinctive and unmarred.

All automotive equipment not protected by traffic control devices that is working on a project which is open to traffic shall have one amber flashing or strobe warning light mounted on the cab roof or on the highest practical point of the machinery. These lights shall be in operation whenever the equipment is working on the highway and/or traveling in the work area at speeds less than 25 MPH.

All vehicles, except passenger cars, which are assigned to the project which operate at speeds of 25 MPH or less shall have an official slow-moving vehicle emblem displaying in accordance with the provisions of Section 7 of Chapter 90 of the General Laws as amended by Chapter 684 of the Acts of 1970.

Flashers must be visible to both oncoming and overtaking vehicular traffic and shall have a light source of 32 minimum candlepower and a flashing frequency of 50-60 times per minute.

All personnel who are working on the traveled way or breakdown lane and who are not protected by traffic control devices shall wear approved safety vests.

The contractor shall at all times, until written acceptance of the physical work by the Town of Swampscott be responsible for the protection of the work and shall take all precautions for preventing injuries to persons or damage to property on or about the project.

#### **14. Traffic Control**

The contractor shall have the sole responsibility for the maintenance and protection of traffic.

An authorized representative of the contractor shall be available on a 24-hour basis for the duration of the project for the purpose of correcting construction related impediments or hazards.

The contractor may be asked to provide a written Traffic Control Plan that details all typical work zones and proposed detours, if applicable.

The contractor shall provide the following traffic control measures:

- Barricade trenches and roadway excavations at the end of each work period with temporary precast concrete barriers, properly lighted and marked to guide traffic to designated travel lane, or by other means acceptable to the Town and approved on the Traffic Control Plan.
- Maintain and protect traffic movements for the entire length of the project.
- Keep one lane of traffic open at all times except for brief stoppages dictated by the construction operation involving safety of vehicles in the travel lanes.
- Maintain access to business and private ways during construction operations.
- Furnish sufficient number of signs, temporary precast concrete barriers, warning lights, drums and traffic cones to warn traffic of construction and guide traffic through the construction area in accordance with the Manual of Uniform Traffic Control Devices (MUTCD) 2003 Edition including all the latest revisions.
- Replace at no cost to the Town of Swampscott pavement markings, legends and lane arrows removed or damaged by the construction operation.
- Restore temporary detours, if any, to original condition.
- Replace traffic signal loops damaged during construction within 72 hours.

### 15. Traffic Officers

Police details will be paid for by the TOWN. Swampscott's payment is limited to four (4) hours in the morning and four (4) in the afternoon or a total of only eight (8) hours per day, unless additional time is previously approved by the Director of Public Works. Any additional hours not previously approved by the Director of Public Works will be the responsibility of the Contractor. The Contractor will be responsible for scheduling such officers.

When, in the opinion of the Owner or the Engineer, public safety or convenience requires the services of police, the Engineer may direct the Contractor to provide manpower to direct traffic within or adjacent to the location of work under this Contract.

The intent is to insure public safety by police direction of traffic. Police are not to serve as watchmen to protect the Contractor's equipment and materials.

### 16. Notice of Owners of Utilities

Written notice shall be given by the Contractor to all public service corporations or municipal and State officials owning or having charge of publicly or privately owned utilities of his intention to commence operations affecting such utilities at least one week in advance of the commencement of such operations. The Contractor shall, at the same time, file a copy of such notice with the Engineer.

Following is a list of Utility Companies and others who may be involved in this project:

Town of Swampscott Department of Public Works 22 Monument Ave Swampscott, MA 01907	Gino A. Cresta, Jr., Director 781-596-8860  Victoria A. Masone, P.E.; Engineer 781-596-2750
National Grid 55 Bearfoot Road Northborough, MA 01532	Mr. Tom Mulligan 508-421-7207
Verizon 125 Lundquist Drive Braintree, MA 02184	Ms. Susette Seely 781-849-6311
MWRA (Water Division) 2 Griffin Way Chelsea, MA 021 50	Mr. Ralph Francesconi 617-305-5827
Swampscott Fire Department 76 Burrill Street Swampscott, MA 01907	Chief Michael Champion 781-595-4050
Swampscott Police Department	Chief Ronald Madigan

86 Burrill Sheet Swampscott, MA 01907	781-595-1111
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The Contractor shall make his own investigation to assure that no damage to the existing structures, drainage lines, traffic signal conduits, and other utilities will occur as a result of his operations.

The Contractor shall notify "Mass. DIG SAFE" and procure a DIG SAFE number of each location prior to disturbing ground in any way.

**"DIG SAFE" call center: Telephone 1-800-344-7233**

**17. Protection of Utilities and Properties**

The Contractor's attention is directed to the location of underground utilities in the existing and proposed roadways.

The Contractor shall determine the exact location of all existing utilities before commencing work. He agrees to be fully responsible for any and all damages, which might be occasioned by his failure to exactly locate and preserve any and all underground utilities. The Contractor shall include in his bid a sufficient allowance to cover the cost of any exploratory excavations, which are needed to verify utility locations and to accomplish all of the required work.

In case of damage to utilities, the Contractor shall promptly notify the owner and shall, if requested, furnish manpower under the owner's direction in getting access to the utility. Pipes and other structures damaged by the operation of the Contractor may be repaired by the Owner, either the municipality or the utility company. The cost of such repairs shall be borne by the Contractor without compensation therefore.

The work to be done under this contract may necessitate changes in the properties of utility companies or the municipality herein before listed. Immediately after executing the contract, the Contractor shall confer with the owners of all utilities in order that relocations of mains or services may be made at times consistent with operations of this contract.

Whatever measures are necessary to protect these lines during the work shall be included in the contract unit price for the various items involved.

**18. Failure to Complete Work On Time**

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 of One Hundred (\$100.00) dollars for each calendar day of delay. If the payments due the Contractor are less than the amount of such liquidated damages, said damages shall be deducted from any other monies due or to become due the Contractor, and, in case such damages exceed the amount of all

monies due or to become due the Contractor, the Contractor or his Surety shall pay the balance to the Owner.

### **19. Safety Controls for Construction Operation**

Safety controls for construction operations shall be done in accordance with the relevant provisions of Section 850 of the Standard Specifications, the Manual on Uniform Traffic Control Devices, the Traffic Management Plans, and the following:

The providing of safety controls for construction operations shall be considered incidental to this contract and the costs for safety controls shall be included in the unit bid price for those contract items requiring such controls.

Positioning, adjusting and re-positioning of all devices such as traffic cones, high level warning devices, etc., not otherwise classified and paid for under other items in this Contract, is considered incidental and no separate payment will be made.

### **20. Safety**

A. The Contractor shall take all necessary precautions and provide all necessary safeguards to prevent personal injury and property damage. The Contractor shall provide protection for all persons including but not limited to his employees and employees of other contractors and subcontractors; members of the public; and employees, agents and representatives of the Owner, the Engineer, and regulatory agencies that may be on or about the Work. The Contractor shall provide protection for all public and private property including but not limited to structures, pipes, and utilities, above and below ground.

B. The Contractor shall provide and maintain all necessary safety equipment such as fences, barriers, signs, lights, walkways, guards and fire prevention and fire-fighting equipment and shall take such other action as is required to fulfill his obligations under this subsection.

C. The Contractor shall comply with all applicable Federal, Commonwealth and local laws, ordinances, rules and regulations and lawful orders of all authorities having jurisdiction for the safety of persons and protection of property.

D. The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This responsible person shall have the authority to take immediate action to correct unsafe or hazardous conditions and to enforce safety precautions and programs.

E. This project is subject to the Safety and Health regulations of the US. Department of Labor set forth in 29 CFR, Part 1926, and to the Massachusetts Department of Labor and Industries, Division of Industrial Safety "Rules and Regulations for the Prevention of Accidents in Construction Operations (454 CMR 10.0 et. seq.)." Contractors shall be familiar with the requirements of these regulations.

## **21. Sanitary Regulations**

- A. The Contractor shall provide adequate sanitary facilities for the use of those employed on the Work. Such facilities shall be made available when the first employees arrive on the site of the Work, shall be properly secluded from public observation, and shall be constructed and maintained during the progress of the Work in suitable numbers and at such points and in such a manner as may be required.
- B. The Contractor shall maintain the sanitary facilities in a satisfactory and sanitary condition at all times and shall enforce their use. He shall rigorously prohibit the committing of nuisances on the site of the Work, on the lands of the Owner, or any adjacent property.

## **22. Dimensions of Existing Structures**

- A. Where the dimensions and locations of existing structures are of importance in the installation or connection of any part of the Work, the Contractor shall verify such dimensions and locations in the field before the fabrication of any material or equipment, which is dependent on the correctness of such information.
- B. Upon completion of final pavement surface the grades within "Limit of Work" shall not exceed the existing grades. The Contractor shall provide a plan verifying existing grades to the Town. Plan should be stamped by a registered Land Surveyor or a Professional Engineer.

## **23. Procedures for Shop Drawing Submittals**

The following procedure shall be followed when making shop drawing submittals for this project:

1. The Prime Contractor shall submit three (3) sets of drawings directly to the Design Engineer, Victoria A. Masone, Town of Swampscott DPW, for preliminary review.
2. The Design Engineer will send a written reply, returning two (2) sets to the Prime Contractor within ten working days of receipt of the drawings.
3. If the Design Engineer's reply indicates rejection or advises corrections or additions to the drawings, steps 1 and 2 are repeated until the Design Engineer indicates that approval will be given. A maximum of two (2) submittals of each shop drawing will be reviewed by the Engineer. If more submittals are required due to the Contractor's neglect or failure to fulfill the requirements of the Contract plans and specifications, or to make corrections or modifications required by the Engineer in the review of the first two submittals, the Engineer will review the submittal and the Contractor will be responsible for the cost of the review.
4. The Contractor shall take care that every separate document in each set of every submittal shall carry the following identifying information:

**Information Required****Example**

a. Community Name of Project	Swampscott
b. Federal Aid Project No. (if applicable) and contract No.	D-1
c. Identifying item number from proposal if applicable.	222.0
d. Locations where material is proposed to be used, if applicable	Puritan Road
e. Name of submitting Contractor	Doe Engineering
f. Personal signature and title of an official of the Prime Contractor authorized to make shop drawing submittals	John Doe, Pres.
g. Date of signature or submittal	May 26, 2009
h. Description of what is on drawing	Surface Course
i. A clear, signed Professional Engineer's stamp to be affixed per Specifications	

The Contractor shall not receive payment for, nor will he be allowed to install any item or materials which require shop drawing approval unless and until he has received shop drawing approval for that item from the Design Engineer with an approval stamp placed thereon.

The Contractor shall not receive payment for, nor will he be allowed to install any item or materials, which require shop drawing approval unless and until he receives an approved shop drawing for that item.

Within 15 days after receipt of an approved shop drawing for any item, the Contractor shall provide the Department written proof that he has ordered such approved materials and written confirmation of such order and delivery schedule from the manufacturer of the item. This delivery schedule shall be appropriate for timely completion of this project.

**24. Saw Cuts**

Saw cuts shall be made in existing pavement at the limits of full depth pavement construction, limits of resurfaced pavement construction and as directed by the Engineer. At no time will feathering of pavement to meet existing conditions be permitted. Payment for this work shall be at the Contract Unit Price for Item 5.

**25. Handling and Distribution**

A. The Contractor shall handle, haul, and distribute all materials and all surplus materials on the different portions of the Work, as necessary or required; shall provide suitable and adequate storage room for materials and equipment during the progress of the Work, and be responsible for the protection, loss of, or damage to materials and equipment furnished by him, until the final completion and acceptance of the Work.

B. All excavated materials and equipment to be incorporated in the Work shall be placed so as not to injure any part of the Work or existing facilities and so that free access can be had at all times to all parts of the Work and to all public utility installations in the vicinity of the work. Materials and equipment shall be kept neatly piled and compactly stored in such location as will cause a minimum of inconvenience to public travel and adjoining owners, tenants and occupants.

C. Storage and demurrage charges by transportation companies and vendors shall be borne by the Contractor.

D. The Contractor shall be responsible for all damages to the work under construction during its progress and until final completion and acceptance.

### **26. Overloaded Trucks**

The Town of Swampscott will not accept any materials delivered to any project in motor vehicles or semi-trailer units that exceed the legal maximum weight allowed for the particular class, as specified in Section 19A of Chapter 90 of the General Laws of Massachusetts.

### **27. Material Removed and Stacked**

The Contractor shall carefully remove and store all Town owned materials at a site designated on the project by the Engineer for their subsequent removal, transportation to and stacking by the Contractor at a Town-owned facility.

Any materials damaged or lost during or subsequent to removal shall be replaced in kind by the Contractor without additional compensation.

All surplus materials resulting from excavation and not needed for use on the project, as determined by the Engineer, shall be disposed of by the Contractor outside and away from the limits of the project, subject to the regulations and requirements of local authorities governing the disposal of such materials at no additional compensation.

### **28. Rejected Materials and Defective Work**

A. Materials furnished by the Contractor and condemned by the Engineer as unsuitable or not in conformity with the specifications shall forthwith be removed from the work by the Contractor, and shall not be made use of elsewhere in the work.

B. Any errors, defects or omissions in the execution of the work or in the materials furnished by the Contractor, even though they may have been passed or overlooked or have appeared after the completion of the work, discovered at any time before the final payment is made hereunder, shall be forthwith rectified and made good by and at the expense of the Contractor and in a manner satisfactory to the Engineer.

C. The Contractor shall reimburse the Owner for any expense, losses or damages incurred in consequence of any defect, error, omission or act of the Contractor or his employees, as determined by the Engineer, occurring previous to the final payment.

### **29. Storage of Materials and Equipment**

All excavated materials and equipment to be incorporated in the Work shall be placed so as not to injure any part of the Work or existing facilities and so that free access can be had at all times to all parts of the Work and to all public utility installations in the vicinity of the Work. Materials and equipment shall be kept neatly piled and compactly stored in such locations as will cause a minimum of inconvenience to public travel and adjoining owners, tenants and occupants.

### **30. Disposal of Excavation Material**

Surplus material obtained from any type of excavation, and not needed for further use as determined by the Engineer, shall become the property of the Contractor and shall be disposed of outside the project location, subject to the regulations and requirements of local authorities governing the disposal of such materials, at no additional compensation.

### **31. Dust Control**

It shall be the responsibility of the Contractor to provide dust control for the duration of the project. The Contractor shall control dust by means of Calcium Chloride and/or Water. The Contractor shall have an appropriate vehicle on site for the application of water as a dust control agent. The cost for providing the vehicle and the application of water shall be considered incidental to the project and no additional payment will be made. Calcium Chloride and Water for roadway dust control will be paid for at the contract unit price bid respectively.

### **32. Site Investigation**

The Contractor acknowledges that he has satisfied himself as to the conditions existing at the site of the work, the type of equipment required to perform this work, the quality and quantity of the materials furnished insofar as this information is reasonably ascertainable from an inspection of the site, as well as from information presented by the Contract Documents made a part of this contract. Any failure of the Contractor to acquaint himself with available information will not relieve him from the responsibility for estimating properly the difficulty or cost of successfully performing the work. The Owner assumes no responsibility for any conclusion or interpretation made by the Contractor is further directed to make any and all questions known to the Engineer at the pre-bid Conference.

### **33. Materials - Samples - Inspection**

A. Unless otherwise expressly provided in the Contract Documents, only new materials and equipment shall be incorporated in the Work. All materials and equipment furnished by the Contractor to be incorporated in the Work shall be subject to the inspection of the Engineer. No material shall be processed or fabricated for the Work or delivered to the work site without prior concurrence of the Engineer.

B. As soon as possible after execution of the AGREEMENT, the Contractor shall submit to the Engineer the names and addresses of the manufacturers and suppliers of all materials and equipment he proposes to incorporate into the Work. When shop and working drawings are required as specified below, the Contractor shall submit, prior to the submission of such drawings, data in sufficient detail to enable the Engineer to determine whether the manufacturer and/or the supplier have the ability to furnish a product meeting the Contract Documents. As requested, the Contractor shall also submit data relating to the materials and equipment he

proposes to incorporate into the Work in sufficient detail to enable the Engineer to identify and evaluate the particular product and to determine whether it conforms to the Contract requirements. Such data shall be submitted in a manner similar to that specified for submission of shop and working drawings.

C. Facilities and labor for the storage, handling, and inspection of all materials and equipment shall be furnished by the Contractor. Defective materials and equipment shall be removed immediately from the site of the Work.

D. If the Engineer so requires, either prior to or after commencement of the Work, the Contractor shall submit samples of materials for such special tests as the Engineer deems necessary to demonstrate that they conform to the Specifications. Such samples, including concrete test cylinders, shall be furnished, taken, stored, packed, and shipped by the Contractor as directed. The Contractor shall furnish suitable molds for making concrete test cylinders. Except as otherwise expressly specified, the Owner shall make arrangements for, and pay for, the tests.

E. All samples shall be packed so as to reach their destination in good condition, and shall be labeled to indicate the material represented, the name of the building or work and location for which the material is intended, and the name of the Contractor submitting the sample. To ensure consideration of samples, the Contractor shall notify the Engineer by letter that the samples have been shipped and shall properly describe the samples in the letter. The letter of notification shall be sent separate from and should not be enclosed with the samples.

F. The Contractor shall submit data and samples, or place his orders, sufficiently early to permit consideration, inspection and testing before the materials and equipment are needed for incorporation in the Work. The consequences of his failure to do so shall be the Contractor's sole responsibility.

G. In order to demonstrate the proficiency of workmen, or to facilitate the choice among several textures, types, finishes, surfaces, etc., the Contractor shall provide such samples of workmanship of wall, floor, finish, etc., as may be required.

H. When required, the Contractor shall furnish to the Engineer in triplicate sworn copies of manufacturer's shop or mill tests (or reports from independent testing laboratories) relative to materials, equipment performance ratings, and concrete data.

I. After review of the samples, data, etc. the materials and equipment used on the Work shall in all respects conform therewith.

#### **34. Inspection of Work Away from the Site**

If work to be done, away from the construction site, is to be inspected on behalf of the Owner during its fabrication, manufacture, or testing, or before shipment, the Contractor shall give notice to the Engineer of the place and time where such fabrication, manufacture, testing, or shipping is to be done. Such notice shall be in writing and delivered to the Engineer in ample

time, as determined solely by the Engineer, so that the necessary arrangements for the inspection can be made.

### **35. Measurement of Materials**

All delivery slips for materials to be paid by weight must be submitted on automated printed tickets. Hand-written tonnage slips will not be accepted.

All delivery slips must be signed by the Engineer and a copy of each slip must be given to the engineer at the time each load is delivered. Each slip must contain the following information:

1. The gross weight of each load.
2. The net weight of the load.
3. The tare weight of the vehicle.
4. The time of day upon leaving the plant.

### **36. Disturbance of Bounds**

The contractor shall replace all bounds disturbed by his operation, at his own expense, the bounds shall be relocated by a land surveyor approved by the engineer and registered in the Commonwealth of Massachusetts.

### **37. Precautions During Adverse Weather**

A. During adverse weather and against the possibility thereof, the Contractor shall take all necessary precautions so that the Work may be properly done and satisfactory in all respects. When required, protection shall be provided by use of tarpaulins, wood and building-paper shelters, or other suitable means.

B. During cold weather, materials shall be preheated, if required, and the materials and adjacent structure into which they are to be incorporated shall be made and kept sufficiently warm so that a proper bond will take place and a proper curing, aging, or drying will result. Protected spaces shall be artificially heated by suitable means which will result in a moist or dry atmosphere according to the particular requirements of the work being protected. Ingredients for concrete and mortar shall be sufficiently heated so that the mixture will be warm throughout when used.

### **38. Subsurface Conditions Found Different**

Should the Contractor encounter soil or other materials classified as hazardous, he shall immediately give notice in writing or, if verbally, with confirmation in writing as soon as possible, to the Owner and Engineer of such conditions. The Owner will thereupon promptly provide the services of a qualified firm to conduct assessment of conditions, develop an environmental safety plan, and provide qualified staff person to observe that the conditions of the plan are followed by the Contractor. The Contractor shall divert his work to other areas of the project while the assessment and environmental safety plan are being developed. Any extension of time required to complete the project shall be in accordance with Article 13 of the AGREEMENT. Reasonable costs for the extra work in accordance with the safety plan, along with removal and disposal of hazardous materials as required, will be made in accordance with Article 13 of the AGREEMENT.

### **39. Cleaning Up**

The Contractor must employ at all times during the progress of his work adequate cleanup measures and safety precautions to prevent injuries to persons or damage to property. The Contractor shall immediately, upon direction by the Engineer provide adequate material, equipment and labor to cleanup and make safe any and all areas deemed necessary by the Engineer.

### **40. Material or Debris in Drainage Facilities**

Where material or debris has washed or flowed into or has been placed in existing watercourses, drains, pipes, structures, such material or debris shall be entirely removed and satisfactorily disposed of during progress of the work, and the drains, pipes, structures, and work shall, upon completion of the work, be left in a clean and neat condition.

### **41. Final Cleanup**

Before acceptance by the Owner, the Contractor shall perform a final cleanup to bring the construction site to its original or specified condition. This cleanup shall include removing all trash and debris off of the premises. Before acceptance, the condition of the site shall be approved by the Engineer.

## **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**

# **TECHNICAL SPECIFICATIONS**

**Item 1: ASPHALT PAVEMENT EXCAVATION BY COLD PLANER**

**SQ. YDS**

**DESCRIPTION:**

The scope of this work is to prepare the surface by way of cold planning. The surface will be ready accept a new wearing course of asphalt pavement materials. The foundation surface shall be cold planed to the proper grade as directed by the Engineer. The planed surface shall provide a smooth riding surface free from gouges, continuous grooves, ridges, oil film and other imperfections of workmanship and shall have a uniform surface appearance.

**REFERENCES:**

Materials and construction methods shall conform, insofar as applicable, to the requirements of the Massachusetts Standard Specifications for Highways and Bridges, dated 1988 together with all errata addenda, additional revisions, and supplemental specifications, all of which are hereinafter referred to as the Massachusetts Standard Specifications.

**MATERIALS:**

Material for this work shall conform to the requirements of Section 120 of the Massachusetts Standard Specifications.

**CONSTRUCTION METHODS:**

The asphalt surface being planed and profiled shall be removed to a depth, width, grade and cross-section as directed by the Engineer.

The loose material resulting from the operation shall become the property of the Contractor and disposed of at a Contractor-furnished disposal site.

The equipment for planning and profiling of pavement surface shall be a power-operated, track-propelled planning machine or a grinder capable of removing, in one pass, a layer of asphalt material 9 feet in width, with a minimum depth of cut equal to 2 inches or a thickness of asphalt concrete necessary to provide profile, cross slope and desired surface uniformly across the entire pavement surface.

The equipment shall be self-propelled with sufficient power, traction and stability to maintain accurate depth of cut and slope. The equipment shall be capable of accurately and automatically establishing profile grades along each edge of the machine (within 1/8-inch more or less) by referencing from the existing pavement by means of a ski or matching shoe controlling cross slope at a given rate.

The machine shall be equipped with an integral loading and reclaiming means to immediately remove material being cut from the surface of the roadway and discharge

the cuttings into a truck, all in one operation. All planning machinery shall be equipped with dust control devices to prevent any dust produced in the cutting operation from escaping into the air. This machine shall be equipped with a floating moldboard cutting device which is behind the mandrel and such moldboard must have an infinitely variable down pressure from 0-300 P.S.I.

The Contractor shall also have the necessary auxiliary grinding or milling machinery to perform the required curb cutting and trim cutting to reduce the amount of hand labor necessary to prepare the roadway foundation.

#### METHOD OF MEASUREMENT AND BASIS OF PAYMENT:

Cold planning of asphalt pavement surfaces will be measured by the actual number of square yards completed. The measurement shall be made by both the Engineer and the Contractor. Payment for work completed shall be at the contract unit price bid per square yard and shall include full compensation for all tools, machines and labor, removing and disposing of all loose material to a Contractor-furnished disposal area, cutting all edges at limit of work and in front of curbs, berms, and at gutter lines; excavating around all utility castings in the roadway, raising utility castings, and all other work necessary to complete the work in a satisfactory manner.

END OF SECTION

**Item 3: HOT MIX ASPHALT BERM**

**LINEAR FOOT**

**DESCRIPTION:**

Work under this item shall conform to the relevant provisions of Section 470 of the Massachusetts Standard Specifications and the following:

**REFERENCES:**

Materials and construction methods shall conform, insofar as applicable, to the requirements of the Massachusetts Standard Specifications for Highways and Bridges, dated 1988, together with all errata addenda, additional revisions, and supplemental specifications, all of which are hereinafter referred to as the Massachusetts Standard Specifications.

**MATERIALS:**

Material for this work shall conform to the requirements of relevant sections of the Massachusetts Standard Specifications.

**CONSTRUCTION METHODS:**

The work shall consist of furnishing and installing hot mix asphalt berm where existing hot mix asphalt berm is damaged due to construction or needs replacement or as directed by the Engineer.

**METHOD OF MEASUREMENT AND BASIS OF PAYMENT:**

This item shall be paid for at the contract unit price per linear foot, which price shall constitute full and complete compensation for all labor, materials and equipment and for all other incidentals necessary to complete this item of work complete, in place, and accepted.

END OF SECTION

**Items 2, 4: HOT MIX ASPHALT PAVEMENT**

**TON**

**DESCRIPTION:**

This item of work shall consist of furnishing and placing hot mix asphalt pavement.

**REFERENCES:**

Materials and construction methods shall conform, insofar as applicable, to the requirements of the Massachusetts Standard Specifications for Highways and Bridges, dated 1988, together with all errata addenda, additional revisions, and supplemental specifications, all of which are hereinafter referred to as the Massachusetts Standard Specifications.

**MATERIALS:**

Materials and methods of placing hot mix asphalt pavement shall conform to the requirements of Section 460 of the Massachusetts Standard Specifications.

**CONSTRUCTION METHODS:**

Materials and methods of placing hot mix asphalt pavement shall conform to the requirements of Section 460 of the Massachusetts Standard Specifications.

- A. The paving plant used by the contractor for preparation of hot mix asphalt paving materials shall be acceptable to the Town of Swampscott who shall have the right to inspect the plant and the making of the material.
- B. All construction methods and materials shall be satisfactory to the Town of Swampscott.
- C. The contractor shall remove and acceptably dispose of all surplus and unsuitable material.
- D. When installing permanent paving on a hot mix asphalt roadway the edges of the existing pavement shall be cut back 12 inches, or more as required, beyond the trench excavation wall or damaged area to sound undamaged material. The edges shall then be straightened, cleaned, and painted with an accepted cutback asphalt to ensure a satisfactory bond between it and the newly place surface courses. The existing surface course shall be stripped from the bituminous concrete base course for at least a 6-inch width and trimmed square and straight so that new permanent surfacing shall be placed on undisturbed hot mix asphalt base course. Existing pavement that will be under new pavement shall be painted with cutback asphalt to ensure a satisfactory bond. The permanent pavement surface course shall overlap the existing pavement not less than 18 inches and be suitably feathered.

- E. All top courses of permanent paving shall be applied with acceptable mechanical spreaders in widths of at least 9 feet.
- F. Pavement shall be placed so that the entire roadway or paved area shall have a true and uniform surface, and the pavement shall conform to the proper grade and cross section with a smooth transition to existing pavement.
- G. All manhole covers, catch basin grates, valve and meter boxes, curbs, walks, and walls shall be adequately protected and left in a clean condition. Where required, the grades of manhole covers, catch basing grates, valve boxes, and other similar items shall be adjusted to conform to the finished pavement grade.
- H. Placing of the mixture shall be as nearly continuous as possible and the roller shall pass over the unprotected end of the newly placed mixture only when the placing of the course is to be discontinued for such length of time as would permit the mixture to attain initial stability. In all such cases, including the formation of joints as here specified, provision shall be made for proper bond with the new surface for the full specified depths of the courses.

All transverse joints, all longitudinal joints of the surface course shall be treated prior to laying the next lane of hot mix asphalt as follows:

The joint shall be coated with a hot poured, rubberized asphalt sealant meeting the requirements of Federal Specification Number SS-S-1401.

When using pavers in tandem, the use of the hot poured rubberized asphalt sealer may be omitted at the discretion of the Town of Swampscott if the temperature of the mixture at the longitudinal joint does not fall below 200°F prior to the placement of the adjacent mat. No re-heating of the joint shall be permitted.

The hot poured rubberized asphalt shall be applied to the joints from a double-jacketed heating kettle with a positive drive gear pump that is connected to a sufficient sealant to effectively bond and seal the transverse and longitudinal paving joint between two adjacent lanes of bituminous concrete.

Longitudinal and transverse joints shall be made in a careful manner, well bonded and sealed, and true to line and grade. Where as directed, transverse joints for all courses and longitudinal joints for the top course placed under this or previous contracts shall be cut back to expose the full depth of the course and when the laying of the course is resumed, the exposed edge of the joint shall be treated as above.

In making joints along any adjoining edge such as curb, gutter or an adjoining pavement and after the mixture is placed by the mechanical spreader, just enough of the hot material shall be placed by hand method to fill any space left open. These joints shall be properly “set-up” with the back of a rake at the proper height and level

to receive the maximum compaction. The work of “setting-up” these joints shall be performed only by competent workmen.

Where and as directed, the first width of any course shall be placed not less than one foot wider than the first width of top course, and successive widths of top and as any other courses shall be so placed that there will be at least a one foot overlap between the joints in the top course and the other course.

The rolling of the successive widths of courses shall overlap and shall be performed so as to leave smooth, uniform joints and cross sections.

- I. During the guarantee period, the contractor shall maintain the hot mix asphalt surface and shall promptly make good all defects such as cracks, depressions, and holes that may occur. At all times, the surfacing shall be kept in a safe and satisfactory condition for traffic. If defects occur in surfacing constructed by the contractor, the contractor shall remove all hot mix asphalt and base course affected and shall remove adjacent hot mix asphalt and base course as is necessary to properly correct the defect. After removing hot mix asphalt surface course, the contractor shall correct the cause of the defect and replace the base course and hot mix asphalt in accordance with these specifications.

#### METHOD OF MEASUREMENT AND BASIS OF PAYMENT:

Hot Mix Asphalt pavement will be measured by the actual number of tons placed. Payment for work completed shall be at the contract unit price bid per tons. Payment shall also include full compensation for all tools, machines and labor, and all other work necessary to complete the work in a satisfactory manner.

END OF SECTION

**Item 5: SAWING ASPHALT PAVEMENT**

**LINEAR FOOT**

**DESCRIPTION:**

Work under this item shall conform to the relevant provisions of Section 480 of the Massachusetts Standard Specifications and the following:

**REFERENCES:**

Materials and construction methods shall conform, insofar as applicable, to the requirements of the Massachusetts Standard Specifications for Highways and Bridges, dated 1988, together with all errata addenda, additional revisions, and supplemental specifications, all of which are hereinafter referred to as the Massachusetts Standard Specifications.

**MATERIALS:**

Material for this work shall conform to the requirements of relevant sections of the Massachusetts Standard Specifications.

**CONSTRUCTION METHODS:**

The work shall include the saw cutting of existing pavements or sidewalks at limits of work or as directed by the Engineer.

Saw cutting equipment shall be approved by the Engineer prior to commencing work.

The existing pavement shall be saw cut where as directed and at all joints between existing and proposed pavements, pavement to remain, and to provide a uniform vertical surface for the proposed pavement joint with the existing pavement.

All edges of excavations made in existing pavements and driveways which will not be resurfaced and which will be visible shall be squared by saw cutting with power-driven tools to provide a neat, clean edge for joining new pavement. Ragged, uneven edges shall not be accepted. Areas which have been broken or undetermined shall be edged neatly with a minimum disturbance to remaining pavement.

Saw cut surfaces shall be sprayed or painted with a uniform thin coat of RS-1 asphalt emulsion immediately before placement of asphalt against the surface.

Saw cut edges which become broken, ragged or undermined as a result of the Contractor's operations shall be re-saw cut prior to the placement of abutting proposed pavement at no additional cost to the Owner.

METHOD OF MEASUREMENT AND BASIS OF PAYMENT:

Sawing pavements will be measured for payment by the linear foot on the pavement surface complete in place.

Sawing pavements will be paid for at the contract unit price per linear foot, which price shall include all labor, materials, equipment, and incidental costs required to complete the work.

END OF SECTION

**Items 6, 7: STRUCTURES ADJUSTED**

**EACH**

**DESCRIPTION:**

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

**REFERENCES:**

Materials and construction methods shall conform, insofar as applicable, to the requirements of the Massachusetts Standard Specifications for Highways and Bridges, dated 1988, together with all errata addenda, additional revisions, and supplemental specifications, all of which are hereinafter referred to as the Massachusetts Standard Specifications.

**MATERIALS:**

Material for this work shall conform to the requirements of relevant sections of the Massachusetts Standard Specifications.

**CONSTRUCTION METHODS:**

The work under this item shall consist of adjusting the frames, grates and covers in conformity with the lines, grades, and dimensions determined based on pre-construction conditions and projected post-construction conditions.

The frames, grates, and covers shall not be adjusted upward until after placement of the binder course, but before placement of the wearing course.

Manhole frames shall be set with the tops conforming accurately to the grade of the pavement or finished ground surface or as directed. Frames shall be set concentric with the top of the masonry and in full bed mortar so that the space between the top of the manhole masonry and the bottom flange of the frame shall be completely filled and made watertight. A thick ring of mortar extending to the outer edge of the masonry shall be placed all around and on the top of the bottom flange. The mortar shall be smoothly finished and have a slight slope to shed water away from the frame.

During the work, the contractor shall take measures to assure that construction materials and debris do not enter the structure. At the completion of the work the Contractor shall clean all existing structures selected by the Engineer of any accumulation of silt, debris or foreign matter of any kind. The Contractor's operations shall, at all times, be conducted in a manner that shall not damage manholes, catch basins, storm drain lines, sanitary sewer lines, etc. and shall not cause injury to persons or property. Under no circumstances shall liquids, solids or any other materials resulting from the cleaning operations be dumped onto public property, or into ditches or water courses. All sludge,

dirt, sand, gravel and other debris resulting from the cleaning operation shall be removed and disposed of off site.

If existing castings are damaged, new castings required shall be supplied by the Town. Installation of new castings to replace broken ones shall be considered incidental to this item with no additional compensation allowed. If a casting is damaged due to improper construction techniques, it will be the Contractor's responsibility to supply and set in place a new casting to the satisfaction of the Utility Company and the Engineer.

#### METHOD OF MEASUREMENT AND BASIS OF PAYMENT:

This item shall be paid for at the contract unit price bid per structure frame, grate and cover adjusted, which price shall constitute full and complete compensation for all materials, bricks, removing, stacking, storing and resetting castings, for all excavation and backfill, equipment, tools, labor and incidentals required to finish the work of this item to the satisfaction of the Engineer.

No separate payment will be made for cleaning of structure and associated lines, but all costs in connection therewith shall be included in the unit price bid for this item including tools, labor, supervision, equipment, removal and disposal of all debris and in performing all other operations in connection with the cleaning of existing structures. Costs for lowering the structures for reclamation activities and resetting shall be covered under Item 1.

**Item 8: GATE BOX ADJUSTED**

**EACH**

**DESCRIPTION:**

The work to be done under this item shall conform to the relevant provisions of Section 300 of the Standard Specifications and the following:

**REFERENCES:**

Materials and construction methods shall conform, insofar as applicable, to the requirements of the Massachusetts Standard Specifications for Highways and Bridges, dated 1988, together with all errata addenda, additional revisions, and supplemental specifications, all of which are hereinafter referred to as the Massachusetts Standard Specifications.

**MATERIALS:**

Material for this work shall conform to the requirements of relevant sections of the Massachusetts Standard Specifications.

**CONSTRUCTION METHODS:**

The work under this item shall consist of adjusting the gate boxes in conformity with the lines, grades, dimensions and details on the plans.

The gate boxes shall not be adjusted upward until after placement of the binder course, but before placement of the wearing course.

Any new gate boxes required shall be supplied by the Town. Installation of new gate boxes to replace broken ones shall be considered incidental to this item with no additional compensation allowed.

**METHOD OF MEASUREMENT AND BASIS OF PAYMENT:**

This item shall be paid for at the contract unit price bid per gate box adjusted, which price shall constitute full and complete compensation for all excavation and backfill, equipment, tools, labor and incidentals required to finish the work of this item to the satisfaction of the Engineer.

The contract unit price for the above item shall constitute full payment for all labor, tools, equipment, and other incidentals needed to satisfactorily complete the work. Costs for lowering the gate boxes for reclamation activities and resetting shall be covered under Item 1.

## **APPENDICES**

**A1: 2010 Paving Scope of Work**

**A2: Pavement Typical Cross Section**