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**TOWN OF ANDOVER
CONSTRUCTION CONTRACT
(PROJECTS UNDER \$100,000.00)**

Date: Aug 23, 2002

This contract is entered into on, or as of, this date by and between the Town of Andover (the "Town") and

Bill Tompkins Corporation
55 Garfield Street
Lawrence, MA 01843
978-687-2152

1. This is a contract for the work described as follows:

1.1 Description of Work: Rental of Construction Equipment, Operators, and Laborers, IFB 421/002/23

1.1.1 Required Bonds 50% Payment Bond only required when a particular job exceeds \$25,000.00

1.1.2 Required Insurance : Commercial General Liability, Auto Liability, Umbrella Liability, and Workers Comp, per Section 32 & 33 of this Contract.

1.1.3 Contract Amount : Per hours rates as attached in Contractor's Bid Submission Documents

1.2 Scope of Work: The Work comprises the completed project described in the Contract Documents and includes all labor, professional services, transportation, tools, materials, supplies, equipment, permits, approvals, documents, calculations,

submittals, and certificates necessary to develop, perform, construct and complete the project in accordance with all applicable laws, ordinances, and regulations, and in accordance with the Contract Documents. Before commencing the Work, the Contractor shall carefully study the Contract Documents and carefully compare all Specifications, Plans, Drawings, figures, dimensions, lines, marks, scales, directions of the Designer, and any other information provided by the Town and shall at once report to the Designer any questions, errors, inconsistencies, or omissions. The Town expressly disclaims any express or implied warranties regarding the sufficiency of the Plans and Specifications, drawings, figures, dimension lines, marker scales and direction of the Designer.

- 1.3 Interpretation. The Plans and Specifications and other Contract Documents are to be considered together and are intended to be mutually complementary, so that any work shown on the Plans though not specified in the Specifications, and any work specified in the Specifications though not shown on the Plans, is part of the Work to be performed by the Contractor. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Owner-Contractor Agreement.
- 1.3.1 In the case of a closed Specification written for a specific item or items to be furnished under the Base Bid, such specifications shall, as applicable, be in compliance with Massachusetts General Laws, Chapter 30, Section 39M and Chapter 149, Sec. 44A et seq.
- 1.3.2 Where the name of an item, material or manufacturer is mentioned in the Specifications or on the Drawings, except as above noted, the intent is to establish a standard and in no way should be construed to exclude any item or manufacturer not mentioned by name, but whose product meets the Specifications as to design, utility, and quality. Final decision shall rest with the Town or its designated Representative as to its acceptability.
- 1.4 Contractor's General Duties. The Contractor shall perform the Work in a proper, thorough and workmanlike manner in accordance with the Contract Documents and all applicable laws. The Contractor shall be solely responsible for, and have control over, construction's means, methods, techniques, sequences, and procedures, and coordination of all portions of the Work under this Contract. The Contractor shall provide and perform for the Contract Price all of the duties and obligations set forth in the Contract Documents.
- 1.5 Sales Tax Exemption and Other Taxes. To the extent that materials and supplies are used or incorporated in the performance of this Contract, the Contractor is

considered an exempt purchaser under the Massachusetts Sales Act, Chapter 14 of the Acts of 1966. The Contractor shall pay all taxes and tariffs of any sort related to the Work, subject to the applicable exemptions.

- 1.6 Safety Requirements. The Contractor shall comply with all Federal, State, and local safety laws and regulations applicable to the Work.
- 1.6.1 The Contractor shall take any necessary precautions for the safety of employees on the Work, and shall comply with all applicable provisions of Federal, State and local laws and codes to prevent accidents or injury to the persons on, about or adjacent to the premises where the work is being performed. The Contractor will erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workers and the public, shall post danger signs warning against the hazards created by such features of construction including but not limited to pits, protruding nails, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials; and shall designate a responsible member of its organization on the work, whose duty shall be the prevention of accidents.
- 1.6.2 The Contractor shall comply and shall cause all Subcontractors and persons employed on the Work to comply with all applicable safety requirements. By executing this Contract the Contractor hereby certifies 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, and that all employees to be employed in the work subject to this bid 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. Any employee found on a worksite subject to this section without documentation of said course shall be subject to immediate removal.
- 1.7 Workforce Qualifications. The Contractor shall: (i) employ competent workers; (ii) enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work; (iii) not permit employment of unfit persons or persons not skilled in tasks assigned to them. Whenever the Town shall notify the Contractor in writing that any worker is, in the Town's opinion, incompetent, unfaithful, disorderly, or otherwise unsatisfactory, such employee

shall be discharged from the Work and shall not again be employed on the Work except with the consent of the Town.

- 1.8 Non-Discrimination in Hiring and Employment. By signing this Contract the Contractor hereby certifies that under the pains and penalties of perjury that the Contractor currently complies with and will continue to comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law.

- 1.9 Veterans Preference. In accordance with M.G.L. c. 49, s.26 in the employment of mechanics and apprentices, teamsters, chauffeurs, and laborers in the construction of public works in the Commonwealth, preference shall first be given to citizens of the Commonwealth who have been residents of the Commonwealth for at least six months at the commencement of their employment and who are veterans as defined in M.G.L. c. 4, s.7(34), and who are qualified to perform the work to which the employment relates and, within such preference, preference shall be given to service-disabled veterans; and secondly, to citizens of the Commonwealth generally who have been residents of the Commonwealth for at least six months at the commencement of their employment, and if they cannot be obtained in sufficient numbers, then to citizens of the United States.

- 1.10 Employment Eligibility Requirements [8 U.S.C., §1324a, 1324b; M.G.L. c. 149 s. 19C; Executive Order No. 481]. The Contractor hereby certifies under pains and penalties of perjury as a condition of receiving this Contract, that I shall not knowingly use undocumented workers in connection with the performance of the Work and that, pursuant to the requirements of federal law, the Contractor shall verify the immigration status of all workers employed in connection with the Work without engaging in unlawful discrimination, and that the Contractor shall not knowingly or recklessly alter, falsify, or knowingly or recklessly accept altered or falsified documents of any worker. The Contractor shall cause all subcontractors to comply with this provision. The Contractor shall comply with Federal Department of Homeland Security Requirements in hiring any and all “employees” to be employed on the Work who are required to be listed in the certified payroll reports for the Work. Without limitation, such requirements shall include the good faith completion of the Federal Department of Homeland Security I-9 process by the Contractor for each of its employees. The Contractor

shall execute a Certificate of Compliance with Employment Eligibility Verification Requirements (I-9 Certificate) simultaneously with the execution of this Contract. The Contractor shall require each of its subcontractors to execute and provide the Contractor and I-9 Certificate with the execution of each subcontract, and the Contractor shall immediately provide a copy to the Town. The Contractor shall certify in each certified payroll report to the Town that the Form I-9 process was faithfully completed for all employees listed on the payroll report. Violation of this Section shall constitute a material breach of this Contract, subjecting the Contractor to sanctions including but not limited to monetary penalties, withholding of payments, contract supervision, or termination.

- 1.11 Weekly or Bi-weekly wage payments [M.G.L. c. 149 s, 148]. The Contractor shall comply with, and shall cause its Subcontractors to comply with M.G.L. c. 148 s. 148 which requires the weekly or bi-weekly payment of employees within 6 days of the end of the pay period during in which wages were earned if employees for five or six days of a calendar week, and within other periods of time under certain circumstances as set forth therein.
 - 1.12 Labor Harmony [M.G.L. c. 30, s. 39S]. By executing this contract the Contractor certifies that the Contractor is liable to furnish labor than can work in harmony with all other elements of labor employed or to be employed in the work. The Contractor shall procure materials from such sources and shall manage its own forces and the forces of its Subcontractors and any sub-subcontractors in such a manner as will result in harmonious labor relations on the site. The Contractor shall cause persons to be employed in the Work who will work in harmony with others so employed. Should the Work be materially stopped or materially delayed in the Town's reasonable judgment due to a labor dispute, the Town shall have the right to require the Contractor to employ substitutes acceptable to the Town.
2. The Contract price to be paid to the Contractor by the Town of Andover is: Hourly rates as per Contractor's Bid Submission Documents.
 3. Payment will be made in accordance with the provisions of this Contract and in accordance with applicable law.
4. Definitions
 - 4.1 Acceptance: All contracts require proper acceptance of the described goods or services by the Town. Proper acceptance shall be understood to include inspection of goods and certification of acceptable performance for services by authorized representatives of the Town to insure that the goods or services are complete and as specified in the Contract.

- 4.2 Contract Documents: All documents relative to the Contract including (where used) Invitation to Bid, Request for Proposals, Instructions to Bidders/Proposers, Proposal Form, General Conditions, Supplementary General Conditions, General Specifications, Other Specifications included in Project Manual, Drawings, and all Addenda issued during the bidding or proposal period. The Contract documents are complementary, and what is called for by any one shall be binding as if called for by all. The intention of the document is to include all labor and materials, equipment and transportation necessary for the proper performance of the Contract.
- 4.3 The Contractor: The “other party” to any Contract with the Town. This term shall (as the sense and particular Contract so require) include Vendor, Contractor, Engineer, or other label used to identify the other party in the particular Contract. Use of the term “Contractor” shall be understood to refer to any other such label used. The Contractor’s relationship with the Town is that of an independent contractor and not that of an agent or employee of the Town.
- 4.4 Date of Substantial Performance: The date when work is sufficiently complete, the services are performed, or the goods delivered, in accordance with the Contract documents, as modified by approved Amendments and Change Orders.
- 4.5 Goods: Goods, Supplies, or Materials.
- 4.6 Subcontractor: Those having direct Contract with the Contractor. The term includes one who furnished material worked to a special design according to the Drawings or Specifications of this work, but does not include one who merely furnished material not so worked.
5. Term of Contract and Time for Performance. This contract shall be fully performed by the Contractor with the provisions of the Contract Documents on or before **July 31, 2023**, unless extended pursuant to a provision for extension contained in the Bid Documents at the sole discretion of the Town, and not subject to assent by the Contractor, and subject to the availability of funds as certified by the Town Accountant. The time limits stated in the Contract Documents are of the essence of the Contract.
- 5.1 Extension for Delays Caused by Town. The only circumstances under which the Contract Price shall be increased due to delays caused by the Town are those specified in M.G.L. c. 30, §390 appearing in Appendix A to this Contract. In all

other cases the Contractor shall be entitled neither to increase the Contract Price nor to receive damages on account of any hindrances or delays, avoidable or unavoidable, but if the delay is caused by the Town, the Contractor shall be entitled to an extension of time to the extent provided in M.G.L. c. 30, §390. The Contractor must submit any claim under this paragraph to the Town in writing as soon as practicable after the end of the Town's suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this Contract. Except for costs due to a suspension order, the Town shall not approve any costs in the claim incurred more than 20 days before the Contractor notified the Town in writing of the act or failure to act or the Town that gave rise to the claim.

6. Subject to Appropriation. Notwithstanding anything in the Contract Documents to the contrary, any and all payments which the Town is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the Town Accountant. The Town may immediately terminate or suspend this Contract without liability on the part of the Town for damages, penalties or other charges in the event the appropriation(s) funding this Contract is terminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Contract.
7. Permits and Approvals. Permits, Licenses, Approvals and all other legal or administrative prerequisites to its performance of the Contract shall be secured and paid for by the Contractor. The Contractor shall comply with and give notices required by laws, ordinances, bylaws, rules, regulations, codes and lawful orders of public authorities bearing on the performance of the Work.
8. Bonds. The Contractor shall provide the Town with a Performance Bond and a Payment Bond in the form provided by the Town, executed by a surety company licensed by the Commonwealth of Massachusetts Division of Insurance and whose name appears on United States Treasury Department Circular 570. Both the performance bond and the payment bond shall be in an amount equal to the Contract sum unless, with respect to the Payment bond or a lesser amount of no less than one half the contract price is expressly specified in the Advertisement or Instructions to Bidders, or with respect to such bonds no such bond is required as expressly set forth in the Advertisement or Instructions to Bidders.
9. Termination and Default
 - 9.1 Without Cause. The Town may terminate the Contract at its sole discretion on seven (7) calendar days' notice when in the best interest of the Town by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested,

regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor.

9.2 For Cause. If the Contractor is determined to be in default on any term of this Contract, The Town may terminate this contract on seven (7) calendar days' notice by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor. The Town may complete the Work or any part thereof, and charge its expense of so completing the Work or part thereof, to the Contractor. The Town may take possession of and use any materials, machinery, implements and tools found upon the site of said Work. The Town shall not be liable for any depreciation, loss or damage to said materials, machinery, implements or tools during said use and the Contractor shall be solely responsible for their removal from the Project site after the Town has no further use for them. In such cases, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid amount owed to the Contractor for work already completed shall exceed the expense of finishing the Work, including compensation for additional architectural, managerial, legal, and administrative services, such excess shall be paid to the Contractor. If such expenses shall exceed unpaid balances, the Contractor shall pay the difference to the Town. The Contractor shall not be relieved of liability to the Town by virtue of any termination of this contract, and any claim for damages against the Contractor relating to the Contractor's performance under this contract shall survive any termination hereunder. Notwithstanding any other provision of this Contract, the Town reserves the right at any time in its absolute discretion to suspend or terminate this Contract in whole or in part for its convenience upon seven days written notice to the Contractor. The Town shall incur no liability by reason of such termination except for the obligation to pay compensation for all work performed by the Contractor and accepted by the Town to the termination date.

9.3 Default. The following shall constitute default events of default under the Contract:

If the Contractor should (1) be adjudged a bankrupt, (2) make a general assignment for the benefit of creditors, (3) have a receiver appointed on account of its insolvency, (4) persistently or repeatedly refuse or fail to supply enough personnel and resources to perform the contract, (5) fail to make prompt payment to subcontractors or to providers of materials or labor, (6) persistently disregard laws and regulations or lawful directives of the Town,

(7) make any material misrepresentation made by the Contractor to the Town, (8) fail to perform any of its obligations under this Contract, (9) fail to commence performance of this Contract at the time specified in this Contract due to a reason or circumstance within the Contractor's reasonable control, (10) Fail to perform this Contract in a manner reasonably satisfactory to the Town, (11) fail to promptly re-perform within a reasonable time the services that were rejected by the Town as unsatisfactory, or erroneous, (12) discontinue the services for reasons not beyond the Contractor's reasonable control, (13) fail to comply with a material term of this Contract, including, but not limited to, the provision of insurance and non-discrimination, (14) perform any other acts specifically or expressly stated in this Contract as constituting a basis for termination of this Contract, or (15) fail to comply with any and all requirements of federal or state law and/or regulations, then the Town may, without prejudice to any other right or remedy and after giving the Contractor (or any surety) seven days written notice, terminate the Contract and the employment of the Contractor and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method it deems appropriate.

10. The Contractor's Breach and the Town's Remedies. Failure of the Contractor to comply with any of the terms or conditions of this Contract shall be deemed a material breach of this Contract and the Town shall have all the rights and remedies provided in the Contract Documents, the right to cancel, terminate, or suspend the Contract in whole or in part, the right to maintain any and all actions at law or in equity or other proceedings with respect to a breach of this Contract, including damages and specific performance, and the right to select among the remedies available to it by all of the above. From any sums due to the Contractor for services, the Town may keep the whole or any part of the amount for expenses, losses and damages, incurred by the Town as a consequence of procuring services as a result of any failure, omission or mistake of the Contractor in providing services as provided in this Contract.

11. Statutory Compliance

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

M.G.L. Chapter 30B- Procurement of Goods and Services

M.G.L. Chapter 30, Sec. 39, *et seq*: Public Works Contracts

M.G.L. Chapter 149, Section 44A, *et seq*: Public Buildings Contracts

- 11.3 The Contractor shall keep itself fully informed of all existing and future State and National Laws and Municipal Bylaws and Regulation and of all orders and decrees of any bodies or tribunals having jurisdiction in any manner affecting those engaged or employed in the work, of the materials used in the work, or in any way affecting the conduct of the work. If any discrepancy or inconsistency is discovered in the Drawings, Specifications, Scope of Work, or Contract for this work in violation of any such law, bylaw, regulation, order or decree, it shall forthwith report the same in writing to the Town. It shall, at all times, itself give all notices and observe and comply with all such existing and future laws, bylaws, regulations, orders and decrees; and shall to the fullest extent permitted by law protect, defend and indemnify the Town, and its duly appointed agents against any claim or liability arising from or based on any violation whether by the Contractor or the Contractor's agents, employees, or subcontractors of any such law, bylaw, regulation or decree. If the Contractor performs Work knowing it to be contrary to legal requirements, the Contractor shall be liable for all damages caused thereby including the cost of correcting the Work.
12. Conflict of Interest. Both the Town and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A), and this Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the application of M.G.L. c. 268A to the performance of this Contract; and by executing the Contract documents the Contractor certifies to the Town that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.
13. Affirmative Action; Non-Discrimination. The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151B (Law Against Discrimination) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted discharged, or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of

race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law.

14. Condition of Enforceability Against the Town. This Contract is only binding upon, and enforceable against, the Town if: (1) the Contract is signed by the Town Manager or its designee; and (2) endorsed with approval by the Town Accountant as to appropriation or availability of funds; and (3) endorsed with approval by the Town Counsel as to form.
15. Corporate Contractor. If the Contractor is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate or if a limited Liability Corporation, a Manager's Certificate or other documentation satisfactory to the Town certifying the corporate capacity and authority of the party signing this Contract for the corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the Contract is executed with the Contractor. This Contract shall not be enforceable against the town unless and until the Contractor complies with this section.
16. Liability of Public Officials. To the full extent permitted by law, no official, employee, agent or representative of the Town shall be individually or personally liable for any obligation of the Town under this Contract.
17. Documents, Materials, Etc. Any materials, reports, information, data, etc. given to or prepared or assembled by the Contractor under this Contract are to be kept confidential and shall not be made available to any individual or organization by the Contractor (except agents, servants, or employees of the Contractor) without the prior written approval of the Town, except as otherwise required by law.

Any materials produced in whole or in part under this Contract shall not be subject to copyright, except by the Town, in the United States or in any other country. The Town shall have unrestricted authority to, without payment of any royalty, commission, or additional fee of any type or nature, publicly disclose, reproduce, distribute and otherwise use, and authorize others to use, in whole or in part, any reports, data or other materials prepared under this Contract.

All data, reports, programs, software, equipment, furnishings, and any other documentation or product paid for by the Town shall vest in the Town. The Contractor shall at all times, during or after termination of this Contract, obtain the prior written approval of the Town before making any statement to the press bearing on the work performed or data collected under this Contract or issues any material for publication through any medium.

18. Confidentiality. The Contractor shall comply with M.G.L. c. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Town data in the Contractor's possession, or used by the Contractor in the performance of this Contract, which shall

include, but is not limited to the Town's public records, documents, files, software, equipment or systems.

19. Record-Keeping and Retention, Inspection of Records. The Contractor shall maintain records, books, files and other data as specified in this Contract and in such detail as shall properly substantiate claims for payment under this Contract, for a minimum retention periods of six (6) years beginning on the first day after the final payment under this Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. The Town shall have access during the Contractors regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.
20. Assignment. The Contractor shall not assign or delegate, in whole or in part or otherwise transfer any liability, responsibility, obligation, duty or interest under this Contract without the written approval of the Town.
21. Subcontracting by Contractor. Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under this Contract must be in writing, authorized in advance by the Town and shall be consistent with and subject to the provisions of this Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under this Contract. The Town is entitled to copies of subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.
22. Risk of Loss. The Contractor shall bear the risk of loss for any Contractor materials used for this Contract and for all deliveries, personal or other data of the Town which is in the possession of the Contractor or used by the Contractor in the performance of this Contract until possession, ownership and full legal title to the deliverables have been transferred to and accepted by the Town.
23. Minimum Wage/Prevailing Wage. The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151, §1, et seq. (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor will at all times comply with and shall cause its Subcontractors to comply with the wage rates as determined by the Commissioner of the Department of Labor and Industries, under the provisions of General Laws Chapter 149, 26 and 27H (Prevailing Wage Law), as shall be in force and as amended.
24. Audit, Inspection, and Recordkeeping. At any time during normal business hours, and as often as the Town may deem it reasonably necessary, there shall be available in the office of the Contractor for the purpose of audit, examination, and/or to make excerpts or transcript al records, contracts, invoices, materials, payrolls, records of personnel,

conditions of employment and other data relating to all matters covered by this agreement.

25. Waiver and Amendment. Amendments, or waivers of any additional term, condition, covenant, duty or obligation contained in this Contract may be made only by written amendment executed by all signatories to the original Contract, prior to the effective date of the Amendment.

To the extent allowed by law, any conditions, duties, and obligations contained in this contract may be waived only by written agreement by both parties.

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any manner limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach of a similar or different matter.

26. Forum and Choice of Law. This Contract and any performance herein shall be governed by the laws of the Commonwealth of Massachusetts. Any and all proceedings or actions relating to the subject matter herein shall be brought and maintained in the courts of the Commonwealth of Massachusetts, which shall have exclusive jurisdiction thereof. This paragraph shall not be construed to limit any other legal rights of the parties.

27. Notices. Any notice permitted or required under the provisions of this Contract to be given or served by either of the parties hereto upon the other party hereto shall be in writing and signed in the name or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified or registered mailing properly addressed. Notice to the Contractor shall be deemed sufficient if sent to the address set forth in the Contract and to the Town by being sent to the Town Manager, Town Hall, 36 Bartlet Street, Andover, Massachusetts 01810.

28. Binding on Successors. This Contract shall be binding upon the Contractor, its assignees, transferees, and/or successors in interest (and where not corporate, the heirs and estate of the Contractor).

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

30. Contractor Certifications.

30.1 By signing this contract, the Contractor certifies under the penalties of perjury that pursuant to General Laws Chapter 62C sec. 49A, the Contractor has files all state tax returns, paid all taxes and complied with all laws of the Commonwealth relating to taxes; and that pursuant to General Laws Chapter 151A, sec. 19A, the Contractor has complied with all laws of the Commonwealth relating to contributions and payments in lieu of contributions.

30.2 By signing this contract, the Contractor certifies under the penalties of perjury that this contract has been obtained in good faith and without collusion or fraud with any other person. As such in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, client or other organization, entity or group of individuals.

30.3 By signing this contract, the Contractor certifies that it is qualified and shall at all times remain qualified to perform this contract, that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability, and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State's website as licensed to do business in Massachusetts, as required by law.

30.4 By signing this contract the Contractor certifies that performance under this contract, in addition to meeting the terms of the contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

30.5 By signing this contract, the Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulations including, Executive Order 147, M.G.L. ch. 29, §29F, M.G.L. ch. 30, §39R, M.G.L. ch. 149, §27C, M.G.L. ch. 149, §44C, M.G.L. ch. 149, §148B and M.G.L. ch. 152, §25C.

31. Change Orders.

31.1 Change Orders. The Contractor shall comply with the provisions of Massachusetts General Law Chapter 30, Section 39I and the Town shall not be obligated to pay for any changes in the work not approved in writing in accordance with said section.

31.2 Changes within the Scope of Work. A change order may be issued by the Town for changes in the Work within the scope of the Contract, including but not limited to, changes in: (1) the Plans and Specifications; (2) the method or manner of performance of the Work; (3) the Town furnished facilities, equipment, materials, services, or Site; or (4) the schedule for performance of the Work. The Contractor shall immediately perform any change order work that is ordered in writing by the Town.

31.3 Request for Equitable Adjustment due to Change Order. Whenever a change order is issued by the Town that will cause a change in the Contractor's cost or time for performance, the Contractor or the Town may request an equitable adjustment in the Contract Price or the Contract time. A request for such an adjustment shall be in writing and shall be submitted by the party making such claim to the other party.

31.4 Latent Conditions. If, during the progress of the Work, the Contractor or Town discover that the actual subsurface or latent physical conditions encountered at the Site differ substantially or materially from those indicated in the Contract Documents, then either the Contractor or the Awarding Authority may request an equitable adjustment in the Contract Price in accordance with M.G.L. ch. 30, §39N appearing in Appendix A attached to this Contract. Likewise if the latent or subsurface condition causes a change in the time for performing the Work, either the Contractor or the Awarding Authority may request an equitable adjustment of the time for performance of the Work.

32. Insurance Generally.

32.1. The Contractor shall purchase and maintain insurance of the type and limits listed in this Article with respect to the operations as well as the completed operations of this Contract. This insurance shall be provided at the Contractor's expense and shall be in full force and effect for the full term of the Contract or for such longer period as this Article requires.

32.2. All policies shall be written on an occurrence basis and be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts and the Commissioner of Insurance of the Commonwealth of Massachusetts with a financial strength rating of A- or better as assigned by AM Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the Town, or otherwise acceptable to the Town.

32.3. The Contractor shall submit of each certificate of insurance, acceptable to the Town, prior to the execution of this Contract by the Town. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles and/or self-insured retentions, and policy effective and expiration dates. Certificates and endorsements shall show the Town and its employees and officials and anyone else the Town requests as an additional insured as to all policies of liability insurance. Certificates shall specifically note the following:

- that the general liability, automobile liability, umbrella liability and pollution liability, if required, policies include the Town and its employees and officials as an additional insured;
- that all policies include the coverage and endorsements in accordance with the terms and conditions as required by this construction contract;
- that the Builders' Risk or Installation Floater, if required, is on an all risk basis including earthquake and flood, and includes the Town as a named insured or loss payee as their interests may appear; and
- that none of the coverages shall be cancelled, terminated, or materially modified unless and until 30 days prior notice is given in writing to the Town.

Properly executed certificates of insurance and endorsements acceptable to the Town signifying adequate coverage in accordance with the requirements of this Contract in effect for the duration of the Contract must be submitted to the Town at least seven days prior to the execution of this Contract by the Town with renewal certificates and endorsements issued not less than 30 days prior to the expiration of a policy period.

The Contractor shall submit updated certificates not less than 30 days prior to the expiration of any of the policies referenced in the certificates so that the Town shall at all times possess certificates indicating current coverage.

32.4. The Contractor shall file one certified complete copy of all endorsements of the Builders Risk or Installation Floater policy, if required, the General Liability policy, Automobile Liability policy, Umbrella Liability policy and the Pollution Liability policy, if required, with the Town prior to the execution of the Contract by the Town, and shall submit certified copies of all policies to the Town upon request. If the Town is damaged by the Contractor's failure to maintain such insurance and to comply with the terms of this Article, then the Contractor shall be responsible for all costs and damages to the Town attributable thereto.

32.5. Termination, cancellation, or material modification of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to

the Town at least thirty days prior to the effective date thereof, which shall be expressed in said notice.

- 32.6. The Contractor is responsible for the payment of any and all deductibles under all of the insurance required. The Town shall not in any instance be responsible for the payment of deductibles, self-insured retentions, or any portion thereof.
- 32.7. The General Liability, Automobile Liability, Umbrella Liability, Pollution Liability and Builders Risk or Installation Floater Policy, if required, policies shall name the Town and its employees and officials as an additional insured. The Certificate of Insurance shall so state the foregoing.
- 32.8. All policies shall be primary and non-contributory with respect to any other insurance available to additional insureds.
- 32.9. All policies shall contain a waiver of subrogation in favor of the Town and the Certificate of Insurance so shall state.
- 32.10. All premiums shall be included in the Contractor's bid.
- 32.11. Completed operations coverage is to be maintained for a period of three years after final payment.
- 32.12. Contractual liability must recognize the indemnities contained in this Agreement.

33.1. Contractor's Commercial General Liability.

A.. The Contractor shall purchase and maintain general liability coverage , including products and completed operations, on an occurrence basis. The form must be amended to state that the aggregate limit applies on a per location/project basis. The policy shall provide the following minimum coverage to protect the Contractor from claims with respect to the operations performed by Contractor and any employee, subcontractor, or supplier, or by anyone for whose acts they may be liable unless a higher coverage is specified in Exhibit A to the Owner - Contractor Agreement, in which case the Contractor shall provide the additional coverage:

Bodily Injury &	\$1,000,000 each occurrence
Property Damage	\$2,000,000 general aggregate
Products & Completed Operations	\$1,000,000 annual aggregate
Personal Injury	\$1,000,000 each occurrence
Medical Expenses	\$5,000

- B. This policy shall include coverage relating to explosion, collapse, and underground property damage.
- C. This policy shall include contractual liability coverage.
- D. The completed operations coverage shall be maintained for a period of three (3) years after Substantial Completion and acceptance by the Town. The Contractor shall provide renewal certificates of insurance to the Town as evidence that this coverage is being maintained.
- E. If the Work includes work to be performed within 50 feet of a railroad, any exclusion for liability assumed under contract for work within 50 feet of a railroad shall be deleted.

- F. This policy shall include the Town, and its employees and officials and anyone else requested by the Town as an additional insured via endorsements for ongoing operations and for completed operations
- G. This policy shall be primary and non-contributory with respect to any other insurance available to additional insureds.
- H. The policy shall contain, a Waiver of Subrogation in favor of the Town.

33.2. Automobile Liability.

- A. The Contractor shall purchase and maintain the following minimum coverage with respect to the operations of any owned, non-owned, and hired vehicles including trailers used in the performance of the work, unless a higher coverage is specified in Exhibit A to the Owner - Contractor Agreement, in which case the Contractor shall provide the additional coverage:

Bodily Injury & Property Damage \$1,000,000 combined single limit

- B. The policy shall include a Broadened Pollution Endorsement, if required. If specified in Exhibit A to the Owner – Contractor Agreement, the Contractor, if hauling contaminants and/or pollutants, must adhere to Sections 29 and 30 of the Motor Carrier Act of 1980, .
- C. The policy shall name the Town and its employees and officials as additional insured and the policy shall be primary and non-contributory with respect to any other insurance available to additional insureds.
- D. The policy shall contain a Waiver of Subrogation in favor of the Town.

33.3. Contractor’s Pollution Liability.

If required, the Contractor shall purchase and maintain coverage for bodily injury and property damage resulting from liability arising out of pollution related exposures such as asbestos abatement, lead paint abatement, tank removal, removal of contaminated soil, etc. The insurance policy shall cover the liability of the Contractor during the process of removal, storage, transport and disposal of hazardous waste and contaminated soil and/or asbestos abatement. The policy shall include coverage for on-Site and off-Site bodily injury and loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental. The policy shall also include defense and clean-up costs. The Town and its employees and officials shall be named as an additional insured and coverage must be on an occurrence basis. The policy shall contain a waiver of subrogation in favor of the Town. The policy shall be primary and non-contributory with respect to any other insurance available to the additional insured. The amount of coverage shall be as follows unless a higher amount is specified

in Exhibit A to the Owner - Contractor Agreement, in which case the Contractor shall provide the additional coverage:

Limit of liability	\$1,000,000 per occurrence
	\$2,000,000 aggregate

33.4. Worker's Compensation.

A. The Contractor shall provide the following coverage in accordance with M.G.L. c.149 §34A and c.152 as amended, unless a higher coverage is specified in Exhibit A to the Owner - Contractor Agreement, in which case the Contractor shall provide the higher coverage:

Worker's Compensation	Statutory limits
Employer's Liability	\$ 500,000 each accident
	\$ 500,000 disease per employee
	\$ 500,000 disease policy aggregate

B. The policy shall contain a Waiver of Subrogation in favor of the Town.

33.5. Builder's Risk/ Installation Floater/Stored Materials.

- A. **If required**, the Contractor shall purchase and maintain coverage against loss or damage on all Work included in this Contract in an amount equal to the Contract Price. Such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, terrorism ("certified" and "non-certified"), collapse, earthquake, flood (if the project is not in an "A" or a "V" flood Zone), windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Unless otherwise specified in this Contract, the limits for earthquake and flood shall be the lesser of the Contract Price or \$10,000,000. This policy and/or installation floater shall include transportation and Stored Materials coverage in an amount equal to the value of the stored materials as required in C. below.
- B. When Work will be completed on existing buildings owned by the Town, the Contractor shall provide an installation floater, in the full amount of the Contract Price. Such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood (if the project is not in an "A" or a "V" flood Zone), windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Unless otherwise specified in this Contract, the limits for earthquake and flood shall be the lesser of the Contract Price or \$10,000,000. This policy and/or installation floater shall include transportation and Stored Materials coverage in an amount equal to the value of the stored materials as required in C. below.
- C. The Contractor shall maintain insurance on delivered and/or stored material designated to be incorporated in the Work against fire, theft or other hazards. Any loss or damage of whatever nature to such material while stored at an off Site location shall be forthwith replaced by the Contractor at no expense to the Town.
- D. The policy or policies shall specifically state that they are for the benefit of and payable to the Town, the Contractor, and all persons furnishing labor or labor and materials for the Contract Work, as their interests may appear. The policy or policies shall list the Town, its employees and

officials, the Contractor, and Subcontractors of any tier as named insureds. The policy shall contain a waiver of subrogation in favor of the Town. The policy shall be primary and non-contributory with respect to any other insurance available to the additional insured.

- E. Coverage shall include any costs for work performed by the Designer or any consultant as the result of a loss experienced during the term of this Contract.
- F. Coverage shall include permission for temporary occupancy and a Waiver of Subrogation in favor of the Town.
- G. Coverage shall be maintained until final acceptance by the Town of the Contract and final payment has been made.
- H. A loss under the property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds. The Contractor shall pay the subcontractors their just shares of insurance proceeds received by the Contractor and shall require subcontractors to make payments to their sub-subcontractors in similar manner.

33.6. Umbrella Coverage.

The Contractor shall provide Umbrella Coverage in a form at least as broad as primary coverages required by Sections 2, 3 and 5 of this Article in the following amount unless a higher amount is specified in Exhibit A to the Owner - Contractor Agreement, in which case the Contractor shall provide the higher amount:

<u>Contract Price:</u>	<u>Limit of Liability:</u>
Under \$1,000,000	\$1,000,000 per occurrence
\$1,000,001 -- \$5,000,000	\$2,000,000 per occurrence
\$5,000,001-- \$10,000,000	\$10,000,000 per occurrence
\$10,000,001 and over	\$25,000,000 per occurrence

The policy shall name the Town and its employees and officials as additional insureds.

The policy shall contain a waiver of subrogation in favor of the Town. The policy shall be primary and non-contributory with respect to any other insurance available to the additional insured.

34. Additional Types of Insurance.

The Contractor shall provide such other types of insurance as may be required by Exhibit A to the Owner - Contractor Agreement.

35. Performance of Work

35.1 The Contractor shall continuously maintain adequate protection of all work from damage and shall protect the property of the Town and others, including adjacent property, from injury or loss arising in connection with the Contract. The Contractor shall make good any such damage, injury or loss, except as may be directly due to errors in the

Contract Documents or caused by agents or employees of the Town, or due to causes beyond the Contractor's control and not the Contractor's fault or negligence.

35.2 The Town shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide suitable accommodations for such access.

35.3 The Contractor shall appoint a competent superintendent and foreman and any necessary assistants, all of whom shall be satisfactory to the Town. If the Town in its sole discretion determines that the construction superintendent, foreman, or assistants are unacceptable to the Town, then upon seven day notice from the Town, the Contractor shall replace such person or persons with people acceptable to the Town.

35.4 The Contractor shall give sufficient supervision to the work, using its best skill and attention. The Contractor shall carefully study and compare the drawings, specifications, and other instructions and shall at once report to the Town any error, inconsistency or omission which shall be discovered. Included in this responsibility shall be supervision of all work performed by Subcontractors on the work.

35.5 If the Contractor should neglect to prosecute the work properly, or fail to perform the contract or any of its provisions, the Town, upon three day written notice, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor, and if such sum is insufficient, the Contractor shall be obligated to pay the balance thereof.

36. Inspection by the Town's Project Representative

36.1 The Town shall have the right to designate a Project Representative who may make periodic visits to the site to familiarize the Town generally with the progress and quality of the work, and to determine in general if the work is proceeding in accordance with the Contract Documents. The Project Representative will be not required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work and will not be responsible for the Contractor's failure to carry out the construction work in accordance with the Contract Documents.

36.2 In connection with the work, the Project Representative shall not be responsible for construction methods, means, techniques, sequences or procedures employed by the Contractor or the Contractor's safety programs, requirements, regulations, or precautions.

37. Decisions of the Project Representative

37.1 The Project Representative shall, within a reasonable time, make decisions on all claims of the Town or the Contractor and on all other matters relating to the execution and progress of the structural work or the interpretation of the Contract Documents.

37.2 The Project Representative's decision, in matters relating to the project, shall be final, if within the terms of the Contract Documents.

37.3 If, however, the Project Representative fails to render a decision within ten days after the parties have presented their evidence, either party may then avail itself of the remedies provided in this contract or available to it by law.

38. Use of Premises by the Contractor

38.1 The Contractor shall confine its apparatus, the storage of materials and the operations of its workmen to limits indicated by law, by-laws, permits or directions of the Town and shall not unreasonably encumber the premises with its materials.

38.2 The Contractor shall not load or permit any part of the structure to be loaded with weight that will endanger its safety.

39. Maintenance of Premises

The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its employees or work, and at the completion of work it shall remove all its rubbish from and about the work site and all its tools, scaffolding and surplus materials and shall leave its work "broom-clean", or its equivalent, unless more exactly specified. In case of dispute, the Town may remove the rubbish and charge the cost to the several contractors, as the Town shall determine to be just.

40. Progress Payments

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

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

41. Final Payment

Final payment under this Contract shall be processed in accordance with the procedures set forth in M.G.L. c. 30, §39K. The acceptance by the Contractor of the last payment due under this Contract or the Contractor's execution of the Final Certificate of Completion, shall operate as to release the Town from all claims and liability related to this Contract.

42. Liens

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

43. Withholding of Payments

43.1 The Town may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may become necessary in its reasonable opinion to protect the Town of Andover from loss on account of:

42.1.1 Defective work not remedied.

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

42.1.3 Failure of the Contractor to make payments properly to Subcontractors or for material or labor.

42.1.4 Reasonable doubt that the Contract can be completed for the balance then unpaid.

42.1.5 Damage to another contractor.

42.1.6 Delays resulting in liquidated damages.

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

44. Claims by Contractor and Liability of Town

All claims by the Contractor against the Town shall, unless otherwise provided by law, be initiated by a written claim submitted to the Town no later than seven (7) calendar days after the event or the first appearance of the circumstances causing the claim. The claim

shall set forth in detail all known facts and circumstances supporting the claim. The Contractor shall continue its performance under this Contract regardless of the submission or existence of any claims.

The limit of liability of the Town under this Agreement is limited to the compensation provided herein for the work actually performed, and shall in no event include liability for delays or for incidental, special or consequential damages or lost profits or for damages or loss from causes beyond the Town's reasonable control.

45. Liquidated Damages

Because both parties recognize (1) that the time for completion of this Contract is of the essence, (2) that the Town will suffer loss if the work is not completed within the contract time specified, plus any extension thereof allowed in accordance with the provisions of this contract, and (3) the delays, expense and difficulties involved in a legal proceeding to determine the actual loss suffered by the Town if the work is not completed on time, it is agreed that the Contractor will pay the Town as liquidated damages representing an estimate of delay damages, not as a penalty, the sum of N/A per day for each calendar day of delay until the work is completed, whether the work is completed by the Contractor or some other person. The Town's right to impose liquidated damages shall in no way prohibit or restrict the Town's right to bring legal action for damages in lieu of or in addition to its option to impose liquidated damages. The Town may deduct any liquidated damages from money due the Contractor, and if such payment is insufficient to cover the liquidated damages, then the Contractor shall pay the amount due.

46. The Contractors' Mutual Responsibility

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

47. Separate Contracts

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

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

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

48. Subcontracts

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

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

48.3 Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the Town.

49. Contractor-Subcontractor Relations

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

50. Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify, defend and save harmless the Town, its officers, attorneys, agents and employees from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses costs, expenses, recoveries and judgments of every nature and description (including reasonable attorneys' fees) brought or recovered against them that may arise in whole or in part out of or in connection with the work being performed or to be performed, or out of any act or omission by the Contractor, its employees, agents, subcontractors, material men, or anyone directly or indirectly employed by

any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder. The Contractor further agrees to reimburse the Town for damage to its property caused by Contractor, its employees, agents, subcontractors or material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including damages caused by his, its or their use of faulty, defective or unsuitable material or equipment regardless of whether or not it is caused in part by any party indemnified hereunder. The existence of insurance shall in no way limit the scope of the Contractor's indemnification under this Contract.

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

The duty to defend, indemnify and hold harmless shall immediately accrue and be owing upon the utterance of such a claim by any person or entity regardless of merit and shall not be dependent upon a finding of negligence or any other finding of fact at trial. The duty to defend shall be absolute and shall not be defeated or in any way undermined by the utterance of claims not covered by this Contract.

The intent of the Specifications regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor's responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and the Town from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the Work.

51. Guarantees

51.1 The Contractor guarantees and warrants to the Town that all labor furnished under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.

51.2 If at any time during the period of one (1) year from the date of the substantial completion, as shown on an approval payment request, or such other period provided in the Specifications, the Work or any part of the Work shall in the reasonable determination of the Town require replacing or repairing due to the fact that it is broken, defective, or otherwise does not conform to the Contract Documents, the Town will notify the Contractor to make the required repairs or replacement. If the Contractor shall neglect to commence such repair or replacements to the satisfaction of the Town within ten (10) days from the date of giving or mailing such notice, then the Town may employ other persons to make said repairs or replacements. The Contractor agrees, upon demand, to pay the Town all amounts which the Town expends for such repairs or replacements. For items of work completed after substantial completion, the one-year guarantee will commence at the time the Town approves of the completion of such items. This one-year guarantee shall not limit or express guaranty or warrantee required to be assigned to the Town pursuant to the terms of the Plans and Specifications.

51.3 Materials and equipment to be installed as part of the Work (both or either of which are hereinafter referred to as "materials") shall be new, unused, of recent manufacture, assembled, and used in accordance with the best construction practices. The Contractor shall inform itself as to, and shall comply with, the provisions of M.G.L. c. 7, s. 23A, as amended, and shall abide by the same and all applicable rules, regulations and orders made thereunder in relation to the purchase of supplies and materials in the execution of the Work, including the provisions of M.G.L. c. 7, s. 22, paragraph 17 which provides that there be "*a preference in the purchase of supplies and materials, other considerations being equal, in favor, first, of supplies and materials manufactured and sold within the Commonwealth, and second, of supplies and materials manufactured and sold elsewhere within the United States.*"

51.4 All guarantees and warranties required in the various Sections of the Specifications which originate with a Subcontractor or Manufacturer must be delivered to the Town before final payment to the Contractor may be made for the amount of that subtrade or for the phase of work to which the guarantee or warranty relates. The failure to deliver a required guarantee or warranty shall be held to constitute a failure of the Subcontractor to fully complete his work in accordance with the Contract Documents. The Contractor's obligation to correct work is in addition to, and not in substitution of, such guarantees or warranties as may be required in the various Sections of the Specifications.

52. The statutory provisions appearing in Appendix A attached hereto are incorporated into this Contract by reference.

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

Dated: _____

The Town of Andover by:

Theresa Peznola 7/27/22

Purchasing Agent/Theresa Peznola

[Signature]

Town Manager/Andrew Flanagan

8/23/22

[Signature]

Department/Division Head

The Contractor by:

[Signature] Ioana Tompkins

(authority or agency) Tompkins corp

Thomas J. Tubelis
Town Counsel CHM 8/23/22

Approved as to Form

Certified as to the Availability of Funds (M.G.L. c. 44, §31C)

[Signature]

Town Accountant

Amount

0142222 - 5295

Fund

APPENDIX A

Statutory Provisions Incorporated by Reference

Chapter 30: Section 39N: Construction Contracts; equitable adjustment in contract price for differing subsurface or latent physical conditions.

Section 39N. Every contract subject to Section 44A of Chapter 149 or subject to Section 39M of Chapter 30 shall contain the following paragraph in its entirety and an awarding authority may adopt reasonable rules or regulations in conformity with that paragraph concerning the filing, investigation and settlement of such claims:

If, during the progress of the work, the contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the contract documents, either the contractor or the contracting authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a contractor, or upon its own initiative, the contracting authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the contracting authority shall make an equitable adjustment in the contract price or the contract shall be modified in writing accordingly.

Chapter 30: Section 39O: Contracts for construction and materials; suspension, delay, or interruption due to order of awarding authority; adjustment in contract price; written claim.

Section 39O. Every contract subject to the provisions of Section 39M of this chapter or subject to Section 44A of Chapter 149 shall contain the following provisions (a) and (b) in their entirety and, in the event of a suspension, delay, interruption or failure to act of the awarding authority increases the cost of performance to any subcontractor, that contractor shall have the same right against the general contractor for payment for an increase in the cost of his performance as provisions (a) and (b) give the general contractor against the awarding authority, but nothing in provisions (a) and (b) shall in any way change, modify or alter any other rights which the general contractor or the subcontractor may have against each other.

- (a) The awarding authority may order the contractor in writing to suspend, delay, or interrupt all or any part of the work for such a period of time as it may determine to be appropriate for the convenience of the awarding authority; provided, however, that if there is a suspension, delay or interruption for fifteen days or more due to a failure of the awarding

authority to act within the time specified in this contract, the awarding authority shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the general contractor on such increase; and provided further, that the awarding authority shall not make any adjustment in the contract price under this provision for any suspension, delay or interruption or failure to act to the extent that such is due to any cause for which the contract provides for an equitable adjustment of the contract price under any other contract provisions.

- (b) The general contractor must submit the amount of the claim under provision (a) to the awarding authority in writing as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the final date of payment under this contract and, except for costs due to a suspension order, the awarding authority shall not approve any costs in the claim uncured more than twenty days before the general contractor notified the awarding authority in writing of the failure to act involved in the claim.

Chapter 30: Section 39P: Contracts for construction and materials; awarding authority's decisions on interruption of specifications, etc.; time limit; notice.

Section 39P. Every contract subject to Section 39M of this chapter or Section 44A of Chapter 149 which requires the awarding authority, any official, its architect or engineer to make a decision on interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, shall require that the decision be made promptly and , in any event, no later than thirty days after the written submission for any decision; but is such decision requires extended investigation and study, the awarding authority, the official, the architect or engineer shall, within thirty days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty day period and the date by which the decision will be made.

Chapter 30: Section 39Q: Contracts for capital facility construction; contents; annual claims report. Section 39Q.

(1) Every contract awarded by any state agency as defined by Section 39A of Chapter 7 for the construction, reconstruction, alteration, remodeling, repair or demolition of any capital facility as defined by the aforesaid Section 39A shall contain the following subparagraphs (a) through (d) in their entirety:

- (a) Disputes regarding changes in and interpretations of the terms or scope of the contract and denials of or failures to act upon claims for payment for extra work or materials shall be resolved according to the following procedures, which shall constitute the exclusive method for resolving such disputes. Written notice of the matter in dispute shall be submitted promptly by the claimant to the chief executive official of the state agency which awarded the contract or his designee. No person or business entity having a contract with a state agency shall delay, suspend, or curtail performance under that contract as a result of any dispute subject to this section. Any disputed order, decision or action by the agency or its authorized representative shall be fully performed or complied with pending resolution of the dispute.
- (b) Within thirty days of submission of the dispute to the chief of executive official of the state agency or his designee, he shall issue a written decision stating the reasons therefor,

and shall notify the parties of their right of appeal under this section. If the official or his designee is unable to issue a decision within thirty days, he shall notify the parties to the dispute in writing why a decision cannot be issued within thirty days and of the date by which the decision shall issue. Failure to issue a decision with the thirty day period or within the additional time period specified in such written notice shall be deemed to constitute a denial of the claim and shall authorize resort to the appeal procedure described below. The decision of the chief executive official or his designee shall be final and conclusive unless an appeal is taken as provided below.

- (c) Within 21 calendar days if the receipt of a written decision or of the failure to issue a decision as stated in the preceding subparagraph, any aggrieved party may file a notice of claim for an adjudicatory hearing with the division of hearing officers or the aggrieved party may file an action directly in a court of competent jurisdiction and shall serve copies thereof upon all other parties in the form and manner prescribed by the rules governing the conduct of adjudicatory proceedings of the division of hearing officers. In the event an aggrieved party exercises its option to file an action directly in court as provided in the previous sentence, the twenty-one day period shall not apply to such filing and the period of filing such action shall be the same period otherwise applicable for filing a civil action in superior court. The appeal shall be referred to a hearing officer experienced in construction law and shall be prosecuted in accordance with the formal rules of procedure for the conduct of adjudicatory hearings of the division of hearing officers, except as provided below. The hearing officer shall issue a final decision as expeditiously as possible, but in no event more than one hundred and twenty calendar days after conclusion of adjudicatory hearing, unless the decision is delayed by a request for an extension of time for filing post-hearing briefs or other submissions assented to by all parties. Whenever, because an extension of time has been granted, the hearing officer is unable to issue a decision within one hundred and twenty days, he shall notify all parties of the reasons for the delay and the date when the decision will be issued. Failure to issue a decision within the one hundred and twenty day period or within the additional period specified in such written notice shall give the petitioner the right to pursue any legal remedies available to him without further delay.
- (d) When the amount in dispute is less than ten thousand dollars, a contractor who is party to the dispute may elect to submit the appeal to a hearing officer experienced in construction law for expedited hearing in accordance with the informal rules of practice and procedure of the division of hearing officers. An expedited hearing under this subparagraph shall be available at the sole option of the contractor. The hearing officer shall issue a decision no later than sixty days following the conclusion of any hearing conducted pursuant to this subparagraph. The hearing officer's decision shall be final and conclusive, and shall not be set aside except in cases of fraud.

(2) The commissioner of administration shall require the division of hearings officers to prepare annually a report concerning the construction contract claims submitted to the division during the preceding twelve months, in such form as the commissioner shall prescribe. The report shall contain, at a minimum, the following information: the number of claims submitted; the names of all parties to each such claim; a brief description of the claim; the date of submission and of disposition of the claim; its disposition, whether by settlement, withdrawal, default or written decision; and the number of claims currently

pending. The original of the report shall be submitted to the commissioner of administration by January fifteenth, and a copy shall be filed with the state librarian and shall be a public document.

Chapter 30: Section 39R: Keeping and maintaining of books, records and accounts; statement of management on internal accounting control; financial statements; enforcement.

Section 39R. (a) The words defined herein shall have the meaning stated below whenever they appear in this section.

- (1) "Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a contract pursuant to sections 38A1/2 to 38O, inclusive of Chapter 7 and any contract awarded or executed pursuant to Section 11C of Chapter 25A, Section 39M of Chapter 30, or Sections 44A to 44H inclusive, of Chapter 149, which is for an amount or estimated amount greater than one hundred thousand dollars.
- (2) "Contract" means any contract awarded or executed pursuant to Sections 38A1/2 to 38O, inclusive of Chapter 7 and any contract awarded or executed pursuant to Section 11C of Chapter 25A, Section 39M of Chapter 30, or Sections 44A through 44H, inclusive, of Chapter 149, which is for amount or estimated greater than one hundred thousand dollars.
- (3) "Records" means books of original entry, accounts, checks, bank statements and all other banking documents, correspondence, memoranda, invoices, computer printouts, tapes, discs, papers and other documents or transcribed information of any type, whether expressed in ordinary or machine language.
- (4) "Independent Certified Accountant" means a person duly registered and in good standing and entitled to practice as a certified public accountant under the laws of the place of his residence or principal office and who is in fact independent. In determining whether an accountant is independent with respect to a particular person, appropriate consideration should be given to all relationships between the accountant and that person or any affiliate thereof. Determination of an accountant's independence shall not be confined to the relationships existing in connection with the filing of reports with the awarding authority.
- (5) "Audit" when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards for the purpose of expressing a *certified* opinion thereon, or, in the alternative, a qualified opinion or declination to express an opinion for stated reasons.
- (6) "Accountant's Report", when used in regard to financial statements, means a document in which an independent certified public accountant indicates the scope of the audit which he has made and sets forth his opinion regarding the financial statements as a whole with a listing of noted exceptions and qualifications, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed the reason therefor shall be stated. An accountant's report shall include as a part thereof a signed statement by the responsible corporate officer attesting that management has fully disclosed all material facts to the

independent certified public accountant, and that the audited financial statement is a true and complete statement of the financial condition of the contractor.

- (7) "Management", when used herein, means the chief executive officers, partners, principals or other person or persons primarily responsible for the financial and operational policies and practices of the contractor.
- (8) Accounting terms, unless otherwise defined herein, shall have a meaning in accordance with generally accepted accounting principles and auditing standards.

(b) Subsection (a) (2) hereof notwithstanding, every agreement or contract awarded or executed pursuant to Sections 38A1/2 to 38O, inclusive, of Chapter 7, or 11C of Chapter 25A, and pursuant to Section 39M of Chapter 30 or to Section 44A through H, inclusive, of Chapter 149, shall provide that:

- (1) The Contractor shall make, and keep for at least six years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the contractor, and
- (2) Until the expiration of six years after final payment, the Office of Inspector General, and the Commissioner of Capital Asset Management and Maintenance shall have the right to examine any books, documents, papers or records of the contractor or of his subcontractors that directly pertain to, and involve transactions relating to, the contractor or his subcontractors, and
- (3) If the agreement is a contract as defined herein, the contractor shall describe any change in the method of maintaining records or recording transactions which materially affect the any statements filed with the awarding authority, including in his description of the date of the change and reasons therefor, and shall accompany said description with a letter from the contractor's independent certified accountant approving or otherwise commenting on the changes, and
- (4) If the agreement is a contract as defined herein, the contractor has filed a statement of management on internal accounting controls as set forth in paragraph (c) below prior to the execution of the contract, and
- (5) If the agreement is a contract as defined herein, the contractor has filed prior to the execution of the contracts and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in paragraph 9d) below.

(c) Every contractor awarded a contract shall file with the awarding authority a statement of management as to whether the system of internal accounting controls of the contractor and its subsidiaries reasonably assures that:

- (1) The transactions are executed in accordance with management's general and specific authorization;
- (2) Transactions are recorded as necessary
 - i. To permit preparation of financial statements in conformity with generally accepted accounting principles, and
 - ii. To maintain accountability for assets;
- (3) Access to assets is permitted only in accordance with management's general or specific authorization; and

- (4) The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference. Every contractor awarded a contract shall also file with the awarding authority a statement prepared and signed by an independent certified public accountant, stating that he has examined the statement of management on internal accounting controls, and expressing an opinion as to:
- i. whether the representations of management in response to this paragraph and paragraph (b) above are consistent with the result of management's evaluation of the system of internal accounting controls; and
 - ii. whether such representation of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statements.
- (d) Every contractor awarded a contract by the Commonwealth of Massachusetts or by any political subdivision thereof shall annually file with the Commissioner of Capital Asset Management and Maintenance during the term of the contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report. Such statements shall be made available to the awarding authority upon request.
- (e) The Office of the Inspector General, the Commissioner of Capital Asset Management and Maintenance and any other awarding authority shall enforce the provisions of this section. The Commissioner of Capital Asset Management and Maintenance may, after providing an opportunity for the Inspector General and other interested parties to comment, promulgate pursuant to the provisions of Chapter 30A such rules, regulations and guidelines as are necessary to effectuate the purposes of this section. Such rules, regulations and guidelines may be applicable to all awarding authorities. A contractor's failure to satisfy any of the requirements of this section may be grounds for debarment pursuant to Section 44C of Chapter 149.
- (f) Records and statements required to be made, kept or filed under the provisions of this section shall not be public records as defined in Section 7 of Chapter 4 and shall not be open to public inspection; provided, however, that such records and statements be made available pursuant to the provisions of clause (2) of paragraph (b).

EXHIBIT A to the Owner-Contractor Agreement

Additional Insurance Provisions

(Insert any additions or modifications to the Insurance Requirements contained in Section 34 of the General Conditions of the Contract here or indicate "None.")

CERTIFICATION OF GOOD FAITH & NON-COLLUSION

The undersigned certifies under pains and penalties of perjury that this bid has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

CERTIFICATE OF STATE TAX COMPLIANCE

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.



Signature of authorized individual submitting bid/proposal

Joana Tompkins

Printed Name

Bill Tompkins Corporation

Name of Business (if applicable)

04-3454929

Social Security or Federal Tax Identification Number

AFFIDAVIT OF OSHA COMPLIANCE

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 on 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; and that all employees to be employed in the work subject to this bid 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.

Date 7/25/22

Bill Tompkins Corporation
(Name of Bidder)

By [Signature] Ioana Tompkins President
(Name of person Signing Bid and Title)
Signature is required

55 Garfield St
(Business Address)

LAWRENCE, MA 01843
(City and State)

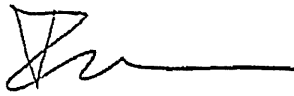
978-687-2152
(Telephone Number)

APPENDIX A - PRICE PROPOSAL

The Contract will be awarded to the responsible, responsive bidder(s) offering the lowest aggregate price for the initial term of the proposed contract. The Town of Andover, at its sole discretion, reserves the right to renew the contract for an additional term utilizing the same hourly rates of the initial term.

The Town of Andover has established the following rates for the contract period July 1, 2022 – June 30, 2023. All unit prices below include the cost of the machine *with* operator. Indicate below if you agree to provide these services at the established rates. A Contractor may propose a lower rate. In no case, can a Contractor provide a higher rate. Providing a higher rate will deem your bid to be unresponsive. If providing a lower rate, you can indicate that rate in the space provided below.

<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Agree to Rate</u> (Write in the rate)	<u>Proposed Lower Rate</u>	<u>Total</u>
1	Excavator/Backhoe	20 hours	\$160.00/hr	N/A		
2	Mini Excavator	20 hours	\$130.00/hr	Yes		\$2,600.00
3	Rubber Tire Backhoe	20 hours	\$110.00/hr	N/A		
4	Hoe Ram	20 hours	\$210.00/hr	N/A		
5	Small Dozer (D-6 or smaller)	20 hours	\$135.00/hr	N/A		
6	Loader (any size bucket)	20 hours	\$140.00/hr	N/A		
7	Skid Steer	20 hours	\$105.00/hr	Yes		\$2,100.00
8	6-Wheel Dump	20 hours	\$90.00/hr	Yes		\$1,800.00
9	10-Wheel Dump	20 hours	\$110.00/hr	N/A		
10	Triaxle	20 hours	\$115.00/hr	N/A		
11	Compressor (Min 180 CFM)	20 hours	\$55.00/hr	Yes		\$1,100.00
12	Compactor (Vibratory Plate)/ Roller	20 hours	\$65.00/hr	N/A		
13	Loam Screener #	20 hours	\$65.00/hr	N/A		
14	Self Propelled Asphalt Paver	20 hours	\$120.00/hr	N/A		
15	Pumps – 2’’ – 4’’	20 hours	\$30.00/hr	N/A		
16	Laborers	20 hours	\$105.00/hr	Yes		\$2,100.00
17	Hauling Snow	20 hours	\$120.00/hr	Yes		\$2,400.00
GRAND TOTAL						<u>\$12,100.00</u>

Addenda 1 & 2 are acknowledged: 
Signature

Business Name Bill Tompkins Corporation

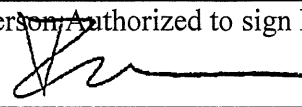
Business Address 55 Garfield St., Lawrence, MA. 01843

Business Phone 978-687-2152 Fax _____

Email Address tompkinslandscape@comcast.net

Ioana Tompkins
Name of Person Authorized to sign Price Proposal

Owner / President
Title of Person Authorized to sign Price Proposal


Signature of Above Person

