

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

**OWNER - CONTRACTOR AGREEMENT**

**PROJECT: LEDGE ROAD LANDFILL CLOSURE / CONTRACT NO. 422/019/23**

This agreement ("Contract") is made as of the <sup>th</sup>17 day of July, 2023, by and between the Town of Andover ("Town" or "Owner") with a principal place of business at 36 Bartlet Street, Andover, MA 01810, and J. Bates and Son, LLC with a principal place of business at 57 Lawrence Street, Clinton, MA 01510, hereinafter called the "Contractor."

Terms used in this Owner - Contractor Agreement which are defined in the General Conditions of the Contract shall have the meanings designated therein.

The Town and the Contractor agree as follows:

**Article 1. Scope of Work.** The Work under this Contract is defined as all work required by the Contract Documents for the construction of Ledge Road Landfill Closure, **Contract No. 422/019/23**, in accordance with and as described in the Plans and Specifications dated March 2023, prepared by CDM Smith ("Designer"), as modified by Addenda Nos. 1, 2, 3, 4, and 5 dated March 16, March 22, April 3, April 5, and April 7, 2023.

**Article 2. Time for Completion.** The Contractor shall commence the Work under this Contract on the date specified in the written "Notice to Proceed," and shall, by 880 days, bring the Work to Final Acceptance. Time is of the essence of this Contract.

**Article 3. Contract Price.** The Town shall pay the Contractor, in current funds, for the performance of the Work, subject to additions and deductions by Approved Change Order(s), the Contract Price of ten million, nine hundred and fifty thousand. (\$ 10,950,000). The Unit Prices, if any, approved by the Town are those included in the Contractor's General Bid. The following Alternates have been accepted and their costs are included in the Contract Price:

Alternate No(s):

**Article 4. Approved Subcontractors.** The filed Subcontractors listed in the Contractor's General Bid submitted by the Contractor have been approved for the performance of the specified portions of the Work subject to the Town's verification that they have complied with state corporation and partnership registration laws. No other filed Subcontractors and no non-filed Subcontractors shall be used for these or any other portions of the Work without the prior written approval of the Town.

**Article 5. Certifications.** Pursuant to M.G.L. c. 62(c), s.49 (a), the individual signing this Contract on behalf of the Contractor hereby certifies, under the penalties of perjury, that to the best of his or her knowledge and belief the Contractor has complied with any and all applicable

state and federal tax laws. The individual signing this Contract on behalf of the Contractor further certifies under penalties of perjury that the Contractor is not presently debarred from doing public construction work in the Commonwealth under the provisions of M.G.L. c. 29, s. 29F, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder and is not presently debarred from doing public construction work by any agency of the United States.

**Article 6. The Contract Documents:** The following documents form the Contract, are incorporated by reference herein, and are referred to as the "Contract Documents:"

- Invitation to Bid
- The Instructions to Bidders
- The General Bid submitted by the Contractor
- This Owner — Contractor Agreement
- The General Conditions of the Contract
- The Plans, Specifications, Project Manual and Drawings, including Addenda identified in Article 1 above
- All Approved Change Orders issued after execution of this Owner - Contractor Agreement

**Article 7. Minority Business Enterprise and Women Business Enterprise Participation Goals and Minority/Women Workforce Utilization Percentages:** The applicable goals, if any, for minority business enterprise and woman business enterprise participation established for this Contract are as follows:

The Minority Business Enterprise/Women Business Enterprise (MBE/WBE) participation goal for this Contract is a combined goal of \_\_\_\_\_ % of the Contract Price.

The applicable minority workforce utilization percentage is 0 %.

The applicable women workforce utilization percentage is 0 %.

**Article 8. Liquidated Damages.** For the purposes of Article VI of the General Conditions of the Contract, liquidated damages for delay shall be as follows:

\$ 2,000 per day

**Article 9. 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 Agreement without liability on the part of the Town for damages, penalties or other charges in the event the appropriation(s) funding this Agreement is terminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Agreement.

**Article 10. Additional Insurance Provisions.** The insurance requirements set forth in Article XIII of the General Conditions of the Contract are supplemented by the provisions, if any, appearing in Exhibit A attached hereto and incorporated herein.

In witness whereof, the parties hereto have caused this instrument to be executed in triplicate under seal as of the date set forth above.

**CONTRACTOR:**

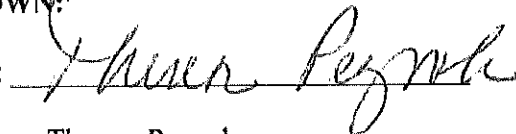
By: 

Name: JOHN W. BATES

Title: MANAGING MEMBER

Date: 6/6/2023

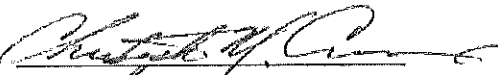
**TOWN:**

By: 

Name: Theresa Peznola

Title: Purchasing Agent

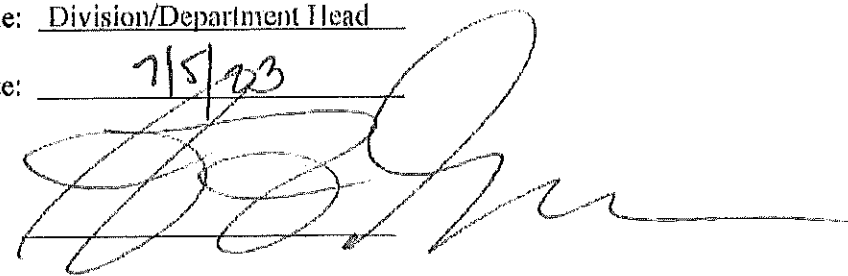
Date: 6/29/23

By: 

Name: 7/5/2023 Christopher Cronin

Title: Division/Department Head

Date: 7/5/23

By: 

Name: Andrew Flanagan

Title: Town Manager

Date: 7/17/23

Approved as to Form:

By: THOMAS URBELIS

Name: *T. Urbelis*

Title: Town Counsel

Date: 7/12/2023

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

*[Signature]*  
Town Accountant

Amount

Fund

ARPA 502306-5700 \$2,250,000.00  
A25 FY16 65030-5700 ~~\$1,355,478.00~~ \$1,354,734.38  
A31 FY08 62141-5700 \$6,695,000  
A25 FY24 62141-5700 ~~\$649,522.00~~ \$650,268.62

## Exhibit A to the Owner-Contractor Agreement

### Insurance Provisions

<u>Workmen's Compensation:</u>	<u>Statutory Requirements</u>
Employer's Liability:	\$1,000,000
<u>Commercial General Liability:</u>	
Each person/each occurrence:	<u>Bodily Injury</u> \$1,000,000
General Aggregate per project:	\$2,000,000 Or a Combined Single Limit of 2,000,000
	<u>Property Damage</u>
Each Occurrence:	\$1,000,000
General Aggregate per project:	\$2,000,000 Or a Combined Single Limit of \$2,000,000
<u>Comprehensive Automobile Liability:</u>	
Each person/each occurrence:	<u>Bodily Injury</u> \$1,000,000 Or a Combined Single Limit of \$1,000,000
	<u>Property Damage</u>
Each occurrence:	\$1,000,000 Or a Combined Single Limit of \$1,000,000
Excess Liability (Umbrella):	\$1,000,000

- (a) The Town and Engineer shall be named as an additional insured on the Contractors' General Liability, Auto Liability and Excess Umbrella Liability Insurance Policies.
- (b) The General Liability & Auto Liability policies shall contain a Waiver of Subrogation In favor of the Town and Engineer.
- (c) All policies shall be primary and non-contributory with respect to any other insurance available to additional insureds.

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**TOWN OF ANDOVER  
CONSTRUCTION CONTRACT**

**GENERAL CONDITIONS OF THE CONTRACT**

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**IFB # 422/019/23**

Town of Andover, Massachusetts  
Purchasing Department

**COPY**

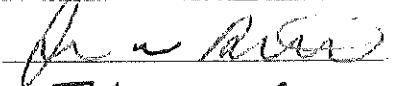
**COVER SHEET**

The Town of Andover reserves the right to reject any or all Bids, to omit any item or items called for, or to accept the bids(s) deemed in the best interest of the Town. One Original and One (1) copy of the bids must be submitted on or before April 6, 2023 at 11:00 AM to:

Terri Peznola, Purchasing Agent  
Purchasing Department  
Town Office Building  
36 Bartlet Street  
Andover, Massachusetts 01810

The envelope containing the Bid and required information must be sealed and marked with Proposer's name, title of proposal, IFB number, and date of opening. The Proposer must sign all required signature pages in order for the proposal to be considered.

The Proposer acknowledges receipt of the following ADDENDA # 1- 3/16/23, 2- 3/22/23, 3- 4/3/23, 4- 4/5/23, 5- 4/7/23

BUSINESS/INDIVIDUAL NAME J. BATES AND SON, LLC  
ADDRESS 57 LAWRENCE ST.  
CITY, STATE, ZIP CODE CLINTON, MA 01510  
TELEPHONE 978-368-7001  
EMAIL jbates@jbatesandson.com  
INDIVIDUAL/AUTHORIZED SIGNATURE   
AUTHORIZED OFFICER NAME (print) John W. BATES  
DATE April 14, 2023

By signing above, the authorized officer is certifying that a complete examination of all bid/rfp documents has been made and that the goods/services will be delivered within the time specified and at the prices stated.

All bidders must sign and submit with their bid the attached Certificate of Good Faith and Tax Attestation Form. Failure to do so will result in the bid being unresponsive and rejected.  
If bidder/proposer is a co-partnership, all partners must execute both copies of the bid/proposal, unless one partner has been authorized to sign for the co-partnership, in which case evidence of such authority shall be submitted.  
If bidder/proposer is a corporation, the authorized agent shall execute both copies of the bid/proposal. Evidence of authority to sign must be submitted.  
The Town of Andover reserves the right to reject any or all bids/proposals and waive any informalities deemed to be in the best interests of the Town.

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# TOWN OF ANDOVER

Town Offices  
36 Bartlet Street  
Andover, MA 01810  
(978) 623-8200  
[www.andoverma.gov](http://www.andoverma.gov)

## TOWN OF ANDOVER MASSACHUSETTS

### INVITATION TO BID

Sealed bids for furnishing the following will be received at the Office of Central Purchasing, Andover Town Offices, 36 Bartlet St., Andover, Massachusetts 01810 until the time specified below at which time the bids will be publicly opened and read. The time received will be stamped on each bid and for a consistency of time, the time stamp clock in the Purchasing Office will be the determining time.

**ITEM**  
IFB 422/019/23  
Ledge Road Landfill Closure

**BID OPENING**  
April 6, 2023  
11:00 AM

Bid Documents and bid forms may be obtained at the Office of Central Purchasing, Andover Town Offices, 36 Bartlet Street, Andover, MA, or on the Central Purchasing Department webpage located at [www.andoverma.gov/bids](http://www.andoverma.gov/bids).

Bids will be opened in the Second Floor Conference Room, Andover Town Offices, 36 Bartlet Street, Andover, MA. Each bid must be accompanied by a bid security of **CASH, CERTIFIED CHECK, or BID BOND** issued by a responsible bank or trust company licensed to do business in the State of Massachusetts in the amount of 5% of the total bid.

No bidder may withdraw his bid for a period of sixty (60) days, excluding Saturdays, Sundays, and legal holidays after the date set for the opening thereof.

Attention is directed to the minimum wage rates to be paid as determined by the Department of Labor and Workforce Development under the provisions of Massachusetts General Laws, Chapter 149, and Sections 26 to 27 D inclusive.

A bond of an amount equal to 100 per cent of the total amount of the bid with a surety company satisfactory to the Town, as surety, will be required for the faithful Performance of the contract and the Payment for all labor and materials used in the work. Such bonds shall be prepared on forms provided by the Owner and supplied by a surety company licensed to do business in the Commonwealth of Massachusetts.

The bidding and award of this Contract will be under the provisions of M.G. L. Chapter 30, Section 39M and the provisions of M.G.L. Chapter 30, and Section 39S.

Andover is an affirmative action/equal opportunity purchaser. The Town reserves the right to accept or reject, in whole or in part, any or all bids or take whatever, other action may be deemed necessary to be in the best interest of the Town.

Theresa Peznola  
Purchasing Agent

ADV: Central Register, Andover Townsman, COMMBUYS – March 8, 2023

INSTRUCTIONS TO BIDDERS  
BID NO 422/019/23

1.01 - PROPOSAL

1. Sealed proposals will be received at the time and place as designated by the Owner in the "Invitation For Bid".
2. If, at the time of the scheduled bid opening, the Town Offices are closed due to inclement weather or other unforeseeable events, the bid opening will be postponed until the same time as specified in the bid documents on the next normal business day. Bids will be accepted until that date and time.
3. Proposal envelopes shall be clearly marked "Sealed Bid" and addressed to: Town of Andover, Purchasing Department, Town Offices, 36 Bartlet Street, Andover, MA 01810.
4. Proposals shall be submitted in duplicate. Proposal envelopes shall have bidder's company name and address on the outside.
5. No claims for immunity or exceptions predicated upon misunderstanding or failure to correctly interpret the "Invitation for Bid" or the contract Documents will be allowed.

1.02 - BID SETS

1. Bid sets will be available at the Office of Central Purchasing website at [www.andoverma.gov/bids](http://www.andoverma.gov/bids).

1.03 – PRE-BID CONFERENCES AND SITE VISITS

1. There will be a pre-bid conference and site visit for all interested parties on: **Friday, March 17, 2023 at 10:00am at the 110 Chandler Road parking lot.**

1.04 - QUALIFICATION AND LICENSING

1. All General Bidders are notified that they must have a Certificate of Eligibility for (**NOT REQUIRED FOR THIS BID**) work from the Massachusetts Division of Capital Asset Management (DCAM) in accordance with Massachusetts General Laws Chapter 149-Section 44D and as amended by Section 46 of Chapter 48 of the Acts of 1984 when specified in the Invitation to Bid.
  - A. General Bidders shall submit with their bid proposal a Certificate of Eligibility and an Update Statement as issued by the Division of Capital Asset Management (**NOT REQUIRED FOR THIS BID**).
2. All Bidders are notified that they must be licensed under prevailing state and local laws and regulations governing the proposed work.

3. All work and materials shall comply in every respect with the building laws, state and town regulations, and the directions of the inspector of buildings and such building laws, regulations and directions are to be considered as a part of the Contract to which it relates.

#### 1.05 - BID WITHDRAWAL

1. Withdrawal or modifications to bids will be allowed only if written notice of a Bidder's desire to withdraw or modify his/her bid is filed prior to the time of bid opening and at the place specified in the request for bids. A notice of a Bidder's desire to withdraw or modify a bid must be signed by the Bidder or his/her designated representative.
2. No bid may be withdrawn for a period of sixty (60) days after the scheduled closing time for the receipt of bids. The Owner reserves the right to accept or reject in whole or in part any or all bids, or take whatever other action that may be deemed to be in its best interest.

#### 1.06 - LOCATION OF SITE

1. The site is located off Chandler Road and Greenwood Road in the Town of Andover, Massachusetts.

#### 1.07 – BID/CONTRACT DOCUMENTS

1. The Contract Documents consist of the following:
  1. Specifications, as listed in the Table of Contents.
  2. Drawings as indicated in the Specifications.
  3. Addenda to Specifications and drawings, if any.
  4. Owner-Contractor Agreement.

#### 1.08 - OWNER

1. Where the term Owner is used in these Specifications, and other Contract Documents, same refers to Town of Andover, Massachusetts, or its authorized representative.

#### 1.09 – ENGINEER/ARCHITECT

1. Where the term Engineer/Architect appears in these Specifications, same refers to CDM Smith, or their authorized representative.

#### 1.10 - CONTRACTOR

1. Where the term Contractor or General Contractor is used in the Specifications, it shall mean the Contractor mentioned as such in the Agreement.
2. Where reference is made to Subcontractors, such reference is intended for reasons of clarification and the relationship between the Contractor and said Subcontractors shall be in accordance with the General Conditions.

#### 1.11 - EXPLANATION TO BIDDERS

1. No oral interpretation will be made. Any interpretations made to bidders will be in the form of an addendum to the Specifications and Drawings that will be forwarded to all bidders.
2. Discrepancies, omissions or doubts as to the meaning of Specifications and drawings should be communicated at once to the Purchasing Agent for interpretation. This request for clarification must be made in writing, via email (Theresa.peznola@andoverma.us), prior to the bid opening. Bidders should act promptly and allow sufficient time for a reply to reach them before the submission of their bids and any interpretation made by the Purchasing Agent and/or the Engineer/Architect prior to receipt of bids shall be made a part of the Contract.
3. Requests for clarifications by a prospective Bidder regarding the specifications, or other bid documents must be presented in writing, via email (Theresa.peznola@andoverma.us), to the Purchasing Agent before the bids are opened. Requests shall include the project specification name and date, and shall be directed to the Purchasing Agent.
4. Verbal explanations or instructions will not be binding during the bidding process. Only written addenda are binding. Written addenda resulting from requests for clarifications will be delivered to all listed holders of the Bid Documents no later than (3) business days prior to the bid opening. Addenda may be issued after this date if deemed to be in the best interests of the Town by the Purchasing Agent. All Bidders shall acknowledge the receipt of all addenda when submitting their bids.
5. In the absence of an interpretation by the Purchasing Agent and/or Engineer/Architect should the Specifications disagree in themselves or with the drawings, the better quality or the greater quantity of work or materials shall be estimated upon and, unless otherwise ordered, shall be furnished.

#### 1.12 - CONDITIONS OF WORK

1. Each bidder shall carefully examine the Contract Documents, shall visit the site, and fully inform himself as to all existing and controlling conditions and limitations. The submission of a bid shall be conclusive evidence that the Bidder is familiar with all such conditions, including the nature, amount, and location of the work, the type of facilities

needed preliminary to and during the execution of the work, the general and local conditions, labor conditions, and all other matters which might in any way affect or have a bearing on the work or its cost.

2. The Contractor shall include all charges for labor, material, tools, staging, equipment and supervision that he/she deems necessary in order to complete, in a thoroughly professional and expeditious manner, all the work described hereafter. All work shall be according to code and approved by the proper authority. Material having salvage value shall become the property of the Town of Andover. All other material and debris accumulated as a result of this operation shall become the property of the contractor and shall be removed from the premises by him/her. The premises are to be clean and neat, to the satisfaction of the Town of Andover and/or designated Consultant.

#### 1.13 - PERMITS, FEES AND NOTICES

1. The successful bidder shall secure all permits and licenses necessary for the proper execution and completion of the work.
2. The Owner will waive or pay for, as applicable, fees for all necessary permits.

#### 1.14 - COOPERATION AND COORDINATION

1. The Owner has entered, or may enter, into separate contracts for work related to the work under this specification.
2. The successful bidder shall cooperate with said contractors and coordinate his work with the work of other trades so that construction will proceed in a rapid and orderly fashion.

#### 1.15 - TIMELY COMPLETION AND LIQUIDATED DAMAGES

1. The Contractor shall start the work under this Contract on written notice from and on date set by the Owner. The Contractor shall start the work at the location on the date set by the Owner and shall continue, without interruption, to completion with all the practical dispatch and regularity. Based upon a contract award date and Notice to Proceed no later than June 1, 2023, on-site work is to begin in or around July 1, 2023 and shall be completed no later than October 31, 2025. The landfill cap shall be substantially complete (all areas seeded) by December 31, 2024. The allowable contract time for this contract is 880 days. All work to be completed during normal business hours of 7:00 AM to 4:00 PM. All work to be done with minimal to no impact to office and administrative operations being held.
2. Liquidated damages in the amount of \$2,000 per day shall be enforced for every day that the project is not complete past 880 days.

#### 1.16 - CONTRACT FORM

1. The successful Bidder will be notified of the award of the Contract in writing, and shall properly execute a contract in accordance with the construction contract agreement within five (5) working days after receipt of such notification.

#### 1.17 - ADDENDA

1. The Owner may, during the bidding period, advise the Bidders by addenda of additions, omissions, or alterations in the Specifications and drawings. All such changes shall become a part of the contract and shall be included in the work covered by the Proposal.
2. No addenda will be issued later than **three (3) days** prior to the date set for receipt of bids, unless deemed to be in the public's best interest to do so by the Purchasing Agent.

#### 1.18 - TAXES

1. The Owner is exempt from all purchaser taxes. Tax Exempt Number will be supplied to the successful bidder.

#### 1.19 - PROPOSAL SECURITY

1. Each Bidder shall submit with his bid a Bid Security in the amount of five percent (5%) of the total bid price. The Bid Security shall consist of Cash, Certified Check, or Bidder's Bond.

#### 1.20 - PERFORMANCE, LABOR & MATERIALS PAYMENT BONDS

1. Before Contract signing, the Contractor shall furnish the Owner with a Labor & Materials Payment Bond and Performance Bond in the amount of one hundred percent (100%) of the Contract price, to insure completion of work and payment for all labor and materials furnished on the project.
2. All bonds shall be written conformance with Massachusetts General Laws, Chapter 149, Section 29, as amended.

#### 1.21 - CONTRACTOR'S LIABILITY INSURANCE

1. The Contractor shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be of himself or by any subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.
  1. Claims under Workmen's Compensation, disability benefit and other similar employee benefit acts.

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees, and claims insured by usual personal injury liability coverage.
  3. Claims for damage because of bodily injury, sickness or disease, or death of any person other than his employees, and claims insured by usual personal injury liability coverage.
  4. Claims for damage because of injury to or destruction of tangible property, including loss of use resulting there from.
2. The Contractor shall adhere to insurance provisions as outlined in Article XIII of the General Conditions of the Contract.

3. Bidders shall submit a certificate of insurance to include comprehensive general liability. The coverage shall include "true occurrence" claim provisions and also contractual liability in the following amounts:

1. Workmen's Compensation: Statutory  
Employer's Liability \$1,000,000
2. Comprehensive General Liability  
Bodily Injury Each person/each occurrence: \$1,000,000  
General Aggregate per project \$2,000,000  
Or a Combined Single Limit of \$2,000,000  
Property Damage Each occurrence: \$1,000,000  
General Aggregate per project: \$2,000,000  
Or a Combined Single Limit of \$2,000,000
3. Comprehensive Automobile Liability  
Each person/each occurrence: Bodily Injury  
\$1,000,000  
Or a Combined Single Limit  
of \$1,000,000  
Each occurrence: Property Damage  
\$1,000,000  
Or a Combined Single Limit  
of \$1,000,000

4. Umbrella Excess Liability

Adding coverage to categories one (1) through three (3) above with limits of \$1,000,000.

5. The comprehensive General Liability Insurance policy shall include coverage for Premises Operations, Elevators (if any), Independent Contractors, Products-Completed Operations, and Contractual Liability Coverage to insure the Contractor's assumed liability under Paragraph 1.22 – CONTRACTOR'S CONTRACTUAL LIABILITY. The policy shall be endorsed to insure against liability for damage to property by explosion, by collapse of adjoining structures, and for damage to underground pipes and utilities caused by digging with mechanical equipment.

6. The Comprehensive Automobile Liability Insurance Policy shall be written to include Owner, Hired and Non-Owned vehicles and it shall provide Extra Territorial Coverage.

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

1. Bidders' insurance shall be AM Best rated with no less than a classification of "A-" and the company shall be a domestic registered carrier. A company that has less than an "A-" rating is unacceptable.

2. Certificates of insurance acceptable to the Owner shall be addressed to and filed with the Owner at Contract signing. Renewal Certificates shall be addressed to and filed with both parties at least ten (10) days prior to the expiration date of required policies.

3. No insurance coverage shall be subject to cancellation without at least fifteen (15) days prior written notice forwarded by registered or certified mail to the Owner. Both parties shall also be notified of the attachment of any restrictive amendments to the policies.

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

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

6. The Town of Andover and Engineer shall be named as an Additional Insured on the Comprehensive General Liability and the Excess Umbrella Liability policies.

7. The Contractor shall instruct its' insurance carrier that wherever the Town of Andover or Engineer is named as an Additional insured, the contractor's policy shall be applied as primary coverage. As a result, the "Other Insurance" clause

wording in the Contractor's insurance policy will be amended accordingly. The Contractor will agree to have the insurer send any notices of cancellation or non-renewal to the Town of Andover.

#### 1.22 – CONTRACTOR'S CONTRACTUAL LIABILITY

1. The Contractor hereby assumes the entire responsibility and liability for any and all injury to or death of any and all persons, including the Contractor's employees, and for any and all damage to property caused by, resulting from or arising out of any act, omission, or neglect on the part of the Contractor or of any subcontractor or of anyone directly or indirectly employed by any of them, or of anyone for whose acts any of them may be liable in connection with operations under the Contract.
2. The Contractor further agrees to indemnify and hold harmless the Owner and Engineer including their agents, employees, and representatives from and against all claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
3. In any and all claims against the Owner or Engineer 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.
4. The intent of the specifications regarding insurance is to specify minimum coverages 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 him and the Owner from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the work, except for exclusions defined herein before.

#### 1.23 – COMPETENCY OF BIDDERS AND REFERENCES

1. No contract will be awarded to any person, firm, or corporation that is in arrears or is in default to the Owner upon any debt or contract, or that is a defaulter, as surety or otherwise, upon any obligation to the Owner, or has failed to perform faithfully any previous contract with the Owner.

2. All Bidders must supply a list of references for similar projects performed over the last three years providing names, addresses and contract person with telephone number on each project. **This reference list is to be submitted with the bid.**

#### 1.24 - AWARD OF CONTRACT

1. This contract shall be awarded to the lowest responsible and eligible bidder based upon the base bid amount. Such a bidder must possess the skill, ability and integrity necessary for the faithful performance of the work and shall establish his ability to comply with the schedule of work outlined in the Contract section. The term "lowest responsible and eligible bidder" as used herein shall mean the bidder whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the faithful performance of the work within the time limit allowed.

#### 1.25 - PRICE ADJUSTMENTS

1. Due to the uncertainty of prices for certain materials (liquid asphalt, Portland cement, diesel fuel and gasoline, structural steel and reinforcing steel) price adjustments will be in accordance with Appendix H, which is included in Appendix A Statutory Provisions of Town of Andover Construction Contract. The base price for each material shall be the period price in effect at the time the project is advertised. The price adjustment clause shall provide for a contract adjustment to be made on a monthly basis when the monthly cost change exceeds plus or minus 5 per cent. Period prices can be found at the Massachusetts Department of Transportation (MassDOT) website at <http://www.massdot.state.ma.us/highway/DoingBusinessWithUs/Construction/PriceAdjustments.aspx>

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## APPENDIX H

### PRICE ADJUSTMENTS FOR CERTAIN MATERIALS IN CONSTRUCTION PROJECTS MGL CHAPTER 30, SECTION 38A

On November 20, 2013, the Massachusetts Legislature passed a bill (Chapter 150 of the Acts of 2013) requiring that water and sewer projects bid under MGL Chapter 30 Section 39M include price adjustment clauses for **fuel** (both diesel and gasoline), **liquid asphalt** and **portland cement** contained in cast in place concrete for all projects that are advertised for bid after January 1, 2014.

The inclusion of these clauses in the construction contract is the responsibility of the awarding authority, and as such, MassDEP does not dictate what language should be used in the contract. MassDEP will, however, review the contracts to verify that price adjustment clauses have been included.

Awarding Authorities may find value from researching the *price adjustment* information on the Massachusetts Department of Transportation (MassDOT) website at <https://www.massdot.state.ma.us/highway/DoingBusinessWithUs/Construction/PriceAdjustments.aspx>. MassDOT requires the use of price adjustment clauses in all of its contracts, and since 2008 has been requiring cities and towns utilizing Chapter 90 road construction funds to also include price adjustment clauses. Because of this, many cities and towns may already have drafted appropriate price adjustment language. This language would be suitable for use in SRF funded contracts. The MassDOT website has extensive information on price adjustments and required contract language for MassDOT contracts.

Attached below is the new Chapter 30, Section 38A language and the contract language that MassDOT uses in its construction contracts. The MassDOT contract language is presented as a possible starting point for borrowers that have not drafted price adjustment clauses. The LGU should consult with their legal and contract staff as appropriate in developing the price adjustment clauses.

#### **Chapter 150 of the Acts of 2013 An Act Relative to Price Adjustment for Certain Materials in Construction Projects**

*Whereas*, the deferred operation of this act would tend to defeat its purpose, which is to establish forthwith certain price adjustments, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

SECTION 1. Chapter 30 of the General Laws is hereby amended by inserting after section 38 the following section:-

Section 38A. Contracts for road and bridge projects awarded as a result of a proposal or invitation for bids under section 39M shall include a price adjustment clause for each of the following materials: fuel, both diesel and gasoline; asphalt; concrete; and steel. Contracts for water and sewer projects awarded as a result of a proposal or invitation for bids under said section 39M shall include a price adjustment clause for fuel, both diesel and gasoline; liquid asphalt; and

*portland* cement contained in cast-in-place concrete. A base price for each material shall be set by the awarding authority or agency and shall be included in the bid documents at the time the project is advertised. The awarding authority or agency shall also identify in the bid documents the price index to be used for each material. The price adjustment clause shall provide for a contract adjustment to be made on a monthly basis when the monthly cost change exceeds plus or minus 5 per cent.

SECTION 2. Section 1 shall apply to projects which are advertised for bid after January 1, 2014.

*Approved, November 25, 2013.*

### **MassDOT Price Adjustment Clauses**

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

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

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

#### **Base Price**

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

#### **Period Price**

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

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

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

**Old Asphalt Period Price Method**

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

**New and Old Asphalt Period Price Methods**

The paragraphs below apply to both the New and the Old Asphalt Period Price Methods. The Contract Price of the hot mix asphalt mixture will be paid under the respective item in the Contract. The price adjustment, as herein provided, upwards or downwards, will be made after the work has been performed, using the monthly period price for the month during which the work was performed.

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

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

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

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

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

DOCUMENT 00812  
SPECIAL PROVISIONS  
MONTHLY PRICE ADJUSTMENT FOR DIESEL FUEL AND GASOLINE –  
ENGLISH UNITS  
Revised: 01/26/2009

This monthly fuel price adjustment is inserted in this contract because the national and worldwide energy situation has made the future cost of fuel unpredictable. This adjustment will provide for either additional compensation to the Contractor or repayment to the Commonwealth, depending on an increase or decrease in the average price of diesel fuel or gasoline.

This adjustment will be based on fuel usage factors for various items of work developed by the Highway Research Board in Circular 158, dated July 1974. These factors will be multiplied by the quantities of work done in each item during each monthly period and further multiplied by the variance in price from the Base Price to the Period Price.

The Base Price of Diesel Fuel and Gasoline will be the price as indicated in the Department's web site (<http://www.massdot.state.ma.us/>) for the month in which the contract was bid, which includes State Tax.

The Period Price will be the average of prices charged to the State, including State Tax for the bulk purchases made during each month.

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

No adjustment will be paid for work done beyond the extended completion date of any contract.

Any adjustment (increase or decrease) to estimated quantities made to each item at the time of final payment will have the fuel price adjustment figured at the average period price for the entire term of the project for the difference of quantity.

The fuel price adjustment will apply only to the following items of work at the fuel factors shown:

ITEMS COVERED	FUEL FACTORS	
	Diesel	Gasoline
Excavation: and Borrow Work: Items 120, 120.1, 121, 123, 124, 125, 127, 129.3, 140, 140.1, 141, 142, 143, 144., 150, 150.1, 151 and 151.1 (Both Factors used)	0.29 Gallons / CY	0.15 Gallons / CY
Surfacing Work: All Items containing Hot Mix Asphalt	2.90 Gallons / Ton	Does Not Apply

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

DOCUMENT 00814  
SPECIAL PROVISIONS  
PRICE ADJUSTMENT FOR PORTLAND CEMENT CONCRETE MIXES  
January 12, 2009

This provision applies to all projects using greater than 100 Cubic Yards (76 Cubic Meters) of Portland cement concrete containing Portland cement as stipulated in the Notice to Contractors section of the Bid Documents. This Price Adjustment will occur on a monthly basis.

The Price Adjustment will be based on the variance in price for the Portland cement component only from the Base Price to the Period Price. It shall not include transportation or other charges.

The Base Price of Portland cement on a project is a fixed price determined at the time of bid by the Department by using the same method as for the determination of the Period Price (see below) and found in the Notice to Contractors.

The Period Price of Portland cement will be determined by using the latest published price, in dollars per ton (U.S.), for Portland cement (Type I) quoted for Boston, U.S.A. in the **Construction Economics** section of *ENR Engineering News-Record* magazine or at the ENR website <http://www.enr.com> under **Construction Economics**. The Period Price will be posted on the MassHighway website the Wednesday immediately following the publishing of the monthly price in ENR, which is normally the first week of the month.

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

The price adjustment applies only to the actual Portland cement content in the mix placed on the job in accordance with the Standard Specifications for Highways and Bridges, Division III, Section M4.02.01.

No adjustments will be made for any cement replacement materials such as fly ash or ground granulated blast furnace slag.

The Price Adjustment will be a separate payment item. It will be determined by multiplying the number of cubic yards of Portland cement concrete placed during each monthly period times the Portland cement content percentage times the variance in price between the Base Price and Period Price of Portland cement.

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

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

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TOWN OF ANDOVER, MASSACHUSETTS

LEDGE ROAD LANDFILL CLOSURE

COPY

CONTRACT NO. 442/019/23

BID SHEET

Item No.	Estimated Quantity	Brief Description of Items With Unit Bid Price In Words	Unit Bid Price In Figures	Amount In Figures
1	L.S.	Mobilization/Demobilization – not to exceed 5 percent of Base Bid less this item. <i>Three hundred thousand Nine hundred Seventeen and 00/100</i> per lump sum		\$ <u>300,917.00</u>
2	L.S.	Site preparation including removal of required Items and all other work not covered in other items but required by the Contract Documents. <i>Seven hundred Fifty three thousand Seventy Nine and 00/100</i> per lump sum		\$ <u>753,079.00</u>
3	L.S	Erosion Control (Furnish, install, and maintain erosion controls). <i>One hundred Eighty One thousand Nine hundred Eighty Seven and 00/100</i> per lump sum		\$ <u>181,987.00</u>
4	L.S	Clearing and Grubbing <i>One hundred fifty Two thousand Four hundred Eighty and 00/100</i> per lump sum		\$ <u>150,480.00</u>
5	141,000 cubic yards	Regrading to revised cap subgrade plan including excavation, grading, and compacting and all other work required to obtain subbase grades shown on the revised approved plan.  <i>Five and 60/100</i> per cubic yard	\$ <u>5.60</u>	\$ <u>789,600.00</u>
6	26,000 square yards	Furnish and install erosion control fabric on all side slopes 4H:1V or steeper including all appurtenant work and materials.  <i>Five and 20/100</i> per square yard	\$ <u>5.20</u>	\$ <u>135,200.00</u>

TOWN OF ANDOVER, MASSACHUSETTS

LEDGE ROAD LANDFILL CLOSURE

CONTRACT NO. 442/019/23

BID SHEET

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Brief Description of Items With Unit Bid Price In Words</u>	<u>Unit Bid Price In Figures</u>	<u>Amount In Figures</u>
7	1,200 linear feet	Furnish and install Vegetated Drainage Swale including all appurtenant work and materials.  <i>Fifty Eight and 80/100</i> per linear foot	\$ 58.80	\$ 70,560.00
8	700 linear feet	Furnish and install Riprap Drainage Swale including all appurtenant work and materials.  <i>One Hundred Twenty One and 00/100</i> per linear foot	\$ 121.00	\$ 84,700.00
9	L.S	Construction of the off-cap detention basin including Excavation; riprap; outlet structure, pipe, and flared end; loam and seed, and all other appurtenant work and materials <i>Two Hundred Twenty Four Thousand Five Hundred Seventy Six and 00/100</i> per lump sum		\$ 224,576.00
10	L.S	Construction of the double-lined detention basin and restored wetland on cap including GCL liner; berm construction; riprap; outlet structure, pipe, and flared end; loam and seed, and all other appurtenant work and materials. <i>Eight Hundred Five Thousand Sixty Six and 00/100</i> per lump sum		\$ 205,066.00
11	107,000 square yards	Furnish and install 6-in gas venting layer including all appurtenant work and materials.  <i>Eight and 80/100</i> per square yard	\$ 8.90	\$ 941,600.00
12	107,000 square yards	Furnish and install 40-mil textured LLDPE liner including all appurtenant work and materials.  <i>Eight and 10/100</i> per square yard	\$ 8.10	\$ 866,700.00

TOWN OF ANDOVER, MASSACHUSETTS

LEDGE ROAD LANDFILL CLOSURE

CONTRACT NO. 442/019/23

BID SHEET

Item No.	Estimated Quantity	Brief Description of Items With Unit Bid Price in Words	Unit Bid Price In Figures	Amount In Figures
13	2,500 linear feet	Furnish and install riprap toe drain including all appurtenant work and materials.  <i>Forty Nine and 60/100</i> per linear foot	\$ 49.60	\$ 124,000.00
14	107,000 square yards	Furnish and install 12-in sand drainage layer including all appurtenant work and materials.  <i>Nineteen and 70/100</i> per square yard	\$ 19.70	\$ 2,167,900.00
15	13,500 linear feet	Furnish and install 18" perforated flat panel pipe including all appurtenant work and materials.  <i>Eleven and 30/100</i> per linear foot	\$ 11.30	\$ 152,550.00
16	107,000 square yards	Furnish and install 8-in loam and seed over cap including all appurtenant work and materials.  <i>Twelve and 80/100</i> per square yard	\$ 12.80	\$ 1,369,600.00
16A	10,000 square yards	Furnish and install 6-in loam and seed outside cap including all appurtenant work and materials.  <i>Twelve and 40/100</i> per square yard	\$ 12.40	\$ 124,000.00
17	900 vertical feet	Furnish and install passive landfill gas vents including all appurtenant work and materials.  <i>Two Hundred Twenty Three and 00/100</i> per vertical foot	\$ 223.00	\$ 200,700.00

TOWN OF ANDOVER, MASSACHUSETTS

LEDGE ROAD LANDFILL CLOSURE

CONTRACT NO. 442/019/23

BID SHEET

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Brief Description of Items With Unit Bid Price In Words</u>	<u>Unit Bid Price In Figures</u>	<u>Amount In Figures</u>
18	1 L.S	Construct passive horizontal gas collection trench including all appurtenant work and materials. <i>One Hundred Sixty Six Thousand Twenty Six and 00/100</i> per lump sum		\$ <u>166,026.00</u>
19	188 vertical feet	Furnish and install gas monitoring wells including all appurtenant work and materials.  <i>Three Hundred Twenty Two and 00/100</i> per vertical foot	\$ <u>322.00</u>	\$ <u>60,536.00</u>
20	339 vertical feet	Furnish and install water monitoring wells including all appurtenant work and materials.  <i>One Hundred Forty Nine and 00/100</i> per vertical foot	\$ <u>149.00</u>	\$ <u>50,511.00</u>
20A	482 vertical feet	Decommission existing monitoring wells including all appurtenant work and materials.  <i>Ten and 50/100</i> per vertical foot	\$ <u>10.50</u>	\$ <u>5,061.00</u>
21	L.S.	Construct gravel maintenance access roads including clearing, grubbing, grading; providing structural fill, processed gravel base, and dense graded crushed stone surface; and all appurtenant work and materials. <i>Four Hundred Four Thousand Two Hundred thirty Two and 00/100</i> per lump sum		\$ <u>404,232.00</u>
22	2,000 cubic yards	Removal of waste from outside the cap limits and relocation to beneath the cap including all appurtenant work and materials.  <i>Fourty Seven and 50/100</i> per cubic yard	\$ <u>47.50</u>	\$ <u>95,000.00</u>

TOWN OF ANDOVER, MASSACHUSETTS

LEDGE ROAD LANDFILL CLOSURE

CONTRACT NO. 442/019/23

BID SHEET

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Brief Description of Items With Unit Bid Price In Words</u>	<u>Unit Bid Price In Figures</u>	<u>Amount In Figures</u>
22A	100 tons	Processing and recycling concrete encountered during waste relocation as directed by Engineer.  <i>Fifty Four and <sup>80</sup>/<sub>100</sub></i> per ton	\$ 54.80	\$ 5,480.00
22B	200 tires	Disposing of tires encountered during waste relocation.  <i>Thirty Eight and <sup>40</sup>/<sub>100</sub></i> per tire	\$ 38.40	\$ 7,680.00
23	1,100 cubic yards	Removal of wetland soil and relocation to beneath the cap including all appurtenant work and materials.  <i>Two Hundred Thirteen and <sup>00</sup>/<sub>100</sub></i> per cubic yard	\$ 213.00	\$ 234,300.00
24A	28,000 square feet	Wetland Restoration  <i>Five and <sup>20</sup>/<sub>100</sub></i> per square foot	\$ 5.20	\$ 145,600.00
24B	21,000 square feet	Wetland Replication  <i>Five and <sup>20</sup>/<sub>100</sub></i> per square foot	\$ 5.20	\$ 109,200.00
24C	360 square feet	BW Bank Restoration  <i>Fifteen and <sup>20</sup>/<sub>100</sub></i> per square foot	\$ 15.20	\$ 5,472.00
25A	7 each	Furnish and install deciduous trees including all appurtenant work and materials. <i>One Thousand Three Hundred Eighty Eight and <sup>00</sup>/<sub>100</sub></i> per each	\$ 1,388.00	\$ 9,716.00

TOWN OF ANDOVER, MASSACHUSETTS

LEDGE ROAD LANDFILL CLOSURE

CONTRACT NO. 442/019/23

BID SHEET

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Brief Description of Items With Unit Bid Price In Words</u>	<u>Unit Bid Price In Figures</u>	<u>Amount In Figures</u>
25B	10 each	Furnish and install evergreen trees including all appurtenant work and materials.  <i>Eight Hundred Eighty Four and 00/100</i> per each	\$ 884.00	\$ 8,840.00
26	L.S	Miscellaneous Work and Cleanup <i>Fifty Thousand Nine Hundred Seventy Five and 00/100</i> per lump sum		\$ 50,975.00

GREENWOD ROAD DRAINAGE IMPROVEMENTS

GR-1	880 Linear feet	Furnish and install 18-in Concrete drainage pipe including trenching, bedding material, backfill, and all appurtenant work and materials.  <i>One Hundred Thirty Seven and 00/100</i> per linear foot	\$ 137.00	\$ 120,560.00
GR-2	180 Linear feet	Furnish and install 3-1/2-in bituminous concrete pavement patch along pipe alignment including all appurtenant work and materials  <i>Fifty One and 00/100</i> per linear foot	\$ 51.60	\$ 9,288.00
GR-3	20 Vertical feet	Furnish and install catch basins and man holes including all appurtenant work and materials. <i>One Thousand Seven Hundred Fifty Four and 00/100</i> per vertical foot	\$ 1,754.00	\$ 35,080.00
GR-4	1 each	Furnish and install Precast Inline Separator including all appurtenant work and materials. <i>Forty One Thousand Two Hundred Twenty Eight and 00/100</i> per each	\$ 41,228.00	\$ 41,228.00

TOWN OF ANDOVER, MASSACHUSETTS

LEDGE ROAD LANDFILL CLOSURE

CONTRACT NO. 442/019/23

BID SHEET

<u>Item No.</u>	<u>Estimated Quantity</u>	<u>Brief Description of Items With Unit Bid Price In Words</u>	<u>Unit Bid Price In Figures</u>	<u>Amount In Figures</u>
		Subtotal Page 00300-6	\$	265,971.00
		Subtotal Page 00300-5	\$	517,448.00
		Subtotal Page 00300-4	\$	781,366.00
		Subtotal Page 00300-3	\$	1,078,790.00
		Subtotal Page 00300-2	\$	2,473,202.00
		Subtotal Page 00300-1	\$	2,315,263.00
		<b>TOTAL BASE BID</b>	\$	<b>10,750,000.00</b>

The time period for holding bids is sixty (60) days, Saturdays, Sundays and legal holidays excluded, after the opening of bids to allow time for funding to be appropriated at Town Meeting and for regulatory approvals to be received.

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THE AMERICAN INSTITUTE OF ARCHITECTS

COPY



AIA Document A310  
Bid Bond

KNOW ALL MEN BY THESE PRESENTS, that we J. BATES & SON, LLC 57 Lawrence Street Clinton, MA 01510

(Here insert full name and address or legal title of Contractor)

as Principal, hereinafter called the Principal, and Philadelphia Indemnity Insurance Company, P.O. Box 10094, a corporation duly organized under the laws of the State of PA as Surety, hereinafter called the Surety, are held and firmly bound unto Town of Andover 36 Butler St. Andover, MA 01810

(Here insert full name and address or legal title of Obligor)

as Obligor, hereinafter called the Obligor, in the sum of 5.00% Attached Bid For the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for 422/019/23 - Ledge Road Landfill Closure

(Here insert full name, address and description of project)

NOW, THEREFORE, if the Obligor shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligor in accordance with the terms of such bid and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligor the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligor may in good faith contract with another party to perform the Work covered by said bid then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 14th day of April, 2023

J. BATES & SON, LLC

(Principal)

(Seal)

(Witness) [Signature]

[Signature]  
John Bates

Philadelphia Indemnity Insurance Company

(Surety)

(Seal)

(Witness) [Signature]

[Signature]  
Mark D. Leskanic, ATTORNEY-IN-FACT

PHILADELPHIA INDEMNITY INSURANCE COMPANY  
One Bala Plaza, Suite 100  
Bala Cynwyd, PA 19004-0950

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS That PHILADELPHIA INDEMNITY INSURANCE COMPANY (the Company), a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, does hereby constitute and appoint Mark D. Leskane; Bette A. Botticello; Greg Angel; Matthew Leskane OF THE TOWN OF NATICK, STATE OF MASSACHUSETTS its true and lawful Attorney-in-fact with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business and to bind the Company thereby, in an amount not to exceed \$50,000,000.

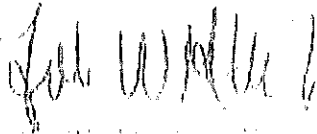
This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of PHILADELPHIA INDEMNITY INSURANCE COMPANY on the 14<sup>th</sup> of November, 2016

**RESOLVED:** That the Board of Directors hereby authorizes the President or any Vice President of the Company: (1) Appoint Attorney(s) in Fact and authorize the Attorney(s) in Fact to execute on behalf of the Company bonds and undertakings, contracts of indemnity and other writings obligatory in the nature thereof and to attach the seal of the Company thereto; and (2) to remove, at any time, any such Attorney-in-Fact and revoke the authority given. And, be it

**FURTHER RESOLVED:** That the signatures of such officers and the seal of the Company may be affixed to any such Power of Attorney or certificate relating thereto by facsimile, and any such Power of Attorney so executed and certified by facsimile signatures and facsimile seal shall be valid and binding upon the Company in the future with respect to any bond or undertaking to which it is attached

IN TESTIMONY WHEREOF, PHILADELPHIA INDEMNITY INSURANCE COMPANY HAS CAUSED THIS INSTRUMENT TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY ITS AUTHORIZED OFFICE THIS 5<sup>TH</sup> DAY OF MARCH, 2021.

(Seal)



Philadelphia Indemnity Insurance Company

On this 5<sup>th</sup> day of March, 2021, before me came the individual who executed the preceding instrument, to me personally known, and being by me duly sworn said that he is the therein described and authorized officer of the PHILADELPHIA INDEMNITY INSURANCE COMPANY, that the seal affixed to said instrument is the Corporate seal of said Company; that the said Corporate Seal and his signature were duly affixed

Notary Public

Commonwealth of Pennsylvania - 00104, Seal  
Vanessa McKenzie, Notary Public  
Montgomery County  
My commission expires November 3, 2024  
Commission number 1366394  
Notary Public is a State-licensed profession

residing at

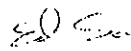
Bala Cynwyd, PA

My commission expires

November 3, 2024

I, Edward Sayago, Corporate Secretary of PHILADELPHIA INDEMNITY INSURANCE COMPANY, do hereby certify that the foregoing resolution of the Board of Directors and the Power of Attorney issued pursuant thereto on the 5<sup>th</sup> day March, 2021 are true and correct and are still in full force and effect. I do further certify that John Glomb, who executed the Power of Attorney as President, was on the date of execution of the attached Power of Attorney the duly elected President of PHILADELPHIA INDEMNITY INSURANCE COMPANY.

In Testimony Whereof I have subscribed my name and affixed the facsimile seal of each Company this 14<sup>th</sup> day of April 2023

  
Edward Sayago, Corporate Secretary  
PHILADELPHIA INDEMNITY INSURANCE COMPANY

PAYMENT BOND

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we \_\_\_\_\_  
with a place of business at \_\_\_\_\_,  
as Principal (the "Principal"), and \_\_\_\_\_, a  
corporation qualified to do business in the Commonwealth of Massachusetts, with a place of business at \_\_\_\_\_ as Surety  
(the "Surety"), are held and firmly bound unto the Town of Andover, Massachusetts as Obligee (the  
"Obligee"), in the sum of \_\_\_\_\_ lawful money of the  
United States of America, to be paid to the Obligee, for which payment, well and truly to be made, we  
bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and  
severally, firmly by these presents.

WHEREAS, the Principal has assumed and made a contract with the Obligee, dated \_\_\_\_\_.

NOW, THE CONDITIONS of this obligation are such that if the Principal and all subcontractors under  
said contract shall pay for all labor performed or furnished and for all materials used or employed in said  
contract and in any and all duly authorized modifications, alterations, extensions of time, changes or  
additions to said contract that may hereafter be made, notice to the Surety of such modifications,  
alterations, extensions of time, changes or additions being hereby waived, the foregoing to include, but  
not be limited to, any other purposes or items set out in, and to be subject to, the provisions of  
Massachusetts General Laws, Chapter 30, Section 39M, and Chapter 149, Section 29, as amended then  
this obligation shall become null and void; otherwise, it shall remain in full force and virtue.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms  
of the Contract, the specifications accompanying the Contract, or to the work to be performed under the  
Contract shall in any way affect its obligation on this bond, except as provided herein, and waives notice  
of any change, extension of time, alteration or addition to the terms of the Contract or the work  
performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract

that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to the Surety is not required for such increased obligation.

IN WITNESS WHEREFORE, the Principal and Surety have hereto set their hands and seals this

\_\_\_\_\_ day of \_\_\_\_\_.

PRINCIPAL

SURETY

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
[Name and Seal]

\_\_\_\_\_  
[Attorney-in-fact] [Seal]

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
[Address]

Attest: \_\_\_\_\_

\_\_\_\_\_  
[Phone]

Attest: \_\_\_\_\_

END OF PAYMENT BOND

PERFORMANCE BOND

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, that we

\_\_\_\_\_ with a place of business at \_\_\_\_\_, as Principal (the "Principal"), and \_\_\_\_\_, a corporation qualified to do business in the Commonwealth of Massachusetts, with a place of business at \_\_\_\_\_ as Surety (the "Surety"), are held and firmly bound unto the Town of Andover, Massachusetts as Obligee (the "Obligee"), in the sum of \_\_\_\_\_ lawful money of the United States of America, to be paid to the Obligee, for which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has assumed and made a Contract with the Obligee, bearing the date of \_\_\_\_\_, for the construction of \_\_\_\_\_

NOW THE CONDITIONS of this obligation are such that if the Principal (and all Subcontractors under said contract) shall well and truly keep and perform all the undertakings, covenants, agreement, terms and conditions of said contract on its part to be kept and performed during the original term of said contract and any extensions thereof that may be granted by the Obligee, with or without notice to the Surety, and during the life and any guarantee required under the contract, and shall also well and truly keep and perform all the undertakings, covenants, agreements, terms and conditions of any and all duly authorized modifications, alterations, changes or additions with notice to the Surety being hereby waived, then this obligation shall become null and void; otherwise, it shall remain in full force and virtue.

The Surety for value received agrees that no change, extension of time, alteration or addition to the terms of the Contract, the specifications accompanying the Contract, or to the work to be performed under the Contract shall in any way affect its obligation on this bond, except as provided herein, and waives notice of any change, extension of time, alteration or addition to the terms of the Contract or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to the Surety is not required for such increased obligation.

IN THE EVENT the Contract is abandoned by the Principal, or is terminated by the Town of Andover, Massachusetts under the applicable provisions of the Contract, the Surety hereby further agrees that the Surety shall, if requested in writing by the Town of Andover, Massachusetts promptly take such action as is necessary to complete said Contract in accordance with its terms and conditions.

IN WITNESS WHEREOF, the Principal and Surety have hereto set their hands and seals this \_\_\_\_ day of \_\_\_\_\_.

PRINCIPAL

SURETY

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
[Name and Seal]

\_\_\_\_\_  
[Attorney-in-fact] [Seal]

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
[Address]

Attest: \_\_\_\_\_

\_\_\_\_\_  
[Phone]

Attest: \_\_\_\_\_

END OF PERFORMANCE BOND

## 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 April 14, 2023

J. BATES AND SON, LLC  
(Name of Bidder)

By JOHN W. BATES  
[Signature]  
(Name of person Signing Bid and Title)  
Signature is required

57 LAWRENCE ST.  
(Business Address)

CLINTON, MA 01510  
(City and State)

978-368-7001  
(Telephone Number)

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REFERENCES FORM

Bidders Name: J. BATES AND SON, LLC  
Bidders Address: 57 LAWRENCE ST.  
CLINTON, MA 01510

Bidder must provide MUNICIPAL references for similar type projects performed within the past three years. Attach additional pages if necessary.

Reference: Jay Hersey Contact: jhersey@brookline.ma.gov  
Address: Hammond Street, Brookline Phone: 617-269-6467  
MA Fax:  
Description and date of Project: Back Landfill closure 2/19

Reference: Thomas Cue Contact: thomas.cue@casella.com  
Address: 165 Barefoot Road, Southbridge Phone: 508-860-2141  
MA 01550 Fax:  
Description and date of Project: Casella Final Closure construction  
project 12/22

Reference: Steve Melloni Contact: smelloni@covanta.com  
Address: 118 Federal Road, Carver Phone: 508-295-6741  
MA Fax:  
Description and date of Project: Carver Landfill Phase VIII  
stages 2A, 2B expansion 12/18

Reference: Chris Mayown Contact: CMC@townofclinton.ma  
Address: 292 Church St. Phone: 978-428-1754  
Clinton MA 01510 Fax:  
Description and date of Project: Smith Meadows Road Landfill, landfill cap  
cover soils removal 12/17

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SIGNATURES

(IF AN INDIVIDUAL) LLC - (S. Corp.)

Date April 14, 2023

Signature of Bidder [Signature] (SEAL)  
(Owner and Proprietor) MANAGING MEMBER

Business Name D/B/A \_\_\_\_\_

Business Address 57 LAWRENCE ST. CLINTON, MA 01510

(IF A CO-PARTNERSHIP)

Date \_\_\_\_\_, 20\_\_\_\_

Firm Name \_\_\_\_\_ (SEAL)

By \_\_\_\_\_ (SEAL)

Business Address \_\_\_\_\_

Names and Addresses

of all \_\_\_\_\_

Members of Firm \_\_\_\_\_

(IF A CORPORATION)

Date \_\_\_\_\_, 20\_\_\_\_

Corporate Name \_\_\_\_\_

By \_\_\_\_\_  
President or Authorized Agent\*

Business Address \_\_\_\_\_

\*Statement of authorization, duly signed by proper authority, to be attached hereto.

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**CORPORATE VOTE**

*N/A*

At a duly authorized meeting of the Board of Directors of \_\_\_\_\_ held on \_\_\_\_\_ at which all the Directors were present or waived notice, it was voted that \_\_\_\_\_ of this company, be and he/she hereby is authorized to execute contracts and bonds in the name and behalf of said company, and affix its Corporate Seal thereto, and such execution of any contract or obligation in this company's name on its behalf by \_\_\_\_\_, shall be binding upon this company.

A TRUE COPY ATTEST:

Clerk,

Date of this Contract

I hereby certify that I am the Clerk of \_\_\_\_\_ that \_\_\_\_\_ is duly elected \_\_\_\_\_ of said company, and the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract.

Clerk

Corporate Seal

SWORN TO AND SUBSCRIBED BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_

Notary Public

If a corporation, complete above or attach to each signed copy of the bid/written request/quotation, a notarized copy of vote of corporation authorizing the signatory to sign this bid/written request/quotation form. If attesting clerk is the same person as the individual executing this contract, have signature notarized above.

**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

JOHN W. BATES  
Printed Name

J. BATES AND SON, LLC  
Name of Business (if applicable)

20-4129961  
Social Security or Federal Tax Identification Number