

# Town of Swampscott



## Invitation for Bids

17-13

### Maintenance and Mowing of Town Parks and Traffic Islands

April 19, 2017

**BIDS DUE:**

**Wednesday, May 3, 2017 at 11:30 AM**

\*Late bids will be rejected

Whitney C. Haskell  
Designated Purchasing Agent  
93 Washington Street  
Salem, MA 01970  
[whaskell@salem.com](mailto:whaskell@salem.com)  
(978) 619-5695

**MAINTENANCE AND MOWING OF TOWN PARKS  
17-13  
COVER SHEET**

**PLEASE PRINT OR TYPE:**

Name of Bidder:	Contact Individual:			
Address:				
#	Street	City/Town	State	Zip Code
Phone:	Alternate Phone:			
Email Address:	Social Security/Federal Tax Identification Number:			
Authorized Signature: _____				

**MAINTENANCE AND MOWING OF TOWN PARKS  
17-18  
BIDDER'S CHECKLIST**

**Submissions:**

- 
- Completed Cover Sheet
- Bidder's Checklist (this sheet)
- Bid Form
- Signed Certificate of Non-Collusion
- Signed Tax Compliance Certification
- Certificate as to Corporate Bidder
- Reference Form
- 5% Bid Deposit of Year 1 Total Cost
- Acknowledgement of Addenda: \_\_\_\_\_ (*if applicable*)  
(#s)

**MAINTENANCE AND MOWING OF TOWN PARKS  
17-13  
BID FORM**

Bidder agrees to furnish all labor and materials necessary to complete the work described in this Invitation for Bids for the total price of:

Base:

	In Words	In Figures
Year 1		
Year 2		
Year 3		
Grand Total		

\*In the event of a discrepancy, the written amount will control.

Add Alternate 1:

Mowing, trimming, aerating, fertilizing, and seeding two additional locations:

1. Boys Little League Diamond, Forest Ave. Fields, rear of Swampscott Middle School.
2. Girls Softball Diamond, Forest Ave. Fields, rear of Swampscott Middle School.

	In Words	In Figures
Year 1		
Year 2		
Year 3		
Grand Total		

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Name (printed)

\_\_\_\_\_  
Date

**MAINTENANCE AND MOWING OF TOWN PARKS  
17-12  
REQUIRED CERTIFICATIONS**

**Form A  
Non-Collusion**

The undersigned certifies under penalties of perjury that this bid or proposal 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.

-----  
(Signature of authorized individual submitting the bid)

-----  
(Name of Business)

**Form B**  
**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.

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(Signature of authorized individual submitting the bid)

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(Name of Business)

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(Social Security or Federal Tax Identification Number)

**Form C**  
**Certificate of Corporate Bidder**

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

(Corporate Seal)

\_\_\_\_\_  
(Secretary-Clerk)

Dated: \_\_\_\_\_

## TOWN OF SWAMPSCOTT

### SPECIFICATIONS FOR LANDSCAPING AND RELATED SERVICES IN THE PARKS AND PUBLIC AREAS OF SWAMPSCOTT, MA

The City of Salem, on behalf of the Town of Swampscott will accept bids for landscaping and related services for the Town of Swampscott parks and public areas as listed in Exhibits A through D. This Contract shall be for three cutting seasons. The season will begin the first full week in May and end the second week in November. The total duration for each year will be twenty-eight (28) weeks.

Any contract that results shall be for one year with the option to renew for up to two additional years in one year increments. The contract will be awarded pursuant to the rules set forth in MGL Chapter 30B of the Massachusetts General Laws. The bid for the second year cannot vary from the first year by more than the plus or minus of five percent (5%) and the third year cannot vary from the second year by more than plus or minus five percent (5%). The bidder must sign the bottom of the bid cover sheet, as well as the attached Bid Form, if any.

**BID:** Copies of the bid documents can be obtained at the City of Salem Procurement Office at Salem City Hall, 93 Washington Street, Monday through Wednesday between the hours of 8:00 a.m. to 4:00 p.m., Thursday between the hours of 8:00 a.m. to 7:00 p.m., and on Fridays from 8:00 a.m. to 12:00 p.m. They will be available after 10:00 a.m. on Wednesday, April 12, 2017. Bid documents may also be obtained at [www.salem.com/purchasing](http://www.salem.com/purchasing) under "Open Procurements."

Sealed bids will be received by the City of Salem Procurement Office until 11:30 AM, prevailing time on Wednesday, May 3, 2017 at the Procurement Office, 93 Washington Street, Salem, MA 01970 at which time and place they will be opened publicly and read aloud.

The bid price will be a lump sum price for each year and will be paid monthly with the submission of an invoice.

The Contractor shall provide a performance bond as awarded in the amount of 50% of the three year total.

An Insurance Certificate naming the Town of Swampscott as a party insured will be required.

The Town of Swampscott reserves the right to reject any or all bids and to waive informalities in any bid.



Each bid must be accompanied by a bid bond, certified check, cash, or treasurer's check in the amount of five percent (5%) of the bid (one year total). The checks are to be payable to the Town of Swampscott.

Any questions must be received by City of Salem Purchasing Agent, Whitney Haskell in writing (whaskell@salem.com) at least seven (7) days before the bid opening and will be answered at least five (5) days before the bid opening by fax or by e-mail.

Bids may be withdrawn or modified in writing prior to the bid opening.

The contract will be awarded within thirty (30) days of the date of the bid opening to the responsive and responsible bidder with the lowest bid total.

All bids shall be complete, factual, and signed by an authorized officer of the bidder's company on both the cover page and the attached bid form (if any). The Designated Purchasing Agent may reject any bid, which is not properly signed, according to prescribed form, incomplete, or otherwise contrary to instructions as well as if deemed to be in the public's best interest to do so.

The Town of Swampscott is exempt from all taxes.

Each bid must be submitted in sealed inner and outer envelopes bearing on the outside of each envelope the name of the bidder, his address, and the name of the project for which the bid is submitted. Both inner and outer opaque envelopes shall be clearly labeled "BID FOR LANDSCAPING AND RELATED SERVICES - DO NOT OPEN".

**QUALIFICATIONS:** Bidders must have performed similar work in Massachusetts within five (5) years of the bid date and not have had a contract cancelled or terminated by a City or Town.

**REFERENCES:** Bidder must provide a minimum of one (1) municipal and two (2) other references on the attached sheet.

**EQUIPMENT:** The Bidders are to submit a list of all equipment proposed to be used as well as all equipment owned (or leased) with the bid. If new equipment is to be purchased, the Bidder must provide the Town with a purchase agreement. The equipment must be of a size and design to be adequate to do the work as determined by the Director of Public Works. The Town of Swampscott will be the sole judge on the adequacy of the proposed equipment. If lesser equipment is substituted during the year without the approval of the Town, the Town may terminate the Contract within seven (7) calendar days of notice to the Contractor. All material, equipment and labor is FOB Town of Swampscott, MA.

**TIME OF WORK:** The work must be performed during the normal five (5) day work week between 7:00 a.m. and 5:00 p.m., except as otherwise provided. The playing fields are to be cut either Thursday or Friday as possible (weather permitting). If the Contractor fails to perform the work for one (1) week without the approval of the Town, the Town may terminate the contract with a seven (7) day notice.

**ASSIGNMENT:** The Contractor's duties and obligations under the contract shall not be subcontracted or assigned to another party without the written approval of the Director of Public

Works.

**SITE CONDITIONS:** The Bidders shall inspect all locations and shall be familiar with all site conditions prior to bidding the work.

**CLEANUP:** The Contractor will be responsible for all cleanup work including routine litter. The Town (DPW) will remove leaves and do spring clean up.

**INSURANCE COVERAGE:**

**General** - The Successful Bidder shall before commencing performance of the Contract shall be responsible for providing and maintaining insurance coverage in force for the life of the Contract of the kind and in adequate amounts to secure all of the obligations under the Contract and with insurance companies licensed to write insurance in the Commonwealth of Massachusetts. All such insurance carried shall not be less than the kinds and amounts designated herein, and the Successful Bidder agrees that the stipulation herein of the kinds and limits of coverage shall in no way limit the liability of the Successful Bidder to any such kinds and amounts of insurance coverage. All policies issued shall indemnify and save harmless the City of Salem, its agents and employees from any and all claims for damages to persons or property as may arise out of the performance of this Contract.

Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of this Contract, and may constitute sufficient grounds for immediate termination of the same. All insurance maintained as provided for in the above shall be taken out and maintained at the sole expense of the Successful Bidder. Proof of such insurance shall be delivered to the Purchasing Agent within Five (5) days from the date of the Notice of Award.

No cancellations of such insurance, whether by the insurer or by the insured party shall be valid unless written notice thereof is given by the parties proposing cancellation to the other party and to the City of Salem at least fifteen- (15) days prior to the intended effective date thereof, which date shall be expressed in said notice, which shall be sent by registered mail, return receipt requested. These provisions shall apply to the legal representatives, trustee in bankruptcy, receiver, assignee, trustee, and the successor in interest of the Successful Bidder.

**Successful Bidder's Comprehensive General Public Liability and Property Damage Liability Insurance** - The Successful Bidder shall carry Comprehensive General Liability Insurance providing for a limit of not less than Five Hundred Thousand Dollars (\$1,000,000.00) for all damages arising out of bodily injury to or death of one person, and subject to that limit for each person, a total limit of not less than One Million Dollars (\$1,000,000.00) for all damages arising out of bodily injuries or death of two or more persons in any one accident; and Successful Bidder's Comprehensive Property Damage Liability Insurance providing for a limit of not less than Five Hundred Thousand Dollars ( \$1,000,000.00 ) for all damages arising out of injury to or destruction of property in any one accident, and subject to that limit per accident, a total ( or aggregate ) limit or not less than One Million Dollars ( \$1,000,000.00 ) for all damages arising out of injury to or destruction of property during the policy period.

The Successful Bidder shall carry Workman's Compensation Insurance as prescribed under Massachusetts Law.

All insurance coverage shall be placed with such company as may be acceptable to the City of Salem and shall constitute a material part of the Contract documents.

**Comprehensive Automotive Liability and Property Damage Insurance-**

The Successful Bidder shall carry comprehensive Automobile Liability Insurance covering all owned vehicles, hired vehicles or non-owned vehicles under the control of the Successful Bidder while performing work under this Contract in the amount of not less than Five Hundred Thousand Dollars (\$1,000,000.00) for all damages arising out of bodily injuries to or death of one person and subject to that limit for each person, a total of not less than One Million Dollars (\$1,000,000.00) for all damages arising out of bodily injuries to or death of two or more persons in any one accident; and Property Damage coverage in the amount of not less than Five Hundred Thousand Dollars ( \$1,000,000.00 ) for all damages arising out of injury to or destruction of property.

The Bidder agrees by submitting a bid to indemnify, save harmless, and defend the Town from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorneys fees), which it may hereafter incur, become responsible for, or pay out as a result of death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulation, or orders caused, in whole or in part, by the Bidder's employees, or it's agents or servants, in the performance of this Contract.

**SUBCONTRACTORS:**

- a. The Successful Bidder shall not hire any subcontractor without the written approval of the City of Salem Purchasing Agent.
- b. The Successful Bidder shall be fully responsible to the Town for the acts and omissions of his subcontractor, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.
- c. Nothing contained in the contract shall create any contractual relation between any subcontractor and the Town of Swampscott.
- d. The Successful Bidder shall cause appropriate provision to be inserted in all subcontracts relative to the work to require compliance by each subcontractor with the application provisions of the Contract for the improvements embraced in the site preparation.

**TERMINATION OF CONTRACT:**

- a. If the Successful Bidder is adjudged bankrupt, or if he/she makes a general assignment for the benefit of his creditors, or if a receiver is appointed on account of his insolvency, or if he persistently or repeatedly refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he/she fails to make prompt payment to subcontractor or for materials or labor, or persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a provision of the Contract Documents, then the City, by written notice to the Successful Bidder, may terminate the Successful Bidder's right to proceed with the work. Upon such termination, the City may take over the work and prosecute the same to completion, by contract or otherwise, and the Successful Bidder and

his/her sureties shall be liable to the City for any additional cost incurred by the City in its completion of the work and they shall also be liable to the City for liquidated damages for any delay in the completion of the work as provided below. If the Successful Bidder's right to proceed is terminated, the City may take possession of and utilize in completing the work such materials, tools, equipment, and plant as may be on the Site of the work and necessary therefore.

## MOWING AND TRIMMING

1. Before the first mowing in the spring, all debris, leaves, paper, and trash that have accumulated over the winter shall be picked up and legally disposed of off the property. This shall include complete trash and litter clean-up of all fences, paved, lawn, and planting areas, within the limit of the work line. Picked up items shall be legally disposed of off the site by the Contractor.
2. Before all mowing, Contractor shall familiarize himself/herself with the location of all in ground irrigation heads to eliminate potential for damage. Any damage to irrigation heads caused by Contractor's operations shall be repaired immediately at Contractor's expense.
3. The Contractor shall submit a mowing schedule for the season for approval by the Director of Public Works. All mowing will be scheduled for Thursdays. In the event mowing is changed to another day of the week, the mowing schedule will revert back to Thursday of the following week. Avoid mowing when the grass is wet. The Contractor must notify the Director of Public Works directly in advance of any changes in the approved schedule.
4. Mowing and trimming shall be performed not less than once per week. At the time of cutting, keep mower blades adjusted for a finished cut height of between one and one-half and two (1 ½" - 2") inches.
5. Areas around trees, shrub beds and other obstacles, and along fence lines at top of slopes shall be hand trimmed at the time of each mowing and neat lawn edges shall be maintained.
6. Mowing direction shall be varied with successive mowings to encourage upright growth of shoots.
7. Locations are listed in Exhibit A - D

## AERATION

1. Mow lawn turf height to 1 ½ to 2 inches immediately prior to aeration.
  
2. Prior to aeration of fields with automatic irrigation systems, the Contractor shall notify the Director of Public Works to assist in determining the locations of all in ground lawn sprinkler heads. Contractor shall mark locations of all irrigation sprinkler heads and shall be familiar with location of in-ground irrigation system to eliminate potential for damage to overall system and irrigation heads. Any damage to the irrigation system caused by the Contractor shall be repaired immediately at Contractor's expense.
  
3. Core Aeration Coverage: Twenty-five to thirty open cores per square foot. The aerator shall make two (2) passes at right angles to each other so that cores are located approximately two (2) inches on center.
  
4. Make sure soil moisture conditions and weight adjustment on the aerator favors deep penetration prior to core aeration as approved by the Director of Public Works.
  
5. Locations are listed in Exhibit B.

## LAWN FERTILIZATION

1. When fertilization is to be accomplished immediately after aeration, aeration cores must be dry.
2. All fertilizer shall be evenly distributed and watered using caution that the water does not wash away the fertilizer and cause it to concentrate in areas.
3. The Contractor shall be responsible for furnishing soil tests and notifying the Director of Public Works directly for final approval so the Contractor can proceed with furnishing and applying commercial fertilizer at the rates recommended by the soil analysis, but not less than the rates and frequencies as specified herein.
4. Fertilizer applications for turf areas shall be four (4) times per year at a minimum of six (6) weeks apart or as noted in the schedule below and as approved by the Director of Public Works.
  - a. 19-2-9 (50% slow release) w/0.68% Confront applied  
late May 15-31
  - b. 36-0-10 (50% slow release) w/70% Uflexx applied  
June - early July
  - c. 26-6-12 (50% slow release) w/30% Uflexx and 1% Iron  
applied early September 1-10
  - d. 36-0-10 (50% slow release) w/30% Uflexx applied late  
October 15-31
5. Fertilizer application rates for turf areas may be altered based on soil test recommendations as approved by the Director of Public Works, but otherwise shall be as follows:
  - a. 4-1/2 lbs./1000 sf
  - b. 4-1/2 lbs./1000 sf
  - c. 4-1/2 lbs./1000 sf
  - d. 4-1/2 lbs./1000 sf
6. The lawn areas shall be fertilized sufficiently to produce continuous healthy growth and an attractive appearance. A copy of all materials and application rates shall be provided to the Director of Public Works.
7. Apply the fertilizer only when the turf is dry. After the application, wash the material into the soil to prevent discoloration or burning of the turf.
8. The use of chemicals (i.e., pesticides and herbicides) is not permitted.
9. Locations are listed in Exhibit C.

## **SLICE SEEDING**

1. Prior to slice seeding of fields with automatic irrigation systems, the Contractor shall notify the Director of Public Works directly to determine location of all in-ground lawn sprinkler heads. Contractor shall mark locations of all irrigation sprinkler heads and shall be familiar with location of in-ground irrigation system to eliminate potential for damage to overall system and irrigation heads. Any damage to the irrigation system caused by Contractor shall be repaired immediately at Contractor's expense.
2. Lawn Area Seed Mix shall be applied in areas at the minimum rate of eight (8) lbs. Per 1000 square feet.
3. Slice seeding shall be performed in two directions at 90-degree angles to each other regardless of some expected surface disturbance or difficult, tight corners.
4. Seed placed by slice seeding shall be applied with an approved slice seeder within the limit of work areas. Minimize machine speed to prevent tearing and slippage of existing turf.
5. Slice seeding for application of seed shall only be performed during those periods within the seasons that are normal for such work as determined by weather or locally accepted practice.
6. Seeding shall consist of one application in April, or at a time agreed upon by the Director of Public Works.
7. Seeding shall only be done when the bed is in a friable condition, nor muddy or hard. The soil on which the seed is laid shall be reasonably moist and shall not be watered.
8. In areas of bare soil that have been seeded, seeded areas shall be immediately light raked and rolled with a hand roller weighing not more than 100 pounds per foot of width to ensure adequate seed to soil contact.
9. Locations are listed in Exhibit B.



## **EXHIBIT A**

### **MOWING AND TRIMMING**

#### **LOCATIONS:**

Phillips Park (all grass areas)

Town Hall

Swampscott Middle School - 203 Forest Ave (back field off of Nason Road)

Stanley School (ball fields)

Monument Area (Humphrey Street to Walker Road including Veteran's area)

Machon School & Adjacent Park Space

Hadley School Play Area

Forest Avenue (High School baseball diamond and common area only)

Johnson Park (across from 174-188 Puritan Road)

Polisson Park (across from 152 Puritan Road)

Swampscott Cannon (across from 380 Humphrey Street)

Abbott Park

Linscott Park

Humphrey Street (grass strip from Red Rock Bistro to Lynn line)

Two Landscape Islands at Lynn line (intersection of Eastern Ave and Humphrey Street))

Upper Jackson Park and surrounds

Lower Jackson Park (including hill)

**EXHIBIT B**  
**SLICE SEEDING**

**LOCATIONS:**

Phillips Park

Forest Ave Ball Fields

Monument Ave Islands

Upper Jackson Park

Lower Jackson Park

Linscott Park

Town Hall

**EXHIBIT C**  
**FERTILIZATION/LIME**

**LOCATIONS:**

Town Hall

Linscott Park

Phillips Park (all grass areas)

Forest Ave ball fields (including common area)

Monument Ave islands

Middle School (back field)

Abbott Park

Upper Jackson Park

Lower Jackson Park

**EXHIBIT D**  
**ADDITIONAL GRASS CUTTING**  
**(Cut Only Every Other Week)**

- (1) Beach Bluff Ave & Mostyn Street (small island)
- (2) Calgon Station (3 New Ocean Street)
- (3) Essex Street (grass strip in front of cemetery from Danvers Road to Stop & Shop entrance)
- (4) Former Council on Aging Building (89 Burrill Street)
- (5) Former Police Station (86 Burrill Street)
- (6) Foster Road Lift Station (across from Elwin Street)
- (7) Fuller Ave & Bayview Ave (small island)
- (8) Hampden Street & Berkshire Street (triangle shaped island)
- (9) Ocean Ave (Palmer Pond side from pole # 27 to Shepard Ave)
- (10) Police Station (531 Humphrey Street)
- (11) Pumping Station (535 Humphrey Street)
- (12) Puritan Road & Littles Point (landscape island)
- (13) Sheridan Road & Walker Road (triangle shaped island)
- (14) Superior Street Playground (an intersection of Duncan Terrace and Superior Street)
- (15) Walker Road & Paradise Road (landscape island)
- (16) Water Tower (Plymouth Lane)
- (17) Windsor Ave Playground (next to 185 Windsor Ave)

**BID REFERENCE FORM**

**Reference #1**

Name \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Email \_\_\_\_\_

**Reference #2**

Name \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Email \_\_\_\_\_

**Reference #3**

Name \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

Phone \_\_\_\_\_

Email \_\_\_\_\_

**TOWN OF SWAMPSCOTT**  
**17-12**  
**Maintenance and Mowing of Town Parks and Traffic Islands**  
**DEPARTMENT OF PUBLIC WORKS**

This agreement is made and entered into by and between the Town of Swampscott, MA (hereinafter the TOWN), a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, and \_\_\_\_\_ (hereinafter the CONTRACTOR).

**ARTICLE 1. DEFINITION.**

This CONTRACT as used herein shall mean these articles, and the “contract documents” which include but are not limited to the following identified items and all documents, and forms submitted therewith, or attached hereby.

- Attachment A: Scope of Services, and/or other bid package materials
- Attachment B: Additional Contract Terms and Conditions
- Attachment C: Statement of Corporate Authority
- Addenda: \_\_\_\_\_

**ARTICLE II. AMOUNT AND DURATION.**

The TOWN shall pay the CONTRACTOR in accordance with CONTRACTOR’S bid 14-05. The term of this contract shall commence on or around XXXXXXXX and terminate XXXXXXXX.

**ARTICLE III. PERFORMANCE.**

The CONTRACTOR agrees to provide all goods and services set forth in the Invitation for Bid 17-12 for Bid Documents, Scope of Service, the Contractor's “Bid 17-12” and/or as outlined in ATTACHMENT A - SCOPE OF SERVICES.

**ARTICLE IV. TERMINATION.**

- i) Without Cause. The TOWN may terminate this CONTRACT on sixty (60) calendar days notice, or may suspend this CONTRACT for up to sixty (60) calendar days upon receipt of notice, when in the best interests 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.
- ii) For Cause. If the CONTRACTOR is determined by the TOWN to be in default of any term or condition of CONTRACT, the TOWN may terminate this contract on thirty (30) 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. If the TOWN is determined by the CONTRACTOR to be in default of any term or condition of this CONTRACT the CONTRACTOR may terminate this contract on thirty (30) days notice by providing notice to the TOWN, which shall be in writing and shall be deemed delivered and received when given in person to the TOWN, 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 TOWN.

- iii) **Default.** The following shall constitute events of default under this CONTRACT: a) any material misrepresentation made by the CONTRACTOR to the TOWN, b) any failure to perform any of its obligations under this CONTRACT including, but not limited to the following: (i) failure 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, (ii) failure to perform this CONTRACT with sufficient personnel and equipment or with sufficient material to ensure the completion of this CONTRACT within the specified time due to a reason or circumstance within the CONTRACTOR'S reasonable control, (iii) failure to perform this CONTRACT in a manner reasonably satisfactory to the TOWN, (iv) failure to promptly re-perform with reasonable time the services that were rejected by the TOWN as unsatisfactory, or erroneous, (v) discontinuance of the services for reasons not beyond the CONTRACTOR'S reasonable control, (vi) failure to comply with a material term of this CONTRACT, including, but not limited to, the provision of insurance and nondiscrimination, and (vii) any other acts specifically and expressly stated in this CONTRACT as constituting a basis for termination of this CONTRACT, and (viii) failure to comply with any and all requirements of state law, and/or regulations, and City ordinances, and/or regulations.

#### **ARTICLE V. REMEDIES OF THE TOWN.**

The TOWN may deduct the cost of any substitute contract or performance for expenses, losses, and all damages, including incidental and consequential damages as a result of any event of non-conformance or non-performance of the CONTRACTOR in complying with the terms of this CONTRACT, and shall withhold such expenses, losses, and damages from sums due, or to become due.

#### **ARTICLE VI. REMEDIES OF THE CONTRACTOR.**

If the damages, other than loss, non-conformance, or non-performance, are actually sustained by the CONTRACTOR due to any act or omission for which the TOWN is legally responsible the TOWN shall allow a sum equal to the amount of such damages sustained by the Contractor as determined by the TOWN in writing, provided the Contractor shall have provided to all signatories of the contract a detailed written statement of such damages and cause thereof within 30 days of the act of omission by the TOWN.

#### **ARTICLE VII. ASSIGNABILITY.**

The CONTRACTOR shall not assign, subcontract or in any way transfer any interest in this contract without the prior written consent of the Procurement Officer of said TOWN. In the event of such occurrence the TOWN reserves the right to deal with any assignee subcontractor or transferee directly and the contractor agrees to remain bound by all terms and conditions of this contract in accordance with its original tenor. The provisions of this CONTRACT shall be binding upon, and shall inure to the benefit of, the successors and assigns of the CONTRACTOR and any public body or bodies succeeding the interests of the TOWN.

#### **ARTICLE VIII. INDEMNIFICATION.**

The CONTRACTOR shall assume the defense, indemnify and hold harmless the TOWN, the TOWN'S agents and employees, from and against all losses and all claims, demands, payments, suits, actions, recoveries and judgments of every nature and description brought or recovered against them by reason of acts, in actions, omissions, negligence, reckless or intentional misconduct of the said CONTRACTOR, its agent(s), officers, employees, or subcontractors; in the execution of the work or in guarding the same. Unless otherwise provided by law, the TOWN may elect to indemnify the

CONTRACTOR for claims arising in tort if it is determined that the CONTRACTOR performed its obligations under this CONTRACT pursuant to the direct supervision and control of the TOWN or its designated agent(s).

#### **ARTICLE IX. WORKER'S COMPENSATION AND OTHER INSURANCE.**

The CONTRACTOR shall provide by insurance for the payment of compensation and the furnishing of other benefits under Chapter 152 of the General Laws of Massachusetts (The Worker's Compensation Act) to all employees of the CONTRACTOR who are subject to the provisions of Chapter 152 of the General Laws of Massachusetts.

Failure to provide and continue in force such insurance during the period of this contract shall be deemed a material breach of this contract, shall operate as an immediate termination thereof, and CONTRACTOR shall indemnify the TOWN for all losses, claims, and actions resulting from the failure to provide the insurance required by this Article.

The Contractor shall furnish to the TOWN evidence of such insurance prior to the execution of this contract and before the same shall be binding on the parties thereto, except if specifically waived in Attachment B.

Prior to commencement of any work and until completion of its work under this CONTRACT shall maintain the following insurance coverage, at its cost, from insurance acceptable to the TOWN, giving evidence of such coverage to the TOWN prior to execution of this CONTRACT, a copy of such insurance coverage to be attached herewith:

##### **Insurance Coverage:**

General - The Successful Bidder shall before commencing performance of the Contract be responsible for providing and maintaining insurance coverage in force for the life of the Contract of the kind and in adequate amounts to secure all of the obligations under the Contract and with insurance companies licensed to write insurance in the Commonwealth of Massachusetts. All such insurance carried shall not be less than the kinds and amounts designated herein, and the Successful Bidder agrees that the stipulation herein of the kinds and limits of coverage shall in no way limit the liability of the Successful Bidder to any such kinds and amounts of insurance coverage. All policies issued shall indemnify and save harmless the Town of Swampscott, its agents and employees from any and all claims for damages to persons or property as may arise out of the performance of this Contract.

Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of this Contract, and may constitute sufficient grounds for immediate termination of the same. All insurance maintained as provided for in the above shall be taken out and maintained at the sole expense of the Successful Bidder. Proof of such insurance shall be delivered to the Purchasing Agent within Five (5) days from the date of the Notice of Intent to Award.

No cancellations of such insurance, whether by the insurer or by the insured party shall be valid unless written notice thereof is given by the parties proposing cancellation to the other party and to the Town of Swampscott at least fifteen- (15) days prior to the intended effective date thereof, which date shall be expressed in said notice, which shall be sent by registered mail, return receipt requested. These provisions shall apply to the legal representatives, trustee in bankruptcy, receiver, assignee, trustee, and the successor in interest of the Successful Bidder.

Successful Bidder's Comprehensive General Public Liability and Property Damage Liability Insurance - The Successful Bidder shall carry Comprehensive General Liability Insurance providing for a limit of not less than Five Hundred Thousand Dollars (\$500,000.00) for all damages arising out of bodily injury to or death of one person, and subject to that limit for each person, a total limit of not less than One Million Dollars (\$1,000,000.00) for all damages arising out of bodily injuries or death of two or more persons in any one accident; and Successful Bidder's Comprehensive Property Damage Liability Insurance providing for a limit of not less than Five Hundred Thousand Dollars (\$500,000) for all damages arising out of injury to or destruction of property in any one accident, and subject to that limit per accident, a total ( or aggregate ) limit or not less than One Million Dollars ( \$1,000,000.00 ) for all damages arising out of injury to or destruction of property during the policy period.

Successful Bidder shall carry Workman's Compensation Insurance as prescribed under Massachusetts Law.



All insurance coverage shall be placed with such company as may be acceptable to the Town of Swampscott and shall constitute a material part of the Contract documents.

Comprehensive Automotive Liability and Property Damage Insurance-

The Successful Bidder shall carry comprehensive Automobile Liability Insurance covering all owned vehicles, hired vehicles or non-owned vehicles under the control of the Successful Bidder while performing work under this Contract in the amount of not less than Five Hundred Thousand Dollars (\$500,000) for all damages arising out of bodily injuries to or death of one person and subject to that limit for each person, a total of not less than One Million Dollars (\$1,000,000.00) for all damages arising out of bodily injuries to or death of two or more persons in any one accident; and Property Damage coverage in the amount of not less than Five Hundred Thousand Dollars (\$500,000) for all damages arising out of injury to or destruction of property.

All required insurance must be endorsed to name the TOWN as Additional Insured. All required insurance shall be endorsed to waive the insurer's rights of subrogation against the TOWN. All policies and certificate for insurance must contain language that the insurance shall not be canceled, materially changed or non-renewed without at least thirty (30) days advance written notice to the TOWN. The CONTRACTOR under this CONTRACT shall not allow it subcontractors to begin work until similar insurance has been so obtained and certificates of insurance approved by the CONTRACTOR.

**ARTICLE X. CORPORATE CONTRACTOR.**

If CONTRACTOR is a corporation, CONTRACTOR shall endorse the Certificate of Corporate Authority for the CONTRACTORS' signatory (Attachment C), or shall otherwise provide a form similar in nature and substance acceptable to the TOWN.

If CONTRACTOR is a non-profit corporation, CONTRACTOR shall provide satisfactory proof of present status as a non-profit corporation. Such proof shall be in the form of a certification from the Massachusetts Secretary of State's office and/or from the Internal Revenue Service and shall provide the Federal Tax Identification Number of the non-profit corporation. This agreement shall not be enforceable against the TOWN unless and until the CONTRACTOR complies with this section. Failure to inform the TOWN in writing of revocation, or other loss of non-profit status shall be deemed a material breach of this contract and operate as an immediate termination thereof.

**ARTICLE XI. SUBJECT TO APPROPRIATION.**

The obligations of the TOWN under this CONTRACT shall be subject to appropriation. In the absence of appropriation this CONTRACT shall be immediately terminated without liability for damages, penalties, or other charges.

In the requisite circumstances, the obligations of the TOWN under this CONTRACT shall be subject to the formal award of the state, federal grant.

**ARTICLE XII. 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 CITY, except as otherwise required by law. The CONTRACTOR understands that he/she/it may acquire or have access to "personal data" otherwise kept by the TOWN. The CONTRACTOR shall comply with the provisions Chapter 66A of the General Laws of Massachusetts as it relates to public documents, and all other state and federal laws and regulations relating to confidentiality, security privacy and use of confidential data.

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 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 other 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 at the termination of this CONTRACT. 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 bearing on the work performed or data collected under this CONTRACT to the press or issues any material for publication through any medium.

### **ARTICLE XIII. AUDIT, INSPECTION, RECORDKEEPING.**

At any time during normal business hours, and as often as the TOWN may deem it reasonably necessary, there shall be made available in the office of the CONTRACTOR for the purpose of audit, examination, and/or to make excerpts or transcripts, all records, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this agreement.

Further the CONTRACTOR agrees to make its work papers, records and other evidence of audit available to the TOWN for a period of three years after final payment under his CONTRACT. The TOWN shall be entitled to reproduce any or all such documents at its own expense, for which provision shall be made at such time.

### **ARTICLE XIV. WEEKLY PAYROLL RECORDS REPORT.**

In accordance with Massachusetts General Law c. 149, s. 27B, a true and accurate record must be kept of all individuals employed on a public works construction project for which prevailing wage rates are applicable.

In addition, every contractor and subcontractor is required to submit, on a weekly basis, a copy of their weekly payroll records to the awarding authority. Once collected, the awarding authority is also required to preserve those records for three years.

### **ARTICLE XV. CONFLICT OF INTEREST.**

- i) TOWN. No officer, member or employee of the TOWN and no members of its governing body who exercise any function or responsibility in review or approval of the undertaking or carrying out of this CONTRACT shall participate in any decision relating to the CONTRACT which affects his/her personal interests or the interest of any corporation, partnership, or association in which he/she has a direct or indirect pecuniary interest. None of the services to be provided by the CONTRACTOR shall be used for any partisan political activity or further the election or defeat of any candidate for political office in the TOWN. Compliance with this section shall be material to the CONTRACT.
- ii) CONTRACTOR. CONTRACTOR agrees that his/her/its agents, servants, and employees have neither presently nor during the period of this CONTRACT any interest direct or indirect which would impair, detract, or conflict in any manner or degree with the performance of services required under this CONTRACT. The CONTRACTOR, his/her/its agents, servants or employees further stipulates that in the performance of this CONTRACT, no person having any such interest shall be employed. Conflicts of Interest include but are not limited to (a) immediate family relationships with officials of the TOWN, (b) instances where the CONTRACTOR, his/her/it agents, servants or employees during the period of this CONTRACT was connected as an officer, employee or member of the governing body of the TOWN, and (c) instances where the CONTRACTOR has an interest in any TOWN department, its agents, servants or employees or parcels of land within the TOWN. Compliance with this section shall be material to the CONTRACT.

### **ARTICLE XVI. PAYMENT.**

The TOWN agrees to make all reasonable efforts to pay to the CONTRACTOR the sum set forth in the CONTRACTOR'S bid or proposal within thirty (30) days of receipt of an invoice at the Office of the City Auditor detailing the work completed.

Subject to pending statutory appeal rights, CONTRACTOR agrees that all sums otherwise due and payable to the TOWN for outstanding taxes, fines, fees and or other municipal charges may be deducted from the sum(s) otherwise payable under this CONTRACT prior to disbursement to the CONTRACTOR.

**ARTICLE XVII. CONFLICT.**

In the event there is a conflict between these Articles and Attachment A, Attachment A shall supersede these Articles.

**ARTICLE XVIII. WAIVER AND AMENDMENT.**

The provisions contained in this CONTRACT may be modified only as specifically provided by ATTACHMENT B - ADDITIONAL TERMS AND CONDITIONS. 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 agreement, prior to the effective date of the amendment.

To the extent allowed by law, all 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.

**ARTICLE XIX. CERTIFICATION.**

IN WITNESS WHEREOF, THE CONTRACTOR CERTIFIES, UNDER THE PAINS AND PENALTIES OF PERJURY, THAT THE CONTRACTOR IS IN COMPLIANCE WITH EACH OF THE FOLLOWING:

- a. **TAXES.** PURSUANT to M.G.L. c. 62C, s. 49A, the CONTRACTOR has filed all state tax returns and complied with all laws of the Commonwealth relating to taxes.
- b. **DEBARMENT.** The CONTRACTOR is not currently debarred or suspended by the Commonwealth of Massachusetts, or any of its entities or subdivisions.
- c. **AMERICANS WITH DISABILITIES ACT.** The CONTRACTOR is aware of the recently enacted Americans with Disabilities Act which prohibits discrimination based upon disability and shall meet any relevant standards, and/or conditions set out in the bid/proposal documents, bid/proposal specifications, and/or ATTACHMENT A - SCOPE OF SERVICES.

**ARTICLE XX. FORUM AND CHOICE OF LAW**

This CONTRACT and any performance herein shall be governed by and be construed in accordance with the laws of Commonwealth. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth or the federal district court sitting in the Commonwealth, which shall have exclusive jurisdiction thereof. This paragraph shall not be construed to limit any other legal rights of the parties.

**IN WITNESS WHEREOF** the parties have hereto and to three other identical instruments set forth their hands the day and year first above written.

THE TOWN:

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Whitney Haskell,  
Designated Purchasing Agent

Approved as to form:

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Approved as Contract Manager:

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Gino Cresta Jr.,  
Director of Public Works

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THE CONTRACTOR:

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Title

\_\_\_\_\_  
Company

\_\_\_\_\_  
Status (Corporate/Non- Corporate)

\_\_\_\_\_  
Taxpayer Identification Number

\_\_\_\_\_  
Date