

Map of the project location showing the intersection of the Deerfield River and the S River Road. The map includes labels for various roads: Finnerly Rd, Rockell Rd, Nether Rd, Heath, Charlemont, Doodie Corner Rd, and Charlemont Hawley. A dashed line indicates the project location, Bridge No. C05-027. A north arrow and a scale bar (1 inch = 2000 feet) are also present.



**Contact Information:**

**Awarding Authority:**

**Town of Charlemont, MA**

Engineering Plans and Specifications by:  
Gill Engineering  
Needham, MA

## INVITATION FOR BIDS

### BRIDGE #C-05-027 – South River Road over Albee Brook Town of Charlemont IFB 2025-0527

The Town of Charlemont (TOC) will accept sealed bids for a bridge preservation project on bridge no. C-05-027, South River Road over Albee Brook.

Sealed bids should be marked **"South River Road Bridge"** and will be received by the Town of Charlemont 157 Main Street PO Box 677 Charlemont MA 01339, until **May 23, 2025, at 2 PM**. Bids received after the deadline will not be accepted. If the Charlemont Town Office is closed for any reason, bids will be opened the following business day at 2PM. *Submit one original and one copy of the bid.*

ALL INTERESTED PARTIES ARE ENCOURAGED TO REVIEW THIS INVITATION FOR BIDS; **HOWEVER THIS IFB SHOULD BE CONSIDERED INFORMAL** AND ONLY BIDS FROM MASSDOT PREQUALIFIED CONTRACTORS IN THE REQUISITE CLASS OF WORK WILL BE CONSIDERED FOR AWARD. ALL CONTRACTORS SHOULD CONFIRM THEIR ELIGIBILITY BEFORE BIDDING. A BIDDER MAY OFFER BIDS UP TO THEIR PREQUALIFICATION AMOUNT.

PREQUALIFICATION AMOUNT: \$380,000  
THE CLASS OF WORK IS: BRIDGE - CONSTRUCTION

Wage rates for this bid are subject to prevailing wage rates as per MGL Chapter 149, Section 26 - 27f inclusive. This bid is being undertaken per MGL Ch 30 §39M requiring a 5% bid bond/deposit and 50% Labor and Materials Payment Bond.

Qualified bidders who are Minority/Women/Disabled Owned Business Enterprises (M/W/D/BE) businesses are encouraged to apply. Other qualified bidders are encouraged to partner with disadvantaged businesses. A listing of certified disadvantaged businesses can be found at <http://www.mass.gov/sdo>. Affirmative Action, Equal Opportunity, and Workforce Participation goals apply.

Specifications, and bid instructions are available for download from <https://charlemont-ma.us/>  
Plans and additional reports accessible on the front page of the Charlemont Website.

The Town of Charlemont is the awarding authority and reserves the right to accept or reject any or all bids in total or in part as they may deem in the best public interest.

The Town of Charlemont does not discriminate on the basis of race, color, national origin, sex, age, disability, or gender with respect to admission to, access to, or operation of its programs, services or activities. If you would like accessibility or language accommodation, please contact Sarah Reynolds 413-339-4335 Ext 8 or [administrator@townofcharlemont.org](mailto:administrator@townofcharlemont.org)

### Advertisement for Public Works Construction Services (MGL Ch 30, §39M)

[] Greenfield Recorder Legal Ad	May 2, 2025
[] Town of Charlemont Webpage	April 25, 2025
[] Posted at Charlemont Town Hall	April 25, 2025
[] Central Register	May 2, 2025
[] COMMBUYS	May 2, 2025

## CRITICAL DATES

Deadline for Written Questions May 16, 2025  
Send questions to [administrator@townofcharlemont.org](mailto:administrator@townofcharlemont.org)

Addenda issued to Plan holders May 20, 2025

**SEALED BIDS DUE** May 23, 2025, at 2 PM

## ESTIMATED DATES

Notice of Award May 27, 2025  
Contract Executed May 30, 2025  
Work Completed by June 30, 2025

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## UNDER SEPARATE COVER

The following documents for IFB 2025-0527 are available at the following locations:

EXHIBIT 1                      GILL ENGINEERING DESIGN PLANS

EXHIBIT 2                    GEOTECHNICAL REPORT

EXHIBIT 3                    HYDRAULIC REPORT

## **PROJECT DESCRIPTION SUMMARY**

### **Bridge #C—05-027 South River Road Bridge over Albee brook**

The work on this project shall conform to the 2025 Massachusetts Department of Transportation Highway Division Standard Specifications for Highways and Bridges, the most current version of the MassDOT Supplemental Specifications as of the bid opening date, the October 2017 Massachusetts Department of Transportation Highway Division Construction Standard Details; 1990 Standard Drawings for Signs and Supports; the 1996 Construction and Traffic Standard Details (as relates to the Pavement Markings details only); the 2009 Manual on Uniform Traffic Control Devices (MUTCD) with Revisions 1, 2, and 3 dated July 2022, Massachusetts Amendments and the Standard Municipal Traffic Code; the 1968 Standard Drawings for Traffic Signals and Highway Lighting; the latest edition of American Standard for Nursery Stock; the Plans and these Special Provisions. The 2025 Standard Specifications; the latest editions of the Supplemental Specifications and the Interim Supplemental Specifications shall be referred to collectively as the Standard Specifications.

The South River Road over Albee Brook Bridge Deck Replacement Project is located on a major collector road located just south of the Deerfield River and approximately 2 miles east of the intersection with West Hawley Road in the Town of Charlemont. The bridge currently does not have a posted weight limit. The deck and superstructure condition is poor and the substructure condition is generally satisfactory. The bridge shall be closed to traffic during construction and a detour route will be signed. The current bridge abutments and wingwalls consist of concrete masonry. The work includes the removal and replacement of the existing bridge deck, exterior beams, and related work. This work shall consist of removing and replacing the existing reinforced concrete deck slab, existing reinforced concrete safety curbs, the removal and replacement of the existing exterior beams, installing the steel thrie beam bridge railing and approach guard rail, performing repairs to the existing abutments and wingwalls, and paving the bridge and approaches. The details are presented on 10 construction drawing sheets that have been reviewed and approved by MassDOT on XXXXXXXX XX, 2025. Traffic management required to perform the construction shall be as shown on the construction drawings. Payment for materials or work shown on the Plans as being part of the work to the bridge and approaches or which may be incidental to its construction and are not specifically included for payment under the Contract shall be considered incidental to the work performed. Where used within the contract documents, the terms “Department”, “Municipality”, and “Town” shall be taken to mean the Town of Charlemont. The term “Engineer” shall be taken to mean the authorized representative or Project Manager for the Town of Charlemont. The construction contract completion date is XXXXXXXX XX, 2025.

**TOWN OF Charlemont**  
**BRIDGE #C-05-027 South River Road over Albee Brook**  
**Town of Charlemont IFB 2025-0527**

**GENERAL INSTRUCTIONS TO BIDDERS**

1. All bids must contain a filled out and signed BID FORM. Minor defects on a bid submittal may be waived by the Chief Procurement Officer (CPO) as long as the error or variation is not prejudicial or preferential to the other bidders and that it may be corrected without affect upon substantive elements of the bid such as, but not limited to, price, quality, payment terms or delivery schedule. Resolution will be determined by the CPO.
2. Bids which are incomplete, not properly endorsed or signed, or otherwise contrary to instructions may be rejected as non-responsive by the CPO. Conditional bids will not be accepted. Any bid arriving after the time and date of bid opening will not be accepted.
3. As the TOWN OF Charlemont is exempt from the payment of Federal Excise Taxes and Massachusetts Sales Tax, prices quoted herein are not to include these taxes.
4. A bidder will be held to the terms and the prices on the bid form for the duration of the contract period if a contract is signed by both parties within 30 days from bid opening.
5. The TOWN reserves the right to reject any and all bids, in total or in part.
6. The selected contractor will be bound by all applicable statutory provisions of law of the Federal Government and the Commonwealth of Massachusetts.
7. The contractor will be required to indemnify and hold harmless the Town of Charlemont for all damages to life and property that may occur due to contractor's negligence or that of his/her employees, subcontractors, etc., during the contract.
8. If in the judgment of the Town of Charlemont, any property is needlessly damaged by an act or omission of the contractor, the amount of damages will be deducted from money due the contractor or may be recovered from said contractor in legal action.
9. Any restrictions, qualifications, or deviations from specifications must appear either on the bid form or on an attachment thereto.
10. A contract (or contracts) will be signed between the awarded bidder(s) and the TOWN OF Charlemont. **A sample contract is attached.** Any provisions of the contract that cannot be met by a prospective bidder must be brought to the attention of the FRCOG during the open question period, otherwise submittal of a bid constitutes acceptance of the Town's standard terms and conditions.
11. Once bids are opened, the Town of Charlemont and their Engineer will review.
12. The contract(s) resulting from this bid will be awarded to the lowest responsible and responsive bidder based upon bid price, past performance and reliability of the bidder, quality of product and/or service, and degree of exclusion, exemption, or restrictions on the bid form. In the event of identical and responsible low bids, a coin toss overseen by the CPO will determine the award. Responsibility may be determined in part by reference checks. **A list of all projects done or in process for Municipalities in Massachusetts for Bridges/Culverts in the last two years is required with the bid submission.**
13. Any questions about the technical specifications of the project or the bid process must be directed to The Town of Charlemont via written question (email [administrator@townofcharlemont.org](mailto:administrator@townofcharlemont.org) and all

prospective bidders will be notified if an addendum is required.

14. Payment of invoices will be made within 30 days upon receipt of invoice by the TOWN.
15. The Town will be available to answer any general questions about bid procedure, etc., but no question will be answered that in any way could give an unfair advantage to a bidder. All inquiries concerning this bid should be directed to:  
**Sarah Reynolds, MCPPO**  
157 Main Street PO Box 677  
Charlemont MA 01339  
413-339-4335 ext. 8  
*administrator@townofcharlemont.org*
16. Police or Flagging Detail will be the responsibility of the CONTRACTOR. See Special Provisions/Technical Specifications.
17. The Town of Charlemont does not discriminate on the basis of disability with respect to admission to, access to, or operation of its programs, services or activities. Individuals who may need auxiliary aids should call the Town of Charlemont
18. Awards will be based on the estimated quantities provided times the price submitted. The responsive and responsible contractor whose total is lowest for the combination of all items will be awarded unless the Town has a legitimate reason to not award to that particular vendor per MGL Ch30 §39M.
19. The project is being funded by Grant and Town Funds which have been appropriated. If funding is unavailable, the project could be cancelled.
20. **OSHA Certification is Required**

All contractors working on public works projects will be required to certify that ALL employees employed at the work site have successfully completed an OSHA approved course in construction safety at least 10 hours in duration. This law requires general contractors to have on file records of all employees OSHA 10- hour training and provide proof to the various agencies in charge of the work. This also applies to all subcontractors, hired trucks, and hired equipment with operators. Every bidder must certify that all persons who are employed by them for this bid are certified. Proof does not have to be submitted with this bid but must be available upon request.

**21 Contract execution will be conditioned upon producing:**

**An insurance certificate** as outlined on the INSURANCE REQUIREMENTS page and a 50% Labor and Materials Payment Bond.

Failure or refusal of the successful bidder to execute and deliver a Signed Contract, Certificate of Insurance, and Labor and Materials Bond acceptable to the Chief Procurement Officer within five days after notice of contract award will result in the forfeiture of the Bid Bond as Liquidated Damages. The Contract may be awarded to the next lowest qualified bidder or the IFB re-advertised, if the Town believes it is in the best public interest.

22.

## INSURANCE REQUIREMENTS

The Contractor shall at all times during the Contract maintain in full force and effect Employer's Liability, Worker's Compensation, Bodily Injury Liability and Property Damage, and General Liability Insurance, including contractual liability coverage. All insurance shall be by insurers and for policy limits acceptable to the Council and before commencement of work hereunder the Contractor agrees to furnish the Council certificates of insurance or other evidence satisfactory to the Council to the effect that such insurance has been procured and is in force.

For the purpose of the Contract, the Contractor shall carry the following types of insurance in at least the minimum amounts specified below:

### COVERAGE LIMITS OF LIABILITY

Workers' Compensation	Statutory
Employers' Liability	\$500,000
Bodily Injury Liability (except automobile)	\$1,000,000 each occurrence \$2,000,000 aggregate
Property Damage Liability (except automobile)	\$1,000,000 each occurrence \$2,000,000 aggregate
Automobile Bodily Injury Liability	\$1,000,000 each person \$2,000,000 each occurrence
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$2,000,000 each occurrence
Contractor's Pollution Liability	\$1,000,000 each occurrence \$3,000,000 aggregate

Contractor's Pollution Liability: The Contractor shall purchase and maintain coverage for bodily injury and property damage resulting from liability arising out of pollution related exposures such as asbestos abatement, lead paint abatement, tank removal, removal of contaminated soil, etc. The policy shall cover the liability of the Contractor during the process of removal, storage, transport and disposal of hazardous waste and contaminated soil and/or asbestos abatement. The policy shall coverage for on-site and off-site bodily injury and loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental. The policy shall also include defense and clean-up costs. The Town shall be named as an additional insured.

The Town of Charlemont shall be named as an additional insured under the liability and automobile insurance. The excess/umbrella liability insurance policy should contain a broad form general liability endorsement.



**Checklist of Required Signed Bid Documents:**

- Bid Form
- Bid Signature Page with Corporate Resolution or List of Partners if applicable
- 5% Bid Bond
- References (Please list all Massachusetts municipal Bridge/Culvert Projects completed or in process in the last two years with contact information)

**SUBMIT ONE ORIGINAL AND ONE COPY OF THE BID**

**FORM FOR GENERAL BID – Page 1 of 3**  
**TOWN OF Charlemont– BRIDGE #C-05-027 South River Road over Albee Brook**

**Town of Charlemont IFB 2025-0527**

To the Town of Charlemont, Massachusetts, (hereinafter called the "Owner") acting through its Selectboard, duly authorized therefore, who act solely for said Town and without personal liability to themselves:

Ladies/Gentlemen:

The undersigned \_\_\_\_\_, as bidder, declares that the only persons or parties interested in this bid as principals are those named herein; that the bidder has carefully examined the proposed form of Proposal and the Specifications (and amendments thereto); and he/she bids and agrees, if this bid is accepted, that the bidder will furnish all materials and labor necessary for the completion of the Work as specified in the Proposal, in the manner and time therein prescribed and according to the requirements of Owner as herein set forth.

The Bidder agrees that the Owner will have forty (40) consecutive days from date of opening to accept the bid, except as described in the specifications, the unit(s) at the price, therein. The Bidder also understands that the Owner reserves the right to accept or reject any or all bids and to waive any informalities in the Proposals if it is in the Owner's interest to do so. The Advertisement for Bidders, Information for Bidders, Specifications and Bid Form attached thereto, shall become a contract upon the receipt by the Bidder of written acceptance of this bid by the Owner.

I/We hereby agree to provide services for which we have provided pricing in accordance with the specifications in the bid and MassDOT, Mass DEP and Army Corps of Engineers standards, where appropriate, and agree to the standard terms and conditions of the sample contract attached.

Pursuant to M.G.L. Ch. 62C, Sec. 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.

The undersigned certifies under 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.

The undersigned certifies under penalties of perjury that the said undersigned is **not presently debarred** from doing public construction work in the Commonwealth of Massachusetts under the provisions of Section 29F of Chapter 29 of the General Laws, or any other applicable debarment provisions of any other Chapter of the General Laws, or any Rule or Regulation promulgated thereunder.

I hereby certify that all of our employees who will be employed at the work site have successfully passed the **OSHA approved 10-hour safety course**, and we have proof on file. I also certify that I am able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work.

The BIDDER acknowledges receipt of the following addenda:

No. \_\_\_\_\_, dated \_\_\_\_\_, 2025

No. \_\_\_\_\_, dated \_\_\_\_\_, 2025

Bidder's Name

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ITEM	QUANTITY	UNITS	DESCRIPTION	UNIT PRICE	AMOUNT
114.11	1	LS	PARTIAL DEMOLITION OF SUPERSTRUCTURE	\$	\$
120.	90	CY	EARTH EXCAVATION	\$	\$
127.12	5	CY	REINFORCED CONCRETE SUBSTRUCTURE EXCAVATION	\$	\$
151.	70	CY	GRAVEL BORROW	\$	\$
170.	120	SY	FINE GRADING AND COMPACTING	\$	\$
452.	13	GAL	ASPHALT EMULSION FOR TACK COAT	\$	\$
460.22	16	TON	SUPERPAVE SURFACE COURSE - 9.5 (SSC - 9.5)	\$	\$
460.31	22	TON	SUPERPAVE INTERMEDIATE COURSE - 12.5 (SIC - 12.5)	\$	\$
509.	26	FT	GRANITE TRANSITION CURB FOR PEDESTRIAN CURB RAMPS - STRAIGHT	\$	\$
620.131	50	FT	GUARDRAIL, DEEP POST (SINGLE FACED)	\$	\$
620.32	15	FT	GUARDRAIL - CURVED, TL-2 (SINGLE FACED)	\$	\$
627.01	1	EA	ROUNDED END UNIT	\$	\$
627.1	3	EA	TRAILING ANCHORAGE	\$	\$
628.25	4	EA	TRANSITION TO THRIE BEAM	\$	\$
657.	300	FT	TEMPORARY FENCE	\$	\$
751.7	2	CY	COMPOST BLANKET	\$	\$
765.	50	SY	SEEDING	\$	\$
767.121	210	FT	SEDIMENT CONTROL BARRIER	\$	\$
769.	160	FT	PAVEMENT MILLING MULCH UNDER GUARD RAIL	\$	\$
852.	259.5	SF	SAFETY SIGNING FOR TRAFFIC MANAGEMENT	\$	\$
853.1	9	EA	PORTABLE BREAKAWAY BARRICADE TYPE III	\$	\$
853.2	60	FT	TEMPORARY BARRIER (TL-2)	\$	\$
856.12	30	DAY	PORTABLE CHANGEABLE MESSAGE SIGN	\$	\$
859.	1080	DAY	REFLECTORIZED DRUM	\$	\$
905.01	4	CY	5000 PSI, 3/8 IN., 710 HP CEMENT CONCRETE FOR SUBSTRUCTURE REPAIRS	\$	\$
909.2	15	SF	CEMENTITIOUS MORTAR FOR PATCHING	\$	\$
910.1	100	LB	STEEL REINFORCEMENT FOR SUBSTRUCTURE REPAIRS - EPOXY COATED	\$	\$
912.5	90	EA	DRILLED AND GROUTED #5 DOWELS	\$	\$
992.1	1	LS	ALTERATION TO BRIDGE STRUCTURE	\$	\$
			CONSTRUCTION COST	\$	\$
999.001		LS	TRAFFIC POLICE - ALLOWANCE	\$ 500.00	\$
999.300		LS	MATERIALS INSPECTION, SAMPLING, AND TESTING SERVICES	\$ 2,000.00	
999.800		LS	ADDITIONAL MATERIALS	\$ 2,000.00	
999.801		LS	ADDITIONAL ARTISANS	\$	2,000.00
			TOTAL CONSTRUCTION COST WITH ALLOWANCES	\$	

TOTAL CONSTRUCTION BID IN WORDS: \_\_\_\_\_

Authorized Signature  \_\_\_\_\_ Printed Name \_\_\_\_\_

Title \_\_\_\_\_ Company Name \_\_\_\_\_

Company Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Phone \_\_\_\_\_ Email \_\_\_\_\_

Date \_\_\_\_\_

The Office of the Attorney General, Washington, DC, requires the following information on all bid proposals amounting to \$1,000.00 or more:

\_\_\_\_\_ Federal Tax ID Number (this number is regularly used by companies when filing their "EMPLOYER'S FEDERAL TAX RETURN, U.S." Treasury Department Form 941

\*IF A CORPORATION, INCLUDE WITH YOUR BID A CORPORATE RESOLUTION LISTING ALL DULY AUTHORIZED SIGNERS ON BEHALF OF THE CORPORATION AND CHECK HERE ☐

\*IF A LIMITED LIABILITY CORPORATION (LLC), INCLUDE THE NAME OF THE LLC MANAGER AND CHECK THE APPROPRIATE CLASSIFICATION OF LLC ☐

Circle tax classification: ☐ D (disregarded entity) ☐ C (corporation) or ☐ P (partnership)

\_\_\_\_\_ LLC MANAGER NAME

\*IF A PARTNERSHIP, INCLUDE A LIST OF NAMES/ADDRESSES OF ALL PARTNERS AND CHECK HERE ( add additional page if necessary) ☐

\_\_\_\_\_ NAME

\_\_\_\_\_ NAME

\_\_\_\_\_ NAME

\_\_\_\_\_ NAME

\*IF A PROPRIETORSHIP, COMPLETELY FILL OUT INFORMATION ON BID FORM ONLY AND CHECK HERE ☐

**ATTACHMENT E - SAMPLE AGREEMENT**  
**TOWN OF Charlemont**  
**BRIDGE #C-05-027 South River Road over Albee Brook**  
**Town of Charlemont IFB 2025-0527**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2025 between **CONTRACTOR** with a usual place of business at **ADDRESS AND PHONE**, hereinafter called the CONTRACTOR, and the **Town of Charlemont** acting by its SELECTBOARD, with a usual place of business at **157 MAIN STREET, Charlemont, MA , TEL 413-339-4335 ext. 8** (hereinafter called the OWNER).

The CONTRACTOR and the OWNER, for the consideration hereinafter named, agree as follows:

1. Scope of Work

The Contractor shall furnish all labor, materials, equipment and insurance to perform all work required for the project known as the **BRIDGE #C-05-027 South River Road over Albee Brook** Project, in strict accordance with the Contract Documents and all related Drawings and Specifications including the Order of Conditions. The Contract Documents (Section 11, herein), Specifications, Drawings and any GENERAL SUPPLEMENTARY CONDITIONS are incorporated herein by reference and are made a part of this Agreement.

2. Contract Price

The Owner shall pay the Contractor for the performance of this Agreement, subject to additions and deductions provided herein, in current funds, the sum of **\$xxxx (xxxxDOLLARS and xxxCENTS)**.

3. Commencement and Completion of Work and Liquidated Damages

It is agreed that time is of the essence of this Agreement. The Contractor shall commence and prosecute the work under this Agreement upon execution hereof and shall complete the work on or before 12/15//2025.

- A. Definition of Term: The Term "Substantial completion" shall mean the date certified by the Owner when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner may occupy the project, or designated portion(s) thereof, for the use for which it is intended.
- B. Time as Essential Condition: It is understood and agreed that the commencement of and substantial completion of the work are essential conditions of this Agreement. It is further agreed that time is of the essence for each and every portion of the Contract Documents wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract Documents any additional time is allowed for the completion of any work, the new time fixed by such extension shall be of the essence of this Agreement. It is understood and agreed that the times for the completion of the work are reasonable, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

C. Progress and Completion: Contractor shall commence work promptly upon execution of this Agreement and shall prosecute and complete the work regularly, diligently and uninterruptedly at such a rate of progress as will insure Substantial Completion within the stipulated number of calendar days.

D. Liquidated Damages: N/A

4. Performance of the Work

A. Direction of the Work: The Contractor shall supervise and direct the Work, using his best skills and attention which shall not be less than such state of skill and attention generally rendered by the contracting profession for projects similar to the Project in scope, difficulty and location. The Contractor shall maintain adequate supervisory personnel at the project site during the performance of the Work. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement.

B. Responsibility for the Work: (1) The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor. This obligation shall also extend to the presence on the Site of suppliers of materials or equipment, their employees, contractors, and agents engaged in the work.

(2) The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Owner in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the Contractor. Approval or review of any documents, plans, specifications, or drawings by the Owner shall not relieve the Contractor of its duties and obligations hereunder.

C. Permits and Fees: Unless otherwise expressly provided, the Contractor shall secure and pay for all permits and fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Agreement and which are legally required at the time the bids are received, and the same shall at all times be the property of the Owner and shall be delivered to the Owner upon completion of the Project.

D. Notices, Compliance With Laws: (1) The Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. The Contractor shall provide the Owner with reproductions of all permits, licenses and receipts for any fees paid. The Owner represents that it has disclosed to the Contractor all orders and requirements known to the Owner of any public authority particular to this Agreement.

(2) If the Contractor observes that any of the Contract Documents are at variance with applicable laws, statutes, codes and regulations in any respect, he shall promptly notify the Owner in writing, and any necessary changes shall be accomplished by appropriate modification.

(3) If the Contractor performs any Work which he knows or should know is contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner, he shall assume full responsibility therefor and shall bear all costs attributable thereto.

(4) In the performance of the Work, the Contractor shall comply with all applicable federal, state and local laws and regulations including those relating to workplace and employee safety. The Contractor shall notify the Owner immediately of any conditions at the place of the work which violate said laws and regulations and shall take prompt action to correct and eliminate any such violations.

E. Project Superintendent: The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

F. Progress Schedule: The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Owner's information an estimated progress schedule for the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents and shall provide for expeditious and practicable execution of the Work.

G. Drawings, Specifications and Submittals:

(1) The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, and "As-Built" Drawings and Specifications in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be delivered to the Owner upon completion of the Work.

(2) By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

(3) The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's approval of Shop Drawings, Product Data or Samples unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Owner's approval thereof.

(4) The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Owner on previous submittals.

(5) No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Owner. All such portions of the Work shall be in accordance with approved submittals.

- H. **Protection of the Work and Owner's Property:** The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this Agreement. He shall at all times safely guard and protect his own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury. The Contractor shall clean the work area and restore it to its original condition upon completion of the work.
- I. **Quality of the Work:** The Contractor shall perform the work in a good, workmanlike manner. The Contractor hereby guarantees that the entire work constructed by him under the Agreement will meet fully all requirements thereof as to quality of workmanship and materials. The Contractor hereby agrees to make at his own expense any repairs or replacements made necessary by defects in materials or workmanship supplied to him that become evident within one (1) year after the date of the final payment, and to restore to full compliance with the requirements set forth herein any part of the work constructed hereunder, which during said one (1) year period is found to be deficient with respect to any provisions of the Contract Documents. The Contractor also agrees to hold the Owner harmless from claims of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written orders for same from the Owner. If the Contractor fails to make the repairs and replacements promptly, the Owner may do the work and the Contractor shall be liable to the Owner for the cost thereof.
- J. **Warranty:** The Contractor guarantees to Owner that all materials incorporated into the work will be new unless otherwise specified or agreed. Prior to final payment, the Contractor shall deliver to the Owner all manufacturers' warranties, together with such endorsements or assignments as are necessary to ensure to the Owner the full rights and benefits of such warranties.

5. **Affirmative Action/Equal Employment Opportunity/Workforce Participation**

The Contractor is directed to comply with all applicable Federal and State Laws, Ordinances, Bylaws, and rules and regulations regarding affirmative action, equal employment opportunity, and workforce participation goal requirements. Failure of the Contractor to comply with any such law, rule or regulation shall constitute grounds for the Owner to terminate the Agreement. The Contractor shall not discriminate against any person because of race, color, religious creed, national origin, gender, ancestry, sexual orientation, age, handicap, gender identity, genetic information, military service or any other protected class under the law.

See Attached CONTRACTOR CERTIFICATION and SUPPLEMENTAL EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM

6. **Site Information Not Guaranteed; Contractor's Investigation**

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

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



Contractor has familiarized himself with the nature and extent of the Contract Documents, work, locality, and with all local conditions and federal, state, and local laws, rules, ordinances, and regulations that in any manner may affect costs, progress, or performance of the work. Contractor has made, or has caused to be made, examinations, investigations, and tests and studies of such reports and related data in addition to those referred to in the paragraph above as he deems necessary for the performance of the work at the Contract Price, within the Contract Time, and in accordance with the other Terms and Conditions of the Contract Documents; and no additional examinations, tests, investigations, reports, and similar data are or will be required by the Contractor for such purposes.

Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the Contract Documents. Contractor has given the Owner written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents, and the resolution thereof by the Owner is acceptable to the Contractor.

It is further agreed and understood that the Contractor shall not use or be entitled to use any of the information made available to him or obtained in any examination made by him in any manner as a basis of or ground for any claim or demand against the Owner, arising from or by reason of any variance which may exist between the information made available and the actual subsurface conditions or other conditions or structures actually encountered during the construction work, except as may otherwise be expressly provided for in the Contract Documents.

7. Project Architect or Engineer

There is a project engineer for this project who is PETER GILL, PROJECT MANAGER; GILL ENGINEERING ASSOCIATES, NEEDHAM, MA. Except as otherwise indicated in the Contract Documents, the Engineer shall be a representative of the Owner and the Contractor shall direct all communications, questions and comments on the work and the performance thereof to the Engineer. Except as otherwise provided, the Engineer shall have all the authority of the Owner set forth in the Contract Documents. In general, the Engineer shall have the authority to review the performance of the work, reject work which is defective or otherwise does not comply with the Contract Documents and to order the Contractor to remedy defective work and take such actions which are necessary to make the work conform to the Contract Documents.

8. Wage Rates

Prevailing Wage Rates as determined by the Commissioner of the Department of Labor and Workforce Development under the provisions of Massachusetts General Laws, Chapter 149, Section 26 to 27G, as amended, apply to this project. It is the responsibility of the Contractor to provide the Town with certified payrolls and to comply with all requirements of the above-cited statutes.

The schedules of prevailing wage rates are included in the Contract Documents.

9. Payments to the Contractor

After receipt from the Contractor of a proper and satisfactory periodic estimate requesting payment of the amount due for the preceding month, the Owner shall apply for and receive reimbursement from the Grantor, after which time the Owner shall make payment for:

- A. The work performed during the preceding month.

- B. The materials not incorporated in the Work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the Contractor has title, or to which a Subcontractor has title and has authorized the Contractor to transfer title to the Owner.
- C. Less the following retention items:
1. A retention based on an estimate of the fair value of the Owner's claims against the Contractor.
  2. A retention for direct payments to Subcontractors, if any, based on demands for same in accordance with the provisions of Section 39F of Chapter 30 of the General Laws.
  3. A retention not exceeding five percent (5%) of the approved amount of the periodic payment.
- D. After the receipt of a periodic estimate requesting final payment and within thirty (30) days after the Contractor fully completes the Work, or substantially completes the Work so that the value of the Work remaining to be done is, on the estimate of the Owner, less than 1% of the original Contract Price, or substantially completes the Work and the Owner takes possession or occupancy, whichever occurs first, the Owner shall pay the Contractor the entire balance due on the Contract less:
1. A retention based on an estimate of the fair value of the Owner's claims against the Contractor and of the cost of completing the incomplete and unsatisfactory items of work.
  2. A retention for direct payments to Subcontractors, if any, based on demands of same in accordance with the provisions of Section 39F of Chapter 30 of the General Laws, or based on the record of payments by the Contractor to the Subcontractors under this Contract if such record of payment indicates that the Contractor has not paid Subcontractors as provided in Section 39F of Chapter 30 of the General Laws.

The Owner may make changes in any periodic estimate submitted by the Contractor and the payment due on said periodic estimate shall be computed in accordance with the changes so made, and such changes and any requirements for a corrected periodic estimate shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided further, that the Owner may, within fourteen (14) days after receipt, return to the Contractor for correction, any periodic estimate which is not in acceptable form or which contains computations not arithmetically correct, and in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter.

- E. Changes in the Work: No changes in the work covered by the approved Contract Documents shall be made without prior written approval of the Owner. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:
- (a) Unit bid prices previously approved.

- (b) An agreed lump sum.
- (c) The actual cost of:
  - (1) Labor.
  - (2) Materials entering permanently into the work.
  - (3) The ownership or rental cost of construction equipment during the time of use on the extra work.
  - (4) Power and consumable supplies for the operation of power equipment.
  - (5) Wages to be paid.

To the cost under (c) there shall be added a fixed fee to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

- F. Claims for Additional Costs: If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Owner written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

The Contractor hereby agrees that the Contractor shall have no claim for damages of any kind against the Owner on account of any delay in the commencement or performance of the work and/or any hindrance, delay or suspension of any portion of the work including, but not limited to, any claims or damages on account of having to perform out of sequence work, claims for damages on account of loss of production or other interference with the work whether such delay is caused by the Owner or otherwise, except as and to the extent expressly provided under G.L. c.30, §39O in the case of written orders by the Owner. The Contractor acknowledges that the Contractor's sole remedy for any such claim will be an extension of time as provided herein.

#### 10. Final Payment, Effect

The acceptance of final payment by the Contractor shall constitute a waiver of all claims by the Contractor arising under the Agreement.

#### 11. Contract Documents

The Contract Documents consist of the following, together with this Agreement:

This Contract Form  
Attachment A:  
Invitation to Bid  
Addenda

Instructions to Bidders  
General Conditions  
Engineer's Technical Specifications/SPECIAL PROVISIONS

Attachment B:  
Contractor's Bid Submission  
Clerk's Certificate of Corporate Vote

Attachment C:  
Certified Payroll Reporting Forms  
Schedule of Prevailing Wages

Under Separate Cover  
Exhibit 1 - Engineer's Plans  
Exhibit 2 – Geotechnical Report  
Exhibit 3 – Hydraulic Report

Appendix B  
Labor & Materials Payment Bond  
Certificate of Insurance

## 12. Terms Required By Law

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

General Laws Chapter 30B - Procurement of Goods and Services

General Laws Chapter 30, section 39 et. seq. - Public Works Contracts

12.2 Wherever applicable law mandates the inclusion of any term and/or provision into a municipal contract, this section shall be understood to import such term or provision into this contract. To whatever extent any provision of this contract shall be inconsistent with any law or regulation limiting the power or liability of cities and towns, such law or regulation shall control.

12.3 The Contractor shall give all notices and comply with all laws and regulations bearing on the performance of the contract. If the Contractor performs the contract in violation of any applicable law or regulation, the Contractor shall bear all costs arising therefrom.

12.4 The Contractor shall keep itself fully informed of all existing and future State and Federal Laws and Municipal By-laws and regulations and of all orders and decrees of any bodies or tribunals having jurisdiction in any manner affecting those engaged or employed in the work, of the materials used in the work or in any way affecting the conduct of the work, if any discrepancy or inconsistency is discovered in the Drawings, Specifications or Contract for this work in violation of any such law, by-law, regulation, order or decree, it shall forthwith report the same in writing to the Owner. It shall, at all times, itself observe and comply with

and shall cause all its agents, employees and subcontractors to observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and shall protect and indemnify the Owner and its duly appointed agents against any claim or liability arising from or based on any violation whether by Contractor, its agents, employees or Subcontractors or any such law, by-law, regulation or decree.

13. Indemnification

a. The Contractor shall defend, indemnify, and hold harmless the Owner from and against any and all claims, damages, losses, and expenses, including attorney's fees, arising out of the performance of this Agreement when such claims, damages, losses, and expenses are caused, in whole or in part, by the acts, errors, or omissions of the Contractor or his employees, agents, subcontractors or representatives. Such obligation shall not negate, abridge, or reduce in any way any additional indemnification rights of the Owner, that otherwise may exist under statute or in law or equity.

b. Contractor assumes full responsibility for relations with any subcontractors employed directly or indirectly by the Contractor and the Contractor shall defend, indemnify, and save harmless the Owner from all demands made against the Owner by such subcontractor, such subcontractor's agent or employee, or any person, as the result of such subcontractor's work performed pursuant to this Agreement including but not limited to negligent acts, errors, or omissions that arise out of, result from, or are connected with the performance of this Agreement or any subsequent Agreement and is not otherwise subject to indemnifications under subparagraph "a" above.

c. The Contractor shall defend, indemnify, and hold harmless the Owner from any and all demands relating to wages, overtime compensation, or other employee benefits by employees employed directly or indirectly by the Contractor for work performed in connection with the work hereunder or required by state or federal law, including but not limited to **Fair Labor Standards Act and Massachusetts Prevailing Wage Law**.

d. The indemnification obligations of the Contractor shall not be limited in any way by any limitations on the amount or type of damages, compensations, or benefits payable by or for the Contractor under any federal or state law.

e. In the event of a breach of this Agreement by the Contractor, the Contractor shall pay the Owner all reasonable attorneys' fees, costs and other litigation expenses incurred by the Owner in enforcing its rights as a result of said breach in addition to any damages for said breach.

14. Insurance

The Contractor shall purchase and maintain such insurance as will protect both the Owner and the Contractor from claims which may arise under the Agreement, including operations performed for the named insured by independent contractors and general inspection thereof by the named insured. In addition, the Contractor shall require its subcontractors to maintain such insurance. Coverage shall be provided for:

- .1 claims under workers' or workmen's compensation, disability benefit and other applicable employee benefit acts;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;

- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;
- .5 claims for damages, including damages to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and
- .6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- .7 claims involving contractual liability applicable to the Contractor's obligations under Article 13.

The Contractor shall, at all times during the Contract, maintain in full force and effect: Employer's Liability, Workers' Compensation, Public Liability and Property Damage Insurance, including contractual liability coverage for the provisions of Section 13.00 (INDEMNITY). All insurance shall be by insurers and for policy limits acceptable to Owner and, before commencement of work hereunder, the Contractor agrees to furnish Owner with certificates of insurance or other evidence satisfactory to Owner to the effect that such insurance has been procured and is in force.

For the purpose of the Contract, the Contractor shall carry the following types of insurance in at least the limits specified below:

#### COVERAGE LIMITS OF LIABILITY

Workers' Compensation	Statutory
Employers' Liability	\$500,000
Bodily Injury Liability (except automobile)	\$1,000,000 each occurrence \$2,000,000 aggregate
Property Damage Liability (except automobile)	\$1,000,000 each occurrence \$2,000,000 aggregate
Automobile Bodily Injury Liability	\$1,000,000 each person \$2,000,000 each occurrence
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$2,000,000 each occurrence
Contractor's Pollution Liability	\$1,000,000 each occurrence \$3,000,000 aggregate

Contractor's Pollution Liability: The Contractor shall purchase and maintain coverage for bodily injury and property damage resulting from liability arising out of pollution related exposures such as asbestos

abatement, lead paint abatement, tank removal, removal of contaminated soil, etc. The policy shall cover the liability of the Contractor during the process of removal, storage, transport and disposal of hazardous waste and contaminated soil and/or asbestos abatement. The policy shall coverage for on-site and off-site bodily injury and loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental. The policy shall also include defense and clean-up costs. The Town shall be named as an additional insured.

Town of Charlemont shall be named as an additional insured under the liability and automobile insurance. The general liability insurance policy should contain a broad form general liability endorsement.

Except for Workmen's Compensation, all liability coverage shall name the Owner as an additional insured and shall provide for 30 days prior written notice to the Owner of any modification or termination of coverage provided thereby. The Contractor shall provide the Owner with appropriate certificate(s) of insurance evidencing compliance with this provision prior to the commencement of any work under this Agreement.

15. Notice

All notices required to be given hereunder shall be in writing and delivered to, or mailed first class to, the parties' respective addresses stated above. In the event that immediate notice is required, it may be given by telephone or EMAIL, but shall, to the extent possible, be followed by notice in writing in the manner set forth above.

16. Termination

- A. Each party shall have the right to terminate this Agreement in the event of a failure of the other party to comply with the terms of the Agreement. Such termination shall be effective upon seven days' notice to the party in default and the failure within that time of said party to cure its default.
- B. The Owner shall have the right to terminate the Agreement without cause, upon ten (10) days' written notice to the Contractor. In the event that the Agreement is terminated pursuant to this subparagraph, the Contractor shall be reimbursed in accordance with the Contract Documents for all satisfactory Work performed up to the termination date, and for all materials or equipment not incorporated in the Work but delivered and suitably stored at the site. Payment for material or equipment stored at the site shall be conditioned upon submission by the Contractor of bills of sale or such other evidence as is satisfactory to Owner to establish the Owner's title to such material or equipment or otherwise protect the Owner's interests.

17. Miscellaneous

- A. ROYALTIES AND PATENTS: The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified; but if the Contractor believes or has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such

information to the Owner, and thereafter the Owner insists on the use of the design, process or products specified.

**B. ACCESS TO RECORDS**

Contractor will make all books, accounts, data, records, reports, files and other papers, things or property, that relate to its activities under this Contract, available at all reasonable times for inspection, review and audit by the Owner, its authorized representative, the Inspector General of the Commonwealth, or the Auditor of the Commonwealth. The Commonwealth reserves the right of the Governor or his designee, the Secretary of Administration and Finance and the State Auditor or his designee, at reasonable times and upon reasonable notice to examine the books, records, and other compilative data of the Contractor which pertain to the performance of the provisions and requirements of this Contract as provided by Executive Order 195.

**C. RIGHTS AND REMEDIES**

Owner's rights and remedies provided in this Contract are in addition to any other rights and remedies provided by law.

**D. CONFLICT OF INTEREST**

Each party shall adhere to the provisions of Massachusetts General Laws, Chapter 268A, with respect to the Conduct of Public Employees. In addition, no member, officer, or employee of either party, or its designee, or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one (1) year thereafter (or such longer period as may be provided in Chapter 268A of the Massachusetts General Laws), shall have any interest in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Contract. Each party shall incorporate, or cause to be incorporated, in all such contracts or subcontracts a provision prohibiting such interest, pursuant to the purposes of this subsection.

**E. JURISDICTION**

This Contract shall be interpreted by the laws of the Commonwealth of Massachusetts and any suit brought pursuant to this Contract shall be commenced only within the County of Franklin, Massachusetts.

**F. MODIFICATION, WAIVER OR CHANGE**

No modifications, waiver or change shall be made in the terms and conditions of this Contract except as may be mutually agreed upon in writing by all parties hereto.

**G. ASSIGNMENT**

Owner and Contractor recognize that each has a substantial interest in having the other perform or control the acts required of it by this Contract. Neither party shall perform its duties through a delegate nor assign its interest under this Contract without the written consent of the other. Nothing herein shall be construed to prevent an assignor's due performance of its entire obligation.



H. SUCCESSORS AND ASSIGNS

Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Contract.

I. ENTIRE UNDERSTANDING

This Contract, together with the attachments hereto, represent the entire understanding of the parties, and neither party is relying upon any representation not contained herein.

J. SEVERABILITY/INTERPRETATION

In the event that any provision of this Contract shall be deemed invalid, unreasonable, or unenforceable by any court of competent jurisdiction, such provision shall be stricken from the Contract or modified so as to render it reasonable, and the remaining provisions of this Contract or the modified provision as provided above, shall continue in full force and effect and be binding upon the parties so long as such remaining or modified provisions reflect the intent of the parties as of the date of this Contract. Further, should this Contract omit any statutory or regulatory requirements which would otherwise render this Contract illegal, then this Contract shall be deemed amended to the minimum extent necessary to comply with said statutes or regulations.

For purposes of interpreting this Agreement in the context of a dispute over its terms or otherwise neither party shall be considered the drafter of this Agreement and neither party shall have any provision of this Agreement construed in its favor as a result of its role in drafting this Agreement or its bargaining power with respect to this Agreement, Consultant's Services, the Project, or otherwise.

K. OWNERSHIP OF DOCUMENTS

The parties agree that all documents created for the project by the Contractor shall belong to the Owner.

L. By its signature hereon, the Contractor certifies, under the pains and penalties of perjury, that it has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

M. Compensation for any additional approved work or change orders is subject to the continued availability of funds.

[Remainder of page intentionally blank.]

AGREED:

**TOWN OF CHARLEMONT, MASSACHUSETTS**  
(Owner)

By its SELECTBOARD

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**CONTRACTOR: NAME**

By \_\_\_\_\_

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

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City and State and ZIP)

Email: \_\_\_\_\_

\_\_\_\_\_  
Date

## PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That we \_\_\_\_\_

\_\_\_\_\_ a \_\_\_\_\_  
(Name of Contractor) (Corporation, Partnership, Joint Venture or Individual)

hereinafter called "Principal" and \_\_\_\_\_ of \_\_\_\_\_,  
(Surety)

State of \_\_\_\_\_ hereinafter called the "Surety" and licensed by the State  
(City and State)

Division of Insurance to do business under the laws of the Commonwealth of Massachusetts, are held and firmly bound to the Town of \_\_\_\_\_, \_\_\_\_\_, Massachusetts, hereinafter called "Owner", in the penal sum of \_\_\_\_\_ Dollars

(\$ \_\_\_\_\_) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for the construction described as follows:

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

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

When the Surety's obligation under this Bond arises, the Surety, at its sole expense and at the consent and election of the Owner, shall promptly take one of the following steps: (1) arrange for the Principal to make payment to subcontractors and suppliers; (2) make payments to all subcontractors and suppliers; or (3) reimburse the Owner, in a manner and at such time as the Owner shall decide, for all costs and expenses incurred by the Owner in reimbursing the subcontractors and suppliers. Surety will keep Owner reasonably informed of the progress, status and results of any investigation of any claim of the Owner.

If the Surety does not proceed as provided in this Bond with due diligence and all deliberate speed, the Surety shall be deemed to be in default of this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner.

After the Surety's obligation under this Bond arises, the Surety is obligated, to the limit of the amounts of this Bond for all payments to subcontractors and suppliers.

Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction in the Commonwealth of Massachusetts.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Construction Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Construction Contract or to the work or to the specifications.

PROVIDED, FURTHER, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

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

ATTEST:

_____	By	_____ Surety
		_____ (Attorney-in-Fact)
		_____ (Address-Zip Code)
_____ Witness as to Surety	(SEAL)	
_____		
_____ (Address-Zip Code)		

NOTE:      Date of Bond must not be prior to date of Contract.    If Contractor is a Partnership, all partners should execute Bond.

# THE COMMONWEALTH OF MASSACHUSETTS

## SUPPLEMENTAL EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM

### ATTACHMENT

#### APPLIES TO ALL WORK REIMBURSED UNDER MASSACHUSETTS “CHAPTER 90” HIGHWAY PROGRAM

#### I. Definitions

For purposes of this contract,

“Minority” means a person who meets one or more of the following definitions:

- (a) American Indian or Native American means: all persons having origins in any of the original peoples of North America and who are recognized as an Indian by a tribe or tribal organization.
- (b) Asian means: All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands, including, but not limited to China, Japan, Korea, Samoa, India, and the Philippine Islands.
- (c) Black means: All persons having origins in any of the Black racial groups of Africa, including, but not limited to, African-Americans, and all persons having origins in any of the original peoples of the Cape Verdean Islands.
- (d) Eskimo or Aleut means: All persons having origins in any of the peoples of Northern Canada, Greenland, Alaska, and Eastern Siberia.
- (e) Hispanic means: All persons having their origins in any of the Spanish-speaking peoples of Mexico, Puerto Rico, Cuba, Central or South America, or the Caribbean Islands.

“State construction contract” means a contract for the construction, reconstruction, installation, demolition, maintenance or repair of a building or capital facility, or a contract for the construction, reconstruction, alteration, remodeling or repair of a public work undertaken by a department, agency, board, or commission of the commonwealth.

“State assisted construction contract” means a contract for the construction, reconstruction, installation, demolition, maintenance or repair of a building or capital facility undertaken by a political subdivision of the commonwealth, or two or more political subdivisions thereof, an authority, or other instrumentality and whose costs of the contract are paid for, reimbursed, grant funded, or otherwise supported, in whole or in part, by the commonwealth.

#### II. Equal Opportunity, Non-Discrimination and Affirmative Action

During the performance of this Contract, the Contractor and all subcontractors (hereinafter collectively referred to as “the Contractor”) for a state construction contract or a state assisted construction contract, for him/herself, his/her assignees and successors in interest, agree to comply with all applicable equal employment opportunity, non-discrimination and affirmative action requirements, including but not limited to the following:

In connection with the performance of work under this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, sex, sexual orientation, genetic information, military service, age, ancestry or disability, shall not discriminate in the selection or retention of subcontractors, and shall not discriminate in the procurement of materials and rentals of equipment.

The aforesaid provision shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment advertising, layoff or termination; rates of pay or other forms of compensation; conditions or privileges of employment; and selection for apprenticeship or on-the-job training opportunity. The Contractor shall comply with the provisions of chapter 151B of the Massachusetts General Laws, as amended, and all other applicable anti-discrimination and equal opportunity laws, all of which are herein incorporated by reference and made a part of this Contract.

The Contractor shall post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Massachusetts Commission Against Discrimination setting forth the provisions of the Fair Employment Practices Law of the Commonwealth (Massachusetts General Laws Chapter 151B).

In connection with the performance of work under this contract, the Contractor shall undertake, in good faith, affirmative action measures to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, sex, sexual orientation, genetic information, military service, age, ancestry or disability. Such affirmative action measures shall entail positive and aggressive measures to ensure non-discrimination and to promote equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, apprenticeship and on-the-job training programs. A list of positive and aggressive measures shall include, but not be limited to, advertising employment opportunities in minority and other community news media; notifying minority, women and other community-based organizations of employment opportunities; validating all job specifications, selection requirements, and tests; maintaining a file of names and addresses of each worker referred to the Contractor and what action was taken concerning such worker; and notifying the administering agency in writing when a union with whom the Contractor has a collective bargaining agreement has failed to refer a minority or woman worker. These and other affirmative action measures shall include all actions required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, sex, sexual orientation, genetic information, military service, age, ancestry or disability. One purpose of this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for this and future Commonwealth public construction projects.

### III. Minority and Women Workforce Participation

Pursuant to his/her obligations under the preceding section, the Contractor shall strive to achieve on this project the labor participation goals contained herein. Said participation goals shall apply in each job category on this project including but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers and those classes of work enumerated in Section 44F of Chapter 149 of the Massachusetts General Laws. The participation goals for this project shall be 15.3% for minorities and 6.9% for women. The participation goals, as set forth herein, shall not be construed as quotas or set-asides; rather, such participation goals will be used to measure the progress of the Commonwealth's equal opportunity, non-discrimination and affirmative action program. Additionally, the participation goals contained herein should not be seen or treated as a floor or as a ceiling for the employment of particular individuals or group of individuals.

#### IV. Liaison Committee

At the discretion of the agency that administers the contract for the construction project there may be established for the life of the contract a body to be known as the Liaison Committee. The Liaison Committee shall be composed of one representative each from the agency or agencies administering the contract for the construction project, hereinafter called the administering agency, a representative from the Office of Affirmative action, and such other representatives as may be designated by the administering agency.

The Contractor (or his/her agent, if any, designated by him/her as the on-site equal employment opportunity officer) shall recognize the Liaison Committee as an affirmative action body, and shall establish a continuing working relationship with the Liaison Committee, consulting with the Liaison Committee on all matters related to minority recruitment, referral, employment and training.

#### V. Reports and Records

The Contractor shall prepare projected workforce tables on a quarterly basis when required by the administering agency. These shall be broken down into projections, by week, of workers required in each trade. Copies shall be furnished one week in advance of the commencement of the period covered, and also, when updated, to the administering agency and the Liaison Committee when required.

The Contractor shall prepare weekly reports in a form approved by the administering agency, unless information required is required to be reported electronically by the administering agency, the number of hours worked in each trade by each employee, identified as woman, minority, or non-minority. Copies of these shall be provided at the end of each such week to the administering agency and the Liaison Committee.

Records of employment referral orders, prepared by the Contractor, shall be made available to the administering agency on request.

The Contractor will provide all information and reports required by the administering agency on instructions issued by the administering agency and will permit access to its facilities and any books, records, accounts and other sources of information which may be determined by the administering agency to effect the employment of personnel. This provision shall apply only to information pertinent to the Commonwealth's supplementary non-discrimination, equal opportunity and access and opportunity contract requirements. Where information required is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the administering agency and shall set forth what efforts he has made to obtain the information.

#### VI. Access to Work Site

A designee of the administering agency and a designee of the Liaison Committee shall each have a right to access the work site.

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

In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential

subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this contract relative to non-discrimination and equal opportunity.

#### VIII. Sanctions

Whenever the administering agency believes the General or Prime Contractor or any subcontractor may not be operating in compliance with the provisions of the Fair Employment Practices Law of the Commonwealth (Massachusetts General Laws Chapter 151B), the administering agency may refer the matter to the Massachusetts Commission Against Discrimination ("Commission") for investigation.

Following the referral of a matter by the administering agency to the Massachusetts Commission Against Discrimination, and while the matter is pending before the MCAD, the administering agency may withhold payments from contractors and subcontractors when it has documentation that the contractor or subcontractor has violated the Fair Employment Practices Law with respect to its activities on the Project, or if the administering agency determines that the contractor has materially failed to comply with its obligations and the requirements of this Section. The amount withheld shall not exceed a withhold of payment to the General or Prime Contractor of 1/100 or 1% of the contract award price or \$5,000, whichever sum is greater, or, if a subcontractor is in non-compliance, a withhold by the administering agency from the General Contractor, to be assessed by the General Contractor as a charge against the subcontractor, of 1/100 or 1% of the subcontractor price, or \$1,000 whichever sum is greater, for each violation of the applicable law or contract requirements. The total withheld from any one General or Prime Contractor or subcontractor on a Project shall not exceed \$20,000 overall. No withhold of payments or investigation by the Commission or its agent shall be initiated without the administering agency providing prior notice to the Contractor.

If, after investigation, the Massachusetts Commission Against Discrimination finds that a General or Prime Contractor or subcontractor, in commission of a state construction contract or state-assisted construction contract, violated the provisions of the Fair Employment Practices Law, the administering agency may convert the amount withheld as set forth above into a permanent sanction, as a permanent deduct from payments to the General or Prime Contractor or subcontractor, which sanction will be in addition to any such sanctions, fines or penalties imposed by the Massachusetts Commission Against Discrimination:

No sanction enumerated under this Section shall be imposed by the administering agency except after notice to the General or Prime Contractor or subcontractor and an adjudicatory proceeding, as that term is used, under Massachusetts General Laws Chapter 30A, has been conducted.

#### IX. Severability

The provisions of this section are severable, and if any of these provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

#### X. Contractor's Certification

A bidder for a state construction contract or state assisted construction contract will not be eligible for award of the contract unless such bidder has submitted to the administering agency the following certification, which will be incorporated into the resulting contract:



## CONTRACTOR'S CERTIFICATION

\_\_\_\_\_certifies that they:

(Contractor Name)

1. Will not discriminate in their employment practices;
2. Intend to use the following listed construction trades in the work under the contract

\_\_\_\_\_  
\_\_\_\_\_ ; and

3. Will make good faith efforts to comply with the minority employee and women employee workforce participation ratio goals and specific affirmative action steps contained herein; and
4. Are in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and
5. Will provide the provisions of the "Supplemental Equal Employment Opportunity, Non-Discrimination and Affirmative Action Program" to each and every subcontractor employed on the Project and will incorporate the terms of this Section into all subcontracts and work orders entered into on the Project.
6. Agree to comply with all provisions contained herein.

\_\_\_\_\_  
(Signature of authorized representative of Contractor)

\_\_\_\_\_  
Date

\_\_\_\_\_  
(Printed name of authorized representative of Contractor)

### XI. Subcontractor Requirements

Prior to the award of any subcontract for a state construction contract or a state assisted construction contract, regardless of tier, the Prime or General Contractor shall provide all prospective subcontractors with a complete copy of this Section entitled "Supplemental Equal Employment Opportunity, Non-Discrimination and Affirmative Action Program" and will incorporate the provisions of this Section by reference into any and all contracts or work orders for all subcontractors providing work on the Project. In order to ensure that the said subcontractor's certification becomes a part of all subcontracts under the prime contract, the Prime or General Contractor shall certify in writing to the administering agency that it has complied with the requirements as set forth in the preceding paragraph.