

**HYBRID SELECTBOARD MEETING
TUESDAY, OCT. 4, 2022
AGENDA
LARGE CONFERENCE ROOM
7 P.M.**

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Note: Not all topics listed here may be reached for discussion. In addition, the topics listed are those which the chair reasonably expects will be discussed as of the date of this notice. This meeting may be audio and/or visually recorded.

- 1. CALL TO ORDER**
- 2. APPROVAL OF MINUTES:** Draft Minutes of Sept. 20, 2022
- 3. ANNOUNCEMENTS/OPEN FORUM**
- 4. CONSENT AGENDA**
 - A. One-Day Beer & Wine License Requests by Karen Franz for Oct. 13 at Gamble Auditorium, Oct. 13 at Prospect Parking Lot, and Oct. 27.
- 5. NEW BUSINESS**
 - A. Tri-Annual Appointments
 - B. October Sewer Use Fee Warrant
 - C. Paving contract
- 6. OLD BUSINESS**
 - A. ARPA – Judd Brook
 - B. Town Meeting
- 7. TOWN ADMINISTRATOR’S REPORT**
- 8. ADJOURN**

**SELECTBOARD MEETING
TUESDAY, SEPT. 20, 2022
MEETING MINUTES
HYBRID / SENIOR CENTER
7 P.M.**

Present in person were Chair Jeff Cyr, Vice Chair Andrea Miles, Clerk Renee Sweeney, Member Carol Constant and Town Administrator Lisa Wong.

CALL TO ORDER

Cyr called the meeting to order at 7 p.m.

MINUTES

Miles motioned to approve the draft minutes of Sept. 6, 2022. Constant seconded.

ANNOUNCEMENTS

Constant offered thanks for the Lyman Street construction project.

CONSENT AGENDA

Constant motioned to approve the consent agenda which consisted of multiple One-Day Beer & Wine License requests from Steven McCray for Sept. 30, Oct. 1, 2, 7, 8, 9, 10, 14, 15, 16, 21, 22, 23, 28, 29, 30 and multiple One-Day Beer & Wine License requests from Karen Franz for Sept. 22, 30, Oct. 12, Dec. 2. Miles seconded. All in favor. Unanimous.

TRI-ANNUAL INTERVIEWS

The board interviewed James Buckley for the Bike Walk Committee, Ben Ayres for MPIC, and Richard Matteson for the Council on Aging. Appointments will be made at the first meeting in October.

SOUTH HADLEY FARMERS MARKET

Miles motioned to approve the Farmers' Market request for the use of Buttery Brook Park on Wednesdays from 2-6 p.m. starting May 24, 2023 through Oct. 11, 2023.. Sweeney seconded. All in favor. Unanimous.

PEARL STREET 61A RIGHT OF FIRST REFUSAL

Constant motioned to not exercise the right of first refusal as per the provisions of MGL Chapter 61A on the land in South Hadley known as Lot #1 on a subdivision plan prepared by Harold L. Eaton and Associates, Inc dated April 12, 2022, and further waive the 120-day waiting period to exercise said right of first refusal. Sweeney seconded. All in favor. Unanimous.

SPECIAL TOWN MEETING

The board discussed the need for a special fall town meeting tentatively for Nov. 30.

TOWN-WIDE GOALS

Sweeney motioned to approve the five goals as presented in the packet. These include Communication and Community/Customer relations; Diversity, Equity and Inclusion; Planning,

Policy and Professionalism; Innovation and Initiative; and Organization, Management and Fiscal Responsibility. Constant seconded. All in favor. Unanimous.

ISOTOPIC STUDY

Sweeney motioned to fund the Isotopic Study for Dry Brook Hill with ARPA funds in the amount of \$10,000. Miles seconded. All in favor. Unanimous.

TOWN ADMINISTRATOR'S REPORT

For the full town administrator's report see the Sept. 20 Selectboard Meeting Packet.

ADJOURN

Sweeney motioned to enter into executive session under MGL Chapter 39 subsection 32B for purpose of discussing litigation and to not return to public session. Miles seconded.

Roll Call Vote

Constant – Aye

Miles – Aye

Sweeney – Aye

Cyr – Aye

All in favor. Unanimous. The meeting adjourned at 7:59 p.m.

**Respectfully submitted,
Kristin Maher
Executive Assistant to Administration**



OD-66

1 Day Alcohol License

Status: Active

Date Created: Sep 21, 2022

Applicant Email

APPLICATIONS MUST BE SUBMITTED AT LEAST TWO WEEKS IN ADVANCE OF AN EVENT. APPLICATIONS SUBMITTED LESS THAN TWO WEEKS IN ADVANCE WILL NOT BE ACCEPTED FOR REVIEW BY THE SELECTBOARD.

Permit Info

Permit For

1 Day Beer and Wine

Check this box to acknowledge that individual applicants can be approved for up to 30 permits per year.



Event Details

Date of Event

10/13/2022

Name or Organization Hosting Event

Student Involvement

Provide a Detailed Description of What The Event Is

Reception

Street Address of Where The Event is Held

Prospect Parking Lot, Willits-Hallowell Center, Mount Holyoke College, 50 College St, South Hadley, MA 01075

Hours of Operation (Ex. 8:00 AM - 5:00 PM)

4pm-12am



OD-65

1 Day Alcohol License

Status: Active

Date Created: Sep 16, 2022

Applicant Email

APPLICATIONS MUST BE SUBMITTED AT LEAST TWO WEEKS IN ADVANCE OF AN EVENT. APPLICATIONS SUBMITTED LESS THAN TWO WEEKS IN ADVANCE WILL NOT BE ACCEPTED FOR REVIEW BY THE SELECTBOARD.

Permit Info

Permit For

1 Day Beer and Wine

Check this box to acknowledge that individual applicants can be approved for up to 30 permits per year.



Event Details

Date of Event

10/13/2022

Name or Organization Hosting Event

Mount Holyoke Art Department

Provide a Detailed Description of What The Event Is

Reception

Street Address of Where The Event is Held

Gamble Auditorium Lobby, Mount Holyoke College, 50 College St, South Hadley MA 01075

Hours of Operation (Ex. 8:00 AM - 5:00 PM)

2 pm - 11 pm



OD-67

1 Day Alcohol License

Status: Active

Date Created: Sep 29, 2022

Applicant Email

APPLICATIONS MUST BE SUBMITTED AT LEAST TWO WEEKS IN ADVANCE OF AN EVENT. APPLICATIONS SUBMITTED LESS THAN TWO WEEKS IN ADVANCE WILL NOT BE ACCEPTED FOR REVIEW BY THE SELECTBOARD.

Permit Info

Permit For

1 Day Beer and Wine

Check this box to acknowledge that individual applicants can be approved for up to 30 permits per year.



Event Details

Date of Event

10/27/2022

Name or Organization Hosting Event

Italian Department

Provide a Detailed Description of What The Event Is

Reception

Street Address of Where The Event is Held

Gamble Auditorium, Mount Holyoke College, 50 College St, South Hadley, MA 01075

Hours of Operation (Ex. 8:00 AM - 5:00 PM)

4 pm - 10 pm

Tri-Annual Interviews – October 2022

Bike/Walk Committee

Jake Woodruff (2023)

James Buckley (2023)

MPIC

Ben Ayers (2025)

Council on Aging

Susan LaBonte (2025)

Richard Matteson (2025)

BOARD/COMMITTEE	Total Number of Members	Number of Current Vacancies
Appropriations Committee	9	1
Bike/Walk Committee	9	4
Bylaw Review Committee	7	1
Canal Park Committee	7	7
Commission on Disabilities	5	0
Conservation Commission	7, 2 Assoc.	1 Assoc.
Council on Aging Board	11	2
Cultural Council	11 Reg, 1 Assoc.	1 Reg, 1 Assoc.
Golf Commission	7 Reg, 2 Alt.	6 Rg, 2 Alt.
Historical Commission	7	2
Historic District Study Committee	7	1
Master Plan Implementation Committee	9	1
Recreation Commission	9	1
Sustainability & Energy Commission	5	0
Tree Committee	7	0
Trustees of the Old Firehouse Museum	9	1
Zoning Board of Appeals	3 Reg, 2 Assoc.	1 Assoc.

DONNA WHITELEY, Treasurer/Collector
CMMT.CMMC

To: Selectboard
From: Donna Whiteley
Date: September 23, 2022
Subject: Sewer Use Fee Warrant

I am requesting a Sewer Use Fee Warrant for the billing date of October 1, 2022 in the amount of \$1,220,100.

Cc: Accounting

Jeff Cyr, Chair
Andrea Miles, Vice-Chair
Renee Sweeney, Clerk
Carol Constant

Lisa Wong
Town Administrator

To: Selectboard
From: Lisa Wong
Re: Judd Brook
Date: September 28, 2022

Background:

The Selectboard approved \$150,000 total for design and engineering work for the Judd Brook Interceptor project. We are going to need to camera the interceptor line as part of the preliminary work as outlined in the attached scope. We will need some additional funding of \$32000.00. We will try to do the cleaning ourselves as much as possible to reduce the cost as well. Once we have updated camera work they will be able to give us much better data as well about current conditions.

Motion: To approve \$32,000 in American Rescue Plan Act funding for the Judd Brook project as outlined in the September 16. 2022 scope from Vortex Services.



Town of South Hadley
Attn: Melissa LaBonte, WPC Superintendent

September 16, 2022

Re: **Judd Brook Interceptor CCTV**

Greetings Melissa,

Thank you for giving us the opportunity to provide you with this proposal.

Scope of Work:

1. Task 1: CCTV inspections of approximately 7,050LF of 14” sewer, 1,920LF of 18” sewer and 960LF of 20” sewer.
2. Task 2: Light cleaning of pipes on an as needed basis to complete the camera inspections of the pipes.

Project Responsibilities:

Town of South Hadley, MA: To help achieve a smooth and successful project, you will be considered the Owner of the project and it will be your responsibility to perform the following:

- Provide a designated contract coordinator.
- Provide mapping of system with all structure and pipe IDs.
- Provide water source for cleaning of pipes – fire hydrant.
- Provide approved location for disposal of debris.
- Provide access to all areas, pits, manholes, and/or structures to complete the project.
- Provide all access to both upstream and downstream of accesses points of the mainline pipeline segments to be inspected.

Vortex Services, LLC: To help achieve a smooth and successful project, you will be considered the Contractor of the project and it will be your responsibility to perform the following:

- Provide a designated Project Manager.
- Provide a CCTV Inspection team with all labor, materials, and equipment to complete the project. Inspector will be NASSCO PACP certified.
- Provide a Cleaning team with all labor, materials, and equipment to complete the project.
- Provide NASSCO compliant reporting.

Vortex Services, LLC Employees:

- Project Manager (Off Site)
- Jet/Vac Operator (CDL)
- PACP Certified CCTV Operator
- Technician



Vortex Services, LLC Equipment:

- Mainline CCTV Unit with studio style climate-controlled control room onboard with room for owner representative.
- Combination Jet/Vac Truck for cleaning of sewers.

General Conditions: Owner recognizes and acknowledges: (a) that the specialized nature of VORTEX SERVICES, LLC's services as they relate to pipes and structures involves the removal of light to heavy debris, often preventing adequate flow; (b) that the services to be provided under this Agreement involve robotic CCTV inspection and may implicate conditions not readily discernable prior to the start of work by the Owner; and (c) that pipe cleaning, including the removal of debris, flushing, and vacuuming of structures or pipes, may be impacted by pipe damage or conditions such as broken, cracked, offset, collapsed, eroded, corroded or otherwise deteriorated pipe. VORTEX SERVICES, LLC shall not be responsible to Owner or any third party for any sums of money on account of any claims or suits arising by reason of the condition of the pipe or structures encountered by VORTEX SERVICES, LLC in rendering services hereunder, including conditions precipitating pipe collapse, deteriorated/corroded pipe, the compromised structural integrity of pipe, and unanticipated back up and discharge flows, including resultant residential or third party impacts.

Differing Conditions:

- Broken pipe or structure- All attempts will be made to clean and/or inspect through condition however may result in a termination of cleaning and/or inspection of the individual line segment. If the work is terminated due to a pre-existing structural condition the contractor shall receive compensation due to an MSA (NASSCO misc. survey abandoned code) at rate identified in schedule of pay items.
- Obstructed pipe or structure- All attempts will be made to clean and/or inspect through condition however may result in a termination of cleaning and/or inspection of the individual line segment. If the work is terminated due to a pre-existing O&M condition the contractor shall receive compensation due to an MSA (NASSCO misc. survey abandoned code) at rate identified in schedule of pay items.
- Unknown changes in pipe direction or change in pipe ID- All attempts will be made to clean and/or inspect through change in direction and/or pipe ID however may result in a termination of cleaning and/or inspection of the individual line segment. If the work is terminated due to a pre-existing O&M condition the contractor shall receive compensation due to an MSA (NASSCO misc. survey abandoned code) at rate identified in schedule of pay items.
- Flows in the gravity piping higher than anticipated by the owner - If flows or water levels in the stormwater system are higher than anticipated all attempts will be made to clean and/or inspect through condition however may result in a termination of cleaning and/or inspection of the individual line segment. If the work is terminated due to a pre-existing O&M condition the contractor shall receive compensation due to an MSA (NASSCO misc. survey abandoned code) at rate identified in schedule of pay items.



Billable Units

Item	Description	Qty	Unit	Unit Price	Price
1	CCTV Inspections	5	Per DY	\$4,000.00	\$20,000.00
2	Pipeline Cleaning	3	Per DY	\$4,000.00	\$12,000.00

Terms and Conditions:

All quotes are good for 30 days from date of inquiry.

Traffic Control is not included.

No easement clearing/access/restoration included in pricing.

Prices include prevailing wages.

Prices do not include heavy cleaning.

CCTV is estimated number of days to complete, Vortex will bill actual number of days after approval from the Town beyond 5 days if necessary.

Number of days needed to clean is an estimate, Vortex will bill actual number of days based on CCTV success.

We appreciate the opportunity to provide you with this proposal and we look forward to the chance to work with you. Please sign and return signed copy upon acceptance of this proposal.

Sincerely,

A handwritten signature in blue ink, appearing to read "Adam Gilbert", with a horizontal line extending to the right.

Adam Gilbert
Project Manager

Accepted by: _____ Title: _____

Print name: _____ Date: _____

Jeff Cyr, Chair
Andrea Miles, Vice-Chair
Renee Sweeney, Clerk
Carol Constant

Lisa Wong
Town Administrator

To: Selectboard
From: Lisa Wong
Re: Special Town Meeting - updates
Date: September 29, 2022

This is a follow-up to last meeting's discussion about holding a special Town Meeting on November 30.

The Town Moderator, Cable Director, IT Director, COA Director and Town Administrator met at the Senior Center (SC) to explore holding the Town Meeting in the multi-purpose room. Our recommendation is to hold the meeting at the High School (HS) again for this next meeting and continue to work out issues related to the Senior Center space for such a large meeting.

- The HS auditorium is a much bigger space than the Senior Center multi-purpose room. There are still people concerned about COVID and the auditorium allows for more spacing.
- The audio in the SC multi-purpose room is problematic. We have had some issues with Selectboard meetings and those issues still need to be researched and resolved. The Town will likely have to invest in some additional equipment.
- The main projection screen at the SC will be technically challenging to switch between the laptop for presentations and the tabulator system. There are no other screens at the SC. With the main projection screen lowered fairly low to the ground, it is not ideal to place people in front of the screen given that the floor is flat and it will be difficult for people in the back to see those in the front. The High School has the ability to have many screens on two levels, avoiding the need to switch back and forth from presentations to the tabulator system, and it will be easier for the town meeting members to view.
- We have already conducted a Town Meeting in the HS auditorium and have successfully addressed technical challenges. The SC multipurpose room has not yet held such a large meeting. We will continue to hold other meetings there and try to work out the issue to make a future Town Meeting there successful.

Next steps:

- The Town will submit a Facility Use Form to the High School. We have already verified that the auditorium is available on November 30.
- The Town will send a "Save the Date" email to Town Meeting members
- The Town will work on finalizing warrant articles by working with staff, legal, Appropriations and the Bylaw Review Committee before submitting the warrant for Selectboard approval.

TOWN OF SOUTH HADLEY ¹

CONTRACT # _____

STATE CONTRACT # (if applicable) _____

DATE: 09/06/2022

This Contract is entered into on, or as of, this date by and between the Town of South Hadley, 116 Main Street, South Hadley, MA 01075 (the "Town"), and

_____ Ondrick Materials & Recycling LLC _____
["Contractor"]

_____ Theodore Ondrick _____
[Contact Name for Responsible Person]

_____ 22 Industry Rd _____

_____ Chicopee, MA 01020 _____

[Address of the Contractor]

_____ 413-592-2566 _____
[Telephone Number]

[FAX Number]

_____ JHaley@ondrickmr.com _____
[email address]

1. This is a Contract for the procurement of the following:

Mill and paving various streets per bid specifications

2. The Contract price to be paid to the Contractor by the Town is:

\$417,604.00

3. Payment will be made as follows: Invoices to be paid as submitted upon completion of work

3.1 If any portion of the contract price is to be paid by a private citizen(s) no work shall be performed until a sum has been deposited with the Town Treasurer, upon an estimate made by the board, committee or officer having charge of the work, sufficient to cover the payment for the portion of the said work chargeable to the private citizen(s).

¹ Construction under \$250k

3.2 Fees and Reimbursable Costs combined shall not exceed \$417,604.00_ as more fully set forth in the Contractor Documents.

3.3 There shall be no further costs, fees or reimbursable charges due the Contractor under this Contract unless said fees and/or costs are so set forth in writing. The Town will not pay any surcharge or premium on top of the direct out of pocket expenses, if any.

4. Security:

4.1 In the event the contract price exceeds the sum of \$10,000.00, the Contractor must provide security in the form of a bond or otherwise, conditioned upon the faithful performance of this Contract.

4.2 If this Contract is to be used for either Building Construction subject to MGL c. 149 or Public Works Construction subject to MGL. c. 30, § 39M or MGL. c. 30B, § 5 the following chart and notes are provided for clarification on the minimum required security subject to the Town requiring additional security:

Contract Price	Performance Bond	Payment Bond	Bid Deposit
Under \$10,000	No	No	No
\$10,000 - \$25,000	No	No	No
\$25,001 - \$50,000	No	50% of total contract price ²	No
\$50,001 - \$150,000 ³	No	50% of total contract price	5% of total bid
Over \$150,000 ⁴	100% of contract price	100% of contract price	5% of total bid

5. Definitions:

5.1 Acceptance: All Contracts require proper acceptance of the described goods or services by the Town. Proper acceptance shall be understood to include inspection of goods and certification of acceptable performance for services by authorized representatives of the Town to ensure that the goods or services are complete and are as specified in the Contract.

² As required by MGL c. 149, § 29 for Building Construction Contracts as well as Public Works (Non-Building) Construction Contracts (with Labor) subject to MGL c. 30, § 39M, or MGL c. 30B, § 5.

³ This \$150,000 threshold is applicable to only Building Construction Contracts subject to MGL c. 149, but not to Public Works (Non-Building) Construction Contracts (with Labor) subject to MGL c. 30, § 39M, that are more than \$50,000. This row applies to all Public Works Contracts subject to MGL c. 30, § 39M, that are greater than \$50,000.

⁴ The requirements of this row only apply to for Building Construction Contracts subject MGL c. 149, but not for Public Works (Non-Building) Construction Contracts (with Labor) subject to MGL c. 30, § 39M, or MGL c. 30B, § 5.

- 5.2 Contract Documents: All documents relative to the Contract including (where used) Request for Proposals and all attachments thereto, Instructions to Bidders, Proposal Form, General Conditions, Supplementary General Conditions, General Specifications, Other Specifications included in Project Manual, Drawings, all Addenda issued during the bidding period and Contractor's Response to the Request for Proposal. The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The purpose of the Contract Documents is to include all labor and materials, equipment and transportation necessary for the proper performance of the Contract.
- 5.3 The Contractor:The "other party" to any Contract with the Town. This term shall (as the sense and particular Contract so require) include Vendor, Contractor, Engineer, or other label used to identify the other party in the particular Contract. Use of the term "Contractor" shall be understood to refer to any other such label used.
- 5.4 Date of Substantial Performance: The date when the work is sufficiently complete, the services are performed, or the goods delivered, in accordance with Contract Documents, as modified by approved Amendments and Change Orders.
- 5.5 Goods: Goods, Supplies, Services or Materials.
- 5.6 Subcontractor:Those having a direct Contract with the Contractor. The term includes one who furnished material worked to a special design according to the Drawings or Specifications of this work, but does not include one who merely furnishes material not so worked.
- 5.7 Work: The services or materials contracted for, or both.

6. Term of Contract and Time for Performance:

This Contract shall be fully performed by the Contractor in accordance with the provisions of the Contract Documents on or before _____, unless extended, in writing, at the sole discretion of the Town, and not subject to assent by the Contractor, and subject to the availability and appropriation of funds as certified by the Town Accountant. Time is of the essence for the completion of the Contract.

7. Subject to Appropriation:

Notwithstanding anything in the Contract Documents to the contrary, any and all payments which the Town is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the Town Accountant. In the absence of appropriation or availability as certified herein, this Contract shall be immediately terminated without liability for damages, penalties or other charges to the Town. In the event this is a multi-year contract, this Contract shall be subject to annual appropriation and in the event funds are not so appropriated, this Contract shall terminate immediately without liability for damages, penalties or charges to the Town.

8. Permits and Approvals:

Permits, Licenses, Approvals and all other legal or administrative prerequisites to its performance of the Contract shall be secured and paid for by the Contractor.

9. Termination and Default:

- 9.1 Without Cause. The Town may terminate this Contract on seven (7) calendar days' notice when in the Town's sole discretion it determines it is in the best interests of the Town to do so, 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. Upon termination without cause, Contractor will be paid for services rendered to the date of termination.
- 9.2 For Cause. If the Contractor is determined by the Town to be in default of any term or condition of this Contract, the Town may terminate this Contract on seven (7) 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.

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

- (1) any material misrepresentation made by the Contractor to the Town; 2) 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 within a 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 non-discrimination, (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 Town bylaw and/or regulations.

10. Suspension or Delay

The Town may order the Contractor, in writing, to suspend, delay or interrupt all or any part of the Services without cause for such period of time as the Town may determine to be appropriate for its convenience. In the event of any such suspension, delay or interruption, the Contractor's time for performance may be equitably adjusted. No adjustment shall be made if the Contractor is or otherwise would have been responsible for the suspension, delay or interruption of the Services, or if another provision of this Contract is applied to render an equitable adjustment.

11. The Contractor's Breach and the Town's Remedies:

Failure of the Contractor to comply with any of the terms or conditions of this Contract shall be a material breach of this Contract, and the Town of South Hadley shall have all the rights and remedies provided in the Contract Documents, the right to cancel, terminate, or suspend the Contract in whole or in part, the right to maintain any and all actions at law or in equity or other proceedings with respect to a breach of this Contract, including "Damages" including but not limited to costs, attorney's fees or other damages resulting

form said breach (“Damages”) as well as specific performance, and the right to select among the remedies available to it by all of the above.

From any sums due to the Contractor for services, the Town may keep the whole or any part of the amount for expenses, losses and Damages incurred by the Town as a consequence of procuring services as a result of any failure, omission or mistake of the Contractor in providing services as provided in this Contract.

12. Statutory Compliance:

- 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 the 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, Sec. 39, *et seq.* - Public Works Contracts.

General Laws Chapter 149, Section 44A, *et seq.* Public Buildings Contracts.

- 12.2 Wherever applicable law mandates the inclusion of any term and 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 comply with all Federal, State and local laws, rules, wage regulations, policies and orders applicable to the Work provided pursuant to this Contract, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the supply of such Work.

The Contractor hereby agrees to indemnify and hold the Town harmless for and against any and all fines, penalties or monetary liabilities incurred by the Town as a result of the failure of the Contractor to comply with the previous sentence. 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 Town. The Contractor hereby agrees to, at all times, itself observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and hereby agrees to protect and indemnify the Town, and its duly appointed agents against any claim or liability arising from or based on any violation whether by him or its agents, employees or subcontractors of any such law, by-law, regulation or decree. The Town agrees to make reasonable effort to notify the Contractor of any duty arising out of this paragraph, but failure to make timely notice will not relieve the Contractor of any duty under this paragraph.

13. Conflict of Interest:

Both the Town and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A), and this Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the application of M.G.L. c. 268A to the performance of this Contract; and by executing the Contract Documents the Contractor certifies to the Town that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.

14. Certification of Tax Compliance

This Contract must include a certification of tax compliance by the Contractor, as required by General Laws Chapter 62C, Section 49A (Requirement of Tax Compliance by All Contractors Providing Goods, Services, or Real Estate Space to the Commonwealth or Subdivision).

15. Non-Discrimination/Affirmative Action

The Contractor shall carry out the obligations of this Contract in compliance with all requirements imposed by or pursuant to federal, State and local ordinances, statutes, rules and regulations and policies prohibiting discrimination in employment, including but not limited to, Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973 and Mass. G. L. c. 151B, and any other executive orders, rules, regulations, requirements and policies relating thereto enacted by the Commonwealth of Massachusetts and the Town as they may be amended from time to time. Contractor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap or sexual orientation.

15.1 As used in this section “affirmative action” means positive steps to ensure all qualified persons equal employment opportunity without regard to race, color, religion, sex or national origin at all stages of the employment process: recruitment, selection, placement, promotion, training, layoff and termination. It may include, but is not limited to, the following:

- (a) Inclusion in all solicitation and advertisements for employees of a statement that the Contractor is an “Equal Opportunity Employer”;
- (b) Placement of solicitations and advertisements for employees in media that reaches minority groups;
- (c) Notification in writing of all recruitment sources that the Contractor solicits the referral of applicants without regard to race, color, religion, sex or national origin;
- (d) Direct solicitation of the support of responsible and appropriate community, state and federal agencies to assist recruitment efforts;
- (e) Participation in, or establishment of, apprenticeship or training programs where outside programs are inadequate or unavailable to minority groups;
- (f) Modification of collective bargaining agreements to eliminate restrictive barriers established by dual lines of seniority, dual rates of pay or dual lines of promotion or progression which are based on race, color, religion, sex or national origin; and
- (g) Review selection, placement, promotion, training, layoff and termination procedures and requirements to ensure that they do not intentionally or unintentionally discriminate against qualified persons because of race, color, religion, sex or national origin.

- 15.2 The Contractor, if applicable, shall include in all compliance and progress reports submitted to the town a report which shall include: (a) A certificate stating that he or she is currently in compliance with the provisions of G.L. c. 152B and setting forth the Affirmative Action he or she is currently undertaking and will undertake during the contract period to provide equal employment opportunity for all qualified persons without regard to race, color, religion, sex or national origin; and (b) A statement in writing supporting information signed by an authorized officer or agent on behalf of any labor union or other agency which refers workers or provides or supervises apprenticeship or other training programs which the Contractor deals, to the effect that the union or other agency's practices and policies do not discriminate on the basis of race, color, religion, sex or national origin; provided, in the event that the union or other agency shall refuse to execute such a statement, the Contractor need only so certify in writing.
- 15.3 A copy of any such report as described above, shall be filed in the office of the Town Clerk and shall upon said filing become a public record.
- 15.4 The Contractor will take Affirmative Action to ensure that employees are solicited and employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin.
- 15.5 The Contractor will in all solicitation or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.
- 15.6 In determining whether steps taken by the Contractor constitute Affirmative Action, the Town shall take into account the relevant characteristics of the Contractor including, but not limited to, the number of employees and the location of the principal and branch offices.

16. Assignment:

The Contractor shall not assign, sublet or otherwise transfer this Contract, in whole or in part, without the prior written consent of the Town, and shall not assign any of the moneys payable under this Contract, except by and with the written consent of the Town.

17. Condition of Enforceability Against the Town:

This Contract is only binding upon, and enforceable against, the Town if: the Contract is signed by the Town Administrator or a majority of the Select Board if \$250,000 or over; and (2) endorsed with approval by the Town Accountant as to appropriation or availability of funds; and (3) endorsed with approval by the Town Counsel as to form.

18. Corporate Contractor:

If the Contractor is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate certifying the corporate capacity and authority of the party signing this Contract for the corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the Contract is executed by the Contractor. This Contract shall not be enforceable against the Town of South Hadley unless and until the Contractor complies with this section.

The Contractor, if a foreign corporation, shall file with the Commissioner of Corporations a Power of Attorney and duly authenticated copies of its Charter or Certificate of Incorporation; and said Contractor shall comply with all the laws of the Commonwealth of Massachusetts.

19. Contractor's Personnel:

The Contractor shall utilize only its employees and shall not utilize any third-party contractors without prior written approval of the Town.

20. Liability of Public Officials:

To the full extent permitted by law, no official, employee, agent or representative of the Town of South Hadley shall be individually or personally liable on any obligation of the Town under this Contract.

21. Indemnification:

The Contractor hereby agrees to indemnify, defend and save harmless the Town, the Town's officers, agents and employees, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including attorneys' fees) that may arise in whole or in part out of or in connection with the work being performed or to be performed, or out of any act or omission by the Contractor, its employees, agents, subcontractors, material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder. The Contractor hereby agrees to reimburse the Town for damage to its property caused by the Contractor, its employees, agents, subcontractors or material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including damages caused by his, its or their use of faulty, defective, or unsuitable material or equipment, unless the damage is caused by the Town's gross negligence or willful misconduct.

- 21.1 The Contractor hereby agrees to indemnify and hold harmless the Town, including the agents, employees and representatives of either, from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
- 21.2 The Contractor shall be responsible for all damage or injury to property of any character during the prosecution of the work resulting from any act, omission, neglect, or misconduct in the manner or method of executing the work or due to the non-execution of the work or at any time due to defective work or materials.
- 21.3 In any and all claims against the town or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in anyway by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's Compensation Acts, disability benefit acts or other employee benefit acts.

21.4 The Contractor hereby assumes the entire responsibility and liability for any and all injury to or death of any or all persons, including the Contractor's employees, and for any and all damage to property caused by, resulting from or arising in whole or in part out of any act, omission, or neglect on the part of the Contractor or of any Subcontractor or of anyone directly or indirectly employed by any of them, or of anyone for whose acts any of them may be liable in connection with operations under the Contract.

21.5 The Town agrees to make reasonable effort to notify the Contractor of any duty arising out of this paragraph, but failure to make timely notice will not relieve the Contractor of any duty under this paragraph.

The foregoing provisions shall not be deemed to be released, waived, limit or modified in any respect by reason of any surety or insurance provided by the Contractor under the Contract.

22. Insurance

22.1 Workers Compensation 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 a material breach of this Contract, shall operate as an immediate termination thereof, and Contractor hereby agrees to indemnify the Town for all losses, claims, and actions resulting from the failure to provide the insurance required by this Article. The Town agrees to make reasonable effort to notify the Contractor of any duty arising out of this paragraph, but failure to make timely notice will not relieve the Contractor of any duty under this paragraph.

The Contractor shall furnish to the Town a certificate evidencing such insurance prior to the execution of this Contract before the same shall be binding on the parties thereto, except if specifically waived by the Town.

22.2 Professional Liability Insurance

Liability of \$1 million per claim and \$3 million aggregate.

Failure to provide and continue in force such insurance during the period of this Contract shall be a material breach of this Contract, shall operate as an immediate termination thereof, and Contractor hereby agrees to indemnify the Town for all losses, claims, and actions resulting from the failure to provide the insurance required by this Article. The Town agrees to make reasonable effort to notify the Contractor of any duty arising out of this paragraph, but failure to make timely notice will not relieve the Contractor of any duty under this paragraph.

22.3 Other Insurance Requirements

- a. Comprehensive commercial general liability insurance with limits of at least \$1 Million per occurrence and \$3 Million annual aggregate for property damage and \$1 Million per person and \$3 Million per occurrence for bodily injury, which shall include the Town of South Hadley as an additional insured, and which shall cover bodily injury, sickness or disease, or death of any person including employees and those persons other than the Contractor's employees, and claims insured by usual personal liability coverage, death, or property damage arising out of the Work including injury or destruction of tangible property, including loss of use resulting therefrom.
- b. Motor vehicle insurance for any motor vehicles used in performing the Work, with limits of at least \$500,000 per person, and \$1 Million per accident.
- c. The intent of the Specifications regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor's responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and the Town from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the work, including and not limited to Professional liability insurance where applicable.
- d. All policies shall identify the Town as an additional insured (except Workers' Compensation and Professional Liability). The Contractor shall notify the Town immediately upon the cancellation or amendment to any policy. Renewal Certificates shall be filed with the Town at least ten (10) days prior to the expiration of the required policies. Certificates evidencing all such coverage shall be provided to the Town upon the execution of this Contract, and upon the renewal of any such coverage. Each such certificate shall specifically refer to this Contract and shall state that such insurance is as required by this Contract. **Failure to provide the notices required in this Section or to continue in force such insurance shall be a material breach of this Contract and shall be grounds for immediate termination.** Said insurance shall include: Workers Compensation/Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent Contractors, personal injury, contractual liability. All Certificates of Insurance shall be on the "MIIA" or "ACORD" Certificate of Insurance form, shall contain true transcripts from the policies, authenticated by the proper officer of the Insurer, evidencing in particular those insured, the extent of coverage, the location and operations to which the insurance applies, the expiration date and the above-mentioned notice clauses. All insurance shall be written on an occurrence basis. Coverage shall be maintained without interruption from date of the Contract until date of final payment and termination of any coverage required to be maintained after payment.
- e. The Contractor shall obtain and maintain during the term of this Contract the insurance coverage in companies licensed to do business in the Commonwealth of Massachusetts and acceptable to the Town.

23. Documents, Materials, Etc.

Any materials, reports, information, data, etc. given to or prepared or assembled by the Contractor under this Contract are to be kept confidential and shall not be made available to any individual or organization by the Contractor (except agents, servants, or employees of the Contractor) without the prior written approval of the Town, except as otherwise required by law. 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 others to use, in whole or in part, any reports, data or other materials prepared under this Contract.

All data, reports, programs, software, equipment, furnishings, and any other documentation or product paid for by the Town shall vest in the Town 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 issuing any material for publication through any medium.

24. No Employment

The Contractor acknowledges and agrees that it is acting as an independent Contractor for all services rendered pursuant to this Contract, and neither the Contractor, nor its employees, agents, servants nor any person for whose conduct the Contractor is responsible shall be considered an employee or agent of the Town for any purpose and shall not file any claim or bring any action for any worker's compensation unemployment benefits and compensation for which they may otherwise be eligible as a Town employee as a result of work performed pursuant to the terms of this Contract.

25. Audit, Inspection and Recordkeeping

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

26. 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 detailing the work completed and acceptance from the Town of the work completed.

27. Waiver and Amendment

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

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

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

28. Severability

BOTH CERTIFICATIONS ON THIS PAGE MUST BE EXECUTED

CERTIFICATION OF GOOD FAITH

The undersigned certifies under pains and penalties of perjury that this contract has been obtained 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 Contractor by:

Print Name

Title/Authority

CERTIFICATE OF STATE TAX COMPLIANCE

Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A

_____, authorized signatory for
name of signatory

_____, whose
name of contractor

principal place of business is at _____,

_____ does hereby certify under the pains and penalties of perjury that
_____ has paid all

name of contractor

Massachusetts taxes and has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature

Date

Name

Federal Tax ID # or Social Security #

BOTH CERTIFICATIONS ON THIS PAGE MUST BE EXECUTED

EXAMPLE CLERK'S CERTIFICATE

Action of Shareholders
Written Consent

(Date)

The undersigned, being the Shareholders of _____, a Massachusetts Corporation (the "Corporation") entitled to vote on the action, hereby consent to the adoption of the following votes:

VOTED: That the [President and/or the Vice President or named individual], each of them acting singly is, authorized to execute any and all Contract Documents and to enter into and negotiate the terms of all contracts and to accomplish same and to execute any and all documents, instruments, and agreements in order to effectuate the transaction and that said transaction shall be valid, binding, effective, and legally enforceable.

VOTED: That the officers are, and each of them acting singly is, authorized, from time to time, in the name and on behalf of the Corporation to take or cause to be taken all such action(s) as s/he or they, as the case may be, deem necessary, appropriate or advisable to effect the foregoing votes, as may be shown by the officer or officers execution or performance which shall be conclusive evidence that the same is authorized by the directors of this Corporation.

VOTED: That the officers are, and each of them acting singly is, authorized, from time to time, in the name and on behalf of this Corporation, under its corporate seal, if desired, attested by an appropriate officer, if desired, to execute, make oath to, acknowledge, deliver and file any and all of the agreements, instruments, certificates and documents referred to or related to the foregoing votes.

VOTED: That the officers are, and each of them acting singly is, authorized, from time to time and on behalf of this Corporation, under its corporate seal, if desired, to execute, acknowledge and deliver any and all agreements, instruments, certificates and documents referred to or related to the foregoing votes, with such changes as the officer or officers so acting may deem necessary or desirable, and the signature of such officer or officers to be conclusive evidence that the same is authorized by the directors of this Corporation.

Clerk of Corporation Certificate

I, _____ the Clerk of the foregoing corporation, do hereby certify that the above vote was taken at a duly called meeting of the shareholders of the Corporation on _____, 20__.

Clerk of Corporation

SEAL

CONTRACT CHECKLIST
FOR TOWN'S INTERNAL USE ONLY. DO NOT ATTACH TO EXECUTED CONTRACTS

- | | Initials |
|--|----------|
| 1. Certification of Signatures | _____ |
| • For Corporation: need President's signature or Clerk's Certificate dated no more than 2 years ago With Corporate Seal affixed (see above form) | |
| • For LLC: need Manager signature or signed vote of the LLC | |
| 2. Certificate of Non-collusion | _____ |
| 3. Insurance Certificate
(showing Town as additional insured) | _____ |
| • Matches amount of insurance required under contract | |
| 4. Certificate of Good Faith | _____ |
| 5. Certificate of Tax Compliance | _____ |
| 6. Signed by Contractor | _____ |
| • Matches certification by Corp officer of authority. | |
| 7. Certificate of Good Standing for Corporation or Certificate of Legal Existence for LLC both from the Secretary of State | _____ |

Contract Reviewed by: _____
Signature

Name, Title

FOR TOWN'S INTERNAL USE ONLY. DO NOT ATTACH TO EXECUTED CONTRACTS

SUPPLEMENT “C”

[] CONSTRUCTION

SUPPLEMENT “C” - Applicable to Contracts for the construction of:

(1) Public Buildings and Public Works

(governed by the provisions of General Laws Chapter 30B);

(2) Public Buildings

(governed by the provisions of General Laws Chapter 149, § 44A, et seq.); and

(3) Public Works

(governed by the provisions of General Laws Chapter 30, §39M, et seq)

1. This form supplements the Town of South Hadley “Contract and General Conditions” and applies only to contracts for the construction, reconstruction, alteration, remodeling or repair of public works or public buildings.
2. Wherever the law requires one contracting with a city or town to be bonded, such obligation shall be understood to be a term and condition of this Contract. The Contractor agrees to secure such bonds (where required) in the form required by the Town and provide an original thereof to the Town prior to the commencement of performance.
3. Equality:
 - 3.1. In the case of a closed Specification written for a specific item or items to be furnished under the Base Bid, such specifications shall, as applicable, be in compliance with the Massachusetts General Laws, Chapter 30, Section 39M and Chapter 149, Sec. 44A et seq.
 - 3.2. Where the name of an item, material or manufacturer is mentioned in the Specifications or on the Drawings, except as above noted, the intent is to establish a standard and in no way should be construed to exclude any item or manufacturer not mentioned by name, but whose product meets the Specifications as to design, utility and quality. Final decision shall rest solely with the Town’s Project Representative (herein after “Project Representative”) as to its acceptability.
4. Change Orders:
 - 4.1. Change orders must receive the approval of the Town Administrator and the appropriate Department or Division Head and must be supported by the project engineers and architects, if any.
 - 4.2. Change orders to contracts governed by General Laws Chapter 30B may not increase the quantity of goods or services provided by more than twenty-five (25%) per cent, in compliance with Sec. 13 of Chapter 30B.

5. The Contractor will carry out the obligations of this contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151, Sec. 1, et seq. (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor will at all times comply with the wage rates as determined by the Commissioner of the Department of Labor and Industries, under the provisions of General Laws Chapter 149, Sections 26 and 27D (Prevailing Wage), as shall be in force and as amended.
6. The Contractor shall continuously maintain adequate protection of all work from damage and shall protect the property of the Town and others, including adjacent property, from injury or loss arising in connection with the Contract. The Contractor shall make good any such damage, injury or loss, except as may be directly due to errors in the Contract Documents or caused by agents or employees of the Town, or due to causes beyond the Contractor's control and not the Contractor's fault or negligence.
7. The Contractor shall take all necessary precautions for the safety of employees on the work, and shall comply with all applicable provisions of Federal, State and local laws and codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed. The Contractor will erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of workers and the public, shall post danger signs warning against the hazards created by such features of construction such as pits, protruding nails, hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials; and shall designate a responsible member of its organization on the work, whose duty shall be the prevention of accidents.
8. The Town shall at all times have access to the work wherever it is in preparation or progress and the Contractor shall provide suitable accommodations for such access.
9. The Contractor shall appoint a competent superintendent and foreman and any necessary assistants, all of whom shall be satisfactory to the Town. If the Town in its sole discretion determines that the construction superintendent, foreman, or assistants are unacceptable to the Town, then upon seven days' notice from the Town, the Contractor shall replace such person or persons with people acceptable to the Town.
10. The Contractor shall give efficient supervision to the work, using its best skill and attention. The Contractor shall carefully study and compare the drawings, specifications and other instructions and shall at once report to the Town any error, inconsistency or omission which shall be discovered. Included in this responsibility shall be supervision of all work performed by subcontractors on the work.
11. Notwithstanding any other provision of this Contract to the contrary, if the Contractor should neglect to prosecute the work properly, or fail to perform the contract or any of its provisions, the Town, upon three days' written notice, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor.
12. Inspection by the Town's Project Representative

- 12.1. The Town shall have the right to designate a Project Representative who may make periodic visits to the site to familiarize the Town generally with the progress and quality of the work, and to determine in general if the work is proceeding in accordance with the Contract Documents. The Project Representative will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and will not be responsible for the Contractor's failure to carry out the construction work in accordance with the Contract Documents. During such visits and on the basis of these observations while at the site, the Project Representative will keep the Town informed on the progress of the work, will endeavor to guard the Town against defects and deficiencies in the work of contractors, and may condemn structural work as failing to conform to the Contract Documents. The Project Representative shall have authority to act on behalf of the Town only to the extent expressly delegated by the Town, which shall be shown to the Contractor, and shall have authority to stop the work whenever such stoppage may reasonably be necessary to insure the proper execution of the Contract.
- 12.2. In connection with the work, the Project Representative shall not be responsible for construction methods, means, techniques, sequences or procedures employed by the Contractor or the Contractor's safety programs, requirements, regulations, or precautions.

13. Decisions of the Project Representative

- 13.1. The Project Representative shall, within a reasonable time, make decisions on all claims of the Town or the Contractor and on all other matters relating to the execution and progress of the structural work or the interpretation of the Contract Documents.
- 13.2. The Project Representative's decision, in matters relating to the project, shall be final, if within the terms of the Contract Documents.
- 13.3. If, however, the Project Representative fails to render a decision within ten days after the parties have presented their evidence, either party may then avail itself of the remedies provided in this Contract or available to it by law. If the Project Representative renders a decision after such remedies have commenced, such decision may be entered as evidence but shall not disturb or interrupt such proceedings except where such decision is acceptable to the parties concerned.

14.1 Use of Premises by the Contractor:

- 14.1. The Contractor shall confine its apparatus, the storage of materials and the operations of its workmen to limits indicated by law, by-laws, permits or directions of the Town and shall not unreasonably encumber the premises with its materials.
- 14.2. The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger its safety.

15. Maintenance of Premises:

The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by its employees or work, and at the completion of the work it shall remove all its rubbish from and about the work site and all its tools, scaffolding and surplus materials and shall

leave its work “broom-clean”, or its equivalent, unless more exactly specified. In case of dispute, the Town may remove the rubbish and charge the cost to the several contractors, as the Town shall determine to be just.

16. Right to Terminate

16.1 In addition to any other remedies herein provided and notwithstanding any other provisions hereof to the contrary, if the Contractor should (1) be adjudged a bankrupt, (2) make a general assignment for the benefit of creditors, (3) have a receiver appointed on account of its insolvency, (4) persistently or repeatedly refuse or fail to supply enough personnel and resources to perform the contract, (5) fail to make prompt payment to subcontractors or to providers of materials or labor, (6) persistently disregard laws and regulations or lawful directives of the Town, or (7) be guilty of a substantial violation of any provision of the Contract, then the Town may, without prejudice to any other right or remedy and after giving the Contractor (or any surety) seven (7) days’ written notice, terminate the contract and the employment of the Contractor and take possession of the premises and of all materials, tools and appliances thereon and finish the work by whatever method it deems appropriate.

16.2 In such cases, the Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid amount owed to the Contractor for work already completed shall exceed the expense of finishing the work, including compensation for additional architectural, managerial, legal and administrative services, such excess shall be paid to the Contractor. If such expenses shall exceed such unpaid balances, the Contractor shall pay the difference to the Town.

16.3 The Contractor shall not be relieved of liability to, or duty to indemnify, the Town by virtue of any termination of this Contract, and any claim for damages against the Contractor relating to the Contractor’s performance under this contract shall survive any termination hereunder.

Notwithstanding any other provision of this Contract, the Town reserves the right at any time in its absolute discretion to suspend or terminate this Contract in whole or in part for its convenience upon seven (7) days’ written notice to the Contractor. The Town shall incur no liability by reason of such termination except for the obligation to pay compensation for all work performed by the Contractor and accepted by the Town to the termination date.

17. Progress Payments:

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

- 17.2. The Contractor shall submit to the Town an itemized Application for Payment, supported to the extent required by the Town by invoices or other vouchers, showing payments for materials and labor, payments to Subcontractors and such other evidence of the Contractor's right to payment.
- 17.3 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:
- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included;
 - .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of 5 percent (5 %);
 - .3 Subtract the aggregate of previous payments made by the Town; and
 - .4 Subtract amounts, if any, for which the Town has withheld or nullified a Certificate for Payment as provided in Section 18, below.

18. Withholding of Payments

- 18.1. The Town may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary in its reasonable opinion to protect the Town of South Hadley from loss on account of:
- 18.1.1. Defective work not remedied.
 - 18.1.2. Claims filed or reasonable evidence indicating probable filing of claims.
 - 18.1.3. Failure of the Contractor to make payments properly to Subcontractors or for material or labor.
 - 18.1.4. A reasonable doubt that the Contract can be completed for the balance then unpaid.
 - 18.1.5. Damage to another contractor.
 - 18.1.6. Delays resulting in liquidated damages.
- 18.2. Withholding of payments shall be in strict compliance with statutory requirements.

19. Claims by Contractor and Liability of Town

- 19.1 All claims by the Contractor against the Town shall, unless otherwise provided by law, be initiated by a written claim submitted to the Town no later than seven (7) calendar days' after the event or the first appearance of the circumstances causing the claim. The claim shall set forth in detail all known facts and circumstances supporting the claim. The Contractor shall continue its performance under this contract regardless of the submission or existence of any claims.
- 19.2 The limit of liability of the Town under this Contract is limited to the compensation provided herein for work actually performed, and shall in no event include liability for delays or for incidental, special or consequential damages or lost profits or for damages or loss from causes beyond the Town's reasonable control.

20. Damages for Delay:

The Contractor shall have no claims for any damages, costs, or expenses of any kind or nature, for any suspension, delay, interruption, frustration, obstruction, hindrance, interference, compression or acceleration of the work on the part of the Town, architect, or any of their consultants in performing or furnishing any work, or resulting from problems or deficiencies with materials, information, or documentation and/or decisions in connection with the execution of the work. Except as otherwise provided by applicable law, the Contractor's sole remedy for such delay shall be for a claim for an extension of time to the time for contract performance.

21. Liquidated Damages:

Because both parties recognize (1) that the time for completion of this Contract is of the essence, (2) that the Town will suffer loss if the work is not completed within the contract time specified, plus any extension thereof allowed in accordance with the provisions of this contract, and (3) the delays, expense and difficulties involved in a legal proceeding to determine the actual loss suffered by the Town if the work is not completed in time, it is agreed that the Contractor will pay the Town as liquidated damages representing an estimate of delay damages to which the Contractor agrees by entering into this Contract, not as a penalty, the sum of One Thousand Dollars (\$1,000) per day for each calendar day of delay until the work is completed, whether the work is completed by the Contractor or some other person. The Town's right to impose liquidated damages shall in no way prohibit or restrict the Town's right to bring a legal action for damages in lieu of or in addition to its option to impose liquidated damages. The Town may deduct any liquidated damages from money due the Contractor, and if such payment is insufficient to cover the liquidated damages, then the Contractor shall pay the amount due.

22. The Contractors' Mutual Responsibility:

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

23. Separate Contracts:

- 23.1. The Town reserves the right to let other Contracts in connection with this work under similar General Conditions. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate its work with theirs.
- 23.2. If any part of the Contractor's work depends, for proper execution or results, upon the work of any other contractor, the Contractor shall inspect and promptly report to the Town any defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of its work except as to defects which may develop in the other contractor's work after the execution of its work.
- 23.3. To ensure the proper execution of its subsequent work, the Contractor shall measure work already in place and shall at once report to the Town any discrepancy between the executed work and the Drawings.

24. Subcontracts:

- 24.1. All Subcontracts shall be awarded in conformity with the requirements of the General Laws, Commonwealth of Massachusetts, Chapter 149, Sections 44A to 44L, inclusive.
- 24.2. The Contractor agrees that it is as fully responsible to the Town for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.
- 24.3. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and the Town.

25. Contractor-Subcontractor Relations:

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

26. The Contractor's Insurance:

Notwithstanding any other provisions of this Contract to the Contrary and in addition to any requirements set forth in the Contract, the Contractor shall provide and maintain the following insurance:

- 26.1. The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable.

26.2 Liability Insurance Requirements

In addition to the liability insurance requirements set forth in the Contract, the liability insurance shall include all major divisions and shall be on a comprehensive general basis including Premises and Operations, Owners and Contractor's Protective, Products and Completed Operations, and Owned, Non-owned and Hired Motor Vehicles. All such insurance shall be written for not less than any limits of liability required by law, unless otherwise provided in the Contract Documents. The Contractor's insurance shall include:

Excess Liability (Umbrella) \$3,000,000

Excess Liability (Umbrella) Insurance (Subcontractors) \$1,000,000 or 1.5 times the value of the subcontract, whichever is higher.

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

25.3.1. Insurance coverage for the Contractor's Comprehensive General Liability, as hereinafter specified under Paragraph entitled "Protective Liability Insurance" shall be written by one and the same insurance company to avoid the expense of duplicate and/or overlapping coverage and to facilitate and expedite the settlement of claims.

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

27. Protective Liability Insurance:

27.1. The Contractor shall purchase and maintain such insurance as described in the preceding paragraph as will protect the Town from claims which may arise from operations under the Contract, including operations performed for the named insureds by independent contractors and general inspection thereof by the named insureds.

27.2. The Contractor shall also purchase and maintain such insurance as will protect the Town against Automobile Non-Ownership Liability in connection with the Contractor's operations under the Contract, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

27.3. The limits of liability for coverage required under the Contract shall be as specified within the Contract Documents.

27.4. The Town shall be named as an additional insured on the above referenced liability Policies, and the Contractor's insurance shall be the primary coverage. The cost of such insurance, including required endorsements and amendments, shall be the sole responsibility of the Contractor.

28. Liens:

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

29. Guarantees:

- 29.1 The Contractor guarantees and warrants to the Town that all labor furnished under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality, new, and of recent manufacture unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.
- 29.2. If at any time any part of the work constructed under the terms of this contract shall in the opinion of the Town Administrator require repairing due to defective work or materials furnished by the Contractor, he may notify the Contractor in writing to make the required repairs. If the Contractor shall neglect to start such repairs within ten days of the date of giving it notice thereof and to complete the same to the satisfaction of the Town Administrator with reasonable dispatch, then the latter may employ other persons to make such repairs. The Town shall charge the expense thereof to the Contractor and may use any moneys still retained to pay for the same, and if such sum is insufficient, the Contractor shall be obligated to pay the balance thereof.
- 29.3. All guarantees and warranties required in the various Sections of the Specifications which originate with a Subcontractor or Manufacturer must be delivered to the Town before final payment to the Contractor may be made for the amount of that subtrade or for the phase of work to which the guarantee or warranty relates. The failure to deliver a required guarantee or warranty shall be held to constitute a failure of the Subcontractor to fully complete his work in accordance with the Contract Documents. The Contractor's obligation to correct work is in addition to, and not in substitution of, such guarantees or warranties as may be required in the various Sections of the Specifications.

Jeff Cyr, Chair
Andrea Miles, Vice-Chair
Renee Sweeney, Clerk
Carol Constant

Lisa Wong
Town Administrator

Town Administrator's Report to Selectboard October 4, 2022

Administration, Finance and Operations

- The Library submitted a MA Cultural Council recovery relief grant to offset \$6,415.97 in Covid-related expenditures from FY20-FY21. The exact amount to be awarded will be based on the applicant pool. There are other Cultural Council grant programs the town is seeking to submit applications for including a Festivals and Projects grant to support the Spring festival.
- Best of luck to Building Commissioner David Garner, whose last day with the town is October 4. We wish him well in his future endeavors.
- Welcome to the new Assistant Town Clerk Zoe Ingram, who will be starting with the Town on October 3. She has great municipal experience and we look forward to her joining our team!

Community Highlights

- The Dog Park is still closed for the construction project to address erosion issues. The Friends of Group will provide updates on their website: www.southhadleymadogpark.org
- The town has been receiving calls about noise and vibration related to the Eversource project. The project has been temporarily suspended while Eversource investigates the vibration issue.
- State Treasurer Deb Goldberg has appointed Lisa Wong as the chair of the Baby Bonds Task Force, which is developing an at-birth publicly funded trust fund program for Massachusetts residents that provides financial opportunities. Baby Bonds aim to close the racial wealth gap and ensure economic security for many low-income families. Visit www.mass.gov/babybonds to learn more.

Public Health

- The new public health nurse started on September 28th. Welcome Maureen Couture!
- The KEVS Foundation selected South Hadley as the recipient of two AEDs. The foundation's mission is to provide free youth heart screenings and public access to defibrillators. According to the Foundation, "Most youth who suffer SCA have an undetected heart condition". The Town will work with the foundation to find the best locations for the AEDs. Find out more at <http://kevsfoundation.com>

Public Works

- In 2010, a proposal to install a signal system for the fire station access/egress on Newton Street (Route 116) under MassDOT South Hadley Construction Contract 116951 Resurfacing and Related Work on Newton Street (Route 116) was submitted. Recently, the Fire District One personnel determined that the placement of the system foundations would be restrictive to the use of the station with the current equipment which includes apparatus which is larger than what had been previously assigned to that station in 2010 when the request for the signal system was originally made. Additionally, since access and egress has not been a problem for equipment at that station when vehicular emergency lights are running, the Fire District One personnel concluded that they prefer to not have the signal system installed.