



TOWN OF NATICK
Massachusetts 01760
www.natickma.gov

Bryan R. Le Blanc
Procurement Officer

VIA REGULAR MAIL

March 26, 2020

Mr. Richard M. Pacella, President
R.M. Pacella, Inc.
3 Madison Street
Plainville, MA 02762

RE: RECONSTRUCTION OF SOUTH MAIN STREET/TOWN OF NATICK

Dear Mr. Pacella:

Please find enclosed a fully-executed form of contract.

The Town appreciates your professionalism throughout the procurement process. Please let me know if you have any questions.

Very truly yours,


Bryan R. Le Blanc

SECTION 00500

CONTRACT AGREEMENT

THIS AGREEMENT, hereinafter "Agreement" or "Contract," made this Twenty seventh day of December in the year 20 20, by and between the Town of Natick, Massachusetts located at the Natick Town Hall 13 East Central Street, Natick, MA 01760 (hereinafter called OWNER), by its Board of Selectmen, and

R.M. Picella, INC., 3 Madison St. Plymouth, MA 02762 doing business as a (Corporation, Partnership or Individual) hereinafter called "CONTRACTOR."

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, OWNER and CONTRACTOR hereby agree as follows:

ARTICLE 1. WORK

1.1. CONTRACTOR shall commence the Work as specified or indicated in the Contract Documents as defined in Article 8 herein. (Main + Add Alt. 1)

1.2. The scope of work includes, but is not limited to, full depth pavement reclamation, pavement milling and resurfacing, box widening, installation of granite curb, installation of new HMA berm, construction of hot mix asphalt sidewalks and cement concrete wheelchair ramps with detectable warning panels, driveway construction, construction of drainage improvements, grading, implementation of erosion prevention and sediment control, construction of retaining walls, landscaping, installation of signs, placement of pavement markings, furnishing and installing rectangular rapid flashing beacons, furnishing and installing a LED stop signs and the implementation of safety controls and signing for construction operations and other incidental items included in the contract documents.

1.3. CONTRACTOR shall furnish all materials, supplies, tools, equipment, labor, and other services necessary for the construction and completion of the Project described herein.

ARTICLE 2. ENGINEER

2.1. The Project has been designed by Green International Affiliates, Inc., who is herein called ENGINEER, and who shall act as OWNER'S representative, who shall assume all duties and responsibilities, and who shall have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

11/27/2019

00500-1

Agreement

3.1. CONTRACTOR shall commence work when authorization by the OWNER or ENGINEER with the provisions of the Notice to Proceed and Contract Documents is received. The work shall be completed on or before the following milestone dates:

- 1) On or before **four hundred ninety-five (495) consecutive calendar days** after the start date to be indicated on the Notice to Proceed
- a. Completion and acceptance of all work for the project.

Therefore the date all work shall be completed is on or before _____, 2020.

*(to be completed by
upon issuance
of a
Notice
to Proceed)*

3.2. Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement. They also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER **one thousand eight hundred (\$1,800.00)** for each day that expires after each time limit specified in paragraph 3.1 of this section for completion and readiness for final payment.

ARTICLE 4. CONTRACT PRICE

4.1. In consideration for performance of the work as required by the Contract Documents, the OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contractor's Bid, as incorporated into the Contract Documents and as permitted by law.

ARTICLE 5. PAYMENT PROCEDURES

5.1. CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions, as modified, if applicable, by the Supplementary Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.2. Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR'S Applications for Payment as recommended by ENGINEER in accordance with MGL Chapter 30 Section 39G and as provided in Article 14 of the General Conditions, as modified, if applicable, by the Supplementary Conditions. Retainage with respect to any progress payments will be five percent (5%) or, if stipulated, the maximum allowed by Massachusetts General Laws. ENGINEER shall establish with the CONTRACTOR an acceptable format for submittal and for the processing of progress payments, prior to the first such request as will be submitted by the CONTRACTOR.

5.3. Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, as modified, if applicable, by the Supplementary Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13.

TOWN OF INDIAN
ARTICLE 6. TERMS

6.1. Terms used in this Agreement, which are defined in Article 1 of the General Conditions, as modified, if applicable, by the Supplementary Conditions, will have the meanings indicated in the General Conditions, as modified, if applicable, by the Supplementary Conditions.

ARTICLE 7. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

7.1. CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

7.2. CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.2 of the General Conditions, and accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to rely.

7.3. CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the General Conditions, as modified, if applicable, by the Supplementary Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

7.4. CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3 of the General Conditions, as modified, if applicable, by the Supplementary Conditions.

7.5. CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

11/27/2019

00500-3

Agreement

7.6. CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

ARTICLE 8. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1 Invitation for Bids
- 8.2 Instructions to Bidders
- 8.3 Contractor's Bid
- 8.4 This Agreement ("Agreement")
- 8.5 Exhibits to this Agreement
- 8.6 General Conditions
- 8.7 Supplementary Conditions
- 8.8 Contractor's Performance and Payment Bonds, and insurance certificates
- 8.9 Notice of Award
- 8.10 Notice to Proceed
- 8.11 Specifications consisting, as listed in table of contents
- 8.12 Construction Drawings totaling 176 Sheets and dated 11/27/2019
- 8.13 Addenda numbers 1 to 2 inclusive.
- 8.14 Change Order

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.4 and 3.5 of the General Conditions.

TOWN OF NATICK

ARTICLE 9. INDEMNIFICATION

To the fullest extent permitted by law, the CONTRACTOR shall indemnify, defend, and hold harmless the Town of Natick and all of its officers, employees, boards, commissions, committees, agents and representatives and the ENGINEER from and against all claims, causes of action, suits, costs, damages, and liability of any kind which arise out of the breach by the CONTRACTOR of its obligations under this Contract, or the act or omission of the CONTRACTOR, its Subcontractors, or their officers, employees, agents and representatives or anyone directly or indirectly employed by them, or anyone for whose acts or omissions they may be liable, regarding the work to be performed by the CONTRACTOR under the Contract, or which arise out of the violation of any Federal, Massachusetts or Town of Natick statute, by-law, rule, regulation, order or directive, or which relate to personal injury or property damage suffered by the CONTRACTOR or any of its officers or employees regarding the subject matter of the Contract.

ARTICLE 10: INSURANCE

10.1. The CONTRACTOR shall provide insurance that satisfies the categories and amounts specified in Article 5 of the General Conditions, as modified by Article 5 of the Supplementary Conditions.

10.2. Each certificate and policy of insurance required by this Agreement shall contain a cancellation provision as indicated below with no variations.

"Should any of the above described policies be canceled or materially amended before the expiration date thereof, the issuing insurer will mail within thirty (30) days written notice to the certificate holder named to the left".

10.3. The Town of Natick and ENGINEER shall be named as an additional insured on each policy of insurance required by this agreement other than worker's compensation.

ARTICLE 11: MISCELLANEOUS PROVISIONS

11.1. No assignment by CONTRACTOR of any rights under or interests in the Contract Documents will be binding on OWNER without the written consent of OWNER; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent, and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the CONTRACTOR from any duty or responsibility under the Contract Documents.

11.2. This Agreement shall be binding upon the OWNER and CONTRACTOR, their respective heirs, executors, administrators, successors, or assigns and legal representative to the other party hereto, its partners, heirs, executors, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

11.3. If any provision of this Agreement shall be determined to be invalid or unenforceable by final judgment of a court of competent jurisdiction, the remaining provisions shall continue in effect to the extent permitted by law.

11.4. This Agreement may be amended only by a written instrument signed by the parties.

11.5. This Agreement shall be governed by and construed in accordance with the Massachusetts law, without regard to choice of law principles.

11.6. The CONTRACTOR shall provide to the satisfaction of the OWNER, adequate supervision of all work performed under this Agreement.

11.7. This Agreement shall be subject to the Commonwealth of Massachusetts Equal Employment Opportunity Anti-Discrimination and Affirmative Action EEO/AA Program. The goal for Affirmative Action is five percent (5%) Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) workforce. The goal for the MBE and WBE Policy is a minimum of five percent (5%). The CONTRACTOR shall take all affirmative steps necessary to achieve these goals, and shall provide required reports.

11.8. The CONTRACTOR shall comply with all provisions of law applicable to his work including without limitation statutes, by-laws rules, regulations, orders and directives. This Contract shall be considered to include in their entirety all terms respecting workers' compensation insurance and other terms required to be included in it by Chapter 152 of the Massachusetts General Laws, as amended, and any other laws, as though such terms were set forth in their entirety herein. The CONTRACTOR shall comply with all applicable provisions of law and regulation as specified by the Williams-Steiger Occupational Safety and Health Act of 1970, as amended.

11.9. The CONTRACTOR has entered into this Contract in reliance on his own examinations and estimates as to the amount and character of his work, and conditions which may be encountered in the performance thereof, and shall assume all risks and bear all losses pertaining thereto.

11.10. The CONTRACTOR shall compensate the Town of Natick for all damages to the Town property of any nature arising out of the CONTRACTOR'S work.

11.11. The Town of Natick may defer payment to the CONTRACTOR of such sums otherwise due him under this Contract for such period of time as the Director of Public Works may deem required by law or expedient for protection of the Town or others against his noncompliance with the provisions thereof; and the Town may reimburse itself, by deduction from the money so retained, for all expense and loss resulting to it from his noncompliance.

11.12. No payment by the Town of Natick to the CONTRACTOR shall be deemed to be a waiver of any right of the Town of Natick under this Contract or ratification by the Town of Natick any breach hereof by him.

11.13. The CONTRACTOR shall provide services under this Agreement as an independent CONTRACTOR with the town of Natick and the CONTRACTOR and its employees shall not be entitled to receive any benefits of employment with the Town of Natick, including without limitation salary, overtime, vacation pay, holiday pay, health insurance, life insurance, pension or deferred compensation.

11.14. If any assignment shall be made by the CONTRACTOR or by any guarantor of the CONTRACTOR for the benefit of creditors, or if a petition is filed by the CONTRACTOR or by any guarantor of the CONTRACTOR for adjudication as a bankrupt, or for reorganization or an arrangement under any provision of the Bankruptcy Act as then in force and effect, or if an involuntary petition under any of the provisions of the Bankruptcy Act is filed against the CONTRACTOR and such involuntary petition is not discharged within ninety (90) days thereafter, in any event the Town may terminate this Contract upon written notice to the CONTRACTOR.

11.15. The award of this Contract and the continued operation of this Contract are subject to appropriation by Natick Town Meeting of sufficient money to fund the Contract.

11.16. The Owner may terminate this Contract upon written notice to the CONTRACTOR if a source of money to fund the Contract is lost during any year of the Contract term. In the alternative, the parties may agree in writing to amend the Contract to provide for a Contract price which represents the reduced appropriation for a contract year.

11.17. In the event of termination, the CONTRACTOR shall be entitled to be paid for services rendered in accordance with this Contract prior to termination.

11/27/2019

00500-7

Agreement

IN WITNESS WHEREOF, OWNER and CONTRACTOR have executed or caused to be executed by their duly authorized officials this Agreement in five (5) copies under seal, each of which shall be deemed as an original on the date first above written. One Counterpart each has been delivered to OWNER, CONTRACTOR, ENGINEER, Town Counsel and Town Accountant.

OWNER:

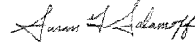
Town of Natick, Massachusetts

By _____

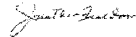
The Natick Board of Selectmen



Michael J. Hickey, Jr., Chairman



Susan G. Salamoff, Vice Chairman



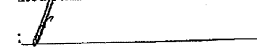
Jonathan H. Freedman, Clerk

Karen Adelman-Foster

Richard P. Jennett Jr.

Dated: 3/25/20

R. M. Pacella, Inc.
ated Name of CONTRACTOR



Signature

Dated: _____

[CORPORATE SEAL]

Attest

IN WITNESS WHEREOF, OWNER and CONTRACTOR have executed or caused to be executed by their duly authorized officials this Agreement in five (5) copies under seal, each of which shall be deemed as an original on the date first above written. One Counterpart each has been delivered to OWNER, CONTRACTOR, ENGINEER, Town Counsel and Town Accountant.

OWNER:

Town of Natick, Massachusetts

By _____

The Natick Board of Selectmen

Michael J. Hickey, Jr., Chairman

Susan G. Salamoff, Vice Chairman

Jonathan H. Freedman, Clerk

Karen Adelman-Foster

Richard P. Jennett Jr.

Dated: _____

CONTRACTOR:

R. M. Pacella, Inc.
Printed Name of CONTRACTOR

By: _____

Signature

Richard M. Pacella
Printed Name

President
Printed Title

Dated: February 11, 2020

R. M. Pacella, Inc.

[CORPORATE SEAL]

Signature

Richard M. Pacella, Jr., Clerk
Attest

Owner Address for giving notices:

Board of Selectmen
Natick Town Hall
13 East Central Street
Natick, MA 01760

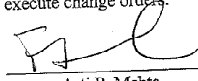
With copies to: Karis L. North, Esq.
Murphy, Hesse, Toomey and Lehane, LLP
300 Crown Colony Drive, Suite 410 P.O. Box 9126
Quincy, MA 02169-9126

Contractor Address for giving notices:

Richard M. Pacella Jr.
President
R.M. Pacella, Inc.
3 Madison Street
Plainville, MA 02762

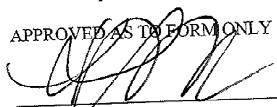
CERTIFICATE OF APPROPRIATION

In accordance with the requirements of M.G.L. Chapter 44, Section 31C, this is to certify that an appropriation in the amount of this CONTRACT is available therefor, and that the Natick Board of Selectmen is authorized to execute this CONTRACT and to approve all requisitions and execute change orders.


Arti P. Mehta
Comptroller, Town of Natick

Date

APPROVED AS TO FORM ONLY (AND NOT AS TO SUBSTANCE):


Karis L. North, Esq.

Date

3/16/20

11/27/2019

00500-9

Agreement

This page intentionally left blank

11/27/2019

00500-10

Agreement

