

**CITY OF NEWTON  
PURCHASING DEPARTMENT**

***CONTRACT FOR PARKS, RECREATION, OPEN SPACE & CULTURE  
(M. G. L. Ch. 30, Sec. 39M)***

**PROJECT MANUAL:  
NEWTON CENTRE PLAYGROUND  
RESURFACING IMPROVEMENTS  
*INVITATION FOR BID #22-84***

***Pre-Bid Meeting: May 12, 2022 at 11:00 a.m.***

***Bid Opening: MAY 19, 2022 12:00 p.m.***

**MAY 2022**

**Ruthanne Fuller, Mayor**

**CITY OF NEWTON**

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**NEWTON CENTRE PLAYGROUND RESURFACING IMPROVEMENTS**

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**END OF SECTION**

**CITY OF NEWTON  
PURCHASING DEPARTMENT  
INVITATION FOR BID #22-84**

The City of Newton invites sealed bids from Contractors for

**NEWTON CENTER PLAYGROUND RESURFACING IMPROVEMENTS**

**Pre-Bid Conference:** 11:00 a.m., Thursday, May 12, 2022, located at City Playground, 81 Tyler Terrace, Newton Centre MA 02459

**Bids will be received until:** 12:00 p.m., Thursday, May 19, 2022

at the Purchasing Department, Room 201, Newton City Hall, 1000 Commonwealth Avenue, Newton, MA 02459. Bids will not be accepted nor may submitted bids be corrected, modified or withdrawn after the deadline for bids. Immediately following the deadline for bids, all bids received within the time specified will be publicly opened and read aloud.

Contract Specifications will be available online at the City's website: [www.newtonma.gov/bids](http://www.newtonma.gov/bids). or for pickup at the Purchasing Department after: 10:00 a.m., May 5, 2022. There will be no charge for contract documents.

**Work under this contract is to remove the existing rubber surface material and install the poured in place rubber surface material at the Newton Center Playground and shall include** all labor, supervision, materials, and equipment described within this Project Manual, including the Special Provisions at pp. 29-34, below.. No other charges will be accepted. **All bids shall be submitted as one ORIGINAL and one COPY.**

Award will be made to the bidder with the lowest Total Contract Price that has been deemed qualified, responsible, and eligible.

All bids must be accompanied by a bid deposit in an amount that is not less than five percent (5%) of the amount of the bid, including all alternates. Bid deposits, payable to the City of Newton, shall be either in the form of a bid bond, or cash, or a certified check, or a treasurer's or cashier's check issued by a responsible bank or trust company. Bidders are reminded that the bid deposit covers the City for damages when a bidder withdraws its bid after the bid submission date. **Be advised that to the extent permitted by law the City will retain all bid deposits for withdrawn bids.**

All bids are subject to the provisions of M.G.L. Chapter 30, Section 39M. **Wages are subject** to minimum wage rates determined by the Massachusetts Department of Labor and Industries pursuant to M.G.L. Chapter 149, Sec. 26 to 27H. The schedule of wage rates applicable to this contract is included in the bidding documents. In addition, the prevailing wage schedule will be updated annually for all public construction projects lasting longer than one (1) year. **You will be required to pay the rates set out in any updated prevailing wage schedule. Increases in prevailing wage schedules will not be the basis for change order requests.** The successful bidder will be required to provide a Certificate of Insurance demonstrating current coverage of the type and amounts set forth in the Project Manual. The successful bidder will be required to furnish a **Labor and Materials Payment Bond** in the amount of **50%** of the contract total.

Addenda's will be available online as a separate file. If you download bids from the internet site and would like to make it known that your company has done so, you may email us a [purchasing@newtonma.gov](mailto:purchasing@newtonma.gov) or fax the Purchasing Department (617) 796-1227 with your NAME, ADDRESS, PHONE, FAX AND INVITATION FOR BID NUMBER.

Bidders attention is directed to the requirements of the City of Newton Supplemental Equal Employment Opportunity, Anti-Discrimination and Affirmative Action Program and also to the Minority/Women Business Enterprise Plan, December 1999, all of which are hereby incorporated into the Contract Documents. In the event of conflict between any of the above listed policies, the stricter policy shall apply.

The City will reject any and all bids in accordance with the above referenced General Laws. In addition, the City reserves the right to waive any informalities in any or all bids, or to reject any or all bids (in whole or in part) if it be in the public interest to do so.

CITY OF NEWTON



Nicholas Read

**CITY OF NEWTON**  
**DEPARTMENT OF PURCHASING**  
**INSTRUCTIONS TO BIDDERS**

**ARTICLE 1 - BIDDER'S REPRESENTATION**

- 1.1 Each General Bidder (hereinafter called the "Bidder") by making a bid (hereinafter called "bid") represents that:
1. The Bidder has read and understands the Contract Documents and the bid is made in accordance therewith.
  2. The Bidder has visited the work site and is familiar with the local conditions under which the work has to be performed.
- 1.2 Failure to so examine the Contract Documents or visit the work site will not relieve any Bidder from any obligation under the bid as submitted.

**ARTICLE 2 - REQUEST FOR INTERPRETATION**

- 2.1 Bidders shall promptly notify the City of any ambiguity, inconsistency, or error which they may discover upon examination of the Contract Documents, the site, and local conditions.
- 2.2 Bidders requiring clarification or interpretation of the Contract Documents shall make a written request to the *Chief Procurement Officer*, at [purchasing@newtonma.gov](mailto:purchasing@newtonma.gov) or via facsimile (617) 796-1227. The City will only answer such requests if received by **Friday, May 13th, 2022 at 12:00 noon**.
- 2.3 Interpretation, correction, or change in the Contract Documents will be made by addendum which will become part of the Contract Documents. The City will not be held accountable for any oral communication.
- 2.4 Addenda will be emailed to every individual or firm on record as having taken a set of Contract Documents.
- 2.5 Copies of addenda will be made available for inspection at the location listed in the Invitation for Bids where Contract Documents are on file, in addition to being available online at [www.newtonma.gov/bids](http://www.newtonma.gov/bids).
- 2.6 Bidders or proposers contacting ANY CITY EMPLOYEE regarding an Invitation for Bid (IFB) or a Request for Proposal (RFP), outside of the Purchasing Department, once an IFB or RFP has been released, may be disqualified from the procurement process.
- 2.7 Bidders downloading information off the internet website are solely responsible for obtaining any addenda prior to the bid opening. If the bidder makes itself known to the Purchasing Department, at [purchasing@newtonma.gov](mailto:purchasing@newtonma.gov) or via facsimile (617) 796-1227, it shall be placed on the bidder's list. Bidders must provide the Purchasing Department with their company's name, street address, city, state, zip, phone, fax, email address and **Invitation for Bid #22-84**.

**ARTICLE 3 - MBE PARTICIPATION**

- 3.1 Notice is hereby given that the Mayor's Affirmative Action Plan for the City of Newton in effect at the time of this solicitation is applicable to all construction contracts in excess of \$10,000.00.
- 3.2 Notice is hereby given that the City of Newton Minority/Women Business Enterprise Plan and the Supplemental Equal Employment Opportunity Anti-Discrimination and Affirmative Action Program in effect at the time of this solicitation are applicable to all City contracts for goods and services in excess of \$50,000.00.
- 3.3 Copies of the Plans and Program referred to in Sections 3.1 and 3.2 are available at:  
[www.newtonma.gov/purchasing](http://www.newtonma.gov/purchasing).

#### ARTICLE 4 - PREPARATION AND SUBMISSION OF BIDS

- 4.1 Bids shall be submitted on the "Bid Form #22-84," attached.
- 4.2 All entries on the Bid Form shall be made by typewriter or in ink.
- 4.3 Where so indicated on the Bid Form, sums shall be expressed in both words and figures. Where there is a discrepancy between the bid sum expressed in words and the bid sum expressed in figures, the words shall control.
- 4.4 Bid deposits shall be submitted in the amount specified in the IFB. They shall be made payable to the City and shall be either in the form of cash, certified check, treasurer's or cashier's check issued by a responsible bank or trust company, or a bid bond issued by a surety licensed to do business in the Commonwealth of Massachusetts; and shall be conditioned upon the faithful performance by the principal of the agreements contained in the bid.

Bid deposits of the three (3) lowest responsible, qualified, and eligible Bidders shall be retained until the execution and delivery of the Owner/Contractor agreement.

- 4.5 The Bid, including the bid deposit shall be enclosed in a sealed envelope with the following plainly marked on the outside:

- \* GENERAL BID FOR: **#22-84**

- \* NAME OF PROJECT: **Newton Centre Playground Resurfacing Improvements**

- \* BIDDER'S NAME, BUSINESS ADDRESS, AND PHONE NUMBER

- 4.6 Date and time for receipt of bids is set forth in the IFB.
- 4.7 Timely delivery of a bid at the location designated shall be the full responsibility of the Bidder.
- 4.8 Bids shall be submitted with one **original** and one **copy**.
- 4.9 Massachusetts law requires all employees who work on Massachusetts public works construction sites must have no less than 10 hours of OSHA-approved safety and health training. *See* M.G.L. c.30, §39M( c), M.G.L. c.30, §39S(a)(1), M.G.L. c.149, §44E(2) & M.G.L. c.149, §44F(2).
  - 1. This requirement will apply to any general bid or sub bid submitted.
  - 2. This law directs the Massachusetts Attorney General to restrain the award of construction contracts to any contractor who is in violation to this requirement and to restrain the performance of these contracts by non-complying contractors.
  - 3. The contractor and all subcontractors on this project must certify on the Bid Form compliance with the applicable requirement. Non-compliance with this law will disqualify the bidder.

#### ARTICLE 5 - ALTERNATES

- 5.1 Each Bidder shall acknowledge alternates (if any) in Section C on the Bid Form.
- 5.2 In the event an alternate does not involve a change in the amount of the base bid, the Bidder shall so indicated by writing "No Change", or "N/C" or "0" in the space provided for that alternate.
- 5.3 Bidders shall enter on the Bid Form a single amount for each alternate which shall consist of the amount for work performed by the Contractor.
- 5.4 The low Bidder will be determined on the basis of the sum of the base bid and the accepted alternates.

#### ARTICLE 6 - WITHDRAWAL OF BIDS

- 6.1 Any bid may be withdrawn prior to the time designated for receipt of bids on written or telegraphic request. Telegraphic withdrawal of bids must be confirmed over the Bidder's signature by written notice postmarked on or before the date and time set for receipt of bids.
- 6.2 Withdrawn bids may be resubmitted up to the time designated for the receipt of bids.
- 6.3 No bids may be withdrawn within sixty days, Saturdays, Sundays and legal holidays excluded, after the opening of the bids.

#### ARTICLE 7 - CONTRACT AWARD

- 7.1 The City will award one (1) contract to the eligible and responsible Bidder offering the lowest Total Contract Price. The City will award a contract within sixty days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids.
- 7.2 The City reserves the right to waive any informalities in or to reject any or all Bids if it be in the public interest to do so.
- 7.3 The City reserves the right to reject any bidder who has failed to pay any local taxes, fees, assessments, betterments, or any other municipal charge, unless the bidder has a pending abatement application or has entered into a payment agreement with the collector-treasurer.
- 7.4 As used herein, the term "lowest responsible and eligible Bidder" shall mean the Bidder (1) whose bid is the lowest of those bidders possessing the skill, ability and integrity necessary for the faithful performance of the work; (2) who has met all the requirements of the invitation for bids; (3) who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (4) who, where the provisions of section eight B of chapter twenty-nine apply, shall have been determined to be qualified thereunder.
- 7.5 Subsequent to the award and within five (5) days, Saturday, Sundays and legal holidays excluded, after the prescribed forms are presented for signature, the successful Bidder shall execute and deliver to the City a contract in the form included in the Contract Documents in such number of counterparts as the City may require.
- 7.6 In the event that the City receives low bids in identical amount from two or more responsive and responsible Bidders, the City shall select the successful Bidder by a blind selection process such as flipping a coin or drawing names from a hat. The low Bidders who are under consideration will be invited to attend and observe the selection process.

#### ARTICLE 8 - TAXES

- 8.1 The Bidder shall not include in this bid any tax imposed upon the sale or rental of tangible personal property in this Commonwealth, such as any and all building materials, supplies, services and equipment required to complete the work.
- 8.2 The City is exempt from payment of the Massachusetts Sales Tax, and the Bidder shall not include any sales tax on its bid. The City's exemption Number is E-046-001-404.

#### ARTICLE 9 – PROPRIETARY SPECIFICATIONS

- 9.1 The City has used a proprietary specification to describe the supply listed in the specifications. Such specifications are permitted under M.G.L. c. 30, §39M(b), provided that the City state in writing that use of the proprietary specification is in its best interest and that it will accept an "equal" of the item specified. An item is considered equal if (i) it is at least equal in quality, durability, appearance, strength, and design; (ii) will perform the intended function at least equally; and (iii) conforms substantially, even with deviations, to the detailed requirements contained in the specifications. Bidders wishing to provide an equal item should do so with their bids. The City shall have the sole right to determine whether or not said item is equal.
- 9.2 The required determination and justification have been duly prepared, and a copy may be requested in accordance with the Massachusetts Public Records Law, M.G.L. c. 66, §10.

**END OF SECTION**

**CITY OF NEWTON  
FORM FOR GENERAL BID #22-84  
NEWTON CENTER PLAYGROUND RESURFACING IMPROVEMENTS**

**TO THE AWARDING AUTHORITY:**

A. The undersigned proposes to furnish all labor and materials required for

**NEWTON CENTER PLAYGROUND RESURFACING IMPROVEMENTS**

in Newton, Massachusetts in accordance with the Item Sheets at pp. 13-16 below, as prepared by the City of Newton for the contract price specified below, subject to additions and deductions according to the terms of the specifications.

B. This bid includes addenda number(s) \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

C. The Total Contract Price is:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
(*"Total Bid" from Item Sheets p. 18.*)

**OPTIONAL:**

Labor charges (rates used for work outside the scope of work included in this project manual). The contractor is being asked to provide hourly rates for possible work not covered in the Item Sheets. Such hourly rates are not part of the Total Bid calculation.

2-man court repair crew \$ \_\_\_\_\_ per hour/per 2-man crew - Standard Rate\* from p. 18 below.

2-man court repair crew \$ \_\_\_\_\_ per hour/per 2-man crew – Premium Rate\* from p. 18 below.

COMPANY: \_\_\_\_\_

\* The definitions of "Standard Rate" and "Premium Rate" are set forth at p. below.

D. **Prompt Payment Discounts.** Bidders are encouraged to offer discounts in exchange for an expedited payment. Payments may be issued earlier than the general goal of within 30 days of receipt of the invoice only when in exchange for discounted prices. Discounts will not be considered in determining the lowest responsible bidder.

Prompt Payment Discount \_\_\_\_\_ % \_\_\_\_\_ Days

Prompt Payment Discount \_\_\_\_\_ % \_\_\_\_\_ Days

Prompt Payment Discount \_\_\_\_\_ % \_\_\_\_\_ Days

E. The undersigned has completed and submits herewith the following documents:

- A five percent (5%) bid deposit/bid guarantee.
- Bidder's Qualifications and References Form, 2 pages
- Manufacturer's Specifications for the rubber surfacing material.
- Bidder's Item Sheets, 2 pages
- Certificate of Non-Collusion, 1 page
- Debarment Letter, 1 page
- IRS W-9 Form, 1 page
- Certificate of Tax Compliance, 1 page

F. The undersigned agrees that, if s/he is selected as general contractor, s/he will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the awarding authority, execute a contract in accordance with the terms of this bid and furnish a labor and materials or payment bond, each of a surety company qualified to do business under the laws of the commonwealth and satisfactory to the awarding authority and each in the sum of the contract price, the premiums for which are to be paid by the general contractor and are included in the contract price.

The undersigned hereby certifies that s/he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work and that s/he will comply fully with all laws and regulations applicable to awards made subject to section forty-four A of M.G.L. Chapter 30, s 39M.

The undersigned certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (2) that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration (“OSHA”) that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and (3) that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States OSHA that is at least 10 hours in duration. The undersigned understands that any employee found on a worksite subject to this section without documentation of successful completion of a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration shall be subject to immediate removal.

The undersigned further certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the Commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

Date \_\_\_\_\_

\_\_\_\_\_  
(Name of General Bidder)

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name and Title of Signatory)

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

\_\_\_\_\_  
(City, State Zip)

\_\_\_\_\_/\_\_\_\_\_  
(Telephone) (FAX)

\_\_\_\_\_  
(E-mail Address)

**NOTE:** If the bidder is a corporation, indicate state of incorporation under signature, and affix corporate seal; if a partnership, give full names and residential addresses of all partners; and if an individual, give residential address if different from business address.



CITY OF NEWTON

BIDDER'S QUALIFICATIONS AND REFERENCES FORM

All questions must be answered, and the data given must be clear and comprehensive. Please type or print legibly. If necessary, add additional sheet for starred items. This information will be utilized by the City for purposes of determining bidder responsiveness and responsibility with regard to the requirements and specifications of the Contract.

- 1. FIRM NAME:
2. WHEN ORGANIZED:
3. INCORPORATED? YES NO DATE AND STATE OF INCORPORATION:
4. IS YOUR BUSINESS A MBE? YES NO WBE? YES NO or MWBE? YES NO

- \* 5. LIST ALL CONTRACTS CURRENTLY ON HAND, SHOWING CONTRACT AMOUNT AND ANTICIPATED DATE OF COMPLETION:

- \* 6. HAVE YOU EVER FAILED TO COMPLETE A CONTRACT AWARDED TO YOU? YES NO IF YES, WHERE AND WHY?

- \* 7. HAVE YOU EVER DEFAULTED ON A CONTRACT? YES NO IF YES, PROVIDE DETAILS.

- \* 8. LIST YOUR VEHICLES/EQUIPMENT AVAILABLE FOR THIS CONTRACT:

- \* 9. IN THE SPACES FOLLOWING, PROVIDE INFORMATION REGARDING CONTRACTS COMPLETED BY YOUR FIRM SIMILAR IN NATURE TO THE PROJECT BEING BID. A MINIMUM OF FIVE (5) CONTRACTS SHALL BE LISTED. PUBLICLY BID CONTRACTS ARE PREFERRED, BUT NOT MANDATORY.

PROJECT NAME:
OWNER:
CITY/STATE:

DOLLAR AMOUNT: \$ \_\_\_\_\_ DATE COMPLETED: \_\_\_\_\_  
PUBLICLY BID? \_\_\_\_\_ YES \_\_\_\_\_ NO  
TYPE OF WORK?: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_ TELEPHONE #: (\_\_\_\_) \_\_\_\_\_  
CONTACT PERSON'S RELATION TO PROJECT?: \_\_\_\_\_  
(i.e., contract manager, purchasing agent, etc.)

---

PROJECT NAME: \_\_\_\_\_  
OWNER: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_  
DOLLAR AMOUNT: \$ \_\_\_\_\_ DATE COMPLETED: \_\_\_\_\_  
PUBLICLY BID? \_\_\_\_\_ YES \_\_\_\_\_ NO  
TYPE OF WORK?: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_ TELEPHONE #: (\_\_\_\_) \_\_\_\_\_  
CONTACT PERSON'S RELATION TO PROJECT?: \_\_\_\_\_  
(i.e., contract manager, purchasing agent, etc.)

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PROJECT NAME: \_\_\_\_\_  
OWNER: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_  
DOLLAR AMOUNT: \$ \_\_\_\_\_ DATE COMPLETED: \_\_\_\_\_  
PUBLICLY BID? \_\_\_\_\_ YES \_\_\_\_\_ NO  
TYPE OF WORK?: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_ TELEPHONE #: (\_\_\_\_) \_\_\_\_\_  
CONTACT PERSON'S RELATION TO PROJECT?: \_\_\_\_\_  
(i.e., contract manager, purchasing agent, etc.)

---

PROJECT NAME: \_\_\_\_\_  
OWNER: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_  
DOLLAR AMOUNT: \$ \_\_\_\_\_ DATE COMPLETED: \_\_\_\_\_  
PUBLICLY BID? \_\_\_\_\_ YES \_\_\_\_\_ NO  
TYPE OF WORK?: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_ TELEPHONE #: (\_\_\_\_) \_\_\_\_\_  
CONTACT PERSON'S RELATION TO PROJECT?: \_\_\_\_\_  
(i.e., contract manager, purchasing agent, etc.)

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10. The undersigned certifies that the information contained herein is complete and accurate and hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the City in verification of the recitals comprising this statement of Bidder's qualifications and experience.

DATE: \_\_\_\_\_ BIDDER: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_

**END OF SECTION**

## CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee club, or other organization, entity, or group or individuals.

\_\_\_\_\_  
(Signature of individual)

\_\_\_\_\_  
Name of Business

City of Newton



Mayor  
Ruthanne Fuller

**Purchasing Department**  
Nicholas Read *Chief Procurement Officer*  
1000 Commonwealth Avenue  
Newton Centre, MA 02459-1449  
purchasing@newtonma.gov

Telephone  
(617) 796-1220  
Fax:  
(617) 796-1227  
TDD/TTY  
(617) 796-1089

Date

Vendor

Re: Debarment Letter for Invitation For Bid # \_\_\_\_\_

As a potential vendor on the above contract, the City requires that you provide a debarment/suspension certification indicating that you are in compliance with the below Federal Executive Order. Certification can be done by completing and signing this form.

**Debarment:**

**Federal Executive Order (E.O.) 12549 "Debarment and Suspension" requires that all contractors receiving individual awards, using federal funds, and all sub-recipients certify that the organization and its principals are not debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from doing business with the Federal Government.**

I hereby certify under pains and penalties of perjury that neither I nor any principal(s) of the Company identified below is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

\_\_\_\_\_ (Name)  
 \_\_\_\_\_ (Company)  
 \_\_\_\_\_ (Address)  
 \_\_\_\_\_ (Address)

PHONE \_\_\_\_\_ FAX \_\_\_\_\_  
 EMAIL \_\_\_\_\_

\_\_\_\_\_ Signature  
 \_\_\_\_\_ Date

If you have questions, please contact Nicholas Read, Chief Procurement Officer at (617) 796-1220.

## CERTIFICATION OF TAX COMPLIANCE

Pursuant to M.G.L. c.62C, §49A and requirements of the City, the undersigned acting on behalf of the Contractor certifies under the penalties of perjury that the Contractor is in compliance with all laws of the Commonwealth relating to taxes including payment of all local taxes, fees, assessments, betterments and any other local or municipal charges (unless the Contractor has a pending abatement application or has entered into a payment agreement with the entity to which such charges were owed), reporting of employees and contractors, and withholding and remitting child support.\*

\_\_\_\_\_  
\*\*Signature of Individual (Mandatory)

\_\_\_\_\_  
\*\*\* Contractor's Social Security Number  
(Voluntary) or Federal Identification Number

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

Date: \_\_\_\_\_

**OR**

\_\_\_\_\_  
Company Name  
(Corporation, Partnership, LLC, etc.)

By: \_\_\_\_\_  
\*\*Corporate Officer (Mandatory)

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

Date: \_\_\_\_\_

- \* The provision in this Certification relating to child support applies only when the Contractor is an individual.
- \*\* Approval of a contract or other agreement will not be granted until the City receives a signed copy of this Certification.
- \*\*\* Your social security number may be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended.

**CERTIFICATE OF FOREIGN CORPORATION**

*The undersigned hereby certifies that it has been duly established, organized, or chartered as a corporation under the laws of:*

---

**(Jurisdiction)**

**The undersigned further certifies that it has complied with the requirements of M.G.L. c. 30, §39L (if applicable) and with the requirements of M.G.L. c. 156D, §15.03 relative to the registration and operation of foreign corporations within the Commonwealth of Massachusetts.**

---

**Name of person signing proposal**

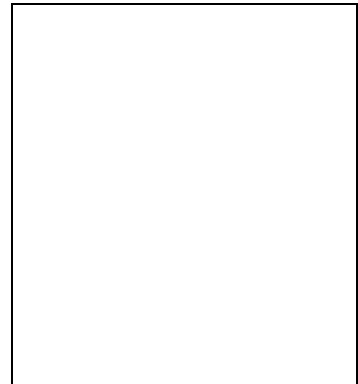
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**Signature of person signing proposal**

---

**Name of Business (Please Print or Type)**

*Affix Corporate Seal here*



## Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

▶ Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Print or type. See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.  <input type="checkbox"/> Individual/sole proprietor or single-member LLC  <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate  <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____ <small>Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.</small>  <input type="checkbox"/> Other (see instructions) ▶ _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):  Exempt payee code (if any) _____  Exemption from FATCA reporting code (if any) _____  <small>(Applies to accounts maintained outside the U.S.)</small>
5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
6 City, state, and ZIP code	
7 List account number(s) here (optional)	

### Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

**Note:** If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number															
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or															
Employer identification number															
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### Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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### General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

### Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

*If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.*

## Business Category Information Form\*

IFB No. 22-83

### NNHS Tennis Court Resurfacing Improvements

Business Type Categories*	Select All That Apply
MBE: Minority-Owned Business Enterprise	
WBE: Women-Owned Business Enterprise	
VBE: Veteran Business Enterprise	
SDVOBE: Service-Disabled Veteran-Owned Business Enterprises	
DOBE: Disability-Owned Business Enterprise	
LGBTBE: Lesbian, Gay, Bisexual, Transgender Business Enterprise	

\*Information is being collected as part of a City initiative to open contract opportunities to underrepresented vendors.

I do not wish to complete this form.

There is no penalty for persons who do not complete this Form, and whether or not the Form is completed will not be taken into consideration in awarding a bid.

I certify that the foregoing information is true and correct.

\_\_\_\_\_

By: \_\_\_\_\_

Date:



The Contractor shall insert prices for each item in ink, in both words and figures, and is to show a total bid price. In the event a discrepancy between the written words and figures, the written words shall govern. In the event an error in the bidders total bid price, the corrected total bid obtained by the summation of the products of the unit prices multiplied by the respective quantities shall stand as the bidder’s total bid price.

The Contractor is advised to review any related plans, conduct a full site review, and read all the provisions in the document before inserting prices. All Prices shall include the supply of material and installation costs (including all labor, materials, supervision, equipment, travel, etc.).

The estimated quantities (Est. Qty.) shown here are based solely upon a reasonable assessment of the project parameters. They are the City’s best estimate based on prior experience. Actual quantities may be more or less than those estimated. Regardless of the amount of the actual quantities, the unit price(s) shall be those set forth in the Bidder’s Item Sheets.

Description	Est. Qty	Unit Cost	Total Cost
<p><b>ITEM 1: REMOVE EXISTING PLAYGROUND RUBBER SUREFACE MATERIAL</b></p> <p>THE SUM OF: _____ DOLLARS                      AND _____ CENTS                      (\$ _____) PER <b>SQUARE YARD</b></p>		<b>SY</b>	\$ _____
<p><b>ITEM 2: REMOVAL OF COMPROMISED EXISTING STONE UP TO 50 TONS</b></p> <p>THE SUM OF: _____ DOLLARS                      AND _____ CENTS                      (\$ _____) PER <b>SQUARE YARD</b></p>		<b>tons</b>	\$ _____
<p><b>ITEM 3: INSTALL REPLACEMENT STONE (STONE AMOUNT IS SAME AS REMOVED IN ITEM #2)</b></p> <p>THE SUM OF: _____ DOLLARS                      AND _____ CENTS                      (\$ _____) PER <b>Tons</b></p>		<b>TON</b>	\$ _____
<p><b>ITEM 4: COMPLETELY REPLACE 8” STONE LAYER IN BOTH PLAY GROUND AREAS (BID ALTERNATE)</b></p> <p>THE SUM OF: _____ DOLLARS                      AND _____ CENTS                      (\$ _____)PER <b>TON</b></p>		<b>TON</b>	\$ _____
<p><b>ITEM 5: INSTALL REQUIRED EROSION CONTROL STRAW WATTLE</b></p> <p>THE SUM OF: _____ DOLLARS                      AND _____ CENTS                      (\$ _____)PER <b>N/A</b></p>		<b>LF</b>	\$ _____

<p><b>ITEM 6: INSTALL 3" PLAYGROUND RUBBER SUREFACE MATERIAL</b></p> <p>THE SUM OF:</p> <p>_____ DOLLARS</p> <p>AND _____ CENTS</p> <p>(\$ _____)PER <b>SY</b></p>		<b>SY</b>	\$ _____
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-Continued on next page-

**Optional Pricing:**

**LABOR CHARGES.** Rates used for work outside the scope of work included in this Project Manual. The contractor is being asked to provide hourly rates below for possible work not covered in the Item Sheets. Such hourly rates are not part of the Total Contract Price calculation.

**2-man court repair crew \$\_\_\_\_\_per hour/per 2-man crew - Standard Rate**

**2-man court repair crew \$\_\_\_\_\_per hour/per 2-man crew – Premium Rate**

1. Standard Rate:

- a. The Contractor shall be compensated for such repairs outside of this scope of work relative to the repair/maintenance of courts within the City of Newton at the Standard Rate shown on the bid form.
- b. The Standard Rate shall apply to any repair/maintenance that does not meet the criteria for Premium Rate.

2. Premium Rate

- a. The Premium Rate shall apply to any work which the City requests the Contractor to commence between 5:00 p.m. and 8:00 a.m. Monday through Friday, and anytime on Saturday or Sunday, or any work which the City requires the Contractor to commence within 2 hours or less of notification.
- b. The Contractor shall be compensated for Premium Rate repairs at the Premium Rate shown on the bid form. Under no circumstances shall any work performed by the Contractor be compensated at the Premium Rate unless the City has given prior authorization to treat the work as a Premium Rate replacement.

**END OF SECTION**

## **CONTRACT FORMS**

The awarded bidder will be required to complete and submit documents substantially similar in form to the following.

These forms may need to be modified on account of changed circumstances, and are provided for informational purposes only.

# CITY-CONTRACTOR AGREEMENT

## CONTRACT NO. C-

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand and Twenty Two by and between the CITY OF NEWTON, a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, hereinafter referred to as the CITY, acting through its Chief Procurement Officer, but without personal liability to him, and

hereinafter referred to as the CONTRACTOR.

The parties hereto for the consideration hereinafter set forth agree as follows:

- I. SCOPE OF WORK.** The Contractor shall furnish all labor, materials and equipment, and perform all work required in strict accordance with the Contract Documents for the following project:

### **Newton Center Playground Resurfacing Improvements**

- II. CONTRACT DOCUMENTS.** The Contract documents consist of the following documents which are either attached to this Agreement or are incorporated herein by referenced:

- a. This CITY-CONTRACTOR Agreement;
- b. The City's Invitation to Bid #22-84 issued by the Purchasing Department;
- c. The Project Manual for Newton Center Playground Resurfacing Improvements including the Instructions to Bidders; General Conditions; Special Conditions; MWBE/AA Requirements, Wage Rate Requirements and Wage Rate Schedule(s) including any updated prevailing wage rate schedules if applicable; The Supplementary Special Conditions; General Requirements and Project Specifications; and Drawings, if included or referenced therein;
- d. Addenda Number(s) \_\_\_\_\_;
- e. The Bid Response of the CONTRACTOR submitted for this Project and accompanying documents and certifications;
- f. Certificate(s) of Insurance and surety bond(s) submitted by the CONTRACTOR in connection with this Project;
- g. Duly authorized and executed Amendments, Change Orders or Purchase orders issued by the CITY after execution of this CITY-CONTRACTOR Agreement.

This CITY-CONTRACTOR Agreement, together with the other documents enumerated in this Article, constitute the entire Agreement between the CITY and the CONTRACTOR. The CONTRACTOR represents that its bid was made without condition, qualification or reservation of any kind, except upon the written acknowledgement and consent of the City.

- III. PRIORITY OF DOCUMENTS.** In the event of inconsistency between the terms of this CITY -CONTRACTOR Agreement and the Project Manual, the terms of this Agreement shall prevail.

- IV. APPLICABLE STATUTES.** All applicable federal, state and local laws and regulations are incorporated herein by reference and the Contractor agrees to comply with same.

- V. CONTRACT TERM.** The term of this Agreement shall extend from the date of execution through June 26, 2022, or such later date as the parties may agree. The City reserves the right to terminate this contract prior to the expiration date in the event total expenditures reach the above stated contract total.
- VI. AUTHORIZATION OF AND PAYMENT FOR WORK PERFORMED.** The execution of this contract does not constitute a notice to proceed or authorization to perform work. No work shall be commenced unless authorized by a written Work Order prepared by City of Newton Parks and Recreation Department specifying the work to be performed. The Contractor will be paid following completion and acceptance of the work authorized in accordance with the Contract. The City will use best efforts to pay within thirty (30) days of receipt of an invoice for the work authorized or acceptance of the work whichever date is later.
- VII. RESPONSIBILITY FOR THE WORK/INDEMNIFICATION.** The Contractor shall take all responsibility for the work, and shall take all precautions for preventing injuries to persons and property in or about the work and shall defend, indemnify and hold the City harmless from all loss, cost, damage or expense arising from injuries to persons or property in or about the work. The Contractor shall be responsible for any damage which may be caused by the failure or insufficiency of any temporary works. He shall effectively protect his work and shall be liable for all damage and loss by delay or otherwise caused by his neglect or failure so to do.
- VIII. WARRANTY.** Except as may be otherwise provided in the Project Manual, the Contractor shall replace, repair or make good, without cost to the City, any defects or faults arising within one (1) year after date of acceptance of work and materials furnished hereunder (acceptance not to be unreasonably delayed) resulting from imperfect or defective work done or materials furnished by the Contractor.
- IX. PATENT INDEMNIFICATION.** The Contractor agrees to assume the defense of and shall indemnify and save harmless the City and all persons acting for or on behalf of it from all suits and claims against them, or any of them, arising from or occasioned by the use of any material, equipment or apparatus, or any part thereof which infringes or is alleged to infringe on any patent rights. In case such material, equipment or apparatus, or any part thereof, in any such suit is held to constitute infringement, the Contractor, within a reasonable time, shall at its own expense, and as the City may elect, replace such material, equipment or apparatus with non-infringing material, equipment or apparatus, or remove the material, equipment, or apparatus and refund the sums paid therefor.
- X. ASSIGNMENT/SUB-CONTRACTING.** The Contractor agrees that he will not sell, assign or transfer this Contract or any part thereof or interest therein without the prior written consent of the City.
- XI. TERMINATION.** If the work to be done under this Contract shall be abandoned, or if this Contract or any part thereof shall be assigned or transferred, without the previous written consent of the City, or if the Contract or any claim hereunder shall be assigned by the Contractor otherwise than as herein specified, or if at any time the City determines that the conditions herein specified as to the rate of progress are not fulfilled, or that the work or any part thereof, is unnecessarily or unreasonably delayed, or that the Contractor has violated any of the provisions of this Contract, the City may terminate this Contract and/or notify the Contractor to discontinue such work or such part thereof as the City may designate, and the City may thereupon by agreement or otherwise, as it may determine, complete the work, or any part thereof; and for such completion the City for itself or for its Contractor may take possession of and use or cause to be used in the completion of the work thereof any of such materials, apparatus, machinery, implements, and tools of every description as may be found upon said work. Termination pursuant to this paragraph shall not entitle the Contractor to any claim for damages on account thereof, nor shall it relieve the Contractor of any liability under this Contract.
- XII. INSURANCE.** The Contractor shall provide insurance coverage as listed below. This insurance shall be provided at the Contractor's expense and shall be in full force and effect during the full term of this Contract.

WORKER'S COMPENSATION

Worker's Compensation: Per M.G.L. c.. 149, s. 34 and c.. 152 as amended.

COMMERCIAL GENERAL LIABILITY

Personal Injury	\$500,000 each occurrence \$1,000,000 aggregate
Property Damage	\$500,000 each occurrence \$1,000,000 aggregate

VEHICLE LIABILITY

Personal Injury                    \$500,000 each person  
   \$1,000,000 aggregate  
Property Damage                \$300,000

The City shall be named as additional insureds on the Contractor's Liability Policies.

**XIII. GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

**XIV. SEVERABILITY.** The provisions of this Contract are severable. If any section, paragraph, clause or provision of this Contract shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Contract shall be unaffected by such adjudication and all of the remaining provisions of this Contract shall remain in full force and effect as though such section, paragraph, clause or provision, or any part thereof so adjudicated to be invalid, had not been included herein, unless such remaining provisions, standing alone, are incomplete and incapable of being executed in accordance with the intent of the parties to this Contract.

**XV. AMENDMENTS TO THIS CONTRACT.** This Contract may not be amended except in writing executed in the same manner as this CITY-CONTRACTOR Agreement.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed under seal the day and year first above written.

**CONTRACTOR**

**CITY OF NEWTON**

By \_\_\_\_\_  
Print Name \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

By \_\_\_\_\_  
*Chief Procurement Officer*  
Date \_\_\_\_\_

*Affix Corporate Seal Here*

By \_\_\_\_\_  
*Commissioner of Parks & Recreation*  
Date \_\_\_\_\_

Certified that additional funds are in the following accounts:

\_\_\_\_\_

Approved as to Legal Form and Character

I further certify that the Mayor, or her designee, is authorized to execute contracts and approve change orders.

By \_\_\_\_\_  
*Associate City Solicitor*

By \_\_\_\_\_  
*Comptroller of Accounts*

Date \_\_\_\_\_

Date \_\_\_\_\_

**CONTRACT AND BONDS APPROVED**

By \_\_\_\_\_  
*Mayor or her designee*

Date \_\_\_\_\_

## CERTIFICATE OF AUTHORITY - CORPORATE

1. I hereby certify that I am the Clerk/Secretary of \_\_\_\_\_  
(insert full name of Corporation)
2. Corporation, and that \_\_\_\_\_  
(insert the name of officer who signed the **contract and bonds.**)
3. is the duly elected \_\_\_\_\_  
(insert the title of the officer in line 2)
4. of said corporation, and that on \_\_\_\_\_  
(insert a date that is ***ON OR BEFORE*** the date the officer signed the **contract and bonds.**)

at a duly authorized meeting of the Board of Directors of said corporation, at which all the directors were present or waived notice, it was voted that

5. \_\_\_\_\_ the \_\_\_\_\_  
(insert **name** from line 2) (insert **title** from line 3)

of this corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

6. ATTEST: \_\_\_\_\_ *AFFIX CORPORATE SEAL HERE*  
(Signature of **Clerk or Secretary**)\*
7. Name: \_\_\_\_\_  
(Please print or type name in line 6)\*
8. Date: \_\_\_\_\_  
(insert a date that is ***ON OR AFTER*** the date the officer signed the **contract and bonds.**)

\* The name and signature inserted in lines 6 & 7 **must** be that of the **Clerk or Secretary** of the corporation.



**CITY OF NEWTON, MASSACHUSETTS**  
**PAYMENT BOND**

Know All Men By These Presents:

That we, \_\_\_\_\_, as PRINCIPAL, and \_\_\_\_\_, as SURETY, are held and firmly bound unto the City of Newton as Obligee, in the sum of \_\_\_\_\_ dollars (\$\_\_\_\_\_) to be paid to the Obligee, for which payments well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, the said PRINCIPAL has made a contract with the Obligee, bearing the date of \_\_\_\_\_, 2022, for the construction of \_\_\_\_\_ in Newton, Massachusetts.  
(Project Title)

Now, the conditions of this obligation are such that if the PRINCIPAL and all Sub-contractors under said contract shall pay for all labor performed or furnished and for all materials used or employed in said contract and in any and all duly authorized modifications, alterations, extensions of time, changes or additions to said contract that may hereafter be made, notice to the SURETY of such modifications, alterations, extensions of time, changes or additions being hereby waived, the foregoing to include any other purposes or items set out in, and to be subject to, provisions of M.G.L. c.30, §39A, and M.G.L. c.149, §29, as amended, then this obligation shall become null and void; otherwise it shall remain in full force, virtue and effect.

In Witness Whereof, the PRINCIPAL and SURETY have hereto set their hands and seals this \_\_\_\_day of \_\_\_\_2022.

PRINCIPAL

SURETY

\_\_\_\_\_

\_\_\_\_\_

BY \_\_\_\_\_  
(SEAL)

BY \_\_\_\_\_  
(ATTORNEY-IN-FACT) (SEAL)

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

ATTEST: \_\_\_\_\_

ATTEST: \_\_\_\_\_

**CITY OF NEWTON**  
**GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**

**1.0 DEFINITIONS**

**1.1 THE CONTRACT DOCUMENTS**

The term "Contract Documents" sometimes also referred to as the "Contract", means the contract entered into between the City of Newton (hereinafter "City") and the Contractor. It includes the Invitation for Bid, General Bid Form, Contract Form, these General Conditions of the Contract, Supplements and Amendments to the General Conditions (if any), Contract Specifications, Drawings, all addenda issued prior to execution of the contract, the Bid Bond, the Labor and Material Payment Bond, or other assurances of completion, the applicable wage rate determinations, and other documents listed in the Agreement and modifications issued after execution of the contract.

**1.2 THE WORK**

The term "Work", sometimes also referred to as the "Project", means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligation.

**1.3 OWNER**

The term "Owner" is the City of Newton.

**1.4 CONTRACT OFFICER**

The terms "Contract Officer" or "Project Manager" means the person appointed by the Owner to administer the terms of the Contract between the Owner and the Contractor, who is also empowered to take certain actions under this Agreement.

**1.5 CONTRACTOR**

1.5.1 The Contractor, sometimes referred to as the General Contractor, is the person or entity identified as such throughout the Contract Documents as if singular in number. The term Contractor means the Contractor or its authorized representative.

1.5.2 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract.

**1.6 SUBSTANTIAL COMPLETION**

The term "Substantial Completion" means the value of the work remaining to be performed by the Contractor is, in the estimate of the awarding authority, less than one percent (1%) of the original contract price.

**2.0 CONTRACT ADMINISTRATION**

**2.1 PRE-CONSTRUCTION CONFERENCE**

2.1.1 Prior to commencement of the Work, the Contractor shall meet in conference with representatives of the Owner regarding the Owner's requirements under the Contract for administration of the quality assurance program, safety program, labor provisions, the schedule of work, and other Contract procedures.

2.1.2 The Contractor shall begin work upon receipt of a written Notice to Proceed from the Contract Officer or designee. The Contractor shall not begin work prior to receiving such notice.

## **2.2 CONTRACT PERIOD**

The Contractor shall complete all work required under this contract within the timeframe specified elsewhere in this document, or within the time schedule established in the notice to proceed issued by the Contracting Officer.

## **2.3 REJECTION OF DEFECTIVE MATERIALS AND WORK**

The Owner's inspection of the Work shall not relieve the Contractor of any of its responsibilities to fulfill the Contract obligations, and defective work shall be corrected without cost to the Owner. Unsuitable work may be rejected by the Owner, notwithstanding that such work and materials have been previously overlooked or misjudged by the Owner and accepted for payment. If the Work or any part thereof shall be found defective at any time before the final acceptance of the whole Work, the Contractor shall forthwith correct such defect in a manner satisfactory to the Owner, and if any material brought upon the site for use in the Work, or selected for the same, shall be rejected by the Owner as unsuitable or not in conformity with the Contract requirements, the Contractor shall forthwith remove such materials from the vicinity of the Work.

## **2.4 CHANGES**

2.4.1 All changes in the work including any increase, decrease, or other equitable adjustment in the Contract price or in the time for performing the Contract, shall be authorized in writing by the Owner and/or Contract Officer prior to commencement.

## **2.5 PAYMENTS**

### **2.5.1 CONTRACT PRICE**

The Contract Price is stated in the Contract Form, and including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

## **2.6 APPLICATIONS FOR PAYMENT**

2.6.1 Once each month, on a date established by the Owner at the beginning of the Work, the Contractor shall deliver to the Owner an itemized Application for Payment, supported by such data substantiating the Contractor's right to payment as the Owner may require, and reflecting a minimum of 5% retainage until the final acceptance and payment by the Owner.

2.6.2 The Owner shall make payment to the Contractor within 15 days of receipt of said application, less any applicable retainage.

2.6.3 The Owner may make changes in any application for payment submitted by the Contractor for:

- i. Retention based on the value of its claims against the Contractor,
- ii. Retention of 5% of the approved amount of the Application for Payment.

## **2.7 FINAL PAYMENT**

The acceptance by the Contractor of the last payment due under this Contract or the execution of the Final Certificate of Completion, shall operate as a release to the Owner from all claims and liability related to this Contract.

## **2.8 GUARANTY AND WARRANTY**

### **2.8.1 WARRANTY**

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

## **2.8.2 GENERAL GUARANTY**

If at any time during the period of one (1) year from the date of Substantial Completion of the Work to be performed under this Contract, any part of the Work shall, in the reasonable determination of the Owner, require replacing or repairing due to the fact that it is broken, defective, or otherwise does not conform to the Contract Documents, the Owner will notify the Contractor to make the required repairs or replacement. If the Contractor shall neglect to commence such repairs or replacement to the satisfaction of the Owner within ten (10) days from the date of giving or mailing such notice, then the Owner may employ other persons to make the same. The Contractor agrees, upon demand, to pay to the Owner all amounts which the Owner expends for such repairs or replacements. During this one year guarantee period any corrective work shall be performed in accordance with the applicable terms of this Contract. For items of work completed after use and occupancy has been taken, the one year guarantee shall commence at the time the Owner accepts such items. This one year guarantee shall not limit any express guaranty or warranty provided elsewhere in the Contract.

## **2.9 INSURANCE REQUIREMENTS**

### **2.9.1 CERTIFICATES OF INSURANCE, POLICIES**

- i. The Contractor shall not commence the work until proof of compliance with this Section 2.9 has been furnished to the Owner by submitting one copy of a properly endorsed insurance certificate issued by a company authorized to write insurance in the Commonwealth. This certificate shall indicate that the contractual liability coverage is in force.
- ii. The Contractor shall file the original and one certified copy of all policies with the Owner within fifteen (15) days after contract award. If the Owner is damaged by the Contractor's failure to maintain such insurance and to so notify the Owner, then the Contractor shall be responsible for all reasonable costs attributable thereto.

### **2.9.2 CANCELLATION**

Cancellation of any insurance required by this contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and Owner at least thirty days prior to the effective date thereof, which shall be expressed in said notice.

## **2.10 INDEMNIFICATION**

The Contractor shall take all responsibility for the Work and take all precautions for preventing injuries to persons and property in or about the Work; shall bear all losses resulting to or on account of the amount or character of the Work. The Contractor shall pay or cause payment to be made for all labor performed or furnished and for all materials used or employed in carrying out this Contract. The Contractor shall assume the defense of, and indemnify and save harmless the Owner, and the Owner's officers and agents from all claims relating to labor performed or furnished and materials used or employed for the Work; to inventions, patents and patent rights used in and in doing the Work unless such patent infringement is due to a product or process specified by the Owner; to injuries to any person or corporation received or sustained by or from the Contractor and any employees, and subcontractors and employees, in doing the work, or in consequence of any improper materials, implements or labor used or employed therein; and to any act, omission or neglect of the Contractor and any employees therein.

## **2.11 BONDS**

The Contractor shall provide the Owner with a performance and with a payment or labor and materials bond in the form provided by the Owner, executed by a surety company licensed by the Commonwealth of Massachusetts' Division of Insurance. Such bond shall be in an amount equal to at least one half of the Contract price unless otherwise stated in the Contract Documents. All bonds shall be accompanied by a current power of attorney.

## **2.12 TERMINATION**

### **2.12.1 TERMINATION FOR CAUSE**

- i. The Owner may terminate this contract for cause if it determines that any of the following circumstances have occurred:
  - a. The Contractor is adjudged bankrupt or has made a general assignment for the benefit of its creditors.
  - b. A receiver has been appointed of the Contractor's property.
  - c. All or a part of the Work has been abandoned.
  - d. The Contractor has sublet or assigned all or any portion of the Work, the Contract, or claims thereunder, without the prior written consent of the Owner, except as provided in the Contract.
  - e. The Owner has determined that the rate of progress required on the project is not being met.
  - f. The Contractor has substantially violated any provisions of this Contract.
- ii. The Owner may complete the Work, or any part thereof, and charge its expense of so completing the Work or part thereof, to the Contractor.
- iii. The Owner may take possession of and use any materials, machinery, implements and tools found upon the site of said Work. The Owner shall not be liable for any depreciation, loss or damage to said materials, machinery, implements or tools during said use and the Contractor shall be solely responsible for their removal from the Project site after the Owner has no further use for them.

**2.12.2 TERMINATION - NO FAULT**

- i. In the event that this Contract is terminated by the Owner, prior to the completion of construction and termination is not based on a reason listed in Paragraph 2.12.1, the Contractor shall be compensated for its costs incurred on the Project, including reasonable costs of de-mobilization, covering the period of time between the last approved application for payment and the date of termination.
- ii. Payment by the Owner pursuant to Section 2.7 shall be considered to fully compensate the Contractor for all claims and expenses and those of any consultants, subcontractors, and suppliers, directly or indirectly attributable to the termination, including any claims for lost profits.

**2.13 PERMITS, FEES, AND NOTICES**

- 2.13.1 The Contractor shall secure and the Owner shall pay for the building permit, if required. The Contractor shall coordinate all efforts required to obtain this permit. All other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work shall be secured and paid for by the Contractor.
- 2.13.2 The Contractor shall comply with and give notices required by laws, ordinances rules, regulations, and lawful orders of public authorities bearing on performance of the Work.
- 2.13.3 If the Contractor performs Work that it knows or reasonably should know is contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs.

**2.14 SAFETY REQUIREMENTS**

- 2.14.1 The Contractor shall comply with all Federal, State, and local safety laws and regulations applicable to the Work performed under this Contract.

**2.15 TEMPORARY HEATING**

[Reserved]

**2.16 AVAILABILITY AND USE OF UTILITY SERVICES**

- 2.16.1 The City shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the Contract. Unless otherwise provided in the Contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the City or, where the utility is produced by the City, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

## **2.17 DISPUTES**

- 2.17.1 "Claim," as used in this section, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the Contract, unlike a claim relating to the Contract, is a claim that can be resolved under a Contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this section, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- 2.17.2 All disputes arising under or relating to this Contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this section.
- 2.17.3 All claims by the Contractor shall be made in writing and submitted to the Contract Officer for a written decision. A claim by the City against the Contractor shall be subject to a written decision by the Contract Officer.
- 2.17.4 The Contract Officer shall, within thirty (30) days after receipt of the request, decide the claim or notify the Contractor of the date by which the decision will be made.
- 2.17.5 The Contract Officer's decision shall be final unless the Contractor files suit in a court of competent jurisdiction. Such appeal must be made within One hundred Twenty (120) days after receipt of the Contract Officer's decision.
- 2.17.6 The Contractor shall proceed diligently with performance of this Contract and/or any authorized change thereof, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the Contract and/or any authorized change thereof, and comply with any decision of the Contract Officer.

## **2.18 LIQUIDATED DAMAGES**

- 2.18.1 If the Contractor fails to complete the Work within the time specified in the contract, or any extension thereof, the Contractor shall pay to the City as liquidated damages, the sum of \$50.00 for each day of delay.
- Completion dates are specified in the Contract for separate phases of the work, and the amount of liquidated damages shall be assessed on each and every phase which is delayed. In the context of this paragraph, "delay" means failure to provide resurfacing services on the date required by City. To the extent that the Contractor's delay or nonperformance is excused under another section in this Contract, liquidated damages shall not be due the City. The Contractor remains liable for damages caused other than by delay.
- 2.18.2 If the City terminates the Contractor's right to proceed pursuant to section 2.12.1, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the Work together with any increased costs to the City in completing the Work.
- 2.18.3 If the City does not terminate the Contractor's right to proceed, the resulting damage will consist of liquidated damages until the Work is completed or accepted.

## **3.0 SALES TAX EXEMPTION AND OTHER TAXES**

- 3.0.1 To the extent that materials and supplies are used or incorporated in the performance of this Contract, the Contractor is considered an exempt purchaser under the Massachusetts Sales Act, Chapter 14 of the Acts of 1966.

3.0.2 The Contractor shall be responsible for paying all other taxes and tariffs of any sort, related to the Work.

**3.1 PROHIBITION AGAINST LIENS**

The Contractor is prohibited from placing a lien on the City's property. This prohibition shall apply to all subcontractors at any tier and all materials suppliers.

**3.2 ORDER OF PRECEDENCE**

In the event of a conflict between these General Conditions and the Specifications, the General Conditions shall prevail. In the event of a conflict between these General Conditions and the Supplementary Special Conditions, the Supplementary Special Conditions shall prevail. In the event of a conflict between the Contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.

**3.3 EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

The City of Newton shall, until three (3) years after final payment under this Contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this Contract for the purpose of making audit, examination, excerpts, and/or transcriptions.

**END OF SECTION**

**SPECIAL CONDITIONS - COMMONWEALTH OF MASSACHUSETTS & CITY OF NEWTON**

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## **SPECIAL CONDITIONS - COMMONWEALTH OF MASSACHUSETTS**

### **Article 1. METHOD OF PAYING SUBCONTRACTORS**

**(General Laws, Chapter 30, Section 39F as most recently amended by Chapter 450, §76 of the Acts of 1996)**

(1.) Every contract awarded pursuant to section forty-four A to L, inclusive, of chapter one hundred and forty-nine shall contain the following subparagraphs (a) through (i) and every contract awarded pursuant to section thirty-nine M of chapter thirty shall contain the following subparagraphs (a) through (h) and in each case those subparagraphs shall be binding between the general contractor and each subcontractor.

(a) Forthwith after the general contractor receives payment on account of a periodic estimate, the general contractor shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by the subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.

(b) Not later than the sixty-fifth day after each subcontractor substantially completes his work in accordance with the plans and specifications, the entire balance due under the subcontract less amounts retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and the awarding authority shall pay that amount to the general contractor. The general contractor shall forthwith pay to the subcontractor the full amount received from the awarding authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.

(c) Each payment made by the awarding authority to the general contractor pursuant to subparagraphs (a) and (b) of this paragraph for the labor performed and the materials furnished by a subcontractor shall be made to the general contractor for the account of that subcontractor, and the awarding authority shall take reasonable steps to compel the general contractor to make each such payment to each such subcontractor. If the awarding authority has received a demand for direct payment from a subcontractor for any amount which has already been included in a payment to the general contractor or which is to be included in a payment to the general contractor for payment to the subcontractor as provided in subparagraphs (a) and (b), the awarding authority shall act upon the demand as provided in this section.

(d) If, within seventy days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the awarding authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of the balance from the awarding authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the awarding authority, and a copy shall be delivered to or sent by certified mail to the general contractor at the same time. The demand shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the subcontractor has substantially completed the subcontract work. Within ten days after the subcontractor has delivered or so mailed the demand to the awarding authority and delivered or so mailed a copy to the general contractor, the general contractor may reply to the demand. The reply shall be by a sworn statement delivered to or sent by certified mail to the awarding authority and a copy shall be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor and of the amount due for each claim made by the general contractor against the subcontractor.

(e) Within fifteen days after receipt of the demand by the awarding authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the awarding authority shall make direct payment to the subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount (i) retained by the awarding authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the general contractor in the sworn reply; provided, that the awarding authority shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph (d). The awarding authority shall make further direct payments to the subcontractor forthwith after the removal of the basis for deductions from direct payments made as provided in parts (i) and (ii) of this subparagraph.

(f) The awarding authority shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of subparagraph (e) in an interest-bearing joint account in the names of the general contractor and the subcontractor in a bank in Massachusetts selected by the awarding authority or agreed upon by the general contractor and the subcontractor and shall notify the general contractor and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the general contractor and the subcontractor or as determined by a decree of a court of competent jurisdiction.

(g) All direct payments and all deductions from demands for direct payments deposited in an interest-bearing account for accounts in a bank pursuant to subparagraph (f) shall be made out of amounts payable to the general contractor at the time of receipt of a demand for direct payment from a subcontractor and out of amounts which later become payable to the general contractor and in the order of receipt of such demands from subcontractors. All direct payments shall discharge the obligation of the awarding authority to the general contractor to the extent of such payment.

(h) The awarding authority shall deduct from payments to a general contractor amounts which, together with the deposits in interest-bearing accounts pursuant to subparagraph (f), are sufficient to satisfy all unpaid balances of demands for direct payment received from subcontractors. All such amounts shall be earmarked for such direct payments, and the subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of the general contractor.

(i) If the subcontractor does not receive payment as provided in subparagraph (a) or if the general contractor does not submit a periodic estimate for the value of the labor or materials performed or furnished by the subcontractor and the subcontractor does not receive payment for same when due less the deductions provided for in subparagraph (a), the subcontractor may demand direct payment by following the procedure in subparagraph (d) and the general contractor may file a sworn reply as provided in that same subparagraph. A demand made after the first day of the month following that for which the subcontractor performed or furnished the labor and materials for which the subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on a periodic estimate from the general contractor. Thereafter the awarding authority shall proceed as provided in subparagraph (e), (f), (g) and (h).

## **Article 2. METHOD OF PAYING GENERAL CONTRACTORS**

**(General Laws, Chapter 30, Section 39K as most recently amended by Chapter 145 of the Acts of 1991 and Chapter 151 of the Acts of 1993.)**

Every contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building by the commonwealth, or by any county, city, town, district, board, commission or other public body, when the amount is more than five thousand dollars in the case of the commonwealth and more than two thousand dollars in the case of any county, city, town, district, board, commission or other public body, shall contain the following paragraph:--Within fifteen days (forty-five days in the case of the commonwealth, including local housing authorities) after receipt from the contractor, at the place designated by the awarding authority if such a place is so designated, of a periodic estimate requesting payment of the amount due for the preceding month, the awarding authority will make a periodic payment to the contractor for the work performed during the preceding month and for the materials not incorporated in the work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the contractor has title or to which a subcontractor has title and has authorized the contractor to transfer title to the awarding authority, less (1) a retention based on its estimate of the fair value of its claims against the contractor and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, and less (3) a retention not exceeding five per cent of the approved amount of the periodic payment. After the receipt of a periodic estimate requesting final payment and within sixty-five days after (a) the contractor fully completes the work or substantially completes the work so that the value of the work remaining to be done is, in the estimate of the awarding authority, less than one per cent of the original contract price, or (b) the contractor substantially completes the work and the awarding authority takes possession for occupancy, whichever occurs first, the awarding authority shall pay the contractor the entire balance due on the contract less (1) a retention based on its estimate of the fair value of its claims against the contractor and of the cost of completing the incomplete and unsatisfactory items of work and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, or based on the record of payments by the contractor to the subcontractors under this contract if such record of payment indicates that the contractor has not paid subcontractors as provided in section thirty nine F. If the awarding authority fails to make payment as herein provided, there shall be added to each such payment daily interest at the rate of three percentage points above the rediscount rate then charged by the Federal Reserve Bank of Boston commencing on the first day after said payment is due and continuing until the payment is delivered or mailed to the contractor; provided, that no interest shall be due, in any event, on the amount due on a periodic estimate for final payment until fifteen days (twenty-four days in the case of the commonwealth) after receipt of such a periodic estimate from the contractor, at the place designated by the awarding authority if such a place is so designated. The contractor agrees to pay to each subcontractor a portion of any such interest paid in accordance with the amount due each subcontractor.

The awarding authority may make changes in any periodic estimate submitted by the contractor and the payment due on said periodic estimate shall be computed in accordance with the changes so made, but such changes or any requirement for a corrected periodic estimate shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided, that the awarding authority may, within seven days after receipt, return to the contractor for correction, any periodic estimate which is not in the required form or which contains computations not arithmetically correct and, in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter. The provisions of section thirty-nine G shall not apply to any contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building to which this section applies.

All periodic estimates shall be submitted to the awarding authority, or to its designee as set forth in writing to the contractor, and the date of receipt by the awarding authority or its designee shall be marked on the estimate. All periodic estimates shall contain a separate item for each filed subtrade and each sub-subtrade listed in sub-bid form as required by specifications and a column listing the amount paid to each subcontractor and sub-subcontractor as of the date the periodic estimate is filed. The person making payment for the awarding authority shall add the daily interest provided for herein to each payment for each day beyond the due date based on the date of receipt marked on the estimate.

A certificate of the architect to the effect that the contractor has fully or substantially completed the work shall, subject to the provisions of section thirty-nine J, be conclusive for the purposes of this section.

### **Article 3. CLAIMS FOR UNFORESEEN CONDITIONS**

**(General Laws, Chapter 30, Section 39N as most recently amended by Chapter 774 of the Acts of 1972)**

Every contract subject to section forty-four A of chapter one hundred and forty-nine or subject to section thirty-nine M of chapter thirty shall contain the following paragraph in its entirety and an awarding authority may adopt reasonable rules or regulations in conformity with that paragraph concerning the filing, investigation and settlement of such claims:

If, during the progress of the work, the contractor or the awarding authority discovers that the actual subsurface or latent physical conditions encountered at the site differ substantially or materially from those shown on the plans or indicated in the contract documents either the contractor or the contracting authority may request an equitable adjustment in the contract price of the contract applying to work affected by the differing site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a contractor, or upon its own initiative, the contracting authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the contracting authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly.

### **Article 4. CLAIMS FOR DELAY**

**(General Laws, Chapter 30, Section 390 as added by Chapter 116 of the Acts of 1973)**

Every contract subject to the provisions of section thirty-nine M of this chapter or subject to section forty-four A of chapter one hundred forty-nine shall contain the following provisions (a) and (b) in their entirety and, in the event a suspension, delay, interruption or failure to act of the awarding authority increases the cost of performance to any subcontractor, that subcontractor shall have the same rights against the general contractor for payment for an increase in the cost of his performance as provisions (a) and (b) give the general contractor against the awarding authority, but nothing in provisions (a) and (b) shall in any way change, modify or alter any other rights which the general contractor or the subcontractor may have against each other.

(a) The awarding authority may order the general contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the awarding authority; provided however, that if there is a suspension, delay or interruption for fifteen days or more or due to a failure of the awarding authority to act within the time specified in this contract, the awarding authority shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the general contractor on such increase; and

provided further, that the awarding authority shall not make any adjustment in the contract price under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provisions.

(b) The general contractor must submit the amount of a claim under provision (a) to the awarding authority in writing, as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this contract and, except for costs due to a suspension order, the awarding authority shall not approve any costs in the claim incurred more than twenty days before the general contractor notified the awarding authority in writing of the act of failure to act involved in the claim.

## **Article 5. DECISIONS AND APPROVALS BY OWNER OR LANDSCAPE ARCHITECT**

**(General Laws, Chapter 30, Section 39P, as added by Chapter 1164 of the Acts of 1973)**

Every contract subject to section thirty-nine M of this chapter or section forty-four A of chapter one hundred forty-nine which requires the awarding authority, any official, its architect or engineer to make a decision on interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, shall require that the decision be made promptly and, in any event, no later than thirty days after the written submission for decision; but if such decision requires extended investigation and study, the awarding authority, the official, architect or engineer shall, within thirty days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty day period and the date by which the decision will be made.

## **Article 6. PREFERENCE IN EMPLOYMENT, WAGES**

**(General Laws, Chapter 149 Section 26 as most recently amended by Chapter 665 of the Acts of 1986 and Chapter 552 of the Acts of 1991).**

In the employment of mechanics and apprentices, teamsters, chauffeurs and laborers in the construction of public works by the commonwealth, or by a county, town or district, or by persons contracting or subcontracting for such works, preference shall first be given to citizens of the commonwealth who have been residents of the commonwealth for at least six months at the commencement of their employment who are male veterans as defined in clause Forty-third of section seven of chapter four, and who are qualified to perform the work to which the employment relates; and secondly, to citizens of the commonwealth generally who have been residents of the commonwealth for at least six months at the commencement of their employment, and if they cannot be obtained in sufficient numbers, then to citizens of the United States, and every contract for such work shall contain a provision to this effect. Each county, town or district in the construction of public works, or persons contracting or subcontracting for such works, shall give preference to veterans and citizens who are residents of such county, town or district. The rate per hour of the wages paid to said mechanics and apprentices, teamsters, chauffeurs and laborers in the construction of public works shall not be less than the rate or rates of wages to be determined by the commissioner as hereinafter provided; provided, that the wages paid to laborers employed on said works shall not be less than those paid to laborers in the municipal service of the town or towns where said works are being constructed; provided, further, that where the same public work is to be constructed in two or more towns, the wages paid to laborers shall not be less than those paid to laborers in the municipal service of the town paying the highest rate; provided, further, that if, in any of the towns where the works are to be constructed, a wage rate or wage rates have been established in certain trades and occupations by collective agreements or understandings in the private construction industry between organized labor and employers, the rate or rates to be paid on said works shall not be less than the rates so established, provided, further that in towns where no such rate or rates have been so established, the wages paid to mechanics and apprentices, teamster, chauffeurs and laborers on public works, shall not be less than the wages paid to the employees in the same trades and occupations by private employers engaged in the construction industry. This section shall also apply to regular employees of the commonwealth or of a county, town or district, when such employees are employed in the construction, addition to or alteration of public buildings for which special appropriation of more than One Thousand Dollars are provided. Payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans under collective bargaining agreements or understandings between organized labor and employers shall be included for the purpose of establishing minimum wage rates as herein provided.

## **Article 7. HOURS OF WORK**

**(General Laws, Chapter 149 Section 34 as most recently amended by Chapter 552 of the Acts of 1991).**

Every contract, except for the purchase of material or supplies, involving the employment of laborers, workmen, mechanics, foremen or inspectors, to which the commonwealth or any county or town, subject to section thirty, is a party, shall contain a stipulation that no laborer, workman, mechanic, foreman or inspector working within the commonwealth, in the employ of the

contractor, subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the contract, shall be required or permitted to work more than eight hours in any one day or more than forty-eight hours in any one week, or more than six days in any one week, except in case of emergency, or, in case any town subject to section thirty-one is a party to such a contract, more than eight hours in any one day, except as aforesaid, provided, that in contracts entered into by the department of highways for the construction or reconstruction of highways there may be inserted in said stipulation a provision that said department, or any contractor or subcontractor for said department, may employ laborers, workmen, mechanics, foremen and inspectors for more than eight hours in any one day in such construction or reconstruction when, in the opinion of the commissioner of labor and industries, public necessity so requires. Every such contract not containing the aforesaid stipulation shall be null and void.

**Article 8. WORK BY FOREIGN CORPORATIONS**

**(General Laws, Chapter 30 Section 39L, as most recently amended by Chapter 3 of the Acts of 1967).**

The Commonwealth and every county, city, town, district, board, commission or other public body which, as the awarding authority, requests proposals, bids or subbids for any work in the construction, reconstruction, alteration, remodeling, repair or demolition of any public building or other public works (1) shall not enter into a contract for such work with, and shall not approve as a subcontractor furnishing labor and materials for a part of any such work, a foreign corporation which has not filed with such awarding authority a certificate of the state secretary stating that such corporation has complied with sections three and five of chapter one hundred and eighty-one and the date of such compliance, and (2) shall report to the state secretary and to the department of corporations and taxation any foreign corporation performing work under such contract or subcontract, and any person, other than a corporation, performing work under such contract or subcontract, and residing or having a principal place of business outside the Commonwealth.

**END OF SECTION**

## SUPPLEMENTARY SPECIAL CONDITIONS

The following provisions supplement the General Conditions of the Contract. In the event of conflict or discrepancy between the General Conditions and these Supplementary Special Conditions, the provisions of the Supplementary Special Conditions shall govern.

### 1.0 SUMMARY OF WORK

A. The Work under the Contract consists of:

1. Furnishing all labor, materials, tools, equipment and supervision necessary to accomplish the work described herein, in accordance with all specifications and requirements of the Project Manual.
2. All work either shown on the Drawings (if any) or included in the specifications unless specifically indicated as not to be done.

B. In addition, the work under the Contract includes:

1. Work outside the Project Site as called for in the Contract Documents and as required for the performance of the Work.
2. The restoration of any items damaged or destroyed by encroaching upon areas outside the Project Site.
3. Providing and restoring, where appropriate, all temporary facilities.

C. The Proposed Contract Price shall be complete costs, including overhead, profit, insurance, transportation, and all other costs connected with, or incidental to, the work described.

### 2.0 PROJECT LOCATION

A. The work referred to herein is located at various parks or schools within the City of Newton, County of Middlesex, Commonwealth of Massachusetts, as described in these specifications.

### 3.0 NOTICE TO PROCEED/FAILURE TO COMMENCE WORK

A. In the event of Contractor's failure to commence work within the time required by these specifications, the City shall exercise all provisions contained in the General Conditions regarding default, suspension or termination of this contract.

### 4.0 PAYMENT

A. Upon receipt of the Application for Payment, the City will, within fifteen days, make payment in full for Work completed and accepted during the preceding month, less a retainage of 5% of the estimated total. The City will make final payment for completed Work, including any retained amounts, upon completion and acceptance of the Work and receipt of an Application for Payment at the end of the month in which the Work is completed and accepted.

### 5.0 COMMUNICATIONS

A. All notices, demands, requests, instructions, approvals and claims must be in writing.

B. Any such notice shall be deemed to have been given as of the time of delivery, or of actual receipt in the case of telegrams or, in the case of mailing, when it should have been received in due course of post.

C. For communicating purposes, the office address of the Contractor shall be that stated on the signature page of the contract; that of the City shall be as stated in the Invitation for Bids. Any subsequent change in address of either party shall be communicated to the other in writing.

### 6.0 PLANS AND SPECIFICATIONS

The City will furnish to the Contractor, without charge, all copies of the plans and specifications reasonably necessary in the performance of the contract work.

## 7.0 COORDINATION

The Contractor shall:

- A. Supply to the City the name and telephone number of a responsible person who may be contacted during off-hour emergencies during the term of the Contract.
- B. Cooperate at all times with the City and the Project Manager, and ensure the cooperation of his key personnel and that of his subcontractors.

## 8.0 CONDUCT OF THE WORK

- A. The work must be completed in a continuous uninterrupted operation. The Contractor must use sufficient workforce and adequate equipment to complete all the necessary work requirements within a minimum period of time.
- B. See Specifications for information regarding work hours and work days.
- C. Under no circumstances will the contractor be paid at a premium or overtime rate for any work performed without the express advance authorization of the City.
- D. The Contractor is responsible for the security of partially completed work until the project is finally accepted by the City.

## 9.0 ALTERATION

- A. The Contractor shall patch, repair and/or replace all existing materials and surfaces remaining exposed after installation of new work which have been affected by alteration or removal of existing work. All patch and repair work shall match existing.

## 10.0 GENERAL DIRECTIONS

- A. Damage to Persons and Property

Any damage to buildings, roads, public roads, bituminous concrete areas, fences, lawn areas, trees, shrubbery, electric or telephone poles, underground utilities, etc., shall be repaired by the Contractor at his own expense. Damaged property shall be returned to its original condition prior to the damages within a reasonable time period, except all utility outages shall be repaired immediately.

- B. Protection of Persons and Property

The Contractor shall, at all times, leave an unobstructed way along the roadways and walks, and shall maintain barriers and lights for the protection of all persons and property in all locations where he has materials stored or work going on, and during the entire time such work is going on or material is stored.

- C. Shutdown of Services

The Contractor's attention is especially called to the fact that continuous operation of building utilities and services is mandatory. During the period of construction of the new work and/or alterations to the existing work, the progress and sequence of installation shall be carefully planned and approved by the City. If any building is to be left without heat, hot water, city water, electricity, gas, sanitary facilities, or any other services, the Contractor shall provide reasonable written notice to the City before proceeding.

- D. Care of Work

All work is to be carefully protected so that no injury will come to it from water, frost, accident, or any other cause and any injury which may come to any of the work shall be repaired immediately by the Contractor at

his own expense and without additional cost to the City. This shall also apply to any abutting or adjoining work on premises. The Contractor shall be responsible for any damage and in the event of such damage, the Contractor shall repair the damage immediately at his own cost and without additional cost to the City.

E. Removal of Debris

Debris of any nature shall be completely removed from the site at the end of each day's work and disposed of in accordance with all Federal, State and local regulations.

F. The Contractor is responsible for the security of all work until it is accepted by the City.

11.0 TEMPORARY UTILITIES

A. Prior to execution of the Work, the Contractor shall confer with a representative of the Public Building Department regarding the use of utilities and facilities at the worksite. No City utilities or facilities are to be used by the Contractor in the performance of this Contract without the prior approval of the City.

12.0 SUBMISSION OF PAYROLLS

A. The Contractor shall, with each invoice submitted during the term of this Contract, submit to the City two (2) legible copies of his payrolls documenting the wages paid to all employees performing on site labor relating to the work of this Contract. These copies shall be prepared on forms supplied by the City.

13.0 DRAWINGS

- A. The drawings attached herein and such drawings as may be issued per addendum, shall constitute an integral part of this section and shall serve as the working drawings.
- B. Drawings shall not be scaled. Field verification is directed since actual locations, dimensions and levels are existing.
- C. All items not specifically mentioned in the specifications or noted on the drawings, but which are obviously necessary to make a complete working installation, shall be included.

14.0 MATERIALS

- A. Unless specifically so stated to the contrary the use of a manufacturer's name or style number is not restrictive, and is intended solely as an identification of the type and quality of the materials and services required. In all cases, the words "or approved equal" if not inserted are implied.
- B. An item equal to that named or described in the specifications may upon written approval of the City be furnished by the Contractor. An item shall be considered equal to the item so named or described if (1) it is at least equal in quality, durability, appearance, strength and design; (2) it will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased; (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the specifications.
- C. The name and identification of all materials other than the one specifically named shall be submitted to the City in writing for approval, prior to purchase, use or fabrication of such items. Approval shall be at the sole discretion of the City, shall be in writing to be effective, and the decision of the City shall be final. The City may require tests of all materials so submitted to establish quality standards at the Contractor's expense.
- D. For the use of material other than the one specified, the Contractor shall assume the cost of and responsibility for satisfactorily accomplishing all changes that may be required in the work as shown. All directions, specifications and recommendations by manufacturers for the installation, handling, storing, adjustment, and operation of their equipment shall be complied with and responsibility for proper performance shall continue to rest with the Contractor.



- E. The Contractor shall not have any right of appeal from the decision of the City condemning any materials furnished if the Contractor fails to obtain the approval for substitution in accordance with these provisions. If any substitutuin is more costly, the Contracotr shall pay for such costs

15.0 WARRANTY AND INDEMNIFICATION

- A. In addition to other guarantees or warranties required under law or other sections of the specification, the Contractor warrants all materials furnished and labor performed under this Contract to be free from defects or errors in workmanship or installation for a period of one year from the date of Completion of the work, as certified by the Project Manager. The Contractor shall indemnify the Authority for the full cost of any damage to the property that may result by reason of such defects or errors and shall indemnify the Authority from and against any and all claims, demands, losses, costs, expenses, liabilities and damages, including reasonable attorney's fees and expenses, arising out of or on account of this Contract, including but not limited to claims brought against the Authority for alleged infringement of patents based upon any methods of construction or application of materials furnished under the Contract.
- B. The Contractor shall indemnify, hold harmless and defend the City and its departments, officers, employees, servants, and agents from and against all actions, causes of actions, claims, demands, damages, costs, loss of services, expenses and compensation, including attorney's fees and interest arising out of or resulting directly or indirectly from the services rendered pursuant to this Contract, provided that any such action, cause of action, claim, demand, damage, cost, loss of service, expense, compensation (1) in any way grows out of bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, which (2) is caused in whole or in part by any act or omission of the Contractor, 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.

**END OF SECTION**

## CITY OF NEWTON

### WAGE RATE REQUIREMENTS

#### 1. GENERAL

- A. This section summarizes the requirements for the payment of wages to laborers and mechanics employed under the Contract.
- B. Other duties and requirements of law which may not be specified in this section apply and are inherently a part of the Contract.

#### 2. WAGE RATES

- A. The rate per hour to be paid to mechanics, apprentices, teamsters, chauffeurs, and laborers employed on the Work shall not be less than the rate of wages in the attached "Minimum Wage Rates" as determined by the Commissioner of Labor and Industries. This schedule shall continue to be the minimum rate of wages for said employees during the life of this Contract.
- B. Keep posted on the site a legible copy of said schedule. Keep on file the wage rates and classifications of labor employed on this Work in order that they may be available for inspection by the Owner, Administrator, or the Architect.
- C. Apprentices employed pursuant to this determination of wage rates must be registered and approved by the State Apprenticeship Council wherever rates for journeymen or apprentices are not listed.
- D. Pay reserve police officers employed on the Work the prevailing rate of wages paid to regular police officers as required by M.G.L. c149, Sec. 34B, as amended. Such police officers shall be covered by Workmen's Compensation Insurance and Employers Liability Insurance by the Contractor.
- E. **The Contractor and all subcontractors shall, on a weekly basis throughout the term of the contract, provide to the City of Newton certified payroll affidavits verifying compliance with M.G.L. c.149, Sec. 27, 27A and 27B.** The Contractor is obligated to provide such records to the City directly on a weekly basis. The City may assess a penalty of \$100 for each day beyond the required submission date that such records are received, which amount shall be deducted from any amounts to the Contractor from the City. In the event of chronic late submissions, the City shall report the same to the Office of the Attorney General.
- F. The Contractor and all subcontractors shall provide a Statement of Compliance within 15 days of the completion of its portion of the work. This statement shall be submitted to the Owner on the form found elsewhere in this section.
- G. The Contractor shall maintain accurate and complete records, including payroll records, during the Contract term and for three years thereafter.

**END OF SECTION**

# **The Massachusetts Prevailing Wage Law**

## **M.G.L. ch. 149, §§ 26 – 27**

### **NOTICE TO AWARDING AUTHORITIES**

- The enclosed wage schedule applies only to the specific project listed at the top and will be updated for any public construction project lasting longer than one (1) year.
- You should request an updated wage schedule from the Division of Occupational Safety if you have not opened bids or selected a contractor within 90 days of the date of issuance of the enclosed wage schedule.
- The wage schedule shall be incorporated in any advertisement or call for bids for the project for which it has been issued.
- Once a contractor has been selected by the awarding authority, the wage schedule shall be made a part of the contract for that project.

### **NOTICE TO CONTRACTORS**

- The enclosed wage schedule, and any updated schedule, must be posted in a conspicuous place at the work site during the life of the project.
- The wages listed on the enclosed wage schedule must be paid to employees on public works projects regardless of whether they are employed by the prime contractor, a filed sub-bidder, or any sub-contractor.
- The enclosed wage schedule applies to all phases of the project including the final clean-up. Contractors whose only role is to perform final clean-up must pay their employees according to this wage schedule.
- All apprentices must be registered with the Massachusetts Division of Apprentice Training in order to be paid at the reduced apprentice rates. If a worker is not registered with the Division of Apprentice Training, they must be paid the “total rate” listed on the wage schedule regardless of experience or skill level. For further information, please call (617) 727-3486 or write to the Division of Apprentice Training, 399 Washington Street, 4th Floor, Boston, MA 02108

# WEEKLY PAYROLL RECORDS REPORT & STATEMENT OF COMPLIANCE

In accordance with Massachusetts General Law c149, §27B, a true and accurate record must be kept of all persons employed on the public works project for which the enclosed rates have been provided. A Payroll Form has been printed on the reverse of this page and includes all the information required to be kept by law. Every contractor or subcontractor is required to keep these records and preserve them for a period of three years from the date of completion of the contract.

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

In addition, each such contractor, subcontractor or public body shall furnish to the Department of Labor & Workforce Development/Division of Occupational Safety within fifteen days after completion of its portion of the work a statement, executed by the contractor, subcontractor or public body who supervises the payment of wages, in the following form:

## STATEMENT OF COMPLIANCE

\_\_\_\_\_, 2022

I, \_\_\_\_\_,

(Name of signatory party) (Title)

do hereby state:

That I pay or supervise the payment of the persons employed by

\_\_\_\_\_ on the \_\_\_\_\_

(Contractor, subcontractor or public body) (Building or project)

and that all mechanics and apprentices, teamsters, chauffeurs and laborers employed on said project have been paid in accordance with wages determined under the provisions of sections twenty-six and twenty-seven of chapter one hundred and forty nine of the General Laws.

Signature \_\_\_\_\_

Title \_\_\_\_\_

DIVISION OF OCCUPATIONAL SAFETY, 399 WASHINGTON STREET, 5TH FL., BOSTON, MA. 02108

**WEEKLY PAYROLL REPORT FORM**

Company Name:

Prime Contractor

Project Name:

Subcontractor

Awarding Auth.:

List Prime Contractor:

Work Week Ending:

Employer Signature:

Print Name & Title:

Employee Name & Address	Work Classification	Hours Worked							(A) Tot. Hrs.	(B) Hourly Base Wage	Employer Contributions			(F) [B+C+D+E] Hourly Total Wage (prev. wage)	(G) [A*F] Weekly Total Amount
		S	M	T	W	T	F	S			(C) Health & Welfare	(D) Pension	(E) Supp. Unemp		

NOTE: Every contractor and subcontractor is required to submit a copy of their weekly payroll records to the awarding authority.

# SPECIAL PROVISIONS

## SECTION 01110

### PLAYGROUND SAFETY SURFACING

#### **PART 1 - GENERAL**

##### 1.01 GENERAL REQUIREMENTS

- A. Examine all site conditions as they exist at the project location prior to submitting a bid for the work of this SECTION.

##### 1.02 SCOPE OF WORK

- A. Provide all labor, materials, equipment, services, and transportation required to completely remove and dispose of the existing playground poured in place safety rubber surfacing layer (3" thickness), remove up to 50 tons of contaminated stone layer sub-base, install up to 50 tons of new stone base, and complete playground safety surfacing installation in two separate areas as shown on the aerial photos below and as specified herein or both. Please note that the playground dimensions (SF) listed below are rough estimates, and it shall be the responsibility of the contractor to perform and confirm all measurements for the purpose of developing their bid. Bidders shall assume stock colors for rubber granules and the purpose of developing their bids, 50% black, and 50% another color. Material pattern will be to match in kind, but colors may vary from existing and will be selected by the owner from the stock color samples to be provided by the contractor as part of the submittal process.

##### 1.03 REFERENCES

- A. American Society for Testing and Materials (ASTM):
  1. ASTM D412 Standard Test Methods for Vulcanized Rubber and Thermoplastic Rubbers and Thermoplastic Elastomers-Tension.
  2. ASTM D624 Standard Test Method for Tear Strength of Conventional Vulcanized Rubber and Thermoplastic Elastomers. 02790 10025487 01 MS 12196 05/16/02 PTC.
  3. ASTM D2047 Standard Test Method for Static Coefficient of Friction of Polish-Coated Floor Surfaces as Measured by the James Machine.
  4. ASTM D2859 Standard Test Method for Flammability of Finished Textile Floor Covering Materials.
  5. ASTM E303 Standard Test Method for Measuring Surface Frictional Properties Using the British Pendulum Tester.
  6. ASTM F1292 Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment.

7. ASTM F1951 Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment.

1.04 INSTALLATION OF PLAYGROUND AMENITIES

- A. Playground equipment installation is not included in this Scope of Work.
- B. Install Playground Safety Surfacing after the removal of undesirable or compromised stone aggregate subbase as shown on the attached graphic photographs or mentioned here within.

SYSTEM DESCRIPTION - POURED IN PLACE PLAYGROUND SURFACING SYSTEM

- C. There are no poured-in-place Playground Surfacing System Construction Drawings: The patterns and colors of the surfacing will be selected by the Owner at the submittals time period. The patterns and colors may be modified by the Owner. Any modified material selections will be submitted to the contractor for installation at no additional cost to the owner.
- D. Poured-in-place Playground Surfacing System Performance Requirements: Provide a 2-layer rubber-polyurethane playground surfacing system which has been designed, manufactured, and installed to meet the following criteria:
  1. Shock Attenuation (ASTM F1292):
    - a. Gmax: Less than 200.
    - b. Head Injury Criteria: Less than 1000.
  2. Flammability (ASTM D2859): Pass.
  3. Tensile Strength (ASTM D412): 60 psi (413 kPa).
  4. Tear Resistance (ASTM D624): 140%.
  5. Water Permeability: 0.4 gal/yd<sup>2</sup>/second.
  6. Accessibility: Comply with requirements of ASTM F1951.
  7. Fall Height: 8'.
- E. Test results in accordance with ASTM F 1951 Standard Specification for Determination of Accessibility of Surface Systems Under and Around Playground Equipment.
- F. Certification that the surface meets the intent of the Americans with Disabilities Act (ADA).
- G. Written manufacture's 10-year warranty against loss of resiliency.
- H. Provide product liability insurance certificate with project owner named as certificate holder.

1.05 QUALIFICATIONS/SPECIAL REQUIREMENTS

- A. The playground safety materials shall be one manufacturer's materials only.
- B. The Contractor shall have at least 5 years' experience and at least 5 completed projects located in New England installing playground surfacing materials.

1.06 SUBMITTALS

- A. Submit the following in accordance with the provisions of submittals: Double Washed  $\frac{3}{4}$ " Crushed Stone: General contractor to confirm that the material specified is compatible with the playground safety surface selected to be installed. If the Crushed Stone is not compatible with the playground safety surface, the Contractor is to provide a material that is compatible at no cost to the Owner.
- B. Poured-in-place Playground Surfacing Product Data: Submit manufacturer's product data, installation instructions, and standard color chart.
- C. Verification Samples: Submit manufacturer's standard verification samples of 9"  $\times$  9" (229  $\times$  229 mm) minimum for the Poured-in-place Playground Surfacing.
- D. Erosion Control Straw Wattles : Straw Wattles shall consist of a 100% biodegradable exterior jute or coir netting with 100% wheat straw interior filling or approved equal. The wattles will be placed and staked in the ground using wooden stakes. The wooden stakes will be placed at a minimum depth of 24-inches into the ground. The wattles will be placed and staked in the ground using wooden stakes. The wooden stakes will be placed at a minimum depth of 24-inches into the ground.
- E. Shop Drawings:
  - 1. Minimum  $\frac{3}{8}$ " scale plans and section drawing of the area of Playground Surface installation showing the location, dimensions details and relationships of the Playground Surfacing.
- F. Quality Assurance/Control Submittals: Submit the following:
  - 1. Certificate of qualifications of the playground surfacing installer by the specified manufacturer.
- G. Closeout Submittals: Submit the following:
  - 1. Warranty documents specified herein.
  - 2. Certified Impact Testing: (6) impact test areas for the play areas certifying that the playgrounds have a Critical Fall Height that exceeds (8) feet, complying with the requirements of ASTM F1292 Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment.



## 1.07 QUALITY ASSURANCE

- A. Qualifications: Utilize an installer approved and trained by the manufacturer of the playground surfacing system, having experience with other projects of the scope and scale of the work described in this section.
- B. Certifications: Certification by manufacturer that installer is an approved applicator of the playground surfacing material.
- C. Submission of International Play Equipment Manufacturers Association (IPEMA) certification.

## 1.10 DELIVERY, STORAGE & HANDLING

- A. Delivery: Deliver materials in manufacturer's original, unopened, undamaged containers with identification labels intact.
- B. Storage and Protection: Store materials protected from exposure to harmful environmental conditions and at a minimum temperature of 40 degrees F (4 degrees C) and a maximum temperature of 90 degrees F (32 degrees C).

## 1.11 PROJECT/SITE CONDITIONS

- A. Environmental Requirements: Install surfacing system when minimum ambient temperature is 40 degrees F and maximum ambient temperature is 90 degrees F. Do not install in steady or heavy rain or high humidity above 70% or according to manufacturer's specifications.

## 1.12 WARRANTY

- A. Manufacturer's Warranty: Submit, for Owner's acceptance, manufacturer's standard warranty document executed by authorized company official. Manufacturer's warranty is in addition to, and not a limitation of, other rights Owner may have under contract documents.

Warranty Period: 5 years from date of completion of work.

## 1.13 DEFINITIONS

- A. References to Owner shall mean Newton Parks, Recreation, Open Space, and Culture Department designated representative.

**PART 2 - MATERIALS**

2.01 CRUSHED STONE

- A. Crushed stone must be crushed and double washed so that it contains no, fines, silt, or clay particles. The stone should be a homogeneous mixture of the following sieve size stone:

U.S. Sieve Size Number	Percent Passing	
	Minimum	Maximum
1”	90	100
5/8”	50	80
¼”	30	50
#4	15	35
#8	10	30
#30	3	5
#200	0	3

2.02 SUBDRAIN SYSTEM

- A. There is no sub-surface drainage installation in this Scope of Work.

2.03 POURED-IN-PLACE PLAYGROUND SURFACING SYSTEM

- A. Manufacturer: Play Bound Poured in Place by Surface America, Inc., (800)999- 0555; or Spectra Pour Safety Surface by Spectraturf SpectraPour, 800-875- 5788; or Vitriturf Poured in Place Playground System by Hanover Specialties, Inc., 631-231-1300. The Surface America product is referenced below.

- 1. Play Bound Poured-In-Place Primer:
  - a. Material: Polyurethane.
- 2. Play Bound Poured-in-Place Basemat:
  - a. Material: Blend of 100% recycled SBR (styrene butadiene rubber) and polyurethane.
  - b. Thickness: Varies, refer to the manufacture’s specifications and Shop Drawings.

- c. Formulation Components: Blend of strand and granular material.
  - d. Basemat mix proportions by weight: 14% polyurethane, 86% rubber.
3. Play Bound Poured-In-Place Top Surface
- a. Material: Blend of recycled EPDM (ethylene propylene diene monomer) and polyurethane.
  - b. Thickness: Nominal 1/2" (12.7 mm), minimum 3/8" (9.5 mm), maximum 5/8" (15.9 mm).
  - c. Color: Up to eight (8) colors as selected by Owner from a minimum of twenty-four (24) colors or a combination of a color and black or gray mixed to form a color. The use of non- yellowing binder shall be required for those standard colors for which it is recommended.
  - d. Dry Static Coefficient of Friction (ASTM D2047): 1.0.
  - e. Wet Static Coefficient of Friction (ASTM D2047): 0.9.
  - f. Dry Skid Resistance (ASTM E303): 89.
  - g. Wet Skid Resistance (ASTM E303): 57.
  - h. Top surface mix proportions by weight: 18% polyurethane, 82% rubber.

## **PART 3 - EXECUTION**

### **3.01 EXAMINATION**

- A. Site Verification of Conditions:
  - 1. Verify that the playground equipment is in good working order and conditions are suitable for the installation of the playground surfacing system.
  - 2. Verify that the substrate(subgrade) conditions are suitable for installation of the playground surfacing system.
- B. Do not proceed with installation until unsuitable conditions are corrected.

### **3.02 MANUFACTURER'S INSTRUCTIONS**

- A. Comply with the instructions and recommendations of the Poured inPlace Playground Surfacing manufacturer.

### **3.03 DEMOLITION**

- A. In both playground areas, safely remove and properly dispose off-site, all existing rubber surface play surfaces and any attached stone to the rubber surfaces.
- B. Identify, cut, cap, and abandon any utility systems if and as discovered through the scope of work. Install environmental controls including 100 +/- silt fencing / wattles near existing waterway prior to commencing work of any kind on premises. Protection of the adjacent properties, coordination with the City of Newton representatives as needed and required, conducting of demolition and restoration operations in a manner that does not disrupt or inconvenience normal activities and/or special events at the property. Restoration of all project areas upon the successful and satisfactory execution of all demolition efforts as specified here within the Scope of Work.
- C. Conform to applicable codes and requirements for demolition of structure, safety of adjacent structures, dust control, service utilities, and discovered hazards. Dispose or recycle all demolition debris in accordance with all applicable regulations. Contractor is solely responsible for obtaining permits or approvals which may be required to perform the work of this Section, including all costs, fees and taxes required or levied. All legally imposed charges made by local authorities for the work of this Section involving the connection, inspection and approval services of all bureaus administering all applicable codes and regulations shall be provided hereunder at no additional expense to the Owner. Notify and obtain such permits or approvals from all agencies having jurisdiction over demolition prior to starting work including, but not limited to Health, Building, and Fire Departments of the municipality and local, State and Federal agencies. The Contractor shall give the proper authorities all required notices or information relating to work in his/her charge, pay all fees necessary to obtain all official licenses, permits and certificates, and comply with the rules of the Massachusetts Department of Public Safety. Comply with all applicable Federal, State, and local environmental, safety and health requirements and regulations regarding the demolition of structures and other site features and recycling or disposal of demolition debris, as applicable. Conform to applicable codes and requirements for demolition of structures, safety of adjacent structures, dust control, service utilities, and discovered hazards.
- D. The Contractor shall assume complete responsibility and liability for the safety and structural integrity of all work and utilities to remain during demolition. The contractor shall take special care when working within or near the drainage culvert easement. Provide safeguards including, but not limited to, warning signs, barricades, temporary fences, warning lights and other items required for protection of personnel and the general public during performance of all work. All features related to protection shall be maintained until that work has been completed to the point when such safeguards are no longer required.

- E. Install erosion controls to protect adjacent areas from eroded materials likely to enter adjacent properties, resource areas, or drainage ways/systems, downstream of areas disturbed by work activities. Where items to be demolished are located within or adjacent to pavements to remain, the Contractor shall make provisions to protect that pavement to remain. Cut concrete pavement back to the nearest score line and cut bituminous concrete pavement back far enough to prevent disturbance to base course materials. Pavements damaged as a result of Contractor activities shall be replaced to the extent determined by the Owner at no additional cost to the Owner.
- F. If Contractor utilizes an open top dumpster for debris removal from work area, the dumpster shall be placed on wooden blocks, beams, iron plates, or other support devices so as not to damage turfgrass areas. Dumpster shall be placed outside of existing tree lines and not near any utilities.

#### 3.04 SUB GRADE PREPARATION (BID ALTERNATE ITEM # 4):

This section only is used if after the demolition of the existing rubber surface is completed, Contractor detects damaged, compromised, contaminated stone layer that leads to the removal of stone down to subgrade surface. In this instance, Contractor shall prepare the subgrade for the installation of the rubber play surface by removing all stones, debris, rocks, foreign material, and other material discrepancies and ensure the subgrade is uniform material. Subgrade shall be regraded with mechanical equipment and landscape rakes ensuring a uniform planar subgrade with no low spots or depressions. If low spots or depressions exist after demolition, Contractor shall repair these areas immediately as stated above before any installation of any rubberized layers are installed on top. The entire uniform subgrade surface shall be compacted to 95% Standard Proctor Compaction with a vibrating pneumatic tamper or roller to achieve satisfactory compaction. Contractor shall approve subgrade and then contact Owner for on-site inspection of the subgrade. Owner has the right to reject the subgrade work if deficient and request Contractor to perform additional compaction, debris removal, or grading at no additional charge to the Owner. All backfill to subgrade, shall be compacted to not less than ninety-five percent (95%) of the maximum dry density of the material as determined by the Standard AASHTO Test Designation T-180-86, Modified Proctor Test.

#### 3.05 WASHED AND CRUSHED STONE BASEINSTALLATION

- A. Contractor shall replenish existing stone base as necessary to achieve a depth of 8” per manufacturer’s specifications.
- B. Compact to 95% Standard Proctor Compaction using a tamper, roller, or combination of both per ASTM standards.

#### 3.06 POURED-IN-PLACE PLAYGROUND SURFACING PREPARATION

- A. Surface Preparation: Using a brush or short nap roller, apply primer to the substrate surface and any adjacent vertical barriers such as playground equipment support legs, curbs or slabs that will contact the surfacing system at the rate of 300 ft<sup>2</sup>/gal (7.5 m<sup>2</sup>/L).
- B. Do not proceed with playground surfacing installation until all applicable site work, including demolition, stone base, and substrate(if necessary) preparation, and other relevant work, has been completed.
- C. Basemat Installation:
  - 1. Using screeds and hand trowels, install the basemat at a consistent density of 29 pounds, 1 ounce per cubic foot (466 kg/m<sup>3</sup>) to the specified thickness of 2 ½” and manufacturers’ specifications.

2. Allow basemat to cure for sufficient time so that indentations are not left in the basemat from applicator foot traffic or equipment.
  3. Do not allow foot traffic or use of the basemat surface until it is sufficiently cured.
- D. Primer Application: Using a brush or short nap roller, apply primer to the basemat surface and any adjacent vertical barriers such as playground equipment support legs, curbs or slabs that will contact the surfacing system at the rate of 300 ft<sup>2</sup>/gal (7.5 m<sup>2</sup>/L).
- E. Top Surface Installation:
1. Using a hand trowel, install top surface at a consistent density of 58 pounds, 9 ounces per cubic foot (938 kg/m<sup>3</sup>) to a nominal thickness of 1/2" (12.7 mm).
  2. Allow top surface to cure for a minimum of 48 hours.
  3. At the end of the minimum curing period, verify that the top surface is sufficiently dry and firm to allow foot traffic and use without damage to the surface.
  4. Do not allow foot traffic or use of the surface until it is sufficiently cured.

### 3.07 PROTECTION

- A. Protect the installed playground surface from damage resulting from subsequent construction activity on the site with secure fencing or other approved methods by Owner.
- B. Contractor will provide tree protection fencing around the drip line of all trees over 6" DBH adjacent to the project site, staging areas, and vehicular access paths to and from the site. If trees are damaged, contractor shall provide Owner the equivalent caliper inches DBH of trees equal to the existing tree that was damaged during this Scope of Work. Contractor supplies, staging materials, storage units, and construction equipment shall not be placed near trees or within the existing dripline of any tree. Refer to graphic photo for approved staging area and site access.
- C. Contractor will provide protection to all existing site amenities, play equipment, site furniture, curbing, fencing, trash receptacles, lighting, asphalt paths, concrete and other utilities. Contractor shall replace or repair these items if they become damaged during construction by the Contractor or its Sub-Contractors. Replacement and repairs of damaged items shall be completed prior to final completion and payment of final invoice. If an item becomes severely damaged by Contractor, Owner has the right to require full replacement of the item by the Contractor at no cost to the Owner.
- D. Contractor will protect all existing turfgrass areas, vegetation, and waterways from damage during construction. If damage occurs to turfgrass areas from vehicular traffic or other means, creating tire ruts or depressions, the area will be repaired with quality sandy loam soil, soil preparation methods approved by owner, grass seed mix with the following content: Kentucky Bluegrass (20%), Perennial Ryegrass(20%), and Fine Fescues(60 %) at a rate of 6 pounds per 1000 square feet, with starter fertilizer at manufacturer's specifications. Contractor shall submit grass seed and cultivar information for approval from Owner prior to installation. Contractor shall provide one watering in all seeded areas for restoration of damaged areas. All turf and other repairs in this section must be completed prior to final completion and the payment of final invoice.
- E. All grassed areas disturbed by the Contractor's operations shall be repaired as herein specified. The Contractor shall bear the responsibility and cost of furnishing and applying water or any other substances, as necessary to ensure the sustainability of grass seeded areas, as part of the work of this contract. In accordance with requirements of general specifications, the Contractor shall submit the following to the Owner for review and approval: Certification of seed mix composition and proportion, indicating named seed varieties by percent, percent germination, purity, and percent crop seed, percent inert matter, and percent weed seed content.

F. Fertilizer shall be a complete, standard commercial fertilizer, homogenous and uniform in composition, dry and free-flowing, and shall be delivered to the site in the manufacturer's original sealed containers, each bearing the manufacturer's guaranteed analysis and marketed in compliance with State and Federal Laws. All fertilizer shall be used in accordance with the manufacturer's recommendations.

1. Seed shall be of an approved perennial variety mixture, the previous year's crop, clean, and high in germinating value. Weed seed content shall be less than 0.5 percent and include no noxious weeds. Seed shall be obtained from a reliable seed company and shall be accompanied by certificates of compliance relative to mixture purity and germinating value.

2. Seed shall be furnished and delivered in new, clean, sealed and properly labeled containers. All seed shall comply with applicable State and Federal laws. Seed that has become wet, moldy, or otherwise damaged shall not be accepted.

3. Grass seed for general lawn areas shall conform to the following requirements:  
Botanical and Common Names, Proportion by Weight, Germination Rate, Purity  
Minimum Chewing's Fescue (*Festuca rubra commutata*) 30%, 70%, 97% 'Kentucky 31' Tall Fescue (*Festuca arundinacea* 'Kentucky 31') 30%, 90%, 98% Kentucky Bluegrass (*Poa pratensis*) 20%, 80%, 85%, Perennial Ryegrass (*Lolium perenne*) 20%, 90%, 98% biodegradable fastening. Weight shall be 0.50 pounds per square yard.

G. Water shall be furnished by the Contractor, unless otherwise specified, and shall be suitable for irrigation and free from ingredients harmful to plant growth and viability. The delivery and distribution equipment required for the application of water shall be the furnished by the Contractor, at no additional cost to the Owner. All work shall be performed by skilled workers with a minimum of 2 years of seeded lawn construction and establishment experience and under the full-time supervision of a qualified foreperson. Seeding operations shall not begin less than 4 days after the application of lime and fertilizer and the seedbed areas are reviewed and approved by the Owner. Seeding shall be done when soil and weather conditions permit in early spring, until June 15, or from September 10 to October 15, unless otherwise approved. If it becomes necessary for seed to be sown after June 15, provisions shall be made for supplementary water and using mulch cover over lawn areas. If there is a delay in seeding, during which weeds grow, or soil is washed out, the Contractor shall eliminate the weeds by physical means, or replace the soil before sowing the seed, without additional compensation. Immediately before seeding is begun, the soil shall be lightly raked. Seed shall be sown at the approved rate, on a non-windy day by machine, or as approved by the Owner. The surface shall be kept moist by a fine spray until the seed shows uniform germination over the entire area. Wherever poor germination occurs in areas larger than 3 square feet, the Contractor shall reseed, roll, straw, and water as necessary to obtain proper germination. If there is insufficient time in the planting season to complete soil preparations, fertilizing, and seeding, permanent seeding may be left until the following planting season, at the option of the Contractor, or on order of the Owner.

END OF SECTION

# APPENDIX - A

**CITY OF NEWTON – PARKS & RECREATION DEPARTMENT**

**SERVICE CONTRACTOR'S WORK ORDER**





APPENDIX B

Newton Center Playground Location Map





EXISTING CONDITIONS

## APPENDIX C

### Newton Conservation Commission Approval & Conditions

#### NEWTON CONSERVATION COMMISSION ADMINISTRATIVE APPROVAL

CITY HALL, 1000 COMMONWEALTH AVE., NEWTON, MA 02459 TELEPHONE: 617-796-1134 [JSTEEL@NEWTONMA.GOV](mailto:JSTEEL@NEWTONMA.GOV)

*This Administrative Approval does not exempt you, your property, or activities on your property from the Wetlands Protection Act and its Regulations (310CMR 10.00). Cutting vegetation, grading, filling, etc. beyond the specific activities cited in this approval, may require a permit from the Conservation Commission.*

#### Project Location and Applicant

- A.  Project Address: 0 Tyler Ter Applicant: Greg Mellett gmellett@newtonma.gov; Park, Rec & Culture  
Phone: 617-796-1525 Proposed Approved Project: Resurface playground with new rubber surfacing  
 Sketch Attached Approved by: jms Approved Date: 4/6/2022

#### Jurisdiction

- B.  According to our maps, there are no wetlands or buffer zone on your property.
- C.  According to our maps, at least a portion of the property is within wetland or buffer zone protected by the Mass. Wetlands Protection Act (310CMR 10.00). Specifically, all or a portion of our property is in a:  
 Wetland Resource Area (e.g., 200' riverfront area, bordering wetland, pond, stream, or City flood zone)  
 Buffer Zone of a Wetland Resource Area (all land within 100' of a qualifying wetland).

#### Reason for Administrative Approval

- D.  The project will not alter a wetland Area Subject to Protection (wetland, river, pond, marsh, etc.). The following conditions apply: All work will take place on existing paved pathways and rubber-surfaced playground. No trees will be cut.
- E.  The work you propose is not within wetland or buffer zone.
- F.  According to our maps, your proposed project is within wetland or buffer zone, but has been allowed because it is:
- EXEMPT within Buffer Zone or Riverfront Area [310 CMR 10.02(b)(1)], as long as erosion controls are maintained
    - Converting lawn to uses accessory to residential structures [e.g., decks (& porches), sheds, pools, & patios] >50' from wetland/ stream
    - Installation of pervious unpaved pedestrian walkways for private use
    - Fencing, stonewalls, or wood (don't bar wildlife)
    - Plantings of native trees, shrubs, or groundcover, but excluding turf lawns
    - Vista pruning
    - Conversion of impervious surfaces to vegetated surfaces such as lawn, shrubs, and trees
    - Temporary, negligible activities (planning/monitoring)
    - Maintaining a stormwater management system installed after 1/2/08 under a valid OOC
    - Maintaining parking lots within Riverfront Area ONLY
    - Maintaining clearings and landscaping w/in RFA ONLY
    - Herbicide use under ROW VMP
    - Utility poles and work in roads, signs, signals, etc.
    - Vegetation cutting for road safety
    - Pavement repair and resurfacing
    - Driveway replacement
  - EXEMPT b/c project is mandatory and will not alter land or vegetation (e.g., replacement of water line in lawn/pavement)
  - CITY APPROVAL FOR MAINTENANCE AND SAFETY anywhere within a Resource Area or Buffer Zone
    - Maintaining or repairing an existing structure. No filling, grading, or landscaping is allowed under this approval.
    - Removal of 1-2 hazard trees if the tree(s) appear(s) to the Agent and Tree Warden to be unsafe (likely to damage a human, house, or structure). No equipment shall enter a wetland.
      - Only the top of the tree may be removed to eliminate danger. \_\_\_ feet of trunk must be left as habitat.
      - The tree may be cut flush with the ground.
      - No wood chips shall remain on site. No brush shall be left in or within 25 feet of a wetland.
      - \_\_\_ native saplings shall be planted on the site. 1 for each 8-16", 2 for each 16-24", 3 for each >24" tree cut.
      - \_\_\_ native shrubs shall be planted on the site. 2 for each 8-16", 3 for each 16-24", 5 for each >24" tree cut.
    - De minimis fill in a Floodplain with documentation of fill brought in and/or removed.

#### Requirements (or full wetland enforcement and/or permitting requirements shall apply)

- G.  Erosion/debris control MUST be installed as shown on the attached plans. All work will take place on existing paved pathways and rubber-surfaced playground. The native subgrade soil will not be disturbed. No trees may be cut or damaged during this project.

