NEW BUSINESS

5-30-12

Jacqueline Shanley

From: Andy Bagas
Sent: Thursday, May 24, 2012 11:05 AM
To: Jacqueline Shanley
Subject: Tispaquin Street Culvert Contracts

Jackie:

Town Counsel Dan Murray has reviewed and signed five (5) copies of the contract. I will bring the contracts to your office next week in time for the BOS meeting, vote, and signatures.

Andy

Environmental Partners

A partnership for engineering solutions.

May 17, 2012

Mr. Andrew Bagas, Director
Middleborough Department of Public Works
48 Wareham Street
Middleborough, MA 02346

RE: Transmittal of Contract Documents
Replacement of Tispaquin Street Fall Brook Culvert and Appurtenant Work

Dear Mr. Bagas:

Enclosed are five sets of Contract Documents for the subject contract. All five sets have been properly prepared by Green Acres Landscape & Construction Co., Inc. and are ready for execution by the Board of Selectmen. Green Acres included insurance certificates indicate acceptable coverage.

Documents should be dated on pages 00500-2, 00610-1 and 00620-1 and signed by Town Counsel and the Town Accountant on page 00500-7. Please return one executed copy to this office and one to Green Acres. Retain three copies for your file.

Also enclosed is the Notice to Proceed. Please sign, date and send to Green Acres for acknowledgement. The date on the Notice should be the same as the date on page 00500-2.

Please feel free to contact me at (617) 657-0253 or rjt@envpartners.com with any questions or concerns.

Very truly yours,
Environmental Partners Group, Inc.

Ryan J. Trahan, P.E.
Project Manager

enc.

SECTION 00500

AGREEMENT

THIS AGREEMENT is dated as of the _____ day of _____ in the year 20___ by and between the Town of Middleborough, Massachusetts, acting by and through its Department of Public Works, duly authorized therefore, who acts herein solely for said Town and without personal liability to itself, (hereinafter called OWNER) and Green Acres Landscape (hereinafter called CONTRACTOR).

OWNER AND CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is as described in SECTION 01010, SUMMARY OF WORK, and as shown on the plans.

The work done and materials and equipment furnished shall be strictly pursuant to and in conformity with the specifications and plans; said plans are signed and accompany this contract and these specifications, and are intended to complement each other. Any work appearing in or upon the one and not mentioned in the other shall be executed according to the true intent and meaning of said specifications and plans, the same as though the work was contained and described in all and as reasonably implied by the plans.

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as completion of the **Replacement of Tispaquin Street Fall Brook Culvert and Appurtenant Work**.

ARTICLE 2. ENGINEER

The Project has been designed by Environmental Partners Group, Inc., 1900 Crown Colony Drive, Suite 402, Quincy, Massachusetts 02169, who is hereinafter called ENGINEER and who is to act as OWNER'S representative, assume all duties and responsibilities, and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIMES

3.1 In accordance with the project's Order of Conditions issued by the Town of Middleborough Conservation Commission, the successful bidder will be required to start after **July 9, 2012** but no later than **August 16, 2012**. Once mobilized, the successful bidder shall complete the work within **45 calendar days**. The Order of Conditions is included as Appendix B.

3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense, and difficulties involved in proving the

actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER fifteen hundred dollars ($1,000) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete.

3.3 DIRECT LABOR MARKUP (percentage) for Change Orders on this project shall not exceed 15 percent.

ARTICLE 4. CONTRACT PRICE

The OWNER shall pay CONTRACTOR for completion of the work in accordance with the Contract Documents in current funds at the Contract Price agreed upon in the Bid Form attached to this Agreement:

Section 00300 BID FORM dated 4/25/12. The total of the Bid Proposal accepted by the Town is: One Hundred thirty-three thousand Six Hundred Eighty-five dollars ($ 133,685.00).

This amount includes all work described in Bid Items: 6.

ARTICLE 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 For unit price bid items the product of the actual measured quantities suitably installed and accepted and the unit prices from the accepted bid proposal constitutes the extended total for payment. The extended total is the unit price times the quantity indicated. Equitable adjustment of the unit price bid in the proposal will only be considered if the actual quantity is greater than 25% above or below the estimated quantity. For Lump Sum items suitability installed and completed the lump sum amount listed in the accepted bid proposal constitutes the total for payment.

5.2 Progress Payments; Retainage. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, and in accordance with the applicable Massachusetts General Law during construction. All such payments will be measured by the schedule of values established in paragraph 2.07 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

5.3 Progress payments will be made in an amount equal to 95 percent of Work completed (with the balance being retainage) but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.02.B.5 of the General Conditions.

5.4 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.06 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07.

ARTICLE 6. CONTRACTOR'S REPRESENTATIONS

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

6.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 7) and the other related data identified in the Bidding Documents including "technical data."

6.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work.

6.3 CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.

6.4 CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the General Conditions as provided in paragraph 4.02. CONTRACTOR accepts the determination set forth in Section 00700, paragraph 4.02 of the General Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to completeness of information and data shown or indicated in the Contract Documents with respected to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance, or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

6.5 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.

6.6 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports, and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

6.7 CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 7. CONTRACT DOCUMENTS

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

7.1 Invitation to Bid.

7.2 Instructions to Bidders.

7.3 CONTRACTOR's Bid Proposal.

7.4 This Agreement.

7.5 Exhibits to this Agreement.

7.6 Performance, Payment, and other Bonds.

7.7 General Conditions EJCDC C-700, 2002 edition.

7.8 Supplemental General Conditions.

7.9 Specifications and Appendices as listed in table of contents thereof.

7.10 Drawings dated March, 2012 (with latest revisions) with each sheet bearing the following general title:

Replacement of Tispaquin Street Fall Brook Culvert
and Appurtenant Work
Department of Public Works
Town of Middleborough, MA

7.11 Addenda numbers 1 to 1, inclusive.

7.12 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraph 3.04 of the General Conditions.

ARTICLE 8. MISCELLANEOUS

8.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

8.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and

specifically, but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment with release or discharge the assignor from any duty or responsibility under the Contract Documents.

8.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

8.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.5 The Contractor shall not discriminate against or exclude any person from participation herein on grounds of race, religion, color, sex, age, or national origin; and it shall take affirmative actions to insure that applicants are employed, and that employees are treated during their employment, without regard to race, religion, color, sex, age, handicapped status, or national origin.

8.76 The Contractor shall not participate in or cooperate with an international boycott, as defined in Section 999 (b) (3) AND (4) of the Internal Revenue code 1986, as amended, or engage in conduct declared to be unlawful by Section 2 of Chapter 151E of the Massachusetts General laws.

IN WITNESS HEREOF, the parties of this AGREEMENT have hereunto set their hands and seals as of the day and year first above written.

FOR THE TOWN OF MIDDLEBOROUGH, MA

By: _____

_____

_____

_____

SIGN HERE

_____

Board of Selectmen
(Party of the First Part)

CONTRACTOR

By: _____

TITLE: Joseph Barbosa - President
Print or type name and title

TAX ID#: 04 · 3142648
(Social Security # or FEID #)

APPROVED AS TO FORM

_____ _____
Middleborough Town Counsel Date

CERTIFICATE PURSUANT TO GL C44 & 31C

In accordance with M.G.L. C44, Section 31C, this is to certify that an appropriation in the amount of this contract is available therefore and that the Board of Selectmen has been authorized to execute the contract and approve all requisitions and change orders.

BY _____
Town Accountant

END OF SECTION 00500

NOTICE OF AWARD

TO: Green Acres Landscape & Construction Co., Inc.
21 Malbone Street
Lakeville, MA 02347

PROJECT DESCRIPTION: ***Replacement of Tispaquin Street Fall Brook Culvert and Appurtenant Work***

The Owner has considered the Proposal submitted by you for the above described Work on **April 26, 2012** in response to its Invitation to Bid and Instructions to Bidders.

You are hereby notified that your Proposal has been accepted for Items totaling the amount of **$133,685.00.**

You are required by the Instructions to Bidders to execute the Contract Agreement and furnish the required Contractor's Performance Bond, Payment Bond and certificates of insurance within ten (10) days from the date of this Notice of Award.

If you fail to execute said Agreement and to furnish said Bonds and Insurance within ten (10) days from the date of this Notice, said Owner will be entitled to consider all your rights arising out of the Owner's acceptance of your Proposal as abandoned and as a forfeiture of your Bid Bond. The Owner will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged copy of this Notice of Award to the Owner. Dated this 14th day of May, 2012

By Its Director of the Public Works:

Andrew Bagas

May 14, 2012
Date

ACCEPTANCE OF NOTICE

Receipt of the above Notice of Award is hereby acknowledged, this, the 16 day of May, 2012

By: _____

Title: President.

NOTICE TO PROCEED

To: Green Acres Landscape & Construction Co., Inc.
21 Malbone Street
Lakeville, MA 02347

Date: _____

PROJECT: ***Town of Middleborough***
Replacement of Tispaquin Street Fall Brook Culvert and Appurtenant Work

You are hereby notified to commence the Work in accordance with the Agreement dated _____. In accordance with the Instructions to Bidders, you are to start work no earlier than **July 9, 2012** and no later than **August 16, 2012**, and shall complete all work, once mobilized, within **45 calendar days**. ~~The date of completion for all work is therefore, _____~~.

Town of Middleborough, Massachusetts

By: _____
Director of Public Works

END OF SECTION 00550

SECTION 00610

PERFORMANCE BOND

Bond No. K0865234A

KNOW ALL MEN BY THESE PRESENTS,

That we, **Green Acres Landscape & Construction Co., Inc.**, organized under the laws of the State of **Massachusetts**, and having a usual place of business in **Lakeville, MA**, as principals, and **Westchester Fire Insurance Company**, organized under the laws of the State of **Pennsylvania**, and having a usual place of business in **Boston, MA**, as surety, are are holden and stand firmly bound and obligated unto the Town of Middleborough, Massachusetts, as obligee, in the sum of **One Hundred Thirty Three Thousand Six Hundred Eighty Five 00/100** ($ **133,685.00**) Dollars, lawful money of the United States of America, to and for the true payment whereof, we hereby bind ourselves, and each of us, our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said principal has, by means of a written agreement, dated _____, entered into a contract with the said obligee for the **Replacement of Tispaquin Street Fall Brook Culvert and Appurtenant Work,** a copy of which agreement is attached hereto and by reference, made a part hereof.

NOW, THEREFORE, the conditions of this obligation is such that if the said principal shall well and truly keep and perform all the undertakings, covenants, agreements. terms and conditions of said contract on his part to be kept and performed, during the original term of said contract and any extensions thereof that may be granted by the Town of Middleborough, Massachusetts with or without notice to the surety, and during the life of any guaranty required under the contract, and shall also well and truly keep and perform all the undertakings, covenants, agreements, terms and conditions of any and all duly authorized modifications, alterations, changes or additions to said contract that may hereafter be made, notice to the surety of such modifications, alterations, changes or additions being hereby waived, then this obligation shall be null and void; otherwise it shall be and remain in full force, virtue and effect.

In the event that the work under said contract is abandoned by the principal, or is terminated by the Town of Middleborough, Massachusetts under the provisions of sections of said Contract, said surety hereby further agrees that said surety shall, if requested in writing by the Town of Middleborough, Massachusetts, take such action as is necessary to complete the work under said contract. And the said surety, for value received, hereby stipulates and agrees that no change in. or extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or to the Specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the Specifications.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 16th day of May in the year Two Thousand and Twelve.

Important: Attach herewith proof of authority of officers or agents to sign Bond.

Principal:

Green Acres Landscape & Construction Co., Inc.

By: _____

(Title) President

(SEAL)

21 Malbone Street Lakeville, MA

Address

Surety:

Westchester Fire Insurance Company

By: _____

(Title) **Alyssa R. Michael, Attorney-in-Fact**

(SEAL)

508-235-2278

Telephone Number

866-700-6988

Fax Number

END OF SECTION 00610

Duplicate Original

SECTION 00620

PAYMENT BOND **Bond No. K0865234A**

KNOW ALL MEN BY THESE PRESENTS,

That we, **Green Acres Landscape & Construction Co., Inc.** organized under the laws of the State of **Massachusetts** and having a usual place of business in **Lakeville, MA**, as principal, and **Westchester Fire Insurance Company** organized under the laws of the State of **Pennsylvania** and having a usual place of business in **Boston, MA**, as surety, are holden and stand firmly bound unto the Town of Middleborough, Massachusetts as obligee, in the sum of ($ **133,685.00**) Dollars lawful money of the United States of America, to and for the true payment whereof, we hereby bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said principal has, by means of a written agreement, dated _____ entered into a contract with the said obligee for the **Replacement of Tispaquin Street Fall Brook Culvert and Appurtenant Work**, a copy of which agreement is attached hereto and by reference made a part hereof.

NOW THEREFORE, The conditions of this obligation is such that if the principal 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, then this obligation shall be null and void; otherwise it shall be and remain in full force, virtue and effect.

IN WITNESS WHEREOF, the above-bounded parties have hereunto set our hands and seals this 16th day of May in the year Two Thousand Twelve.

Important: Attach herewith proof of authority of officers or agents to sign Bond.

PRINCIPAL:	**SURETY:**
Green Acres Landscape & Construction Co., Inc.	**Westchester Fire Insurance Company**
By:	By:
(Title) President.	(Title) **Alyssa R. Michael, Attorney-in-Fact**

END OF SECTION 00620