



SECTION 00520 – AGREEMENT

STATE OF: Massachusetts

COUNTY OF: Essex

THIS AGREEMENT AND FORMAL CONTRACT, made and entered into this 6<sup>th</sup> day of July, 2005, by and between Feoffees of the Grammar School in the Town of Ipswich, MA, party of the first part, hereinafter called the "OWNER", and, Waterline Industries Corporation of the City of Seabrook, County of Rockingham, State of New Hampshire, hereinafter called the "CONTRACTOR" party of the second part, WITNESSETH, that whereas the OWNER intends to construct the Little Neck, Ipswich, MA Wastewater Holding Tank, hereinafter called the Work, in accordance with the Drawings, Specifications, and other Contract Documents prepared by Lombardo Associates, Inc., dated April 26, 2005.

NOW, THEREFORE, the OWNER and CONTRACTOR for the considerations hereinafter set forth, agree as follows:

1. The CONTRACTOR agrees to furnish all the necessary labor, materials, equipment, tools and services necessary to perform and complete in a workmanlike manner all work required for the construction of the Work, in strict compliance with the Contract Documents herein mentioned, which are hereby made a part of the Agreement, including the following Addenda:

Addendum No.	Date
<u>1</u>	<u>May 4, 2005</u>
<u>2</u>	<u>June 29, 2005</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

- a. Contract Time: The CONTRACTOR agrees to commence work under this Contract in accordance with the written Notice to Proceed, and to finally complete the Work within 120 calendar days of the commencement of the Contract Time as defined in the General Conditions of the Contract.
- b. Sub-Contractors: The CONTRACTOR agrees to bind every sub -contractor by the terms of the Contract Documents. The Contract Documents shall not be



construed as creating any contractual relation between the Sub-Contractor and the OWNER.

2. The OWNER agrees to pay, and the CONTRACTOR agrees to accept, in full payment for the performance of this Agreement, and in accordance with Section 00300 of the Contract Documents, the Contract Amount of: One Million, One Hundred Forty Five Thousand Two Hundred Seventy-Seven Dollars (\$1,145,277), plus any and all sums to be added and/or deducted resulting from all extra and/or omitted work in connection therewith, as authorized under the terms as stated in the General and Supplementary Conditions, all in accordance with the terms as stated in the Contract Documents.
  - a. Progress Payments will be made in accordance with the General and Supplementary Conditions of the Contract Documents.
  - b. Progress Payments will be in the amount equal to ninety percent (90%) of the calculated value of the Work completed until fifty percent (50%) of the work required by the Contract Documents has been completed. At such time, OWNER shall have retained funds to five percent (5%) of the total Contract Amount. The amount retained, as provided above will be withheld by the OWNER until completion of the Agreement to ensure faithful completion of the Work under the terms of the Contract Documents.
  - c. Upon completion and acceptance of the Work in accordance with the Contract Documents, OWNER shall pay the remainder of the Contract Amount after publication by the OWNER in accordance with Massachusetts statutory requirements.

### 3. Contract Documents

It is hereby mutually agreed that the following list of instruments, plans, specifications, and documents which are attached hereto, bound herewith or incorporated herein by reference shall constitute the Contract Documents, all of which are made a part hereof, and collectively evidenced and constitute the Agreement between the parties hereto, and they are fully a part of the Agreement as if they were set out verbatim and in full herein, and are designated as follows:

- a. Instructions to Bidders
- b. Bid Proposal
- c. Bid Bond
- d. Notice of Award
- e. Agreement
- f. Performance and Payment Bonds
- g. Certificates of Insurance, Policy Endorsement

- h. Notice to Proceed
  - i. General Conditions
  - j. Supplementary Conditions
  - k. Technical Specifications
  - l. Drawings
  - m. Submittal Packet
  - n. Addenda
4. Liquidated Damages

OWNER and CONTRACTOR recognize that time is of the essence in this Agreement and that the OWNER will suffer financial loss if the Work is not complete within the time specified in paragraph 1.a) above, plus any extensions thereof allowed in accordance with the General Conditions. They also recognize the delays, expense and difficulties involved in proving, in a legal proceeding, the actual loss suffered by OWNER if the Work is not complete 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 two thousand dollars (\$2,000) for each calendar day that expires after the time specified in paragraph 1.a) for final completion until the Work is finally complete.

5. Contractor Representations

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

- a. CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state, and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.
- b. CONTRACTOR has studied carefully the Contract Documents and all other items otherwise affecting cost, progress or performance of the Work which were relied upon by the Engineer in the preparation of the Contract Drawings and Specifications and which have been identified in the Supplementary Conditions as a part of the Contract Documents.
- c. CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 5.b) as he deems necessary for the performance of the Work at the Contract Amount, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.

- d. CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
  - e. CONTRACTOR has given Engineer written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to CONTRACTOR.
6. Miscellaneous
- a. Terms used in this Formal Contract which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
  - b. 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 will release or discharge the assignor from any duty or responsibility under the Contract Documents.
  - c. OWNER and CONTRACTOR each binds himself, his partners, successors, assigns, and legal representatives to the other party hereto, his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
  - d. No mechanic, contractor, sub-contractor, material man or other person can or will contract for or in any manner have or acquire any lien upon the Work covered by this Agreement, or the land upon which the same is situated.
  - e. The Engineer is: Lombardo Associates, Inc. Located at 49 Edge Hill Road, Newton, MA 02467. Attn: Pio Lombardo.

SIGNATURES:

OWNER: Feoffees of the Grammar School in the Town of Ipswich

DATE: July 6, 2005

BY: 

NAME: Alex Mulholland

TITLE: Feoffee and Chairman

ATTEST: 

NAME: Donald M. Greenough

TITLE: Attorney for Owner

Address for giving notices:

C/o Attorney Donald Greenough  
2 Depot Square  
Ipswich, MA 01938-0790

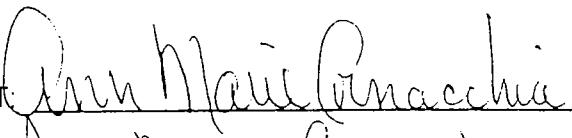
CONTRACTOR: Waterline Industries Corporation

DATE: July 6, 2005

BY: 

NAME: Ralph Dumke

TITLE: President

ATTEST: 

NAME: Ann Marie Cornacchia

TITLE: \_\_\_\_\_

Address for giving notices:

145 Batchelder Rd  
Seabrook, NH 03874

SECTION 00530 – NOTICE TO PROCEED

TO: Waterline Industries Corporation

DESCRIPTION OF WORK: Construction of the Little Neck, Ipswich, MA Wastewater Holding Tank

OWNER: Feoffees of the Grammar School in the Town of Ipswich

This notice is to advise you:

That the required Contractor's Performance Bond, Payment Bond and Certificates of Insurance and Policy Endorsement have been received by the Owner.

That the Agreement covering the above-described Work has been fully executed by the Contractor and the Owner.

That the Owner has approved the said Contract Documents.

That the Contract Time commences upon execution of this Notice to Proceed by the Owner.

Therefore, as the Contractor for the above described Work, you are hereby authorized and directed to proceed within ten (10) calendar days from receipt of this notice as required by the Agreement.

Dated this 6<sup>th</sup> day of July, 2005.

OWNER: Feoffees of the Grammar School in the Town of Ipswich

BY: 

NAME: Alex Mulholland

TITLE: Feoffee and Chairman

ACKNOWLEDGMENT OF NOTICE

Receipt of this Notice to Proceed is hereby acknowledged this 6<sup>th</sup> day of July, 2005.

CONTRACTOR: Waterline Industries Corporation

BY: 

NAME: Ralph Dumke

TITLE: President