

CONTRACT FOR GRAVEL REMOVAL

Agreement made as of the 25th day of May, 2010 by and between the County of Plymouth, acting through and by its Plymouth County Commissioners, of 11 South Russell Street, Plymouth, Massachusetts (hereinafter the "COUNTY") and Kingstown Corporation, 61 Camelot Drive, Plymouth, Massachusetts 02360 (hereinafter the "CONTRACTOR").

WHEREAS, COUNTY owns certain property containing sand and gravel located off Camelot Drive, Plymouth, consisting of 106 acres more or less, Plymouth Assessor's Map 88, Parcel 54, known as and hereafter referred to as the "Wood Lot"; and

WHEREAS, COUNTY published an Invitation for Bids for Sand & Gravel Removal from the Wood Lot; and

WHEREAS, CONTRACTOR submitted a bid responsive to said COUNTY Invitation for Bids, which bid is acceptable to County;

NOW, THEREFORE, COUNTY and CONTRACTOR hereby agree that the following terms and conditions shall govern the contract for removal of sand and gravel from the Wood Lot;

1. **PURPOSE:** The purpose of this Contract is to govern the removal of sand and gravel from the Wood Lot by CONTRACTOR.

2. **PARTIES:** The parties to this Contract are The County of Plymouth, a body politic of the Commonwealth of Massachusetts and Kingstown Corporation, a Massachusetts Corporation.

3. **DEFINITIONS:**

3.1 **CONTRACT DOCUMENTS:** All documents relative to the contract, including the Invitation for Bid, dated November 19, 2009 consisting of 12 pages; the bid proposal by CONTRACTOR dated December 28, 2009 consisting of 7 pages, each of these documents being attached hereto as Attachment A and the document entitled Best Management Practices attached hereto as Attachment B, together shall be deemed to be the Contract. The contract documents are complementary, and what is called for by any one shall be binding as if called for by all. The intention of the documents is to include all labor and materials, equipment and transportation necessary for the proper performance of the contract.

3.2 **THE CONTRACTOR:** The "other party" to any contract with the County, meaning Kingstown Corporation This term shall (as the sense and particular contract so require) include vendor, contractor, engineer, or other label used to identify the other party in the particular contract. Use of the term "CONTRACTOR" shall be understood to refer to any other label so used.

3.3. DATE OF SUBSTANTIAL PERFORMANCE: The date when the work is sufficiently complete, the services are performed or the goods delivered, in accordance with Contract Documents, as modified by amendments and change orders.

3.4. GOODS: Goods, supplies or materials.

3.5 SUBCONTRACTOR: Those having a direct contract with the CONTRACTOR.

The terms includes one who furnished material worked to a special design according to the Drawings or Specifications of this work, but does not include one who merely furnishes material not so worked.

3.6. WORK: The services or materials contracted for, or both.

4. PROJECT SUPERVISION: John Moon, General Manager, shall be the project manager for the CONTRACTOR and the County Administrator or his designee shall be the project manager for the County. Either party may rely on the representations, approvals and other actions of the project manager of the other party. Either party may designate a new project manager by written notification to the other party.

5. KEY PERSONNEL: The CONTRACTOR shall forthwith furnish to the County a list of key individuals who will be assigned on this Contract and identify the task they will perform. Key assigned personnel cannot be changed without written approval of the County, which approval shall not be unreasonably withheld.

6. SERVICES: The services to be provided are set forth in detail in the Contract Documents as that term is defined herein and included herewith as Attachments A and B, which shall be deemed to be incorporated herein by reference.

7. PRICING, TERMS AND TIME FOR PERFORMANCE: CONTRACTOR shall pay COUNTY One Dollar and Thirty Eight Cents (\$1.38) per cubic yard of material removed from the Wood Lot as provided for in the CONTRACT DOCUMENTS. CONTRACTOR'S activities hereunder shall be governed by said CONTRACT DOCUMENTS and no modification or variation shall be authorized unless the same is made pursuant to an amendment signed by the parties. The total number of cubic yards of material removed will be determined by comparison of pre-removal topographical survey to a post-removal topographical survey. Such surveys will be performed by a licensed engineer and the costs for such surveys will be paid by the CONTRACTOR. Notwithstanding the results of such surveys, the CONTRACTOR shall be obligated to pay to the COUNTY not less than \$345,000.00 during the term of this Contract.

The CONTRACTOR shall have two (2) years from the date of the issuance of a permit from the Town of Plymouth to complete removal of 250,000 cubic yards of material. The CONTRACTOR shall immediately upon execution of this Contract prepare and file the necessary applications with the Town of Plymouth and use its best efforts to obtain the required

permits.

The Contract Documents require full payment within twelve (12) months. Upon execution of this Contract CONTRACTOR shall pay to the County one third of the amount due (One Hundred Fifteen Thousand Dollars (\$115,000.00)), to be held by COUNTY pending issuance of permits from the Town of Plymouth. The balance of the amount due under the Contract shall be paid as follows: an additional one third of the amount due (One Hundred Fifteen Thousand Dollars (\$115,000.00)) within six (6) months of the date of this Contract; and the final one third of the amount due (One Hundred Fifteen Thousand Dollars (\$115,000.00)) within twelve (12) months of the date of this Contract.

7.1. CONTRACTOR shall follow Best Management Practices contained in Attachment B, to the extent the same are not in conflict with standards or practices required by the Town of Plymouth or other permitting authority, in which event the more stringent standard shall apply.

In determining the performance bond required by the terms and conditions of the Contract Documents, the COUNTY shall take into consideration any bonding requirements imposed by the Town of Plymouth in issuing any permits for gravel removal.

CONTRACTOR acknowledges that the Wood Lot referenced in the Contract Documents and from which the gravel is to be removed, is 106 +/- acres and that the area subject to this Contract is a small portion of the Wood Lot. The County will have other activities ongoing on the Wood Lot, which activities may include gravel removal. During the term of this Contract, CONTRACTOR agrees for itself, its officers, directors, employees, and all related entities, not to appeal the grant of any permit or license for activities on the remaining portion of the Wood Lot. In the event that any appeal is filed by the CONTRACTOR, its officers, directors, employees, or any related entities, the COUNTY reserves the right to terminate this Contract upon seven (7) day written notice to the CONTRACTOR.

8. **CONDITION OF ENFORCEABILITY AGAINST THE COUNTY:** This Contract is binding upon, and enforceable against the County if the Contract is (1) signed by the Plymouth County Commissioners or its designee; (2) endorsed with approval by the County Treasurer as to appropriation or availability of funds; and (3) endorsed with the approval by the County Attorney as to form.

9. **CONTRACTOR'S BREACH AND COUNTY REMEDIES:** Failure of the CONTRACTOR to comply with any of the terms or conditions of this Contract shall be deemed a material breach of this Contract and the County shall have all the rights and remedies provided in the Contract documents; the right to cancel, terminate, or suspend the Contract in whole or in part; the right to maintain any and all actions at law or equity or the other proceeding with respect to a breach of the Contract including damages and specific performance and the right to select among the remedies available to it by all of the above. In the event of a claimed default Contractor will have fourteen (14) days to cure upon written notice from County. In the event of claimed default based on safety violations Contractor must immediately take reasonable steps to

cure.

10. STATUTORY COMPLIANCE:

10.1. This Contract will be construed and governed by the provisions of applicable federal, state and local laws and regulations. Wherever any provision of the Contract or Contract Documents conflicts with any provision or requirement of federal, state or local law or regulation, the provisions of law and regulations shall control. Where applicable to the Contract, the provisions of Massachusetts General Laws are incorporated by reference into the Contract.

10.2. Where applicable law mandates the inclusion of any term and provision into this contract, this Section shall be understood to import such term or provision into this Contract. To whatever extent any provision of this Contract is inconsistent with any law or regulation limiting the power of liability of the County, such law or regulation shall control.

10.3. The CONTRACTOR shall give all notices and comply with all laws and regulations bearing on the performance of the Contract. If the CONTRACTOR performs the Contract in violation of any applicable law or regulation, The CONTRACTOR shall bear all costs arising therefrom.

10.4. The CONTRACTOR shall keep itself fully informed of all existing and future state and national laws and municipal bylaws and regulations, and of all orders and decrees of any bodies or tribunals having jurisdiction in any manner affecting those engaged or employed in the work, or the materials used in the work or in any way affecting the conduct of the work. If any discrepancy or inconsistency is discovered in the drawings, specification or Contract for this work in violation of any such law, bylaw, regulation order or decree, the CONTRACTOR shall forthwith report the same in writing to the County. The CONTRACTOR shall, at all times, observe and comply with and shall cause all its agents, employees and Subcontractors to observe and comply with all existing and future laws, bylaws, regulations, orders and decrees; and shall protect and indemnify the County and its duly appointed agents against any claim or liability arising from or based on any violations whether by him or its agents, employees or subcontractors of any such law, bylaw, regulation or decree.

11. CONFLICT OF INTEREST: Both the County and the CONTRACTOR stipulate to the applicability of the State Conflict of Interest Law, M.G.I. ch. 268A and M.G.L. ch. 62C. Sec. 49A (Requirement of Tax Compliance by all Contractors Providing Goods and Services, or Real Estate Space to the Commonwealth or Subdivision).

12. DISCRIMINATION: The CONTRACTOR will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to MGL Ch. 151B (Law Against Discrimination), any executive orders, rules, regulations and requirements of the Commonwealth of Massachusetts as they may from time to time be amended and the County's MIIIE/WBE Plan, if any.

13. **SUBCONTRACTING:** There shall be no subcontracting permitted without the express written consent of County, which consent shall not be unreasonably withheld.

14. **ASSIGNMENT:** Neither party shall assign the rights or responsibilities under this Contract without the express written consent of the other party.

15. **BINDING ON SUCCESSORS:** This Contract shall be binding upon the CONTRACTOR, its assigns, transferees, and/or successors in interests (and where not corporate, the heirs and estates of the CONTRACTOR).

16. **CORPORATION CONTRACTOR:** If the CONTRACTOR is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate certifying the corporate capacity and authority of the party signing this Contract for the corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the Contract is executed by the CONTRACTOR. This Contract shall not be enforceable against the County unless and until the CONTRACTOR complies with this Section. The CONTRACTOR if a foreign corporation, shall comply with the provisions of the MGI, Ch. 181, Sec. 3 & 5, and any Acts and Amendments thereof, and in addition thereto, relating to the appointment of the Commissioner of Corporation as its attorney, shall file with the Commissioner of Corporation as Power of Attorney and duly authenticated copies of its Charter or Certificate of Incorporation; and said CONTRACTOR shall comply with all the laws of the Commonwealth.

17. **NOTICES:** Any notice permitted or required under the provisions of this Contract to be given or served by either of the parties hereto upon the other party hereto shall be in writing and signed in the name of or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified ore registered mailing properly addressed. Notice to the CONTRACTOR shall be deemed sufficient if sent to the address set forth in the Contract and to the County by being sent to the Plymouth County Commissioners, 11 South Russell St., Plymouth, MA 02360.

18. **LIABILITY OF PUBLIC OFFICIALS:** To the full extent permitted by law, no official, employee, agent or representative of the County shall be individually or personally liable for any obligation of the County tinder this Contract.

19. **INDEMNIFICATION / INSURANCE:** The CONTRACTOR and any subcontractors shall maintain in force throughout the term of the Contract, Workers' Compensation Insurance and general liability insurance in the amount of \$1,000,000 / \$2,000,000 aggregate, including non-owned auto coverage for the entities involved and their employees, and agents. Proof of such coverage must be submitted prior to Notice to Proceed. The CONTRACTOR hereby indemnifies and agrees to hold harmless the County against any liability including al claims for bodily injury or property damage that may arise out of the CONTRACTOR's performance of its obligations under this Contract. The CONTRACTOR hereby releases the County from any claim for liability by itself or a subcontractor, officer, agent or employee.

20. **CONSTRUCTION:** This Contract shall be reasonably construed under the laws of the Commonwealth of Massachusetts to give its purpose. Words shall be given their common ordinary meanings unless the context clearly otherwise requires.

21. **COMPLETE CONTRACT/AMENDMENTS:** This Contract together with Attachment A constitutes the complete Contract between the parties. It may be amended only in writing executed by both parties. This Contract may be executed in multiple counterparts, each of which shall be considered an original. When executed, this Contract shall be binding upon all parties and their respective successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Contract separately, on the dates indicated by their respective signatures.

COUNTY OF PLYMOUTH



Anthony O'Brien

Date:

John P. Riordan

Date:

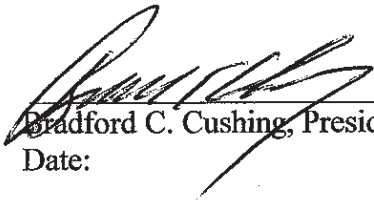


Timothy J. McMullen

Date:

KINGSTOWN CORPORATION

by:



Bradford C. Cushing, President and Treasurer

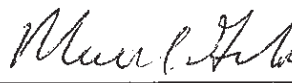
Date:

Approved as to Appropriation or
Availability of Funds:



County Treasurer

Approved as to Form:



County Attorney