

Massachusetts Department of Revenue Division of Local Services

Amy Pitter, Commissioner

Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs

Friday, September 05, 2014

Ronald Florino
Accountant
Town of Stoneham

Re: **NOTIFICATION OF FREE CASH APPROVAL - Stoneham**

Based upon the unaudited balance sheet submitted, I hereby certify that the amount of available funds or "free cash" as of July 1, 2014 for the Town of Stoneham is:

General Fund		\$	1,138,074
Water	Enterprise Fund	\$	1,004,653
Sewer	Enterprise Fund	\$	1,237,600

This certification is in accordance with the provisions of G. L. Chapter 59, §23, as amended.

Certification letters will be e-mailed to the mayor/manager, board of selectmen, prudential committee, finance director and treasurer immediately upon approval, provided an e-mail address is reported in DLS' Local Officials Directory. Please forward to other officials that you deem appropriate.

Sincerely,



Gerard D. Perry
Director of Accounts

cc:
JDP9633@aol.com;esinclair@ci.stoneham.ma.us;amoneill118@yahoo.com;frank.vallarelli@comcast.net;bmacdo
nald@ci.stoneham.ma.us;tboussy@thbcompany.com;dragucci@ci.stoneham.ma.us;rflorino@ci.stoneham.ma.us
;dmurphy@ci.stoneham.ma.us;pdudley@ci.stoneham.ma.us;townclerk@ci.stoneham.ma.us;sweeneybob54@gm
ail.com

SUBMITTED BY Ron Florino
FIELD REP M. O'Neil

COMMUNITY Stoneham
FUND Water

RETAINED EARNINGS CALCULATION - ENTERPRISE FUND

PART I

CASH 1,015,029

SUBTRACT:

CURRENT LIABILITIES, DESIGNATIONS OF FUND BALANCE

Warrants Payable 936

Encumbrances

Expenditures

Acc Pay 9,440

OTHER

TOTAL 1,004,653

PART II

RETAINED EARNINGS - UNDESIGNATED 1,004,653

SUBTRACT:

ACCOUNTS RECEIVABLE (NET)

OTHER

TOTAL 1,004,653

PART III

FIXED ASSETS:

DEBITS

CREDITS

Total -

FIXED ASSET VARIANCE -

M. O'Neil

REVIEWED BY: _____ PLEASE SEE CERTIFICATION LETTER

DATE: 08/28/14 FOR DIRECTOR OF ACCOUNTS APPROVAL

SUBMITTED BY Ron Florino
FIELD REP M. O'Neil

COMMUNITY Stoneham
FUND Sewer

RETAINED EARNINGS CALCULATION - ENTERPRISE FUND

PART I

CASH 1,262,160

SUBTRACT:

CURRENT LIABILITIES, DESIGNATIONS OF FUND BALANCE

Warrants Payable	7,005
Encumbrances	1,107
Expenditures	
Acc Pay	16,448

OTHER

TOTAL 1,237,600

PART II

RETAINED EARNINGS - UNDESIGNATED 1,237,600

SUBTRACT:

ACCOUNTS RECEIVABLE (NET)

_____	_____
_____	_____
_____	_____
_____	_____

OTHER

TOTAL 1,237,600

PART III

FIXED ASSETS:

DEBITS

CREDITS

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Total	-		-
FIXED ASSET VARIANCE	-		-

M. O'Neil

REVIEWED BY: _____

PLEASE SEE CERTIFICATION LETTER

DATE: 08/28/14

FOR DIRECTOR OF ACCOUNTS APPROVAL



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Deval L. Patrick, Governor ♦ Aaron Gornstein, Undersecretary

September 2, 2014

Mr. Jonathon Whitten, Esq.,
Huggins and Witten, LLC
156 Duck Mill Rd
Duxbury, MA 02332 and
1172 Beacon Street, Suite 202
Newton, MA 02461

Decision on Grounds for Denial of Comprehensive Permit Application – Weiss Farm Apartments, LLC, Stoneham

Dear Mr. Witten:

The Department of Housing and Community Development (DHCD) is in receipt of the Town of Stoneham's July 24, 2014, letter to Weiss Farm Apartments, LLC, (Applicant), regarding its application for a Comprehensive Permit. The July 24, 2014, letter seeks to provide notice pursuant to 760 CMR 56.03(8) that the Town of Stoneham Zoning Board of Appeals (Board) considers the denial of Applicant's application for a Comprehensive Permit to be consistent with local needs. DHCD is also in receipt of an August 7, 2014 letter from the Applicant that challenges the Board's assertion that the Town of Stoneham denial is consistent with local needs.

Specifically, the Board claims that the Town of Stoneham is consistent with local needs based on the following assertions: 1) Subsidized Housing Inventory (SHI) Eligible Housing units occupy sites in Stoneham comprising more than 1.5% of the total land area as defined under 760 CMR 56.03(3) (b); and 2) the Related Application provision at 760 CMR 56.03(7) has been met. Pursuant to 760 CMR 56.03(8), DHCD addresses both assertions below.

General Land Area Minimum as Defined in 760 CMR 56.03(3) (b):

The Board claims that Subsidized Housing Inventory (SHI) Eligible Housing units occupy sites in Stoneham comprising more than 1.5% of the total land area as defined under 760 CMR 56.03 (3) (b). DHCD notes that the Board via its July 24, 2014 letter claims that the Town has 2,141.95 acres of developable land based on exclusions from total land area as defined under 760 CMR 56.03(3)(b).

The July 24, 2014 letter also notes that the 1.5% of the total land area land is 32.1 acres. Finally, the July 24, 2014 letter claims that the total qualifying land area (with respect to SHI units) is 50.85 acres, therefore meeting and exceeding the 32.1 acres, to support the Board's assertion that Town is "consistent with local needs" pursuant to Chapter 40B.

Discussion and Findings

Pursuant to 760 CMR 56.03(8), the Board shall have the burden of proving satisfaction of the grounds for asserting that a denial of a permit would be consistent with local needs; furthermore, the Board is to provide any necessary supportive documentation regarding the grounds it believes it has met. DHCD finds that the Board's letter and its accompanying table with asserted acreage did not provide necessary supportive documentation as it does not show that the land area used in its calculations is accurate and satisfies 760 CMR 56.03(3)(b)). The asserted land area is not beyond reasonable dispute or otherwise presumed to be accurate by DHCD for purposes of 760 CMR 56.03(8). Even assuming the Board could meet its burden of proof without other documentation, the documentation provided by the Applicant sufficiently rebuts the Board's assertion that it has met the 1.5% threshold. After careful analysis of the Town of Stoneham's Appraisal Summary Forms provided by the Applicant, which include land area for units qualifying under 760 CMR 56.03(3)(b), DHCD makes the following observations:

DHCD notes that the Board's letter counted the same land parcel several times, which undermines its argument that the Town is "consistent with local needs" pursuant to Chapter 40B. The Applicant points out, and provides Town of Stoneham Appraisal Summary Forms as supportive documentation, that four SHI projects (SHI ID #'s 3042, 3043, 3044 and 3045) are all located on the same parcel of land (8.77 acres in total) owned by the Stoneham Housing Authority (SHA). In addition, the Applicant notes that SHI #'s 3041 and 9648 are located on the same parcel of land (4.85 acres) and owned by the SHA. The Board appears to have counted various SHI projects as separate parcels artificially boosting the total count to 50.85 acres.

After reviewing all documentation, DHCD is in agreement with the Applicant that, even assuming the Board's assertion that 28.74 acres of land constituting total land area as defined under 760 CMR 56.03(3)(b) is correct and that the method of calculating area occupied by SHI Eligible Housing units meets the regulatory requirement,¹ the Board has failed to establish that it has met the 1.5% threshold.

Related Application as Defined in 760 CMR 56.03(7):

The Board also asserts consistency with local needs based on the Related Application provision as defined in 760 CMR 56.03(7). The regulation states:

¹ "Only sites of SHI Eligible Housing units inventoried by the Department or established according to 760 CMR 56.03(3)(a) as occupied, available for occupancy, or under permit as of the date of the Applicant's initial submission to the Board, shall be included in toward the 1½ minimum. For such sites, that proportion of the site area shall count that is occupied by SHI Eligible Housing units (including impervious and landscaped areas directly associated with such units." 760 CMR 56.03(3)(b).

Related Applications.

For the purposes of this subsection, a related application shall mean that less than 12 months has elapsed between the date of an application for a Comprehensive Permit and any of the following:

(a) the date of filing of a prior application for a variance, special permit, subdivision, or other approval related to construction on the same land, if that application was for a prior project that was principally non-residential in use, or if the prior project was principally residential in use, if it did not include at least 10% SHI Eligible Housing units;

(b) any date during which such an application was pending before a local permit granting authority;

(c) the date of final disposition of such an application (including all appeals); or

(d) the date of withdrawal of such an application. An application shall not be considered a prior application if it concerns insubstantial construction or modification of the preexisting use of the land.

DHCD notes that the Board's letter states that the Applicant filed an Approval Not Required (ANR) plan with the Stoneham Planning Board to divide the land into two lots in November 2013. The ANR Plan was later endorsed by the Stoneham Planning Board (December 4, 2013). One of the two lots is the land comprising the proposed Comprehensive Permit.

Discussion and Findings

DHCD agrees with the Applicant that the Town's endorsement of the ANR plan was not an approval. Approval was not required on its face ("Approval Not Required") and the Town found approval was not required when it endorsed the ANR filing. There was also no application for approval as the filing was for an Approval Not Required. Even assuming there was such an application and approval, the ANR plan filing related to the lack of a subdivision for purposes of M.G.L. c. 41, §81P and did not relate to construction on the land.

DHCD notes that according to the DHCD Approval Not Required (ANR) Handbook, the court(s) has interpreted the Subdivision Control Law (M.G.L. c. 41, §§ 81K-81GG) to impose three standards that must be met in order for lots shown on a plan to be entitled to an endorsement by the Planning Board that "approval under the Subdivision Control Law is not required."

1. The lots shown on such plan must front on one of the three types of ways specified in Chapter 41, Section 81L, MGL;
2. The lots shown on such plan must meet the minimum frontage requirements as specified in Chapter 41, Section 81L, MGL; and,
3. A Planning Board's determination that the vital access to such lots as contemplated by Chapter 41, Section 81M, MGL, otherwise exists.

The endorsement of the ANR lots does not constitute approval for construction and/or a permit. Although it may essentially create a lot(s) by allowing the plan to be recorded, it does not meet the Related Application provision since it does not involve construction on the proposed Comprehensive Permit site.

Conclusion

DHCD notes that the Applicant and Board have met the regulatory timeline(s) pursuant to 760 CMR 56.03(8) based on the information provided. After careful analysis of the documentation submitted and a review of the applicable regulations and guidelines, DHCD is in agreement with the Applicant, the Board has not met the burden of proof in its assertion that a denial with conditions would be consistent with local needs.

If either the Board or the Applicant wishes to appeal this decision pursuant to 760 CMR 56.03(8), that party shall file an interlocutory appeal with the HAC on an expedited basis, pursuant to 760 CMR 56.05(9) (c) and 56.06(7) (e) (11), within 20 days of its receipt of the decision, with a copy to the other party and to the Department.

The Board's hearing of the Project shall thereupon be stayed until the conclusion of the appeal, at which time the Board's hearing shall proceed in accordance with 760 CMR 56.05. Any appeal to the Courts of the HAC's ruling shall not be taken until after the Board has completed its hearing and the HAC has rendered a decision on any subsequent appeal.

If you have further questions, please contact Phillip DeMartino, Technical Assistance Program Coordinator, at (617) 573-1357 or Phillip.DeMartino@state.ma.us.

Sincerely,



Leverett Wing
Associate Director
Division of Community Services

cc: David Ragucci, Town Administrator, Stoneham
Thomas Boussy, Chairman, Stoneham, Board of Selectman
William Solomon Esq., Town Counsel, Stoneham
Robert Saltzman Esq., Chairperson, Stoneham Zoning Board of Appeals
Steven L. Cikatelli, Esq.
Miryam Bobadilla, Senior Technical Assistance Coordinator, DHCD
Margaux LeClair, Counsel/Fair Housing Specialist, DHCD
Greg Watson, Director of Comprehensive Permits, MassHousing

Ventresca, Inc.

Excavation • Utility • Road Construction • Masonry

John A. Ventresca

General Manager

3 Thomas Circle
Stoneham, MA 02180

Office: (781) 438-0759
Cell: (781) 953-0045
Fax: (781) 435-0142

Water Main Contract #2014-W1

From: **Lizotte, David** (dlizotte@stoneham-ma.gov)

Sent: Tue 8/26/14 11:46 AM

To: John Ventresca (johnventrescajr@hotmail.com)

1 attachment

Ventresca - Contract 2014W1 - Article 18 Letter 8-26-2014.pdf(358.3 KB)

John,

Letter attached.

You are notified to return your key to the Stevens Street yard before 3:30 PM today, Tuesday August 26, 2014.

All equipment and material shall be removed from the project site and Stevens Street before noon on Friday August 29, 2014.

You are not authorized to enter Stevens Street yard without the presence of DPW personnel in order to remove your equipment and materials.

David Lizotte

David Lizotte

Operations Engineer

(O) 1-781-438-0760 x2584

(F) 1-781-438-8183

(E) DLizotte@ci.stoneham.ma.us

RE: Saw cutting Stonewood road

From: **Lizotte, David** (dlizotte@stoneham-ma.gov)

Sent: Mon 8/18/14 8:33 AM

To: johnventrescajr (johnventrescajr@hotmail.com)

1 attachment

Ventresca Suspension Letter 8-18-2014.pdf (336.5 KB)

John,

Attached letter. Halt any operations relating to claims made against the town.

David

From: johnventrescajr [mailto:johnventrescajr@hotmail.com]

Sent: Monday, August 18, 2014 8:23 AM

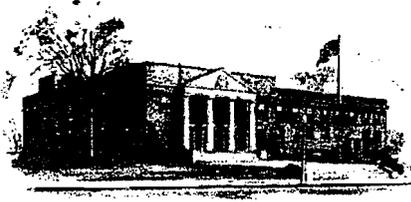
To: Lizotte, David

Subject: Saw cutting Stonewood road

Dave

Radigan just came by and shut my crew down for not having permission to use the hydrant for saw cutting. Please advise what to do.

Sent on the new Sprint Network from my Samsung Galaxy SIII4.



TOWN OF
STONEHAM

MASSACHUSETTS 02180

Public Works Department
16 Pine Street

781-438-0760
Fax 781-438-8183

TO: John Ventresca Jr, Ventresca Inc

FROM: David Lizotte, Operations Engineer
Public Works Department

DATE: August 18, 2014

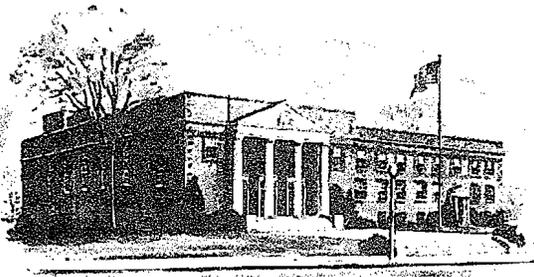
SUBJECT: Water Main Contract #2014-W1 Suspension of Work

This letter will serve as notification of the Town of Stoneham's intent to exercise their rights under Article 20 of the contract to halt work until the Town of Stoneham is able to review claims made by Ventresca, Inc in excess of \$250,000.00 for work that was bid at a unit price of a penny.

Such claims against the town, if proven viable, would be paid at the unit price on the bid form, a "reasonable cost" or as agreed to between both parties. The amounts submitted for payment under Article 19 have not been done in good faith.

The town will review these claims and notify the contractor of their findings no work shall be performed relating to these claims until written word is provided.

David Lizotte, Operations Engineer
Public Works Department



TOWN OF
STONEHAM
MASSACHUSETTS

www.stoneham-ma.gov

OFFICE OF TOWN ADMINISTRATOR
35 CENTRAL STREET
STONEHAM, MA 02180-2087
TEL: 781-279-2600
FAX: 781-279-2602
dragucci@ci.stoneham.ma.us

DAVID RAGUCCI

TOWN ADMINISTRATOR

September 11, 2014

Ventresca, Inc.
3 Thomas Circle
Stoneham, MA 02180

DELIVERED BY HAND AND CERTIFIED MAIL/RETURN RECEIPT

ATTN: John Ventresca, Jr.

RE: Water Main Replacement Contract #2014-W1

Gentlemen:

In the Town of Stoneham's (the "Town's") August 26, 2014 Memorandum from David Lizotte of the Public Works Department, the Town notified Ventresca, Inc. ("Ventresca") to discontinue work on the Water Main Replacement Contract #2014-W1 (the "Contract"), while the Town attempted to understand Ventresca's refusal to complete the work in accordance with the Contract requirements.

The August 26, 2014 Memorandum listed a number of violations by Ventresca of its obligations under the Contract.

On September 4, 2014, Town officials, employees and attorneys met with principals of Ventresca and its attorney, to discuss the Town's August 26, 2014 Memorandum and to determine if Ventresca intended to complete its work.

While the Town and Ventresca agreed that some of the issues listed in the August 26, 2014 letter had since been resolved, it was evident at the September 4, 2014 meeting, that a serious violation of the Contract remained unresolved. That violation involves Ventresca's refusal to undertake its contractual obligations to perform the work necessary to install the Binder Course Pavement and the Top Course Pavement over the trenches that have been backfilled.

We also note that Ventresca has refused to accept the Town's position that Ventresca is contractually obligated to cut back 1 foot of the existing pavement on each side of the trench, prior to installing the pavement over the backfilled trenches.

The Town maintains that Ventresca's obligation to perform the paving of the trenches is clearly described in the Contract, particularly at pages S-7-1 through S-7-4.

Ventresca appears to maintain that it is not contractually obligated to perform the paving of the trenches. Ventresca has filed a claim for an equitable adjustment in excess of \$250,000 to perform the trench paving, which the Town contends is clearly covered by the Contract.

We note that Ventresca's unit price bids that were incorporated into the Contract for Items #10 and #11, cover the work to install the "Permanent Binder Course" and the "Permanent Trench Top Course". Those unit prices provide that Ventresca is required to perform the paving work at Ventresca's unit price bid of 1¢ per ton for the two paving items.

Ventresca's refusal to perform the work required to pave the trenches, in accordance with the Contract, has resulted in a dirty, dusty and potentially dangerous condition on all the streets in which Ventresca installed water mains. Those streets are in residential areas and in one case, provide access to an elementary school. The Town DPW has performed some temporary work in order to make the site safe and the Town will present its costs of doing so to Ventresca for reimbursement.

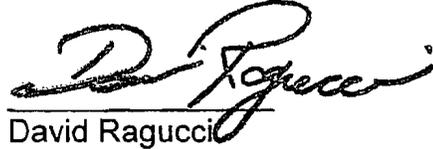
If Ventresca agrees to perform the trench paving work, as described above, please contact David Lizotte by 1PM on September 15, 2014, in order to discuss your schedule and to confirm that the methods you intend to use are in conformance with the Town's understanding of the contract requirements.

If you contend that you are entitled to a request for an adjustment in the contract price, for any portion of the trench work, you will be required to follow the provisions of Article 19 of the Contract. If the Town disagrees with your request for an adjustment in the contract price, Ventresca shall submit daily reports to Mr. Lizotte, listing the actual labor, materials, and equipment costs that Ventresca incurs, that Ventresca contends support an adjustment in the Contract price.

If Ventresca fails to contact Mr. Lizotte by the date and time specified above, the Town will terminate the Contract for failure to complete the work. In that event, the Town will notify Ventresca's surety, Endurance American Insurance Company, to complete the Contract work.

pursuant to its obligations to the Town under the Performance Bond that was furnished to the Town.

Very truly yours,

A handwritten signature in black ink, appearing to read "D. Ragucci", written in a cursive style.

David Ragucci
Town Administrator

Cc: David Lizotte
Endurance American Insurance Agency
William H. Solomon, Esq., Town Counsel
Robert P. Garrity, Esq.
Paul J. Hogan, Esquire
Eastern States Insurance Company



TOWN OF
STONEHAM
MASSACHUSETTS 02180
Public Works Department
16 Pine Street
781-438-0760
Fax 781-438-8183

TO: John Ventresca Jr, Ventresca Inc

FROM: David Lizotte, Operations Engineer
Public Works Department

DATE: August 26, 2014

SUBJECT: Water Main Contract #2014-W1 Article 18 Discontinue all work

This letter will serve as notification of the Town of Stoneham's intent to exercise their rights under Article 18 of the contract to notify the Contractor to discontinue all work and the Town will seek under contract or otherwise to complete the work and charge the expense to the Contractor.

The Town of Stoneham is notifying the Contractor to discontinue all work based on the following reasons:

- To date 6 water sample tests failed out of a total of 10 taken or a failure rate of 60%
- Sunset Road has failed, for the second time, its water sample test and is estimated to have second round testing results verbally available on September 2, 2014. The Contractor's daily log number 33, dated July 28, 2014, indicated heavy rain that flooded the trench and likely resulted in silt and debris entering the pipe. The Town ordered the pipe to be flushed the next day prior to tying into the mainline based on daily log 33. Test failed again confirming material is still trapped in pipe.
- Estimated completion of the contract, if a third round of testing results is verbally available on September 2, 2014, would be September 5, 2014 which is the 89th day of the contract.
- Stoneham Public Schools will be back in session on September 8, 2014. Construction and bypass piping at this time could pose a safety risk for the community, especially based on the condition of the current work area.

- Based on the uncertainty of Sunset Road passing after a third test it would be a great risk to the residents of the Town of Stoneham to allow the Contractor to continue working on the project.
- Fiscal year review of insurance policies turned up Ventresca, Inc allowed their insurance policy with the Town to expire in violation of Article 17 of the contract.
- Ventresca, Inc does not properly protect their work and materials in violation of Article 25 and made evident on multiple occasions not limited to daily log number 33 dated July 28, 2014 in which an open trench was flooded with water and material that entered the pipe.
- Ventresca, Inc does not properly maintain drainage facilities, as required by Section 9 – subsection 7, evident by the amount of siltation downstream past the catch basin and the amount of material inside the grates and complete lack of protection at others.
- Ventresca, Inc does not engage in proper water jetting techniques, as outlined in Earthwork subsection 19. Instead of utilizing the proper 2 inch minimum pipe an excavator is used to scratch the top foot of material to create a pond for water to collect and infiltrate down.
- Ventresca, Inc hauled excess surplus material from Rustic and Sunset to Stockwell in violation of requirements outlined in Earthwork subsection 23.
- Ventresca, Inc has shown an unwillingness to honor their bid prices for paving work described in Paving subsection D and E.
- Ventresca, Inc has shown an unwillingness to maintain a clean jobsite as required by Cleaning Up on page S-10-1. The Town has requested sweeping operations be performed and Ventresca, Inc ignores these orders. A sweeping attempt was made in order to allow for cut back markings.
- Ventresca, Inc used non-domestic fittings in violation of Ductile Iron Pipe and Fittings subsection 7. The Town sought a price adjustment to work with Ventresca, Inc and not delay the project.
- Ventresca, Inc installed and maintained dirty pipe in violation of Ductile Iron Pipe and Fittings subsection 13.

David Lizotte, Operations Engineer
Public Works Department

SECTION 7

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that Ventresca, Inc

3 Thomas Circle, Stoneham, MA 02180

As Principal, and Endurance American Insurance Company

333 Westchester Avenue, White Plains, NY 10604

As Surety, are held and firmly bound unto the Awarding Authority in the sum of Three Hundred Twenty Five Thousand Seven Hundred Eighty Two Dollars and 15/100THS

(S325,782.15)

Lawful money of the United States of America to be paid to the Awarding Authority 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 Awarding Authority bearing date of April 24, 2014, for the construction of Water Main Replacement Contract #2014-W1

(Project)

Now the condition of this obligation is such that if the Principal shall well and truly keep and perform all the undertakings, covenants, agreements, terms and conditions of said contract and any extensions thereof that may be granted by the Awarding Authority, 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 become null and void; otherwise it shall remain in full force and virtue.

In the event that the contract is abandoned by the Contractor, or is terminated by the Awarding Authority, said surety hereby further agrees that said surety shall, if required in writing by the Awarding Authority, take such action as is necessary to complete said contract.

In witness whereof we hereunto set our hands and seals this
_____ day of _____, A.D., 2014

By Ventresca, Inc.


(Seal) Principle (President)

By Endurance American Insurance Agency


Mark D. Leskani (Seal) Surety Attorney-In-Fact

333 Westchester Avenue, White Plains, NY 10604

Address

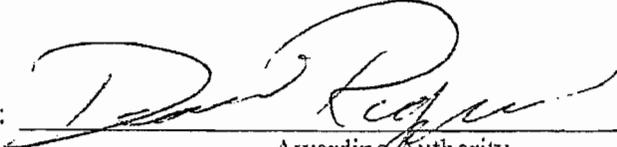
Surety Agent: Eastern States Insurance Agency

Address: 50 Prospect Street

Waltham, MA 02453

Phone No: (781) 642-9000

APPROVED:


Awarding Authority

Ventresca Letters
Contract Info.

1. Endurance American Insurance Company
750 Third Avenue
10th Floor
New York, NY 10017

ATTN: Jack Wilson
jwilson@enduranceservices.com
direct. Tel. Jack Wilson (212) 471-1786

2. Surety Agent
Eastern States Insurance Agency
50 Prospect Street
Waltham, MA 02453

ATTN: Mark Leskanic
Mark-leskanic@esia.com
(781) 642-9000

3. Ventresca's Attorney
Paul J. Hogan, Esq.
Hogan & Associates
374 Granite Avenue
Milton, MA 02186

Email: Paulhogan2@comcast.net

HOGAN & ASSOCIATES

COUNSELLORS AT LAW

63 CHATHAM STREET
BOSTON, MA 021
TELEPHONE: 617.291.5450
FACSIMILE: 617.322.1866

PAUL J. HOGAN *
Paulhogan2@comcast.net

374 Granite Avenue
Milton, MA 02186
(Mailing Address)

Of Counsel

Kieran Fallon**

*ALSO ADMITTED TO PRACTICE IN NH
** ALSO ADMITTED TO PRACTICE IN FL

September 12, 2014

Via Email attywhs@comcast.net and Mail

William H. Solomon, Esq.
319 Main Street
Stoneham, MA 02180

RE: **Water Main Contract # 2014-W1**
WRONGFUL TERMINATION

Dear Attorney Solomon:

As you know, this office represents Ventresca, Inc. (hereafter "Ventresca"), General Contractor for the above referenced Project. On behalf of Ventresca, I am responding to your letter to the company issued yesterday, September 11, 2014.

The first paragraph of your letter presents a gross misstatement of critical facts. You inaccurately allege that Ventresca refused to complete its work in accordance with the Contract Documents. Nowhere is there evidence that Ventresca made any such refusal. In fact, on Monday, August 18, 2014, Ventresca was actively engaged in the process of initiating the paving portion of the work for three of the four contract streets Ventresca had completed when officials from the Town came to the site and directed Ventresca to cease its paving operations. No explanation was given at that time.

Later that day, however, the Town issued a letter indicating that the Town was "exercising its rights under Article 20 of the contract to halt work until the Town is able to review claims made by Ventresca (See a true and accurate copy of the Town's August 18 letter attached here at EXHIBIT 1). It is clear that the only reason why the work was suspended was that Ventresca had submitted claims.

While it had submitted claims, in a letter dated August 15, 2014, Ventresca affirmed that it indeed would complete the paving work the Town required. Ventresca indicated it would do so under protest. (See a true and accurate copy of Ventresca's August 15, 2014 letter to the Town attached at EXHIBIT 2). This was not a refusal to perform the work. In fact, the paving operation initiated by Ventresca included all the cutback areas that the Town had indicated in lines they drew on the streets. The operation stopped only because the Town discontinued it 24 days ago, and there was never a refusal by Ventresca to pave or perform its contract obligations, as you allege.

It was eight days after the August 18 discontinuance directive (which prohibited Ventresca from performing any work for that period) that the Town issued another letter on August 26, 2014, notifying Ventresca "...to discontinue all work and the Town will seek under contract or otherwise to complete the work and charge the expense to the Contractor."

This second letter alleged that the "discontinuance" was due to failed water tests (which have all passed); delays in the contract (when the Town had delayed the contract on a number of occasions); or other alleged infractions that were either minor, waived, or irrelevant. It is clear that there was no reason for the action other than what was indicated in the Town's first letter. This counsel responded and repudiated that August 26 letter the next day (See attached as EXHIBIT 3 hereto copies of the August 26th Town letter with a responding letter on August 27 response). In fact, the Town did go ahead and contract a third party contractor to perform portions of Ventresca's contract work. Ventresca maintains this voided both the contract and the performance bond. All of the above translates into a wrongful termination.

Your letter also references the settlement conference that the Town called for on September 4, 2014, and again misstates the facts. There was never a published agenda for that meeting and it was not called as you "to determine if Ventresca intended to complete the work". Ventresca had always intended to complete the work, and was completing the work when it was stopped by the Town on August 18th.

There was never a violation of the contract by Ventresca as you further allege. In fact, it is the Town who has violated the provisions of the Contract. The Town wrongfully prevented Ventresca from doing its work; the Town called in a third party contractor to perform contract work; the Town wrongfully contacted Ventresca's surety requesting the surety to complete the Project when there was never a default by Ventresca. These are some of a series of arbitrary and capricious actions Stoneham officials have taken in the administration of this contract.

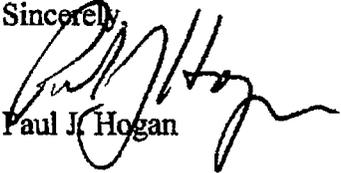
Ventresca was in the process of installing the Binder Course Pavement and the Top Course Pavement over the Trenches when it was directed to suspend work on August 18th – and on that day the evidence will show that Ventresca was saw cutting the cutbacks – from one foot on each side of the trench to greater lengths where required - dependent on the cutback lines marked on the road by the Town. While Ventresca and the parties may have a differing opinion on the exact extent of the paving required under the contract, Ventresca was doing what the Town requested. The fact that it put in a claim for additional costs should not and cannot under Massachusetts law be a cause for suspension and/or termination.

Finally, your letter alleges dirty and dusty conditions in the streets that were part of the Project. These conditions, if they exist, are not due to Ventresca refusing to pave – but to the Town preventing Ventresca from completing the paving work some 24 days ago. Had the Town not wrongfully stopped the work, the roads would be paved by now and there would be no dust or dirt issue.

This letter is not a formal response to your request for the paving work. It is only a response to all of the allegations made by the Town that Ventresca's maintains are not supported by any of the evidence.

Ventresca directly will be responding directly to your request to pave prior to the deadline you indicated.

Sincerely,


Paul J. Hogan

CC: John Ventresca

EXHIBIT 2

Ventresca, Inc.

3 Thomas Circle, Stoneham MA. 02180
Tel. 781-438-0759
Fax 781-435-0142

TO: David Lizotte, Operations Engineer
Public Works Department
Town of Stoneham

FROM: John Ventresca, Jr.
President
Ventresca Inc.

DATE: August 15, 2014

RE: Contract # 2014-W1

SUBJECT: **LETTER OF PROTEST-CUT-BACKS/EXPANDED PAVING**
Stonewood Road Phase I

As you are aware, Ventresca, Inc. ("Ventresca") has been ordered to resurface and cut back trenches. This letter is in reference to Notifications and Claims submitted by Ventresca pertaining to Cut-backs and Expanded Paving. Ventresca is faced with an expanded area to resurface due to the Unforeseen Sub-Surface conditions, which were abnormal and unnatural clusters of entwined piles of stone in various sizes and shapes placed as backfill for the existing main. In addition, the DPW ordered expanded cutting back of trenches beyond the contract requirements.

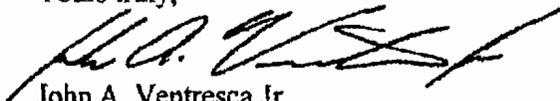
Ventresca estimate that due to the above, the total estimated extra cost for Cut-Back Phase I Stonewood Road is in the amount of **\$36,234.67**. Ventresca will claim this amount, as well as an extension to the contract time in the amount of **5.25** calendar days.

The total in extra cost for Expanded Resurfacing Area Phase I Stonewood Road is in the amount of **\$42,186.67**. Ventresca also seeks an extension to contract time in the amount of **4.18** calendar days.

The total in extra cost for Phase I Stonewood Road for Cut-back and Expanded Resurfacing Area is estimated to be \$78,421.34. Ventresca also seeks an extension to contract time in the amount of 9.43 calendar days.

This work will be completed under protest by Ventresca, Inc.

Yours truly,



John A. Ventresca Jr.
President

CC: Attorney Paul Hogan

EXHIBIT 3



TOWN OF
STONEHAM
MASSACHUSETTS 02180

Public Works Department
16 Pine Street
781-438-0760
Fax 781-438-8183

TO: John Ventresca Jr, Ventresca Inc
FROM: David Lizotte, Operations Engineer
Public Works Department
DATE: August 26, 2014
SUBJECT: Water Main Contract #2014-W1 Article 18 Discontinue all work

This letter will serve as notification of the Town of Stoneham's intent to exercise their rights under Article 18 of the contract to notify the Contractor to discontinue all work and the Town will seek under contract or otherwise to complete the work and charge the expense to the Contractor.

The Town of Stoneham is notifying the Contractor to discontinue all work based on the following reasons:

- To date 6 water sample tests failed out of a total of 10 taken or a failure rate of 60%
- Sunset Road has failed, for the second time, its water sample test and is estimated to have second round testing results verbally available on September 2, 2014. The Contractor's daily log number 33, dated July 28, 2014, indicated heavy rain that flooded the trench and likely resulted in silt and debris entering the pipe. The Town ordered the pipe to be flushed the next day prior to tying into the mainline based on daily log 33. Test failed again confirming material is still trapped in pipe.
- Estimated completion of the contract, if a third round of testing results is verbally available on September 2, 2014, would be September 5, 2014 which is the 89th day of the contract.
- Stoneham Public Schools will be back in session on September 8, 2014. Construction and bypass piping at this time could pose a safety risk for the community, especially based on the condition of the current work area.

- Based on the uncertainty of Sunset Road passing after a third test it would be a great risk to the residents of the Town of Stoneham to allow the Contractor to continue working on the project.
- Fiscal year review of insurance policies turned up Ventresca, Inc allowed their insurance policy with the Town to expire in violation of Article 17 of the contract.
- Ventresca, Inc does not properly protect their work and materials in violation of Article 25 and made evident on multiple occasions not limited to daily log number 33 dated July 28, 2014 in which an open trench was flooded with water and material that entered the pipe.
- Ventresca, Inc does not properly maintain drainage facilities, as required by Section 9 – subsection 7, evident by the amount of siltation downstream past the catch basin and the amount of material inside the grates and complete lack of protection at others.
- Ventresca, Inc does not engage in proper water jetting techniques, as outlined in Earthwork subsection 19. Instead of utilizing the proper 2 inch minimum pipe an excavator is used to scratch the top foot of material to create a pond for water to collect and infiltrate down.
- Ventresca, Inc hauled excess surplus material from Rustic and Sunset to Stockwell in violation of requirements outlined in Earthwork subsection 23.
- Ventresca, Inc has shown an unwillingness to honor their bid prices for paving work described in Paving subsection D and E.
- Ventresca, Inc has shown an unwillingness to maintain a clean jobsite as required by Cleaning Up on page S-10-1. The Town has requested sweeping operations be performed and Ventresca, Inc ignores these orders. A sweeping attempt was made in order to allow for cut back markings.
- Ventresca, Inc used non-domestic fittings in violation of Ductile Iron Pipe and Fittings subsection 7. The Town sought a price adjustment to work with Ventresca, Inc and not delay the project.
- Ventresca, Inc installed and maintained dirty pipe in violation of Ductile Iron Pipe and Fittings subsection 13.

David Lizotte, Operations Engineer
Public Works Department

HOGAN & ASSOCIATES

COUNSELLORS AT LAW

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Paulhogan2@comcast.net

374 Granite Avenue
Milton, MA 02186
(Mailing Address)

Of Counsel
Kieran Fallon**

* ALSO ADMITTED TO PRACTICE IN NH
** ALSO ADMITTED TO PRACTICE IN FL

August 27, 2014

Via Email dlizotte@stoneham-ma.gov and Mail
Mr. David Lizotte
Operations Engineer
Public Works Department
Town of Stoneham

RE: Water Main Contract # 2014-W1
NOTICE TO DISCONTINUE WORK

Dear Mr. Lizotte:

This office represents Ventresca, Inc. (hereafter "Ventresca"), the general contractor for the above referenced Project. On behalf of our client, we are responding to your letter issued yesterday, August 26, 2014, which directs Ventresca to "discontinue work" On the Project.

Ventresca disputes the entire content of the letter and all of the reasons cited for the discontinuance of work. We further maintain that the letter and action by the Town of Stoneham constitute a wrongful termination of Ventresca on the Project. Ventresca is and has been ready, willing and able to complete the work of the Project. During this suspension, Ventresca will maintain safety barriers and barriers to ensure safety.

Due to this wrongful termination, we will initiate, on behalf of Ventresca, action in the Middlesex Superior Court and contact the Office of the Attorney General as we maintain the action of the Town is contrary Massachusetts bid and procurement law. All of the reasons cited as the basis for the directive to discontinue are flawed, as illustrated below:

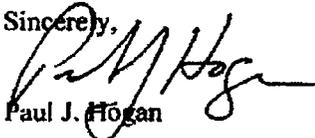
1. **Water Tests:** The Town states that 6 of 10 water tests failed, but the cause of any failures were due to the Town's improper flushing of the Pipes. Despite that five of the six failed tests have since passed, and the final one is expected to be cleared in a matter of days. There is no evidence that any of the failures were caused or due to the work of Ventresca – but there is evidence that the Town failed to properly flush the lines during the test and the failures are attributable to factors outside of Ventresca's control.
2. **Delay in the Project:** The Town on several occasions suspended work on the project. At the start of the contract, the Town delayed the work one week due Town's By-Pass System for initial streets not being ready, changing of order of work and methods and means. In some instances, the Town's By-Pass System was not ready, and Ventresca could not proceed. Ventresca already notified the Town of the delays, and the impact it would have on the streets nearby the School. Ventresca is not responsible for the delays.

3. **Insurance:** Ventresca had maintained the proper insurance during the period of the Project.
4. **Proper Contract Procedures:** Ventresca did properly maintain its drainage facilities; did apply the proper water jetting techniques, and its excavations passed all required compaction tests.
5. **Hauling Material:** Ventresca did not haul excess surplus material from Rustic and Sunset to Stockwell in violation of the contract as alleged.
6. **Paving Work:** The Town's letter mis-states Ventresca's position on paving. Ventresca began paving this Monday, August 18, 2014, but was stopped by the Town. Ventresca agreed that it owed paving over the trenches at the bid price, but indicated in its claims that the amount of paving grew due to unforeseen subsurface conditions, and that it requested an equitable price adjustment for the areas to be paved *outside* the trenches.
7. **Clean Job Site:** Ventresca has maintained a clean and safe work site.
8. **Fittings:** All of the fittings incorporated in the work were approved by the Owner and its design firm.
9. **Dirty Pipe:** Ventresca has not installed and maintained dirty pipe as alleged – the infiltration, if any, occurred due to actions and inactions of the Town.

On behalf of Ventresca, we will be filing a law suit against the Town in the Middlesex Superior Court alleging, among other things, Wrongful Termination, and Arbitrary and Capricious Actions by Stoneham. We had contacted the office of the Town Administrator last week to arrange a meeting to avert litigation, but that request went unanswered.

We will also be reporting this action to the Office of the Attorney General as we allege that the Town is acting outside of State and Municipal Procurement Requirements to award work to a favorite contractor outside of bid laws. It is clear that the reasons for directing the discontinuance of work on the Project were fabricated by the Town for the purpose of awarding the work – without a bid – to a preferred contractor. As this is the case, and the action of the Town is tantamount to a wrongful termination, Ventresca is not responsible for any charges to complete the work, and will challenge the Town's attempt to assert such costs in the Court.

Sincerely,


Paul J. Hogan

CC: Office of the Attorney General
John A. Ventresca Jr.