



REQUEST FOR QUALIFICATIONS

RFQ # 450/031/24

LEAD AND COPPER RULE COMPLIANCE ENGINEERING SERVICES
TOWN OF ANDOVER, MA

December 20, 2023

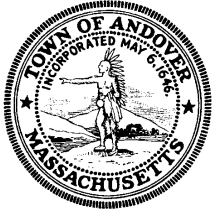
DUE:

January 8, 2024 11:00 AM

Late Submittals Will Be Rejected

DELIVER COMPLETED SUBMISSIONS TO:

Town of Andover, MA
Central Purchasing Department
Attn: Theresa Peznola
397 Lowell St. Andover, MA 01810
Phone: 978-623-8951
e-mail: theresa.peznola@andoverma.us



Town of Andover

Office of the Purchasing Agent
397 Lowell Street
Andover, MA 01810
(978) 623-8951
www.andoverma.gov

REQUEST FOR QUALIFICATION

Sealed Bids for furnishing the following will be received at the Office of Central Purchasing, Andover Town Offices, 397 Lowell Street, Andover, Massachusetts 01810 until the time specified below at which time the bids will be publicly opened and read. The time received will be stamped on each bid and for a consistency of time, the time stamp clock in the Purchasing office will be the determining time.

ITEM

Proposal No. RFQ 450/031/24
Lead and Copper Rule Compliance Engineering Services

BID OPENING

January 8, 2024
11:00 AM

Proposal Documents may be obtained on the Central Purchasing Department webpage located at www.andoverma.gov/bids.

There is no Security required on this Bid.

No bidder may withdraw his bid for a period of thirty (30) days after the date set for the opening thereof.

Andover is an affirmative action/equal opportunity purchaser. The Town reserves the right to accept or reject, in whole or in part, any or all bids, or take whatever other action may be deemed necessary to be in the best interest of the Town.

Theresa Peznola
Purchasing Agent

ADV: Andover Townsman – December 21, 2023
Central Register- December 20, 2023

RFQ # 450/031/24

Town of Andover, Massachusetts
Purchasing Department

COVER SHEET

The Town of Andover reserves the right to reject any or all Bids, to omit any item or items called for, or to accept the bids(s) deemed in the best interest of the Town. One Original and Five (5) copies of the proposal must be submitted **on or before 11:00 AM on Monday, January 8, 2024**, to:

Theresa Peznola, Purchasing Agent
Purchasing Department
Water Treatment Plant
397 Lowell Street
Andover, Massachusetts 01810

The envelope containing the proposal and required information must be sealed and marked with Proposer’s name, title of proposal, RFQ number, and date of opening. The Proposer must sign all required signature pages in order for the proposal to be considered.

The Proposer acknowledges receipt of the following **ADDENDA #** _____

BUSINESS/INDIVIDUAL NAME _____

ADDRESS _____

CITY, STATE, ZIP CODE _____

TELEPHONE _____

EMAIL _____

INDIVIDUAL/AUTHORIZED SIGNATURE _____

AUTHORIZED OFFICER NAME (print) _____

DATE _____

By signing above, the authorized officer is certifying that a complete examination of all bid/RFQ documents has been made and that the goods/services will be delivered within the time specified and at the prices stated.

All bidders must sign and submit with their bid the attached Certificate of Good Faith and Tax Attestation Form. Failure to do so will result in the bid being unresponsive and rejected.

If bidder/proposer is a co-partnership, all partners must execute both copies of the bid/proposal, unless one partner has been authorized to sign for the co-partnership, in which case evidence of such authority shall be submitted.

If bidder/proposer is a corporation, the authorized agent shall execute both copies of the bid/proposal. Evidence of authority to sign must be submitted.

The Town of Andover reserves the right to reject any or all bids/proposals and waive any informalities deemed to be in the best interests of the Town.

PART 1. GENERAL INFORMATION

1.1 PROCUREMENT DESCRIPTION

The Town of Andover Central Purchasing Department, on behalf of the Andover Public Works Department, is issuing this Request for Proposal to hire a qualified firm to provide leak detection survey services for the Town's water distribution system.

Any contract that results from this procurement shall begin in or around February 1, 2024 and end on January 31, 2027.

1.2 APPLICABLE LAW

This procurement will be conducted pursuant to Massachusetts General Laws.

1.3 APPROVAL

Any contract that may result from the procurement shall be subject to the approval of the Town Manager, or his designee.

1.4 INCORPORATION BY REFERENCE

All requirements, specifications, terms, conditions and addenda issued and as described in this Request for Proposals shall be incorporated by reference into any contract that may result.

1.5 TIME FOR AWARD

Any contract that may result from the procurement shall be awarded within thirty (30) days after the proposal opening. The time for award may be extended for up to 45 days by agreement between the Town and the most advantageous proposer.

1.6 RIGHT TO CANCEL/REJECT

The Town reserves the right to cancel this RFQ or reject in whole or in part any and all proposals if the Town determines that cancellation or rejection serves the best interests of the Town.

1.7 TAXATION

Purchases made by the Town are exempt from the payment of Federal excise tax and the payment of Commonwealth of Massachusetts sales tax and any such taxes must not be included in the bid pricing.

Copies of the Town's tax exempt paperwork shall be available upon request of the selected contractor.

1.8 OBTAINING THE REQUEST FOR PROPOSAL

The Request for Proposal shall be available beginning on December 20, 2023.

The Request for Qualifications and related documents shall be available for free download from the Town's Purchasing Department webpage located on the Town's website at www.andoverma.gov/bids.

PART 2. INSTRUCTIONS TO PROPOSERS

2.1 REQUIREMENTS AND SUBMISSIONS

Below please find a description of the requirements and submissions that must be included as part of a proposal. Proposals must be sealed and marked as noted.

2.1.1 FEE

Fee will be negotiated with the selected firm.

2.1.2 NON-PRICE/TECHNICAL PROPOSAL

The Technical Proposal shall contain the following:

NON-COLLUSION FORM/TAX COMPLIANCE

Every proposal must include a certification of good faith, certifying that the proposal was made in good faith and without collusion or fraud. See 'Non-Collusion Form' attached.

Every proposal must include a written certification that the proposer has complied with all state laws relating to taxes, reporting of employees and contractors, and child support. See 'Tax Compliance Form' attached.

CORPORATE BIDDER FORM AND/OR SIGNATURES FORM

If the proposal is being submitted by a corporation the proposal must include a certification that the individual submitting the bid has been authorized to bind the corporation. See 'Certificate of Corporate Authority' and "Signatures Form" attached.

PLAN OF SERVICES

The Plan of Services should include, but is not limited to:

- Overview of company/organization
 - Structure/history/background
 - Location (principal place of business)
 - Key personnel (resumes/profiles)
- Project Deliverables – demonstrate your organization has the technical services, resources and capacity available to it to complete the Scope of Services
- Credentials
- Examples of similar work performed in similar communities to Andover
- At least three references (municipal references preferred)
- See the Scope of Services for further details on proposal submittal requirements

2.2 PROPOSAL DELIVERY

Below please find a description of the manner in which sealed proposals must be submitted.

2.2.1 DUE DATE AND TIME

Proposals shall be received by the Office of the Purchasing Agent, 397 Lowell Street on or before, **January 8, 2024 at 11:00 AM.**

Any proposal received after that time shall be rejected as non-responsive. For a matter of uniformity regarding time, the Time Stamp Clock in the Office of the Purchasing Agent will be the official determining time. Proposals submitted via email or facsimile will not be accepted.

2.2.2 ADDRESS

Sealed proposals shall be delivered to the Office of the Purchasing Agent, 397 Lowell Street, Andover, MA 01810.

2.2.3 HOURS OF OPERATION

Proposals must be delivered during the normal hours of operation of the Town of Andover: 8:30 AM – 4:30 PM Monday through Friday.

2.2.4 COPIES

Proposers must submit one (1) original and five (5) copies of the proposal.

2.2.5 LABELING

Each proposal shall be labeled with (1) the proposal number and title, (2) the proposal due date, (3) the name of the proposer.

2.3 SIGNATURES

A proposal must be signed as follows: 1) if the proposer is an individual, by her/him personally; 2) if the proposer is a partnership, by the name of the partnership, followed by the signature of each general partner; and 3) if the proposer is a corporation, by the authorized officer, whose signature must be attested to by the clerk/secretary of the corporation, and with the corporate seal affixed (See attached “Signatures Form” and “Corporate Vote Form”).

2.4 QUESTIONS, CHANGES, MODIFICATIONS AND WITHDRAWALS

2.4.1 QUESTIONS/REQUESTS FOR CLARIFICATION

Questions concerning this Request for Proposal must be submitted in writing to: Theresa Peznola at theresa.peznola@andoverma.us at least five (5) days prior to the proposal opening date. Written responses will be mailed to all proposers on record as having picked up the Request for Proposal.

2.4.2 CHANGES

If any changes are made to this Request for Proposal, addenda will be issued. Addenda will be posted in the Office of the Purchasing Agent, on the website and e-mailed to all proposers on record as having obtained the Request for Proposal.

2.4.3 MODIFICATIONS AND WITHDRAWALS

A proposer may correct, modify, or withdraw a bid by written notice received by the Town of Andover prior to the time and date set for bid opening.

Modifications must be submitted in a sealed envelope clearly labeled "Modification No. ___" to the address listed in part one of this section. Each modification must be numbered in sequence, and must reference the Request for Proposal.

After the proposal opening a proposer may not change any provision of the proposal in a manner prejudicial to the interests of the Town or fair competition. Minor informalities will be waived or the proposer will be allowed to correct them. If a mistake and the intended proposal are clearly evident on the face of the proposal document, the mistake will be corrected to reflect the intended correct proposal, and the proposer will be notified in writing; the proposer may not withdraw the proposal. A proposer may withdraw a proposal if a mistake is clearly evident on the face of the proposal document, but the intended correct proposal is not similarly evident.

2.5 UNFORESEEN OFFICE CLOSURES

If, at the time of the scheduled proposal opening, the Office of the Purchasing Agent is closed due to uncontrolled events such as fire, snow, ice, wind, or building evacuation, the proposal opening will be postponed until the next normal business day and at the same scheduled time as the original deadline. Proposals will be accepted until that date and time.

PART 3. EVALUATION & SELECTION

3.1 MINIMUM REQUIREMENTS

See below for further information regarding minimum requirements and qualifications of the vendor.

3.2 SCOPE OF SERVICE

See below for further information on the Scope of Service.

3.3 COMPARATIVE CRITERIA

See below for further information relative to the comparative criteria which be utilized to rank the proposals.

3.4 RULE FOR AWARD

Any contract that may result from this procurement shall be awarded to the responsible and responsive proposer offering the most advantageous proposal, taking into consideration all evaluation criteria described herein. Fee will be negotiated with the selected firm. If fee negotiation is unsuccessful, the Town may withdraw its offer and move on to the next highest ranked firm.

3.5 SELECTION PROCESS

Following the deadline for receipt of proposals, the Purchasing Agent will open the technical proposals and prepare a register of proposals submitted. The technical proposals will be evaluated by an evaluation committee based on the Minimum Requirements and Comparative Criteria contained in this RFQ. The evaluation committee shall notify the Purchasing Agent which proposal was deemed most advantageous. The Purchasing Agent will then tentatively award the contract to the most advantageous proposal and begin fee negotiations.

PART 4. TERMS & CONDITIONS

4.1 TERM OF CONTRACT

The contract period for the initial term shall commence on or around **February 1, 2024 and terminate on or around January 31, 2027.**

4.2 ASSIGNMENTS AND SUBCONTRACTING

The selected contractor(s) shall not assign, sell, subcontract or otherwise transfer any interest in this contract without the prior written consent of the Town.

4.3 PAYMENT

The Town shall make every effort to furnish payment within thirty (30) days of receipt of a reasonably detailed invoice. Any invoice received must reference the contract or RFQ number.

4.4 INSURANCE REQUIREMENTS

See Goods and Services Contract attached for insurance requirements.

4.5 INDEMNIFICATION

The Contractor shall indemnify, defend and save harmless the Town, its officers, agents and employees from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses,

recoveries and judgments of every nature and description (including reasonable attorneys' fees) brought or recovered against them that may arise in whole or in part out of or in connection with the work being performed or to be performed, or out of any act or omission by the Contractor, its employees, agents, subcontractors, material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder. The Contractor further agrees to reimburse the Town for damage to its property caused by Contractor, its employees, agents, subcontractors or material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including damages caused by his, its or their use of faulty, defective or unsuitable material or equipment, unless the damage is caused by the Town's gross negligence or willful misconduct. The existence of insurance shall in no way limit the scope of this indemnification.

4.6 FEDERAL AND STATE LAW

The selected contractor shall comply with all applicable Federal, State and Local laws and ordinances.

4.7 SAMPLE CONTRACT

See sample "Contract for Professional Engineering Services" attached.

REQUEST FOR QUALIFICATIONS

LEAD AND COPPER RULE COMPLIANCE ENGINEERING SERVICES **TOWN OF ANDOVER, MA**

Request For Qualification No. RFQ 450/031/24

The Town of Andover, hereby known as “Town” is seeking submittals for Engineering Services for lead and copper rule compliance. Sealed proposals will be received at the Purchasing Agent’s Office, 397 Lowell Street, Andover, MA 01810 until 11:00 AM on January 8, 2024.

Introduction

The Town of Andover is seeking engineering services related to compliance with the lead and copper rule (LCR) and lead and copper rule revisions (LCRR) as promulgated by the United States Environmental Protection Agency (USEPA) and effective December 16, 2021. Services shall include the identification, development, and preparation of federal, state, local, and private grant applications to fund studies, plans, work, and then implement work funded under those grants, including State and Federal grants and those originating with, but not limited to, the USEPA including Bipartisan Infrastructure Law (BIL) funding.

This Request for Qualifications (RFQ) is intended to provide proposers, hereby known as “Contractor” with a common, uniform set of instructions to guide them through the development of their proposals.

Terms used and conditions imposed in this RFQ are not intended to imply or denote a particular Contractor nor are they to be construed as restrictive in any way.

In responding to this RFQ, Contractors must follow the prescribed format, where specified, and use the included forms, where provided, or reasonable facsimiles thereof. By so doing, each Contractor will be providing the Town with information comparable to that submitted by other Contractors and thus be assured of fair and objective treatment in the Town’s review and evaluation process.

Project Overview

Provide professional engineering services to assist the Town of Andover with the regulatory compliance, operation, maintenance, repair, and replacement of the water system.

The services may involve technical advice, regulatory compliance assistance, funding and financing assistance, operational assistance, technical evaluations, engineering studies and reports, preliminary or conceptual designs, final designs, bidding assistance, construction administration, construction Resident Project Representative services, post-construction services, SCADA, GIS, Asset Management and other engineering services.

The firm selected may assist the Town of Andover in a various tasks as described below:

- Services to support the Town of Andover with grants and funding, including program selection, suitability, and competitiveness for identified projects.
- Preparation of a Water Service Line Inventory by October 16, 2024.
- Preparation of a Lead Service Line Replacement Plan by October 16, 2024.
- Services to investigate and quantify existing conditions of various public infrastructure, including the preparation of engineering surveys or record plans and preparation of reports to summarize investigations.

- Engineering of LCRR compliance projects including the conceptual, preliminary and final design, permitting, construction cost estimating, bidding, bid award and construction support services.
- LCR compliance support.
- Other engineering services related LCRR compliance as directed by the Town of Andover.
- Assignments under this contract could have duration periods of a few days to multi-year assignments depending on the services requested by the Town of Andover.

Available Information and Resources

- Town of Andover Water Distribution Map
- Electronic GIS or PDF Plans to be coordinated with the Town of Andover staff
- Town of Andover Staff

Project Schedule

The term for any agreement resulting from this RFQ will be a term of three (3) years with the option to extend the duration of the agreement at the discretion of the Town.

Instructions for Submittal

Submit five (5) copies of the qualifications submittal and one (1) electronic file in PDF format (USB) in a sealed package and plainly marked on the outside as "Lead and Copper Rule Compliance Engineering Services."

Submittals must include the information specified hereinafter.

Submittals received after the deadline will be returned to Offerors unopened.

Failure to submit a submittal in accordance with the instructions in this RFQ may disqualify a firm from any further consideration in the evaluation process. The Town reserves the right to reject any submittals that fail to meet any material term, condition, or requirement of procedure.

All material submitted will become the property of the Town, may be disposed of without notification, and will be considered public information.

This solicitation is contingent on the availability of appropriated funds. The Town retains the right to cancel this solicitation at any time before the execution and approval of the contract. If this solicitation is canceled, all submittals received in response to this RFQ will be rejected.

Information Required in Submittals

Submittals must be concise, complete and accurate, without unnecessary elaboration. Supplying information not directly pertaining to the required qualifications response will be viewed unfavorably. Qualifications and experience must be clearly identified in the appropriate sections of the firm's submittal.

Submission of Proposals

Each Contractor must furnish all requested information in the formats specified by this RFQ. Promotional materials and other “fluff” documents are not wanted and will not be considered as meeting any of the requirements of this RFQ.

Each proposal must include a letter of transmittal containing the signature of an authorized representative of the prime Contractor and not more than two individuals authorized to negotiate and sign a contract with the Town on behalf of the prime Contractor. The transmittal letter should be addressed to the Town of Andover’s Purchasing Agent, Theresa Peznola, and shall not exceed two pages in length.

All Contractors responding to this RFQ will submit **their technical proposal in one sealed envelope/box, properly labeled.**

A. Sealed Envelope #1, with a **bound original and five bound copies** of the following:

1. Transmittal Letter
2. Technical Proposal
3. Plan of Services
4. All required signature sheets as applicable
5. Required Tax Compliance Certification, Certificate of Non-Collusion, and Corporate Vote Form

The content of each section of the technical proposal must be as described in the instructions in “RFQ Response Requirements” below. In accordance with the State’s procurement process, Contractors must not include any cost information in any part of the Technical and Business Proposal or Plan for Services.

A sealed package containing the bound original and five bound copies of the Technical Proposal, Plan for Services and Evaluation Criteria forms must be labeled as follows:

(Contractor Name): Professional Services for Town of Andover Leak Detection Survey for Water Distribution System : **Technical Proposal**

Proposal packets must be delivered to the Central Purchasing Office no later than Monday, January 8, 2024, at 11:00 AM. The time received will be stamped on each proposal and for consistency, the time stamp clock in the Purchasing Office will be the determining time. These proposal packets must be delivered to the following location:

Theresa Peznola
Purchasing Agent
Office of Central Purchasing
Water Treatment Plant
397 Lowell Street
Andover, MA 01810

Delivery will be at the Contractor’s expense. Any and all damages that may occur due to packaging or shipping will be the sole responsibility of the Contractor.

RFQ Response Requirements

All Proposals must provide information relating to the following sections in sufficient detail with supporting documentation to allow the Town’s evaluation committee to conduct a fair and informed selection:

1. Technical Proposal

A. Transmittal Letter

B. Corporate Profile (including all sub-contractors)

C. Prior Project Experience

1. A list of similar projects performed within the past five years, and any ongoing projects, listing client contacts (municipalities and/or consultants) that can speak knowledgeably about the Contractor's abilities, experience, and skills. The list must include client name, address, name of contact person, position, and telephone numbers, with a brief description of the relevant work performed for each client and highlighting the elements of that project that are similar to this project. Each sub-contractor should provide at least three client contacts. (The proposal evaluation team, at its option, may request further references to clarify specific claimed experience.)
2. Documentation to support the Contractor's ability to provide the necessary services, including resumes and past project descriptions.
3. Documentation, where applicable, to support that the Contractor meets the minimum requirements as specified in the Minimum Evaluation Criteria.

D. Project Staffing

Each Contractor must demonstrate expertise and available staff to be assigned to the project. The names and resumes of all personnel to be assigned to this project must be provided to the Town prior to commencement of the survey.

E. Required Support from the Town

A description of any support needed from the Town, other than availability of appropriate individuals to meet with the Contractor(s) for coordination purposes.

2. Plan for Services

The following is a listing of response requirements that must be included in the Plan For Services. Any Contractor who does not include the requested information will be subject to disqualification.

- A. A concise but responsive description of services to be performed. This must include the projected staff with their roles and responsibilities, methods and equipment to be used for each proposed task anticipated to be performed in order to develop and oversee the project.
- B. An equipment list of Contractor's in-house equipment and other equipment that will be utilized for this project. The list should indicate clearly which equipment is owned and which is leased.
- C. A clear description of activities to be subcontracted, including the name and address of sub-contractor.
- D. A work schedule of anticipated tasks or milestones. The proposed schedule should include a timetable for any deliverables such as, reports, plans, and other supporting information.

3. Required Signature Pages: Tax Compliance Certification, Certificate of Non-Collusion, Corporate Vote Form

Questions

Questions pertaining to the RF must be sent in writing, via e-mail, to Theresa Peznola, at theresa.peznola@andoverma.us. The Town will take written questions up to 4PM on Tuesday, January 2, 2024. The Town will respond to questions in writing and email copies of the response to all plan holders of record in the form of an addendum.

Clarification of Proposals

The Contractor of any proposal may be required to discuss or clarify the proposal with the Town at any time during the evaluation and selection process.

Evaluation of Submittals

The Evaluation Criteria are contained in attachments to be submitted with the proposal:

- Minimum Criteria which must be met by Contractors in order to be considered responsive.
- Comparative Evaluation Criteria which will be applied to responsive Contractors who have met the Minimum Criteria.

An evaluation committee, consisting of a minimum of three Town Department of Public Works staff, will first examine all proposals for acceptability and comparison to the Minimum Criteria. Any submittal determined to be non-responsive to any of the Minimum Criteria of this RFQ will be subject to disqualification without further evaluation. The committee may determine that the non-responsiveness is not substantial and can be clarified, as provided in the above paragraph. The evaluation committee will examine all submittals that meet the minimum criteria in comparison to the comparative evaluation criteria and ranked. The evaluation committee may request interviews with the project leader identified by the Contractor as part of the evaluation process or prior to awarding the contract.

After opening and reviewing all proposals, including cost proposals, and following any interviews, the evaluation committee will decide on the successful Contractor for contracting with the Town. The evaluation committee reserves the right to require clarifications of any proposals.

Rejection of Proposals

The Town reserves the right to reject any and all proposals received in response to this RFQ. A proposal may be rejected if the firm:

1. Fails to adhere to one or more of the provisions established in the RFQ;
2. Fails to submit its proposal at the time or in the format specified herein or to supply the minimum information requested herein;
3. Fails to meet the minimum criteria as specified in this RFQ;
4. Fails to submit its proposal to the required address on or before the specified submission deadline;
5. Misrepresents its services or provides demonstrably false information in its proposal, or fails to provide material information;

Contractor Selection

Following the procedures previously described, the Town will make a decision regarding selection of the Contractor with whom it wishes to enter into a contract. The supplier of these services will be selected based upon weighing the relative merits of proposals submitted by competing Contractors, taking into consideration the proposals' relative merits and costs. This may not necessarily be the lowest cost.

Schedule of Events for RFQ

The Town intends to progress in this procurement in a series of orderly steps. The schedule that follows has been developed in order to provide adequate information for Contractors to prepare definitive proposals and to permit the Town to fully consider various factors that may affect its decision. These dates will be observed. However, should conditions warrant changing any of them, Contractors will be notified.

Event	Date
Andover Townsman Advertising	12/21/2023
Written Questions Due	01/02/2024 @ 4PM
Proposal Opening	01/08/2024 @ 11AM

Uniform Proposals

To enable the Town to perform a fair comparative analysis and evaluation of proposals, it is desired that a uniform format be employed in structuring each proposal. The required format is specified earlier under “**RFQ Response Requirements**” in this RFQ.

Contractor's Examination of the RFQ

Contractors must examine all information and materials contained in and accompanying this RFQ. Failure to do so will be at the Contractor's risk. This will include, but not be limited to, all relevant state and federal laws and regulations.

Responsibilities of the Contractor

The successful Contractor will be required to assume total responsibility for the completion and delivery services offered in this proposal.

The Town will consider the successful Contractor to be the sole point of contact with regard to all contractual matters, including performance or service of subcontractors, unless otherwise stated.

Prior to final selection, Contractors may be required to submit any additional information, which the Town may deem necessary to determine the Contractor’s qualifications to respond to the RFQ.

Firm Price

Prices negotiated with the Contractor will be firm and not subject to increase during the term of any contractual agreement arising between the Town and the successful Contractor as a result of this RFQ. **The fee will be negotiated with the proposer who is ranked as the most advantageous after review and ranking of all proposals that meet the Minimum Criteria.**

The Town of Andover reserves the right to reject any or all proposals; to issue additional solicitations for proposals and/or addenda to this Scope of Services; to waive any irregularities in proposals received after notification to affected Contractors; to select any proposal as the basis for negotiation of a contract and to negotiate with Contractors for amendments or other modifications to their proposals; to conduct investigations with respect to the qualifications of each Contractor; to exercise its discretion and apply its judgment with respect to any aspect of the Scope of Services, the evaluation of proposals, and the negotiation and award of any contract; to enter into an agreement for only portions (or not to enter into an agreement for any) of the services contemplated by the proposals; to perform any of the proposed tasks in-house with Town staff; to select the

proposal that best satisfies the interests of the Town of Andover.

Non-appropriation of funds – If sufficient funds are not appropriated for this project in the next fiscal year, The Town of Andover may terminate this contract and shall not be obligated to make any further payments.

Open Procurement

1. The Contractor should include any latitudes, prohibitions or limitations placed on the provision of services presented in the proposal. If some services cannot be provided as specifically provided for in the RFQ, this should be stated. The objective is to clarify all procurement options.
2. The Town reserves the right to accept or reject any or all proposals in whole or in part.

Execution of Contract

1. Upon the successful negotiation of the Contractor’s fee, the Town will incorporate into its standard contract form (see Attachment F for Sample Contract), appropriate specifics for this procurement and submit the contract to the Contractor for signing. In the event that the Contractor fails, neglects or refuses to execute the contract within a specified number of days after receiving a copy of the contract from the Town, the Town may at its option terminate and cancel its action in awarding the contract and the contract shall become null and void and of no effect.
2. Incorporated by reference into the contract which is to be entered into by the Town and the Contractor pursuant to this RFQ will be:
 - A. All of the information presented in or with this RFQ and the Contractor's response thereto, and
 - B. All written communications between the Town and the Contractor whose proposal is accepted.A designated official of the Contractor and the Town of Andover shall execute the contract.
3. Before a contract may be executed by the Town, the Contractor will be required to provide:
 - A. Workers’ Compensation Insurance as required by the current laws of the Commonwealth of Massachusetts and Employer’s Liability Insurance with Statutory Limits.
 - B. Comprehensive General Liability insurance policy with the following limits of coverage: Bodily Injury, One Million Dollars (\$1,000,000) each person/each occurrence; Property Damage, One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) General Aggregate.
 - C. A Comprehensive Automobile Liability insurance policy with the following limits: Bodily Injury, One Million Dollars (\$1,000,000) each person/each occurrence; or a Combined Single Limit of One Million Dollars (\$1,000,000) and Property Damage, One Million Dollars (\$1,000,000) each occurrence, or a Combined Single Limit of One Million Dollars (\$1,000,000) for owned, hired and non-owned autos.
 - D. Indemnification to indemnify and hold harmless the Town of Andover in the performance of the Services under this Agreement.
 - E. All of the insurance must be issued by an insurer licensed, authorized and maintains an office to do business in Massachusetts.
 - F. The Town of Andover is to be named an additional insured on the above policies.
 - G. The General Liability and Auto Liability policies shall include a Waiver of Subrogation in favor of

The Town.

H. Federal taxpayer identification number (FID). Please provide a W-9.

No Assignment

Assignment by the Contractor to any third party of any contract based on the RFQ or any monies due shall be absolutely prohibited and will not be recognized by the Town unless approved in advance by the Town in writing.

Confidentiality

Under the Massachusetts General Laws, the Town cannot assure the confidentiality of any materials or information that may be submitted by a Contractor in response to this RFQ. Thus Contractors who choose to submit confidential information do so at their own risk.

Rights to Submitted Material

All proposals, response inquiries, or correspondence relating to or in reference to this RFQ, and all reports, charts, displays, schedules, exhibits and other documentation submitted by Contractors shall become the property of the Town when received.

Proposed Work Schedule

Each proposal must include a schedule of proposed tasks or milestones with completion dates, deadlines and review periods. Any costs or proposed budget for this schedule should only be included in the Cost Proposal portion of this RFQ.

Non-Discrimination in Employment and Affirmative Action

1. The Contractor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion or physical or mental handicap. The Contractor agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment including: Title VII of the Civil Right Act of 1973; Massachusetts General Laws Chapter 151B Section 4 (1); and all relevant administrative orders and executive orders.
2. If a complaint or claim alleging violation by the Contractor of such statutes, rules, or regulations is presented to the Massachusetts Commission Against Discrimination (MCAD) the Contractor agrees to cooperate with MCAD in the investigation and disposition of complaint or claim.
3. In the event of the Contractor's non-compliance with the provisions of this section, the Town shall impose such sanctions as it deems appropriate, including but not limited to the following:
 - A. Withholding of payments due the Contractor until the Contractor complies; and
 - B. Termination or suspension of any contract or agreement pursuant to this RFQ.

Force Majeure

Neither party will be liable to the other for any failure or delay in rendering performance arising out of causes beyond its control and without its fault or negligence. But the failure or delay must be beyond its control and without its fault or negligence. Dates or times of performance will be extended to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.

ATTACHMENTS

- A. Minimum Criteria

- B. Comparative Evaluation Criteria
- C. Non-Collusion & Tax Attestation Form
- D. Corporate Vote Form
- E. Sample Contract

ATTACHMENT A

MINIMUM CRITERIA

In order to provide the services required, it is essential that the Contractor meet the following minimum criteria:

1. The submittal is received before the deadline.
2. The Contractor has been in business performing lead and copper rule compliance engineering services for at least 5 years.
3. All required forms are included with the Technical Proposal.

ATTACHMENT B

COMPARATIVE EVALUATION CRITERIA

In order for a Contractor's submittal to be considered under the Comparative Evaluation Criteria the Contractor must have met the Minimum Criteria.

The following ratings will be applied to the Comparative Evaluation Criteria: "HIGHLY ADVANTAGEOUS", "ADVANTAGEOUS", "NOT ADVANTAGEOUS", AND "UNACCEPTABLE".

1. Professional experience of individual staff members to be assigned under this proposal:
 - "Highly Advantageous" if all individual staff members to be assigned under this proposal have professional experience in lead and copper rule compliance.
 - "Advantageous" if at least two staff members to be assigned under this proposal have professional experience in lead and copper rule compliance.
 - "Unacceptable" if only one staff member to be assigned under this proposal has professional experience in lead and copper rule compliance.

2. The Contractor's direct experience in other projects of similar size, type and scope of work.
 - "Highly Advantageous" if the Contractor has had direct experience in three (3) or more projects of similar size, type and scope.
 - "Not Advantageous" if the Contractor has had direct experience in fewer than three (3) projects of similar size, type and scope.
 - "Unacceptable" if the Contractor has had no direct experience in other projects of similar size, type and scope of work.

3. The number of years the proposing firm has been in business of service related to lead and copper rule compliance.
 - "Highly Advantageous" if the proposing firm has been in the business of service related to lead and copper rule compliance for ten (10) or more years.
 - "Advantageous" if the proposing firm has been in the business of service related to lead and copper rule compliance for five (5) to nine (9) years.
 - "Unacceptable" if the proposing firm has been in the business of service related to lead and copper rule compliance for less than five (5) years.

4. The Contractor's proposal indicates that it has adequate existing staff to dedicate to this project
 - "Highly Advantageous" if the Contractor clearly has adequate existing staff to dedicate to this project and will not rely on any sub-contractors.
 - "Advantageous" if the Contractor has adequate existing staff to dedicate to this project but will rely on sub-contractors for at least one, but no more than two tasks.
 - "Unacceptable" if the Contractor has only minimal existing staff to dedicate to this project or will rely substantially on sub-contractors.

5. Overall Quality of the Proposal Package

- “Highly Advantageous” The Contractor met all submittal requirements. The submission clearly defines the roles and responsibilities of all of the Contractor’s personnel as well as sub-contractors and the Town.
- “Advantageous” The Contractor met all submittal requirements. The submission basically defines the roles and responsibilities of all of the Contractor’s personnel as well as sub-contractors and the Town.
- “Not Advantageous” The Contractor’s proposal met most submittal requirements. The submission was found to be general in nature and did not adequately address the roles and responsibilities of personnel and sub-contractors.
- “Unacceptable” The Contractor’s submission omitted certain requirements. The proposal was found to be deficient in a significant fashion.

ATTACHMENT C

CERTIFICATION OF GOOD FAITH & NON-COLLUSION

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

CERTIFICATE OF STATE TAX COMPLIANCE

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature of authorized individual submitting bid/proposal

Printed Name

Name of Business (if applicable)

Social Security or Federal Tax Identification Number

ATTACHMENT D

CORPORATE VOTE

At a duly authorized meeting of the Board of Directors of _____
_____ held on _____ at which all the Directors were
present or waived notice, it was voted that _____,
_____ of this company, be and he/she hereby is authorized to execute contracts and
bonds in the name and behalf of said company, and affix its Corporate Seal thereto, and such execution of any
contract or obligation in this company's name on its behalf by _____,
shall be binding upon this company.

A TRUE COPY ATTEST:

Clerk,

Date of this Contract

I hereby certify that I am the Clerk of _____, that
_____ is duly elected _____ of said company, and
the above vote has not been amended or rescinded and remains in full force and
effect as of the date of this contract.

Clerk Corporate Seal

SWORN TO AND SUBSCRIBED BEFORE ME THIS _____ DAY OF _____,

Notary Public

If a corporation, complete above or attach to each signed copy of the bid/written request/quotation, a notarized copy of vote of corporation authorizing the signatory to sign this bid/written request/quotation form. If attesting clerk is the same person as the individual executing this contract, have signature notarized above.

ATTACHMENT E

Town of ANDOVER

Contract FOR PROFESSIONAL ENGINEERING SERVICES

DATE: _____

This Contract is entered into on, or as of, this date by and between the Town of Andover (the “Town”),
and

1. This is a Contract for the procurement of the following:
2. The Contract price to be paid to the Contractor by the Town of Andover is:
3. Payment will be made as follows:
4. Definitions:
 - 4.1 Acceptance: All Contracts require proper acceptance of the described deliverables or services by the Town of Andover. Proper acceptance shall be understood to include inspection of deliverables and certification of acceptable performance for services by authorized representatives of the Town to ensure that the deliverables or services are complete and are as specified in the Contract.
 - 4.2 Contract Documents: All documents relative to the Contract including (where used) Instructions to Bidders, Proposal Form, General Conditions, Supplementary General Conditions, General Specifications, Other Specifications included in Project Manual, Drawings, Request for Qualifications, Scope of Services, and all Addenda. The Contract documents are complementary, and what is called for by any one shall be as binding as if called for by all. The intention of this Contract is to include all labor and materials, equipment and transportation necessary for the proper performance of the Contract.
 - 4.3 The Contractor: The “other party” to any Contract with the Town. 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 such label used. In the performance of service under this Agreement, the Contractor acts at all times as an independent contractor. There is no relationship of employment or agency between the Town, on the one hand, and the Contractor on the other, and neither party shall have or exercise any control or direction over the method by which the other performs its work or

functions aside from such control or directions as provided in this Contract which the parties view as consistent with their independent contractor relationship.

4.4 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 approved Amendments and Change Orders.

4.5 Goods: Goods, Supplies, Materials or other Deliverables.

4.6 SubContractor: Those having a direct Contract with the Contractor. The term 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.

4.7 Work: The services or materials contracted for, or both.

5. Term of Contract and Time for Performance:

This Contract shall be fully performed by the Contractor in accordance with the provisions of the Contract Documents on or before _____, unless extended pursuant to a provision for extension contained in the Contract documents at the sole discretion of the Town, and not subject to assent by the Contractor, and subject to the availability and appropriation of funds as certified by the Town Accountant. The time limits stated in the Contract documents are of the essence of the Contract.

6. Subject to Appropriation:

Notwithstanding anything in the Contract documents to the contrary, any and all payments which the Town is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the Town Accountant. In the absence of appropriation, this Contract shall be immediately terminated without liability for damages, penalties or other charges. When the amount of the Accountant's certification of available funds is less than the face amount of the Contract, the Town shall not be liable for any claims or requests for payment by the Contractor which would cause total claims or payments under this Contract to exceed the amount so certified.

7. Permits and Approvals:

Permits, Licenses, Approvals and all other legal or administrative prerequisites to its performance of the Contract shall be secured and paid for by the Contractor.

8. Termination:

a. Without Cause. The Town may terminate this Contract on seven (7) calendar days notice when in the best interests of the Town by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor. Upon termination without cause, Contractor will be paid for services rendered to the date of termination.

b. For Cause. If the Contractor is determined by the Town to be in default of any term or condition of Contract, the Town may terminate this Contract on seven (7) days notice by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor.

c. Default. The following shall constitute events of a default under the Contract:

- 1) any material misrepresentation made by the Contractor to the Town; 2) any failure to perform any of its obligations under this Contract including, but not limited to the following: (i) failure to commence performance of this Contract at the time specified in this Contract due to a reason or circumstance within the Contractor's reasonable control, (ii) failure to perform this Contract with sufficient personnel and equipment or with sufficient material to ensure the completion of this Contract within the specified time due to a reason or circumstance within the Contractor's reasonable control, (iii) failure to perform this Contract in a manner reasonably satisfactory to the Town, (iv) failure to promptly re-perform within a reasonable time the services that were rejected by the Town as unsatisfactory, or erroneous, (v) discontinuance of the services for reasons not beyond the Contractor's reasonable control, (vi) failure to comply with a material term of this Contract, including, but not limited to, the provision of insurance and non-discrimination, (vii) any other acts specifically and expressly stated in this Contract as constituting a basis for termination of this Contract, and (viii) failure to comply with any and all requirements of federal and/or state law and/or regulations, and Town bylaw and/or regulations.

9. The Contractor's Breach and the Town's 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 Town of Andover 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 in equity or other proceedings with respect to a breach of this Contract, including damages and specific performance, and the right to select among the remedies available to it by all of the above.

From any sums due to the Contractor for services, the Town may keep the whole or any part of the amount for expenses, losses and damages incurred by the Town as a consequence of procuring services as a result of any failure, omission or mistake of the Contractor in providing services as provided in this Contract.

10. Statutory Compliance:

10.1 This Contract will be construed and governed by the provisions of applicable federal, state and local laws and regulations; and wherever any provision of the Contract or Contract documents shall conflict with any provision or requirement of federal, state or local law or regulation, then the provisions of law and regulation shall control. Where applicable to the Contract, the provisions of General Laws are incorporated by reference into this Contract, including, but not limited to, the following:

General Laws Chapter 30B – Procurement of Goods and Services.

General Laws Chapter 30, Sec. 39, *et seq.* - Public Works Contracts.

General Laws Chapter 149, Section 44A, *et seq.* Public Buildings Contracts.

General Laws Chapter 7, Sections 38A ½ - O: Designer Selection

- 10.2 Wherever applicable law mandates the inclusion of any term and provision into a municipal contract, this Section shall be understood to import such term or provision into this Contract. To whatever extent any provision of this Contract shall be inconsistent with any law or regulation limiting the power or liability of cities and Towns, 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 By-laws 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, of 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, Specifications or Contract for this work in violation of any such law, by-law, regulation, order or decree, the Contractor shall forthwith report the same in writing to the Town. It shall, at all times, itself observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and shall protect and indemnify the Town of Andover, and its duly appointed agents against any claim or liability arising from or based on any violation whether by him or its agents, employees or subcontractors of any such law, by-law, regulation or decree.
- 10.5 Any changes to the Scope of Services or contract price shall be made only by a written contract amendment executed by the Town and the Contractor.

11. Conflict of Interest:

Both the Town and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A), and this Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the application of M.G.L. c. 268A to the performance of this Contract; and by executing the Contract documents the Contractor certifies to the Town that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.

12. Certification of Tax Compliance

This Contract must include a certification of tax compliance by the Contractor, as required by General Laws Chapter 62C, 49A (Requirement of Tax Compliance by All Contractors Providing Goods, Services, or Real Estate Space to the Commonwealth or Subdivision).

13. Discrimination

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151B (Law Against Discrimination) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor shall comply with all federal and state laws, rules and regulations promoting

fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law.

14. Assignment:

Assignment of this Contract is prohibited, unless and only to the extent that assignment is provided for expressly in the Contract documents.

15. Condition of Enforceability Against the Town:

This Contract is only binding upon, and enforceable against, the Town if: (1) the Contract is signed by the Town Manager or its designee; and (2) endorsed with approval by the Town Accountant as to appropriation or availability of funds; and (3) endorsed with approval by the Town Counsel as to form.

16. Corporate 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 Town of Andover unless and until the Contractor complies with this section.

The Contractor, if a foreign corporation, shall comply with the provisions of the General Laws, Chapter 181, Section 3, and any Acts and Amendments thereof, and in addition thereto, relating to the appointment of the Commissioner of Corporations as its attorney, shall file with the Commissioner of Corporations a 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. Liability of Public Officials:

To the full extent permitted by law, no official, employee, agent or representative of the Town of Andover shall be individually or personally liable on any obligation of the Town under this Contract.

18. Indemnification:

The Contractor shall indemnify, defend, and save harmless the Town, the Town's officers, agents and employees, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including reasonable attorneys' fees) incurred by, brought or recovered against them that may arise in whole or in part out of or in connection with the services being performed or to be performed, and out of any negligent act or omission

by the Contractor, its employees, agents, subcontractors, material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder. The existence of insurance shall in no way limit the scope of the Contractor's indemnification under this contract. The duty to defend shall immediately accrue and be owing upon the utterance of such a claim by any person or entity regardless of merit and shall not be dependent upon a finding of negligence or any other finding of fact at trial. The duty to defend shall be absolute and will include and shall not be defeated or in any way undermined by the utterance of claims not covered by this Contract.

19. Documents, Materials, Etc.

Any materials, reports, information, data, etc. given to or prepared or assembled by the Contractor under this Contract are to be kept confidential and shall not be made available to any individual or organization by the Contractor (except agents, servants, or employees of the Contractor) without the prior written approval of the Town, except as otherwise required by law. The Contractor shall comply with the provisions Chapter 66A of the General Laws of Massachusetts as it relates to public documents, and all other state and federal laws and regulations relating to confidentiality, security, privacy and use of confidential data.

A hard copy and an electronic copy (if requested by the Town) of Contractor's drawings, plans, specifications and other similar documents, whether in written, graphic or electronic form, shall be delivered to the Town. If there is a discrepancy between the electronic files and the hard copies, the hard copies shall govern.

The Town shall have unlimited rights, for the benefit of the Town, in all drawings, designs, specifications, notes and other work developed in the performance of this contract including the right to use same on any other Town projects without additional cost to the Town; and with respect thereto the Contractor agrees and hereby grants to the Town an irrevocable royalty-free license to all such data which the Contractor may cover by copyright and to all designs as to which it may assert any rights or establish any claim under any patent or copyright laws. The Contractor shall not be responsible for changes made in the documents by others without the Contractor's authorization, nor for the Town's use of the document on projects other than the project which is the subject of this Contract, unless this is a contract for design services for a master plan or prototype.

20. Confidentiality

The Contractor shall comply with M.G.L. ch. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Town data in the Contractor's possession, or used by the Contractor in the performance of this Contract, which shall include, but is not limited to the Town's public records, documents, files, software, equipment or systems.

21. Record-Keeping and Retention, Inspection of Records

The Contractor shall maintain records, books, files and other data as specified in this Contract and in such detail as shall properly substantiate claims for payment under this Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under this Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. The Town shall have access during the Contractor's regular business hours and upon

reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

22. Subcontracting By Contractor

Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under this Contract must be in writing, authorized in advance by the Town and shall be consistent with and subject to the provisions of this Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under this Contract. The Town is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

23. Risk of Loss

The Contractor shall bear the risk of loss for any Contractor materials used for this Contract and for all deliveries, Town personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of this Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Town.

24. Minimum Wage/Prevailing Wage

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151, §1, *et seq.* (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor will at all times comply with the wage rates as determined by the Commission of the Department of Labor and Industries, under the provisions of General Laws Chapter 149, 26 to 27D (Prevailing Wage Law), as shall be in force and as amended. The Contractor will, in addition to any other submissions required by the Prevailing Wage Law, submit certified weekly payrolls to the Town with the information described in General Laws Chapter 149, §27B.

25. Audit, Inspection and Recordkeeping

At any time during normal business hours, and as often as the Town may deem it reasonably necessary, there shall be available in the office of the Contractor for the purpose of audit, examination, and/or to make excerpts or transcript all records, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

26. Payment

The Town agrees to make all reasonable efforts to pay to the Contractor the sum set forth in the Contractor's bid or proposal within thirty (30) days of receipt of an invoice detailing the work completed and acceptance from the Town of the work completed.

27. Waiver and Amendment

Amendments, or waivers of any additional term, condition, covenant, duty or obligation contained in this Contract may be made only by written amendment executed by all signatories to the original Agreement, prior to the effective date of the amendment.

To the extent allowed by law, any conditions, duties, and obligations contained in this Contract may be waived only by written Agreement by both parties.

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any manner limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach of a similar or different matter.

28. Forum and Choice of Law

This Contract and any performance herein shall be governed by and be construed in accordance with the laws of the Commonwealth of Massachusetts. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth or the federal district court sitting in the Commonwealth, which shall have exclusive jurisdiction thereof. This paragraph shall not be construed to limit any other legal rights of the parties.

29. 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 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 or 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 Town of Andover by being sent to the Town Manager, Town Hall, 36 Bartlet Street, Andover, Massachusetts 01810.

30. Binding on Successors:

This Contract shall be binding upon the Contractor, its assigns, transferees, and/or successors in interest (and where not corporate, the heirs and estate of the Contractor).

31. Complete Contract:

This instrument, together with its endorsed supplements, and the other components of the contract documents, constitutes the entire contract between the parties, with no agreements other than those incorporated herein.

32. Contractor Certifications

32.1 By signing this contract, the Contractor certifies under the penalties of perjury that pursuant to General Laws Chapter 62C sec. 49A, the Contractor has filed all state tax returns, paid all taxes and complied with all laws of the Commonwealth relating to taxes; and that pursuant to General Laws Chapter 151A, sec. 19A, the Contractor has complied with all laws of the Commonwealth relating to contributions and payments in lieu of contributions.

32.2 By signing this contract, the Contractor certifies under the penalties of perjury that this contract has been obtained in good faith and without collusion or fraud with any other person. As such in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, client or other organization, entity or group of individuals.

32.3 Qualifications. The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract, that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability, and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State’s website as licensed to do business in Massachusetts, as required by law.

32.4 Business Ethics and Fraud, Waste and Abuse Prevention. The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

32.5 Debarment. The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulations including, Executive Order 147, M.G.L. ch. 29, §29F, M.G.L. ch. 30, §39R, M.G.L. ch. 149, §27C, M.G.L. ch. 149, §44C, M.G.L. ch. 149, §148B and M.G.L. ch. 152, §25C.

33. Contract Amendments:

Any change in the scope of services or contract price shall be made only by a written contract amendment executed by the Town and the Contractor.

34. Minimum Wage:

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151, §1, *et seq.* (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended.

35. Insurance:

The Contractor shall obtain and maintain the following insurance:

35.1 Workers Compensation Insurance of the scope and amount required by the laws of the Commonwealth of Massachusetts.

35.2 Broad Form Commercial General Liability insurance with limits of at least \$1 Million per occurrence and \$2 Million aggregate, or such higher amount as the Town may require, and which shall cover bodily injury, death, or property damage arising out of the work.

- 35.3 Automobile Liability Insurance, including coverage for owned, hired or borrowed vehicles with limits of at least \$1 Million each person/each occurrence or a combined single limit of \$1 Million.
- 35.4 Professional Liability Insurance covering errors, omissions and acts of the Contractor or of any person or business entity for whose performance the Contractor is legally liable arising out of the performance of the contract. The total amount of such insurance shall at a minimum equal one million dollars or such larger amounts as the Town may require for the applicable period of limitations, which coverage shall be maintained for a period of at least three (3) years after the date of the final payment by the Town. The Contractor shall obtain such insurance coverage at its own expense and provide certificates of insurance to the Town at least 7 days prior to the execution of the Contract by the Town.
- 35.5 The intent of the Contract provisions regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor's responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and the Town from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the work.
- 35.6 All required insurance shall be certified by a duly authorized representative of the insurers on the Certificate of Insurance form incorporated into and made a part of this Agreement. Properly executed certificates and endorsements acceptable to the Town signifying adequate coverage in effect in accordance with the requirements of this contract for the duration of the contract must be submitted to the Town at least 7 days prior to execution of this Contract by the Town with renewal certificates and endorsements issued not less than 30 days prior to expiration of a policy period. The Contractor shall submit certified copies of all policies to the Town within 7 days of such a request. All insurance companies shall be authorized by the Massachusetts Commissioner of Insurance to do business in the Commonwealth of Massachusetts.
- 35.7 The Town and its employees and officials shall be named as an additional insured on the above-referenced liability policies with the exception of the Professional Liability policy and the Contractor's insurance coverage shall be primary and non-contributory with respect to any other coverage available to additional insureds. The certificate of insurance shall so state the foregoing. The cost of such insurance, including required endorsements or amendments, shall be the sole responsibility of the Contractor.
- 35.8 The above referenced Liability policies (General Liability, Auto Liability, and Workers Compensation) shall include a Waiver of Subrogation endorsement in favor of the Town. The certificate of insurance shall so state the foregoing.
- 35.9 The General Liability and Automobile Liability shall be written on an occurrence basis.
- 35.10 The Contractor shall maintain all required insurance in full force and effect as required by this Contract or the Contractor shall be in material breach hereof.

35.11 Coverages are to be maintained for a period of 3 years after final payment.

35.12 Contractual liability must recognize the indemnity contained in this Agreement.

IN WITNESS WHEREOF the parties have hereto and to two other identical instruments set forth their hands the day and year first above written.

THE TOWN

THE CONTRACTOR

Division/Department Head Date

Company Name

Town Manager Date

Signature Date

Purchasing Agent Date

Print Name & Title

APPROVED AS TO FORM:

Town Counsel Date

CERTIFICATION AS TO AVAILABILITY OF FUNDS:

Town Accountant Date