



REQUEST FOR PROPOSALS
RFP # 026/02-17/040

PROFESSIONAL CONSULTING SERVICES
FOR HISTORIC MILL DISTRICT
ANDOVER, MA

Thursday, January 26, 2017

PROPOSALS DUE:

Friday, February 24, 2017 11:00 am

Late Proposals Will Be Rejected

DELIVER COMPLETED SUBMISSIONS TO:

Town of Andover, MA
Central Purchasing Department
Attn: Tom Watkins
36 Bartlet St. Andover, MA 01810
Phone: 978-623-8216
e-mail: twatkins@andoverma.gov

RFP # 026/02-17/040

Town of Andover, Massachusetts
Purchasing Department

COVER SHEET

The Town of Andover reserves the right to reject any or all Proposals, to omit any item or items called for, or to accept the Proposal deemed in the best interest of the Town. One Original and Three (3) copies of the proposal must be submitted **on or before 11:00 AM on Friday, February 24, 2017** to:

Thomas Watkins, Purchasing Agent
Purchasing Department
Town Office Building
36 Bartlet Street
Andover, Massachusetts 01810

The envelope containing the Proposal and required information must be sealed and marked with Proposer’s name, title of proposal, RFP 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 NAME _____

BUSINESS 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/RFP 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.

RFP NO. 026/02-17/040

CONSULTING SERVICES FOR HISTORIC MILL DISTRICT IN ANDOVER, MA

INFORMATION FOR PROPOSERS

Separately sealed non-price and priced proposals will be received at the Office of Central Purchasing, Andover Town Offices, 36 Bartlet Street, Andover, MA 01810, until 11:00 A.M., local time, by February 24, 2017 and will be opened and recorded in accordance with MGL Ch. 30B.

PART 1. GENERAL INFORMATION

1.1 PROCUREMENT DESCRIPTION

The Town of Andover Central Purchasing Department, is issuing this Request for Proposal to hire a qualified firm to provide professional consulting services for the Historic Mill District in the Town of Andover.

1.2 APPLICABLE LAW

This procurement will be conducted pursuant to Massachusetts General Laws Chapter 30B, Section 6.

1.3 APPROVAL

Any contract that may result from the procurement shall be subject to the approval of the Town Manager, or his designee. The sample contract, including all insurance requirements, is incorporated with this proposal document.

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 RFP 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 January 26, 2017.

The Request for Proposal and related documents shall be available for free download from the Town's Purchasing Department webpage located on the Town's website at http://andoverma.vt-s.net/Pages/AndoverMA_Procurement/index

Hardcopies of the Request for Proposal and related documents may be obtained at the Office of the Purchasing Agent, 36 Bartlet Street Andover, MA 01810 between the hours of 8:30 AM-4:30 PM on Monday-Friday.

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 PRICE PROPOSAL FORM

Every proposal must include a completed 'Price Proposal Form'. See attached. The price proposal shall be separately sealed and labeled as "Price Proposal".

2.1.2 NON-PRICE/TECHNICAL PROPOSAL

Each proposal must include a Non-Price/Technical Proposal submittal, which shall be separately sealed and labeled as "Non-Price Proposal," containing:

NON-COLLUSION FORM

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.

TAX COMPLIANCE FORM

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)

2.2 PROPOSAL DELIVERY

Below please find a description of the manner in which sealed proposals must be submitted. Price and Non-Price Proposals must be separately sealed and labeled.

2.2.1 DUE DATE AND TIME

Proposals shall be received by the Office of the Purchasing Agent on or before, Friday, February 24, 2017 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, 36 Bartlet 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. In addition, the Technical/Non-Price Proposal shall be submitted electronically on a Flash Drive within the sealed envelope for the Technical/Non-Price Proposal submittal. Do not include your price proposal on the flash drive.

2.2.5 LABELING

Price and Non-Price proposals must be separately sealed and labeled. Each proposal shall be labeled with (1) the proposal number and title, (2) the proposal due date, (3) the name of the proposer and (4) price or non-price proposal.

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: Thomas P. Watkins at twatkins@andoverma.gov 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

Each technical (non-price) proposal shall first be reviewed to ascertain whether or not the following minimum evaluation criteria have been met:

1. The proposing firm has at least 5 years experience in developing design guidelines for municipalities.
2. The proposing firm has successfully provided design guidelines and/or technical experience for at least ten other municipalities
3. The proposing firm has submitted all required material and did so by the date and time established within this RFP.

3.2 SCOPE OF SERVICE

See below for further information on the Scope of Service.

3.3 COMPARATIVE CRITERIA

Each non-price proposal meeting the Minimum Evaluation Criteria requirements shall be further rated according to the following Comparative Evaluation Criteria:

1. Design Guideline experience provided to Massachusetts municipalities. For this criterion, the proposal will be rated:

Highly advantageous - the proposer has successful experience developing design guidelines for five or more zoning districts

Advantageous - the proposer has successful experience developing design guidelines for three to four zoning districts

Not advantageous - the proposer has experience developing design guidelines for less than three zoning districts

Unacceptable - if the proposer has no experience in developing design guidelines for zoning districts.

2. Ability to meet the general requirements and specific requirements listed in the Request for Proposal.

Any exception, deviation, or alternate to any specified requirement must be specifically stated in the non-price proposal. If no exception, deviation, or alternate to any specified requirement is stated in the proposal, it is conclusively understood that the specification will be met. For this criterion, the proposal will be rated:

Highly advantageous - if the proposal is clear, complete, and demonstrates that the proposer has the ability to provide all general and specific requirements that is required of the Town of Andover.

Advantageous - if the proposal is clear, complete, and demonstrates that the proposer has the ability to provide only some of the general and specific requirements and that the company organization, controls, disaster plans, and security measures are thoroughly documented and indicate an acceptable organization.

Not advantageous - if the proposal is clear, complete, and demonstrates that the proposer cannot provide all the general and specific requirements and / or that the company organization, controls, disaster plans, and security measures are not thoroughly documented and / or indicate a questionable organization.

Unacceptable – if the proposal is not clear, not complete and demonstrates that the proposer cannot provide any of the requirements listed in this RFP.

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, as well as price.

3.5 SELECTION PROCESS

Following the deadline for receipt of proposals, the Purchasing Agent will open the non-price proposals and prepare a register of proposals submitted. The non-price proposals will be evaluated by an evaluation committee based on the Minimum Requirements and Comparative Criteria contained in this RFP. The evaluation committee shall notify the Purchasing Agent which proposal was deemed most advantageous. The Purchasing Agent will then open and evaluate the price proposals, and upon the evaluation committee's recommendation, award the contract to the most advantageous proposal taking into account the non-price and price proposals.

Do note that the Town reserves the right to narrow down the field of applicants to semi-finalists and may opt to further evaluate the semi-finalists by way of an interview with the Historic Mill District Task Force. The interviews have been scheduled for Friday March 10, 2017 at 9:00am. All potential proposers shall note that these interviews are open to the general public as the Task Force is a public entity of the Town and subject to the Open Meeting Law. Semi-finalists will be contacted at least one week in advance of their interview to be notified of their scheduled interview time and the interview location.

PART 4. TERMS & CONDITIONS

4.1 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.

4.2 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 RFP number.

4.3 INSURANCE REQUIREMENTS

See the Town of Andover's Standard Contract under Supplement "S" for all information relative to insurance requirements.

4.4 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.

4.5 FEDERAL AND STATE LAW

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

4.6 SAMPLE CONTRACT

See "Sample Contract" and contract "Supplement S" attached.

PROFESSIONAL CONSULTING SERVICES FOR ANDOVER HISTORIC MILL DISTRICT

Background:

At Andover's annual open Town Meeting in May of 2015, voters overwhelmingly approved the creation of the Historic Mill District (HMD), see attached. This new zoning district encompasses nearly one hundred (100) acres between Main Street, Dundee Park, the Shawsheen River and Whole Foods Grocery Store. The purpose of the HMD is to encourage smart growth development in proximity to Andover's regional transit station by fostering a range of housing opportunities within mixed-use development projects that promote compact design, preservation of open space, and a variety of transportation options, including enhanced pedestrian access to employment and nearby transportation systems.

**Andover Historic
Mill District**

Existing Zoning Definitions

GB = General Business

MU = Mixed Use

IG = General Industrial

SRA = Single Residential A

SRB = Single Residential B

Marquee Locations

1. Memorial Hall Library
2. MBTA Commuter Rail
3. Dundee Park
4. Whole Foods Plaza



The Town of Andover is interested in establishing requirements and standards within a set of design guidelines to ensure predictable, fair and cost-effective development review and permitting and at the same time allowing for creative site planning, context-sensitive design and building aesthetics that allow new construction to be woven into the existing fabric of the HMD.

The Town of Andover is looking to hire a consultant with an architecture and urban design focus to assist in developing the design guidelines for the HMD. The goal of the design guidelines are to preserve and augment the HMD's architectural qualities, historic character and pedestrian scale. In preparation of the design guidelines, the selected consultant shall consider the following elements:

- Building Design
- Massing
- Landscape Design
- Plantings

- Materials
- Signage
- Parking and Vehicular Access
- Pedestrian and Bicycle Amenities
- Open space
- Streetscapes
- Climate Change and Sustainability
- Lighting

Scope of Work

Historic Mill District – Design Guidelines:

▪ **Task I:**

- Meet with the Town Manager and Planning staff to discuss activities and events that have led to the creation of the Historic Mill District, and to discuss Scope of Work. Assess available reports and other materials that will assist in preparing for Public Meeting #1, including Planning staff support in augmenting consultant's scope.
- Public Meeting # 1:
 - Public Kick-Off Meeting: Engage area residents, businesses and community leaders to introduce the Scope of Work. The goal of Public Meeting #1 is to solicit input on the project and discuss topics that the Design Guidelines should address. Session shall include presentation of comparable Design Guidelines and Standards to assist in stimulating discussion.
 - Review past redevelopment concepts associated with the Andover Historic Mill District and charrette ideas that had been previously envisioned by the public back in 2015.
- Task I Deliverables:
 - Summary of collected materials
 - Written synopsis of community engagement

▪ **Task II:**

- Public Meeting # 2:
 - Prepare and Present Preliminary Draft Design Guidelines: Presentation of design and planning options that focus on different scenarios (e.g., more restrictive - less restrictive spectrum) and highlight draft guidelines.
 - The Preliminary Design Guidelines shall consider issues of, building design, massing, landscape design, plantings, lighting, materials, signage, parking and vehicular access, pedestrian and bicycle amenities, open space and streetscapes.
 - The preliminary Design Guidelines shall support the purpose and intent of the Historic Mill District as defined in the Andover Zoning By-law.
- Task II Deliverables:
 - Create preliminary Design Guidelines
 - Presentation of design options for the Historic Mill District at Public Meeting # 2
 - Continue staff engagement
 - Summary of collected material

▪ **Task III:**

- Meet with the Town Manager and Planning staff:
 - Confirm what we heard: Present Draft Design Guidelines based upon community's input at Public Meeting # 2.
 - Test Case Scenario: Working with the Town owned parcel off Lewis Street, demonstrate the impacts of a potential project when addressing the Design Guidelines. A simulated schematic/preliminary design shall be developed to assess impact of draft design guidelines.

- Task III Deliverables:
 - Presentation of updated draft Design Guidelines
 - Test Case Scenario on Town owned parcel
 - Summary of collected material

- **Task IV:**
 - Public Meeting #3:
 - Final draft of Design Guidelines: Participate and present final draft of the Design Guidelines for review and approval to the public and the Planning Board.

 - Task IV Deliverables:
 - Prepare and present Design Guidelines to the Planning Board
 - Provide final Design Guidelines Manual, which shall clearly be articulated in both written and pictorial form.
 - Fifteen hardcopies (15) and one electronic copy suitable for printing.

ATTACHMENT 1

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 2

**PRICE PROPOSAL
RFP 026/02-16/040**

Provide a lump sum* price to provide all the services as described in this RFP.

\$ _____

Proposer must submit the hourly rates for any and all employees for additional services to the Town of Andover. If more space is needed please submit the hourly rates on a separate sheet of paper:

\$ _____ per hour _____
Title

\$ _____ per hour _____
Title

\$ _____ per hour _____
Title

Lump sum price shall be all inclusive of all costs associated with performing and completing the scope of services as outlined in this RFP. All travel, printing, copying, etc. shall be included within the lump sum price.

By:

Date:

Authorized Signature

TOWN OF ANDOVER

SAMPLE CONTRACT

DATE: _____

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

[“Contractor”]

[Address of the Contractor]

[Telephone Number]

[FAX Number]

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 goods or services by the Town of Andover. Proper acceptance shall be understood to include inspection of goods and certification of acceptable performance for services by authorized representatives of the Town to insure that the goods 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, and all Addenda issued during the bidding period. 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 the document 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.

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 or Materials.

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.

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 and Default:

8.1 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.

8.2 For Cause. If the Contractor is determined by the Town to be in default of any term or condition of this 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.

8.3 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 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 the 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.

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, it 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.

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, Section 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.

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, Sections 3 and 5, 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) 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 the 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 the Contractor's indemnification under this contract.

19. Workers Compensation Insurance:

The Contractor shall provide by insurance for the payment of compensation and the furnishing of other benefits under Chapter 152 of the General Laws of Massachusetts (The Worker's Compensation Act) to all employees of the Contractor who are subject to the provisions of Chapter 152 of the General Laws of Massachusetts.

Failure to provide and continue in force such insurance during the period of this Contract shall be deemed a material breach of this Contract, shall operate as an immediate termination thereof, and Contractor shall indemnify the Town for all losses, claims, and actions resulting from the failure to provide the insurance required by this Article.

The Contractor shall furnish to the Town evidence of such insurance prior to the execution of this Contract before the same shall be binding on the parties thereto, except if specifically waived by the Town.

20. 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.

Any materials produced in whole or in part under this Contract shall not be subject to copyright, except by the Town, in the United States or any other country. The Town shall have unrestricted authority to, without payment of any royalty, commission, or additional fee of any type or nature, publicly disclose, reproduce, distribute and otherwise use, and authorize others to use, in whole or in part, any reports, data or other materials prepared under this Contract.

All data, reports, programs, software, equipment, furnishings, and any other documentation or product paid for by the Town shall vest in the Town at the termination of this Contract. The Contractor shall at all times, during or after termination of this Contract, obtain the prior written approval of the Town before making any statement bearing on the work performed or data collected under this Contract to the press or issues any material for publication through any medium.

21. 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.

22. 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.

23. 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.

24. 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. 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.

25. 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.

26. 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).

27. 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.

28. Supplemental Conditions:

The foregoing provisions apply to all contracts to which the Town of Andover shall be a party. One of the following "Supplements" *must* be "checked" as applicable to this Contract, shall be attached hereto, and shall in any event apply as the nature of the Contract requires. The Supplement contains additional terms governing the Contract:

[] GOODS

SUPPLEMENT "G" - Applicable to Contracts for the procurement of Goods (governed by the provisions of General Laws Chapter 30B)

[X] SERVICES

SUPPLEMENT "S" - Applicable to Contracts for the procurement of Services (governed by the provisions of General Laws Chapter 30B)

[] CONSTRUCTION

SUPPLEMENT "C" - Applicable to Contracts for Construction

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
Contract Manager

Company Name

Town Manager Date
Andrew P. Flanagan

Signature Date

Print Name & Title

APPROVED AS TO FORM:

Town Counsel Date

CERTIFICATION AS TO AVAILABILITY OF FUNDS:

Town Accountant Date

SUPPLEMENT "S"

This form supplements the general provisions of the Contract between the Town of Andover, and _____, which Contract is a contract for the procurement of services.

“Services” shall mean furnishing of labor, time, or effort by the Contractor. This term shall not include employment agreements, collective bargaining agreements, or grant agreements.

Change Orders:

Change orders for contracts subject to Massachusetts General laws Chapter 30B may not increase the quantity of services by more than twenty-five (25%) per cent, in compliance with General Laws Chapter 30B, §13.

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 Commissioner of the Department of Labor and Industries, under the provisions of General Laws Chapter 149, 26 to 27D (Prevailing Wage), as shall be in force and as amended.

Insurance:

The Contractor shall obtain and maintain the following insurance:

- 5.1 Workers Compensation Insurance of the scope and amount required by the laws of the Commonwealth of Massachusetts.
- 5.2 Broad Form Commercial General Liability coverage with limits of at least \$1 Million per occurrence and \$2 Million aggregate, and which shall cover bodily injury, death, or property damage arising out of the work.
- 5.3 Automobile Liability Coverage, including coverage for owned, hired, or borrowed vehicles with limits of Bodily Injury and Property Damage in the amount of \$1 Million each person/each occurrence or a combined single limit of \$1 Million.
- 5.4 Certificates of Insurance showing proof of errors and omissions coverage in the amount of \$100,000 (minimum).
- 5.5 The intent of the Specifications 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.
- 5.6 All required insurance shall be certified by a duly authorized representative of the insurers on the “MIIA” or “ACORD” Certificate of Insurance form incorporated into and made a part of this agreement. Properly executed certificates signifying adequate coverage in effect for the duration of the contract with renewal certificates issued not less than 30 days prior to expiration of a policy period, must be submitted to the Town prior to commencement of this Agreement.
- 5.7 The Town shall be named as an additional insured on the above referenced liability policies, and the Contractor’s insurance shall be the primary coverage. The cost of such insurance, including required endorsements or amendments, shall be the sole responsibility of the Contractor.

5.8 The General Liability and Automobile Liability Policies shall include a Waiver of Subrogation in favor of the Town.

6. 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.

APPROVED AS TO FORM ONLY:

TOWN OF ANDOVER

Town Counsel

Town Manager
Andrew P. Flanagan

I CERTIFY THAT FUNDS ARE AVAILABLE
IN ACCOUNT NO _____:

Department/Division Head

Town Accountant

THE CONTRACTOR:

Date: _____
