

***Town of Weymouth
Massachusetts***

Robert L. Hedlund
Mayor

75 Middle Street
Weymouth, MA 02189



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**CONTRACT BETWEEN THE
TOWN OF WEYMOUTH AND**

The Town of Weymouth, acting by and through its duly authorized Mayor, ("Town"), with a principal place of business at 75 Middle Street, Weymouth, Massachusetts 02189, and _____ ("Vendor"), with a principal place of business at _____ make this contract beginning on _____ 2020 for the provision of supplies and services under the following terms and conditions.

- 1) ***Description of Supplies and Services to be Provided.*** The Vendor will provide to the Town the following supplies and services: _____
- 2) ***The Contract Sum.*** The Town agrees to pay the Vendor in an amount not to exceed \$_____ for the purchased supplies and services.
- 3) ***Duration of this Contract.*** The term of this contract shall be from the date above until June 30, 2020.
- 4) ***Delivery of Supplies.*** Time is of the essence for all deliveries made under this contract. All deliveries under this contract will be F.O.B. Weymouth with all transportation and handling charges paid for by the Vendor. Responsibility and liability for loss or damage will remain with Vendor until final inspection and acceptance, when responsibility will pass to the Town, except as to latent defects, fraud, or Vendor's warranty obligations. The Vendor shall be responsible for the customary industry standard in packing and shipping of all supplies. The Town shall have seven (7) days after delivery of the supplies to perform an inspection of the supplies to determine whether the supplies conform to the standards specified in the solicitation of this contract prior to acceptance of the supplies by the Town.
- 5) ***Time for Performance of Services.*** Time is of the essence for the provision of all services made under this contract. The Vendor shall commence work under the contract immediately and shall provide all purchased supplies and services to the Town before **June 30, 2020.**

6) ***Enumeration of Contract Documents.*** The following list of documents form the entire agreement between the Town and Vendor and are fully a part of the contract as if attached to this document or repeated herein:

- a. Amendments, modifications, or other mutually agreed upon change orders;
- b. This Contract;
- c. The Towns "Request for Qualifications," or other such bid solicitations;
- d. The Vendor's response to the Town's bid solicitations;
- e. All required certifications, permits, or licenses;
- f. Certificates of insurance;
- g. Certificate of corporate vote, or other authorization to act; and
- h. Certificate of corporate status or proof of legal organizational status.

If a conflict arises between any of the documents listed above, the order of precedence shall be that language contained in the document higher in the list shall prevail over any conflicting document lower in the list of documents.

7) ***Designated Representatives.*** The Town designates _____ and the Vendor designates _____, as their authorized representatives to provide approvals, directives, and permissions including changes, and to receive notices or other communications under this contract at the addresses stated above.

8) ***Manner in which the Vendor Shall be Paid by the Town.*** The Vendor shall submit an invoice to the designated billing office of the Town with any reasonable supporting documentation or information requested by the Town, such as, for example, but without limitation, the value of the supplies provided and services performed. Upon satisfactory review of said invoice and documentation, the Town shall promptly remit payment to the Vendor.

9) ***Required Insurance.*** The Vendor shall maintain the following required insurance coverage.

- a. General Comprehensive Liability in the amount of \$1,000,000 for each occurrence and \$3,000,000 in the aggregate;
- b. Automobile Liability (applicable for any vendor/consultant who has an automobile operating exposure) in the amount of \$1,000,000 for bodily injury and property damage per accident;
- c. Workers' Compensation and Employer's Liability in the amount as may be required by Massachusetts General Laws Chapter 152; and
- d. Umbrella Liability of \$2,000,000 for each occurrence and \$2,000,000 in the aggregate.

The Vendor shall name the Town as an additional insured under all insurance coverages required by this contract, with the exception of workers' compensation insurance. The Vendor shall further provide the Town with a copy of the current additional insured endorsement page reflecting that the Vendor added the Town as an additional insured for each insurance policy to which the Vendor added the Town.

The Town and Vendor acknowledge that the types of insurance and coverage limits listed herein are the minimum necessary for the Town to award this contract to the Vendor. The Town does not intend the required types of insurance coverage in any way limits the Vendor's liability for any damages arising from the Vendor's performance of services under this contract.

The Vendor shall maintain the listed insurance coverage throughout the duration of this contract. If, at any time while this contract is in effect, any of the listed insurance coverages should lapse, the Vendor shall immediately notify the Town. Within thirty (30) days of any such lapse, the Vendor shall provide the Town with new certificates of insurance coverage.

10) ***Warranty of supplies.*** The Vendor guarantees to the Town that all supplies provided by this contract will be new, unless expressly agreed to by the Town in writing. The Vendor shall deliver to the Town all manufacturers' warranties, together with endorsements or assignments as are necessary to ensure to the Town the full rights and benefits of all warranties.

11) ***Degree of Care Owed by the Vendor.*** The Vendor represents that it will perform its services for the Town using the degree of care and skill ordinarily exercised consistent with the standards applicable to persons performing similar services under similar conditions and circumstances in the same or nearby locality.

12) ***Non-assignability of this Agreement.*** The Vendor shall not delegate, assign, or transfer its duties or interests in this contract without the prior, express written consent of the Town. If the Town approves assignment, this contract shall be binding upon the Vendor's assigns, transferees, and successors in interest.

13) ***Contract Modification or Amendment.*** The Town and Vendor may modify or amend this contract from time to time, but only in writing by a prior, specific authority duly executed by both the Town and Vendor, as of the date of the amendment.

14) ***Non-Waiver.*** Neither the Town nor Vendor shall construe the failure of the other to enforce at any time any contract provisions as a waiver of the right of other to enforce any contract provision.

15) ***Prevailing Statutory Authority.*** The laws of the Commonwealth of Massachusetts and the Code of Ordinances, Town of Weymouth, Massachusetts govern the validity, interpretation, construction, and performance of this contract. The Town and Vendor agree that this contract shall be construed to include all terms required to be included by Massachusetts General Laws, or any other laws, as though such terms were set forth in full. Any dispute arising out of or relating to this contract, if brought, shall only be brought in Norfolk County, Massachusetts.

16) ***Vendor's Obligation to Comply with Existing Laws.*** The Vendor warrants that it will comply with all applicable laws, regulations or ordinances affecting the successful completion of the contract, including but not strictly limited to laws, regulations, or ordinances related to public bidding, procurement, municipal finance, tax, labor law, reporting of employees and contractors, withholding and remitting child support payments, and prevailing wage laws.

The Vendor represents and warrants that it does not discriminate on the grounds of race, color, religious creed, national origin, ancestry, sex, gender identity, homelessness, age, inquiry as to a criminal record, handicap disability, mental illness, retaliation, sexual harassment, sexual orientation, genetics, and active military service. The Vendor shall comply with all applicable laws, ordinances, rules, regulations, and orders pertaining to the protection of work, property, person, and employees.

17) **Termination.** Either the Town or Vendor may terminate this contract for any reason by providing at least ten (10) days advance, written notice to the signatories for the Town or the Vendor as the case may be. In case of a written termination by the Town, the Vendor shall cease performing all services or delivery of all supplies under this contract, with the exception of any work, in the opinion of the Town, necessary to bring the work in progress to a reasonable and safe condition. The Vendor shall then submit a final bill based only on work actually performed. There shall be no penalty for early termination.

18) **Indemnification.** The Vendor agrees, to the greatest extent permitted by law, to defend, indemnify and hold harmless the Town, its agents, servants, employees, successors, heirs, executors, insurers, attorneys, administrators and all other representatives, of and from any and all claims, liabilities and actions for damages or other relief, whether sounding in contract, tort, or otherwise, on account of or in any way arising out of or relating to the supplies and services purchased under this contract, including but not limited to incidents involving the Town's negligence. The Vendor's 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. The Town may assume its own defense after proper notice to the Vendor. If the Town assumes its own defense, the Vendor shall pay the Town its reasonable attorney's fees, costs, and expenses. If the Town assumes its own defense, the Vendor shall continue to have the duty to indemnify and hold harmless the Town.

19) **Condition Precedent to Any Litigation.** If a disagreement arises from or relates to this contract, the supplies provided, or the services performed and as a condition precedent to the commencement of any litigation between them, the Town and Vendor agree to attempt to resolve any disagreement through direct negotiations between senior representatives of each party. If direct negotiations do not resolve the disagreement, the Town and Vendor agree to consider using mutually acceptable nonbinding alternative dispute resolution to resolve any disagreements without litigation.

20) **Effect of final payment.** The acceptance of final payment by the Vendor shall constitute a waiver of all claims against the Town by the Vendor arising under this contract.

21) **Materiality of Any Breach.** All words, clauses, terms, sentences, paragraphs, portions, parts, paragraphs, and sections of this contract are material. A breach by either the Town or Vendor shall not constitute an excuse by the other party to fail to fully perform all other words, clauses, terms, sentences, paragraphs, portions, parts, paragraphs, and sections of this contract.

22) ***No Ambiguity***. All words, clauses, terms, sentences, paragraphs, portions, parts, paragraphs, and sections of this contract, and this contract as a whole, are unambiguous.

23) ***No Presumption against Drafting Party***. The Town and Vendor agree that the rule of construction that any ambiguities are to be resolved against the drafting party will not be employed in any interpretation of this contract.

24) ***Integration of this Contract***. This contract, including all attachments listed above, embodies the entire agreement between the Town and Vendor, and each acknowledges that the other made no inducements, promises, terms, conditions, or obligations other than those expressly contained within the written terms of this contract. The written contract supersedes all prior agreements, understandings, or past practice between the Town and Vendor.

25) ***Severability***. If any court of competent jurisdiction holds any portion of this contract to be illegal, invalid, or unenforceable, the Town and Vendor agree that any such order shall not affect any other remaining term, clause, phrase, paragraph, section, or provision and all shall remain in full force and effect.

26) ***No Third-Party Beneficiaries***. There are no third-party beneficiaries to this contract.

27) ***The Vendor's Status as an Independent Contractor***. The Vendor will act as an independent contractor and not as an employee or agent of the Town in performing the services required by the contract.

28) ***Non-Appropriation***. The Town's obligation to make payments during any Town fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds. The Town shall have the right to terminate the contract when whichever level of government—Federal, state, or local—fails to appropriate or otherwise make available funds to support continuation of performance of this contract in a subsequent fiscal year.

29) ***The Vendor's Contract Documents Subject to Public Records Law***. The Vendor agrees that this contract, related purchase orders, related pricing documents, and invoices will be public documents, and may be available for public and private distribution in accordance with the Public Records Law, General Laws c. 66, *et seq.* The Vendor will provide the Town copies of any documents requested under this law at no charge to the Town or the requestor.

30) ***The Vendor's Contract Documents Subject to Audit***. The Town shall have the right, at reasonable times, at a site designated by mutual agreement, to audit the books, documents, and records of the Vendor to the extent that the books, documents, and records relate to costs or pricing data for the contract. The Vendor agrees to maintain records that will support the prices charged and costs incurred for the contract. The Vendor shall preserve books, documents, and records that relate to costs or pricing data for the contract for a period of three (3) years from date of final payment. The Vendor shall give full and free access to all records to the Town and its authorized representatives.

31) ***Certification as to Non-Collusion***. The Vendor certifies, pursuant to General Laws c. 30, § 39M and c. 30B, § 10, that under the penalties of perjury that this bid or proposal is

in all respects bona fide, fair, and has been made and submitted in good faith and without collusion or fraud with any other person, meaning any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals.

32) ***Certification as to Payment of State Taxes.*** The Vendor certifies, pursuant to General Laws c. 62C, § 49A, that under the penalties of perjury that the Vendor complied, is complying, and will comply during the terms of this contract with all laws of the Commonwealth of Massachusetts relating to taxes.

33) ***Certification as to Conflict of Interest Laws.*** The Vendor certifies that no official or employee of the Town has a financial interest in this contract or in the expected profit to arise from the contract, unless the Vendor and the Town employee or official both have notified in writing the Mayor, with a copy to the Town Solicitor, that the Vendor and the employee fully complied with the provisions of General Laws c. 43, § 27 (Interest in Public Contracts by Public Employees) and of provisions of General Laws c. 268A, § 20 (Conflict of Interest Law).

34) ***Execution of Counterparts.*** The Town and Vendor may execute this contract, or any subsequent amendments, in any number of counterparts. The Town and Vendor agree each such counterpart will be considered and enforced as if an original and all counterparts together shall constitute the same.

35) ***Facsimile Signatures are Valid.*** The Town and Vendor agree that they may receive and consider as facsimile signatures electronic signatures of authorized individuals, which the Town and Vendor agree either may enforce as if valid, original written signatures. “Facsimile signature” means, for purposes of this contract, a reproduction of the manual signature of an authorized officer of either the Town or Vendor.

36) ***Warranty of Authority.*** The person who signs this document on behalf of the Vendor acknowledges, warrants, and represents under the pains and penalties of perjury with his or her signature the following: he or she (a) is legally and mentally competent to execute this document; (b) is of legal age; (c) has the authority to bind with his or her signature, all plaintiffs in this action; (d) has carefully read all of the provisions of this contract with care and with the advice and counsel of any attorney of record and any other attorneys of his or her choice; and (e) knows and fully understands each and every word, clause, term, sentence, paragraph, portion, part, paragraph, and section of this contract, and this contract as a whole. In affixing his or her signature below, he or she has affixed his or her signature to this document intentionally, willingly, and free from any compulsion or duress and as his or her own free act and deed after having obtained the advice and counsel of any attorney of record and any other attorneys of his or her choice.

For the Vendor:

Signature of Authorized Signatory

PRINTED NAME OF AUTHORIZED

TITLE _____

Vendor Address

Vendor Email Address

For the Town of Weymouth:

Department Head

Approved as to Form:

Joseph Callanan, Town Solicitor

Approved as to Appropriation:

James Malary - Chief Financial Officer
FUNDING CODE

Approved:

Robert L. Hedlund, Mayor