



CITY OF FITCHBURG

CONTRACT BETWEEN CITY AND CONTRACTOR

(MA GENERAL LAW c. 30B Services)

CONTRACT NO.

CONTRACT TITLE:

CONTRACTING DEPARTMENT:

THIS CONTRACT is made this __ day of [insert date], by and between [insert Vendor name] with a usual place of business at [insert Vendor legal address] (hereinafter called the Vendor), and the City of Fitchburg, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, acting through its Mayor, (hereinafter referred to as the City).

WITNESSETH that the Vendor and the City of Fitchburg, for the consideration hereinafter named, agree as follows:

In all respects, this Contract shall be governed by and performed consistently with all laws of the Commonwealth of Massachusetts for public contracts including but not limited to Massachusetts General Law c. 30B. The provisions of the Massachusetts General Laws regarding public contracts shall take precedence over any and all other Contract provisions or documents. Any conflicts among provisions and/or between documents shall be resolved and/or interpreted according to the Massachusetts General Laws (MGL). The Vendor warrants that it is familiar with and agrees to abide by all laws of the Commonwealth of Massachusetts.

ARTICLE 1. CONTRACT DOCUMENTS

- a) The City and the Vendor agree that the Vendor's bid, including any related documents, prices, deliverables, or services promised, and the City's Invitation for Bid, including any purchase description, specifications, submission requirements, scope of work, and any other related documents are all incorporated and made part of this Contract as if written herein. These documents form the entire Contract between the parties and there are no other Contracts between the parties.
- b) This Contract is only binding upon, and enforceable against the City if the Contract is:
 - i. Signed by the Mayor;
 - ii. Signed by the City Auditor as to appropriation or availability of funds;
 - iii. Endorsed with approval of the City Solicitor as to form and legality;
 - iv. Signed by the Chief Procurement Officer as to compliance with procurement statutes.

ARTICLE 2. SCOPE OF THE WORK

Vendor shall furnish and include all labor, tools, materials, supplies, and equipment required by the Contract documents and necessary to fulfill Contract. The Vendor agrees to meet or exceed all requirements of this Contract and the Contract documents.

ARTICLE 3. TERM OF CONTRACT

This Contract shall be for a term of [insert time period], commencing on [insert date] and ending on [insert date], and is subject to annual appropriation. This Contract shall not be renewed or extended unless provisions for renewal or extension were contained in the Procurement Documents, in which event the Contract may be extended or renewed at the sole option of the City, and upon the terms described therein.

[insert renewals here, if applicable] Potential contract renewal for a term of [insert time period], commencing on [insert date] and ending on [insert date]. (repeat this section as needed)

The maximum term of this Contract is [insert term]. Time is of the essence for the completion of the Contract.

ARTICLE 4. CONTRACT SUM

The City shall pay the Vendor for the performance of this Contract a sum NOT TO EXCEED **[insert price in numbers]**, including all labor and materials, and based upon unit prices on bid form.

The signature of the City Auditor at the time of execution of this Contract certifies that sufficient appropriations exist and shall be encumbered to fund the Contract price. This Contract is subject to appropriation and shall be made only for supplies and materials covered by this Contract.

ARTICLE 5. EMPLOY COMPETENT PEOPLE

The Vendor shall employ only competent people to do the work. Whenever the City shall notify the Vendor in writing that any person under the Vendor's employ is, in the City's opinion, incompetent, unfaithful, disorderly or otherwise unsatisfactory, or not employed in accordance with the provisions of this Contract, such person shall be discharged from the work and shall not again be employed on the Project, except with the consent of the City.

ARTICLE 6. DEBARMENT

Vendor certifies under the pains and penalties of perjury that it, its agents, and employees are not presently debarred from entering into a public Contract in the Commonwealth of Massachusetts under the provision of MGL c. 29, §29F, or any other applicable debarment provisions of any other Chapter of MGL or any rule or regulation promulgated thereunder.

ARTICLE 7. SALES TAX EXEMPTION

The City is exempt from federal excise, state and local taxes, and from Massachusetts sales and use tax. The City's tax exempt number is 046-001-388.

Materials, equipment, and supplies, as well as rental charges for vehicles, equipment, and machinery rented exclusively for use on the site or for transportation of materials for the work are entitled to exemption from sales taxes in accordance with MGL c. 64H, §6(d). The Vendor shall take all action required to obtain the benefit of said sales tax exemption.

ARTICLE 8. MATERIALS AND WORKMANSHIP

Unless otherwise specified, all materials shall be new, unused, of recent manufacture, and used in accordance with best practices. All workmanship shall be first class.

ARTICLE 9. OBLIGATIONS AND LIABILITY OF VENDOR

- a) The Vendor shall do all the work and furnish all the materials, tools and appliances, except as otherwise specified and all items necessary for proper performance and completion of the work required by this Contract, in the manner and within the time specified herein. The Vendor shall complete the entire work to the satisfaction of the City, and in accordance with the specifications, at the prices agreed upon. All work, labor and materials to be furnished under this Contract shall be furnished strictly pursuant to, and in conformance with the specifications, and the instructions of the City's designee as given from time to time during the progress of the work, under the terms of this Contract.
- b) The Vendor shall coordinate operations and avoid interference with the operations of any other vendors or contractors who may be employed on other work of the City and shall cooperate in the arrangements for storage of materials.
- c) The Vendor shall conduct work so as to interfere as little as possible with private business and public travel. Vendor shall, wherever necessary or required, take such precautions as may be necessary to protect life and property and shall be liable for all damages occasioned in any way by their act or neglect, or that of their agents, employees or workers.

ARTICLE 10. CITY TO MANAGE CONTRACT

- a) The City's designee shall in all cases determine the amount, quality, acceptability and fitness of the supplies or materials which are to be paid for under this Contract and shall in all cases decide every question of fact which may arise relative to fulfillment of this Contract on the part of the City and on the part of the Vendor. The City's decision shall be final and conclusive upon both parties to this Contract.
- b) The City's designee shall make all necessary explanations as to the meaning and intention of the specifications, and shall give all necessary orders and directions.

ARTICLE 11. DISCREPANCIES, ERRORS, AND OMISSIONS

- a) Vendor shall carefully examine the Contract documents and compare all specifications, directions of the City, and any other information provided, and shall at once report to the City any questions, comments, errors, inconsistencies, or omissions.
- b) Should any discrepancy appear or any misunderstanding arise as to the significance of any part of the specifications, the interpretation and decision of the City's designee shall be final and binding on both parties to this Contract.
- c) Any correction of errors or omissions in specifications may be made by the City's designee when such correction is necessary for the proper fulfillment of the Contract. Where said correction of errors or omissions adds to the amount of work to be done by the Vendor, compensation for said additional work shall be made under a written Change Order.
- d) The fact that specific mention of any part of the work is omitted in the specifications, whether intentionally or otherwise, when the same is usually and customarily required to fully complete such work as is specified herein, will not entitle the Vendor to consideration in the matter of any claim for extra compensation.

ARTICLE 12. PROGRESS SCHEDULE

- a) Time of completion/fulfillment shall be in accordance with the terms of this Contract unless and except as any part may be delayed under the provisions of this Contract.
- b) Should the Vendor require additional time to meet Contract requirements, the Vendor shall document the reasons and submit a written request for extension of time.
- c) If, in the opinion of the City, the Vendor fails to meet time requirements of the Contract, the City may issue written notice to that effect, or may give the Vendor a notice of failure and a designated time period to cure said failure. Should the Vendor fail to cure, the may exercise its right to deem the Contract terminated.
- d) No extension of time will be allowed for ordinary delays, inclement weather and accidents, and the occurrence of such will not relieve the Vendor from the requirements of this Contract. If delays are caused by acts of God, acts of Government or State, strikes, extra work, floods or other contingencies clearly beyond the control or responsibility of the Vendor, the Vendor shall be entitled to as much additional time to perform and complete this Contract as the City shall certify in writing to be equitable.

ARTICLE 13. AMENDMENTS

No officer, official, agent, or employee of the City shall have the authority to amend, modify or alter this Contract or waive any of its provisions or to bind the City by making any promise or representation not contained herein except by amendment, in writing, executed in the same manner as this Contract is executed. The Vendor may not rely on any conduct, statements, action, inaction or courses of conduct of the employees or officers of the other party as having changed, modified, or amended this Contract. The City shall not be construed as waiving a provision unless the waiver is executed in writing as an amendment to the Contract. No waiver by the City of any default or breach shall constitute a waiver of any subsequent default or breach.

ARTICLE 14. CHANGE ORDERS

Changes to the Contract require a written change order, signed by all parties to the Contract. The Chief Procurement Officer may, by written change order, signed by all parties to the original Contract, make an equitable adjustment in the Contract price if alterations to the project require an increase or decrease to the cost of the project. Changes to the scope of work or project cost which are not confirmed with a written and fully executed Change Order will not be honored and will result in non-payment for such services or work performed.

ARTICLE 15. QUANTITY

The City may increase the quantity of supplies or services or both specified in this Contract provided:

- a) the unit prices remain the same or less;
- b) the Chief Procurement Officer has specified in writing that an increase is necessary to fulfill the needs of the City and is more economical and practical than awarding an additional Contract;
- c) the City and Vendor agree to the increase in writing;
- d) the increase does not exceed twenty-five percent (25%) with the only exceptions being Contracts for gasoline, special fuel, fuel oil, road salt or other ice and snow control materials which are not subject to this limit; and
- e) the City, with the agreement of the Vendor, may reduce the unit price for supplies or services or both specified in a Contract to be paid by the City at any time during the term of the Contract or when an option to renew, extend or purchase is exercised.

ARTICLE 16. QUALITY

- a) Pursuant to MGL c. 30B, an item shall be considered equal to the item so named or described if, in the opinion of the City: (1) it is at least equal in quality, durability, appearance, strength and design, (2) it will perform at least equally the function imposed by the general design for the public work being Contracted for or the material being purchased, and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the Project specifications.

ARTICLE 17. DEFECTIVE WORK

- a) The inspection of work shall not relieve the Vendor of any of obligations to fulfill the Contract as prescribed. Any defective work shall be made good and unsuitable materials shall be rejected and replaced, even though such work and materials may have been previously overlooked by the City's designee and accepted for payment.
- b) If the work or any part thereof shall be found defective any time before the final acceptance of the whole work, the Vendor shall immediately make good such defect, in a manner satisfactory to the City. If any material brought to the site for use in the work or selected for the same, shall be condemned by the City as unsuitable or not in conformance with the specifications, the Vendor shall immediately remove such materials from the vicinity of the work. Any material furnished by the City which is damaged or rendered defective by the handling or improper installation by the Vendor, their agents or employees, shall be made good and replaced at the Vendor's expense.

ARTICLE 18. ABANDONMENT OF WORK

Vendor agrees that abandonment or delay of work or services shall be a violation of this Contract. The City may, by whatever legal remedies are available to it, complete or cause to be completed, the work or provision of services and the Vendor shall bear full responsibility for the entire cost of completing the terms of the Contract, and agrees to be liable to the City for any losses, damages, costs and expenses sustained or incurred by the City by reason of any of the foregoing causes.

ARTICLE 19. FAILURE TO COMPLETE WORK ON TIME

The contract work shall be performed on or before the date stated in the specifications for completion or the date to which the time of completion shall have been extended under the provisions of this Contract.

ARTICLE 20. NON-PERFORMANCE

In the case of any default on the part of the Vendor with respect to any of the terms of this Contract, the City shall give written notice thereof, and if said default is not made good within such time as the City shall specify in writing, the City shall notify

the Vendor in writing that there has been a breach of the Contract and thereafter the City shall have the right to secure the completion of the work remaining to be done on such terms and in such manner as the City shall determine, and the Vendor shall pay for the completion of such work and reimburse the City for all expenses incurred by reason of said breach. The Vendor in case of such breach shall be entitled to receive payment only for work completed satisfactorily prior to said breach, so long as the total paid hereunder does not exceed the Contract sum, and the amount of any balance due the Vendor shall be determined by the City and certified to the Vendor. The City shall be reimbursed by the Vendor for the cost of additional services required by the City in the case of a breach.

ARTICLE 21. TERMINATION

- a) The City may without prejudice to any other right or remedy deem this Contract terminated for cause if any of the following defaults occur and are not cured after giving notice to the Vendor:
 - 1) The Vendor refuses or fails, except where extensions are provided by the City in writing, to supply the materials or services to meet the obligations of this Contract;
 - 2) The Vendor has sublet or assigned any or all of the work without prior written consent of the City, except as permitted in this Contract;
 - 3) The Vendor has failed to comply with laws;
 - 4) The Vendor has breached any material provision of this Contract.
- b) The City may terminate this Contract for convenience if the Vendor is not in default by giving notice specifying date of termination.

ARTICLE 22. PAYMENT TERMS

- a) Within five (5) calendar days of the end of each month, the Vendor shall provide an itemized request for payment for work completed to date. Upon receipt of request for payment, the City shall, except as hereinafter provided, make an estimate in writing of the total amount of the work done, and the amount earned by the Vendor.
- b) If for any reason the City makes a payment under this Contract in error, the City may recover the amount overpaid or, if applicable, may apply any overpayment to a future installment payment.
- c) The City is not responsible for payment of invoices sent to an address other than specified in this Contract.

ARTICLE 23. CONTRACT CONDITIONS SPECIFICALLY REQUIRED BY LAW

Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

ARTICLE 24. EXAMINATION OF WORK

- a) Performance evaluation is a component of the City's Contract management protocol. Evaluation will be conducted by City personnel and/or the City's representative(s) using direct monitoring, indirect monitoring, survey, interview or milestone reviews.
- b) Evaluations may include written reports and other documents regarding Vendor performance, and any written Vendor responses or documents. All evaluation material and supporting documentation will be maintained in the Vendor's file, and will be considered as a "public record." The evaluation shall be part of the record that the City is required to review, and may be considered in determining future Contract eligibility.
- c) The opinions of the City are not statements of fact, and the Vendor shall not institute suit based on statements of opinion made by the City or its employees, officers or representatives.

- d) The City shall be furnished with every reasonable facility for determining that the work is being performed in accordance with the requirements and intention of this Contract, even to the extent of uncovering or taking down portions of finished work.
- e) Should the work examined prove unsatisfactory, making good shall be at the expense of the Vendor.
- f) At any time during normal business hours, and as often as the City 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 Contract.

ARTICLE 25. INSURANCE

The Vendor shall, at its own expense, obtain and maintain general liability and motor vehicle liability insurance policies protecting the City in connection with any operations included in this Contract, and shall have the City as an additional insured on the policies.

- 1) General liability coverage shall be in the amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury liability and \$1,000,000 per occurrence and \$2,000,000 aggregate for property damage liability.
- 2) Automobile liability coverage shall include coverage for owned, hired and non-owned vehicles and shall be in the amount of at least \$1,000,000 per person and \$1,000,000 per occurrence for bodily injury liability and \$1,000,000 per occurrence for property damage liability.
- 3) Contractors shall provide Worker's Compensation coverage within the statutory limits and in accordance with MGL c. 149 §34A.
- 4) Vendor shall provide any such other types of insurance as may be additionally required as part of this Contract.
- 5) Companies providing insurance coverage must be licensed to transact business in the Commonwealth of Massachusetts.
- 6) The Vendor shall furnish Certificates of Insurance prior to commencement of this Contract.
- 7) Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the Contract. Any cancellation of insurance whether by the insurers or by the insured shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the City at least fifteen days prior to the intended effective date thereof, which date should be expressed in said notice.
- 8) The Certificate of Insurance shall be provided to the City in accordance with terms stated. Certificates shall display each type of insurance, insurance company, policy number, amount of insurance and policy effective and expiration dates, and the NA/C number assigned to the insurance company. The Certificate holder shall be listed as The Chief Procurement Officer, City of Fitchburg and shall contain a provision or endorsement that the coverage afforded shall not be cancelled, materially changed, or renewal refused until at least thirty days prior written notice has been provided to the Certificate Holder.
- 9) The City of Fitchburg, its employees, agents and representatives shall be named as additional insured with respect to all coverage, except for Workers Compensation.

ARTICLE 26. GUARANTEE

- a) Except as otherwise specified, all work shall be guaranteed by the Vendor against defects resulting from the use of inferior materials, equipment, or workmanship for one year from the date of final completion of the Contract.
- b) If, within any guarantee period, repairs or changes are required in connection with guaranteed work, which in the opinion of the City are rendered necessary as a result of the use of materials, equipment or workmanship which are

inferior, defective or not in accordance with the terms of the Contract, the Vendor shall, promptly upon receipt of notice from the City and at its own expense:

- 1) make goods and services conform to this Contract;
- 2) make good all damage to the City, or equipment or contents thereof, which, in the opinion of the City, is the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the Contract; and
- 3) make good any work or material, or the equipment or site, which is disturbed in fulfilling any such guarantee.

ARTICLE 27. INDEPENDENT CONTRACTOR

All of the services to be performed under the terms of this Contract will be rendered by the Vendor as an independent Contractor. None of the terms of this Contract shall create a principle-agent, master-servant or employer-employee relationship between the City and the Vendor.

ARTICLE 28. SEVERABILITY

If a court declares one or more of the provisions of this Contract invalid, the validity of the remaining provision of this Contract shall not be affected thereby.

ARTICLE 29. DISCRIMINATION

In the performance of this Contract, the Vendor shall provide equal employment opportunities for all persons, regardless of race, color, religion, creed, sex, age, national origin, disability or political affiliation. The Vendor shall comply with provisions of MGL c. 151B and all other applicable anti-discrimination and equal opportunity laws.

ARTICLE 30. CONFLICT OF INTEREST

By execution of this Contract with the City, the Vendor acknowledges that the City is a municipality for the purposes of MGL c. 268A (the Massachusetts conflict of interest statute), and agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with the obligations of the Vendor based on said statute. Municipal employees and their family members are not allowed to have a financial interest in a Contract with the City they are employed by. Municipal employees and their family members are also forbidden to solicit or accept gifts, gratuities, or favors from anyone looking to conduct business with the City of Fitchburg. Incidents of this nature will be reported to the appropriate authorities for investigation.

ARTICLE 31. CONFIDENTIALITY

- a) For all Contracts involving the Vendor's access to personal information as defined in MGL c. 93H, and personal data, as defined in MGL c. 66A, or access to systems containing such information or data, the Vendor certifies to protect any and all information and data.
- b) The Vendor shall also protect the physical security and restrict any access to personal or other City data in the Vendor's possession or used by the Vendor in the performance of this Contract, which shall include, but is not limited to the City's public records, employee records, document, digital and electronic files, software, equipment, or systems.

ARTICLE 32. INDEMNIFICATION

To the fullest extent permissible by law, the Vendor hereby agrees to indemnify, defend, and save harmless the City of Fitchburg and all of the City's officers, agents and employees from and against all damages, liabilities, actions, suits, proceedings, demands, losses, costs and expenses (including reasonable attorneys' fees) and claims of liability of every name and nature, including costs of defending any action, for or on account of any injuries to persons or damage to property of the City or any person, firm, corporation or association arising out of or resulting from any act, omission, or negligence of the Vendor, Subcontractors and its and their agents or employees in the performance of the work covered by this Contract and/or failure to comply with terms and conditions of this Contract, but only in respect of such injuries or damages sustained during the performance and prior to the completion and acceptance of the work covered by this Contract. The existence of insurance

shall in no way limit the scope of this indemnification. This agreement shall not waive or abrogate the application of MGL c. 258, as the same may be amended from time to time.

ARTICLE 33. MISCELLANEOUS PROVISIONS

- a) This Contract shall be binding upon the City and the Vendor and the partners, successors, heirs, executors, administrators, assigns and legal representatives of the City and the Vendor. Neither the City nor the Vendor shall assign, sublet or transfer any interest in this Contract without the prior written consent of each other, and such consent shall not be unreasonably withheld.
- b) No public official, employee, or agent of the City shall have any personal liability for the obligations of the City set forth in this Contract.

ARTICLE 34. CONSENT TO VENUE

The Vendor agrees that it shall commence and litigate all actions or proceedings arising in connection with this Contract exclusively in the Fitchburg District Court or in the Worcester Superior Court, both of which are located in the County of Worcester, Commonwealth of Massachusetts. The aforementioned choice of venue is intended to be mandatory and not permissive in nature, thereby precluding the possibility of the Vendor commencing or prosecuting any litigation against the City, with respect to or arising out of this Contract, in any court or forum other than those specified in this paragraph. It is further agreed that the parties to this Contract hereby waive their rights to a jury trial.

ARTICLE 35. NOTICE

Notices to the Vendor shall be deemed given when delivered to the Vendor's field office on site, or when delivered by United States Postal Service to the Vendor's address specified in the Contract, or when delivered by courier to either location.

All notices under this Contract shall be given in writing and shall be effective upon receipt by hand delivery or certified mail to the Chief Procurement Officer, City Hall, 718 Main Street, Suite 208, Fitchburg, MA 01420.

IN WITNESS WHEREOF the parties hereto have executed this Contract the day and year first above written.

FOR THE CONTRACTOR

Signature
Printed Name:

FOR THE CONTRACTING DEPARTMENT:

[insert department head name]
[insert title]

FOR THE CITY OF FITCHBURG

Samantha M. Squailia
Mayor

SUFFICIENT AS TO LEGAL FORM:

Lisa L. Mead
City Solicitor

Mary A. Delaney
Chief Procurement Officer who certifies, that to the best of their belief and knowledge, the Contract was, procured pursuant to the procurement laws of the Commonwealth of Massachusetts to the extent such laws apply.

Jacquelyn Cronin
City Auditor who certifies, pursuant to Massachusetts General Law C.44, §31C, that the proposed expenditure is not in excess of the appropriation or the unexpended balance thereof and that the Mayor is authorized to sign this Contract.

Account number: _____

Appropriation: _____

