

# TOWN OF NORTH ANDOVER

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## REQUEST FOR PROPOSALS BILLING SERVICES FOR EMERGENCY AMBULANCE SERVICE

**September 16, 2020**

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## 1. Introduction

The Town of North Andover is soliciting Request for Proposals (RFP) for billing services for emergency ambulance service for the North Andover Fire Department. The emergency ambulance service is operated by the North Andover Fire Department and is a basic life support service. Qualified companies are requested to submit their proposals to the Director of Administrative Services at Town Hall, 120 Main Street, 2<sup>nd</sup> floor, North Andover, MA, in accordance with the instructions contained within this RFP.

The selected proposer will be considered an independent contractor and will not be entitled to the fringe benefits provided to regular Town employees relating to life insurance, health insurance, and pension benefits and the like. The selected proposer shall be responsible for paying it, his or her own income taxes and social security taxes.

Notice of this RFP is published in Commbuys, the Eagle Tribune and posted on the Town website ([www.northandoverma.gov](http://www.northandoverma.gov)) under “Bids and Proposals”.

**The Town of North Andover may cancel this RFP or reject in whole or in part any and all proposals, if they determine that cancellation or rejection serves the best interest of the Town of North Andover.**

## 2. Submission Deadline and Instructions

Qualified persons or firms are requested to submit non-price (technical) proposals in a sealed envelope marked “Ambulance Billing Services” with the applicant’s name and address on the front. The proposal must address, at a minimum, each of the issues set forth in the RFP in order to be considered responsive. Any proposal that does not respond to each issue in the Request for Proposals will be rejected by the Town as non-responsive. Applicants should provide one (1) signed original proposal and three (3) copies. Fax or electronic submissions will not be accepted.

A complete and all-encompassing pricing proposal sheet (Appendix A) is to be submitted in a separate sealed envelope marked “Pricing Proposal”. The price proposal shall represent the full compensation for all services, supplies, equipment and material except as otherwise provided.

Applicants must also execute and include in the sealed submission the Certificate of Vote, Certificate of Non-Collusion, and the Certificate of Tax Compliance. The Town of North Andover, through the Town Manager, is the awarding authority and reserves the right to reject any and all proposals or parts of proposals; to waive any defects, information, and minor irregularities; to accept exceptions to these specifications; and to award contracts or to cancel this Request for Proposals if it is in the Town of North Andover’s best interest to do so.

Any proposal which is not according to prescribed form, not properly signed, or otherwise contrary to instructions, may be rejected by the Town. More than one proposal from the same proposer, whether or not the same or different names appear on the signature page, shall not be considered. Any or all proposals shall be rejected if there is reason for believing that collusion exists among the proposers.

Proposals must be signed as follows: a) if the bidder is an individual, by her/him personally; b) if the bidder is a partnership, by the name of the partnership, followed by the signature of each general partner; and c) if the bidder is a corporation, by the authorized officer, whose signature must be attested to by the Clerk/Secretary of the corporation and the corporate seal affixed.

All sealed proposals must be received and registered by the Town Manager's office by Wednesday, October 7, 2020 at 2:00 p.m. All outer envelopes must be labeled "Ambulance Billing Services" and mailed or hand delivered to the following address:

Laurie Burzlaff, Director of Administrative Services  
North Andover Town Hall  
120 Main Street  
North Andover, MA 01845

No responsibility will be attached to the Town Manager or her staff for the premature opening of any proposal that is not properly identified. No proposals will be accepted after the time and date noted. Late delivery of materials due to any type of delivery system shall be cause for rejection. If on the date and time of the submittal deadline the Town Hall is closed due to an uncontrolled event such as fire, snow, ice, wind or building evacuation, the submittal deadline will be postponed until 2:00 p.m. on the next normal business day.

### 3. Questions or Addendum

Questions concerning this RFP must be submitted in writing to: Laurie Burzlaff, Director of Administrative Services, North Andover Town Hall, 120 Main Street, North Andover, MA 01845, or they may be emailed to [lburzlaff@northandoverma.gov](mailto:lburzlaff@northandoverma.gov). All questions/inquiries must be received by close of business on Wednesday, September 30, 2020 to be considered. Questions/inquiries may be mailed or emailed. Written responses will be posted on the Town's website ([www.northandoverma.gov](http://www.northandoverma.gov)) in "Bids and Proposals" by Thursday, October 1, 2020 at 2:00 p.m.

If any changes are made to this RFP, an addendum will be posted on the Town's website in "Bids and Proposals". It is the sole responsibility of the bidder to ascertain the existence of any addenda and/or modifications issued by the Town. As this RFP has been published on the Town's website ([www.northandoverma.gov](http://www.northandoverma.gov)) all bidders are responsible for checking the website for any addenda and/or modifications that are subsequently made to this RFP.

The Town accepts no liability for and will provide no accommodations to bidders who fail to check for amendments and/or modifications to this RFP and subsequently submit inadequate or incorrect responses. Bidders may not alter (manually or electronically) the RFP language or any RFP component files. Modifications to the body of the RFP, Scope of Work, terms and conditions, or which change the intent of this RFP are prohibited and may disqualify a response.

All proposals submitted in response to this RFP shall remain firm for sixty (60) days following the submittal deadline. It is anticipated that the contract will be awarded within thirty (30) days after the submittal deadline.

Bidders are not to communicate directly with any employee of the Town of North Andover, except as specified in this RFP, and no other individual employee or representative is authorized to provide any information or respond to any question or inquiry concerning this RFP.

Bidders may contact the Contact Person for this RFP in the event this RFP is incomplete or the bidder is having trouble obtaining any part of the RFP electronically through the Town website ([www.northandoverma.gov](http://www.northandoverma.gov)), including, and without limitation the form and attachments.

Bidder with disabilities or hardships that seek reasonable accommodations, which may include the receipt of RFP information and/or addenda and/or modifications in an alternative format, must communicate such requests in writing to the contact person, and reasonable accommodation will be made by agreement with the contact person on behalf of the Town of North Andover.

#### 4. Modifications to Proposal

A vendor may correct, modify, or withdraw a proposal by written notice received by the Town prior to the time and date set for the proposal opening. Proposal modifications must be submitted in a sealed envelope clearly labeled "Modification No. \_\_\_\_." Each modification must be numbered in sequence, and must reference the original RFP.

#### 5. Scope of Work

The proposer shall carefully examine the information available and all conditions which may affect the services to be performed. The purpose of this RFP is to provide ambulance billing services for the North Andover Fire Department as detailed below and in accordance with all applicable federal, state and local statutes, laws and regulations. No claims for additional costs will be allowed because of lack of knowledge.

The North Andover Fire Department will provide the billing agency with a copy (paper or electronic) of the Patient Care Report Form (PCR) to include the patient's name, address and the date and time of transport to area hospitals or any other pertinent information required for billing purposes. This form will have the mileage of the call clearly noted to allow the billing service to bill mileage appropriately based on the rate structure outlined. In addition, the North Andover Fire Department personnel will make a reasonable effort to gather any additional information such as the responsible insurance company information, date of birth of the patient, and all patient signature requirements.

All amounts received by the billing agency will be recorded and the proceeds deposited in an account at the bank providing municipal banking services to the Town during the period of the contract, and the account shall be in the name of the Town of North Andover, North Andover Fire Department, 795 Chickering Road, North Andover, MA 01845. At the expiration of each month, the billing agency shall bill the Town for collection charges due the billing agency for actual collections made that month.

Until notified of any change by the Town, the charges for ambulance service will be as follows:

BLS BASE RATE	\$1,414.00
BLS MILEAGE RATE	\$ 32.73
ALS 1 EMERGENCY RATE	\$2,358.00
ALS 2 EMERGENCY RATE	\$3,198.00

All expenses directly or indirectly related to the collection of the Town patients accounts shall be borne by the billing agency. Other refunds due the patient, as a result of an error on the part of the Town, or overpayment or any other cause, not the fault of the billing agency, will be paid by the Town. Except as otherwise specifically provided, the billing agency will not incur expenses on behalf of or without the Town's written prior consent.

It is understood that the Town accepts assignment of Mass Health, Medicare and Medicare/MassHealth. Accordingly, the billing agency will make the required contractual adjustments when applicable and will be reported on the monthly revenue statement.

Write offs and/or reductions of charges will be handled by the Town on an abatement basis at its discretion. Requests for abatements or adjustments from patients will be sent in writing to the billing agency and then sent to the Town. This is applicable to any patient who signs for an abatement or waiver after being billed by the agency.

The billing agency will furnish to Town a report of all collections together with a copy of the deposit slips evidencing the deposit to the Town's bank account; a monthly recap of reports including an aging report at end of month reflecting balance of open receivables; and commitment listings, listing of write offs, adjustment credits, any other report determined necessary to be able to prove balance from month to month.

All records and correspondence relating to the Town's accounts receivable and the billing agency's collection efforts will be kept at the billing agency's office and shall be available for examination by the Town or authorized representatives.

The Fire Chief of the North Andover Fire Department shall receive all records and reports and shall designate in writing to the billing agency those parties authorized on the Town's behalf to receive the records and reports in compliance with HIPPA Privacy Rules.

The proposer shall be familiar with Massachusetts Medicaid and Massachusetts health insurance carriers and health insurance requirements; and the successful proposer shall be reasonably available for onsite visits and meetings in order to resolve issues, improve service, provide training, and be responsive to the particular needs of the Town.

The billing agency will collect accounts receivable of the Town under the name of Ambulance Billing Service Town of North Andover.

The billing agency shall delegate an authorized representative for receiving notices and day to day contract administration.

The billing agency shall adhere to the collections procedures and time tables set forth by the Town.

The proposal must contain all information pertaining to the Billing Service, such as method of billing, initiation of billing procedures, application for, and timetable for, the respective applications for provider numbers for Medicare and Blue/Cross Shield, and Medicaid and Mass Health.

Although the Town wishes to maximize ambulance collections, the Town wishes to have compassion for those with financial hardship. A strict waiver policy will be formulated and administered by the Town. To that end the billing agency must recognize that, in its dealings with the recipients of ambulance service, every effort towards courteous and compassionate handling of patients will be the rule. The billing agency will have made every attempt to determine if primary and/or secondary insurance exists through inquiry to recipients of the service and computer screening, prior to bills being sent to individuals, and the primary and secondary insurance carriers billed where appropriate. All correspondence and inquiries for waiver applications will be directed to the billing agency's mailing address. All payments will be directed to the Town. All applications for waiver must be signed, filled out and returned to the billing agency. The billing agency will turn over all requests for abatement to the Town for action. The billing agency must show an understanding of this policy in its response to the request for proposal. Each proposal should contain an outline of the agency's capabilities in dealing with clients that express hardship. Provide copies of internal policies to reinforce this response along with any waiver policies that the agency has dealt with, or is dealing with presently.

The proposer should provide documentation as proof that it can achieve collection percentage of between 85% and 95%. The proof should be established by comparison with another municipal ambulance service that will show collection percentage and name of municipal contact person with telephone number for reference.

The proposer will bill direct to carriers as opposed to billing recipients of the service. If clients need be billed, due to a lack of insurance information, the billing agency should be willing to assist the client and fill out the forms on their behalf.

The proposer will include the privacy notice with every invoice.

## 6. Minimum Criteria/Qualifications

In addition to addressing each of the items in Section 5, the Proposer must submit, as part of its non-price proposal, the following minimum qualification criteria:

- A. A letter of Transmittal signed by the individual authorized to negotiate for and contractually bind the proposer, stating that the offer is effective for at least sixty (60) calendar days from the deadline for the submission of proposals.
- B. A list of Massachusetts municipalities, ambulance services or other private clients for which the proposer has provided ambulance billing service over the past year. This list is

to include a current name, address, contact person, and phone number of references for the selection committee to access.

- C. A so-called “dishonesty” performance bond of for the minimum amount of \$100,000.00 and an errors and omissions (E+O) bond for the minimum amount of \$1,000,000.00 naming the Town as an additional insured are to be included with the proposal. If the proposal is accepted these bonds must be kept in effect for the life of the contract.
- D. Proposers must provide a toll free number for the Town’s use and for the use of citizens making inquiries.
- E. List any litigation, with the appropriate explanation, against proposer in the past five years.
- F. Proposer must provide documentation of licensing as a collection agency under Massachusetts laws.
- G. Proposer must maintain an interface with OCI Software, Ambupro, or equivalent software package for compliance.
- H. Proposer must be able to have experience with hospital information systems and are currently receiving electronic demographic information.
- I. Proposer must list any patient complaints officially recorded with the Town.
- J. Submission of separate and sealed narrative proposal and pricing proposal.
- K. Submission of required statements and forms.

7. Comparative Evaluation Criteria

All proposals meeting the minimum criteria/qualifications will then be evaluated based upon the specific comparative evaluation criteria. The following point schedule will be utilized:

<i>Highly advantageous</i>	5 points	Response excels on the specific criterion
<i>Advantageous</i>	3 points	Response meets evaluation standard for the criterion
<i>Least Advantageous</i>	1 point	Response does not fully meet the criterion or leaves a question or issue not fully addressed
<i>Does Not Meet</i>	0 points *	Does not address the criterion

\* Proposal is automatically eliminated from further consideration if “0 points” is received in any category.

- A. Proposer’s compute linkage to billing information and method of collecting data for billing.
  - ◆ Total billing information secured and all medical necessity forms filled out by billing

service with no charge to operation for North Andover Fire Department personnel with personnel completing forms and obtaining hospital attendant's signature with any additional information being obtained by the billing company will be considered Highly Advantageous (5 points)

- ◆ Access to patient information at the definitive care facility, North Andover Fire Department attendants having to fill out only medical necessity forms and secure physicians signatures will be considered Advantageous (3 points)
- ◆ Most billing information to be provided by North Andover Fire Department ambulance personnel. Ambulance personnel having to secure name of insurance carrier and insurance policy numbers will be considered Least Advantageous (1 point)
- ◆ All billing information to be provided by the North Andover Fire Department ambulance personnel will be considered as Does Not Meet minimum requirements (0 points and elimination from further consideration)

B. Years of experience in billing for municipal ambulance services in Massachusetts.

- ◆ Proposer that has more than five (5) years of experience in billing for municipal ambulance services in Massachusetts will be considered Highly Advantageous (5 points)
- ◆ Proposer that has between three (3) years and five (5) years of experience in billing for municipal ambulance services in Massachusetts will be considered Advantageous (3 points)
- ◆ Proposer that has more than one (1) year but less than three (3) years of experience in billing for municipal ambulance services in Massachusetts will be considered Least Advantageous (1 point)
- ◆ Proposer that has less than one (1) year experience will be considered as Does Not Meet minimum requirements (0 points and elimination from further consideration)

C. Current number of municipal clients.

- ◆ Proposer that represents more than five (5) municipalities in Massachusetts will be considered Highly Advantageous (5 points)
- ◆ Proposer that represents three (3) to five (5) municipalities in Massachusetts will be considered Advantageous (3 points)
- ◆ Proposer that represents one (1) or two (2) municipalities in Massachusetts will be considered Least Advantageous (1 point)

- ◆ Proposer that has not worked for a municipality in Massachusetts will be considered as Does Not Meet minimum requirements (0 points and elimination from further consideration)

D. Collection percentage of 85% to 95%.

- ◆ Proposal that contains documentation for two (2) or more municipalities served showing collection percentage rate of 90% or greater will be considered Highly Advantageous (5 points)
- ◆ Proposal that contains documentation for one municipality served showing collection percentage rate of 90% or greater will be considered Advantageous (3 points)
- ◆ Proposal that contains documentation for one municipality served showing collection percentage rate of 85-89% will be considered Least Advantageous (1 point)
- ◆ Proposal that provides no documentation for collection percentage rate or documentation showing collection rates below 85% will be considered as Does Not Meet minimum requirements (0 points and elimination from further consideration)

E. Claim processing/billing methods.

- ◆ Proposer that processes claims to all insurance carriers, including automobile insurance, workers compensation and homeowner's insurance will be considered Highly Advantageous (5 points)
- ◆ Proposer that processes claims to Medicare/MassHealth, major insurance carriers and secondary insurance if applicable will be considered Advantageous (3 points)
- ◆ Proposer that processes only claims to Medicare/MassHealth and major insurance carriers (i.e. BC/BS) will be considered Least Advantageous (1 point)
- ◆ Proposer that processes claims to only Medicare/MassHealth claims and mails all others to client will be considered as Does Not Meet minimum requirements (0 points and elimination from further consideration)

F. Experience in reconciling the ambulance account on a monthly basis.

- ◆ Proposer that reconciles more than ten (10) ambulance or private billing accounts on a monthly basis will be consider Highly Advantageous (5 points)
- ◆ Proposer that reconciles between five (5) and ten (10) ambulance or private billing accounts on a monthly basis will be consider Advantageous (3 points)

- ◆ Proposer that reconciles between one (1) and five (5) ambulance or private billing accounts on a monthly basis will be considered Least Advantageous (1 point)
  - ◆ Proposer that does not reconcile any ambulance accounts on a monthly basis will be considered as Does Not Meet minimum requirements (0 points and elimination from further consideration)
- G. Experience in submitting combined BLS/ALS (two tiered) ambulance claims.
- ◆ Proposer with more than five (5) years of experience submitting BLS/ALS claims will be consider Highly Advantageous (5 points)
  - ◆ Proposer with at least three (3) years of experience but not more than five (5) years of experience submitting BLS/ALS claims will be consider Advantageous (3 points)
  - ◆ Proposer with less than (3) years of experience submitting BLS/ALS claims will be considered Least Advantageous (1 point)
  - ◆ Proposer with no experience submitting BLS/ALS claims will be considered as Does Not Meet minimum requirements (0 points and elimination from further consideration)
- H. Number of Certified Professional Coders/Certified Ambulance Coders or Professional Chart Auditors on staff.
- ◆ Proposer with five (5) or more Certified Professional Coders/Certified Ambulance Coders or Professional Chart Auditors on staff will be consider Highly Advantageous (5 points)
  - ◆ Proposer with two (2) to four (4) Certified Professional Coders/Certified Ambulance Coders or Professional Chart Auditors on staff will be consider Advantageous (3 points)
  - ◆ Proposer with one (1) Certified Professional Coder/Certified Ambulance Coder or Professional Chart Auditor on staff will be considered Least Advantageous (1 point)
  - ◆ Proposer with no Certified Professional Coders/Certified Ambulance Coders or Professional Chart Auditors on staff will be considered as Does Not Meet minimum requirements (0 points and elimination from further consideration)
- I. Scope of urgent care medical billing services.
- ◆ Proposer with thirty (30) or more professional urgent care medical providers will be consider Highly Advantageous (5 points)
  - ◆ Proposer with at least twenty (20) but less than thirty (30) professional urgent care medical providers will be consider Advantageous (3 points)

- ◆ Proposer with at least one (1) but less than twenty (20) professional urgent care medical providers will be considered Least Advantageous (1 point)
- ◆ Proposer with no professional urgent care medical providers will be considered as Does Not Meet minimum requirements (0 points and elimination from further consideration)

#### 8. Method for Award

The contract will be awarded to the responsible and responsive proposer submitting the most advantageous proposal taking into consideration all evaluation criteria as well as price.

The Town may interview proposers selected as finalists. If interviews are to be held, proposers will be notified five (5) business days prior to their scheduled interview.

The non-price proposals shall be ranked by the Town. After such ranking, the price proposal of the first ranked proposer shall be opened.

The Town will endeavor to negotiate a contract with the first ranked proposer. If it is unsuccessful it shall proceed to the second ranked proposer and endeavor to negotiate a contract.

#### 9. Assignment of Award

No subletting of the award or contract, nor assignment of moneys due, or to become due, shall be made without the Town Manager's written approval.

#### 10. Term of Contract

The Town of North Andover is seeking to award a three year contract commencing on January 1, 2021 and ending December 31, 2023. The contract will have a fixed rate per run for the three-year (3) period and can be terminated per the terms of the attached contract if the Town deems termination appropriate.

The successful bidder will be required to execute the standard Town of North Andover contract as attached.

## APPENDIX A - PRICE PROPOSAL

Fixed rate per run to be charged to Town: \_\_\_\_\_

Addendum \_\_\_\_\_ are acknowledged: \_\_\_\_\_  
Signature

Business Name \_\_\_\_\_

Business Address \_\_\_\_\_

Business Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email Address \_\_\_\_\_

\_\_\_\_\_  
Name of Person Authorized to sign Price Proposal

\_\_\_\_\_  
Title of Person Authorized to sign Price Proposal

\_\_\_\_\_  
Signature of Above Person

# TOWN OF NORTH ANDOVER

## CONTRACT (GOODS / SERVICES)

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CONTRACT # \_\_\_\_\_

DATE: \_\_\_\_\_

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

**Contractor:**

**Address:**

**Telephone Number:**

**Email:**

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 North Andover is as follows:
3. Payment will be made as follows:

### **Upon completion of services and receipt of invoice (net 30)**

4. Definitions
  - 4.1 Acceptance: All Contracts require proper acceptance of the described goods or services by the Town of North 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) Invitation to Bid, Request for Proposals, Instructions to Bidders/Proposers, Proposal Form, General Conditions, Supplementary General Conditions, General Specifications, Other Specifications included in Project Manual, Drawings, and all Addenda issued during the bidding period or proposal. 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. The Contractor’s relationship to the Town is that of an independent contractor and not that of an agent or employee of the Town.
- 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 Sub-Contractor: 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 for an additional year 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. The Town may immediately terminate or suspend this Agreement without liability on the part of the Town for damages, penalties or other charges in the event the appropriation funding this Agreement is terminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Agreement.

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 at its sole discretion 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 federal or state law and/or regulations, and Town bylaws 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 North 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 Massachusetts General Laws are incorporated by reference into this Contract, including, but not limited to, the following:

M.G.L. Chapter 30B – Procurement of Goods and Services.

M.G.L. Chapter 30, Sec. 39, *et seq.* - Public Works Contracts.

M.G.L. 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, then it shall be understood that this Agreement shall 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, Scope of Business 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 North Andover, and its duly appointed agents against any claim or liability arising from or based on any violation whether by it 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 c268A), 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. c268A 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 c62C, Section 49A (Requirement of Tax Compliance by All Contractors Providing Goods, Services, or Real Estate Space to the Commonwealth or Subdivision).

13. Affirmative Action; Non-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 c151B (Law Against Discrimination) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended.

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

14. 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.

15. Corporate Contractor

If the Contractor is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate or if a Limited Liability Corporation, a Manager's Certificate or other documentation satisfactory to the Town 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 North 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, c181, §3, and any Acts and Amendments thereof, and in addition thereto, relating to the appointment of the Commissioner of Corporations as its attorney, shall file with the Commissioner of Corporations a Power of Attorney and duly authenticated copies of its Charter or Certificate of Incorporation; and said Contractor shall comply with all the laws of the Commonwealth.

16. Liability of Public Officials

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

17. Indemnification

The Contractor shall indemnify, defend and save harmless the Town, the Town's officers, attorneys, 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.

18. 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 the 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 in a form satisfactory to the Town before the same shall be binding on the parties thereto, except if specifically waived by the Town.

18.1 The Contractor further understands and agrees that in rendering services to the town under this Contract that the Contractor is an independent contractor and not an employee of the Town, that the Contractor is not covered by the Town's Workers' Compensation, or liability insurance, that the Contractor shall not make any claim against the Town, its officers, agents and employees and that the Contractor indemnifies, holds harmless, and releases the Town from any claims of the Contractor or of any other party that may arise in whole or in part out of or in connection with the work being performed by the Contractor.

19. Documents, Materials, Etc.

Any materials, reports, information, data, etc. given to or prepared or assembled by the Contractor under this Contract are to be kept confidential and shall not be made available to any individual or organization by the Contractor (except agents, servants, or employees of the Contractor) without the prior written approval of the Town, except as otherwise required by law. The Contractor shall comply with the provisions of Chapter 66 and Chapter 66A of the General Laws of Massachusetts as they 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. 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.

20. Confidentiality

The Contractor shall comply with M.G.L. c66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Town data in the Contractor's possession, or used by the Contractor in the performance of this Contract, which shall include, but is not limited to the Town's public records, documents, files, software, equipment or systems.

21. Record-Keeping and Retention, Inspection of Records

The Contractor shall maintain records, books, files and other data as specified in this Contract and in such detail as shall properly substantiate claims for payment under this Contract, for

a minimum retention period of seven (7) years beginning on the first day after the final payment under this Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. The Town shall have access during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

22. Assignment

The Contractor shall not assign or delegate, in whole or in part or otherwise transfer any liability, responsibility, obligation, duty or interest under this Contract without the written approval of the Town.

23. Subcontracting By Contractor

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

24. Risk of Loss

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

25. 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 c151, §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 c149, §§26 to 27D (Prevailing Wage Law), as shall be in force and as amended. The Contractor will, in addition to any other submissions required by the Prevailing Wage Law, submit certified weekly payrolls to the Town with the information described in General Laws c149, §27B.

26. 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.

27. 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.

28. 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 Contract, 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.

29. Forum and Choice of Law

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

30. 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 North Andover by being sent to the Town Manager, Town Hall, 120 Main Street, North Andover, Massachusetts 01845.

31. 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).

32. 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.

33. Contractor Certifications

33.1 By signing this contract, the Contractor certifies under the penalties of perjury that pursuant to General Laws c62C §49A, the Contractor has filed all state tax returns, paid all taxes and complied with all laws of the Commonwealth relating to taxes; and that pursuant to General Laws c151A, §19A, the Contractor has complied with all laws of the Commonwealth relating to contributions and payments in lieu of contributions.

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

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

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

33.5 **Debarment.** The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulations including, Executive Order 147, M.G.L. c29, §29F, M.G.L. c30, §39R, M.G.L. c149, §27C, M.G.L. c149, §44C, M.G.L. c149, §148B and M.G.L. c152, §25C.

34. Additional Provisions:

34.1 Applicable to Contracts for the Procurement of Goods

34.1.1 “Goods” shall mean Goods, Supplies, or Materials, as described in the Contract.

34.1.2 Change Orders:

Change orders for contracts subject to M.G.L. c30B may not increase the total contract price by more than twenty-five (25.0%) percent and shall be in compliance with Massachusetts General Laws c30B, §13.

This Contract for purchase includes the following delivery, installation or setup requirements:

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34.2 Applicable to Contracts for Services

34.2.1 “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.

34.2.2 Change Orders:

Change orders for contracts subject to Massachusetts General Laws c30B may not increase the total contract price by more than twenty-five (25%) percent and shall be in compliance with Massachusetts General Laws c30B, §13.

34.2.3 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 c151, §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 c149, §§26 to 27D (Prevailing Wage Law), as shall be in force and as amended. The Contractor will, in addition to any other submissions required by the Prevailing Wage Law, submit certified weekly payrolls to the Town with the information described in General Laws c149, §27B.

34.2.4 Insurance:

The Contractor shall obtain and maintain the following insurance:

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

34.2.4.2 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.

- 34.2.4.3 Automobile Liability Coverage, including coverage for owned, hired, or borrowed vehicles with limits of at least \$1 Million per person, and \$1 Million per accident. 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.
- 34.2.4.3 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 Contract.
- 34.2.4.4 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.
- 34.2.4.5 Contractual liability must recognize the indemnities contained in this Agreement.
- 34.2.4.6 Coverages are to be maintained for a period of two (2) years after final payment.
- 34.2.4.7 The Contractor shall maintain all required insurance in full force and effect as required by this Contract or the Contractor shall be in material breach hereof.

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

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Town Manager                      Date

\_\_\_\_\_  
Signature                              Date

\_\_\_\_\_  
Print Name & Title

Federal Identification  
No.: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Counsel                              Date

CERTIFICATION AS TO AVAILABILITY OF FUNDS:

\_\_\_\_\_  
Town Accountant                              Date

**CERTIFICATIONS**

**CERTIFICATE OF NON-COLLUSION**

The undersigned certifies under penalties of perjury that our bid or proposal 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 natural person, business, partnership, corporation, committee, union, club or other organization, entity, or group of individuals.

Signature \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
Print Name & Title

\_\_\_\_\_  
Company Name

**CERTIFICATE OF TAX COMPLIANCE**

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A (b), I

\_\_\_\_\_, authorized signatory for \_\_\_\_\_

*Name of individual*

*Name of contractor*

do hereby certify under the pains and penalties of perjury that said contractor has complied with all laws of the Commonwealth of Massachusetts, and the Town of North Andover, relating to taxes, permit or other fees, reporting of employees and contractors, and withholding and remitting child support.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

