Town of Burlington, Massachusetts

Request for Proposals

21-175-01

Northwest Park: Housing Consultant

July 3, 2020

PROPOSALS DUE:

Wednesday, July 22nd, 4:30 PM

Whitney C. Haskell
Chief Procurement Officer
29 Center Street, 2nd Floor
Burlington, MA 01803
whaskell@burlington.org
(781) 270-1669
# REQUEST FOR PROPOSALS
## NWP HOUSING CONSULTANT
### COVER SHEET

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2
REQUEST FOR PROPOSALS
NWP HOUSING CONSULTANT
CHECKLIST

Submissions:

☐ Completed Cover Sheet
☐ Checklist
☐ Price Proposal Form
☐ Non-Price Proposal
  ☐ Signed Certificate of Non-Collusion
  ☐ Signed Tax Compliance Certification
  ☐ Signed Certificate as to Corporate Bidder (if applicable)
☐ Acknowledgement of Addenda: __________ (if applicable)

Minimum Requirements:

1. Consultants must possess either an educational degree in or related to affordable housing, planning, economics from a recognized public or private college or university and five or more years of practice in the field at issue or a related field.

2. Then applicant shall have relevant professional experience directly in affordable housing and Federal Fair Housing Practices.

3. The Proposal must be complete, accurate and responsive to the RFP’s requirements.
REQUEST FOR PROPOSALS
NWP HOUSING CONSULTANT
PRICE PROPOSAL

Please sign the form below and attach a document that includes:

- The total lump sum price for the scope of services contained herein. The lump sum may be broken down into phases or line items as the proposer sees fit.
- An explanation of how proposer plans to charge for meeting preparation and attendance (i.e. hourly rate, lump sum).
- Any other relevant cost information that may impact the cost of the resulting contract with the proposer.

_____________________________________________________
SIGNATURE OF AUTHORIZED REPRESENTATIVE

_____________________________________________________
NAME (PRINTED)

_____________________________________________________
DATE
REQUEST FOR PROPOSALS
NWP HOUSING CONSULTANT
REQUIRED CERTIFICATIONS

FORM A
NON-COLLUSION

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

____________________________________________
(Signature of authorized individual submitting proposal)

____________________________________________
(Printed Name)

____________________________________________
(Name of Proposer)

____________
(Date)
FORM B
TAX COMPLIANCE

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

____________________________________________
(Signature of authorized individual submitting proposal)

____________________________________________
(Printed Name)

____________________________________________
(Name of Proposer)

____________________________________________
(Federal Tax Identification or Social Security Number)

____________________________________________
(Date)
FORM C
CERTIFICATE OF CORPORATE AUTHORITY (if applicable):

I, _______________________________ certify that I am the _____________________ of the corporation named as Bidder in the Bid included herein, that __________________, who signed said Bid on behalf of the Bidder was then ________________________ of said corporation, that I know his signature, that his signature thereon is genuine and that said Bid was duly signed, sealed and executed for and in behalf of said corporation by authority of its governing body.

(Please sign)

____________________________________________
(Signature of authorized individual submitting proposal)

____________________________________________
(Printed Name)

____________________________________________
(Name of Proposer)

(please sign)

(Date)
PART 1. GENERAL INFORMATION

1.1 PROCUREMENT DESCRIPTION

1.1.1 INTRODUCTION

The Town of Burlington, through its The Northwest Park Housing Committee (‘Committee’), is seeking proposals from qualified consultants to assist with all aspects of the process of selecting residents for housing at Northwest Park. The scope of work is defined further herein, but the general scope shall be:

- To assist in the development of an application form and process for affordable housing units to be rented at 80% AMI, to those meeting local criteria for eligibility.
- To assist in the development of a selection process including eligibility criterion for a range of assets limitations.
- To develop an implementation strategy and process including such things as educational outreach, meetings etc.

1.1.2 BACKGROUND

At the September 2019 Town Meeting, the members of the Town Meeting voted to approve the development of apartments in the area known as “Northwest Park” to be constructed by the Nordblom Company (Nordblom). Given the Town’s sufficient supply of “Affordable Housing” these units were designed to provide affordable housing to those that are low income but fall outside of the asset limitations required under state regulations. As a result, the Town has the latitude to address a specific group of citizens who want to sell their homes but may not necessarily be able to afford to stay in Burlington. The Town Meeting authorized the Board of Selectmen to commission a group representing multiple areas of the Town to work with Nordblom to develop criteria for “Burlington Senior Preference Units” which will represent 14% of the units at Northwest Park as developed. This committee known as the “Northwest Park Housing Committee” (The Committee) was designated in January 2020 by the Board of Selectmen. This Committee consists of representatives from Town Meeting, Board of Selectmen, Planning Board, Veterans Association, Zoning Bylaw Review, Council on Aging, and the Housing Authority.

The Committee has adopted the following Mission Statement:

The Northwest Park Housing Committee is tasked with developing the terms of an agreement (the Senior Housing Agreement) to be entered into between the Town and Nordblom Company regarding the senior housing component of the Northwest Park multifamily housing apartments, as approved by Town Meeting in September 2019. The committee shall develop the parameters for qualifying applicants, and shall contract with a housing consultant and legal counsel to insure compliance with all state and local laws.

The Committee has identified specific groups and issues that would need to be addressed as a result of this process

- Burlington Seniors and Veterans who fall into the hole between State defined “Affordable Housing” and market rates and wish to stay in town.
- Those who have current real estate to sell but cannot afford to buy in our Town.
Those who do not have defined benefit pensions but do have 401(k) assets that disqualify them from State defined affordable units.

The Committee has been authorized to commission an independent housing consultant to assist in the development of the criteria and the documents needed to achieve its mission. To that end, we request that you complete this short RFP document. It is our intent to complete this study by September 15, 2020.

1.2 APPLICABLE LAW

This procurement will be conducted pursuant to M.G.L. ch. 30B, sec. 6.

1.3 APPROVAL

Any contract that may result from the procurement shall be subject to the approval of the Board of Selectmen.

1.4 INCORPORATION BY REFERENCE

All requirements, specifications, terms and conditions described in this Request for Proposals (‘RFP’) shall be incorporated by reference into any contract that may result.

1.5 TIME FOR AWARD

Any contract that may result from the procurement shall be awarded within forty-five (45) days after the proposal due date. The time for award may be extended for up to 45 additional days by mutual agreement between the Town and the most advantageous proposer.

1.6 RIGHT TO CANCEL/REJECT

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

1.7 TAXATION

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

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

1.8 OBTAINING THE REQUEST FOR PROPOSALS

The RFP shall be available beginning, Friday, July 3rd, 2020.

The RFP and related documents shall be available for free download from the Town’s website:
PART 2. INSTRUCTIONS TO PROPOSERS

2.1 REQUIREMENTS AND SUBMISSIONS

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

2.1.1 PRICE PROPOSAL FORM

Every proposal must include a completed ‘Price Proposal Form’. See attached. The price proposal shall be separately sealed and labeled as “Price Proposal”.

2.1.2 NON-PRICE/TECHNICAL PROPOSAL

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

☐ NON-COLLUSION FORM

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

☐ TAX COMPLIANCE FORM

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

☐ CORPORATE BIDDER FORM

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

☐ PLAN OF SERVICES

The Plan of Services shall contain, at minimum:

Cover Letter

A cover letter signed by an officer of the firm, binding the firm to all statements made in the proposal is required. Include a primary contact person for the proposal.

Qualifications and Experience

1. Please provide background information on your organization and experience in the area of affordable housing and federal fair housing practices.
2. Please identify who in your organization would work on this project.
   a. Please provide bios of all members of your team who will work on this project.
3. Three references
4. List of past projects that are similar as well as current contracts

**Project Approach**

1. Please outline the approach that you would take.
2. Are you aware of any other municipalities that have used a similar approach?
   If so, please amplify.
3. What are areas that we should be sure to steer clear of or avoid?
4. What additional suggested criteria would you propose?

**2.2 PROPOSAL DELIVERY**

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

**2.2.1 DUE DATE AND TIME**

Proposals shall be received by the Office of the Chief Procurement Officer on or before **Wednesday, July 23, 2020, 4:30 PM**.

Any proposal received after that time shall be rejected as non-responsive.

**2.2.2 ADDRESS**

Sealed proposals shall be delivered to the Office of the Chief Procurement Officer, 29 Center Street, 2nd Floor, Burlington, MA 01803

Facsimile and email submissions will not be accepted.

**2.2.3 HOURS OF OPERATION**

Proposals must be delivered during the normal hours of operation of the Town of Burlington.

- Monday, Tuesday, Thursday: 8:30 AM-4:30 PM
- Wednesday: 8:30 AM-7:00 PM
- Friday: 8:30 AM-1:00 PM

**2.2.4 COPIES**

Proposers must submit one (1) original copy of the proposal. Proposer must also submit a copy on a storage device, sealed with the non-price proposal.

**2.2.5 LABELING**

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

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

2.4 QUESTIONS, CHANGES, MODIFICATIONS AND WITHDRAWALS

2.4.1 QUESTIONS

Questions concerning this RFP must be submitted in writing to: Whitney Haskell at whaskell@burlington.org at least five (5) days prior to the due date. Written responses will be mailed to all bidders on record as having picked up the RFP.

2.4.2 CHANGES

If any changes are made to this RFP, addenda will be issued. Addenda will be posted in the Office of the Chief Procurement Officer on the website and e-mailed to all proposers on record as having picked up the RFP.

2.4.3 MODIFICATIONS AND WITHDRAWALS

A proposer may correct, modify, or withdraw a proposals by written notice received by the Town prior to the time and date set the proposal due date.

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

After the proposal due date, a proposer may not change any provision of the proposal in a manner prejudicial to the interests of the Town or fair competition. Minor informalities will be waived or the proposer will be allowed to correct them.

2.5 UNFORESEEN OFFICE CLOSURES

If, at the time of the scheduled due date, 29 Center Street, Burlington, MA 01803, is closed due to uncontrolled events such as fire, snow, ice, wind, or building evacuation, the due date will be postponed until 2:00 PM on the next normal business day. Proposals will be accepted until that date and time.
PART 3. SCOPE OF SERVICES

STATEMENT OF WORK:

1. Review documentation provided.

2. Attend one (1) meeting with the Planning Director and select members of the NWP Housing Committee and Nordblom to discuss scope of work and material, attend two (2) meetings with the NWP Housing Committee and Nordblom and (1) Meeting with the Board of Selectman.

3. Determine eligible populations and income and asset limits consistent with Federal Fair Housing Practices.
   a. Income limits
   b. Asset limits including:
      i. Home sale
      ii. Pensions
      iii. 401K and other investments.

4. Develop qualification criteria for determining those identified in #3 above consistent with Federal fair Housing practices.

5. Prepare a letter report including:
   a. Eligible populations
   b. Income and asset criteria
   c. A worksheet or application for the Town to determine eligibility, including tiered systems if applicable.
   d. Develop a scoring system for the Town to ensure a fair process to applicants.
   e. Necessary Coordination and Contract with the Applicant/owner of the units (Nordblom).

MATERIALS FOR REVIEW:

The Town will provide the following materials for review:

- Planning Board recommendation and letter from Applicant from the 2019 Town Meeting.
- 2020 Approved DHCD SHI Inventory.

SCHEDULE:

The Peer Review Consultant must include an estimated timeline to perform the services as described in the Scope of Services following written authorization to proceed and receipt of relevant data. It is the hope that this project will conclude in 6 to 8 weeks.
PART 4. EVALUATION AND SELECTION

4.1 MINIMUM REQUIREMENTS

1. Consultants must possess either an educational degree in or related to affordable housing, planning, economics from a recognized public or private college or university and five or more years of practice in the field at issue or a related field.
2. Then applicant shall have relevant professional experience directly in affordable housing and federal fair housing practices.
3. The Proposal must be complete, accurate and responsive to the RFP's requirements.

4.2 COMPARATIVE CRITERIA

The proposal will be reviewed and ranked upon the following criteria:


   **Highly Advantageous**
   Appropriately licensed. Has five or more years' experience providing solutions to municipalities to provide affordable housing in their communities. Has worked with a Massachusetts municipality or State agency within the past 7 years on affordable housing measures.

   **Advantageous**
   Appropriately licensed. Has a minimum of 3 years’ experience providing solutions to municipalities to provide affordable housing in their communities. Has worked with a Massachusetts municipality or State agency on affordable housing measures.

   **Non-Advantageous**
   Not having the required degree or work experience in affordable housing and/or the experience is in a non-Massachusetts municipality or State agency.

2. General experience – working with municipalities and setting criteria for eligibility.

   **Highly Advantageous**
   Appropriately licensed. Has five or more years’ experience providing solutions to municipalities to provide affordable housing in their communities. Has worked with a Massachusetts municipality or State agency within the past 7 years on affordable housing measures.

   **Advantageous**
   Appropriately licensed. Has a minimum of 3 years’ experience providing solutions to municipalities to provide affordable housing in their communities. Has worked with a Massachusetts municipality or State agency on affordable housing measures.

   **Non-Advantageous**
   Not having the required degree or work experience in affordable housing and/or the experience is in a non-Massachusetts municipality or State agency.

3. General experience – Developing ongoing oversight of compliance and eligibility for affordable housing units.
**Highly Advantageous**
Appropriately licensed. Has five or more years’ experience providing solutions to municipalities to provide fordlable housing in their communities. Has worked with a Massachusetts municipality or State agency within the past 7 years on affordable housing measures.

**Advantageous**
Appropriately licensed. Has a minimum of 3 years’ experience providing solutions to municipalities to provide fordlable housing in their communities. Has worked with a Massachusetts municipality or State agency on affordable housing measures.

**Non-Advantageous**
Not having the required degree or work experience in affordable housing and/or the experience is in a non-Massachusetts municipality or State agency.

4. **General experience – Experience with developing contracts between public and private entities.**

**Highly Advantageous**
Appropriately licensed. Has five or more years’ experience providing solutions to municipalities to provide fordlable housing in their communities. Has worked with a Massachusetts municipality or State agency within the past 7 years on affordable housing measures.

**Advantageous**
Appropriately licensed. Has a minimum of 3 years’ experience providing solutions to municipalities to provide fordlable housing in their communities. Has worked with a Massachusetts municipality or State agency on affordable housing measures.

**Non-Advantageous**
Not having the required degree or work experience in affordable housing and/or the experience is in a non-Massachusetts municipality or State agency.

5. **References – Quality of work and timeliness**

**Most Advantageous**
References for providing References for providing affordable housing solutions including eligibility criterion outside that of 40B regulations.

**Advantageous**
References for providing References for providing related to affordable housing solutions.

**Non-Advantageous**
No references provided or work not related to affordable housing.

An interview may be scheduled, if deemed necessary.

4.2 **RULE FOR AWARD**

Any contract that may result from this procurement shall be awarded to the responsible and responsive proposer offering the most advantageous proposal, taking into consideration all evaluation criteria described herein, as well as price.
4.3 SELECTION PROCESS

Following the deadline for receipt of proposals, the Chief Procurement Officer (‘CPO’) will open the non-price proposals and prepare a register of proposals submitted. The non-price proposals will be evaluated by an evaluation committee based on the Minimum Requirements and Comparative Criteria contained in this RFP. The evaluation committee shall notify the CPO which proposal was deemed most advantageous. The CPO will then open and evaluate the price proposals, and award the contract to the most advantageous proposal taking into account the evaluation criteria and price.
5.1 TERM OF CONTRACT

The term any contract that results from this RFP, shall commence upon issuance of the Notice to Proceed. The work is expected to be completed by the end of September 2020.

5.2 ASSIGNMENT AND SUBCONTRACTING

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

5.3 OWNERSHIP OF MATERIAL

All rights, titles to and ownership of all data, material, and documentation resulting from this project and/or prepared for the Town pursuant to the Awarded Contract shall remain exclusively with the Town. The prospective consultant shall be paid for all services as will be specified in the contract.

5.4 ACCESS TO RECORDS

In addition to terms stated elsewhere in the RFP, the Town or any of its duly authorized representatives, shall have access, upon demand, to any books, documents, papers, and records of the successful Consultant which are directly pertinent to the Awarded Contract, for the purposes of making audit examinations, excerpts, and transcriptions. The successful Consultant shall insert identical rights of access for these parties into any subcontractor agreements the successful Consultant enters into under the Awarded Contract.

5.5 CONFLICT OF INTEREST

The consultant agrees that to the extent that such law is applicable to the duties it is to perform hereunder, it will comply with the provisions of Chapter 268A of the General Laws concerning conflict of interest. The consultant covenants that it presently has no interest and shall not require any interest, direct or indirect, which would conflict in any manner or degree with the performance under the agreement.

No employee of the Town and no public official who exercises any function or responsibilities in the review or approval of the undertaking or carrying out of this agreement shall participate in any decision relating to this agreement which affects his personal interest or the interest of any corporation, partnership, or association in which he is directly or indirectly interested or have any financial interest, direct or indirect in this agreement or the proceeds thereof.

5.6 FAIR PRACTICES

The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, age, handicap, veteran status, familial status, sexual orientation or national origin. The Consultant shall take affirmative action to ensure that applicants are employed, and employees are treated during employment, without regard to race, color, religion, gender, age, handicap, veteran status, familial status, sexual orientation or national origin. Such action shall include, but not be limited to, the following:
employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other form of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notice setting for the provisions of this non-discrimination clause. The Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applications will receive consideration for employment without regard to race, color, religion, sex, age, handicap, veteran status or national origin. The Consultant agrees to comply with the "Governor's Code of Fair Practices" of January 12, 1966, Chapter 151B of the Massachusetts General Laws, as amended and Executive Orders which prohibit discrimination because of race, color, religion, national origin, age, sex, veteran status or handicap.

5.7 INSURANCE REQUIREMENTS

General- The Vendor shall before commencing performance of the Contract be responsible for providing and maintaining insurance coverage in force for the life of the Contract of the kind and in adequate amounts to secure all of the obligations under the Contract and with insurance companies licensed to write insurance in the Commonwealth of Massachusetts. All such insurance carried shall not be less than the kinds and amounts designated herein, and the Vendor agrees that the stipulation herein of the kinds and limits of coverage shall in no way limit the liability of the Vendor to any such kinds and amounts of insurance coverage. All policies issued shall indemnify and save harmless the Town of Burlington, its agents and employees from any and all claims for damages to persons or property as may rise out of the performance of this Contract.

Vendor's Comprehensive General Public Liability and Property Damage Liability Insurance - The Vendor shall carry Comprehensive General Liability Insurance providing for a limit of not less than Five Hundred Thousand Dollars ($500,000.00) for all damages arising out of bodily injury to or death of one person, and subject to that limit for each person, a total limit of not less than One Million Dollars ($1,000,000.00) for all damages arising out of bodily injuries or death of two or more persons in any one accident; and Vendor’s Comprehensive Property Damage Liability Insurance providing for a limit of not less than Five Hundred Thousand Dollars ($500,000.00) for all damages arising out of injury to or destruction of property in any one accident, and subject to that limit per accident, a total (or aggregate) limit or not less than One Million Dollars ($1,000,000.00) for all damages arising out of injury to or destruction of property during the policy period.

Comprehensive Automotive and Property Damage Insurance - The Vendor shall carry Automobile Insurance covering all owned vehicles, hired vehicles or non-owned vehicles under the control of the Vendor while performing work under the Contract in the amount of not less than Five Hundred Thousand Dollars ($500,000.00) for all damages arising out of bodily injuries to or death of one person and subject to that limit for each person, a total of not less than One Million Dollars ($1,000,000.00) for all damages arising out of bodily injuries to or death of two or more persons in any one accident; and Property Damage coverage in the amount of not less than Five Hundred Thousand Dollars ($500,000.00) for all damages to or destruction of property.

The Vendor must carry Workman’s Compensation Insurance in the amounts prescribed under Massachusetts State Law and meet all other City and State Laws and Regulations.

No cancellation(s) of such insurance, whether by the insurer or by the insured party shall be valid unless written notice thereof is given by the parties proposing cancellation to the other
party and to the Town of Burlington at least fifteen (15) days prior to the intended effective
date thereof, which date shall be expressed in said notice, which shall be sent by registered
mail, return receipt requested. These provisions shall apply to the legal representative(s),
trustee in bankruptcy, receiver, assignee, trustee, and successor(s) in interest of the Vendor.

All insurance coverage shall be at the sole expense of the Vendor and shall be placed with
such company as may be acceptable to the Town of Burlington and shall constitute a
material part of the contract documents.
Failure to provide written proof to Town and continue in force such insurance as aforesaid
shall be deemed a material breach of the contract, and may constitute sufficient grounds for
immediate termination of the same.

5.8 INDEMNIFICATION

Unless otherwise provided by law, the Vendor will indemnify and hold harmless the Town
against any and all liability, loss, damages, costs or expenses for personal injury or damage to
real or tangible personal property which the Town may sustain, incur or be required to pay,
arising out of or in connection with the performance of the Contract by reason of any
negligent action/inaction or willful misconduct by the Contractor, its agents, servants or
employees.

5.9 FEDERAL AND STATE LAW

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

5.10 SAMPLE CONTRACT

See ‘Sample Contract’ attached.
DATE: ____________________

This Contract is entered into on, or as of, this date by and between the Town of Burlington, 29 Center Street Burlington, MA 01803 (the “Town”), and

Company Name
[“Contractor”]

Individual
[Contact Name for Responsible Person]

Address
No and Street
City, State, ZIP
[Address of the Contractor]

[Telephone Number]  [FAX Number]

name@email.com
[email address]

1. This is a Contract for the procurement of the following:

(Describe the work to be performed and/or attach agreed-upon scope of services)

2. The Contract price to be paid to the Contractor by the Town is:

2.1 The Pricing Structure is outlined in Attachment A.

OR

2.1 The Town agrees to pay the Contractor (DOLLARS ($XXXXX), said payment to be made within thirty days from receipt and acceptance of a reasonably detailed invoice.

3. Payment will be made as follows:

3.1 If any portion of the contract price is to be paid by a private citizen(s) no work shall be performed until a sum has been deposited with the Town Treasurer, upon an estimate made by the board, committee or officer having charge of the work, sufficient to cover the payment for the portion of the said work chargeable to the private citizen(s).

3.2 Fees and Reimbursable Costs combined shall not exceed $_____ as more fully set forth in the Contractor Documents.
3.3 There shall be no further costs, fees or reimbursable charges due the Contractor under this Contract unless said fees and/or costs are so set forth in writing. The Town will not pay any surcharge or premium on top of the direct out of pocket expenses, if any.

3.4 Final payment including any unpaid balance of the Contractor’s compensation shall be due and payable when the goods are delivered and accepted by the Town.

4. Security  N/A

4.1 The Contractor must provide security in the form of a bond or otherwise, conditioned upon the faithful performance of this Contract. [Delete and replace with “N/A” if not applicable.]

5. Definitions:

5.1 Acceptance: All Contracts require proper acceptance of the described goods or services by the Town. Proper acceptance shall be understood to include inspection of goods and certification of acceptable performance for services by authorized representatives of the Town to ensure that the goods or services are complete and are as specified in the Contract.

5.2 Contract Documents: All documents relative to the Contract including (where used) Invitation for Bids, Request for Proposals, Cooperative Contract Agreement and all attachments thereto, any addenda issued, and Contractor’s proposal/bid documents. The Contract documents are complementary, and what is called for by any one shall be as binding as if called for by all.

5.3 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.

5.4 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.

5.5 Goods: Goods, Supplies, Services or Materials.

5.6 Subcontractor: Those having a direct Contract with the Contractor. The term includes one who furnished material worked to a special design according to the Drawings or Specifications of this work, but does not include one who merely furnishes material not so worked.

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

6. Term of Contract and Time for Performance:

6.1 This Contract shall be fully performed by the Contractor in accordance with the provisions of the Contract Documents on or before ________________, unless extended, in writing, 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. Time is of the essence for the completion of the Contract.

OR

6.1 The performance period shall commence upon issuance of the ‘Notice to Proceed’ for a term of one year, with the option to renew for up to two additional years, in one year increments, 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. Time is of the essence for the completion of the Contract.

7. Subject to Appropriation:

Notwithstanding anything in the Contract documents to the contrary, any and all payments which the Town is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the Town Accountant. In the absence of appropriation or availability as certified herein, this Contract shall be immediately terminated without liability for damages, penalties or other charges to the Town. In the event this is a multi-year contract, this Contract shall be subject to annual appropriation and in the event funds are not so appropriated, this Contract shall terminate immediately without liability for damages, penalties or charges to the Town.

8. 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.

9. Termination and Default:

9.1 Without Cause. The Town may terminate this Contract on seven (7) calendar days’ notice when in the Town’s sole discretion it determines it is in the best interests of the Town to do so, 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.

9.2 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.

9.3 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, (vii) any other acts specifically and expressly stated in this Contract as constituting a basis for termination of this Contract, and (viii) failure to comply with any and all requirements of state law and/or regulations, and Town bylaw and/or regulations.

10. Suspension or Delay
The Town may order the Contractor, in writing, to suspend, delay or interrupt all or any part of the Services without cause for such period of time as the Town may determine to be appropriate for its convenience. In the event of any such suspension, delay or interruption, the Contractor’s time for performance shall be equitably adjusted. No adjustment shall be made if the Contractor is or otherwise would have been responsible for the suspension, delay or interruption of the Services, or if another provision of this Contract is applied to render an equitable adjustment.

11. 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 Burlington 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” including but not limited to costs, attorney’s fees or other damages resulting form said breach (“Damages”) as well as 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.

12. Statutory Compliance:

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


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

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

12.2 Wherever applicable law mandates the inclusion of any term and provision into a municipal contract, this Section shall be understood to import such term or provision into this Contract. To whatever extent any provision of this Contract shall be inconsistent with any law or regulation limiting the power or liability of cities and towns, such law or regulation shall control.

12.3 The Contractor shall comply with all Federal, State and local laws, rules, regulations, policies and orders applicable to the Work provided pursuant to this Contract, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the supply of such Work.

The Contractor shall indemnify and hold the Town harmless for and against any and all fines, penalties or monetary liabilities incurred by the Town as a result of the failure of the Contractor to comply with the previous sentence. If any discrepancy or inconsistency is discovered in the Drawings, Specifications or Contract for this work in violation of any such law, by-law, regulation, order or decree, it shall forthwith report the same in writing to the Town. It shall, at all times, itself observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and shall protect and indemnify the Town, and its duly appointed agents against any claim or liability arising from or based on
any violation whether by him or its agents, employees or subcontractors of any such law, by-law, regulation or decree.

13. Conflict of Interest:

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

14. Certification of Tax Compliance

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

15. Non-Discrimination/Affirmative Action

The Contractor shall carry out the obligations of this Agreement in compliance with all requirements imposed by or pursuant to federal, State and local ordinances, statutes, rules and regulations and policies prohibiting discrimination in employment, including but not limited to, Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973 and Mass. G. L. c. 151B, and any other executive orders, rules, regulations, requirements and policies relating thereto enacted by the Commonwealth of Massachusetts and the Town as they may be amended from time to time. Contractor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, race, sex, religion, physical or mental handicap or sexual orientation.

15.1 As used in this section “affirmative action” means positive steps to ensure all qualified persons equal employment opportunity without regard to race, color, religion, sex or national origin at all stages of the employment process: recruitment, selection, placement, promotion, training, layoff and termination. It may include, but is not limited to, the following:

(a) Inclusion in all solicitation and advertisements for employees of a statement that the Contractor is an “Equal Opportunity Employer”;

(b) Placement of solicitations and advertisements for employees in media that reaches minority groups;

(c) Notification in writing of all recruitment sources that the Contractor solicits the referral of applicants without regard to race, color, religion, sex or national origin;

(d) Direct solicitation of the support of responsible and appropriate community, state and federal agencies to assist recruitment efforts;

(e) Participation in, or establishment of, apprenticeship or training programs where outside programs are inadequate or unavailable to minority groups;
Modification of collective bargaining agreements to eliminate restrictive barriers established by dual lines of seniority, dual rates of pay or dual lines of promotion or progression which are based on race, color, religion, sex or national origin; and

Review selection, placement, promotion, training, layoff and termination procedures and requirements to ensure that they do not intentionally or unintentionally discriminate against qualified persons because of race, color, religion, sex or national origin.

15.2 The Contractor, if applicable, shall include in all compliance and progress reports submitted to the town a report which shall include: (a) A certificate stating that he or she is currently in compliance with the provisions of G.L. c. 152B and setting forth the Affirmative Action he or she is currently undertaking and will undertake during the contract period to provide equal employment opportunity for all qualified persons without regard to race, color, religion, sex or national origin; and (b) A statement in writing supporting information signed by an authorized officer or agent on behalf of any labor union or other agency which refers workers or provides or supervises apprenticeship or other training programs which the Contractor deals, to the effect that the union or other agency’s practices and policies do not discriminate on the basis of race, color, religion, sex or national origin; provided, in the event that the union or other agency shall refuse to execute such a statement, the Contractor need only so certify in writing.

15.3 A copy of any such report as described above, shall be filed in the office of the Town Clerk and shall upon said filing become a public record.

15.4 The Contractor will take Affirmative Action to ensure that employees are solicited and employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin.

15.5 The Contractor will in all solicitation or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

15.6 In determining whether steps taken by the Contractor constitute Affirmative Action, the Town shall take into account the relevant characteristics of the Contractor including, but not limited to, the number of employees and the location of the principal and branch offices.

16. Assignment:

The Contractor shall not assign, sublet or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the Town, and shall not assign any of the moneys payable under this Contract, except by and with the written consent of the Town.

17. 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 Board of Selectmen 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.

18. Corporate Contractor:

If the Contractor is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk’s Certificate certifying the corporate capacity and authority of the party signing this Contract for the corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the Contract is executed by the Contractor. This
Contract shall not be enforceable against the Town of Burlington unless and until the Contractor complies with this section.

The Contractor, if a foreign corporation, 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.

19. Contractor’s Personnel:

The Contractor shall utilize only its employees and shall not utilize any third-party contractors without prior written approval of the Town.

20. Liability of Public Officials:

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

21. Indemnification:

The Contractor shall indemnify, defend and save harmless the Town, the Town’s officers, agents and employees, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including 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. 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.

21.1 The Contractor further agrees to indemnify and hold harmless the Town, including the agents, employees and representatives of either, from and against all claims, damages, losses and expenses, including attorney’s fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, 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 a party indemnified hereunder.

21.2 The Contractor shall be responsible for all damage or injury to property of any character during the prosecution of the work resulting from any act, omission, neglect, or misconduct in the manner or method of executing the work or due to the non-execution of the work or at any time due to defective work or materials.

21.3 In any and all claims against the town or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under Worker’s Compensation Acts, disability benefit acts or other employee benefit acts.
21.4 The Contractor hereby assumes the entire responsibility and liability for any and all injury to or death of any or all persons, including the Contractor’s employees, and for any and all damage to property caused by, resulting from or arising in whole or in part out of any act, omission, or neglect on the part of the Contractor or of any Subcontractor or of anyone directly or indirectly employed by any of them, or of anyone for whose acts any of them may be liable in connection with operations under the Contract.

The foregoing provisions shall not be deemed to be released, waived, limit or modified in any respect by reason of any surety or insurance provided by the Contractor under the Contract.

22. Insurance

22.1 Workers Compensation Insurance:

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

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

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

22.2 Professional Liability Insurance

Liability of $1 million per claim and $3 million aggregate.

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

22.3 Other Insurance Requirements

(a) Comprehensive commercial general liability insurance with limits of at least $1 Million per occurrence and $3 Million annual aggregate for property damage and $1 Million per person and $3 Million per occurrence for bodily injury, which shall include the Town of Burlington as an additional insured, and which shall cover bodily injury, sickness or disease, or death of any person including employees and those persons other than the Contractor’s employees, and claims insured by usual personal liability coverage, death, or property damage arising out of the Work including injury or destruction of tangible property, including loss of use resulting therefrom.

(b) Motor vehicle insurance for any motor vehicles used in performing the Work, with limits of at least $500,000 per person, and $1 Million per accident.

(c) 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, including and not limited to Professional liability insurance where applicable.

(d) All policies shall identify the Town as an additional insured (except Workers' Compensation and Professional Liability). The Contractor shall notify the Town immediately upon the cancellation or amendment to any policy. Renewal Certificates shall be filed with the Town at least ten (10) days prior to the expiration of the required policies. Certificates evidencing all such coverage shall be provided to the Town upon the execution of this Agreement, and upon the renewal of any such coverage. Each such certificate shall specifically refer to this Contract and shall state that such insurance is as required by this Contract. Failure to provide the notices required in this Section or to continue in force such insurance shall be deemed a material breach of this Contract and shall be grounds for immediate termination. Said insurance shall include: Workers Compensation/Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent Contractors, personal injury, contractual liability. All Certificates of Insurance shall be on the “MIIA” or “ACORD” Certificate of Insurance form, shall contain true transcripts from the policies, authenticated by the proper officer of the Insurer, evidencing in particular those insured, the extent of coverage, the location and operations to which the insurance applies, the expiration date and the above-mentioned notice clauses. All insurance shall be written on an occurrence basis. Coverage shall be maintained without interruption from date of the Contract until date of final payment and termination of any coverage required to be maintained after payment.

(e) The Contractor shall obtain and maintain during the term of this Contract the insurance coverage in companies licensed to do business in the Commonwealth of Massachusetts and acceptable to the Town.


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

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

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

24. No Employment
The Contractor acknowledges and agrees that it is acting as an independent Contractor for all services rendered pursuant to this Contract, and neither the Contractor, nor its employees, agents, servants nor any person for whose conduct the Contractor is responsible shall be considered an employee or agent of the Town for any purpose and shall not file any claim or bring any action for any worker’s compensation unemployment benefits and compensation for which they may otherwise be eligible as a Town employee as a result of work performed pursuant to the terms of this Contract.

25. Audit, Inspection and Recordkeeping

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

26. Payment

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

27. Waiver and Amendment

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

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

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

28. Severability

If any term or condition of this Contract or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Contract shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

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

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 on page 1 or furnished from time to time in writing hereafter.

31. Binding on Successors:

This Contract is binding upon the parties hereto, their successors, assigns and legal representatives (and where not corporate, the heirs and estate of the Contractor). Neither the Town nor the Contractor shall assign or transfer any interest in the Contract without the written consent of the other.
32. Entire Agreement:

This Contract, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Contract supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

**IN WITNESS WHEREOF** the parties have hereto and to two other identical instruments set forth their hands and executed this as an instrument under seal this the day and year first above written.

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<tr>
<th><strong>THE TOWN OF BURLINGTON:</strong></th>
<th><strong>THE CONTRACTOR:</strong></th>
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<tbody>
<tr>
<td>Paul Sagarino, Town Administrator</td>
<td>Date</td>
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<td>Department Head, Department</td>
<td>Date</td>
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<td>As contract manager</td>
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<td>Whitney Haskell, Chief Procurement Officer</td>
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<tr>
<td>John Danizio, Town Accountant</td>
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