

TOWN OF WILMINGTON



REQUEST FOR PROPOSALS

ELECTRONIC VOTE TABULATION MACHINES

WILMINGTON, MA

PROPOSALS DUE:

November 17, 2021, 10:00 AM

***Late proposals will be rejected**

REQUEST FOR PROPOSALS

TOWN OF WILMINGTON, MASSACHUSETTS

VOTE TABULATION MACHINES

I. Notice of Proposal

The Town of Wilmington (Town) is requesting proposals from qualified vendors to provide electronic voting machines that will scan appropriate markings made by registered Wilmington voters on ballots fed into the machines and accurately tabulate the number of votes for each candidate or question printed on the ballot.

Separate price and non-price proposals shall be received in the Town Manager's Office, 121 Glen Road, Wilmington, MA 01887 until 10:00 a.m. **on Wednesday November 17, 2021.** Vendors shall submit one (1) sealed **price** proposal marked "Price Proposal for Electronic Vote Tabulation Machines" and three (3) **non-price** proposals marked "Non-price Proposal for Electronic Vote Tabulation Machines." Each sealed proposal shall clearly identify the vendor's name and business address. The Town reserves the right to reject any or all proposals deemed not in the best interest of the Town. Award of a contract to purchase vote tabulation machines as described in this RFP are subject to the availability of funds.

II. Background

The Town Clerk is seeking to replace the 7 accuvote voting machines, which have been used for 17 years.

The Town has received funding at the May 1, 2021 Annual Town meeting, in addition to financial assistance from the state and/or federal government, to defray the cost of the voting machines. The Town Clerk expects to employ the new voting machines for the first time in the April 23, 2022 Local Town Election.

The Town expects to purchase no fewer than six (6) and no more than seven (7) voting machines.

III. General Requirements

Vendors must meet the following requirements for their proposals to be considered:

The voting machines must be approved for use in the Commonwealth of Massachusetts by the Secretary of State. A transmittal letter must be signed by the person authorized to sell the voting machines to the Town.

1. The price that is quoted for the voting machines shall include but not be limited to the actual voting machine, optical scanner, ballot box, storage and carrying case, battery backup, data card, costs for delivery of all voting machine components from the factory authorized dealer to the Wilmington Town Hall (portal to portal), training covering all aspects of the use, testing and proper care of the voting machines and a minimum two (2) year warranty for parts and labor. This price proposal will include the trade in amount for the machines currently used.
2. The vendor shall complete the “price proposal form” provided by the Town and submit that document by the proposal deadline in a sealed envelope labeled “Price Proposal for Electronic Vote Tabulation Machines.” The stated price shall include all items referenced in III (1). The Price Proposal and Non-Price Proposal must be properly labeled and enclosed in separate envelopes. They must not be combined.
3. All items contained in this Request for Proposal (RFP) must be specifically and completely addressed. Failure to do so may result in disqualification of the vendor.
4. All proposals become the property of the Town of Wilmington and will not be returned to respondents. Documents submitted in response to this RFP are deemed public records after the evaluation of proposals is complete.
5. The vendor shall be available for a screening interview as part of the selection process if necessary. Such interviews may be scheduled during the business day.
6. All costs of the proposal preparation shall be borne by the vendor. The Town shall not reimburse any costs incurred by vendor in anticipation of receiving the award.
7. Modifications to the proposal are accepted up until the deadline for proposal submission. Modifications submitted after the proposal deadline will not be opened.
8. The Town reserves the right to amend this RFP. Such amendments shall be sent to each vendor who has received the RFP. No amendments to this RFP shall be made less than seven (7) business days prior to the proposal deadline.
9. Questions concerning this RFP should be directed to Elizabeth Lawrenson, Town Clerk, at (978) 658-2030. She is available Monday through Friday from 8:30 a.m. to 4:30 p.m.
10. The Town of Wilmington may cancel this RFP or reject, in whole or in part, any and all proposals when it is determined that said cancellation or rejection serves the best interests of the Town. Reasons for cancellation or rejection shall be stated in writing.

IV. Tentative Schedule

The Town expects to adhere to the following schedule:

Week of November 3, 2021: Begin advertising RFP.

November 17, 2021, at 10:00 a.m. due date for proposals.

Week of November 22, 2021: Proposals reviewed by the Proposal Review Committee. Interviews may be scheduled if necessary.

Week of November 29, 2021: The Proposal Review Committee to interview selected vendors, if necessary, and submit a recommendation for hire to the Town Manager.

Week of December 13, 2021: Town Manager to issue award letter to successful vendor subject to availability of funding.

V. Compensation

- A. The selected vendor shall submit an invoice to the Town that reflects the per unit cost for each voting machine purchased, the number of units purchased and the total cost to the Town, inclusive of all elements described in this RFP.
- B. Payment to the vendor shall be based upon complete delivery of fully operational voting machines. "A Certificate of Acceptance" (**Appendix C**) shall be executed by the Town, which shall attest to the delivery of the number of voting machines purchased, that they have been received in good condition and are fully operational.
- C. Once the "Certificate of Acceptance" has been executed the vendor may issue the Town an invoice. Payment to the vendor shall be made within forty-five (45) calendar days from receipt of the invoice by the Town.

VI. Proposal Submission Requirements

Vendors are reminded that the **price** and **non-price** proposals must be submitted in **separately sealed envelopes** with the name and address of the vendor and marked, "price proposal for Electronic Voter Tabulation Machines" and "non-price proposal for Electronic Voter Tabulation Machines."

- A. In order to meet the minimum evaluation criteria, the **non-price** proposal must include the following information:
 - 1. All voting equipment offered must be, at the time of bid submission, certified by the Secretary of the Commonwealth of Massachusetts, Elections Division, as being approved for use in Massachusetts elections. All such voting equipment must be in compliance with the standards set forth in 950 Commonwealth of Massachusetts Regulations, section 50.02. Bidders must include a copy of the Secretary of State's Letter of Approval with the bid submission.

2. All voting equipment offered must meet or exceed the Federal Voluntary Voting System Standards of 2005 as adopted by the Election Assistance Commission. Bidders must include a copy of the EAC Certification with the bid submission.
3. The business address of the closest factory authorized service facility to Wilmington, which receives and responds to service calls for the make and model voting machine being proposed.
4. The specific days and hours of operation of the factory authorized service facility identified in VI. A. (4) above.
5. Specify the means, telephonic or otherwise, by which the Town will notify the vendor of any problem that may be experienced with the voting machines. Such information shall include the vendor's telephone number and contact person who can address service issues.
6. The guaranteed response time (in minutes or hours) within which the vendor will arrive on location, if telephonic communication does not resolve the problem, to replace or repair failed voting machine(s), memory card/pack or any component of the voting machine during the date and time of the election.
7. Detail the specific conditions of all warranties or guarantees that are provided with the voting machines. The Town requires at least a 2-year warranty on all parts, labor, and transportation costs associated with repairs to the voting machines.
8. Cost of shipping, pickup, and delivery of equipment for repair or replacement. (There shall be no costs associated with repair or replacement of the equipment during the duration of the warranty.)
9. The vendor will provide a minimum of two (2) hours of on-site training for the Town of Wilmington Clerk and office staff on all voting equipment. All training will take place at the Town of Wilmington Offices during normal business hours. Training will cover basic use of the vote tabulator equipment, pre-election testing, and Election Day procedures. Training will be scheduled by the Town of Wilmington Clerk, and the vendor will accommodate said schedule.
10. The vendor will provide a minimum of two (2) hours of on-site training for Town of Wilmington poll workers. All training will take place at the Town of Wilmington Offices during/after normal business hours (i.e. evenings, time varies). Training will cover Election Day procedures and basic troubleshooting. Training will be scheduled by the Town of Wilmington Clerk, and the vendor will accommodate said schedule.

11. The vendor will assign one of their employees to provide on-site coverage to the Town of Wilmington during the first election in which the new voting tabulator equipment is used.
 - a. Said employee must be fully trained & experienced in the operation of the supplied vote tabulator equipment and software.
 - b. The vendor employee will work with the Town of Wilmington from one (1) hour prior to opening the polls until two (2) hours after the polls close on Election Day.
 - c. Said employee will NOT be a subcontracted employee from another company.
 - d. Said employee will be present during the Poll Worker Training Session so all Poll Workers will be familiar with, and have had interaction with, the employee prior to the Election.
 12. The vendor will have staff available on an on-going basis that can respond to Town of Wilmington equipment issues on any given election voter day, with an on-site response time of one (1) hour or less.
 13. Written confirmation that a complete delivery of all voting machines purchased shall be made to the Town Hall auditorium within thirty (30) days of receipt by the vendor of proposal award.
 14. Written confirmation that the vendor shall be responsible for any and all damage to equipment while in transit from “portal to portal.” Equipment damaged in transit shall be replaced within twenty (21) days from the date of intended delivery with new equipment of the same make and model.
 15. A description of the vendor including name, location and size of the organization and the number of years in the business of providing this equipment. Identify the contact person(s) who shall be assigned to the Town of Wilmington.
 16. A certificate of insurance shall be provided to the Town naming the Town as an additional insured with respect to delivery and set-up of equipment in accordance with the insurance limits stated in the Sample Agreement (Appendix D):
- B. The vendor shall submit a separate **price** proposal on the form marked, “Price Proposal” (**Appendix B**) in this RFP. This price proposal will include the trade in amount for the machines currently used. The per unit price shall include any and all costs associated with supplying the equipment to the Town including but not limited to the equipment itself, transportation from the manufacturing location to the Town and delivery into the Town Hall auditorium, equipment set-up, testing, training and warranty for parts and labor. The vendor shall guarantee that their price(s) shall, remain valid for at least 120 calendar days from the deadline for **price** proposals.

- C. The vendor shall submit one (1) sealed copy of the **price** proposal and three (3) sealed copies of the **non-price** proposal.

VII. Criteria for Selection

- A. A Proposal Review Committee shall evaluate all proposals submitted within the established deadline based on the selection criteria specified herein. If deemed necessary, interviews may be arranged with vendors whose proposals are considered by the Town to be the most advantageous in terms of the stated criteria. Based upon the proposal, interviews (if needed) and reference checks, the Proposal Review Committee will recommend the selection of the vendor to the Town Manager.

Once the recommendation has been made to the Town Manager, he will review the recommendation together with the price proposals submitted by the vendors. He reserves the right to conduct interviews with vendors if he deems it necessary. The Town Manager, in his capacity as Chief Procurement Officer for the Town, will make a final decision on award of the contract.

B. Voting Equipment:

1. Each of the 7 Electronic Vote Tabulator Packages will consist of, at a minimum, the following;
 - a. electronic digital optical scanning vote tabulating unit.
 - b. Protective carrying case for the vote tabulating unit.
 - c. One (1) complete set of memory media required to conduct Town of Wilmington and U.S. Federal elections.
 - d. Internal backup battery
 - e. Power cord
 - f. Key set.
 - g. Thermal paper roll
 - h. One dozen marking pens
 - i. Ballot box with three (3) compartments, including caster wheels, and a built-in power supply. The ballot boxes should nest into each other for ease of storage. One of the Electronic Vote Tabulators is a spare and will not require a ballot box.
3. All equipment offered must be brand-new; no used or demonstration equipment will be accepted.
4. Equipment must be lightweight, easy to store, carry, and set-up.

5. The electronic vote tabulators to be supplied must be able to:
 - a. Scan marked paper ballots.
 - b. Interpret voter marks on the paper ballots.
 - c. Store and tabulate each vote from each paper ballot.
 - d. The scanner must have the ability to capture digital images of each ballot (this function must also be able to be disabled to comply with current Massachusetts law).
 - e. The scanner must have the ability to be locked to prevent tampering.
 - f. The tabulator must be able to process single or double-sided ballots.
 - g. The tabulator must be able to be configured to handle multiple ballot scenarios.
 - h. The tabulator must be able to be programmed to accept multiple cards and ballot styles.
 - i. The tabulator must be able to display a notification to the voter identifying a discrepancy on the ballot, when marking for an office or question exceeds the number to be elected and allowing the voter to correct the ballot. If the voter chooses to cast the ballot with mistakes, the tabulator must be programmed to register the vote as a blank to prevent double voting.
6. The electronic vote tabulator must be powered by standard 120-volt AC power, with internal battery backup to power the unit in the event of an electrical power failure. The backup battery must be able to provide a minimum of two (2) hours of continuous use.
7. Each individual electronic vote tabulator must come with its own protective carrying case for the tabulator.
8. Ballot box with three (3) compartments, including caster wheels, and a built-in power supply. The ballot boxes should nest into each other for ease of storage.
9. The vendor must supply all necessary equipment and accessories, power cords, memory media, operating system software and technical support that provides for fully functioning electronic voting equipment.
10. The voting equipment must have an easily readable display screen capable of displaying the status of the tabulator to both poll workers and voters in multiple languages.

C. Training:

1. The vendor will provide a minimum of two (2) hours of on-site training for the Wilmington Clerk and office staff on all voting equipment. All training will take place at the Wilmington Offices during normal business hours. Training will

cover basic use of the vote tabulator equipment, pre-election testing, and Election Day procedures. Training will be scheduled by the Wilmington Clerk, and the vendor will accommodate said schedule.

2. The vendor will provide a minimum of two (2) hours of on-site training for Wilmington poll workers. All training will take place at the Wilmington Offices during/after normal business hours (i.e., evenings, time varies). Training will cover Election Day procedures and basic troubleshooting. Training will be scheduled by the Wilmington Clerk, and the vendor will accommodate said schedule.
3. The vendor will provide documentation to accompany all training.

A. SERVICE AND SUPPORT

1. On-Site Election Coverage:

The vendor will assign one of their employees to provide on-site coverage to the Town of Wilmington during the first election in which the new voting tabulator equipment is used.

- a. Said employee must be fully trained & experienced in the operation of the supplied vote tabulator equipment and software.
- b. The vendor employee will work with the Town of Wilmington from one (1) hour prior to opening the polls until two (2) hours after the polls close on Election Day.
- c. Said employee will NOT be a subcontracted employee from another company.
- d. Said employee will be present during the Poll Worker Training Session so all Poll Workers will be familiar with, and have had interaction with, the employee prior to the Election.

B. COMPARATIVE EVALUATION CRITERIA

Proposals which meet the minimum criteria shall be further evaluated on the basis of the following comparative criteria. The following ratings will be used to measure the relative merits of each proposal, which met the Minimum Evaluation Criteria established above. Those proposals that do not meet the Minimum Evaluation Criteria will be judged Unacceptable.

HIGHLY ADVANTAGEOUS – Proposal excels on a specific criterion.

ADVANTAGEOUS – Proposal fully meets the evaluation standard that has been specified.

NOT ADVANTAGEOUS – Proposal does not fully meet the evaluation standard, is incomplete and/or unclear.

The criteria that will be used for comparative purposes are the following:

POWER FAILURE SUPPORT

A system which provides an internal battery and uninterrupted power during a power failure will be rated as HIGHLY ADVANTAGEOUS.

A system which provides an optional battery, which can be connected to provide power during a power failure will be rated as ADVANTAGEOUS.

A system which provides no provision for power backup during a power failure will be rated as NOT ADVANTAGEOUS.

PORTABILITY

A tabulating unit which weighs less than 20 pounds will be rated as HIGHLY ADVANTAGEOUS.

A tabulating unit which weighs 20 pounds or more but less than 30 pounds will be rated as ADVANTAGEOUS.

A tabulating unit which weighs more than 30 pounds will be rated as NOT ADVANTAGEOUS.

A vendor whose factory authorized service facility, as described in the Minimum Requirements section, and which is within one hour from the Town of Wilmington, under normal driving conditions will be rated as HIGHLY ADVANTAGEOUS.

A vendor whose factory authorized service facility, as described in the Minimum Requirements section, and which is within two hours from the Town of Wilmington, under normal driving conditions will be rated as ADVANTAGEOUS.

A vendor whose factory authorized service facility, as described in the Minimum Requirements section, and which is more than two hours from the Town of Wilmington, under normal driving conditions will be rated as NOT ADVANTAGEOUS.

A vendor that has ten (10) or more trained and qualified full-time employees stationed within the Commonwealth of Massachusetts available to troubleshoot, repair and otherwise provide backup and support for the voting machines the Town purchases, during a Municipal election will be rated as HIGHLY ADVANTAGEOUS.

A vendor that has five (5) to nine (9) trained and qualified full-time employees stationed within the Commonwealth of Massachusetts available to troubleshoot, repair and otherwise provide backup and support, for the voting machines the Town purchases, during a Municipal election will be rated as ADVANTAGEOUS.

A vendor that has fewer than five (5) trained and qualified full-time employees stationed within the Commonwealth of Massachusetts available to troubleshoot, repair and otherwise provide backup and support, for voting machines the Town purchases, during a Municipal election will be rated as NOT ADVANTAGEOUS.

BALLOT LAYOUT AND DESIGN

A system that allows for a ballot with up to four (4) columns, of variable width, which can be printed and read in either horizontal or vertical format will be considered HIGHLY ADVANTAGEOUS.

A system that allows for a ballot with up to three (3) columns, of variable width, which can be printed and read in either horizontal or vertical format will be considered ADVANTAGEOUS.

A system that does not allow for a ballot to be printed and read in either horizontal or vertical format will be considered NOT ADVANTAGEOUS.

MARKING DEVICE REQUIREMENTS

A system that does not require the use of special marking pens, or a #2 pencil will be considered to be HIGHLY ADVANTAGEOUS.

A system that requires a special marking pen, or a #2 pencil will be considered to be NOT ADVANTAGEOUS.

BALLOT BOX DESIGN

A system that uses a ballot box that weighs less than 80 lbs. will be considered to be HIGHLY ADVANTAGEOUS.

A system that uses a ballot box that weighs 100 lbs. or more will be considered to be NOT ADVANTAGEOUS.

RATINGS VALUE

HIGHLY ADVANTAGEOUS = 10 POINTS
ADVANTAGEOUS = 5 POINTS
NOT ADVANTAGEOUS = 0 POINTS

APPENDIX A – REQUIRED CERTIFICATIONS

TO BE SUBMITTED WITH PROPOSAL

Certification as to Payment Of State Taxes

Pursuant to M.G.L. CH 62C, Sec 49A, the undersigned Bidder certifies under the penalties of perjury that it is in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Certification of 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.

Name of Business: _____

Print Name of Person Signing Bid: _____

Signature & Title: _____

**TOWN OF WILMINGTON
CORPORATE BIDDER CERTIFICATE**

I, _____ certify that I am the _____
Name Title
of the Corporation named as Bidder in the attached Bid Form; that
_____ who signed said forms on behalf of the bidder
Name
was then _____ of said Corporation; that I know
Title
his/her signature hereto is genuine, and that said Bid Form was duly signed, sealed
and executed for and in behalf of said Corporation by authority of its governing body.

Name and Title of Individual

Signature

Date

Affix Corporate Seal:

This Certificate must be completed where the Bidder is a corporation and should be so completed by its Clerk. In the event the Clerk is the person signing the Bid on behalf of the Corporation, this certificate must be completed by another Officer of the Corporation.

CERTIFICATE OF VOTE

I, _____, Clerk of _____
Name of Corporation

hereby certify that, at a meeting of the Board of Directors of said Corporation duly

held on _____ at which a quorum was present and voting
Date

throughout, the following vote was duly passed and is now in full force and effect:

Voted that _____
Name of Officer authorized to sign for Corporation

be and hereby is authorized, directed and empowered for, in the name and on behalf of this Corporation, to sign and seal with the corporate seal, execute, acknowledge and deliver all contracts, bonds and other obligations of the Corporation; the execution of any such contract, bond or obligations by such,

_____ to be valid and
Name of Officer authorized to sign for Corporation

binding upon this Corporation for all purposes, and that a Certificate of the Clerk of the Corporation setting forth this vote shall be delivered to the Town of Wilmington and that this vote shall remain in full force and effect unless and until the same has been altered, amended or revoked by a subsequent vote of such directors and a certificate of such later vote attested to by the Clerk of this Corporation is delivered to the Town of Wilmington.

I further certify that _____
Name of Officer authorized to sign for Corporation

is duly elected _____ of said Corporation.
Title Corporation.

Signature of Clerk or Secretary Date

Corporate Seal: Place of Business Affix

Town of Wilmington Conflict of Interest

I hereby certify that the Bidder named below understands that the Massachusetts Conflict of Interest Law, M.G.L. c268A, applies to the Bidder with respect to the services outlined in this IFB. I also certify that the Bidder understands that the Bidder, its officers, employees, agents, subcontractors, and affiliated agencies, shall not participate in any activity which constitutes a violation of the Massachusetts Conflict of Interest Law or which creates an appearance of a violation of the Massachusetts Conflict of Interest Law.

The Bidder named below hereby certifies:

1. The Bidder was not given, offered, or agreed to give any gift, contribution, or offer of employment as an inducement for, or in connection with, the award of a contract for this project.
2. No consultant to, or subcontractor for the Bidder has given, offered, or agreed to give any gift, contribution, or offer of employment to the Bidder, or to any other person, corporation, or entity as an inducement for, or in connection with, the award of the consultant or subcontractor of a contract by the Bidder.
3. No person, corporation, or other entity, other than a bona fide full time employee of the Bidder has been retained or hired to solicit for or in any way assist the Bidder in obtaining the contract for services upon an agreement or understanding that such person, corporation, or entity be paid a fee or other compensation contingent upon the award of the contract to the Bidder.

Name and Title of Individual Submitting Bid

Signature

Date

APPENDIX B

PRICE PROPOSAL

The total unit price inclusive of the voting machine, itself, delivery, set-up, testing, training, warranties, and all other costs associated with the making the voting machines available for use by the town shall be:

Written Words

Numerical

The total amount to be paid to the vendor for all voting machines purchased by the town shall be the product of the unit price as stated above, times the number of voting machines purchased.

This price shall remain firm for no less than 120 days from the date of the deadline for the RFP.

Signature: _____

Title: _____

Company Name: _____

Address: _____

APPENDIX C

CERTIFICATE OF ACCEPTANCE

I, Elizabeth M. Lawrenson, in my capacity as Town Clerk for the Town of Wilmington do certify that the town has received _____ voting machines on _____ and that I

(number)

(date)

have inspected the units, have observed the testing of each unit by a representative of the supplier of the voting machines and find the voting machines to be in good condition, absent of any visible defects and to be fully operational in accordance with their specifications. Based upon my observations I accept delivery of the voting machines. This acceptance in no way waives any manufacturer's warranties or other warranties or guarantees that are provided by the vendor who is supplying the voting machines.

Elizabeth M. Lawrenson, Town Clerk

Date

APPENDIX D

TOWN OF WILMINGTON
SAMPLE AGREEMENT

TOWN OF WILMINGTON, MASSACHUSETTS

SAMPLE AGREEMENT

THIS AGREEMENT made this ____ day of _____, 20__ by and between the TOWN of _____, a municipal corporation duly organized under the laws of Massachusetts and having a usual place of business at _____, Massachusetts, hereinafter referred to as the "TOWN", and _____, a _____ corporation having a usual place of business at _____, hereinafter referred to as the "CONTRACTOR".

WITNESSETH:

WHEREAS, the TOWN invited the submission of proposals for the purchase and delivery of _____, hereinafter "the Project"; and

WHEREAS, the CONTRACTOR submitted a Proposal to perform the work required to complete the Project; and

WHEREAS, the TOWN has decided to award the contract therefor to the CONTRACTOR.

NOW, THEREFORE, the TOWN and the CONTRACTOR agree as follows:

1. CONTRACT DOCUMENTS. The Contract Documents consist of this Agreement, the Invitation to Bid, Instructions to Bidders and the CONTRACTOR's Proposal. The Contract Documents constitute the entire Agreement between the parties concerning the work, and all are as fully a part of this Agreement as if attached hereto.
2. THE WORK. The Work consists of _____, as more fully described in the Contract Documents as defined above.
3. TERM OF CONTRACT. This Agreement shall be in effect from _____ and shall expire on _____, unless terminated earlier pursuant to the terms hereof.
4. COMPENSATION.
 - A. The TOWN shall pay the CONTRACTOR as full compensation for the performance of the work outlined in Section 2 above the contract sum of \$_____.
 - B. The acceptance by the CONTRACTOR of final payment for items and/or services provided shall be deemed a release of the TOWN from any and all claims and liabilities under this Agreement.
 - C. Neither the TOWN's review, approval or acceptance of, nor payment for any of the items and/or services provided shall be construed to operate as a waiver of any rights of the TOWN under the Agreement or any cause of action arising out of the performance of the Agreement.
 - D. The TOWN shall cancel this Agreement if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal year succeeding the current fiscal year as required by G.L. c. 30B, sec. 12(c)(3).
5. PAYMENT OF COMPENSATION. The TOWN shall make payments within thirty (30) days after its receipt of Invoice.

6. LIABILITY OF THE TOWN. The TOWN's liability hereunder shall be to make all payments when they shall become due, and the TOWN shall be under no further obligation or liability. Nothing in this Agreement shall be construed to render the TOWN or any elected or appointed official or employee of the TOWN, or their successors in office, personally liable for any obligation under this Agreement.
7. INDEPENDENT CONTRACTOR. The CONTRACTOR acknowledges and agrees that it is acting as an independent contractor for all work and services rendered pursuant to this Agreement, and shall not be considered an employee or agent of the TOWN for any purpose.
8. INDEMNIFICATION. The CONTRACTOR shall indemnify, defend, and hold the TOWN harmless from and against any and all claims, demands, liabilities, actions, causes of actions, costs and expenses, including attorney's fees, arising out of the CONTRACTOR's breach of this Agreement or the negligence or misconduct of the CONTRACTOR, or the CONTRACTOR's agents or employees.
9. INSURANCE.
- A. The CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the insurance coverage in companies licensed to do business in the Commonwealth of Massachusetts, and acceptable to the TOWN, as set forth below:
- General Liability
Bodily Injury Liability \$1,000,000 per occurrence
Property Damage Liability \$ 500,000 per occurrence (or
combined single limit) \$1,000,000 per occurrence
- Automobile Liability
Bodily Injury Liability \$1,000,000 per occurrence
Property Damage Liability \$ 500,000 per occurrence (or
combined single limit) \$1,000,000 per occurrence
- Workers' Compensation Insurance
Coverage for all employees in accordance with Massachusetts General Laws
- Professional Liability Insurance
Minimum Coverage \$1,000,000 per occurrence
- B. All policies shall identify the TOWN as an additional insured (except Workers' Compensation) and shall provide that the TOWN shall receive written notification at least 30 days prior to the effective date of any amendment or cancellation. Certificates evidencing all such coverages shall be provided to the TOWN upon the execution of this Agreement. Each such certificate shall specifically refer to this Agreement and shall state that such insurance is as required by this Agreement. Failure to provide or to continue in force such insurance shall be deemed a material breach of this Agreement and shall be grounds for immediate termination.
10. 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 Agreement, except by and with the written consent of the TOWN.

11. TERMINATION. A. Termination for Cause. If at any time during the term of this Agreement the TOWN determines that the CONTRACTOR has breached the terms of this Agreement by negligently or incompetently performing the work, or any part thereof, or by failing to perform the work in a timely fashion, or by failing to perform the work to the satisfaction of the TOWN, or by not complying with the direction of the TOWN or its agents, or by otherwise failing to perform this Agreement in accordance with all of its terms and provisions, the TOWN shall notify the CONTRACTOR in writing stating therein the nature of the alleged breach and directing the CONTRACTOR to cure such breach within ten (10) days. The CONTRACTOR specifically agrees that it shall indemnify and hold the TOWN harmless from any loss, damage, cost, charge, expense or claim arising out of or resulting from such breach regardless of its knowledge or authorization of the actions resulting in the breach. If the CONTRACTOR fails to cure said breach within ten (10) days, the TOWN may, at its election at any time after the expiration of said ten (10) days, terminate this Agreement by giving written notice thereof to the CONTRACTOR specifying the effective date of the termination. Upon receipt of said notice, the CONTRACTOR shall cease to incur additional expenses in connection with this Agreement. Upon the date specified in said notice, this Agreement shall terminate. Such termination shall not prejudice or waive any rights or action which the TOWN may have against the CONTRACTOR up to the date of such termination, and the CONTRACTOR shall be liable to the TOWN for any amount which it may be required to pay in excess of the compensation provided herein in order to complete the work specified herein in a timely manner. Upon such termination, the CONTRACTOR shall be entitled to compensation for all satisfactory work completed prior to the termination date, as determined by the TOWN.
- B. Termination for Convenience. The TOWN may terminate this Agreement at any time for convenience by providing the CONTRACTOR written notice specifying therein the termination date which shall not be sooner than ten days from the issuance of said notice. Upon receipt of said notice, the CONTRACTOR shall cease to incur additional expenses in connection with this Agreement. Upon such termination, the CONTRACTOR shall be entitled to compensation for all satisfactory work completed prior to the termination date, as determined by the TOWN, such payment not to exceed the fair value of the services provided hereunder.
12. INSPECTION AND REPORTS. The TOWN shall have the right at any time to inspect the work of the CONTRACTOR, including the right to enter upon any property owned or occupied by CONTRACTOR, whether situated within or beyond the limits of the TOWN. Whenever requested, CONTRACTOR shall immediately furnish to the TOWN full and complete written reports of its operation under this Contract in such detail and with such information as the TOWN may request.
13. ROYALTIES AND PATENTS. The CONTRACTOR shall pay all applicable royalties and license fees. In addition, the CONTRACTOR hereby represents that it is duly authorized to use any process or other intellectual property rights held by third parties in the performance of this Agreement, it shall defend all suits or claims for infringement of any patent or other intellectual property rights and shall indemnify and hold the TOWN harmless from loss on account thereof.
14. SUCCESSOR AND ASSIGNS. This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither the TOWN nor the CONTRACTOR shall assign or transfer any interest in the Agreement without the written consent of the other.
15. COMPLIANCE WITH LAWS. The CONTRACTOR shall comply with all Federal, State and local laws, rules, regulations and orders applicable to the work provided pursuant to this Agreement, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the performance of such work.

16. NOTICE. Any and all notices, or other communications required or permitted under this Agreement, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at the addresses set forth on Page 1 or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service.
17. SEVERABILITY. If any term or condition of this Agreement 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 Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.
18. GOVERNING LAW. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and the CONTRACTOR submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.
19. ENTIRE AGREEMENT. This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement 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 hereto have executed this Agreement on the day and year first above written.

I certify that an appropriation
is available in the amount of this
Contract.

TOWN OF WILMINGTON, MA

By its: Town Manager

Finance Director

Jeffrey M. Hull

Approved as to Form:

CONTRACTOR:

Town Counsel

(Signature)

(Name and Title)

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