

CITY – VENDOR AGREEMENT

THIS AGREEMENT made this 1st day of January in the year 2023 by and between the CITY OF MALDEN, a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, hereinafter referred to as the CITY, acting through its Chief Procurement Officer, but without personal liability to him, and HAYNER SWANSON, INC. hereinafter referred to as the VENDOR.

The parties hereto for the considerations hereinafter set forth agree as follows:

- I. SCOPE OF WORK.** The VENDOR shall furnish all labor, materials and equipment, and perform all work required in strict accordance with the Contract Documents for the following project **ON CALL CIVIL ENGINEERING SERVICES.**
- II. CONTRACT DOCUMENTS.** The Contract documents consist of the following documents which are either attached to this Agreement or are incorporated herein by referenced:
- This CITY-VENDOR Agreement;
 - The City's Request For Proposals issued by the Office of Strategic Planning and Community Development;
 - The RFP Project Manual for **ON CALL CIVIL ENGINEERING SERVICES** including the Instructions to Bidders; General Conditions; Special Conditions; MWBE/AA Requirements, Wage Rate Requirements and Wage Rate Schedule(s) including any updated prevailing wage rate schedules if applicable; The Supplementary Special Conditions; General Requirements and Project Specifications; and Drawings, if included or referenced therein;
 - Addenda Number(s) _____
 - The Proposal Response of the VENDOR submitted and accompanying documents & certifications;
 - Certificate(s) of Insurance and surety bond(s) submitted by the VENDOR in connection with this Project;
 - Duly authorized and executed Amendments, Work Orders, or Change Orders issued by the CITY after execution of this CITY-VENDOR Agreement.
- This CITY-VENDOR Agreement, together with the other documents enumerated in this Article, constitute the entire Agreement between the CITY and the VENDOR. The VENDOR represents that its bid was made without condition, qualification or reservation, except upon the written acknowledgement and consent of the CITY.
- III. PRIORITY OF DOCUMENTS.** In the event of inconsistency between the terms of this CITY -VENDOR Agreement and the RFP Project Manual, the terms of this Agreement shall prevail.
- IV. APPLICABLE STATUTES.** All applicable federal, state and local laws and regulations are incorporated herein by reference and the VENDOR agrees to comply with same.
- V. CONTRACT TERM.** The term of this contract shall extend through **1/1/2026.**
- VI. AUTHORIZATION OF AND PAYMENT FOR WORK PERFORMED.** The execution of this contract does not constitute a notice to proceed or authorization to perform work. No work shall be commenced unless authorized by a written Work Order prepared by City of Malden specifying the work to be performed. The VENDOR will be paid for work performed in accordance with the provisions contained in the RFP Project Manual and applicable state law.
- VII. RESPONSIBILITY FOR THE WORK/INDEMNIFICATION.** The VENDOR shall take all responsibility for the work and shall take all precautions for preventing injuries to persons and property in or about the work

and shall indemnify and hold the City harmless from all loss, cost, damage or expense arising from injuries to persons or property in or about the work. The **VENDOR** shall be responsible for any damage which may be caused by the failure or insufficiency of any temporary works. He shall effectively protect his work and shall be liable for all damage and loss by delay or otherwise caused by his neglect or failure so to do

- VIII. WARRANTY.** Except as may be otherwise provided in the RFP Project Manual, the **VENDOR** shall replace, repair or make good, without cost to the City, any defects or faults arising within one (1) year after date of acceptance of work and materials furnished hereunder (acceptance not to be unreasonably delayed) resulting from imperfect or defective work done or materials furnished by the **VENDOR**.
- IX. PATENT INDEMNIFICATION.** The **VENDOR** agrees to indemnify and save harmless the City and all persons acting for or on behalf of it from all suits and claims against them, or any of them, arising from or occasioned by the use of any material, equipment or apparatus, or any part thereof which infringes or is alleged to infringe on any patent rights. In case such material, equipment or apparatus, or any part thereof, in any such suit is held to constitute infringement, the **VENDOR**, within a reasonable time, shall at its own expense, and as the City may elect, replace such material, equipment or apparatus with non-infringing material, equipment or apparatus, or remove the material, equipment, or apparatus and refund the sums paid therefor.
- X. ASSIGNMENT/SUB-CONTRACTING.** The **VENDOR** agrees that he will not sell, assign or transfer this Contract or any part thereof or interest therein without the prior written consent of the City.
- XI. TERMINATION.** If the work to be done under this Contract shall be abandoned, or if this Contract or any part thereof shall be assigned or transferred, without the previous written consent of the City, or if the Contract or any claim hereunder shall be assigned by the **VENDOR** otherwise than as herein specified, or if at any time the City determines that the conditions herein specified as to the rate of progress are not fulfilled, or that the work or any part thereof, is unnecessarily or unreasonably delayed, or that the **VENDOR** has violated any of the provisions of this Contract, the City may terminate this Contract and/or notify the **VENDOR** to discontinue such work or such part thereof as the City may designate, and the City may thereupon by agreement or otherwise, as it may determine, complete the work, or any part thereof; and for such completion the City for itself or for its **VENDOR** may take possession of and use or cause to be used in the completion of the work thereof any of such materials, apparatus, machinery, implements, and tools of every description as may be found upon said work. Termination pursuant to this paragraph shall not entitle the **VENDOR** to any claim for damages on account thereof, nor shall it relieve the **VENDOR** of any liability under this Contract.
- XII. GOVERNING LAW.** This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
- XIII. SEVERABILITY.** The provisions of this Contract are severable. If any section, paragraph, clause or provision of this Contract shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Contract shall be unaffected by such adjudication and all of the remaining provisions of this Contract shall remain in full force and effect as though such section, paragraph, clause or provision, or any part thereof so adjudicated to be invalid, had not been included herein, unless such remaining provisions, standing alone, are incomplete and incapable of being executed in accordance with the intent of the parties to this Contract.
- XIV. AMENDMENTS TO THIS CONTRACT.** This Contract may not be amended except in writing executed in the same manner as this CITY-VENDOR Agreement.

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

CITY OF MALDEN, MASSACHUSETTS

By and through its Mayor:

By: [Signature] 03/28/23
Gary Christenson, Mayor Date

Approved as to Form:

By: [Signature]
City Solicitor Date 3/30/23

Certification as to the Availability of Funds:

By: Charles Ranaghan 04/04/23
Charles Ranaghan, City Controller Date

Purchase Order # _____

By: Deborah A. Burke
Deborah A. Burke, Director, OSPCD Date
Executive Director, Malden Redevelopment Authority

ON CALL CIVIL ENGINEERING SERVICES,
HAYNER SWANSON, INC

By*: [Signature] 3/27/23
Date

John C Vancor
Print Name

**My signature above certifies that I am duly
authorized, or that I have attached a signed Certificate
of Vote from my Board of Directors giving me
authority, to sign this Contract.*

STANDARD CONTRACT GENERAL CONDITIONS

CITY OF MALDEN

1. DEFINITIONS

"City" sometimes referred to as the Owner, shall mean the City of Malden, Massachusetts.

"Contract" and "Contract Documents" shall include the following documents, as applicable: City's Standard Contract Form; these Standard Contract General Conditions; City's Invitation for Bids, Request for Proposals, Request for Quotation, or other solicitation; the Vendor's response to the City's solicitation document including certifications but excluding any language stricken by City as unacceptable. Appendices are made an integral part of this Contract. The Contract documents are to be read collectively and complementary to one another; any requirement under one shall be as binding as if required by all. In the event of any conflict or inconsistency between the provisions of the City's Standard Contract Form or these Standard Contract General Conditions and any other Contract Documents or appendices, the provisions of the City's Standard Contract Form and/or these Standard Contract General Conditions shall prevail. In the event of any conflict or inconsistency between the Contract Documents and any applicable state law, the applicable state law shall prevail.

"VENDOR" The VENDOR sometimes referred to as the General VENDOR, Vendor, Offeror, and/or Provider, is the person or entity identified as such throughout the Contract Documents as if singular in number. The term VENDOR means the VENDOR or its authorized representative. The VENDOR shall supervise and direct the Work, using the VENDOR's best skill and attention. The VENDOR shall be solely responsible for and have control over means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, limited to the extent to which consultant is directly responsible for.

"Certify" or "Certifies" shall mean that the Vendor certifies under pains and penalties of perjury to the statement referenced.

"Vendor" shall mean the individual, corporation, partnership, or other entity which is a party to this Contract.

2. PERFORMANCE; TIME

The Vendor shall perform in accordance with all provisions of this Contract in a manner satisfactory to the City. The Vendor's performance shall be timely and meet or exceed industry standards for the performance required. It is understood and agreed that all specified times or periods of performance are of the essence of this Contract.

3. ACCEPTANCE OF GOODS OR SERVICES AND RIGHTS TO INVENTIONS

Performance under this Contract shall include services rendered, obligations due, costs incurred, goods and deliverables provided and accepted by the City. The City shall have a reasonable opportunity to inspect all goods and deliverables, services performed by, and work product of the Vendor, and accept or reject same. The Owner's inspection of the Work shall not relieve the VENDOR of any of its responsibilities to fulfill the Contract obligations, and defective work shall be corrected without cost to the Owner. Unsuitable work may be rejected by the Owner, notwithstanding that such work and materials have been previously overlooked or misjudged by the Owner and accepted for payment. If the Work or any part thereof shall be found defective at any time before the final acceptance of the whole Work, the VENDOR shall forthwith correct such defect in a manner satisfactory to the Owner, and if any material brought upon the site for use in the Work, or selected for the same, shall be rejected by the Owner as unsuitable or not in conformity with the Contract requirements, the VENDOR shall forthwith remove such materials from the vicinity of the Work.

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

4. COMPENSATION

The City shall pay in full and complete compensation for goods received and accepted and services performed and accepted under this Contract in an amount not to exceed the amount stated on the face of this Contract paid in accordance with the rate indicated or in accordance with a prescribed payment schedule.

The Vendor shall periodically submit invoices to the City, for which compensation is due under this Contract and requesting payment for goods received or services rendered by the Vendor during the period covered by the invoice. The invoice must agree to the rates/payment schedule as indicated in this contract. The invoice shall include the following information: vendor name, vendor remit address, invoice date, invoice number, itemized listing of goods, services, labor, and expenses and indicating the total amount due. The City shall review the invoice and determine the value of goods or services accepted by the City in accordance with the Contract Documents. Payments due to the Vendor will be made within sixty (60) days from receipt and approval of an invoice. Final invoices from the Vendor are due no later than ninety (90) days from the Completion Date. Any invoice received past the ninety (90) day date will not be paid. If this Contract is extended, invoices related to the extension period are due no later than ninety (90) days from the Extended Completion Date.

In case of an error in extension prices quoted herein, the unit price will govern (Applicable To Goods Only).

5. RELEASE OF CITY ON FINAL PAYMENT

Acceptance by the Vendor of payment from the City for final delivery of goods or rendering of services under this Contract shall be deemed to release forever the City from all claims and liabilities, except those which the Vendor notifies the City in writing within three (3) months after such payment.

6. RISK OF LOSS

The Vendor shall bear the risk of loss, for any cause, for any Vendor materials used for this Contract and for all goods, deliverables, and work in process, until possession, ownership, and full legal title to the goods and deliverables are transferred to and accepted by the City.

The Vendor shall pay and be exclusively responsible for all debts for labor and material contracted for by the Vendor for the rental of any appliance or equipment hired by Vendor and/or for any expense incurred on account of services to be performed or goods delivered under this Contract.

7. INDEMNIFICATION

The Vendor shall indemnify and hold harmless the City of Malden, its officers, employees, agents and representatives from and against claims, suits, liabilities, losses, damages, costs or expenses (including judgements, costs, interest, attorney's fees and expert's fees) to the extent caused by the Vendor from negligent acts in the performance of professional services under this agreement.

8. DEFAULT; TERMINATION; REMEDIES (In conformity with 2 CFR Pt. 200, App. II (A,B))

A. Events of Default

The following shall constitute events of default under this Contract: (1) The Vendor has made any material misrepresentation to the City; or (2) a judgment or decree is entered against the Vendor approving a petition for an arrangement, liquidation, dissolution or similar relief relating to bankruptcy or insolvency; or (3) the Vendor files a voluntary petition in bankruptcy or any petition or answer seeking any arrangement, liquidation or dissolution relating to bankruptcy, insolvency or other relief for debtors; or (4) the Vendor seeks or consents or acquiesces in the appointment of any trustee or receiver, or is the subject of any other proceeding under which a court assumes custody or control over the Vendor or of any of the Vendor's property; or (5) the Vendor becomes the defendant in a levy of an attachment or execution, or a debtor in an assignment for the benefit of creditors; or (6) the Vendor is involved in a winding up or dissolution of its corporate structure; or (7) any failure by the Vendor 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 Vendor'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 Vendor's reasonable control, (iii) failure to perform this Contract in a manner reasonably satisfactory to the City, (iv) failure to promptly re-perform within reasonable time the Services or Supplies that were properly rejected by the City as erroneous or unsatisfactory, (v) discontinuance of the Services or Supplies for reasons not beyond the Vendor's reasonable control, (vi) failure to comply with a material term of this Contract, including, but not limited to, the provision of insurance and nondiscrimination; or (8) any other acts specifically and expressly stated in this Contract as constituting a basis for termination of this Contract.

B. Termination upon Default.

In the event of a default by the Vendor, the City, acting through its Chief Procurement Officer, may, at its option, terminate this Contract immediately by written notice of termination specifying the termination date.

Notwithstanding the above, in the event of a default by the Vendor, the City, acting through its Chief Procurement Officer, may give notice in writing of a default, which notice shall set forth the nature of the default and shall set a date, by which the Vendor shall cure the default, subject to approval of the City.

If the Vendor fails to cure the default, the City, in the alternative, may make any reasonable purchase or contract to acquire goods or services in substitution for those due from Vendor. The City may deduct the cost of any substitute contract or nonperformance together with incidental and consequential damages from the Contract price and shall withhold such damages from sums due or to become due to the Vendor. If the damages sustained by the City exceeds the sums due or to become due the Vendor shall pay the difference to the City upon demand.

Upon immediate notification to the other party, neither the City nor the Vendor shall be deemed to be in default for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Sub VENDOR failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the VENDOR's control. The City retains all rights and remedies at law or in equity.

If the Vendor fails to cure the default within the time as may be required by the notice, the City, acting through its Chief Procurement Officer, may, at its option terminate the Contract.

The parties agree that if City erroneously or unjustifiably terminates this Contract for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

C. Termination for Convenience.

Notwithstanding any language to the contrary within this Contract, the City, acting through its Chief Procurement Officer, may terminate this Contract, without cause at any time, effective upon the termination date stated in the notice of termination. In the event of termination for convenience, the Vendor shall be entitled to be paid for goods delivered and accepted and services rendered and accepted prior to notice of termination at the prices stated in the Contract, subject to offset of sums due the Vendor against sums owed by the Vendor to the City. Any goods or services delivered after notification of termination but prior to the effective termination date must be approved in writing in advance by the City in order to be eligible for payment. In no event shall the Vendor be entitled to be paid for any goods or services delivered after the effective date of termination. The Vendor shall be entitled to no other compensation of any type. In no case shall a Vendor be entitled to lost profits.

D. Obligations upon Termination.

Upon termination of this Contract with or without cause, the Vendor shall immediately, unless otherwise directed by the City: 1. cease performance upon the stated termination date; 2. surrender to the City the Vendor's work product, which is deliverable under the Contract, whatever its state of completion; and 3. return all tools, equipment, finished or unfinished documents, data, studies, reports, correspondence, drawings, plans, models, or any other items whatsoever prepared by the Vendor pursuant to this Contract, which shall become property of the City, or belonging to or supplied by the City.

E. Rights and Remedies.

The City shall have the right to: a) disallow all or any part of the Vendor's invoices not in material compliance with this Contract; b) temporarily withhold payment pending correction by the Vendor of any deficiency; c) sue for specific performance or money damages or both, including reasonable attorneys' fees and costs incurred in enforcing any Vendor obligations hereunder; d) pursue remedies under any bond provided; and e) pursue such other local, state and federal actions and remedies as may be available to the City.

Any termination shall not effect or terminate any of the rights or remedies of the City as against the Vendor then existing, or which may accrue because of any default. No remedy referred to in this subsection is intended to be exclusive, but shall be cumulative, and in addition to any other remedy referred to above or otherwise available to the City or Vendor at law or in equity. The Vendor shall not gain nor assert any right, title or interest in any product produced by the Vendor under this Contract.

9. INSURANCE

The Vendor shall comply with all insurance requirements set out in the Contract Documents. The Vendor shall deliver to the City new certificates of insurance at least ten (10) calendar days prior to expiration of the prior insurance and shall furnish the City with the name, business address and telephone number of the insurance agent.

The Vendor certifies compliance with applicable state and federal employment laws or regulations including but not limited to G.L. c. 152 (Workers' Compensation), as applicable, and Vendor shall provide City with acceptable evidence of compliance with the insurance requirements of this chapter. The Owner shall be named as additional insureds on the VENDOR's Liability Policies.

Unless otherwise required in the contract documents, the VENDOR shall provide, at a minimum, insurance coverage as listed below. This insurance shall be provided at the VENDOR's expense and shall be in full force and effect during the full term of this Contract.

Commercial General Liability Coverage and Limits

General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$1,000,000
Personal and Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage Legal Liability	\$ 300,000
Medical Expenses	\$ 10,000

Commercial Automobile Liability Coverage and Limits

Bodily Injury/Property Damage Combined Single Limit	\$1,000,000
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Commercial Umbrella Coverage and Limits

Minimum Limits	
Each Occurrence	\$5,000,000
Annual Aggregate	\$5,000,000
Self-Insured Retention	\$ 10,000

The vendor agrees to provide "Workman's Compensation" insurance for payment of compensation and the furnishing of other benefits in accordance with the provisions of Chapter 152 of the General Laws, Tercentenary Edition, to persons employed directly by the Vendor under this contract and shall continue such insurance in full force and effect during the term of the contract and amendments thereto. Coverage is required for owners of businesses operating as Partnerships or Sole proprietorships. Employer liability limits for the following will be:

Each Accident	\$ 500,000
Aggregate for disease	\$ 500,000
Disease for employee	\$ 500,000

The VENDOR shall not commence work until proof of compliance with this Section has been furnished to the Owner by submitting one copy of a properly endorsed insurance certificate issued by a company authorized to write insurance in the Commonwealth. This certificate shall indicate that the contractual liability coverage is in force.

The VENDOR shall file the original and one certified copy of all policies with the Owner within fifteen (15) days after contract award. The VENDOR shall not execute any contract award documents until applicable insurance is in full effect. If the Owner is damaged by the VENDOR's failure to maintain such insurance and to so notify the Owner, then the VENDOR shall be responsible for all reasonable costs attributable thereto.

10. GOVERNING LAW; FORUM

This Contract shall be governed by the laws of the Commonwealth of Massachusetts. Any action arising out of this Contract shall be brought and maintained in Massachusetts which shall have exclusive jurisdiction thereof, and exclusive venue shall be the Massachusetts Superior Court; all other venues expressly waived by the parties.

11. COMPLETE AGREEMENT

This Contract supersedes all prior agreements and understandings between the parties and may not be changed unless mutually agreed upon in writing by both parties.

12. AMENDMENT AND CHANGES

No amendment to this Contract shall be effective unless it is signed by the authorized representatives of all parties and complies with all requirements of the law. All alterations or additions, material or otherwise, to the terms and conditions of this Contract must be in writing and signed by the City, as set forth in the below section, and the Vendor.

13. CONDITIONS OF ENFORCEABILITY AGAINST THE CITY

This Contract is only binding upon, and enforceable against, the City if: (1) the Contract is signed by the Mayor; (2) endorsed with approval by the City Controller as to appropriation or availability of funds; and (3) endorsed with approval by the City Solicitor as to form.

This Contract and payments hereunder are subject to the availability of an appropriation therefor. Any oral or written representations, commitments, or assurances made by any City representatives are not binding. Vendors should verify funding and contract execution prior to beginning performance.

Purchase Orders shall be the sole basis to establish authorization to proceed with work. No other oral or written representations, commitments, or assurances by any City representative with respect to authorizing the performances of work shall be binding.

When the amount of the City Controller's certification of available funds is less than the face amount of the Contract, the City shall not be liable for any claims or requests for payment by Vendor which would cause total claims or payments under this Contract to exceed the amount so certified.

The City's Standard Contract Form and Standard Contract General Conditions shall supersede any conflicting verbal or written agreements or forms relating to the performance of this Contract, including contract forms, purchase orders, or invoices of the Vendor.

The City shall have no legal obligation to compensate a Vendor for performance that is outside the scope of this Contract. The City shall make no payment prior to the execution of a Contract.

14. TAXES

Purchases incurred by the City are exempt from Federal Excise Taxes and Massachusetts Sales Tax, and prices must exclude any such taxes. Tax Exemption Certificates will be furnished upon request. The City of Malden's Massachusetts Tax Exempt Number is: E046-001-398. A "Form ST-5C" is available upon request.

15. INDEPENDENT VENDOR

The Vendor is an independent VENDOR and is not an employee, agent or representative of the City. The City shall not be obligated under any contract, subcontract, or commitment made by the Vendor.

16. ASSIGNMENT; SUB-CONTRACT

The Vendor shall not assign, delegate, subcontract, or transfer this Contract or any interest herein, without the prior written consent of the City.

17. DISCRIMINATION AND EQUAL OPPORTUNITY (In conformity with 2 CFR Pt. 200, App. II (C))

The Vendor agrees to comply with all applicable laws prohibiting discrimination in employment. The Vendor agrees that it shall be a material breach of this Contract for the Vendor to engage in any practice which shall violate any provision of G.L. c. 151B, as well as Title VI of the Civil Rights Act of 1964; relative to discrimination in hiring, discharge, compensation or terms, conditions or privileges of employment because of, but not inclusive of, race, color, religious creed, national origin, sex, sexual orientation, age, family status, gender identity, marital status, or ancestry.

Furthermore, during the performance of this contract, the VENDOR agrees as follows 'Equal opportunity clause;'

(1) The VENDOR will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The VENDOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, 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 forms of compensation; and selection for training, including apprenticeship. The VENDOR agrees to post in

conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The VENDOR will, in all solicitations or advertisements for employees placed by or on behalf of the VENDOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The VENDOR will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the VENDOR's legal duty to furnish information.

(4) The VENDOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the VENDOR's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The VENDOR will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The VENDOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the VENDOR's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the VENDOR may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The VENDOR will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subVENDOR or vendor. The VENDOR will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the VENDOR becomes involved in, or is threatened with, litigation with a subVENDOR or vendor as a result of such direction, the VENDOR may request the United States to enter into such litigation to protect the interests of the United States.

18. WAIVER

All duties and obligations contained in this Contract can only be waived by written agreement. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor does it in any way limit the legal or equitable remedies available to the City.

19. SEVERABILITY

In the event that any provision of this Contract shall be held to be illegal, unenforceable or void, such provision shall be severed from this Contract and the entire Contract shall not fail on account thereof, but otherwise remain in full force and effect and shall be enforced to the fullest extent permitted by law.

20. NOTICE

The parties shall give notice in writing by one of the following methods: (i) hand-delivery; (ii) facsimile; (iii) certified mail, return receipt requested; or (iv) overnight delivery service, to the Vendor at the contact information specified on the face of this Contract; to the City addressed to: Office of the Controller, 215 Pleasant Street, 2nd Floor, Malden, MA 02148. Notice shall be effective on the earlier of (i) the day of actual receipt, or (ii) one day after tender of delivery.

21. CAPTIONS

The captions of the sections in this Contract are for convenience and reference only and in no way define, limit or affect the scope or substance of any section of this Contract.

22. NON-COLLUSION (In conformity with 2 CFR Pt. 200, App. II (J))

This Contract was made without collusion or fraud with any other person and was in all respects bona fide and fair. As used in this paragraph, the word, "person," shall mean any natural person, joint venture, partnership, corporation, or other business or legal entity. The Vendor 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.

Furthermore, the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) is in effect for all contracts exceeding \$100,000. Federal funds shall not be used to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Vendor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

23. TAX AND CONTRIBUTIONS COMPLIANCE

The Vendor certifies, under pains and penalties of perjury, in accordance with MGL c. 62C, s. 49A, that the Vendor is in full compliance with all law; of the Commonwealth of Massachusetts relating to taxes, is in good standing with respect to all returns due and taxes payable to the Commonwealth, reporting of employees and VENDORS, and withholding and remitting of child support and to contributions and payments in lieu of taxes. In the event that the City is notified by the IRS that the TIN provided by the vendor and the vendor name as recognized by the IRS do not match their records, the vendor is responsible for all penalties.

24. MUNICIPAL TAXES, CHARGES AND LIENS

The Vendor certifies that it has paid all accounts receivable owed to the City of Malden, including but not limited to real estate, personal property or excise tax, parking fines, water/sewer charges, license/permit fees, fines and/or any other municipal lien charges due to the City of Malden. Pursuant to MGL c. 60, s. 93, the Vendor agrees that the Collector/Treasurer of the City may withhold from amounts owing and payable to the Vendor under this Contract any sums owed to any department or agency of the City which remain wholly or partially unpaid. This shall include but not be limited to unpaid taxes and assessments, police details, and any other fees and charges until such sums owed have been fully paid, and the Collector/Treasurer may apply any amount owing and payable to the Vendor to satisfy any monies owed to the City.

The VENDOR is prohibited from placing a lien on the City's property. This prohibition shall apply to all sub-contracts at any tier and all materials suppliers

25. COMPLIANCE WITH APPLICABLE LAWS (In conformity with 2 CFR Pt. 200, App. II (G))

The Vendor shall comply with all applicable federal and state laws, and city ordinances and regulations, which in any manner affect performance of this Contract. The Vendor shall indemnify, and hold harmless the City, its officers, agents and employees against any claim or liability arising from or based on the violations of such ordinances, regulations or laws, caused by the negligent actions of the Vendor, its agents, employees or sub-contracts. Vendor must also abide by the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended, and be in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

26. CONFLICT OF INTEREST

The Vendor certifies that no official or employee of the City has a financial interest in this Contract or in the expected profits to arise therefrom, unless there has been compliance with the provisions of G. L. c. 43, § 27 (Interest in Public Contracts by Public Employees), and G. L. c. 268A (Conflict of Interest). The Vendor certifies that it has reviewed the Massachusetts

Conflict of Interest Law, MGL c. 268A and at any time during the term of this Contract, the Vendor is required to affirmatively disclose in writing to the City the details of any potential conflicts of interest of which the Vendor has knowledge or learns of during the Contract term.

27. LICENSES AND PERMITS

The Vendor certifies that it is qualified to perform the Contract and shall obtain and possess at its sole expense, all necessary licenses, permits, or other authorizations required by the City, the Commonwealth of Massachusetts or any other governmental agency, for any activity under this Contract. The Vendor shall submit copies of such licenses and/or permits to the City upon request. If a business, the Vendor certifies that it is a duly organized and validly existing entity, licensed to do business in Massachusetts, in good standing in the Commonwealth of Massachusetts, with full power and authority to consummate the Contract, and listed under the Commonwealth of Massachusetts Secretary of State's website as required by law.

28. RECORDKEEPING, AUDIT, AND INSPECTION OF RECORDS (In conformity with 2 CFR Pt. 200, App. II (K))

All records, work papers, reports, questionnaires, work product, regardless of its medium, prepared or collected by the Vendor in the course of completing the work to be performed under this Contract shall at all times be the exclusive property of the City. In the event of termination or upon expiration of the Contract, the VENDOR shall promptly deliver to the City all documents, work papers, calculations, data, drawings, plans, and other tangible work product or materials pertaining to the services performed under this Contract, in both a physical format and electronic format. The electronic format shall be either Comma Separated Values (CSV) files along with the mapping information for each field, or such other electronic format(s) acceptable to the city. At no additional cost to the City, the VENDOR shall store and preserve such records while in their possession in accordance with the requirements of the Massachusetts Public Records Law, the Commonwealth of Massachusetts record retention schedule, and City of Malden record retention schedule. The City shall have the right to at reasonable times and upon reasonable notice to examine and copy, at its reasonable expense, the books, records, and other compilations of data of the Vendor which relates to the provision of services under this Contract. Such access shall include on-site audits, review, and copying of said records.

The vendor must also abide by 2 CFR § 200.338, Restrictions on public access to records, 2 CFR § 200.322 - Domestic preferences for procurements, and prohibition on certain telecommunications and video surveillance services or equipment (2 C.F.R. § 200.216.)

29. DEBARMENT, SUSPENSION, SAFETY STANDARDS & PREVAILING WAGES (In conformity with 2 CFR Pt. 200, App. II (D,E,H))

The Vendor certifies that it has not been and currently is not debarred or suspended by any federal, state, or municipal governmental agency under G. L. c. 29, § 29F, the Federal Executive Order (E.O.) 12549 "Debarment and Suspension," or other applicable law, nor will it contract with a debarred or suspended subVENDOR on any public contract. The Prevailing Wage Law, both State, MGL c.149, is applicable and the vendor must follow the more restrictive law.

Furthermore, when required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, VENDORS must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, VENDORS must be required to pay wages not less than once a week. The vendor must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The vendor must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "VENDORS and Sub-contracts on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each VENDOR or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The vendor must report all suspected or reported violations to the Federal awarding agency.

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must conform to the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each VENDOR must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

As a matter of ensuring compliance, a vendor receiving federal funds, shall be registered as active on Sam.gov.

30. GUARANTY AND WARRANTY

Warranty: The VENDOR warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner, the VENDOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

General Guaranty: If at any time during the period of one (1) year from the date of Substantial Completion of the Work, to be performed under this Contract, or delivery of goods, any part of the Work shall, in the reasonable determination of the Owner, require replacing or repairing due to the fact that it is broken, defective, or otherwise does not conform to the Contract Documents, the Owner will notify the VENDOR to make the required repairs or replacement. If the VENDOR shall neglect to commence such repairs or replacement to the satisfaction of the Owner within ten (10) days from the date of giving or mailing such notice, then the Owner may employ other persons to make the same.

The VENDOR agrees, upon demand, to pay to the Owner all amounts which the Owner expends for such repairs or replacements. During this one year guarantee period any corrective work shall be performed in accordance with the applicable terms of this Contract. For items of work completed after use and occupancy has been taken, the one year guarantee shall commence at the time the Owner accepts such items. This one year guarantee shall not limit any express guaranty or warranty provided elsewhere in the Contract.

The Vendor warrants that (1) the goods sold are merchantable, (2) that they are fit for the purpose for which they are being purchased, (3) that they are absent any latent defects and (4) that they are in conformity with any sample which may have been presented to the City. The Vendor guarantees that upon inspection, any defective or inferior goods shall be replaced without additional cost to the City. The Vendor will assume any additional cost accrued by the City due to the defective or inferior goods. The Vendor guarantees all goods for a period of no less than one (1) year, unless a greater period of time is specified in the Contract Documents.

31. BONDS

If applicable per MGL the VENDOR shall provide the Owner with a performance and with a payment or labor and materials bond in the form provided by the Owner, executed by a surety company licensed by the Commonwealth of Massachusetts' Division of Insurance. Such bond shall be in an amount equal to at least one half of the Contract price unless otherwise stated in the Contract Documents. All bonds shall be accompanied by a current power of attorney.

32. DISPUTES

"Claim," as used in this section, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under the Contract, unlike a claim relating to the Contract, is a claim that can be resolved under a Contract clause that provides for the relief sought by the claimant. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim by complying with the requirements of this section, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

All disputes arising under or relating to this Contract, including any claims for damages for the alleged breach thereof which are not disposed of by agreement, shall be resolved under this section.

All claims by the VENDOR shall be made in writing and submitted to the City Department managing the contract, for a written decision. A claim by the City against the VENDOR shall be subject to a written decision by said department.

The applicable City Department shall, within thirty (30) days after receipt of the request, decide the claim or notify the VENDOR of the date by which the decision will be made.

The City Department's decision shall be final unless the VENDOR (1) appeals in writing to a higher level in the City, (2) refers the appeal to an independent mediator or arbitrator, or (3) files suit in a court of competent jurisdiction. Such appeal must be made within thirty (30) days after receipt of the Contract Officer's decision.

The VENDOR shall proceed diligently with performance of this Contract and/or any authorized change thereof, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the Contract and/or any authorized change thereof, and comply with any decision of the Department managing the contract.

Order of Precedence: In the event of a conflict between these General Conditions and the Specifications, the General Conditions shall prevail. In the event of a conflict between the Contract and any applicable state or local law or regulation, the state or local law or regulation shall prevail; provided that such state or local law or regulation does not conflict with, or is less restrictive than applicable federal law, regulation, or Executive Order. In the event of such a conflict, applicable federal law, regulation, and Executive Order shall prevail.