



City of  
**GREENFIELD, MASSACHUSETTS**



**Procurement Department**

**Laura Phelps, MCPPO**

**Chief Procurement Officer**

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**21-14 RFP Modular Offices and Fire Fighter Quarters for Temporary Fire Station**

**ADDENDUM #2**

DATE: January 18, 2021

THE ORIGINAL SPECIFICATIONS DATED December 16, 2020 FOR THE ABOVE-NOTED PROJECT ARE AMENDED AS NOTED IN THE ADDENDUM #2

THIS ADDENDUM IS ISSUED FOR THE PURPOSE OF AMENDING THE REQUIREMENTS OF THE CONTRACT DOCUMENTS AND IS HEREBY MADE PART OF THE CONTRACT DRAWINGS AND SPECIFICATIONS TO THE SAME EXTENT AS THOUGH IT WERE FULLY INCORPORATED THEREIN.

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**SAMPLE AGREEMENT**

**Modular Offices and Fire Fighter Quarters for Temporary Fire Station at the intersection of Hope and Prospect Streets, Greenfield, MA**

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Greenfield, Massachusetts, (“Client”) with principal offices at 14 Court Square, Greenfield, MA 01301 and \_\_\_\_\_ (Proposer, Name and address).

1. **Proposer’s Services**

Proposer’s services are described in Attachment A, Scope of Services, which is attached to and made part of this Agreement by reference.

2. **General Conditions**

These General Conditions specify the general understandings, representations, and obligations of the Proposer and Client.

3. Special Conditions

The Scope of Services specifies: 1) the scope and location of the work; 2) the basis of Proposer's compensation; and 3) specific obligations of Proposer and Client which are not part of these General Conditions.

4. Changes in Scope of Services

If Client or Proposer request changes in the Scope of Services, the Parties will, by mutual agreement, execute a written amendment describing the changes to the Scope of Services, project schedule and authorized budget. If the Parties cannot agree to the changed scope of service or budget, Proposer will continue to provide the services initially approved by Client.

5. Time for Performance

- A. The construction schedule is described in the Certification of Completion Date, Attachment B. If Proposer's Services are interrupted, suspended, or delayed for any reason beyond Proposer's reasonable control, the building timeline shall be adjusted accordingly.
- B. Proposer shall not be responsible for consequential damages of any kind or nature caused by such delay in the work.

6. Compensation and Payment

A. Compensation

- 1) Except when indicated otherwise in a written agreement between Client and Proposer, Proposer will invoice all its construction related work in accordance with the submitted Price Summary Form, which is attached to and made part of this Agreement (Attachment C).
- 2) Proposer shall submit invoices for payment on or about the 1<sup>st</sup> of each month, for services rendered the previous month. Client will process all invoices within forty-five (45) days of approval. If Client objects to any portion of the invoice, Client must notify Proposer in writing within ten calendar days from receipt of the invoice, identify the cause of disagreement, and pay when due all charges that are not in dispute. In the event Proposer and Client cannot resolve a dispute regarding the invoiced amount within thirty days after Proposer receives Client's notice of disagreement, the dispute shall be subject to the Dispute Resolution provision of this Agreement.

B. Effect of Client's Delay in Payment

- 1) If any undisputed amount is not paid within forty-five calendar days after Client receives Proposer's invoice, Proposer may, without notice, suspend all services until all outstanding amounts have been paid or Proposer may terminate this Agreement and its services for cause and regardless of any other provision of this Agreement to the contrary, such action by Proposer shall not be a breach of this Agreement.

- 2) All unpaid invoices and other invoiced amounts not in dispute and all of Proposer's costs of collection, including all reasonable legal fees and related costs shall constitute Proposer's continuing and valid claim against Client and its heirs, successors and assigns until paid in full.

7. Proposers Standard of Care

A. Proposer will perform all services in a manner consistent with the level of care and skill generally exercised by firms providing similar services in the same general locality under similar conditions at the time the services are provided. Proposer will, without additional compensation, correct or revise any of its work and other deliverables, which are not consistent with this standard of care subject to Client providing reasonable notice to Proposer.

B. Cooperation of Client and Proposer

Client and Proposer will cooperate to complete the work in a timely, efficient, and cost-effective manner, with each Party designating an authorized project representative who shall have the authority to make decisions.

8. Confidentiality

A. Nondisclosure

With the exception noted below, Proposer shall consider all Clients' information as confidential and will not disclose such information to any other party unless requested by Client or directed by subpoena or court order. In such event, Proposer will cooperate with Client by providing Client with as much notice as possible under the circumstances and by all other lawful means as Client may request. All of Proposer's costs in responding to or attempting to minimize the effect of any subpoena or lawful order at Client's request will be invoiced to Client on a time and expenses basis and shall be paid by Client within thirty business days after Client receives Proposer's invoice. Client's failure to pay Proposer as specified in this paragraph shall be a material breach of this Agreement.

9. Health & Safety

Proposer is responsible for personnel at the work sites who are under their control and will take reasonable safety precautions to protect their personnel from injury.

10. Indemnity

A. General

Proposer agrees to indemnify, and hold harmless Client and its officers, directors, and employees from and against claims, suits, damages, or losses incurred by Client, to the extent caused by the negligent acts or willful misconduct of Proposer or its agents, officers, directors, employees and contractors. Proposer's agreement to indemnify, and hold Client harmless shall not extend to any suit, claims, damages, or losses caused by the negligent acts, omissions, or conduct of Client.

Client agrees to indemnify, defend, and hold harmless Proposer and its agents, officers, directors, employees and contractors from and against all claims, suits, damages, and losses, arising out of, relating to, or based on Client’s negligent acts, omissions or other negligent conduct.

11. Insurance – (Refer to RFP 21-14 starting pg 6)

A. Proposer shall maintain the following types of insurance relating to this Agreement and Proposer’s performance of the Work:

1) Workmen’s Compensation and Employer’s Liability Insurance as required by the Workmen’s Compensation Laws of the Commonwealth of Massachusetts.

2) Comprehensive Commercial Liability Insurance covering Bodily Injury and Property Damage (Broad Form) as follows:

|                      |                             |
|----------------------|-----------------------------|
| Limits of Liability* | \$1,000,000 each occurrence |
|                      | \$2,000,000 aggregate       |

\* or \$1,000,000 single limit combined Bodily Injury and Property Damage.

The Comprehensive Commercial Liability Policy shall provide insurance for the Contractor for Bodily Injury and Property Damage to third persons arising out of:

(a) Work performed by the Contractor himself with his own employees, called “premises operations.”

(b) Work performed by his subcontractors, called “sublet work” or Independent Contractors (this is referred to as Contractor’s Protective Liability).

(c) The Contractor’s liability assumed under this contract, called “Hold Harmless” clauses or indemnity agreement. (This is referred to as Contractual Liability Insurance).

(d) Products liability coverage covering the completed building or installation or products furnished. (This is called Products Liability Insurance for the manufacturer and Complete Operations Liability Insurance for the Contractor).

(e) If any work is to be performed below the surface of the ground, the coverage shall be extended to include protection against property damage caused by explosion (including blasting), collapse of structures and damage to underground pipes and utilities. (This is known as “XCU” coverage).

3) Comprehensive Automobile Liability Insurance covering Bodily Injury and Property Damage, as follows:

Limits of Liability

|                 |                           |
|-----------------|---------------------------|
| Bodily Injury   | \$500,000 each person     |
|                 | \$1,000,000 each accident |
| Property Damage | \$1,000,000 each accident |



\* or \$500,000 single limit combined Bodily Injury and Property Damage.

This insurance is to apply with respect to all owned or hired vehicles of the Contractor and non-ownership protection for all employees of the Contractor engaged in the performance of this contract.

- 4) All policies shall be so written that the City will be notified of cancellation or restrictive amendment at least 30 days prior to the effective date of such cancellation or amendment. Certificates from the insurance carrier stating the limits of liability and expiration date shall be filed in triplicate with the City before operations are begun. Such certificates not only shall name the types of policy provided, but also shall refer specifically to this Contract\* and article and the above paragraphs in accordance with which insurance is being furnished and shall state that such insurance is as required by such paragraphs of this Contract and shall be sufficiently comprehensive as to permit the owner to determine that the required insurance coverage has been provided without the necessity of examining the individual insurance policies.

If the initial insurance expires prior to completion of the Work, renewal certificates shall be furnished by the date of expiration.

\* If blanket coverage is furnished, this particular Contract need not be referred to.

- 5) The Contractor shall require each of his sub-contractors to procure and maintain until the completion of that sub-contractor's work, insurance of the types and to the limits specified in paragraphs A to C, inclusive, above. It shall be the responsibility of the Contractor to insure that all his sub-contractors comply with all of the insurance requirements contained herein relating to such sub-contractors.

No insurances required or furnished hereunder shall, in any way, relieve the contractor of, or diminish any of his responsibilities, obligations and liabilities under the Contract.

## 12. Termination

### A. Termination for Cause

Either party may terminate this Agreement for cause if the other party fails to substantially perform its responsibilities under this Agreement or substantially violates or breaches any provision of this Agreement.

The terminating party shall provide at least ten calendar day's written notice of its intent to terminate, specifying the reasons and an opportunity for the terminated party to consult with the terminating party and cure the alleged failure or violation within ten business days.

## 13. Dispute Resolution

- A. The parties shall attempt in good faith resolve any dispute, controversy or claim related to this Agreement within twenty business days after the date any such issue arises (the "Issue Date").
- B. If the parties cannot resolve a dispute within this period, the parties agree to submit the dispute to mediation within thirty business days after the Issue Date and may use any mediator upon which they mutually agree. If the parties cannot mutually agree on a mediator within forty business days after the

Issue Date, the parties will each select a mediator. The two mediators will then select the mediator. The cost of any mediation will be split equally between the parties.

- C. If the parties are unsuccessful in their good faith attempt to mediate the dispute, the dispute may, by written agreement settle the dispute by binding arbitration.
- D. The parties agree that a judgment on an arbitration award may be obtained from and enforced in any court having appropriate jurisdiction.

14. Miscellaneous

- A. This Agreement shall be binding on Proposer and Client and their respective heirs, successors, legal representatives and assigns.
- B. Neither party shall assign or transfer any rights, responsibilities, or interests in this Agreement without the written consent of the other party, such consent not to be unreasonably withheld. An assignment shall not relieve the assigning party from any responsibility, duty, or obligation under this Agreement, unless expressly agreed to in writing. Any attempt by either party to assign this Agreement in violation of the above provision shall be null and void.
- C. Proposer may retain any subcontractors which, in the proposer's opinion, can assist in the performance of the Work under this Agreement. Proposer shall be responsible for all services provided by its subcontractor(s) as if the Services were provided directly by the proposer.
- D. All duties, responsibilities, rights, and interests created by this Agreement are for the sole and exclusive benefit of Proposer and Client, and not for the benefit of any third party.
- E. Any written notice required or authorized under this Agreement shall be personally delivered, sent by certified mail or overnight delivery to the authorized representatives designated under this Agreement. The party providing notice must be able to document this.
- F. If any provision of this Agreement is determined to be void or unenforceable by a court or mediator, all remaining provisions shall continue to be valid and enforceable. The parties also agree to reform or replace any void or unenforceable provision with a valid and enforceable provision that comes as close as possible to expressing the intention of the void or unenforceable provision.
- G. The paragraph headings in this Agreement are included solely for reference, and shall not define, limit, or affect the construction or interpretation of this Agreement.
- H. The Agreement, as supplemented by any documented changes and Exhibits, constitutes the complete and final Agreement between Proposer and Client and it supersedes all prior or contemporaneous Agreements, communications, representations, undertakings or understandings between the parties, whether oral or written, including but not limited to, purchase orders relating to services rendered, except as they are expressly incorporated into this Agreement. Modifications to this Agreement shall not be binding unless made in writing and signed by Proposer and Client.

- 1) To the extent that they are inconsistent or contradictory, these General Terms and conditions shall take precedence over all other documents, except amendments expressly revising these General Terms and Conditions.
  - 2) Any term and/or condition set forth in a change order executed after the date of this Agreement shall take precedence over any inconsistent or contradictory term in this Agreement.
- I. Proposer shall be fully independent in performing the Work set forth herein and shall not act as an agent or employee of Client. The proposer is solely responsible for its employees and contractors and for their actions, compensation, benefits, contributions and taxes.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

CITY OF GREENFIELD, MA

PROPOSER

By: \_\_\_\_\_  
Roxann Wedegartner, Mayor

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Appropriation:

\_\_\_\_\_  
City Accountant

**END OF ADDENDUM #2**

**Please acknowledge receipt this Addendum on the Price Summery Form**



*The Town of Greenfield is an Affirmative Action/Equal Opportunity Employer,  
a designated Green Community and a recipient of the "Leading by Example" Award*