

# Town of Fairhaven

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## INVITATION FOR BID/ REQUEST FOR PROPOSALS

### ADA Self Evaluation and Transition Plan

**February 20, 2024**

**Contact**      **Angie Lopes Ellison, Town Administrator**  
                     **c/o Martha Reed, Executive Director-Council on Aging**

**Address**        **40 Center Street, Fairhaven, MA 02719**

**Telephone**    **508-979-4023**

**Email:**          **[mreed@fairhaven-ma.gov](mailto:mreed@fairhaven-ma.gov)**

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## 1. Introduction

The Town of Fairhaven, pursuant to Massachusetts General Laws Chapter 30B, is seeking bids/proposals from qualified vendors for Consulting Services related to an ADA Self-Evaluation and Transition Plan encompassing all of the Town's facilities. The Town has received a grant to fund this project and needs to complete this work by June 30, 2024. Please note that Invitation to Bid (IFB) and Request for Proposals (RFP) are used interchangeably.

The complete Invitation to Bid (IFB)/Request for Proposals (RFP) is available on the Town website ([www.fairhaven-ma.gov](http://www.fairhaven-ma.gov)) under "Invitations to Bid" and on [CommBuys.com](http://CommBuys.com). The Town will only accept proposals delivered in person or by mail to Angie Lopes Ellison c/o Martha Reed 40 Center Street, Fairhaven, MA 02719. All proposals must be received by 12:00 PM on April 1, 2024 to be considered. Price and technical proposals must be submitted separately, sealed, and clearly marked. Proposals that are not prepared as required will be considered non-responsive. Late proposals will not be accepted.

Notice of this IFB/RFP is published in the Neighborhood News (a newspaper of general circulation), COMMBUYS ([www.commbuys.com](http://www.commbuys.com)), and posted on the Town website ([www.fairhaven-ma.gov](http://www.fairhaven-ma.gov)) under "Invitations to Bid".

The respondent's submission of a proposal in response to the IFB/RFP shall constitute acceptance by the respondent of the terms and conditions of this IFB/RFP, terms of which shall be incorporated by reference in any contract executed pursuant to this IFB/RFP.

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

## 2. Submission Deadline and Instructions

Proposers must be able to comply with all of the IFB/RFP specifications in order for your proposal to be accepted. Please read all of the IFB/RFP specifications and follow all instructions in preparing your IFB/RFP response. Failure to respond properly may result in the REJECTION of your proposal.

Proposers must submit **one (1) original and two (2) exact copies** of the Proposal with all required information included. The Proposal must be submitted in a **sealed envelopes** bearing on the outside the name and address of the Proposer, addressed to the Town of Fairhaven. The Proposal must be signed, sealed and endorsed. Telephone responses, faxed, or e-mailed replies will not be accepted. No responsibility will be attached to any person or persons for the premature openings of proposals not properly marked.

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

All sealed proposals must be received and registered at Town Administrator's office by Monday, April 1, 2024 at 12:00 p.m. The Proposal envelope must be labeled: "ADA Evaluation and Transition Plan Technical Proposal" and mailed or hand delivered to the following address:

Angie Lopes Ellison, Town Administrator  
c/o Martha Reed, Executive Director-Council on Aging  
40 Center Street  
Fairhaven, MA 02719

No proposals will be accepted after the time and date noted. Late delivery of materials due to any type of delivery system shall be cause for rejection. If on the date and time of the submittal deadline the Fairhaven Town Hall is closed due to an uncontrolled event such as fire, snow, ice, wind or building evacuation, the submittal deadline will be postponed until 12:00 p.m. on the next normal business day.

Proposals that are incomplete, not properly endorsed or signed, or are otherwise contrary to these instructions may be rejected as informal by the Town. Conditional proposals will not be accepted. The Town reserves the right to reject any and all proposals, to waive any irregularities, to allow exceptions to the attached specifications and to make an award in a manner deemed in the best interest of the Town.

The Town of Fairhaven is a tax exempt entity so no sales tax will be assessed to any purchases made under this proposed contract.

### 3. Questions, Addendum or Proposal Modification

Questions concerning this IFB/RFP must be submitted in writing to: Martha Reed, Executive Director Council on Aging 40 Center Street, Fairhaven, MA 02719, or they may be emailed to [mreed@fairhaven-ma.gov](mailto:mreed@fairhaven-ma.gov). All questions/inquiries must be received by 4:30 p.m. on March 25, 2024 to be considered. Questions/inquiries may be delivered, mailed or emailed. Written responses will be posted on the Town's website ([www.fairhaven-ma.gov](http://www.fairhaven-ma.gov)) in "Invitations to Bid" by Noon on March 28, 2024.

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

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

All proposals submitted in response to this IFB/RFP shall remain firm for sixty (60) days following the submittal deadline. It is anticipated that the contract will be awarded within five (5)

days after the

submittal deadline.

Bidders are not to communicate directly with any employee of the Town of Fairhaven, except as specified in this IFB/RFP, and no other individual employee or representative is authorized to provide any information or respond to any question or inquiry concerning this IFB/RFP. Bidders may contact the Contact Person for this IFB/RFP in the event this IFB/RFP is incomplete or the bidder is having trouble obtaining any part of the IFB/RFP electronically through the Town website ([www.fairhaven-ma.gov](http://www.fairhaven-ma.gov)), including, and without limitation the form and attachments.

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

4. Minimum Requirements To be eligible for the Fairhaven ADA Evaluation & Transition Plan project, the Respondent must meet the following requirements:

- A. Firm/individual must demonstrate a minimum of three (3) years of experience in Massachusetts in providing the services required in the Scope of Services.
- B. Firm/Individual shall submit a complete list of all similar contracts performed in other Massachusetts municipalities over the past seven (7) years with contact names and telephone numbers. "Similar Contracts" shall mean the same type and level of services to other Massachusetts municipalities of similar size and makeup.
- C. Narrative describing approach to completing the tasks identified in the Scope of Work section, including a timeline.
- D. The process to include input from all Town of Fairhaven departments. Please describe the plan for meeting with Fairhaven Staff members and the general public to provide the needs analysis. The principal and project Administrator to be assigned to this project must be available for meetings with the Town on days or evenings, as required.
- E. The firm/individual must have proven experience in the public sector and in working with federal, state and municipal agencies, and neighborhood/business organizations.
- F. Written acknowledgement that the volume of the proposed project managers and firm's current and projected workload will not adversely affect its ability to immediately initiate work and to follow through with the project in a timely and professional manner. The firm and all team members must be capable of devoting a significant amount of time to this project in order to complete the work by June 30, 2024.
- G. Company shall furnish all labor, materials, equipment, and materials as required to perform the work in accordance with the Scope of Services.
- H. Price shall remain firm for the entire period of the contract.

I. Submission of required statements and forms.

5. Scope of Services

Background Information

The Town of Fairhaven last conducted an ADA Self Evaluation and Transition Plan in 1994. Since that time, several new Town-owned buildings have come online and others have been substantially renovated. The Town owns 15 facilities comprising approximately 400,000 square feet of space.

The Town has an active Commission on Disability that serves the Town in an advisory capacity, to identify the needs of the community under the ADA Civil Rights Law, and to monitor initiatives generated by the Committee to see that results are achieved. The Commission works to bring accessibility to both Town-owned and private facilities and consists of nine Commissioners, all volunteers appointed by the Select Board. State law mandates that the majority of Commissioners have a disability.

The Town also has an appointed ADA Coordinator – the Town’s Administrator – as well as a Facilities Director and Commission on Disability Staff Liaison. All will be actively engaged in overseeing this project and helping to carry out action items that result from its final product.

The Town of Fairhaven is in need of a consultant to prepare a Self-Evaluation and Transition Plan that wholly complies with the requirements of the Americans with Disabilities Act of 1990 (ADA), including modifications made by the ADA amendments of 2008 and up to current day. The Town of Fairhaven intends to enter into a contract for professional services with an experienced and qualified consultant to provide these services.

The following outline is offered to describe the general extent of services to be provided by the Consultant. This outline is not necessarily all-inclusive, and the Consultant will include in the proposal any tasks or alternatives and services deemed necessary to satisfactorily complete the project.

Project Goals

- A. Provide an evaluation of Fairhaven’s programs and policies/resources to determine compliance with ADA regulations.
- B. Provide an evaluation of Fairhaven facilities including buildings and outdoor facilities. Note: sidewalks that are part of and associated with Fairhaven buildings and facilities are included in the scope of this project. Any and all items on Fairhaven owned and/or operated property or in Fairhaven operated and/or owned buildings, parking lots, are covered under the scope of this project.
- C. Prepare a Self-Evaluation and Transition Plan that complies with current ADA standards.
- D. Review and adjust where necessary the existing grievance procedure and public notice that

conforms to ADA/504 requirements.

- E. Provide a current cost estimate for remediation work required as a result of the evaluation.
- F. Ensure that all physical improvements identified and proposed under the plan shall conform to both ADA and Architectural Access Board (AAB) requirements.

### Scope of Work

#### *Task I – Community and Staff Evaluation and Involvement*

- A. Consultant shall provide options and recommendations regarding the involvement of staff and the community in the process of preparation of a self-evaluation plan.
- B. Coordination and distribution of a questionnaire/survey that would identify areas to provide the needs analysis for the self-evaluation/ transition plan.
- C. Facilitation of public/staff meetings to fully identify areas of Fairhaven building, services/policies that require evaluation.

#### *Task II – Evaluation of Programs*

- A. The consultant will be responsible for obtaining and conducting an intensive review of all written policies, rules and regulations of the Town of Fairhaven and all of its Departments. The intensive review should provide an accurate assessment of which programs and policies, if any, contain language or processes that may be discriminatory and/or non-compliant with Title I and II of the ADA.
- B. Provide a full review of Fairhaven's website and online information services including GIS viewer, Assessor's information and on-line permitting for ADA compliance.

#### *Task III – Evaluation of Facilities and Reports*

- A. Survey and review reports of all Fairhaven owned and operated buildings, parks, and rights of way to evaluate compliance with the ADA and provide remedial options for compliance. Each site shall have all aspects of the infrastructure located on the site examined that pertain to ADA compliance.
- B. Provide a report, in both typed and electronic format, that includes a cost evaluation of all proposed modifications.

#### *Task IV Actions Steps and Timeliness*

- A. The consultant shall provide a complete and accurate report that includes recommendations for any modifications or deletion of language in all program policies, practices, and procedures. This document should be prepared in a fashion that is accessible by both the town and public.
- B. The consultant shall provide a complete evaluation of Fairhaven Facilities, including costs for proposed modifications and priorities for completion of proposed modifications.

#### *Task V Other Suggested Items*

- A. Under Task V, the consultant should provide items that it feels are not properly captured in the tasks outlined above. Based on the Project Goals identified at the start of this IFB/RFP, the consultant shall review the tasks outlined above. If there is recommended scope that

should be incorporated into this contract to meet the Project Goals, outline those items under this task and provide a cost estimate for that work.

### **Deliverables**

- A. The selected firm will be required to attend at least one (1) Commission on Disability meeting with staff and the public to identify areas of Fairhaven services and facilities that need to be evaluated.
- B. The selected firm's representatives will be required to attend and provide a presentation at one (1) Fairhaven Select Board meeting.
- C. A preliminary report will be required when approximately 75% of the evaluation for programs, policies and facilities is complete.
- D. The final version of each deliverable should be submitted in electronic format and contain a Microsoft Word compatible version, and a searchable PDF version. All images, tables and graphs used in the final version should be in Microsoft Excel compatible format, and shall include all GIS or CAD data created by the Consultant and used in maps in the final version. All materials will become the property of the Town of Fairhaven.

The services listed above as part of this IFB/RFP are intended to reflect minimum standards required by the Town. Should the Proposer's current specifications exceed these, they shall be considered minimum and furnished. All exceptions to the Town's specifications must be clearly stated in the response. If the Proposer states no exceptions, the Town will assume the Proposer's response to equal or exceed the specifications contained within this IFB/RFP at the Proposer's risk and own cost.

### **6. Term of Contract**

Within seven (7) business days after award of contract, the successful proposer will be required to execute the standard Town of Fairhaven contract as attached. The proposer must guarantee availability to commence work for the Town within seven (7) business days of contract execution and complete all work by June 30, 2022.

### **7. Evaluation/Comparative Selection Criteria**

All proposals will be reviewed for completeness and compliance with the minimum criteria/ qualifications. Proposals deemed to be complete and in compliance with minimum qualifications will then be evaluated with respect to the comparative evaluation criteria. The following point schedule will be utilized:

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



A. Project Experience: Number of similar projects completed in Massachusetts.

**Highly Advantageous**: Experience in completing four (4) or more ADA self-evaluation and transition plans for a Massachusetts municipality

**Advantageous**: Experience in completing two (2) or three (3) ADA self-evaluation and transition plans for a Massachusetts municipality

**Not Advantageous**: Experience in completing one (1) ADA self-evaluation and transition plan for a Massachusetts municipality

**Unacceptable**: No experience in completing an ADA self-evaluation and transition plan.

B. Team and Key Staff: Depth of experience of key staff to be assigned to this project, including prior experience with public contracts and ADA-compliance, self-evaluations and transition plans and related laws, and local, state, and Federal regulations related to ADA and Architectural Access Board regulations.

**Highly Advantageous**: Key staff have at least seven (7) years of relevant experience consulting with municipalities on projects of similar size and scope to this project.

**Advantageous**: Key staff have at least five (5) years of experience consulting with municipalities on projects of similar size and scope to this project.

**Not Advantageous**: Key staff have at least four (4) years of experience consulting with municipalities on projects of similar size and scope to this project.

**Unacceptable**: Key staff has less than four (4) years of experience consulting with municipalities on projects of similar size and scope to this project.

C. Quality of References: References will be evaluated to identify the ability and quality of previous work for ADA self-evaluation and transition plans completed in Massachusetts. References shall demonstrate prior client satisfaction with working relationship, project management capabilities (including completion on time and within budget), and technical expertise in developing similar projects.

**Highly Advantageous**: Four or more positive references from Massachusetts municipalities.

**Advantageous**: Two or three positive references from Massachusetts municipalities.

**Not Advantageous**: One positive reference from a Massachusetts municipality.

**Unacceptable**: Zero positive references

- D. Plan of services: Desirability of approach to the project, as well as a demonstrated understanding of all project components and public outreach needs.

**Highly Advantageous**: The response contains a clear, creative, and comprehensive plan that addresses all project Goals and Priorities as stated in the IFB/RFP.

**Advantageous**: The response contains a clear plan that addresses most of the project Goals and Priorities as stated in the IFB/RFP.

**Not Advantageous**: The response does not contain a clear plan to address many of the project Goals and Priorities as stated in the IFB/RFP.

**Unacceptable**: The response does not contain any plan to address the project objectives stated in the IFB/RFP.

#### 8. Method for Award

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

The non-price proposals shall be ranked by the Town. After all of the ratings have been compiled, the price proposals will be opened. The Evaluation Committee will recommend to the Town Administrator, the responsive and responsible firm submitting the most advantageous proposal taking into account ratings on evaluative criteria and the proposal price.

The Town will endeavor to negotiate a contract with the first ranked proposer. If it is unsuccessful it shall proceed to the second ranked proposer and endeavor to negotiate a contract. If negotiations with one or more of the finalists prove unsuccessful, the Town may reject all responses and may choose to re-advertise for consultant services if deemed in the best interest to do so.

The issuance of this Request for Proposals does not commit the Town to award a contract, to pay any costs incurred in the preparation of a response to this request, or to procure or contract for any services.

## APPENDIX A - PRICE PROPOSAL

**This form MUST be submitted separately from Non-Price Proposal Information. Inclusion of any price information in the Non-Price portion of the proposal will result in rejection of the proposal.**

Name of Company: \_\_\_\_\_

In an attachment, please provide a detailed not-to-exceed cost proposal for all work described under the Scope of Work. The prices quoted below include the cost of all labor, materials, insurance, and all other necessary expenses to fulfill the conditions of the contract in the time stated. All travel costs to be incurred by the contractor are part of the proposal price and shall be paid by the contractor.

Consultants are encouraged to submit suggestions for cost savings and other ways of promoting cost-efficiency and to highlight any tradeoffs inherent in the suggested alternatives.

Total Proposal Amount in Numbers: \_\_\_\_\_

Total Proposal Amount in Words: \_\_\_\_\_

By signing this proposal for the ADA Evaluation & Transition Plan for Fairhaven, MA, I (we) hereby bind \_\_\_\_\_ (name of company) to all comments made in the proposal, and accept all of the provisions made in the Request for Proposals.

\_\_\_\_\_  
Signature:  
(Must be signed by Corporate Officer, Partner, or Sole Proprietor)

\_\_\_\_\_  
Print Name of Above

\_\_\_\_\_  
Title

Dated:

**TOWN OF Fairhaven  
CONTRACT  
(GOODS / SERVICES)**

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

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

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

**Contractor:**

**Address:**

**Telephone Number:**

**Email:**

1. This is a Contract for the procurement of the following:
2. The Contract price to be paid to the Contractor by the Town of Fairhaven is as follows:
3. Payment will be made as follows:
4. Definitions
  - 4.1 Acceptance: All Contracts require proper acceptance of the described goods or services by the Town of Fairhaven. Proper acceptance shall be understood to include inspection of goods and certification of acceptable performance for services by authorized representatives of the Town to insure that the goods or services are complete and are as specified in the Contract.
  - 4.2 Contract Documents: All documents relative to the Contract including (where used) Invitation to Bid, Request for Proposals, Instructions to Bidders/Proposers, Proposal Form, General Conditions, Supplementary General Conditions, General Specifications, Other Specifications included in Project Manual, Drawings, and all Addenda issued during the bidding period or proposal. The Contract documents are complementary, and what is called for by any one shall be as binding as if called for

by all. The intention of the document is to include all labor and materials, equipment and transportation necessary for the proper performance of the Contract.

4.3 The Contractor: The “other party” to any Contract with the Town. This term shall (as the sense and particular Contract so require) include Vendor, Contractor, Engineer, or other label used to identify the other party in the particular Contract. Use of the term “Contractor” shall be understood to refer to any other such label used. The Contractor’s relationship to the Town is that of an independent contractor and not that of an agent or employee of the Town.

4.4 Date of Substantial Performance: The date when the work is sufficiently complete, the services are performed, or the goods delivered, in accordance with Contract documents, as modified by approved Amendments and Change Orders.

4.5 Goods: Goods, Supplies or Materials.

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

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

## 5. Term of Contract and Time for Performance

This Contract shall be fully performed by the Contractor in accordance with the provisions of the Contract Documents on or before , unless extended for an additional year per the Invitation for Bids, at the sole discretion of the Town, and not subject to assent by the Contractor, and subject to the availability and appropriation of funds as certified by the Town Accountant. The time limits stated in the Contract documents are of the essence of the Contract.

## 6. Subject to Appropriation

Notwithstanding anything in the Contract documents to the contrary, any and all payments which the Town is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the Town Accountant. The Town may immediately terminate or suspend this Agreement without liability on the part of the Town for damages, penalties or other charges in the event the appropriation funding this Agreement is terminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Agreement.

## 7. Permits and Approvals

Permits, Licenses, Approvals and all other legal or administrative prerequisites to its performance of the Contract shall be secured and paid for by the Contractor.

## 8. Termination and Default

- 8.1 Without Cause. The Town may terminate this Contract at its sole discretion on seven (7) calendar days' notice when in the best interests of the Town by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor. Upon termination without cause, Contractor will be paid for services rendered to the date of termination.
- 8.2 For Cause. If the Contractor is determined by the Town to be in default of any term or condition of this Contract, the Town may terminate this Contract on seven (7) days' notice by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor.
- 8.3 Default. The following shall constitute events of a default under the Contract:
- 1) any material misrepresentation made by the Contractor to the Town; 2) any failure to perform any of its obligations under this Contract including, but not limited to the following: (i) failure to commence performance of this Contract at the time specified in this Contract due to a reason or circumstance within the Contractor's reasonable control, (ii) failure to perform this Contract with sufficient personnel and equipment or with sufficient material to ensure the completion of this Contract within the specified time due to a reason or circumstance within the Contractor's reasonable control, (iii) failure to perform this Contract in a manner reasonably satisfactory to the Town, (iv) failure to promptly re-perform within a reasonable time the services that were rejected by the Town as unsatisfactory, or erroneous, (v) discontinuance of the services for reasons not beyond the Contractor's reasonable control, (vi) failure to comply with a material term of this Contract, including, but not limited to, the provision of insurance and non-discrimination, (vii) any other acts specifically and expressly stated in this Contract as constituting a basis for termination of this Contract, and (viii) failure to comply with any and all requirements of federal or state law and/or regulations, and Town bylaws and/or regulations.

## 9. The Contractor's Breach and the Town's Remedies

Failure of the Contractor to comply with any of the terms or conditions of this Contract shall be deemed a material breach of this Contract, and the Town of Fairhaven shall have all the rights and remedies provided in the Contract documents, the right to cancel, terminate, or suspend the Contract in whole or in part, the right to maintain any and all actions at law or in equity or other proceedings with respect to a breach of this Contract, including damages and specific performance, and the right to select among the remedies available to it by all of the above.

From any sums due to the Contractor for services, the Town may keep the whole or any part of the amount for expenses, losses and damages incurred by the Town as a consequence of procuring services as a result of any failure, omission or mistake of the Contractor in providing services as provided in this Contract.

10. Statutory Compliance

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

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

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

M.G.L. Chapter 149, Section 44A, *et seq.* Public Buildings Contracts.

- 10.2 Wherever applicable law mandates the inclusion of any term and provision into a municipal contract, then it shall be understood that this Agreement shall import such term or provision into this Contract. To whatever extent any provision of this Contract shall be inconsistent with any law or regulation limiting the power or liability of cities and towns, such law or regulation shall control.
- 10.3 The Contractor shall give all notices and comply with all laws and regulations bearing on the performance of the Contract. If the Contractor performs the Contract in violation of any applicable law or regulation, the Contractor shall bear all costs arising therefrom.
- 10.4 The Contractor shall keep itself fully informed of all existing and future State and National Laws and Municipal By-laws and Regulations and of all orders and decrees of any bodies or tribunals having jurisdiction in any manner affecting those engaged or employed in the work, of the materials used in the work or in any way affecting the conduct of the work. If any discrepancy or inconsistency is discovered in the Drawings, Specifications, Scope of Business or Contract for this work in violation of any such law, by-law, regulation, order or decree, it shall forthwith report the same in writing to the Town. It shall, at all times, itself observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and shall protect and indemnify the Town of Fairhaven, and its duly appointed agents against any claim or liability arising from or based on any violation whether by it or its agents, employees or subcontractors of any such law, by-law, regulation or decree.

11. Conflict of Interest

Both the Town and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws c268A), and this Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the application of M.G.L. c268A to the performance of this Contract; and by executing the Contract documents the Contractor certifies to the Town that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.

12. Certification of Tax Compliance

This Contract must include a certification of tax compliance by the Contractor, as required by General Laws c62C, Section 49A (Requirement of Tax Compliance by All Contractors Providing Goods, Services, or Real Estate Space to the Commonwealth or Subdivision).

13. Affirmative Action; Non-Discrimination

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws c151B (Law Against Discrimination) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended.

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

14. Condition of Enforceability Against the Town

This Contract is only binding upon, and enforceable against, the Town if: (1) the Contract is signed by the Town Administrator or its designee; and (2) endorsed with approval by the Town Accountant as to appropriation or availability of funds; and (3) endorsed with approval by the Town Counsel as to form.

15. Corporate Contractor

If the Contractor is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate or if a Limited Liability Corporation, a Manager's Certificate or other documentation satisfactory to the Town certifying the corporate capacity and authority of the party signing this Contract for the corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the Contract is executed by the Contractor. This Contract shall not be enforceable



against the Town of Fairhaven unless and until the Contractor complies with this section.

The Contractor, if a foreign corporation, shall comply with the provisions of the General Laws, c181, §3, and any Acts and Amendments thereof, and in addition thereto, relating to the appointment of the Commissioner of Corporations as its attorney, shall file with the Commissioner of Corporations a Power of Attorney and duly authenticated copies of its Charter or Certificate of Incorporation; and said Contractor shall comply with all the laws of the Commonwealth.

16. Liability of Public Officials

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

17. Indemnification

The Contractor shall indemnify, defend and save harmless the Town, the Town's officers, attorneys, agents and employees, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including reasonable attorneys' fees) that may arise in whole or in part out of or in connection with the work being performed or to be performed, or out of any act or omission by the Contractor, its employees, agents, subcontractors, material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by any party indemnified hereunder. The Contractor further agrees to reimburse the Town for damage to its property caused by the Contractor, its employees, agents, subcontractors or material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including damages caused by his, its' or their use of faulty, defective, or unsuitable material or equipment, unless the damage is caused by the Town's gross negligence or willful misconduct. The existence of insurance shall in no way limit the scope of the Contractor's indemnification under this contract.

18. Workers Compensation Insurance

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

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

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

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

#### 19. Documents, Materials, Etc.

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

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

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

#### 20. Confidentiality

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

21. Record-Keeping and Retention, Inspection of Records

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

22. Assignment

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

23. Subcontracting By Contractor

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

24. Risk of Loss

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

25. Minimum Wage/Prevailing Wage

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws c151, §1, *et seq.* (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor will at all times comply with the wage rates as determined by the Commissioner of the Department of Labor and Industries, under the provisions of General Laws c149, §§26 to 27D (Prevailing Wage Law), as shall be in force and as amended. The Contractor will, in addition to any other submissions required by the Prevailing Wage Law, submit certified weekly payrolls to the Town with the information described in General Laws c149, §27B.

26. Audit, Inspection and Recordkeeping

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

27. Payment

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

28. Waiver and Amendment

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

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

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

29. Forum and Choice of Law

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

30. Notices

Any notice permitted or required under the provisions of this Contract to be given or served by either of the parties hereto upon the other party hereto shall be in writing and signed in the name or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified or registered mailing properly addressed. Notice to the Contractor shall be deemed sufficient if sent to the address set forth in the Contract and to the Town of Fairhaven by being sent to the Town Administrator, Town Hall, 40 Center Street, Fairhaven, Massachusetts 02719.

31. Binding on Successors

This Contract shall be binding upon the Contractor, its assigns, transferees, and/or successors in interest (and where not corporate, the heirs and estate of the Contractor).

32. Complete Contract

This instrument, together with its endorsed supplements, and the other components of the contract documents, constitutes the entire contract between the parties, with no agreements other than those incorporated herein.

33. Contractor Certifications

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

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

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

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

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

34. Additional Provisions:

34.1 Applicable to Contracts for the Procurement of Goods

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

34.1.2 Change Orders:

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

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

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34.2 Applicable to Contracts for Services

34.2.1 “Services” shall mean furnishing of labor, time, or effort by the Contractor. This term shall not include employment agreements, collective bargaining agreements, or grant agreements.

34.2.2 Change Orders:

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

34.2.3 Minimum Wage/Prevailing Wage:

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws c151, §1, *et seq.* (Minimum Wage Law) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended. The Contractor will at all times comply with the wage rates as determined by the Commissioner of the Department of Labor and Industries, under the provisions of General Laws c149, §§26 to 27D (Prevailing Wage Law), as shall be in force and as amended. The Contractor will, in addition to any other submissions required by the Prevailing Wage Law, submit certified weekly payrolls to the Town with the information described in General Laws c149, §27B.

34.2.4 Insurance:

The Contractor shall obtain and maintain the following insurance:

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

- 34.2.4.2 Broad Form Commercial General Liability coverage with limits of at least \$1 Million per occurrence and \$2 Million aggregate, and which shall cover bodily injury, death, or property damage arising out of the work.
- 34.2.4.3 Automobile Liability Coverage, including coverage for owned, hired, or borrowed vehicles with limits of at least \$1 Million per person, and \$1 Million per accident. The intent of the Specifications regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor's responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and the Town from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the work.
- 34.2.4.3 All required insurance shall be certified by a duly authorized representative of the insurers on the "MIIA" or "ACORD" Certificate of Insurance form incorporated into and made a part of this agreement. Properly executed certificates signifying adequate coverage in effect for the duration of the contract with renewal certificates issued not less than 30 days prior to expiration of a policy period, must be submitted to the Town prior to commencement of this Contract.
- 34.2.4.4 The Town shall be named as an additional insured on the above referenced liability policies, and the Contractor's insurance shall be the primary coverage. The cost of such insurance, including required endorsements or amendments, shall be the sole responsibility of the Contractor.
- 34.2.4.5 Contractual liability must recognize the indemnities contained in this Agreement.
- 34.2.4.6 Coverages are to be maintained for a period of two (2) years after final payment.
- 34.2.4.7 The Contractor shall maintain all required insurance in full force and effect as required by this Contract or the Contractor shall be in material breach hereof.

IN WITNESS WHEREOF the parties have hereto and to one other identical instruments set forth their hands the day and year first above written.

THE TOWN

THE CONTRACTOR

\_\_\_\_\_  
Division/Department Head

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

\_\_\_\_\_  
Town Administrator  
Date

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

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

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

APPROVED AS TO FORM:

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

CERTIFICATION AS TO AVAILABILITY OF FUNDS:

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



## **CERTIFICATIONS**

### **CERTIFICATE OF NON-COLLUSION**

The undersigned certifies under penalties of perjury that our bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean natural person, business, partnership, corporation, committee, union, club or other organization, entity, or group of individuals.

Signature\_\_\_\_\_

Date\_\_\_\_\_

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

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

### **CERTIFICATE OF TAX COMPLIANCE**

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

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

*Name of individual*

*Name of contractor*

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# CERTIFICATE OF VOTE

At a duly authorized meeting the Board of Directors of the \_\_\_\_\_  
held on \_\_\_\_\_ it was

VOTED, THAT

\_\_\_\_\_ (Name) \_\_\_\_\_ (Officer)

of \_\_\_\_\_ be and hereby is authorized to execute contracts and bonds in the name and on behalf of said \_\_\_\_\_, and affix its corporate seal hereto; and such execution of any contract or obligation in the name of \_\_\_\_\_ on its behalf by such officer under seal of \_\_\_\_\_, shall be valid and binding upon \_\_\_\_\_.

I hereby certify that I am the clerk of the above named \_\_\_\_\_ and  
that \_\_\_\_\_ is the duly elected officer as above of said  
\_\_\_\_\_, and that the above vote has not been amended or rescinded and  
remains in full force and effect as the date of this contract.

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 (Date)

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 (Clerk)

# IFB-BIDDER CONTACT CARD

ADA Self Evaluation and Transition Plan

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

Contact Person: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

Telephone Number: \_\_\_\_\_

E-mail Address: \_\_\_\_\_