



GLOUCESTER CITY COUNCIL  
**Budget & Finance Committee**  
Thursday, May 8, 2014 – **6:00 p.m.**  
1<sup>st</sup> Fl. Council Committee Rm. – City Hall

**\*\*\*AMENDED AGENDA\*\*\*\***

*(Items May be taken out of order at the discretion of the Committee)*

1. *Communication from Judith Hoglander, Chair of the Committee for the Arts re: Roger Armstrong's proposed restoration of eight bronze cenotaphs & plaques at City Hall (Cont'd from 04/17/14)*
2. *CC2014-001 (Verga/McGeary) Request that B&F Committee in consultation with Police Dept. & local merchants consider adopting certain days as "parking meter holidays" to begin in FY14 (Cont'd from 3/06/14)*
3. *Memorandum from Harbormaster & Supplemental Appropriation-Budgetary Request (2014-SA-64)*
4. *Memorandum from Harbormaster & Request for an amendment to current FY14 Clean Vessel Act Contract*
5. *Supplemental Appropriation-Budgetary Request (2014-SA-65) from DPW (Talbot Rink Enterprise Fund)*
6. *Supplemental Appropriation-Budgetary Request (2014-SA-66) from DPW (Sewer Enterprise Fund)*
7. *Supplemental Appropriation-Budgetary Request (2014-SA-67) from DPW (Sewer Enterprise Fund)*
8. *Memo from City Auditor regarding accounts having expenditures which exceed their authorization And Auditor's Report*

COMMITTEE  
Councilor Melissa Cox, Chair  
Councilor William Fonvielle, Vice Chair  
Councilor Paul McGeary

CC: Mayor Carolyn Kirk  
Kenny Costa/Aleesha Nunley  
John Dunn  
Judith Hoglander  
Jim Caulkett  
Mike Hale/Mark Cole

The listing of matters is those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.



CITY CLERK  
GLOUCESTER, MA

14 MAY -1 PM 3: 31

## **DOWNTOWN DEVELOPMENT COMMISSION**

**c/o 153 Main Street, Gloucester, MA 01930**

[Gloucesterinfo@gmail.com](mailto:Gloucesterinfo@gmail.com)

May 1, 2014

Gloucester City Council  
9 Dale Avenue  
Gloucester, MA 01930

Re: City Council Order CC#2014-001

The Downtown Development Commission met on April 14<sup>th</sup>. At the meeting, the proposed City Council order as noted above was discussed. Besides DDC members, present at the meeting was Councilor Verga.

The DDC is pleased that Councilor Verga and co-author of the order, Councilor McGeary, put forth this “parking meter holiday” proposal as a way to encourage people to shop downtown. The DDC has strived to make shopping downtown an enjoyable experience.

A concern, as always, with meter holidays or free parking is enforcement of hourly restrictions. Meters in the downtown are either two hour or ten hour meters. In a response to an e-mail sent to Police Chief Campanello, he assured me that enforcement would take place and felt it was “doable” on a short-term basis.

The DDC is in favor of a meter holiday for any state tax holiday, Black Friday, Small Business Saturday (the day following Black Friday) and seven calendar days

prior to Christmas. The Commission felt that it should be tried for one year and if there are any problems the ordinance should be re-visited.

At the time of the DDC meeting, the Gloucester Downtown Association (GDA) had voted in favor of this proposed ordinance. This group is made up of downtown merchants.

Sincerely,

Suzanne Silveira  
Chair  
Downtown Development Commission

Nineteen Harbor Loop  
Gloucester, MA 01930



TEL 978-282-3012

FAX 978-281-4188

[jcaulkett@gloucester-ma.gov](mailto:jcaulkett@gloucester-ma.gov)

**CITY OF GLOUCESTER**  
HARBORMASTER'S OFFICE

**Memorandum**

**From:** Jim Caulkett, Harbormaster  
**To:** Mayor Carolyn Kirk  
**Date:** April 28, 2014  
**Subject:** Amendment to FY 2014 Clean Vessel Act Contract

Mayor Kirk,

Mayor, in your next Report to Council will you include the following request for an amendment to the current FY 2014 Clean Vessel Act Contract.

This increase of \$8,500.00 is for the replacement of the engine on the pumpout boat.

If you have any questions please feel free to contact me.

Respectfully

# COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



This form is jointly issued and published by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. Any changes to the official printed language of this form shall be void. Additional non-conflicting terms may be added by Attachment. Contractors may not require any additional agreements, engagement letters, contract forms or other additional terms as part of this Contract without prior Department approval. Click on hyperlinks for definitions, instructions and legal requirements that are incorporated by reference into this Contract. An electronic copy of this form is available at [www.mass.gov/osc](http://www.mass.gov/osc) under Guidance For Vendors - Forms or [www.mass.gov/osd](http://www.mass.gov/osd) under OSD Forms.

|   |                            |   |                          |
|---|----------------------------|---|--------------------------|
| <b>CONTRACTOR LEGAL NAME:</b> Gloucester<br>(and d/b/a):  |                            | <b>COMMONWEALTH DEPARTMENT NAME:</b> Dept of Fish & Game, Div Marine Fisheries<br><b>MMARS Department Code:</b> FWE |                          |
| <b>Legal Address:</b> (W-9, W-4, T&C): 19 Harbor Loop, Gloucester MA, 01930                                 |                            | <b>Business Mailing Address:</b> 251 Causeway St Suite 400, Boston MA 02114   |                          |
| <b>Contract Manager:</b> James Caulkett Jr.   |                            | <b>Billing Address (if different):</b> 30 Emerson Avenue, Gloucester, MA, 01930                                     |                          |
| <b>E-Mail:</b> <a href="mailto:jcaulkett@gloucester-ma.gov">jcaulkett@gloucester-ma.gov</a>                 |                            | <b>Contract Manager:</b> Cecil French   |                          |
| <b>Phone:</b> 978 282-3012  | <b>Fax:</b> (978) 281-4188 | <b>E-Mail:</b> <a href="mailto:Cecil.French@state.ma.us">Cecil.French@state.ma.us</a>                               |                          |
| <b>Contractor Vendor Code:</b> VC 6000 192096   |                            | <b>Phone:</b> 978 282 0308 ext 119  | <b>Fax:</b> 617 727 3337 |
| <b>Vendor Code Address ID (e.g. "AD001"):</b> AD<br>(Note: The Address Id Must be set up for EET payments.) |                            | <b>MMARS Doc ID(e):</b> CITYGLOUCESTERFY2014  |                          |
|   |                            | <b>RFR/Procurement or Other ID Number:</b>  |                          |

|   |   |
|---|---|
| <p style="text-align: center;"><u>NEW CONTRACT</u></p> <p><b>PROCUREMENT OR EXCEPTION TYPE:</b> (Check one option only)</p> <p><input type="checkbox"/> <u>Statewide Contract</u> (OSD or an OSD-designated Department)</p> <p><input type="checkbox"/> <u>Collective Purchase</u> (Attach OSD approval, scope, budget)</p> <p><input checked="" type="checkbox"/> <u>Department Procurement</u> (Includes State or Federal grants <u>815 CMR 2.00</u>) (Attach RFR and Response or other procurement supporting documentation)</p> <p><input type="checkbox"/> <u>Emergency Contract</u> (Attach justification for emergency, scope, budget)</p> <p><input type="checkbox"/> <u>Contract Employee</u> (Attach <u>Employment Status Form</u>, scope, budget)</p> <p><input type="checkbox"/> <u>Legislative/Legal or Other:</u> (Attach authorizing language/justification, scope and budget)</p> | <p style="text-align: center;"><u>CONTRACT AMENDMENT</u></p> <p>Enter Current Contract End Date <u>Prior</u> to Amendment: <u>June 30, 2014</u></p> <p>Enter Amendment Amount: \$ <u>8,500.00</u> (or 'no change')</p> <p><b>AMENDMENT TYPE:</b> (Check one option only. Attach details of Amendment changes.)</p> <p><input checked="" type="checkbox"/> <u>Amendment to Scope or Budget</u> (Attach updated scope and budget)</p> <p><input type="checkbox"/> <u>Interim Contract</u> (Attach justification for interim Contract and updated scope/budget)</p> <p><input type="checkbox"/> <u>Contract Employee</u> (Attach any updates to scope or budget)</p> <p><input type="checkbox"/> <u>Legislative/Legal or Other:</u> (Attach authorizing language/justification and updated scope and budget)</p> |
|---|---|

The following **COMMONWEALTH TERMS AND CONDITIONS (T&C)** has been executed, filed with CTR and is incorporated by reference into this Contract.

Commonwealth Terms and Conditions     Commonwealth Terms and Conditions For Human and Social Services

**COMPENSATION:** (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00.

Rate Contract (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)

Maximum Obligation Contract Enter Total Maximum Obligation for total duration of this Contract (or new Total if Contract is being amended). \$ 18,000.00

**PROMPT PAYMENT DISCOUNTS (PPD):** Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days    % PPD; Payment issued within 15 days    % PPD; Payment issued within 20 days    % PPD; Payment issued within 30 days    % PPD. If PPD percentages are left blank, identify reason:    agree to standard 45 day cycle    statutory/legal or Ready Payments (G.L. c. 29, § 23A);    only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)

**BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT:** (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.) Pumpout boat and Fixed Location Pumpout station purchased earlier with CVA funds. Amended for emergency engine replacement.

**ANTICIPATED START DATE:** (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:

1. may be incurred as of the Effective Date (latest signature date below) and no obligations have been incurred prior to the Effective Date.

2. may be incurred as of   , 20  , a date LATER than the Effective Date below and no obligations have been incurred prior to the Effective Date.

3. were incurred as of   , 20  , a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.

**CONTRACT END DATE:** Contract performance shall terminate as of June 30, 2014 with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.

**CERTIFICATIONS:** Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor makes all certifications required under the attached Contractor Certifications (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions, this Standard Contract Form including the Instructions and Contractor Certifications, the Request for Response (RFR) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

**AUTHORIZING SIGNATURE FOR THE CONTRACTOR:**

X: *Carolyn Kirk* Date: 4/29/2014  
(Signature and Date Must Be Handwritten At Time of Signature)

Print Name: CAROLYN KIRK

Print Title: MANOR

**AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:**

X: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature and Date Must Be Handwritten At Time of Signature)

Print Name: Kevin Creighton

Print Title: Chief Fiscal Officer

**INSTRUCTIONS AND CONTRACTOR CERTIFICATIONS**

The following instructions and terms are incorporated by reference and apply to this Standard Contract Form. Text that appears underlined indicates a "hyperlink" to an Internet or bookmarked site and are unofficial versions of these documents and Departments and Contractors should consult with their legal counsel to ensure compliance with all legal requirements. Using the Web Toolbar will make navigation between the form and the hyperlinks easier. Please note that not all applicable laws have been cited.

**CONTRACTOR LEGAL NAME (AND D/B/A):** Enter the Full Legal Name of the Contractor's business as it appears on the Contractor's W-9 or W-4 Form (Contract Employees only) and the applicable Commonwealth Terms and Conditions if Contractor also has a "doing business as" (d/b/a) name, BOTH the legal name and the "d/b/a" name must appear in this section.

**Contractor Legal Address:** Enter the Legal Address of the Contractor as it appears on the Contractor's W-9 or W-4 Form (Contract Employees only) and the applicable Commonwealth Terms and Conditions, which must match the legal address on the 10991 table in MMARS (or the Legal Address in HR/CMS for Contract Employee).

**Contractor Contract Manager:** Enter the authorized Contract Manager who will be responsible for managing the Contract. The Contract Manager should be an Authorized Signatory or, at a minimum, a person designated by the Contractor to represent the Contractor, receive legal notices and negotiate ongoing Contract issues. The Contract Manager is considered "Key Personnel" and may not be changed without the prior written approval of the Department. If the Contract is posted on Comm-PASS, the Contract Manager must be listed on the Vendor Section tab.

**Contractor E-Mail Address/Phone/Fax:** Enter the electronic mail (e-mail) address, phone and fax number of the Contractor Contract Manager. This information must be kept current by the Contractor to ensure that the Department can contact the Contractor and provide any required legal notices. Notice received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any written legal notice requirements.

**Contractor Vendor Code:** The Department must enter the MMARS Vendor Code assigned by the Commonwealth. If a Vendor Code has not yet been assigned, leave this space blank and the Department will complete this section when a Vendor Code has been assigned. The Department is responsible under the Vendor File and W-9s Policy for verifying with authorized signatories of the Contractor, as part of contract execution, that the legal name, address and Federal Tax Identification Number (TIN) in the Contract documents match the state accounting system.

**Vendor Code Address ID:** (e.g., "AD001") The Department must enter the MMARS Vendor Code Address ID identifying the payment remittance address for Contract payments, which MUST be set up for EFT payments PRIOR to the first payment under the Contract in accordance with the Bill Paying and Vendor File and W-9 policies.

**COMMONWEALTH DEPARTMENT NAME:** Enter the full Department name with the authority to obligate funds encumbered for the Contract.

**Commonwealth MMARS Alpha Department Code:** Enter the three (3) letter MMARS Code assigned to this Commonwealth Department in the state accounting system.

**Department Business Mailing Address:** Enter the address where all formal correspondence to the Department must be sent. Unless otherwise specified in the Contract, legal notice sent or received by the Department's Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address for the Contract Manager will meet any requirements for legal notice.

**Department Billing Address:** Enter the Billing Address or email address if invoices must be sent to a different location. Billing or confirmation of delivery of performance issues should be resolved through the listed Contract Managers.

**Department Contract Manager:** Identify the authorized Contract Manager who will be responsible for managing the Contract, who should be an authorized signatory or an employee designated by the Department to represent the Department to receive legal notices and negotiate ongoing Contract issues.

**Department E-Mail Address/Phone/Fax:** Enter the electronic mail (e-mail) address, phone and fax number of the Department Contract Manager. Unless otherwise specified in the Contract, legal notice sent or received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any requirements for written notice under the Contract.

**MMARS Document ID(s):** Enter the MMARS 20 character encumbrance transaction number associated with this Contract which must remain the same for the life of the Contract. If multiple numbers exist for this Contract, identify all Doc Ids.

**RFR/Procurement or Other ID Number or Name:** Enter the Request for Response (RFR) or other Procurement Reference number, Contract ID Number or other reference/tracking number for this Contract or Amendment and will be entered into the Board Award Field in the MMARS encumbrance transaction for this Contract.

**NEW CONTRACTS (left side of Form):**

Complete this section ONLY if this Contract is brand new. (Complete the **CONTRACT AMENDMENT** section for any material changes to an existing or an expired Contract, and for exercising options to renew or annual contracts under a multi-year procurement or grant program.)

**PROCUREMENT OR EXCEPTION TYPE:** Check the appropriate type of procurement or exception for this Contract. Only one option can be selected. See State Finance Law and General Requirements, Acquisition Policy and Fixed Assets, the Commodities and Services Policy and the Procurement Information Center (Department Contract Guidance) for details.

**Statewide Contract (OSD or an OSD-designated Department).** Check this option for a Statewide Contract under OSD, or by an OSD-designated Department.

**Collective Purchase approved by OSD.** Check this option for Contracts approved by OSD for collective purchases through federal, state, local government or other entities.

**Department Contract Procurement.** Check this option for a Department procurement including state grants and federal sub-grants under 815 CMR 2.00 and State Grants and Federal Subgrants Policy, Departmental Master Agreements (MA). If multi-Department user Contract, identify multi-Department use is allowable in Brief Description.

**Emergency Contract.** Check this option when the Department has determined that an unforeseen crisis or incident has arisen which requires or mandates immediate purchases to avoid substantial harm to the functioning of government or the provision of necessary or mandated services or whenever the health, welfare or safety of clients or other persons or serious damage to property is threatened.

**Contract Employee.** Check this option when the Department requires the performance of an Individual Contractor, and when the planned Contract performance with an Individual has been classified using the Employment Status Form (prior to the Contractor's selection) as work of a Contract Employee and not that of an Independent Contractor.

**Legislative/Legal or Other.** Check this option when legislation, an existing legal obligation, prohibition or other circumstance exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative "earmarks" exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Supporting documentation must be attached to explain and justify the exemption.

**CONTRACT AMENDMENT (Right Side of Form)**

Complete this section for any Contract being renewed, amended or to continue a lapsed Contract. All Contracts with available options to renew must be amended referencing the original procurement and Contract doc Ids, since all continuing contracts must be maintained in the same Contract file (even if the underlying appropriation changes each fiscal year.) "See Amendments, Suspensions, and Termination Policy."

**Enter Current Contract End Date:** Enter the termination date of the Current Contract being amended, even if this date has already passed. (Note: Current Start Date is not requested since this date does not change and is already recorded in MMARS.)

**Enter Amendment Amount:** Enter the amount of the Amendment increase or decrease to a Maximum Obligation Contract. Enter "no change" for Rate Contracts or if no change.

**AMENDMENT TYPE:** Identify the type of Amendment being done. Documentation supporting the updates to performance and budget must be attached. **Amendment to Scope or Budget.** Check this option when renewing a Contract or executing any Amendment ("material change" in Contract terms) even if the Contract has lapsed. The parties may negotiate a change in any element of Contract performance or cost identified in the RFR or the Contractor's response which results in lower costs, or a more cost-effective or better value performance than was presented in the original selected response, provided the negotiation results in a better value within the scope of the RFR than what was proposed by the Contractor in the original selected response. Any "material" change in the Contract terms must be memorialized in a formal Amendment even if a corresponding MMARS transaction is not needed to support the change. Additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

**Interim Contracts.** Check this option for an Interim Contract to prevent a lapse of Contract performance whenever an existing Contract is being re-procured but the new procurement has not been completed, to bridge the gap during implementation between an expiring and a new procurement, or to contract with an interim Contractor when a current Contractor is unable to complete full performance under a Contract.

**Contract Employee.** Check this option when the Department requires a renewal or other amendment to the performance of a Contract Employee.

**Legislative/Legal or Other.** Check this option when legislation, an existing legal obligation, prohibition or other circumstance exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative "earmarks" exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Attach supporting documentation

# COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



to explain and justify the exemption and whether Contractor selection has been publicly posted.

payments require justification and must be under same encumbrance and object codes as the Contract payments. Performance dates are subject to G.L. c.4, § 9.

## COMMONWEALTH TERMS AND CONDITIONS

Identify which Commonwealth Terms and Conditions the Contractor has executed and is incorporated by reference into this Contract. This Form is signed only once and recorded on the Vendor Customer File (VCUST). See Vendor File and W-Ss Policy.

## CONTRACT END DATE

The Department must enter the date that Contract performance will terminate. If the Contract is being amended and the Contract End Date is not changing, this date must be re-entered again here. A Contract must be signed for at least the initial duration but not longer than the period of procurement listed in the RFR, or other solicitation document (if applicable). No new performance is allowable beyond the end date without an amendment, but the Department may allow a Contractor to complete minimal close out performance obligations if substantial performance has been made prior to the termination date of the Contract and prior to the end of the fiscal year in which payments are appropriated, provided that any close out performance is subject to appropriation and funding limits under state finance law, and CTR may adjust encumbrances and payments in the state accounting system to enable final close out payments. Performance dates are subject to G.L. c.4, § 9.

## COMPENSATION

Identify if the Contract is a Rate Contract (with no stated Maximum Obligation) or a Maximum Obligation Contract (with a stated Maximum Obligation) and identify the Maximum Obligation. If the Contract is being amended, enter the new Maximum Obligation based upon the increase or decreasing Amendment. The Total Maximum Obligation must reflect the total funding for the dates of service under the contract, including the Amendment amount if the Contract is being amended. The Maximum Obligation must match the MMARS encumbrance. Funding and allotments must be verified as available and encumbered prior to incurring obligations. If a Contract includes both a Maximum Obligation component and Rate Contract component, check off both, specific Maximum Obligation amounts or amended amounts and Attachments must clearly outline the Contract breakdown to match the encumbrance.

## CERTIFICATIONS AND EXECUTION

See Department Head Signature Authorization Policy and the Contractor Authorized Signatory Listing for policies on Contractor and Department signatures.

## PAYMENTS AND PROMPT PAY DISCOUNTS

Payments are processed within a 45 day payment cycle through EFT in accordance with the Commonwealth Bill Paying Policy for investment and cash flow purposes. Departments may NOT negotiate accelerated payments and Payees are NOT entitled to accelerated payments UNLESS a prompt payment discount (PPD) is provided to support the Commonwealth's loss of investment earnings for this earlier payment, or unless a payments is legally mandated to be made in less than 45 days (e.g., construction contracts, Ready Payments under G.L. c. 29, § 23A). See Prompt Pay Discounts Policy. PPD are identified as a percentage discount which will be automatically deducted when an accelerated payment is made. Reduced contracts rates may not be negotiated to replace a PPD. If PPD fields are left blank please identify that the Contractor agrees to the standard 45 day cycle; a statutory/legal exemption such as Ready Payments (G.L. c. 29, § 23A); or only an initial accelerated payment for reimbursements or start up costs for a grant, with subsequent payments scheduled to support standard EFT 45 day payment cycle. Financial hardship is not a sufficient justification to accelerate cash flow for all payments under a Contract. Initial grant or contract payments may be accelerated for the first invoice or initial grant installment, but subsequent periodic installments or invoice payments should be scheduled to support the Payee cash flow needs and the standard 45 day EFT payment cycle in accordance with the Bill Paying Policy. Any accelerated payment that does not provide for a PPD must have a legal justification in Contract file for audit purposes explaining why accelerated payments were allowable without a PPD.

Authorizing Signature for Contractor/Date: The Authorized Contractor Signatory must (in their own handwriting and in ink) sign AND enter the date the Contract is signed. See section above under "Anticipated Contract Start Date". Acceptance of payment by the Contractor shall waive any right of the Contractor to claim the Contract/Amendment is not valid and the Contractor may not void the Contract. Rubber stamps, typed or other images are not acceptable. Proof of Contractor signature authorization on a Contractor Authorized Signatory Listing may be required by the Department if not already on file.

Contractor Name /Title: The Contractor Authorized Signatory's name and title must appear legibly as it appears on the Contractor Authorized Signatory Listing.

Authorizing Signature For Commonwealth/Date: The Authorized Department Signatory must (in their own handwriting and in ink) sign AND enter the date the Contract is signed. See section above under "Anticipated Start Date". Rubber stamps, typed or other images are not accepted. The Authorized Signatory must be an employee within the Department legally responsible for the Contract. See Department Head Signature Authorization. The Department must have the legislative funding appropriated for all the costs of this Contract or funding allocated under an approved Interdepartmental Service Agreement (ISA). A Department may not contract for performance to be delivered to or by another state department without specific legislative authorization (unless this Contract is a Statewide Contract). For Contracts requiring Secretariat signoff, evidence of Secretariat signoff must be included in the Contract file.

Department Name /Title: Enter the Authorized Signatory's name and title legibly.

## BRIEF DESCRIPTION OF CONTRACT PERFORMANCE

Enter a brief description of the Contract performance, project name and/or other identifying information for the Contract to specifically identify the Contract performance, match the Contract with attachments, determine the appropriate expenditure code (as listed in the Expenditure Classification Handbook) or to identify or clarify important information related to the Contract such as the Fiscal Year(s) of performance (ex. "FY2012" or "FY2012-14"). Identify settlements or other exceptions and attach more detailed justification and supporting documents. Enter "Multi-Department Use" if other Departments can access procurement. For Amendments, identify the purpose and what items are being amended. Merely stating "see attached" or referencing attachments without a narrative description of performance is insufficient.

## CONTRACTOR CERTIFICATIONS AND LEGAL REFERENCES

Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified, subject to any required approvals. The Contractor makes all certifications required under this Contract under the pains and penalties of perjury, and agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein:

**Commonwealth and Contractor Ownership Rights.** The Contractor certifies and agrees that the Commonwealth is entitled to ownership and possession of all "deliverables" purchased or developed with Contract funds. A Department may not relinquish Commonwealth rights to deliverables nor may Contractors sell products developed with Commonwealth resources without just compensation. The Contract should detail all Commonwealth deliverables and ownership rights and any Contractor proprietary rights.

**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 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.

**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.

**Collusion.** The Contractor certifies that this Contract has been offered in good faith and without collusion, fraud or unfair trade practices with any other person, that any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

## ANTICIPATED START DATE

The Department and Contractor must certify WHEN obligations under this Contract/Amendment may be incurred. Option 1 is the default option when performance may begin as of the Effective Date (latest signature date and any required approvals). If the parties want a new Contract or renewal to begin as of the upcoming fiscal year then list the fiscal year(s) (ex. "FY2012" or "FY2012-14") in the Brief Description section. Performance starts and encumbrances reflect the default Effective Date (if no FY is listed) or the later FY start date (if a FY is listed). Use Option 2 only when the Contract will be signed well in advance of the start date and identify a specific future start date. Do not use Option 2 for a fiscal year start unless it is certain that the Contract will be signed prior to fiscal year. Option 3 is used in lieu of the Settlement and Release Form when the Contract/Amendment is signed late, and obligations have already been incurred by the Contractor prior to the Effective Date for which the Department has either requested, accepted or deemed legally eligible for reimbursement, and the Contract includes supporting documents justifying the performance or proof of eligibility, and approximate costs. Any obligations incurred outside the scope of the Effective Date under any Option listed, even if the Incorrect Option is selected, shall be automatically deemed a settlement included under the terms of the Contract and upon payment to the Contractor will release the Commonwealth from further obligations for the identified performance. All settlement

# COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



**Public Records and Access** The Contractor shall provide full access to records related to performance and compliance to the Department and officials listed under Executive Order 195 and G.L. c. 11, s. 12 seven (7) years beginning on the first day after the final payment under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor can not claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under 850 C.M.R. 32.00.

**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 regulation including, Executive Order 147; G.L. c. 29, s. 29F; G.L. c. 30, § 39R; G.L. c. 149, § 27C; G.L. c. 149, § 44C; G.L. c. 149, § 148B and G.L. c. 152, s. 25C.

**Applicable Laws.** The Contractor shall comply with all applicable state laws and regulations including but not limited to the applicable Massachusetts General Laws; the Official Code of Massachusetts Regulations; Code of Massachusetts Regulations (unofficial); 801 CMR 21.00 (Procurement of Commodity and Service Procurements, Including Human and Social Services); 815 CMR 2.00 (Grants and Subsidies); 808 CMR 1.00 (Compliance, Reporting and Auditing for Human And Social Services); AICPA Standards; confidentiality of Department records under G.L. c. 66A; and the Massachusetts Constitution Article XVIII if applicable.

**Invoices.** The Contractor must submit invoices in accordance with the terms of the Contract and the Commonwealth Bill Paying Policy. Contractors must be able to reconcile and properly attribute concurrent payments from multiple Departments. Final invoices in any fiscal year must be submitted no later than August 15<sup>th</sup> for performance made and received (goods delivered, services completed) prior to June 30<sup>th</sup>, in order to make payment for that performance prior to the close of the fiscal year to prevent reversion of appropriated funds. Failure to submit timely invoices by August 15<sup>th</sup> or other date listed in the Contract shall authorize the Department to issue an estimated payment based upon the Department's determination of performance delivered and accepted. The Contractor's acceptance of this estimated payment releases the Commonwealth from further claims for these invoices. If budgetary funds revert due to the Contractor's failure to submit timely final invoices, or for disputing an estimated payment, the Department may deduct a penalty up to 10% from any final payment in the next fiscal year for failure to submit timely invoices.

**Payments Subject To Appropriation.** Pursuant to G.L. c. 29, § 26, § 27 and § 29, Departments are required to expend funds only for the purposes set forth by the Legislature and within the funding limits established through appropriation, allotment and subsidiary, including mandated allotment reductions triggered by G.L. c. 29, § 9C. A Department cannot authorize or accept performance in excess of an existing appropriation and allotment, or sufficient non-appropriated available funds. Any oral or written representations, commitments, or assurances made by the Department or any other Commonwealth representative are not binding. The Commonwealth has no legal obligation to compensate a Contractor for performance that is not requested and is intentionally delivered by a Contractor outside the scope of a Contract. Contractors should verify funding prior to beginning performance.

**Intercept.** Contractors may be registered as Customers in the Vendor file if the Contractor owes a Commonwealth debt. Unresolved and undisputed debts, and overpayments of Contract payments that are not reimbursed timely shall be subject to intercept pursuant to G.L. c. 7A, s. 3 and 815 CMR 9.00. Contract overpayments will be subject to immediate intercept or payment offset. The Contractor may not penalize any state Department or assess late fees, cancel a Contract or other services if amounts are intercepted or offset due to recoupment of an overpayment, outstanding taxes, child support, other overdue debts or Contract overpayments.

**Tax Law Compliance.** The Contractor certifies under the pains and penalties of perjury tax compliance with Federal tax laws; State tax laws including but not limited to G.L. c. 62C; G.L. c. 62C, s. 49A; compliance with all state tax laws, reporting of employees and contractors, withholding and remitting of tax withholdings and child support and is in good standing with respect to all state taxes and returns due; reporting of employees and contractors under G.L. c. 62E, withholding and remitting child support including G.L. c. 119A, s. 12; TIR 05-11; New Independent Contractor Provisions and applicable TIRs.

**Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts.** The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing at least 45 days prior to filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is any risk to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill the terms of this Contract or Amendment. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation or litigation

pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

**Federal Anti-Lobbying and Other Federal Requirements.** If receiving federal funds, the Contractor certifies compliance with federal anti-lobbying requirements including 31 USC 1352; other federal requirements; Executive Order 11246; Air Pollution Act; Federal Water Pollution Control Act and Federal Employment Laws.

**Protection of Personal Data and Information.** The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all Commonwealth data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under G.L. c. 93H and c. 66A and Executive Order 504. The Contractor is required to comply with G.L. c. 93I for the proper disposal of all paper and electronic media, backups or systems containing personal data and information, provided further that the Contractor is required to ensure that any personal data or information transmitted electronically or through a portable device be properly encrypted using (at a minimum) Information Technology Division (ITD) Protection of Sensitive Information, provided further that any Contractor having access to credit card or banking information of Commonwealth customers certifies that the Contractor is PCI compliant in accordance with the Payment Card Industry Council Standards and shall provide confirmation compliance during the Contract, provide further that the Contractor shall immediately notify the Department in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the Commonwealth and provide access to any information necessary for the Commonwealth to respond to the security breach and shall be fully responsible for any damages associated with the Contractor's breach including but not limited to G.L. c. 214, s. 3B.

**Corporate and Business Filings and Reports.** The Contractor certifies compliance with any certification, filing, reporting and service of process requirements of the Secretary of the Commonwealth, the Office of the Attorney General or other Departments as related to its conduct of business in the Commonwealth; and with its incorporating state (or foreign entity).

**Employer Requirements.** Contractors that are employers certify compliance with applicable state and federal employment laws or regulations, including but not limited to G.L. c. 5, s. 1 (Prevailing Wages for Printing and Distribution of Public Documents); G.L. c. 7, s. 22 (Prevailing Wages for Contracts for Meat Products and Clothing and Apparel); minimum wages and prevailing wage programs and payments; unemployment insurance and contributions; workers' compensation and insurance, child labor laws, AGO fair labor practices; G.L. c. 149 (Labor and Industries); G.L. c. 150A (Labor Relations); G.L. c. 151 and 455 CMR 2.00 (Minimum Fair Wages); G.L. c. 151A (Employment and Training); G.L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); G.L. c. 152 (Workers' Compensation); G.L. c. 153 (Liability for Injuries); 29 USC c. 8 (Federal Fair Labor Standards); 29 USC c. 28 and the Federal Family and Medical Leave Act.

**Federal And State Laws And Regulations Prohibiting Discrimination** including but not limited to the Federal Equal Employment Opportunity (EEO) Laws the Americans with Disabilities Act; 42 U.S.C. Sec. 12,101, et seq., the Rehabilitation Act; 29 USC c. 16, s. 794; 29 USC c. 16, s. 701; 29 USC c. 14, 623; the 42 USC c. 45; (Federal Fair Housing Act); G.L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); the Public Accommodations Law G.L. c. 272, s. 92A; G.L. c. 272, s. 98 and 98A, Massachusetts Constitution Article CXIV and G.L. c. 93, s. 103; 47 USC c. 5, sec. II, Part II, s. 255 (Telecommunication Act; Chapter 149, Section 105D; G.L. c. 151C; G.L. c. 272, Section 92A, Section 98 and Section 98A, and G.L. c. 111, Section 199A, and Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities, and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also MCAD and MCAD links and Resources.

**Small Business Purchasing Program (SBPP).** A Contractor may be eligible to participate in the SBPP, created pursuant to Executive Order 523, if qualified through the SBPP SmartBid subscription process at: [www.com-mass.com](http://www.com-mass.com) and with acceptance of the terms of the SBPP participation agreement.

**Limitation of Liability for Information Technology Contracts (and other Contracts as Authorized).** The Information Technology Mandatory Specifications and the IT Acquisition Accessibility Contract Language are incorporated by reference into Information Technology Contracts. The following language will apply to Information Technology contracts in the U01, U02, U03, U04, U05, U06, U07, U08, U09, U10, U75, U98 object codes in the Expenditure Classification Handbook or other Contracts as approved by CTR or OSD. Pursuant to Section 11. Indemnification of the Commonwealth Terms and Conditions, the term "other damages" shall include, but shall not be limited to, the reasonable costs the Commonwealth incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a Contract. "Other damages" shall not include

# COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



damages to the Commonwealth as a result of third party claims, provided, however, that the foregoing in no way limits the Commonwealth's right of recovery for personal injury or property damages or patent and copyright infringement under Section 11 nor the Commonwealth's ability to join the contractor as a third party defendant. Further, the term "other damages" shall not include, and in no event shall the contractor be liable for, damages for the Commonwealth's use of contractor provided products or services, loss of Commonwealth records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the Commonwealth. In no event shall "other damages" exceed the greater of \$100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. Section 11 sets forth the contractor's entire liability under a Contract. Nothing in this section shall limit the Commonwealth's ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference Section 11 of the Commonwealth Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement. These terms may be applied to other Contracts only with prior written confirmation from the Operational Services Division or the Office of the Comptroller. The terms in this Clarification may not be modified.

**Northern Ireland Certification.** Pursuant to G.L. c. 7 s. 22C for state agencies, state authorities, the House of Representatives or the state Senate, by signing this Contract the Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

**Pandemic, Disaster or Emergency Performance.** In the event of a serious emergency, pandemic or disaster outside the control of the Department, the Department may negotiate emergency performance from the Contractor to address the immediate needs of the Commonwealth even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

**Consultant Contractor Certifications (For Consultant Contracts "H" and "NN" and "U05" object codes subject to G.L. Chapter 29, s. 28A).** Contractors must make required disclosures as part of the RFR Response or using the Consultant Contractor Mandatory Submission Form.

**Attorneys.** Attorneys or firms providing legal services or representing Commonwealth Departments may be subject to G.L. c. 30, s. 65, and if providing litigation services must be approved by the Office of the Attorney General to appear on behalf of a Department, and shall have a continuing obligation to notify the Commonwealth of any conflicts of interest arising under the Contract.

**Subcontractor Performance.** The Contractor certifies full responsibility for Contract performance, including subcontractors, and that comparable Contract terms will be included in subcontracts, and that the Department will not be required to directly or indirectly manage subcontractors or have any payment obligations to subcontractors.

## EXECUTIVE ORDERS

For covered Executive state Departments, the Contractor certifies compliance with applicable Executive Orders (see also Massachusetts Executive Orders), including but not limited to the specific orders listed below. A breach during period of a Contract may be considered a material breach and subject Contractor to appropriate monetary or Contract sanctions.

**Executive Order 481. Prohibiting the Use of Undocumented Workers on State Contracts.** For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established, by signing this Contract the Contractor certifies under the pains and penalties of perjury that they shall not knowingly use undocumented workers in connection with the performance of this Contract; that, pursuant to federal requirements, shall verify the immigration status of workers assigned to a Contract without engaging in unlawful discrimination; and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker

**Executive Order 130. Anti-Boycott.** The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott (See IRC § 999(b)(3)-(4), and IRS Audit Guidelines Boycotts) or engages in conduct declared to be unlawful by G.L. c. 151E, s. 2. A breach in the warranty, representation, and agreement contained in this paragraph, without limiting such other rights as it may have, the Commonwealth shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

**Executive Order 346. Hiring of State Employees By State Contractors** Contractor certifies compliance with both the conflict of interest law G.L. c. 268A specifically s. 5 (f) and this order; and includes limitations regarding the hiring of state employees by private companies contracting with the Commonwealth. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

**Executive Order 444. Disclosure of Family Relationships With Other State Employees.** Each person applying for employment (including Contract work) within the Executive Branch under the Governor must disclose in writing the names of all immediate family related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

**Executive Order 504. Regarding the Security and Confidentiality of Personal Information.** For all Contracts involving the Contractor's access to personal information, as defined in G.L. c. 93H, and personal data, as defined in G.L. c. 66A, owned or controlled by Executive Department agencies, or access to agency systems containing such information or data (herein collectively "personal information"), Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read Commonwealth of Massachusetts Executive Order 504 and agrees to protect any and all personal information; and (2) has reviewed all of the Commonwealth Information Technology Division's Security Policies. Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all state agencies in the Executive Department, including all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with the contracting agency's Information Security Program (ISP) and any pertinent security guidelines, standards, and policies; (2) comply with all of the Commonwealth of Massachusetts Information Technology Division's "Security Policies" (3) communicate and enforce the contracting agency's ISP and such Security Policies against all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information to which the Contractor is given access by the contracting agency from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information (collectively referred to as the "unauthorized use"); (a) immediately notify the contracting agency if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the contracting agency to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the contracting agency and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 11 of the Commonwealth's Terms and Conditions, withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under G.L. c. 214, § 3B for violations under M.G.L. c. 66A.

**Executive Orders 523, 524 and 526.** Executive Order 526 (Order Regarding Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action which supersedes Executive Order 478). Executive Order 524 (Establishing the Massachusetts Supplier Diversity Program which supersedes Executive Order 390). Executive Order 523 (Establishing the Massachusetts Small Business Purchasing Program.) All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices; and the Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and the Contractor commits to purchase supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. These provisions shall be enforced through the contracting agency, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

**ATTACHMENT A  
Segment V-13-D-1  
(19)  
Scope of Services**

**Gloucester**

In consideration of a Clean Vessel Act grant by the Commonwealth of Massachusetts Division of Marine Fisheries, hereinafter called the Division, in the amount of nine thousand five hundred (\$18,000.00) dollars, the City of Gloucester, hereinafter called the City, shall service the resident and transient boaters of Gloucester and environs by providing a program to collect and legally dispose of sewage from vessel holding tanks and portable toilets. In order to provide said program the city shall acquire and/or operate and maintain the following equipment:

**Section 1**

- A. Appended to this document and identified as Addendum A is a list of equipment acquired by the City, which shall be incorporated by reference herein.
- B. Such sewer connection materials transfer stations fittings etc. as are necessary to make the equipment identified in Addendum A operational.
- C. Miscellaneous safety equipment and gear as is necessary for the safe operation of the pumpout equipment.
- D. Such supplies including, but not limited to, fuel and oil as are necessary to operate and maintain the equipment identified above.
- E. Replacement or repair of motors and equipment including new outboard engines for pumpout boats if necessary to continue pumpout operations.

**Section 2**

The City shall be responsible for providing the personnel necessary to operate and maintain the pumpout equipment identified in Section 1 above.

**Section 3**

The City agrees that the use of the equipment funded under this contract and the pumpout services provided by the employees funded under this contract shall be at no cost to the boater (i.e. no per-pumpout fee). Pumpout services shall be available to the boater during reasonable business hours in the boating season. The City further agrees that the equipment funded under this contract will remain in use and be

dedicated to the purpose of providing pumpout service to the general boating public for the useful life of such equipment notwithstanding the expiration of this contract.

#### Section 4

The City shall secure such legally binding agreements with all collaborators utilizing such equipment as are necessary to assure that the provisions of Section 3 above are carried out; shall secure and safely preserve a copy of same in the City and shall attach a copy of all such agreements to this contract.

#### Section 5

The City agrees that it will collect, hold, transport, and dispose of the sewage generated from this program in accordance with all applicable federal, state, and local laws and regulations. The City shall secure an agreement with a properly licensed waste hauler or with a person having charge of a properly licensed wastewater Treatment facility to assure that the waste collected by this pumpout program will be properly disposed of. A copy of said Agreement shall be attached to this contract.

#### Section 6

The City agrees to erect a sign to be provided by the Division at each pumpout facility wherein funding is received under this grant which will acknowledge that the facility was constructed or improved with funds from the Clean Vessel Act.

#### Section 7

The City shall provide such planning, legal, accounting, and general oversight services and shall keep and maintain such fiscal and personnel records in accordance with generally accepted accounting principles so as to assure the proper administration of this contract.

- A. It shall be the sole responsibility of the City to provide insurance coverage for all equipment purchased with CVA funds.

#### Section 8

The City shall maintain a log of pumpouts performed by each pump in accordance with this contract and, in addition, keep a running account of gallons pumped by each pump.

#### Section 9

The City agrees to encourage use of the pumpout facilities by the use of signs, brochures, flags, cards, or any other practical means. Expenses related to this section are 75% reimbursable according to the terms stated in Section 8, Attachment B, but

only after written approval by the Division.

#### **Section 10**

**This contract shall be annually renewable on July 1 at the option of the Clean Vessel Act grant administrators of the Commonwealth of Massachusetts for the duration of the Federal Clean Vessel Act Grant.**

**Attachment B  
BUDGET  
Segment V-13-D-1  
(19)  
Gloucester**

**Section 1**

Payments not to exceed seventy-five percent (75%) of the cost of items in Section 1 of Attachment A shall be made by the Commonwealth upon receipt of invoices, bills of lading or other such documentation from vendors doing business with the City. The City shall hold and safely preserve the original invoice or other documentation in the City and shall sign one copy of same and send it together with a narrative describing what is being purchased to the Division of Marine Fisheries, 251 Causeway Street, Suite 400, Boston, Massachusetts 02114. The Town understands and agrees that the grant amount of nine thousand five hundred (\$18,000.00) dollars provided by this contract represents the Federal share of the total project cost and that the City shall be responsible for providing the non-Federal share of not less than 25% of the total project costs.

**Section 2**

The Commonwealth will make no payments unless the invoices, bills of lading or other such acceptable material are accompanied by a copy of the log identified in Section 8, Addendum A of this contract, giving the number of boats and approximate gallons pumped for the period represented by the invoices and other documentation of pumpout expenses.

**Section 3**

Payments not to exceed seventy-five (75%) percent of the operation and maintenance cost including sewage disposal fees, vaccinations, slip and storage fees, supplies and other items and services necessary and reasonable for the operation of the pumpout project shall be made by the Commonwealth upon receipt of proper invoices as provided above.

**Section 4**

Payments not to exceed seventy-five (75%) of the cost of personnel identified in Section 2 of Attachment A shall be made by the Commonwealth upon receipt of (1) a copy of a City payroll warrant, (2) a Daily Narrative Report provided by the Division of Marine Fisheries and signed by a supervisor having responsibility for such employees, and (3) an affidavit signed by the City's chief financial officer affirming that pumpout duties described on the time sheet were performed in accordance with this contract. The City shall be responsible for the payment of the remaining non-Federal twenty-five

(25%) percent of the cost of the personnel identified in Section 2 of Attachment A. Payments to reimburse City employees for operating pumpout equipment cannot exceed \$12 per hour, regardless of the employee's actual salary, but can be less if the employee is paid less than \$16 per hour.

The Commonwealth shall pay the City the reasonable and necessary fringe and indirect costs for those City employees hired pursuant to Section 2 of Attachment A in an amount computed in the following manner:

**Indirect costs:** Payment of not more than ten percent (10%) times the salaries paid to the City personnel necessary to operate and maintain the pumpout equipment identified in Section 1 of Attachment A.

**Fringe costs.** An amount equal to the amount paid by the City for health insurance and retirement for the City personnel necessary to operate and maintain the pumpout equipment identified in Section 1 of Attachment A.

No fringe or indirect costs shall be paid by the Commonwealth for employees hired by a collaborator.

#### Section 5

The Commonwealth shall reimburse the City for items of equipment owned by the City or its collaborators and for services rendered by the City or its collaborators if such equipment or services are (a) necessary, reasonable and directly related to the pumpout program (b) not funded by any other Federal grant or program and are adequately documented as determined by the Division.

Requests for reimbursements for equipment that will be donated to the pumpout program by the City or by a collaborator shall be accompanied by an appraisal report conducted by a qualified disinterested appraiser, which shall clearly identify the equipment and the fair market value of such equipment. The City agrees that all such equipment donated to the pumpout program shall be dedicated to the pumpout program for the useful life of that equipment notwithstanding the expiration of this contract. If reimbursement is requested for items of equipment donated by collaborators the City shall also secure and forward to the Division an agreement from the collaborator attesting to his donation of such equipment and the continued dedication of such equipment for the useful life of said equipment.

Requests for reimbursement for equipment that will be loaned to the pumpout program by the City or by a collaborator for the duration of this contract shall be accompanied by a statement by a qualified disinterested appraiser, which shall clearly identify the equipment and the fair rental rate for such equipment for the period of this contract.

The City agrees that such equipment loaned to the pumpout program shall be dedicated to the pumpout program for the period of this contract. If reimbursement is requested for items of equipment loaned by collaborators the City shall also secure an agreement from the collaborator attesting to his loan of such equipment for the duration of this contract and the continued dedication of such equipment for the duration of this contract.

#### Section 6

Request for reimbursement for services provided by existing City employees shall be made by the Commonwealth upon receipt of City payroll warrants and signed time sheets covering the employees who provided such services. Other reimbursable expenditures shall include legal, construction, electrical, and plumbing services.

#### Section 7

Request by the City for reimbursement for services donated to the City by a collaborator shall be made by the Commonwealth upon receipt of documentation that identifies the methodology that was used to determine the value of the donation and stipulates that the reimbursement requested by the City does not exceed the fair market value of the donation. If any services donated to the City include the cost of personnel to utilize such equipment as is acquired under Addendum A of Attachment A, the City shall provide time sheets and collaborator payroll warrants in the same manner as provided in Section 3 of this Attachment.

#### Section 8

The Commonwealth's share of the cost of the items and services identified in Attachment A, in combination with the services in Section 5, Attachment B, shall not exceed \$ 18,000.00

#### Section 9

All invoices submitted for grant reimbursement should be sent in a timely manner. No invoice for CVA expenses incurred during the fiscal year which ends on June 30 shall be accepted for payment if it arrives at the Clean Vessel Act Grant Program offices after the following July 30<sup>th</sup>.

#### Section 10

Equipment purchased with Clean Vessel Act funds identified in Attachment A shall be used by the City for pumpout purposes and no other purpose, whether or not the pumpout program continues to be supported by grant funds. Observed/reported incidents of unauthorized use of CVA equipment shall be addressed in the following *Marine Fisheries*' management procedures:

- 1) Any observed/reported incident of unauthorized use of CVA funded vessels will be followed-up by a Marine Fisheries communication with the appropriate operator. Marine Fisheries may conduct site visits or contact area boaters for supplemental information as necessary. The pumping out of commercial vessels with CVA funded equipment is strictly prohibited.
- 2) In those instances where Marine Fisheries determines that an unauthorized use of a CVA funded vessel has occurred, Marine Fisheries will provide written notification to the operator of its determination with a warning that continued misuse or abuse of CVA-funded vessels and equipment may result in:
  - a) the loss of O&M and/or equipment replacement funds;
  - b) the removal of misused equipment from the facility; and/or
  - c) an assessment against the operator by the Department of Fish and Game for reimbursement of the federal contribution against the current market value of the vessel (e.g., a vessel with a current market value of \$20,000 would require the operator to reimburse the CVA Program the sum of \$15,000).
- 3) The Department of Fish and Game shall conduct an adjudicatory proceeding in accordance with the relevant provisions of G.L. c.30A and 801 CMR 1.01 prior to the assessment of any reimbursement of the federal contribution against the current market value of the vessel as provided for in paragraph 2.c. An independent marine surveyor shall be contracted by Marine Fisheries to provide all necessary and appropriate valuations.

## Section 11

When acquiring replacement equipment, the City may use the equipment to be replaced as a trade-in or the City may sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the Division. If the City is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

When original or replacement equipment acquired under this grant is no longer needed or the City is no longer able to support the pumpout program, disposition of the equipment shall be made as follows:

- 1) The equipment may be transferred at no cost to another CVA subgrantee (e.g., marina, yacht club, or governmental agency) if such equipment will remain in use and be dedicated to the pumpout program. The conditions for such transfer shall be stipulated by the Division and shall include the same requirements as those imposed in the original grant. Any cash or in-kind match paid when the equipment was originally purchased will be forfeited in total.

- 2) If the equipment cannot be transferred to another CVA subgrantee, it must be sold at the discretion of the Division, and the City shall pay the Division the proceeds of the sale or the fair market value of the equipment, whichever is the greatest.
- 3) In compliance with the Executive Office of Environmental Affairs' "Clean Boat Engine" policy, all boat motors purchased with CVA funding must be "clean" (i.e., 4-stroke or DFI 2-stroke) motors.

#### **ADDENDUM A**

1. Pumpout boat purchased earlier with CVA funds.
2. Replacement engine for Pumpout boat.