

TOWN OF HINGHAM



AGREEMENT M.G.L. c. 149 (IFB)

This Agreement (hereafter “Agreement”) is made effective on this ____ day of _____, 2026 by and between the Town of Hingham, Massachusetts, a municipal corporation organized under the laws of the Commonwealth of Massachusetts, of 210 Central Street, Hingham, MA 02043 (“Town”) and **TM Construction Management LLC**, a Massachusetts limited liability company, of **151 Mystic Avenue, Medford, MA 02155** (“Contractor”).

Whereas, the Town issued an invitation for bids (“IFB”) pursuant to M.G.L. c. 149 and all other applicable laws; and

Whereas, the Contractor submitted a Bid in response to said IFB and the Town has accepted said Bid and selected the Contractor to provide the Town with the requested labor, work and/or materials;

Now, therefore, for good and valuable consideration the parties hereby agree as follows.

Labor, Work and Materials

The Contractor agrees to provide the requested labor, work and/or materials to the Town as described in the IFB attached hereto and incorporated herein as “Exhibit A” and as described in the Contractor’s Bid provided in response to said IFB attached hereto and incorporated herein as “Exhibit B” as and when requested by the Town.

In addition to any express manufacturer warranty associated with any materials provided hereunder, all materials provided hereunder are subject to the implied warranty of merchantability and the implied warranty for a particular purpose. The Contractor shall be responsible for the transportation and delivery of all materials and the costs associated therewith.

All labor and work provided by the Contractor hereunder shall be performed with the degree of care and skill consistent with the standards applicable to persons performing said labor and work under similar conditions and circumstances in the same or nearby locality.

All materials delivered to the Town shall become property of the Town and all documents of any kind delivered to the Town as part of work provided hereunder shall become property of the Town and shall be subject to the public records law to the extent applicable.

Payment

The Town shall compensate the Contractor for said labor, work and materials in accordance with the Contractor's Bid attached hereto as "Exhibit B" which amount shall not exceed **\$367,440.00** (accepting the project Add Alt) for the term of this Agreement. The Contractor shall invoice the Town on a monthly basis for said labor, work, and materials. The Contractor shall perform and deliver all labor, work, and materials hereunder as an independent contractor and payment for such labor, work and materials shall be made without deductions. The Contractor shall be responsible for all withholding taxes, other taxes, contributions to social security and any other deductions which may be required by state or federal law with respect to the labor, work and materials provided hereunder.

Nothing in this Agreement shall create any benefit, right or contractual relationship with any third party including any subcontractors of the Contractor. The Contractor shall be solely liable for all payments to all third parties or subcontractors and shall fully indemnify and hold harmless the Town from any and all claims made against the Town by Contractor's third parties or subcontractors.

The Town's liability for payments hereunder are subject to an appropriation of sufficient funds and the total payments under this Agreement shall not exceed said appropriation.

The acceptance of final payment by the Contractor hereunder shall constitute a waiver of any and all claims against the Town by the Contractor arising under this Agreement.

Term

The term of this Agreement shall commence upon the date of this Agreement and shall continue until the completion of providing labor, work and materials hereunder which shall be **June 25, 2026** or until the earlier termination of this Agreement as provided herein.

The Town may terminate this Agreement at any time for convenience and without cause upon thirty (30) days prior written notice to the other party.

In the case of any default on the part of the Contractor with respect to any of the terms of this Agreement, the Town shall give written notice thereof, and if said default is not cured within such time as the Town shall specify in writing, the Town shall have the right to terminate this Agreement for cause.

Upon the expiration and/or termination of this Agreement the Contractor shall cease any further providing of labor, work and materials hereunder and shall submit a final invoice for supplies delivered and/or work performed as of said expiration and/or termination date to the Town for payment. All express and implied warranties and all indemnification provisions shall survive the termination and/or expiration of this Agreement.

The parties may extend the term of this Agreement by mutual agreement.

Insurance/Indemnity

During the term of this Agreement the Contractor shall, at its expense, obtain and maintain Worker's Compensation Insurance, Motor Vehicle Insurance, General Liability Insurance and Professional Liability/Errors and Omissions Insurance (for professional services contracts only) in amounts acceptable to the Town. The Contractor shall provide the Town with a certificate(s) of said insurance naming the Town as an additional insured.

Contractor shall indemnify and hold harmless the Town from and against any and all claims, damages, losses, and expenses, including attorney's fees, arising out of the providing of labor, work and materials under this Agreement, when such claims, damages, losses, and expenses are caused, in whole or in part, by the wrongful or negligent acts or omissions of Contractor or its employees, officers, agents, subcontractors or representatives.

Notices

All notices shall be delivered by hand or sent by registered or certified mail, postage prepaid or by so-called "express" mail (such as Federal Express or U.S. Postal Service Express Mail) to the following addresses:

Town:

Town of Hingham
Thomas Mayo, Town Administrator
210 Central Street
Hingham, MA 02043

Contractor:

Address listed above

Assignment

The Contractor shall not assign any of its rights or obligations under this Agreement without the prior written consent of the Town.

Waiver/Alteration/Modification

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by both parties.

Certification as to Non-Collusion

The Contractor certifies under penalties of perjury that the above referenced Bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word “person” shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

Certification as to Payment of State Taxes

The Contractor certifies, pursuant to M.G.L. c. 62C, § 49A, that under the penalties of perjury that the Contractor has complied, is complying, and will comply during the terms of this Agreement with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

Certification as to Conflict of Interest Laws

The Contractor certifies that the execution of this Agreement and the providing of labor, work and materials hereunder by the Contractor and any third party or subcontractor is and shall be in full compliance with the applicable conflict of interest laws including M.G.L. c. 268A and that there are no existing conflicts of interest which would prohibit the Contractor from providing labor, work and materials hereunder.

Compliance with Laws

The Contractor shall comply with all federal, state and local laws, regulations, bylaws and rules applicable to this Agreement and shall obtain all necessary bonds, licenses, permits and approvals applicable to this Agreement.

All of the applicable provisions of M.G.L. c. 30 and/or c. 149 are incorporated herein by reference including prevailing wage laws.

Certifications

The Contractor certifies that it is qualified and certified to provide the labor, work and materials hereunder and that the person executing this Agreement on behalf of the Contractor is duly authorized to execute this Agreement.

Debarment

The Contractor certifies that the said Contractor is not presently debarred, suspended or otherwise prohibited from doing public construction work in the Commonwealth of Massachusetts. Contractor shall immediately notify Town if at any time during the term of this Agreement it becomes debarred, suspended or otherwise prohibited from doing public construction work in the Commonwealth of Massachusetts.

Exhibits/Headings

To the extent any conflict arises between the main body of this Agreement and any of the exhibits attached hereto, the main body of this Agreement shall control. The headings contained in this Agreement and in any of the exhibits hereto are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Counterparts and Electronic Signatures

This Agreement may be executed in counterparts, each of which shall be deemed an original and both of which shall constitute one and the same Agreement. In addition, this Agreement may be executed by electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. Without limitation, “electronic signature” shall include electronically scanned and transmitted versions (e.g., via pdf) of an original signature delivered electronically as if the original had been received.

No Damages for Delay

Notwithstanding anything to the contrary in any of the Contract Documents, the Contractor hereby agrees that the Contractor shall have no claim for damages of any kind against the Owner or the Designer on account of any delay in the commencement or performance of any of the work or any delay or suspension of any portion of the work, whether such delay is caused by the Owner, the Designer, or otherwise. The Contractor acknowledges that the Contractor's sole remedy for any such delay and/or suspension will be an extension of time as provided hereunder.

The Owner may delay the commencement of the work, or any part thereof, due to unforeseen circumstances or conditions which have a bearing on the work required under the Contract or for any other reason, if it is deemed to be in the best interest of the Owner to do so. The Contractor shall have no claim for damages on account of such delay, but shall be entitled to so much additional time in which to complete the whole or any portion of the work as provided hereunder

The Owner may delay the commencement of the work, or any part thereof, due to unforeseen circumstances or conditions which have a bearing on the work required under the Contract or for any other reason, if it is deemed to be in the best interest of the Owner to do so. The Contractor shall have no claim for damages on account of such delay, but shall be entitled to so much additional time in which to complete the whole or any portion of the work as provided hereunder.

Governing Law

This Agreement is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, and sets forth the entire Agreement between the parties and is binding upon and enures to the benefit of the parties hereto and their respective successors and/or assigns and all parties hereby submit to the jurisdiction and venue of the courts of the Commonwealth of Massachusetts located in Plymouth or Suffolk County for all purposes with respect to enforcement of this Agreement and all parties waive any objection to such jurisdiction and venue. If any court of competent jurisdiction holds any portion of this Agreement to be illegal, invalid, or unenforceable, the Town and Contractor agree that any such order shall not affect any other remaining term, clause, phrase, paragraph, section, or provision and all shall remain in full force and effect.

In witness whereof, the Town and the Contractor have caused this Agreement to be executed as a sealed instrument as of the above effective date.

Town of Hingham:
Lincoln Apartments LLC

Contractor: **TM Construction Management, LLC**

By: _____
Name: _____
Title: **Manager, Lincoln Apartments, LLC**

By: _____
Name: _____
Title: _____

The undersigned hereby certifies that the Town followed the applicable procurement laws and that the work and labor procured under this Agreement are for the benefit of the Town.

Name: **David Sequeira**
Title: **Procurement and Contracts Manager**

Approved by the Select Board under Section 3.2 of the Ground Lease between the Town of Hingham and Lincoln Apartments LLC dated January 30, 2009:

By: _____
Name: _____
Title: _____

The undersigned certifies that an appropriation and/or funds are available for the amount of this Agreement.

By: _____
Name: _____
Title: **Manager, Lincoln Apartments, LLC**

“Exhibit A” IFB (*see OpenGov Portal*)
“Exhibit B” Contractor’s Bid
“Exhibit C” Prevailing Wage Schedule
“Exhibit D” Certificate of Insurance
“Exhibit E” MBE/WBE/VBE Goals

“Exhibit A”
IFB (see OpenGov Portal)

DRAFT

**“Exhibit B”
Contractor’s Bid**

DRAFT

“Exhibit C”
Prevailing Wage Schedule

DRAFT

**“Exhibit D”
Certificate of Insurance**

DRAFT

“Exhibit E”
MBE/WBE/VBE Goals

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