



Franklin Regional Council of Governments

REQUEST FOR PROPOSALS

FOR CONSULTING SERVICES IN SUPPORT OF ROWE'S MVP ACTION GRANT
COMMUNITY DRIVEN FOREST CLIMATE RESILIENCE PROGRAM IN THE MTWP REGION
RFP 2022-2048

ADDENDUM 1

Please find attached the Sample Contract that will be required to be signed by the chosen consultant.

FRANKLIN REGIONAL COUNCIL OF GOVERNMENTS

Andrea Woods, Chief Procurement Officer

October 17, 2022

Date

The Franklin Regional Council of Governments does not discriminate on the basis of disability with respect to admission to, access to, or operation of its programs, services, or activities. Individuals who need auxiliary aids for effective communication with respect to programs and services of the FRCOG should contact the American with Disabilities Act (ADA) Compliance Coordinator at 413-774-3167 x111.



Franklin Regional Council of Governments

DRAFT AGREEMENT FOR SERVICES

by and between

[INSERT CONSULTANT NAME]

and the

FRANKLIN REGIONAL COUNCIL OF GOVERNMENTS

for

CONSULTING SERVICES FOR THE ROWE MUNICIPAL VULNERABILITY GRANT COMMUNITY DRIVEN FOREST CLIMATE RESILIENCE IN THE MTWP REGION

The following provisions, together with the Request for Proposals (RFP) undertaken under MGL Ch 30B for a XYZ CONSULTANT, prepared by the Franklin Regional Council of Governments (Attachment A), and the submittals received by Consultant Name in response to the RFP (Attachment B) on DATE of receipt is hereby incorporated by reference and made a part of this AGREEMENT, effective as of the _____ day of XXXXXX, 2022, between Consultant Name, having a usual place of business at Consultant Address (hereinafter referred to as the "Consultant"), and the Franklin Regional Council of Governments having a usual place of business at John W. Olver Transit Center, 12 Olive Street, Suite 2, Greenfield, Massachusetts, 01301 (hereinafter referred to as the "Council").

Whereas the Council proposes to engage the Consultant to assist in the preparation and completion of the tasks outlined in Attachments A, and

Whereas this project shall be conducted in accordance with this Agreement, as more specifically amended or supplemented by the following Special Provisions, and

Whereas, this Agreement, together with Attachment A and Attachment B represents the entire understanding of the parties, and neither is relying upon any representation not contained herein.

Now therefore, in consideration of the mutual covenants herein contained the parties agree as follows:

ARTICLE 1 - ENGAGEMENT OF THE CONSULTANT

The Council hereby engages the Consultant and the Consultant hereby accepts the engagement to perform services in connection with the preparation and completion of the tasks specified in the RFP, which is incorporated by reference and made a part hereof as expressly modified or supplemented herein.

The Consultant agrees to perform the work required under this Agreement. In performing the services under this Agreement, the Consultant shall be deemed to be an independent Consultant and not an employee of the Council.

The Council may terminate, in writing, this Agreement for non-performance of the services required under this Agreement or upon loss of funding for the project.

Upon receipt of written notification from the Council to the Consultant that the Agreement or any portion thereof is to be terminated, the Consultant shall immediately cease operations on the work stipulated, and assemble all material that has been prepared, developed, furnished or obtained under the terms of the Agreement that may be in the possession or custody of the Consultant and shall transmit the same to the Council on or before the fifteenth (15th) day following the

receipt of the written notice of termination together with his/her evaluation of the cost of the work performed. The Consultant shall be entitled to complete payment for any satisfactorily completed uncompensated work performed prior to such notice and for the cost of assembling the material to be transmitted to the Council.

The Council shall have the right to terminate this Contract without cause upon ten (10) days notice to the Consultant and all preceding paragraphs herein shall be applicable to this termination.

In the event that there is a disagreement between the Consultant and the Council, the terms of this Agreement for Services shall control.

ARTICLE 2 - SERVICES AND RESPONSIBILITIES OF THE CONSULTANT

The Consultant shall perform professional services in accordance with the RFP (Attachment A) and this Agreement.

The Consultant will consult with and advise the Council during the performance of the specific services. The Consultant shall dedicate the key personnel presented in their submission to provide the Scope of Services. Consultant may not change or substitute the key personnel without the prior written approval of the Council.

The Consultant shall receive prior approval from the Council for any expenditure not specifically provided for in this Agreement, which is thought to be billable. The Consultant is advised that any work performed outside the RFP without the prior written agreement of the Council, shall not be considered as work under this Agreement and payment for such work will not be allowed.

The Consultant will use best efforts to email or hand deliver all material to the Council not less than five (5) business days prior to the meeting at which the material is to be discussed.

The Consultant shall complete all work as specified in the RFP in order to receive final payment.

ARTICLE 3 - SCHEDULE

The Services as required under this Agreement shall be completed by the Consultant between November 15, 2022 and June 20, 2024.

ARTICLE 4 - RESPONSIBILITIES OF THE COUNCIL

The Council shall make available to the Consultant copies of all available information pertinent to the project including any background information on file at Council Office.

ARTICLE 5 - PAYMENTS TO THE CONSULTANT

For all the services to be performed under this Agreement, inclusive of any agreed upon travel and other related expenses, the Consultant shall be compensated in accordance with invoices submitted by the CONSULTANT to the FRCOG no later than June 20, 2023 for Tasks 2 & 4 and June 20, 2024 for Tasks 7 & 8. Due to certain funding constraints, if an invoice is not received by this deadline, payment could be jeopardized. Tasks or Subtasks must be 100% complete in order to receive payment based on Reimbursement Requests submitted to the Council with satisfactory documentation including the match requirement. Payments will be made to the Consultant within 14 business days of when funds are received by FRCOG from EOEEA and/or the Town of Rowe.

The FRCOG prefers to pay vendors by Electronic Funds Transfer (EFT) and will require completion of an enrollment form for direct payment of invoiced amounts to the Consultants bank account with the signed contract.

Invoices should document dates of services and a description of services rendered. FRCOG expects the Consultant will provide his or her own professional supplies and materials. Any supplies and/or materials purchased as a direct cost to this project outside this agreement will become the property of FRCOG and must have prior approval. The FRCOG is not subject to sales tax. A Federal W-9 Form must be submitted with the signed contract. The form can be found at <http://www.irs.gov/pub/irs-pdf/fw9.pdf>. Payments may be delayed if the W-9 form is not submitted.

The total amount of payments for this project will not exceed \$124,450.00. The required match for the contract is \$17,000.

ARTICLE 5 - SOURCE OF FUNDING

The funding for the services is provided by the Executive Office of Environmental Affairs (EOEEA) Municipal Vulnerability Grant program and the agreement is wholly dependent on the availability of funds. The FRCOG reserves the right to review and monitor the practices and recordkeeping of the Consultant and/or Subconsultant in order to determine compliance with this Agreement or other requirements that may be included in the Grant Award.

ARTICLE 6 - OWNERSHIP OF DOCUMENTS AND WORK PRODUCT

The parties agree that all documents produced or created for the Council pursuant to this Agreement shall belong to the Council and the Town of Rowe with all rights established thereby. All information acquired from the Council, or from others at the expense of the Council, in the performance of this Agreement shall be and remain the property of the Council. This includes but is not limited to all records, data files, computer records, work sheets, deliverable products (complete and incomplete) and all other types of information prepared or acquired by the Consultant in the performance of the Consultant’s services. The Council shall own and shall have all rights to the use of the drawings, specifications, and other documents prepared by the Consultant for the completion and use of this project.

ARTICLE 7 - SEVERABILITY & APPLICABLE LAW

In the event that any provision of this Agreement shall be deemed invalid, unreasonable or unenforceable by any court of relevant jurisdiction, such provision shall be stricken from the Agreement or modified so as to render it reasonable, and the remaining provisions of this Agreement, or the modified provision as provided above, shall continue in full force and effect and be binding upon the parties so long as such remaining or modified provisions reflect the intent of the parties as of the date of this Agreement. Further, should this Agreement omit any statutory or regulatory requirements which would otherwise render this Agreement illegal, then this Agreement shall be deemed amended to the minimum extent necessary to comply with said statutes or regulations.

This Agreement shall be construed under and governed by the laws of the Commonwealth of Massachusetts. The Consultant, and agents thereof, agree to bring any federal or state proceedings arising under this Agreement, in which either the Commonwealth or the Awarding Authority is party, in a court of competent jurisdiction in the County of Franklin, Massachusetts.

ARTICLE 8 – INSURANCE REQUIREMENTS

The Consultant shall, at all times during the Contract, maintain in full force and effect: Employer's Liability, Workers' Compensation, Public Liability and Property Damage Insurance, including contractual liability coverage for the provisions of the Section herein entitled Indemnity. All insurance shall be by insurers and for policy limits acceptable to the Council and, before commencement of work hereunder, the Consultant agrees to furnish the Council with certificates of insurance or other evidence satisfactory to the Council to the effect that such insurance has been procured and is in force. The certificates shall contain the following express obligation:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or material change in a policy affecting the certificate holder, thirty (30) days prior written notice will be given the certificate holder."

For the purpose of the Contract, the Consultant shall carry the following types of insurance in at least the limits specified below:

COVERAGELIMITS OF LIABILITY

Workers' Compensation	Statutory Limit
Employers' Liability	\$500,000
Bodily Injury Liability	\$1,000,000 each occurrence

(except automobile)	\$2,000,000 aggregate
Property Damage Liability (except automobile)	\$1,000,000 each occurrence \$2,000,000 aggregate
Automobile Bodily Injury Liability	\$1,000,000 each person \$2,000,000 each occurrence
Automobile Property Damage Liability	\$1,000,000 each occurrence
Excess Umbrella Liability	\$1,000,000 each occurrence

The Council shall be named as an additional insured under the liability and automobile insurance. The general liability insurance policy should contain a broad form general liability endorsement.

All policies and certificates shall contain an endorsement requiring at least thirty (30) days written notice of non-renewal, restrictive amendment, or cancellation of coverage to the COUNCIL. Compliance by the Consultant with the insurance requirements shall not relieve the Consultant from liability under the full indemnity provisions contained herein. Failure to provide insurance as established above shall be considered a breach of Contract and grounds for termination of the Contract.

ARTICLE 9 – MODIFICATION, WAIVER OF CHANGE

No modifications, waiver or change shall be made in the terms and conditions of this Agreement, except as may be mutually agreed upon in writing by all parties hereto.

ARTICLE 10 – INDEMNITY

- a. To the fullest extent permitted by law, the Consultant shall defend, indemnify, and save harmless the Council, Rowe Select Board and its respective duly elected or appointed officials, agents and employees (referred to collectively as “Council”) from and against all demands, claims, damages, liabilities, losses, costs, and expenses (including, but not limited to, reasonable attorney fees) (referred to collectively as “demands”) arising out of or resulting from any work performed pursuant to this Agreement including but not limited to any negligent acts, errors, or omissions of the Consultant, any Subconsultant of the Consultant, or any person directly or indirectly employed by any of them, or by a defect of a product or design supplied by the Consultant or Subconsultant. Such obligation shall not negate, abridge, or reduce in any way any additional indemnification rights of the Council, that otherwise may exist under statute or in law or equity.
- b. Consultant assumes full responsibility for relations with any Subconsultants employed directly or indirectly by the Consultant and the Consultant shall defend, indemnify, and save harmless the Council from all demands made against the Council by such Subconsultant, such Subconsultant’s agent or employee, or any person, as the result of such Subconsultant’s work performed pursuant to this Agreement including but not limited to negligent acts, errors, or omissions that arise out of, result from, or are connected with the performance of this Agreement or any subsequent Agreement and is not otherwise subject to indemnifications under subparagraph “a” above.
- c. The Consultant shall defend, indemnify, and hold harmless the Council from any and all demands relating to wages, overtime compensation, or other employee benefits by employees employed directly or indirectly by the Consultant or Subconsultant for work performed in connection with the work hereunder or required by state or federal law, including but not limited to **Fair Labor Standards Act and Massachusetts Prevailing Wage Law**.
- d. The indemnification obligations of the Consultant and Subconsultant shall not be limited in any way by any limitations on the amount or type of damages, compensations, or benefits payable by or for the Consultant or Subconsultant under any federal or state law.

e. In the event of a breach of this Agreement by the Consultant, the Consultant shall pay the Council all reasonable attorney fees, costs and other litigation expenses incurred by the Council in enforcing its rights as a result of said breach in addition to any damages for said breach.

The Consultant will indemnify and hold the Council, its officials, agents, servants and employees harmless from and against any and all liability including suits, actions, legal proceedings, claims, demands, costs, expenses, and attorney fees for damage to persons or property of any kind whatsoever arising out of any and all activities to be conducted by the Consultant or Subconsultant pursuant to this Agreement.

By entering into this Agreement the FRCOG has not waived any governmental immunity or limitation of damages which may be extended to them by operation of law.

ARTICLE 11 - CRIMINAL OFFENDER RECORD CHECKS:

Certain Consultants who may be working directly with minors may be subject to provisions of 105 CMR 950 Criminal Offender Record Checks.

ARTICLE 12 – SUCCESSORS AND ASSIGNS

The Consultant shall not assign any interest in this Agreement, and shall not transfer any interest in the same, without prior written consent of the Council. No subcontract may be awarded by the Consultant, the purpose of which is to fulfill in whole or in part the services required herein, without said written consent of the Council. Nothing herein shall be construed to prevent an assignor's due performance of its entire obligation. This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of each of the parties hereto.

ARTICLE 13 - CONFLICT OF INTEREST

No officer, employee, agent, or member of the Council or the Consultant shall participate in any decision or service relating to this Agreement, which affects the personal interest of such officer, employee, agent, or member of the Council or the Consultant, whether such interest is direct or indirect. The Council and the Consultant shall take all reasonable actions necessary to ensure that their officers, employees, agents, and members of their governing bodies are aware of the requirements, and comply with the provisions of Massachusetts General Laws, Chapter 268A, the so-called Conflict of Interest Law.

ARTICLE 14 – NONDISCRIMINATION

The Consultant shall not discriminate against any person because of race, color, religious creed, national origin, gender, ancestry, sexual orientation, age, handicap, gender identity, genetic information, military service or any other protected class under the law.

ARTICLE 15 – RIGHTS AND REMEDIES

The Council's rights and remedies provided in this Agreement are in addition to any other rights and remedies provided by law.

ARTICLE 16 – ACCESS TO RECORDS

Consultant will make all books, accounts, data, records, reports, files and other papers required to be kept or kept in the course of the work to be performed under this Agreement available at all reasonable times for inspection, review and audit by the Council or its authorized representative.

ARTICLE 17 – COMPLIANCE WITH THE LAW

The Consultant shall conduct operations under this Agreement in compliance with all applicable laws, regulations, rules, by-laws and codes of the local, state and federal government such provisions being incorporated herein by reference, provided however, the General Specifications shall govern the obligations of the Consultant where there exists conflicting ordinances on the subject. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

ARTICLE 18 – FORCE MAJEURE

The Consultant shall not be liable for the failure to wholly perform his duties if such failure is caused by catastrophe, riot, war, governmental order or regulation, strike, fire, accident, act of God or other similar or different contingency beyond the reasonable control of the Consultant.

ARTICLE 19 – MARGINAL HEADINGS, PRONOUNS

The marginal headings used in this Agreement are for convenience only and shall not be deemed to be a binding portion of this Agreement. The pronouns he, she, or it, are also used for convenience, and in the event that an improper pronoun has been used, it shall be deemed changed so as to render the sentence in which it is contained effective in accordance with its terms.

ARTICLE 20 – ENTIRE UNDERSTANDING

This Agreement, together with the attachments hereto, represents the entire understanding of the parties, and neither party is relying upon any representation not contained herein.

IN WITNESS WHEREOF, the parties hereby execute this Agreement as of the dates written below.

For the FRANKLIN REGIONAL COUNCIL OF GOVERNMENTS:

Linda Dunlavy, Executive Director
Franklin Regional Council of Governments

Signature Date: _____

For the CONSULTANT:

Authorized Signature / Printed Name and Title

Signature Date: _____

Tax ID Number (TIN)

The Franklin Regional Council of Governments (FRCOG) does not discriminate on the basis of race, color, national origin, sex, age, disability, or gender with respect to admission to, access to, or operation of its programs, services or activities. If you would like accessibility or language accommodation, please contact the Title VI Coordinator at 413-774-3167 (voice) (MA Relay System: 800-439-2370), 413-774-3169 (fax), or civilrights@frcog.org (e-mail).

For FRCOG Use Only

Contract Reviewed by Procurement: _____ Finance: _____ Grant Line # _____
Initial Initial

ATTACHMENT A – The Request for Proposal (RFP)

ATTACHMENT B – The response to the RFP