

AGREEMENT is made this \_\_\_ day of JUNE 2023 for a portion of **NAME AND H-#** by and between the Municipalities listed in Attachment A, who are all Municipalities in the Commonwealth of Massachusetts (hereinafter called the "Participants") and **COMPANY NAME AND PHONE** (hereinafter called the "Seller").

The SELLER agrees to sell and the PARTICIPANTS agree to buy materials and/or services particularly described as follows:

As further described in Attachments A and B (Award document with Bidder's submission and Invitation for Bids/Specifications including list of Participants)

1. The PARTICIPANTS agree to pay the SELLER for said materials and/or services in the following manner:

a. See Attachments A and B. Per MGL Ch7, §22B, the Franklin Regional Council of Governments (hereinafter "FRCOG"), who has facilitated the bid on behalf of the Participants, will in no way be responsible for the actions of the PARTICIPANTS and each PARTICIPANT accepts sole responsibility for any payment due a Seller. All scheduling, acceptance of products/services and invoicing shall be done directly between the SELLER and the INDIVIDUAL PARTICIPANT.

2. The SELLER agrees to deliver said materials and/or perform such services as described in Attachments A and B

3. Title to said materials and/or services shall not pass to the PARTICIPANTS until delivered and/or performed and accepted by the PARTICIPANT, and the risk of loss shall be that of the SELLER until delivered and/or accepted by the PARTICIPANT.

4. The contract period shall be from **July 1, 2023 to June 30, 2024**.

5. The following contract terms apply to all contracts involving **Delivered or Applied in Place** products:

**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.

**Successors and Assigns** This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of each of the parties hereto.

**Violation of Law** The Seller shall strictly observe and comply with all federal, state and local laws and regulations which may govern the work to be performed as herein specified. .

**Nondiscrimination** The Seller 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.

**Governing Law** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

**Venue and Jurisdiction** Venue and jurisdiction of any action will only be brought in the Commonwealth of Massachusetts, County of Franklin.

**Termination** Any party may terminate this Agreement by giving thirty (30) days notice to the other parties.

**Severability** In the event that any provision of this Agreement shall be deemed invalid, unreasonable, or unenforceable by any court of competent 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.

**Marginal Headings and 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.

**Insurance** The Seller 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 Participants and, before commencement of work hereunder, the Seller agrees to furnish the FRCOG with certificates of insurance or other evidence satisfactory to the FRCOG to the effect that such insurance has been procured and is in force.

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

COVERAGES	LIMITS OF LIABILITY
Worker's Compensation	Statutory **
Employer's Liability	\$500,000.00
Bodily Injury (except Automobile)	\$1,000,000.00 each person \$2,000,000.00 each occurrence
Property Damage Liability (except Automobile)	\$1,000,000.00 each occurrence \$2,000,000.00 aggregate
Automobile Bodily Injury	\$1,000,000.00 each person \$2,000,000.00 each occurrence
Automobile Property Damage Liability	\$1,000,000.00 each person
Excess Umbrella Liability	\$1,000,000

*\*\* If Contractor has elected exemption from M.G.L. c. 152 pursuant to M.G.L. c. 152 sec. 1(4), Contractor shall provide Council with a copy of its Affidavit of Exemption, and Contractor hereby covenants and affirms that in electing such exemption has complied with all requirements of M.G.L. c. 152, and 452 C.M.R. c. 8.00 et seq., as amended from time to time. Failure by Contractor to comply with this paragraph shall constitute an event of default as defined herein.*

The Franklin Regional Council of Governments and the "Participants of [name of bid]" 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.

**Licenses and Fees** The Seller shall obtain all licenses and permits (other than the license and permit granted by the Agreement) required to conduct the activities pursuant to this Agreement and shall promptly pay all fees, taxes or other state or municipal costs necessary for said licenses, permits or activities.

**Compliance with the Law** The Seller 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 Seller where there exists conflicting ordinances on the subject.

**Availability of Funds** The compensation provided by this Agreement is subject to the continued availability of Municipal funds and appropriations and the continued availability of any other funds anticipated or earmarked for the work hereunder.

**Access to Records** Seller 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 Participants or the FRCOG.

**Rights and Remedies** The Participant's rights and remedies provided in this Agreement are in addition to any other rights and remedies provided by law.

**Ownership of Documents** The parties agree that all documents created for the Participant(s) pursuant to this Agreement by the Contractor shall belong to the Participant(s) with all rights established thereby.

### **Indemnity**

a. To the fullest extent permitted by law, the Seller shall defend, indemnify, and save harmless the FRCOG, the Participants, and their respective duly elected or appointed officials, agents and employees (referred to collectively as "FRCOG and Participants") 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 Seller, any subcontractor of the Seller, or any person directly or indirectly employed by any of them, or by a defect of a product or design supplied by the Seller or subcontractor. Such obligation shall not negate, abridge, or reduce in any way any additional indemnification rights of the Council and Participants, that otherwise may exist under statute or in law or equity.

b. Seller assumes full responsibility for relations with any subcontractors employed directly or indirectly by the Seller and the Seller shall defend, indemnify, and save harmless the FRCOG and Participants from all demands made against the FRCOG and Participants by such subcontractor, such subcontractor's agent or employee, or any person, as the result of such subcontractor'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 Seller shall defend, indemnify, and hold harmless the FRCOG and Participants from any and all demands relating to wages, overtime compensation, or other employee benefits by employees employed directly or indirectly by the Seller 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 Seller and subcontractor 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 Seller or subcontractor under any federal or state law.

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

**Force Majeure** The Seller 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 Seller.

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

In witness whereof the parties hereto have subscribed their hands and seals on the date first above written.

SELLER

FRANKLIN REGIONAL  
COUNCIL OF GOVERNMENTS  
on behalf of the Participants per their  
Collective Purchasing Agreement.

\_\_\_\_\_  
NAME OF SELLER .

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Andrea Woods, Chief Procurement Officer

\_\_\_\_\_  
Printed Name of Above and Title

\_\_\_\_\_  
Address Line 1

\_\_\_\_\_  
Address Line 2 /zip \_\_\_\_\_

\_\_\_\_\_  
Email address

Attachment A

CONTRACT AWARD DETAIL and BIDDER'S SUBMISSION

Attachment B

INVITATION FOR BIDS AND ANY ADDENDA THERETO  
INCLUDING LIST OF PARTICIPANTS

THE LIST OF PARTICIPANTS IN THE FRCOG COLLECTIVE  
HIGHWAY PROGRAM IS INFORMATIONAL ONLY AND NOT  
ALL LISTED TOWNS WILL PARTICIPATE IN THIS CONTRACT.