

SELECT BOARD MEETING AGENDA*

*Donn B. Griffin Room, Town Hall
732 Main Street, Harwich, MA
Regular Meeting 6:00 P.M.
Monday, October 16, 2023*

Remote Participation Optional:

Please join my meeting from your computer, tablet or smartphone.

<https://meet.goto.com/520628541>

You can also dial in using your phone.

Access Code: 520-628-541

United States: [+1 \(224\) 501-3412](tel:+12245013412)

**As required by Open Meeting Law, you are hereby informed that the Town will be video and audio taping as well as live broadcasting this public meeting. In addition, anyone in the audience who plans to video or audio tape this meeting must notify the Chairman prior to the start of the meeting.*

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. PUBLIC COMMENTS/ANNOUNCEMENTS

- A. Next Select Board Meeting will be Monday, October 23, 2023
- B. Next Office Hours with Mary Anderson & Jeff Handler will be Wednesday, October 25, 2023, 5:00 - 7:00 p.m. at 204 Sisson Road
- C. Ashley Symington, Director of Youth and Family Services, to discuss upcoming Community Forums

IV. CONSENT AGENDA

- A. Approve Select Board Meeting Minutes:
 - 1. October 2, 2023
- B. Approve the resignation of Maryann Campagna from the Harwich Accessibility Rights Committee
- C. Accept a memorial bench donation from Joel and Christine Berman, Trs., of the Berman Family Trust
- D. Accept a memorial bench donation from Raymond and Jeanne M. Mongillo
- E. Vote to appoint Emily Brutti as the Planning Board’s representative to the Community Preservation Committee, Term to expire June 30, 2024

V. NEW BUSINESS

- A. Vote to use ImageCast Precinct tabulators beginning with the March 5, 2024 Presidential Preference Primary Election and continuing for future elections thereafter pursuant to MGL c. 54, § 34
- B. Vote to appoint the Treasurer/Collector role as Parking Clerk pursuant to MGL c. 90, § 20A ½

VI. CONTRACTS

- A. Vote to approve a contract with Deere & Company for a ballfield mower in the amount of \$87,806.18.
- B. Vote to approve a contract with Lawrence-Lynch Corporation for the Brooks Park Pickle ball court expansion in the amount of \$240,283.77.

VII. TOWN ADMINISTRATOR’S REPORT

VIII. SELECT BOARD’S MEMBER REPORT

IX. CORRESPONDENCE

X. ADJOURNMENT

**Per the Attorney General’s Office: The Select Board may hold an open session for topics not reasonably anticipated by the Chair 48 hours in advance of the meeting following “New Business.” If you are deaf or hard of hearing or a person with a disability who requires an accommodation, contact the Select Board’s Office at 508-430-7513.*

Authorized Posting Officer:

Carol Campos, Executive Assistant

Posted by: _____

Town Clerk

Date: _____

October 12, 2023

PUBLIC
COMMENTS /
ANNOUNCEMENTS



COMMUNITY FORUMS

On the Behavioral Health needs of children and youth (age 0 to 21) in Barnstable County

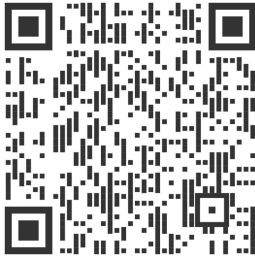
A series of Community forums is being hosted by Barnstable County Department of Human Services to hear about the behavioral health needs of children and youth (age 0-21) in Barnstable County. Join us and share your thoughts and experiences!



Attend In-Person or Participate Virtually via Zoom!

OUTER CAPE
October 16th
5:30-7:30PM


Truro Community Center
7 Standish Way
North Truro



Scan to
RSVP & receive
Zoom link!

LOWER CAPE
October 25th
5:30-7:30PM


Cape Cod Technical
High School
351 Pleasant Lake Ave
Harwich



Scan to
RSVP & receive
Zoom link!


MID CAPE
October 26th
5:30-7:30PM

The Family Table
Collaborative
1338 Route 28
South Yarmouth




Scan to
RSVP & receive
Zoom link!

UPPER CAPE
November 6th
5:30-7:30PM



Mashpee Wampanoag
Community/Gov't Center
483 Great Neck Road S.
Mashpee



Scan to
RSVP & receive
Zoom link!

Food and Refreshments will be provided for In-Person attendees.
RSVP is encouraged for all attendees; required to receive the link for Virtual attendance.
Childcare is not available, but *Parents/Caregivers are welcome to bring their child(ren).*

FOR MORE INFORMATION CONTACT:
Mandi Speakman, mandi.speakman@capecod.gov

CONSENT AGENDA

**MINUTES
SELECT BOARD MEETING
DONN B. GRIFFIN ROOM, TOWN HALL
732 MAIN STREET, HARWICH, MA
REGULAR MEETING - 6:00PM
MONDAY, OCTOBER 2, 2023**

MEMBERS PARTICIPATING: Mary Anderson, Chair, Jeff Handler, Clerk, Michael MacAskill and Don Howell

ALSO PARTICIPATING: Joseph Powers, Town Administrator

CALL TO ORDER: Ms. Anderson called the meeting of the Harwich Select Board to order on Monday, October 2, 2023 at 6:00PM.

PLEDGE OF ALLEGIANCE:

Ms. Anderson invited all attendees to join in the Pledge of Allegiance.

CONSENT AGENDA:

(TAKEN OUT OF ORDER)

- F. Appoint John Sullivan as a Special Police Officer to the Harwich Police Department effective October 18, 2023, as recommended by the Chief of Police
- G. Appoint Sergeant Aaron Goshgarian to Lieutenant of the Harwich Police Department, effective October 18, 2023 as recommended by the Chief of Police
- H. Appoint Patrol Officer Tyler Vermette to Sergeant of the Harwich Police Department effective October 18, 2023 as recommended by the Chief of Police

Chief Guillemette requested the appointment of John Sullivan as Special Police Officer. He is presently a Lieutenant and is retiring in Mid October. He gave a summary of Lt. Sullivan's career. He also expressed gratitude for his years of service and congratulations on his retirement.

Chief Guillemette announced the recommendation of the promotion of Aaron Goshgarian to Lieutenant and gave a summary of Sergeant Goshgarian's career up to this point.

Chief Guillemette announced the recommendation of the promotion of Officer Tyler Vermette to the rank of Sergeant and gave a summary of Officer Vermette's career up to this point.

Chief Guillemette announced that Wednesday, October 4th is National Coffee with a Cop Day and Officers will be at Cumberland Farms from 9:00 to 10:00 and invited anyone who is interested to stop by.

Mr. Handler moved to approve F. , G. , and H. , of the Consent Agenda as presented, seconded by Don Howell.

Vote: 4:0 in favor. Motion carried.

Board members and the audience expressed their congratulation to all the officers.

PUBLIC COMMENTS/ANNOUNCEMENTS:

October 2, 2023

A. Next Select Board Office Hours - October 25th, 5:00 p.m. to 7:00 p.m., at 204 Sisson Road

Carolyn Carey, Community Center Director, announced the October events at the Community Center. All events, dates and details are on the website.

Lou Roberno of West Harwich commented on the Budget, specifically Free Cash. He asked that the Board look at Free Cash in terms of usage, and also to explain where Free Cash originates from and how it comes about. He asked the Board to consider where Free Cash could be spent on a predetermined basis so as not to cause a Budget issue. He feels the community would benefit from that information. He also offered his thanks to the members of the Select Board for their service to the Town.

Jamie Goodwin, Station Manager, gave an update. The new name for the station is The Harwich Channel. The name was picked by people who responded to the pole. She also noted the plan to make changes in the Griffin Room including new furniture and having more space for citizens. The Station is still available on You Tube through the same links and instructions on other ways to access the station are on the website.

Lauren Vivanti, Harwich resident, expressed a concern about what she feels is the Recreation Department's lack of children's programming. She noted programs that other elementary schools offer and she described them in detail. She also noted things she has done and suggestions she has made including collaborating with other towns that have programs. She offered her time to help.

Mr. Handler noted that there is a formal request from Ms. Vivanti, to the Town to look into this situation.

Bianca Caswell, Harwich resident, expressed her concerns about the shortage of staff at the Community Center and noted a specific situation.

Brian Wentworth, Harwich resident, offered suggestions on how to get more volunteers and people involved and also offered to help.

Jay Schronic, Harwich resident, spoke about electronic voting systems for Town Meeting. He suggested an Audience Response System for the next meeting and explained how it would help at Town Meeting. He offered information to Board members about a system that other Towns are using.

Mr. MacAskill asked for a show of hands of people who were present regarding the Recreation Department issue.

Abigail MacGillan also expressed concerns about the lack of programming for children and safe activities.

Patrick Otton, of East Harwich, spoke about the benefits to using clickers at Town Meeting. He will send data to the Select Board for their information.

John Cherry of Harwich, referred to a request that he had made regarding clickers and asked for an update on that request. He also suggested sharing clickers with Chatham.

Ms. Anderson responded that they are looking at the suggestion of clickers.

Seth Demontigne also expressed his concerns about the Recreation Department and the programs.

Nancy Peterson expressed her concerns about the cost and the lack of programs for children.

Kristen Wentworth expressed her concerns, specifically mentioning the lack of fields. She stressed that they are all willing to help in any way.

October 2, 2023

Mr. MacAskill commented and explained that they re not responding to the comments because it is a Public Comment/Announcement item on the Agenda. He assured all those who voiced their concerns that there will be follow up.

CONSENT AGENDA:

- A. Approve Select Board Meeting Minutes:
 - 1. September 11, 2023
 - 2. September 18, 2023
 - 3. September 25, 2023
- B. Approve the resignation of Mary Maslowski as a Planning Board Representative to the Community Preservation Committee
- C. Approve the resignation of Mary Maslowski from the Harwich Housing Committee
- D. Approve the resignation of Kohn Connolly from the Golf Committee
- E. Appoint Mary Maslowski as Select Board Representative to the Community Preservation Committee term to expire June 30, 2024
- I. Accept a donation to the Wetlands Revolving Account from EdOdyssey in the amount of \$300.00

Mr. Handler moved to accept the minutes of the September 11, 2023, September 18, 2023, September 25, 2023 with one modification. On the September 18th meeting, under Public Comments/ Announcements, The name is corrected to Ray Gottwald as noted by Mr. Howell. Mr. Handler moved to approve items B., C., D., E., and I. as presented. Seconded by Mr. MacAskill.

Mr. Howell expressed thanks to Mr. Connolly.

Vote 4:0 in favor Motion carried.

OLD BUSINESS:

- A. Review of Golf Committee Charge

Ms. Anderson made opening statements regarding making decisions that are in the best interest of the town and that reviewing all Committees is part of a process, the Golf Committee is not being singled out. It is an advisory committee and that is the category they are reviewing at this time. She credited Mr. Handler for his exceptional work and professionalism. She explained the process going forward at this meeting.

Mr. Handler explained that challenges of writing a new charge and possible template for moving forward. He also summarized the process and changes that have been made to the draft. He commented on Martha Duffy, Chair of the Golf Committee and the result of their meeting that included Mr. Powers. Mr. Handler noted one modification in the wording in the Chair's email.

Mr. Howell noted that he had requested that the Golf's Committee's voted on draft charge be included in the packet, not to deliberate but as a public document. He expressed concerns of where it varies and is inconsistent with the Charter. He read the wording of his specific concerns and explained his concerns in detail. He stressed that the Charter language itself must be changed, it cannot be changed by codifying it in the Charge.

Ms. Anderson responded to Mr. Howell's concerns, noting the discrepancy in the Charter. Legal Counsel has advised them that they can have that wording in the Charge and that is why it is included.

Mr. MacAskill asked for Mr. Powers' opinion on Mr. Howell's comments.

October 2, 2023

Mr. Powers noted that there is not a Charter Compliance Committee to rely on. He agreed that there is a fracture between what committees want to do and what they think they can do. He understands that the Board's focus was to create a template for all the Committees as it is universally understood that there are disconnects in the Charter language.

Mr. MacAskill asked if it is accurate, that the Charge put forth tonight, reflects Town Counsel's opinion that they are legally okay with the wording.

Mr. Power's had not spoken directly to counsel but he understand that it comports.

Ms. Anderson noted that they were advised that this Charge does not conflict with the Charter and it is within the authority of the Select Board.

Mr. MacAskill commended Mr. Handler's outstanding work on the Charter and that everyone including Mr. Howell had an opportunity have a meeting and/or to send comments and express thoughts to Mr. Handler. He also commented on clips on Harwich Old Timers (a social media site) and on people who have called him to get the true facts. Mr. MacAskill stated that he supports the Charge. He described specific situations and conversations. He noted that the Golf Committee Charge belongs to the Select Board and input from others including social media, should not be what Harwich wants for their town government. He directed everyone to the August 23, 2022 meeting and asked if that is how they want their Town employees to be treated. This is an effort to save the Gold Committee, he would prefer to dissolve the Golf Committee and start from scratch.

Mr. Howell and Mr. MacAskill exchanged comments.

Mr. Handler noted that he would like to see the Golf Committee salvaged. and see all Committees be of value to the Town of Harwich. He explained what he tried to accomplish with the Charter and went through each section and how/why he decided on the wording so the committee members knew what they were supposed to do and not supposed to do. The Charge should be giving them direction and allowing them to be efficient. Mr. Handler stated that unless there is a clear, concise sentence of a change, he would move to accept this Charge.

Mr. Howell asked a question about the wording and Mr. Handler responded in detail. Discussion followed regarding wording in the Committee handbook.

Mr. Howell suggested an amendment.

The Board had a discussion about the language and the Committee's options for agenda items.

Mr. Powers referred to the Handbook which he had in hand, specifically page 4 which has the requirements of Committee members.

Mr. Handler read language from the Handbook which was the reason that Counsel advised him to incorporate the language into the Draft Charge. Mr. Handler also suggested that this Charge could be adapted for any other Committee.

Mr. Howell reiterated that it still talks about "The Committee" They can't have a Committee opinion to approach anyone without first having an Open Meeting. And the only way to have an Open Meeting is to post it publicly.

Mr. Handler asked Mr. Powers for advice on changing the wording if the Charges are the purview of the Select Board He asked if the Select Board have the right to modify a Committee's Handbook language and make a vote.

October 2, 2023

Mr. Powers replied that the Committee Handbook was created by past Boards of Selectmen.

There was Board discussion about changes in the wording.

Mr. Handler moved to accept the Golf Committee's Charge as presented with these modifications: Omission of Chair in Chair email and language change from "if a member of the Golf Committee has any concerns" to "if a member of the Golf Committee has any concern regarding", seconded by Mr. MacAskill.

Mr. Howell expressed his concern about advisory committees waiting for instruction from the Select Board. He suggested a mechanism to eliminate that issue and suggested wording.

Mr Handler responded and noted that Counsel made it clear that the direction should come from the Select Board.

More discussion followed regarding the options for agenda building.

Vote 3:1 with Mrs Howell voting Nay.

Motion carried.

Ms. Anderson asked the members of the Golf Committee in the audience to look at the Charge and consider if they have the ability to operated within that Charge.

- B. Discussion on May 6, 2024 Annual Town Meeting
 - 1 Current Five Year Fiscal Assessment
 - 2. Five Year Financial Outlook
 - 3. Select Board Budget Message

Mr. Powers noted required actions to be taken prior to Town Meeting which are noted as 1, 2, and 3 above. He referred to documents in the packet regarding 1, 2, and 3. He explained each document in detail. Also noted was his memo of recommendations to assist the Select Board in their efforts for building a Budget Message. He explained the reasons for his recommendations which include taking a moderate approach of working within the levy limit.

Ms. Anderson briefly summarized major expenses the Town has had over the past couple of years and expressed that she feels it is time to keep spending as low as possible, at or below the 2 and 1/2%.

Mr. Howell commented that he would encourage a conservative approach.

Mr. MacAskill agreed and also noted an issue with projects and suggested the Board take a conservative approach with those also. He would like to include something in the Budget message about Capital items.

Mr. Powers noted that the Charter requires the Select Board to establish the General Policy Statement on or before the first Tuesday. He asked if they were willing and able to vote on a Policy Statement that he can start distributing.

The Board discussed the creating the General Policy Statement at this meeting and agreed that a draft can be presented at the next meeting for modification.

Mr. Howell suggested that there is consensus of the Board to work with Mr. MacAskill as he has done this in the past and in a conservative way. All members agreed.

October 2, 2023

John Chorey asked a question about a document that was not in the packet and also agreed with and commented on the 1-2 and 1/2 goal, a conservative look at projects and also asked for an update on uncollected property taxes at a future meeting.

Mr. MacAskill offered an update and also noted what can be expected moving forward.

C. Town Administrator to present project updates

Mr. Powers referred to a document in the packet provided by Meggan Eldredge, Assistant Town Administrator, with the numbers of projects and the plan. He offered details on specific items.

Mr. MacAskill questioned why a specific procurement is on the list regarding dredging, which they do every year and not under the Harbormaster Rendon's name.

Mr. Rendon, Harbormaster responded with a detailed answer of how and why those funds were added to the procurement list. He also noted two projects on the list which have been completed. He noted funds from those projects that had not been used and commented that he hopes to use those funds towards an emergency generator.

Mr. MacAskill expressed an interest in completing projects and knowing what is left and what is needed and what can be reappropriated. He also questioned why some Department Heads are not doing their procurements and asked Mr. Powers review the list and to provide an updated list to the Board.

Mr. Powers responded that they are all able to do procurements although some are formally trained. He also noted the procedure to reappropriate funds.

Mr. Handler asked about older project requests which may now cost more and the procedure to update those numbers.

Mr. Powers responded with a detailed answer and gave an example.

D. Discussion and vote on Select Board meeting schedule

Ms. Anderson referred to the proposed set of dates which is included in the packet. She explained why she requested a schedule with two regular meetings and a working session.

A Board discussion followed regarding the schedule.

Mr. MacAskill expressed concerns about completing the amount of work ahead of them. He does not support the schedule as proposed.

Mr. Handler commented that he would prefer to meet weekly.

Mr. Howell suggested an alternative way to utilize the working session as a single item session.

Ms. Anderson noted that the request for every other week was from staff to enable them to get more done. She noted that the consensus is to meet weekly with the option to cancel a meeting if the agenda is light. She also agreed that a single topic meeting would be helpful to the Board and would give staff much needed time to accomplish their work.

Discussion continued regarding the next meeting and when the Budget Message will be completed.

The Board agreed to meet on October 16th and then continue with a weekly schedule.

October 2, 2023

Taken out of order under CONTRACTS:

- A. Vote to approve a construction contract agreement with T.W. Nickerson, Inc. for Wixon Landing improvements in the amount of \$95,500

Mr. MacAskill moved to approve a construction contract agreement with T.W. Nickerson Inc as presented, seconded by Mr. Howell.

Mark Kelleher made a request of the Harbormaster to ask the contractor to use the smallest size riprap for safety reasons.

Mr. Rendon agreed to ask the engineer about the smaller riprap.

Vote 3:0:1 with Mr. Handler abstaining. Motion carried.

NEW BUSINESS:

- A. Approve a fee waiver request from WOMR for six signs for the “Rockin’ Picnic in the Park” event in the amount of \$600.00

Shelia Howes, Board President and John Braydon, Executive Director of WOMR participated remotely.

Board members discussed the waiver, both for and against.

Mr. Handler moved to approve a \$500.00 reduction in the sign fees for 6 signs in the amount of \$100.00, seconded by Mr. Howell.

Board discussion followed verifying that it is one application but each sign is \$100.00. Also noted was a previous request for a waiver that had been denied. Board members asked Ms. Howes questions regarding distance between signs and the time they are up which she answered.

Vote 3:1 with Mr. MacAskill voting Nay. Motion carried.

Ms. Anderson suggested that the Board consider, for a future discussion, a reduced rate for non-profits.

- B. Approve a Hawkers & Peddlers license for Pilgrim Lodge AF & AM - 706 Main Street

Mr. MacAskill moved to approve a Hawkers & Peddlers license as presented, seconded by Mr. Howell.

Vote 4:0 in favor Motion carried.

- C. Approve a fee waiver request from Pilgrim Lodge AF & AM for the application fee for a Hawkers & Peddlers license in the amount of \$60

Mr. Handler moved to approve the fee waiver request as presented, seconded by Mr. Howell.

Mr. MacAskill commented that this and other requests that have been denied in the past. and noted that these applications do cost the Town money.

Vote 1:3 against with Mr. MacAskill, Mr. Handler and Ms. Anderson voting against. Motion denied.

CONTRACTS:

- B. Vote to approve a contract with Paul S. Kapinos & Associates, Inc. for Tax Title research in the amount of \$93,600

Mr. Handler moved to approve a contract with Paul S Kapinos as presented, seconded by Mr. Howell.

October 2, 2023

Mr. MacAskill questioned where the work material is stored and when they will get it, is she (Gail) working on or off site.

Mr. Powers replied that the information is not in the documents from Paul Kapinos.

Mr. MacAskill asked that this be a topic of conversation noting that he believes the town's property should be on the town's site. It is important that they have all the information that is created. He also had questions regarding Scope of Services and other professionals services.

Mr. Powers noted that if this is approved, the next step will be a meeting when all those questions will be asked and answered.

Mr. MacAskill asked, regarding Gail, an employee of PK, who is she reporting to, when is she reporting to them and when does the Board get updates.

Mr Powers replied that that is an internal matter but he can request a scheduling of updates for the Board.

Mr. MacAskill requested an update before the Board on at least a quarterly basis.

Vote 4:0 in favor. Motion carried.

C. Vote to approve the license agreement extension with Bob Miller for golf instruction services in the amount of \$11,865.66

Mr. Handler moved to approve the license agreement as presented, and upon the recommendation of the Golf Director, seconded by Mr. MacAskill.

Vote 4:0 in favor. Motion carried.

TOWN ADMINISTRATOR'S REPORT:

Mr. Powers reported on job hirings. He also noted that the report to the Commonwealth on the MS4 Program is in order.

SELECT BOARD'S MEMBERS REPORT:

Mr. Howell, no report.

Mr. Handler, no report.

Mr. MacAskill requested a legal opinion, by the next meeting, on whether or not it is true that the Rec and Youth Committee do not have to go before the Select Board for fee waivers or to update their fees. He gave his reasons for that request. He also requested an agenda item related to 204 Sisson Road and an agenda item for the land of little value.

CORRESPONDENCE:

No correspondence.

ADJOURNMENT

Mr. Handler moved to adjourn, seconded by Mr MacAskill.

October 2, 2023

Vote 4:0 in favor. Motion carried Meeting adjourned.

Respectfully submitted,

Judi Moldstad
Board Secretary

October 2, 2023

Emily Mitchell

From: Maryann Campagna [REDACTED] >
Sent: Sunday, October 1, 2023 4:55 PM
To: Emily Mitchell
Subject: HARC

RECEIVED
TOWN CLERK
HARWICH, MA

2023 OCT -2 A 10: 13

Blind Copy to the Harwich Accessibility Rights Committee

Dear Emily,

I regret to inform you that I am resigning as Chair of the Harwich Accessibility Rights Committee. It is my hope that I can continue serving the Town in another capacity.

Thank you,
Maryann Campagna



Carol Campos

From: Emily Mitchell
Sent: Thursday, October 12, 2023 1:54 PM
To: Carol Campos
Subject: FW: HARC

Emily Mitchell
Harwich Town Clerk
732 Main Street
Harwich, MA 02645
Phone: 508-430-7516
Fax: 508-430-7517
Email: emitchell@harwich-ma.gov

-----Original Message-----

From: Maryann Campagna <[REDACTED]>
Sent: Monday, October 2, 2023 11:41 AM
To: Emily Mitchell <emitchell@harwich-ma.gov>
Subject: HARC

My intention is to resign fully.
Thank you!
Maryann

Sent from my iPhone

Harwich Planning Department



Shelagh Delaney, Assistant
Planning & Community Development
sdelaney@harwich-ma.gov
508-430-7511

Memorandum

To: Board of Selectmen

RE: Nomination of Planning Board Member

Emily Brutti as Representative to the Harwich Community Preservation Committee

Date: October 11, 2023

At its meeting last evening, October 10, 2023 Mary Maslowski moved to nominate Emily Brutti to the position of Planning Board Representative to the Harwich Community Preservation Committee. The motion was seconded by Allan Peterson. All 7 members of the Planning Board voted in favor.

Please place this matter on the next available Agenda.

NEW BUSINESS



Town of Harwich

TOWN CLERK'S OFFICE

Emily Mitchell, Town Clerk
Harwich Town Hall • 732 Main Street • Harwich, MA 02645
Tel: 508-430-7516 • Fax: 508-430-7517

memo

TO: Select Board

FROM: Emily Mitchell, Town Clerk

DATE: October 11, 2023

RE: **Vote to Use New Vote Tabulation Machines**

The Town of Harwich signed a contract for the purchase of six new electronic vote tabulation machines with vendor LHS Associates, Inc. on August 31, 2023. The total purchase cost for the new tabulators was \$26,960.00 and was paid with an appropriation from Article 20 of the 2022 Annual Town Meeting.

The new machines, ImageCast Precinct tabulators, will replace the AccuVote Optical Scan tabulators which have been in use since they were purchased by the Town in 2008. The ImageCast Precinct Tabulators are one of two types of electronic vote tabulation machines that are currently manufactured and certified for use in Massachusetts by the Secretary of the Commonwealth's Office. The AccuVote Optical Scan tabulators remain certified for use, but are no longer manufactured and therefore pose challenges for ongoing maintenance and repairs.

Before new vote tabulation machines can be put into use in a community, MGL c. 54, § 34 requires the Town's Select Board to formally vote to put the specific machines into use and to identify the election at which they will first be used. This vote must be taken at least 120 days prior to that first election.

I respectfully request that you take that action at your October 16, 2023 meeting. I have provided motion language for your vote and signature. Once voted, our office will send documentation of your action to the Secretary of the Commonwealth's Office notifying them that this requirement has been met.

We are thankful to the Select Board and the residents and voters of Harwich for your support of the purchase of new voting machines and are excited to put them into use in 2024.



Town of Harwich

TOWN CLERK'S OFFICE

Emily Mitchell, Town Clerk
Harwich Town Hall • 732 Main Street • Harwich, MA 02645
Tel: 508-430-7516 • Fax: 508-430-7517

October 16, 2023

As required pursuant to MGL c. 54, § 34, I move that the Town of Harwich vote to use the ImageCast Precinct tabulators beginning with the March 5, 2024 Presidential Preference Primary, and thereafter in all future local, state, and federal preliminary, primary, and general elections held in the Town of Harwich, and with that, to discontinue the use of the AccuVote Optical Scan tabulators.

Approved and signed this 16th day of October 2023

Mary E. Anderson, Chair

Julie E. Kavanagh, Vice Chair

Jeffrey F. Handler, Clerk

Donald F. Howell, Member

Michael D. MacAskill, Member

HARWICH SELECT BOARD

Part I ADMINISTRATION OF THE GOVERNMENT

Title XIV PUBLIC WAYS AND WORKS

Chapter 90 MOTOR VEHICLES AND AIRCRAFT

Section 20A1/2 CITIES OF BOSTON AND CAMBRIDGE; PARKING VIOLATIONS; TAGS; APPEARANCE; FAILURE TO APPEAR; ADJUDICATION BY MAIL

Section 20A1/2. In the cities of Boston and Cambridge and in any city or town which accepts the provisions of this section, each manager in a city having a Plan D or E form of charter or the mayor, with the approval of the city council or board of aldermen in any other city, or the town council or board of selectmen of a town shall designate or appoint a parking clerk. The parking clerk shall report to the council or aldermen of a city, the council or board of selectmen of a town and shall supervise and coordinate the processing of parking notices in such city or town. The parking clerk shall have the authority, after such authorization by the mayor and city council in a city or town council or selectmen in a town, to hire and designate such personnel as may be necessary or contract by competitive bid for such services, subject to appropriation, to implement the provisions of this section; provided, however, that such positions shall be filled in the city of Boston and Cambridge by granting preference to persons who had been employees of said cities in the fire, police or traffic crossing guard service, and all such positions in said city of Boston and

Cambridge shall be subject to chapter thirty-one, and in no case in the city of Boston and Cambridge shall the amount expended for administration of this section exceed eleven per cent of the total amount of the annual receipts collected by the parking clerk.

It shall be the duty of every police officer who takes cognizance of a violation of any provision of any rule, regulation, order, ordinance or by-law regulating the parking of motor vehicles established for their respective city or town, forthwith to give the offender a notice, which shall be in tag form as provided in this section, to appear before the parking clerk of the city or town wherein the violation occurred at any time during regular office hours, not later than twenty-one days after the date of such violation. All tags shall be prepared in triplicate and shall be prenumbered.

Said tag shall be affixed securely to the motor vehicle and shall contain, but shall not be limited to, the following information: the make, color and registration number of the vehicle involved and the state of issuance of said registration number, the date, time and place of the violation, the specific violation charged and, if a meter violation, the number of said meter, the name and badge number of the officer and his division, a schedule of established fines, instructions for the return of the tag and a notice which reads: This notice may be returned by mail, personally or by an authorized person. A hearing may be obtained upon the written request of the registered owner. Failure to obey this notice within twenty-one days after the date of violation may result in the non-renewal of the license to drive and the registration of the registered owner.

At or before the completion of each tour of duty, the officer shall give to his commanding officer those copies of each notice of such violation taken cognizance of during such tour. Said commanding officer shall retain and safely preserve one of such copies and shall at a time no later than the beginning of the next business day of the city or town after receipt of such notice deliver another of such copies to the parking clerk before whom the offender has been notified to appear. The parking clerk shall maintain a docket of all such notices to appear.

Any person notified to appear before the parking clerk, as provided herein, may appear before such parking clerk, or his designee, and confess the offense charged, either personally or through an agent duly authorized in writing or by mailing to such parking clerk the notice accompanied by the fine provided therein, such payment to be made only by postal note, money order or check made out to the parking clerk. Payment of the fine established shall operate as a final disposition of the case. Notice affixed to a motor vehicle as provided in this section, shall be deemed a sufficient notice, and a certificate of the officer affixing such notice that it has been affixed thereto, in accordance with this section, shall be deemed prima facie evidence thereof and shall be admissible in any judicial or administrative proceeding as to the facts contained therein.

The traffic and parking commission of the city of Boston, the traffic commission or traffic director of any other city or town having such a commission or director with authority to promulgate traffic rules, the city council of any other city, and the board of selectmen of any other town, shall, from time to time, establish by rule or regulation a schedule of fines for violations subject to this section committed within such city or town; provided, however, that all such fines shall be uniform for the same offense committed in the same zone or district, if any; and provided,

further, that the fine for the violation of the parking of motor vehicles within ten feet of a fire hydrant shall not be more than one hundred dollars, and provided, further, that the fine for the violation of parking a motor vehicle within a posted bus stop shall be \$100; and provided further, that any fine established under the provisions of this section for all other parking violations shall not exceed \$50, if paid within 21 days, nor shall it exceed \$55, if paid thereafter, but before the parking clerk reports to the registrar, as provided below and shall not exceed \$75 if paid thereafter.

Should any person notified to appear hereunder fail to appear and, if a fine is provided hereunder, to pay the same, or having appeared desire not to avail himself of the benefits of the procedure established by this section, the parking clerk shall forthwith schedule the matter before a person hereafter referred to as a hearing officer, said hearing officer to be the parking clerk of the city or town wherein the violation occurred or such other person or persons as the parking clerk may designate. Written notice of the date, time and place of said hearing shall be sent by first-class mail to the registered owner. Said hearing shall be informal, the rules of evidence shall not apply and the decision of the hearing officer shall be final subject to judicial review as provided by section fourteen of chapter thirty A.

If any person fails to appear in accordance with said notice, the parking clerk shall notify the registrar of motor vehicles who shall place the matter on record and, upon receipt of two or more such notices, shall not renew the license to operate a motor vehicle of the registered owner of the vehicle or the registration of said vehicle until after notice from the parking clerk that all such matters have been disposed of in accordance with law. Upon such notification to the registrar, an additional twenty

dollar charge, payable to the registrar of motor vehicles, shall be assessed against the registered owner of said vehicle. It shall be the duty of the parking clerk to notify the registrar forthwith that such case has been so disposed of in accordance with law, provided however, that a certified receipt of full and final payment from the parking clerk of the city or town in which the violation occurred shall also serve as legal notice to the registrar that said violation has been disposed of. The notice to appear provided herein shall be printed in such form as the registrar of motor vehicles may approve. The parking clerk shall distribute such notices to the commanding officer of the police department of the city or town upon request, and shall take a receipt therefor. The registrar shall approve such other forms as he deems appropriate to implement this section, and said forms shall be printed and used by the cities and towns.

If any person shall have failed to appear in accordance with five or more said notices, notwithstanding any notification to the registrar, the parking clerk may notify the chief of police or director of traffic and parking of said city or town that the vehicle involved in said multiple violations shall be removed and stored, or otherwise immobilized by a mechanical device, at the expense of the registered owner of said vehicle until such time as the matter has been disposed of in accordance with law.

As used in this section, the words "motor vehicle" shall, so far as apt, include trailer, semi-trailer and semi-trailer unit.

The provisions of this section shall apply to violations of rules and regulations relative to the use of parking areas subject to the control of the county commissioners adjacent to or abutting county buildings, and county commissioners are hereby authorized to make such rules and

regulations. Said provisions shall also apply to violations of rules and regulations relative to the parking of motor vehicles established by any commission or body empowered to make such rules and regulations.

Any person notified to appear before the parking clerk, as provided herein, without waiving his right to a hearing before the parking clerk or hearing officer as provided by this section, and also without waiving judicial review as provided by section fourteen of chapter thirty A, may challenge the validity of the parking violation notice and receive a review and disposition of the violation from the parking clerk or a hearing officer by mail. The alleged parking violator may, upon receipt of the notice to appear, send a signed statement explaining his objections to the violation notice as well as signed statements from witnesses, police officers, government officials and any other relevant parties. Photographs, diagrams, maps and other documents may also be sent with the statements. Any such statements or materials sent to the parking clerk for review shall have attached the persons' name and address as well as the ticket number and the date of the violation. The parking clerk or hearing officer shall, within twenty-one days of receipt of said material, review the material and dismiss or uphold the violation and notify, by mail, the alleged violator of the disposition of the hearing. If the outcome of the hearing is against the alleged violator, the parking clerk or hearing officer shall explain the reasons for the outcome on the notice. Such review and disposition handled by mail shall be informal, the rules of evidence shall not apply, and the decision of the parking clerk shall be final subject to any hearing provisions provided by this section or to judicial review as provided by section fourteen of chapter thirty A. Each parking violation issued shall carry a statement explaining the procedure to adjudicate the violation by mail.

OLD BUSINESS

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039




Joseph F. Powers, *Town Administrator*

Meggan M. Eldredge, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA 02645

Memo

To: Select Board
Joseph F. Powers, Town Administrator

From: Meggan Eldredge, Assistant Town Administrator 

RE: Contract for a ballfield mower

Date: October 10, 2023

This memo corresponds to *Agenda Item IX, A, approve a contract with Deere & Company for a ballfield mower in the amount of \$87,806.18.*

Article 16 of the 2023 Annual Town Meeting authorized funding several items, the replacement of the ball field mower was one of them. The article provides \$75,000 of funding for this equipment replacement. The additional \$12,806.18 is funded through the FY24 operating budget for the Highway Department.

The procurement of this equipment was conducted through Statewide Contract FAC 116. A contract has been signed by the vendor and the Finance Division.

I recommend approval of this contract.

PROCUREMENT CHECKLIST & APPROVAL FORM

STAFF LEAD: KYLE EDSON **DEPARTMENT:** DPW PARKS

FUNDING SOURCE: FY 2024, ARTICLE 16, ITEM 9. REMAINDER FROM 014212 529000

Appropriated amount: \$75,000.00 **Estimated cost:** \$ 66,271.59 **Actual cost:** \$87,806.18

PROCUREMENT METHOD:

STATE CONTRACT FAC116

PURCHASE DESCRIPTION:

Purchase descriptions should contain the following components (see document on purchase descriptions):
Description of supplies or services required; quantities required; schedule for performance and delivery terms.

Purchase (1) John Deere 8800A mower. The primary duty of this mower is to cut all the sports fields in town and any large fields that require mowing. The current John Deere 8800 mower is beyond its useful life and will be traded in. Delivery of the new mower should be within one year.

PROCUREMENT MAY PROCEED ONLY IF SIGNATURES PROVIDED BELOW ATM 5/23 Art 16

Funds Available: Finance Director: *Kathleen Barrette* DocuSigned by: Kathleen Barrette **Account #** 014218 623169
83B11569769A4FD...

Approved to proceed: Town Administrator or Designee: *Joseph F. Powers* DocuSigned by: Joseph F. Powers
0623C0C5799644E...

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

Deere & Company
2000 John Deere Run
Cary, NC 27513
FED ID: 36-2382580
UEID: FNSWEDARMK53

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

Finch Turf, Inc.
238 Bodwell Street
Avon, MA 02322
800-560-3373
eldersburg@finchinc.com

Quote Summary

Prepared For:
TOWN OF HARWICH DPW
PO BOX 1543
HARWICH, MA 02645
Business: 508-430-7572
Mobile: 508-237-8471
kedson@town.harwich.ma.us

Delivering Dealer:
Finch Turf, Inc.
William Rockwell
238 Bodwell Street
Avon, MA 02322
Phone: 800-560-3373
Mobile: 508-789-5293
wrockwell@finchturf.com

ALL QUOTES SUBJECT TO CHANGE AFTER 30 DAYS

Quote ID: 28740298
Created On: 02 May 2023
Last Modified On: 02 May 2023
Expiration Date: 01 June 2023

Equipment Summary	Selling Price	Qty	Extended
JOHN DEERE 8800A TerrainCut Rough Mower Contract: MA Lawn & Grounds Equipment FAC116 (PG 3X CG 22) Price Effective Date: February 1, 2023	\$ 87,806.18 X	1 =	\$ 87,806.18
Equipment Total			\$ 87,806.18

* Includes Fees and Non-contract items

Quote Summary	
Equipment Total	\$ 87,806.18
Trade In	
SubTotal	\$ 87,806.18
Est. Service Agreement Tax	\$ 0.00
Total	\$ 87,806.18
Down Payment	(0.00)
Rental Applied	(0.00)
Balance Due	\$ 87,806.18



Selling Equipment

Quote Id: 28740298 **Customer Name:** TOWN OF HARWICH DPW

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):
 Deere & Company
 2000 John Deere Run
 Cary, NC 27513
 FED ID: 36-2382580
 UEID: FNSWEDARMK53

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:
 Finch Turf, Inc.
 238 Bodwell Street
 Avon, MA 02322
 800-560-3373
 eldersburg@finchinc.com

JOHN DEERE 8800A TerrainCut Rough Mower

Hours:

Stock Number:

Contract: MA Lawn & Grounds Equipment FAC116 (PG 3X CG 22)

Selling Price *
 \$ 87,806.18

Price Effective Date: February 1, 2023

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
150ETC	8800A TerrainCut Rough Mower	1	\$ 110,072.00	23.00	\$ 25,316.56	\$ 84,755.44	\$ 84,755.44
Standard Options - Per Unit							
001A	United States/Canada	1	\$ 0.00	23.00	\$ 0.00	\$ 0.00	\$ 0.00
183E	JDLink™ Modem	1	\$ 0.00	23.00	\$ 0.00	\$ 0.00	\$ 0.00
0443	All Other Countries (English / Spanish)	1	\$ 0.00	23.00	\$ 0.00	\$ 0.00	\$ 0.00
9764	Canopy Kit	1	\$ 866.00	23.00	\$ 199.18	\$ 666.82	\$ 666.82
9860	21" Cast Front Roller Kit, 8800A	1	\$ 2,287.00	23.00	\$ 526.01	\$ 1,760.99	\$ 1,760.99
9863	21 In. Rear Roller Scrapper, 8800A.	1	\$ 809.00	23.00	\$ 186.07	\$ 622.93	\$ 622.93
Standard Options Total			\$ 3,962.00		\$ 911.26	\$ 3,050.74	\$ 3,050.74
Value Added Services Total			\$ 0.00			\$ 0.00	\$ 0.00
Total Selling Price			\$ 114,034.00		\$ 26,227.82	\$ 87,806.18	\$ 87,806.18

Capital Outlay Submittal Form – FY 2024 to 2028

Department/Committee
Requested by:
Request Date:
Project Request:
Asset Category:
Priority:

Project Description:

Enter a description of your request. Attach quotes, pictures, or additional details.

Replacement of a 15 year old ballfield mower – There are no hand-me-down opportunities from Cranberry Golf Course for another 5 years and the mower will not last that long.

Was this project submitted in FY '23? Y N

If yes, was it approved?

Purpose:

Replace Equipment

Benefit

This mower is used to mow and maintain the Town's 7 fields 5 days per week from April – October. The Town is renowned for its fields and this is an essential piece of equipment to maintain them.

Total Estimated Cost:

Funding Requests by Year:

'24 '25 '26 '27 '28

Describe any discounts or cost reductions (trade-ins, etc.)

The mower would be purchased on state contract FAC116 and the old mower would be traded towards the purchase price.

Are there available revenue sources or grants other than municipal funds?

None that I am aware of.

Consequence on department or program in delaying purchase/project

The current 10 yr old mower is facing approximately \$8k in repairs and 40 man hours in time to make the repairs. Not purchasing a new mower would force us to put good money into an old, antiquated machine as the ballfields must be mowed.

Rule Charter more closely, which this plan does not do. The plan adopted at last year's ATM identified \$1.6 million in items funded by free cash, in FY 2024, 12 months later, that figure has ballooned to \$4.9 million.

FINANCE COMMITTEE RECOMMENDS THIS ARTICLE BE INDEFINITELY POSTPONED (IPP) VOTE: YES-8, NO-0

ROLL CALL VOTES:

Board of Selectmen:

To accept and adopt:

Yeas: 4 (Four): Michael MacAskill, Mary Anderson, Larry Ballantine, Julie Kavanagh

Nays: 1 (One): Donald Howell

Finance Committee:

To indefinitely postpone:

Yeas: 8 (Eight): Peter Hughes, Dana DeCosta, Karen Doucette, Mark Kelleher, Mark Ameres, Daniel Tworek, Robert McCready, Michele Gallucci

Nays: 0 (Zero): None

CAPITAL OUTLAY PLAN ARTICLES

CAPITAL OUTLAY PLAN ITEMS FUNDED FROM FREE CASH

ARTICLE 16: To see if the Town will vote to raise and appropriate, transfer from available funds or borrow a sufficient sum of money to fund the items in the table below included in the FY 2024 Capital Outlay Plan, and to act fully thereon. By request of the Board of Selectmen. Estimated cost: \$4,906,922.

	Project	Amount	Department	Uses
1	Beautify the villages of Harwich	50,000	Administration	Designs and plans
2	Engines/Other Fire Equipped Vehicles	350,000	Fire Department	Mini-pumper
3	Equipment replacements	36,580	Fire Department	Dive equipment
4	Wixon Landing improvements	30,000	Harbormaster	Designs and specs
5	Technology reinvestment	387,000	Info. Tech.	Infrastructure, work sta.
6	Equipment replacements	64,115	Police Department	Tasers, ballistic plates
7	Police Cruisers	183,000	Police Department	Annual acquisition
8	Technology replacement	20,000	Police Department	EOC IT upgrades
9	Equipment replacements	75,000	Public Works	Ballfield mower
10	Road maintenance/improvements	700,000	Public Works	In lieu of borrowing
11	Vehicle replacements	515,000	Public Works	Annual item
12	100 Oak Street (Community Center)	145,500	Facilities Maintenance	Bleachers, fans

13	204 Sisson Road (old Middle School)	1,982,427	Facilities Maintenance	Building improvements
14	273 Queen Anne Rd (Transfer Station)	157,300	Facilities Maintenance	Generator
15	ADA compliance requirements	121,000	Facilities Maintenance	Per ADA Report
16	739 Main Street (Brooks Free Library)	90,000	Facilities Maintenance	Supplemental (roof)
TOTAL:		4,906,922		

Finance Committee Recommendation: The Finance Committee recommends no recommendation pending further information, (NRPF). Although there are many items on this list the Finance Committee does support it cannot support the entire list as presented in one article. There was an expectation at the last Town meeting that there would be a business/financial plan put together for this year's Town meeting on the former Middle School at 204 Sisson Road. This plan was not put together despite the best efforts of the Finance Committee to support this. Without adequate information on the future of 204 Sisson Road with regards to the Cultural Center, the Recreation uses, the Municipal needs, the maintenance requirements, staffing, and capital costs needed to support the future uses of the building, the Finance Committee does not support spending above the safety and maintenance cost of the building until the voters can be given the complete vision a business/financial plan would provide.

FINANCE COMMITTEE RECOMMENDS NO RECOMMENDATION PENDING FURTHER INFORMATION (NRPF). VOTE: YES-8, NO-0

ROLL CALL VOTES:

Board of Selectmen:

To accept and adopt:

Yeas: 5 (Five): Michael MacAskill, Mary Anderson, Donald Howell, Larry Ballantine, Julie Kavanagh

Nays: 0 (Zero): None

Finance Committee:

To not recommend pending further information:

Yeas: 8 (Eight): Peter Hughes, Dana DeCosta, Karen Doucette, Mark Kelleher, Mark Ameres, Daniel Tworek, Robert McCready, Michele Gallucci

Nays: 0 (Zero): None

CAPITAL OUTLAY PLAN ITEMS FUNDED FROM WATER RETAINED EARNINGS

ARTICLE 17: To see if the Town will vote to raise and appropriate, transfer from available funds or borrow a sufficient sum of money to fund the items in the table below included in the FY 2024 Capital Outlay Plan, and to act fully thereon. By request of the Board of Selectmen and the Water and Wastewater Commission. Estimated cost: \$775,000.

Summary of Project

(1) New John Deere 8800A mower

The current mower 8800 mower is not being fully utilized due to its poor condition. The 8800 mowers primary function is to mow the sports fields in Town. There are no hand-me-downs from Cranberry Valley in the foreseeable future.

Funding Source: \$75,000.00 FY 2024, Article 16, Item 9. Remainder from 014212 529000

Procurement Method: State Contract FAC 116

AGREEMENT FOR TOWN OF HARWICH

The following provisions shall constitute an Agreement between the Town of Harwich, acting by and through its Select Board, hereinafter referred to as "Town," and Deere & Company with an address of 2000 John Deer Run, Cary, NC 27513 hereinafter referred to as "Contractor", effective as of the ___th day of September, 2023. In consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF WORK:

The Contractor shall perform all work and furnish all services necessary to provide the Town with a John Deere 8800A TerrainCut Rough Mower including the all items listed within the quote ID 28740298.

ARTICLE 2: TIME OF PERFORMANCE:

The Contractor shall complete all work and services required hereunder commencing upon contract execution through June 30, 2024.

ARTICLE 3: COMPENSATION:

The Town shall pay the Contractor for the performance of the work outlined in Article 1 above the contract sum of \$87,806.18. The Contractor shall submit monthly invoices to the Town for services rendered, which will be due 30 days following receipt by the Town.

ARTICLE 4: CONTRACT DOCUMENTS:

The following documents form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein:

1. This Agreement.
2. Amendments, or other changes mutually agreed upon between the parties.
3. All attachments to the Agreement.

In the event of conflicting provisions, those provisions most favorable to the Town shall govern.

ARTICLE 5: CONTRACT TERMINATION:

The Town may suspend or terminate this Agreement by providing the Contractor with ten (10) days written notice for the reasons outlined as follows:

1. Failure of the Contractor, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement.
2. Violation of any of the provisions of this Agreement by the Contractor.
3. A determination by the Town that the Contractor has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this Agreement.

Either party may terminate this Agreement at any time for convenience by providing the other party written notice specifying therein the termination date which shall be no sooner than thirty (30) days from the issuance of said notice. Upon receipt of a notice of termination from the Town, the Contractor shall cease to incur additional expenses in connection with the Agreement. Upon such termination, the Contractor shall be entitled to compensation for all satisfactory work completed prior to the termination date as determined by the Town. Such payment shall not exceed the fair value of the services provided hereunder.

ARTICLE 6: INDEMNIFICATION:

The Contractor shall defend, indemnify and hold harmless the Town and its officers, agents, and all employees from and against claims arising directly or indirectly from the contract. Contractor shall be solely responsible for all local taxes or contributions imposed or required under the Social Security, Workers' Compensation, and income tax laws. Further, the Contractor shall defend, indemnify and hold harmless the Town with respect to any damages, expenses, or

claims arising from or in connection with any of the work performed or to be performed under this Agreement. This shall not be construed as a limitation of the Contractor's liability under the Agreement or as otherwise provided by law.

ARTICLE 7: AVAILABILITY OF FUNDS:

The compensation provided by this Agreement is subject to the availability and appropriation of funds.

ARTICLE 8: APPLICABLE LAW:

The Contractor agrees to comply with all applicable local, state and federal laws, regulations and orders relating to the completion of this Agreement. This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.

ARTICLE 9: ASSIGNMENT:

The Contractor shall not make any assignment of this Agreement without the prior written approval of the Town.

ARTICLE 10: AMENDMENTS:

All amendments or any changes to the provisions specified in this Contract can only occur when mutually agreed upon by the Town and Contractor. Further, such amendments or changes shall be in writing and signed by officials with authority to bind the Town. No amendment or change to the contract provisions shall be made until after the written execution of the amendment or change to the Contract by both parties.

ARTICLE 11: INDEPENDENT CONTRACTOR:

The Contractor acknowledges and agrees that it is acting as an independent contractor for all work and services rendered pursuant to this Agreement and shall not be considered an employee or agent of the Town for any purpose.

ARTICLE 12: INSURANCE:

The Contractor shall be responsible to the Town or any third party for any property damage or bodily injury caused by it, any of its subcontractors, employees or agents in the performance of, or as a result of, the work under this Agreement. The Contractor and any subcontractors used hereby certify that they are insured for workers' compensation, property damage, personal and product liability. The Contractor and any subcontractor it uses shall purchase, furnish copies of, and maintain in full force and effect insurance policies in the amounts here indicated.

- 1) General Liability with liability coverage for personal injury, bodily injury and property damage including Products and Completed Operations with limits not less than \$1,000,000 per occurrence and \$3,000,000 aggregate. Such insurance shall be written on an occurrence basis. This policy shall provide coverage on a primary and non-contributory basis and should name the Municipality as an "Additional Insured".
- 2) Automobile Liability (applicable for any automobile operating exposure) with limits of not less than \$1,000,000 covering all owned, non-owned, hired, rented or leased vehicles. The Municipality should be named as an "Additional Insured". See Snow Plowing Recommendations
- 3) Workers' Compensation and Employers' Liability Insurance including (i) Workers' Compensation Insurance providing statutory coverage as required by the Commonwealth of Massachusetts, and (ii) Employers' Liability Insurance coverage with limits of not less than \$500,000 per accident. Each contractors, subcontractors, and consultants performing work on or about the Premises shall have similar policies covering their employees.
- 4) Umbrella Liability of at least \$2,000,000 per occurrence with a \$2,000,000 Annual Aggregate. The Municipality should be named as an "Additional Insured".

Prior to commencement of any work under this Agreement, the Contractor shall provide the Town with Certificates of Insurance which include the Town as an additional named insured and which include a thirty day notice of cancellation to the Town.

ARTICLE 13: SEVERABILITY:

If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

ARTICLE 14: ENTIRE AGREEMENT:

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

ARTICLE 15: COUNTERPARTS:

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be a counterpart original.

CERTIFICATION AS TO PAYMENT OF STATE TAXES

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, Andrew Roman, authorized signatory for the Contractor do hereby certify under the pains and penalties of perjury that said Contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

36-2382580
Social Security Number or
Federal Identification Number

DocuSigned by:
Andrew Roman
Signature of Individual or
Corporate Name

By:
Corporate Officer
(if applicable)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CONTRACTOR

TOWN OF HARWICH

By

by its Select Board Over \$75,000

DocuSigned by:
Andrew Roman
1B15F81A5A4D4F8...
Andrew Roman Contract Administrator

Printed Name and Title

Approved as to Availability of Funds:

by its Town Administrator Up to \$75,000

DocuSigned by:
Megan Green (\$ 87,806.18)
36E65670E18A4AC
Finance Director Contract Sum

Town Administrator

Account/PO # _____

014218/623169 - \$75,000
014212/529000 - \$12,806.18



Customer:

Quotes are valid for 30 days from the creation date or upon contract expiration, whichever occurs first.

A Purchase Order (PO) or Letter of Intent (LOI) including the below information is required to proceed with this sale. The PO or LOI will be returned if information is missing.

- Vendor: Deere & Company
- 2000 John Deere Run
Cary, NC 27513
- Signature on all LOIs and POs with a signature line
- Contract name or number; or JD Quote ID
- Sold to street address
- Ship to street address (no PO box)
- Bill to contact name and phone number
- Bill to address
- Bill to email address (required to send the invoice and/or to obtain the tax exemption certificate)
- Membership number if required by the contract

For any questions, please contact:

William Rockwell

Finch Turf, Inc.
238 Bodwell Street
Avon, MA 02322

Tel: 800-560-3373
Mobile Phone: 508-789-5293
Fax: 410-848-5525
Email: wrockwell@finchturf.com

Quotes of equipment offered through contracts between Deere & Company, its divisions and subsidiaries (collectively "Deere") and government agencies are subject to audit and access by Deere's Strategic Accounts Business Division to ensure compliance with the terms and conditions of the contracts.


ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

Deere & Company
2000 John Deere Run
Cary, NC 27513
FED ID: 36-2382580
UEID: FNSWEDARMK53

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

Finch Turf, Inc.
238 Bodwell Street
Avon, MA 02322
800-560-3373
eldersburg@finchinc.com

Quote Summary

Prepared For:

TOWN OF HARWICH DPW
PO BOX 1543
HARWICH, MA 02645
Business: 508-430-7572
Mobile: 508-237-8471
kedson@town.harwich.ma.us

Delivering Dealer:

Finch Turf, Inc.
William Rockwell
238 Bodwell Street
Avon, MA 02322
Phone: 800-560-3373
Mobile: 508-789-5293
wrockwell@finchturf.com

Quote ID: 29398509
Created On: 10 August 2023
Last Modified On: 10 August 2023
Expiration Date: 09 September 2023

Equipment Summary	Selling Price	Qty	Extended
JOHN DEERE 8800A TerrainCut Rough Mower	\$ 87,806.18 X	1 =	\$ 87,806.18
Contract: MA Lawn & Grounds Equipment FAC116 (PG 3X CG 22)			
Price Effective Date: February 1, 2023			
Equipment Total			\$ 87,806.18

* Includes Fees and Non-contract items

Quote Summary

Equipment Total	\$ 87,806.18
Trade In	
SubTotal	\$ 87,806.18
Est. Service Agreement Tax	\$ 0.00
Total	\$ 87,806.18
Down Payment	(0.00)
Rental Applied	(0.00)
Balance Due	\$ 87,806.18

**JOHN DEERE**

Selling Equipment

Quote Id: 29398509

Customer Name: TOWN OF HARWICH DPW

ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):

Deere & Company
2000 John Deere Run
Cary, NC 27513
FED ID: 36-2382580
UEID: FNSWEDARMK53

ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:

Finch Turf, Inc.
238 Bodwell Street
Avon, MA 02322
800-560-3373
eldersburg@finchinc.com

JOHN DEERE 8800A TerrainCut Rough Mower

Hours:

Stock Number:**Contract:** MA Lawn & Grounds Equipment FAC116 (PG 3X CG 22)**Selling Price ***
\$ 87,806.18**Price Effective Date:** February 1, 2023

* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
150ETC	8800A TerrainCut Rough Mower	1	\$ 110,072.00	23.00	\$ 25,316.56	\$ 84,755.44	\$ 84,755.44
Standard Options - Per Unit							
001A	United States/Canada	1	\$ 0.00	23.00	\$ 0.00	\$ 0.00	\$ 0.00
183E	JDLink™ Modem	1	\$ 0.00	23.00	\$ 0.00	\$ 0.00	\$ 0.00
0443	All Other Countries (English / Spanish)	1	\$ 0.00	23.00	\$ 0.00	\$ 0.00	\$ 0.00
9764	Canopy Kit	1	\$ 866.00	23.00	\$ 199.18	\$ 666.82	\$ 666.82
9860	21" Cast Front Roller Kit, 8800A	1	\$ 2,287.00	23.00	\$ 526.01	\$ 1,760.99	\$ 1,760.99
9863	21 In. Rear Roller Scrapper, 8800A.	1	\$ 809.00	23.00	\$ 186.07	\$ 622.93	\$ 622.93
Standard Options Total			\$ 3,962.00		\$ 911.26	\$ 3,050.74	\$ 3,050.74
Value Added Services Total			\$ 0.00			\$ 0.00	\$ 0.00
Total Selling Price			\$ 114,034.00		\$ 26,227.82	\$ 87,806.18	\$ 87,806.18

Low Bidder: John Peere

Article 16 Item 9

Bid Price: \$ 87,806.18

State Contract FAC 116

12/13/18 Revised Procurement Checklist

Please complete checklist below for contracts requiring Selectmen* signature **before Wednesday morning**** in order to get sign-off approval from the Town Administrator or the Assistant Town Administrator.

*Note: contracts (not grants) **below \$25,000** can be signed by Town Administrator.

- 1. Please provide a **separate page titled "Summary of Project"** which includes:
 - a. Provide how many bidders there were, the range of bids, and apparent low bidder.
 - b. Identify the funding source, such as article number and amount approved.
 - c. Include what you feel is pertinent, but keep this section to 4 sentences or less.

- 2. Finance Director has signed that funds are available: Ann 2023 #16 Account # 014218
- 3. Please provide a single **copy of the bid packet** along with all supporting documents. 623169
- 4. Please use K-P Law provided standardized contracts.

<u>Buildings and Public Works</u>	<u>Goods and Services</u>
<input type="checkbox"/> C1. Please show Prevailing Wage was used.	<input checked="" type="checkbox"/> GS1. If procured using the State Bid List :
<input type="checkbox"/> C2. If construction is near \$10,000 you also need: <ul style="list-style-type: none"> <input type="checkbox"/> a. Written spec sheet. <input type="checkbox"/> b. Advertised for two weeks on Central Register and COMMBUYS. <input type="checkbox"/> c. Apparent low bidder posted to Town website. 	<input checked="" type="checkbox"/> a. Over \$25,000 please show project was on the Capital Plan.
<input type="checkbox"/> C3. If construction over \$25,000 you need C1, C2, as well as: <ul style="list-style-type: none"> <input type="checkbox"/> a. Show project was in the Capital Plan. <input type="checkbox"/> b. Low bidder provides 50% payment bond after Selectmen's countersignature. 	<input type="checkbox"/> GS2. If project is over \$5,000 : <ul style="list-style-type: none"> <input checked="" type="checkbox"/> a. Please provide written spec sheet used and who it was sent to. <u>FAC 116</u> <input type="checkbox"/> b. Maximum contract length is three years.
<input type="checkbox"/> C4. If construction over \$50,000 you need C1, C2, C3, as well as: <ul style="list-style-type: none"> <input type="checkbox"/> a. Bid Bond of 5% of total value. <input type="checkbox"/> b. Sealed Bids. <input type="checkbox"/> c. End of Public Works construction requirements 	<input type="checkbox"/> GS3. If project is over \$50,000 : <ul style="list-style-type: none"> <input type="checkbox"/> a. Show project was advertised for two weeks in a newspaper and on COMMBUYS. <u>N/A</u> <input type="checkbox"/> b. Show project utilized sealed bids. <input type="checkbox"/> c. Apparent low bidder posted to Town website.
<input type="checkbox"/> C5. If Building estimated construction costs are over \$300,000 and estimated design costs are over \$30,000 you'll need to follow the Designer Selection RFQ process: <ul style="list-style-type: none"> <input type="checkbox"/> a. Advertise in Central Register and local newspaper for two weeks. <input type="checkbox"/> b. Set a designer fee or price ceiling. <input type="checkbox"/> c. Use Standard Designer Application Form 	<input type="checkbox"/> GS4. If project is over \$100,000 : <ul style="list-style-type: none"> <input type="checkbox"/> a. Show project was advertised for two weeks in COMMBUYS and Goods and Services Bulletin. <input type="checkbox"/> b. Show project utilized sealed bids.
<input type="checkbox"/> C6. If Building construction over \$150,000 you'll need C1, C2, C3, C4, C5, as well as: <ul style="list-style-type: none"> <input type="checkbox"/> a. 100% payment bond was in bids. <input type="checkbox"/> b. 100% performance bond was in bids. <input type="checkbox"/> c. DCAMM certified bidders. <ul style="list-style-type: none"> <input type="checkbox"/> i. DCAMM certified sub-bids if over \$25,000. 	<p>Note 1: If lowest bidder was found to be either not responsive or not responsible, the Town may begin negotiations with next lowest bidder.</p> <p>Note 2: Bids may be negotiated downwards but never higher than original quote.</p> <p>Note 3: Municipalities shall not provide a down payment, deposit, or provide funding before possession of purchased item.</p> <p><u>75,000.00 from FY 2024, Article 16, Item 9</u></p> <p><u>12806.18 from 014212 529000</u></p>
<input type="checkbox"/> C7. If Building construction over \$10,000,000 you'll need C1, C2, C3, C4, C5, C6, as well as: <ul style="list-style-type: none"> a. Solicit qualifications prior to sealed bids. 	

Original for Accounting Original for Procurement Original for Vendor Contract to Treasurer's

Signature of Town Administrator or Assistant Town Administrator: 

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Town Administrator*

732 MAIN STREET, HARWICH, MA 02645

Meggan M. Eldredge, *Assistant Town Administrator*



Memo

To: Select Board
Joseph F. Powers, Town Administrator

From: Meggan Eldredge, Assistant Town Administrator *ME*

RE: Contract for Brooks Park Improvements-Court expansion

Date: October 10, 2023

This memo corresponds to *Agenda Item XI. B* Vote to approve a contract with Lawrence-Lynch Corporation for the Brooks Park Pickle ball court expansion in the amount of \$240,283.77.

Article 36 of the 2022 Annual Town Meeting authorized funding for the expansion of a basketball court and construction of new pickleball courts at Brooks Park. A portion of the funding has been used for the design of the courts. This procurement is for the construction.

An Invitation for Bids was released on August 28, 2023 and advertised in the Central Register, Commbuys, the Chronicle and on our website as required by MGL c.30, §39M. Prevailing wage was used along with Sealed Bids. Two bids were received on September 28, 2023 with Lawrence-Lynch being the apparent low bidder.

References were contacted and a contract has been signed by Lawrence Lynch as well as the Finance Division. Work will be completed by July 1, 2024.

I recommend approval of this contract.

PROCUREMENT CHECKLIST & APPROVAL FORM

STAFF LEAD: Eric Beebe DEPARTMENT: Recreation Department

FUNDING SOURCE: Community Preservation Act 80271292-622036 ATM 2022 # 36

Appropriated amount: \$ 245,500 Estimated cost: \$ 245,500 Actual cost: _____

PROCUREMENT METHOD:

MGL C 30 39M sealed bids IFB

PURCHASE DESCRIPTION:

Purchase descriptions should contain the following components (see document on purchase descriptions):
Description of supplies or services required; quantities required; schedule for performance and delivery terms.

Funding for all expenses associated with the addition of 4 new pickle ball courts at Brooks Park, Harwich. This funding also includes the expansion of current half basketball court to a full court at Brooks Park.

80271292-622036
\$245,000

PROCUREMENT MAY PROCEED ONLY IF SIGNATURES PROVIDED BELOW

Funds Available: Finance Director: Kathleen Barrette Account # _____
DocuSigned by: 83B11589769A4FD...

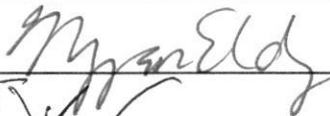
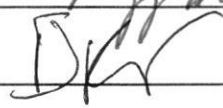
Approved to proceed: Town Administrator or Designee: Joseph F. Powers
DocuSigned by: 0623C0C5799644E...

Town of Harwich Bid Opening

Date, Time:	9.28.2023, 2:00 PM
Title:	Brooks Park Court Expansion

Bidder (in order of Bid Opening)	bid amount	other
Speakman	#248,400	
Lawrence Lynch	#240,283.77	

Commencement	2:00 PM
Completion	2:02pm

	Name	Signature	Date
Bid Opener	Meggan Eldredge		9/28/23
Witness	Danielle Freiner		9/28/23

AGREEMENT

THIS AGREEMENT made this ____ day of October in the year Two Thousand and Twenty Three, between Lawrence-Lynch Corp., with a usual place of business at 396 Gifford Street, PO Box 913, Falmouth, MA 02540-0913 hereinafter called the CONTRACTOR, and the Town of Harwich, acting by its Select Board, with a usual place of business at 732 Main Street, Harwich, MA 02645, hereinafter called the OWNER.

The CONTRACTOR and the OWNER, for the consideration hereinafter named, agree as follows:

1. Scope of Work

The Contractor shall furnish all labor, materials, equipment and insurance to perform all work required for the project known as the Brooks Park Improvements Project, in strict accordance with the Contract Documents and all related Drawings and Specifications. The said Documents, Specifications, Drawings and any GENERAL SUPPLEMENTARY CONDITIONS are incorporated herein by reference and are made a part of this Agreement.

2. Contract Price

The Owner shall pay the Contractor for the performance of this Agreement, subject to additions and deductions provided herein, in current funds, the sum of Two Hundred Forty Thousand Two Hundred Eighty Three Dollars and Seventy Seven cents (\$240,283.77).

3. Commencement and Completion of Work and Liquidated Damages

It is agreed that time is of the essence of this Agreement. The Contractor shall commence and prosecute the work under this Agreement upon execution hereof and shall complete the work on or before July 1, 2024.

- A. Definition of Term: The Term "Substantial completion" shall mean the date certified by the Owner when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner may occupy the project, or designated portion(s) thereof, for the use for which it is intended.
- B. Time as Essential Condition: It is understood and agreed that the commencement of and substantial completion of the work are essential conditions of this Agreement. It is further agreed that time is of the essence for each and every portion of the Contract Documents wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract Documents any additional time is allowed for the completion of any work, the new time fixed by such extension shall be of

the essence of this Agreement. It is understood and agreed that the times for the completion of the work are reasonable, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

- C. Progress and Completion: Contractor shall commence work promptly upon execution of this Agreement and shall prosecute and complete the work regularly, diligently and uninterruptedly at such a rate of progress as will insure Substantial Completion within the stipulated number of calendar days.
- D. Liquidated Damages: It is expressly agreed between the Contractor and the Owner that the Contractor will be responsible for all damages which may arise due to the Contractor's failure to substantially complete the work within the above specified time. If the Contractor shall neglect, fail or refuse to complete the work within the specified number of days, or any extension thereof authorized by the Owner, Contractor agrees, as a part of the consideration for the execution of this Contract by the Owner, to pay the Owner the amount specified herein, not as a penalty, but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day, excluding Saturdays, Sundays and legal Holidays, that the Contractor shall be in default of Substantial completion after the date specified in the Agreement. Due to the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, said amount is agreed to be the amount of damages which the Owner would sustain, and said amount shall be retained from time to time by the Owner from current periodic estimates. The amount of liquidated damages shall be \$500 per day.

4. Performance of the Work

- A. Direction of the Work: The Contractor shall supervise and direct the Work, using his best skills and attention which shall not be less than such state of skill and attention generally rendered by the contracting profession for projects similar to the Project in scope, difficulty and location. The Contractor shall maintain adequate supervisory personnel at the project site during the performance of the Work. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement.
- B. Responsibility for the Work: (1) The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor. This obligation shall also extend to the presence on the Site of suppliers of materials or equipment, their employees, contractors, and agents engaged in the work.

(2) The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Owner in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the Contractor.

- C. Permits and Fees: Unless otherwise expressly provided, the Contractor shall secure and pay for all permits and fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Agreement and which are legally required at the time the bids are received, and the same shall at all times be the property of the Owner and shall be delivered to the Owner upon completion of the Project.
- D. Notices, Compliance With Laws: (1) The Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. The Contractor shall provide the Owner with reproductions of all permits, licenses and receipts for any fees paid. The Owner represents that it has disclosed to the Contractor all orders and requirements known to the Owner of any public authority particular to this Agreement.
- (2) If the Contractor observes that any of the Contract Documents are at variance with applicable laws, statutes, codes and regulations in any respect, he shall promptly notify the Owner in writing, and any necessary changes shall be accomplished by appropriate modification.
- (3) If the Contractor performs any Work which he knows or should know is contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner, he shall assume full responsibility therefor and shall bear all costs attributable thereto.
- (4) In the performance of the Work, the Contractor shall comply with all applicable federal, state and local laws and regulations including those relating to workplace and employee safety. The Contractor shall notify the Owner immediately of any conditions at the place of the work which violate said laws and regulations and shall take prompt action to correct and eliminate any such violations.
- E. Project Superintendent: The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.
- F. Progress Schedule: The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Owner's information an estimated progress schedule for the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.
- G. Drawings, Specifications and Submittals:
- (1) The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications,

and "As-Built" Drawings and Specifications in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be delivered to the Owner upon completion of the Work.

(2) By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

(3) The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's approval of Shop Drawings, Product Data or Samples unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Owner's approval thereof.

(4) The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Owner on previous submittals.

(5) No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Owner. All such portions of the Work shall be in accordance with approved submittals.

- H. Protection of the Work and Owner's Property: The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this Agreement. He shall at all times safely guard and protect his own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury. The Contractor shall clean the work area and restore it to its original condition upon completion of the work.
- I. Quality of the Work: The Contractor shall perform the work in a good, workmanlike manner. The Contractor hereby guarantees that the entire work constructed by him under the Agreement will meet fully all requirements thereof as to quality of workmanship and materials. The Contractor hereby agrees to make at his own expense any repairs or replacements made necessary by defects in materials or workmanship supplied to him that become evident within one (1) year after the date of the final payment, and to restore to full compliance with the requirements set forth herein any part of the work constructed hereunder, which during said one (1) year period is found to be deficient with respect to any provisions of the Contract Documents. The Contractor also agrees to hold the Owner harmless from claims of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written orders for same from the Owner. If the Contractor fails to make the repairs and

replacements promptly, the Owner may do the work and the Contractor shall be liable to the Owner for the cost thereof.

- J. Warranty: The Contractor guarantees to Owner that all materials incorporated into the work will be new unless otherwise specified or agreed. Prior to final payment, the Contractor shall deliver to the Owner all manufacturers' warranties, together with such endorsements or assignments as are necessary to ensure to the Owner the full rights and benefits of such warranties.

5. Affirmative Action/Equal Employment Opportunity

The Contractor is directed to comply with all applicable State Laws, Ordinances, Bylaws, and rules and regulations regarding affirmative action/equal employment opportunity requirements. Failure of the Contractor to comply with any such law, rule or regulation shall constitute grounds for the Owner to terminate the Agreement.

6. Site Information Not Guaranteed; Contractor's Investigation

All information given in the Contract Documents relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the Owner. All such information is furnished only for the information and convenience of the Contractor and is not guaranteed.

It is agreed and understood that the Owner does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures encountered during construction will be the same as those indicated in the Contract Documents.

Contractor has familiarized himself with the nature and extent of the Contract Documents, work, locality, and with all local conditions and federal, state, and local laws, rules, ordinances, and regulations that in any manner may affect costs, progress, or performance of the work. Contractor has made, or has caused to be made, examinations, investigations, and tests and studies of such reports and related data in addition to those referred to in the paragraph above as he deems necessary for the performance of the work at the Contract Price, within the Contract Time, and in accordance with the other Terms and Conditions of the Contract Documents; and no additional examinations, tests, investigations, reports, and similar data are or will be required by the Contractor for such purposes.

Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the Contract Documents. Contractor has given the Owner written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents, and the resolution thereof by the Owner is acceptable to the Contractor.

It is further agreed and understood that the Contractor shall not use or be entitled to use any of the information made available to him or obtained in any examination made by him in any manner as a basis of or ground for any claim or demand against the Owner, arising from or by reason of any variance which may exist between the information made available and the actual

subsurface conditions or other conditions or structures actually encountered during the construction work, except as may otherwise be expressly provided for in the Contract Documents.

7. Project Architect or Engineer

There is not a project architect-engineer for this project. Except as otherwise indicated in the Contract Documents, the Architect/Engineer shall be a representative of the Owner and the Contractor shall direct all communications, questions and comments on the work and the performance thereof to the Architect/Engineer. Except as otherwise provided, the Architect/Engineer shall have all the authority of the Owner set forth in the Contract Documents. In general, the Architect/Engineer shall have the authority to review the performance of the work, reject work which is defective or otherwise does not comply with the Contract Documents and to order the Contractor to remedy defective work and take such actions which are necessary to make the work conform to the Contract Documents.

8. Wage Rates

Prevailing Wage Rates as determined by the Commissioner of the Department of Labor and Workforce Development under the provisions of Massachusetts General Laws, Chapter 149, Section 26 to 27G, as amended, apply to this project. It is the responsibility of the Contractor to provide the Town with certified payrolls and to comply with all requirements of the above-cited statutes.

The schedules of prevailing wage rates are included in the Contract Documents.

9. Payments to the Contractor

Within fifteen (15) days after receipt from the Contractor of a proper and satisfactory periodic estimate requesting payment of the amount due for the preceding month, the Owner shall have thirty (30) days to make payment for:

- A. The work performed during the preceding month.
- B. The materials not incorporated in the Work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the Contractor has title, or to which a Subcontractor has title and has authorized the Contractor to transfer title to the Owner.
- C. Less the following retention items:
 1. A retention based on an estimate of the fair value of the Owner's claims against the Contractor.
 2. A retention for direct payments to Subcontractors, if any, based on demands for same in accordance with the provisions of Section 39F of Chapter 30 of the General Laws.

3. A retention not exceeding five percent (5%) of the approved amount of the periodic payment.
- D. After the receipt of a periodic estimate requesting final payment and within sixty-five (65) days after the Contractor fully completes the Work, or substantially completes the Work so that the value of the Work remaining to be done is, on the estimate of the Owner, less than 1% of the original Contract Price, or substantially completes the Work and the Owner takes possession or occupancy, whichever occurs first, the Owner shall pay the Contractor the entire balance due on the Contract less:
1. A retention based on an estimate of the fair value of the Owner's claims against the Contractor and of the cost of completing the incomplete and unsatisfactory items of work.
 2. A retention for direct payments to Subcontractors, if any, based on demands of same in accordance with the provisions of Section 39F of Chapter 30 of the General Laws, or based on the record of payments by the Contractor to the Subcontractors under this Contract if such record of payment indicates that the Contractor has not paid Subcontractors as provided in Section 39F of Chapter 30 of the General Laws.

If the Owner fails to make payment as herein provided, there shall be added to each such payment, daily interest at the rate of 3 percentage points above the rediscount rate than charged by the Federal Reserve Bank of Boston, commencing on the first day after said payment is due, and continuing until the payment is delivered or mailed to the Contractor; provided that no interest shall be due, in any event, on the amount of a periodic estimate for final payment until fifteen (15) days after receipt of such a periodic estimate by the Owner as provided in the first paragraph of this Article. The Contractor agrees to pay to each subcontractor a portion of any such interest paid in accordance with the amount due each subcontractor.

The Owner may make changes in any periodic estimate submitted by the Contractor and the payment due on said periodic estimate shall be computed in accordance with the changes so made, and such changes and any requirements for a corrected periodic estimate shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided further, that the Owner may, within seven (7) days after receipt, return to the Contractor for correction, any periodic estimate which is not in acceptable form or which contains computations not arithmetically correct, and in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter.

- E. Changes in the Work: No changes in the work covered by the approved Contract Documents shall be made without prior written approval of the Owner. Charges or

credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:

- (a) Unit bid prices previously approved.
- (b) An agreed lump sum.
- (c) The actual cost of:
 - (1) Labor.
 - (2) Materials entering permanently into the work.
 - (3) The ownership or rental cost of construction equipment during the time of use on the extra work.
 - (4) Power and consumable supplies for the operation of power equipment.
 - (5) Wages to be paid.

To the cost under (c) there shall be added a fixed fee to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

- F. Claims for Additional Costs: If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Owner written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

The Contractor hereby agrees that the Contractor shall have no claim for damages of any kind against the Town on account of any delay in the commencement or performance of the work and/or any hindrance, delay or suspension of any portion of the work including, but not limited to, any claims or damages on account of having to perform out of sequence work, claims for damages on account of loss of production or other interference with the work whether such delay is caused by the Town or otherwise, except as and to the extent expressly provided under G.L. c.30, §390 in the case of written orders by the Town. The Contractor acknowledges that the Contractor's sole remedy for any such claim will be an extension of time as provided herein.

10. Final Payment, Effect

The acceptance of final payment by the Contractor shall constitute a waiver of all claims by the Contractor arising under the Agreement.

11. Contract Documents

The Contract Documents consist of the following, together with this Agreement:

Invitation to Bid
Instructions to Bidders
This Contract Form
Bid Form
Performance Bond
Labor & Materials Payment Bond
Non-Collusion Certificate
Tax Compliance Certificate
Clerk's Certificate of Corporate Vote
Certificate of Insurance
General Conditions
Supplementary General Conditions
General Requirements
Specifications and Addenda
Contract Drawings
Schedule of Prevailing Wages

12. Terms Required By Law

This Agreement shall be considered to include all terms required to be included in it by the Massachusetts General Laws, and all other laws, as though such terms were set forth in full herein.

13. Indemnification

The Contractor shall indemnify and hold harmless the Owner from and against any and all claims, damages, losses, and expenses, including attorney's fees, arising out of the performance of this Agreement when such claims, damages, losses, and expenses are caused, in whole or in part, by the acts, errors, or omissions of the Contractor or his employees, agents, subcontractors or representatives.

14. Insurance

The Contractor shall purchase and maintain such insurance as will protect both the Owner and the Contractor from claims which may arise under the Agreement, including operations performed for the named insured by independent contractors and general inspection thereof by the named insured. In addition, the Contractor shall require its subcontractors to maintain such insurance. Coverage shall be provided for:

- .1 claims under workers' or workmen's compensation, disability benefit and other applicable employee benefit acts;

- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;
- .5 claims for damages, including damages to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and
- .6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- .7 claims involving contractual liability applicable to the Contractor's obligations under Article 13.

The limits of liability for coverage required under the preceding paragraph shall be as Specified in the Supplemental Conditions.

Except for Workmen's Compensation, all liability coverage shall name the Town as an additional insured and shall provide for 30 days prior written notice to the Town of any modification or termination of coverage provided thereby. The Contractor shall provide the Owner with appropriate certificate(s) of insurance evidencing compliance with this provision prior to the commencement of any work under this Agreement.

15. Notice

All notices required to be given hereunder shall be in writing and delivered to, or mailed first class to, the parties' respective addresses stated above. In the event that immediate notice is required, it may be given by telephone or facsimile, but shall, to the extent possible, be followed by notice in writing in the manner set forth above.

16. Termination

- A. Each party shall have the right to terminate this Agreement in the event of a failure of the other party to comply with the terms of the Agreement. Such termination shall be effective upon seven days' notice to the party in default and the failure within that time of said party to cure its default.
- B. The Owner shall have the right to terminate the Agreement without cause, upon ten (10) days' written notice to the Contractor. In the event that the Agreement is terminated pursuant to this subparagraph, the Contractor shall be reimbursed in accordance with the Contract Documents for all Work performed up to the termination date, and for all

materials or equipment not incorporated in the Work, but delivered and suitably stored at the site. Payment for material or equipment stored at the site shall be conditioned upon submission by the Contractor of bills of sale or such other evidence as is satisfactory to Owner to establish the Owner's title to such material or equipment or otherwise protect the Owner's interests.

17. Miscellaneous

- A. **Royalties and Patents:** The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified; but if the Contractor believes or has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Owner, and thereafter the Owner insists on the use of the design, process or products specified.
- B. **Assignment:** The Contractor shall not assign or transfer any of its rights, duties or obligations under this Agreement without the written approval of the Owner.
- C. **Governing Law:** This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.
- D. **By its signature hereon, the Contractor certifies, under the pains and penalties of perjury, that it has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.**

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CONTRACTOR

By

DocuSigned by:

Christopher M. Lynch

4DD24AF4FB644F6...

Christopher M. Lynch President

Printed Name and Title

TOWN OF HARWICH
by its Select Board Over \$75,000

Approved as to Availability of Funds:

DocuSigned by:

Megan Greep

\$240,283.77

Finance Director

38E96676E18A4AC...

Contract Sum

80271292 - 622036

Account/PO #

by its Town Administrator Up to \$75,000

Town Administrator

**FORM OF GENERAL BID
BROOKS PARK IMPROVEMENT**

The undersigned proposes to **CONSTRUCT FOUR (4) PICKLE BALL COURTS AND EXPAND A BASKETBALL COURT at BROOKS PARK, Oak Street, Harwich, MA 02645** in accordance with the Invitation for Bids, Instructions to Bidders, Bid Specifications and any other related documents, for the contract price specified below:

Two Hundred Forty Thousand Two Hundred Eighty-Three Dollars and Seventy-Seven cents

(\$ 240,283.77)

Bidder acknowledges receipt of and this bid includes the following addenda:

No. 1 Dated: 8/31/23

No. _____ Dated: _____

The undersigned shall provide the following with this Form of General Bid:

- 5% bid deposit
- Tax Compliance Certification (attached)
- Non-Collusion Certification (attached)

The undersigned agrees that, if he is selected as a general contractor, he will within ten days, Saturdays, Sundays, and legal holidays excluded after presentation thereof by the awarding authority, execute a contract in accordance with the terms of this bid and furnish a 50% payment bond of a surety company qualified to do business under the laws of the Commonwealth and satisfactory to the awarding authority in each of the sum of the contract price, the premiums for which are to be paid by the general contractor and are included in the contract price.

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work and that he will comply fully with all laws and regulations applicable to awards made subject to Section 44A of M.G.L. c. 149.

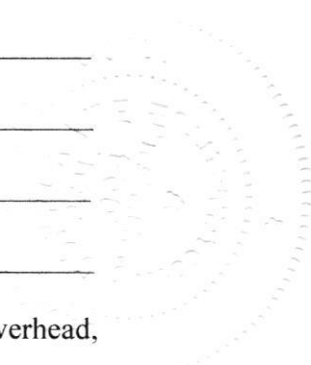
Signature: _____ Date: September 28, 2023

Printed Name: Christopher M. Lynch Title: President

Business Address: 396 Gifford Street, Falmouth, MA 02540

Email address: clynch@lawrencelynch.com

The above unit prices shall include all labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.



The Bidder understands that all bids for this project are subject to the applicable bidding laws of the Commonwealth of Massachusetts, including General Laws Chapter 149 and Chapter 30, Section 39M, as amended.

The Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informalities in the bidding.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of 30 days, Saturdays, Sundays and legal holidays excluded, after the opening of bids.

Within 10 days of receipt of the written notice of acceptance of this bid, the Bidder will execute the formal Agreement attached to this Invitation for Bids..

Bid security is attached in the sum of five percent (5%) of the total bid in accordance with the conditions of INSTRUCTIONS TO BIDDERS. The bid security may become the property of the Owner in the event the contract and bond are not executed within the time set forth above.

The selected Contractor shall furnish a payment bond in an amount at least equal to fifty percent (50%) of the contract price in accordance with PAYMENT BOND attached, and as stipulated in the contract.

The undersigned offers the following information as evidence of his qualifications to perform the work as bid upon according to all the requirements of the plans and specifications.

1. Have been in business under present name for 51 years.
2. The names and addresses of all persons interested in the bid (if made by a partnership or corporation) as principals, are as follows:

Christopher M. Lynch, President
325 Baxter's Neck Rd., Marstons Mills, MA 02648

Doris Christiani, Clerk
83 Bittersweet Rd., East Falmouth, MA 02536

(attach supplementary list if necessary)

3. The bidder is requested to state below what work of a similar character to that included in the proposed contract he has done, and give references that will enable the Owner to judge his experience, skill and business standing (add supplementary page if necessary).

<u>Completion Date</u>	<u>Project Name</u>	<u>Contract Amount</u>	<u>Design Engineer</u>	<u>Reference Name</u>	<u>Telephone No.</u>
a. 2022	DCR Hardcourts	\$1,459,139	DCR	Sandra Libby	(978) 407-6307
<u>Construct/Repair Basketball, Pickleball and Tennis Courts throughout Eastern MA</u>					
b. 2023	Brooks Elementary School Exterior Basketball Court	\$249,565	Doug Bliven	(508) 758-9777	
<u>Erosion Control, grading, drainage, fencing, asphalt paving, turf & grasses and sports equipment, New Bedford</u>					
c. 2022	Norton High School Athletic Campus Improvements	\$5,971,692	Joseph Baeta	(508) 285-0100	
<u>Bituminous Pavement Tennis Courts, Oval Running Track, etc.</u>					
d. 2018	Mayflower Project, Raynham	\$1,405,202	Gilbane	Matt Kellogg	(617) 478-3300
<u>Construction of a new regulation Basketball Court at J&J Raynham Workplace Expansion Renovation Project</u>					
e. 2021	Basketball Court on Nickerson Street, Provincetown	\$100K	Brandon Motta	(508) 487-7097	
<u>2018 Eight Pickle Ball Courts/Tennis Courts at Mashpee High School \$ Catherine Laurent (508) 539-1420</u>					
f. 2019	Tennis Court Renovations in Quincy	\$244,294	MacKay Construction	Kyle Annuto	(617) 314-6213
<u>Bishop Field and Broad Meadows Tennis Court Renovations</u>					

Pursuant to G.L. c.62C, §49A, I certify hereby in writing, under penalties of perjury, that the within named Bidder/Contractor has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

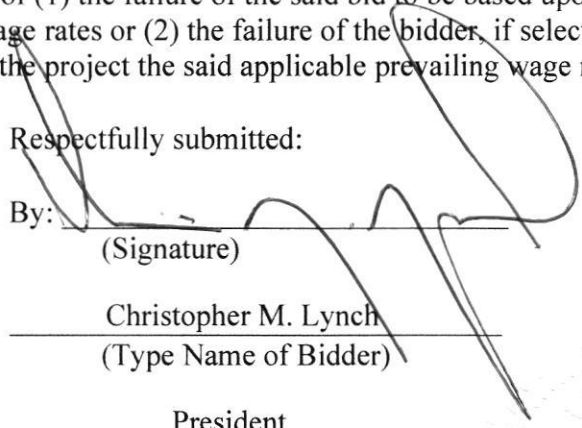
The undersigned Bidder hereby certifies under penalties of perjury, as follows: (1) that he/she is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (2) that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and (3) that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

The undersigned certifies under penalties of perjury that this 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.

The undersigned bidder hereby certifies, under pains and penalties of perjury, that the foregoing bid is based upon the payment to laborers to be employed on the project of wages in an amount no less than the applicable prevailing wage rates established for the project by the Massachusetts Department of Labor and Workforce Development. The undersigned bidder agrees to indemnify the awarding authority for, from and against any loss, expense, damages, actions or claims, including any expense incurred in connection with any delay or stoppage of the project work arising out of or as a result of (1) the failure of the said bid to be based upon the payment of the said applicable prevailing wage rates or (2) the failure of the bidder, if selected as the contractor, to pay laborers employed on the project the said applicable prevailing wage rates

Respectfully submitted:

Date: September 28, 2023

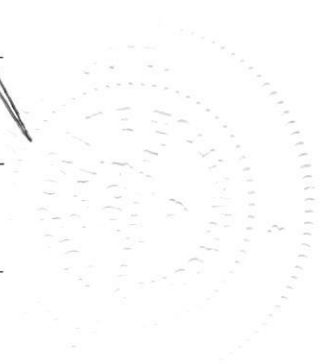
By: 
(Signature)

Christopher M. Lynch
(Type Name of Bidder)

President
(Title)

396 Gifford Street
(Business Address)

Falmouth, MA 02540
(City and State)



**CERTIFICATIONS REQUIRED BY LAW
FOR PUBLIC CONSTRUCTION CONTRACTS**

You must COMPLETE and SIGN the following certifications. You must also print, at the bottom of this page, the name of the contractor for whom these certifications are submitted.

TAX COMPLIANCE

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, the undersigned, authorized signatory for the below named contractor, do hereby certify under the pains and penalties of perjury that said contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

NON-COLLUSION

The undersigned certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

PUBLIC CONTRACTOR DEBARMENT

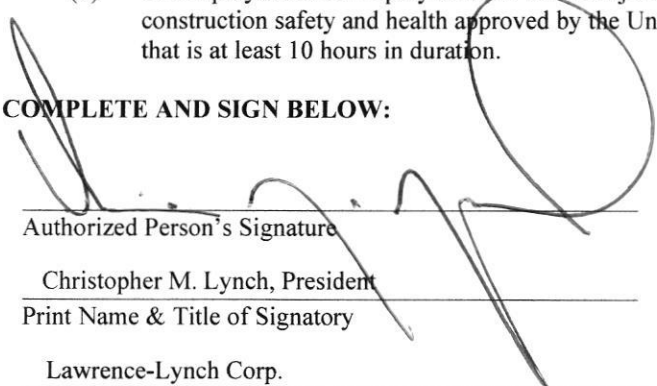
The undersigned certifies under penalty of perjury that the below named contractor is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

OSHA TRAINING

Pursuant to G.L. c. 30, §39S, the Contractor hereby certifies under penalties of perjury as follows:

- (1) Contractor is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work;
- (2) All employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and they shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and
- (3) All employees to be employed in the work subject to this contract have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

COMPLETE AND SIGN BELOW:



Authorized Person's Signature

Christopher M. Lynch, President

Print Name & Title of Signatory

Lawrence-Lynch Corp.

Name of Contractor

September 28, 2023

Date



BID BOND

Conforms with The American Institute of Architects, A.I.A. Document No. A-310

KNOW ALL BY THESE PRESENTS, That we, Lawrence-Lynch Corp.

396 Gifford Street, P.O. Box 913, Falmouth, MA 02540-0913

_____ as Principal, hereinafter called the Principal.

and the Travelers Casualty and Surety Company of America

of 350 Granite Street, Braintree, MA 02184

_____, a corporation duly organized under

the laws of the State of Connecticut, as Surety, hereinafter called the Surety, are held and firmly bound unto

Town of Harwich

732 Main Street, Harwich, MA 02645

_____ as Obligee, hereinafter called the Obligee.

in the sum of Five Percent of Bid Amount

Dollars (\$ 5% of Bid Amount), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a bid for Brooks Park Improvements

NOW, THEREFORE, if the Obligee shall accept the bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such bid, and give such bond or bonds as may be specified in the bidding or Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this 28th day of September, 2023

Christine M. Astin

Witness

Lawrence-Lynch Corp. (Seal)
Principal
Christopher M. Lynch, President Title

[Signature]

Witness

Travelers Casualty and Surety Company of America
By Claire A. Cavanaugh
Claire A. Cavanaugh, Attorney-in-Fact



**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

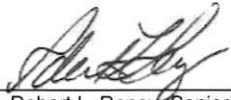
KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Claire Cavanaugh** of **NORWELL Massachusetts**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **17th** day of **January**, **2019**.



State of Connecticut

City of Hartford ss.

By: 
Robert L. Raney, Senior Vice President

On this the **17th** day of **January**, **2019**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, **2021**




Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 29th day of SEPTEMBER 2023




Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which this Power of Attorney is attached.**

**INVITATION FOR BIDS
TOWN OF HARWICH
IMPROVEMENTS TO BROOKS PARK**

The Town of Harwich is accepting sealed bids for Improvements to Brooks Park located on Oak Street in, Harwich. Work includes construction of new pickleball courts, improvements to basketball court, with appurtenant drainage, fencing, etc.

Information, bid specifications and general bid forms may be obtained <https://www.harwich-ma.gov/home/pages/procurement>. Sealed bids, clearly marked "Brooks Park Improvements" will be accepted at 732 Main Street, Harwich, MA 02645 until 2:00 p.m. on **Thursday, September 28, 2023**, at which time they will be publicly opened and read. For further information, contact Eric Beebe at 508/430-7554 or eebeebe@harwich-ma.gov.

All bids for this project are subject to applicable public bidding laws of Massachusetts, including, but not limited to G.L. c.30, §39M. Prevailing Wage Rates apply.

Selection of the contractor will be based upon bidder qualifications, including evidence of past performance in similar projects, and bid price. The contract will be awarded to the bidder deemed by the awarding authority to be the lowest responsible and eligible bidder.

The bidder agrees that its bid shall be good and may not be withdrawn for a period of 30 days, Saturdays, Sundays and legal holidays excluded, after the opening of the bids.

The Town reserves the right to waive any informalities, to accept or reject, in whole or in part any or all bids, or take whatever other action may be deemed to be in the best interest of the Town.

Joseph F. Powers, Town Administrator

Posted: August 28, 2023

Central Register: August 30, 2023

CommBuys: August 28, 2023

Website: August 28, 2023

Chronicle: August 31, 2023

INSTRUCTIONS TO BIDDERS IMPROVEMENTS TO BROOKS PARK

1. Receipt and Opening of Bids.

The Town of Harwich, hereinafter called the Town, will receive sealed bids for the Brooks Park Improvements until **2:00 p.m. on Thursday, September 28, 2023** in the office of the Town Administrator, Town Hall, 732 Main Street, Harwich, MA 02645, at which time and place such bids will be publicly opened and read.

Bids must be submitted in a sealed envelope, addressed to the Town Administrator, bearing on the outside the bidder's name, address, and the title: "Brooks Park Improvements “.

Bids may be withdrawn upon request, by letter, if such request is received by the Town prior to the opening of bids. Any bid received after the time and date specified will not be considered. The bidder agrees that the bid shall be good and may not be withdrawn for a period of 30 days, Saturdays, Sundays and legal holidays excluded, after the opening of bids.

2. Location and Work to be Done.

The Work consists of constructing 4 new pickle ball courts and expansion of a basketball court with associated fencing, drainage, painting etc. in accordance with the Specifications and conceptual plans attached hereto.

Additional drawings showing details in accordance with which the Work is to be done may be furnished by addendum from time to time during the bidding period by the Owner or its Architect/Engineer, and shall then become a part of the Contract Documents.

The Contractor shall furnish all labor, services, materials, equipment, plant, machinery, apparatus, appliances, tools, supplies, and all other things necessary to do all work required for the completion of each item of the Work and as herein specified.

The Work to be done and paid for under any item shall not be limited to the exact extent mentioned or described but shall include all incidental work necessary or customarily done for the completion of that item.

3. Preparation of Bid

Each bid must be submitted on the prescribed form. All blank spaces for bid prices must be filled in, in ink or typewritten, in both words and figures.

Each bid must be submitted in a sealed envelope bearing on the outside the name of the bidder, his address, and endorsed with the name of the project as specified in Receipt and Opening of Bids, above. If forwarded by mail, the sealed envelope containing the bid must be enclosed in another envelope addressed as specified in Receipt and Opening of Bids, above.

4. Bid Opening Procedure

The following list of requirements shall apply to each filed bid. Bids not meeting all the requirements for timeliness and security will be rejected; bids not meeting signature and addenda requirements will be rejected prior to checking of bid amounts.

Bids shall be filed at the place and before the time specified in Receipt and Opening of Bids, above.

Properly executed bid security shall be placed in a sealed envelope and shall be attached to the outside of the envelope containing the bid.

Bid signatures will be checked.

All addenda will be e-mailed to all prospective bidders. All bidders shall include with their bids the written acknowledgment form provided on the FORM OF GENERAL BID.

The total dollar amount of each bid will be read, and the three apparent lowest bids will be selected for further consideration. These three apparent low bids will be read aloud for the benefit of the other bidders and the bid opening procedure will be closed. All those present at the bid opening may examine all bids after the bid opening and after the reading of the three apparent low bids.

5. Modification

Any bidder may modify his bid by written communication at any time prior to the scheduled closing time for receipt of bids. Any telegraphic communication must be received by the Owner prior to the closing time, and, provided further, the Owner must be satisfied that a written confirmation of the telegraphic modification over the signature of the bidder was mailed prior to the closing time. If written confirmation is not received within two days from the closing time, no consideration will be given to a telegraphic communication.

The communication shall not reveal the bid price but shall provide the addition or subtraction or other modification so that the final prices or terms will not be known by the Owner until the sealed bid is opened.

6. Ability and Experience of Bidder

No award will be made to any bidder who cannot satisfy the Owner that he has sufficient ability and experience in this class of work and sufficient capital and plant to enable him to prosecute and complete the work successfully within the time named. The Owner's decision or judgment on these matters will be final, conclusive, and binding.

The Owner may make such investigations as it deems necessary, and the bidder shall furnish to the Owner, under oath if so required, all such information and data for this purpose as the Owner may request.

7. Conditions of Work

Each bidder must familiarize himself fully with the conditions relating to the construction of the project and the employment of labor thereon. Failure to do so will not relieve a successful bidder of his obligation to furnish all material and labor necessary to carry out the provisions of his contract. Insofar as possible the Contractor, in carrying out his work, must employ such methods or means as will not cause any interruption of or interference with the work of any other Contractor.

8. Addenda and Interpretations

No interpretation of the meaning of the plans, specifications or other prebid documents will be made to any bidder orally. All information given to bidders other than by means of the plans, specifications, or by addenda, as described below, is given informally and shall not be used as the basis of a claim against the Owner.

Every request for such interpretation should be in writing addressed to Meggan Eldredge, Harwich Town Hall, 732 Main Street, Harwich, MA 02645, and to be given consideration must be received at least seven (7) days prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications which, when issued, will be mailed by certified mail with return receipt requested to all prospective bidders (at the respective address furnished by them for such purposes), or sent via facsimile or email if time requires. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the Contract Documents.

9. Security for Faithful Performance

Simultaneously with his delivery of the executed Contract, the Contractor shall furnish a surety bond or bonds as security for faithful performance of this contract and for the payment of all persons performing labor and materials under this contract. The surety on such bond or bonds shall be a surety company qualified to do business under the laws of the Commonwealth and satisfactory to the Owner. The bonds shall remain in force for one year after final acceptance of the work by the Owner, unless the Owner, in writing, releases the Contractor from the obligation sooner.

10. Power of Attorney

Attorneys-in-fact who sign Contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

11. Laws and Regulations

The bidder's attention is directed to the fact that all applicable State laws, municipal ordinances or bylaws, and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the contract throughout, and they will be deemed to be included in the Contract the same as though written out in full.

12. Liquidated Damages for Failure to Enter into Contract

The successful bidder, upon his failure or refusal to execute and deliver the Contract and bonds required within 10 days after presentation thereof by the Owner, shall forfeit to the Owner, as liquidated damages for such failure or refusal, the security deposited with his/her bid, but the amount forfeited shall not exceed the difference between his/her bid price and the bid price of the next lowest responsible and eligible bidder. In case of death, disability, bona fide clerical or mechanical error of a substantial nature, or other similar unforeseen circumstances affecting the bidder, his/her bid deposit will be returned.

13. Obligation of Bidder

At the time of the opening of bids, each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the Contract Documents (including all addenda). The failure or omission of any bidder to examine any form, instrument, or document shall in no way relieve any bidder from any obligation in respect of his bid.

14. Information Not Guaranteed

All information given in the Contract Documents relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the Owner. All such information is furnished only for the information and convenience of bidders and is not guaranteed.

It is agreed and understood that the Owner does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures encountered during construction will be the same as those indicated in the Contract Documents. It is further agreed and understood that no bidder or Contractor shall use or be entitled to use any of the information made available to him or obtained in any examination made by him in any manner as a basis of or ground for any claim or demand against the Owner or the Architect/Engineer, arising from or by reason of any variance which may exist between the information made available and the actual subsurface or other structures actually encountered during the construction work, except as may otherwise be expressly provided for in the Contract Documents.

15. Bid Security

Each bid and sub-bid must be accompanied by bid security in the form of a certified check, a bid bond, cash, or a treasurer's or cashier's check, payable to the Owner, in the amount of five (5) percent of the value of the bid. Such security of general bidders will be returned to all except the three lowest responsible and eligible bidders within five days, Saturdays, Sundays, and legal holidays excluded, after the opening of bids, and the remaining securities will be returned promptly after the Owner and the accepted bidder have executed the Contract, or if no notice of intent to award has been presented to the selected contractor within 30 days, Saturdays, Sundays and holidays excluded, after the date of the opening of bids, upon demand of the bidder at any time thereafter.

16. Right to Reject Bid

The Owner reserves the right to waive any informalities in bids and to reject any and all bids, should the Owner deem it to be in the public interest to do so.

The Owner may also reject bids which in its sole judgment are either incomplete, conditional, obscure or not responsive or which contain additions not called for, erasures not properly initialed, alterations, or similar irregularities.

17. Time for Completion

The successful general bidder must agree to fully complete the project prior to March 1, 2024.

18. Comparison of Bids

Bids will be compared on the basis of prices set forth in the bid forms. In the event that there is a discrepancy between the lump sum or unit prices written in words and figures, the prices written in words will govern.

19. Award of Contract

The Contract will be awarded to “the lowest responsible and eligible bidder” pursuant to General Laws Chapter 30, Section 39M, as amended. Such a bidder shall possess the skill, ability and integrity necessary for the faithful performance of the work, shall be able to furnish labor that can work in harmony with all other elements of labor employed, or to be employed, in the work, and shall otherwise comply with all applicable provisions of law. Contract award shall be subject to availability of an appropriation for funding.

20. Statutes Regulating Competitive Bidding

Any bid which does not comply with the provisions of Massachusetts General Laws Chapter 30, Section 39M, as amended, need not be accepted and the Owner may reject every such bid.

21. Wage Rates

Prevailing Wage Rates as determined by the Commissioner of Department of Labor and Workforce Development under the provision of the Massachusetts General Laws, Chapter 149, Section 26 to 27G, as amended, apply to this project. It is the responsibility of the bidder, before bid opening, to request any additional information on Prevailing Wage Rates for those tradespeople who may be employed for the proposed work under this contract.

22. Contractor Records

The Contractor shall comply with the provisions of Massachusetts General Laws, Chapter 30, Section 39R concerning Contractor records.

23. INSURANCE

The Contractor shall carry and continuously maintain until completion of the Contract, insurance as specified in Agreement and in such form as shall protect him performing work covered by this Contract, and the Town of Harwich and its employees, agents and officials, from all claims an liability for damages for bodily injury, including accidental death, and for property damage, which may arise from operations under this Contract. The Town shall be named as an additional insured. The Contractor covenants and agrees to hold the Town and its employees, agents and officials harmless from loss or damage due to claims for bodily injury or death and/or property damage arising from, or in connection with, operations under this Contract.

25. PROJECT MANAGER

The Owner may utilize the services of a project manager, whose duties shall be as set forth in an Agreement for Project Manager Services.

**SCOPE OF WORK
BROOKS PARK IMPROVEMENTS**

Construction of four (4) new pickle ball courts, expansion of a half-court basketball court into a full-court and all related appurtenant drainage, nets, painting, fences etc., per the plans and specifications attached.

Bidder is not responsible for tree or stump removal, the Town will perform this work prior to construction.

12/13/18 Revised Procurement Checklist

Please complete checklist below for contracts requiring Selectmen* signature before Wednesday morning** in order to get sign-off approval from the Town Administrator or the Assistant Town Administrator.

*Note: contracts (not grants) below \$75,000 can be signed by Town Administrator.

- 1. Please provide a separate page titled "Summary of Project" which includes:
a. Provide how many bidders there were, the range of bids, and apparent low bidder.
b. Identify the funding source, such as article number and amount approved.
c. Include what you feel is pertinent, but keep this section to 4 sentences or less.
2. Finance Director has signed that funds are available: 80271292 622036 Account
3. Please provide a single copy of the bid packet along with all supporting documents.
4. Please use K-P Law provided standardized contracts.

Buildings and Public Works
Goods and Services
C1. Please show Prevailing Wage was used.
C2. If construction is near \$10,000 you also need:
a. Written spec sheet.
b. Advertised for two weeks on Central Register and COMMBUYS.
c. Apparent low bidder posted to Town website.
C3. If construction over \$25,000 you need C1, C2, as well as:
a. Show project was in the Capital Plan.
b. Low bidder provides 50% payment bond after Selectmen's countersignature.
C4. If construction over \$50,000 you need C1, C2, C3, as well as:
a. Bid Bond of 5% of total value.
b. Sealed Bids.
c. End of Public Works construction requirements
C5. If Building estimated construction costs are over \$300,000 and estimated design costs are over \$30,000 you'll need to follow the Designer Selection RFQ process:
a. Advertise in Central Register and local newspaper for two weeks.
b. Set a designer fee or price ceiling.
c. Use Standard Designer Application Form
C6. If Building construction over \$150,000 you'll need C1, C2, C3, C4, C5, as well as:
a. 100% payment bond was in bids.
b. 100% performance bond was in bids.
c. DCAMM certified bidders.
i. DCAMM certified sub-bids if over \$25,000.
C7. If Building construction over \$10,000,000 you'll need C1, C2, C3, C4, C5, C6, as well as:
a. Solicit qualifications prior to sealed bids.
GS1. If procured using the State Bid List:
a. Over \$25,000 please show project was on the Capital Plan.
GS2. If project is over \$5,000:
a. Please provide written spec sheet used and who it was sent to.
b. Maximum contract length is three years.
GS3. If project is over \$50,000:
a. Show project was advertised for two weeks in a newspaper and on COMMBUYS.
b. Show project utilized sealed bids.
c. Apparent low bidder posted to Town website.
GS4. If project is over \$100,000:
a. Show project was advertised for two weeks in COMMBUYS and Goods and Services Bulletin.
b. Show project utilized sealed bids.
Note 1: If lowest bidder was found to be either not responsive or not responsible, the Town may begin negotiations with next lowest bidder.
Note 2: Bids may be negotiated downwards but never higher than original quote.
Note 3: Municipalities shall not provide a down payment, deposit, or provide funding before possession of purchased item.

Original for Accounting Original for Procurement Original for Vendor Contract to Treasurer's

Signature of Town Administrator or Assistant Town Administrator: [Signature]

TOWN
ADMINISTRATOR'S
REPORT

OFFICE OF THE TOWN ADMINISTRATOR

Joseph F. Powers, *Town Administrator*
Meggan M. Eldredge, *Assistant Town Administrator*

Phone (508) 430-7513

Fax (508) 432-5039

732 MAIN STREET, HARWICH, MA 02645



Memo

To: Select Board
Joseph F. Powers, Town Administrator

From: Meggan Eldredge, Assistant Town Administrator *ME*

RE: Contract for Brooks Park Improvements-Court resurfacing

Date: October 10, 2023

This memo explains the procurement process for a contract with East Coast Sealcoating, Inc. for the Brooks Park court resurfacing project in the amount of \$64,860.00.

Article 32 of the 2023 Annual Town Meeting authorized funding for the resurfacing of the existing courts at Brooks Park. The article total was \$110,000, the contract is well within the funding amount provided.

An Invitation for Bids was released on August 16, 2023 and advertised in the Central Register, Commbuys, the Chronicle and on our website as required by MGL c.30, §39M. Prevailing wage was used along with Sealed Bids. Two bids were received on September 14, 2023 with East Coast Seal Coating, Inc. being the apparent low bidder.

A KP Law approved contract has been executed for this work.

PROCUREMENT CHECKLIST & APPROVAL FORM

STAFF LEAD: Eric Beebe DEPARTMENT: Recreation and Youth

Annual Town Meeting 2023

FUNDING SOURCE: Community Preservation Committee

Appropriated amount: \$110,000 Estimated cost: \$110,000 Actual cost: \$64,860

PROCUREMENT METHOD:

MGL Ch. 30 B-sealed bids

PURCHASE DESCRIPTION:

Purchase descriptions should contain the following components (see document on purchase descriptions):
Description of supplies or services required; quantities required; schedule for performance and delivery terms.

Funding in the amount of \$110,000 for the re-surfacing of the current tennis and pickle-ball courts at Brooks Park, Harwich. Will include crack repair, sealant, re-surfacing, and re-lining of all the current tennis and pickle ball courts located at Brooks Park.

PROCUREMENT MAY PROCEED ONLY IF SIGNATURES PROVIDED BELOW

Funds Available: Finance Director: Kathleen Barrette Account # 80271292
DocuSigned by: 83B11569769A4FD...


Approved to proceed: Town Administrator or Designee: Joseph F. Powers
DocuSigned by: 0623C0C5799644E...

Town of Harwich Bid Opening

Date, Time:	9.14.2023, 2:00 PM
Title:	Brooks Park Court Resurfacing

Bidder (in order of Bid Opening)	bid amount - base	other Add Alt 1
Sports Tek, Inc. Corp.	96,100. ⁰⁰	5,900 ⁻
East Coast Seal Coating Inc.	13 , 51,510. ⁰⁰	13,350 ⁻

Commencement	2:00 PM
Completion	2:04 PM

	Name	Signature	Date
Bid Opener	Denick Freiner		9/14/23
Witness	Carole Campos	Carol Campos	9/14/23

**FORM OF GENERAL BID
TENNIS AND PICKLE BALL COURT RESURFACING**

The undersigned proposes to **CLEAN, REPAIR, AND RESURFACE FOUR EXISTING TENNIS AND FOUR EXISTING PICKLE BALL COURTS at BROOKS PARK, Oak Street, Harwich, MA 02645** in accordance with the Invitation for Bids, Instructions to Bidders, Bid Specifications and any other related documents, for the contract price specified below:

Fifty One Thousand Five Hundred ^{TEN} Dollars and NO cents
(\$ 51,510.00).

ADD ALTERNATE 1
(To be awarded subject to available funds)

Apply 1 coat of sand-filled acrylic resurfacer over the entire surface area prior to application of color coats.

Thirteen Thousand Three Hundred ^{FIFTY} Dollars and NO cents
(\$ 13,350.00).

The undersigned shall provide the following with this Form of General Bid:

- 5% bid deposit
- Tax Compliance Certification (attached)
- Non-Collusion Certification (attached)

The undersigned agrees that, if he is selected as a general contractor, he will within ten days, Saturdays, Sundays, and legal holidays excluded after presentation thereof by the awarding authority, execute a contract in accordance with the terms of this bid and furnish a 50% payment bond of a surety company qualified to do business under the laws of the Commonwealth and satisfactory to the awarding authority in each of the sum of the contract price, the premiums for which are to be paid by the general contractor and are included in the contract price.

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work and that he will comply fully with all laws and regulations applicable to awards made subject to Section 44A of M.G.L. c. 149.

Date: 9/11/2023

Name of General Bidder: EAST COAST SEALCOATING & INC.

Signature: Harry Conover

CERTIFICATION OF COMPLIANCE
M.G.L. Chapter 62C, Section 49A

Pursuant to Section 49A of Chapter 62C of the General Laws of Massachusetts, I hereby certify that I have complied with all Laws of the Commonwealth of Massachusetts relating to taxes.

This statement is made under the pains and penalties of perjury this 11 day of ~~February~~, 2023.

Sept.

Printed Name of Individual or Corporation: EAST COAST SEALCOATING INC

Name and Title of Corporate Officer (if applicable): HARRY CONOVER, PRES.

Signature of Individual or Corporate Officer: 

Social Security or Federal Identification Number: 04-2772436

CERTIFICATION OF NON-COLLUSION

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

Signed: 

Printed Name: HARRY CONOVER

Date: 9-11-2023 Name of Business: EAST COAST SEALCOATING INC.

The undersigned, Andrew Gould, in compliance with the Commonwealth of Massachusetts General Laws (Ter. Ed) Chapter 44, Section 31C, certifies that an appropriation in the amount required for this contract is available out of Account Number _____.

Andrew Gould, Finance Director/Town Accountant

CONTRACTOR:

THE TOWN:

Company Name:

Harwich Board of Selectmen

EAST COAST SEALCOATING

Signed By:

Harry Conover

Title:

President

Date:

9/11/2023

ATTEST:

Name: James Foley

Title: General Manager

Printed Name: Harry Conover

Title: President

Business Address: 766 Adams St.
Abington, MA 02351

BID BOND
(Percentage)

Bond No. 66790482

KNOW ALL PERSONS BY THESE PRESENTS, That we East Coast Sealcoating, Inc.
of 766 Adams St., Abington, MA 02351

WESTERN SURETY COMPANY, hereinafter referred to as the Principal, and

as Surety, are held and firmly bound unto Town of Harwich

~~of~~ _____, hereinafter referred to as the Obligee, in the amount of
Five Percent of the Amount Bid
(5%), for the payment of which we bind ourselves, our legal representatives,
successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal has submitted or is about to submit a proposal to Obligee on a contract for _____
Brooks Park Tennis Courts

NOW, THEREFORE, if the said contract be awarded to Principal and Principal shall, within such time as may be specified, enter into the contract in writing and give such bond or bonds as may be specified in the bidding or contract documents with surety acceptable to Obligee; or if Principal shall fail to do so, pay to Obligee the damages which Obligee may suffer by reason of such failure not exceeding the penalty of this bond, then this obligation shall be void; otherwise to remain in full force and effect.

SIGNED, SEALED AND DATED this 15th day of September, 2023.

Principal

East Coast Sealcoating, Inc.

BY: Harry Conover

Surety

WESTERN SURETY COMPANY

BY: Scott David Mandorff
Scott David Mandorff, Attorney-in-Fact



Western Surety Company

POWER OF ATTORNEY - CERTIFIED COPY

Bond No. 66790482

Know All Men By These Presents, that WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota, and having its principal office in Sioux Falls, South Dakota (the "Company"), does by these presents make, constitute and appoint Scott David Handorff

its true and lawful attorney(s)-in-fact, with full power and authority hereby conferred, to execute, acknowledge and deliver for and on its behalf as Surety, bonds for:

Principal: East Coast Sealcoating, Inc.

Obligee: Town of Harwich

Amount: \$1,000,000.00

and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the Vice President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said attorney(s)-in-fact may do within the above stated limitations. Said appointment is made under and by authority of the following bylaw of Western Surety Company which remains in full force and effect.

"Section 7. All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

This Power of Attorney may be signed by digital signature and sealed by a digital or otherwise electronic-formatted corporate seal under and by the authority of the following Resolution adopted by the Board of Directors of the Company by unanimous written consent dated the 27th day of April, 2022:

"RESOLVED: That it is in the best interest of the Company to periodically ratify and confirm any corporate documents signed by digital signatures and to ratify and confirm the use of a digital or otherwise electronic-formatted corporate seal, each to be considered the act and deed of the Company."

If Bond No. 66790482 is not issued on or before midnight of December 15th, 2023, all authority conferred in this Power of Attorney shall expire and terminate.

In Witness Whereof, Western Surety Company has caused these presents to be signed by its Vice President, Larry Kasten, and its corporate seal to be affixed this 15th day of September, 2023.



WESTERN SURETY COMPANY

Larry Kasten
Larry Kasten, Vice President

On this 15th day of September, in the year 2023, before me, a notary public, personally appeared Larry Kasten, who being to me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of WESTERN SURETY COMPANY and acknowledged said instrument to be the voluntary act and deed of said corporation.



S. Green
Notary Public - South Dakota
My Commission Expires February 12, 2027

I the undersigned officer of Western Surety Company, a stock corporation of the State of South Dakota, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable, and furthermore, that Section 7 of the bylaws of the Company as set forth in the Power of Attorney is now in force.

In testimony whereof, I have hereunto set my hand and seal of Western Surety Company this 15th day of September, 2023.

WESTERN SURETY COMPANY

Larry Kasten
Larry Kasten, Vice President

TOWN OF HARWICH CONTRACT CHANGE ORDER

CHANGE ORDER NO. _____ DATE: 9-28-2023

CONTRACT TITLE: Brooks Park Court Resurfacing

CONTRACTOR'S NAME: EAST COAST SEALCOATING

CONTRACTOR'S ADDRESS: 766 Adams St., Abington MA

PREVIOUS CONTRACT AMOUNT \$ 64,860.

AMOUNT OF THIS ORDER \$ 10,000. (decrease) (increase)

REVISED CONTRACT AMOUNT \$ 74,860.

This order covers the contract modification hereunder described:

The work covered by this order shall be performed under the same terms and conditions as included on the original construction contract.

Change Requested by:

By: Hay Canaves
Contractor signature

Date: 9-28-2023

TOWN OF HARWICH – BOARD OF SELECTMEN

(over \$75,00)

Mary Anderson

Michael MacAskill

Julie Kavanaugh

Donald Howell

Jeffrey Handler

DocuSigned by:
Megan Green
EA0B31BD1FFB473

Finance Director (verifies funds are available for change order)

TOWN ADMINISTRATOR

(up to \$75,000)

DocuSigned by:
Joseph F. Powers
Joseph F. Powers 06822655799644E...

Proposal
For
Order of Change
Brooks Park Tennis and Basketball Courts
Harwich, MA

In Reference to: necessary material upgrades for adequate restoration of sport surfaces.

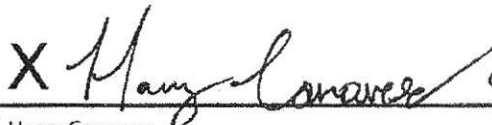
After strong consideration, the following changes to the materials has been deemed necessary for completion of the project in a timely manner, while satisfying results.

- A. **Riteway Fabric System:** The official addendum did not specify what exact fabric system will be used. In order to provide the best quality crack repair system, we must reiterate the use of the **Riteway Fabric System**. Opposed to low-end/low-cost fabric systems, Riteway is superior and best fit for this project. For the amount of cracks that need to be repaired (300ft worth), The best system is a requirement for long term results.

- B. **Cold Weather Coating System:** The original contract specified use of the Nova combination system which originally would have been a sufficient product. However, it has been requested that the project would commence in the following weeks this year. Now that this is the case, these cold temperatures must seriously be taken into consideration. The **Nova Play Cold Weather** product is undoubtedly the solution to these concerns, and a strong upgrade over the regular Nova Combination. This is necessary to combat the uncertain curing time paired with undesirable application temperatures.

Additional Costs: **\$10,000.00**

Proposal Authorized by:

X  9-27-2023

Harry Conover
President - Owner

OWNER-CONTRACTOR AGREEMENT

THIS AGREEMENT is made this ^{26th} _____ day of September, 2023 by the Town of Harwich, Massachusetts, with an address of 732 Main Street, Harwich, MA hereinafter called the "Owner" and East Coast Sealcoating, Inc, with an address of 766 Adams Street, Abington, MA 02351 hereinafter called the "Contractor."

WITNESSETH, that the Owner and the Contractor for the consideration hereinafter named, agree as follows:

ARTICLE 1. SCOPE OF WORK:

The Contractor shall perform all the work required for the Repair and Resurface of four existing tennis courts and 4 existing pickle ball courts at Brooks Park, Oak Street, Harwich, MA in accordance with the Invitation for Bids, Instructions to Bidders, Bid Specifications and any other related documents, prepared by the Town of Harwich. Work includes the Add Alternate 1.

ARTICLE 2. TIME OF COMPLETION:

The contractor shall commence work under this Contract on the date specified in the written "Notice to Proceed" from the Owner and shall bring the work to completion prior to March 1, 2024.

ARTICLE 3. THE CONTRACT SUM:

The Owner shall pay the Contractor for the performance of the work, subject to additions and deductions by Change Order the Contract Sum of: \$64,860.

ARTICLE 4. THE CONTRACT DOCUMENTS:

The following together with this Agreement form the Contract and all are as fully a part of the contract as if attached to this agreement or repeated herein: Invitation for Bids, Bidding Documents, Instructions to Bidders, Scope of Work, amendments, change orders, or other changes mutually agreed upon in writing; all applicable State laws, including but not limited to MGL Chapter 30, § 39M as amended, and MGL Chapter 149, §§ 26 and 27 (prevailing wages), municipal ordinances, and the rules and regulations of all authorities having jurisdiction over the construction of the project; and the Contractor's Form of General Bid as accepted by the Town (including requirements of M.G.L. Chapter 149, sections 26-27 -- Prevailing Wage Rates).

ARTICLE 5. BONDS AND INSURANCE:

The contractor shall furnish the following bonds and insurance certificates as contract security:

1. Insurance certificates, satisfactory to the Town, as proof of having met the requirements of Section 15, Instructions to Bidders;

2. Labor and Materials Bond equal to 50% (Fifty Percent) of the contract price;

ARTICLE 6. CONTRACT TERMINATION:

The Town may suspend or terminate this Contract by providing the Contractor with ten (10) days written notice for the reasons outlined as follows:

1. Failure of the contractor, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement;
2. Violation of the provisions of this Agreement by the Contractor;
3. A determination by the Town that the Contractor has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this contract.

ARTICLE 7. ASSIGNMENT:

The Contractor shall not make any assignment of this Contract without prior written approval of the Town.

ARTICLE 8. AMENDMENTS:

All amendments, change orders or any changes to the provisions specified in this Contract can only occur when mutually agreed upon by the Town and the Contractor. Further, such amendments, change orders, or changes shall be in writing and signed by officials with authority to bind the awarding authority. Additionally, all amendments, change orders and changes shall be approved by the Town Accountant prior to execution by the awarding authority. No amendment, change order, or change to the contract provisions shall be made until after the written execution of the amendment, change order, or change to the Contract by both parties. All amendments, change orders and changes to this Agreement shall be in accordance with M.G.L. 30B, section 13.

ARTICLE 9. INDEMNIFICATION:

The Contractor hereby agrees to indemnify and hold harmless the Town from any and all claims, damages, losses and expenses (including attorney's fees) arising out of the performance of this Contract, when such claims, damages, losses and expenses are caused by the negligent acts, errors or omissions of the Contractor.

ARTICLE 10. APPROPRIATION:

This Agreement is subject to appropriation.

ARTICLE 11. DISCRIMINATION:

No person shall, on the grounds of race, color, national origin, sex or sexual preference, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in any form.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CONTRACTOR:

THE TOWN:

Company Name:

Harwich Town Administrator

EAST COAST SEALCOATING

DocuSigned by:

Joseph F. Powers

Signed By:

Joseph F. Powers

DocuSigned by:

Harry Conover

Title: 9744B8751155452...

President

Date:

9/21/2023 | 4:26:20 PM EDT

In compliance with the Commonwealth of Massachusetts General Laws (Ter. Ed) Chapter 44, Section 31C, the undersigned certifies that an appropriation in the amount required for this contract is available out of Account Number 80271292-623032 \$64,860.00.

DocuSigned by:

Megan Green

36E65676E18A4AC
Finance Director/Town Accountant

12/13/18 Revised Procurement Checklist

Please complete checklist below for contracts requiring Selectmen* signature before Wednesday morning** in order to get sign-off approval from the Town Administrator or the Assistant Town Administrator.

*Note: contracts (not grants) below \$75,000 can be signed by Town Administrator.

- 1. Please provide a separate page titled "Summary of Project" which includes:
a. Provide how many bidders there were, the range of bids, and apparent low bidder.
b. Identify the funding source, such as article number and amount approved.
c. Include what you feel is pertinent, but keep this section to 4 sentences or less.
2. Finance Director has signed that funds are available: 80271292 623032 Account
3. Please provide a single copy of the bid packet along with all supporting documents.
4. Please use K-P Law provided standardized contracts.

Buildings and Public Works
Goods and Services
C1. Please show Prevailing Wage was used.
C2. If construction is near \$10,000 you also need:
a. Written spec sheet.
b. Advertised for two weeks on Central Register and COMMBUYS.
c. Apparent low bidder posted to Town website.
C3. If construction over \$25,000 you need C1, C2, as well as:
a. Show project was in the Capital Plan.
b. Low bidder provides 50% payment bond after Selectmen's countersignature.
C4. If construction over \$50,000 you need C1, C2, C3, as well as:
a. Bid Bond of 5% of total value.
b. Sealed Bids.
c. End of Public Works construction requirements
C5. If Building estimated construction costs are over \$300,000 and estimated design costs are over \$30,000 you'll need to follow the Designer Selection RFQ process:
a. Advertise in Central Register and local newspaper for two weeks.
b. Set a designer fee or price ceiling.
c. Use Standard Designer Application Form
C6. If Building construction over \$150,000 you'll need C1, C2, C3, C4, C5, as well as:
a. 100% payment bond was in bids.
b. 100% performance bond was in bids.
c. DCAMM certified bidders.
i. DCAMM certified sub-bids if over \$25,000.
C7. If Building construction over \$10,000,000 you'll need C1, C2, C3, C4, C5, C6, as well as:
a. Solicit qualifications prior to sealed bids.
GS1. If procured using the State Bid List:
a. Over \$25,000 please show project was on the Capital Plan.
GS2. If project is over \$5,000:
a. Please provide written spec sheet used and who it was sent to.
b. Maximum contract length is three years.
GS3. If project is over \$50,000:
a. Show project was advertised for two weeks in a newspaper and on COMMBUYS.
b. Show project utilized sealed bids.
c. Apparent low bidder posted to Town website.
GS4. If project is over \$100,000:
a. Show project was advertised for two weeks in COMMBUYS and Goods and Services Bulletin.
b. Show project utilized sealed bids.
Note 1: If lowest bidder was found to be either not responsive or not responsible, the Town may begin negotiations with next lowest bidder.
Note 2: Bids may be negotiated downwards but never higher than original quote.
Note 3: Municipalities shall not provide a down payment, deposit, or provide funding before possession of purchased item.

Original for Accounting Original for Procurement Original for Vendor Contract to Treasurer's

Signature of Town Administrator or Assistant Town Administrator: [Signature]

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Town Administrator*

Meggan M. Eldredge, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA 02645



Memo

To: Select Board
Joseph F. Powers, Town Administrator

From: Meggan Eldredge, Assistant Town Administrator *ME*

RE: Contract for Fixed seating replacement at 204 Sisson Road

Date: October 10, 2023

This memo explains the procurement process for a contract with Robert H. Lord Co. for the replacement of auditorium seating at the 204 Sisson Road project in the amount of \$70,981.00.

Article 16 of the 2023 Annual Town Meeting authorized funding for multiple projects at 204 Sisson Road, one of those projects is replacing the auditorium seating.

A request for quotes was sent through the cooperative purchasing group Massachusetts Higher Education Consortium (MHEC). This is a statewide purchasing option that complies with MGL c.30b. One quote was received from Robert H. Lord Co.

References were checked and the quote comports with the scope of services and needs of the Town.

A KP Law approved contract has been executed for this work.

PROCUREMENT CHECKLIST & APPROVAL FORM

STAFF LEAD: Kara Mewhinney DEPARTMENT: Cultural Affairs

FUNDING SOURCE: Article 16 ATM2023 / FY2024 FREE CASH

Appropriated amount: \$85,275.00 Estimated cost: \$75,000 Actual cost: \$71,062

PROCUREMENT METHOD:

Sealed Bids using MGL c 30

PURCHASE DESCRIPTION:

Purchase descriptions should contain the following components (see document on purchase descriptions):
Description of supplies or services required; quantities required; schedule for performance and delivery terms.

The 204 Cultural Arts Municipal Building is looking for the replacement of the current fixed seating the Main Auditorium Room. Currently there are 220 seats available for participants, we are seeking the replacement of all seats to enhance user experience and meet ADA guidelines. Seats would need to have an arm rest, number system, and row letter on ends of each row. We will be seeking disposal of older chairs and installation of new fixed seating.

PROCUREMENT MAY PROCEED ONLY IF SIGNATURES PROVIDED BELOW

Funds Available: Finance Director: *Kathleen Barrette* Account # 014218 623113
DocuSigned by: 83B11569769A4FD...

Approved to proceed: Town Administrator or Designee: *Joseph F. Powers*
DocuSigned by: 0623C0C5799644E...

AGREEMENT FOR TOWN OF HARWICH

The following provisions shall constitute an Agreement between the Town of Harwich, acting by and through its Select Board, hereinafter referred to as "Town," and Robert H. Lord Co. with an address of 220 Chapel Road, Manchester, CT 06042, hereinafter referred to as "Contractor", effective as of the 6th day of October, 2023. In consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF WORK:

The Contractor shall perform all work and furnish all services necessary to provide the Town with Hussey Seating Co. standard Quattro style auditorium Fixed Seating including the scope of services set forth in Attachment A.

ARTICLE 2: TIME OF PERFORMANCE:

The Contractor shall complete all work and services required hereunder commencing upon contract execution through June 30, 2024.

ARTICLE 3: COMPENSATION:

The Town shall pay the Contractor for the performance of the work outlined in Article 1 above the contract sum of \$70,981. The Contractor shall submit monthly invoices to the Town for services rendered, which will be due 30 days following receipt by the Town.

ARTICLE 4: CONTRACT DOCUMENTS:

The following documents form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein:

1. This Agreement.
2. Amendments, or other changes mutually agreed upon between the parties.
3. All attachments to the Agreement.

In the event of conflicting provisions, those provisions most favorable to the Town shall govern.

ARTICLE 5: CONTRACT TERMINATION:

The Town may suspend or terminate this Agreement by providing the Contractor with ten (10) days written notice for the reasons outlined as follows:

1. Failure of the Contractor, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement.
2. Violation of any of the provisions of this Agreement by the Contractor.
3. A determination by the Town that the Contractor has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this Agreement.

Either party may terminate this Agreement at any time for convenience by providing the other party written notice specifying therein the termination date which shall be no sooner than thirty (30) days from the issuance of said notice. Upon receipt of a notice of termination from the Town, the Contractor shall cease to incur additional expenses in connection with the Agreement. Upon such termination, the Contractor shall be entitled to compensation for all satisfactory work completed prior to the termination date as determined by the Town. Such payment shall not exceed the fair value of the services provided hereunder.

ARTICLE 6: INDEMNIFICATION:

The Contractor shall defend, indemnify and hold harmless the Town and its officers, agents, and all employees from and against claims arising directly or indirectly from the contract. Contractor shall be solely responsible for all local taxes or contributions imposed or required under the Social Security, Workers' Compensation, and income tax laws. Further, the Contractor shall defend, indemnify and hold harmless the Town with respect to any damages, expenses, or claims arising from or in connection with any of the work performed or to be performed under this Agreement. This shall not be construed as a limitation of the Contractor's liability under the Agreement or as otherwise provided by law.

ARTICLE 7: AVAILABILITY OF FUNDS:

The compensation provided by this Agreement is subject to the availability and appropriation of funds.

ARTICLE 8: APPLICABLE LAW:

The Contractor agrees to comply with all applicable local, state and federal laws, regulations and orders relating to the completion of this Agreement. This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts including MGL c30B and c149.

ARTICLE 9: ASSIGNMENT:

The Contractor shall not make any assignment of this Agreement without the prior written approval of the Town.

ARTICLE 10: AMENDMENTS:

All amendments or any changes to the provisions specified in this Contract can only occur when mutually agreed upon by the Town and Contractor. Further, such amendments or changes shall be in writing and signed by officials with authority to bind the Town. No amendment or change to the contract provisions shall be made until after the written execution of the amendment or change to the Contract by both parties.

ARTICLE 11: INDEPENDENT CONTRACTOR:

The Contractor acknowledges and agrees that it is acting as an independent contractor for all work and services rendered pursuant to this Agreement and shall not be considered an employee or agent of the Town for any purpose.

ARTICLE 12: INSURANCE:

The Contractor shall be responsible to the Town or any third party for any property damage or bodily injury caused by it, any of its subcontractors, employees or agents in the performance of, or as a result of, the work under this Agreement. The Contractor and any subcontractors used hereby certify that they are insured for workers' compensation, property damage, personal and product liability. The Contractor and any subcontractor it uses shall

purchase, furnish copies of, and maintain in full force and effect insurance policies in the amounts here indicated.

- 1) General Liability of at least \$1,000,000 Occurrence/\$3,000,000 General Aggregate. The Municipality should be named as an "Additional Insured". Products and Completed Operations should be maintained for up to 3 years after the completion of the project.
- 2) Automobile Liability (applicable for any contractor who has an automobile operating exposure) of at least \$1,000,000 Bodily Injury and Property Damage per accident. The Municipality should be named as an "Additional Insured".
- 3) Workers' Compensation Insurance as required by law. Include Employers Liability Part B with a limit of \$1,000,000
- 4) Builders' Risk Property Coverage for the full insurable value. It should include "All Risk" insurance for physical loss or damage including theft.
- 5) Property Coverage for materials and supplies being transported by the contractor, as the Town's Property Contract provides coverage for personal property within 1000 feet of the premises.
- 6) Umbrella Liability of at least \$2,000,000/ occurrence, \$2,000,000/aggregate. The Municipality should be named as an Additional Insured.
- 7) Architects and Engineers Professional Liability (applicable for any architects or engineers involved in the project) of at least \$1,000,000/occurrence, \$3,000,000 aggregate.

Prior to commencement of any work under this Agreement, the Contractor shall provide the Town with Certificates of Insurance which include the Town as an additional named insured and which include a thirty day notice of cancellation to the Town.

ARTICLE 13: SEVERABILITY:

If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

ARTICLE 14: ENTIRE AGREEMENT:

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

ARTICLE 15: COUNTERPARTS:

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be a counterpart original.

CERTIFICATION AS TO PAYMENT OF STATE TAXES

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, Roy McNally, authorized signatory for the Contractor do hereby certify under the pains and penalties of perjury that said Contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

06-0858289
Social Security Number or
Federal Identification Number

DocuSigned by:
Roy McNally
Signature of Individual or
Corporate Name

By:
Corporate Officer
(if applicable)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CONTRACTOR

TOWN OF HARWICH

By

by its Select Board Over \$75,000

DocuSigned by:
Roy McNally
EC956AC5EFFF4E0...

Roy McNally Vice President of Operations

Printed Name and Title

Approved as to Availability of Funds:

by its Town Administrator Up to \$75,000

DocuSigned by:
Megan Green (\$ 70,981)
Finance Director Contract Sum

DocuSigned by:
Joseph F. Powers
Town Administrator

Account/PO: 014218/623113



ROBERT H LORD CO.

FIXED SEATING QUOTATION (MHEC Purchasing Contract)

To:	Kara Mewhinney-- Dir. Of Cultural Affairs	Date:	<u>September 25th, 2023</u>
From:	Robert H. Lord Co.	Project:	Harwich Cultural Center
Address:	220 Chapel Road Manchester, CT 06042	Address:	204 Sisson Rd Harwich, MA 02645
Phone:	860-645-8700	Architect:	None Known
Fax:	860-645-9100	Addenda(s):	None Known
Bid Price:	<u>\$62,681.00</u>	Section(s):	None Known

The Robert H. Lord Company, Inc. proposes to furnish, subject to the conditions below, excluding sales tax, **Hussey Seating Co.** standard **QUATTRO** style Auditorium Seating. Standards include, but are not limited to, construction, materials and/or finishes, unless otherwise noted.

Price Based on: Furnishing & Installing – Material below, using these wages: **OPEN SHOP**

QTY.'S QUOTATION DETAILS:

238	Chairs	Consisting of the following: Quattro	Classic	Series
	C-S3	Soft Square Polymer Outer Back		
	A	Inner Back to have Waterfall Fabric Design		
	F-S2	2" Cut Back Foam		
	L	33" Back Height		
	3	Polymer Seat Bottom		
	AA	Seat Bottom to have Waterfall Fabric Design		
	F-S	Standard Seat Foam (Ergonomic Design)		
	Q-CA	Quattro Cast Aluminum Floor Mount Standards		
	F0	Level/Sloped Floor Mount Standards		
	W	Wood Armrest		
	SBA	Brushed Aluminum Seat Numbers & Row Letters		
	FAB	Grade "G" Fabric Line (Type & Color TBD)		
	MHEC	<u>Pricing Generated Using MHEC Purchasing Contract #MC10-C07</u>		

VOLUNTARY ALTERNATES:

Removal and Disposal of Existing Seating (Dumpsters included)

ADD: \$8,300.00

BID CLARIFICATIONS:

Exclusions:

1. Performance, Materials and Payment Bonds, O.C.I.P. or C.C.I.P.
2. Cost and responsibility of storing materials, if installation cannot be started at the time of delivery.

Notes, Exclusions plus Terms Conditions outlined on page two are considered part of the quotation documents.

- 3. Permits of any type.
- 4. Pollution Insurance.

Terms and Conditions:

1. Shipment will be 120 to 150 days after receipt of all milestone information, i.e. – Submittal approval, colors and field dimensions. **Note: For CAL 133 treatment an additional 3 weeks is required.**
2. Quotation net prices will remain firm for 30 days for shipment on or before, 8/1/2024, after which we reserve the right to re-quote this project.
3. The above pricing does not include any Federal, State, Local, Manufacturers, Excise or other taxes unless specifically mentioned in the above quotation
4. Shop Drawings will be submitted within 4 to 6 weeks after acknowledgement of purchase order and/or contract.
5. This quotation is based on our submitting progress invoices, covering material as shipped and installation as completed. Terms for each invoice are NET 30 days from date of invoice and a finance charge of 1.5% (18% APR) per month will be assessed on all accounts that have a balance thirty or more days past due.
6. In the event of a default by non-payment and the institution of collection procedures, the customer and/or guarantor agree to be responsible for all costs of collection, including attorney’s fees.
7. All parties hereto agree to submit to the jurisdiction of the State of Connecticut as the proper venue for any lawsuit filed to enforce collection of monies due or regarding any service and/or product dispute.
8. Delivery and installation based upon the nearest quarter or completion date on/or about: 9/1/2024
9. For any work beyond this period our quotation is **NOT** valid, and must be refigured. In the case of an later completion date, from what was specified in the bid documents, we reserve the right to review, with our manufacturer, what impact, if any, the revised date has on our quotation. Any cost increases will be passed on to you, to be processed as a contract addition by change order.
10. The General Contractor/Owner to supply elevator or hoist, if needed, at no charge to the **Robert H. Lord Company, Inc.**
11. The General Contractor/Owner to supply use of dumpsters at no charge to the **Robert H. Lord Company, Inc.**
12. The prices quoted in this proposal are an offer to do business with your firm subject to credit approval by the **Robert H. Lord Company, Inc.**, and in addition, approval of the contract forms.
13. The General Contractor/Owner is responsible for providing adequate lighting for installation.
14. The **Robert H. Lord Company, Inc.** will not accept any back charges unless prior written approval is obtained from the RHL project manager.
15. **THE ROBERT H. LORD QUOTATION FOR THIS PROJECT MUST BE MADE A PART OF THE CONTRACT.**

Please contact Roy McNally at (860) 512-2128 for price confirmation at the time of contract award.

Respectfully,

Jon Lord

Jon Lord
Sales Associate (860) 729-9215 Cell

10/6/2023 | 8:35:06 AM EDT
Date: _____

DocuSigned by:
Joseph F. Powers
Accepted: _____
0623C0C5799644E...

12/13/18 Revised Procurement Checklist

Please complete checklist below for contracts requiring Selectmen* signature before Wednesday morning** in order to get sign-off approval from the Town Administrator or the Assistant Town Administrator.

*Note: contracts (not grants) below \$75,000 can be signed by Town Administrator.

- 1. Please provide a separate page titled "Summary of Project" which includes:
a. Provide how many bidders there were, the range of bids, and apparent low bidder.
b. Identify the funding source, such as article number and amount approved.
c. Include what you feel is pertinent, but keep this section to 4 sentences or less.
2. Finance Director has signed that funds are available: 014218-62313 Account
3. Please provide a single copy of the bid packet along with all supporting documents.
4. Please use K-P Law provided standardized contracts.

Table with 2 columns: Buildings and Public Works, Goods and Services. Contains various checklist items with checkboxes and handwritten marks.

Original for Accounting Original for Procurement Original for Vendor Contract to Treasurer's

Signature of Town Administrator or Assistant Town Administrator: [Handwritten Signature]

OFFICE OF THE TOWN ADMINISTRATOR

Phone (508) 430-7513

Fax (508) 432-5039

Joseph F. Powers, *Town Administrator*

Meggan M. Eldredge, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA 02645



Memo

To: Select Board
Joseph F. Powers, Town Administrator

From: Meggan Eldredge, Assistant Town Administrator *ME*

RE: Contract for website upgrade

Date: October 10, 2023

This memo explains the procurement process for a contract with CivicPlus, LLC for the redesign and upgrade of the town website in the amount of \$48,712.95.

Article 16 of the 2023 Annual Town Meeting authorized funding for multiple projects, technology upgrades was one of those projects.

Due to the fact that our existing website is hosted and designed by CivicPlus, a sole source procurement method was used. A letter indicating CivicPlus as the sole source provider is included in the packet.

The quote matches the scope of services and needs of the Town.

A KP Law approved contract has been executed for this work.

PROCUREMENT CHECKLIST & APPROVAL FORM

STAFF LEAD: Sarah Eaton **DEPARTMENT:** Information Technology

FUNDING SOURCE: 2023 ATM Article 16 - Project 5

Appropriated amount: \$50,000.00 **Estimated cost:** _____ **Actual cost:** 48,712

PROCUREMENT METHOD:

GGSA Contract and Sole Source

PURCHASE DESCRIPTION:

Purchase descriptions should contain the following components (see document on purchase descriptions):
Description of supplies or services required; quantities required; schedule for performance and delivery terms.

Services for the upgrade and redesign of the town website.
 CivicPlus is the hosting and design service provider for the Town of Harwich's website. This would be a sole source procurement that would have CivicPlus redesign and update the current website.

PROCUREMENT MAY PROCEED ONLY IF SIGNATURES PROVIDED BELOW 011558 623165

Funds Available: Finance Director: DocuSigned by:
Kathleen Barrette Account # _____
83B11569769A4FD...

Approved to proceed: Town Administrator or Designee: DocuSigned by:
Joseph F. Powers _____
0623C0C5799644E...



This letter serves to notify you that CivicPlus, LLC, d/b/a CivicPlus is the sole provider of the CivicEngage system (formerly Government Content Management System or GCMS®) and associated product and service package that enables municipal website administrators to manage critical aspects of their online presence.

CivicEngage differs from other content management software in that it has been optimized for use by government entities. Not only have many of the applications been developed specifically for use by municipal governments, but CivicEngage is also hosted at a network operations center dedicated to serving local government websites.

Included in the standard CivicEngage development package are applications that are unique to the CivicEngage, like a citizen request management and mapping tool. Applications like these may be available at a much higher cost from other vendors; however, CivicPlus is the sole provider of these applications as a part of an all-inclusive, standardized CivicEngage.

No other organization offers our unique product and service package, coupling our CivicEngage with some of the most useful web applications available to municipal governments.

Regards,

A handwritten signature in cursive script that reads 'Amy Vikander'.

Amy Vikander • CivicPlus
Senior Vice President of Customer Success
Main 888-228-2233
Fax 785-587-8951
www.CivicPlus.com

AGREEMENT FOR TOWN OF HARWICH

The following provisions shall constitute an Agreement between the Town of Harwich, acting by and through its Select Board, hereinafter referred to as "Town," and CivicPlus, LLC, d/b/a CivicPlus with an address of 302 South 4th Street, Suite 500, Manhattan, KS 66502 hereinafter referred to as "Contractor", effective as of the ^{5th} day of October, 2023. In consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF WORK:

The Contractor shall perform all work and furnish all services necessary to provide the Town with CivicEngage Evolve services and associated training, development and implementation including the Statement of Work set forth in Attachment A.

ARTICLE 2: TIME OF PERFORMANCE:

The Contractor shall complete all work and services required hereunder commencing upon contract execution for a twelve month period.

ARTICLE 3: COMPENSATION:

The Town shall pay the Contractor for the performance of the work outlined in Article 1 above the contract sum of \$48,712.95. The Contractor shall submit monthly invoices to the Town for services rendered, which will be due 30 days following receipt by the Town.

ARTICLE 4: CONTRACT DOCUMENTS:

The following documents form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein:

1. This Agreement.
2. Amendments, or other changes mutually agreed upon between the parties.
3. All attachments to the Agreement.

In the event of conflicting provisions, those provisions most favorable to the Town shall govern.

ARTICLE 5: CONTRACT TERMINATION:

The Town may suspend or terminate this Agreement by providing the Contractor with thirty (30) days written notice for the reasons outlined as follows:

1. Failure of the Contractor, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement.
2. Violation of any of the provisions of this Agreement by the Contractor.

Either party may terminate this Agreement at any time for convenience by providing the other party written notice specifying therein the termination date which shall be no sooner than thirty (30) days from the issuance of said notice. Upon receipt of a notice of termination from the Town, the Contractor shall cease to incur additional expenses in connection with the Agreement. Upon such termination, the Contractor shall be entitled to compensation for all satisfactory work completed prior to the termination date as determined by the Town. Such payment shall not exceed the fair value of the services provided hereunder.

ARTICLE 6: INDEMNIFICATION:

The Contractor shall defend, indemnify and hold harmless the Town and its officers, agents, and all employees from and against claims arising directly or indirectly from the contract. Contractor shall be solely responsible for all local taxes or contributions imposed or required under the Social Security, Workers' Compensation, and income tax laws. Further, the Contractor shall defend, indemnify and hold harmless the Town with respect to any damages, expenses, or claims arising from or in connection with any of the work performed or to be performed under

this Agreement. This shall not be construed as a limitation of the Contractor's liability under the Agreement or as otherwise provided by law.

ARTICLE 7: AVAILABILITY OF FUNDS:

The compensation provided by this Agreement is subject to the availability and appropriation of funds.

ARTICLE 8: APPLICABLE LAW:

The Contractor agrees to comply with all applicable local, state and federal laws, regulations and orders relating to the completion of this Agreement. This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.

ARTICLE 9: ASSIGNMENT:

The Contractor shall not make any assignment of this Agreement without the prior written approval of the Town. Such approval shall not be unreasonably withheld. Notwithstanding the foregoing, Contractor may assign and transfer all of its rights under this Agreement by a sale of a majority of its assets or merger.

ARTICLE 10: AMENDMENTS:

All amendments or any changes to the provisions specified in this Contract can only occur when mutually agreed upon by the Town and Contractor. Further, such amendments or changes shall be in writing and signed by officials with authority to bind the Town. No amendment or change to the contract provisions shall be made until after the written execution of the amendment or change to the Contract by both parties.

ARTICLE 11: INDEPENDENT CONTRACTOR:

The Contractor acknowledges and agrees that it is acting as an independent contractor for all work and services rendered pursuant to this Agreement and shall not be considered an employee or agent of the Town for any purpose.

ARTICLE 12: INSURANCE:

The Contractor shall be responsible to the Town or any third party for any property damage or bodily injury caused by it, any of its subcontractors, employees or agents in the performance of, or as a result of, the work under this Agreement. The Contractor and any subcontractors used hereby certify that they are insured for workers' compensation, property damage, personal and product liability. The Contractor and any subcontractor it uses shall purchase, furnish copies of, and maintain in full force and effect insurance policies in the amounts here indicated.

- 1) General Liability with liability coverage for personal injury, bodily injury and property damage including Products and Completed Operations with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Such insurance shall be written on an occurrence basis. This policy shall provide coverage on a primary and non-contributory basis and should name the Municipality as an "Additional Insured".
- 2) Automobile Liability (applicable for any automobile operating exposure) with limits of not less than \$1,000,000 covering all owned, non-owned, hired, rented or leased vehicles. The Municipality should be named as an "Additional Insured".
- 3) Workers' Compensation and Employers' Liability Insurance including (i) Workers' Compensation Insurance providing statutory coverage as required by the Commonwealth of Massachusetts, and (ii) Employers' Liability Insurance coverage with limits of not less than \$500,000 per accident. Each contractors, subcontractors, and consultants performing work on or about the Premises shall have similar policies covering their employees.
- 4) Umbrella Liability of at least \$2,000,000 per occurrence with a \$2,000,000 Annual Aggregate. The Municipality should be named as an "Additional Insured".

Prior to commencement of any work under this Agreement, the Contractor shall provide the Town with Certificates of Insurance which include the Town as an additional named insured and which include a thirty day notice of cancellation to the Town.

ARTICLE 13: SEVERABILITY:

If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

ARTICLE 14: ENTIRE AGREEMENT:

This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

ARTICLE 15: COUNTERPARTS:

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be a counterpart original.

CERTIFICATION AS TO PAYMENT OF STATE TAXES

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, cole cheever, authorized signatory for the Contractor do hereby certify under the pains and penalties of perjury that said Contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

512862724
Social Security Number or
Federal Identification Number

DocuSigned by:
Cole Cheever
482883AFF026421...
Signature of Individual or
Corporate Name

By:
Corporate Officer
(if applicable)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CONTRACTOR
By

TOWN OF HARWICH
by its Select Board Over \$75,000

DocuSigned by:
Cole Cheever
482883AFF026421...
cole cheever Sr. VP of operations
Printed Name and Title

Approved as to Availability of Funds:

by its Town Administrator Up to \$75,000

DocuSigned by:
Megan Green (\$ 48,712.95)
38E65F79E18A446...
Finance Director Contract Sum
Account/PO # 011558/623165

DocuSigned by:
Joseph F. Powers
1062310757996145...
Town Administrator



GSA Statement of Work for Harwich, MA
GSA Contract GS-35F-0124U

Organization

URL

Town of Harwich, MA

www.harwich-ma.gov

Street Address

732 Main Street

Address

s 2

Postal

City

Harwich

State

MA

Code 02645

CivicPlus provides telephone support for all trained clients from 7am - 7pm Central Time, Monday-Friday (excluding holidays). Emergency Support is provided on a 24/7/365 basis for representatives named by the Client. Client is responsible for ensuring CivicPlus has current updates.

Emergency Contact & Mobile Phone

Sarah Eaton 508-827-0692

Emergency Contact & Mobile Phone

Jamie Goodwin 508-430-7569

Emergency Contact & Mobile Phone

Billing Contact

Sarah Eaton

E-Mail

seaton@harwich-ma.gov

Phone

508-430-7570

Ext.

Fax

Billing Address

732 Main Street

Address 2

City

Harwich

ST

MA

Postal

Code 02645

Tax ID #

Sales Tax

Exempt #

Account

Billing Terms Annual

Rep

Info Required on Invoice (PO or Job #)

Contract Contact

Email

Phone

Ext.

Fax

Project Contact

Sarah Eaton

Email

seaton@harwich-ma.gov

Phone

508-430-7570

Ext.

Fax



GSA Statement of Work for Harwich, MA
GSA Contract GS-35F-0124U

GSA CivicPlus Statement of Work

Labor Category	GSA Hourly Rate with IFF	Hours	Total Cost
Website Consultant	\$149.01	12	\$1,788.12
Project Manager	\$135.86	12	\$1,630.32
Network Consultant	\$135.86		
Wireless Network Technician	\$135.86		
Programmer	\$131.48	12	\$1,577.76
Graphic Designer	\$109.57	148	\$16,216.36
Writer	\$109.57		
Server and Network Technician	\$109.57	12	\$1,314.84
Trainer	\$109.57	28	\$3,067.96
PC Technician	\$89.41		
Content Developer	\$80.64	327	\$26,369.28
Subtotal			\$51,964.64
Discount			(\$3,251.69)
Total Fees Year 1			\$48,712.95

Project Implementation and Deployment

- Ultimate Implementation – CivicEngage Evolve
- System Training (4h, Virtual) – CivicEngage Evolve, QTY: 6
- CivicEngage Evolve Design Center Pro Upgrade
- Design Center Pro Training (4h, Virtual) – CivicEngage
- Virtual Content Consulting – CivicEngage, QTY: up to 4 hours
- Content Development – 1 Page – CivicEngage, QTY: 435 pages
- System Annual – CivicEngage Evolve
- 48 Month Redesign Ultimate Annual – CivicEngage Evolve

\$48,712.95

Total Initial Term Fees \$48,712.95

Renewal Annual Services

\$11,347.56

1. Performance and payment under this Statement of Work ("SOW") by and between Harwich, MA("Customer") and CivicPlus ("CivicPlus") shall be subject to the terms & conditions of the Agreement by and between the General Services Administration and CivicPlus.
2. This SOW shall remain in effect for an initial term of twelve (12) months (the "Initial Term") from signing. In the event that neither party gives 60 days' notice to terminate prior to the end of the initial or any subsequent renewal term, this SOW will automatically renew for an additional 1-year Renewal Term.
3. The Total Initial Term Fees will be invoiced as follows:
4. Renewal Term Annual Services shall be invoiced on the first day of each Renewal Term. Annual services, including but not limited to hosting, support and maintenance services, shall be subject to a 5% annual increase beginning in Year 2 of service.



GSA Statement of Work for Harwich, MA
GSA Contract GS-35F-0124U

5. Payment is due 30 days from date of invoice. Unless otherwise limited by law, a finance charge of 1.5 percent (%) per month or \$5.00, whichever is greater, will be added to past due accounts. Payments received will be applied first to finance charges, then to the oldest outstanding invoice(s).
6. If a Customer change in timeline causes CivicPlus to incur additional expenses (i.e. airline change fees), Customer agrees to reimburse CivicPlus for those fees. Not to exceed \$1,000 per CivicPlus resource per trip.

Ownership & Content Responsibility

7. Upon full and complete payment of amounts owed for Project Development under the applicable SOW, Customer will own any website graphic designs, Services content, module content, importable/exportable data, and archived information ("Customer Content") created by CivicPlus on behalf of Customer pursuant to this Agreement. "Customer Content" also includes, without limitation, any elements of text, graphics, images, photos, audio, video, designs, artworks, logos, trademarks, services marks, and other materials or content which Customer provides to CivicPlus for processing, transmission, storage, or inputs into any website, software or module in connection with any Services. Customer Content excludes any content in the public domain and any content owned or licensed by CivicPlus, whether in connection with providing Services or otherwise.
8. Upon completion of the Project Development, Customer will take over the management and control of the Services and Customer will assume full responsibility for Customer Content maintenance and administration. Customer, not CivicPlus, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Content. Customer hereby grants CivicPlus a worldwide, non-exclusive right and license to reproduce, distribute and display the Customer Content as necessary to provide the Services. Customer represents and warrants that Customer owns all Customer Content or that Customer has permission from the rightful owner to use each of the elements of Customer Content and that Customer has all rights necessary for CivicPlus to use the Customer Content in connection with providing the Services. Customer agrees that CivicPlus shall not be responsible or liable for the content of messages created by Customer or by Customer's Users or end-users who access Service. Notwithstanding the foregoing, CivicPlus retains the right, but not the obligation, to remove any Customer Content that is libelous, harassing, abusive, fraudulent, defamatory, excessively profane, obscene, abusive, hate related, violent, harmful to minors, that advocates racial or ethnic intolerance, intended to advocate or advance computer hacking or cracking, or other material, products or services that violate or encourage conduct that would violate any laws or third-party rights.
9. At any time during the term of the applicable SOW, Customer will have the ability to download the Customer Content and export the data that is processed through the Services ("Customer Data"). Customer may request CivicPlus to perform the export of Customer Data and provide the Customer Data to Customer in a commonly used format, at any time, for a fee to be quoted at time of request and approved by Customer. Upon termination of the applicable SOW for any reason, whether or not Customer has retrieved or requested the Customer Data, CivicPlus reserves the right to permanently and definitively delete the Customer Content and Customer Data held in the Services thirty (30) days following termination of the applicable SOW. During the thirty (30) day period following termination of the SOW, regardless of the reason for its termination, Customer will not have access to the Services.
10. Intellectual Property in the software or other original works created by or licensed to CivicPlus, including all software source code, documents, and materials used in performing the Services ("CivicPlus Property") will remain the property of CivicPlus. CivicPlus Property specifically excludes Customer Content. Customer shall not:
 - A. license, sublicense, sell, resell, reproduce, transfer, assign, distribute or otherwise commercially exploit or make available to any third party any CivicPlus Property in any way, except as specifically provided in the applicable SOW;
 - B. adapt, alter, modify, or make derivative works based upon any CivicPlus Property;
 - C. create internet "links" to the CivicPlus Property software or "frame" or "mirror" any CivicPlus Property administrative access on any other server or wireless or internet-based device that may allow third-party entities, other than Customer, to use the Services;
 - D. reverse engineer, decompile, disassemble, or otherwise attempt to obtain the software source code to all or any portion of the Services;
 - E. make any attempt to gain unauthorized access to the Services and/or any of CivicPlus' systems or networks; or
 - F. access any CivicPlus Property in order to:



GSA Statement of Work for Harwich, MA
GSA Contract GS-35F-0124U

1. build a competitive product or service,
2. build a product using similar ideas, features, functions or graphics of any CivicPlus Property, or
3. copy any ideas, features, functions or graphics of any CivicPlus Property.

The CivicPlus name, the CivicPlus logo, and the product and module names associated with any CivicPlus Property are trademarks of CivicPlus, and no right or license is granted to use them outside of the licenses set forth in this Agreement.

11. Provided Customer complies with the terms and conditions herein, the relevant SOW, and license restrictions set forth in §10, CivicPlus hereby grants Customer a limited, nontransferable, nonexclusive, non-assignable license to access and use the CivicPlus Property associated with any valid and effective SOW, for the term of the respective SOW. The license set forth herein, shall only apply to the extent that Customer is using the Services for legitimate business use as intended by the purpose of the Services and not for the purpose of comparing the Services to a competitor or similar product of CivicPlus. Customer hereby warrants and affirms its purpose in accessing or otherwise using the Services is for their intended purpose only and understands and agrees that any other use shall be considered fraud.
12. All CivicPlus helpful information and user's guides for the Services ("Documentation") are maintained and updated electronically by CivicPlus and can be accessed through the [CivicPlus "Help Center"](#). CivicPlus does not provide paper copies of its Documentation. Customer and its Users are granted a limited license to access Documentation as needed. Customer shall not copy, download, distribute, or make derivatives of the Documentation.
13. Customer acknowledges that CivicPlus may continually develop, alter, deliver, and provide to the Customer ongoing innovation to the Services, in the form of new features and functionalities. CivicPlus reserves the right to modify the Services from time to time. Any modifications or improvements to the Services listed on the SOW will be provided to the Customer at no additional charge. In the event that CivicPlus creates new products or significant enhancements to the Services ("New Services"), and Customer desires these New Services, then Customer will have to pay CivicPlus the appropriate fee for the access to and use of the New Services. CivicPlus shall use commercially reasonable best efforts to provide workarounds in the event any modification to the Services causes Customer to lose substantial functionality of the Services.
14. CivicPlus in its sole discretion, may utilize all comments and suggestions, whether written or oral, furnished by Customer to CivicPlus in connection with its access to and use of the Services (all reports, comments and suggestions provided by Customer hereunder constitute, collectively, the "Feedback"). Customer hereby grants to CivicPlus a worldwide, non-exclusive, irrevocable, perpetual, royalty-free right and license to incorporate the Feedback in the CivicPlus products and services.

Indemnification

15. CivicPlus will defend at its expense or settle any third-party claim against Customer alleging that the Services provided under this Agreement infringe intellectual property rights. CivicPlus will pay infringement claim defense costs, CivicPlus-negotiated settlement amounts, and damages finally awarded by a court. CivicPlus has no obligation for any claim of infringement arising from Customer's use of the Services for purposes not contemplated by this Agreement. CivicPlus's indemnification obligations under this Section 15 are conditioned upon the Customer:
 - A. promptly notifying the CivicPlus of any claim in writing;
 - B. cooperating with CivicPlus in the defense of the claim; and
 - C. granting CivicPlus sole control of the defense or settlement of the claim.

Responsibilities of the Parties

16. CivicPlus will not be liable for any act, omission of act, negligence, or defect in the quality of service of any underlying carrier, licensor, or other third-party service provider whose facilities or services are used in furnishing any portion of the Service received by the Customer.
17. CivicPlus will not be liable for any failure of performance that is caused by or the result of any act or omission by Customer or any entity employed/contracted on the Customer's behalf. During Project Development, Customer will be responsive and cooperative with CivicPlus to ensure the Project Development is completed in a timely manner.
18. Customer agrees that it is solely responsible for the end-user's personal data that Customer decides to solicit, collect, store, or otherwise use in connection with any Service provided by CivicPlus. Customer understands and agrees that CivicPlus



GSA Statement of Work for Harwich, MA
GSA Contract GS-35F-0124U

provides certain solutions with increased security measures for the solicitation and storage of any sensitive data, and it is Customer's responsibility to determine whether the data it solicits and collects should be stored in such solutions. Customer understands and agrees that CivicPlus does not have knowledge or control over what type of data Customer solicits therefore CivicPlus has no responsibility for the use or storage of end-users' personal data in connection with the Services or the consequences of the solicitation, collection, storage, or other use by Customer or by any third party of any personal data. Customer has the sole control and responsibility over the determination of which data and information shall be included in the content that is to be transmitted and stored by CivicPlus. Customer shall not provide to CivicPlus or allow to be provided to CivicPlus any content that:

- A. infringes or violates any 3rd party's intellectual property rights, rights of publicity or rights of privacy;
 - B. contains any defamatory material; or
 - C. violates any federal, state, local, or foreign laws, regulations, or statutes.
19. Customer is responsible for all activity that occurs under Customer's accounts by or on behalf of Customer. Customer agrees to:
- A. be solely responsible for all designated and authorized individuals chosen by Customer ("User") activity, which must be in accordance with this Agreement and the CivicPlus [Terms of Use](#);
 - B. be solely responsible for the Customer data;
 - C. obtain and maintain during the term all necessary consents, agreements and approvals from end-users, individuals or any other third parties for all actual or intended uses of information, data or other content Customer will use in connection with the Services;
 - D. use commercially reasonable efforts to prevent unauthorized access to, or use of, any User's log-in information and the Services, and notify CivicPlus promptly of any known unauthorized access or use of the foregoing;
 - E. use commercially reasonable efforts to prevent unauthorized access to or use of the Services and CivicPlus Property and shall promptly notify CivicPlus of any unauthorized access or use of the Services and/or CivicPlus Property and any loss or theft or unauthorized use of any User's password or username and/or personal information; and
 - F. use the Services only in accordance with applicable laws and regulations.
20. The Parties shall comply with all applicable local, state, and federal laws, treaties, regulations, and conventions in connection with its use and provision of any of the Services or CivicPlus Property.
21. CivicPlus shall not be responsible for any act or omission of any third-party vendor or service provider that Customer has selected to integrate any of its Services with.
22. Customer understands that CivicPlus must fastidiously allocate resources across all of its customers and specifically reserves necessary resources for Customer's Project Development. If any professional services, such as consulting or training, purchased by Customer are not used during the Project Development phase solely due to the inaction or unresponsiveness of Customer, then these services shall expire 30 days after completion of Project Development. The Customer may re-schedule any unused professional services during this 30-day period as mutually agreed upon by the Parties. Any professional services that have not been used or rescheduled shall be marked as complete and closed upon the expiration of the 30-day period.
23. CivicPlus shall, at all times, comply with the terms and conditions of its [Privacy Policy](#). CivicPlus will maintain commercially reasonable administrative, physical, and technical safeguards designed to protect the security and confidentiality of Customer Data. CivicPlus will not modify Customer Data or disclose Customer Data, except:
- A. in order to provide the Services;
 - B. to prevent or address service or technical problems in connection with support matters;
 - C. as specifically directed or expressly permitted in writing by Customer;
 - D. in compliance with our [Privacy Policy](#); or
 - E. if compelled by law.
24. Notwithstanding the foregoing, CivicPlus reserves the right to delete, suspend, or block known malicious accounts without Customer authorization. Customer understands that CivicPlus has no obligation to provide the Services or maintain the Customer Data, information or other material if Customer's accounts are past due and unpaid as set forth in this Agreement.



GSA Statement of Work for Harwich, MA
GSA Contract GS-35F-0124U

25. Customer acknowledges and agrees that CivicPlus utilizes third-party service providers to host and provide the Services and store Customer Data and the protection of such data will be in accordance with such third party's safeguards for the protection and the security and confidentiality of Customer's Data. Notwithstanding anything to the contrary, CivicPlus shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and CivicPlus will be free (during and after the term hereof) to use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other CivicPlus offerings.
26. CivicPlus may offer Customer the ability to use third-party applications in combination with the Services. Any such third-party application will be subject to acceptance by Customer. In connection with any such third-party application agreed to by Customer, Customer acknowledges and agrees that CivicPlus may allow the third-party providers access to Customer Data as required for the interoperability of such third-party application with the Services. The use of a third-party application with the Services may also require Customer to agree to a separate agreement or terms and conditions with the provider of the third-party application, which will govern Customer's use of such third-party application.
27. In the event of a security breach due to the sole negligence, malicious actions, omissions, or misconduct of CivicPlus, CivicPlus, as the data custodian, will comply will all remediation efforts as required by applicable federal and state law.

Limitation of Liability

28. CivicPlus' liability arising out of or related to this Agreement, or any associated SOW, will not exceed the amounts paid by Customer for the Annual Recurring Services in the year prior to such claim of liability.
29. In no event will CivicPlus be liable to Customer for any consequential, indirect, special, incidental, or punitive damages arising out of or related to this Agreement.
30. The liabilities limited herein apply:
 - A. to liability for negligence;
 - B. regardless of the form of action, whether in contract, tort, strict product liability, or otherwise;
 - C. even if Customer is advised in advance of the possibility of the damages in question and even if such damages were foreseeable; and
 - D. even if Customer's remedies fail of their essential purposes.
31. If applicable law limits the application of the provisions of this Limitation of Liability section, CivicPlus' liability will be limited to the maximum extent permissible.

Warranties & Disclaimer

32. Each person signing the SOW, or otherwise agreeing to the terms of this Agreement, represents and warrants that he or she is duly authorized and has legal capacity to execute and bind the respective Party to the terms and conditions of the SOW and this Agreement. Each Party represents and warrants to the other that the execution and delivery of the SOW and the performance of such Party's obligations thereunder have been duly authorized and that this Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms. Customer represents and warrants that Customer has not provided any false information to gain access to the Service and that Customer's billing information provided on the Contact Sheet is correct; and it has all necessary rights in the Customer Content to permit Customer's use of the Service and to grant the licenses contained in this Agreement without infringing the intellectual property or other rights of any third parties, violating any applicable laws, or violating the terms of any license or agreement to which it is bound.
33. CivicPlus warrants that the Services will perform substantially in accordance with documentation and marketing proposals, and free of any material defect. CivicPlus warrants to the Customer that, upon notice given to CivicPlus of any defect in design or fault or improper workmanship, CivicPlus will remedy any such defect. CivicPlus makes no warranty regarding, and will have no responsibility for, any claim arising out of:
 - A. a modification of the Services made by anyone other than CivicPlus, even in a situation where CivicPlus approves of such modification in writing; or



GSA Statement of Work for Harwich, MA
GSA Contract GS-35F-0124U

- B. use of the Services in combination with a third-party service, web hosting service, or server not authorized by CivicPlus.
34. The Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by CivicPlus or by third-party providers, or because of other causes beyond CivicPlus's reasonable control, but CivicPlus shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, SERVICE PROVIDER DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, THE SERVICES ARE PROVIDED "AS IS AND CIVICPLUS HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A PRIOR COURSE OF DEALING.
35. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY CIVICPLUS TO CUSTOMER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT.

Force Majeure

36. No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by force majeure, meaning any act of God, storm, pandemic, fire, casualty, unanticipated work stoppage, strike, lockout, labor dispute, civil disturbance, riot, war, national emergency, act of public enemy, internet service provider failure or delay, third party application failure, denial of service attack, or other cause of similar or dissimilar nature beyond its control.

Taxes

37. The amounts owed for the Services exclude, and Customer will be responsible for, all sales, use, excise, withholding and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity in connection with the Services (excluding taxes based solely on CivicPlus's income). If the Customer is tax-exempt, the Customer must provide CivicPlus proof of their tax-exempt status, within fifteen (15) days of contract signing, and the fees owed by Customer under this Agreement will not be taxed. If such exemption certificate is challenged or held invalid by a taxing authority then Customer agrees to pay for all resulting fines, penalties, and expenses.

Product Terms

38. If the Customer's use of the Design Center Pro module results in a loss in website or software function or other issue requiring CivicPlus resources to remedy, the Customer will be charged CivicPlus's standard hourly rate at such time for such resources.
39. Starting after continuous service for the period of months explicitly stated in the Recurring Redesign line item on the applicable SOW (the "Redesign Term"), the Customer shall be entitled to receive a website redesign at no additional cost. The Customer may initiate the website redesign any time after completion of a Redesign Term. Upon the initiation of an eligible redesign project, the Customer may begin accumulating eligibility towards a subsequent redesign after continuous service of a subsequent Redesign Term. Redesigns that include additional features not purchased on the original website SOW may be subject to additional charges.
40. Additional features include, but are not limited to, additional modules and integration of third-party software. Recurring Redesigns are eligible for the website, subsite, and department headers encompassed in the Customer's website at the time of recurring redesign was purchased or included in the applicable SOW in which the redesign was purchased. Any subsequently purchased website, subsite, and department header may be included in the Customer's redesign at an additional fee.



GSA Statement of Work for Harwich, MA
GSA Contract GS-35F-0124U

Acceptance

We, the undersigned, agreeing to the conditions specified in this document, understand and authorize the provision of services outlined in this SOW.

Customer

By: _____

Name: Joseph F. Powers

Title: Town Administrator

Date: July 28, 2023

CivicPlus

By: _____

Name: Amy Vikander

Title: Senior Vice President of Customer Success

Date: 7/31/2023

Project Name: website upgrade

TM Year and Article #: 2023 ATM #16

Appropriation: \$50,000

Bid Price: \$48,712.95

12/13/18 Revised Procurement Checklist

Please complete checklist below for contracts requiring Selectmen* signature **before Wednesday morning**** in order to get sign-off approval from the Town Administrator or the Assistant Town Administrator.

*Note: contracts (not grants) **below \$75,000** can be signed by Town Administrator.

- 1. Please provide a **separate page titled "Summary of Project"** which includes:
 - a. Provide how many bidders there were, the range of bids, and apparent low bidder.
 - b. Identify the funding source, such as article number and amount approved.
 - c. Include what you feel is pertinent, but keep this section to 4 sentences or less.
- 2. Finance Director has signed that funds are available: 011558-623165 Account
- 3. Please provide a single **copy of the bid packet** along with all supporting documents.
- 4. Please use K-P Law provided standardized contracts.

Buildings and Public Works	Goods and Services
<input type="checkbox"/> C1. Please show Prevailing Wage was used.	<input type="checkbox"/> GS1. If procured using the State Bid List :
<input type="checkbox"/> C2. If construction is near \$10,000 you also need: <ul style="list-style-type: none"> <input type="checkbox"/> a. Written spec sheet. <input type="checkbox"/> b. Advertised for two weeks on Central Register and COMMBUYS. <input type="checkbox"/> c. Apparent low bidder posted to Town website. 	<input checked="" type="checkbox"/> a. Over \$25,000 please show project was on the Capital Plan.
<input type="checkbox"/> C3. If construction over \$25,000 you need C1, C2, as well as: <ul style="list-style-type: none"> <input type="checkbox"/> a. Show project was in the Capital Plan. <input type="checkbox"/> b. Low bidder provides 50% payment bond after Selectmen's countersignature. 	<input type="checkbox"/> GS2. If project is over \$5,000 : <ul style="list-style-type: none"> <input type="checkbox"/> a. Please provide written spec sheet used and who it was sent to. <input checked="" type="checkbox"/> b. Maximum contract length is three years.
<input type="checkbox"/> C4. If construction over \$50,000 you need C1, C2, C3, as well as: <ul style="list-style-type: none"> <input type="checkbox"/> a. Bid Bond of 5% of total value. <input type="checkbox"/> b. Sealed Bids. <input type="checkbox"/> c. End of Public Works construction requirements 	<input type="checkbox"/> GS3. If project is over \$50,000 : <ul style="list-style-type: none"> <input type="checkbox"/> a. Show project was advertised for two weeks in a newspaper and on COMMBUYS. <input type="checkbox"/> b. Show project utilized sealed bids. <input type="checkbox"/> c. Apparent low bidder posted to Town website.
<input type="checkbox"/> C5. If Building estimated construction costs are over \$300,000 and estimated design costs are over \$30,000 you'll need to follow the Designer Selection RFQ process: <ul style="list-style-type: none"> <input type="checkbox"/> a. Advertise in Central Register and local newspaper for two weeks. <input type="checkbox"/> b. Set a designer fee or price ceiling. <input type="checkbox"/> c. Use Standard Designer Application Form 	<input type="checkbox"/> GS4. If project is over \$100,000 : <ul style="list-style-type: none"> <input type="checkbox"/> a. Show project was advertised for two weeks in COMMBUYS and Goods and Services Bulletin. <input type="checkbox"/> b. Show project utilized sealed bids.
<input type="checkbox"/> C6. If Building construction over \$150,000 you'll need C1, C2, C3, C4, C5, as well as: <ul style="list-style-type: none"> <input type="checkbox"/> a. 100% payment bond was in bids. <input type="checkbox"/> b. 100% performance bond was in bids. <input type="checkbox"/> c. DCAMM certified bidders. <ul style="list-style-type: none"> <input type="checkbox"/> i. DCAMM certified sub-bids if over \$25,000. 	<p>Note 1: If lowest bidder was found to be either not responsive or not responsible, the Town may begin negotiations with next lowest bidder.</p> <p>Note 2: Bids may be negotiated downwards but never higher than original quote.</p> <p>Note 3: Municipalities shall not provide a down payment, deposit, or provide funding before possession of purchased item.</p>
<input type="checkbox"/> C7. If Building construction over \$10,000,000 you'll need C1, C2, C3, C4, C5, C6, as well as: <ul style="list-style-type: none"> a. Solicit qualifications prior to sealed bids. 	

Original for Accounting Original for Procurement Original for Vendor Contract to Treasurer's

Signature of Town Administrator or Assistant Town Administrator: 