



CONTRACTUAL AGREEMENT TO PURCHASE

LED Streetlight Retrofit & Maintenance Services

* Required entry

ARTICLE 1

CONTRACTING PARTIES

1.1 THIS AGREEMENT made effective by dated signature of the Parties hereto, by and between the
Town of Berlin [THE MUNICIPALITY], and
Arden Engineering Constructors LLC * [Vendor],
whose principal office address and state of incorporation are set forth in Section 10.2.

ARTICLE 2

SUBJECT OF AGREEMENT

2.1 WHEREAS, THE MUNICIPALITY desires to retain the Vendor to provide goods and/or services to THE MUNICIPALITY, and the Vendor is willing to accept such engagement, pursuant to the terms and conditions of this Agreement, including any Additional and Special Terms and Conditions listed in Exhibit C, and the following Invitation For Bids:

IFB#: MAPC-DOER-23

as it relates to provision of the items specified in Appendix A and as hereinafter set forth.

2.2 NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 3

ENGAGEMENT OF THE VENDOR

3.1 THE MUNICIPALITY hereby engages the Vendor, and the Vendor hereby accepts the engagement, to provide goods to and/or perform certain services for THE MUNICIPALITY, as described in Article 2.
3.2 In the performance of service under this Agreement, the Vendor acts at all times as an independent vendor. There is no relationship of employment or agency between THE MUNICIPALITY, on the one hand, and the Vendor on the other, and neither party shall have nor exercise any control or direction over the method by which the other performs its work or functions aside from such control or directions as provided in this Agreement which the parties view as consistent with their independent vendor relationship.

ARTICLE 4

SERVICES OF THE VENDOR

4.1 The Vendor will provide the goods and/or services as described in the IFB cited in Article 2 [the Service].
4.2 The Vendor shall report, and be responsible, to THE MUNICIPALITY or its designee as set forth on Exhibit B.
4.3 There shall be no modification to the list of goods, including substitutions of specific products offered in the Vendor's bid, or amendment of the scope of services provided for in this Agreement, without the prior written approval of THE MUNICIPALITY. THE MUNICIPALITY shall be under no obligation to pay for any goods or services not so authorized.
4.4 The Vendor represents and warrants to THE MUNICIPALITY as follows:
4.4.1 That it and all its personnel (whether employees, agents or independent vendors) are qualified and duly



licensed as required by law and/or local municipal code to provide the goods and/or services required by this Agreement.

4.4.2 That it further agrees to perform services, including manufacturing, in a professional manner adhering to a reasonable standard of care and in accordance with all applicable State or Federal laws, rules and regulations.

4.4.3 That it will obtain any and all permits, bonds, insurances and other items required for the proper and legal performance of the work.

4.4.4 That it is not a party to any agreement, contract or understanding, which would in any way restrict or prohibit it from undertaking or performing its obligations hereunder in accordance with the terms and conditions of this Agreement.

4.4.5 That it does not now, and will not during the term of this Agreement, conduct business with parties located in or supported by countries identified by the U.S. government as funding, harboring, supporting, promoting or otherwise facilitating terrorist organizations or activities, nor will it provide goods or services produced under such circumstances.

ARTICLE 5

TERM

5.1 The term of this Agreement shall commence on the date of its execution by both parties and continue for one year or until its purpose is accomplished and acknowledged by formal acceptance and acknowledgment of the Vendor's performance by THE MUNICIPALITY, or until otherwise terminated as provided by this Agreement or the IFB, and may be extended for two additional one-year terms at the sole discretion of THE MUNICIPALITY.

5.2 The Vendor agrees to proceed with the Work promptly upon execution of this Agreement and to diligently and faithfully prosecute the Work to completion in accordance with the provisions hereof. The Vendor acknowledges that time is of the essence as it relates to performance under this Agreement.

5.3 The Vendor agrees to the schedule provide in Section 36 of the IFB that provided an Anticipated Start date of **7 Jan 2019** and a required Project Closeout date of **_ 25 Jan 2019 _**.

ARTICLE 6

PAYMENTS TO THE VENDOR

6.1 Compensation due the Vendor shall be paid as specified in Section 40 and Form C of the IFB.

ARTICLE 7

TERMINATION

7.1 Either THE MUNICIPALITY or the Vendor may terminate this Agreement for cause upon written notice given by the non-defaulting party. For the purposes of this provision, "cause" shall include the failure of a party to fulfill its material duties hereunder in a timely and proper manner.

7.2 THE MUNICIPALITY shall have the right to terminate this Agreement for its convenience upon ten (10) days written notice.

7.3 Following termination of this Agreement, the parties shall be relieved of all further obligations hereunder except that:

7.3.1 THE MUNICIPALITY shall remain liable for payments for the services and/or expenses of Vendor accrued prior to the effective date of the notice of termination in compliance with this Agreement (less all costs reasonably incurred by THE MUNICIPALITY as a result of the Vendor's default, if any), as determined by THE MUNICIPALITY, but for no other amounts including, without limitation, claims for lost profits on work not performed.

7.3.2 The Vendor shall remain liable for any damages, expenses or liabilities arising under this Agreement (including its indemnity obligations) with respect to work performed pursuant to the Agreement.



ARTICLE 8

INSURANCE AND INDEMNIFICATION

8.1 The Vendor agrees to indemnify and save THE MUNICIPALITY harmless from any and all manner of suits, claims, or demands arising out of any errors, omissions or negligence by the Vendor (including all its employees or agents) in providing the **Service**, or any breach of the terms of this Agreement, which constitute an obligation of the Vendor. The Vendor shall reimburse THE MUNICIPALITY for any and all costs, damages and expenses, including reasonable attorney's fees, which THE MUNICIPALITY pay or becomes obligated to pay, by reason of such activities or breach. The provisions of this Section shall be in addition to and shall not be construed as a limitation on any other legal rights of THE MUNICIPALITY expressed or not expressed in the **IFB** and with respect to this Agreement.

8.2 Before providing the **Service**, the Vendor shall obtain, and shall maintain throughout the term of this Agreement, insurance at limits specified in the **IFB** and provide written documentation of such in the form specified in the **IFB**.

8.3 The Vendor shall give THE MUNICIPALITY 20 (twenty) days written notice and copies of documentation in the event of any change or cancellation of coverage.

ARTICLE 9

GENERAL PROVISIONS

9.1 Upon the expiration or termination of this Agreement for any reason, any data, drawings, specifications, reports, estimates, summaries and other work product which have been accumulated, developed or prepared by the Vendor (whether completed or in process) shall become the property of THE MUNICIPALITY. The Vendor shall immediately deliver or otherwise make available all such material to THE MUNICIPALITY.

9.2 Neither party may assign, transfer or otherwise dispose of this Agreement or any of its rights hereunder or otherwise delegate any of its duties hereunder without the prior written consent of the other party. Any such attempted assignment or other disposition without such consent shall be null and void and of no force and effect.

9.3 Except as otherwise expressly provided in this Agreement, any decision or action by THE MUNICIPALITY relating to this Agreement, its operation, or termination, shall be made only by THE MUNICIPALITY or its designated representative identified in **Exhibit B**.

9.4 This Agreement, together with its **Exhibits**, the **IFB** referenced above and its **Addenda**, the required supplemental documents and any additional exhibits, constitute the entire agreement between THE MUNICIPALITY and the Vendor with respect to the matters set forth therein and may not be changed (amended, modified or terms waived) except by a writing signed by both parties. Any notices required or allowed shall be sent by receipt-verified mail, e-mail, fax or courier to the persons designated in **Exhibit B**.

9.5 In the event any terms and conditions of this Agreement conflict with those contained in the **IFB** and its **Addenda**, the **IFB** and its **Addenda** shall prevail.

9.6 This Agreement is governed by the laws of Massachusetts and shall be construed in accordance therewith.

9.7 Consent to venue for the Town of Needham: The VENDOR agrees that it shall commence and litigate all actions or proceedings arising in connection with this Agreement exclusively in the Dedham District Court or in the Norfolk Superior Court, both of which are located in the County of Norfolk, Commonwealth of Massachusetts. The aforementioned choice of venue is intended to be mandatory and not permissive in nature, thereby precluding the possibility of the VENDOR commencing or prosecuting any litigation against the Town, with respect to or arising out of this Agreement, in any court or forum other than those specified in this paragraph. It is further agreed that the parties to this Agreement hereby waive their rights to a jury trial.



ARTICLE 10

SIGNATURES

10.1 For the Municipality:

x Christine Keefe
Signature

Christine Keefe
Name

Chair, Board of Selectmen
Title

01/07/2019
Date

978-838-2442
Phone

978-838-0014
Fax

selectmen@townofberlin.com
e-mail

10.2 For the Vendor:

x _____
* Signature

* Title _____

* Fax _____

* Affix Corporate Seal ⇔
(or mark "n/a")

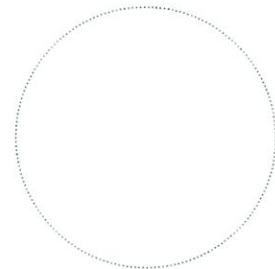




EXHIBIT A

List of Procured Items

The following list contains all items procured through and subject to this contract.

Table 1. Prices in Scope of Work					
Item No.	Description of Work	Unit of Measure *	Unit Price	Quantity	Total Price
1	Cobrahead Retrofit - labor: to replace existing HID Luminaire with one (1) new LED Luminaire complete with Photocell and ownership label provided by the Cities, as per Schedule 1.	EA	\$ 47.50	64	\$3,040.00
2A	Decorative Retrofit: Post-Top Screw In Bulb - labor: to replace existing HID bulb o with one (1) new LED bulb and ownership label provided by Cities	EA	\$ 22.00	-	0
2B	Decorative Retrofit: Post Top/Acorn/Top Hat - labor: to replace existing HID fixture with one (1) new LED fixture and ownership label provided by Cities	EA	\$ 70.00	-	0
2C	Decorative Retrofit: Tear Drop Pendant - labor: to replace existing HID fixture with one (1) new LED fixture and ownership label provided by Cities	EA	\$ 50.00	-	0
2D	Decorative Retrofit: Pendant Screw In Bulb - labor: to replace existing HID bulb with one (1) new LED bulb and ownership label provided by Cities.	EA	\$ 25.00	-	0
2E	Casing Change: Broken Casing - labor: to replace an existing broken lighting case/housing for a decorative light with one (1) new case provided by the Cities (see spec sheet at link with other spec sheets)	EA	\$ 150.00	-	0
3A	Flood/Area Light Retrofit - labor: to replace an existing HID Luminaire with one (1) new LED Luminaire and photocell provided by the Cities	EA	\$ 70.00	2	\$140.00
3B	Wallpack Light Retrofit - labor: to replace an existing HID Luminaire with LED Wallpack	EA	\$ 50.00	-	0
3C	Soffit Light Retrofit - labor: to replace existing luminaire with LED soffit. Accesible with standard ladder. Includes the minimum re-wiring to replace the entire fixture.	EA	\$ 25.00	-	0



4	Fusing Install - labor: to install a new double pole fuse in a new fuse holder, provided by the Cities, with necessary wiring according to National Grid standards (See Schedule 4).	EA	\$ 10.50	66	\$693.00
5	Arm & Light Removal – Labor – Remove an existing arm and fixture from a wood distribution pole.	EA	\$ 353.50	2	707.00
6	Arm Rotation – Labor – Rotate existing Arm 45 degrees on wood distribution pole.	EA	\$ 25.00	-	0
7	Arm Install – Labor – Install a new 6ft arm, to be provided by the Cities, on wood distribution pole.	EA	\$ 50.00	-	0
8	Cobrahead Retrofit requiring High Voltage crew (over 480v) - Labor	EA	\$ 150.00	-	0
9	New 3-15 feet Wire - Material and labor to install wire complete with proper terminations, if needed in excess of a standard install of cobrahead, decorative or flood retrofit of cobrahead, decorative or flood and fuse**	EA	\$ 20.00	-	0
10	New 16-30 feet Wire - Material and labor to install wire complete with proper terminations, if needed in excess of ancillary wire needed for a standard install of cobrahead, decorative or flood and fuse**	EA	\$ 50.00	-	0
Grand Total					\$4580.00

Table 2. Prices Outside Scope of Work – Require a Separate Purchase Order from the Cities to Perform

Item No.	Description of Work	Unit of Measure *	Unit Price
12	Labor: install gateway for wireless controls (hourly rate)	Hour	\$ 175.00
13	Cobrahead Refresh compression connection to Secondary wiring.	EA	\$ 95.00
14	Decorative Refresh compression connection to Secondary wiring.	EA	\$ 95.00
15	Supply and install: Ground Anchor with all accompanying hardware.	EA	\$ 350.00
16	Material and labor: Drop Service Entrance Panel.	EA	\$2,500.00
17	Labor: Straighten Pole.	EA	\$ 250.00
18	Labor: Repair Hand Hole.	EA	\$ 250.00
19	Supply and install: Replacement Bolt.	EA	\$ 450.00



Table 3. Warranty Period Service Calls			
Item No.	Description of Work	Unit of Measure *	Unit Price
20	Standard service call rate per hour (including labor and equipment such as bucket truck). For non-emergency, non-overtime service.	EA	\$ 175.00
21	Overtime rate per hour Weekday (before 7:00am or after 4:00pm).	EA	\$ 190.00
22	Overtime rate per hour rate Weekend and Holidays.	EA	\$ 250.00
23	Materials mark-up (mark-up percentage on cost).	Percentage	15%
24	Minimum call out rate for an emergency call. (If hours spent on site multiplied by the applicable hourly rate exceed this lump sum for a given emergency call, then the applicable hourly rate should be used for any additional time spent on the call)	LS	\$ 736.00
25	Travel fee for an emergency call (using mileage from Electrical Contractor's office address to the Municipality City Hall address and back).	Per mile	\$ 2.50

Initialed For:

THE MUNICIPALITY: CK

* Vendor: _____



EXHIBIT B

NOTICE ADDRESSEES

A.1 For THE MUNICIPALITY:

David Smith
Name

Highway Superintendent
Title

23 Linden St.
Street Address

Berlin, MA 01503
City, State, ZIP

508-340-9505
Phone

978-838-0014
Fax

highway@townofberlin.com
e-mail

A.2 For the Vendor:

* Name

* Title

* Street Address

* City, State, ZIP

* Phone

* Fax

* e-mail



EXHIBIT C

ADDITIONAL AND SPECIAL TERMS AND CONDITIONS

THE MUNICIPALITY and the Vendor agree that the following additional and special conditions apply to and shall be held in full force and effect during the term of this contract:

SINGLE POINT OF CONTACT

MUNICIPALITY, the MUNICIPALITY's Project Management Company [Company Name], and VENDOR will each assign a single point of contact with respect to this project. It is anticipated that the contact person will not change during the period of the contract.

Contacts:

David Smith

[Municipality]

Address: 112 West St. Berlin, MA 01503

Primary phone: 508-340-9505

Secondary phone: 978-838-2898

email: highway@townofberlin.com

[Name]

LightSmart Energy Consulting, LLC

Attn: Brian Woodbury

1052 Johnson Farm Road

Lillington, NC

Primary phone: 617-821-2868

Secondary phone: 603-321-0212

email: brian.woodbury@lightsmartconsulting.com

[Name]

[Vendor]

Address

Primary phone:

Secondary phone:

email:

ISSUE RESOLUTION

The single points of contact from each organization bear the primary responsibility for ensuring issue resolution. If they mutually agree that they are unable to resolve an issue, they are responsible for escalating the issue to the parties identified below which party is authorized to bind their respective organizations in a resolution:

Escalation Points

David Smith

[Municipality]

Address: 112 West St. Berlin, MA 01503

Primary phone: 508-340-9505

Secondary phone: 978-838-2898

email: highway@townofberlin.com

[Name and Title of Project Management Consultant Supervisor]

LightSmart Energy Consulting

ATTN George Woodbury

Email: George.woodbury@lightsmartconsulting.com

Primary phone: 603-321-0212



Secondary phone: 910-814-2342

[Name and Title of VENDOR's Supervisor]

[Vendor]

Email:

Primary phone:

Secondary phone:

Upon escalation of an issue for resolution, each party shall include MAPC, Patrick Roche (proche@mapc.org), in their written communications.

Initialed For:

THE MUNICIPALITY: CK

* Vendor: '



EXHIBIT D

ATTACHMENTS

1.0 Invitation for Bids # MAPC-DOER-23

2.0 Other Bid Documents:

- General Bid Form
- Statement of Competency
- Bid Price Form

3.0 Other Documents:

- Insurance Certificate(s)__(to be provided for contract execution)
- Prevailing Wage Sheets
- _____
- _____
- _____
- _____