

RFQ#2025OPM

STANDARD CONTRACT

**SOUTH HADLEY ELECTRIC LIGHT DEPARTMENT
85 Main Street, South Hadley, MA 01075**

DATE: _____

This Contract is entered into on, or as of, this date by and between

**SOUTH HADLEY ELECTRIC LIGHT DEPARTMENT
AND
[“Contractor/Vendor Name”]**

[Address of the Contractor/Vendor]

**[Contractor/Vendor Telephone Number]
[Contract/Vendor Email]**

hereinafter called the Contractor and South Hadley Electric Light Department (SHELD or Department), a municipal light department.

This is a Contract for the procurement of the following:

Owners Project Manager Services for the development of a new Administrative and Operations Facility in South Hadley, MA.

- The Contract price to be paid to the Contractor by the Department is: Negotiated
- Payment will be made as follows: As Negotiated

1. DEFINITIONS:

- a. Contract Documents: All documents relative to the Contract including (where used) Instructions to Bidders, Proposal Form, General Conditions, Supplementary General Conditions, General Specifications, Other Specifications included in Project Manual, Drawings, and all Addenda issued during the bidding period. The Contract documents are complementary, and what is called for by anyone shall be as binding as if called for by all. The intention of the document is to include all labor and materials, equipment and transportation necessary for the proper performance of the Contract.
- b. The Contractor: The “other party” to any Contract with the Department. This term shall (as the sense and particular Contract so require) include Vendor, Proposer, Engineer, Proposer or other label used to identify the other party in the particular Contract. Use of the term “Contractor” shall be understood to refer to any other such label used.
- c. Date of Substantial Performance: The date when the work is sufficiently complete, the services are performed, or the goods delivered, in accordance with Contract documents, as modified by approved Amendments and Change Orders.
- d. Goods: Goods, Supplies or Materials.
- e. Subcontractor: Those having a direct Contract with the Contractor. The term includes one who furnished material worked to a special design according to the Drawings or Specifications of this work but does not include one who merely furnishes material not so worked.
- f. Work: The services or materials contracted for, or both.

2. TO BEGIN WORK:

The Contractor shall begin the work on the first scheduled workday following the signing and execution of this contract. Substantial completion of this contract is expected as outlined within the request and this contract may be subject to extensions. The time limits stated in the Contract documents are of the essence of the Contract.

3. STANDARD OF WORK:

All work to be done pursuant to this contract must be completed in a workman-like and professional manner and to the sole satisfaction of Department. In evaluating this standard, the parties shall take into account the fact that South Hadley Electric Light Department is a municipal lighting plant as described in Massachusetts General Laws, Chapter 164, Sections 34 through 69, inclusive. As applicable, Contractor specifically acknowledges that the materials, supplies, equipment, tools, services and all other facilities and things are being sold subject to all implied warranties and warranties imposed by law, including but

not limited to merchantability and fitness for a particular purpose. All work and Contractor responsibilities shall be in accordance with the provisions of this contract and all associated documentation, as applicable.

4. THE CONTRACTOR:

Shall conform to and comply with all the provisions of municipal ordinances, the General Laws of Massachusetts and the United States Code, including but not limited to, Chapters 7, 30, 62C, 11F and 149 of the General Laws of Massachusetts, relating to public works, public buildings and other matters, whenever applicable including the requirements hereinbefore and hereinafter stated.

As applicable, materials or supplies delivered under this Contract must be accompanied by any necessary form relating to toxic or hazardous substances including, but not limited to, Material Safety Data Sheets required by the United States Code or the general laws of Massachusetts. For guidance, the Contractor will use the Massachusetts Substance List (MSL) described in Chapter 111F of the General Laws of Massachusetts and 105 CMR 670.

5. PERMITS AND NOTIFICATIONS:

Permits, Licenses, Approvals and all other legal or administrative prerequisites to its performance of the Contract shall be secured and paid for by the Contractor.

6. CHANGES, ALTERATIONS OR ADDITIONS:

The Department may order extra work or may make changes by altering, adding to or deducting from the work, and all changes shall be performed under the conditions of this contract and the Contractor shall have no claim for extra compensation in any case unless, before any change is made or any extra work done or materials furnished, the Department shall have ordered the change or extra work in writing and shall have specified in writing the value of the change to the contract. As applicable, extra work shall be billed to the Department not later than fifteen (15) days after completion of each assignment of additional or changed work. No verbal agreement or conversation with any officer, agent or employee of the Department, either before or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained. No officer, agent or employee of the Department shall have any power or authority whatsoever to bind the Department or incur any obligation on its behalf to any subcontractor, material supplier or other person in any manner whatsoever.

Any changes, extensions of time, alternations or additions to this contract made in accordance with its terms or any changes in the work to be performed made in the plans or specifications, shall be deemed to be made under the provisions hereof.

If applicable, any changes, extensions of time, alternations or additions to this contract shall not, as applicable, affect the obligations of the bond or surety thereon; nor shall a failure to give notice of changes, alterations or additions to the surety on said bond affect

the obligation of said surety, all of said notices being waived by the execution by said surety of the bond for the performance of the contract and the payment of all claims relating thereto.

7. SUBJECT TO APPROPRIATION:

Notwithstanding anything in the Contract documents to the contrary, any and all payments which the Department is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the Municipal Light Board. In the absence of appropriation, this Contract shall be immediately terminated without liability for damages, penalties or other charges.

8. SALES TAX EXEMPTION:

The Department is exempt from State Sales Tax under the Sales Act, Chapter 14 of the Acts of 1966 and all amendments thereto. All purchases of supplies and materials in relation to the project are therefore tax-exempt. This must be considered when submitting contract prices. A tax-exempt certificate will be provided.

9. STATUTORY COMPLIANCE:

This Contract will be construed and governed by the provisions of applicable federal, state and local laws and regulations; and wherever any provision of the Contract or Contract documents shall conflict with any provision or requirement of federal, state or local law or regulation, then the provisions of law and regulation shall control. Where applicable to the Contract, the provisions of the General Laws are incorporated by reference into this Contract, including, but not limited to, the following:

General Laws Chapter 30B: Uniform Procurement Act

General Laws Chapter 30, Sec. 39, et seq: Public Works Contracts.

General Laws Chapter 149, Section 44A, et seq: Public Buildings Contracts

General Laws Chapter 7C: Designer Selection

- a. Wherever applicable law mandates the inclusion of any term and provision into a municipal contract, this Section shall be understood to import such term or provision into this Contract. To whatever extent any provision of this Contract shall be inconsistent with any law or regulation limiting the power or liability of cities and towns, such law or regulation shall control.
- b. The Contractor shall give all notices and comply with all laws and regulations bearing on the performance of the Contract. If the Contractor performs the Contract in violation of any applicable law or regulation, the Contractor shall bear all costs arising therefrom.
- c. The Contractor shall keep itself fully informed of all existing and future State and National Laws and Municipal By-laws and Regulations and of all orders and

decrees of any bodies or tribunals having jurisdiction in any manner affecting those engaged or employed in the work, of the materials used in the work or in any way affecting the conduct of the work. If any discrepancy or inconsistency is discovered in this Contract and associated Contract Documents, for this work in violation of any such law, by-law, regulation, order or decree, it shall forthwith report the same in writing to the Department. It shall, at all times, observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and shall protect and indemnify the Department, and its duly appointed agents against any claim or liability arising from or based on any violation whether by him or its agents, employees or subcontractors of any such law, by-law, regulation or decree.

10. CONFLICT OF INTEREST:

Both the Department and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A), and this Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the application of M.G.L. c. 268A to the performance of this Contract; and by executing the Contract documents the Contractor certifies to the Department that neither it nor its agents, employees, or subcontractor are thereby in violation of General Laws Chapter 268A.

11. INSURANCE AND INDEMNIFICATION:

The Contractor shall have the following insurance in effect during the term of the contract.

- Professional Liability (Errors and Omission) Coverage of no less than \$1,000,000
- General Liability Coverage of no less than \$1,000,000
- Automobile Liability Coverage of no less than \$1,000,000
- Worker's Compensation and Employers Liability as required by statute.

Protection shall be, against all claims for injuries and damage to persons or property to the extent such claim arises from Contractor's performance of the work. The Contractor shall, before commencing performance of the contract, provide by insurance for the payment of compensation and the furnishing of benefits under General Laws, Chapter 152, to all persons to be employed under the contract and the Contractor shall continue such insurance in full force and effect during the term of the contract. The Contractor shall furnish Certificates of Insurance naming the Department as an "Additional Insured" showing proof of compliance with this requirement before this contract shall be in effect. All policies shall contain a "Waiver of Subrogation" in favor of the Department. No cancellation of such insurance whether by the insurer or by the insured shall be valid unless written notice thereof is given by the party proposing cancellation to the other party, and to the Department at least 30 days prior to the intended effective date thereof, which date shall

be expressed in said notice. Failure to provide and continue in force such insurance shall be deemed a material breach of contract and shall operate as an immediate termination thereof. Any notice of cancellation shall comply with the requirements of General Laws, Chapter 149, Section 34A.

To the fullest extent provided by law, contractor shall indemnify, defend and hold harmless the Department from any and all claims for injuries and damages to persons or property including death arising from the Contractor's performance of the work, including without limitation the Department's legal and experts' fees and expenses relating to the investigation, defense and resolution of any and all claims.

12. PAYMENTS BY DEPARTMENT:

The Department will pay, and the Contractor will accept in full consideration for the complete performance of this contract, the agreed to values as negotiated.

13. ASSIGN, SUBLET OR TRANSFER:

This contract or the right to receive payment thereunder shall not be assigned, sublet or transferred, in any way, in whole or in part except with the written consent of the Department.

14. TERMINATION:

The Department, on three days' written notice, may suspend, postpone, abandon or terminate this contract, or any part hereof, and such action shall in no event be deemed a breach of contract. Such suspension, postponement, abandonment, or termination may come about for the convenience of the Department or as a result of the Contractor's failure to render to the satisfaction of the Department the services required of him under this contract, including the progress of work under such services. Upon receipt of written notice from the Department that this contract, or any part hereof, is terminated, the Contractor shall immediately cease operation of the work stipulated, and assemble all material that has been prepared, developed, furnished or obtained under the terms of this contract that may be in his possession or custody, and shall transmit the same to the Department on or before the fifteenth day following the receipt of the above-written notice of termination, together with his evaluation of the cost of the work performed. The Contractor shall be entitled to just and equitable payment in accordance with this contract for any uncompensated work satisfactorily performed prior to such notice.

The Department shall determine the amount of acceptable work performed by the Contractor under this contract. The Department's evaluation shall be used as a basis to determine the amount of compensation due for this work, provided it shall be made in good faith and supported by substantial evidence.

In determining the value of the work performed by the Contractor prior to termination, no consideration will be given to profit, which the Contractor might have reasonably expected to make on the uncompleted portion of the work.

15. WAIVER:

Any waiver by the Department of any violation or omission of any particular item of this contract or the plans or specifications shall be considered, always, only as a waiver of the particular violation or omission and shall not at any time be considered or construed as a waiver of any term of this contract or of any requirement of the plans and specifications. Nor shall any such waiver of any particular violation or omission in any way affect the obligation of the bond and the surety thereon given by the Contractor, as applicable.

16. CONTRACTOR TO PAY:

The Contractor shall pay all claims for labor and materials and for equipment, insurance and all facilities employed in the performance of the contract without delay, and to the fullest extent allowed by law, shall defend, hold harmless and indemnify the Department against any and all such claims and against all claims for injuries or damages to the extent arising out of the performance of the contract and the manner or method in which the work is accomplished, including without limitation the Department's legal and experts' fees and expenses relating to the investigation, defense and resolution of any and all claims.

17. CERTIFICATION OF TAX COMPLIANCE:

This Contract must include a certification of tax compliance by the Contractor, as required by General Laws Chapter 62C, Section 49A (Requirement of Tax Compliance by All Proposers Providing Goods, Services, or Real Estate Space to the Commonwealth or Subdivision).

18. BOND:

If required, this agreement shall not be in force nor shall it have any binding effect until and unless the Contractor shall furnish a satisfactory performance and payment surety bonds conforming to the provisions of General Laws, Chapter 149, Section 29.

19. ARBITRATION:

Any dispute or disagreement between the Department and Contractor arising under this contract shall be submitted to arbitration upon the request of either party, specifying the issue or issues in dispute, and summarizing the party's claim with respect thereto. Copies of any such request shall be served on the opposing party. Within ten (10) days after receipt of such a request, authorized representatives of the Contractor and the Department shall confer and attempt to agree upon appointment of a single arbitrator. If such agreement is not accomplished, the Contractor or the Department may request the American Arbitration Association to appoint an arbitrator in accordance with its Commercial Arbitration Rules, which rules shall govern the conduct of the arbitration in the absence of a contrary agreement by the Contractor and the Department. The arbitrator shall conduct a hearing in South Hadley, Massachusetts, and within thirty (30) days thereafter, unless such time is extended by agreement of the parties, shall notify the parties in writing of his decision stating separately findings of fact and determinations of law. The arbitrator shall not have the power to add to or amend the contract. Subject to such limitation, the decision of the arbitrator shall be final and binding on all parties except that either party may petition a court of competent jurisdiction for review of errors of law. The decision of the arbitrator

shall determine and specify how the expenses of arbitration shall be allocated between the Department and the Contractor.

20. APPLICABLE LAW:

This agreement is made under and shall be governed by the laws of the Commonwealth of Massachusetts and litigated if at all only by the courts of the Commonwealth.

21. SEVERABILITY:

If any one or more of the terms, provisions, promises, covenants or conditions of this contract shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all other remaining terms and provisions, covenants and conditions of this agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law. A signed copy of this document shall be as enforceable as a signed original.

22. LEGAL CERTIFICATIONS:

By acceptance of this contract, Contractor certifies that it has complied and will continue to comply with all ordinances, laws and regulations, including but not limited to all Massachusetts tax laws, and that this contract is fully authorized and enforceable against the Contractor.

IN WITNESS WHEREOF,

[Vendor Name, Title] signed this instrument, and South Hadley Electric Light Department has caused the signature of its General Manager, Sean Fitzgerald, to be hereto affixed for SHELD.

IN PRESENCE OF:

_____ By _____ Date _____
Witness

[Vendor Company]
[Signer Name, Title]

_____ By _____ Date _____
Witness

South Hadley Electric Light Department
Sean Fitzgerald, General Manager