



1 Mercantile Street – Suite 520  
Worcester, MA 01608  
508.756.7717 P  
508.792.6818 F  
www.cmrpc.org

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## Invitation for Bids

### SPECIFICATIONS -FISCAL YEAR 2024 No. 2 FUEL (HEATING) OIL BID

July 1, 2023 - June 30, 2024

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The Central Massachusetts Regional Planning Commission (CMRPC) is inviting sealed Bids for an estimated 105,586 gallons of dyed NO. 2 HEATING OIL to be delivered to the following Central Massachusetts communities from July 1, 2023 through June 30, 2024: Auburn, Ayer, Harvard, Lunenburg, Millville, Northbridge, Oxford, Southbridge, Upton, and Uxbridge (collectively, the “Towns”). Bidders have the option of bidding for all ten (10) communities or for any of the communities individually. Sealed bids will be received by CMRPC, 1 Mercantile Street – Suite 520, Worcester, MA 01608 on or before, June 13, 2023 at 10am. Specifications may be obtained by email from Ethan Melad (emelad@cmrpc.org) beginning May 30, 2023 at 10am.

All questions regarding the bids must be submitted before June 6, 2023. Any questions should be directed to Ethan Melad, emelad@cmrpc.org.

The CMRPC reserves the right to accept or reject any or all bids, to waive any informality contained therein, and to award the contract as deemed by them to be in the best interest of the participants. Prices (markup) must remain firm for at least 30 days so participating communities can decide whether to opt in and contract with the successful bidder. Once the contract is executed, the vendor must hold markup prices firm for the duration of the contract (through June 30, 2024).

### Fuel (Heating) Oil Specifications

1. Fuel oil must comply with the following specifications and procedures:
  - The most updated Federal Specifications that replaced Spec. VV-F-815C published in July 1, 1972 Federal Supply Services, GSA, or specifications currently in use for GSA procurements.

- D396-98 Standard Specifications for Fuel Oils – Copyright 1999 American Society for Testing and Materials, West Conshohocken, PA. The American Society of Testing Materials; and fuel oil specification ASTM D-396 amended to comply with regulations of the Massachusetts Department of Environmental Protection; and other applicable Federal and/or Commonwealth regulations and laws.
- Unless a contract is otherwise amended by an individual Town, Towns are seeking minimal biofuel under this procurement. Therefore, fuel must not exceed a biofuel ratio of 10%.
  - Any biofuel must comply with the most up to date ASTM requirements.
  - Any biofuel must be clean biofuel without sediments or materials that could damage tanks or equipment. Fuels used must be compatible with the manufacturer’s standards for all tanks and equipment.
  - If, failing to meet these standards, the vendor’s fuel damages Town tanks or equipment, the vendor is responsible for any associated costs.
- CMRPC will conduct at least one test using an independent lab and a fuel sample from a town of its choosing. Results will be shared with participating communities.
- All deliveries in full or split loads shall be uncontaminated, containing no solids, and made with temperature of the oil corrected to 60 degrees Fahrenheit. Metered slips shall be signed at each location by an authorized person. Late or missed deliveries are sufficient cause for a Town to terminate their contract.
- Upon request, the bidder shall submit, at the bidder's expense, an analysis of the fuel oil, date of analysis, by whom such analysis was made and the address of the person performing such analysis.

Winter Fuel (available between December 1 and March 31) must meet all winter requirements to ensure proper performance during the winter months for the location that the fuel will be used. IF WINTER BLEND IS NOT AVAILABLE DURING ANY PORTION OF THIS PERIOD, THE VENDOR MUST PROVIDE THE TOWN, WITH EACH DELIVERY, ENOUGH WINTER BLEND ADDITIVE TO TREAT THE TANK TO PREVENT GELLING. Vendors are expected to recommend use of the Winter Blend when they believe gelling could be an issue. The Town then has the option of whether to use the Winter Blend, as recommended. **Bidders will be asked to submit pricing for a Winter Blend as well as a complete description of its contents as part of the bid sheet.**

2. ALL TAXES and FEES must be included in the total price per gallon. Awarded vendors must set up a billing system where Customers are not charged taxes or fees in addition to their total awarded bid price. Repeated over-billing of Customers will be grounds for contract termination.
3. The awarded contractor(s) will contact the Customers to determine if they desire automatic deliveries or not. Town/Agency personnel are not required to assist in the deliveries and contractors are cautioned to notify their shippers that adequate assistance must be provided at the point of delivery. Contractors are required to verify delivery conditions before bidding on this contract.

4. The contractor(s) must specify the lead time (hours, days, etc.) for call-in deliveries, both for regular deliveries and emergencies.
5. Some participating towns are also looking for their provider to maintain and service their tanks. As part of the bid sheet, bidders will be asked to submit their hourly rate for maintenance and service or attach a complete description of its relevant services and detailed pricing.
6. **BID PRICES (markup) must remain firm for at least 30 days so participating communities can decide whether to opt in and contract with the successful bidder. Once the contract is executed, the vendor must hold markup prices firm for the duration of the contract (through June 30, 2024).**

## Insurance

Before commencing any work, the contractor shall submit a certificate of insurance naming participating municipalities as “Additional Insured”. The following minimum limits shall apply:

- Commercial General Liability - Per occurrence/aggregate - \$1,000,000/\$2,000,000
- Automobile Liability - Bodily Injury and Property Damage - Minimum of \$1,000,000 on a combined single limit for bodily injury and property damage
- Employer’s Liability Insurance - Worker’s Compensation - Limits as required under the laws of the Commonwealth of Massachusetts
- Umbrella or Excess Liability Insurance - Not less than \$2,000,000 over and above primary limits

## Spills and/or Accidents

While performing work under this contract, the contractor shall be responsible for completing clean-up of any spills or accidental releases to the environment (pursuant to MGL c. 21E and other relevant regulations) at no cost to the participating municipality. The contractor shall notify all local, state and federal authorities as required by law in the event of such a release or threat of release. The contractor will immediately notify the user facility contact person, in writing, in the event of a spill, release, or threat of a release to the environment and prior to initiating clean up response actions. If prior notification of the facility contact is not possible, then the contractor shall take appropriate response actions, and notify the contact person, in writing, as soon as possible thereafter. The contractor must provide a written summary of the response actions taken in any case within the timelines established for reporting of spills and /or contamination, as set forth in MGL C. 21E. A copy must also be sent to the Town Manager/Administrator/Executive Secretary of the participating Town.

## Tax Exemption

The Towns are exempt from the payment of Federal Excise Taxes and State Sales Taxes. However, the Towns are responsible for any required Mass State Tax. Tax must be included in the bid price. If any additional state, federal or local taxes (for example, a so called “gas tax”) are

imposed during the course of the contract, the contracts will be amended to add that direct cost – likewise if they are revoked for any reason. All applicable fees must also be included in the Bid Price.

## Purchases

If the Contractor fails for any reason to comply with the provisions contained herein, the Towns shall be at liberty to buy heating fuel in the open market, and to charge against the Contractor any excess in price of the fuel so purchased over the price named in the contract, and the whole or any part of any sums of money due the Contractor may be applied to meet such excess cost.

The following towns have indicated a desire to purchase fuel oil cooperatively through this bid. If any Towns determine the bid is not advantageous, they may decline to participate. Each Town shall enter into an individual contract and shall be billed directly for its purchases. These quantities are based on past usage and are not guaranteed for future use. Tank locations and capacities may change as town operations change and are not guaranteed for the duration of the award period. Estimated Heating Fuel requirements are as follows:

Community	Contact	Email	Phone	Fuel Oil Estimated Need (Gallons)	Fuel Oil Tank Location and Capacity (Gallons)
Auburn	Joanna Paquin	<a href="mailto:jpaquin@town.auburn.ma.us">jpaquin@town.auburn.ma.us</a>	508-832-7814	5,000	65 Central St - 500 gal 41 South St - 500 gal 102 Central St - 500 gal 273 Central St - 500 gal
Ayer	Pam Martin	<a href="mailto:pmartin@ayer.ma.us">pmartin@ayer.ma.us</a>	978-772-8240	10,000	25 Brook St
Harvard	Tim Kilhart	<a href="mailto:tkilhart@harvard.ma.us">tkilhart@harvard.ma.us</a>	978-456-4130	5,000	47 Depot Rd - 275 gal (x3) 231 Still River Rd - 275 gal
Lunenburg	Robert Oliva	<a href="mailto:roliva@lunenburgonline.com">roliva@lunenburgonline.com</a>	9785824160	11,600	
Millville	Peter Caruso	<a href="mailto:townadmin@millvillema.org">townadmin@millvillema.org</a>	5088872878	1,796	Millville Town Hall - 330 Library - ?
					17 Church St - 330 gal (x2) 193 Main St - 5,000 gal 2301 Providence Rd - 500 gal 644 Providence Rd - 3,500 gal 644 Providence Rd - 275 gal 644 Providence Rd - 660 gal (x2) 644 Providence Rd - 275 gal
Northbridge	Jamie Luchini	<a href="mailto:jluchini@northbridge.mass.org">jluchini@northbridge.mass.org</a>	1-508-234-3581	26,700	7 Main St - 3,000 gal 875 Hill St - 275 gal 241 Linwood Ave - 275 gal 14 Hill St - 5,000 30 Cross St - 10,000 gal 427 Linwood Ave - 10,000 gal 14 Crescent St - 8,000 gal 171 Linwood Ave - 20,000 gal

Oxford	Jared Duval	<a href="mailto:jduval@oxfordma.us">jduval@oxfordma.us</a>	(508) 987-6006	11,890	656 Main St. - 275 gal x2 3 Barton St. - 275 gal x2 34 Charlton St. - 500 gal x3, 275 gal
Southbridge	Tara Thibeault	tthibeault@southbridgemass.org	508-764-5403	17,900	
Upton	William Taylor	<a href="mailto:wtaylor@uptonma.gov">wtaylor@uptonma.gov</a>	508-529-3067	6,000	100 Pleasant St - 500 gal 1 East Main St - 275 gal
Uxbridge	Benn Sherman	<a href="mailto:bsherman@uxbridge-ma.gov">bsherman@uxbridge-ma.gov</a> ; <a href="mailto:EWelch@uxbridge-ma.gov">EWelch@uxbridge-ma.gov</a> ; <a href="mailto:ssette@uxbridge-ma.gov">ssette@uxbridge-ma.gov</a>	508-278-8600	9,700	222 Aldrich St - 400 gal 44 Mendon Rd. - 275 gal 21 South Main St - 300 gal x3

### Additional Information Regarding Tanks

- Any tanks owned by the vendor are noted in the table above. If a Town failed to indicate vendor-owned tanks, vendors are allowed to bill them for the cost to supply/install tanks.

## Bid Price Provisions

Bid Price will include the following:

- It is the contracted vendor's (hereinafter called "Supplier") responsibility to inform the Participant of any changes required at the site before the contract is set if that change will result in fees/charges or changes to the site.
- If the Participant will use vendor-owned tank(s), providing, installing and maintaining proper storage tanks at the Participant's location/s of delivery. If new tank installation is required, Supplier will complete all installations within 21 days of receipt of the new contract. No extra charge for installation allowed.
- Providing and delivering Heating Oil to the Participant at their individual locations in a timely manner.
- Proper inspection of all piping, equipment, valves and connections and immediate notification of any condition that is dangerous or hazardous. Supplier will immediately shut off the flow of fuel to any defective part.
- Supplier will be responsible for obtaining all permits required by law.
- Supplier will be responsible for all rules, regulations and laws of the Federal Government and the Commonwealth of Massachusetts regarding the storage, handling, shipping, transporting and installation of storage tanks.
- Supplier will be completely responsible for maintaining their equipment, including but not limited to: piping, valves, connections, and fittings and will respond immediately to any notification of known or suspected leakage.
- If annual delivery amount is less than 100 gallons, a \$50 flat fee will be charged to the town/entity by the Supplier.

Bid price does NOT include:

- Modifications to interior appliances to meet code requirements or additional piping required beyond the exterior wall of a building to bring a facility up to safety code compliance or the addition of compliance.
- Repair or maintenance services for existing user owned tanks or infrastructure. Repair and maintenance are included for all Supplier-provided tanks.

## INSTRUCTIONS FOR BIDS

### Bid Instructions:

1. Bids must be delivered by **June 13, 2023 at 10AM** to 1 Mercantile Street – Suite 520, Worcester, MA 01608, and clearly labeled "FY22 FUEL OIL BID ROUND 2".
2. Bids will be opened publicly on **June 13, 2023 at 10AM** at CMRPC offices, 1 Mercantile Street – Suite 520, Worcester, MA 01608

3. The Towns are exempt from the payment of Federal Excise Taxes. However, the Towns are responsible for any required Mass State Tax. Tax must be included in the bid price. If any additional state, federal or local taxes (for example, a so called “gas tax”) are imposed during the course of the contract, the contracts will be amended to add that direct cost – likewise if they are revoked for any reason. All applicable fees must also be included in the Bid Price.
4. No award will be made to any bidder who cannot satisfy the awarding authority that he/she has sufficient ability and experience in this class of work and sufficient capital and plant to enable him/her to properly furnish and deliver the material within a normal period of time. The awarding authority’s decision or judgment on these matters shall be final, conclusive, and binding.
5. Contracts will list specific towns and agencies involved and those towns and agencies will be held to those contracts once they are signed. BID BONDS and PERFORMANCE BONDS will not be required.
6. The CMRPC and/or the participants reserve the right to reject any or all bids wholly or in part; to waive technicalities and informalities; to amend and/or cancel this bid prior to opening; to correct any award erroneously made as a result of a clerical error on the part of the participants or the CMRPC.
7. The period of the contract from this bid is from **July 1, 2023, to June 30, 2024** for all items.
8. All bids must be submitted on the enclosed Bid Forms along with properly executed certifications which include the Tax Compliance Form, Non-Collusion Form, Certificate of Authority and Signature Authorization. Any restrictions, qualifications or deviations from the specifications must appear on the bid form or an attachment hereto required.

### Attachments

The following documents are attached: Attachments A, B, and C should be returned with the bid proposal. Attachments D and E will be completed upon award.

- A. Bid Sheet
- B. Compliance Certifications
- C. Certificate of Authority
- D. Hold Harmless Agreement (completed upon award)
- E. Draft Town Contract (completed upon award)

### GENERAL CONTRACT TERMS

Any damage occurring to a Town vehicle or building due to fuel that varies from or otherwise fails to satisfy these specifications shall be repaired at the cost of the bidder. Any damage caused to Town property by tank wagons, trucks, fuel hose, fuel spillage, etc. will be charged to the bidder. Any damage to property, equipment or installations resulting from the failure of the bidder to deliver fuel will be charged to the bidder.



Unless indicated otherwise by the municipality, the Bidder shall provide "watch-dog" service to all locations to trigger deliveries. Each Town will provide the successful bidder with the usage for the previous years upon such bidder's request.

The delivered fuel is to be invoiced at the guaranteed firm price per gallon. The price quoted shall include all relevant costs, including costs of transportation, labor, materials, taxes and insurance.

If the Contractor fails for any reason to comply with the provisions contained herein, the Towns shall be at liberty to buy FUEL OIL in the open market, and to charge against the Contractor any excess in price of the fuel so purchased over the price named in the contract, and the whole or any part of any sums of money due the Contractor may be applied to meet such excess cost.

### Surcharge/Administrative Fee

The vendor agrees to pay to CMRPC a three percent (3%) surcharge or administrative fee on all purchases from Vendor by the CMRPC participating communities. The fee would be assessed on net sales and must be included in the bid price. The Vendor agrees to remit these fees with a quarterly report as required within thirty days of the end of each calendar quarter.

Quarterly report and Administrative Fee Due Dates:

- Oct 31, 2023 covering Jul 1, 2023 – Sept 30, 2023
- Jan 30, 2024 covering Oct 1, 2023 – Dec 31, 2023
- Apr 30, 2024 covering Jan 1, 2024 – Mar 31, 2024
- Jul 30, 2024 covering Apr 1, 2024 – Jun 30, 2024

Payments to CMRPC will be by check to:

CMRPC  
1 Mercantile Street – Suite 520  
Worcester, MA 01608  
Attn: Connor Robichaud, Cooperative FUEL (HEATING) OIL Procurement Program

**Quarterly and Other Reports:** The Contractor agrees to provide summary information on the purchases by CMRPC participating communities through the purchasing program associated with this bid on a quarterly basis to allow CMRPC to monitor the program's use and benefit to its members. Quarterly reports are due on the same schedule as the administrative fee due dates indicated above.

The quarterly report will provide total sales by participating Towns regardless of the amount purchased during any period. The vendor is responsible for establishing an accounting system or process that will enable the tracking and reporting of sales to participating towns and departments under this bid.

The vendor agrees to complete a brief, semi-annual survey to determine satisfaction with the program, identify any issues or problems, and make suggestions for improvement.

### **Basis of Award**

This procurement will be awarded to the responsive and responsible low-bidder based on the fuel oil price provided on the Bid Sheet. While vendors are asked to provide a price for their fuel oil Winter Blend and their pricing for maintenance and service, the award will be based on their price for fuel oil. Past performance will be a factor in awarding this bid. For each Town, CMRPC will choose the lowest responsive and responsible bidder.

## ATTACHMENT A: BID SHEET -FISCAL YEAR 2024 -No. 2 HEATING OIL (1 of 3)

Name of Bidder: \_\_\_\_\_

Having read the attached conditions and agreeing to comply fully with them unless otherwise noted on this form, the undersigned proposes the following.

Bidders have the option of bidding for all participating towns, or bidding on individual Towns. CMRPC will award the bid to the lowest responsive and responsible bidder for each Town. Bidder submits a bid for the specified fuel for the following (Choose between option 1 and 2, marking the boxes of towns you're bidding on):

### 1. All Towns

- Auburn, Ayer, Harvard, Lunenburg, Millville, Northbridge, Oxford, Southbridge, Upton and Uxbridge (collectively, the "Towns").

### 2. Individual Towns

- Auburn
- Ayer
- Harvard
- Hubbardston
- Millville
- Northbridge
- Oxford
- Southbridge
- Upton
- Uxbridge

## ATTACHMENT A: BID SHEET -FISCAL YEAR 2024 -No. 2 HEATING OIL (2 of 3)

Bidders must submit pricing for approximately 105,586 gallons of NO. 2 HEATING OIL for FY24 (July 1, 2023 through June 30, 2024).

### Guaranteed Price

CMRPC is seeking a **markup per gallon price**. For the baseline price, we will use the New York Mercantile Exchange (NYMEX) price for New York Harbor. Remember you must include all taxes and fees in your bid. As an example, if the NYMEX price is \$2.50 per gallon and your markup is \$0.50 per gallon, you would indicate the NYMEX Price of \$2.50 per gallon, your markup per gallon of \$0.50 and the total price of \$3.00 per gallon. CMRPC will make the award to the lowest price vendor based on their markup price per gallon. Please also indicate a markup price for any winter blends.

Pricing information can be found here: <https://www.eia.gov/todayinenergy/prices.php>

NO. 2 HEATING OIL for FY2024. (July 1, 2023 through June 30, 2024)

New York Mercantile Exchange Price Per Gallon	\$ /gal.
<b>VENDOR MARKUP PER GALLON</b> <i>*Basis for Award*</i>	\$ /gal.
Total Price Per Gallon	\$ /gal.

<b>Bidder's Name:</b>	
<b>Authorized Signature:</b>	
<b>Title:</b>	
<b>Mailing Address:</b>	
<b>Fed. ID #:</b>	
<b>Telephone:</b>	

<b>Date:</b>	
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**ATTACHMENT A: BID SHEET -FISCAL YEAR 2024 -No. 2 HEATING OIL (3 of 3)**

**Winter Blend Pricing**

Vendors are expected to recommend use of the winter blend when they believe gelling could be an issue. **Bidders are asked to submit pricing for a Winter Blend as well as a complete description of its contents as part of the bid sheet.**

<b>WINTER BLEND Description</b>	
<b>Vendor Markup Per Gallon</b>	<b>\$ /gal.</b>

**Maintenance and Service Pricing**

Some towns also require maintenance and service of their tanks. **Bidders are asked to submit pricing for their hourly rate charged for maintenance and service or attach a complete description of their services and pricing.**

<b>Maintenance and Service Description</b>	
<b>Hourly Rate</b>	<b>\$ /gal.</b>

## ATTACHMENT B: COMPLIANCE CERTIFICATIONS

**Certificate of Non-Collusion** The undersigned certifies under 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 word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

**Non-Discrimination and Affirmative Action** The Contractor agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment, including but not limited to, the Americans with Disabilities Act 42 USC 12101, 28 CFR Part 35, or as amended; 29 USC S.791 et. seq.; Executive Orders 227, 237, 246; MGL C. 151B; and MGL C. 272, S. 92A, S98 et.seq., or any amendments to these provisions. Pursuant to Executive Orders 227 and 246, the Contractor is required to take affirmative actions designed to eliminate the patterns and practices of discrimination including providing written notice of its commitment to non-discrimination to any labor association with which it has an employment agreement, and to certified minority and women-owned businesses and organizations or businesses owned by individuals with disabilities. The CMRPC shall not be liable for any costs associated with the consultant's defense of claims of discrimination.

**Public Contracts Debarment** In connection with this bid and all procurement transactions, by signature thereon, the respondent certifies that neither the company nor its principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts, procurement or non-procurement programs from the Commonwealth of Massachusetts, United States Federal Government and/or the Towns. "Principals" means officers, directors, owners, partners and persons having primary interest, management or supervisory responsibilities with the business entity. Vendors shall provide immediate written notification to the Towns at any time during the period of the contract of prior or prior to the contract award if the vendor learns of any changed condition with regards to the debarment of the company or its officers. This certification is a material representation of fact upon which reliance will be placed when making the business award. If at any time it is determined that the vendor knowingly misrepresented this certification, in addition to other legal remedies available to the Towns, the contract will be cancelled and the award revoked.

**Qualifications** The Contractor represents that it is qualified to perform the services required under this contract and possesses or shall obtain all requisite licenses and permits.

**Tax Compliance Certification** Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

**Employment Security Contributions and Compulsory Workers' Compensation Insurance** Pursuant to MGL C.151A, S.19 and MGL C.152, the Contractor certifies with all laws of the Commonwealth relating to payments to the Employment Security System and all Commonwealth laws relating to required worker's compensation insurance policies.

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Signature

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Date

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Name of Person Signing Proposal

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Name of Business

# ATTACHMENT C: CERTIFICATE OF AUTHORITY

## (For Corporations/LLC's/LLP's/Entities Only)

At a duly authorized meeting of the Board of Directors/Members/Partners of the \_\_\_\_\_ (Name of Entity) held on \_\_\_\_\_ (Date) at which all the Directors/Members/Partners were present or waived notice, it was voted that

\_\_\_\_\_ (Authorized Signer's Name), the \_\_\_\_\_ (Officer/Title) of this company, be and he hereby is authorized to execute contracts and bonds in the name and behalf of said company, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this company's name on its behalf of such \_\_\_\_\_ (Officer) under seal of the company, shall be valid and binding upon this company.

A TRUE COPY,  
ATTEST:

\_\_\_\_\_  
(Signature/Title)

Place of Business: \_\_\_\_\_  
\_\_\_\_\_

I hereby certify that I am the \_\_\_\_\_ (Title) of the \_\_\_\_\_ (Name of Corporation) that \_\_\_\_\_ (Officer, Name) is duly elected \_\_\_\_\_ (Title) of said company, and the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract.

\_\_\_\_\_  
(Signature/Title)

\_\_\_\_\_  
(Typed Name/Title)

\_\_\_\_\_  
(Date)

Subscribed and sworn to before me  
If applicable (i.e., not necessary for sole proprietorships or partnerships)  
this \_\_\_\_ day of \_\_\_\_\_, 2023

(Corporate Seal)

\_\_\_\_\_  
Notary Public

(Notary Seal)

My Commission Expires \_\_\_\_\_



**ATTACHMENT D: DRAFT HOLD HARMLESS AGREEMENT (completed upon award)**

The Contractor, \_\_\_\_\_, agrees to indemnify and hold harmless the Town of \_\_\_\_\_ its officers, employees, and agents from and against any and all liabilities, claims, damages or expenses resulting from or incurred in connection with work performed under this contract.

The Contractor agrees to indemnify and hold the Town of \_\_\_\_\_ harmless from and against any and all suits, causes of action, judgments or damages, including attorneys' fees, arising out of or resulting from bodily injury or death or destruction of property, in connection with work performed under this contract.

**By:**

<b>Date</b>	
<b>Signature</b>	
<b>Name of person signing bid or proposal</b>	
<b>Name of business</b>	

## ATTACHMENT E: DRAFT MUNICIPAL AGREEMENT (completed upon award)

TOWN OF \_\_\_\_\_, MASSACHUSETTS

### AGREEMENT

THIS AGREEMENT made this day \_\_\_\_\_ of \_\_\_\_\_, 2023 by and between the Town of \_\_\_\_\_, a municipal corporation duly organized under the laws of Massachusetts and having a usual place of business at \_\_\_\_\_, Massachusetts, hereinafter referred to as the "TOWN", and, [a corporation] having a usual place of business at \_\_\_\_\_, hereinafter referred to as the "CONTRACTOR".

### WITNESSETH

WHEREAS, the TOWN invited the submission of bids for the purchase and delivery of FISCAL YEAR 2022 HEATING OIL, hereinafter "the Project"; and

WHEREAS, the CONTRACTOR submitted a bid to perform the work required completing the Project, and the TOWN has decided to award the contract therefore to the CONTRACTOR.

NOW, THEREFORE, the TOWN and the CONTRACTOR agree as follows:

1. Contract Documents. The Contract Documents consist of this Agreement, the Invitation for Bids, Instructions to Bidders, and the CONTRACTOR's Bid. The Contract Documents constitute the entire Agreement between the parties concerning the work, and all are as fully a part of this Agreement as if attached hereto.
2. The Work. The Work consists of furnishing and delivering heating oil to various Town-owned buildings.
  - A. If the town is engaging the vendor in supplying maintenance and service of their tanks, the bidder will provide the agreed upon services at the price described in their bid for fuel oil.
3. Term of Contract. This Agreement shall be in effect from July 1 2023 and shall expire on June 30, 2024, unless terminated earlier pursuant to the terms hereof.
4. Compensation. The TOWN shall pay, as full compensation for items and/or services furnished and delivered in carrying out this agreement, at a markup price of \_\_\_\_\_ per gallon.
5. Payment of Compensation. The TOWN shall make payments within thirty (30) days after its receipt of Invoice.
6. Liability of the TOWN. The TOWN's liability hereunder shall be to make all payments when they shall become due, and the TOWN shall be under no further obligation or liability. Nothing in this Agreement shall be construed to render the TOWN or any elected

or appointed official or employee of the TOWN, or their successors in office, personally liable for any obligation under this Agreement.

7. 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.
8. Indemnification. The CONTRACTOR shall indemnify, defend, and hold the TOWN harmless from and against any and all claims, demands, liabilities, actions, causes of actions, costs and expenses, including attorney's fees, arising out of the CONTRACTOR's breach of this Agreement or the negligence or misconduct of the CONTRACTOR, or the CONTRACTOR's agent or employees.
9. Insurance.
  - A. The CONTRACTOR shall obtain and maintain during the term of this Agreement the insurance coverage in companies licensed to do business in the Commonwealth of Massachusetts and acceptable to the TOWN.
  - B. All policies shall indemnify the TOWN as an additional insured (except Worker's Compensation) and shall provide that the TOWN shall receive written notification at least 30 days prior to the effective date of any amendment or cancellation. Certificates evidencing all such coverage shall be provided to the TOWN upon the execution of this Agreement. Each such certificate shall specifically refer to this Agreement and shall state that such insurance is as required by this Agreement. Failure to provide or to continue in force such insurance shall be deemed a material breach of this Agreement and shall be grounds for immediate termination.
10. Assignment. The CONTRACTOR shall not assign, sublet or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the TOWN, and shall not assign any of the moneys payable under this Agreement, except by and with the written consent of the TOWN.
11. Termination for Cause. If at any time during the term of this Agreement the TOWN determines that the CONTRACTOR has breached the terms of this Agreement by negligently or incompetently performing the work, or any part thereof, or by failing to perform the work in a timely fashion, or by failing to perform the work to the satisfaction of the TOWN, or by not complying with the direction of the TOWN or its agents, or by otherwise failing to perform this Agreement in accordance with all of its terms and provisions, the TOWN shall notify the CONTRACTOR in writing stating therein the nature of the alleged breach and directing the CONTRACTOR to cure such breach within ten (10) days. The CONTRACTOR specifically agrees that it shall indemnify and hold the TOWN harmless from any loss, damage, cost, charge, expense or claim arising out of or resulting from such breach regardless of its knowledge or authorization of the actions resulting in the breach. If the CONTRACTOR fails to cure said breach within ten (10) days, the TOWN may, at its election at any time after the expiration of said ten (10) days, terminate this Agreement by giving written notice thereof to the CONTRACTOR specifying the effective date of the termination. Upon receipt of said notice, the CONTRACTOR shall cease to

incur additional expenses in connection with this Agreement. Upon the date specified in said notice, this Agreement shall terminate. Such termination shall not prejudice or waive any rights or action which the TOWN may have against the CONTRACTOR up to the date of such termination, and the CONTRACTOR shall be liable to the TOWN for any amount which it may be required to pay in excess of the compensation provided herein in order to complete the work specified herein in a timely manner. 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.

12. **Inspection and Reports.** The TOWN shall have the right at any time to inspect the work of the CONTRACTOR, including the right to enter upon any property owned or occupied by the CONTRACTOR, whether situated within or beyond the limits of the TOWN. Whenever requested, CONTRACTOR shall immediately furnish to the TOWN full and complete written reports of his operation under this Contract in such detail and with such information as the TOWN may request.
13. **Successor and Assigns.** This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither the TOWN nor the CONTRACTOR shall assign or transfer any interest in the Agreement without the written consent of the other.
14. **Compliance with Laws.** The CONTRACTOR shall comply with all Federal, State and local laws, rules, regulations and orders applicable to the work provided pursuant to this Agreement, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the performance of such work.
15. **Notice.** Any and all notices, or other communications required or permitted under this Agreement, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at the addresses set forth on Page 1 or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U. S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service.
16. **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.
17. **Governing Law.** This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and the CONTRACTOR submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.
18. **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.

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

I certify that an appropriation is available for this Contract.

TOWN OF \_\_\_\_\_, MA  
By its \_\_\_\_\_

\_\_\_\_\_  
(Town Accountant Signature)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Name & Title)

\_\_\_\_\_  
(Name & Title)

CONTRACTOR:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name & Title)