

**SHORT FORM OF AGREEMENT FOR CONSTRUCTION  
BETWEEN CITY AND CONTRACTOR PROCURED UNDER G.L. C. 30, §39M FOR  
VERTICAL CONSTRUCTION NOT EXCEEDING \$150,000**

THIS AGREEMENT for \_\_\_\_\_ (hereinafter referred to as the "Project"), is made the \_\_\_\_\_ **day of** \_\_\_\_\_, 2019 by and between \_\_\_\_\_, a corporation duly organized under the laws of the Commonwealth of Massachusetts, with a usual place of business at \_\_\_\_\_, (hereinafter referred to as the "CONTRACTOR"), and the City of Framingham, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, (hereinafter referred to as the "CITY").

**WITNESSETH** that the CONTRACTOR and the CITY, for the consideration hereinafter named, agree as follows:

**ARTICLE 1: CONTRACT DOCUMENTS**

The Contract Documents consist of the following, and in the event of conflicts or discrepancies among them, they shall be interpreted on the basis of the following priorities and in the manner most favorable to the City:

- (1) This Short Form of Agreement for Procurement between City and CONTRACTOR
- (2) General Conditions of the Construction Contract, as modified by the Supplementary Conditions
- (3) Specifications
- (4) Invitation for bids, bid specifications, request for proposals or purchase description
- (5) Drawings required for the project
- (6) Performance bond in the form attached hereto as **Exhibit A**
- (7) Payment bond in the form attached hereto as **Exhibit B**
- (8) Addenda issued prior to execution of the Agreement
- (9) CONTRACTOR's bid or proposal
- (10) Modifications issued after execution of the Agreement, which are not attached hereto, including the following:
  - a. Work Order issued by the City
  - b. Written amendment to the Agreement signed by both parties
  - c. Change Order
- (11) Copies of all required bonds, certificates of insurance and licenses required under the Agreement,
- (12) Prevailing Wages
- (13) The Summary of Conflict of Interest Law for Municipal Employees attached hereto as **Exhibit C**, as well as the acknowledgement of receipt of summary attached hereto as **Exhibit D** and confirmation of completion of online training, and
- (14) Affirmative Action & Equal Employment Opportunity Requirements attached hereto as **Exhibit E**

EACH OF WHICH IS ATTACHED HERETO except as otherwise provided. These documents form the entire Agreement between the parties and there are no other agreements between the parties. Any amendment or modification to this Agreement must be in writing and signed by an

official with the authority to bind the City. Such amendment or modification shall be incorporated into and made part of this Agreement.

**ARTICLE 2: SCOPE OF WORK**

The CONTRACTOR shall furnish all materials, labor and equipment, and perform all work shown on the Contract Documents, and the CONTRACTOR agrees to do everything required by this Agreement and the Contract Documents.

**ARTICLE 3: TERM OF AGREEMENT**

- (a) All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Agreement.
- (b) The Work will be substantially completed within **XXX** days after the date when the Contract Times commence to run as provided in Paragraph 3 of the General Conditions, and completed and ready for final payment within **XXX** days after the date when the Contract Times commence to run.
- (c) If the CONTRACTOR fails to substantially or finally complete the work or achieve any Milestone by the date specified in the Contract Documents, or an extended completion date which is mutually agreed upon by the CITY and the CONTRACTOR, the CONTRACTOR shall pay to the CITY not as a penalty but as liquidated damages for delay the sum of **\$50.00 (Fifty Dollars)** per day for each and every calendar day beyond the date on which completion was required. This amount is fixed and agreed upon by and between the CITY and CONTRACTOR to be the amount of damages which the CITY would sustain, and is based upon the parties' agreed upon reasonable estimate of those actual damages likely to result from the CONTRACTOR's breach hereunder. The CITY's right to assess liquidated damages shall not preclude the CITY from the exercise of any other rights to recover damages on account of the CONTRACTOR's failure to achieve substantial or final completion within the time required.

**ARTICLE 4: THE CONTRACT SUM**

**1** The CONTRACTOR agrees to provide to the CITY items at the specific price points listed in the CONTRACTOR'S bid submission, for the duration of the contract. The CITY makes no guarantee to purchase any minimum or specific quantity of goods or services under the provisions of this contract. The total value of the goods and services will not exceed the sum of \$\_\_\_\_\_ (xxxxxxxxxxxxxxxx and no cents) without the issuance of a change order agreed to in writing by all parties.

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**ARTICLE 5: PAYMENT**

- (a) CONTRACTOR shall submit Applications for Payment in accordance with Paragraph 5 of the General Conditions. Applications for Payment will be processed by the Architect/Project Manager as provided in the General Conditions.
- (b) Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as the City may withhold, including but not limited to liquidated damages in accordance with Article 3 of this Agreement.
  - 1. 95% of Work completed (with the balance being retainage).
  - 2. 95% percent of cost of materials and equipment not incorporated in the Work but which satisfies the requirements of Paragraph 5.1 of the General Conditions (with the balance being retainage).
- (c) Upon satisfaction of the Substantial Completion procedures set forth in Paragraph 3.9 of the General Conditions, the City shall pay an amount sufficient to increase total payments to CONTRACTOR to 99% of the Work completed, less such amounts as the City may withhold in accordance with Article 3 of this Agreement and Paragraph 5.1 of the General Conditions.
- (d) Upon final completion and acceptance of the Work and satisfaction of the procedures set forth in Paragraph 3.9 of the General Conditions, the City shall pay the remainder of the Contract Price to the CONTRACTOR.

#### **ARTICLE 6: CONTRACTOR'S REPRESENTATIONS**

In order to induce the City to enter into this Agreement, CONTRACTOR makes the following representations:

- A. CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. CONTRACTOR has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. CONTRACTOR has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in the Contract Documents as containing reliable "technical data", and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in the Contract Documents as containing reliable "technical data."

- E. CONTRACTOR has considered information known to CONTRACTOR; information commonly known to CONTRACTORS doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) CONTRACTOR's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraphs A through E above, CONTRACTOR does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. CONTRACTOR is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. CONTRACTOR has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents, and the written resolution thereof by Owner is acceptable to CONTRACTOR.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

**ARTICLE 7: TERMINATION**

In addition to the provisions of Paragraph 8.0 and 9 of the General Conditions, the CITY shall have the right to terminate this Agreement if funds are not appropriated or otherwise made available to support the continuation of this Agreement after the first year.

**ARTICLE 8: NOTICE**

All notices required to be given under this Agreement shall be in writing and shall be effective upon receipt by hand delivery or by registered or certified mail to:

**City of Framingham:**  
 Contract Administrator  
 City of Framingham  
 Amy Putney  
 150 Concord Street  
 Framingham, MA 01702

**CONTRACTOR:**

Name \_\_\_\_\_  
 Title \_\_\_\_\_

Company \_\_\_\_\_

Address \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-Mail: \_\_\_\_\_

## **ARTICLE 9: PERFORMANCE AND PAYMENT BONDS**

When CONTRACTOR delivers the executed counterparts of the Agreement to Owner, CONTRACTOR shall also deliver performance and payment bonds as follows:

- (a) The CONTRACTOR shall furnish a **100% Performance Bond** from a surety company qualified to do business under the laws of the Commonwealth of Massachusetts which is satisfactory to the CITY in the full amount of the Contract Price and in the form attached hereto as **Exhibit A**.
- (b) The CONTRACTOR shall furnish a **100% Payment Bond** from a surety company qualified to do business under the laws of the Commonwealth of Massachusetts which is satisfactory to the CITY in the full amount of the Contract Price and in the form attached hereto as **Exhibit B**.

## **ARTICLE 10: INSURANCE**

### **A. Insurance Generally.**

1. The CONTRACTOR shall purchase and maintain insurance of the type and limits listed in this Article with respect to the operations as well as the completed operations of this Contract. This insurance shall be provided at the CONTRACTOR's expense and shall be in full force and effect for the full term of the Contract or for such longer period as this Article requires.

2. All policies shall be written on an occurrence basis and be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth with a financial strength rating of A- or better as assigned by AM Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the CITY, or otherwise acceptable to the CITY.

3. CONTRACTOR shall submit three originals of each certificate of insurance, acceptable to the CITY, simultaneously with the execution of this Contract. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles and/or self-insured retentions, and policy effective and expiration dates. Certificates shall show the CITY and anyone else the CITY requests as an additional insured as to all policies of liability insurance. Certificates shall specifically note the following:

- that the General Liability policy includes contractual liability
- that the General Liability policy includes the CITY as additional insureds for ongoing operations (CG 20 10) and for completed operations (CG 20 37) or equivalent endorsements.
- that the automobile liability, umbrella liability and pollution liability policies include the CITY as additional insureds
- that the General Liability policy includes endorsement CG 24 04 or equivalent, a Waiver of Subrogation in favor of the CITY
- that the Builders' Risk or Installation Floater is on an all risk basis including earthquake and flood, and includes the CITY, CONTRACTOR, subcontractors and suppliers of any tier as named insureds or loss payees as their interests may appear.

- that the policies have been endorsed such that none of the coverages shall be cancelled, terminated, or materially modified unless and until 30 days prior notice is given in writing to the CITY.

CONTRACTOR shall submit updated certificates prior to the expiration of any of the policies referenced in the certificates so that the CITY shall at all times possess certificates indicating current coverage.

**D.** If requested by the City, the CONTRACTOR shall file one certified complete copy of all policies and endorsements with the CITY. If the CITY is damaged by the CONTRACTOR's failure to maintain such insurance and to comply with the terms of this Article, then the CONTRACTOR shall be responsible for all costs and damages to the CITY attributable thereto.

**E.** Termination, cancellation, or material modification of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the CITY at least thirty days prior to the effective date thereof, which shall be expressed in said notice.

**F.** The CONTRACTOR is responsible for the payment of any and all deductibles under all of the insurance required below. The CITY shall not in any instance be responsible for the payment of deductibles, self-insured retentions, or any portion thereof.

**2. Commercial General Liability.**

**A.** The CONTRACTOR shall purchase and maintain broad form general liability coverage on the ISO form CG 00 01 or equivalent, including products and completed operations, on an occurrence basis. The form must be amended to state that the aggregate limit applies on a per location/project basis. The policy shall provide the following minimum coverage to protect the CONTRACTOR from claims with respect to the operations performed by CONTRACTOR and any employee, subcontractor, or supplier, or by anyone for whose acts they may be liable unless a higher coverage is specified in Paragraph 7.0 of the General Conditions, in which case the CONTRACTOR shall provide the additional coverage:

Bodily Injury &	\$1,000,000 each occurrence
Property Damage	\$2,000,000 general aggregate per project
Products & Completed Operations	\$1,000,000 annual aggregate
Personal & Advertising Injury	\$1,000,000 each occurrence
Medical Expenses	\$10,000

**B.** This policy shall include coverage relating to explosion, collapse, and underground property damage.

**C.** This policy shall include contractual liability coverage.

**D.** The completed operations coverage shall be maintained for a period of three (3) years after Substantial Completion and acceptance by the CITY. The CONTRACTOR shall provide renewal certificates of insurance to the CITY as evidence that this coverage is being maintained.

**E.** If the Work includes work to be performed within 50 feet of a railroad, any exclusion for liability assumed under contract for work within 50 feet of a railroad shall be deleted.

**F.** This policy shall include the CITY and anyone else requested by the CITY as an additional insured via endorsements CG 20 10 for ongoing operations and CG 20 37 for completed operations. This policy shall be primary and non-contributory with respect to any other insurance available to additional insureds as named insureds.

**G.** The policy shall include endorsement CG 24 04, a Waiver of Subrogation in favor of the CITY.

**3. Automobile Liability.**

A. The CONTRACTOR shall purchase and maintain the following minimum coverage with respect to the operations of any owned, non-owned, and hired vehicles including trailers used in the performance of the work, unless a higher coverage is specified in Paragraph 7.0 of the General Conditions, in which case the CONTRACTOR shall provide the additional coverage:

Bodily Injury & Property Damage      \$1,000,000.00 combined single limit

B. The policy shall include a CA 99 48 Broadened Pollution Endorsement. If specified in Paragraph 7.0 of the General Conditions, if hauling contaminants and/or pollutants, must adhere to Sections 29 and 30 of the Motor Carrier Act of 1980, which shall include coverage Form MCS-90.

C. The policy shall include the CITY as an additional insured.

D. The policy shall contain a Waiver of Subrogation in favor of the CITY.

**4. Contractor's Pollution Liability.**  
**Intentionally Omitted**

**5. Worker's Compensation.**

A. The CONTRACTOR shall provide the following coverage in accordance with M.G.L. c.149 §34A and c.152 as amended, unless a higher coverage is specified in Paragraph 7.0 of the General Conditions, in which case the CONTRACTOR shall provide the higher coverage:

Worker's Compensation	Statutory limits
Employer's Liability	\$ 500,000 each accident
	\$ 500,000 disease per employee
	\$ 500,000 disease policy aggregate

B. If specified in Paragraph 7.0 of the General Conditions, the policy must be endorsed to cover United States Longshoremen & Harborworkers Act (USLHW), or Maritime Liability.

C. The policy shall contain a Waiver of Subrogation in favor of the CITY.

**6. Builder's Risk/ Installation Floater/Stored Materials.**  
**Intentionally Omitted**

**7. Umbrella Coverage.**

The CONTRACTOR shall provide Umbrella Coverage in a form at least as broad as primary coverages required by Sections 2, 3 and 5 of this Article in the following amount unless a higher amount is specified in Paragraph 7.0 of the General Conditions:

Limit of liability:      \$1,000,000 per occurrence

**8. Additional Types of Insurance.**

The CONTRACTOR shall provide such other types of insurance as may be required by Paragraph 7.0 of the General Conditions.

**ARTICLE 11: INDEMNIFICATION**

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify, defend, and hold harmless Owner and Engineer and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers,

architects, attorneys, and other professionals and all court or other dispute resolution costs) for or on account of or relating to any act, omission, or negligence of the CONTRACTOR, Subcontractors, or its or their agents or employees in the performance of the Work and/or their failure to comply with the terms and conditions of this Agreement. The foregoing provision shall not be deemed to be released, waived, or modified in any respect by reason of any surety or insurance provided by CONTRACTOR.

- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

#### **ARTICLE 12: PREVAILING WAGE RATES**

If the work under this agreement involves the construction of public works, the contractor shall pay the prevailing wage and comply with mass. gen. l. ch. 149, sec. 26 - 27d, and a statement of compliance shall be included in the contract documents. Pursuant to mass. gen. l. ch. 149, sec. 26 and 27b, the contractor (and every subcontractor) shall file weekly certified payroll records with the city for all employees who have worked on the project. The city and the contractor shall preserve said records for a period of not less than three years from the date of completion of the contract.

#### **ARTICLE 13: MANDATORY ETHICS TRAINING**

A summary of the Conflict of Interest Law is attached hereto as **Exhibit C** and must be distributed to all key employees of the Contractor pursuant to G.L. c. 268A. Questions regarding whether any of the Contractor's employees are considered "key employees" should be directed to the Legal Division of the State Ethics Commission at (617) 371-9500. Pursuant to Chapter 28 of the Acts of 2009, as amended, all key employees must complete online ethics training on the State Ethics Commission's website, [www.mass.gov/ethics](http://www.mass.gov/ethics). Within thirty days of the date of this Agreement, each key employee must provide to the City a signed acknowledgment of receipt of the summary of the Conflict of Interest Law, in the form attached hereto as **Exhibit D**, and a certificate of completion of the online training which must be printed at the completion of the training. In the event that the term of this Agreement extends for more than two years, all continuously employed key employees shall repeat the online training and provide the City with a new certificate of completion within ninety days before or ninety days after the two-year anniversary of the date of this Agreement. Any new key employee who becomes employed by the Contractor after the date of this Agreement and whose services are specifically required by this Agreement must complete the online training and provide the City with a certificate of completion within thirty days of the date on which his services commence pursuant to this Agreement. Satisfaction of these requirements is the sole responsibility of the Contractor and its

key employees, and the City shall have no liability for the Contractor's or its key employees' failure to meet these requirements.

**ARTICLE 14: AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY**

CONTRACTOR shall comply with the requirements of G.L. c. 151 governing non-discrimination in employment; City of Framingham Local Affirmative Action Requirements; and the Affirmative Action & Equal Employment Opportunity Requirements attached hereto as **Exhibit E**.

**ARTICLE 15: MISCELLANEOUS**

- A. This Agreement shall be binding upon the CITY and the CONTRACTOR and the partners, successors, heirs, executors, administrators, assigns and legal representatives of the CITY and the CONTRACTOR. Neither the CITY nor the CONTRACTOR shall assign, subcontract, sublet or transfer any interest in this Agreement without the written consent of each other, and such consent shall not be unreasonably withheld.
- B. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.
- C. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CITY and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

**IN WITNESS WHEREOF** the parties hereto have executed copies of this Agreement the day and year first above written. \*

\*If a Corporation, attach to each signed copy of this Contract an attested copy of the vote of the Corporation on authorizing the said signing and sealing.

**CONTRACTOR:** \_\_\_\_\_

\_\_\_\_\_  
**Matt Torti**  
**Director of Buildings and Grounds**  
**Date:** \_\_\_\_\_

**BY:** \_\_\_\_\_

**Title:** \_\_\_\_\_

Corporate Seal:

*Approved As To Form*

\_\_\_\_\_  
**Jennifer A. Pratt**  
**Chief Procurement Officer**

\_\_\_\_\_  
**Christopher J. Petrini**  
**City Solicitor**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

*Approved as to Funds Availability*  
Pursuant to M.G.L. c. 44, §31C, I certify that an appropriation has been made in the total amount of the contract.

\_\_\_\_\_  
**Richard G. Howarth**  
**City Accountant**

\_\_\_\_\_  
**Thatcher W. Kezer III**  
**Chief Operating Officer**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**Funding Source:**

**Requisition #** \_\_\_\_\_

**Org** \_\_\_\_\_ **Object** \_\_\_\_\_ **Project** \_\_\_\_\_

\_\_\_\_\_  
Bid # MHEC Contract#  
State Contract # Other

**EXHIBIT A**

**PERFORMANCE BOND**

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENT, that we \_\_\_\_\_ with a place of business at \_\_\_\_\_ as principal (the "Principal"), and \_\_\_\_\_, a corporation qualified to do business in the Commonwealth of Massachusetts, with a place of business at \_\_\_\_\_ as Surety (the "Surety"), are held and firmly bound unto the City of Framingham as Obligee (the "Obligee"), in the sum of \_\_\_\_\_ lawful money of the United States of America, to be paid to the Obligee, for which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these present.

WHEREAS, the Principal has assumed and made a contract with the Obligee, bearing the date of \_\_\_\_\_, for the \_\_\_\_\_ **[Insert Project Name]**

NOW THE CONDITIONS of this obligation are such that if the Principal and all SubCONTRACTORS under said contract shall well and truly keep and perform all the undertakings, covenants, agreement, terms, and conditions of said contract on its part to be kept and performed during the original term of said contract and any extensions thereof that may be granted by the Obligee, with or without notice to the Surety, and during the life and any guarantee required under the contract, and shall also well and truly keep and perform all the undertakings, covenants, agreements, terms and conditions of any and all duly authorized modifications, alterations, changes or additions being hereby waived, then this obligation shall become null and void; otherwise, it shall remain in full force and virtue.

IN THE EVENT the Contract is abandoned by the Principal, or is terminated by the City of Framingham under the applicable provisions of the Contract, the Surety hereby further agrees that the Surety shall, if requested in writing by the City of Framingham promptly take such action as is necessary to complete said Contract in accordance with its terms and conditions.

IN WITNESS WHEREOF, the Principal and Surety have hereto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

PRINCIPAL

SURETY

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
[Name and Seal]

\_\_\_\_\_  
[Attorney-In-Fact]

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
[Address]

\_\_\_\_\_  
[Phone]

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

The rate of the Bond is \_\_\_\_\_% of the first \$\_\_\_\_\_ and \_\_\_\_\_% for the next \$\_\_\_\_\_.  
The total premium for this Bond is \$\_\_\_\_\_.

END OF PERFORMANCE BOND

**EXHIBIT B**

**PAYMENT BOND**

Bond No. \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENT, that we \_\_\_\_\_ with a place of business at \_\_\_\_\_ as principal (the "Principal"), and \_\_\_\_\_, a corporation qualified to do business in the Commonwealth of Massachusetts, with a place of business at \_\_\_\_\_ as Surety (the "Surety"), are held and firmly bound unto City of Framingham as Obligee (the "Obligee"), in the sum of \_\_\_\_\_ lawful money of the United States of America, to be paid to the Obligee, for which payment, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these present.

WHEREAS, the Principal has assumed and made a contract with the Obligee, bearing the date of \_\_\_\_\_, for the \_\_\_\_\_ **[Insert Name of Project]**.

NOW, THE CONDITIONS of this obligation are such that if the Principal and all subCONTRACTORS under said contract shall pay for all labor performed or furnished and for all materials used or employed in said contract and in any and all duly authorized modifications, alterations, extensions of time, changes or additions to said contract that may hereafter be made, notice to the Surety of such modifications, alterations, extensions of time, changes or additions being hereby waived, the foregoing to include any other purposes or items set out in, and to be subject to, the provisions of Massachusetts General Laws, Chapter 30, Section 39A, and Chapter 149, Section 29, as amended then this obligation shall become null and void; otherwise, it shall remain in full force and virtue.

IN WITNESS WHEREFORE, the Principal and Surety have hereto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

PRINCIPAL

SURETY

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
[Name and Seal]

\_\_\_\_\_  
[Attorney-In-Fact][Seal]

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
[Address]

\_\_\_\_\_  
[Phone]

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

The rate for this Bond is \_\_\_\_\_% of the first \$\_\_\_\_\_ and \_\_\_\_\_% for the next \$\_\_\_\_\_.

The total premium for this Bond is \$\_\_\_\_\_.

END OF PAYMENT BOND

# EXHIBIT C

## Mandatory Training Requirements - Summaries and Online Training

### Mandatory educational requirements under the Ethics Reform Bill

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- **Summary of the Conflict of Interest Law for Municipal Employees**

By December 28, 2009, and on an annual basis thereafter, all current municipal employees must be provided with this summary of the conflict of interest law. Municipal employees hired after December 28, 2009, should be provided with the summary within 30 days of the date on which they commence employment, and on an annual basis thereafter. Every municipal employee is required to sign a written acknowledgment that he has been provided with the summary.

- **Online Training Program**

[www.mass.gov/ethics](http://www.mass.gov/ethics) - Under Education & Training Resources

By 12/28/09, and every 2 years thereafter, all current state, county and municipal employees must complete this training. Public employees hired after 12/28/09 must complete this training within 30 days of beginning public service, and every 2 years thereafter. This training is designed primarily for state employees. County and municipal employees should also use this training until it is revised with one tailored to them. Upon completing the program, employees should print out the completion certificate and keep a copy for themselves. Employees will be required to provide a copy of the completion certificate to the Town or City Clerk (municipal employees), their employing agency (appointed state and county employees), or to the Ethics Commission (elected state and county employees). Completing the single program will be considered by the Commission as meeting the Bill's training requirements until a second program is added. When multiple users attempt to complete the current training program using the same computer they may experience a problem accessing the beginning of the program. The user will need to open their internet browser, click on "Tools", then "Internet Options", select "Delete Cookies", then click "OK". The user will be able to click back on the Online Training module on the Commission's website and start at the beginning.

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**After you have completed the Online Training, print out the “State Ethics Commission Receipt”, and return with the receipt on Page 9 of this packet “Conflict of Interest Law” .**

## Summary of the Conflict of Interest Law for Municipal Employees

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This summary of the conflict of interest law, General Laws chapter 268A, is intended to help municipal employees understand how that law applies to them. This summary is not a substitute for legal advice, nor does it mention every aspect of the law that may apply in a particular situation. Municipal employees can obtain free confidential advice about the conflict of interest law from the Commission's Legal Division at our website, phone number, and address above. Municipal counsel may also provide advice.

The conflict of interest law seeks to prevent conflicts between private interests and public duties, foster integrity in public service, and promote the public's trust and confidence in that service by placing restrictions on what municipal employees may do on the job, after hours, and after leaving public service, as described below. The sections referenced below are sections of G.L. c. 268A.

When the Commission determines that the conflict of interest law has been violated, it can impose a civil penalty of up to \$10,000 (\$25,000 for bribery cases) for each violation. In addition, the Commission can order the violator to repay any economic advantage he gained by the violation, and to make restitution to injured third parties. Violations of the conflict of interest law can also be prosecuted criminally.

### I. Are you a municipal employee for conflict of interest law purposes?

You do not have to be a full-time, paid municipal employee to be considered a municipal employee for conflict of interest purposes. Anyone performing services for a city or town or holding a municipal position, whether paid or unpaid, including full- and part-time municipal employees, elected officials, volunteers, and consultants, is a municipal employee under the conflict of interest law. An employee of a private firm can also be a municipal employee, if the private firm has a contract with the city or town and the employee is a "key employee" under the contract, meaning the town has specifically contracted for her services. The law also covers private parties who engage in impermissible dealings with municipal employees, such as offering bribes or illegal gifts.

### II. On-the-job restrictions.

(a) Bribes. Asking for and taking bribes is prohibited.  
(See Section 2)

A bribe is anything of value corruptly received by a municipal employee in exchange for the employee being influenced in his official actions. Giving, offering, receiving, or asking for a bribe is illegal.

Bribes are more serious than illegal gifts because they involve corrupt intent. In other words, the municipal employee intends to sell his office by agreeing to do or not do some official act, and the giver intends to influence him to do so. Bribes of any value are illegal.

(b) Gifts and gratuities. Asking for or accepting a gift because of your official position, or because of something you can do or have done in your official position, is prohibited. (See Sections 3, 23(b)(2), and 26) Municipal employees may not accept gifts and gratuities valued at \$50 or more given to influence their official actions or because of their official position. Accepting a gift intended to reward past official action or to bring about future official action is illegal, as is giving such gifts. Accepting a gift given to you because of the municipal position you hold is also illegal. Meals, entertainment event tickets, golf, gift baskets, and payment of travel expenses can all be illegal gifts if given in connection with official action or position, as can anything worth \$50 or more. A number of smaller gifts together worth \$50 or more may also violate these sections.

**Example of violation:** A town administrator accepts reduced rental payments from developers.

**Example of violation:** A developer offers a ski trip to a school district employee who oversees the developer's work for the school district.

**Regulatory exemptions.** There are situations in which a municipal employee's receipt of a gift does not present a genuine risk of a conflict of interest, and may in fact advance the public interest. The Commission has created exemptions, and is considering creating additional exemptions, permitting giving and receiving gifts in these situations. One commonly used exemption permits municipal employees to accept payment of travel-related expenses when doing so advances a public purpose. Other exemptions are listed on the Commission's website.

**Example where there is no violation:** A fire truck manufacturer offers to pay the travel expenses of a fire chief to a trade show where the chief can examine various kinds of fire-fighting equipment that the town may purchase. The chief fills out a disclosure form and obtains prior approval from his appointing authority.

(c) **Misuse of position.** Using your official position to get something you are not entitled to, or to get someone else something they are not entitled to, is prohibited. Causing someone else to do these things is also prohibited. (See Sections 23(b)(2) and 26)

A municipal employee may not use her official position to get something worth \$50 or more that would not be properly available to other similarly situated individuals. Similarly, a municipal employee may not use her official position to get something worth \$50 or more for someone else that would not be properly available to other similarly situated individuals. Causing someone else to do these things is also prohibited.

**Example of violation:** A full-time town employee writes a novel on work time, using her office computer, and directing her secretary to proofread the draft.

**Example of violation:** A city councilor directs subordinates to drive the councilor's wife to and from the grocery store.

**Example of violation:** A mayor avoids a speeding ticket by asking the police officer who stops him, "Do you know who I am?" and showing his municipal I.D.

(d) **Self-dealing and nepotism.** Participating as a municipal employee in a matter in which you, your immediate family, your business organization, or your future employer has a financial interest is prohibited. (See Section 19)

A municipal employee may not participate in any particular matter in which he or a member of his immediate family (parents, children, siblings, spouse, and spouse's parents, children, and siblings) has a financial interest. He also may not participate in any particular matter in which a prospective employer, or a business organization of which he is a director, officer, trustee, or employee has a financial interest. Participation includes discussing as well as voting on a matter, and delegating a matter to someone else.

A financial interest may create a conflict of interest whether it is large or small, and positive or negative. In other words, it does not matter if a lot of money is involved or only a little. It also does not matter if you are putting money into your pocket or taking it out. If you, your immediate family, your business, or your employer have or has a financial interest in a matter, you may not participate. The financial interest must be direct and immediate or reasonably foreseeable to create a conflict. Financial interests which are remote, speculative or not sufficiently identifiable do not create conflicts.

**Example of violation:** A school committee member's wife is a teacher in the town's public schools. The school committee member votes on the budget line item for teachers' salaries.

**Example of violation:** A member of a town affordable housing committee is also the director of a non-profit housing development corporation. The non-profit makes an application to the committee, and the member/director participates in the discussion.

**Example:** A planning board member lives next door to property where a developer plans to construct a new building. Because the planning board member owns abutting property, he is presumed to have a financial interest in the matter. He cannot participate unless he provides the State Ethics Commission with an opinion from a qualified independent appraiser that the new construction will not affect his financial interest.

In many cases, where not otherwise required to participate, a municipal employee may comply with the law by simply not participating in the particular matter in which she has a financial interest. She need not give a reason for not participating.

There are several exemptions to this section of the law. An appointed municipal employee may file a written disclosure about the financial interest with his appointing authority, and seek permission to participate notwithstanding the conflict. The appointing authority may grant written permission if she determines that the financial interest in question is not so substantial that it is likely to affect the integrity of his services to the municipality. Participating without disclosing the financial interest is a violation. Elected employees cannot use the disclosure procedure because they have no appointing authority.

**Example where there is no violation:** An appointed member of the town zoning advisory committee, which will review and recommend changes to the town's by-laws with regard to a commercial district, is a partner at a company that owns commercial property in the district. Prior to participating in any committee discussions, the member files a disclosure with the zoning board of appeals that appointed him to his position, and that board gives him a written determination authorizing his participation, despite his company's financial interest. There is no violation.

There is also an exemption for both appointed and elected employees where the employee's task is to address a matter of general policy and the employee's financial interest is shared with a substantial portion (generally 10% or more) of the town's population, such as, for instance, a financial interest in real estate tax rates or municipal utility rates.

(e) False claims. Presenting a false claim to your employer for a payment or benefit is prohibited, and causing someone else to do so is also prohibited. (See Sections 23(b)(4) and 26)

A municipal employee may not present a false or fraudulent claim to his employer for any payment or benefit worth \$50 or more, or cause another person to do so.

**Example of violation:** A public works director directs his secretary to fill out time sheets to show him as present at work on days when he was skiing.

(f) Appearance of conflict. Acting in a manner that would make a reasonable person think you can be improperly influenced is prohibited. (See Section 23(b)(3))

A municipal employee may not act in a manner that would cause a reasonable person to think that she would show favor toward someone or that she can be improperly influenced. Section 23(b)(3) requires a municipal employee to consider whether her relationships and affiliations could prevent her from acting fairly and objectively when she performs her duties for a city or town. If she cannot be fair and objective because of a

relationship or affiliation, she should not perform her duties. However, a municipal employee, whether elected or appointed, can avoid violating this provision by making a public disclosure of the facts. An appointed employee must make the disclosure in writing to his appointing official.

**Example where there is no violation:** A developer who is the cousin of the chair of the conservation commission has filed an application with the commission. A reasonable person could conclude that the chair might favor her cousin. The chair files a written disclosure with her appointing authority explaining her relationship with her cousin prior to the meeting at which the application will be considered. There is no violation of Sec. 23(b)(3).

(g) Confidential information. Improperly disclosing or personally using confidential information obtained through your job is prohibited. (See Section 23(c))

Municipal employees may not improperly disclose confidential information, or make personal use of non-public information they acquired in the course of their official duties to further their personal interests.

### III. After-hours restrictions.

(a) Taking a second paid job that conflicts with the duties of your municipal job is prohibited. (See Section 23(b)(1))

A municipal employee may not accept other paid employment if the responsibilities of the second job are incompatible with his or her municipal job.

**Example:** A police officer may not work as a paid private security guard in the town where he serves because the demands of his private employment would conflict with his duties as a police officer.

(b) Divided loyalties. Receiving pay from anyone other than the city or town to work on a matter involving the city or town is prohibited. Acting as agent or attorney for anyone other than the city or town in a matter involving the city or town is also prohibited whether or not you are paid. (See Sec. 17)

Because cities and towns are entitled to the undivided loyalty of their employees, a municipal employee may not be paid by other people and organizations in relation to a matter if the city or town has an interest in the matter. In addition, a municipal employee may not act on behalf of other people and organizations or act as an attorney for other people and organizations in which the town has an interest. Acting as agent includes contacting the municipality in person, by phone, or in writing; acting as a liaison; providing documents to the city or town; and serving as spokesman.

A municipal employee may always represent his own personal interests, even before his own municipal agency or board, on the same terms and conditions that other similarly situated members of the public would be allowed to do so. A municipal employee may also apply for building and related permits on behalf of someone else and be paid for doing so, unless he works for the permitting agency, or an agency which regulates the permitting agency.

**Example of violation:** A full-time health agent submits a septic system plan that she has prepared for a private client to the town's board of health.

**Example of violation:** A planning board member represents a private client before the board of selectmen on a request that town meeting consider rezoning the client's property.

While many municipal employees earn their livelihood in municipal jobs, some municipal employees volunteer their time to provide services to the town or receive small stipends. Others, such as a private attorney who provides legal services to a town as needed, may serve in a position in which they may have other personal or

private employment during normal working hours. In recognition of the need not to unduly restrict the ability of town volunteers and part-time employees to earn a living, the law is less restrictive for “special” municipal employees than for other municipal employees.

The status of “special” municipal employee has to be assigned to a municipal position by vote of the board of selectmen, city council, or similar body. A position is eligible to be designated as “special” if it is unpaid, or if it is part-time and the employee is allowed to have another job during normal working hours, or if the employee was not paid for working more than 800 hours during the preceding 365 days. It is the position that is designated as “special” and not the person or persons holding the position. Selectmen in towns of 10,000 or fewer are automatically “special”; selectman in larger towns cannot be “specials.”

If a municipal position has been designated as “special,” an employee holding that position may be paid by others, act on behalf of others, and act as attorney for others with respect to matters before municipal boards other than his own, provided that he has not officially participated in the matter, and the matter is not now, and has not within the past year been, under his official responsibility.

**Example:** A school committee member who has been designated as a special municipal employee appears before the board of health on behalf of a client of his private law practice, on a matter that he has not participated in or had responsibility for as a school committee member. There is no conflict. However, he may not appear before the school committee, or the school department, on behalf of a client because he has official responsibility for any matter that comes before the school committee. This is still the case even if he has recused himself from participating in the matter in his official capacity.

**Example:** A member who sits as an alternate on the conservation commission is a special municipal employee. Under town by-laws, he only has official responsibility for matters assigned to him. He may represent a resident who wants to file an application with the conservation commission as long as the matter is not assigned to him and he will not participate in it.

(c) Inside track. Being paid by your city or town, directly or indirectly, under some second arrangement in addition to your job is prohibited, unless an exemption applies. (See Section 20)  
A municipal employee generally may not have a financial interest in a municipal contract, including a second municipal job. A municipal employee is also generally prohibited from having an indirect financial interest in a contract that the city or town has with someone else. This provision is intended to prevent municipal employees from having an “inside track” to further financial opportunities.

**Example of violation:** Legal counsel to the town housing authority becomes the acting executive director of the authority, and is paid in both positions.

**Example of violation:** A selectman buys a surplus truck from the town DPW.

**Example of violation:** A full-time secretary for the board of health wants to have a second job working part-time for the town library. She will violate Section 20 unless she can meet the requirements of an exemption.

**Example of violation:** A city councilor wants to work for a non-profit that receives funding under a contract with her city. Unless she can satisfy the requirements of an exemption under Section 20, she cannot take the job.

There are numerous exemptions. A municipal employee may hold multiple unpaid or elected positions. Some exemptions apply only to special municipal employees. Specific exemptions may cover housing-related

benefits, public safety positions, certain elected positions, small towns, and other specific situations. Please call the Ethics Commission's Legal Division for advice about a specific situation.

IV. After you leave municipal employment. (See Section 18)

(a) Forever ban. After you leave your municipal job, you may never work for anyone other than the municipality on a matter that you worked on as a municipal employee.

If you participated in a matter as a municipal employee, you cannot ever be paid to work on that same matter for anyone other than the municipality, nor may you act for someone else, whether paid or not. The purpose of this restriction is to bar former employees from selling to private interests their familiarity with the facts of particular matters that are of continuing concern to their former municipal employer. The restriction does not prohibit former municipal employees from using the expertise acquired in government service in their subsequent private activities.

**Example of violation:** A former school department employee works for a CONTRACTOR under a contract that she helped to draft and oversee for the school department.

(b) One year cooling-off period. For one year after you leave your municipal job you may not participate in any matter over which you had official responsibility during your last two years of public service.

Former municipal employees are barred for one year after they leave municipal employment from personally appearing before any agency of the municipality in connection with matters that were under their authority in their prior municipal positions during the two years before they left.

**Example:** An assistant town manager negotiates a three-year contract with a company. The town manager who supervised the assistant, and had official responsibility for the contract but did not participate in negotiating it, leaves her job to work for the company to which the contract was awarded. The former manager may not call or write the town in connection with the company's work on the contract for one year after leaving the town.

(c) Partners. Your partners will be subject to restrictions while you serve as a municipal employee and after your municipal service ends.

Partners of municipal employees and former municipal employees are also subject to restrictions under the conflict of interest law. If a municipal employee participated in a matter, or if he has official responsibility for a matter, then his partner may not act on behalf of anyone other than the municipality or provide services as an attorney to anyone but the city or town in relation to the matter.

**Example:** While serving on a city's historic district commission, an architect reviewed an application to get landmark status for a building. His partners at his architecture firm may not prepare and sign plans for the owner of the building or otherwise act on the owner's behalf in relation to the application for landmark status. In addition, because the architect has official responsibility as a commissioner for every matter that comes before the commission, his partners may not communicate with the commission or otherwise act on behalf of any client on any matter that comes before the commission during the time that the architect serves on the commission.

**Example:** A former town counsel joins a law firm as a partner. Because she litigated a lawsuit for the town, her new partners cannot represent any private clients in the lawsuit for one year after her job with the town ended.

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This summary is not intended to be legal advice and, because it is a summary, it does not mention every provision of the conflict law that may apply in a particular situation. Our

website, [www.mass.gov/ethics](http://www.mass.gov/ethics), contains further information about how the law applies in many situations. You can also contact the Commission's Legal Division via our website, by telephone, or by letter. Our contact information is at the top of this document.

## **EXHIBIT D**

In accordance with Massachusetts General Laws, Chapter 303 of the Acts of 1975, I have been furnished a copy of the Conflict of Interest Law.

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**Print Name**

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**Department / Office / Board / Committee**

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**Address**

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**City or Town, State & Zip**

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**Phone**

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**Email**

Please sign below and return to the City Clerk's Office as required by law.

\_\_\_\_\_ **State Ethics Commission Receipt Included**

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**Signature**

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**Date**