

REQUEST FOR PROPOSAL (RFP)



TOWN OF WEBSTER

LANDSCAPING

Prepared by

Carole Marchand

Recreation Director

The Town of Webster (Town) is seeking proposals from qualified firms for various landscaping projects in town.

The following timeline has been established to ensure that our project objective is achieved; however, the following project timeline shall be subject to change when deemed necessary by The Town.

MILESTONE	DATE
Proposal Published	February 23, 2022
Pre Proposal Tour	March 8, 2022
Questions Deadline	March 14, 2022
Close to Proposals	March 18, 2022
Contract Awarded	March 29, 2022
Contract Completion	June 17, 2022

On-Site Proposal Meeting/Tour

There will be a Pre-Proposal Meeting/Tour to meet with The Town Designee for a question and answer session and tour of the projects. This is not a mandatory meeting, but attendance is highly encouraged.

Meet at Location:

Town Hall Rotunda 350 Main St. Webster, MA 01570

Time: 10:00am

Email cmarchand@webster-ma.gov with the name(s) of those who will be attending so spots can be reserved. Please print a copy of the RFP and bring it with you, as no additional copies will be provided at the meeting. Vendors are responsible for their own transportation. **Snow date March 10, 2022**
10:00am. Registered attendees will be notified by email. If you have any question on weather please email at same address.

The Town is an equal opportunity/educational institution, which does not discriminate on the basis of race, color, religion, national origin, gender, age, disability, sexual orientation or veteran status.

PROJECT SUMMARY/GENERAL OVERVIEW

PROJECT SUMMARY: The Town of Webster, through this Request for Proposal (“RFP”) is seeking proposals for Landscaping & at various locations. Delivery will be in accordance with the terms, conditions and requirements set forth in this Request for Proposal. The successful proposer will provide the specified requirements in accordance with all applicable federal, state and local laws, standards and regulations necessary to perform the scope of services.

Services are required at the Town Hall. Removing and disposing of bushes in front of building. Preparing area to be seeded for grass and the seeding itself. Services are also required at the French River Walk and Park. Removing and disposing of overgrowth. Planting of new vegetation if deemed necessary.

TERM OF CONTRACT: Under the initial terms of the RFP, The Town intends to let vendor contract for the Spring of 2022. Ending by June 30, 2022. The Town reserves the right to award separate contracts to multiple bidders.

GENERAL OVERVIEW: Proposals will be received **no later than March 3, 2022 at 3:00pm in the Irene Martel Meeting Room at 350 Main St. Webster, MA 01570.** Vendors are instructed that a formal opening will not occur. The name of the vendors will be read into record at that time and the proposals will not be opened. There will be no additional information given at this time. The Town will negotiate with qualified vendors concerning the proposals submitted. All late proposals will be rejected and returned to the submitting vendor unopened.

For the purpose and clarity of this document only, the word(s) “THE TOWN” will herein mean Town of Webster, MA. In addition, for the purpose and clarity of the document, the word “VENDOR” will herein mean any reliable and interested broker, vendor, supplier, and contractor who wants to submit a proposal for this contract. Within this document, the terms “Bidder”, “Contractor”, “Proposer” or “Vendor” is the same as the “Vendor”. The terms “Bid” and “Proposal” are one and the same.

THOROUGH STUDY AND INVESTIGATION

The Proposer must be familiar with the project by thorough personal examination of the proposed work site(s), and by use of any other means that may be necessary to determine the following:

- a. The actual conditions and requirements of the work;
- b. Any unusual difficulties that may be encountered in the prosecution of the work;
- c. The character and respective amounts of all classes of labor and material which the contractor may be required to furnish in order to complete all or any part of the work; and
- d. All circumstances and conditions affecting the work or its cost.
- e. The Proposer’s proposal must include any and all expenses that may incur in order to complete the work stipulated under the proposed contract.

Any failure of the Contractor acquainting themselves with all the available information concerning the above, shall not be relieved from responsibility for estimating properly the difficulties or cost to successfully perform the work.

SCOPE OF SERVICES

1. Scope

The Contractor shall furnish all labor, material, tools, equipment, transportation, insurance, incidentals, and other facilities to perform all work for the said Landscaping projects. Work to be performed comprises of removal and disposal of bushes and overgrowth, and replacement of grass and plant materials. Services to be rendered include but are not limited to the following:

- a. Removal and disposal of bushes in front of Town Hall
- b. Prepare area for looming and seeding
- c. Loom and seed area
- d. Removal and disposal of overgrowth at French River Walk/Park
- e. Replace plant material when deemed necessary by both the Town and the Vendor

2. Pre-existing/Deficiency List

At the start of the Contract, the Contractor shall inspect all flowers, trees, plants, containers, and any related ground keeping repairs for pre-existing conditions for all locations in each service area, and in accordance with the Scope of Services incorporated herein. The Contractor shall provide a written deficiency inspection report with illustrations (if necessary) that identifies and details all methods of repair and/or replacement components needed in order to properly maintain the landscape and grounds.

3. General Landscape

The Contractor shall:

- a. Furnish all labor, materials, and equipment necessary to perform the work described within the Scope of Services in strict accordance with these specifications and subject to the terms and conditions of the contract.
- b. Not post signs or advertising material anywhere on Town premises or improvements thereon without prior written approval from the Town's authorized representative.
- c. Ensure that all employees wear the appropriate personal protective equipment (PPE) for the activity they are performing.
- d. Maintain the health and appearance of existing landscape plants, trees, shrubs, groundcovers and lawn area.
- e. Ensure that each facility site is free of debris, weeds, insect infestation.
- f. Replace plants or dead ground cover that died under the Contractor's care and not due to vandalism or circumstances beyond Contractor's control.
- g. Provide an option to subcontract with a certified tree pruning and tree removal company for any major tree removal/pruning work that is outside the scope of the landscaping contract. Subcontractor must be approved, in writing, by The Town prior to work
- h. Perform all work in a professional skillful manner using quality equipment and materials.
- i. Have a full time staff employee that is State licensed to operate and apply chemicals in all categories and provide evidence of such licensure.
- j. Secure any gated or doored areas that require landscaping services after services are completed.

The Town shall monitor all work performed, and meet as needed with Contractor to discuss concerns, additions, and or deletions in the performance of the contract. Contractor shall maintain and have available for review all records that reasonably confirm frequency of tasks performed at each location.

The Town reserves the right to add, delete, and or change Scope of Services of this contract, and may do so by submitting written notification to Contractor. Any increase or decrease in fees shall be negotiated at that time and incorporated into the contract documentation.

All material and design of landscaping services shall be in accordance with Town guidelines.

4. Damages

- a. All damages incurred to existing facilities by the Contractor's operation shall be repaired or replaced, at the Town's discretion, and at the Contractor's expense.
- b. All such repairs or replacements shall be completed within the following time limits:
- c. All damage to shrubs, trees, turf or groundcover shall be repaired or replaced within five (5) working days.
- d. All repairs or replacements shall be completed in accordance with the following maintenance practices:
 - Trees - a qualified tree surgeon or arborist shall remedy minor damage such as bark lost from impact of equipment. If damage results in loss of a tree, the damaged tree shall be removed and replaced to comply with the specific instructions of the Town.
 - Shrubs - Minor damage may be corrected by appropriate pruning. Major damage shall be corrected by removal of the damaged shrub and replacement to comply with the specific instructions of the Town.
 - Chemicals - All damage resulting from chemical application, either spray-drift or lateral leaching shall be corrected in accordance with the aforementioned maintenance practices and the soil conditioned to insure its ability to support future plant life.

5. Safety Plan

- a. The Contractor agrees to perform all work outlined in this Scope of Services in such a manner as to meet all accepted standards for safe practices during the maintenance operation and to safely maintain stored equipment, machines, and materials or other hazards consequential or related to the work. Contractor agrees additionally to accept the sole responsibility for complying with all local, County, State, or other legal requirements including but not limited to, full compliance with the terms of the applicable O.S.H.A. Safety Orders at all times so as to protect all person, including Contractor's employees, Town employees, agents of the Town, vendors, members of the public or others from foreseeable injury, or damage to their property. Contractor shall inspect all potential hazards at said facilities and keep a log indicating date inspected and action taken.
- b. It shall be the Contractor's responsibility to inspect, and identify, any condition(s) that renders any portion of the maintenance area unsafe, as well as any usage practices occurring thereon. The Town shall be notified immediately of any unsafe condition that requires major correction. Contractor shall be responsible for making minor corrections as to prevent loss/damage and to protect members of the public or others from injury. Contractor shall cooperate fully with the Town in the investigation of any accidental injury or death occurring in the maintenance area. For any accident requiring medical attention, the

contractor is to notify the Town immediately, and file a written report to the Town within three (3) working days.

- c. It shall be the Contractor's responsibility to provide safety training to their employees.

6. Delays

The Contractor shall make a good faith effort to adhere to the contracted schedule. In the event that Contractor is unable, for whatever reason, to maintain the schedule (i.e. poor weather conditions, etc.), and Contractor does not reschedule the service, or inform the Town of intent to make up the service within 72 hours, that amount for the failure to perform may be deducted from Contractor's fee. If the work cannot be completed on the proposed scheduled day, the Contractor must notify the Town contact to advise them accordingly.

7. Staffing/Managerial

- a. There will be no subcontractors working on the College grounds and facilities without the express prior written consent of the Colleges' Facilities Director.
- b. If in the opinion of the Town, a Contractor's employee is incompetent or disorderly, refuses to perform in accordance with the contract specifications, threatens or uses abusive language while on Town property, that employee shall be removed from all work under this contract.
- c. The Contractor shall require each of its employees to adhere to basic public works standards of working attire. These are uniforms, proper shoes, and other gear required by State Safety Regulation, and proper wearing of the clothing. Shirts shall be worn and buttoned at all times.
- d. The Contractor nor any of its employees shall interfere with the public use of the premises, and shall conduct its operations as to offer the least possible obstruction and inconvenience to the public or disruption to the peace and quiet of the area within which the services are being performed.

8. Vendor Qualifications

Vendor must provide proof with their proposal of their ability to meet the minimum qualifications set forth under the Scope of Services.

Vendors are instructed to provide a brief summary of the vendor's safety history for the past two (2) years. This narrative should site any hazardous safety incidents and actions to correct such incidents in the future.

9. Additional Information

The final authority to approve or disapprove delivered products and/or services lies with The Town. In the event products delivered do not meet specification quality level, or do not perform as specified in this proposal, the supplier will replace the items, at no additional cost to The Town.

If The Town, in the exercise of its best judgment, determines the supplier's process for the delivery of services is unsafe or hazardous to life or property, The Town will suspend the process until the supplier takes corrective action. No allowance will be made for a supplier' waste, loss, breakage, damage or difficulties.

PROPOSAL PREPARATION AND SUBMITTAL

Proposals must conform to all requirements stated below and elsewhere in this RFP.

Disregarding these requirements may result in disqualifications of the proposal.

Before submitting a proposal, each firm shall familiarize itself with the entire RFP, including the Scope of Work, sample Agreement for Services, Town's insurance requirements, and all laws, regulations and other factors affecting the firm's performance. The firm is responsible for fully understanding the requirements of a subsequent contract, and shall otherwise satisfy itself as to the expense and difficulties accompanying the fulfillment of contract requirements. The submission of a proposal will constitute a representation of compliance by the firm. There will be no subsequent financial adjustment for lack of such familiarization.

All proposal materials must be placed in a sealed package (envelope, box, etc.) clearly marked with the proposal name and number and the firm's name. It is the responsibility of the firm to ensure that proposals are received in the office of Recreation by the due date and time stated on page 1 of this RFP. The firm is responsible for delivery of its proposal by the deadline notwithstanding any claims of error or failure to perform by a mail, courier or package delivery service. No proposals or proposal modifications may be submitted orally, electronically, or via telephone, facsimile, electronic mail (email) or telegraph.

All proposals must be on standard paper size (8½ x 11 inches) and shall be in the required format incorporating the forms provided in this RFP package, if any. It is permissible to copy these forms as required. The authorized person signing the proposal shall initial erasures, interlineations or other modifications on the proposal.

The firm must submit one (1) original copy of the proposal, clearly marked "Original" and three (3) hard copies. The firm's proposal should be organized in sections as outlined below:

1. Cover Letter

All proposals must include a cover letter submitted under the firm's name on the firm's letterhead containing the signature and title of a person or an official of the firm who is authorized to commit the firm to a potential contract with The Town. The cover letter must also identify the primary contact for this proposal. The cover letter should express the firm's interest and serve as an executive summary of the proposal. Claims of proprietary information must be included in the cover letter.

2. Qualifications

The proposal must describe the firm's qualifications to provide the requested products and/or services, and include the following:

- a. Description of the nature of the firm's business; include a description of experience, competencies, and overall organizational capabilities
- b. Number of years in business.
- c. Description of the firm's capabilities to provide the requested product(s)/service(s).
- d. Overview of approach and description of methodology to be used.

- e. References: The proposer must provide three (3) independent references from three (3) different projects of similar scope, nature, and complexity to that requested by The Town. The Town prefers educational or governmental entity references. Each of the references must include the following information:
 - a) Entity name
 - b) Industry Type
 - c) Address, City, Province/State/Country
 - d) Contact Name, Title, Phone Number, and Email address
 - e) Comments (include details regarding the current status of the product/service provided by proposer)

3. Response to Scope of Work

Responses must be clear and thorough, but concise, and written in plain, easy to understand language.

4. Exceptions Requested

- a. Exceptions to the RFP/Scope of Work. Any exceptions to the requirements of this RFP that the firm requests The Town to consider must be placed in this section. Each alternate or exception should be addressed separately with specific reference to the requirement. If there is no proposed alternates or exceptions, a statement to that effect must be included in this section of the proposal.
- b. Exceptions to the Agreement and Terms and Conditions. The Town's Sample Agreement for Services, including the Insurance Requirements, general and supplemental Terms and Conditions, will be used to consummate any resulting agreement between The Town and successful proposer. Any exceptions requested from the Sample Agreement must be included in this section. Any proposed additional terms (i.e., terms not already covered by The Town's Sample Agreement) or alternate terms required by the firm should be included here with a brief explanatory introduction. **NOTE: interested proposer is expected to engage in good faith negotiations, and as such, is encouraged to select a reasonable number of agreement terms of substance and importance. Lengthy lists with proposed exceptions or requests for exceptions in non-negotiable terms (e.g., statemandated provisions; federal compliance, etc.) will not be considered. Further, unless expressly requested by The Town's Designee, proposer should NOT include its firm's standard form of agreement with its proposal: Any resulting agreement between The Town and successful proposer will be drafted on the The Town's form.**

5. Cost Proposal

The proposer shall complete the Cost Proposal Form included in the RFP or in alternative, use the enclosed Form as a guide in completing its own cost proposal, and shall submit such detailed Cost Proposal together with its original proposed packet. The Cost Proposal shall conform to the following guidelines:

- a. a. Prices shall be shown by item and individually extended, unless otherwise indicated. In case of a conflict between unit price and extension, unit price prevails.

- b. Proposals that include equipment or materials should not include sales tax. The Town is tax exempt under federal tax EIN 046-001-342
- c. Prices for services shall be listed hourly, including the total cost and the total number of hours required to complete the services, and, if applicable, any individual category of the services.
- d. Provide detailed explanations of any assumptions that the proposer made in calculating the project costs in order to provide sufficient information for The Town to be able to prepare a detailed cost analysis and comparison.

6. Certifications

By signing the Proposal Form the proposer certifies that the submission of the proposal did not involve collusion or other anti-competitive practices; that the proposer has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted proposal. The Proposer also certifies whether it is a small business under the federal regulations, and if so, the category of eligible small business.

The deadline for receipt of sealed proposals is March 8, 2022 at 3:00 PM (Eastern Time). Sealed proposals must be received by this deadline at the following location:

RFP Contact: Carole Marchand, Recreation Director

Contact Mailing Address: Town Hall 350 Main St. Webster, MA 01570 Attention Recreation

Drop off for day of Proposal Close Town Hall 350 Main St. Webster, MA 01570 Irene Martel Meeting Room 3:00 pm

SELECTION AND CONTRACT AWARD

Proposals shall be evaluated based on the requirements set forth in the RFP. Selection of the firm(s) will be at the discretion of The Town and will be based on the proposal that The Town deems to be the most responsive and responsible and serves the best interests of The Town. It is the intent of The Town to negotiate and enter into a contract with the selected firm following a Notice of Intent of Selection.

Proposals will be reviewed by The Town Designees and will be evaluated based on the following criteria, which are listed in descending order of importance:

- a. Staffing – (40) Primary staff and qualifications and proposed time commitments.
- b. Scope of Work – (30) Demonstration of understanding of scope objectives.
- c. Costs – (20) Monthly costs to the College/Overall costs to College.
- d. References – (10) Include in your response a minimum of three (3) references of facilities of like size and demographics. You must include contact names and current phone numbers.

RFP COMPLETION CHECKLIST

The checklist is a summary of some of the required components of the RFP. It is provided as a convenience to proposers, but is not intended to be all-inclusive or to imply acceptance or evidence of compliance by its use. It is the responsibility of the proposer to submit complete and compliant proposals.

- Cover Letter**
- Proposal Form**
- Cost Proposal Form**
- Qualifications**
- Responses to Scope of Work**
- Exceptions Requested From**
- Completed and Signed Certifications**

PROPOSAL FORM

Date _____

Proposal of _____,

(Company Name)

- a corporation organized and existing under the laws of the State of _____;
- a partnership, registered in the State of _____, and consisting of _____;
- an individual trading as _____, located at _____

This Proposal is submitted in response to RFP, _____ [provide title or brief description]

The undersigned, as a duly authorized officer, hereby agrees to be bound by the content of this Proposal and agrees to comply with the terms, conditions and provisions of the referenced RFP and any addenda thereto in the event of an award. Exceptions are to be noted as stated in the RFP.

The undersigned understands that The Town reserves the right to reject any or all Proposals or to waive any formality or technicality, as determined by The Town in its sole discretion, in any Proposal in the interest of The Town.

The undersigned hereby certifies that this Proposal is genuine and not a sham or collusive, nor made in the interest or behalf of any person not herein named, and that the undersigned has not directly or indirectly induced or solicited any other proposer to put in a sham proposal, or any other person or entity to refrain from submitting proposals, and that the Proposer has not in any manner sought by collusion to secure for itself an advantage over any other Proposer.

The undersigned further certifies that as a duly authorized officer, he or she is authorized to negotiate in good faith on behalf of this firm for purposes of this RFP.

(Proposer's Full Legal Name) _____

(Signature) _____

(Print Name) _____

(Title) _____

(Complete Business Address) _____

(Email Address) _____

(Phone) _____

(Federal Taxpayer ID Number) _____

COST PROPOSAL FORM

All supplies and services needed to perform the scope of work are to be provided by the Bidder and included on this cost of service form.

LOCATION	COST	ESTIMATED TIME TO COMPLETE
Town Hall		
French River Walkway		
French River Park		

EXCEPTIONS REQUESTED FORM

After carefully reviewing The Town's sample agreement(next section), the proposer: (select one only)

Requests no exceptions

Requests the following exceptions:

For each exception, the proposer shall provide all of the following information: (i) Name of the Document/Attachment; (ii) Page and Paragraph Number; (iii) Exception; (iv) Justification for Exception. Blank, unjustified, or unsupported requests will be disregarded.

SAMPLE AGREEMENT

THIS AGREEMENT FOR SERVICES ("Agreement") is made as of _____, 2022 ("Effective Date") by and between The Town of Webster ("The Town"), located in Webster, MA and _____ ("Contractor"), [insert Contractor's full legal name] a(n) _____ [insert Contractor's State of incorporation/registration] _____ corporation, with a principal place of business at _____ [insert complete address]

RECITALS:

A. Contractor is a successful proposer under The Town's request for proposal for Landscaping.

NOW, THEREFORE, in exchange of mutual promises and other valuable consideration, the parties agree as follows:

1. SERVICES

1.1. Subject to the terms and conditions stated in Attachment A and, if applicable, Attachment E, attached to and made part of this Agreement, Contractor shall provide The Town the _____ services ("Services"). Attachment B, which is attached to and made part of this Agreement, provides detailed description of the Services, including the Scope of Work, to be performed by Contractor.

1.2. As part of the Services, Contractor shall deliver to the Town all goods, reports, documents and other materials ("Deliverables") as set forth in Attachment B.

2. COMPENSATION

In exchange for the Services, The Town shall pay Contractor as compensation the total amount of _____ (\$ _____) dollars, as and when set forth on Attachment C, which is attached to and made part of this Agreement. Unless states expressly in Attachment C, Contractor shall be solely responsible for all expenses it incurs in connection with the Contractor's obligations under this Agreement.

3. TERMINATION

3.1. **Termination for Cause.** Notwithstanding the Term, The Town reserves the right to terminate this Agreement in whole or in part due to the failure of Contractor to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, licenses and permits, or to make satisfactory progress in performing the Services. The Town shall provide written notice of the termination and the reasons for it to Contractor. Upon termination under this provision, all goods, materials, documents, data and reports prepared by Contractor under this Agreement shall become the property of and be delivered to the Town on demand. The Town, may, upon termination of the Agreement, procure, on terms and in the manner that it deems appropriate, the

services to replace those under this Agreement. Contractor shall be liable to The Town for any excess costs incurred by The Town in re-procuring the services.

3.2 Termination for Convenience. The Town reserves the right to terminate this Agreement in whole or in part at any time when in the best interests of The Town without penalty or recourse. Upon receipt of the written notice, Contractor shall immediately stop all work as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to The Town. In the event of termination under this provision, all documents, data and reports prepared by Contractor under this Agreement shall become the property of and delivered to The Town. Contractor shall be entitled to receive just, equitable compensation for work in progress, work completed, and materials accepted before the effective date of termination. Such compensation shall be Contractor's sole remedy against The Town in the event of termination under this provision.

5. INSURANCE

Contractor shall (and shall cause its subcontractors to) procure and maintain until all of the Contractor's obligations under this Agreement have been discharged or satisfied, including any warranty periods, insurance coverage described in Attachment D, and shall otherwise comply with the requirements of Attachment D, which is attached to and made part of this Agreement.

6. NOTICES

Any notice to be given under this Agreement shall be in writing and sent to the intended party's address indicated below:

Town of Webster
Carole Marchand Recreation Director
508-949-3800 X 1023
cmarchand@webster-ma.gov

Town Hall
350 Main St
Webster, MA 01570

To CONTRACTOR:

Name: _____

Phone: _____

Email: _____

Address: _____

7. ENTIRE AGREEMENT; AMENDMENTS

7.1. This document, including all Attachments constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior communications and understandings, written or oral, between the parties.

7.2. This Agreement shall not be modified, amended, or extended except by written amendment signed by both parties

IN WITNESS WHEREOF, the parties' duly authorized representatives have signed this Agreement on the dates indicated below:

For Town of Webster

Town of Webster:

By: _____

Printed Name: _____

Title: _____

Date: _____

For Contractor

[INSERT CONTRACTORS FULL LEGAL NAME]

By: _____

Printed Name: _____

Title: _____

Date: _____

ATTACHMENTS:

Attachment A- General Terms and Conditions

Attachment B- Scope of Work; Deliverables

Attachment C – Compensation

Attachment D – Insurance Requirements

AGREEMENT FOR SERVICES

GENERAL TERMS AND CONDITIONS

- 1. Contractors Performance of Services.** Contractor shall provide all tools, equipment, and supplies Contractor determines to be necessary to perform the Services.
- 2. Supervision.** Contractor is using its own knowledge, skill, and technical expertise in the performance of the Services and is not being supervised by The Town.
- 3. Government Fees; Licenses.** Contractor shall be solely responsible for complying with all laws and regulations regarding taxes, permits, (if Town permits are required fees will be waived) and fees as they may apply to any matter under this Agreement. Contractor shall, at its own cost, obtain and maintain in full force and effect during the entire Term all business registrations or licenses required to perform the Services. Upon request by The Town, Contractor shall demonstrate that it is duly licensed by whatever regulatory body may so require during the performance of the Agreement.
- 4. Work to Be Performed by Others.** The Town reserves the right to perform any and all services in-house or to utilize the services of other firms on unrelated projects.
- 5. Warranties.**
 - a. Contractor warrants that the Services will be performed in a professional and competent manner and in conformity with industry standards by persons reasonably suited by skill, training, and experience for the type of services they are assigned to perform.
 - b. Contractor further warrants that (i) it owns or has sufficient rights in all Deliverables, and no Deliverables will infringe on or violate any intellectual property rights of any third parties; (ii) no code or software developed or delivered by Contractor under this Agreement will contain any viruses, worms, or other disabling devices or code; and (iii) in addition to any implied warranties, all Deliverables will conform to the specifications and descriptions created therefor.
 - c. To the extent, Contractor warrants that the Services, Deliverables, all electronic and information technology to be provided under this Agreement comply with the accessibility requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §12101 et seq.) and Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794d), and maintain Web Content Accessibility Standards 2.0 at Level AA.
- 6. Scope of Relationship.** Contractor is an independent contractor. Neither Contractor nor any of Contractor's employees, agents, or subcontractors, or their employees or subcontractors (collectively, with Contractor, "Contractor Parties"), shall be deemed employees, agents, partners, or joint ventures of College, and nothing in this Agreement will be construed to authorize either party to act as agent for the other.
- 7. Intellectual Property.**
 - a. The Town's Intellectual Property. All intellectual property that Contractor may make, conceive, discover, develop, or create, either solely or jointly with any other person or persons including The Town, pursuant to or in connection with the Services, including all intermediate and partial versions

("Contract IP"), will be owned by The Town, and where applicable, all copyrightable Contract IP will be considered "Work Made for Hire" under the U.S. Copyright Act, 17 U.S.C. §101 et seq. To the extent that any Contract IP is not, by operation of law, agreement or otherwise considered work made for hire for The Town (or if ownership of all rights therein do not otherwise vest exclusively in Town), Contractor hereby irrevocably assigns, without further consideration, to The Town, all rights, title, and interest to all Contract IP. For purposes of this Agreement, "Intellectual Property" or "IP" means all forms of legally protectable intellectual property, including copyrights, trademarks, inventions, patent applications, patents and mask works, drawings and/or blueprints.

b. Contractors Intellectual Property. Contractor will retain ownership of its pre-existing Intellectual Property, including any of its pre-existing Intellectual Property that may be incorporated into the Contract IP, provided that Contractor informs The Town in writing before incorporating any pre-existing Intellectual Property into any Contract IP. Contractor hereby grants to The Town a perpetual, irrevocable, royalty-free, worldwide right and license (with the right to sublicense), to freely use, make, have made, reproduce, disseminate, display, perform, and create derivative works based on such pre-existing Intellectual Property as may be incorporated into the Contract IP or otherwise provided to The Town in the performance of the Services.

8. Damages

a. IN NO EVENT SHALL CONTRACTOR BE LIABLE TO THE TOWN OR THE TOWN LIABLE TO CONTRACTOR FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSSES OR LOST PROFITS OR, ANY EVENT BEYOND THE CONTROL OF CONTRACTOR OR THE TOWN RESPECTIVELY. However, the limitations on indirect, incidental or consequential damages set forth in this Section shall not apply to, or in any way limit, Contractor's indemnity obligations under this Agreement.

b. Contractor shall be liable for the loss of or damages to The Town's property when such loss or damage arises from the negligent or unlawful acts or omissions of Contractor or its employees.

c. The Contractor is responsible for reporting, in writing within seventy-two (72) hours of the occurrence, damage to Town property or personal property on Town premises. Failure to make report to the Town of the occurrence, within the specified time, may be cause for termination of this contract.

d. If either party employs an attorney or commences legal or arbitral proceedings to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover from the other, reasonable costs incurred in connection with such enforcement, including, but not limited to, attorneys' fees and costs of investigation, litigation, mediation, or arbitration.

9. Indemnification. Contractor shall indemnify, defend, and hold harmless to the fullest extent allowed by law, The Town, its officers, agents, and employees ("Indemnitees") from any and all claims, demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including attorneys' fees and/or litigation expenses, which may be brought or made against or incurred on account of breach, or loss of or damage to any property, or for injuries to or death of any person, or financial loss incurred by Indemnitees, caused by, arising out of, or contributed to, in whole or in part, by reasons of any act, omission, professional error, fault, mistake, or negligence of Contractor or Contractor Parties in connection with or incident to the performance of this Agreement. Such indemnification shall specifically include (i) infringement claims made against any and all intellectual property supplied by

Contractor and third party infringement under the Agreement; and (ii) claims related to the disclosure of College's Confidential Information.

10. Use of Town Property. While on Town property, Contractor shall comply, and shall ensure that its employees, agents, and subcontractors comply, with Town policies and procedures governing security and privacy, the Drug Free Environment, Smoking, Weapons, and Anti-Harassment (including Sexual Harassment). Contractor's personnel, agents, and subcontractors shall comply with all reasonable requests of The Town communicated to Contractor regarding personal and professional conduct, and shall otherwise conduct themselves in a businesslike manner.

11. Compliance Generally. The parties shall comply with the requirements of all applicable state and federal rules, regulations, and executive orders, including the Americans with Disabilities Act (ADA), 42 U.S.C. § 12132, Immigration and Nationality Act (INA), 8 U.S.C. § 1324a, and A.R.S. § 41-4401.

12. Equal Opportunity; Non-Discrimination. The parties shall comply with the requirements of 41 CFR §§ 60- 1.4(a), 60-300.5(a) and 60-741.5(a), prohibiting discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin.

ATTACHMENT B

SCOPE OF WORK; DELIVERABLES

This attachment will be developed from the Scope of work defined in section 2 of this RFP and successful proposer's proposal

ATTACHMENT C
COMPENSATION

This attachment will be developed based on the Cost Proposal form of the successful Proposer's proposal

ATTACHMENT D

INSURANCE REQUIREMENTS

1. GENERAL INSURANCE REQUIREMENTS:

A. Certificates of Insurance: Contractor shall, upon request, submit to The Town Designee certificates of insurance evidencing the coverage required in this Attachment as proof that the policies providing the required coverages are in full force and effect. The amounts shall not be less than the amounts specified below or such other amounts as specified in advance in writing by The Town.

B. Self-Insurance: Any deductibles and self-insured retentions contained in any insurance coverage required by this Attachment shall be declared to The Town, and are subject to approval by The Town. Contractor shall be solely responsible for any such deductible and/or self-insured retention.

C. Scope of Insurance Coverage: All policies, except for Workers' Compensation, shall contain a waiver of subrogation in favor of The Town of Webster, its Board of Governors, employees, and any of its affiliates, subsidiaries or related entities. Contractor's insurance coverages shall be primary as to any other insurance or source, and shall include a severability of interest clause. Coverage provided by Contractor shall not be limited to the liability assumed under the indemnification provisions of the agreement with The Town.

D. Additional Insureds: For policies shown in Sections 2(B), 2(C), and 2(E) below, the insurance certificates shall name The Town of Webster as an additional insureds with respect to liability arising out of the activities performed by or on behalf of Contractor.

E. Notice of Cancellations, Changes to Coverage: Coverage afforded under the policies may not be cancelled, terminated, or materially altered until at least thirty- (30) days' prior written notice has been provided by Contractor to the Town's Designee.

F. Contractor's Personnel, Agents, and Subcontractors: Contractor shall cause its subcontractors to provide and maintain appropriate types and amounts of insurance coverage and limits of liability, as determined by Contractor and agreed to by The Town, proportionate to the type of work to be performed and exposure to risk. Contractor shall not permit all persons or entities retained by, through, or under Contractor, from entering upon Town's premises or continuing the performance of the work unless such person or entity is and continues to be insured in accordance with requirements stated in this Attachment.

G. Failure to Maintain Insurance: In the event Contractor and/or any person or entity retained by, through, or under Contractor fail to maintain required insurance coverage, The Town may, at its discretion, procure or renew such missing insurance coverage and charge the cost of such insurance premiums to Contractor.

2. INSURANCE COVERAGE REQUIRED:

A. Workers' Compensation Insurance - Contractor shall procure and maintain Workers Compensation Insurance to cover obligations imposed by federal and state statutes having jurisdiction over Contractor, its employees, or both, engaged in the performance of the Agreement, as follows:

Employer's Liability Statutory

Each Accident \$1,000,000

Disease – Each Employee \$1,000,000

Disease – Policy Limit \$1,000,000

B. **Commercial (Business) Automobile Liability Insurance** – Contractor shall procure and maintain Commercial Automobile Liability Insurance with respect to Contractor's owned, hired, or non-owned vehicles assigned to or used in performance of the services under this Agreement, with the minimum coverage for each occurrence for bodily injury and property damage below. Insurance shall be endorsed for "any auto."

Combined Single Limit \$1,000,000 (CA 0001)

C. **Commercial General Liability Insurance** – Contractor shall procure and maintain Commercial General Liability Insurance which shall be an occurrence form policy and shall include coverage for bodily injury, broad form property damage (including completed operation), personal injury (including coverage for contractual and employee acts), and blanket contractual products, with the minimum coverage limits below. Contractors with excavation and underground risks shall have coverage for and exclusions removed for "x, c, and u."

Each Occurrence \$1,000,000 (CG 0001)

General Aggregate \$3,000,000

Products – Completed Operations Aggregate \$1,000,000

Personal and Advertising Injury \$1,000,000

Blanket Contractual Liability – Written and Oral \$1,000,000

Fire Legal Liability \$1,000,000

D. **Other Requirements** – The Contractor is required to include Town of Webster as an additional Insured on the Commercial General Liability and Business Automobile Policy. Attach a waiver of Subrogation to all policies. The CGL Policy should be Primary and Noncontributory to any other insurance. All policies should include a 30-day Notice of Cancellation provision in favor of The Town.