

3.XX – RESPONSIBLE EMPLOYER: PUBLIC CONSTRUCTION CONTRACTS AND AGREEMENTS FOR TAX RELIEF

A. Purpose

The purpose of this Bylaw is to ensure that the Town of Amherst awards contracts for goods and services and public construction and grants tax relief agreements only to responsible contractors and sponsors who certify their compliance with wage and hour laws and to provide a means of enforcement through written contracts at the outset of awards and appropriate remedies.

B. Definitions

1. "Amherst Resident" means any person domiciled in Amherst, in accordance with the Amherst Home Rule Charter, Sec. 1.7.
2. "Contractor" means:
 - a. any bidder or proposer;
 - b. any person that has furnished or seeks to furnish supplies or services under a contract with a public agency or with a person under a contract with a public agency.
 - c. construction manager;
 - d. general contractor, other lead or prime contractor, or any entity functioning in any such general contractor capacity;
 - e. Subcontractor, as defined by this Bylaw.
3. "Sponsor" means the recipient of Tax Relief.
4. "Subcontractor" means:
 - a. any person who enters into a contract, written or verbal, with a contractor for the performance of any part of the contractor's contract, or who enters into a contract with any other subcontractor for the performance of any part of the subcontractor's contract, and who does not perform work other than a subcontractor.
 - b. Trade contractor;
 - c. a subcontractor not subject to M.G.L. Ch. 149 Sec. 44F, and any other contractor, subcontractor of any tier, or other person that is engaged to perform construction work under the bidder or contractor for projects subject to M.G.L. Ch. 149 Sec. 44A(2) or M.G.L. Ch. 30 Sec.39M proposers or contractor under M.G.L. Ch. 149A.
5. "Person of Color" means:
 - a. African-American - All persons having origins in any of the Black racial groups of Africa, including, but not limited to, African-Americans, and all persons having origins in any of the original peoples of the Cape Verdean Islands.
 - b. Hispanic - All persons having their origins in any of the Spanish-speaking peoples of Mexico, Puerto Rico, Cuba, Central or South America, or the Caribbean Islands.
 - c. Asian American - All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands, including, but not limited to China, Japan, Korea, Samoa, India, and the Philippine Islands;
 - d. Indigenous, American Indian or Native American - All persons having origins in any of the original peoples of North America and who are recognized as an Indian by a tribe or tribal organization; or
 - e. Eskimo or Aleut - All persons having origins in the original peoples of Northern Canada, Greenland, Alaska, and Eastern Siberia.
6. "Tax Relief" means any form of tax relief granted by the Town under a Tax Incentive Financing ("TIF") Agreement (M.G.L. Ch. 40 Sec. 59), or pursuant to any other provision of law or regulation authorizing the Town to grant tax relief. Tax Relief, as defined, shall not include relief granted under M.G.L. Ch. 59 Sec. 5. .

7. "Veteran" means a person who has served in any branch of the United States Armed Forces and was not dishonorably discharged.

C. Municipal Construction Contracts

1. Whenever the Town of Amherst is procuring construction services subject to the provisions of M.G.L. Ch. 149, Ch. 149A, or Ch. 30 Sec. 39M, Sections B, C.2, C.3, C.4, C.5, C.6, and C.7 of this Bylaw shall be incorporated into the procurement documents and shall be made part of the specifications and contract. Any person, company, or corporation shall acknowledge, in writing, receipt of the requirements and obligations set forth in this Bylaw with their bid or proposal.
2. As a condition for bidding or subcontracting, all Contractors shall verify under oath and in writing at the time of bidding, submittal in response to an RFP, or prior to entering into a contract or subcontract at any tier that they comply with the following conditions for bidding or subcontracting, and, for the duration of the project, shall comply with the following obligations:
 - a. The Contractor shall not have been debarred or suspended from or otherwise prevented from bidding for or performing work on a public project by any federal, state, or local government agency or authority in the past 5 years.
 - b. The Contractor shall not have been found within the past 5 years by a court or governmental agency in violation of any law relating to providing workers compensation insurance coverage, misclassification of employees as independent contractors, payment of employer payroll taxes, employee income tax withholding, wage and hour laws, earned sick time, prompt payment laws, or prevailing wage laws.
 - c. The Contractor shall maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with M.G.L. Ch. 152 and provide documentary proof of such coverage included with the Contractor's submitted bid, application process, or prior to commencing any work, to be maintained as a public record.
 - d. The Contractor shall properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of prevailing wages and overtime, workers' compensation insurance coverage, unemployment taxes, social security taxes, and state and federal income tax withholding (M.G.L. Ch. 149 Sec. 148B on employee classification).
 - e. The Contractor shall comply with M.G.L. Ch. 151 Sec. 1A and M.G.L. Ch. 149 Sec. 148 with respect to the payment of wages.
 - f. The Contractor shall be in compliance with the health and hospitalization requirements of the Massachusetts Health Care Reform law established by Chapter 58 of the Acts of 2006, as amended, and regulations promulgated under that statute by the Commonwealth Health Insurance Connector Authority and any other applicable law relating to health and hospitalization.
 - g. The Contractor shall not discriminate against residents of states other than Massachusetts in hiring individuals for the project but, as between prospective employees who are residents of Massachusetts and are equally qualified, shall give preference to Amherst Residents, and thereafter residents of Hampshire, Hamden, and Franklin Counties.
 - h. The Contractor shall endeavor to provide employment in the amount of 15.3% of the Contractor's hours worked on the project to People of Color, 6.9% of the Contractor's hours worked on the project to women, and 5% of the Contractor's hours worked on the project to Veterans. In the event the Contractor cannot find qualified workers to fulfill these requirements, or has no additional hires to make in connection with the project, the Contractor shall certify to the Town, under oath, that compliance with this section was not

possible or practicable under the particular circumstances applicable to the Contractor, and submit documentation detailing efforts to meet these requirements.

- i. The Contractor shall attend all regularly scheduled and/or special meetings convened by the Town for the purpose of reviewing workforce hiring commitments in Sections C.2.g and C.2.h above.
 - j. The Contractor must make arrangements to ensure that each employee of every contractor and subcontractor of any tier entering or leaving the project individually completes the appropriate entries in a daily sign-in/out log. The sign in/out log shall include: the location of the project; current date; printed employee name; signed employee name; name of employee's employer, and the time of each entry or exit. The log shall contain a prominent notice that employees are entitled under state law to receive the prevailing wage rate for their work on the project. Such sign-in/out logs shall be provided to the Town on a weekly basis with the certified payrolls and shall be a public record.
 - k. The Contractor shall submit weekly certified payrolls for all contractors. A certified payroll format will be provided by the Town that includes each employee's full name, address, identifying number, gender and whether the person is a Person of Color, and which tabulates hours worked for females, People of Color, and Amherst Residents. Each Contractor shall provide a copy of the OSHA 10 card for every employee attached to the first certified payroll they submit on which the employee appears.
3. A proposal or bid submitted by any Contractor that does not certify compliance with the requirements and obligations set forth in Section C.2. of this Bylaw for bidding shall be rejected.
 4. No subcontract for work outside the scope of M.G.L. Ch. 149 Sec. 44F shall be awarded to a Subcontractor that does not comply with the requirements and obligations set forth in Section C.2. of this Bylaw, except as otherwise provided by law.
 5. All Contractors who obtain contracts on projects subject to M.G.L. Ch. 149 Sec. 44A(2), Ch. 149A, or Ch. 30 Sec. 39M shall comply with each of the requirements and obligations set forth in this Bylaw for the entire duration of their work on the project, and an officer of each separate Contractor shall certify under oath and in writing on a weekly basis that they are in compliance with such obligations.
 6. Any Contractor that fails to comply with any one of obligations set forth in this Bylaw for any period of time shall, at the sole discretion of the Town, and in accord with any applicable contract, be subject to 1 or more of the following sanctions: (1) cessation of work on the project until compliance is obtained; (2) withholding of payment due under any contract or subcontract until compliance is obtained; (3) permanent removal from any further work on the project; (4) liquidated damages payable to the Town in the amount of 5% of the dollar value of the contract.
 7. In addition to the remedies outlined in Section C.6 above, a Contractor, to the extent consistent with law and terms of the contract with the Town, shall be equally liable for the violations of its Subcontractors except for violations arising from work performed pursuant to subcontracts that are subject to M.G.L. Ch. 149 Sec. 44F. Any Contractor or Subcontractor that has been determined by the Town or by any court or agency to have violated any of the obligations set forth in this Bylaw shall, to the extent consistent with law, be barred from performing any work on any future projects for 6 months for a first violation, 3 years for a second violation, and permanently for a third violation.

D. Requirements for The Grant of Tax Relief

1. In addition to any other conditions that may be required in connection with Tax Relief granted by the Town, each Tax Relief Agreement ("Agreement") entered into between the Town and the Sponsor shall be subject to and shall include, to the extent consistent with law, the definitions

set forth in Section B. and the mandatory conditions set forth in Sections D.2., D.3., and E. below.

2. It shall be a special and material condition of this Agreement that any construction manager, general contractor or other lead or prime contractor, or any entity functioning in any such capacity, and any other contractor or subcontractor of any tier or other person that is engaged to perform the construction work during the term of this Agreement (hereinafter, collectively and individually, the "Contractor") on the property that is the subject of the Agreement shall comply with the following qualifications and conditions at all times during their performance of work on the property:
 - a. The Contractor shall not have been debarred or suspended from or otherwise prevented from bidding for or performing work on a public project by any federal, state, or local government agency or authority in the past 5 years;
 - b. The Contractor shall not have been found within the past 5 years by a court or governmental agency in violation of any law relating to providing workers compensation insurance coverage, misclassification of employees as independent contractors, payment of employer payroll taxes, employee income tax withholding, wage and hour laws, earned sick time, prompt payment laws, or prevailing wage laws;
 - c. The Contractor shall maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with M.G.L. Ch. 152 and provide documentary proof of such coverage to the Town with the Contractor's submitted bid, application, or prior to commencing any work, to be maintained as a public record;
 - d. The Contractor shall properly classify employees as employees rather than independent contractors using applicable federal and state law and shall treat them accordingly for purposes of prevailing wages and overtime, workers' compensation insurance coverage, unemployment taxes, social security taxes, and state and federal income tax withholding (M.G.L. Ch. 149 Sec. 148B on employee classification);
 - e. The Contractor shall comply with M.G.L. Ch. 151 Sec. 1A and M.G.L. Ch. 149 Sec. 148 with respect to the payment of wages;
 - f. The Contractor shall be in compliance with the health and hospitalization requirements of the Massachusetts Health Care Reform law established by Chapter 58 of the Acts of 2006, as amended, and regulations promulgated under that statute by the Commonwealth Health Insurance Connector Authority;
 - g. The Contractor shall not discriminate against residents of states other than Massachusetts in hiring individuals for the project but, as between prospective employees who are residents of Massachusetts and equally qualified, shall give preference to Amherst Residents, and thereafter residents of Hampshire, Hamden, and Franklin Counties;
 - h. The Contractor shall endeavor to provide employment in the amount of 15.3% of the Contractor's hours worked on the project to People of Color, 6.9% of the Contractor's hours worked on the project to women, and 5% of the Contractor's hours worked on the project to Veterans. In the event the Contractor cannot find qualified workers to fulfill these requirements, or has no additional hires to make in connection with the project, the Contractor shall certify to the Town, under oath, that compliance with this section was not possible or practicable under the particular circumstances applicable to the Contractor and submit documentation to the Town detailing efforts to meet these requirements;
 - i. The Contractor shall attend all regularly scheduled and/or special meetings convened by the Town for the purpose of reviewing compliance with these requirements;
 - j. The Contractor shall make arrangements to ensure that each employee of every contractor and subcontractor of any tier entering or leaving the project individually completes the

appropriate entries in a daily sign-in/out log. The sign in/out log shall include: the location of the project; current date; printed employee name; signed employee name; name of employee's employer, and the time of each entry or exit. The log shall contain a prominent notice that employees are entitled under state law to receive the prevailing wage rate for their work on the project. Such sign-in/out logs shall be provided to the Town on a monthly basis with the certified payrolls and shall be a public record;

- k. The Contractor shall submit to the Town monthly certified payrolls for all contractors. A certified payroll format will be provided by the Town that includes the employees full name, address, identifying number, gender and whether they are a Person of Color, and which tabulates hours worked for females, People of Color, and Amherst Residents. Each Contractor shall provide a copy of the OSHA 10 card for every employee attached to the first certified payroll they submit on which the employee appears; and
 - l. The Sponsor shall provide the Town with a list of all the expected Contractors to work on the project prior to the start of any work on the property subject to the Agreements. The list shall include the name of the primary contact of each Contractor, the Contractor's address, and the Contractor's phone number or email address. The signatory to the Agreement shall provide the Town with an updated list within 14 days of any additional or replacement Contractors performing work on the project and a final all-inclusive list to the Town within 30 days of the conclusion of the project.
3. When seeking Tax Relief granted by the Town, the Sponsor shall certify as part of the request or application process that any Contractor or Subcontractor previously determined by the Town or by any court or agency to have violated any of the requirements set forth in Sections C., D.2., and E. of this Bylaw for the previous 5 years shall not be hired to perform work on the project.

E. Noncompliance and Complaints – Grant of Tax Relief

- 1. If any person or entity subject to the foregoing qualifications and conditions fails to comply with any of the foregoing qualifications and conditions with respect to work on the property, the parties agree that such an event materially frustrates the public purpose for which this Agreement and any certification by the state was intended to advance. In such an event, the Tax Relief granted by this Agreement shall be terminated upon written notice by the Town to the Sponsor, and the Sponsor shall pay to the Town an amount equal to the value of the tax relief already received under this Agreement. Where required, the Town shall petition the appropriate state agency or body for revocation of the certification or approval of the grant of Tax Relief and, upon notice of revocation, the tax relief provided by this Agreement shall be terminated, and, to the extent consistent with law, the Sponsor shall pay to the Town an amount equal to the value of the tax relief already received under this Agreement.
- 2. In the event the Sponsor challenges the Town's efforts to invoke the forfeiture/clawback provisions of this Agreement or to obtain revocation by the state, or challenges any decision to revoke any certification or approval of the grant of Tax Relief by the state, the Sponsor shall set aside in an escrow account an amount equal to the full amount of the tax savings that previously would have accrued under the Agreement while any such challenge remains pending. The Sponsor shall have a continuing obligation to contribute to the escrow account amounts equal to the additional tax savings that accrue under this Agreement while its challenge remains pending. The Sponsor shall promptly provide to the Town documentation of its compliance with this obligation. The conditions of the escrow account shall provide that, in the event the Sponsor is unsuccessful in its challenge, the funds in the account shall be paid to the Town. The Sponsor's obligations under this subsection shall be judicially enforceable. It is the intent of the parties to this Agreement that Amherst Residents are third party beneficiaries of this

Agreement, and that it may be enforced in a civil proceeding brought by not less than 10 taxable inhabitants.

F. Requirements for Successors-In-Interest

The requirements of this Bylaw, including any remedies imposed herein, that are applicable to any Contractor or Sponsor shall also be applicable to, and effective against, any successor Contractor or Sponsor that (1) has at least 1 of the same principals or officers as the prior Contractor or Sponsor; and (2) is engaged in the same or equivalent trade or activity as the prior Contractor or Sponsor.