

TOWN OF FOXBOROUGH  
INVITATION FOR BID  
Encoder Receiver Transmitter (ERT)

INVITATION FOR BIDS

ENCODER RECEIVER TRANSMITTER (ERT)

IFB #:	<b>ENCODER RECEIVER TRASMITTER</b>
Bid Opening:	<b>August 23, 2022 at 11AM</b>
Bids Opened At:	<b>Foxborough Town Hall 40 South Street, Foxborough, MA 02035</b>

**Procurement Contact**

Audrey Strom- Procurement Administrator

[astrom@foxboroughma.gov](mailto:astrom@foxboroughma.gov)

**TOWN OF FOXBOROUGH  
INVITATION FOR BID  
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LEGAL NOTICE

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**INVITATION FOR BIDS**

**ENCODER RECEIVER TRANSMITTERS**

The Town of Foxborough invites bids for Encoder Receiver Transmitters (ERT). Bid documents will be available starting August 9, 2022 by visiting <https://foxboroughma.gov/departments/procurement>. Sealed bids will be opened on Tuesday, August 23, 2022 at 11:00AM at Foxborough Town Hall, 40 South Street, Foxborough, MA 02035. A one (1) year contract is being offered with two (2) additional 1-year options to renew solely based on the Town's recommendations. The Owner reserves the right to reject any and all responses if the Owner determines, within its own discretion, that it is in the Owner's best interests to do so.

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Advertisements placed as follows:

Local Newspaper	Published:	8/4/22
Goods & Services	Published:	8/8/22
Town Hall	Posted:	8/9/22
Commbuys	Posted :	8/8/22
Town's Website	Published:	8/9/22

**TOWN OF FOXBOROUGH  
INVITATION FOR BID  
Encoder Receiver Transmitter (ERT)**

GENERAL INFORMATION

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**1. OVERVIEW**

The Town of Foxborough request sealed bids for **ENCODER RECEIVER TRANSMITTERS (ERT)**. Bids must be received in a sealed envelope clearly marked **ENCODER RECEIVER TRANSMITTERS IFB** to the Foxborough Town Hall **Tuesday, August 23, 2022 at 11:00AM**. Bids will be opened and read in public at that time. The Owner reserves the right to reject any and all responses if the Owner determines, within its own discretion, that it is in the Owner's best interests to do so.

A one (1) year contract is being offered with two (2) additional 1-year options to renew solely based on the Town's recommendations. The Owner reserves the right to reject any and all responses if the Owner determines, within its own discretion, that it is in the Owner's best interests to do so.

**2. BID DOCUMENTS AVAILABLE**

Bid documents will be made available beginning **August 9, 2022** on the Town's website, <https://foxboroughma.gov/departments/procurement>.

Reasonable Accommodation: Bidders with disabilities or hardships that seek reasonable accommodation, which may include the receipt of IFB information in an alternative format, must communicate such requests in writing to the contact person. Requests for accommodation will be addressed on a case by case basis. A bidder requesting accommodations must notify the Town in advance of due date and bid opening. The Town reserves the right to reject unreasonable requests.

**3. PRE-BID CONFERENCE**

No pre-bid conference is scheduled.

**4. BIDDER COMMUNICATIONS**

Bidders are prohibited from communicating directly with any employee of the Town of Foxborough regarding this solicitation except as specified in this bid document, and no other individual employee or representative is authorized to provide any information or respond to any question or inquiry concerning this bid except for the Procurement Office. In the event that this Request for Bid is incomplete or information is missing questions must be made in writing and submitted to Audrey Strom in accordance with the instructions in the solicitation. Failure to follow these instructions may result in bidder disqualification. Answers to any questions will be issued through an addendum to all persons who have requested bids.

Direct all questions/inquiries in writing to the Procurement Administrator, Audrey Strom by email at [astrom@foxboroughma.gov](mailto:astrom@foxboroughma.gov). All questions must be received by **August 15, 2022 at 4:00PM**. Responses to inquiries will be issued as addenda found on the Town's website.

**5. ADDENDA**

Written addenda issued by the Town of Foxborough will be e-mailed or faxed to all parties that the Town of Foxborough is aware have requested documents as necessary using the contact information provided to the Town of Foxborough. Absence of "failure" messages electronically transmitted from addressee's site will serve as confirmation of delivery of addenda. Bidders should contact Audrey Strom via e-mail if they believe an addendum has not been received. Addenda will also be posted on the Town's website under the Procurement Department.

**How to Submit A Bid**

**6. BID SUBMITTAL**

Bids must be submitted in **sealed envelopes** clearly marked with the following information

**BID FOR:** **Town of Foxborough, Encoder Receiver Transmitter (ERT)**

**TOWN OF FOXBOROUGH  
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**Bid envelopes must contain one (1) copy of all required documents.**

Bids must be signed as follows:

- **If the bidder is an individual**, by her/him personally;
- **If the bidder is a partnership**, by the name of the partnership, followed by the signature of each general partner; and
- **If the bidder is a corporation**, by the name of the corporation, followed by the signature of an authorized officer, whose signature must be attested to by the Clerk/Secretary of the corporation with the corporate seal affixed.
- **Bids must be delivered to the Department of Public Works** *Bids delivered to other locations by 3<sup>rd</sup> party vendors may be deemed non-responsive and rejected.*

**7. ESTIMATED QUANTITIES**

Quantities and delivery and installation sites are cited on the **Bid Price Form**. Quantities listed are an estimate for comparison and actual purchased may be more or less than estimated. Depending on funding and grant opportunities the Town may look to purchase up to 3,000 units in the first year.

These are estimate quantities for bidding purposes only and not a guarantee of purchase. These prices will remain in place for the entire duration of the contract.

Emergency Standby Commodities and/or Services: Due to a declaration of an emergency or, state of emergency where the safety and well-being of Town of Foxborough citizens are at risk, the town may request specific commodities and/or services from its Contractors. Contractors may be called upon to supply and/or deliver to the town on a priority basis such commodities and/or services currently under contract. Such accommodations may be requested from a Contractor during an actual emergency. To accommodate such requests, Contractors may be requested and must make every effort to service these requests to the best of their ability from regular sources of supply at the rates set forth in any standard contract resulting from this IFB.

Bidders are prohibited from communicating directly with any employee of the Town of Foxborough regarding this solicitation except as specified in this bid document, and no other individual employee or representative is authorized to provide any information or respond to any question or inquiry concerning this bid except for the Procurement Administrator. In the event that this Request for Bid is incomplete or information is missing questions must be made in writing and submitted to Audrey Strom in accordance with the instructions in the solicitation. Failure to follow these instructions may result in bidder disqualification. Answers to any questions will be issued through an addendum to all persons who have requested bids.

**8. COMPLIANCE WITH IFB**

Bidders must comply with all requirements of this IFB in order to be eligible for contract award.

Minor informalities may be waived or the bidder will be allowed to correct them. If a mistake in a bid is evident and the intended bid is clear on the face of the **Bid Price Form**, the mistake will be corrected to reflect the intended correct bid and the bidder will be notified in writing. In the event of a discrepancy between the total price and the unit price, the unit price will govern. The bidder may not withdraw such a bid. The Town of Foxborough may reject or a bidder may withdraw a bid if a mistake is clearly evident on the face of the **Bid Price Form**, yet the intended correct bid is not similarly evident.

**9. FORM OF BID**

Bids must be submitted on the **Bid Price Forms** provided and must contain all the required enclosures itemized in Section 10 below.

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**10. REQUIRED BID DOCUMENTS**

All bids are **required** to contain the following forms fully completed and signed:

- General Bid Form (Form A)**
- Statement of Competency -- with list of references (Form B)**
- Bid Price Form (Form C):**
- Form D: A fully executed and signed Contract**
- W9**
- Certificate of Insurances stating that the coverage with Town of Foxborough named as additional insured must be included. Owner/Operators must also provide worker's compensation insurance.**
- Special Certifications / Licenses\***

**11. MODIFICATIONS TO BIDS**

A bidder may correct, modify, or withdraw a bid by written notice received by the Town of Foxborough not later than the close of business on the day before the bid opening. Bid modifications must be submitted in a sealed envelope clearly labeled "Modification No. \_\_\_." Each modification must be numbered in sequence, must reference the original IFB and must be signed by the same person who signed the **General Bid Form** or a surrogate so authorized in writing.

After the bid opening, a bidder may not change any provision of the bid in a manner prejudicial to the interests of the Town of Foxborough or fair competition as determined by the Town of Foxborough.

**12. BID OPENING**

Sealed bids will be accepted at the **Town Manager's Office, Foxborough Town Hall, 40 South Street, Foxborough, MA 02035 until 11:00AM on August 23, 2022** when and where they will be publicly opened and read aloud. Bids will be made available for inspection on-site for a reasonable period of time after all bids are opened.

**Unforeseeable Deterrents** - If at the time of the scheduled bid opening, the designated site is unavailable due to circumstances beyond the control of the Town of Foxborough, the bid opening will be automatically postponed (with or without notice to potential bidders) until 12:00 Noon at the same location on the next normal business day. In the event the same location cannot be used to accommodate a postponement, the bid opening will be formally postponed with notification to all parties provided bid documents by the Town of Foxborough. Bids will be accepted until any postponement time.

**AWARD AND CONTRACT**

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**13. RULE OF AWARD**

**An award will be made as follows:**

An award will be made to the responsive and responsible bidder offering the lowest total bid price for the goods and/or services that are the subject of this IFB. In the event of a discrepancy between the total price and the unit price, the unit price will govern.

**14. TIE BREAKER**

In the event of a tie, the low bidder shall be the bidder who wins a coin toss to take place immediately after the bid opening.

**15. TIMEFRAME FOR AWARD**

All bid prices submitted in response to this IFB must remain firm for 30 (thirty) days following the bid opening or until a contract is executed, whichever occurs first.

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**16. RESERVED RIGHTS**

The Town of Foxborough reserves the right to:

1. Cancel this IFB at any time, with or without notice to prospective bidders. Reasonable efforts will be made to give timely notice.
1. Accept or reject, in whole or in part, any and all bids as permitted by law.
2. Award contracts as it deems best serves the interests of the **Town of Foxborough**.
3. Waive or adjust non-statutory bid requirements before or after bids are opened in whatever ways it deems best serves the interests of the **Town of Foxborough**, while also being non-prejudicial to the interests of fair competition.

**17. CONTRACT**

A signed contract will result from this IFB and will remain in effect for 1 year with the option to extend an additional 2 years, based on the sole recommendations of the Town, or until the purpose of the contract is fully realized. Not to exceed 3 years in total.

Any contract resulting from this procurement is open to be used to any department within the Town of Foxborough.

BIDDER QUALIFICATION REQUIREMENTS

**18. PERFORMANCE CAPABILITIES**

Bidders must be capable of providing the specified goods and services on schedule, in working order, in an intact and undamaged condition, and providing any support services in a professional and workmanlike manner. Service quality requirements include but are not limited to the Contractor's responsibility for the work, the precautions for preventing injuries to person and property in or around the work and the site conditions being in same conditions as before contracted work commenced. Contracted Vendors must have the capability to perform fully the contract requirements, as well as the integrity and reliability to assure good-faith performance. The Manager assigned to the contract has the right to monitor the Contractor's activities associated with the Work of this Contract.

Time of performance is critical to this IFB. Bidders must reassure the Town of Foxborough of their capacity to perform within the timeframe set out in this IFB. Often there are times when the contractor will be called on for emergency service.

**19. EXPERIENCE**

Bidders must demonstrate competency in the business of providing the goods and/or services specified in this IFB by conformance with the following criteria:

- a. Bidders must be **qualified** for this service
- b. In business for a minimum of 3 years.
- c. Provision of the specified goods/and or services is consistent with normal lines of business.
- d. Receive favorable ratings from references.
- e. Bidders that do not meet these minimum qualifications will not be considered.

**20. REFERENCES**

4. Bidders must provide the following contact information for a minimum of **5 customers**, of which no less than 3 must have been active within the 36 months prior to this IFB's bid opening date. Use a separate sheet(s) clearly marked "**REFERENCES**" to provide the following information for each reference. The Town may reach out to additional sources of references other than those supplied with bid.

1. Customer Name
2. Years as a customer

**Poor references may be used as a basis for determining that a CONTRACTOR is not a responsible bidder. The Town of Foxborough can and will act as its own reference.**

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3. Street
4. City, State, Zip
5. Contact Person
6. Telephone number

**21. SUBCONTRACTORS**

The contractor may not subcontract any of the work which it is required to perform under this agreement to any corporation, entity or person **without prior written approval** from the Town's Superintendent of Department of Public works

**Will you be using subcontractors? \_\_\_yes \_\_\_No**

List of Subcontracts Name/Address: \_\_\_\_\_  
\_\_\_\_\_

Add separate list if needed.

PRODUCT AND PERFORMANCE TERMS

**22. QUALITY REQUIREMENTS**

All products must be new and fully serviceable and suited to their intended use consistent with the manufacturers' specifications and representations, and any representations made by selected Contractor(s). Used and previously opened items will not be accepted.

**23. "OR EQUAL"**

An item at least equal to one or more that are named or described in the Specifications may be offered by a Bidder.

The naming of any commercial name, trademark, or other identification shall not be construed to exclude any item or manufacturer not mentioned by name or as limiting competition but shall establish a standard of quality only. An item equal to one or more that are named or described in the Specifications may be offered by a Contractor. An item shall be considered equal to the item so named or described if (1) it is at least equal in quality, durability, appearance, strength and design, (2) it will perform at least equally the function imposed by the general design for the use intended, and (3) it conforms substantially to the requirements of the specifications with only minor deviations immaterial to the requirements of the preceding conditions (1) and (2). The name and manufacturer's published product specifications establishing product equality must accompany "Or Equal" Bids. Acceptance of "Or Equal" Bids shall be at the sole discretion of The Town of Foxborough's Governmental Body whose decision shall be final.

**24. WARRANTY/WORKMANSHIP – PROTECTION OF WORK AND PROPERTY**

The contractor shall safely protect the property of the Town of Foxborough and all adjacent property from loss or damage and shall repair or replace any damage, injury or loss resulting from this contract. The contractor shall indemnify the awarding authority for, from and against any loss, expense, damages, actions or claims including any expense incurred in connection with any delay or stoppage of the project work.

Bidder is required to provide a manufacturer warranty on all purchased parts.

**25. METHOD OF ACQUISITION**

Outright purchase for quantities ordered, a purchase order will be issued in advance.

**26. INVOICING**

Selected Contractors must direct all invoices to the Department being billed:  
Water Department  
70 Elm Street  
Foxborough, MA 02072



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The Town of Foxborough is tax-exempt. Sales taxes and finance charges will not be paid.

Invoices must contain, or be accompanied by, the following information:

A detailed invoice may be submitted upon completion of each ERT order for payment by the Town within thirty (30) days of approval of the invoice. Failure to provide this information may be cause for rejection of the invoice.

- The Town of Foxborough Purchase Order number
- The Town of Foxborough Contract “Encoder Receiver Transmitters (ERT)”
- Total Amount Payable
- Date (s) of Service

**27. PAYMENT**

Invoicing and credit issues must be resolved in a timely and efficient manner. The goods and/or services procured through this IFB are funded by the Town of Foxborough on an indirect payment basis. All services applicable to prevailing wage must pay prevailing wage and send certified payroll reports with each invoice. If this is a prevailing wage project the wage rate sheets should be included in the bid documents. The Town of Foxborough will make payment to Contractors upon receipt of funding from the Town Accountant, which normally occurs within 60 days of delivery of a payment request to the Town Accountant and will not pay any late fees for payments within this cycle. The Town of Foxborough will make all necessary effort to expedite payment cycles. The Town of Foxborough will not be liable for slow payment cycles.

**APPENDIX A – SPECIFICATIONS**

100W Encoder Receiver Transmitter (ERT)

1 Water Endpoints

- 1.1.1 The endpoint must be capable of operating in harsh environments. List the environmental specifications of the endpoint and describe its ability to withstand extreme high and low temperature conditions as well as its resistance to water intrusion. As a minimum, the endpoint must function accurately and not be damaged over an operating temperature range of -40 to +70 degrees Celsius.
- 1.1.2 The endpoint must operate in the non-licensed ISM band according to the rules and regulations of the Federal Communications Commission (FCC)
- 1.1.3 The endpoint shall have a meter right-sizing feature to analyze the flow of commercial/industrial meters and determine if those meters are the right size for that application. The flow intervals should be at or below 5 minutes for a minimum timeframe of 30days
- 1.1.4 Describe the power supply utilized by the endpoint. Battery operated endpoints must have a battery design life of 20 years with engineering data to support the claim.
- 1.1.5 The vendor’s solution must provide the same functionality for both indoor water meters and those located in pit settings. Endpoints proposed for pit settings must be able to withstand the harsh pit environment and have no exposed electrical connections.
- 1.1.6 The endpoint must operate in bubble-up mode at intervals for mobile drive- by not greater than 10 seconds and Fixed Network not greater than 10 minutes
- 1.1.7 The endpoint must be installable on a Badger meter.
- 1.1.8 The endpoint must be readable by Temetra Itron
- 1.1.9 The endpoint in pit settings must offer an in-line connector that enables removal of the meter for periodic testing while allowing the endpoint to stay in the field. Connector must be a proven device with five (5) or more years of use in the field.
- 1.1.10 The endpoint shall have a low battery flag that indicates it has reached 90% of useful life
- 1.1.11 The endpoint must be capable of detecting and reporting potential theft. describe all the tamper reports available with this water endpoint. At a minimum, the endpoint must report cut cable tamper, communication error and reverse flow

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- 1.1.12 The endpoint must be capable of detecting and reporting leak events. Describe how the system detects and reports leaks
  - 1.1.13 The endpoint shall have the option of having a remote antenna for exceptionally unfriendly RF environments where standard mobile mode is not sufficient for satisfactory reading performance.
  - 1.1.14 The Endpoint should have an optional second port to connect an acoustic leak sensor. The endpoint will also collect and push the leak analysis data to an online secure site.
  - 1.1.15 Vendor must have sold a minimum of ten million radio-frequency based endpoints to the water utility market to assure familiarity with the water market.
  - 1.1.16 The endpoint must be able to connect to pulse accumulating or absolute encoder-type registers.
  - 1.1.17 Endpoints must be capable of auto-detecting an encoded register and configuring themselves to the proper meter without the requirement for programming
  - 1.1.18 Endpoints shall be capable of reading the water meter on top of the hour every hour and storing a minimum of 40 days' worth of hourly readings. The endpoint shall be capable of transmitting any or all of the readings via radio commands to avoid having to physically visit the endpoint site.
  - 1.1.19 The endpoint shall be capable of being read by a Mobile Reading System as well as by a Fixed Network System. If different operating modes are required, the endpoint shall be capable of switching from one mode to the other. When in Fixed Network mode (if applicable) the endpoint shall still be capable of being read by a Mobile System for contingency readings. Describe operating modes for each environment (Mobile and Fixed Network). Describe process for switching from one mode to the other (if applicable).
- 
- 1.2 LEAK DETECTION MODULES
    - 1.2.1 Briefly describe the acoustic leak detection sensor, listing capabilities and physical properties. Detail the proposed acoustic leak detection sensor functionality. Describe how the acoustic leak detection sensor interfaces with AMR solutions
    - 1.2.2 Range: Up to 320 feet on metal pipe
    - 1.2.3 Physical rating: Sealed, waterproof, IP68 rating
    - 1.2.4 Dimensions: 1.75" x 2.0"
    - 1.2.5 Connection to AMR solutions is made by 3-wire cable or in-line connector, pre-wired and potted.

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**END**

**TOWN OF FOXBOROUGH  
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**FORM A - GENERAL BID FORM**

The accompanying **Statement of Competency** and **Bid Price Form** are hereby submitted in response to the IFB cited above. All information, statements and prices are true, accurate and binding representations of its intentions and commitments in responding to this IFB. Bidder acknowledges that they read all the bid and contract documents and understands his obligations to faithfully perform the work.

**If this is a prevailing wage job – I acknowledge receipt of the wage rate sheets and will submit Certified Payroll Reports with my invoices. Failure to do so may result in rejection of invoices for payment.**

This bid applies to the category(s) of goods and/or services marked with an "X" below.

**ERT**

<b>Contractor Name:</b> _____			
<b>Street:</b> _____			
<b>City:</b> _____	<b>State:</b> _____	<b>Zip:</b> _____	
<b>Phone:</b> _____	<b>e-mail:</b> _____		
<b>Web Address:</b> _____			

**Non-Collusion Statement**

The undersigned certifies under penalties of perjury that this bid has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

**Taxes Paid Certification**

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am/my company is in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and Contractor's, and withholding and remitting child support.

For the Bidder:

**X** \_\_\_\_\_

Name: \_\_\_\_\_

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

**Attach certificate of corporate vote  
(if required by Section 7)**

Date: \_\_\_\_\_

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**FORM B - STATEMENT OF COMPETENCY**

I hereby certify that the Bidder meets or exceeds the competency criteria set out in this IFB.

I further attest to the following assertions:

1. Bidder is a Supplier of ERTs that meet specifications as specified in Bid documents.
2. The Bidder has been in business for a minimum of 3 years.
3. Provision of the items specified in this IFB is consistent with the Bidder's normal lines of business.
4. The operators have acceptable driving reports from the Department of Motor Vehicles.
5. The Bidder will receive favorable ratings from the following references, **Must list at least (5) references of all similar work completed in the last (3) years.** Please provide a *direct contact person* who is available by telephone. Your references must include all the information listed on the chart. Failure to reach your references may affect your overall rating.
6. Do not list the Town of Foxborough as a reference

REFERENCES:

	CONTACT PERSON	ADDRESS	TELEPHONE NUMBER
1			
2			
3			
4			
5			

For the Bidder:

**X** \_\_\_\_\_

Name: \_\_\_\_\_

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

Date: \_\_\_\_\_

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**FORM C - BID PRICE FORM**

Quantities listed are an estimate for comparison and actual purchased may be more or less than estimated. Depending on funding and grant opportunities the Town may look to purchase up to 3,000 units in the first year.

<u>Bid Item</u>	<u>Item</u>	<u>Quantity (More or Less)</u>	<u>Unit Price</u>	<u>Extended Total Price</u>
1	Two Port - Encoder Receiver Transmitter	3000	_____	_____
2	Three Port - Encoder Receiver Transmitter	3000	_____	_____
			<b>Total Bid</b>	_____

1. Second year price escalation for items not purchased in first year, \_\_\_\_\_% of first year price.
2. Third year price escalation for items not purchased in first and second year, \_\_\_\_\_% of second year adjusted price.

**These rates must include all, travel, equipment, materials, gasoline and/all other related expenses etc, so that there are not additional expenses to the Town of Foxborough above and beyond the amounts indicated in the proposal.**

There will be no separate reimbursement for any additional project costs.

These rates must include all travel, equipment, materials, gasoline and any/all other related

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**FORM D - CONTRACT**

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**CONTRACTUAL AGREEMENT TO PURCHASE**

**Duration of Contract: One (1) Year**

**Options to renew: Option of Two (2) Additional Years solely based on the Town's Recommendation**

**ARTICLE 1**

**CONTRACTING PARTIES**

1. **THIS AGREEMENT** made effective by dated signature of the Parties hereto, by and between the **Town of Foxborough**, and \_\_\_\_\_ \* **[Contractor]**,  
whose principal office address is: \_\_\_\_\_  
\_\_\_\_\_

**ARTICLE 2**

**SUBJECT OF AGREEMENT**

2. **WHEREAS**, The Town of Foxborough desires to retain the Contractor to provide goods and/or services to the Town, and the Contractor is willing to accept such engagement, pursuant to the terms and conditions of this Agreement, including any Additional and Special Terms and Conditions listed in Exhibit C, and the following Invitation for Bids **[IFB]**:

**IFB#:** \_\_\_\_\_

As it relates to provision of the items specified in Appendix A –Specifications and as hereinafter set forth.

3. **NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE 3**

**ENGAGEMENT OF THE CONTRACTOR**

**3.1** The Town of Foxborough hereby engages the Contractor, and the Contractor hereby accepts the engagement, to provide goods to and/or perform certain services for the Town, as described in Article 2.

**3.2** In the performance of service under this Agreement, the Contractor acts at all times as an independent Contractor. There is no relationship of employment or agency between the Town, on the one hand, and the Contractor on the other, and neither party shall have nor exercise any control or direction over the method by which the other performs its work or functions aside from such control or directions as provided in this Agreement which the parties view as consistent with their independent Contractor relationship.

**ARTICLE 4**

**SERVICES OF THE CONTRACTOR**

**4.1** The Contractor will provide the goods and/or services as described in the IFB cited in Section 2 **[the Work]**.

**4.2** The Contractor shall report, and be responsible, to the Town or its designee as set forth on Exhibit B.

**4.3** There shall be no modification to the list of goods, including substitutions of specific products offered in the Contractor's bid, or amendment of the scope of services provided for in this Agreement, without the prior written approval of the Town. The Town of Foxborough shall be under no obligation to pay for any goods or services not so authorized.

**4.4** The Contractor represents and warrants to the Town of Foxborough as follows:

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**4.4.1** That it and all its personnel (whether employees, agents or independent Contractors) are qualified and duly licensed as required by law and/or local municipal code to provide the goods and/or services required by this Agreement.

**4.4.2** That it further agrees to perform services, including manufacturing, in a professional manner adhering to a reasonable standard of care and in accordance with all applicable State or Federal laws, rules and regulations.

**4.4.3** That it will obtain any and all permits, bonds, insurances and other items required for the proper and legal performance of the work.

**4.4.4** That it is not a party to any agreement, contract or understanding, which would in any way restrict or prohibit it from undertaking or performing its obligations hereunder in accordance with the terms and conditions of this Agreement.

**4.4.5** That it does not now, and will not during the term of this Agreement, conduct business with parties located in or supported by countries identified by the U.S. government as funding, harboring, supporting, promoting or otherwise facilitating terrorist organizations or activities, nor will it provide goods or services produced under such circumstances.

**ARTICLE 5**

**TERM**

**5.1** The term of this Agreement shall commence on the date of its execution by both parties and continue until its purpose is accomplished and acknowledged by formal acceptance and acknowledgment of the Contractor's performance by the Town of Foxborough, or until otherwise terminated as provided by this Agreement or the IFB.

**5.2** The Contractor agrees to proceed with the Work promptly upon execution of this Agreement and to diligently and faithfully prosecute the Work to completion in accordance with the provisions hereof. The Contractor acknowledges that time is of the essence as it relates to performance under this Agreement.

**ARTICLE 6**

**PAYMENTS TO THE CONTRACTOR**

**6.1** Compensation due the Contractor shall be paid as specified in Form C – Bid Price Form.

**ARTICLE 7**

**TERMINATION**

**7.1** Either the Town of Foxborough or the Contractor may terminate this Agreement for cause upon written notice given by the non-defaulting party. For the purposes of this provision, "cause" shall include the failure of a party to fulfill its material duties hereunder in a timely and proper manner.

**7.2** The Town of Foxborough shall have the right to terminate this Agreement for its convenience upon ten (10) days written notice.

**7.3** Following termination of this Agreement, the parties shall be relieved of all further obligations hereunder except that:

**7.3.1** The Town shall remain liable for payments for the services and/or expenses of Contractor accrued prior to the effective date of the notice of termination in compliance with this Agreement (less all costs reasonably incurred by the Town as a result of the Contractor's default, if any), as determined by the Town, but for no other amounts including, without limitation, claims for lost profits on work not performed.

**7.3.2** The Contractor shall remain liable for any damages, expenses or liabilities arising under this Agreement (including its indemnity obligations) with respect to work performed pursuant to the Agreement.

**ARTICLE 8**

**INSURANCE AND INDEMNIFICATION**

**8.1** The Contractor agrees to indemnify, defend, and save harmless The Town of Foxborough from and against

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any and all manner of suits, claims, or demands arising out of any errors, acts, omissions or negligence of or by the Contractor (including all its employees or agents) in performing the **WORK**, or any breach of this Agreement. The Contractor shall reimburse the Town for any and all costs, damages and expenses, including reasonable attorney's fees, which the Town pays or becomes obligated to pay, by reason of such errors, acts, omissions, negligence or breach. The provisions of this Section shall be in addition to and not a limitation on any other rights and remedies available to the Town under this Agreement, at law or in equity.

**8.2** Before commencing **WORK**, the Contractor shall obtain, and shall maintain throughout the term of this Agreement, insurance at limits specified in the **IFB** and provide written documentation of such in the form specified in the **IFB**.

**8.3** The Contractor shall give the Town of Foxborough 20 days (twenty) written notice and copies of documentation in the event of any change or cancellation of coverage.

## **ARTICLE 9**

### **GENERAL PROVISIONS**

**9.1** Upon the expiration or termination of this Agreement for any reason, any data, drawings, specifications, reports, estimates, summaries and other work product which have been accumulated, developed or prepared by the Contractor (whether completed or in process) shall become the property of the Town of Foxborough. The Contractor shall immediately deliver or otherwise make available all such material to the Town.

**9.2** Neither party may assign, transfer or otherwise dispose of this Agreement or any of its rights hereunder or otherwise delegate any of its duties hereunder without the prior written consent of the other party. Any such attempted assignment or other disposition without such consent shall be null and void and of no force and effect.

**9.3** Except as otherwise expressly provided in this Agreement, any decision or action by the Town of Foxborough relating to this Agreement, its operation, or termination, shall be made only by the Town or its designated representative identified in **Exhibit B**.

**9.4** This Agreement, together with its **Exhibits**, the **IFB** referenced above and its **Addenda**, the required supplemental documents and any additional exhibits, constitute the entire agreement between the Town of Foxborough and the Contractor with respect to the matters set forth therein and may not be changed (amended, modified or terms waived) except by a writing signed by both parties. Any notices required or allowed shall be sent by receipt-verified mail, e-mail, fax or courier to the persons designated in **Exhibit B**.

**9.5** In the event any terms and conditions of this Agreement conflict with those contained in the **IFB** and its **Addenda**, the **IFB** and its **Addenda** shall prevail.

**9.6** This Agreement is governed by the laws of Massachusetts and shall be construed in accordance therewith.





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**EXHIBIT A**

**List of Procured Items**

The following list contains all items procured through and subject to this contract.

Item #	Description
	<b>Encoder Receiver Transmitter (ERT)</b>
	<b>FORM C – BID FORM WITH SPECIFIED EQUIPMENTS AND RATES ARE ATTACHED</b>

Initialed For:

Town of Foxborough: \_\_\_\_\_

\* Contractor: \_\_\_\_\_

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**EXHIBIT B**

**NOTICE ADDRESSEES**

**A.1 For Town of Foxborough:**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, ZIP

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Fax

\_\_\_\_\_  
e-mail

**A.2 For the Contractor:**

\_\_\_\_\_  
\* Name

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

\_\_\_\_\_  
\* Street Address

\_\_\_\_\_  
\* City, State, ZIP

\_\_\_\_\_  
\* Phone

\_\_\_\_\_  
\* Fax

\_\_\_\_\_  
\* e-mail

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**EXHIBIT C**

**ADDITIONAL AND SPECIAL TERMS AND CONDITIONS**

The Town of Foxborough and the Contractor agree that the following additional and special conditions apply to and shall be held in full force and effect during the term of this contract:

1. This is awarded for specified equipment and services listed in Appendix A and Form C .

Initialed For:

Town of Foxborough: \_\_\_\_\_

\* Contractor: \_\_\_\_\_

**EXHIBIT D**

**ATTACHMENTS**

- 1.0 Invitation for Bids # \_\_\_\_\_
- 2.0 Other Bid Documents:
  - **Form A: General Bid Form**
  - **Form B: Statement of Competency**
  - **Form C: Bid Price Form**
  - **Form D: Contract**
- 3.0 Other Documents:
  - **Insurance Certificate(s)** (to be provided for contract execution)
  - **W-9**
  - **Workers Compensation Affidavits**