



AGREEMENT

THIS AGREEMENT made this 18 day of March 2021 by and between The Town of Plaistow, NH hereinafter called "Owner" and Affinity LED Light LLC, doing business as a partnership hereinafter called "Contractor".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The Contractor will furnish and install approximately 351 LED light fixtures in the Town of Plaistow's Fitzgerald Safety Complex, hereafter called the Project, and per the pricing shown on the cost proposal spreadsheet dated February 17, 2021 and as specified herein; projected at a cost of \$67,876.00. Final pricing will depend on actual number of fixture size and type installed.
2. The Contractor will furnish all materials, supplies, tools, equipment, labor and other services necessary for the construction and completion of the Project described herein. However, the "Owner" will be responsible for the provision of any required uniformed-police details.
3. The Contractor will be responsible for proper recycling and disposal of all removed fixtures and materials.
4. The Contractor will commence the work required by the Contract Documents and will complete Project by September 30, 2021.
5. The Contractor agrees to perform all work described in the Contract Documents and comply with the terms therein for the unit prices as shown in the cost proposal dated February 17, 2021.
6. The Owner will pay to the Contractor in the manner and at such times as set forth in the Contract Documents in such amounts as required by the Contract Documents.
7. The Owner may at its sole option add more light fixtures to be retrofitted with LEDs. The Owner would consult with the Contractor to set a schedule for the added fixtures. The Owner will pay for the additional work using the unit prices as bid or as agreed to under this agreement, unless otherwise agreed-to.
8. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.
9. The Contractor will assist the OWNER with obtaining rebates/incentives from Unitil.



IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement which shall be deemed an original on the date first above written.

OWNER:
FOR THE TOWN OF PLAISTOW

Signature

Name Mark Pearson

Title Town Manager

CONTRACTOR:
Affinity LED Light LLC

Signature

Title Steven R. Lieber

Name President

Affinity LED Light LLC
133 Islington St, Unit #8
Portsmouth, NH 03801

CONTRACT DOCUMENTS AND DEFINITIONS

ARTICLE 1 - DEFINITIONS

Wherever the words defined in this article, or pronouns used in their stead, occur in this Contract and specifications hereto attached, they shall have the meanings herein given.

1.1 OWNER – The word Owner shall mean the first party, any board, officer or agent, authorized to act for the said party of the first part, in the execution of the work of this Contract.

1.2 CONTRACTOR – The word Contractor shall mean the party of the second part, designated, entering into this Contract for the performance of the Work required, or the legal representative of said party or the agent appointed for said party in the performance of the work.

1.3 SUBCONTRACTOR – The word Subcontractor shall mean a person, firm or corporation supplying labor or materials for work at the site of the project for, and under separate Contract agreement with the General Contractor.

ARTICLE 2 - OBLIGATIONS AND LIABILITY

2.1 The Contractor shall complete the work to the satisfaction of the Board of Selectmen at the prices herein agreed upon and fixed therefore.

2.2 The Contractor shall conduct his work to interfere as little as possible with private business and public travel. The Contractor shall bear all losses resulting to him or the Owner on account of the amount of character of the work or on the account of weather elements or other causes. The Contractor shall assume the defense of all claims of whatsoever against the Contractor or the Owner and indemnify, save harmless, and ensure the Owner, its officers or agents, against claims that may arise from injury or damage to persons, corporations or property. Claims against the Contractor shall be settled in an expedient manner, proof of which shall be provided to the Board of Selectmen.

2.3 The Owner disclaims any authority or responsibility for job site safety and for the safety of persons who are or are not part of the construction process. It is understood and agreed that the Owner will not be responsible for compliance of safety programs, put forth by the Contractor or related OSHA regulation required to be followed by the Contractor, employees, subcontractors and agents. Job site safety shall be the responsibility of the Contractor at all times.

ARTICLE 3 - BOARD OF SELECTMEN TO DECIDE

3.1 In the event of any questions or disputes as to the interpretation, application or intent of any provisions in this Contract, the Contractor shall immediately notify the Town's Board of Selectmen in writing of any issues; the Board of Selectmen shall consult with the Contractor and a decision shall be made by the Board of Selectmen, which decision shall be final and binding on both parties.

3.2 Nothing in this agreement shall be construed as giving the Board of Selectmen the responsibility to direct construction methods, techniques, procedures or safety methods.

ARTICLE 4 - INTENTIONS OF DOCUMENTS

4.1 See Article 3.1 above.

ARTICLE 5 - ABSENCE OF CONTRACTOR

5.1 Work shall neither commence nor proceed unless supervised by the Contractor or his duly authorized superintendent. Delays in the work due to the absence of the Contractor or his duly authorized representative shall not constitute reason for extension of time for completion. The Board of Selectmen shall be notified at least 24 hours in advance for any deviation from the normal daily work schedule.

ARTICLE 6 - PARTS OF THE CONTRACT

6.1 The proposal submitted by the Contractor, the Specifications, are made parts of this Contract.

ARTICLE 7 - ERRORS AND OMISSIONS

7.1 See Article 3.1 above.

ARTICLE 8 - INSURANCE

8.1 Indemnification

8.1.1 The Contractor shall indemnify and hold harmless the Owner against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of the Contractor or anyone directly or indirectly employed by the Contractor, whose acts may be liable, regardless of whether or not is caused in part by a party indemnified hereunder.

8.1.2 In any and all claims against the Owner, or its employees by any employee of the Contractor, or anyone directly or indirectly employed by the Owner, the indemnification obligation under this paragraph shall not be limited in any way by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor under workman's compensation acts, disability benefits act or other employee benefit acts.

8.2 Insurance – requirements shall be as follows:

Workers Compensation – Statutory with Employers Liability as follows:

E.L. (employers liability) each accident: \$500,000

E.L. disease – each employee: \$500,000

E.L. disease – policy limit: \$500,000

Commercial Auto Liability:

Combined Single Limit (bodily injury and property damage) – each accident: \$1,000,000

Commercial General Liability:

Each occurrence: \$1,000,000

General Aggregate: \$2,000,000 with per project aggregate endorsement

Products/Completed Operations Aggregate: \$2,000,000

Commercial Umbrella/Excess Liability:

Each Occurrence: \$1,000,000

General Aggregate: \$1,000,000

Products/Completed Operations Aggregate: \$1,000,000

Owners Liability – Named Insured: The Town of Plaistow

The Town of Plaistow shall be named as an additional insured for on-going and completed operations on a primary and noncontributory basis by way of certificate of insurance and amendatory endorsement on all liability insurance policies required above.

8.3 The insurance provided herein is to be primary, and no insurance held or owned by the Town shall be called upon to contribute to a loss.

8.4 A copy of the required policy endorsements shall be attached to each certificate submitted.

8.5 The Owner, in its sole discretion, reserves the right to increase or reduce the required limits, or to require other forms of insurance, as deemed appropriate in relation to the scope of a project. For example, some projects



may require pollution liability, professional liability or other specialty coverages.

ARTICLE 9 – COMPLIANCE WITH LAWS

9.1 The Contractor at all times, shall observe and comply with, and cause all his agents and employees to observe and comply with all such laws, ordinances, regulations, orders or decrees; and shall protect and indemnify the Owner, its officers and agents against all claims or liability arising from or based upon violation of any such law, ordinances, regulations, orders or decrees, whether by himself or his employees.

ARTICLE 10 – NOT TO SUBLET

10.1 The Contractor shall give his personal attention constantly to the faithful prosecution of the work, shall keep the same under his personal control, and shall not assign by power of attorney or otherwise, nor subject the work or any part thereof, without the previous written consent of the Owner, and shall not either legally or equitably assign any of the monies payable under this agreement or his claim thereto, unless by and with the like consent of the Owner.

ARTICLE 11 – TIME OF BEGINNING WORK

11.1 It is the intent of this Contract to have the Contractor commence work within the Town on or before June 1, 2020. However, the actual commencement date may occur earlier based upon discussion between Contractor and Owner and all 'date certain' milestones will be agreed upon at that time.

11.2 No work shall begin for the police department before 8:00 am and activities shall finish before 3:30 pm on designated weekdays. Work crew personnel must be escorted by police department personnel at all times while in the police department building. Work hours will be reviewed for the fire department portion of the project, Mondays through Fridays, as authorized by the Town.

ARTICLE 12 – DELAY BY OWNER

12.1 The Owner may delay the beginning of the work or any part thereof, if materials or equipment to be furnished by the Owner are not delivered. The Contractor shall have no claim for damages on account of such delay but shall be entitled to such additional time wherein to perform and complete this Contract on his part as the Board of Selectmen shall certify in writing to be just.

ARTICLE 13 – TIME OF COMPLETION

13.1 The rate of progress shall be such that work shall be performed and completed in accordance with the terms of this Contract.

13.2 It is agreed that the rate of progress herein required has been purposely made slow enough to allow for the ordinary delays incident to construction work of this character. No extension of time will be made for ordinary delays, inclement weather and accidents, and occurrences of such will not relieve the Contractor from the necessity of maintaining the rate of progress.

13.3 If delays are caused by acts of god, acts of government or State, extra work, or contingencies clearly beyond the control or responsibilities of the Contractor, the Contractor shall be entitled to additional time wherein to perform and complete this Contract on his part as the Owner may grant.

13.4 The Contractor shall provide a schedule to meet the milestones depicted within this document. Changes to the schedule should only be made through written documentation. The Contractor agrees to exercise diligence in the performance of its services consistent with the agreed upon schedule, subject, however, to the generally accepted standards of care for performance of such services.

13.5 **Work is expected to be fully complete by September 30, 2021.**

13.6 If work has begun and is stopped for any reason (including acts of god) the Contractor is required to take all necessary care to ensure the public safety at all times, (satisfactory to the Owner), at its own expense. Failure to ensure the public safety (including maintaining reclaimed roadways) may be deemed a breach of Contract.

ARTICLE 14 – NIGHT AND SUNDAY WORK

14.1 Night work is generally not to be assumed, however, may be requested by the Owner or Contractor.

14.2 No Saturday or Sunday work is permitted, except in great emergency, and to such extent that may be necessary.

ARTICLE 15 – EMPLOY COMPETENT PERSONS

15.1 The Contractor shall employ only competent persons to do the work, and whenever the Board of Selectmen shall notify the Contractor in writing that any such persons on the work is, in his opinion, incompetent, such persons shall be discharged from the work and shall not again be employed on it, except with the consent of the Board of Selectmen.

ARTICLE 16 – LABOR AND EQUIPMENT

16.1 If in the opinion of the Board of Selectmen the Contractor is not employing sufficient labor or equipment to complete the Contract within the time specified the



Board of Selectmen may, after giving written notice, require said Contractor to employ such additional labor and equipment as may be necessary to enable said work to properly progress. Failure of the Contractor to comply in the request of the Board of Selectmen shall be considered a violation of this Contract.

ARTICLE 17 – LIQUORS AND DRUGS

17.1 The Contractor shall not sell and shall neither permit the use of intoxicating liquors or drugs or other materials upon or about the work.

ARTICLE 18 – ACCESS TO WORK

18.1 The Owner reserves the right if in his opinion, public health, safety and welfare are jeopardized, to access the work and if necessary to employ forces, not a party to this Contract for the correction of hazards or defects in the work performed by the Contractor and the costs and or performance of such work shall be set forth in Article 24.

ARTICLE 19 – EXAMINATION OF WORK

19.1 The Board of Selectmen shall be furnished with every reasonable facility for ascertaining that the work is in accordance with the requirements and intention of this Contract, even to the extent of uncovering portions of the work.

ARTICLE 20 – DEFECTIVE WORK

20.1 The inspection of the work shall not relieve the Contractor of any of his obligations to fulfill his Contract as herein prescribed and defective work shall be made good and unsuitable material shall be rejected, notwithstanding that such work and materials have been previously overlooked by the Board of Selectmen and accepted or estimated for payment. If any portions of the work are found to be defective before the final acceptance of the whole work, the Contractor shall forthwith make good such defects in a manner satisfactory to the Board of Selectmen, and if any material brought upon the ground for use in the work shall be condemned by the Board of Selectmen as unsuitable or not in conformity with the specifications the Contractor shall remove such materials from the vicinity of the work and make good areas of uncertainty at the Contractor's expense to the satisfaction of the Board of Selectmen.

ARTICLE 21 – MISTAKES OF CONTRACTORS

21.1 The Contractor shall pay the Owner, all expenses, losses, and damages as determined by the Board of Selectmen incurred in consequence of any defect, omission or mistake of the Contractor or the making good thereof.

ARTICLE 22 – RIGHT TO MATERIALS

22.1 Nothing in this Contract shall be constructed as vesting in the Contractor any right of property in any of the materials removed (castings, reclaim, etc.) or placed once having been affixed to the work or the soil, but all such materials shall, upon being so removed, attached or affixed become the property of the Owner.

ARTICLE 23 – LIMITATIONS OF WORK

23.1 Should the Contractor consider himself entitled to extra compensation on account of alterations or changes he shall notify the OWNER by making his claim in writing.

23.2 Should, in the opinion of the Board of Selectmen any contemplated change in the quantities of the work or alterations thereof, materially change the character of the work or any part thereof, or materially affect the compensation of the same, then the work shall be considered extra work.

ARTICLE 24 – EXTRA WORK

24.1 The Contractor shall perform work incidental to the proper completion of the Contract. The amount of compensation to be paid to the Contractor for extra work shall be determined as one of the following:

24.1.1 By unit prices, if any as set forth in the Contract

24.1.2 If no unit prices are set forth, then by unit prices or by lump sum mutually agreed by the Owner and the Contractor; or

24.1.3 If no unit prices are set forth and if the parties cannot agree upon unit prices or a lump sum then by the actual net costs in money to the Contractor as approved by the Board of Selectmen of the materials and of the wages of applied labor required for such extra work, plus such rental of plant and equipment (other than small tools) required and approved for such extra work, plus ten percent (10%).

24.1.4 Any and all alterations, changes, or extra work that impacts the pricing of this contract, shall be approved by the Owner in advance and in writing.

24.2 The Owner and Contractor may agree to extend this Contract for an extent to be agreed upon, however for no more than 5 fiscal years.

ARTICLE 25 – EXTRA TIME

25.1 When extra work is ordered during the progress of work, which required, in the opinion of the Board of Selectmen, an unavoidable increase of time for the completion

of the Contract a suitable extension of completion shall be made, only upon approval of the Owner.

ARTICLE 26 – CLAIMS FOR DAMAGES

26.1 If the Contractor claims compensation for any damages for work performed or material furnished in accordance with the terms of this Contract or for any other cause, he shall promptly, after sustaining of any damage, make a written statement of the damage sustained, to the Owner and shall on or before the fifteenth day of the month following that in which the damage shall have been sustained, file with the Owner an itemized statement of the details and the amount of damage. Unless such statement is made, his claim for compensation shall be forfeited and invalidated and shall not be entitled to payment on account of any such damage.

26.2 If the parties become involved in a dispute related to, arising out of, or connected with the Work, change orders, or this Contract or the interpretation thereof, they shall first attempt to resolve the dispute in mediation, jointly paid for by the parties, prior to the filing of a litigation. The location of any such mediation shall be Rockingham County Superior Court.

ARTICLE 27 – ABANDONMENT OF WORK

27.1 If the work to be done under this Contract shall be abandoned, or if this Contract or any part thereof shall be sublet without consent by the Owner or the rate of progress is unreasonably delayed or that the Contractor has violated any of the provisions of this Contract, the Owner may notify the Contractor by a written order, with a copy mailed to the home office of the Surety, to discontinue all work or any part thereof and the Owner may thereupon by Contract or otherwise as it may determine, complete the work and charge the entire expense of completing the work; and for such completion the Owner for itself or its Contractors may take possession of and use or cause to be used in the completion of the work, materials, equipment, machinery, implements and tools of every description as may be found at the location of such work.

27.2 This article shall also include emergency situations where the Contractor is unable to be reached or has been unresponsive to alerts made by the Board of Selectmen or Owner. Every effort shall be made by the Owner to reach said Contractor. No action during emergency situations may be considered a breach of Contract, however;

27.2a All expenses charged under this article shall be deducted and paid by the Owner out of any monies due or to become due to the Contractor under this agreement. The Owner shall not be held to the lowest figures for the work of completing the Contract or any part thereof; (including emergency response) all sums actually paid therefore shall be charged to the Contractor. In case the expense so charged are less than the sum which would have been payable under this Contract, if the same had been completed by the Contractor, the Contractor shall be entitled to the difference; and in



case such expenses shall exceed the said sum, the Contractor shall pay the amount of the excess to the Owner.

ARTICLE 28 – PRICES OF WORK

281. The Owner shall pay and the Contractor shall receive the prices stipulated in the proposal attached hereto as full compensation for everything furnished and done by the Contractor under this agreement and for faithfully completing the work.

ARTICLE 29 - MEASUREMENT AND PAYMENT

29.1 Any and all work necessary to complete the proposal items should be accounted for by the Contractor, if for any reason a task(s) to complete a proposal item is not included in these documents it shall be considered incidental to the proposal item. Payment Procedures are described in this Agreement and / or as determined during the Pre-construction meeting.

29.2 Contractor shall be paid according to the items in the proposal as successfully completed within a given pay period and with the details outlined in the Contract specifications. Payment will be based on the actual amount of work accepted.

29.3 An initial 50% deposit of the project total value will be paid to the Contractor prior to the start of the project. Deposit will be applied to all subsequent material and installation billing.

29.4 Payments to the Contractor will be made for the actual quantities put in place and accepted in accordance with the Contract Documents. At all times the Contractor's unit prices will govern payment, unless a penalty is assessed by the Owner.

29.5 When alterations in the quantities of work not requiring a supplemental agreement, as herein before provided for, are ordered and performed, the Contractor shall accept payment in full at the Contract price for the actual quantities of work done. No allowance will be made for anticipated profits.

29.6 Should any items contained in the bid form be found unnecessary for the proper completion of the work Contracted, the Owner may eliminate such items from the Contract, and such action shall in no way invalidate the Contract, and no allowance will be made for items so eliminated in making final payment to the Contractor.

29.7 Partial payments shall be made as the work progresses as pay requisitions are received from the Contractor.

29.8 Final Payment will be due when the Contractor has completed all work and the Contractor has submitted all required paperwork.

ARTICLE 30 – SAFETY AND HEALTH REGULATIONS

30.1 In order to protect the lives and health of his employees under the Contract, the Contractor shall comply with all pertinent provisions of the Contract Work Hours and Safety Standards Act; and shall maintain all accurate records in all cases of death, occupational disease and injuries requiring medical attention or causing loss of time from work, arising out of and in course of employment on Work under this Contract.

30.2 The Contractor alone is responsible for the safety, efficiency and adequacy of his plant, appliances and methods and for any damage which may result from the failure or the improper construction, maintenance or operation.

30.3 The Contractor shall comply with the requirements of the Occupational Safety and Health Act.

ARTICLE 31 – LIABILITY OF THE OWNER

31.1 No person, firm or corporation, other than the signer of this Contract as Contractor now has any interest hereunder and no claim shall be made or to be valid, and neither the Owner nor any agent of the Owner, shall be liable for or to be held to pay any money except as herein provided. The acceptance by the Contractor of the payment of the final estimate shall operate as and shall be a release to the Owner, and every agent of the Owner, from all claims and liability to the Contractor for anything done or furnished for or relating to the work, except the claim against the Owner for the remainder, if any thereby, of the amounts kept or retained as herein provided.

ARTICLE 32 – GUARANTEES

32.1 The Contractor guarantees that the work to be done under this Contract and the materials to be furnished by him for use in the construction of the same will be free from defects or flaws. This labor guaranty shall be for a period of one year and after the date of acceptance.

32.2 Contractor warrants that the LED lighting fixtures will be free of defects in material and workmanship for a period of FIVE (5) YEARS from the date of original purchase. This limited warranty shall be void if the product is not used for the purpose for which it was designed.

32.3 It is hereby agreed and understood that this guaranty shall not include repairs made necessary, by any cause other than defective work or materials furnished by the Contractor. The Contractor shall at all times within said period of guaranty keep the surface of the ground over his work in the condition required by this Contract and refill settlement or erosion due to any cause whatsoever during the work or when directed by



the Board of Selectmen. Should he fail to do so, the Owner may have said work completed as described in ARTICLE 24.

ARTICLE 33 – RESPONSIBILITY FOR UTILITIES AND SERVICES

33.1 At points where the Contractor's operations are adjacent to properties of railway, telegraph, telephone, and power companies or are adjacent to other property, damage to which might result in considerable expense, loss or inconvenience, work shall not be commenced until all arrangements necessary for the protection thereof have been made.

ARTICLE 34 – TERMINATION

34.1 Upon fourteen calendar (14) days written notice to the Contractor, Owner may without cause and without prejudice to any other right of remedy, elect to abandon the project and terminate the agreement. In such case, Contractor shall be paid for all work executed at the Contract prices prior to the date of termination as its sole remedy.