

**THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
LAND AND WATER CONSERVATION FUND**

Project Agreement

Project Agreement Number **#25-00559/P22AP00039**

Project Period **May 1, 2022-April 30, 2025**

Between the **City of Somerville**

Hereinafter referred to as the PARTICIPANT and the Commonwealth of Massachusetts acting by and through the State Liaison Officer, Kathleen A. Theoharides, Secretary, Executive Office of Energy and Environmental Affairs hereinafter referred to as the COMMONWEALTH.

WHEREAS, the PARTICIPANT have made application to the COMMONWEALTH for assistance under the Federal Land and Water Conservation Fund Act of 1965, Stat. 897 (1964) as it may be amended, for a project briefly described as follows:

Somerville, Conway Park, Land and Water Conservation Fund #25-00559: The project includes the construction of an expanded splash pad/water play area, refurbishing the playground structures and ground surfaces, extending the play value to younger children through educational and musical playground elements, repaving and restriping the basketball courts, installing new site furniture and shade structures for the baseball dugouts and an LED lighting system.

Premises: Approximately 2.82 acres of land including any buildings thereon located at 560 Somerville Avenue in the Somerville, Massachusetts. For Participant's Title, see Book 45, Page 1, in the Middlesex County Registry of Deeds, at 208 Cambridge Street, Cambridge, MA 02141.

WHEREAS, the COMMONWEALTH has reviewed said application and found the project to be in conformance with the Statewide Comprehensive Outdoor Recreation Plan, and

WHEREAS, the COMMONWEALTH has forwarded said application to the United States National Park Service, Department of the Interior (hereinafter referred to as the National Park Service), and

WHEREAS, the National Park Service has approved said application, has obligated certain federal funds in the amount of **\$750,000** and has agreed to tender the COMMONWEALTH that portion of the obligation that is required to pay the United States' share of the costs of the above project stage,

WHEREAS, the COMMONWEALTH has undertaken to cause the project to be carried out in accordance with the Federal Project Agreement.

WITNESSETH: the COMMONWEALTH and the PARTICIPANT mutually agree to perform this agreement in accordance with the Land and Water Conservation Fund Act of 1965, 78 Stat. 897 (1964) and

The COMMONWEALTH agrees to transfer to the City of Somerville the amount received from the National Park Service on account of said project subject to the Commonwealth of Massachusetts Standard Contract and Terms and Conditions executed for this project.

The PARTICIPANT agree to execute the project described above in accordance with the terms of and the obligations contained in the Federal Project Agreement, **Number #25-00559** with the terms, promises, conditions, plans, specifications, estimates, procedures, project proposals, maps and assurances made a part thereof, with the National Park Service Land and Water Conservation Fund Grant Manual, and with any special terms and conditions attached hereto, all of which are hereby incorporated by reference. All significant deviations from the project as described therein shall be submitted to the COMMONWEALTH for prior approval.

Failure by the PARTICIPANT to comply with this project agreement may, at the option of the COMMONWEALTH, suspend or terminate all obligations of the COMMONWEALTH hereunder.

In accordance with Part II paragraph B of the General Provisions of the Federal Project Agreement, the PARTICIPANT agree that payment by the PARTICIPANT to the COMMONWEALTH of money would be an inadequate remedy for a breach of the PARTICIPANT of this agreement, and agrees therefore that, as an alternative or as an additional remedy, specific performance of this agreement may be enforced by the COMMONWEALTH.

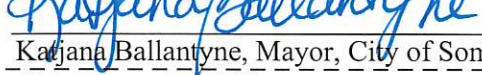
The PARTICIPANT agrees to record a copy of this Agreement, along with the municipal vote and property boundary map, at the Registry of Deeds and to provide proof of such recording to the COMMONWEALTH. In the case of a development project, this Agreement shall be recorded with and a marginal notation entered on the deed to the property to be improved by the project. This project agreement shall also be recorded and marginally noted on any prior deed, restriction, conveyance, or other instrument affecting the project area. Failure to do so shall not impair the validity or enforcement of the agreement. The PARTICIPANT agrees to reference this project agreement in any deed, restriction, or conveyance or other instrument affecting the project area.

IN WITNESS WHEREOF, the parties hereto have hereinunder set their hands and seals, the day and year first above written.

COMMONWEALTH OF MASSACHUSETTS

City of Somerville

By _____
Kurt Gaertner, Alternate State Liaison Officer
Executive Office of Energy and Environmental Affairs

By 

Katjana Ballantyne, Mayor, City of Somerville
Chief Executive Officer

Date of Approval

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



This form is jointly issued and published by the Office of the Comptroller (CTR), the Executive Office for Administration and Finance (ANF), and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. The Commonwealth deems void any changes made on or by attachment (in the form of addendum, engagement letters, contract forms or invoice terms) to the terms in this published form or to the [Standard Contract Form Instructions and Contractor Certifications](#), the [Commonwealth Terms and Conditions for Human and Social Services](#) or the [Commonwealth IT Terms and Conditions](#) which are incorporated by reference herein. Additional non-conflicting terms may be added by Attachment. Contractors are required to access published forms at CTR Forms: <https://www.macomptroller.org/forms>. Forms are also posted at OSD Forms: <https://www.mass.gov/lists/osd-forms>.

CONTRACTOR LEGAL NAME: City of Somerville (and d/b/a):		COMMONWEALTH DEPARTMENT NAME: Exec. Off. of Energy and Env. Affairs MMARS Department Code: ENV	
Legal Address: (W-9, W-4): 93 Highland Avenue, Somerville, MA 02143		Business Mailing Address: 100 Cambridge Street, 9 th Floor, Boston, MA 02114	
Contract Manager: Luisa Oliveira	Phone: 617-960-7524	Billing Address (if different):	
E-Mail: loliveira@somervillema.gov	Fax:	Contract Manager: Melissa Cryan	Phone: 617-626-1171
Contractor Vendor Code: VC6000192138		E-Mail: melissa.cryan@mass.gov	Fax:
Vendor Code Address ID (e.g. "AD001"): AD ____ (Note: The Address ID must be set up for EFT payments.)		MMARS Doc ID(s):	
		RFR/Procurement or Other ID Number: BID ENV 21 DCS 08	
<input checked="" type="checkbox"/> NEW CONTRACT		<input type="checkbox"/> CONTRACT AMENDMENT	
PROCUREMENT OR EXCEPTION TYPE: (Check one option only) <input checked="" type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department) <input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget) <input type="checkbox"/> Department Procurement (includes all Grants - 815 CMR 2.00) (Solicitation Notice or RFR, and Response or other procurement supporting documentation) <input type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget) <input type="checkbox"/> Contract Employee (Attach Employment Status Form, scope, budget) <input type="checkbox"/> Other Procurement Exception (Attach authorizing language, legislation with specific exemption or earmark, and exception justification, scope and budget)		Enter Current Contract End Date <i>Prior</i> to Amendment: ____, 20 ____. Enter Amendment Amount: \$ _____. (or "no change") AMENDMENT TYPE: (Check one option only. Attach details of amendment changes.) <input type="checkbox"/> Amendment to Date, Scope or Budget (Attach updated scope and budget) <input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated scope/budget) <input type="checkbox"/> Contract Employee (Attach any updates to scope or budget) <input type="checkbox"/> Other Procurement Exception (Attach authorizing language/justification and updated scope and budget)	
The Standard Contract Form Instructions and Contractor Certifications and the following Commonwealth Terms and Conditions document are incorporated by reference into this Contract and are legally binding: (Check ONE option): <input checked="" type="checkbox"/> Commonwealth Terms and Conditions <input type="checkbox"/> Commonwealth Terms and Conditions For Human and Social Services <input type="checkbox"/> Commonwealth IT Terms and Conditions			
COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00 . <input type="checkbox"/> Rate Contract. (No Maximum Obligation) Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.) <input checked="" type="checkbox"/> Maximum Obligation Contract. Enter total maximum obligation for total duration of this contract (or new total if Contract is being amended). \$ <u>750,000</u> .			
PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days __% PPD; Payment issued within 15 days __% PPD; Payment issued within 20 days __% PPD; Payment issued within 30 days __% PPD. If PPD percentages are left blank, identify reason: <input checked="" type="checkbox"/> agree to standard 45 day cycle <input type="checkbox"/> statutory/legal or Ready Payments (M.G.L. c. 29, § 23A); <input type="checkbox"/> only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)			
BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.) Somerville, Conway Park, Land and Water Conservation Fund #25-00559/P22AP00039: The project includes the construction of an expanded splash pad/water play area, refurbishing the playground structures and ground surfaces, extending the play value to younger children through educational and musical playground elements, repaving and restriping the basketball courts, installing new site furniture and shade structures for the baseball dugouts and an LED lighting system; in accordance with the federal Land and Water Conservation Fund Project Agreement and the Executive Office of Energy and Environmental Affairs, Division of Conservation Services.			
ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations: __ 1. may be incurred as of the Effective Date (latest signature date below) and no obligations have been incurred prior to the Effective Date. __ 2. may be incurred as of ____, 20____, a date LATER than the Effective Date below and no obligations have been incurred prior to the Effective Date. <input checked="" type="checkbox"/> 3. were incurred as of December 16, 2021 , a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.			
CONTRACT END DATE: Contract performance shall terminate as of <u>June 30, 2022</u> with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.			
CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the " Effective Date " of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions, this Standard Contract Form, the Standard Contract Form Instructions and Contractor Certifications, the Request for Response (RFR) or other solicitation, the Contractor's Response (excluding any language stricken by a Department as unacceptable, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07 , incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.			
AUTHORIZING SIGNATURE FOR THE CONTRACTOR: X: <u>Katjana Ballantyne</u> Date: <u>6-14-22</u> (Signature and Date Must Be Captured At Time of Signature)		AUTHORIZING SIGNATURE FOR THE COMMONWEALTH: X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature)	
Print Name: <u>Katjana Ballantyne</u>		Print Name: <u>Bryan Hightower</u>	
Print Title: <u>Mayor</u>		Print Title: <u>Director of Capital & Trust Planning</u>	

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



ATTACHMENT A – SCOPE OF SERVICES AND ADDITIONAL TERMS AND CONDITIONS

INSTRUCTIONS: In order to ensure that the Department and the Contractor have a clear understanding of their respective responsibilities and performance expectations, the Following attachment shall contain a specific detailed description of all obligations, responsibilities and additional terms and conditions between the Contractor and the Department which do not modify the Contract boilerplate language. *Attach as many additional pages as necessary.* {See INSTRUCTIONS sheet for more information and suggested provisions to include in ATTACHMENT A.}

Somerville, Conway Park, Land and Water Conservation Fund #25-00559/P22AP00039: The project includes the construction of an expanded splash pad/water play area, refurbishing the playground structures and ground surfaces, extending the play value to younger children through educational and musical playground elements, repaving and restriping the basketball courts, installing new site furniture and shade structures for the baseball dugouts and an LED lighting system; in accordance with the federal Land and Water Conservation Fund Project Agreement and the Executive Office of Energy and Environmental Affairs, Division of Conservation Services.

ATTACHMENT B – BUDGET AND APPROVED EXPENDITURES

{The Department and Contractor may complete this format or attach an approved alternative Budget format or invoice.}

Items identified below which are not part of the Contract should be left blank.

Attach as many additional copies of this format as necessary, Maximum obligation should appear as last entry.

Contract Expenditures	Unit Rate (per unit, hour, day)	Number of Units	Other Fees or Charges (specify)	TOTAL
FY22				\$ 750,000
FY23				\$
				\$
				\$
				\$
				\$
				\$
SUBTOTAL (this page)				\$ 750,000

MAXIMUM OBLIGATION

\$ 750,000

Page 1 of 1 Budget pages

Attachment B is subject to any restrictions or additional provisions outlined in Attachment A



The Commonwealth of Massachusetts
Executive Office of Energy and Environmental Affairs
100 Cambridge Street, Suite 900
Boston, MA 02114

Charles D. Baker
GOVERNOR

Karyn E. Polito
LIEUTENANT GOVERNOR

Kathleen A. Theoharides
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181

October 26, 2021

LaDona Pinkard
National Park Service - Southeast Regional Office
100 Alabama Street, SW 1924 Building
Atlanta GA 30303

RE: City of Somerville Conway Park Waiver of Retroactivity

Dear Ms. Pinkard,

The City of Somerville submitted a Land and Water Conservation Fund application for the Conway Park project during the Notice of Funding Opportunity window that ended on July 31, 2021. While they have yet to receive approval on the project from the National Park Service, the city must begin construction on the project due to the reasons outlined below. Due to this, the city is requesting a Waiver of Retroactivity. The information needed for a waiver request, per the LWCF Manual, is below.

Description of the planned development

The City of Somerville will construct a 10-jet splash pad/water play area, refurbish the playground structures and ground surfaces, repave and restripe the basketball courts, install new site furniture, add shade structures for the baseball dugouts, introduce an energy-efficient LED lighting system for the athletic fields, and retrofit existing area lights for LED. Somerville will also surround the new splashpad with pollinator vegetation, plant 64 new shade trees, create environmental education signage that addresses the site's history and new pollinator and stormwater controls, and provide for solar trash collection and recycling.

Public outdoor recreation uses proposed for the site

Public outdoor recreation uses resulting from the renovation of Conway Park will include expanded playground play for children ages 2-12; water play for people of all ages; and basketball (two courts), baseball/softball (two fields), and soccer for youth and adults, with shade protection during daytime play and lighting for extended evening play.

Justification for the proposed action

In 2017, while Somerville was repairing a retaining wall, toxic contamination was discovered at Conway Park, deposited there as landfill sometime between 1938 and the early 1970s. The park was immediately closed. Due to the discovery of the contamination, the City of Somerville is under an Administrative Settlement Agreement and Order of Consent for Removal Action that requires the complete cleanup as outlined in CERCLA Docket No. 01-2020-0054. The Administrative Settlement Agreement became effective in August 2020. Since then, Somerville has been partnering with the Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection to remediate the site. The Administrative Settlement Agreement includes a workplan with consecutive work phases. The EPA was responsible for Phase II cleanup of the most highly contaminated soils. It completed this work on September 22, 2021. Somerville is now responsible for completing Phase III renovations to the park—the LWCF grant is to pay for large portions of this work.

Under the terms of the Administrative Settlement Agreement, Somerville must begin renovations immediately following EPA's completion of cleanup; Somerville cannot leave the park in a raw soil state. Since it has not yet received an award from the LWCF and must proceed with renovations immediately, Somerville is in danger of permanently losing access to federal reimbursement for 48% of the costs unless it is granted a Waiver of Retroactivity.

I am happy to answer any questions that you may have about this request. Thank you for your consideration.

Sincerely,

Melissa Cryan

Melissa Cryan
LWCF Stateside Coordinator

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



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Legal Address: (W-9, W-4): 93 Highland Avenue, Somerville, MA 02143		Business Mailing Address: 100 Cambridge Street, 9 th Floor, Boston, MA 02114	
Contract Manager: Luisa Oliveira	Phone: 617-960-7524	Billing Address (if different):	
E-Mail: loliveira@somervillema.gov	Fax:	Contract Manager: Melissa Cryan	Phone: 617-626-1171
Contractor Vendor Code: VC6000192138		E-Mail: melissa.cryan@mass.gov	Fax:
Vendor Code Address ID (e.g. "AD001"): AD____ (Note: The Address ID must be set up for EFT payments.)		MMARS Doc ID(s):	
		RFR/Procurement or Other ID Number: BID ENV 21 DCS 08	
<input checked="" type="checkbox"/> NEW CONTRACT		<input type="checkbox"/> CONTRACT AMENDMENT	
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CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the " Effective Date " of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions, this Standard Contract Form, the Standard Contract Form Instructions and Contractor Certifications, the Request for Response (RFR) or other solicitation, the Contractor's Response (excluding any language stricken by a Department as unacceptable, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07 , incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.			
AUTHORIZING SIGNATURE FOR THE CONTRACTOR:		AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:	
X: _____ Date: _____ (Signature and Date Must Be Captured At Time of Signature)		X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature)	
Print Name: <u>Katjana Ballantyne</u>		Print Name: <u>Bryan Hightower</u>	
Print Title: <u>Mayor</u>		Print Title: <u>Director of Capital & Trust Planning</u>	

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



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				\$
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				\$
SUBTOTAL (this page)				\$ 750,000

MAXIMUM OBLIGATION

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Page 1 of 1 Budget pages

Attachment B is subject to any restrictions or additional provisions outlined in Attachment A