

# TOWN OF TOWNSEND<sup>1</sup>

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DATE: 2/29/2024

This Contract is entered into on, or as of, this date by and between the Town of Townsend, 272 Main Street, Townsend, MA 01469 (the "Town"), and

MetroGov  
["Contractor"]

Robert Mayotte  
[Contact Name for Responsible Person]

75 Hunt Rd.

Chelmsford MA, 01824

[Address of the Contractor]

617-644-7360  
[Telephone Number]

contact@metrogov.solutions  
[email address]

**1. This is a Contract for the procurement of the following:**

Under the administrative direction of the Board of Selectmen through the Town Administrator, the Contractor works to maintain the existing Town of Townsend website. The Contractor exercises control in the development of new webpages, as well as updating existing websites on request, and is expected to work collaboratively with the Department or Board/Committee that the webpage represents. The Contractor will be responsible for maintaining the Town of Townsend website, including seeing that all pages are current and for maintaining webpages that do not have a supporting staff member designated as the "owner" of the webpage. The Contractor is also responsible for posting News and Announcements as requested by Town staff, creating new webpages as required, and for making suggestions for website updates. The Contractor will be responsible for migrating data from the Town's existing website to the new website currently in process of creation.

The essential functions or duties of the Contractor under the Contract listed below are intended only as illustrations of the various type of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the Contractor.

- Sees that webpages are kept current by staff members assigned to department and Board/Committee pages.
- Responsible for maintaining webpages for Boards/Committees without designated staff persons such as, but not limited to, Finance Committee, Capital Planning Committee, Energy Committee, Flag Committee, Town Properties Committee, etc.

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<sup>1</sup> Contract Short Form - Services

- Responsible for creating webpages for Boards/Committees without designated staff persons assigned to the committee, and for new Boards/Committees that may be created from time to time (for example, Dog Park Committee).
- Posts News and Announcements on the website main page and on Department and Board/Committee pages as requested.
- Makes suggestions for website updates and design in order to improve the user's experience.

2. The Contract price to be paid to the Contractor by the Town is:

FY2024 - \$515 per month for 6 hours per week, \$19.16 for any hours in excess of 6 per week  
FY2025 - \$524.12 per month for 6 hours per week, \$19.50 for any hours in excess of 6 per week

Invoices to be submitted every month, for the previous month.

3. Payment will be made as follows:

3.1 There shall be no further costs, fees or reimbursable charges due the Contractor under this Contract unless said fees and/or costs are so set forth in writing. The Town will not pay any surcharge or premium on top of the direct out of pocket expenses, if any.

3.2 Final payment including any unpaid balance of the Contractor's compensation shall be due and payable when the project is completed, and the related services are complete.

4. Definitions:

4.1 Contract Documents: All documents relative to the Contract including (where used) Request for Proposals and all attachments thereto, Instructions to Bidders, Proposal Form, Specifications. The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all.

4.2 Date of Substantial Performance: The date when the work is sufficiently complete and the services are performed, in accordance with Contract Documents, as modified by approved Amendments and Change Orders.

4.3 Work: The services or materials contracted for, or both.

5. Term of Contract and Time for Performance:

This Contract shall be fully performed by the Contractor in accordance with the provisions of the Contract Documents on or before June 30, 2025, unless extended, in writing, at the sole discretion of the Town, and not subject to assent by the Contractor. Time is of the essence for the completion of the Contract. Both Parties agree that, absent written notice by either party, this contract will automatically renew with a 3.5% increase to both the fixed monthly cost and hourly rate in excess of 6 hours per week.

6. Subject to Appropriation:

Notwithstanding anything in the Contract Documents to the contrary, any and all payments which the Town is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the Town Accountant. In the absence of appropriation or availability as certified herein, this Contract shall be immediately terminated without liability for damages, penalties or other charges to the Town.

### 7. Permits and Approvals:

Permits, Licenses, Approvals and all other legal or administrative prerequisites to its performance of the Contract shall be secured and paid for by the Contractor prior to commencement of the Services, and shall be maintained throughout the duration of the Contract.

### 8. Termination and Default:

8.1 Without Cause. The Town may terminate this Contract on thirty (30) calendar days' notice when in the Town's sole discretion it determines it is in the best interests of the Town to do so, by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor. Upon termination without cause, Contractor will be paid for services rendered to the date of termination.

8.2 For Cause. If the Contractor is determined by the Town to be in default of any term or condition of this Contract, the Town may terminate this Contract on fourteen (14) days' notice by providing notice to the Contractor, which shall be in writing and shall be deemed delivered and received when given in person to the Contractor, or when received by fax, express mail, certified mail return receipt requested, regular mail postage prepaid or delivered by any other appropriate method evidencing actual receipt by the Contractor. The Contractor shall have the right to cure such cause within seven (7) days following the date of notice above, however, the acceptance of such cure and rescission of such termination is within the sole discretion of the Town.

8.3 Default. The following shall constitute events of a default under the Contract:

(1) any material misrepresentation made by the Contractor to the Town; 2) any failure to perform any of its obligations under this Contract including, but not limited to the following: (i) failure to commence performance of this Contract at the time specified in this Contract due to a reason or circumstance within the Contractor's reasonable control, (ii) failure to perform this Contract with sufficient personnel and equipment or with sufficient material to ensure the completion of this Contract within the specified time due to a reason or circumstance within the Contractor's reasonable control, (iii) failure to perform this Contract in a manner reasonably satisfactory to the Town, (iv) failure to promptly re-perform within a reasonable time the services that were rejected by the Town as unsatisfactory, or erroneous, (v) discontinuance of the services for reasons not beyond the Contractor's reasonable control, (vi) failure to comply with a material term of this Contract, including, but not limited to, the provision of insurance and non-discrimination, (vii) any other acts specifically and expressly stated in this Contract as constituting a basis for termination of this Contract, and (viii) failure to comply with any and all requirements of state law and/or regulations, and Town bylaw and/or regulations.

### 9. The Contractor's Breach and the Town's Remedies:

Failure of the Contractor to comply with any of the terms or conditions of this Contract shall be a material breach of this Contract, and the Town of Townsend shall have all the rights and remedies provided in the Contract Documents, the right to cancel, terminate, or suspend the Contract in whole or in part, the right to maintain any and all actions at law or in equity or other proceedings with respect to a breach of this Contract, including "Damages" including but not limited to costs, attorney's fees or other damages resulting from said breach ("Damages") as well as specific performance, and the right to select among the remedies available to it by all of the above.

**10. Statutory Compliance:**

10.1 This Contract will be construed and governed by the provisions of applicable federal, state and local laws and regulations; and wherever any provision of the Contract or Contract Documents shall conflict with any provision or requirement of federal, state or local law or regulation, then the provisions of law and regulation shall control. Where applicable to the Contract, the provisions of the General Laws are incorporated by reference into this Contract.

10.2 The Contractor shall comply with all Federal, State and local laws, rules, regulations, policies and orders applicable to the Services provided pursuant to this Contract.

**11. Conflict of Interest:**

Both the Town and the Contractor acknowledge the provisions of the State Conflict of Interest Law (General Laws Chapter 268A), and this Contract expressly prohibits any activity which shall constitute a violation of that law. The Contractor shall be deemed to have investigated the application of M.G.L. c. 268A to the performance of this Contract.

**12. Certification of Tax Compliance**

This Contract must include a certification of tax compliance by the Contractor, as required by General Laws Chapter 62C, Section 49A (Requirement of Tax Compliance by All Contractors Providing Goods, Services, or Real Estate Space to the Commonwealth or Subdivision).

**13. Non-Discrimination/Affirmative Action**

The Contractor shall carry out the obligations of this Contract in compliance with all requirements imposed by or pursuant to federal, State and local ordinances, statutes, rules and regulations and policies prohibiting discrimination in employment. Contractor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap or sexual orientation.

**14. Assignment:**

The Contractor shall not assign, sublet or otherwise transfer this Contract, in whole or in part, without the prior written consent of the Town, and shall not assign any of the moneys payable under this Contract, except by and with the written consent of the Town.

**15. Condition of Enforceability Against the Town:**

This Contract is only binding upon, and enforceable against, the Town if: (1) the Contract is signed by a majority of the Board of Selectmen; and (2) endorsed with approval by the Town Accountant as to appropriation or availability of funds.

**16. Corporate Contractor:**

If the Contractor is a corporation and this Contract is being executed by a party other than its president, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate certifying the corporate capacity and authority of the party signing this Contract for the corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the Contract is executed by the Contractor. This Contract shall not be enforceable against the Town of Townsend unless and until the Contractor complies with this section.

17. Minimum Wage:

The Contractor will carry out the obligations of this Contract in full compliance with all of the requirements imposed by or pursuant to G. L. c. 151, §1, *et seq.* (Minimum Wage Law).

18. Liability of Public Officials:

To the full extent permitted by law, no official, employee, agent or representative of the Town of Townsend shall be individually or personally liable on any obligation of the Town under this Contract.

19. Indemnification:

The Contractor hereby agrees to indemnify, defend and save harmless the Town, the Town's officers, agents and employees, from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs, expenses, recoveries and judgments of every nature and description (including attorneys' fees) that may arise in whole or in part out of or in connection with the work being performed or to be performed, or out of any act or omission by the Contractor, its employees, agents, subcontractors, material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. The Contractor hereby agrees to reimburse the Town for damage to its property caused by the Contractor, its employees, agents, subcontractors or material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, including damages caused by his, its or their use of faulty, defective, or unsuitable material or equipment, unless the damage is caused by the Town's gross negligence or willful misconduct. The Town agrees to make reasonable effort to notify the Contractor of any duty arising out of this paragraph, but failure to make timely notice will not relieve the Contractor of any duty under this paragraph.

The foregoing provisions shall not be deemed to be released, waived, limited or modified in any respect by reason of any surety or insurance provided by the Contractor under the Contract.

20. Insurance

Failure to provide and continue in force the following insurance during the period of this Contract shall be a material breach of this Contract, shall operate as an immediate termination thereof, and the Contractor hereby agrees to indemnify the Town for all losses, claims, and actions resulting from the failure to provide the insurance required by this Article.

All policies shall identify the Town as an additional insured (except Workers' Compensation and Professional Liability). The Contractor must provide notice to the Town immediately upon cancellation or modification of the policy. All Certificates of Insurance shall be on the "MIIA" or "ACORD" Certificate of Insurance form, shall contain true transcripts from the policies, authenticated by the proper officer of the Insurer, evidencing in particular those insured, the extent of coverage, the location and operations to which the insurance applies, the expiration date and the above-mentioned notice clauses.

The Contractor shall obtain and maintain during the term of this Contract the following insurance coverage from companies licensed to do business in the Commonwealth of Massachusetts and acceptable to the Town.

20.1 Workers Compensation Insurance:

The Contractor shall provide by insurance for the payment of compensation and the furnishing of other benefits under Chapter 152 of the General Laws of Massachusetts (The Worker's Compensation Act) to all employees of the Contractor who are subject to the provisions of Chapter 152 of the General Laws of Massachusetts.

The Contractor shall furnish to the Town a certificate evidencing such insurance prior to the execution of this Contract before the same shall be binding on the parties thereto, except if specifically waived by the Town.

#### 20.2 Professional Liability Insurance

Liability of \$1 million per claim and \$3 million aggregate.

#### 20.3 Other Insurance Requirements

- a. Comprehensive commercial general liability insurance with limits of at least \$1 Million per occurrence and \$3 Million annual aggregate for property damage and \$1 Million per person and \$3 Million per occurrence for bodily injury, which shall include the Town of Townsend as an additional insured, and which shall cover bodily injury, sickness or disease, or death of any person including employees and those persons other than the Contractor's employees, and claims insured by usual personal liability coverage, death, or property damage arising out of the Work including injury or destruction of tangible property, including loss of use resulting therefrom.
- b. Motor vehicle insurance for any motor vehicles used in performing the Work, with limits of at least \$500,000 per person, and \$1 Million per accident.
- c. All policies shall identify the Town as an additional insured. (except Workers' Compensation and Professional Liability) The Contractor must provide notice to the Town immediately upon the cancellation modification of the policy. All Certificates of Insurance shall be on the "MIA" or "ACORD" Certificate of Insurance form, shall contain true transcripts from the policies, authenticated by the proper officer of the Insurer, evidencing in particular those insured, the extent of coverage, the location and operations to which the insurance applies, the expiration date and the above-mentioned notice clauses.
- d. The Contractor shall obtain and maintain during the term of this Contract the insurance coverage in companies licensed to do business in the Commonwealth of Massachusetts and acceptable to the Town.

#### 21. No Employment

The Contractor acknowledges and agrees that it is acting as an independent Contractor for all services rendered pursuant to this Contract, and neither the Contractor, nor its employees, agents, servants nor any person for whose conduct the Contractor is responsible shall be considered an employee or agent of the Town for any purpose and shall not file any claim or bring any action for any worker's compensation unemployment benefits and compensation for which they may otherwise be eligible as a Town employee as a result of work performed pursuant to the terms of this Contract.

#### 22. Payment

The Town agrees to make all reasonable efforts to pay to the Contractor the sum set forth in the Contractor's proposal within thirty (30) days of receipt of an invoice detailing the services provided and acceptance from the Town of said services.

#### 23. Waiver and Amendment

Amendments, or waivers of any additional term, condition, covenant, duty or obligation contained in this Contract may be made only by written amendment executed by all signatories to the original Contract, prior to the effective date of the amendment.

**24. Severability**

If any term or condition of this Contract or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining terms and conditions of this Contract shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

**25. Forum and Choice of Law**

This Contract and any performance herein shall be governed by and be construed in accordance with the laws of the Commonwealth of Massachusetts. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth of Massachusetts or the federal district court sitting in the Commonwealth of Massachusetts, which shall have exclusive jurisdiction thereof. This paragraph shall not be construed to limit any other legal rights of the parties.

**26. Notices**

Any notice permitted or required under the provisions of this Contract to be given or served by either of the parties hereto upon the other party hereto shall be in writing and signed in the name or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified or registered mailing properly addressed. Notice to the Contractor shall be deemed sufficient if sent to the address set forth on page 1 or furnished from time to time in writing hereafter.

**27. Binding on Successors:**

This Contract is binding upon the parties hereto, their successors, assigns and legal representatives (and where not corporate, the heirs and estate of the Contractor). Neither the Town nor the Contractor shall assign or transfer any interest in the Contract without the written consent of the other.

**28. Entire Agreement:**

This Contract, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Contract supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or amended except by a written document executed by the parties hereto.

IN WITNESS WHEREOF the parties have hereto and to two other identical instruments set forth their hands and executed this as an instrument under seal this the day and year first above written.

The Town of Townsend by:

Charles Sexton-Diranian 3/4/24  
Board of Selectmen Date

Charles Sexton-Diranian  
Print Name

Joseph Z. Shank 3/4/24  
Board of Selectmen Date

Joseph Z. Shank  
Print Name

Theresa A. Morse 3/4/24  
Board of Selectmen Date

Theresa A. Morse  
Print Name

R. Eric Slagle 3/4/24  
Department Head Date

R. Eric Slagle  
Print Name

The Contractor by:

Robert Mark Dieder 3/4/24  
Signature Date

Robert Mark Dieder  
Print Name & Title

Certified as to  
Appropriation/Availability of Funds:

Elizabeth Braccia 03/13/2024  
Town Accountant Date