

TOWN OF BOXFORD, MASSACHUSETTS

AGREEMENT

THIS AGREEMENT made this 3rd day of April, 2024 by and between the Town of Boxford, a municipal corporation located within the Commonwealth of Massachusetts (hereinafter, the "Town"), and FWM Inc., a corporation having a usual place of business at , hereinafter referred to as the "CONTRACTOR".

WITNESSETH:

WHEREAS, the TOWN utilized a Sourcewell cooperative purchasing agreement for the purchase and delivery of Americans with Disabilities Act (ADA) accessible docks for Stiles Pond Beach, hereinafter "the Project"; and

WHEREAS, the CONTRACTOR submitted a Proposal to perform the work required to complete the Project; and

WHEREAS, the TOWN has decided to award the contract therefor to the CONTRACTOR.

NOW, THEREFORE, the TOWN and the CONTRACTOR agree as follows:

1. CONTRACT DOCUMENTS. The Contract Documents consist of this Agreement and Sales Order #S00031997, dated March 13, 2024. The Contract Documents constitute the entire Agreement between the parties concerning the work, and all are as fully a part of this Agreement as if attached hereto.
2. THE WORK. The Work consists of delivery, assembly, and installation of two 60' by 6.5' docks, accompanying 10' ramps, and a 10' by 10' swim float, as more fully described in the Contract Documents as defined above.
3. TERM OF CONTRACT. This Agreement shall be in effect from the date listed above and shall expire upon completion of installation, unless terminated earlier pursuant to the terms hereof.
4. COMPENSATION.
 - A. The TOWN shall pay the CONTRACTOR as full compensation for the performance of the work outlined in Section 2 above the contract sum of \$71,826.32.
 - B. The acceptance by the CONTRACTOR of final payment for items and/or services provided shall be deemed a release of the TOWN from any and all claims and liabilities under this Agreement.

- C. Neither the TOWN's review, approval or acceptance of, nor payment for any of the items and/or services provided shall be construed to operate as a waiver of any rights of the TOWN under the Agreement or any cause of action arising out of the performance of the Agreement.
- D. The TOWN shall cancel this Agreement if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal year succeeding the current fiscal year as required by G.L. c. 30B, sec. 12(c)(3).
5. PAYMENT OF COMPENSATION. The TOWN shall make payments within thirty (30) days after its receipt of Invoice.
6. LIABILITY OF THE TOWN. The TOWN's liability hereunder shall be to make all payments when they shall become due, and the TOWN shall be under no further obligation or liability. Nothing in this Agreement shall be construed to render the TOWN or any elected or appointed official or employee of the TOWN, or their successors in office, personally liable for any obligation under this Agreement.
7. INDEPENDENT CONTRACTOR. The CONTRACTOR acknowledges and agrees that it is acting as an independent contractor for all work and services rendered pursuant to this Agreement, and shall not be considered an employee or agent of the TOWN for any purpose.
8. INDEMNIFICATION. The CONTRACTOR shall indemnify, defend, and hold the TOWN harmless from and against any and all claims, demands, liabilities, actions, causes of actions, costs and expenses, including attorney's fees, arising out of the CONTRACTOR's breach of this Agreement or the negligence or misconduct of the CONTRACTOR, or the CONTRACTOR's agents or employees.
9. INSURANCE.
- A. The CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the insurance coverage in companies licensed to do business in the Commonwealth of Massachusetts, and acceptable to the TOWN, as set forth below:

General Liability

Bodily Injury Liability	\$1,000,000 per occurrence
Property Damage Liability	\$500,000 per occurrence
(or combined single limit)	\$1,000,000 per occurrence

Automobile Liability

Bodily Injury Liability	\$1,000,000 per occurrence
Property Damage Liability	\$500,000 per occurrence
(or combined single limit)	\$1,000,000 per occurrence

Workers' Compensation Insurance

Coverage for all employees in accordance with Massachusetts General Laws

Professional Liability Insurance

Minimum Coverage \$1,000,000 per occurrence

- B. All policies shall identify the TOWN as an additional insured (except Workers' Compensation) and shall provide that the TOWN shall receive written notification at least 30 days prior to the effective date of any amendment or cancellation. Certificates evidencing all such coverages shall be provided to the TOWN upon the execution of this Agreement. Each such certificate shall specifically refer to this Agreement and shall state that such insurance is as required by this Agreement. Failure to provide or to continue in force such insurance shall be deemed a material breach of this Agreement and shall be grounds for immediate termination.
10. ASSIGNMENT. The CONTRACTOR shall not assign, sublet or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the TOWN, and shall not assign any of the moneys payable under this Agreement, except by and with the written consent of the TOWN.
11. TERMINATION. A. Termination for Cause. If at any time during the term of this Agreement the TOWN determines that the CONTRACTOR has breached the terms of this Agreement by negligently or incompetently performing the work, or any part thereof, or by failing to perform the work in a timely fashion, or by failing to perform the work to the satisfaction of the TOWN, or by not complying with the direction of the TOWN or its agents, or by otherwise failing to perform this Agreement in accordance with all of its terms and provisions, the TOWN shall notify the CONTRACTOR in writing stating therein the nature of the alleged breach and directing the CONTRACTOR to cure such breach within ten (10) days. The CONTRACTOR specifically agrees that it shall indemnify and hold the TOWN harmless from any loss, damage, cost, charge, expense or claim arising out of or resulting from such breach regardless of its knowledge or authorization of the actions resulting in the breach. If the CONTRACTOR fails to cure said breach within ten (10) days, the TOWN may, at its election at any time after the expiration of said ten (10) days, terminate this Agreement by giving written notice thereof to the CONTRACTOR specifying the effective date of the termination. Upon receipt of said notice, the CONTRACTOR shall cease to incur additional expenses in connection with this Agreement. Upon the date specified in said notice, this Agreement shall terminate. Such termination shall not prejudice or waive any rights or action which the TOWN may have against the CONTRACTOR up to the date of such termination, and the CONTRACTOR shall be liable to the TOWN for any amount which it may be required to pay in excess of the compensation provided herein in order to complete the work specified herein in a timely manner. Upon such termination, the CONTRACTOR shall be entitled to compensation for all satisfactory work completed prior to the termination date, as determined by the TOWN.

B. Termination for Convenience. The TOWN may terminate this Agreement at any time for convenience by providing the CONTRACTOR written notice specifying therein the termination date which shall not be sooner than ten days from the issuance of said notice. Upon receipt of said notice, the CONTRACTOR shall cease to incur additional expenses in connection with this Agreement. Upon such termination, the CONTRACTOR shall be entitled to compensation for all satisfactory work completed prior to the termination date, as determined by the TOWN, such payment not to exceed the fair value of the services provided hereunder.

12. INSPECTION AND REPORTS. The TOWN shall have the right at any time to inspect the work of the CONTRACTOR, including the right to enter upon any property owned or occupied by CONTRACTOR, whether situated within or beyond the limits of the TOWN. Whenever requested, CONTRACTOR shall immediately furnish to the TOWN full and complete written reports of its operation under this Contract in such detail and with such information as the TOWN may request.
13. ROYALTIES AND PATENTS. The CONTRACTOR shall pay all applicable royalties and license fees. In addition, the CONTRACTOR hereby represents that it is duly authorized to use any process or other intellectual property rights held by third parties in the performance of this Agreement, it shall defend all suits or claims for infringement of any patent or other intellectual property rights and shall indemnify and hold the TOWN harmless from loss on account thereof.
14. SUCCESSOR AND ASSIGNS. This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither the TOWN nor the CONTRACTOR shall assign or transfer any interest in the Agreement without the written consent of the other.
15. COMPLIANCE WITH LAWS. The CONTRACTOR shall comply with all Federal, State and local laws, rules, regulations and orders applicable to the work provided pursuant to this Agreement, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the performance of such work.
16. NOTICE. Any and all notices, or other communications required or permitted under this Agreement, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, by registered or certified mail or by other reputable delivery service, to the parties at the addresses set forth on Page 1 or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service, when deposited with such delivery service.
17. SEVERABILITY. If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, the validity, legality, and enforceability of the remaining

terms and conditions of this Agreement shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.

18. GOVERNING LAW. This Agreement shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts and the CONTRACTOR submits to the jurisdiction of any of its appropriate courts for the adjudication of disputes arising out of this Agreement.

19. ENTIRE AGREEMENT. This Agreement, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement 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 hereto have executed this Agreement on the day and year first above written.

I certify that an appropriation is available in the amount of this Contract.

TOWN OF BOXFORD, MA

By its: SELECT BOARD

Town Accountant

Approved as to Form:

CONTRACTOR:

Town Counsel



(Signature)
Michael Barry VP

(Name and Title)

Sales Order

FWM FWM Inc.
 11 Friars Drive
 Hudson, NH 03051
 Phone: 603-578-3366

Order #	Date
S00031997	03/13/2024



Bill To:
Brendan Sweeney 7A Spofford Road Boxford, MA 01921

Ship To:
Brendan Sweeney 7A Spofford Road Boxford, MA 01921

Customer: Brendan Sweeney

PO Number: 202547

Sales Rep	Payment Terms	FOB Point	Carrier	Ship Service	Date Scheduled
Keith Wilson	Due on receipt	Origin	Install		03/13/2024

Item #	Type	Number	Description	Unit Price	Qty Ordered	Total Price
1	Sale	E404010	GANGWAY, 10' POLY GANGWAY SECTION	\$1,084.00	2 ea	\$ 2,168.00
2	Sale	E400440	GANGWAY HINGE KIT PE GANGWAY TO 40" DOCK	\$416.00	2 ea	\$ 832.00
3	Sale	E206010	DOCK SECTION 60" X 10' DOCK SECTION (BEIGE)	\$1,926.00	2 ea	\$ 3,852.00
4	Sale	E208010	DOCK SECTION 80" X 120" (BEIGE)	\$2,526.00	12 ea	\$ 30,312.00
5	Sale	E301100	COUPLER SET W/ COMPOSITE ROD	\$65.00	46 ea	\$ 2,990.00
6	Sale	ES35116	DOCK CURBING PLASTIC 2 1/2" x 3 1/2" X 116" (no screws) (BROWN)	\$104.00	5 ea	\$ 520.00
7	Sale	E80530SS	3" FH SCREWS FOR CURBING	\$2.43	24 ea	\$ 58.32
8	Sale	E135350	PIPE BRACKET KIT STANDARD DUTY 3.5" - BEIGE	\$164.00	20 ea	\$ 3,280.00
9	Sale	E116027	2-3/8 - OD -10 GAUGE X 7' L GALVANIZED PIPE Sourcewell Open Item	\$84.00	6 ea	\$ 504.00
10	Sale	E11602105	2-3/8" OD - 10 GAUGE X 10.5' L GALVANIZED PIPE Sourcewell Open Item	\$126.00	4 ea	\$ 504.00
11	Sale	E1160214	2-3/8" OD - 10 GAUGE X 14' L GALVANIZED PIPE Sourcewell Open Item	\$168.00	6 ea	\$ 1,008.00
12	Sale	E1160221	2-3/8" OD - 10 GAUGE X 21' L GALVANIZED PIPE Sourcewell Open Item	\$252.00	4 ea	\$ 1,008.00
13	Sale	E100255	Auger Kit for 2-1/2" OD Pipe Sourcewell Open Item	\$45.00	20 ea	\$ 900.00
14	Sale	E900012	EZD POLE COVER & CAP Sourcewell Open Item	\$47.15	20 ea	\$ 943.00
15	Sale	E300260-EZGR	MOLDED POLYETHYLENE 5 STEP SWIM LADDER (GRAY)	\$531.00	3 ea	\$ 1,593.00
16	Sale	E100900	HANDRAIL POST KIT, PE POST WITH HARDWARE (BEIGE)	\$217.00	52 ea	\$ 11,284.00

Sales Order

FWM FWM Inc.
 11 Friars Drive
 Hudson, NH 03051
 Phone: 603-578-3366

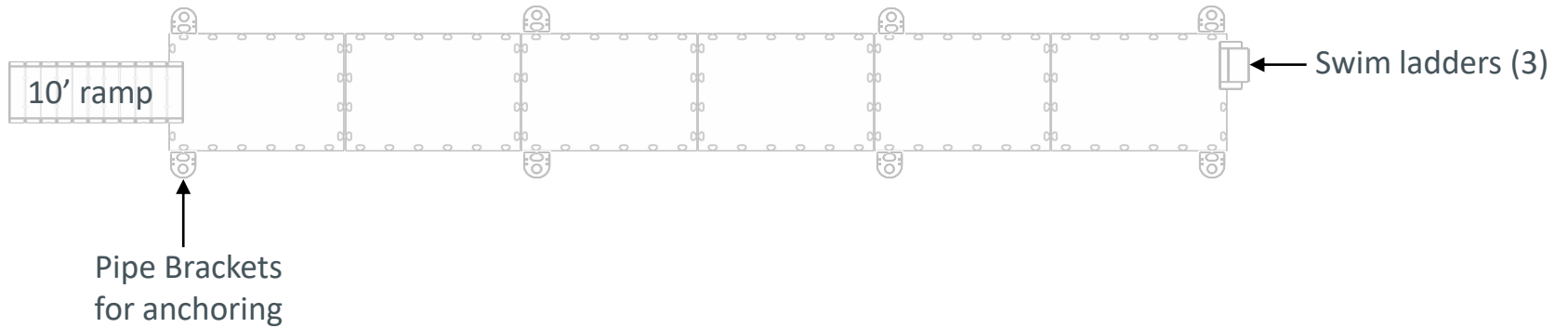
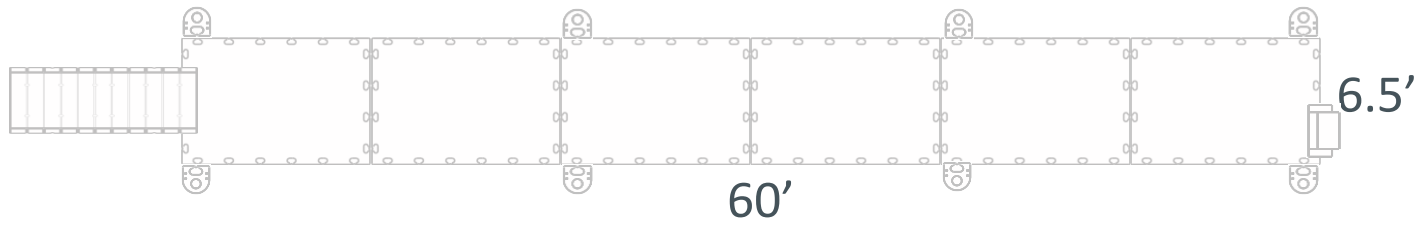
Order #	Date
S00031997	03/13/2024



Item #	Type	Number	Description	Unit Price	Qty Ordered	Total Price
17	Sale	Other	Other - Custom/Not in Catalog 1'-1/2" OD Aluminum Pipe for Poly Posts (Sourcewell Open Item)	\$65.00	78 ea	\$ 5,070.00
18	Sale	EZDDel	EZD Delivery	\$500.00	1 ea	\$ 500.00
19	Sale	EZDInstall	EZ Install	\$2,500.00	1 ea	\$ 2,500.00
20	Shipping	EZDFREIGHT	Freight Charges	\$2,000.00	1 ea	\$ 2,000.00
21	Note		Sourcewell #202547			
22	Note		EZ Dock Sourcewell #010521-LTS-2			

Subtotal:	\$71,826.32
Sales Tax:	\$0.00
Total:	\$71,826.32

Approval: _____ Date: _____



MODULAR

VERSATILE

MAINTENANCE FREE

DURABLE

SAFE



B. Sweeney – Town of Boxford

