**Village Grande at English Mill Homeowners Association**

**PROCEDURE 108–Contracting for Goods and Services**

Process/Procedure Owner: Site Manager

## 1.1 Purpose

This procedure describes the process to follow to Contract any non- emergency service, material or supplies required for the operation of the Common Facilities of VGEM. Emergency situations should be handled as appropriate to the circumstance. Confirming Contracts for emergencies should be completed as soon as practical after the fact to maintain a record of the occurrence. Purchases for Clubs or Events (e.g. Halloween Party) sponsored by the HOA are not covered by this procedure.

The General Covenants Conditions and Restrictions for the entire community provides that the Board of Trustees is empowered to promulgate, adopt and publish such Rules and Regulations as may be necessary to carry out the intent of the General Covenants Conditions and Restrictions.

## 1.2 Roles and Duties

**Seller** – Responsible to provide the goods and services as well as all other deliverables defined in the Contract. This may include training, Manuals, special tools, spare parts etc.

**Site Manager** – Receives the request to purchase service, materials and supplies in accordance with the VGEM Delegation of Authority and assures the request is fully defined. The Site Manager also administers the overall Contracting Process including Request for Bids or Proposals, Evaluation, Award, Contract Administration and payment.

**Receiver** – Confirms receipt of material or completion of services in accordance with the terms of the agreement. The Receiver should normally be someone other than the Site Manager.

**1.3 Procedure**

Upon identification of a need for service, materials or supplies, the Site Manager shall review the need, assure it is fully defined and initiate the acquisition. In Emergency situations, an agreement can be placed verbally and confirmed via written Contract as soon as practicable. Purchases valued at greater than $10,000 or any purchase that may have a critical impact on the HOA (as determined by the Board of Trustees) are considered a Major Contracts and shall comply with the provisions in this procedure applicable to Major Contracts.

If value of the purchase is within the authority (DOA) delegated to the Site Manager, (s)he shall prepare the agreement as detailed below and transmit to the Seller. The Site Manager shall use its best efforts to award these agreements to Sellers who can meet the specifications or scope of the work and provide the best combination of Price, Quality and Schedule. When practicable multiple bids should be obtained.

If the purchase is beyond the authority (DOA) of the Site Manager, the Site Manager shall prepare a Purchase Recommendation (See Exhibit 1) and review it with the entity having the approval authority. Award of the Contract shall be made after approval of the recommendation. This recommendation may be as simple as a short statement or a thorough analysis depending on the specific needs.

A Contract file shall be created for all contracts and shall include a copy of any Invitation to bid, a copy of all bids/proposals, a copy of the approved Purchase Recommendation, all correspondence between Seller and HOA or internal to the HOA regarding the Invitation to Bid and the subsequent Contract.

Contracts documents should be written in Plain Language (See Exhibit 2 for a Document Checklist for Plain Language), include a Contract Date, Contract Effective Date, Required Delivery/Completion Date, Contract Expiration Date, ship to address or location of work to be performed, Method of shipment, FOB, Payment Terms, scope of work, specification or full description including a list of all deliverables and showing, part number if applicable, unit price, extended price, subtotal of extended prices, tax, shipping and handling, other costs, special terms and conditions and signature. The Contract should be written using the HOA Standard Contract Form as shown in Exhibit 3 which includes the Standard Terms and Conditions. Contracts for Services should be executed by both the HOA and the Seller. One copy of the fully executed Contract shall be mailed to the Seller, and one copy placed in the Contract File.

The Contract documents should fully define the responsibilities of the Seller, the HOA and where applicable, the homeowners of VGEM.

When Service is rendered, or material received, it should be inspected to assure that it conforms to the agreement. If so, it should be so noted in the Contract file. Inspection of materials should be done when the deliverer of the materials is still present, whenever possible, and any discrepancies should be noted on the deliverer’s paperwork. If there is a discrepancy, the Site Manager should be notified, and the Site Manager shall immediately notify the Seller.

**Major Contracts**, as defined herein shall adhere to the following:

1. A minimum of 3 Bids shall be sought. In cases where it is anticipated that some Sellers may decline to bid an adequate number of Sellers should be invited to bid to obtain 3 bids and an Intent to Bid document shall be required to be submitted by each bidder. If 3 bids are not obtained, the Purchase Recommendation shall include an explanation of why there are less than 3 bids.
2. All bids shall remain confidential and sealed until the Bid Closing Date. Bids should be kept in a secure location and not distributed until after the Bid Closing Date. During the period from the Bid Closing Date until the award of the Contract, bid information shall remain confidential and distributed only on a need to know basis.
3. The evaluation criteria should be documented prior to the start of evaluating proposals. Each Contract will have unique evaluation criteria, but such criteria generally includes price, schedule, quality, prior performance of Seller at VGEM, reference checks, features and characteristics that are unique to a given Seller, commercial terms and conditions and Sellers ability to provide future maintenance or modifications as required.
4. An evaluation team shall be assigned which includes a minimum of 3 people. Typically, the Site Manager and at least one Board member shall be assigned to each team. The team should be selected prior to issuing the invitation to bid.
5. All Major Contracts shall be included on a Contracting Plan (See Exhibit 4) that is maintained by the Site Manager and reviewed by the Board of Trustees, at a minimum, on a quarterly basis. This plan should include a timeline for each Major Contract identifying time for:
	1. Preparing an invitation to bid package including Specifications/Scope of Work, Special Terms and Conditions and Schedule Requirements
	2. Investigating potential Sellers to be included on the Invitation to bid list.
	3. Bidders to thoroughly analyze the invitation to bid and prepare a proposal/bid. When necessary this should also include time for Site visits and/or pre-bid meetings.
	4. Analyzing proposals and preparing a Purchase Recommendation. When necessary this should also include time for questions for each Seller and corresponding response time as well as time to meet with some or all Sellers to review their proposals.
	5. Approval of the Award by the Board of Trustees at an open HOA meeting
	6. Negotiation, preparation and execution of a Contract, and
	7. Startup time as needed

##  Definitions and Acronyms

**Bid Closing Date –** The specific date and time when all bids are to be received.

**Common Facilities –**

**Contract –** The agreement between the Seller and the HOA for the purchase of goods or services.

**HOA** – Village Grande at English Mill Homeowners Association Inc.

**Seller** - The entity providing the service, materials or supplies.

**Site Manager**- The person responsible for the day to day administration of the HOA.

 **VGEM** – Village Grande at English Mill

## Attachments

Exhibit 1 - Purchase Recommendation

 Exhibit 2 – Plain Language Checklist

 Exhibit 3 – Standard HOA Contract Form including Standard Terms and Conditions

 Exhibit 4 – Sample Contracting Plan

 **1.6 References**

Procedure 107 – Delegation of Authority

## 1.7 Inquiries

Questions regarding this procedure should be directed to the Site Manager.

**Exhibit 1**

**Sample Purchase Recommendation**

 (This is a complex Recommendation. Most Recommendations would be simpler.)

**Acoustical Improvement of Large Meeting Room in VGEM Clubhouse**

**Objective:**  Improve the Sound Quality in the VGEM Large Meeting room to provide an acceptable environment during gatherings of 100 + people or for events

**Selection of Bidders:** Contact was made with Ivan Blitz, an architect in Philadelphia. Ivan gave name of Metropolitan Acoustics, an Acoustic Consulting firm, owned by Felicia Doggett. After discussing this project with Felicia, she gave names of several qualified contractors from the Philadelphia area. The following is the conclusion of the Acoustical committee.

We elected to use a 2-step bidding process with all bidders identified providing a preliminary proposal outlining their approach and cost. These preliminary proposals allowed us to gain a better understand the work and to eliminate any bidders who appeared to be unacceptable from a cost or scope basis. Based on these preliminary proposals, we would determine a more specific requirement and ask for a detailed proposal based on our specific requirements.

**Evaluation Criteria:** Evaluation Criteria can be broken down into 4 categories as follows: (1) Performance; (2) Quality; (3) Cost and; (4) Schedule. For this Evaluation, the Criteria are:

 **Performance:** Reduce the Reverberation Time in the large meeting room to 1.5 seconds.

 **Quality:**

* + - * 1. Product Specification of sound absorbing material proposed.
				2. Product Specification of the covering/architectural treatment proposed.
				3. Experience of Supplier in installing similar projects.
				4. Reference Checks.

 **Cost:** Calculate the PV Cost of proposal including Purchase price, cost of permits and inspections, Community support costs, maintenance and repair costs and product life.

 **Schedule:** Lead time for materials, installation time, overall elapsed time from award to completion of work

**Responses:** Preliminary proposals were received from 7 firms, A review of these proposals quickly identified 4 bidders who were truly interested in our project and provided a competitive proposal that was well thought out and should meet our needs. As a result, we solicited final proposals from: W, X, Y and Z.

* + - * 1. .

A detailed summary of each of these proposals is contained in Exhibit 1 – Bid Summary

**Evaluation Summary: (**See Exhibit 1 for details)

 All bidders used the same approach, … Each of the bidders proposed a different amount of material to accomplish the reduction in reverberation time as shown on the attached Table:

Prices quoted from each bidder are shown in the following Table 2

**Recommendation:**

Since X, Y and Z all bid identical materials, we would recommend X and Y over the other 2 bidders based on cost per square foot and the higher likelihood that the coverage proposed by X and Y solve our objective. Z’s original proposal is higher than X however the painted panels are higher price.

We recommend that we negotiate with Z for a Firm and Final Proposal for both painted and fabric covered panels. The Board can then select the desired covering.

**Submitted by:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Approved by:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Exhibit 2**

**Plain Language Checklist**

Use this checklist to see if your document meets plain language standards. (If you are writing for the web, here's the additional web list.) Click on the links for a brief explanation of each standard. You can find more extensive discussions of these standards throughout this website, especially in the "how to" section.

1. written for the average reader
2. organized to serve the reader's needs
3. has useful headings
4. uses "you" and other pronouns to speak to the reader
5. uses active voice
6. uses short sections and sentences
7. uses the simplest tense possible-simple present is best
8. uses base verbs, not nominalizations (hidden verbs)
9. omits excess words
10. uses concrete, familiar words
11. uses "must" to express requirements; avoids the ambiguous word "shall"
12. places words carefully (avoids large gaps between the subject, the verb and the object;
13. puts exceptions last; places modifiers correctly)
14. uses lists and tables to simplify complex material
15. uses no more than two or three subordinate levels

Exhibit 3

Standard Contract

Contract for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This is a contract entered into by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as "Seller") and Village Grande at English Mill Home Owners Association, Inc. (hereinafter referred to as "HOA") on this date, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ .

The Seller's place of business is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and the HOA's place of business is1 Village Grande Road, Egg Harbor Twp. NJ 08234.

The HOA hereby engages the Seller to provide goods and/or services described below in accordance with the attached Standard Terms and Conditions as well as any other Attachments listed below. The Seller hereby agrees to provide the HOA with such goods and/or services in exchange for consideration described herein.

**Description of Goods and/or Services to be Provided**:

**Quantity --Unit-- ---------------------------Description--------------------------- Unit Price Extended Price**

\_\_\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_

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**Attachments: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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In witness of their agreement to the terms above, the parties or their authorized agents hereby affix their signatures:

* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* (Printed Name of HOA or agent) (Printed Name of Seller or agent)
* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
* (Signature of HOA or agent) (Date) (Signature of Seller or agent) (Date)

**Standard Terms and Conditions**

**Agreements**: Contracts are not valid unless signed by Village Grande at English Mill, Homeowners Association, Inc (HOA) Authorized Representative. HOA will not recognize claims based on verbal agreements.

**Acceptance of Agreement**. Seller's commencement of work on the goods subject to this agreement or shipment of such goods, whichever occurs first, shall be deemed an effective mode of acceptance of this agreement. Any acceptance of this agreement is limited to acceptance of the express terms contained on the face and back hereof.

**Shipment**. If delivery is not made by the date indicated in this agreement, HOA may, in addition to its other rights, cancel this agreement, without any liability whatsoever. If in agreement to comply with HOA's required delivery date it becomes necessary for Seller to ship by a more expensive way than specified in this purchase agreement, any increased costs resulting there from shall be paid for by Seller unless the necessity for such rerouting or expedited handling has been caused by HOA.

**Force Majeure**. HOA may delay delivery or acceptance occasioned by causes beyond its control. Seller shall hold such goods at the direction of the HOA and shall deliver them when the cause affecting the delay has been removed. HOA shall be responsible only for Seller's direct additional costs in holding the goods or delaying performance of this agreement at HOA's request. Causes beyond HOA's control shall include government action or failure of the government to act where such action is required, strike or other labor trouble, fire, or unusually severe weather.

**Changes**. HOA shall have the right at any time to make changes to this agreement. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made, and this agreement shall be modified in writing accordingly. Seller agrees to accept any such changes subject to this paragraph.

**Price and Payment**: Seller warrants that the prices for the articles sold to the HOA are not less favorable than those currently extended to any other customer for the same or similar articles in similar quantities. In the event Seller reduces its price for such article during the term of this agreement, Seller agrees to reduce the prices hereof correspondingly. No modification or adjustment of the stated price may be made without the signed written agreement of HOA. If the price is not stated on this Agreement, the price shall be the lower of: the later price last quoted or paid, or the prevailing market price. Payment shall be made Net 30 days after the later of receipt of a correct invoice and HOA’s acceptance of the goods and/or Services furnished hereunder unless specific payment provisions are stated otherwise within this agreement.

**Setoff**. All claims for money due or to become due from HOA shall be subject to deduction or set off by the HOA by reason of any counterclaim arising out of this or any other transaction with Seller.

**Delivery and Risk of Loss**: Delivery shall be F.O.B. destination unless otherwise specified on the face of this agreement. Each invoice shall show shipping charges as a separate item and such charges shall not exceed the actual shipping charge, notwithstanding any agreement by HOA to pay freight or other transportation charges. Delivery is not complete until the goods have been received and accepted. Payment for the goods delivered hereunder shall not constitute acceptance thereof. HOA reserves the right to refuse C.O.D. shipments.

**Warranty**. Seller expressly warrants that all goods or services furnished under this agreement shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Seller warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods or services. Seller warrants that all goods or services furnished hereunder will be merchantable and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. Seller agrees to replace or correct defects of any goods or services not conforming to the foregoing warranty promptly, without expense to HOA, when notified of such nonconformity by HOA, provided HOA elects to provide Seller with the opportunity to do so. Unless specifically stated otherwise within this agreement, the Seller further warrants that Seller will repair or replace the goods and services furnished under this agreement if they fail in any way during a period no less than 12 months from the date of acceptance of the goods or services. In the event of failure of Seller to correct defects in or replace nonconforming goods or services promptly, HOA, after reasonable notice to Seller, may make such corrections or replace such goods and services and charge Seller for the cost incurred by HOA in doing so.

**Indemnification**. Seller shall defend, indemnify and hold harmless HOA against all damages, claims or liabilities and expenses (including attorneys' fees) arising out of or resulting in any way from any defect in the goods or services purchased hereunder, or from any act or omission of Seller, its agents, employees or subcontractors. This indemnification shall be in addition to the warranty obligations of Seller.

**Entire Agreement**. This agreement, and any documents referred to on the face hereof, constitute the entire agreement between the parties.

**Bankruptcy**. In the event of any proceeding, voluntary or involuntary, in bankruptcy or insolvency by or against the Seller, including any proceeding under the United States bankruptcy laws, or in the event of the appointment, with or without Seller’s consent, of a receiver of an assignee for the benefit of creditors, HOA shall be entitled to cancel any unfilled part of this agreement without any liability whatsoever.

**Taxes**. Unless otherwise indicated on the face of the agreement, HOA agrees to pay all State of New Jersey sales or use taxes. Seller will not charge for federal excise taxes.

**Termination for Convenience of HOA**. HOA reserves the right to terminate this agreement or any part hereof for its sole convenience. Seller shall not be paid for any work done after receipt of the notice of termination, nor for any costs incurred which Seller could reasonably have avoided.

**Termination for Cause**. HOA may terminate this agreement or any part hereof for cause in the event of any default by the Seller or if the Seller fails to comply with any of the terms and conditions of this offer. Late deliveries, deliveries of products which are defective, or which do not conform to this agreement shall all be causes allowing HOA to terminate this agreement for cause. In the event of termination for cause, HOA shall not be liable to Seller for any amount, and Seller shall be liable to HOA for all damages sustained by reason of the default which gave rise to the termination.

**Patents**. Seller agrees, upon receipt of notification, to promptly assume full responsibility for defense of any suit or proceeding which may be brought against HOA or its agents, customers, or other Sellers for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark or appearance of goods, or services furnished hereunder, and Seller further agrees to indemnify HOA, its agents and customers against any and all expenses, losses, royalties, profits, and damages, including court costs and attorneys' fees resulting from any such suit or proceeding, including any settlement. HOA may be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and costs of such representation shall be paid by Seller

**Insurance**. In the event Seller's obligations hereunder require or contemplate performance of services by Seller's employees, or persons under contract to Seller, to be done on HOA's property, or property of HOA's members or customers, the Seller agrees that all such work shall be done as an independent contractor and that the persons doing such work shall not be considered employees of the HOA. Seller shall maintain all necessary insurance coverage’s, including public liability and Workers' Compensation insurance. Seller shall indemnify and save harmless and defend HOA from all claims or liabilities arising out of the work covered by this paragraph.

**Assignments and Subcontracting**. No part of this agreement may be assigned or subcontracted without prior written approval of HOA.

**Limitation on HOA's Liability -Statute of Limitations**. In no event shall HOA be liable for anticipated profits or incidental or consequential damages. HOA's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this agreement or from the performance or breach thereof shall in no case exceed the price allocable to the goods or services or unit thereof, which gives rise to the claim. HOA shall not be liable for penalties of any description. Any action resulting from any breach on the part of HOA as to the goods or services delivered hereunder must be commenced within 1 year after the cause of action has accrued.

**Severability**. If any provision hereof shall be found to be inoperable or in violation of any law or regulation, only that provision shall be stricken from this agreement and the remainder of the agreement shall not be affected.

**Not for Profit**. The Village Grande at English Mill HOA affirms that all purchases made under this contract are for use solely by The Village Grande at English Mill HOA. We are a not for profit corporation organized under the laws of the State of New Jersey.

**Registration and Licensing.** Seller acknowledges that he is registered in the State of New Jersey to do the work contemplated by this agreement and has obtained all necessary licenses and registrations required to perform such work.

**Governing Law**. The laws of the State of New Jersey shall govern this Agreement and the right and the obligations of the parties hereunder, and the venue of any action brought hereunder shall be in the State of New Jersey.

**Exhibit 4**

**Sample Contracting Plan**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  **Contract Description** | **Required Start Date** | **Specification/Scope of Work Prepared** | **RFP/RFQ Issued** | **Bid Closing Date** | **Recommendation Prepared** | **Award** |
|   |   |   |   |   |   |   |
| Landscape Maintenance | 3/1/2019 | 6/1/2018 | 7/1/2018 | 9/15/2018 | 11/1/2018 | 12/20/2018 |
| Irrigation System Maint | 12/1/2016 | 6/1/2018 | 7/1/2018 | 9/15/2018 | 11/1/2018 | 12/20/2018 |
| Snow Removal | 9/1/2016 | 7/1/2017 | 8/1/2017 | 9/15/2017 | 11/1/2017 | 12/15/2017 |
| Pool Management | 5/1/2017 | 11/1/2017 | 11/15/2017 | 1/15/2018 | 3/1/2018 | 4/1/2018 |