

**REQUEST FOR QUALIFICATIONS  
FOR DESIGNER SERVICES FOR THE  
GEORGETOWN COUNCIL ON AGING SENIOR ACTIVITY CENTER PROJECT**

The Town of Georgetown, through its Board of Selectmen, is seeking responses from qualified Architectural and Engineering Firms registered and licensed in the Commonwealth of Massachusetts for the preparation of plans and specifications, cost estimating, bidding documents and construction documents for the renovation of a portion of the Perley Elementary School to accommodate a senior citizens activity center.

**I. GENERAL INFORMATION AND SUBMISSION REQUIREMENTS.**

- 1) RFQ packages can be obtained from the Town's Electronic Procurement Desk found at the Town of Georgetown website [www.georgetownma.gov](http://www.georgetownma.gov); and will be accepted at the Town of Georgetown, Town Administrator's Office, 1 Library Street, Georgetown, MA 01833, until 11:00 a.m. on Wednesday July 15, 2015 for this Request for Qualifications which is made in accordance with MGL c.7 §§38A ½ -O. **The original and four copies of the proposal are required.**

**a. The non-price proposal envelope must be sealed and clearly marked:**

*Non-Price Proposal* – **DESIGNER SERVICES FOR THE Georgetown Council on Aging Senior Activity Center PROJECT**

**b. The Price proposal envelope must be sealed and clearly marked:**

*Price Proposal* – **DESIGNER SERVICES FOR THE GEORGETOWN Council on Aging Senior Activity Center PROJECT.**

- 2) A **mandatory site visit** will be conducted on July 1, 2015 at 11:00 a.m. The Perley School is located at 61 North Street, Georgetown, Ma.
- 3) Award date. Award will be made within thirty (30) days after the due date unless otherwise stated in the specifications or the time for award is extended by mutual consent of all parties. All RFQ's submitted shall be valid for a minimum period of forty-five (45) calendar days following the date established for acceptance.
- 4) Questions concerning this RFQ must be emailed to: Michael Farrell, before Thursday, July 9, 2015 by 12:00 noon at ([Jpantano@Georgetownma.gov](mailto:Jpantano@Georgetownma.gov)). Written responses will be emailed all bidders on record as having requested the RFQ.
- 5) RFQ's may be modified, corrected or withdrawn only by written correspondence received by the Town of Georgetown prior to the time and date set for the bid opening. Bid modifications must be submitted in a sealed envelope clearly labeled "Modification No. \_\_\_\_" and must reference the original RFQ.
- 6) After the bid opening, a bidder may not change any provision of the bid in a manner prejudicial to the interests of the Town of Georgetown or fair competition. Minor informalities will be waived or the bidder will be allowed to correct them. If a mistake and the intended bid are clearly evident on the face of the bid document, the mistake will be corrected to reflect the intended bid, and the bidder will be notified in writing; the bidder may not withdraw the bid. A bidder may withdraw a bid if a mistake is clearly evident on the face of the bid, but the intended correct bid is not similarly evident.
- 7) The Town of Georgetown reserves the right to reject any and all RFQ's and to waive any informality in RFQ's received whenever such rejection or waiver is in its best interest.

- 8) The Town of Georgetown will not be responsible for any expenses incurred in preparing and submitting RFQ's. All RFQ's shall become the property of the Town of Georgetown.
- 9) Responders must be willing to enter into the Town of Georgetown standard form of contract that will include the scope of services description of this RFQ.
- 10) The bid, and any subsequent contract for the services, is hereby issued in accordance with applicable Massachusetts General Laws. The selected bidder shall be expected to comply with all applicable state and federal laws in performance of service.
- 11) RFQ's received prior to the date of opening will be securely kept, unopened. No responsibility will attach to an officer or person for the premature opening of a bid not properly addressed and identified.
- 12) Any RFQ's received after the advertised date and time for opening will be returned to the responder unopened.
- 13) Purchases by the Town of Georgetown are exempt from federal, state and municipal sales and/or excise taxes.
- 14) The Tax Compliance Certification and the Certificate of Non-Collusion must be included with the bid response. The bid must be signed by the authorized individual(s).
- 15) Unexpected closures. If, at the time of the scheduled bid opening, Town Hall is closed due to uncontrolled events such as fire, snow, ice, wind or building evacuation, the bid opening will be postponed until 2:00 PM on the next normal business day. RFQ's will be accepted until that date and time.
- 16) The TOWN OF GEORGETOWN is an Affirmative Action/Equal Opportunity Employer. The Town encourages RFQ's from qualified MBE/DBE/WBE firms.
- 17) Bidders should be aware that many overnight mailing services do not guarantee service to Georgetown.
- 18) Responses to the RFQ must be prepared according to the guidelines set forth herein. Selection of the successful responder will be based upon an evaluation and analysis of the information and materials required under the RFQ.

## **II. PROJECT DESCRIPTION and SCOPE OF SERVICES.**

The Project will result in the development and preparation of final plans, specifications and other bid documents for renovations of a portion of the Perley Elementary School to accommodate a senior citizens activity center. The Designer selected will be responsible for providing full investigation, design, bidding and construction services.

The general scope of work shall include, but not be limited to the following tasks:

- A. Investigation: A detailed investigation of the existing conditions is required and shall include any necessary test cuts, material testing, etc. A detailed report documenting the results of the investigation shall be provided, to include a description of existing conditions, photographs, schematic details, options and priorities for the proposed renovations. A detailed construction cost estimate shall also be provided. Attendance

at meetings with the Town will also be required to review the report and to develop project priorities and milestone schedule.

B. Design Development. This phase will consist of preparing detailed design and program documents and related services. The program documents will consist of:

1. Complete and well detailed construction drawings and specifications including a bid form, contract form, general conditions of the contract for construction and supplementary general conditions, technical specifications, plans, and detailed drawings. The Designer must attend meetings with the Town to review the design documents, the bidding schedule, and the construction schedule.
2. Capital construction cost estimates and schedules, including phasing, site development and construction staging areas.
3. The Designer shall be responsible for compliance with all applicable building and life safety codes.
4. The Designer shall be required to cooperate with the Town's Project Manager, if any, in the provision of services for the project including but not limited to, value engineering, construction phasing, and overall coordination.

C. Construction Documents.

1. The Designer shall prepare complete working plans and specifications in sufficient detail to permit firm bids in open competition for construction of the Project.
2. Detailed cost estimates for the Project shall be further developed, and shall include quantities of all materials and unit prices for labor and materials as well as cost estimates for each item of work.

D. Bidding.

1. The Designer shall prepare the final construction contract documents, including advertising for receipt of bids from construction contractors.
2. The Designer shall assist in distributing the bidding documents to prospective proposers.
3. The Designer shall prepare and distribute all addenda, and shall conduct a pre-bid conference.
4. The Designer shall review all bids and make a written recommendation of award to the Awarding Authority.

E. Construction Administration Services.

1. The Designer will be charged with the general administration of the construction contract, although the Town reserves the right to contract with a separate project management firm for certain services.

2. The Designer must be present and active on the site periodically during the lifetime of the project. Construction oversight should be coordinated with the Clerk of the Works and Project Manager (if any) to assure work is in accordance with specifications until the completion and acceptance of the Project.
3. Participation, on-site, in weekly project meetings with General Contractor, Site Coordinator, Clerk of the Works and Project Manager (if any) and others as required by the Town.
4. Require each consultant employed by the Designer to make site visits periodically for the same purposes during the progress of that portion of the construction to which the consultant's services relate; and to report in writing thereon to the Designer.
5. Check and approve samples, schedules, shop drawings and other submissions by the General Contractor.
6. Recommend condemnation of all Project work observed by the Designer that fails to conform to the contract documents.
7. Decide all questions regarding interpretation of or compliance with the construction documents, except as the Town may, in writing, otherwise determine.
8. Review and act on all requests for changes in the plans, specifications or contracts for the Project.
9. Report to the Town, in writing, on the progress of the construction.
10. Conduct semi-final and final inspections of the construction and report the results of such inspections in writing to the Town.

**NOTE:** *An onsite visit to review the physical space of the location of this project is highly encouraged prior to submitting price and non-price bids.*

No more than (2) onsite-visits to document existing conditions and review scope of work with Director of Facilities. No less than (3) Design / Construction Meetings before and during construction and installation. No more than (2) onsite-visits for final inspections and certification.

Finally, the selected firm shall perform cost estimating, specification and bid package preparation, bid review assistance and be available for any questions or discrepancies through the completion of the project.

At the time the RFQ response is submitted to the Town Administrator's office, each prospective firm shall provide at least three (3) references for relevant work, preferably from client(s) whose projects were similar to that of this proposal. These references shall include specific names and telephone numbers for reference points of contact.

### III. PROPOSAL EVALUATION PROCEDURE

The Chief Procurement Officer and a subcommittee will evaluate qualifications on the basis of criteria contained herein. Submittals failing to comply with one or more of the minimum criteria stated below shall be disqualified from further consideration.

Submittals that comply with the minimum criteria will be further evaluated on the basis of the comparative criteria detailed below. Each proposal meeting the minimum criteria will be assigned a rating for each comparative criterion, as well as a composite rating. Selection of the three finalists will be based on meeting all minimum criteria, and the evaluation of qualifications with regard to the comparative criteria. The Town will rank the three finalists.

#### A. Minimum Evaluation Criteria

The Chief Procurement Officer and subcommittee shall reject Proposals which do not meet the following certain minimum requirements:

- 1) Submitting firm must have a minimum of five (5) projects during the past five years involving similar MEP Design services in Massachusetts.
- 2) The Proposal must be from an individual or established business, corporation, partnership, sole proprietorship, joint stock company, joint venture, firm, or other entity engaged in the practice of providing such services as the principal business for which the entity was formed.
- 3) The firm must possess all necessary current licenses and registrations, as applicable, either within the firm or through independent consultants, to qualify under Massachusetts law to perform the stated services. All consultants carried by the Architect are to be licensed to provide professional services in the Commonwealth of Massachusetts.
- 4) All Proposers must provide a "Contractor Profile" that includes:
  - a. Full name, tax identification number, main office address and officers of the Contractor that would ultimately enter into a Contract with the Town of Georgetown.
  - b. History and background including when the Contractor was organized and if a corporation, where incorporated, and how many years engaged in providing the stated services. Provide a complete list of officers and/or associates who will be directly involved with the stated project including name, title, address, telephone number, and e-mail address.
- 5) The proposer must have completed and signed the Commonwealth of Massachusetts, Division of Capital Asset Management (DCAM), Cities and Towns Application Form (attached) and shall have included them in the Proposal package.
- 6) The Proposal must be signed by an agent of the company who has authority to bind the company to a firm bid price.
- 7) All responses are to include a statement that the Proposal is in accordance with this Request for Qualifications and that the proposer has read and understands all sections and provisions herein. Exceptions, if any, are to be clearly stated.

## **B. Staffing Requirements**

1. The architect must set forth the staffing to be utilized for this service, including the estimated percentage of time to be dedicated to this project.
2. Submitting firm must be prepared to contractually commit all individuals as submitted in their Proposal to this service. Any deviation from the proposed will constitute a breach of Contract to any agreement which may result from this Request for Qualifications.
3. The Proposal must include resumes, experience, and qualifications of any proposed consultants that would be utilized by the Proposer in the performance of this contract. Any deviation from the architect's listed consultants or their team will constitute a breach of Contract to any agreement which may result from this Request for Proposals. Any change in consultants listed in the Proposal must obtain approval from the Town.
4. Should it become impossible for a contractually committed individual to complete his duties, for a reason such as termination of employment, any change in the Proposers staffing as outlined in the Proposal will be subject to the approval of the Town of Georgetown. The Town of Georgetown Project Administrator, or designee, shall notify the proposer within fifteen (15) business days of the acceptance or rejection of any such staff substitutions. Any substituted person must be of an experience level equal to or greater than the person being replaced unless approved by the Town.

## **C. Additional Narrative Information**

1. List the anticipated amount of support services and/or documents the Procurement Office would be required to provide to you. Define what is not included within your fee proposal.
3. Provide evidence that the firm has an established and implemented Affirmative Action Plan.

## **D. Miscellaneous Requirements**

Public Relations: The Town of Georgetown and the Proposer shall cooperate in maintaining good public relations throughout the period of this project. Any announcements including, but not limited to, press releases, bill stuffers, flyers, web site information, and so forth, shall be submitted to the Project Manager, or designee, for review and approval before distribution to the public.

The Architect, or a representative of the firm given the Contract may be required to meet privately or publicly with various representatives, committees, boards, or commissions of the Town of Georgetown, or other public forums, to discuss this project, gather information, and address any concerns or to provide timely updates.

## **F. Financial Scope of Services**

**The Price Proposal must be submitted in a separately sealed envelope and no mention of the pricing portions of the Proposal shall be mentioned in the technical, or non-price qualifications portion of the Proposal. Failure to meet this stipulation may be cause for the Proposal to be rejected.**

## **COMPARATIVE EVALUATION CRITERIA**

The Town reserves the right to award the contract to the responsive and responsible qualification submittal which best meets the Town's needs, taking into account firm qualifications, submittal quality, evaluation criteria and proposal price. The awarding authority's decision or judgment on these matters shall be final; the

committee will use the comparative criterion for each separate rating area, and based upon these criteria, will assign an overall rating to each proposal. Each of the criteria may contain ratings of:

Unacceptable  
Not Advantageous  
Acceptable  
Advantageous  
Highly Advantageous

**An “Unacceptable” rating in any one of the criteria will eliminate the proposal from further consideration.**

Firms must meet the minimum requirements as specified in Section III A. Failure to meet the minimum evaluation criteria will result in immediate rejection of the qualification submittal and will not be subject to further review.

The following criteria will be used in the evaluation of the architectural firm regarding the Technical or Non-Price Proposal in order to be placed on the short list for an interview with the Selection Committee.

**Responding Firms are to address each of the following criteria in a clearly labeled section of their response and in the same order.**

**1)The Firm Background and Capability:**

**Firm Background and Capability:** to perform all of the aspects of the project, such as programming, building permitting, cost estimating and value engineering, architectural, mechanical, fire protection and electrical engineering.

- a. **Unacceptable:** Less than three (3) years of experience in providing Design services in Massachusetts with documented examples of such services.
- b. **Acceptable:** Three (3) to five (5) years of experience in providing Design services in Massachusetts with documented examples of such services.
- c. **Advantageous:** More than five (5) years of experience in providing Design services in Massachusetts with documented examples of such services.
- d. **Highly Advantageous:** More than seven (7) years of experience in providing Design services in Massachusetts with documented examples of such services.

**2) Recent Relevant Experience:** with projects comparable to the proposed project. Firm to describe relevant Massachusetts, permitting and design in this type of facility project.

- a. **Unacceptable:** Firm has no permitting or design background in providing this type of facility project. No projects of similar type have been successfully completed.
- b. **Advantageous:** Firm has prior experience in permitting and design in providing this type of facility project that is current (within the past 5 years). One (1) to Three (3) projects of similar type have been successfully completed.
- c. **Highly Advantageous:** Firm has prior experience with permitting and design background in this type of facility project within that is current (within past 5 years). Additional similar work is underway currently within the firm. Three (3) or more projects of similar type have been successfully completed.

**3) Current Firm Capacity:** list significant current work and work completed in the last five (5) years, as well as projects in-house but not yet begun; quantify.

- a. **Unacceptable:** No or limited current work listed.

- b. **Not Advantageous:** Firm capacity may be challenged by current work load when taking on this new assignment.
- c. **Advantageous:** Firm capacity appears to be able to handle this assignment with the given work load.
- d. **Highly Advantageous:** Firm capacity can easily handle this assignment with their given work load.

4) **References:** Provide references with contact names and valid phone numbers of other clients whereby similar work has been performed.

- a. **Unacceptable:** References are not provided.
- b. **Not Advantageous:** References provided are not related to similar project type
- c. **Acceptable:** At least two (2) references are from similar project experience.
- d. **Advantageous:** More than three (3) references are provided from similar project types.
- e. **Highly Advantageous:** Five or more references are provided for similar project types.

## 5) Project Discussion & Scope of Work:

### Project Understanding & Challenges

#### Project Approach

- a. **Unacceptable** - Proposal did not adequately convey the Proposers understanding of the project and the firm's approach to completing the project successfully.
- b. **Not Advantageous** - The response indicates the proposer may understand the Owner's needs, but the plan provided is not clear enough to make a determination. The Proposers approach does not instill confidence in a plan to complete the project in a well thought out manner.
- c. **Advantageous** - The Scope of Services response provided indicates the proposer will meet the needs of the Owner; and shows the Proposers demonstrated understanding of the project and their approach to the work required to complete a successful project.
- d. **Highly Advantageous** - The Scope of Services response provided clearly indicates the understanding and ability to successfully meet the needs of the Owner; shows the Proposers demonstrated understanding of the project; their ability to bring leadership to the project and that their approach to the project demonstrates a creative and thorough process

## 6) Proposed Schedule

- a. **Unacceptable:** A proposed schedule was not offered.
- b. **Not Advantageous:** The proposed project schedule does not instill confidence by the Owner in the firm to complete the project in a well thought out manner.
- c. **Acceptable:** The proposed project schedule provided indicates the proposer understands the project, its scope and its timeframes for completing the work adequately.
- d. **Advantageous:** The proposed schedule provided indicates the proposer has more than adequately demonstrated their understanding of the project and the work required to complete a successful project and to meet the requirement of the Owner's review and approval cycles.
- e. **Highly Advantageous:** The proposed schedule provided indicates the proposer has demonstrated their complete understanding of the project and will monitor and keep the project on schedule. The firm understands the time required to complete a successful project and has clearly demonstrated their process which will meet the requirements of the Owner for timely reviews and approvals.

## 7) Response to Additional Narrative Information

List support services and/or required documents required by your firm of the Town.  
Define what is not included within your fee proposal.

- a. **Unacceptable** – Proposer did not address Additional Narrative Information section.
- b. **Not Advantageous** – Proposal did not adequately respond to all additional Narrative Information as requested.
- c. **Advantageous** – Proposal was responsive, adequately responded to additional Narrative Information requested, appeared consistent with project intent, and responded to needs expressed by the documents in all areas
- d. **Highly Advantageous** - Proposal was very responsive, thoroughly responded to additional Narrative Information requested, appeared consistent with project intent, and responded to needs expressed by the documents in all areas.

8) **Affirmative Action Plan:** provide evidence of your firm's policies.

- a. **Unacceptable:** Proposer did not submit their Affirmative Action Plan.
- b. **Not Advantageous:** Affirmative Action Plan was poorly defined.
- c. **Acceptable:** Affirmative Action Plan was responsive to the intent of the program.
- d. **Advantageous:** Affirmative Action Plan was responsive and more than adequately responded to the intent of the program.
- e. **Highly Advantageous:** Affirmative Action Plan was responsive and more than adequately responded to the intent of the program. The proposer demonstrated actual follow through on the program with documented firm history.

9) **General Impression of Proposal**

**Unacceptable** - The proposal was not responsive to the Comparative Evaluation Criteria in an acceptable manner.

**Not Advantageous** - Response is informative, meets the criteria for responsiveness. Reviewer feels proposal reflects that proposer is able to perform in a manner acceptable to the Town but was not overly impressed by Proposers expression of ability.

**Advantageous** - Response is informative, meets criteria for responsiveness and communicates well. Reviewer feels proposal reflects that proposer is able to perform in a manner acceptable to the Town, and shows the Proposers commitment to the Town and the project.

**Highly Advantageous** - Response is concise, informative, and highly detailed. Proposal reflects that provider is able to perform in a manner acceptable to the Town, communicates well and shows the Proposers commitment to the Town and the project.

## VI. RULE FOR AWARD

The contract shall be awarded to the responsive and responsible proposer submitting the most advantageous proposal, taking into consideration the proposals relative merits and price

## VII. BASIS OF COMPENSATION

The contract awarded will be a negotiated fee. There will be no reimbursable expenses allowed.

## CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

---

Signature of person signing bid or proposal

---

Name of Business

## TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

\_\_\_\_\_  
Federal Employer ID Number

\_\_\_\_\_  
Name of Corporation

By: \_\_\_\_\_  
President's Signature

Date: \_\_\_\_\_

**AGREEMENT BETWEEN  
THE TOWN OF GEORGETOWN  
AND**

---

THIS AGREEMENT made effective \_\_\_\_\_, 2012, by and between the **TOWN OF GEORGETOWN, GEORGETOWN, MASSACHUSETTS**, a municipal corporation, acting by and through its Georgetown School Committee, 10 Surfside Road, Georgetown, Massachusetts 02554 (hereinafter called the "TOWN"), and \_\_\_\_\_ whose principal office address and state of incorporation are as set forth on Exhibit A (hereinafter called the "CONTRACTOR").

**RECITALS:**

WHEREAS, the TOWN desires to retain the CONTRACTOR to provide certain services for the TOWN, as described below, and the CONTRACTOR is willing to accept such engagement, all on the terms hereinafter set forth,

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**ARTICLE 1 - ENGAGEMENT OF THE CONTRACTOR**

- 1.1 The TOWN hereby engages the CONTRACTOR, and the CONTRACTOR hereby accepts the engagement to perform certain services for the TOWN, as described in Article 2.
- 1.2 In the performance of any service under this Agreement, the CONTRACTOR acts at all times as an independent contractor. There is no relationship of employment or agency between the TOWN, on the one hand, and the CONTRACTOR, on the other, and the TOWN shall not have or exercise any control or direction over the method by which the CONTRACTOR performs its work or functions aside from such control or directions which are consistent with the independent contractor relationship contemplated in the Agreement.

**ARTICLE 2 - SERVICES OF THE CONTRACTOR**

- 2.1 The CONTRACTOR will perform the services described in the Scope of Services set forth on Exhibit A (the "Work").
- 2.2 The CONTRACTOR shall report, and be responsible, to the TOWN and its designee (if any) as set forth on Exhibit A.
- 2.3 There shall be no amendment to the Scope of Services or Work provided for in this Agreement without the written approval of the TOWN. The TOWN shall be under no obligation to pay for any services performed by the CONTRACTOR which are not explicitly agreed to by the TOWN in writing.
- 2.4 The CONTRACTOR represents and warrants to the TOWN that the CONTRACTOR (including all of its personnel, whether employees, agents or independent contractors) will be qualified and duly licensed (if necessary) to perform the services required by this Agreement and further agrees to perform its services in a professional manner, and in accordance with the reasonable standard of care implied by law and all applicable local, state or federal ordinances, laws, rules and regulations, all of which are incorporated herein by reference. The CONTRACTOR will obtain and pay for any and all permits, bonds and other items required for the proper and legal performance of the Work.

- 2.5 The CONTRACTOR represents and warrants to the TOWN that it is not a party to any agreement contract or understanding which would in any way restricts or prohibits it from undertaking or performing its obligations hereunder in accordance with the terms and conditions of this Agreement.
- 2.6 All written materials and any other documents (whether in the form of "hard" copies, graphics, magnetic media or otherwise) which are received and produced by the CONTRACTOR pursuant to this Agreement shall be deemed to be "work for hire" and shall be and become the property of the TOWN upon the receipt and production of such items by the CONTRACTOR. The TOWN acknowledges that such materials are being prepared with respect to the specific project contemplated hereby and that any reuse of such materials by the TOWN in connection with any other project shall be at the TOWN's sole risk, unless otherwise agreed to by the CONTRACTOR in writing.
- 2.7 The CONTRACTOR shall be responsible for the professional and technical accuracy, and for the coordination, of all designs, drawings, specifications, estimates and other work or services furnished by CONTRACTOR or its consultants and subcontractors. The CONTRACTOR shall perform its work under this Agreement in such a competent and professional manner that detail checking and reviewing by the TOWN shall not be necessary. The CONTRACTOR shall supervise and direct the Work, using its best skills and attention, which shall not be less than such state of skill and attention generally rendered by the design and engineering profession for projects similar to the subject project in scope, difficulty and location.
- 2.8 The CONTRACTOR shall not use any subcontractors or sub-consultants (not identified herein) for any work required under this Agreement unless such use has been approved in advance in writing by the TOWN.
- 2.9 Notwithstanding anything to the contrary in this Agreement, the CONTRACTOR shall not be relieved of its obligations under this Agreement by the TOWN's performance, or failure to perform, any of the TOWN's administrative duties under this Agreement, including, but not limited to, the TOWN's review and/or approval of plans, estimates, programs, documents, materials, work and services furnished by CONTRACTOR.

### **ARTICLE 3 - PERIOD OF SERVICES**

- 3.1 Unless otherwise provided on Exhibit A, the term of this Agreement shall commence on the date hereof and continue until the Work is completed to the TOWN's reasonable satisfaction.
- 3.2 The CONTRACTOR shall proceed with the Work promptly after receiving Notice to Proceed and will diligently and faithfully prosecute the Work to completion in accordance with the provisions hereof. In any event, the Work shall be completed no later than the date set forth on Exhibit A. The CONTRACTOR acknowledges that time is of the essence of this Agreement.
- 3.3 If the CONTRACTOR is delayed in the performance of any of its obligations under this Agreement by the occurrence of an unforeseen event beyond its control such as fire or other casualty, abnormal adverse weather conditions, acts of God (collectively, "Unavoidable Events") which materially and adversely affect its ability to perform the Work, then the time for the CONTRACTOR to perform the Work shall be extended for such time as the TOWN shall reasonably determine is necessary to permit the CONTRACTOR to perform in light of the effects of the Unavoidable Event.

If an Unavoidable Event occurs which, in the TOWN's reasonable determination, makes the performance of the Agreement impossible without the expenditure of additional TOWN funds, the TOWN may, at its

option, elect to terminate this Agreement upon thirty (30) days written notice.

#### **ARTICLE 4 - PAYMENTS TO THE CONTRACTOR**

- 4.1 The compensation due to the CONTRACTOR shall be paid in the amounts, and in the manner, set forth on Exhibit B, attached hereto.
- 4.2 The CONTRACTOR will bill the TOWN at the completion of the work unless otherwise provided on Exhibit B, with one or more invoices broken down to show the quantity of work performed and the percentage of the entire project completed, categories and amount of reimbursable expenses (if any), and provide such supporting data as may be required by the TOWN.
- 4.3 The TOWN will pay the CONTRACTOR upon review and approval of such invoices by the TOWN or its designee.
- 4.4 This engagement may be subject to budgetary restrictions which may limit the total amount of funds available for the Work. Accordingly, unless otherwise stated on Exhibit B, the TOWN will not be obligated to pay any amount in excess of the maximum project amount without the express written approval of the TOWN.
- 4.5 The CONTRACTOR and its sub-contractors shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the CONTRACTOR in the preparation of the documents, as reasonably determined by the TOWN.

#### **ARTICLE 5 - TERMINATION**

- 5.1 This Agreement may be terminated, with cause, by either the TOWN or CONTRACTOR, upon written notice given by the non-defaulting party. For the purposes of this provision, "cause" shall include the failure of a party to fulfill its material duties hereunder in a timely and proper manner.
- 5.2 The TOWN shall have the right to terminate this Agreement for its convenience and without cause upon ten (10) days written notice.
- 5.3 Following termination of this Agreement, the parties shall be relieved of all further obligations hereunder except:
  - (a) unless the TOWN terminates for cause under paragraph 5.1, in which event the TOWN shall be under no obligation to make any payments to CONTRACTOR except for those services satisfactorily provided, the TOWN shall remain responsible for payments for the services satisfactorily performed and, unless this Agreement is for a lump-sum, expenses of CONTRACTOR reasonably accrued prior to the effective date of the notice of termination in compliance with this Agreement (less the value of any claims of the TOWN), all as determined by the TOWN in its sole discretion, but for no other amounts, including, without limitation, claims for lost profits on Work not performed; and
  - (b) The CONTRACTOR shall remain liable for any damages, expenses or liabilities arising under this Agreement (including its indemnity obligations) with respect to WORK performed pursuant to the Agreement.

#### **ARTICLE 6 - INSURANCE AND INDEMNIFICATION**

- 6.1 The CONTRACTOR agrees to indemnify and save the TOWN harmless from any and all manner of suits, claims, or demands arising out of any errors, omissions or negligence by CONTRACTOR (including all its

employees, agents and independent contractors) in performing the Work, or any breach of the terms of this Agreement by such CONTRACTOR and shall reimburse the TOWN for any and all costs, damages and expenses, including reasonable attorney's fees, which the TOWN pays or becomes obligated to pay, by reason of such activities, or breach. The provisions of this Section 6.1 shall be in addition to, and shall not be construed as a limitation on, any other legal rights of the TOWN with respect to the CONTRACTOR, in connection with this Agreement, and shall survive termination or expiration of this Agreement.

- 6.2 Before commencing work the CONTRACTOR shall obtain and maintain at its expense and from insurance companies of a Best Rating of A or better, which are licensed to do business in the Commonwealth of Massachusetts, insurance as set forth below. If the CONTRACTOR is permitted to sub-contract a material portion of the Work, or is otherwise identifying a third party to perform services for the Town, the CONTRACTOR shall assure that such sub-contractor or other third party also has such insurance.
- (a) Workers' Compensation, covering the obligations of the CONTRACTOR in accordance with applicable Workers' Compensation or Benefits laws.
  - (b) Commercial General Liability Insurance on an occurrence basis with a combined single limit of not less than \$1 million. Coverage is to include premises and operations, coverage for liability of subcontractors. The policy shall contain an endorsement stating that the aggregate limits will apply separately to the work being performed under this Agreement.
  - (c) Automobile Liability Insurance of not less than \$1 million combined single limit covering owned, hired and non-hired vehicle use.
  - (d) Errors and Omissions Insurance of not less than \$2 million per claim. The coverage shall be in force from the date of execution of the Agreement to the date when all design and construction work is completed and accepted by the TOWN, unless, however, the policy is a "claims made policy," in which event the policy shall remain effective and in full force for a period of six (6) years after completion of all design and construction work relating to the engagement.
  - (e) Such additional insurance as may be required to be carried by the CONTRACTOR by law.
  - (f) Such additional insurance as the TOWN may reasonably require, as set forth on Exhibit A.

CONTRACTOR shall maintain such insurance during the term of Agreement and give the TOWN twenty (20) days written notice of any change or cancellation of coverage. Each insurer providing policies hereunder shall waive its rights to subrogate claims against the TOWN. The TOWN will be added as an additional named insured with respect to each such policy and such endorsement shall be reflected on a Certificate of Insurance to be delivered to the TOWN upon the execution of this Agreement and at such times thereafter as the TOWN may reasonably request.

#### **ARTICLE 7 - GENERAL PROVISIONS**

- 7.1 Upon the expiration or the termination of this Agreement for any reason, all data, drawings, specifications, reports, estimates, summaries and other work product which have been accumulated, developed or prepared by the CONTRACTOR (whether completed or in process) shall become the property of the TOWN upon payment for such to the CONTRACTOR and the CONTRACTOR shall immediately deliver or otherwise make available all such material to the TOWN.
- 7.2 Neither party may assign, transfer or otherwise dispose of this Agreement or any of its rights hereunder or otherwise delegate any of its duties hereunder without the prior written consent of the other party, and any

such attempted assignment or other disposition without such consent shall be null and void and of no force and effect.

- 7.3 Except as otherwise expressly provided in this Agreement, any decision or action made by the TOWN relating to this Agreement, its operation, amendment or termination, shall be made by the Board, Committee or Authority of the TOWN specified in the initial paragraph of this Agreement, unless specifically authorized or delegated by a lawful vote of such body.
- 7.4 This Agreement, together with Exhibit A (Contractor, Scope of Work, Term), Exhibit B (Payments), and Exhibit C (Tax Compliance Certificate), and any additional exhibits referred to therein, constitute the entire agreement of TOWN and CONTRACTOR with respect to the matters set forth therein and may not be changed, amended, modified or terms waived except by a writing signed by TOWN and CONTRACTOR. If there is any conflict among the terms set forth in the body of this Agreement and the terms or provisions set forth in Exhibit A or Exhibit B, or in any other attachment hereto, or in any other document or law incorporated by reference herein, such conflict shall be resolved by giving precedence to the party's address above by certified mail, return receipt requested Terms or provisions contained in the following documents in accordance with the following hierarchy, with the topmost document of the highest priority:
- A. Applicable federal, state and local laws, rules and regulations.
  - B. Amendments to this Agreement, if any.
  - C. Exhibits A and B.
  - D. This Agreement.
  - E. Any other attachments to this Agreement.

To the extent the conflict is not resolved by applying the above hierarchy, the conflict shall be resolved in a manner that results in the highest quantity and best quality of goods and services to the TOWN.

- 7.5 This Agreement is governed by the law of The Commonwealth of Massachusetts and shall be construed in accordance therewith. The parties agree that exclusive jurisdiction for any action arising out of or relating to this Agreement shall lie with the state and federal courts having jurisdiction over the county and state in which the Town is located and the parties hereby irrevocably waive, to the fullest extent permitted by law, any objection which they may now or hereafter have to the venue of any proceeding brought in such location and further irrevocably waive any claims that any such proceeding has been brought in an inconvenient forum.
- 7.6 Any notices required or allowed shall be to the person's address above by certified mail, return receipt requested.
- 7.7 Notwithstanding anything to the contrary in this Agreement, this Agreement is subject to the appropriation and availability of funds.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

TOWN OF GEORGETOWN,  
MASSACHUSETTS:

CONTRACTOR:

\_\_\_\_\_  
Chairman, Board of Selectmen

\_\_\_\_\_  
Name  
President

FEIN:

Approved as to Funds Available

\_\_\_\_\_  
Finance Director

## **CONTRACT EXHIBIT A**

CONTRACTOR, SCOPE OF WORK, TERM

1. **Name of Contractor:**
2. **State of Incorporation:**
3. **Principal Office Address:**
4. **Description of Services:**
5. **Person, Department, or Committee, if any, to whom CONTRACTOR reports (§ 2.2):**
6. **Term of Agreement (§3.1):**
7. **Completion Date (§3.2):**
8. **Additional Insurance Coverage (§6.2(e)):**

## AGREEMENT EXHIBIT B

### PAYMENTS

1. Lump Sum Method
  - a. **Maximum Project Amount:**
  - b. **Payment Increments:** CONTRACTOR shall submit one (1) lump sum certificate for payment after final commissioning by design engineer for approval and processing by the TOWN.
  - c. **Reimbursable Expenses (if any):** None.

*TAX COMPLIANCE CERTIFICATION*  
**EXHIBIT C**

Pursuant to M.G.L. 62C, Sec.49A, the undersigned certifies under the penalties of perjury that it, to the best knowledge and belief of management, has filed all state tax returns and paid all state taxes required under law (if any, are so required).

By:

\_\_\_\_\_  
Name, President

\_\_\_\_\_  
Date

\_\_\_\_\_  
FEIN: