

TOWN OF HOLLISTON

**703 Washington Street
Holliston, MA 01746**

508-958-4416

**INVITATION FOR BID
FIBER OPTIC INSTALLATION SERVICES
MUNICIPAL-OWNED FIBER OPTIC INSTALLATION**

The Town of Holliston is seeking sealed bids from qualified contractors for the expansion and construction of a municipally-owned Fiber Optic cabling, materials, and installation services to be performed in the Town of Holliston, Massachusetts.

Contractors are invited to submit sealed bids no later than **10 AM May 3, 2024** at the Town Administrator's Office, Town Hall at 703 Washington Street, Holliston, MA 01746. The bid opening will begin promptly at **10:00 AM May 3, 2024**. The Town of Holliston reserves the right to accept or reject any or all bids and to award the bid in a manner which is deemed to be in the interests of the Town of Holliston.

The Scope of Work includes furnishing all Fiber Optic equipment, supplies, materials, tools, supervisors, labor, police details, permits, approvals, bonds, cable testing, including all other incidental services necessary to provide Fiber Optic installation services at the locations specified in the IFB.

Date Issued:

April 3, 2024

Post to Town's Web Page:

April 3, 2024

Post Town Hall:

April 3, 2024

Post Local Newspaper:

April 10, 2024

Goods and Services & COMMBUYS:

April 8, 2024

Sealed Bid Submission and Response Date:

May 3, 2024 at 10AM

GENERAL REQUIREMENTS:

1. INTENT

The Town of Holliston is seeking sealed bids from qualified contractors for the expansion and construction of a municipally-owned Fiber Optic cabling, materials, and installation services to be performed in the Town of Holliston, Massachusetts. Contractors are to supply all materials and labor for the project, and to provide proof of general liability and workers compensation insurance at the state required minimum level upon award of the project. The Town will award the contract to the lowest responsive and responsible bidder. The Town reserves the right to reject any and all bids as determined to be in the best interests of the Town. Unless sooner rejected or accepted, all bid proposals must be firm and continue in effect for ninety (90) calendar days following the date of bid opening.

2. CONTRACT TERMS AND CONDITIONS

The successful Bidder must enter into the Town's Standard Form Agreement, attached hereto.

3. QUESTIONS REGARDING BID

3.1 Any prospective contractor (bidder) requesting an interpretation of existing specifications of terms and conditions must do so in writing by **3 PM April 24, 2024** addressed to James Keast at the Holliston Facilities Department, 1750 Washington Street, Holliston, MA 01746 or via email to James Keast at: keastj@holliston.k12.ma.us

3.2 The Bidder should be familiar with all of the IFB requirements and Bid Documents before submitting their bid in order to prevent misunderstanding. Bidders shall promptly raise the issue of any ambiguity, inconsistency, or error which they may discover in the bid documents, specifications, at the work site, or any other conditions which may apply. No allowance will be made for any claim where the underlying bid was based on incomplete information.

3.3 Questions that may be asked during a pre-bid conference, if any, should also be sent in writing in order to receive an official response. Requests properly presented that, in the sole opinion of the Town, require interpretation, correction, or change in the Bid Documents may result in an issuance of an Addendum to the Bid Documents. Such Addendum shall then become part of the contract. The Town will forward all their responses to all persons who are on record as having received the bid package. Questions received after the deadline for such will be met with no response unless the Town, in its sole discretion, determines it is necessary to respond.

4. ADDENDA

In the event changes/additions are made to this IFB, an addendum will be issued to all persons on record as having received the bid package.

5. BID MODIFICATIONS OR WITHDRAWALS

Bids may be corrected, modified, or withdrawn prior to the submission deadline. After the submission deadline, bids may not be changed. Minor mistakes may be waived by the Town.

6. PREMATURE OPENING OF A BID

The Town will not be responsible for the premature opening of any bid not properly identified. The Town may reject bids which are incomplete, not properly endorsed or signed, or which are otherwise contrary to these instructions.

7. UNEXPECTED CLOSURES OR DELAYS

If, at the time of the scheduled bid submission deadline, the designated location for delivery and opening of the bids is closed due to uncontrollable events such as fire, snow, ice, wind, building evacuation, COVID-19 or other, the deadline will be postponed to **the next business day**. In such an event, bids will be accepted at the same location until said date and time.

8. LATE SUBMISSIONS

LATE BIDS WILL NOT BE CONSIDERED. The Town assumes no responsibility for late submissions due to mail, courier, delivery or any other problems.

9. REJECTION OF BIDS

The bid must satisfy all requirements to be considered for award. Failure to complete the required forms, answer any questions, or provide the required documentation will result in the bid being deemed NON-RESPONSIVE and will result in rejection by the Town unless it is determined, solely by the Town, that any such failure constitutes a minor informality that can be corrected without prejudice to other bidders.

10. TAXES

Purchases made by the Town are exempt from the payment of all Federal and State taxes. If requested, the Town will provide the successful bidder with a copy of the Certificate of Exemption.

11. CONTRACT AWARD

The Town reserves the right to waive all minor informalities and reject any and all bids as determined to be in the best interests of the Town.

The Town of Holliston will review all bids and will award a contract to the lowest responsive and responsible bidder. The lowest responsive and responsible bidder shall be awarded a contract for the specified items based upon the total bid price provided in their bid. At the sole discretion of the Town, the purchase of the items may be awarded to one or more vendors for each item as defined in the Specifications and Bid Form, whichever is determined to be in the best interests of the Town. Upon bidder selection, the Town will mail or email the contract to be executed by the Bidder, who will return the required number of original copies with the required insurance information. Unless otherwise noted by the Town, the terms and conditions of the contract are not negotiable.

12. PREVAILING WAGE

Pursuant to Massachusetts General Laws, chapter 149, sections 26 and 27, the Division of Occupational Safety (formerly the Department of Labor and Industries) has determined the Prevailing Wage Rates for this work. The enclosed rates apply only to this work. The Prevailing Wage shall become part of the contract signed between the successful bidder and the awarding authority or the contract is invalid. Prevailing Wages must be paid to all persons employed on the public works project, regardless of whether they are employed by the successful bidder or a subcontractor. The wage rates issued for each project shall be paid for the entire project.

- a. Payroll records must be kept by the successful bidder for all persons employed on the project. A separate Statement of Compliance must be submitted to the Division of Occupational Safety by every employer, including all prime contractors and subcontractors, when its portion of the work is completed. The enclosed form entitled "Weekly Payroll Records Report and Statement of Compliance" clearly details these requirements. A certified payroll record must be submitted to the Office of the Town Administrator for each week work is performed for the Town under this contract.

13. PAYMENT BOND

Within ten (10) days of receipt of notice of contract award, the successful bidder shall provide a payment bond 50% of the amount of the contract. Upon execution of the contract, the successful bidder shall be expected to commence work immediately and proceed in a timely and efficient manner until project completion and acceptance by the Town.

14. OSHA CERTIFICATION

Successful bidder must comply with Chapter 306 of the Acts of 2004 § 1. (3) and shall certify that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and SECTION 2 (3) that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration. (b) Any employee found on a worksite subject to this section without documentation of successful completion of a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration shall be subject to immediate removal.

15. MA WORKFORCE PARTICIPATION REQUIREMENTS

The contract to be awarded shall include the processes and procedures to ensure compliance with the Workforce Participation Goals, including reporting and enforcement provisions as required for this under M.G.L. c. 149, § 44A(2)(G).

SUBMISSION REQUIREMENTS:

1. Bids are to be addressed as follows: MUNICIPAL-OWNED FIBER OPTIC INSTALLATION - Town of Holliston, Administrator's Office, Town Hall, 703 Washington Street, Holliston, MA 01746.
 2. Bids are to be sealed and clearly marked: "MUNICIPAL-OWNED FIBER OPTIC INSTALLATION, Holliston, MA"
 3. Bidder should acknowledge all addenda to this IFB, if any.
 4. Bidder must submit a completed Bid Form, signed by an individual authorized to contractually bind the Bidder. All prices must include costs for delivery. No price adjustments will be allowed. Fuel or vehicle surcharges will not be allowed.
 5. Bids shall be accompanied by a bid deposit of not less than five (5%) percent of the value of the proposed work and made payable to the Town of Holliston, the Awarding Authority. Bidders are reminded that the bid deposit covers the Town for damages when a bidder withdraws its bid after the bid submission date. Be advised that to the extent permitted by the law the Town will retain all bid deposits for withdrawn bids.
 6. Bids must be received and time stamped no later than the deadline stated in the Invitation for Bids Brief. LATE BIDS WILL NOT BE CONSIDERED.
 7. Bidder must provide a minimum of three (3) references for whom they have completed contracts for work similar in size and scope to this project within the last five (5) years. For each reference, provide customer's name, contact person, address, telephone number, and a brief description of the services provided.
 8. 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 Holliston 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.
- 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.

9. Bids must include the following forms completed and signed:

Certificate of Non-Collusion;

Certification Regarding Labor Harmony and OSHA Training;

Certificate of Good Standing for Corporation or Certificate of Legal Existence for LLC from Secretary of Commonwealth;

Certificate of Tax Compliance;

Certification of Signatures

If Corporation: need President's signature or Clerk's Certificate dated no more than 2 years ago, with Corporate Seal affixed (see attached form)

If LLC: need Manager signature or signed vote of the LLC

Itemized Bid Price Form

END OF PAGE

PROJECT SCOPE:

SUMMARY AND DESCRIPTION OF WORK

The Town of Holliston back in 2004 installed a Municipal-owned Fiber Optic Network to town-owned facilities in downtown Holliston. The Town would now like to expand this downtown fiber network to include additional Town buildings and infrastructure including Traffic Lights so the Town can deploy Traffic Security Cameras in the future.

The purpose of this Invitation to Bid is to furnish a 96 strand fiber optic cable from 370 Hollis Street to an existing splice box near 725 Washington Street, then install two (2) 48 strand fiber optic cables from this splice box to 1750 Washington Street and 150 Goulding Street including adding slack loops and fiber drop connections at all traffic lights outlined in this bid document. The Town is also looking to have a second optional bid to include fiber connections on 9 Green Street.

INSTALLATION LOCATIONS

Holliston High School, 370 Hollis Street
Washington Street/Hollis Street Splice Box, 725 Washington Street
Traffic Light, 725 Washington Street
Traffic Light, 799 Washington Street
Traffic Light, 1280 Washington Street
1750 Washington Street (Community Center), 1750 Washington Street
Holliston Senior Center, 150 Goulding Street
1285/1292 Washington Street (Splice Box for future building)

OPTIONAL BID LOCATIONS

Municipal Lot, 9 Green Street
Goodwill Park, 2 Green Street

PROJECT DETAILS

1. The Town is currently working through Verizon on the make ready review of the project and anticipates the work will be completed before any project start date.
2. One (1) new Single Mode Fiber (SMF) 96 strand count is proposed for the fiber optic link from Holliston High School, 370 Hollis Street to the Washington Street/Hollis Street Splice Box. (Approximately 1 mile in length)
3. Furnish, splice, and terminate all 96 strands at Holliston High School (370 Hollis Street) in a rack mounted patch panel with SC/APC connectors

4. One (1) new Single Mode Fiber (SMF) 48 strand count is proposed for the fiber optic link from the Washington Street/Hollis Street Splice Box to 150 Goulding Street. (Approximately 2.5 miles in length)
5. Splice all 48 strands to the 96 strand splice box located at Washington Street/Hollis Street Splice Box.
6. Furnish, splice, and terminate 8 strands at 150 Goulding Street in a wall mounted patch panel with SC/APC in the Utility Closet.
7. One (1) new Single Mode Fiber (SMF) 48 strand count is proposed for the fiber optic link from the Washington Street/Hollis Street Splice Box to 1750 Washington Street. (Approximately 2.5 miles in length)
8. Splice all 48 strands to the 96 strand splice box at Washington Street/Hollis Street Splice Box.
9. Furnish, splice, and terminate 8 strands at 1750 Washington Street in a rack mounted patch panel with SC/APC in the head-end room.
10. Furnish, splice, and terminate 4 strands at the Traffic Light Control Box at 725 Washington Street in a rack mount patch panel with SC/APC connectors.
11. Furnish, splice, and terminate 4 strands at the Traffic Light Control Box at 799 Washington Street in a rack mount patch panel with SC/APC connectors.
12. Furnish, splice, and terminate 4 strands at the Traffic Light Control Box at 1280 Washington Street in a rack mount patch panel with SC/APC connectors.
13. All backbone fibers throughout the network will be fusion spliced. Fiber strand assignments will be determined jointly with Holliston IT and the selected Vendor prior to start of the installation.
14. Contractor will be responsible for coring/drilling into municipal-owned installation locations with approval of the Building Commissioner
15. All splice enclosures must be 458D or equivalent
16. All work will be fully complete including all fiber splicing at the pole location for the fiber lateral into the buildings, the fiber entrance cable, the fiber termination panels, the connectors, and all other materials for a complete and fully functional fiber network at each location.
17. Slack Loops will have a 150 ft minimum distance for future splices or repairs. Locations of slack loops should be based on industry standard locations throughout the fiber run.

18. A Splice location should be installed around the 1285/1292 Washington Street area for a future Municipal Building which will be located at 20 Cross Street.
19. All optical testing will conform to industry standards and be delivered in electronic copy.
20. The Town shall receive OTDR traces and Power Meter Test results at both 1310mm and 1550mm.
21. The contractor and Town will determine lateral access into installation locations during the construction phase.
22. Pricing assumes the Town utilizing rights to the municipal space on the poles for the routes.
23. Contractor will be responsible for removing all waste from installation locations and along the route.
24. Holliston's current fiber network resides between Verizon and Comcast (mid-comm space) on the poles.
25. The selected Contractor will be responsible for schedule and provide Police Details to support the installation. The Town of Holliston detail rate is \$59 per hour per officer.

OPTIONAL BID WORK

1. Furnish, splice, and terminate 4 strands at the electrical control box at the Municipal Lot, 9 Green Street in a wall mount patch panel with SC/APC connectors
2. Furnish, splice, and terminate 4 strands at a place to be determined at Goodwill Park at 2 Green Street in a mount to be determined with SC/APC connectors.

Town of Holliston – Map of Fiber Optic Runs

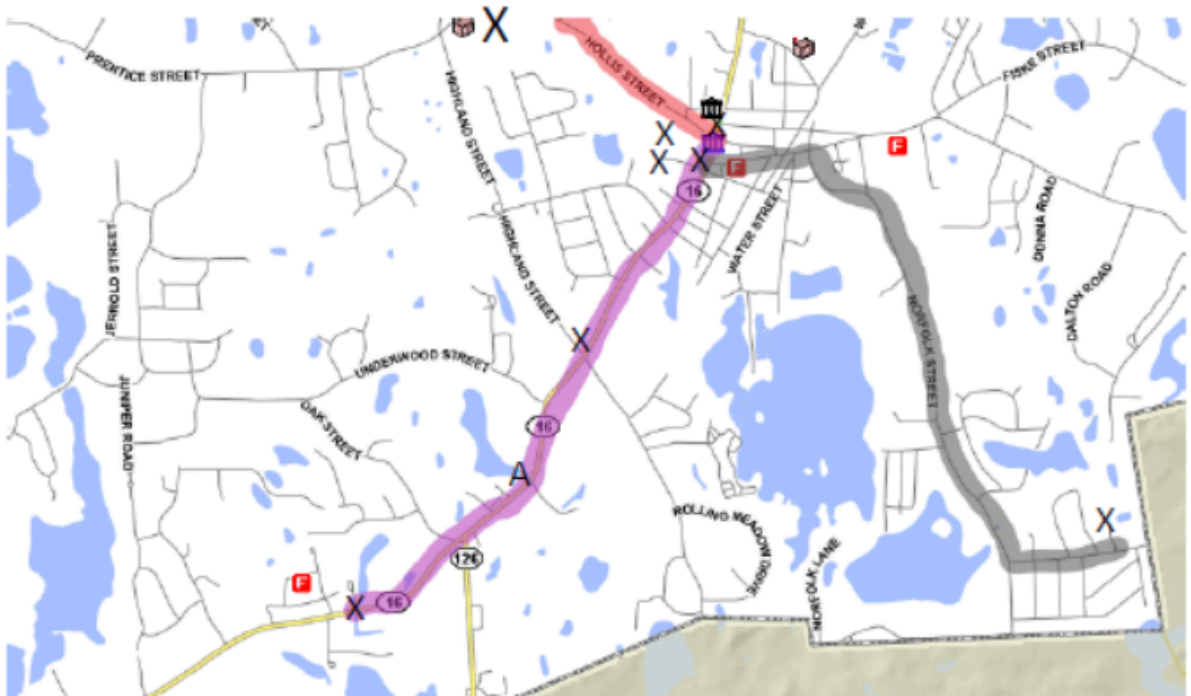
96 Strand SMF Fiber Cable (Approx 1 Mile) █

48 Strand SMF Fiber Cable (Approx 2.5 Miles) █

48 Strand SMF Fiber Cable (Approx 2.5 Miles) █

Terminate Locations: X

Splice Box for Future Building: A



Map of Fiber Optic Runs - Town of Holliston, MA

MUNICIPAL-OWNED FIBER OPTIC INSTALLATION - BID SHEET

A) Fiber Optic Installation for Items 1 through 25 under Project Details Pages 8-10:

\$ _____

B) Optional Work Item 1 under Project Details Page 10:

\$ _____

C) Optional Work Item 2 under Project Details Page 10:

\$ _____

Bid Submitted By: _____

Title: _____

I hereby submit the above quote in response to the advertised and specified MUNICIPAL-OWNED FIBER OPTIC INSTALLATION for the town of Holliston. I understand that this Bid is to be submitted no later than **10 am March 29, 2024** and that the Town of Holliston reserves the right to accept or reject any and all bids and or select any options outlined above.

Bidder

Signature: _____

CERTIFICATE OF NON-COLLUSION
MUNICIPAL-OWNED FIBER OPTIC INSTALLATION, HOLLISTON MA

The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity..

Name of Business

Signature of Individual Corporate Name

Signature of individual submitting bid or proposal

Social Security Number or Federal Identification Number

CERTIFICATION REGARDING LABOR HARMONY AND OSHA TRAINING

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work; that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration (“OSHA”) that is at least ten (10) hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee (effective July 1, 2006); and that he will comply fully with all laws and regulations applicable to awards made subject to section forty-four A.

Name and Title of person authorized to sign Bid

Signature

Name of Business (please Print or Type)

Date: _____

CERTIFICATE OF STATE TAX COMPLIANCE

Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A

_____, authorized signatory for
name of signatory

_____, whose
name of contractor

principal place of business is at _____,

_____ does hereby certify under the pains and penalties of perjury that
_____ has paid all

name of contractor

Massachusetts taxes and has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature

Date

Name

Federal Tax ID # or Social Security #

EXAMPLE CLERK'S CERTIFICATE

Action of Shareholders
Written Consent

(Date)

The undersigned, being the Shareholders of _____, a Massachusetts Corporation (the "Corporation") entitled to vote on the action, hereby consent to the adoption of the following votes:

VOTED: That the [President and/or the Vice President or named individual], each of them acting singly is, authorized to execute any and all Contract Documents and to enter into and negotiate the terms of all contracts and to accomplish same and to execute any and all documents, instruments, and agreements in order to effectuate the transaction and that said transaction shall be valid, binding, effective, and legally enforceable.

VOTED: That the officers are, and each of them acting singly is, authorized, from time to time, in the name and on behalf of the Corporation to take or cause to be taken all such action(s) as s/he or they, as the case may be, deem necessary, appropriate or advisable to effect the foregoing votes, as may be shown by the officer or officers execution or performance which shall be conclusive evidence that the same is authorized by the directors of this Corporation.

VOTED: That the officers are, and each of them acting singly is, authorized, from time to time, in the name and on behalf of this Corporation, under its corporate seal, if desired, attested by an appropriate officer, if desired, to execute, make oath to, acknowledge, deliver and file any and all of the agreements, instruments, certificates and documents referred to or related to the foregoing votes.

VOTED: That the officers are, and each of them acting singly is, authorized, from time to time and on behalf of this Corporation, under its corporate seal, if desired, to execute, acknowledge and deliver any and all agreements, instruments, certificates and documents referred to or related to the foregoing votes, with such changes as the officer or officers so acting may deem necessary or desirable, and the signature of such officer or officers to be conclusive evidence that the same is authorized by the directors of this Corporation.

Clerk of Corporation Certificate

I, _____ the Clerk of the foregoing corporation, do hereby certify that the above vote was taken at a duly called meeting of the shareholders of the Corporation on _____, 20__.

Clerk of Corporation

SEAL

SAMPLE
TOWN OF HOLLISTON

CONTRACT # _____

STATE CONTRACT # (if applicable) _____

DATE: _____

This Contract is entered into on, or as of, this date by and between the Town of Holliston,
703 Washington Street, Holliston, MA 01746 (the “Town” or “Owner”), and

[“Contractor”]

[Contact Name for Responsible Person]

[Address of the Contractor]

[Telephone Number]

[FAX Number]

[email address]

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

(Describe the work to be performed or attach agreed-upon scope of services)

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

3. Payment will be made as follows:

3.1 If any portion of the contract price is to be paid by a private citizen(s) no work shall be performed until a sum has been deposited with the Town Treasurer, upon an estimate made by the board, committee or officer having charge of the work, sufficient to cover the payment for the portion of the said work chargeable to the private citizen(s).

3.2 Fees and Reimbursable Costs combined shall not exceed \$ _____ as more fully set forth in the Contractor Documents.

3.3 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.

4. Security:

4.1 In the event the contract price exceeds the sum of \$10,000.00, the Contractor must provide security in the form of a bond or otherwise, conditioned upon the faithful performance of this Contract.

4.2 If this Contract is to be used for either Building Construction subject to MGL c. 149 or Public Works Construction subject to MGL c. 30, § 39M or MGL c. 30B, § 5 the following chart and notes are provided for clarification on the minimum required security subject to the Town requiring additional security:

Contract Price	Performance Bond	Payment Bond	Bid Deposit
Under \$10,000	No	No	No
\$10,000 - \$25,000	No	No	No
\$25,001 - \$50,000	No	50% of total contract price ¹	No
\$50,001 - \$150,000 ²	No	50% of total contract price	5% of total bid
Over \$150,000 ³	100% of contract price	100% of contract price	5% of total bid

5. Definitions:

5.1 **Acceptance:** All Contracts require proper acceptance of the described goods or services by the Town. Proper acceptance shall be understood to include inspection of goods and certification of acceptable performance for services by authorized representatives of the Town to ensure that the goods or services are complete and are as specified in the Contract.

¹ As required by MGL c. 149, § 29 for Building Construction Contracts as well as Public Works (Non-Building) Construction Contracts (with Labor) subject to MGL c. 30, § 39M, or MGL c. 30B, § 5.

² This \$150,000 threshold is applicable to only Building Construction Contracts subject to MGL c. 149, but not to Public Works (Non-Building) Construction Contracts (with Labor) subject to MGL c. 30, § 39M, that are more than \$50,000. This row applies to all Public Works Contracts subject to MGL c. 30, § 39M, that are greater than \$50,000.

³ The requirements of this row only apply to for Building Construction Contracts subject MGL c. 149, but not for Public Works (Non-Building) Construction Contracts (with Labor) subject to MGL c. 30, § 39M, or MGL c. 30B, § 5.

- 5.2 Contract Documents: All documents relative to the Contract including (where used) Request for Proposals and all attachments thereto, Instructions to Bidders, Proposal Form, General Conditions, Supplementary General Conditions, General Specifications, Other Specifications included in Project Manual, Drawings, all Addenda issued during the bidding period and Contractor's Response to the Request for Proposal. The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. The purpose of the Contract Documents is to include all labor and materials, equipment and transportation necessary for the proper performance of the Contract.
- 5.3 The Contractor: The "other party" to any Contract with the Town. This term shall (as the sense and particular Contract so require) include Vendor, Contractor, Engineer, or other label used to identify the other party in the particular Contract. Use of the term "Contractor" shall be understood to refer to any other such label used.
- 5.4 Date of Substantial Performance: The date when the work is sufficiently complete, the services are performed, or the goods delivered, in accordance with Contract Documents, as modified by approved Amendments and Change Orders.
- 5.5 Goods: Goods, Supplies, Services or Materials.
- 5.6 Subcontractor: Those having a direct Contract with the Contractor. The term includes one who furnished material worked to a special design according to the Drawings or Specifications of this work, but does not include one who merely furnishes material not so worked.
- 5.7 Work: The services or materials contracted for, or both.

6. 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 _____, unless extended, in writing, at the sole discretion of the Town, and not subject to assent by the Contractor, and subject to the availability and appropriation of funds as certified by the Town Accountant. Time is of the essence for the completion of the Contract.

7. 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. In the event this is a multi-year contract, this Contract shall be subject to annual appropriation and in the event funds are not so appropriated, this Contract shall terminate immediately without liability for damages, penalties or charges to the Town.

8. 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.

9. Termination and Default:

- 9.1 Without Cause. The Town may terminate this Contract on seven (7) 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.
- 9.2 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 seven (7) 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.
- 9.3 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.

10. Suspension or Delay

The Town may order the Contractor, in writing, to suspend, delay or interrupt all or any part of the Services without cause for such period of time as the Town may determine to be appropriate for its convenience. In the event of any such suspension, delay or interruption, the Contractor's time for performance may be equitably adjusted. No adjustment shall be made if the Contractor is or otherwise would have been responsible for the suspension, delay or interruption of the Services, or if another provision of this Contract is applied to render an equitable adjustment.

11. 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 Holliston 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.

From any sums due to the Contractor for services, the Town may keep the whole or any part of the amount for expenses, losses and Damages incurred by the Town as a consequence of procuring services as a result of any failure, omission or mistake of the Contractor in providing services as provided in this Contract.

12. Statutory Compliance:

- 12.1 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, including, but not limited to, the following:

General Laws Chapter 30B – Procurement of Goods and Services.

General Laws Chapter 30, Sec. 39, *et seq*: - Public Works Contracts.

General Laws Chapter 149, Section 44A, *et seq*: Public Buildings Contracts.

- 12.2 Wherever applicable law mandates the inclusion of any term and provision into a municipal contract, this Section shall be understood to import such term or provision into this Contract. To whatever extent any provision of this Contract shall be inconsistent with any law or regulation limiting the power or liability of cities and towns, such law or regulation shall control.
- 12.3 The Contractor shall comply with all Federal, State and local laws, rules, wage regulations, policies and orders applicable to the Work provided pursuant to this Contract, such provisions being incorporated herein by reference, and shall be responsible for obtaining all necessary licenses, permits, and approvals required for the supply of such Work.

The Contractor hereby agrees to indemnify and hold the Town harmless for and against any and all fines, penalties or monetary liabilities incurred by the Town as a result of the failure of the Contractor to comply with the previous sentence. If any discrepancy or inconsistency is discovered in the Drawings, Specifications or Contract for this work in violation of any such law, by-law, regulation, order or decree, it shall forthwith report the same in writing to the Town. The Contractor hereby agrees to, at all times, itself observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and hereby agrees to protect and indemnify the Town, and its duly appointed agents against any claim or liability arising from or based on any violation whether by him or its agents, employees or subcontractors of any such law, by-law, regulation or decree. 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.

13. 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; and by executing the Contract Documents the Contractor certifies to the Town that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.

14. 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).

15. 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, including but not limited to, Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973 and Mass. G. L. c. 151B, and any other executive orders, rules, regulations, requirements and policies relating thereto enacted by the Commonwealth of Massachusetts and the Town as they may be amended from time to time. 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.

15.1 As used in this section “affirmative action” means positive steps to ensure all qualified persons equal employment opportunity without regard to race, color, religion, sex or national origin at all stages of the employment process: recruitment, selection, placement, promotion, training, layoff and termination. It may include, but is not limited to, the following:

- (a) Inclusion in all solicitation and advertisements for employees of a statement that the Contractor is an “Equal Opportunity Employer”;
- (b) Placement of solicitations and advertisements for employees in media that reaches minority groups;
- (c) Notification in writing of all recruitment sources that the Contractor solicits the referral of applicants without regard to race, color, religion, sex or national origin;
- (d) Direct solicitation of the support of responsible and appropriate community, state and federal agencies to assist recruitment efforts;
- (e) Participation in, or establishment of, apprenticeship or training programs where outside programs are inadequate or unavailable to minority groups;
- (f) Modification of collective bargaining agreements to eliminate restrictive barriers established by dual lines of seniority, dual rates of pay or dual lines of promotion or progression which are based on race, color, religion, sex or national origin; and
- (g) Review selection, placement, promotion, training, layoff and termination procedures and requirements to ensure that they do not intentionally or unintentionally discriminate against qualified persons because of race, color, religion, sex or national origin.

15.2 The Contractor, if applicable, shall include in all compliance and progress reports submitted to the town a report which shall include: (a) A certificate stating that he or she is currently in

compliance with the provisions of G.L. c. 152B and setting forth the Affirmative Action he or she is currently undertaking and will undertake during the contract period to provide equal employment opportunity for all qualified persons without regard to race, color, religion, sex or national origin; and (b) A statement in writing supporting information signed by an authorized officer or agent on behalf of any labor union or other agency which refers workers or provides or supervises apprenticeship or other training programs which the Contractor deals, to the effect that the union or other agency's practices and policies do not discriminate on the basis of race, color, religion, sex or national origin; provided, in the event that the union or other agency shall refuse to execute such a statement, the Contractor need only so certify in writing.

15.3 A copy of any such report as described above, shall be filed in the office of the Town Clerk and shall upon said filing become a public record.

15.4 The Contractor will take Affirmative Action to ensure that employees are solicited and employed, and that employees are treated during employment, without regard to race, color, religion, sex or national origin.

15.5 The Contractor will in all solicitation or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

15.6 In determining whether steps taken by the Contractor constitute Affirmative Action, the Town shall take into account the relevant characteristics of the Contractor including, but not limited to, the number of employees and the location of the principal and branch offices.

16. 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.

17. 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 Select Board; and (2) endorsed with approval by the Town Accountant as to appropriation or availability of funds; and (3) endorsed with approval by the Town Counsel as to form.

18. Corporate Contractor:

If the Contractor is a corporation, 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 Holliston unless and until the Contractor complies with this section.

The Contractor, if a foreign corporation, shall file with the Commissioner of Corporations a Power of Attorney and duly authenticated copies of its Charter or Certificate of Incorporation; and said Contractor shall comply with all the laws of the Commonwealth of Massachusetts.

19. Contractor's Personnel:

The Contractor shall utilize only its employees and shall not utilize any third-party contractors without prior written approval of the Town.

20. Liability of Public Officials:

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

21. 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, regardless of whether or not it is caused in part by any party indemnified hereunder. 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.

- 21.1 The Contractor hereby agrees to indemnify and hold harmless the Town, including the agents, employees and representatives of either, from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder.
- 21.2 The Contractor shall be responsible for all damage or injury to property of any character during the prosecution of the work resulting from any act, omission, neglect, or misconduct in the manner or method of executing the work or due to the non-execution of the work or at any time due to defective work or materials.
- 21.3 In any and all claims against the town or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in anyway by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workmen's Compensation Acts, disability benefit acts or other employee benefit acts.
- 21.4 The Contractor hereby assumes the entire responsibility and liability for any and all injury to or death of any or all persons, including the Contractor's employees, and for any and all damage to property caused by, resulting from or arising in whole or in part out of any act, omission, or neglect on the part of the Contractor or of any Subcontractor or of anyone directly or indirectly

employed by any of them, or of anyone for whose acts any of them may be liable in connection with operations under the Contract.

- 21.5 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, limit or modified in any respect by reason of any surety or insurance provided by the Contractor under the Contract.

22. Insurance

22.1 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.

Failure to provide and continue in force such insurance during the period of this Contract shall be a material breach of this Contract, shall operate as an immediate termination thereof, and 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. 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 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.

22.2 Professional Liability Insurance

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

Failure to provide and continue in force such insurance during the period of this Contract shall be a material breach of this Contract, shall operate as an immediate termination thereof, and 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. 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.

22.3 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 Holliston 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. The intent of the Specifications regarding insurance is to specify minimum coverage and minimum limits of liability acceptable under the Contract. However, it shall be the Contractor's responsibility to purchase and maintain insurance of such character and in such amounts as will adequately protect it and the Town from and against all claims, damages, losses and expenses resulting from exposure to any casualty liability in the performance of the work, including and not limited to Professional liability insurance where applicable.
- d. All policies shall identify the Town as an additional insured (except Workers' Compensation and Professional Liability). The Contractor shall notify the Town immediately upon the cancellation or amendment to any policy. Renewal Certificates shall be filed with the Town at least ten (10) days prior to the expiration of the required policies. Certificates evidencing all such coverage shall be provided to the Town upon the execution of this Contract, and upon the renewal of any such coverage. Each such certificate shall specifically refer to this Contract and shall state that such insurance is as required by this Contract. **Failure to provide the notices required in this Section or to continue in force such insurance shall be a material breach of this Contract and shall be grounds for immediate termination.** Said insurance shall include: Workers Compensation/Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent Contractors, personal injury, contractual liability. 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. All insurance shall be written on an occurrence basis. Coverage shall be maintained without interruption from date of the Contract until date of final payment and termination of any coverage required to be maintained after payment.
- e. 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.

23. Documents, Materials, Etc.

Any materials, reports, information, data, etc. given to or prepared or assembled by the Contractor under this Contract are to be kept confidential and shall not be made available to any individual or organization by the Contractor (except agents, servants, or employees of the Contractor) without the prior written approval of the Town, except as otherwise required by law. The Contractor shall comply with the provisions Chapter 66A of the General Laws of Massachusetts as it relates to public documents, and all other state and federal laws and regulations relating to confidentiality, security, privacy and use of confidential data.

Any materials produced in whole or in part under this Contract shall not be subject to copyright, except by the Town, in the United States or any other country. The Town shall have unrestricted authority to, without payment of any royalty, commission, or additional fee of any type or nature, publicly disclose, reproduce, distribute and otherwise use, and authorize others to use, in whole or in part, any reports, data or other materials prepared under this Contract.

All data, reports, programs, software, equipment, furnishings, and any other documentation or product paid for by the Town shall vest in the Town at the termination of this Contract. The Contractor shall at all times, during or after termination of this Contract, obtain the prior written approval of the Town before making any statement bearing on the work performed or data collected under this Contract to the press or issuing any material for publication through any medium.

24. 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.

25. Audit, Inspection and Recordkeeping

At any time during normal business hours, and as often as the Town may deem it reasonably necessary, there shall be available in the office of the Contractor for the purpose of audit, examination, and/or to make excerpts or transcript all records, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Contract.

26. Payment

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

27. 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.

To the extent allowed by law, any conditions, duties, and obligations contained in this Contract may be waived only by written agreement by both parties.

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any manner limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach of a similar or different matter.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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 Holliston by:

The Contractor by:

Select Board Date

Signature Date

Print Name

Print Name & Title

Select Board Date

Print Name

Select Board Date

Print Name

Department Head Date

Print Name

Chief Procurement Officer:

Date

Certified as to Form:

Town Counsel Date

Certified as to
Appropriation/Availability of Funds:

Town Accountant Date

BOTH CERTIFICATIONS ON THIS PAGE MUST BE EXECUTED

CERTIFICATION OF GOOD FAITH

The undersigned certifies under pains and penalties of perjury that this contract has been obtained in good faith and without collusion or fraud with any other 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.

The Contractor by:

Print Name

Title/Authority

CERTIFICATE OF STATE TAX COMPLIANCE

Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A

_____, authorized signatory for
name of signatory

_____, whose
name of contractor

principal place of business is at _____,

_____ does hereby certify under the pains and penalties of perjury that
_____ has paid all

name of contractor

Massachusetts taxes and has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature

Date

Name

Federal Tax ID # or Social Security #