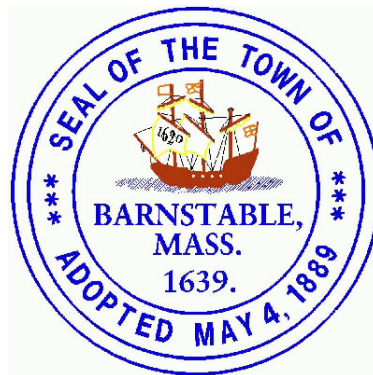


# **Town of Barnstable Request for Proposals**

## **Aselton Lighting Design Project and On Call Lighting Design and Review Consultation Services**



**Growth Management Department**

**August 31, 2009**

This document and any addenda thereto are issued electronically only. It is the responsibility of every bidder who receives this bid and all associated documents to check the Town of Barnstable Bid & RFP System ([www.town.barnstable.ma.us](http://www.town.barnstable.ma.us)) for any addenda or modification to this solicitation, if they intend to respond. The Town of Barnstable accepts no liability to provide accommodation to bidders who submit a response based upon an out of date solicitation document. Bidders may not alter (manually or electronically) the bid language or any bid documents. Unauthorized modifications to the body of the bid, specifications, terms or conditions, or which change the intent of this bid are prohibited and may disqualify a response.

## TABLE OF CONTENTS

	Page Number
I INTRODUCTION AND BACKGROUND	3
II. KEY DATES FOR PROPOSAL	4
III. PROPOSAL INSTRUCTIONS	4
A. Instructions to Proposers	4
A. Notification of Award	7
B. Contract	7
C. Insurance Requirements	7
D. Miscellaneous Information	8
E. Minority or Woman Business Enterprise Participation	8
IV. PROPOSAL REQUIREMENTS	9
A. Minimum Requirements	9
B. Qualification/Staffing Requirements	10
C. Technical Scope of Services	11
D. Additional Narrative Information	13
E. Miscellaneous Requirements	14
V. PROPOSAL EVALUATION	14
A. Technical Evaluation	14
Minimum Criteria	14
Comparative Criteria	14
B. Interview	16
C. Rule for Award	16
VI. PROPOSAL SUBMISSION REQUIREMENTS	17
A. Non Price Proposal	17
B. Price Proposal	17
C. Contact Information	17
APPENDICES	
APPENDIX A -- Certificate of Non-collusion	18
APPENDIX B -- State Taxes Certification Clause	19
APPENDIX C --Price Proposal	20
APPENDIX D -- Legal advertisement	22
APPENDIX E - Agreement	23

Note: See Page 13 for location of additional documents for review.

## **SECTION I. INTRODUCTION AND BACKGROUND**

The Purchasing Agent for the Town of Barnstable on behalf of the Growth Management Department is seeking proposals for professional consulting services from qualified electrical and lighting engineering design consultants for the Aselton Lighting Design and On Call Lighting Design and Review Consultation Services. The Town of Barnstable adopted a Lighting Study for the Hyannis Area in the fall of 2007 and we have implemented some projects based upon this study. The Town of Barnstable is soliciting Qualification and Fee Packages from qualified lighting design consultants. The design services include the specific design of improvements to the Aselton Park Lighting in accordance with the adopted plan and a three (3) year on call service agreement for lighting design and consultation as requested by the Town at the discretion of the Town.

The adopted lighting plan is available online at on the Town of Barnstable website at <http://www.town.barnstable.ma.us/GrowthManagement/LightingStudy.pdf>.

In 2005 the Town designated a Growth Incentive Zone (GIZ) in downtown Hyannis around Main Street and Hyannis Harbor and targeted this area for revitalization. Within the GIZ, the town has allowed increased density and mixed uses to complement the commercial village center that already exists. Lighting Improvements are a key part of our revitalization effort.

The Town is looking for an Electrical and Lighting Engineering Consultant (the designer) that will effectively work with the Town to implement the lighting plan that will accentuate the Hyannis area and provide an aesthetically pleasing and safe area to drive, walk, and bicycle.

The contract and its award process resulting from this Request for Proposal (RFP) are not subject to the Uniform Procurement Act pursuant to the M.G.L. c. 30B the Designer Selection Law, Chapter 7. Issuance of this RFP does not signify the Town's submission of this service to the provisions of the Act, and the contract and award will be made at the Town's discretion. If it becomes necessary to revise any part of this RFP or otherwise provide additional information, an addendum will be issued to all prospective proposers who received copies of the original request. Award of a contract resulting from this RFP shall be in strict accordance with the requirements of this document.

### **A. BACKGROUND**

The Town of Barnstable, located on Cape Cod, was incorporated in 1639. The Town has an annual year-round population of over 48,000 (2000 Census) and approximately 125,000 - 150,000 seasonal residents. The average per capita income of the residents of Barnstable is \$46,811 (2000 Census). Of the residents over age 25, approximately 88.7% have a high school degree, and 28.1% have a bachelor's degree or greater. The Town of Barnstable is located approximately 65 miles southerly from Boston and approximately 75 miles easterly from Providence. The Town of Barnstable serves as the commercial and transportation center for Cape Cod.

The Town encompasses an area of 64.1 square miles and consists of seven distinct villages: Barnstable, Centerville, Cotuit, Hyannis, Marstons Mills, Osterville, and West Barnstable. It serves as the County Seat for Barnstable County.

Hyannis is the most populated of the seven villages in the Town of Barnstable. Over the last 100 to 150 years the village of Hyannis grew into the commercial and transportation center for the Town of

Barnstable and for Cape Cod. There is a regional bus station, a railroad station, regional airport, and two terminals for ferries to the Islands. Main Street is the traditional downtown shopping area for the Town.

The Town functions under a Council-Manager form of government, with a charter-supported strong Manager, and thirteen Town Councilors elected by precinct. The Barnstable Town Council is the legislative and policy-making branch of the Town government. The Town Manager develops policies and ordinances for adoption by the Town Council and the Council then enacts policies and ordinances, which it believes promote and enhance the general welfare of the Town.

## **SECTION II. KEY DATES FOR THIS PROPOSAL**

### **Key dates for this Proposal** (Note – some dates are tentative and subject to change)

August 31, 2009	RFP available on the Town of Barnstable website <a href="http://www.town.barnstable.ma.us">www.town.barnstable.ma.us</a> , Bid & RFP System
September 6, 2009	RFP Advertised in Cape Cod Times
September 14, 2009	Advertise in the Goods and Services Bulletin
September 18, 2009	Last date for written questions to Purchasing Agent
September 25, 2009	Proposals Due 2:00 pm, Purchasing Agent’s Office
Week of September 28 <sup>th</sup> or October 5 <sup>th</sup>	Optional Interview period
Week of October 12 <sup>th</sup>	Notification of Award
November 1, 2009 or sooner	Contracted work to commence
May 27, 2010	Construction of Project Completion Date

## **SECTION III. PROPOSAL INSTRUCTIONS**

### **A. INSTRUCTIONS TO PROPOSERS**

1. The Town of Barnstable may cancel this RFP, in whole or in part, or may reject all proposals submitted in response, or may procure only some goods and/or services outlined in this RFP whenever such action is determined to be fiscally advantageous to the Town or if it is otherwise in the best interest of the Town.
2. The Town of Barnstable may request that supplementary information be furnished to assure the Town that a proposer has the technical competence, the business and technical organization, and the financial resources adequate to successfully perform the necessary work.

3. No forms are provided by the awarding authority except the Certificate of Non Collusion found in Appendix A, the State Taxes Certification Clause, Appendix B, and the Price Proposal form Appendix C. All proposals shall be in ink or typewritten and must be completed according to the instructions contained herein.
4. Questions requiring clarification shall be submitted in writing or faxed to the Chief Procurement Officer prior to date indicated above in Key Dates in order to afford the Town adequate time to respond with a correction or additional information prior to the deadline for submission of proposals. See section VI sub- section C for address and phone numbers. Should it be found necessary, a written addendum will be incorporated into the RFP and will become part of the contract. Those who have received a copy of the RFP will be notified of such changes.
5. Each proposer shall acknowledge receipt of any and all addendum issued to the Request for Proposal by so indicating in the Cover Letter/General Response. Failure to do so shall be cause to reject the proposal as being unresponsive.
6. The proposer shall sign the proposal correctly in ink or in the case of an organization, firm, partnership or corporation, a person having the legal authority from said organization to sign the proposal will sign the document.
7. All proposals shall be submitted to the office of the Purchasing Agent, Procurement & Risk Management, Town of Barnstable, 230 South Street, 3<sup>rd</sup> Floor, Hyannis, MA 02601, on or before the date and time stated in the “Legal Advertisement”- Appendix D. Each proposal shall be in SEALED envelopes, clearly marked on the outside of the envelope to indicate the contents, and the name and address of the proposer. Sealed Non Price Proposals must be submitted in a separate, sealed envelope from the Sealed Price Proposal.
8. Proposers may correct, modify or withdraw the original proposals on or before the date and time as stated in the “Legal Advertisement”. Corrections or modifications shall be in sealed envelopes, clearly marked to indicate the contents, with the name and address of the Consultant. Any late correction or modification to the proposal will not be accepted. A proposer who wishes to withdraw a proposal must make a request in writing.
9. Each proposer shall be presumed to have read and be thoroughly familiar with these documents. Unfamiliarity with these documents shall in no way relieve any proposer from any obligation in respect to his/her proposal.
10. It is understood that the Consultant’s Proposal to the Town of Barnstable to provide said services and products will remain valid for 90 days past the submission deadline.
11. The proposer’s attention is directed to the fact that all applicable state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over proposal/purchase shall apply to the contract throughout, and they shall be deemed to be included in the contract the same as though herein written out in full. .
12. It is understood that the proposer has submitted the Proposal in good faith and has not colluded with any other individuals, firms, or corporations in creating the proposal to subvert the market process. See Certificate of Non-Collusion attached (Appendix A).
13. If the proposer intends on subcontracting portions of the required work, then the proposer will ensure that all specifications within their Proposal as well as the RFP are met, regardless of who performs the work. Any subcontractors must be so noted in the Consultant’s proposal. The Consultant must comply with all federal, state, and municipal laws,

ordinances, rules and/or regulations, including labor laws, and those against discrimination, existing or adopted in the future which are applicable at any time to the consultant pursuant to its obligations during this project. The consultant and any of his subcontractors, agents, servants and/or employees shall obtain at their sole cost and expense, all required permits, franchises, approvals, licenses and/or certificates necessary for the performance of his obligations pursuant to the agreement, if applicable.

14. All costs involved in preparing the Proposal will be borne by the Consultant; the Town will not be liable for any costs associated with the creation of the Proposal. The proposer shall be familiar with all state, local and other laws relating to this type of work .
15. All responses are to include a statement that the Proposal is in accordance with this Request for Proposal and that the proposer has read and understands all sections and provisions herein. Exceptions, if any, are to be clearly stated.
16. Proposals, which are incomplete, conditional or obscure, will be rejected. No award will be made to any proposer who cannot satisfy the awarding authority that he/she has sufficient ability and sufficient capital to enable him/her to meet the requirements of these specifications. The awarding authority's decision or judgment on these matters shall be final, conclusive and binding.
17. Any proposal received after the date and time stated in the "Legal Advertisement" will be deemed "non-responsive" and shall not be opened. Unopened proposals will be returned to the proposer.
18. The evaluation of the Non-Price Proposals will be conducted by a team/committee appointed by the Purchasing Agent. The judgment of the evaluators will be based upon the evaluation criteria set forth in this RFP and shall be final.
19. The Non-Price Proposals will be opened on the date and at the time stated in the "Legal Advertisement" The name of the person or organization submitting a proposal will be read and recorded. The contents of all proposals will be opened privately and not be disclosed to the public or competing proposers until the evaluation process is completed and a contract has been awarded. A register of proposals will be completed indicating the name of the proposer and the number of proposal modifications submitted by each proposer. This register may be viewed upon request. The names of the witnesses will also be recorded. The Price Proposals will be opened only after the evaluation has been completed.
20. Any contract resulting from this RFP shall be awarded to the proposer whose Proposal is deemed to be the most Highly Advantageous to the Town of Barnstable. The Town alone will be the sole judge in determining whether a Consultant's proposal satisfies the requirements of this RFP and whether or not the Proposal will prove advantageous to the Town. The selected Consultant will be under contractual agreement to the Town per the attached contract document.
21. Response to this Request for Proposal acknowledges the Consultant's acceptance of all sections and requirements of this document. The Request for Proposal will be written into the successful Consultant's proposal as part of the system contract. IF THE CONSULTANT'S PROPOSAL DOES NOT COMPLY WITH THE REQUIREMENTS OF THIS REQUEST FOR PROPOSAL, OR IF AN ITEM IS NOT UNDERSTOOD IN ANYWAY, A COPY OF THAT SECTION OF THE REQUEST FOR PROPOSAL MUST THEN BE INCLUDED IN THE PROPOSAL AND ALL ITS COPIES CLEARLY STATING THE DEVIATION, ADDITIONS, OR OTHER COMMENTS.

## **B. NOTIFICATION OF AWARD**

All proposers will be notified of the selection decision within 30 days of the date proposals are due to the Town unless otherwise notified by the Town. In no case will the award be made beyond 60 days unless the Consultant agrees to extend the period of time in which the proposal is valid.

## **C. CONTRACT**

This Request for Proposal, as well as the selected Consultant's proposal, and any addenda to that proposal, will become part of the final contract.

## **D. INSURANCE REQUIREMENTS**

1. **Indemnification** - Contractor will indemnify and hold harmless the Town of Barnstable and its employees against any and all claims for damages on account of bodily injury, including death, property damage, personal injury, and advertising injury by any act or omission due to negligence of the Contractor, subcontracts, its agents, or employees to any property of or under the control of the Town of Barnstable during the term or any extension of the resultant agreement, and in case of any action or actions or other legal proceedings shall be brought or instituted against the Town of Barnstable on account of any such claims, Contractor shall indemnify and hold harmless the Town of Barnstable. However, should the claim be due to the negligence of the Town of Barnstable and/or its employees, Contractor shall be held harmless.
2. **General Insurance** - The Contractor shall, before commencing performance of the contract, be responsible for providing and maintaining insurance coverage in force for the life of the contract of the kind and in adequate amounts to secure all of the obligations under the contract and with insurance companies acceptable to the Town of Barnstable. All such insurance carried should not be less than the kinds and amounts designated herein, and the Contractor agrees that the stipulation herein of the kinds and limits of coverage shall in no way limit the liability of the Contractor to any such kinds and amounts of insurance coverage. Under all insurance coverage, required or not required by the Town, the Contractor shall indemnify, and hold harmless the Town of Barnstable, its elected or duly appointed offices, directors and employees against any claim based upon negligent, accidental or intentional acts or omissions of the contractor, its employees or its agents in providing its services to employees of the municipality or their dependants pursuant to the agreement.

With the exception of Professional Services Liability for architects, designers and engineers, and Worker's Compensation, the Town of Barnstable and its employees must be named as an additional insured and a certificate of insurance will be provided indicating such for each of the insurance policies or surety bonds obtained pursuant to the requirements established by the issuance of the contract. Upon execution of the contract the Contractor will provide copies of certificates of insurance to the Town of Barnstable.

Failure to provide and continue in force such insurance as aforesaid may be deemed a material breach of this contract, and may constitute sufficient grounds for immediate termination of the same. All insurance maintained as provided for in the above shall be taken out and maintained at the sole

expense of the Contractor. Annually, at time of vendor's policy renewal, updated insurance certificates shall be sent to the Town of Barnstable.

No cancellations of such insurance, whether by the insurer or by the insured party shall be valid unless written notice thereof is given by the parties proposing cancellation to the other party and to the Town of Barnstable at least thirty (30) days prior to the intended effective date thereof, which date shall be expressed in said notice, and which shall be sent out by registered mail, return receipt requested. These provisions shall apply to the legal representatives, trustees in bankruptcy, receiver, assignee, and/or the successor in interest of the Contractor.

All insurance coverage shall be placed with such company as may be acceptable to the Town of Barnstable and shall constitute a material part of the contract documents.

3. **Comprehensive General Liability Insurance** - The Contractor shall carry Commercial General Liability Insurance with an each occurrence limit of liability no less than One Million Dollars (\$1,000,000.00) and a general aggregate limit of liability no less than Two Million Dollars (\$2,000,000.00); and a Products/Completed Operations (as may be required) Aggregate limit no less than Two Million Dollars (\$2,000,000.00) for all injury and damages to or destruction of property during the policy period.
4. **Automobile Liability and Property Damage Insurance** - The Contractor shall carry business Automobile Liability Insurance covering all owned vehicles with a combined single limit no less than One Million Dollars (\$1,000,000.00) to cover all damage caused by contracted employees of the awarded Contractor. Level of insurance must adequately cover the liability exposure of project site and is subject to Town of Barnstable Risk Manager approval.
5. **Workers' Compensation Insurance** - The Contractor shall carry Workers' Compensation Insurance as required by Massachusetts General Law, c. 152, and Section 25, with a minimum limit of Employer's Liability as per Massachusetts General Law requirements.

#### **E. MISCELLANEOUS INFORMATION**

All information acquired by the Consultant from the municipality or from others at the expense of the municipality in performance of the agreement, shall be and remains the property of the municipality. All records, data file, computer records work sheets, deliverable products complete and incomplete, and all other types of information prepared or acquired by the consultant for delivery to the Town shall be and remain the property of the Town.

The Consultant agrees that he will use this information only as required in the performance of this agreement and will not, before or after the completion of this agreement, otherwise use said information, nor copy, nor reproduce the same in any form except pursuant to the sole written instructions of the Town.

#### **F. MINORITY OR WOMAN BUSINESS ENTERPRISE PARTICIPATION**

Minority-Owned Business Enterprises (MBE) or Woman-Owned Business Enterprises (WBE) are strongly encouraged to submit proposals in response to the Request for Proposal (RFP). For the purposes of this RFP, the term MBE or WBE shall mean a vendor who is certified as a minority business



enterprise by the State Office of Minority and Women-Owned Business Assistance (SOMWBA), and who is certified at the time the vendor's proposal is submitted.

All minority owned businesses are encouraged to apply for SOMWBA certification. For further information on SOMWBA qualifications, or access to SOMWBA vendor lists, contact the State Office of Minority and Women-Owned Business Assistance at (617) 727-8692

The Town of Barnstable will require contractors and subcontractors involved in local municipal projects to abide by the Equal Opportunity Anti-Discrimination Program guidelines below, which form a part of the contract generating from this RFP.

### **EQUAL EMPLOYMENT OPPORTUNITY ANTI-DISCRIMINATION PROGRAM**

During the performance of this contract, the Contractor and all of (his) Sub-Contractors (wherein after collectively referred to as the Contractor), for himself, his assignees, and successors in interest, agree as follows:

**The Contractor, in the performance of all work after award and prior to completion of the contract work, will not discriminate on grounds of race, color, religious creed, national origin, age or sex in employment practices, in the selection or retention of subcontractors, or in the procurement of materials and rentals of equipment. Fair Employment Practices Law of the Commonwealth (M.G.L. Chapter 151B)**

**The proposer by signing the contract offered by the Town agrees to abide by the above paragraph to the best of his/her ability.**

#### **SECTION IV. PROPOSAL REQUIREMENTS**

##### **A. MINIMUM REQUIREMENTS**

The Evaluation Committee shall reject proposals which do not meet the following certain minimum requirements or the instructions to proposers found in this document:

1. The electrical and lighting engineering consultant shall be a registered Professional Engineer in the Commonwealth of Massachusetts. (documentation to be provided)
2. The electrical and lighting engineering consulting must be a member of the Illuminating Engineers Society. (documentation to be provided)
3. Proposer must have a minimum of five (5) years experience in lighting design with a focus on municipal facility exterior lighting including walkways, roadways, multipurpose paths, parking lots, parks and building exteriors. (documentation to be provided)
4. The proposal must be from an established business, corporation, partnership, firm or individual(s) who normally furnish such services as the principal business for which the corporation or firm is formed. A description of the business including a list of clients (does not have to be complete list; sample is acceptable) and number of employees is required.
5. All proposals shall be submitted to Procurement & Risk Management as stated in "Legal Advertisement"- Appendix D. Each proposal shall be in SEALED envelopes, clearly marked on the outside of the envelope to indicate the contents, and the name and address of the proposer. Sealed Non Price Proposals must be submitted in a separate, sealed envelope from the Sealed Price Proposal.

6. The proposal must be received in the Purchasing Agent's Office before the deadline for receipt of proposals as stated in Section II, Key Dates and must be complete (must include or address all items specified in Section VI -- Proposal Submission Requirements).
7. The proposer must have signed both the Certificate of Non Collusion (Appendix A) and the State Taxes Certification Clause (Appendix B) and include them in the proposal package.
8. The proposal must be signed by an agent of the company who has authority to bind the company to a firm bid price.

**B. QUALIFICATIONS/STAFFING REQUIREMENTS**

1. Qualifications of the Consultant

The Electrical and Lighting Engineering Consultant shall meet the minimum requirements defined above in Section IV.A and proposal shall include the following.

- a. A description of the consultant's approach to this project: methodology, demonstrated understanding of the community's needs, and the consultant's expectations of assistance and services from the Town.
- b. An applicant qualifications statement, including academic and professional work experience attesting to capacity to perform the required work program. Resumes are required for all project personnel.
- c. A client reference list, with names, addresses, and telephone numbers, especially for clients for whom the consultant has performed similar services in the past. A minimum of five (5) references of similar municipal type exterior lighting design projects worked on in the past five (5) years. References shall include a brief description of the project along with the size of the project and contact information of the project owner or client.
- d. Any other information deemed relevant to the project, and which the consultant believes will further the competitiveness of the proposal, including work samples from similar completed projects.

2. Project Staffing

- a. The Proposer must set forth the staffing to be utilized for this service, including qualifications and experience.
- b. If the proposer is an individual who intends to do the entire work themselves without any additional staff, they must indicate the full extent and nature of any other projects or work they are currently engaged in during the time of the project work.
- c. Each individual, their duties, the number of days each will spend providing this service must be broken down into the following categories:

Name  
Work Assignment  
Responsibilities

- d. Consultants must be prepared to contractually commit all individuals as submitted in their proposal, to this service. Any deviation from the proposed individuals will constitute a breach of agreement to any contractual agreement, which may result from this Request for Proposals.
- e. Should it become impossible for a contractually committed individual to complete his duties, for a reason such as termination of employment, any change to the Consultant's staffing as outlined in the proposal will be subject to the approval of the Town. The Town shall notify the Consultant 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. TECHNICAL SCOPE OF WORK

### Task 1 - Aselton Park Lighting Improvement Design

The scope of work will include Design Phase, Bid Phase and Construction Phase services for Lighting Equipment Replacement and Improvements at Aselton Park.

Aselton Park is a Town Owned Public Park located at the southeast corner of the intersection of South Street and Ocean Street, Hyannis. The park is approximately 2 acres in size with 1,000 linear feet of walkways and a small plaza that need to be lit.

Currently all but approximately 300 feet of walkway is lit by 13 existing lights that are approximately 20 years old. Under this project the existing lighting will be replaced and new lighting will be installed along the newer 300 foot brick walkway that is currently not lit.

#### Task 1A – Design Phase

Lighting is to be designed in accordance with the Lighting Study that was adopted by the Town of Barnstable. In the design phase the lighting consultant shall design the lighting and prepare construction drawings, technical specifications, and construction cost estimates for the proposed work. The design shall be in conformance with all applicable federal, state, and local codes, laws, and regulations.

- **Walkway and Plaza Lighting** – The designer shall design the installation of new light poles and fixtures for the existing 13 walkway lights and for additional lighting as necessary along the new brick walkway. The designer will be responsible for all aspects of the design including but not limited to: photometric design, structural adequacy of the pole foundations, adequacy of the wiring, and electrical circuitry.

Walkway and lighting assemblies shall be the nautical style with banner arms and plant hangers as shown on sheets 44 and 45 of the lighting study with the exception that the overall height of the pole shall be 20 feet and 2 inches and the bottom of the fixture shall be a minimum of 14 feet six inches above the finished ground. Hose shields shall be installed on the fixtures facing the harbor in areas where lighting glare from the fixtures could affect boating activities.

Lighting shall be metal halide. Poles shall have banner arms as well as Plant Hangers.

- **Flag pole lighting** – Vandal resistant in ground spot lighting suitable to illuminate the American flag at the park shall be designed and specified. There is existing wiring to locations where above grade fixtures were damaged by vandals.

Deliverables: Drawings, specifications and Cost estimates shall be submitted at the 95% design phase and again after town review at the 100% phase at which time the documents will be suitable for public bidding purposes.

- **Photometric** calculation results. Including photometric plan and letter regarding conformance with the Town of Barnstable lighting study
- **Drawings** - A hard reproducible drawing, PDF file, and electronic cad file adequately illustrating the work shall be furnished to the Town of Barnstable for to be used for bidding and construction purposes.
- **Specifications** - A hard reproducible set of Technical Specifications and a word document shall be furnished to the Town of Barnstable for to be used for bidding and construction purposes. The Town of Barnstable shall provide the “front end” bid form, etc. for the bid documents and will administer the bid process.
- **Cost Estimate** - A cost estimate shall be submitted to the Town of Barnstable in hard copy as well as in a PDF and excel spreadsheet format.

Schedule: A project design, bidding and construction schedule for the work shall be submitted with the proposal. It is desirable that the lighting be installed by Memorial Day 2010.

#### Task 1B – Bid Phase

The designer will assist the Town of Barnstable during the bidding phase by being available by telephone during the pre-bid conference, by answering technical questions from Bidders that arise during the bid phase, and by performing a technical review of “or equivalent” lighting equipment pre-submitted and submitting a letter of recommendation to the town for each pre-submittal.

Deliverables: Bidding addenda as necessary.

#### Task 1C – Construction Phase

The designer will be responsible for reviewing shop drawings, responding to the contractor’s technical questions, and preparation of change orders, conflict resolution and coordination of supplier issues, substantial completion observation and punch list preparation. It is anticipated that the designer will need to attend a start of construction meeting as well as a substantial completion inspection.

Deliverables: Shop drawing review approvals/comments. Substantial completion punch list.

**Task 2 – On Call Lighting Engineering Services to the Town as needed.**

The Town anticipates the need for additional design, and lighting design review services as we continue to implement the lighting study. The consultant will be paid for these services on a negotiated or hourly basis as determined at the time of request to provide services by the town. In anticipation of this need the designer shall submit hourly rates for his services to cover a three year period and a per trip cost to Barnstable to cover the cost of onsite meetings or inspections. The designer shall provide an hourly fee for principal, engineer, designer, draftsman, and clerical services in the categories the designer typically charges and also provide a per trip cost that includes all necessary travel, and accommodation expenses beyond the hourly rate charged for services provided onsite in Barnstable. As these services are to be authorized at the Town’s discretion and as funded, a contract amendment will be issued to authorize funding for defined tasks.

**Documents Available for Review:**

The following documents are available for review:

- The adopted lighting plan is available online at on the Town of Barnstable website at <http://www.town.barnstable.ma.us/GrowthManagement/LightingStudy.pdf>.
- Downtown Hyannis Design and Infrastructure Plan which is available at the Town’s website [www.town.barnstable.ma.us/](http://www.town.barnstable.ma.us/).
- Hyannis Village Zoning Districts which is available at the Town’s website [www.town.barnstable.ma.us/](http://www.town.barnstable.ma.us/).
- Aselton Park Proposed Lighting and Electrical Plan dated December 21, 1990 as revised June 12, 1992 (attached).
- Aselton Park Existing conditions plan Compiled from Town of Barnstable GIS aerial photography information supplemented with field survey information (attached).
- Aselton Lighting 1992 Plan, Aselton Lighting 2009 Existing Plan (separate PDF)

**Project Manager**

The project will be managed by the Stephen Seymour, P.E. in the Town of Barnstable’s Growth Management Department [steve.seymour@town.barnstable.ma.us](mailto:steve.seymour@town.barnstable.ma.us) telephone: (508) 862-4086.

**D. ADDITIONAL NARRATIVE INFORMATION**

1. Summarize what you believe your firm offers that is unique from other firms.
2. Provide at least five (5) references with contact phone numbers from other municipalities whereby similar work has been done.
3. List the anticipated amount of support services and/or documents the Town would be required to provide to you in the performance of these contracted services.
4. Include a statement or documentation on the Financial Stability of the firm.

**E. MISCELLANEOUS REQUIREMENTS**

The Town of Barnstable and the Consultant shall cooperate in maintaining good public relations throughout the period of this project.

An interview may be conducted with any proposer who is deemed Highly Advantageous or Advantageous during the evaluation of the proposals. These interviews will occur during the period indicated in Section II, Key Dates. Any proposer should make sure they are available during that time period for interviews to be held at the Barnstable Town Hall, 367 Main Street, Hyannis, MA.

## **SECTION V. PROPOSAL EVALUATION**

### **A. TECHNICAL EVALUATION**

The evaluation process will include each proposal being reviewed by the appointed evaluation committee. Those proposals that meet all of the minimum requirements as outlined in this RFP, and are determined to be both responsive (those that offer all of the services requested in the RFP and contain all of the required information and forms properly completed) and those that are responsible (those with the capability, integrity, and reliability to perform under the contract) will be further reviewed using the comparative criteria outlined in this section.

The committee will use the comparative criterion for each separate rating area, and based upon those criteria, will assign an overall rating to each proposal as permitted under Chapter 30B. Each of the seven criterion contain ratings of

Unacceptable  
Not Advantageous  
Advantageous  
Highly Advantageous

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

The Town reserves the right to award the contract to the responsive and responsible proposal which best meets the Town’s needs, taking into account proposal quality and proposal price. If the lowest priced proposal is not selected and has received at minimum a rating of advantageous, the evaluation committee shall explain the reasons for the award in writing to the Chief Procurement Officer, specifying in reasonable detail the basis for determining that the Town should award the contract to a different proposal.

***Minimum Evaluation Criteria -- Failure to meet the following minimum evaluation criteria will result in immediate rejection of the proposal.***

1. Minimum Requirements: Consultant must meet the minimum requirements as specified in Section IV - A.

#### **Comparative Evaluation Criteria**

2. Experience in providing similar services. (Documentation is required. Information should include project detail and phone numbers and contacts)

**Not Advantageous** – Less than five (5) years experience in providing similar consulting services.

**Advantageous** – A minimum of five (5) years but less than eight (8) of experience in providing similar consulting services.

**Highly Advantageous** – More than eight (8) years of experience in providing similar consulting services.

3. Demonstrated municipal project experience and understanding of Massachusetts procurement regulations. (Documentation is required. Information should include project detail and phone numbers and contacts)

**Not Advantageous** – No municipal experience or demonstrated knowledge of Massachusetts procurement regulations.

**Advantageous** – Limited municipal experience and demonstrated knowledge of Massachusetts procurement regulations (Less than 5 similar municipal projects).

**Highly Advantageous** – Extensive municipal experience and demonstrated knowledge of Massachusetts procurement regulations (5 or more similar municipal projects).

4. Knowledge, Ability, and Skill required per technical scope of services (Per Section IV. B – please address in detail in your proposal submittal).

**Unacceptable** – Proposal does not demonstrate the proposer as having required knowledge, ability, and skill.

**Advantageous** - Proposal was adequate and demonstrates the proposer as having the required knowledge, ability, and skill required.

**Highly Advantageous** - Proposal was very thorough and demonstrates the proposer as far exceeding the required knowledge, ability and skill required.

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

**Unacceptable** - References are not provided.

**Not Advantageous** - References provided are not related to similar project type.

**Advantageous** - Five (5) references are provided from similar project types.

**Highly Advantageous** – More than Five (5) references are provided for similar project types.

6. Proposer Qualifications:

**Unacceptable** – Minimum requirements are not met.

**Not Advantageous** - The proposer qualifications may meet the Town’s needs, but are not clearly defined in their proposal.

**Advantageous** – The proposer qualifications meet the minimum requirements defined in the RFP.

**Highly Advantageous** – The proposer qualifications exceed the minimum requirements defined in the RFP.

7. Availability to complete contracted services per task schedule contained in this document:

**Not Advantageous** – Proposer can not meet the schedule per the key dates

**Highly Advantageous** – Proposer can complete services within the schedule provided in the key dates.

8. General impression of proposal

**Unacceptable** – Evaluator could not determine proposer’s ability to provide services required from information submitted in proposal.

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

**Highly Advantageous** - Response is concise, informative, and highly detailed. Proposal reflects that provider is able to perform in a manner acceptable to the Town. Team is completely convinced about the proposer’s ability to provide the contracted services as required by the Town.

## **B. INTERVIEW**

After their review of the technical proposals, the Evaluation Committee may interview the qualified, responsive and responsible proposers. Proposers whose submittals are determined to be not advantageous or did not meet the minimum requirements will not be interviewed.

In accordance with those interviews, the evaluation committee will then rank those finalists and make a recommendation of award to the Town Manager as the awarding authority on this project, subject to the satisfactory negotiations of the plan of services. If the Town Manager, or designee, is unable to negotiate a contract, including any modifications to the fee, with the top-ranked finalist, the Town Manager, or designee, will then commence negotiations with the next ranked finalist and so on, until a contract is successfully negotiated and approved by the Town Manager.

Reimbursement for expenses incurred for this interview will not be forthcoming to either the awarded Consultant or any other candidate asked to be interviewed. The Town of Barnstable reserves the right to change the interview period or to extend the dates during which interviews may be undertaken.

## **C. RULE FOR AWARD**

The award of this contract will be made taking into consideration the evaluation criteria, the interview process, and the price proposal based on the consensus of the evaluation committee in determining the proposer that is in the best interest and is most advantageous to the awarding authority.



## **SECTION VI. PROPOSAL SUBMISSION REQUIREMENTS**

Two separate sealed envelopes, one containing an original and 5 copies of the non-price technical proposal marked “Lighting Design RFP (non-price)” and one containing an original and one copy of the price proposal marked “Lighting Design RFP (price proposal)” must be received per the time frame outlined in the legal advertisement- (appendix D). It is the sole responsibility of the offerer to insure that the proposal arrives on time and at the designated place.

**No reference to the actual price proposal shall be contained in any portion of the non-price proposal outlined below. Failure to adhere to this requirement will result in disqualification.**

### **A. NON-PRICE PROPOSAL**

Within your Proposal, please supply each of the following items and clearly structure and label your Proposal.

- 1) Cover Letter including name of Agency/Firm, address and telephone number, signed in ink by someone authorized to sign such documents.

### **B. PRICE PROPOSAL**

The pricing portion must include the forms found in APPENDIX C

### **C. CONTACT INFORMATION**

Clarification and interpretations of this Request for Proposal must be requested in writing. Responses shall be likewise furnished. The last day to submit written requests is stated in Section II, Key Dates. After that day no requests or questions will be accepted. Please contact the Town of Barnstable for clarification of this Request for Proposal, direct all inquiries regarding the plan to:

Johanna F. Boucher  
Purchasing Agent/Contract Compliance Officer  
Town of Barnstable  
230 South Street, Hyannis, MA 02601  
Phone. (508) 862-4741, Fax: (508) 862-4717  
Business Hours: 8:00 a.m. - 4:00 p.m., Mon. – Fri.  
Johanna.boucher@town.barnstable.ma.us

TOWN OF BARNSTABLE

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 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.

FIRM \_\_\_\_\_

SIGNATURE \_\_\_\_\_

ADDRESS \_\_\_\_\_

NAME (print) \_\_\_\_\_

\_\_\_\_\_

TITLE \_\_\_\_\_

TELEPHONE \_\_\_\_\_

DATE \_\_\_\_\_

TOWN OF BARNSTABLE

STATE TAXES CERTIFICATION CLAUSE

I certify under the penalties of perjury that I, to my best knowledge and belief, have filed all state tax returns and paid all state taxes under law.

\_\_\_\_\_ by: \_\_\_\_\_  
\* Signature of individual or Corporate Officer  
Corporate Name (Mandatory) (Mandatory, if applicable)

\_\_\_\_\_  
\*\*Social Security # (Voluntary)  
or Federal Identification #

\* Approval of a contract or other agreement will not be granted unless this certification clause is signed by the applicant.

\*\* Your Social Security Number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended. This request is made under the authority of Mass. G.L. 62C s. 49.A.

(Submit in a separate envelope, labeled "Price Proposal")

**ASELTON LIGHTING DESIGN PROJECT AND AS NEEDED LIGHTING DESIGN AND REVIEW CONSULTATION SERVICES**

**Growth Management Department**

**Task 1 - Aselton Park Lighting Improvement Project Design**

We propose the following total lump sum price for the lighting design services as specified in this Request for Quotation document for Task 1 as follows:

Total Lump Sum Fee  
\$ \_\_\_\_\_

Attach to this pricing sheet a complete rate structure including all hourly rates by discipline/position and any other associated charges included in the total lump fee. Also include a breakdown of the fee by task as outlined in the request for proposal.

The Consultant's fee is subject to downward negotiation. The Consultant will execute the Town's contract document. Town will not pay for any additional work on this project without the prior written approval.

**Task 2 – Lighting Engineering Services to the Town as needed.**

Attach to this pricing sheet a complete rate structure including all hourly rates by discipline/position and any other associated charges including a per trip cost to Barnstable as described in the Request for Proposal.

Your signature below acknowledges your understanding of these parameters and your willingness to live within the stated financial constraint of the project.

Company: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email: \_\_\_\_\_

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

**LEGAL ADVERTISEMENT FOR RFP**

The Purchasing Agent for the Town of Barnstable on behalf of the Growth Management Department is seeking proposals for professional consulting services from qualified electrical and lighting engineering design consultants for the Aselton Lighting Design and On Call Lighting Design and Review Consultation Services. The Town of Barnstable adopted a Lighting Study for the Hyannis Area in the fall of 2007 and we have implemented some projects based upon this study. The Town of Barnstable is soliciting Qualification and Fee Packages from qualified lighting design consultants. The design services include the specific design of improvements to the Aselton Park Lighting in accordance with the adopted plan and a three (3) year on call service agreement for lighting design and consultation as requested by the Town at the discretion of the Town.

The contract and its award process are not subject to the Uniform Procurement Act pursuant to the M.G.L. c. 30B the Designer Selection Law, Chapter 7. Issuance of this Request for Proposal does not signify the Town's submission of this service to the provisions of the Act, and the contract and award will be made at the Town's discretion. If it becomes necessary to revise any part of this RFP or otherwise provide additional information, an addendum will be issued to all prospective proposers who received copies of the original request. Award of a contract resulting from this Request for Proposal shall be in strict accordance with the requirements of this document.

Proposals are due on **September 25, 2009** at 2:00 p.m. in the Purchasing Agent's Office, 230 South Street, 3<sup>rd</sup> Floor, Hyannis, MA 02601. Proposals will be opened and read immediately following closing time and will not be public. Contract will be awarded within 30 days. Specifications and required forms are available on the Town of Barnstable Website, [www.town.barnstable.ma.us](http://www.town.barnstable.ma.us) beginning immediately. Contact: Johanna Boucher, Purchasing Agent, Tel. 508-862-4741, Fax. 508-862-4717, email: [johanna.boucher@town.barnstable.ma.us](mailto:johanna.boucher@town.barnstable.ma.us). All proposals must be received in a sealed envelopes properly marked prior to the proposal due date and time. The Town of Barnstable reserves the right to reject any or all proposals when it deems it to be in the best interest of the Town.

**Appendix E**

**AGREEMENT BETWEEN TOWN AND CONSULTANT**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_2009 by and between the **TOWN OF BARNSTABLE**, Massachusetts hereinafter called the Town, and \_\_\_\_\_ with legal address and principal place of business at \_\_\_\_\_ hereinafter called CONSULTANT.

WITNESSTH: That for consideration of payments and agreement hereinafter mentioned, to be made and performed by the Town, the CONSULTANT hereby agrees with the Town to provide professional consulting services to provide the Growth Management Department consulting services for the Asleton Lighting Design Project and On Call Lighting Design and Review consultation services; hereinafter called PRODUCT whose specifications are identified in the Request for Proposal dated August 27, 2009 and proposal submittal dated \_\_\_\_\_, which are attached hereto and made part of this agreement, and collectively evidence and constitute this contract, upon demand of the Town, made as hereinafter provided, at a total lump sum cost of \$\_\_\_\_\_, delivered to the Town of Barnstable, Growth Management, Town Hall, 367 Main Street, Hyannis, MA 02601 in accordance with the following requirements.

1. Deliverables The CONSULTANT shall provide the services as defined in the Request for Proposal entitled "Asleton Lighting Design Project and On Call Lighting Design and Review Consultation Services" dated August 27, 2009 and deliver PRODUCTS in accordance with the schedule as defined in Attachment "A" hereto.

ARTICLE 1: DEFINITION OF TERMS

1. GENERAL LAWS -- The General Laws of the Commonwealth as amended including any rules, regulations and administrative procedures implementing said laws.
2. TOWN -- The Town of Barnstable or its representative who is duly authorized to act in the execution of the work covered by this contract.
3. DIRECTOR -- The Director of Growth Management or her authorized representative.
4. PROJECT -- The services to be provided as specified in the Scope of Services
5. CONTRACTOR -- The person or firm performing services under this agreement.
6. APPROVAL OF THE DIRECTOR -- A written communication from the Director, or her authorized representative, to the Contractor expressing the Town of Barnstable approval of services or documents prepared by the Contractor, which communication in no way relieves the Contractor from responsibilities under this contract.

ARTICLE 2: RESPONSIBILITIES OF THE TOWN

1. The Town administers this contract to ensure that the project meets the Town's needs and conforms to the guidelines and standards supplied by the Town.
2. The Town shall, without unreasonable delay, render all approvals required by this contract in writing to the Contractor, or shall notify the Contractor in writing why such approvals are being withheld. The Town shall not unreasonably withhold any approval, acceptance, or consent required under this contract.

3. For satisfactory performance of all services required in this contract, the Town shall compensate the Contractor in accordance with the provisions of Articles 8 below.
4. The Town shall furnish to the Contractor available data for each project task as available. All such data and any other data provided to the Contractor by the Town shall remain the property of the Town of Barnstable. The Contractor may use all data provided by the Town only for the purposes of this Contract, unless the Town gives the Contractor specific written permission for some other use.
5. The Town does not guarantee nor does it make any express or implied warranties concerning the accuracy of information furnished and the Contractor must satisfy himself as to the correctness of data, except in instances where the Town makes specific written exceptions. The Contractor shall, within the fee, analyze and evaluate the information furnished by the Town.

#### ARTICLE 3: PROFESSIONAL RESPONSIBILITY AND SERVICES TO BE PERFORMED

1. The Contractor shall perform the services in accordance with the scope of services stated in the Request for Proposal dated April 7, 2009. The Contractor shall be responsible for the professional and technical accuracy and the coordination of all reports and other work furnished by the Contractor. Contractor shall meet the approved schedule and submittal dates established during the course of this contract for each assigned project.
2. The Contractor shall furnish appropriate competent services for each of the Tasks/Parts to the point where detail checking or reviewing by the Town will not be necessary.
3. The Town's review, approval or acceptance of, or payment for, any of the services furnished shall not be construed as a waiver of any rights under the contract or of any cause of action arising out of the performance of the contract.

#### ARTICLE 4: PROJECT PERMITTING AND APPROVALS

1. The Contractor warrants that his services will conform to all applicable federal, state, and local laws, regulations, ordinances, and by-laws, as applicable.

#### ARTICLE 5: CONTRACTORS, SUBCONTRACTING, SUCCESSORS AND ASSIGNMENTS

1. The Contractor shall not employ Subcontractors, sublet, assign or transfer any part of his services or obligations under this Agreement without the prior approval of and written consent of the Town. The Town shall not unreasonably withhold such approval. The Town may rescind this consent if a subcontractor is incompetent, irresponsible or otherwise unsatisfactory, and the Contractor shall remove such subcontractor from the work. The Town's written consent shall not in any way relieve the Contractor from his responsibility for the work or materials furnished.
2. When the Contractor receives payment from the Town, the Contractor shall within 14 calendar days make payment to each subcontractor whose work was included in the work for which such payment was received from the Town. The Town shall have the contractual right to investigate any breach of a subcontractor's contract and to take corrective measures necessary for the best interest of the Town.

ARTICLE 6: RESERVED

ARTICLE 7: TIME RECORDS

The Contractor shall cause to be maintained complete, accurate and detailed records of all time devoted to each assigned project by the Contractor. The Town may at all reasonable times audit such records. The Contractor shall maintain accurate and detailed accounts for a six-year period period

ARTICLE 8: COMPLIANCE WITH LAWS

1. The Contractor shall exercise due care in accordance with generally accepted standards of professional practice, to perform the work required under this contract in conformity with requirements and standards of the Town and all applicable laws of the Commonwealth of Massachusetts, its political subdivisions and the Federal Government. Unless otherwise provided by law, the Contractor shall promptly pay all fines, penalties and damages that may arise out of or are imposed because of the Contractor's failure to comply with the provisions of this Article and shall indemnify the Town against any liability incurred as a result of a violation of this section.

ARTICLE 9: DATA RIGHTS

1. All information acquired by the Contractor from the municipality or from others at the expense of the municipality in performance of the Agreement, shall be and shall remain the property of the municipality. All records, data files, computer records, work sheets, deliverable products complete and incomplete, and all other types of information prepared or acquired by the Contractor for delivery to the Town shall be and shall remain the property of the Town upon payment thereof.
2. The Contractor agrees that he/she will use this information only as required in the performance of this Agreement and will not, before or after the completion of this Agreement, otherwise use said information, nor copy, nor reproduce the same in any form except pursuant to the sole written instructions of the Town, provided that the Contractor shall be permitted to retain a copy of such information for purposes of documenting the Services.

ARTICLE 10: CONTRACTOR'S BASIC FEE

1. The Contractor shall be compensated for all services on the project in the amount of \$\_\_\_\_\_ based on the Fee Schedule in this agreement. The fee and payment schedule shall be as defined in Attachment "A" to this Agreement' Schedule of Task and Fees.

ARTICLE 11: CONTRACT TERM

1. Work under this contract is expected to be complete within approximately nine (9) months. From \_\_\_\_\_ to \_\_\_\_\_.

ARTICLE 12: FORCE MAJEURE



1. The Agreement shall be subject to **Force Majeure** considerations, and in the event that either party hereto shall be prevented from the performance of any act required there under by reasons of strikes, lockouts, labor trouble, inability to procure materials, failure of power, fire, winds, Acts of God, riots, insurrections, war or other reason of a like nature not reasonably within the control of the party in performing any obligations, shall be excused for the period of non-performance, and the period for the performance of such obligation shall be extended for an equivalent period for no additional cost to the Town. In the event that the extension is not possible, the Contractor may be required to rebate to the Town a portion of the fee.
2. It is agreed, however, that since performance dates of this Agreement are important to the implementation of requested services, continued failure to perform for periods aggregating thirty (30) or more days, even for causes beyond the control of the Contractor, shall be deemed to render performance impossible, and the Town shall thereafter have the right to terminate this Agreement in accordance with the provisions of the section entitled "Termination of Agreement."

#### ARTICLE 13: TERMINATION, NO AWARD

1. By written notice to the Contractor, the Town may terminate this contract in whole or in part at any time either for the Town's convenience or because of the failure of the Contractor to fulfill his contract obligations. If any such termination shall occur without the fault of the Contractor, all compensation and reimbursement due to the Contractor up to the date of termination, in accordance with all contract terms, including proportionate payment for partially completed work, shall be paid to the Contractor by the Town. Such payment shall not exceed the fair value of the work, as the Town shall reasonably determine. No amount shall be allowed for anticipated profit on unperformed services.
2. If the contract is terminated due to the failure of the Contractor to fulfill his contract obligations, the Town may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Contractor shall be liable to the Town for any reasonable additional cost occasioned to the Town thereby. These rights and remedies of the Town are in addition to any rights and remedies provided by law or under this contract.
3. Upon any termination of the contract the Contractor shall deliver to the Town all records, data, drawings, specifications, reports, estimates, summaries, and such other information and materials, whether completed or in process, as may have been accumulated by the Contractor in performing this contract.
4. Subject to the provisions explaining Force Majeure, if the Contractor shall fail to fulfill in a timely and satisfactory manner its obligations under this agreement, or if the Contractor shall violate any of the covenants, conditions, or stipulations of this agreement, which failure or violation shall continue for seven (7) business days after written notice of such failure or violation is received by the Contractor, then the Owner shall thereupon have the right to terminate this agreement by giving written notice to the contractor of such termination and specifying the effective date thereof, at least seven (7) days before the effective date of such termination.
5. The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Town's interest. If this contract is terminated, the Government shall be liable only for payment

under the payment provisions of this contract for services rendered before the effective date of termination.

ARTICLE 14: RELEASE AND DISCHARGE

1. The acceptance by the Contractor of the last payment for services paid under the provisions of the contract and/or in the event of termination of the contract, shall in each instance, operate as and be a release to the Town and every member and agent thereof, from all claims and liability to the Contractor for everything done or furnished for or relating to the work, or for any act or neglect of the Town or of any person relating to or affecting the work and except that such acceptance shall not release the Town from any liability it would otherwise have for injuries to third parties resulting from the negligent acts or omissions of the Town or its employees.

ARTICLE 15: NOTICES, APPROVALS, INVOICES

1. Any notice required under this contract to be given by the Town to the Contractor, or by the Contractor to the Town shall be deemed to have been so given, whether or not received, if mailed by prepaid postage by, respectively, the Town to the Contractor at the address specified for the Contractor on Page 1 above, or the Contractor to the Town of Barnstable, Growth Management Department, 367 Main Street, Hyannis, MA 02601.
2. Written approval is required by the Town for Additional Compensation prior to the commencement of work that exceeds the stated amount of the contract
3. Prior to the commencement of each task, the Contractor shall provide the Director of the Growth Management Department, a proposed milestone payment schedule for that task for approval.
4. All invoices shall be submitted (in duplicate) in accordance with the agreed milestone schedule contained herein and will be promptly processed by the Town if they are in conformity with the contract terms and properly documented; if not, they will be returned to the Contractor. Undisputed charges will be paid by the Town upon submittal of a corrected invoice.
5. Invoices submitted for services that have not been previously authorized in writing shall be returned to the Contractor.

ARTICLE 16: INSURANCE

1. **Indemnification** - Contractor will indemnify and hold harmless the Town of Barnstable and its employees against any and all claims for damages on account of bodily injury, including death, property damage, personal injury, and advertising injury by any act or omission due to negligence of the Contractor, subcontracts, its agents, or employees to any property of or under the control of the Town of Barnstable during the term or any extension of the resultant agreement, and in case of any action or actions or other legal proceedings shall be brought or instituted against the Town of Barnstable on account of any such claims, Contractor shall indemnify and hold harmless the Town of Barnstable. However, should the claim be due to the negligence of the Town of Barnstable and/or its employees, Contractor shall be held harmless.
2. **General Insurance** - The Contractor shall, before commencing performance of the contract, be responsible for providing and maintaining insurance coverage in force for the life of the contract

of the kind and in adequate amounts to secure all of the obligations under the contract and with insurance companies acceptable to the Town of Barnstable. All such insurance carried should not be less than the kinds and amounts designated herein, and the Contractor agrees that the stipulation herein of the kinds and limits of coverage shall in no way limit the liability of the Contractor to any such kinds and amounts of insurance coverage. Under all insurance coverage, required or not required by the Town, the Contractor shall indemnify, and hold harmless the Town of Barnstable, its elected or duly appointed offices, directors and employees against any claim based upon negligent, accidental or intentional acts or omissions of the contractor, its employees or its agents in providing its services to employees of the municipality or their dependants pursuant to the agreement.

With the exception of Professional Services Liability for architects, designers and engineers, and Worker's Compensation, the Town of Barnstable and its employees must be named as an additional insured and a certificate of insurance will be provided indicating such for each of the insurance policies or surety bonds obtained pursuant to the requirements established by the issuance of the contract. Upon execution of the contract the Contractor will provide copies of certificates of insurance to the Town of Barnstable, Administration & Technical Support Division and Procurement & Risk Management.

Failure to provide and continue in force such insurance as aforesaid may be deemed a material breach of this contract, and may constitute sufficient grounds for immediate termination of the same. All insurance maintained as provided for in the above shall be taken out and maintained at the sole expense of the Contractor. Annually, at time of vendor's policy renewal, updated insurance certificates shall be sent to the Town of Barnstable.

No cancellations of such insurance, whether by the insurer or by the insured party shall be valid unless written notice thereof is given by the parties proposing cancellation to the other party and to the Town of Barnstable at least thirty (30) days prior to the intended effective date thereof, which date shall be expressed in said notice, and which shall be sent out by registered mail, return receipt requested. These provisions shall apply to the legal representatives, trustees in bankruptcy, receiver, assignee, and/or the successor in interest of the Contractor.

All insurance coverage shall be placed with such company as may be acceptable to the Town of Barnstable and shall constitute a material part of the contract documents.

**3. Comprehensive General Liability Insurance**

The Contractor shall carry Commercial General Liability Insurance with an each occurrence limit of liability no less than One Million Dollars (\$1,000,000.00) and a general aggregate limit of liability no less than Two Million Dollars (\$2,000,000.00); and a Products/Completed Operations (*as may be required*) Aggregate limit no less than Two Million Dollars (\$2,000,000.00) for all injury and damages to or destruction of property during the policy period.

**4. Automobile Liability and Property Damage Insurance**

The Contractor shall carry business Automobile Liability Insurance covering all owned vehicles with a combined single limit no less than One Million Dollars (\$1,000,000.00) to cover all damage caused by contracted employees of the awarded Contractor. Level of insurance must

adequately cover the liability exposure of project site and is subject to Town of Barnstable Risk Manager approval.

**5. Workers' Compensation Insurance**

The Contractor shall carry Workers' Compensation Insurance as required by Massachusetts General Law, c. 152, and Section 25, with a minimum limit of Employer's Liability as per Massachusetts General Law requirements.

The aforementioned insurance coverages shall remain in full force and effect throughout the period of the contract. Similar insurance coverage shall be provided by or in behalf of any subcontractor to cover their operations with the same minimum limits as required of the Contractor. Contractor's insurance shall be primary insurance to all insurance carried by Owner.

**ARTICLE 17: LEGAL REQUIREMENTS**

**1. Non-resident Processing; Signatures**

Every Contractor who is a nonresident of the Commonwealth of Massachusetts, or a non-resident co-partner of a Contractor, hereby appoints the Secretary of the Commonwealth of Massachusetts and his successor in office to be his true and lawful attorney in and for Massachusetts, upon whom all lawful processes in any action or proceeding arising out of this contract may be served. When legal process against any such person is served upon the Secretary of State, a copy of such process shall forthwith be sent by registered mail with a return receipt requested by the Town or its lawful Attorney to said Contractor or non-resident co-partner at the address set forth in the contract. Said Contractor or said non-resident co-partner hereby stipulates and agrees that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served on said Contractor or said co-partner. Such authority shall continue in force so long as any liability remains outstanding against said Contractor or said co-partner.

**2. Anti-Boycott Covenant (Executive Order #130)**

The contractor warrants, represents and agrees that during the time this contract is in effect, neither it nor any affiliated company, as hereafter defined, will participate in or cooperate with an international boycott, as defined in Section 999 (b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by General Laws Chapter 151E, sections 2 and 3. If there shall be a breach in the warranty, representation and agreement contained in this paragraph, then without limiting such other rights as it may have, the Town shall be entitled to rescind this contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the contractor, or by a person or persons, or business entity or entities, directly or indirectly owning at least 51% of the ownership interests of the contractor.

**3. Access to Contractor's Records (Executive Order #195)**

The Town shall have the right, at reasonable times and upon reasonable notice, to examine the books, records, and other compilations of data of the Contractor which pertain to the performance and requirements of this contract.

ARTICLE 18: EQUAL EMPLOYMENT OPPORTUNITY ANTI-DISCRIMINATION PROGRAM

1. During the performance of this agreement, the Contractor, for him/herself, his/her assignees, and successors in interest, agree as follows:
  - a. The Contractor, in the performance of all work after award and prior to completion of the contract work, will not discriminate on grounds of race, color, religious creed, national origin, age or sex in employment practices, in the selection or retention of subcontractors, or in the procurement of materials and rental of equipment. Fair Employment Practices Law of the Commonwealth (M.G.L. Chapter 151B).
  - b. The Contractor by signing the Agreement offered by the Town agrees to abide by the above paragraph to the best of his/her ability.

ARTICLE 19: CHOICE OF LAW

1. This Contract shall be construed under and governed by the laws and regulations of the Commonwealth of Massachusetts, and the Town of Barnstable. The Contractor, and the agents thereof, agree to bring any federal or state legal proceedings arising under this Contract, in which the Town is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts. This paragraph shall not be construed to limit any rights a party may have to intervene in any action, in any court or wherever, pending, in which the other is a party.

ARTICLE 20: WAIVERS

1. The provisions of this contract can be waived only by written agreement, except where otherwise stated herein. Forbearance or indulgence by a party shall not be construed as a waiver, nor in any way 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.

ARTICLE 21: AMENDMENTS

1. No amendment to this Contract shall be effective unless it is executed in writing by authorized representatives of both parties.

ARTICLE 22: SEVERABILITY

1. If any provision of this Contract is declared or found illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. The remainder of the Contract shall be enforced to the fullest extent permitted by law.

ARTICLE 23: CONTRACTOR'S CONTRACT SUPPLEMENTARY DATA

1. No changes are to be made in this Article at any time during the life of this contract without written notification to the Town and when required, receipt of written approval by the Town.

The Town agrees to pay the CONSULTANT for the performance of the contract; the total lump sum contract amount is \$\_\_\_\_\_. No amount shall be paid in addition to the foregoing without a further contract with the Town

IN WITNESS WHEREOF, the parties to these presents have executed this contract in the year and day first above mentioned

Approved as to form:

By: CONSULTANT

\_\_\_\_\_  
Ruth Weil, Town Attorney

\_\_\_\_\_  
By: TOWN OF BARNSTABLE

\_\_\_\_\_  
John C. Klimm, Town Manager

As required by Chapter 693 of the Acts of 1964, this is to certify that the Town of Barnstable, Massachusetts has an appropriation which is adequate to cover the cost of this contract.

By:

\_\_\_\_\_  
Mark Milne, Finance Director

The Certificate shall be signed by the auditor or accountant or other officer having similar duties of the Town of Barnstable, Massachusetts and the official title noted below the signature.