

**TOWN OF  
ASHLAND, MASSACHUSETTS**



**REQUEST FOR PROPOSALS**

**BIDDING REQUIREMENTS AND  
CONTRACT DOCUMENTS:**

**WARREN TELECHRON CLOCK RESTORATION**

**Town of Ashland  
101 Main Street  
Ashland, MA 01721**

**(508) 881-0100**

**Town of Ashland**  
**Request for Proposals**  
**Warren Telechron Clock Restoration**

The Town of Ashland is seeking a qualified organization to repair and restore two Warren Telechron clocks atop the **Ashland Technology Center** building located at 150 Homer Ave., Ashland, MA 01721.

The RFP may be obtained from the Office of the Ashland Town Clerk, Ashland Town Hall, 101 Main Street, Ashland from 8 AM – 3:30 PM, Monday through Thursday commencing June 6, 2013 or from the Town's website: [www.ashlandmass.com](http://www.ashlandmass.com). Proposers downloading information from the Town's website are solely responsible for obtaining any Addenda prior to the bid opening. The RFP will list notification requirements.

Proposals shall be returned to the Chief Procurement Officer, Michael Herbert Ashland Town Hall, 101 Main Street, Ashland MA 01721 in a sealed envelope clearly marked "**Warren Telechron Clock Restoration**" no later than 11:00 AM on Thursday June 27, 2013. All proposals shall have the name of the proposer clearly marked on the outside of the proposal envelope. The Town reserves the right to cancel this RFP or reject in whole or in part any and all proposals, if the Town determines that cancellation or rejection serves the best interests of the Town. The Town will not accept late proposals due to any type of mail or courier delay.

Per Order

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Town Administrator/CPO

Request for Proposals  
Warren Telechron Clock Restoration

## 1.0 INTRODUCTION

The Town of Ashland, acting through its Historical Commission, its Board of Selectmen and its Town Manager/Chief Procurement Officer (hereafter collectively known as “the Town”) seeks a qualified organization (hereafter known as “the Grantee”) to repair two clocks and associated masonry atop the **Ashland Technology Center** building located at 150 Homer Ave., Ashland, MA 01721.

## 2.0 STATEMENT OF WORK

### Specifications for restoration of two Warren Telechron clocks in the Ashland Tech Center Tower

Provide historical restoration services on the two Warren Telechron clocks located on the Homer Avenue side of the Ashland Technology Center building. Clocks may be removed from the facility, returned to factory for restoration and then reinstalled.

Restoration services must include the following:

- Sand blasting and restoration of structure, frame and hands
- Replacement of existing #4 movements with #4 minute impulse movements made by Electric Time Company or equivalent. Movements must have cross bolted shafts to match the original clock hand hubs; clamp hubs or set screw hubs are not acceptable. Movements must run on 24V AC.
- Clock dials are currently missing and must be provided as part of this project. Original dials were glass. Dials to be backlighted with LED lighting. Provide translucent tempered starfire laminated glass dials with inner PVB layer to match color of existing glass. Acrylic or polycarbonate dials or wooden dials will not be acceptable.
- Doubled sided 4100K LED backlighting to have 108-264VAC variable power supply as manufactured by GE or equivalent. Modules are to be packaged in an over-molded plastic design which protect against moisture, dust & damage. Modules to be spaced according to manufacturer’s recommendation. Lighting to be uniform with no hot spots. 5 year manufacturer’s warranty on the lighting system is required.
- Utilize a catalyzed polyurethane paint system with test results from a testing lab. Paint system to consist of acid etch primer over base material, base color and sealer for UV protection.
- Provide and install automatic tower clock control mounted in an IP65 (Indoor/outdoor use) enclosure. Control to automatically reset the tower clock after power outage and for the daylight savings time change. GPS receiver to provide exact time. Built in 100 year daylight savings time calendar. Control to be mounted on the brick wall above the roof below the tower clocks.
- Provide and install a photo-electric cell to control the lighting. Photocell to be mounted next to the tower clock controller.
- Include all wiring between equipment and power source from a location as directed by the Building Owner.
- Control and clock to be tested in its entirety by a recognized National Testing lab to applicable UL standards. The "CE" listing will not be an acceptable alternative.
- This project also includes the repair and upgrade of masonry surrounding the clocks, to ensure their stability and safety.

### 3.0 PROPOSAL SUBMISSION REQUIREMENTS

3.1 Qualified proposers shall submit six (6) copies of the proposal to **Michael Herbert, Chief Procurement Officer**, Town of Ashland, 101 Main Street, Ashland, MA 01721 no later than 11:00 AM on June 27, 2013. Proposals received after that time shall not be accepted.

3.2 Envelopes shall be sealed and clearly marked as follows:

Warren Telechron Clock Restoration Proposal  
Name of Proposer

3.3 The proposal shall be accompanied by:

- a) A cover letter signed by a duly authorized individual who may bind the firm: if a trust, by the name of the trustee(s), followed by the signature of each trustee; and, if a corporation, by the authorized officer, whose signature must be attested to by the Clerk/Secretary of the corporation and the corporate seal affixed.
- b) Non-collusion form (Exhibit A) and certificate of tax compliance (Exhibit B) signed by the proposer.
- c) A detailed description of the Grantee's proposed plan to repair the clocks and brickwork and to satisfy any other requirement under this Request for Proposal or applicable laws. Additionally, this shall include the Grantee's methodology, estimated duration of the project, demonstrated understanding of the community's needs, and the Grantee's expectations of assistance and service from the Town.
- d) A listing of the organization's relevant experience and qualifications, which shall include: the number of years of experience in the remediation of Warren Telechron clocks and names, addresses, and telephone numbers of contact people for the entity where those remediations were performed.
- e) A listing of the number of current paid personnel that spend a significant amount of their time in repairing tower clocks and, specifically, Warren Telechron clocks. Proposer shall include their academic and professional work experience, as well as the names and resumes for all project personnel.
- f) Any other information deemed relevant to the project, and which the Proposer believes will further the competitiveness of the proposal, including work samples from similar completed projects.

3.4 Questions concerning this Request for Proposal shall be submitted in writing no later than June 17, 2013 to Michael Herbert by mail to the address listed in 3.1, by fax to 508-231-1503 or by e-mail to **mHerbert@ashlandmass.com** . Written responses will be mailed, faxed or e-mailed to all proposers no later than June 20, 2013.

### 4. EVALUATION OF PROPOSALS

4.1 Any proposal that fails to include all of the items specified in sections 3.1 – 3.3 inclusive will be rejected as unresponsive, and will not be afforded a complete review by an evaluation committee ("Committee") comprised of members of the Historical Commission and its designees.

4.2 Each Proposal meeting the minimum requirements will be ranked by the Committee according to the comparative evaluation criteria described herein and determine, in writing, a composite rating for each Proposal.

4.3 After a composite rating has been determined for each Proposal, the Committee will open each Proposal and determine the most advantageous Proposal taking into consideration the composite ratings.

4.4 The Town shall use the following criteria in selecting the successful candidate for execution of this statement of work:

<b>Evaluation Criteria</b>	<b>Highly Advantageous</b>	<b>Advantageous</b>	<b>Not advantageous</b>
Number of years organization has been in existence	20 + years	Minimum of 20 years	Fewer than 10 years
Number of paid staff involved in repair and restoration of tower clocks, preferably Warren Tower Clocks.	5+	Minimum of 3	Fewer than 3
Total years of experience by paid staff in restoring Warren Clocks.	<b>5+</b>	<b>Minimum of 3</b>	<b>Fewer than 3</b>
Number of Tower Clocks repaired by your organization.	<b>5+</b>	<b>Minimum of 3</b>	<b>Fewer than 3</b>
Number of Warren Clocks repaired or restored by your organization.	<b>5+</b>	<b>Minimum of 3</b>	<b>Fewer than 3</b>

## 5.0 CHOICE OF PROPOSAL

5.1 No later than July 8, 2013 the Town will choose the most favorable proposal responding to this request. The Evaluation Committee shall review all proposals and make a recommendation to the Board of Selectmen and they shall choose the proposal deemed most favorable. All Proposals shall remain valid and acceptable for that period of time, which may be extended in writing by mutual consent. **The Grantee selected shall be required to sign an agreement consistent with the terms hereof and shall commence performance under the agreement, within 30 days, in accordance with the Terms of the agreement.**

5.2 The Town reserves the right to negotiate all contract terms with the successful Proposer.

## 6.0 ADDITIONAL INFORMATION

6.1 The Town reserves the right to cancel this RFP or reject in whole or in part any and all proposals, if the Town determines that cancellation or rejection serves the best interests of the Town. The Town also reserves the right to waive any informalities.

6.2 If it becomes necessary to revise any part of the RFP, or otherwise provide additional information, addenda will be mailed or faxed to all proposers on record as having been sent the RFP.

6.3 Proposers downloading information from the Town's website are solely responsible for obtaining any addenda prior to the opening of Proposals. If Proposer notifies the Chief Procurement Officer by e-mail to **mHerbert@ashlandmass.com, by phone to 508-881-0100 x618 or by fax to 508-231-1503**, he/she will be placed on the proposer's list and will be informed of any changes or items of clarification to this RFP. Proposer shall provide the Chief Procurement Officer with the name of the company, Street address, city, state, zip, phone fax and e-mail address.

6.4 The Grantee shall comply with all applicable equal employment opportunity laws and regulations.

6.5 The Town prohibits any activity that would constitute a violation of the conflict of interest statute (MGL c. 268A). The Town prohibits the assignment of any interest in the contract. Grantee shall comply with all federal, state, and local ordinances, rules, and regulations of all kinds.

6.6 The Grantee shall agree to indemnify, defend and hold the Town and the owners of the Ashland Technology Center at 150 Homer Avenue harmless from any and all claims arising out of the performance of the contract. Certificates of insurance, as specified below, shall be filed with the Town prior to commencement of the work and must be kept in force for the duration of the contract. The Grantee shall provide liability and other coverage as required by law and shall meet the minimum requirements as specified:

a) A commercial general liability insurance policy with the following limits of coverage: Bodily injury and property damage, one million dollars (\$1,000,000.00) each occurrence, three million dollars (\$3,000,000.00) annual aggregate, to include Products/Completed Operations Liability. The Town of Ashland shall be named as Additional Insured on a primary and non-contributory basis including completed operations.

b) A comprehensive automobile insurance policy with a combined single limit, bodily injury and property damage of at least one million dollars (\$1,000,000.00) to include Liability coverage for all owned, non-owned and hired vehicles. The Town of Ashland shall be named as Additional Insured.

c) An Umbrella or Excess Liability coverage in the amount of at least two million dollars (\$2,000,000.00) per occurrence, two million dollars (\$2,000,000.00) aggregate. The Town of Ashland shall be named as Additional Insured on a primary and non-contributory basis including completed operations.

d) Workers' Compensation Insurance as required by the then current laws of the Commonwealth of Massachusetts and Employer's Liability Insurance with limits of one million dollars (\$1,000,000.00).

**6.7 The Grantee shall enter into a contract with the Town in substantially the form attached at Exhibit C.**

**EXHIBIT A**  
**CERTIFICATE OF NON-COLLUSION**

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

**EXHIBIT B**  
**TAX COMPLIANCE CERTIFICATION**

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

name of contractor

paid all required 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

**EXHIBIT C  
TOWN OF ASHLAND**

**CONTRACT**

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**DATE:** \_\_\_\_\_

This Contract is entered into on, or as of, this date by and between the Town of Ashland, 101 Main Street, Ashland, MA 01721 (the "Town"), and

\_\_\_\_\_  
["Contractor"]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
[Address of the Contractor]

\_\_\_\_\_  
[Telephone Number]

\_\_\_\_\_  
[FAX Number]

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

Services required for the restoration of two historic Warren Telechron clocks in the Ashland Tech Center Tower.

**2. The Contract price to be paid is:**

**3. Payment will be made as follows:**

3.1 Fees and Fees and Reimbursable Costs combined shall not exceed \$\_\_\_\_\_ as more fully set forth in the Contractors Response to the RFP.

3.2 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 in an Amendment hereto. The Town will not pay any surcharge or premium on top of the direct out of pocket expenses, if any.

3.3 Final payment including any unpaid balance of the Contractor's compensation shall be due and payable when the Project/Goods/Services is/are delivered to the Town when the project is completed and

the services are complete and/or the goods are delivered and accepted.

#### 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.

#### 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 insure that the goods or services are complete and are as specified in the Contract.

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 intention of the document 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 **December 31, 2013**, 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:

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 compensation shall 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 deemed a material breach of this Contract, and the Town of Ashland 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, Sections 26-27: Prevailing Wage Laws

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, 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 shall 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. It

shall, at all times, itself observe and comply with all such existing and future laws, by-laws, regulations, orders and decrees; and shall 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.

### 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

The Contractor shall carry out the obligations of this Agreement 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.

### 16. Assignment:

The Contractor shall not assign, sublet or otherwise transfer this Agreement, in whole or in part, without the prior written consent of the Town, and shall not assign any of the moneys payable under this 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 the Board of Selectmen or its designee; 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 Ashland 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.

#### 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 Ashland shall be individually or personally liable on any obligation of the Town under this Contract.

#### 21. Indemnification:

The Contractor shall 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. The Contractor further 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.

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 deemed a material breach of this Contract, shall operate as an immediate termination thereof, and Contractor shall indemnify the Town for all losses, claims, and actions resulting from the failure to provide the insurance required by this Article.

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 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 Ashland 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.
- d. All policies shall identify the Town as an additional insured (except Workers' Compensation). 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 Agreement, 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 deemed 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 "MIIA" 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's 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 issues 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 Agreement.

## 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 Agreement, 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 the 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. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth, Middlesex County or the federal district court sitting in the Commonwealth, 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.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK]

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

THE CONTRACTOR

\_\_\_\_\_  
Division/Department Head      Date

\_\_\_\_\_  
Company Name                      Date

Contract Manager

\_\_\_\_\_  
Town Manager                      Date

\_\_\_\_\_  
Signature                              Date

\_\_\_\_\_  
Print Name & Title

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Counsel                      Date

CERTIFICATION AS TO AVAILABILITY OF FUNDS:

\_\_\_\_\_  
Town Accountant                  Date