



# **PURCHASING Procedures Manual**

45 Broad Street, Westerly, RI 02891  
and  
23 Highland Avenue, Westerly, RI 02891

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**MUNIS SHORTCUT KEYS**



- Find



- Add



- Export to Excel



- Update



- Enter



- Delete



- View PDF



- Save to Spool



- View List

## **SECTION I GOALS**

This manual has been designed to ensure that the policies set by the Town Council/School Committee with regard to the expenditure of public funds are met by all Town/School departments. If these policies are adhered to, the Town/School will receive the maximum value for each public dollar spent.

### 1.1 Basic Goals

The basic goals of the Town's/School's purchasing program are:

- a. To comply with the legal requirements of public purchasing;
- b. To assure vendors that impartial and equal treatment will be afforded all who wish to do business with the Town/School;
- c. To receive maximum value for each public dollar spent;
- d. To provide Town/School departments the required goods and services at the time and place needed in the proper quantity and quality; and
- e. To purchase only goods and services for which funds have been approved through the budget process and not previously encumbered.

If the procedures and guidelines established in the manual are followed, each department will efficiently manage, control and plan their available resources to meet present and future departmental needs and help the Town/School meet these goals.

## **SECTION II GENERAL GUIDELINES**

These general guidelines should be considered Administrative rules and regulations and are to be adhered to by all departments in the procurement of goods and services.

### 2.1 Local Buying

It is the desire of the Town/School to purchase from Westerly vendors whenever possible. This can be accomplished by insuring that local vendors who have goods or services available which are needed by the Town/School are included in the competitive shopping process which will precede most purchases. The Town/School has a responsibility to its residents, however, to ensure that the maximum value is obtained for each public dollar spent. It is assumed that local vendors who wish to do business with the Town/School will offer the lowest possible quote for the item being purchased.

### 2.2 Planning

Planning for purchases should be done on both a short term and a long-term basis. Small order and last-minute purchases should be minimized, thereby increasing the capability of each department to purchase its goods and services in larger quantities in order to obtain the maximum discounts possible. Planning will also cut down on the number of trips required to obtain materials and minimize the amount of clerical and supervisory time spent on documenting purchases. The purchasing process begins with the preparation of the Annual Budget.

### 2.3 Overdrafts Prohibited

No purchase will be authorized which would overdraft a budgetary line item account. Department Heads who are contemplating a purchase that will exceed a budgetary line item account should notify the Finance Department in writing of the expected shortfall and indicate if funds are available in other accounts within the department's budget. If available funds do exist, the purchase will be authorized, and a line item budget transfer may be made to cover the expected shortfall.

### 2.4 Buying Proper Quality

Quality and service are just as important as price and it is the duty of the requisitioning department to secure the best quality for the purpose intended. Quality buying is the buying of goods or services that will meet but not exceed the requirements for which they are intended. In some instances, the primary consideration is durability. With other purchases, it may be a question of immediate availability, ease of installation, frequency of repair or efficiency of operation that must be given primary consideration. In the case of motor vehicles and other capital expenditures, departments may want to investigate life cycle costs or EPA mileage rating to compare bids as opposed to utilizing the price as the criterion for determining the lowest responsible bidder. It is the responsibility of each Department Head to become familiar enough with the available equipment to determine the appropriate quality required in order to develop specifications.

### 2.5 Vendor Favoritism

Acceptance of personal or town/school gifts from vendors attempting to influence purchasing decisions will not be tolerated. The penalty for accepting personal gifts to influence the decision process will be immediate termination. Procurement of goods or services from any vendor regardless of price - with any implied or stated understanding that said vendor will be rewarded in any manner – including implied or stated future award(s) of no-bid purchase orders or contracts – will not be tolerated and will be grounds for immediate termination.

### 2.6 Sales Tax

The Town/School is exempt from paying all local and state sales taxes or Federal Excise taxes. The Finance Department can provide the necessary exemption documents to any vendor upon request.

### 2.7 Public Access

All specifications, bid documents, purchase orders and supporting documents are public records which will be made available to citizens, vendors or the media, upon request through the Public Records Request (APRA).

### 2.8 Endorsements

It is Town/School policy not to endorse or in any way permit an employee's name, position, or the Town's/School's name to be used and advertised as supporting a product or vendor.

### 2.9 Personal Purchases

Purchases for employees by the Town/School are prohibited. Town/School employees are also prohibited from using the Town's/School's name or the employee's position to obtain special consideration in personal purchases.

## 2.10 Conflict of Interest

No employee, officer or agent of the Town of Westerly/Westerly Public Schools shall participate in selection or in the award or administration of a contract if a conflict of interest, real or apparent would be involved.

## 2.11 Minority Business Enterprises

Pursuant to the provisions of RIGL 37-14.1; the Town reserves the right to apply additional consideration to offers, and to direct awards to bidders other than the responsive bid representing the lowest price where:

- a. the offer is fully responsive to the terms and conditions of the Request, and
- b. the price offer is determined to be within a competitive range (not to exceed 5% higher than the lowest responsive price offer) for the products or services, and
- c. the firm making the offer has been certified by the RI Department of Economic Development to be a small business concern meeting the criteria established to be considered a Minority Business Enterprise. Ten percent (10%) of the dollar value of the work performed against contracts for construction exceeding \$5,000 shall be performed by Minority Business Enterprises where it has been determined that subcontract opportunities exist, and where certified Minority Business Enterprises are available. A contractor may count towards its MBE, DBE, or WBE goals 60% of its expenditures for materials and supplies required under a contract and obtained from an MBE, DBE, or WBE regular dealer, and 100% of such expenditures when obtained from an MBE, DBE, or WBE manufacturer. Awards of this type shall be subject to approval, by the Purchasing Agent, of a Subcontracting Plan submitted by the bidder receiving the award.

## **SECTION III PURCHASING PROCEDURES**

The Town Council/School Committee has established policies regulating the degree of formality to be followed in the purchase of goods and services, depending on the costs of the items to be purchased. The splitting of purchases into smaller orders to avoid these requirements is strictly prohibited.

### 3.1 Signature Requirements

All requisitions require Department Head approval or designee and all purchase orders will be approved and electronically signed by the Purchasing Agent regardless of the dollar amount.

#### **Finance Department**

The Town and School Finance Departments approval ensures that the account code is appropriate for the purchase, that the department has budget funding to support the requisition and that the purchase is recorded appropriately under accounting, reporting and grant guidelines. Should the Finance Department determine that the request does not meet any of those three requirements, the purchase requisition will be put on hold or rejected. If a requisition is placed on hold or rejected, the Finance Department staff member will communicate the reason to the requestor and the Purchasing Agent.

The Finance Director can assign approvals to their Assistant Director or Deputy Director up to \$7,500. Requisitions over that amount are to be approved by the Finance Director however the Director can temporarily assign approval rights under extenuating circumstances or during their absence.

## **Purchasing Agent**

The Purchasing Agent's approval, subsequent to the Finance Department approval, ensures that the purchasing policies are followed. This includes, but is not limited to, bids requirements, pricing, contractual arrangements and applicable documentation. Those requirements are provided in this manual. In addition, by approval of the requisition, if a Sourcing Justification Form (Appendix D) is attached, the Purchasing Agent's signature will be considered executed without an actual signature.

### 3.2 All Purchases

All purchases must have prior purchase order approval, within the Munis system by the Finance Director, Purchasing Agent (up to \$5,000) or the Finance Director, Purchasing Agent and Town Manager (over \$5,000) prior to the order taking place. The department may find it convenient to occasionally use the Request for Quotation or Telephone Quotation forms, even though items required are below the amounts necessary to trigger this procurement process. See APPENDIX F Purchasing Dollar Limits & Quotes Matrix.

### 3.3 Purchase Requisition up to \$500

Requisitions for goods or services having a value of up to \$500; a telephone quotation should be obtained and retained in your department. All telephone quotes should be quoted with shipping charges stated as "f.o.b. – destination." Enough detailed description for each line item must be provided. Where multiple items are being purchased each line item will be denoted, described and priced individually. The quotations may be obtained over the telephone or by whatever other means available- utilizing the telephone quotation form. Catalog prices may be used in this price range. The purchase requisition which shows the award to the lowest responsible vendor should be forwarded in the Munis system for review and approval with a telephone quotation form attached. The Department Head will review and approve, verifying that funds are available, and the accounts are correct, prior to submitting the requisition.

### 3.4 Purchases from \$501 to \$2,500

Requisitions for goods or services having a value of from \$501 to \$2,500 must be submitted for approval prior to placing an order with a vendor. Departments should obtain a minimum of two telephone quotations unless conditions exist precluding the obtaining of competitive pricing. All telephone quotes should be quoted with shipping charges stated as "f.o.b. – destination." Enough detailed description for each line item must be provided. Where multiple items are being purchased each line item will be denoted, described and priced individually. The quotations may be obtained over the telephone or by whatever other means available-utilizing the telephone quotation form. Catalog prices may be used in this price range. The purchase requisition which shows the award to the lowest responsible vendor should then be forwarded to the Department Head for review and approval with a telephone quotation form attached. In certain instances, the Purchasing Agent may obtain the quotations when requested by the departments or when knowledge of said product will yield a more advantageous price. After approval, the Department Head will review and approve, verifying that funds are available, and the accounts are correct. If Department Heads are unable to secure two telephone quotations, a notation explaining why less than two qualified vendors were available should be made on the quotation form, attached to the requisition in the Munis System. Provided all guidelines have been followed and that sufficient funds exist, departments should allow for lead time of 48 hours for Purchasing and Finance approval. Please note that if proper backup information is not included, purchasing lead time will be extended. At times a telephone call requesting approval from the Purchasing Agent for purchases in the \$501 to \$1000 may trigger approval. The Purchasing Agent will make a judgment on a case by case basis on whether to approve

over the phone.

If in the opinion of the Purchasing Agent a department is abusing the telephone quote system, the Purchasing Agent may require the department to use formal bid procedures. Descriptions of items purchased must be exact and as detailed as possible regardless of the price range.

### 3.5 Purchases from \$2,501 to \$7,500 (Non-construction) & \$2,501 to \$15,000 (Construction)

In accordance with state law, prior to processing a purchase order to secure goods or services costing over \$2,501, Department Heads must obtain three written quotations. Request for Quotation forms will be used to document these quotations. See Appendix B for the Request for Quotation of Materials and or Appendix C for the Request for Quotation of Services. If Department Heads are unable to secure three written quotations, the Single/Sole/Proprietary Source/Emergency Justification Form (see Appendix D) must be attached to the requisition, explaining why less than three qualified vendors were available as well as the Request for Quotation form should be attached to the purchase requisition and forwarded for approval.

Department Heads are reminded that the use of written Request for Quotation forms (Material or Services) requires appropriate planning to ensure that adequate lead time is available to satisfy the purchasing requirements. It is, of course, possible to call in the quotations, email or hand carry the Request for Quotations to qualified vendors and obtain the three quotes, complete the Quotation Summary (Appendix E) and submit a requisition in a single day. The more detailed the purchase, the more the need for written specifications. A good rule of thumb is to review your requests with the Purchasing Agent prior to beginning the process.

Provided all guidelines have been followed and that sufficient funds exist, departments should allow for lead time of 72 hours for purchasing approval. Please note that if proper backup information such as explanation as to why less than three quotations were obtained, is not included, purchasing lead time will be extended. If in the opinion of the Purchasing Agent a department is abusing the written quote system, the Purchasing Agent may require the department to use formal bid procedures.

### 3.6 Purchases in Excess of \$7,500 (Non-construction) \$15,000 (Construction)

Department Heads anticipating the purchase of goods or services exceeding the value of \$7,500 for non-construction and purchase of goods or services exceeding \$15,000 for construction, should prepare the Scope of Work package, including specifications with Project Schedule or Delivery requirements, list of potential Bidders, if any based upon standards appropriate to meet the Town's/School's needs. The Scope of Work package including specifications should be forwarded to the Purchasing Agent's Office along with Account Codes, indicating funds budgeted for the purchase, and any revised cost estimates that may exist. The Purchasing Agent will then develop the RFQ/RFP the bid package and will then post the document on the Westerly Website, the State of RI website and the City of Newport website, depending on the RFQ/RFP requirements. The Purchasing Agent will also send out the RFQ/RFP package to vendors/contractors on the Bidders list. The Department Head will work with the Purchasing Agent to develop the bidders list. Formal Bids will be posted for at least seven (7) business days prior to bid opening and no more than twenty-one (21) (State Statute). Bids will be received in both hard and digital format. After these bids are publicly opened by the Purchasing Agent, one set of bids will be turned over to the Department Head by the Purchasing Agent, along with a written tabulation of all bids. The Department Head will draft a memorandum of recommendation and Town Council/School Committee resolution to the Town Manager/Superintendent with a copy to and concurrence of the Purchasing Agent, IF THE PURCHASE IS NOT INCLUDED IN THE ANNUAL APPROVED BUDGET. The award will normally be made to the low bidder meeting specifications. However, there may be instances when the low bid is



not from a responsible bidder or the bid is not in accordance with minimum specifications. When such a situation arises it is incumbent upon the Department Head to thoroughly document in writing the reasons why the low bidder or bidders should be disqualified. All bids requiring a contract will be prepared with all appropriate documentation to will be developed by the Purchasing Agent. The Purchasing Agent will forward the contract to the successful contractor for signature. After the Contractor returns the signed document, the Purchasing Agent will send the said contract to the Town Solicitor. After Town Solicitor reviews, signs and returns, the contract will be ready for Town Manager/Superintendent signature. Please note that no work is to be started regarding any contract without an approved and signed Contract and/or Purchase Order. The Purchasing Agent will then send a fully executed copy back to the Contractor and will download a copy to the Contract Database System and a hard copy to the Town Clerks office.

## **SECTION IV SPECIAL PROCUREMENT PROCEDURES**

Occasionally the Town/School may need to purchase goods or services under circumstances which do not clearly fit the patterns of normal public procurement and for which normal competitive bidding procedures do not apply. The following guidelines are provided with regard to making such purchases.

### 4.1 Exclusive Service

In the event that there is only one vendor capable of providing a particular good or service, then the competitive bidding procedures outlined in this manual may be waived by the Purchasing Agent up to \$7,500 and by the Town Manager/Superintendent over \$7,500. When a Department Head determines that he/she must purchase goods or services from a "sole source vendor", he/she must document why only one company or individual is capable of providing the goods or services required. A "Sole Source" is the only source from which the item(s) or service(s) may be purchased regardless of price considerations. The documentation should be attached to the purchase requisition prior to authorization to the vendor. (complete sole source justification form, Appendix D)

### 4.2 Cooperative Procurement Programs

Department Heads are encouraged to use approved cooperative purchasing programs sponsored by the State of Rhode Island or other jurisdictions. Cooperative purchasing can prove advantageous to the Town/School both by relieving Department Heads of the paperwork necessary to put together bid packages and by taking advantage of the large quantity purchases made by State Government or other state, municipal or federal entities. Purchases made through these programs have met the requirements of competitive bidding and require no further documentation. Department Heads are encouraged to check with the Purchasing Agent and/or the State through their website regarding approved cooperative procurement contracts in effect prior to making any purchase exceeding \$2,500.

### 4.3 Professional Services

Normal competitive procedures cannot be utilized in securing professional services such as engineers, architects, planners, and other professional people who, in keeping with the standards of their discipline, will not enter into a competitive bidding process.

A Request for Proposal (RFP) for a particular project will be developed by the Purchasing Agent based upon the department requesting the service scope of Work package. The Scope of Work should

define the project in specific terms and identify the various project components and phases. Detailed project descriptions should also be prepared to guide prospective consultants. The degree, if any, of federal participation should also be defined at this time since certain planning and design criteria may be prerequisites for federal or state assistance.

RFP's must identify evaluation factors and assign a point value to all factors. A minimum score requirement must be met for the proposal to be considered for award. The firm meeting the highest total score is awarded the contract.

When an RFP for professional services is approved, a list of qualified professionals known to the Town/School should be invited to submit a proposal setting forth their interest, qualifications and how they can meet the Town's/School's needs. In securing professional services it is the primary goal of the Town/School to obtain the services of a professional on the basis of demonstrated competence and qualification for the type of services required at fair and reasonable prices. It is recognized that competence, experience and ability are important considerations, and amount of fee alone is not the only criteria in selecting professional services. A contract will be negotiated with the professional deemed to best meet the Town's/School's needs. All professional service contracts in excess of \$7,500 must receive Town Council/School Committee approval, if not within the approved annual budget.

#### 4.4 Blanket Purchase Orders

Blanket Purchase Orders are for long term contracts for goods or services awarded after receiving competitive bids and firm pricing has been established and documented in the agreement. The purchase order remains open for a period of up to one year to purchase the goods or services specified on an "as needed" basis. Examples of Blanket Purchase Orders include construction materials such as rock, stone, sand, concrete and asphalt, trees and other landscaping materials, automotive supplies such as tires and batteries, hardware, clothing and office supplies frequently or routinely utilized by the Town/School and for which the initiation of competitive shopping each time the goods or services are required would become cumbersome and inefficient. All Blanket Purchase Orders should indicate a not to exceed total dollar amount, Unit Prices, contract number, council resolution number if required, or other state, city or town or school contract or resolution numbers when applicable -- and the expiration date of the award.

#### 4.5 Emergency Purchases

The bid procedures outlined in this manual may be waived under emergency conditions when a delay may threaten the basic mission of a line department or where life or limb may be in jeopardy.

In case of an emergency the Department Head may purchase the necessary supplies or services without complying with Section 2 of this Article. True emergency situations are rare and are classified as those where immediate procurement is essential to prevent delays in work which may vitally affect the life, health or safety of citizens or the immediate urgent mission of a line department. The department head will forward to the Purchasing Agent within two (2) working days a complete written explanation of the emergency circumstances on the Sourcing Justification Form, (APPENDIX D) attached to a purchase requisition. Requests based on improper planning of lead time to procure normal operating supplies or services will not be allowed under this emergency provision. Emergencies that happen outside of normal working hours require the Department Head to contact the Purchasing Agent with details immediately on the next work day.

#### 4.6 Federally-Assisted Procurements

Federally-assisted procurements must include language specified in Appendix II to Part 200 in bid and contract documents. The required language is provided in Appendix A of this manual.

#### 4.7 Petty Cash Accounts

Petty cash funds should be used to avoid the time and expense of issuing purchase orders for minor expenses totaling one hundred dollars or less. Petty cash funds will be reimbursed at least monthly with a limit of \$100. A check will then be prepared, made payable to the individual responsible for the particular department's petty cash, and it will be that person's responsibility to cash the check and assure that the funds are placed into the departmental petty cash fund. The Finance Department will conduct unannounced audits of petty cash funds to assure that monies are being properly accounted for. The use of petty cash funds for personal use, even for very short periods of time, is contrary to Town/School policy and grounds for termination.

#### 4.8 Purchasing Card (P-Card) Program

**Town of Westerly/Westerly Schools** is making available to designated employees delegated authority to make minor purchases directly through a Purchasing Card Program. This will allow departments flexibility to purchase small routine materials and supplies.

Certain controls have been developed for the Purchasing Card that do not exist in a traditional credit card. These controls ensure that the card is used only for specific purchases, within specific dollar and transaction limits.

The purpose of this booklet is to provide guidance on the proper use of Town/School's Purchasing Card and establish policies, which meet the following criteria:

- \* Provide an efficient and cost-effective method of purchasing and paying for goods and services under \$500.00.
- \* Reduce the use of petty cash, purchase orders for small amounts.
- \* Ensure Purchasing Card purchases are in accordance with the policies of the Town of Westerly. Still need to have 2 – 3 telephone quotes from \$501.00 up to \$2,500.00 retained in the Department files. \$2,500.00 to \$7,500.00 need 3 written quotes retained in the Department files. Over \$7,500.00 must be Publicly Bid through the Purchasing Department.
- \* Reduce the time and money spent processing low dollar transactions.
- \* Increase Annual Rebate by using to pay for large purchases such as Utilities, Blanket order that have been Awarded by competitive Bidding.
- \* Ensure that the Town bears no legal liability from inappropriate use of Purchasing Cards.
- \* Provide for disciplinary action if the Purchasing Cards are misused.

**NOTE: The Westerly Purchasing Bidding requirements MUST still be followed.**

#### 4.9 Vendor Non-Response to Posted Invitation to Bid Procedure

Infrequently, situations may occur wherein our standard procedure of public notice and advertisement requesting written, sealed bids for goods or services (as defined in sub-section Purchases in Excess of \$7,500 (Non-construction) \$15,000 (Construction)) fails to yield any formal bid or response. This is probably most likely to occur in a service or maintenance bidding situation requiring special vendor expertise, equipment, employee training or risk, significant liability or other unique qualification. Assuming that the bid package and specifications were clear, concise and complete, and all associated administrative functions satisfied, the following additional action should be implemented:

- a. Give public notice and advertise the request for bids a second time in a newspaper with a greater circulation and in an area where more potential bidders are likely to exist (e.g. Providence Journal vs. Westerly Sun). Judgment regarding the reasons for non-response should guide whether to advertise in the Providence Journal. This is not mandatory.
- b. If the second bid attempt is non-responsive, it seems reasonable to assume that our standard procedures will not yield the desired result. Specifically, and with the approval and assistance of the Purchasing Agent, a direct solicitation of potential vendors qualified to provide the goods or services required should be initiated by the Department Head similar to the purchasing practices employed in the private sector. If possible, at least three qualified written bids should be obtained with supporting documentation (e.g. certificates of insurance, bonds, etc.). The Department Head will then prepare a written request to the Purchasing Agent and Town Manager/Superintendent for approval of the Town Council/School Committee for exemption to the standard purchasing procedure. The request would have to include the Department Head's arguments for this exemption as well as the written approval of the Purchasing Agent.
- c. Only with the approval of the Town Manager/Superintendent will the department head be authorized to issue a purchase order.

#### 4.10 Consolidated and/or Repetitive Purchase Orders

There are certain categories of products that are common to multiple Town/School departments or are ordered repeatedly by the same department during the course of the fiscal year (e.g. office supplies, building supplies, etc.). These categories of products when ordered separately or repetitively by departments in a decentralized purchasing environment will rarely exceed the dollar limits defined in the Purchasing Procedures section of the Purchasing Manual on any individual purchase order (i.e. \$2,500). In a centralized purchasing structure, this procedure of issuing repetitive, small orders for the same products is financially disadvantageous. The quantity discounts associated with larger, consolidated purchases or blanket purchase order for specified time periods are not available. However, in issuing larger, consolidated purchase orders or blanket purchase orders from a centralized purchasing environment the dollar limits defined in the Purchasing Procedures section of the Purchasing Manual will probably be exceeded. This exemption to the Town/School Purchasing Manual extends the provisions and dollar limit from \$5,000 to \$10,000 when, in the opinion of the Purchasing Agent, the interests of the Town/School, both financially and operationally, will best be served by the issue of larger, consolidated purchase orders or blanket purchase orders through a centralized purchasing structure. The Purchasing Agent will attempt to negotiate with a minimum of three vendors when utilizing this section. The Purchasing Agent will approve all purchase orders issued under this format.

#### 4.11 Specialized Services

As the Town's/School's unavoidable usage of high tech electronic equipment increases (e.g. computers, software systems, etc.), so too does our reliance on competent service and maintenance for this equipment through warranty or service contracts. Specialized services may also be desirable and/or difficult to obtain for certain unique or highly specialized requirements (e.g. uniform tailoring, heavy equipment repair, radio repair, land evidence records, computer repair etc.). In that these service contracts are specialized or difficult to obtain from multiple sources or require consistency, or due to Town/School satisfaction with the existing vendor, or a desire to consolidate contracts for the same equipment (e.g. copiers) under one service contract for optimum pricing or efficiency, the

following exemption to the Town/School Purchasing Procedures is applicable. If, in the opinion of the Purchasing Agent, the interests of the town/school, both financially and/or operationally, are best served by consolidating, canceling, re-negotiating, or extending (without additional bidding) existing service contracts or highly specialized service arrangements, he or she is authorized to do so, notwithstanding the provisions and dollar limits of the Purchasing Procedures section of the Purchasing Manual. Correspondence outlining the need for this specialized service exemption must be provided by the department requesting the exemption. The Purchasing Agent will review the documentation and make a recommendation to the Town Manager/Superintendent as to whether or not the service is truly a specialized service. Based on the Purchasing Agent's opinion, approval will be given for this specialized service exemption or the department will be informed that they must follow normal purchasing guidelines.

#### 4.12 Negotiations with the Lowest Bidder

After receiving the required number of quotes/bids based on the Purchasing Procedures section of this Purchasing Manual, the Purchasing Agent and Town Manager/Superintendent have the authority to negotiate further price reductions on goods and services with the lowest qualified bidder in accordance with state law regarding municipal purchases.

#### 4.13 Original Manufacturer Direct Purchase

If an individual order is large enough, or the potential for an ongoing business relationship probable, some manufacturers will sell directly to the end user, bypassing their own authorized dealer/distribution network. In the situation where the Town/School has the ability to deal directly with the original equipment manufacturer of a product, the Purchasing Agent has the authority to negotiate with the OEM up to a maximum of \$ 10,000. This type of direct purchase will frequently yield the lowest possible price available in that an entire level of overhead costs and profits (i.e. the dealer) is eliminated. Should the purchase requirement be well defined (i.e. specific), and of significant quantity or repetitive in nature, contact the Town's/School's Purchasing Agent for assistance in reviewing this purchasing opportunity. In the event the manufacturer is receptive to direct sales, the Purchasing Agent will conduct the negotiations with the original manufacturer; compare pricing with the manufacturer's local dealers and/or competitors. A Purchase Requisition and Purchase Order to the original manufacturer, if applicable, will be approved and issued - providing the funds are available and appropriate authorization from the Finance Director and Town Manager/Superintendent has been received.

## **SECTION V SPECIFICATIONS**

### 5.1 Formal Competitive Bidding

When goods or services are bought under the formal competitive bidding process, specifications must be prepared. Specifications, regardless of the type, should do four things:

- a. Identify minimum requirements;
- b. Allow for competitive bid;
- c. Be capable of objective review; and

- d. Provide for an equitable award at the lowest possible cost.

## 5.2 General Guidelines

- a. Keep specifications as simple as possible while maintaining the exactness required to keep bidders from utilizing a loophole to avoid providing the quality goods or services required or in another fashion to take advantage of their competitors.
- b. Whenever possible, identify the equipment or material required with some name brand or known standard specification already on the market. All specifications that utilize a name brand must include the term "or equivalent."
- c. Specifications should promote competition. Specifications so drafted will normally allow several bidders to provide the Town/School with alternatives and insure that the Town/School obtains the lowest possible price for the goods or services required.
- d. Flexibility in the specifications is desirable in instances where new technologies are being sought. Specifications should be specific enough to guarantee the quality required but sufficiently flexible to allow vendors to be creative in their proposals. If a proposal does not meet the Town's/School's needs, it can be rejected and the bid which closely follows the specifications accepted. These procedures should be used sparingly and Department Heads contemplating flexible specifications should contact the Purchasing Agent to discuss the format and degree of flexibility anticipated prior to the completion of the final draft.
- e. Specification should be reasonable in its tolerances. Unnecessary precision is expensive.
- f. Specifications should be written with clear, simple language, free of vague terms or those subject to variation in interpretation.

## 5.3 Types of Specifications

There are several ways of structuring specifications to protect the integrity of the purchasing process and to ensure that the needs of the Town/School are met. Different methods of structuring specifications include:

- a. *Qualified Products or Acceptable Brands List.* These lists are developed only where it is not possible to write specifications adequate to identify the quality and performance required of the goods or services to be purchased. Acceptable brands lists are also used when tests necessary to determine compliance with technical specifications are lengthy, costly or require complicated technical equipment.
- b. *Specification by Brand or Trade Name.* Brand or trade names should be used where brand name products have been found to be superior to others for the purpose intended, or when their composition is secret, unknown or patented. The use of brand names establishes a quality standard but is not intended to limit or eliminate competition. Whenever this method of establishing specifications is used, the specifications should specifically provide for bidding of competitive or equal grades. It is incumbent on a vendor who bids on goods of supposed equal quality to those specified to document that the goods or services that he is bidding are, in fact, of equal quality.
- c. *Specification by Blueprint or Dimension Sheet.* Specifications of construction projects for

everything from buildings and streets to custom built cabinets, furniture, machines or other equipment should be written to reference the blueprints or dimension sheets prepared by an engineer or architect. Such specifications provide an appropriate method of evaluating all bids, and later of verifying the quality of the construction work or the equipment or fixtures delivered.

- d. *Specifications by Chemical Analysis or Physical Properties.* Specifications which include the chemical analysis of physical properties of the goods requested clearly place responsibility on the supplier to provide exactly those items requested. Again, care must be taken in preparing specifications utilizing this method to ensure that competition remains a part of the bidding process. If the specifications are drawn too narrowly and only one bidder is qualified to meet the technical specifications, the cost of obtaining these items may be higher than necessary due to the lack of competition.
- e. *Specifications by Performance, Purpose or Use.* Specifications which include a set of performance criteria for the goods or services required will provide flexibility for vendors to design products or programs specifically aimed at meeting the purpose or performance standards the Town/School has established. Generally, specifications which center on performance standard generate a great deal of competition since they allow vendors to exercise some creativity in the types of services or goods included in their bids. Department Heads are cautioned to exercise care by including some specific technical specifications which will provide a floor or bottom line quality determination. The use of performance specifications without minimum standards could result in items being installed, paid for, and later determined not to meet Town/School expectations. It can then be very difficult to go back to a vendor and argue that the item bid did not meet the performance criteria established. At that point the determinations of satisfactory performance can become extremely subjective with the vendor insisting that his item is acceptable even though actual experience indicates otherwise.
- f. *Specifications by Identification with Industry Standards.* Specifications will often refer to industry-wide standards or to standards set by other public jurisdictions. Some examples of these would be Lumber Grading, standards set by the asphalt or concrete industries, or by referencing standard specifications of the Rhode Island Department of Transportation or other State or Federal Agency.
- g. *Specifications by Samples.* Whenever appropriate, a sample is always a good way to make your requirements perfectly clear. A good example would be printing bids for which artwork or an existing form would be attached. Whenever samples are utilized, Department Heads should provide an adequate supply so that originals can be sent with all bid invitations and some maintained in the file for vendors who request bidding documents.

## **SECTION VI REQUISITION, PURCHASE ORDER & CONTRACTS**

As a general note, **Requisitions** are used to start the Purchase Order process. A **Purchase Order** is issued to a Supplier/Vendor for the purchase of materials, goods and or equipment. A **Contract** is issued to a Contractor/Consultant to perform services/labor. We will issue a Purchase Order number to a Contractor/Consultant for accounting purposes only, so they can have a number to invoice against. The Town/School currently uses two (2) forms of agreement, The Town of Westerly/Westerly Public Schools Contract Agreement for Construction & Labor Services and the Town of Westerly/Westerly Public Schools Professional Services/Consulting Agreement for Engineering & Other Consultant Services. (See APPENDIX G & H)

The Town/School Requisition must be completed and approved by the Department Head under the procedures established in this manual. In order to insure expeditious processing of purchase orders it is important that all forms are completed accurately by the department ordering the goods or services. Descriptions must be enough to identify the object being purchased. Catalogue numbers, stock numbers and other such identifying titles are important. Do not use the description of "see attached list" or any other such vague wording.

A purchase order is a contract between the Town/School and a vendor. The contract is not binding until it is accepted by the vendor. The issuance of purchase orders by unauthorized individuals will not be recognized by the Town/School and payment of these obligations will not be approved. Unauthorized purchases are classified as personal expenses.

Purchase orders are classified as either "original" or "confirming" based on whether or not the vendor has previously been notified of the Town's/School's intent to purchase goods or services from him. Confirming purchase orders are used to prevent double purchasing of the same item. It is critical that vendors list the purchase order number on all delivery slips and invoices. Failure to do so may result in a payment delay to the vendor.

Vendors are to send invoices to the Town of Westerly, Attn: Accounts Payable, 45 Broad Street Westerly Rhode Island, 02891 OR Westerly Public Schools, 23 Highland Avenue, Westerly, Rhode Island, 02891.

## **SECTION VII DELIVERY & PERFORMANCE SCHEDULE**

A contract or purchase order that is complete in all respects and that is accepted by the parties concerned still must produce the intended results or objectives before it can be considered a successful or completed purchase. The terms and conditions must clearly define the delivery and performance requirements of the services, supplies or equipment.

The importance of the delivery schedule should be emphasized to the vendor. Delivery requirements must be clearly written and fully understood by all contract participants. If several items are required by the purchase order or contract, there may be a different delivery schedule for each item. The delivery schedule will normally be shown in calendar days from a specific date or transaction, such as receipt of order by the vendor or notice to proceed to the contractor. It is also important that you clearly show the place for delivery and the receiving time schedule at the delivery points. If there are liquidated damages for non-delivery, or late delivery or non-performance, call these terms to the attention of the vendor or contractor and stress their importance. All parties should know where the material will be accepted – f.o.b. origin or destination. In determining delivery locations, you should analyze each specific location in respect to product, cost, timeliness, and other relative factors. Regarding Project Schedules, they must be clearly defined in the contract.

### **7.1 Follow Up & Expediting**

Follow-up normally applies to the monitoring of the delivery schedules to assure compliance. Expediting, in the purest sense, involves an attempt to improve or to reduce the contractually stipulated delivery time for various reasons, and the vendor is not legally obligated to comply. The primary objectives of the follow-up function are:

- a. To assure full compliance by the vendor; and
- b. To develop documentation for future evaluation of the vendor's performance.



The early detection of possible delivery delays will provide the Town/School with a greater opportunity for resolving the problem and for developing satisfactory alternatives. The initial follow-up action would be to reaffirm the delivery schedule and to establish proper liaison with the seller's representative.

If delivery problems do develop, there are certain techniques that may be used to help solve them:

- a. Contact the Purchasing Agent for assistance.
- b. Initiate phone calls, emails, faxes, or letters.
- c. Visit the vendor. This might help solve the problem and will assist in verifying any reasons for the delay.

### 7.2 Delinquent Deliveries

When follow-up efforts have failed, and the deliveries have become delinquent, one of two actions must be taken:

- a. Authorize additional time for delivery; or
- b. Cancel and order from other sources.

In making the decision as to which of these actions should be taken, several factors must be considered:

- a. Needs and requirements of the Town/School;
- b. Agreements with the vendor;
- c. Availability of the items from other sources; and
- d. Time it would take for delivery if reordered from another source.

In all cases, the reasons for delinquent deliveries or non-performance in a contract, must be documented. This information may be needed in evaluating future bids submitted by that particular vendor or contractor.

### 7.3 Partial Deliveries

Some purchase orders may list several items. In this event it may be possible for the vendor to complete timely delivery on some of the items, which would be referred to as "partial deliveries" on the complete bid. If these items can be used separately, partial payments can and should be authorized. However, if the separate items are part of a system, then partial deliveries would be of little value to the Town/School. In this case, partial payments should not be authorized. It is the responsibility of the ordering department to advise the Finance Department of any approved partial payments.

## 7.4 Substitution

To meet the contractual delivery schedule, it may be appropriate in some situations to consider substitute items. The specifications should cover this eventuality and would govern the legality of the transaction. However, substitutions may be necessary, regardless of the specifications, if it is absolutely necessary for the Town/School to have the material by a specified date. Other reasons for substitution may be design changes, raw material shortages, and health and safety priorities.

Whenever substitutions are necessary, due to shortcomings of the vendor, it is the responsibility of the purchaser to seek and obtain an adjustment for lower prices on the substituted items. This action will serve to meet the legal requirements of the contract and to discourage future substitutions by the same vendor. In addition, this action will serve notice on the other bidders that no favoritism was shown and that compliance with specifications is expected from all vendors.

## 7.5 Nonperformance

Should the vendor or contractor fail to meet any requirement of the specifications, the vendor can be cited for nonperformance. The seriousness of nonperformance must be evaluated based on the circumstances surrounding each violation. However, there should always be some recourse to the Town/School when a vendor fails to perform in accordance with the terms and conditions.

These recourses include:

- a. The Town/School may exercise its rights under a liquidated damages clause or under the terms of a performance bond, if it is regarding a contract.
- b. The Town/School may obtain the needed items from another source and charge the delinquent vendor the excess difference in cost. But obtaining the delinquent items from another source is not always an acceptable solution, since additional delivery time may be required. A revised delivery schedule with the vendor may be the best remedy.
- c. The Town/School may terminate the contract for default if it is in the best interest of the Town/School and provided that the items can be obtained under more favorable conditions from other sources.

The Department Head should notify the Purchasing Agent immediately of any non-performance issues.

## **SECTION VIII RECEIVING REPORTS & INSPECTION**

### 8.1 Receiving & Inspection

All user departments are responsible for receiving and inspecting all deliveries to determine that the goods delivered meet expectations as to quantity, quality and general conformance to the specifications on the purchase order. In order to continue favorable vendor relations user departments will process all paperwork notifying the Finance Department of receipt of goods within three working days. It is the responsibility of the user department to obtain delivery tickets, receiving slips or packing lists as proof of delivery and forward such documentation to Finance attached to the Receiving Report. The Receiving Report is the purchase order with 'Received By' information on the bottom left hand corner. All Receiving Reports should be matched up with the "Invoices to be Paid." On complete or completed orders the Department Head, or his/her duly authorized representative, will indicate the receiving date, that the purchase order has been completed, and place his/her

signature on the receiving copy authorizing that the shipment has been received in satisfactory condition and therefore, approving payment to be made. Any variation in quantity shall be noted on the receiving copy of the purchase order. If the materials delivered are not in conformity with the specifications or for other reasons are not acceptable to the ordering department, they shall notify the Purchasing Agent and Accounts Payable Coordinator in writing of the reasons for withholding acceptance. The Department Head should also notify the vendor that his delivery has been rejected and order him to make a satisfactory replacement or a supplementary delivery.

## 8.2 Partial Receiving Report

A partial receiving report is a copy of the Receiving copy of the Purchase Order form which will inform Accounts Payable that part of the items listed on the purchase order have been received. The processing of this form will allow partial payments if so authorized by the Department Head.

The partial receiving report form contains spaces for the following information: the department making the report; the number of the purchase order on which the material was shipped.

One copy of this form will be prepared by the ordering department and forwarded to the Finance Department's Accounts Payable Coordinator.

The original receiving copy of this purchase order will be held by the department until the order has been completely filled, at which time it will be forwarded to Accounts Payable. Accounts Payable will check partial receiving reports against the vendor's invoice for the shipment. If the invoice is correct, it will be processed for payment.

## **SECTION IX INVOICES**

An invoice is the vendor's statement of his charges against the Town/School for materials or services rendered. Invoices are based on purchase orders and must contain substantially the same information.

The invoice will normally be mailed to the Finance Department. In some cases, the invoices may be delivered with the goods at the receiving point. In such cases, the ordering department should attach the invoice to the front of the receiving report and forward it to the Finance Department's Invoices to be Paid basket.

Upon receipt of the invoice, Accounts Payable will cause it to be checked against the purchase order and the receiving report. After verification, Accounts Payable will check the invoice against the purchase order to ensure that the terms areas specified, that discounts, if any, have been given, and that all calculations are correct. The invoice will then be paid within the agreed upon payment terms.

## **SECTION X DISPOSAL OF SURPLUS GOODS**

Goods become obsolete or they wear out. Occasionally it turns out they are over-stocked. Changing technology, accumulation of "waste," and fulfillment of the "useful" life of goods make the activity of handling surplus inevitable. There may also be situations where the goods are scrap only.

The Town/School is interested in full realization of the value of goods it purchases.

The Town/School policy is aimed at making sure all surpluses are disposed of to the economic advantage of the Town/School.

Competitive bidding on surplus, obsolete or usable goods is required, except for scrap items. This may be achieved through sealed bids or an annual auction process. The disposal of all goods will be coordinated by the Purchasing Agent, with the appropriate department.

## SECTION XI ELECTRONICALLY FILING RFQ/RFP DOCUMENTS

Each RFQ/RFP must be assigned a number which comes from the Master list.

BID NUMBER	ISSUED	BID DUE	BID TITLE/DESCRIPTION	STATUS	Awarded to	Amount	DEPARTMENT
2017-001	1/18/2017	2/22/2017	RFP - Operation Mainenance and Mangt Wastewater Facilities	The Council passed a resolution authorizing t	CH2M		Town Engineer
2017-002	1/18/2017	2/22/2017	RFP - Organizational Assessment of the Finance Department	Complete	Novak Assoc		Finance

The number is the year that the package is issued, followed by the next sequential number from the Master List. For example, 2018-001. The Master List is kept by the Purchasing Agent.

All RFQ/RFP files must be electronically filed in the following format:

**Documents library**  
2018-048 BAY STREET STREETScape ENHANCEMENT PROJECT

Name	Date modified
Bid RESULTS Bids	1/2/2019 10:20 AM
CONTRACT Bond Insurance	1/2/2019 10:39 AM
External Correspondance	10/30/2018 12:13 ...
Internal Correspondance	1/2/2019 10:51 AM
Resolution	12/17/2018 4:02 PM
RFQ Addendum	8/8/2018 8:59 AM

May not be needed if a Purchase Order

May not be needed if within Budget

These files are kept on the Town’s shared drive, town hall (\\thfile) (T:) under the “Department”, then “Purchasing” and then by year.

Name	Date modified	Type
RFP - RFQ 2016 2015 and Older	5/7/2018 2:16 PM	File folder
RFP - RFQ 2017	10/30/2018 10:31 ...	File folder
RFP - RFQ 2018	4/3/2018 8:57 AM	File folder

Hard copies of all the documents for each RFQ/RFP package are kept in a file folder labeled by the RFQ/RFP number and the package description. For example, 2018-057 Assistant Town Solicitor. These are maintained by the Purchasing Agent.

## APPENDIX A

# Code of Federal Regulations

## Title 2 - Grants and Agreements

Volume: 1

Date: 2014-01-01

Original Date: 2014-01-01

Title: Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

Context: Title 2 - Grants and Agreements. Subtitle A - Office of Management and Budget Guidance for Grants and Agreements. CHAPTER II - OFFICE OF MANAGEMENT AND BUDGET GUIDANCE. - Reserved. PART 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.

Pt. 200, App. II

### Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are

unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(K) See § 200.322 Procurement of recovered materials.

**APPENIX B**

**REQUEST FOR QUOTATION (Materials/Goods)**



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

Bid Due Date: \_\_\_\_\_

TO: _____	ATTN: _____
E-MAIL: _____	FAX: _____

Please provide a firm quote for the following:

Description:	Quantity	Unit Price	Discount	Extended Price
Attachments: _____			Sub-Total:	
			NO Tax:	\$0.00
			Freight:	F.O.B.
			TOTAL:	

All technical and commercial questions must be submitted in writing to the undersigned. For your convenience, your quote may be submitted by e-mail listed below.  
 All terms and conditions regarding this quote shall be in strict accordance with the Town of Westerly standard Terms & Conditions(attached)  
 All Bids to remain in full force and in effect for a period of ninety (90) days after the Bid Due Date.

**MATERIAL IS AVAILABLE FOR DELIVERY** \_\_\_\_\_ After receipt of order

**SUBMIT QUOTE TO:** \_\_\_\_\_

**E-MAIL:** \_\_\_\_\_  
 AND \_\_\_\_\_

**BASE YOUR QUOTE ON DELIVERY TO:** Westerly, RI  
 Attn: TBD



**APPENDIX C**

**REQUEST FOR QUOTATION (Services)**



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

Bid Due Date: \_\_\_\_\_

TO: _____	ATTN: _____
E-MAIL: _____	FAX: _____

Please provide a firm quote for the following:

Description:	PRICE
<b>TOTAL:</b>	

Attachments:


All technical and commercial questions must be submitted in writing to the undersigned. For your convenience, your quote may be submitted by e-mail listed below.  
 All terms and conditions regarding this quote shall be in strict accordance with the Town of Westery standard Terms & Conditions. A copy will be provided upon request.  
 All Bids to remain in full force and in effect for a period of ninety (90) days after the Bid Due Date.

Will START SERVICES: \_\_\_\_\_ After receipt of Notice to Proceed

SUBMIT QUOTE TO: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

AND \_\_\_\_\_

\_\_\_\_\_





APPENDIX D



Single/ Sole/ Proprietary Source/Emergency



Sourcing Justification Form

**Instructions:** Complete Sections I – III of this form for all Single, Sole, or Proprietary source purchases or Emergency purchases for amounts over \$2,500.00. Attach this form to your completed Purchase Requisition with a quote(s).

Commodity/Service to be Purchased: \_\_\_\_\_

Proposed Supplier: \_\_\_\_\_

Requested by: \_\_\_\_\_ Department: \_\_\_\_\_

I. A Single, Sole, Proprietary or Emergency Source Purchase **must** meet one of the following criteria (per RI General Laws § 45-55-8):

- Single Source**      The commodity/service has two or more vendors available; the vendor selected has unique technical, expertise or previous experience with similar contracts that other Suppliers do not have. Personal preference does not adequately justify limiting competition.
- Sole Source**      The commodity/service is available from only one vendor.
- Proprietary Source** The commodity/service must be restricted to one manufacturer due to compatibility with existing equipment/products or service. If dealers are available, quotes must be obtained.
- Emergency**      Urgent need for the item/service does not permit soliciting competitive bids, as cases of emergencies, disasters, etc. Purchases should be made with such competition as is practicable under the circumstances.
- Master Pricing Agreement**  
The commodity/service will be purchased using an established Master Pricing Agreement (MPA) that includes set Unit Rates or costs, as approved by the State of RI consortium buying list.

II. Provide details for this request including an explanation of why only one source is reasonably available. For Proprietary Source purchases; is this part of an integral system? Were other bids requested?  
(attach a separate sheet if necessary)

III. Why is the offered price considered reasonable? What efforts have been made to negotiate the best price for this non-competitive purchase?

Approval: \_\_\_\_\_ Date: \_\_\_\_\_  
Administrator

Approval: \_\_\_\_\_ Date: \_\_\_\_\_  
Purchasing Agent

(SEE PAGE 2 FOR COMPLETE DEFINITIONS OF SOURCING CRITERIA)

## Definitions:

**Single Source:** A Single Source procurement is one in which two or more vendors can supply the commodity, technology and/or perform the services required but the Town/School selects one vendor over the others for reasons such as expertise or previous experience with similar contracts, no other company can provide. Circumstances leading to select this method of procurement may include, for example, a need for a specific consultant firm where several firms are available to perform the work. In such a case, the department can demonstrate a rational basis for selecting a single vendor because of specific factors such as experience with a particular issue, familiarity with specific agency operations, experience with similar projects, demonstrated expertise, or capacity and willingness to respond to the situation and no other firm has such expertise. In addition, if other bidders were asked to bid but stated they were not interested, list in Section II the names of the companies, along with contact info and dates of request.

**Sole Source:** A sole source procurement is a procurement where only one source practicably available for the goods or services required. Competition is not available in a sole source procurement thus distinguishing it from a proprietary procurement where the product is restricted to that of one manufacturer. In addition, the sole source determination and written documentation demonstrating that the proposed price is fair and reasonable must be submitted to Purchasing with the purchase requisition. Upon receipt of such documentation, a sole source request may be granted.

Although all sole source specifications are proprietary, all proprietary specifications are not sole source.

Proprietary items may be available from several distributors through competitive bidding; however, competition has been restricted to this group of suppliers.

**Proprietary Specification:** A proprietary procurement is a procurement where the desired good/service must be restricted to one manufacturer because the good/service is compatible with or is an integral component of existing equipment or products; is necessary to support a specific need of a program; is covered by patent or copyright; must yield absolute continuity of results, or is one with which a user has extensive experience, and the use of any other similar piece of equipment would require considerable reorientation and training. In such cases, an equitable evaluation of comparable products and/or services must be made and documented by the requester which shows that rejection of other products is based solely on their failure to meet that need. In cases where no other comparable source can be identified, a technical description of the product or service requested and a listing of those sources which were considered as alternates must be provided. Upon receipt of such documentation, a proprietary request may be granted, and competition will be obtained among the distributors which carry the manufacturer's product.

Although all sole source specifications are proprietary, all proprietary specifications are not sole source. Proprietary items may be available from several distributors through competitive bidding; however, competition has been restricted to this group of suppliers.

**Emergency Purchase:** Emergency procurement is when there exists a threat to public health, welfare, or safety under emergency conditions as defined in regulations or where the procurement will be in the best interest of the Town as established by properly promulgated rules and regulations; provided, that emergency procurement shall be made with as much competition as is practicable under the circumstances. A written determination of the basis for the emergency, and for the selection of the particular contractor, shall be included in the contract file.

Purchasing Dollar Limits & Quotes Matrix							
Steps	up to \$100	\$101 to \$250	\$251 to \$750	751 OF	\$751 and above (see construction)	\$15,001 and above (construction)	MS OF
	Telephone Quote	2-3 Telephone Quotes	3 Written Quotes	up to \$7,500	Public Bid	Public Bid	Over \$7,500
1	Retain in Dept/complete Purchase requisition	Retain in Dept/complete Purchase requisition	Forward/complete Purchase Req or spec to Purchasing	Follow guidelines in state site or agreement	forward spec, delivery date, prebid sheet to PG	forward spec, schedule, prebid sheet to PG	Follow guidelines in state site or agreement
2	Complete Purchase Requisition OR SEE P.C.M.D. IF AUTHORIZED.	Complete Purchase Requisition	Complete Purchase Requisition	Complete Purchase Requisition and quote if applicable	Complete Purchase Requisition if not in budget get resolution approved by TC reference resolution # as PS	Complete Purchase Requisition if not in budget get resolution approved by TC reference resolution # as PS	Complete Purchase Requisition and quote if not in budget get resolution approved by TC reference resolution # as PS
3	After receipt of PO contact vendor to place order	After receipt of PO contact vendor to place order	After receipt of PO contact vendor to place order	After receipt of PO contact vendor to place order	After receipt of PO contact vendor to place order	After receipt of PO and Contract from Purchasing Agent contact vendor to place order	After receipt of PO contact vendor to place order
4	Upon receipt of goods/services forward PO to AP for pay	Upon receipt of goods/services forward PO to AP for pay	Upon receipt of goods/services forward PO to AP for pay	Upon receipt of goods/services forward PO to AP for pay	Upon receipt of goods/services forward PO to AP for pay	Upon receipt of goods/services forward PO to AP for pay	Upon receipt of goods/services forward PO to AP for pay
<b>Sole Source &amp; Emergency Purchase</b>							
5	Single Source Proprietary Source/Emergency - Justification FORM must be attached to REQ.	Single Source Proprietary Source/Emergency - Justification FORM must be attached to REQ.	Single Source Proprietary Source/Emergency - Justification FORM must be attached to REQ.	Single Source Proprietary Source/Emergency - Justification FORM must be attached to REQ.	Single Source Proprietary Source/Emergency - Justification FORM must be attached to REQ.	Single Source Proprietary Source/Emergency Justification FORM must be attached to REQ.	Single Source Proprietary Source/Emergency Justification FORM must be attached to REQ.
NOT 6/30/2019	NOTES:						
	1 Suppliers must be told by the buyer to include the Purchase Order number on their invoices.						
	2 Most Services/Consulting require the Purchasing Agent to issue a Westerly Contract to the Contractor/Consultant.						
	3 ALL BLANKET ORDERS MUST have Unit Prices established that were competitively bid.						
	4 RESOLUTIONS - Per Step 2, if a purchase is over \$7,500 and is NOT in the departments approved budget, it must go to Town Council for approval.						

7/2/2019

**APPENDIX E**

TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOL				
QUOTATION SUMMARY				
RFQ DATE _____		REQUISITION # _____		
VENDOR		ITEM		
		QUANTITY		
1	VENDOR	#1	#2	#3
2	PRICE PER UNIT			
		DELIVERY		
3	TOTAL			
RECOMMENDED VENDOR:				
REASON FOR SELECTION				
LOWEST PRICE <input type="checkbox"/>		ONLY SOURCE <input type="checkbox"/>		
QUALITY <input type="checkbox"/>		BEST DESIGN <input type="checkbox"/>		
BEST DELIVERY <input type="checkbox"/>		OTHER REASON* <input type="checkbox"/>		
SERVICE <input type="checkbox"/>		*EXPLAIN BELOW		
SIGNATURE: _____				
PRINT NAME: _____		DATE _____		

# APPENDIX F

Purchasing Dollar Limits & Quotes Matrix							
Steps	up to \$500	\$501 to \$2500	\$2501 to \$7500	MPA CPA	\$7501 and above (non construction)	\$15,001 and above (construction)	MPA CPA
	Telephone Quote	2-3 Telephone Quotes	3 Written Quotes	up to \$7,500	Public Bid	Public Bid	Over \$7,500
1	Retain in Dept/complete Purchase requisition	Retain in Dept/complete Purchase requisition	Forward w/completed Purchase Req or specs to Purchasing	Follow guidelines on state site or agreement	(forward specs, delivery date, prebid sheet to PA)	(forward specs, schedule, prebid sheet to PA)	Follow guidelines on state site or agreement
2	Complete Purchase Requisition <b>OR USE P-CARD IF AUTHORIZED.</b>	Complete Purchase Requisition	Complete Purchase Requisition	Complete Purchase Requisition fwd quotes if applicable	Complete Purchase Requisition if not in budget get resolution approved by TC reference resolution # on PR	Complete Purchase Requisition if not in budget get resolution approved by TC reference resolution # on PR	Complete Purchase Requisition fwd quotes if not in budget get resolution approved by TC reference resolution # on PR
3	After receipt of PO contact vendor to place order	After receipt of PO contact vendor to place order	After receipt of PO contact vendor to place order	After receipt of PO contact vendor to place order	After receipt of PO contact vendor to place order	After receipt of PO and Contract from Purchasing Agent contact vendor to place order	After receipt of PO contact vendor to place order
4	Upon receipt of good/services forward PO to AP for pmt	Upon receipt of good/services forward PO to AP for pmt	Upon receipt of good/services forward PO to AP for pmt	Upon receipt of good/services forward PO to AP for pmt	Upon receipt of good/services forward PO to AP for pmt	Upon receipt of good/services forward PO to AP for pmt	Upon receipt of good/services forward PO to AP for pmt
Sole Source & Emergency Purchases							
5		Single/ Sole/ Proprietary Source/Emergency - Justification FORM must be attached to REQ.	Single/ Sole/ Proprietary Source/Emergency - Justification FORM must be attached to REQ.	Single/ Sole/ Proprietary Source/Emergency - Justification FORM must be attached to REQ.	Single/ Sole/ Proprietary Source/Emergency - Justification FORM must be attached to REQ.	Single/ Sole/ Proprietary Source/Emergency - Justification FORM must be attached to REQ.	Single/ Sole/ Proprietary Source/Emergency Justification FORM must be attached to REQ.
REV 4/30/2019	<b>NOTES :</b>						
	1 Suppliers must be told by the buyer to include the <u>Purchase Order number on their invoices</u> .						
	2 Most Services/Consulting require the Purchasing Agent to issue a Westerly Contract to the Contractor/Consultant.						
	3 <b>ALL BLANKET ORDERS MUST</b> have Unit Prices established that were <u>competitively bid</u> .						
	4 <b>RESOLUTIONS</b> - Per Step 2, if a purchase is over \$7,500 and is NOT in the departments approved budget, it must go to Town Council for approval.						

# APPENDIX G

## TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS CONTRACT AGREEMENT

THIS AGREEMENT is made this [redacted] day of [redacted], by and between TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS, ("TOWN") and the party identified below as CONTRACTOR and effective as of the [redacted] day of 2018.

CONTRACT/P.O. NUMBER: [redacted]

RESOLUTION No. [redacted]

PROJECT NAME: [redacted]

RFQ No. [redacted]

<b>CONTRACTOR:</b> [redacted]	<b>TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS</b> 45 BROAD STREET WESTERLY, RI 02891
CONTRACTOR REPRESENTATIVE: [redacted]	TOWN/SCHOOL REPRESENTATIVE:
PHONE: [redacted] E-MAIL: [redacted]	PHONE: 401-348-2625 E-MAIL:

### ARTICLE 1: ENGAGEMENT:

1.1 TOWN hereby engages and CONTRACTOR hereby accepts the engagement to perform and provide the Work set forth in Exhibit A hereof and incorporated herein, in accordance with the terms and conditions of this CONTRACT.

1.2 CONTRACTOR shall perform the Work as an independent Contractor with exclusive control of the manner and means of performing the Work in accordance with the requirements of this CONTRACT. This CONTRACT is not intended, and shall not be construed to create, between TOWN and CONTRACTOR, the relationship of principal and agent, joint venture's, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent engaged by CONTRACTOR shall be, or shall be deemed to be, an employee or agent of TOWN.

1.3 This CONTRACT shall be construed and governed by the laws of the State of Rhode Island. CONTRACTOR represents that it is duly authorized to do business in all locations where the Work is to be performed, it has the knowledge, license, certification, capability and expertise to act as the CONTRACTOR and will evidence said authorization, license, certification and capability to TOWN upon request.

1.4 Prior to commencement of the Work, CONTRACTOR shall provide, and maintain in full force and effect during the term of this CONTRACT, the insurance coverage upon CONTRACTOR's operations hereunder as specified in the Exhibit C. CONTRACTOR shall not be allowed to commence the Work until the original insurance certificates required by Exhibit C have been furnished to TOWN Purchasing Agent.

### ARTICLE 2: TIME OF PERFORMANCE:

2.1 CONTRACTOR shall prosecute and complete all Work under the CONTRACT in accordance with the schedule in Exhibit A.

### ARTICLE 3: COMPENSATION/TERMS OF PAYMENT:

3.1 As full consideration for the complete, satisfactory and timely performance by CONTRACTOR of the Work contemplated by this CONTRACT in strict accordance with the requirements hereof, TOWN shall pay to CONTRACTOR the amount as agreed upon in Exhibit A and in accordance with the payment terms and conditions established by the CONTRACT Documents.

### ARTICLE 4 : CONTRACT DOCUMENTS :

4.1 This CONTRACT shall consist of the following documents ("CONTRACT Documents") which are acknowledged by CONTRACTOR and incorporated herein by this reference:

SCOPE OF WORK EXHIBIT A Pages 1 through 2  
GENERAL CONDITIONS EXHIBIT B Pages 1 through 2  
INSURANCE REQUIREMENTS EXHIBIT C Pages 1 through 2

4.2 The documents referenced in sections 4.1 and 4.2 constitute the entire CONTRACT between TOWN and CONTRACTOR and supersede all prior and contemporaneous negotiations, statements, representations, agreements, letters of intent, awards, or proposals, either written or oral. This CONTRACT may be modified only by a written instrument signed by both parties.

4.3 In the event of any inconsistency between the provisions of the CONTRACT Documents, the inconsistency shall be resolved by giving precedence in the order listed below.

- 4.4.1 CONTRACT Agreement [redacted]
- 4.4.2 Exhibit D, General Conditions [redacted]
- 4.4.3 Exhibit A, Scope of Work, Schedule of Services & Payments, including all Attachments.
- 4.4.4 [redacted]

4.4 The Effective Date set forth on this page of this CONTRACT shall be the date as which all CONTRACT Documents and provisions thereof have reference for purposes of coordination of their meaning and effect. The price relates to the Work as described in the Contract Document in their condition on that date. Changes after the Effective Date will be dealt with in accordance with the provisions for changes. Any work commenced and any payments made pursuant to an Award or Letter

of Intent shall be deemed to have been done and paid after the Effective Date and under the terms of this CONTRACT.

**Performance & Payment Bonds:** Yes:  No:

The CONTRACTOR shall furnish, within twenty (20) calendar days after the date of notice of award of contract by the TOWN, Performance and Payment Bonds in the amount of 100% of the Bid amount covering the faithful performance of the contract. The Performance Bond is to be secured through an insurance company or companies which is licensed in the State of Rhode Island or which is approved by the TOWN. The Bond will remain in effect throughout the warranty period.

TOTAL PAGES ATTACHED (INCLUDING EXHIBITS): 8

IN WITNESS, WHEREOF, the duly authorized representatives of the parties have executed this Agreement as of the date and year first above written.

**THE TOWN OF WESTERLY/  
WESTERLY PUBLIC SCHOOLS**

**CONTRACTOR**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: Mark Bednarski  
(Print)

Name: \_\_\_\_\_  
(Print)

Title: Purchasing/Risk Manager  
(Print)

Title: \_\_\_\_\_  
(Print)

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

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

**TOWN MANAGER / SUPERINTENDENT**

By: \_\_\_\_\_

Name: Mark Rooney

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

## **SCOPE OF WORK, SCHEDULE OF SERVICES & PAYMET - EXHIBIT A**

### **Article 1: SCOPE OF WORK**

1.1 *Description:* Except as otherwise expressly provided herein, CONTRACTOR shall provide each and every item of cost and expense necessary for:

#### **1.1.1 ENTER GENERAL SCOPE TITLE**

1.2 *Specific Elements:* The Work shall include but shall not necessarily be limited to, the following:

#### **1.2.1 ENTER DETAILED SCOPE DESCRIPTION**

1.3 The Work shall not include:

#### **1.3.1 ENTER WORK NOT INCLUDED OR MARK AS N/A....**

### **Article 2: PERFORMANCE PERIOD/SCHEDULE**

**2.1 Term:** *CONTRACTOR shall commence the Work on January 1, 2018, and shall prosecute the Work diligently and shall complete all Work not later than July 1 2018. Milestones: Specific scheduling milestones and coordination requirements are as follows:*

#### **2.1.1**

**2.2 Time of Essence:** Time is of the essence in the performance of this Work. CONTRACTOR shall make whatever adjustments in working hours, manpower, equipment, etc. deemed necessary to complete the Work in accordance with the term of the CONTRACT and the specific schedule requirements hereof.

**2.3 Construction Schedule:** Specific scheduling and coordination requirements are as follows:

**2.3.1** CONTRACTOR shall prepare and submit to TOWN a Construction Schedule for review and acceptance on or before the 10th day after execution of this CONTRACT. The schedule shall be in conformance with the CONTRACT Documents and shall be in sufficient detail to be used as a basis to track the progress of the Work. TOWN and CONTRACTOR will review the proposed schedule. Any revisions resulting from this review shall be resubmitted to TOWN within 7 days.

**2.3.2** CONTRACTOR shall also provide at the same time as the proposed Construction Schedule, a Schedule of Values of the Work upon which payments will be measured. The Schedule of Values will include quantities and proposed billing amounts of items aggregating the total CONTRACT price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction.

**2.3.3** CONTRACTOR, in conjunction with TOWN's Project Manager, shall update the schedule at 2 week, or other intervals requested by TOWN

### **Article 3: REPORTING REQUIREMENTS**

**3.1 Progress Report:** CONTRACTOR shall submit a monthly progress report comparing actual progress to planned progress and shall attend periodic progress review meetings.

### **Article 4: DATA REQUIREMENTS**

**4.1 Submittals:**

**4.1.1** CONTRACTOR shall prepare shop drawings, supply catalog cuts and provide all other pertinent literature for CONTRACTOR furnished materials and equipment. CONTRACTOR shall submit one (1) reproducible original and three (3) copies of this data to TOWN for review prior to any purchase or fabrication. If shop drawings show any deviation from the Work requirements, CONTRACTOR shall make specific mention of the deviations in its letter of transmittal.

**Article 5: TOWN FURNISHED ITEMS**

- 5.1 TOWN shall furnish and deliver, or cause to be delivered, to the Jobsite the following equipment, goods or material:
  - 5.1.1
- 5.2 CONTRACTOR shall be responsible for receiving, unloading, unpacking, inspecting, verifying receipt, maintaining, protecting, and installing TOWN furnished items.

**Article 6:**

**CONTRACT PRICE**

- 6.1 TOWN agrees to pay CONTRACTOR for complete, satisfactory and timely performance of the Work, in strict accordance with the requirements hereof, the firm fixed price of \$ **\$0.00**.

**INVOICES**

- 6.2 CONTRACTOR's invoices must be submitted to TOWN for approval.
  - 6.2.1 CONTRACTOR's invoices shall:
    - 6.2.1 Reference the job name.
    - 6.2.2 Reflect the CONTRACT Number/Purchase Order Number.
    - 6.2.3 Be accompanied by other supporting documentation as TOWN may reasonably require.

**PAYMENT SCHEDULE**

- 6.3 Based upon invoices submitted by the CONTRACTOR in full conformity with the requirements of the contract and approved by the TOWN, the TOWN may make progress payments to the CONTRACT Price to the CONTRACTOR. The period covered by each invoice shall be the calendar month immediately preceding the invoice date and shall be based upon the most recent Schedule of Values.
- 6.4 Final payment, constituting the entire unpaid balance of the CONTRACT Price, shall be made by the TOWN to the CONTRACTOR, when the Work is fully performed in accordance with the requirements of the CONTRACT Documents, IF APPLICABLE and delivery of the following items to the TOWN:
  - 6.4.1 Operation and maintenance manuals
  - 6.4.2 Written warranties for equipment provided
  - 6.4.3 As built drawings
  - 6.4.4 Consent of surety to final payment
  - 6.4.5 Applicable permits and certificates of inspection
- 6.5 If TOWN determines that the Work is substantially complete and that the amount of retained percentages is in excess of the amount considered by TOWN to be adequate for the protection of TOWN, TOWN may, at TOWN's sole discretion, release to the CONTRACTOR such excess amounts. Subject to the other terms and conditions of this CONTRACT, upon satisfactory completion of the Work hereunder, and its final acceptance, the CONTRACTOR will be paid the undisputed unpaid balance of any money due hereunder.



## **GENERAL CONDITIONS - EXHIBIT B**

These General Conditions are a part of each CONTRACT between TOWN/SCHOOLS and its CONTRACTOR for the performance of the Work identified in the CONTRACT.

### **Article 1: CONTRACTOR'S OBLIGATIONS**

1.1 CONTRACTOR is responsible for obtaining and confirming all measurements and taking all other actions necessary for the technical accuracy, quality and timely completion of the Work in full conformity with all laws, regulations, codes and ordinances and with the CONTRACT Documents. In addition, to ensure that his employees are instructed with respect to special regulations, policies, and procedures in effect for any TOWN facility or site, and that they comply with such rules.

1.2 CONTRACTOR shall prosecute the Work diligently with sufficient numbers of qualified personnel, equipment, materials and supplies to accomplish the Work and maintain the schedule or restore the schedule. CONTRACTOR shall provide TOWN with a detailed schedule of performance and shall update the schedule as the Work progresses. TOWN shall determine the normal hours of performance. Any special or differing hours shall be subject to the prior written approval of TOWN. TOWN shall have access always to the locations where Work is performed and to all of drawings, data specifications, calculations, documents, test results and specimens, models and other things related to the Work.

1.3 CONTRACTOR shall furnish and be responsible for the ordering and payment of all supervision, labor, supplies, materials, utilities, tools, equipment, facilities, storage, permits, inspections, licenses and all other things necessary or desirable to accomplish the Work except as specified, in the CONTRACT Documents, to be supplied by TOWN.

1.4 CONTRACTOR is solely responsible for the payment of, and shall require its lower tier CONTRACTORS to pay, all assessments benefits, and insurance premiums in connection with the Work.

1.5 CONTRACTOR is responsible for the health and safety of its employees and the employees of its lower tier CONTRACTORS. CONTRACTOR shall comply with all safety programs, practices or procedures, if any, established, recommended or required by TOWN, any governmental or quasi-governmental authorities. Compliance with any same shall not relieve CONTRACTOR of its responsibility described in the first sentence of this section.

1.6 CONTRACTOR shall be responsible for the security of the Work and shall take all reasonable precautions to prevent theft, loss and waste at the Jobsite.

1.7 CONTRACTOR shall always keep the premises and the vicinity of the Work free and clean of all debris and rubbish. If CONTRACTOR fails to commence cleanup within 24 hours of notice from TOWN of non-compliance, TOWN may commence cleanup without further notice to CONTRACTOR and deduct the cost of same from any amount due or to be due CONTRACTOR.

1.8 The CONTRACTOR shall be responsible to perform all work to cause the least inconvenience to the TOWN, and with proper consideration for the rights of other contractors and workmen. The CONTRACTOR shall be responsible for the resolution of all disputes between itself and other trades on the Site and shall be responsible for any cost, expense or delay resulting there from.

### **Article 2: COMMUNICATIONS & NOTICES**

2.1 All of CONTRACTOR's correspondence or communication regarding this CONTRACT shall include TOWN's CONTRACT Number and Work Description, and shall be mailed or delivered to TOWN's Designated Representative.

2.2 Notices of changes, deficiencies, delays, claims or disputes shall be in writing delivered within 3 business days of occurrence or discovery of same, and shall furnish full information to the extent available. The party notified will acknowledge receipt by endorsement of a copy if requested or will otherwise confirm receipt in writing. Sufficient Notice shall be deemed to have been given if made by express courier or mailing via Registered or Certified Mail postage prepaid to the address shown on page 1 of this CONTRACT.

2.3 CONTRACTOR shall not use or release any advertisement, notice or publicity depicting or describing the Work, TOWN at any time, whether before, during or after completion of the Work, without the express prior written consent of the TOWN. No signs (except reasonably necessary warnings) shall be placed upon the Jobsite without TOWN's express prior written approval.

### **Article 3: CHANGES**

3.1 TOWN may from time to time, by written order, and without notice to any surety and without invalidating this CONTRACT, or any portion thereof, make changes in the Work, or the conditions under which it is to be performed, or may increase or decrease the services to be performed. The CONTRACTOR shall not make changes in the Work or its manner of performance without prior written authorization from TOWN. If such changes increase or decrease either the cost or time required to perform the Work set forth in this CONTRACT, then the parties will mutually agree upon an equitable adjustment to the price and/or the time to perform the Work under this CONTRACT. Any such modification to this CONTRACT shall be in writing, shall define the extent of the change, the price or basis of pricing the change, the impact of the change on the schedule, and shall be signed by both parties. CONTRACTOR acknowledges and agrees that it waives all right or claim for compensation for any additional or other work not specifically authorized in writing by TOWN's Designated Representative prior to the commencement of such work.

### **Article 4: DOCUMENTS**

4.1 CONTRACTOR warrants that it has examined and reviewed the CONTRACT Documents and all other documents, schedules, drawings and data applicable to the Work and that CONTRACTOR is thoroughly familiar with the intent, scope and extent of the Work. Should any errors, omissions, defects or inconsistencies appear in such documents, CONTRACTOR shall notify TOWN within 3 business days of discovery and shall not proceed with the affected Work portion until it has brought same to the attention of TOWN and received a written interpretation or instruction from TOWN.

### **Article 5: INDEMNITY**

5.1 The Contractor guarantees:

a. To save the TOWN, its agents and employees, harmless from any liability imposed upon the TOWN arising from the negligence, either active or passive, of the contractor, as well as for the use of any copyrighted or non-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of the contract of which the contractor is not the patentee, assignee or licensee.

b. To pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the town and State of Rhode Island.

c. That the equipment offered is standard new equipment, latest model of regular stock product with all parts regularly used with the type of equipment offered; also, that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.

### **Article 6: SUSPENSION OF PERFORMANCE**

6.1 TOWN may require CONTRACTOR to suspend performance hereunder completely or partially for whatever length of time TOWN may elect. The time for completion shall be extended by a period equal to such suspension. TOWN shall not be liable for any damages, be they direct, consequential or otherwise, suffered by CONTRACTOR due to delays and suspensions. CONTRACTOR shall be obligated to proceed with the work notwithstanding a dispute on reimbursement; such action shall not prejudice either party's claim with respect to reimbursement.

### **Article 7: TERMINATION**

7.1 TOWN may terminate this CONTRACT, in whole or in part, at any time, with or without cause and without serving prior notice. If this CONTRACT is so terminated, CONTRACTOR shall be paid for all services performed to the date of termination including, in the event the termination is not for cause, all reasonable termination expenses, but shall not be paid for Work not performed by CONTRACTOR. Any progress payments made to CONTRACTOR shall be

credited toward any termination payment due. Such termination payment will constitute CONTRACTOR's full compensation to which it is entitled under this CONTRACT and CONTRACTOR waives any claim for damages, including loss of anticipated profits, arising out of such termination.

7.2 Upon receipt of a termination notice, CONTRACTOR shall: (a) promptly discontinue all services to the extent directed; (b) take reasonable precautions to protect the Work in process; and (c) deliver or otherwise make available to TOWN all data, drawings, calculations, reports and all other information and materials which have been accumulated or developed by CONTRACTOR in performing this CONTRACT, whether completed or in progress.

7.3 In the event of any termination for cause, TOWN shall be entitled to offset against any monies owed to CONTRACTOR all additional costs, expenses or charges incurred or paid by TOWN in connection with or arising out of such termination. If such additional amounts exceed the monies owed CONTRACTOR, CONTRACTOR agrees to pay to TOWN, within seven (7) days of demand, any such excess

7.4 In the event of any termination for cause, TOWN shall be entitled to take and use any materials, equipment, supplies or tools furnished by, or belonging to the CONTRACTOR located at the Jobsite.

**Article 8: DISPUTES**

8.1 All questions arising under this Agreement shall be resolved in the first instance by TOWN's Project Manager. No claim for additional compensation or extension of time shall be considered unless presented to TOWN's Project Manager in writing within ten (10) calendar days after the occurrence giving rise to the dispute. Any claim not satisfactorily resolved by TOWN's Project Manager in the first instance, and which is presented in writing within the time provided, may be appealed by notice in writing to TOWN's Designated Representative within ten (10) calendar days after the Project Manager's initial decision.

8.2 All claims, disputes and other matters in question which are left unresolved after compliance with the foregoing, arising out of or relating to this CONTRACT or the breach thereof, except for claims which have been waived by the making or acceptance of final payment, may be litigated before any court of competent jurisdiction.

8.3 The CONTRACTOR shall carry on the Work and maintain the project schedule during any dispute proceedings, unless otherwise instructed by TOWN.

**Article 9: ASSIGNMENT & CONTRACTS**

9.1 CONTRACTOR's duties and obligations hereunder are personal and shall not be assignable or delegable by it in any manner. CONTRACTOR's rights and interest hereunder may not be assigned, pledged or otherwise encumbered without the prior written consent of TOWN.

9.2 CONTRACTOR shall not further CONTRACT any portion of the Work without TOWN's prior written consent. In any event, any Contracting by CONTRACTOR shall in no event relieve CONTRACTOR of its responsibilities, obligations or guaranties for such Contracted portions of the Work or anything arising out of such Contracting.

**Article 10: PARTIAL USE OR OCCUPANCY**

10.1 TOWN may use and occupy any portion of the Work. Such partial use or occupancy shall not imply an acceptance by TOWN of that or any other portion of the Work and shall not relieve CONTRACTOR of the obligation to complete all of the Work strictly in accordance with the CONTRACT.

**Article 11: EQUAL OPPORTUNITY COMPLIANCE, HANDICAPPED ACCESS AND AFFIRMATIVE ACTION**

11.1 Contractors of the State are required to demonstrate the same commitment to equal opportunity as prevails under federal contracts controlled by Federal Executive Orders 11246, 11625, 11375 and 11830, and Title 28 Chapter 5.1 of the General Laws of Rhode Island. Affirmative action plans shall be submitted by the contractor for review by the State Equal Opportunity Office. A contractor's failure to abide by the rules, regulations, contract terms and compliance reporting provisions as established shall be grounds for forfeiture and penalties as shall be established, including but not limited to suspension..

**Article 12: WARRANTY**

12.1 CONTRACTOR warrants that all materials, equipment and workmanship furnished by CONTRACTOR shall be new, merchantable and fit for the purposes intended by the CONTRACT and shall comply in all respects with the CONTRACT Documents and shall be free of defects for a period of one (1) year from the date of acceptance of the Work or such longer period required in the CONTRACT Documents and the TOWN may, in the event of failure, order its replacement, repair, or return for full credit, at its sole option.

**Article 13: INSURANCE**

13.1 CONTRACTOR shall provide and maintain the insurance required by Exhibit C.

**Article 14: HEADINGS AND SEVERABILITY**

14.1 The headings in the CONTRACT, Exhibits and attachments thereto are for quick reference only and are not to be construed as a part of this CONTRACT.

14.2 If any provision of this CONTRACT is determined to be invalid under any applicable law, such decision shall not affect the remaining portion, which remaining portion shall continue in full force and effect as if it had been executed with the invalid portion eliminated.

**Article 15: HAZARDOUS MATERIALS**

15.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or which is subject to statutory or regulatory requirements governing its handling, disposal or remediation. CONTRACTOR shall have the same obligations with respect to such Hazardous Materials within the scope of the Work as TOWN may have under the CONTRACT Documents or by law.

**Article 16: FOREIGN CORPORATIONS**

16.1 In accordance with Title 7 Chapter 1.1 of the General Laws of Rhode Island, no foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the Secretary of State.

**Article 17: COLLUSION**

17.1 Contractor warrants that he has not, directly or indirectly, entered any agree participated in any collusion or otherwise taken any action in restraint of full competitive bidding. In special circumstances, an executed affidavit will be required as a part of the contract.

**Article 18: PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES**

18.1 Contractor warrants that he has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the Town for obtaining any contract or award issued by the Town. Contractor further warrants that no commission or other payment has been or will be received from or paid to any third-party contingent on the award of any contract by the Town, except as shall have been expressly communicated to the Town Purchasing Agent in writing prior to acceptance of the contract or award in question. Subsequent discovery by the Town of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts and suspension or debarment of the bidder(s) or contractor(s) involved.

**Article 19: PREVAILING WAGE REQUIREMENT**

19.1 In accordance with Title 37 Chapter 13 of the General Laws of Rhode Island, payment of the general prevailing rate of per diem wages and the general prevailing rate for regular, overtime and other working conditions existing in the locality for each craft, mechanic, teamster, or type of workman needed to execute this work is a requirement for both contractors and subcontractors for all public works.

**Article 20: FORCE MAJEURE**

**20.1** All orders shall be filled by the CONTRACTOR with reasonable promptness, but the CONTRACTOR shall not be held responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any other acts not within the control of the CONTRACTOR and which by the exercise of reasonable diligence, the CONTRACTOR is unable to prevent.

**Article 21: PRICING/FREIGHT**

**21.1** All pricing offered or extended to the TOWN is firm and fixed unless expressly provided for to the contrary. All prices shall be F.O.B. Destination with freight costs included.

**Article 22: SAFETY/COMPLIANCE WITH LAWS**

**22.1** Supplier shall comply with all applicable federal, state, provincial and local laws, executive orders, rules and regulations during performance of this order, including but not limited to the Occupational Safety and Health Act of 1970, as amended ("OSHA"), Workplace Hazardous Materials Information System ("WHIMIS"), Toxic Substances Control Act as amended ("TSCA") Resource Conservation and Recover Act at 1976, as amended ("RCRA"), Clean Air Act of 1990, as amended, and Fair Labor Standards Act of 1938, as amended ("FLSA"). Supplier warrants that (1) all items sold or furnished under this order, including any packaging and labeling, will conform to and comply with OSHA standards and regulations, (ii) such items have been manufactured or furnished in accordance with the FLSA and regulations issued thereunder, and (iii) for each chemical product or product containing a chemical substance purchased under this order, Supplier shall furnish THE TOWN OF WESTERLY/WESTERLY PUBIC SCHOOLS a Material Safety Data Sheet ("MSDS") in conformance with applicable OSHA, WHIMIS, state, provincial and local requirements, unless a current MSDS has previously been submitted by Supplier to THE TOWN OF WESTERLY/WESTERLY PUBIC SCHOOLS.

**EXHIBIT C - INSURANCE SPECIFICATIONS**

**Standard Insurance and Indemnification Requirements**

General Conditions: Within ten (10) business days of the award or notice, or prior to the start of work, whichever comes first, the contractor will provide, pay for, and maintain in full force and affect the insurance outlined here for coverage's at not less than the prescribed minimum limits of liability. Such coverage is to remain in force during the life of the contract and for such additional time as may be required, and will cover the contractor's activities, those of any and all subcontractors, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

- A. Certificates of Insurance: The contractor will give the Town/Schools a certificate of insurance completed by a duly authorized representative of their insurer certifying that at least the minimum coverage's required here are in effect and specifying that the liability coverage's are written on an occurrence form and that the coverage's will not be canceled, non-renewed, or materially changed by endorsement or through issuance of other policy(ies) of insurance without thirty (30) days advance written notice to: Town of Westerly, 45 Broad Street, Westerly, Rhode Island, 02891 Attn: Purchasing Agent. Failure of the Town/Schools to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the Town/Schools to identify a deficiency from evidence provided will not be construed as a waiver of the contractor's obligation to maintain such insurance.
- B. Insurer Qualification: All insurance will be provided through companies authorized to do business in the State of Rhode Island and considered acceptable by the owner, with an A.M. Best Rating of A-/VIII.
- C. Additional Insured: To the extent commercially available at no additional cost, the policy or policies providing insurance as required, with the exception of professional liability and workers' compensation, will defend and include the Town/Schools directors, officers, representatives, agents, and employees as additional insureds on a primary basis for work performed under or incidental to this contract.
- D. Retroactive Date and Extended Reporting Period: If any insurance required here is to be issued or renewed on a claims-made form as opposed to the occurrence form, the retroactive date for coverage will be no later than the commencement date of the project and will state that in the event of cancellation or nonrenewal, the discovery period for insurance claims (tail coverage) will be at least 36 months.
- E. Subcontractors' Insurance: The contractor will cause each subcontractor employed by contractor to purchase and maintain insurance of the types specified below. When requested by the owner, the contractor will furnish copies of certificates of insurance evidencing coverage for each subcontractor.
- F. Waiver of Subrogation: The contractor will require all insurance policies in any way related to the work and secured and maintained by the contractor to include clauses stating each underwriter will waive all rights of recovery, under subrogation and otherwise, against Town/Schools, and all tiers of contractors or consultants engaged by them. The contractor will require of subcontractors, by appropriate written agreements, similar waivers each in favor of all parties enumerated in this section.
- G. Indemnification/Hold Harmless: The contractor shall indemnify, defend, and hold harmless the Town/Schools and, if applicable, their agents and employees from and against all claims, damages, losses and expenses, including attorney's fees of counsel selected by the Town/Schools, arising out of or resulting from the performance of the work and /or the supplying of materials, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (b) is caused in whole or in part by any

negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not they are caused in part by a party indemnified hereunder.

## II. Insurance Limits and Coverage:

- A. To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions and coverages of Insurance Services Office (ISO) policies, forms, and endorsements.
- B. If the contractor has self-insured retention's or deductibles under any of the following minimum required coverage's, the contractor must identify on the certificate of insurance the nature and amount of such self-insured retention's or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retention's or deductibles will be the contractor's sole responsibility.
- C. Commercial General Liability: The contractor will maintain commercial general liability insurance covering all operations by or on behalf of the contractor on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Such insurance will have these minimum limits:

Minimum Limits:       \$1,000,000 each occurrence  
                              \$2,000,000 each occurrence if blasting is required  
                              \$2,000,000 general aggregate with dedicated limits per project site  
                              \$2,000,000 products and completed operations aggregate  
                              \$1,000,000 personal and advertising injury

Should blasting be required, all necessary permits for the use of explosives shall be obtained by the contractor or insured from the Fire Marshall.

Special hazards shall be covered if needed by endorsement to the Commercial Liability policy/policies as follows:

- 1) Property damage liability arising out of the collapse of or structural injury to any building or structure due to excavation (including burrowing, filling or backfilling in connection therewith), tunneling, pile driving, cofferdam work or caisson work; or to moving, shoring, underpinning, razing or demolition of any building or structure, or removal or rebuilding of any structural support thereof.
- 2) Property damage liability for injury to or destruction of property arising, directly or indirectly, from blasting or explosions however caused, other than explosions of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment.
- 3) Property damage liability for injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property, or any apparatus in connection therewith, below the surface of the ground, arising from and during the use of mechanical equipment for the purpose of excavating or drilling within project limits; injury to or destruction of property at any time resulting therefrom.

- D. Automobile Liability: The contractor will maintain business auto liability coverage for liability arising out of any auto, including owned, hired, and non-owned autos.

Minimum Limits:       \$1,000,000 combined single limit each accident

- E. Workers' Compensation: The contractor will maintain workers' compensation and employer's liability insurance. Waiver of subrogation in favor of the Town of Westerly shall apply.

Minimum Limits:       Workers' Compensation: statutory limit  
Employer's Liability: \$500,000 bodily injury for each accident  
                              \$500,000 bodily injury by disease for each employee  
                              \$500,000 bodily injury disease aggregate

- F. Umbrella/Excess Liability: The contractor will maintain coverage applying over the underlying Commercial General Liability, Automobile Liability, Pollution Liability (where applicable), and Employer Liability section of the Workers Compensation coverage. **The Town of Westerly shall have the sole discretion in increasing or reducing the Umbrella/Excess Liability coverage requirements depending on the scope and/or size of the work to be performed by Contractor/Bidder.**

Minimum Limits:       \$5,000,000 per occurrence/\$5,000,000 annual aggregate

## APPENDIX H

# **TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS PROFESSIONAL SERVICES/CONSULTING AGREEMENT**

**Contract/PO Number:**

**Resolution Number (if applicable):**

THIS CONSULTING AGREEMENT made effective as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ by and between  
**TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS.** (the "TOWN/SCHOOLS") and \_\_\_\_\_ (the "Consultant").

**1. Engagement.** THE TOWN/SCHOOLS hereby engage the Consultant as a consultant to perform the Services (as defined herein) subject to the terms and conditions of this Agreement, and the Consultant hereby accepts such engagement for and in consideration of the compensation hereinafter provided. The Consultant shall perform its obligations hereunder in compliance with the terms of this Agreement and any and all applicable laws and regulations. The Consultant acknowledges that THE TOWN/SCHOOLS retains the right to appoint additional consultants as THE TOWN/SCHOOLS, in its sole and unrestricted judgment, may from time to time determine to be in the best interests of THE TOWN/SCHOOLS without liability or obligation to the Consultant. THE TOWN/SCHOOLS make no representation or warranty as to the aggregate compensation payable hereunder or the number or scope of projects for which it may engage the Consultant.

**2. Services.**

**a. Statements of Work.** The Consultant agrees to render services and prepare such deliverables as described in the numbered statements of work executed under this Agreement (each, a "Statement of Work"). Each Statement of Work constitutes a separate and independent contract of the Consultant which incorporates the terms and conditions of this Agreement. The tasks to be performed and the deliveries to be made by the Consultant pursuant to each Statement of Work are hereinafter collectively referred to as the "Services." The Consultant shall advise THE TOWN/SCHOOLS in writing which of its employees will be responsible for the provision of the Services subject to the approval of THE TOWN/SCHOOLS, which approval shall not be withheld unreasonably (the "Designees"). The Services shall be performed in accordance with the time schedule indicated in the respective Statement of Work. Time is of the essence in the performance of this Agreement and the Services hereunder.

**b. Benefits.** The Consultant shall be responsible for all employee benefits and compensation and employment taxes with respect to its employees and agents. The Consultant shall indemnify, defend and hold harmless THE TOWN/SCHOOLS and its affiliates, directors, officers, employees, agents and representatives and assigns of each, from and against all claims, suits, liabilities, costs and expenses arising under the preceding sentence, including, without limitation, attorneys' fees and expenses, assessments for withholding and similar taxes, claims for benefits and any similar claims by or with respect to such employees. In no event, shall an employee or agent of the Consultant be considered an employee or agent of THE TOWN/SCHOOLS. Consultant agrees that in the event Consultant or Consultant's employees is {are} classified as an "employee(s)" by any governing authority, and THE TOWN/SCHOOLS becomes liable for any payments for insurance, penalties, or other charges, Consultant shall reimburse THE TOWN/SCHOOLS for any and all amounts charged against THE TOWN/SCHOOLS. The provisions of this Section 2(b) shall survive any termination of this Agreement.

**c. Licenses.** The Consultant is responsible for obtaining all licenses, certifications, registrations and authorizations necessary or advisable for the performance of the Services.

**3. Compensation.** As compensation for the performance of the Services, THE TOWN/SCHOOLS shall pay to the Consultant the amounts ("Fee") specified in the applicable Statement of Work. The Consultant will be responsible for all travel and other business related expenses within the Greater Southern New England Area. Outside this area travel and business related expenses will be reimbursed by THE TOWN/SCHOOLS only upon prior written authorization by THE TOWN/SCHOOLS. Any such reimbursable expenses shall conform to the limitations, guidelines, reporting and approval procedures imposed by THE TOWN/SCHOOLS upon its employees. Unless otherwise provided herein, all federal, state and local taxes, the cost of all required permits, licenses, registrations, certifications and other fees applicable to the performance of Services by Consultant, its subcontractors, if allowed, and each Consultant employee are included in the Fee. THE TOWN/SCHOOLS shall pay Consultant the Fee in the manner provided in the Statement of Work.

**4. Term.** The term of this Agreement shall commence on the date hereof and shall continue for a period of \_\_\_\_\_ years. Notwithstanding the foregoing, this Agreement may be terminated (i) by either party at its convenience upon thirty (30) days written notice ("Early Termination") and (ii) by the non-defaulting party upon a breach or default of any

material provision or obligation hereunder by, or upon the occurrence of an Insolvency Event with respect to, the other party, provided the party terminating this Agreement has, other than in connection with an Insolvency Event, first given the defaulting party 30 days written notice of such default or breach and such default or breach has not been remedied during such period to the reasonable satisfaction of the non-defaulting party ("Default Termination"). "Insolvency Event" shall mean the insolvency or general failure of a party to pay its debts as they become due; entrance of a party into receivership or any arrangement with creditors generally; filing of a voluntary or involuntary petition or other action or proceeding for bankruptcy or reorganization or dissolution or winding-up; a general assignment for the benefit of creditors; or a foreclosure or sale of a material part of a party's assets by or for the benefit of any creditor or governmental agency.

**5. Limitations.** In recognition of the Consultant's acknowledgment that the Services to be rendered to THE TOWN/SCHOOLS pursuant to this Agreement are of a special and unusual character which have a unique value to THE TOWN/SCHOOLS, loss of which cannot adequately be compensated by damages in any action at law; in view of the unique value to THE TOWN/SCHOOLS of the Services for which THE TOWN/SCHOOLS has engaged the Consultant and the confidential information to be obtained by or disclosed to the Consultant; and as a material inducement to THE TOWN/SCHOOLS to engage the Consultant, and to pay to the Consultant the compensation for such Services to be rendered to THE TOWN/SCHOOLS by the Consultant (it being understood and agreed by the parties hereto that all of the compensation paid to the Consultant in connection with this Agreement by THE TOWN/SCHOOLS shall also be paid and received in consideration hereof), Consultant covenants and agrees as follows:

**a. No Representation.** Consultant is not authorized and shall neither purport to act nor hold itself out as an agent, representative or partner of THE TOWN/SCHOOLS. Nothing in this Agreement shall be construed to give the Consultant authority to represent or act on behalf of THE TOWN/SCHOOLS in any manner with or before any person, party, court or governmental or regulatory agency without the express prior written authorization of THE TOWN/SCHOOLS.

**b. Records and Ownership.** All files, books, accounts, records, documents, notes, drawings, designs, lists, specifications, computer programs, data and other materials and information of any nature or copies of the foregoing, however recorded or stored, and related to THE TOWN/SCHOOLS (the "Records") shall at times belong to THE TOWN/SCHOOLS and to the extent possessed by the Consultant hereunder, such possession shall be for the benefit of and as custodian for THE TOWN/SCHOOLS. The Consultant's possession of the Records is at the will of THE TOWN/SCHOOLS and is solely for enabling the Consultant to perform its obligations hereunder. The Records shall be readily separable from the records of the Consultant. All Records furnished to Consultant by THE TOWN/SCHOOLS, shall remain the property of THE TOWN/SCHOOLS and shall be returned promptly upon completion of the Services, or at any time upon written request of THE TOWN/SCHOOLS. Consultant further agrees not to make any copies of any such written materials other than as necessary to accomplish the Services, all of which shall be returned as provided above.

**c. Reasonableness of Restrictions.** The Consultant has carefully read and considered the provisions of this Section 5 and, having done so, agrees that the restrictions set forth in such Section 5 (including, but not limited to, the time period of restriction and the nature of restriction are fair and reasonable and are reasonably required for the protection of the interests of THE TOWN/SCHOOLS.

**d. Injunction.** In the event of a breach or threatened breach by the Consultant of the provisions of this Agreement, THE TOWN/SCHOOLS shall, in addition to any other rights and remedies available to it, at law or otherwise, be entitled to an injunction to be issued by any court of competent jurisdiction enjoining and restraining the Consultant from committing any present violation or future violation of this Agreement.

**e. Application.** If required by THE TOWN/SCHOOLS, prior to commencing work under any Statement of Work, the Consultant shall cause each Designee to agree in writing to be bound by the provisions of this Section 5. The Consultant shall indemnify, defend and hold harmless THE TOWN/SCHOOLS and its affiliates, directors, officers, stockholders, employees, agents and customers and the personal representatives and assigns of each, from and against all losses, costs, expenses (including attorney's fees and expenses) occasioned by any breach of any provision of this Section 5 by any Designee, including without limitation, the type described in the second sentence of Sections 5(c) and 5(f) above.

**f. Survival.** The provisions of this Section 5 shall survive the termination of this Agreement.

**6. Insurance.** Consultant shall provide and maintain the insurance coverages required by Exhibit A, attached hereto and incorporated herein. Contractor shall agree to all terms and conditions in Exhibit A.

**7. Notices.** All notices, demands, requests or other communications which may be or are required to be given, served or sent by one party to the other party pursuant to this Agreement shall be in writing and shall be hand delivered (by prepaid courier) or mailed by certified mail, return receipt requested, postage prepaid, or sent by telefax,

addressed as follows:

*If to THE TOWN/SCHOOLS:*

TOWN OF WESTERLY/WESTERLY PUBLIC SCHOOLS.  
45 BROAD STREET  
WESTERLY, RI 02891  
Attention: MARK BEDNARSKI

*If to the Consultant:*

Name:  
Employee:  
Street Address:  
City, State, ZIP:  
Federal ID Number:

Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be delivered, given or sent. Documents delivered by hand shall be deemed to have been received upon delivery; documents sent by telefax shall be deemed to have been received when the answer back is received; and documents sent by mail shall be deemed to have been received upon their receipt, or when delivery is refused by the addressee upon presentation.

8. **Security.** The Consultant agrees that it and its personnel will at all times comply with all security regulations in effect from time to time at THE TOWN/SCHOOLS' premises or applicable outside such premises, to materials belonging to THE TOWN/SCHOOLS.

9. **Independent Consultant.** The Consultant shall perform Services hereunder only as an independent contractor. Under no circumstances shall the Consultant or any of its employees or agents be construed to be an employee, partner or agent of THE TOWN/SCHOOLS and neither the Consultant nor any of its employees or agents shall be entitled to participate in THE TOWN/SCHOOLS' profit sharing, pension, bonus or other plans for the benefit of THE TOWN/SCHOOLS employees.

10. **Assignment.** Neither this Agreement or any interest herein or any rights hereunder shall be sold or assigned by the Consultant, nor shall any of the duties of the Consultant hereunder be delegated to any person, firm or corporation, without prior notice to and written consent of THE TOWN/SCHOOLS. For purposes of this provision, assignment shall be deemed to include any change of control or transfer by operation of law.

11. **Standard of Care.** The Consultant hereby represents and affirms to THE TOWN/SCHOOLS that the Consultant and each Consultant employee or subcontractor, if allowed, possess the knowledge, ability, professional skills, qualifications and expertise necessary to perform the Services in accordance with the terms hereof. Upon request, the Consultant will furnish to THE TOWN/SCHOOLS reasonable evidence of the professional qualifications and experience of each Consultant employee supplied pursuant to this Agreement. It is expressly agreed by the Consultant that the initiation and continuation of this Agreement shall be contingent upon Consultant's continuing satisfaction of the requirements of this section. The Consultant represents and affirms that it will exercise due diligence to perform the Services in accordance with the highest professional standards applicable to such or similar Services and in compliance with all applicable laws and regulations and the highest ethical standards. Any Services which do not meet these standards shall be reperfomed by the Consultant without cost to THE TOWN/SCHOOLS until it meets THE TOWN/SCHOOLS' reasonable satisfaction. No cost or allowance incurred by Consultant in the performance of such rework shall be reimbursable hereunder. In addition, the Consultant represents and warrants that any information which it may supply THE TOWN/SCHOOLS during the term of this Agreement (i) will have been obtained by the Consultant lawfully and (ii) will not be confidential or proprietary to any third person except for information related to customers of THE TOWN/SCHOOLS which was learned in the course of the performance of the Services and is disclosed to THE TOWN/SCHOOLS in connection therewith. Nothing in this Agreement shall be construed as authorizing or encouraging the Consultant to obtain information for THE TOWN/SCHOOLS in violation of any third party's rights to copyright or trade secret protection.

12. **Adherence To Laws and THE TOWN/SCHOOLS Policies.**

a. **Illegal Acts.** Consultant agrees that in carrying out its duties and responsibilities under this Agreement, it will neither undertake nor cause, nor permit to be undertaken, any activity which either (i) is illegal under any laws, decrees, rules, or regulations in effect in either the United States or foreign country if applicable; or (ii) would have the effect of causing Company to be in violation of any laws, decrees, rules, or regulations in effect in either the United States or foreign country if applicable.

b. **Payments.** Consultant agrees that in connection with this Agreement or with any resultant contract, it will not, directly or indirectly, give, offer, or promise, or authorize to tolerate to be given, offered, or promised, anything of value to any official, entity, or employee with the intent to (i) influence any act or decision of such official, entity, or employee, or (ii) induce such official, entity, or employee to use his influence to affect or influence any act or decision of any individual or entity in order to assist THE TOWN/SCHOOLS in obtaining or retaining business, or in directing business to any person.

c. **Notice.** Consultant agrees to notify THE TOWN/SCHOOLS immediately of any extortive solicitation, demand, or other request for anything of value, by or on behalf of any official, entity, or employee relating to the subject matter of this Agreement.

d. **Conformance with THE TOWN/SCHOOLS Policies.** Consultant acknowledges that THE TOWN/SCHOOLS has certain policies regarding, but not limited to, such things as drug use, alcohol, firearms, safety, security, smoking, sexual harassment, and similar actions which will also apply to the representatives of Consultant engaged to provide services hereunder. Consultant undertakes to have all of Consultant's representatives providing services at any THE TOWN/SCHOOLS facility (including any facility of a customer or supplier of THE TOWN/SCHOOLS) and all of Consultant's representatives providing direct services hereunder, whether on or off THE TOWN/SCHOOLS facilities, to agree to observe all applicable THE TOWN/SCHOOLS' policies and to sign agreements so indicating. Should THE TOWN/SCHOOLS, for any reason, deem any of Consultant's representatives unacceptable, THE TOWN/SCHOOLS shall notify Consultant and Consultant shall, thereafter, neither send such representatives to the TOWN/SCHOOLS facility nor engage such representative in direct service for THE TOWN/SCHOOLS, on or off THE TOWN/SCHOOLS facilities, but shall perform its obligations hereunder using other representatives acceptable to THE TOWN/SCHOOLS.

e. **Criminal Background Check and Substance Screening.** Each representative of Consultant providing services at any TOWN/SCHOOLS facility and each of Consultant's representatives providing direct services hereunder, whether on or off THE TOWN/SCHOOLS facilities, shall be required to successfully undergo a Criminal Background Check and Substance Screening prior to performing any services under this Agreement. Consultant shall require such representatives to cooperate in such Check and Screening. Provided, however, that such Check and Screening shall not be required of any representative of Consultant for whom Consultant can demonstrate successfully passed a similar Check and Screening within one calendar year prior to the proposed commencement of such representative's services under this Agreement. THE TOWN/SCHOOLS shall have the final decision in determining whether any such Check and Screening is similar to THE TOWN/SCHOOLS' Check and Screening.

#### 14. **Miscellaneous.**

a. **Waiver and Remedies.** The provisions of this Agreement may be waived, altered, amended or repealed, in whole or in part, only on the written consent of THE TOWN/SCHOOLS and the Consultant. The remedies provided THE TOWN/SCHOOLS and Consultant herein shall be cumulative, and in addition to any other remedies provided by law or equity. A waiver of a breach of any provision hereof shall not constitute a waiver of any other breach.

b. **Titles; Recitals.** Section headings and numbers used in this Agreement are included for convenience of reference only, and, if there is any conflict between any such numbers and headings, and the text of this Agreement, the text shall control. Each of the statements set forth in the premises of this Agreement is incorporated into the Agreement as a valid and binding representation of the party or parties to whom it relates.

c. **Governing Law; Severability.** This Agreement is entered in Rhode Island and shall be construed in accordance with and governed by the substantive laws of the State of Rhode Island without regard to the conflict of laws provisions thereof. Whenever possible, each provision (including without limitation any subparagraph or part thereof in Section 5 above) of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, and if any provision of this Agreement is held illegal, invalid or void, such provision may be changed to the extent reasonably necessary to make it valid and enforceable and the remainder of this Agreement shall not be affected or impaired thereby.

d. **Entire Agreement.** This Agreement, together with all Statements of Work now and hereafter attached hereto (which are hereby incorporated herein by reference), represent the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior written or oral agreements, side letter, proposal, bid, quote or the like with respect thereto.

IN WITNESS, WHEREOF, the duly authorized representatives of the parties have executed this Consulting Agreement as of the date and year first above written.



**THE TOWN OF WESTERLY/  
WESTERLY PUBLIC SCHOOLS**

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)

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

**CONSULTANT**

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)

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

**TOWN MANAGER / SUPERINTENDENT**

By: \_\_\_\_\_

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

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

**STATEMENT OF WORK NO. 001**

THIS STATEMENT OF WORK dated this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between THE TOWN/SCHOOLS (the "THE TOWN/SCHOOLS") and \_\_\_\_\_ (the "Consultant") is entered into pursuant to the terms and conditions of that certain Consulting Agreement dated as of \_\_\_\_\_, 20\_\_\_\_, between THE TOWN/SCHOOLS and the Consultant (the "Agreement") which Agreement is incorporated herein by this reference. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Agreement.

**1. SERVICES:**

The Consultant agrees to:

**2. DUE DATES:**

The above Services are to be performed as follows:

**3. COMPENSATION:**

Consultant will be paid \_\_\_\_\_ for all services rendered. Consultant shall submit \_\_\_\_\_ invoices to THE TOWN/SCHOOLS for all services performed under this agreement. Each invoice shall identify the services performed and \_\_\_\_\_. Invoices shall be submitted directly to \_\_\_\_\_ for approval. Such invoices shall be payable within thirty (30) calendar days of approval by THE TOWN/SCHOOLS.

IN WITNESS, WHEREOF, THE TOWN/SCHOOLS and the Consultant have executed this Statement of Work as of the date first set forth above, subject to the provisions of the Agreement.

**TOWN OF WESTERLY/  
WESTERLY PUBLIC SCHOOLS**

**CONSULTANT**

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Print)

Name: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)

Title: \_\_\_\_\_  
(Print)

**TOWN MANAGER/SUPERINTENDENT**

By: \_\_\_\_\_

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

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

# Exhibit A

## Standard Insurance and Indemnification Requirements

General Conditions: Within ten (10) business days of the award or notice, or prior to the start of work, whichever comes first, the contractor will provide, pay for, and maintain in full force and affect the insurance outlined here for coverage's at not less than the prescribed minimum limits of liability. Such coverage is to remain in force during the life of the contract and for such additional time as may be required, and will cover the contractor's activities, those of any and all subcontractors, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

- H. Certificates of Insurance: The contractor will give the Town/Schools a certificate of insurance completed by a duly authorized representative of their insurer certifying that at least the minimum coverage's required here are in effect and specifying that the liability coverage's are written on an occurrence form and that the coverage's will not be canceled, non-renewed, or materially changed by endorsement or through issuance of other policy(ies) of insurance without thirty (30) days advance written notice to: Town of Westerly, 45 Broad Street, Westerly, Rhode Island, 02891 Attn: Purchasing Agent. Failure of the Town/Schools to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the Town/Schools to identify a deficiency from evidence provided will not be construed as a waiver of the contractor's obligation to maintain such insurance.
- I. Insurer Qualification: All insurance will be provided through companies authorized to do business in the State of Rhode Island and considered acceptable by the owner, with an A.M. Best Rating of A-/VIII.
- J. Additional Insured: To the extent commercially available at no additional cost, the policy or policies providing insurance as required, with the exception of professional liability and workers' compensation, will defend and include the Town/Schools directors, officers, representatives, agents, and employees as additional insureds on a primary basis for work performed under or incidental to this contract.
- K. Retroactive Date and Extended Reporting Period: If any insurance required here is to be issued or renewed on a claims-made form as opposed to the occurrence form, the retroactive date for coverage will be no later than the commencement date of the project and will state that in the event of cancellation or nonrenewal, the discovery period for insurance claims (tail coverage) will be at least 36 months.
- L. Subcontractors' Insurance: The contractor will cause each subcontractor employed by contractor to purchase and maintain insurance of the types specified below. When requested by the owner, the contractor will furnish copies of certificates of insurance evidencing coverage for each subcontractor.
- M. Waiver of Subrogation: The contractor will require all insurance policies in any way related to the work and secured and maintained by the contractor to include clauses stating each underwriter will waive all rights of recovery, under subrogation and otherwise, against Town/Schools, and all tiers of contractors or consultants engaged by them. The contractor will require of subcontractors, by appropriate written agreements, similar waivers each in favor of all parties enumerated in this section.
- N. Indemnification/Hold Harmless: The contractor shall indemnify, defend, and hold harmless the Town/Schools and, if applicable, their agents and employees from and against all claims, damages, losses and expenses, including attorney's fees of counsel selected by the Town/Schools, arising out of or resulting from the performance of the work and /or the supplying of materials, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not they are caused in part by a party indemnified hereunder.

### II. Insurance Limits and Coverage:

- G. To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions and coverages of Insurance Services Office (ISO) policies, forms, and endorsements.
- H. If the contractor has self-insured retention's or deductibles under any of the following minimum required coverage's, the contractor must identify on the certificate of insurance the nature and amount of such self-insured retention's or deductibles and provide satisfactory evidence of financial responsibility for such obligations. All self-insured retention's or deductibles will be the contractor's sole responsibility.
- I. Commercial General Liability: The contractor will maintain commercial general liability insurance covering all operations by or on behalf of the contractor on an occurrence basis against claims for personal injury (including bodily injury and death) and property damage (including loss of use). Such insurance will have these minimum limits:

Minimum Limits:	\$1,000,000 each occurrence
	\$2,000,000 each occurrence if blasting is required
	\$2,000,000 general aggregate with dedicated limits per project site

\$2,000,000 products and completed operations aggregate  
\$1,000,000 personal and advertising injury

Should blasting be required, all necessary permits for the use of explosives shall be obtained by the contractor or insured from the Fire Marshall.

Special hazards shall be covered if needed by endorsement to the Commercial Liability policy/policies as follows:

- 4) Property damage liability arising out of the collapse of or structural injury to any building or structure due to excavation (including burrowing, filling or backfilling in connection therewith), tunneling, pile driving, cofferdam work or caisson work; or to moving, shoring, underpinning, razing or demolition of any building or structure, or removal or rebuilding of any structural support thereof.
- 5) Property damage liability for injury to or destruction of property arising, directly or indirectly, from blasting or explosions however caused, other than explosions of air or steam vessels, piping under pressure, prime movers, machinery or power transmitting equipment.
- 6) Property damage liability for injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property, or any apparatus in connection therewith, below the surface of the ground, arising from and during the use of mechanical equipment for the purpose of excavating or drilling within project limits; injury to or destruction of property at any time resulting therefrom.

J. Automobile Liability: The contractor will maintain business auto liability coverage for liability arising out of any auto, including owned, hired, and non-owned autos.

Minimum Limits: \$1,000,000 combined single limit each accident

K. Workers' Compensation: The contractor will maintain workers' compensation and employer's liability insurance. Waiver of subrogation in favor of the Town of Westerly shall apply.

Minimum Limits: Workers' Compensation: statutory limit  
Employer's Liability: \$500,000 bodily injury for each accident  
\$500,000 bodily injury by disease for each employee  
\$500,000 bodily injury disease aggregate

L. Umbrella/Excess Liability: The contractor will maintain coverage applying over the underlying Commercial General Liability, Automobile Liability, Pollution Liability (where applicable), and Employer Liability section of the Workers Compensation coverage. **The Town of Westerly shall have the sole discretion in increasing or reducing the Umbrella/Excess Liability coverage requirements depending on the scope and/or size of the work to be performed by Contractor/Bidder.**

Minimum Limits: \$5,000,000 per occurrence/\$5,000,000 annual aggregate

Coverage applies over the underlying Commercial General Liability, Automobile Liability, pollution liability (where applicable), and Employer Liability section of the Workers Compensation Coverage.

M. Professional Liability (for consultants, engineers, and other individuals/businesses providing professional services)

Each Claim/Wrongful Act: \$1,000,000  
Annual Aggregate \$1,000,000

Town of Westerly/Westerly Schools reserves the right to amend amounts of coverage required and type of coverage's provided based on work or service to be performed.