

**LEGAL NOTICE  
TOWN OF MIDDLETON  
REQUEST FOR QUALIFICATIONS  
DESIGN SERVICES**

Pursuant to GL c. 7C, the Town of Middleton seeks qualifications from firms for development of a master facilities development plan on a 52 acre site located at 105 South Main Street. Working with a committee, the project consists of laying out a municipal complex consisting of fire, police, community/senior center, and town offices; soil, wetland, and topographic survey; traffic analysis and study; landscape design; and related work. Project timeline is 5 months from award. Request for Qualifications available April 8, 2019 by contacting Andrew J. Sheehan, Town Administrator, 48 South Main Street, Middleton, MA 01949, 978-777-3617, [andrew.sheehan@middletonma.gov](mailto:andrew.sheehan@middletonma.gov).

<b>Procurement Schedule</b>		
Primary Contact for this Procurement <i>(Note new Address, Phone &amp; Fax numbers)</i>		Andrew J. Sheehan Town Administrator Telephone 978-777-3617 Fax: 978-774-3589 Email: <a href="mailto:andrew.sheehan@middletonma.gov">andrew.sheehan@middletonma.gov</a>
<b>Event</b>	<b>Date</b>	<b>Details</b>
Project Name		<b>Master Development Plan</b>
Request for Qualifications (RFQ) Available	May 8, 2019	Office of the Town Administrator, 48 South Main Street, Middleton, Massachusetts 01949 or by e-mail request to Andrew J. Sheehan, Town Administrator at <a href="mailto:andrew.sheehan@middletonma.gov">andrew.sheehan@middletonma.gov</a>
Pre-Proposal Meeting (Optional)	Wednesday, April 17, 2019, 10AM	Middleton Golf Course, 105 South Main Street, Middleton, Massachusetts 01949
Deadline for Written Questions	Monday, April 22, 2019	Fax: 978-774-3589 Attn: Andrew J. Sheehan Email: <a href="mailto:andrew.sheehan@middletonma.gov">andrew.sheehan@middletonma.gov</a> Questions are to be clearly labeled: <b>Master Development Plan</b>
Addendums		If any changes are made to this RFQ, an addendum will be issued. Addenda will be e-mailed or a web link provided to every individual on record as receiving the RFQ package.
Qualifications Due	Tuesday, April 30, 2019 at 10:00AM LATE BIDS WILL NOT BE ACCEPTED	Office of the Town Administrator, 48 South Main Street, Middleton, Massachusetts 01949
Bid Surety Requirement (Bid Deposit)		Bid Surety is NOT required.

Opening of Qualifications		Qualifications will not be publicly opened. A register of Qualifications received will be made available upon request the day after Qualifications are received.
Notify all candidates of finalists selected	On or around May 15, 2019	Time of late afternoon or evening interviews will be scheduled at time of notification
Finalist interviews (if required)	TBD	Interviews will be scheduled in Middleton, MA
Contract Awarded *	The contract will be awarded as quickly as possible	The Board of Selectmen is the awarding authority
<p>* The time for award may be extended by the Town. The Town reserves the right to change, delay, cancel, or expedite the contract award date. <b>The Town reserves the right to reject any and all bids as determined to be in the best interests of the Town and to waive minor informalities.</b></p>		

# REQUEST FOR QUALIFICATIONS (RFQ)

## Middleton Master Development Plan

Town Administrator and Master  
Development Planning Committee

Town of Middleton, MA

### I. Introduction, Background, and Objectives

#### A. Introduction

The Town of Middleton, through the Board of Selectmen, Town Administrator, and Master Development Planning Committee ("Committee" or "Owner") seeks the services of a qualified firm or individual to provide master development planning services for the future development of a municipal complex at 105 South Main Street, the former Middleton Golf Course. This study will be overseen by the Town Administrator and the Committee. A robust public participation process is planned as well as input from Town departments and committees.

**The Fee for Basic Services and Expenses will be negotiated and shall not exceed a total cost of \$250,000.**

#### B. Background

The Town of Middleton ("Town") is in the process of acquiring the Middleton Golf Course at 105 South Main Street, Middleton ("premises"). The premises will be developed as a municipal complex consisting of, in expected order, a Fire Station, Community/Senior Center, Police Station, and Town Offices. The Town is a municipality of just over 9,000 residents located in Essex County. The Town operates with a five member Board of Selectmen, Open Town Meeting form of government with a Town Administrator. The Town's annual operating budget is approximately \$36,600,000 (FY20).

The Town undertook a facilities study in 2016-2017. That process resulted in the *Middleton Facilities Study* by Gienapp Design Associates, dated October 6, 2017. That study is available on the Town's website.

The Master Development Planning Committee will be a volunteer board that includes citizens with backgrounds in engineering/surveying, finance, architecture, landscape design/architecture,

site planning, project management, and construction. It is created to oversee this planning process. Committee members are presently being sought.

### **C. Objectives**

The overall objective of the Master Development Plan is to prepare the groundwork for the eventual development of the premises. The scope includes laying out the general locations of buildings, parking, access/egress driveways, underground utilities, and common/green spaces. Additional components include wetlands delineation, geotechnical testing for building locations and wastewater disposal, and a traffic study and signalization plan. An extensive outreach process is anticipated to ensure broad public participation and input leading to consensus of how the site should be laid out and developed.

If later funded by Town Meeting and any required ballot vote, the Town may recommend that the selected firm be retained for additional services related to the development of the municipal complex, including further studies, preliminary design, design and construction phase services, contingent on successfully negotiating a scope of services and fee for additional services. The decision to retain the firm for such additional services will be at the sole discretion of the Town of Middleton.

## **II. Scope of Services:**

The Town desires to efficiently lay out the future development of the site while allowing room for expansion in the future. The scope is to lay out the site including but not limited to building locations, ingress and egress drives, parking, level of traffic signalization, greenspace, landscaped buffers, site lighting, wastewater disposal, stormwater components, and similar improvements. Consideration should be given to the pros and cons of combining facilities and/or sharing common amenities.

The study shall provide sufficient information to allow the Town to proceed with procurement of design services for final design of the first building (Fire Station). Work in addition to the Fire Station may be for cost savings due to economies of scale, simplifying later stages of construction, integration of systems, mitigating measures for the neighborhood, and context or other reasons advantageous to the Town. The planning process must be conducted in a manner that is transparent and open to all stakeholders. The planning process shall be collaborative, cooperative, and coordinated with the goal of achieving consensus and endorsement of the issues, goals, objectives, and implementation strategies.

The selected designer will be expected to offer suggestions on energy efficiency and sustainability practices that will lower life cycle costs and reduce the carbon footprint.

The scope of services shall include the following under the coordination and oversight of the Committee:

1. Determine the final space needs of the Fire Station.

2. Review and refine space needs programs for Community/Senior Center, Police Station, and Town Offices. If the Committee concludes that a combined Public Safety Building is advantageous the scope shall expand accordingly. Identify proposed building footprints/pad sites for subsequent construction phases.
3. Determine required parking for each facility and the opportunities for shared parking. Provide a recommendation for the total amount of parking and quantities dedicated for specific buildings versus common parking.
4. Develop a final site plan concept that includes site plan drawings, narratives, diagrams, and appropriate supporting technical data including at least the following:
  - a. Approximate foot print of all proposed buildings: Fire Station, Community/Senior Center, Police Station, and Town Offices, and identify additional pad sites as appropriate.
  - b. Vehicular and pedestrian circulation including public, Town, and emergency vehicle access to and within the site. Parking and access to the open space at the rear of the premises should also be identified.
  - c. Existing utility locations based on available documents.
  - d. Provide proposed locations for all utilities to the site for all anticipated buildings.
  - e. Preliminary grading plan.
  - f. Preliminary site lighting plan.
  - g. Siting and preliminary stormwater design.
  - h. Additional site program elements, such as but not limited to:
    - i. Signage/Wayfinding
    - ii. Site furniture
    - iii. Bicycle racks
    - iv. EV charging station
  - i. Perform a traffic study outlining the impact of the municipal complex on surrounding roads and intersections and identify recommended improvements in the immediate vicinity of the site. Specifically, document improvements that must be constructed as part of the construction of the Fire Station and its site entrance, driveways, and site improvements.
  - j. Review wetland areas and other internal site boundaries. Delineate wetlands and obtain the Conservation Commission's concurrence.
5. The site plan shall be developed using any buildable land judiciously, and shall include evaluation and illustration of the potential to include other future program elements on the site that may be possible/practical, such as open space, trails, and pad sites for Town facilities.
6. Provide three-dimensional renderings and/or diagrams that document:
  - a. The size of the buildings relative to each other, the site, and the neighborhood.
  - b. A concept of the use of materials appropriate to the context and to establish the future context of the public facilities complex.
7. Provide written prescriptive, descriptive, and performance design standards to the approach to the design, use of materials, site organization, and design principles that guide the Town and future designers in the subsequent final design of the buildings. For example:
  - a. Design standards for building materials, proportions, and orientation.

- b. Guidelines for the design of site elements such as lighting, signage, and similar amenities.
- 8. Meet and coordinate with all relevant departments, boards, and committees on issue relating to the development of the site plan concept.
- 9. Provide a progress and final construction cost estimate and total project budget for the provisions of:
  - a. The work proposed as part of the Fire Station.
  - b. Total development of the site.
  - c. The total project budget shall include all soft costs, FF&E, escalation, and other costs anticipated to be incurred as part of the project.
- 10. Develop an implementation schedule for the subsequent final design of the Fire Station.
- 11. Develop a draft document with recommendations for review by the Board of Selectmen.
- 12. Hold up to four (4) public informational presentations to explain the nature of the project and solicit public input.
- 13. Identify other methods that will be utilized to solicit public input.
- 14. Conduct regular meetings with the Committee.
- 15. Provide at least one progress report to the Board of Selectmen and make a final presentation to the Board of Selectmen.
- 16. Attend Town Meeting to assist the Town with presenting the Fire Station as part of the municipal complex.

## **A. Timeline**

The Town anticipates that it will take approximately five (5) months to complete the Master Development Plan. The consultant will be expected to commence activities around May 30, 2019 and to submit a Draft Report by September 2019. The Final Report is expected to be presented to the Board of Selectmen in October 2019. A Special Town Meeting is anticipated in the autumn of 2019 at which time final design funding for the Fire Station will be sought. A project schedule including key milestones should be included.

## **B. Proposal Requirements**

To be eligible for consideration, the proposer shall submit one (1) original and two (2) copies of its proposal, which shall contain all of the following information. In addition, a PDF version shall be provided on a thumb drive.

1. A cover page, identifying the name of the project as “Master Development Plan”. Include the name of the firm, official address, contract person, phone number, and email address.
2. A cover letter which must be signed by the individual with authority to bind the proposal team to contractual commitments.
3. If the proposal team involves more than one firm, the proposal must identify all sub-consultants or subcontractors in addition to the principal firm, with full contact information for each such participating entity or individual.
4. An outline of the experience of the firm with regard to similar projects considered relevant, including a summary of change order costs to overall project costs in the identified

- projects.
5. A proposed scope of work and services for the project. Identify the approach to the project and a proposed project schedule including key milestones.
  6. A staffing plan with resumes identifying the principal in charge, the project manager, and key personnel who will work on the project. Include an organization chart of the team.
  7. A description of the firm's history, size, experience, and capability to complete the scope of work. The qualifications section must include:
    - a. A description of the firm, its practice, specializations, staffing, and current staff capacity.
    - b. A description of the teams' experience with municipal projects within the past ten (10) years in which the team included any member of the team proposed for this project.
    - c. Resumes and evidence of appropriate and current Massachusetts licenses or registrations (where applicable) for all individuals who will be assigned to this project.
    - d. A list of the firm's current contractual commitments.
  8. Include a completed "Standard Designer Application Form for Municipalities and Public Agencies not with DSB Jurisdiction" as published by the Commonwealth of Massachusetts. Said form is available through [www.mass.gov](http://www.mass.gov).
  9. Submit a list of at least three (3) separate professional references of persons who are familiar with the work of the staff that will be assigned to this project; at least one reference shall be a municipal reference in the Commonwealth of Massachusetts. References shall include full contact information, the name of the project, and the dates of service. References must be available to be contacted by person, phone, and/or correspondence as to the firm's past performance.
  10. Provide the forms attached hereto as Attachments B-D.

### **C. Qualifications Required**

All firms must possess the following minimum qualifications:

1. Massachusetts registration and licensing in all applicable disciplines.
2. Thorough working knowledge and experience with MGL c. 149 as it pertains to public building construction laws, bidding laws, wage rates, OSHA 10 requirements, DCAMM certifications, and legal advertisements.
3. Thorough knowledge of procedures, requirements, and practices of the Commonwealth of Massachusetts, and other agencies related to the design and construction of municipal buildings.
4. Thorough knowledge of the Massachusetts State Building Code and regulations of the Architectural Access Board.
5. Thorough knowledge or and experience with preparing planning documents and bid specifications as they pertain to c. 149 building projects and required forms.
6. Thorough knowledge of and familiarity with the requirements of c. 579 of the Acts of 1980 (Omnibus Construction Reform Act) and c. 484 of the Acts of 1984.
7. Sufficient levels of staff to complete the project within the timeline.



8. Prior to signing the contract, all insurance indicated in Attachment A, Article 11.
9. Responders must have a minimum five (5) years of satisfactory performance of equal complexity in conduction projects for municipalities.

#### **D. Fee**

Design fees for this project will be negotiated with the selected firm. The maximum obligation for this project is \$250,000. If the Town cannot come to an agreement on fees, the Town will then negotiate with the next most qualified firm.

#### **E. Submission of Qualifications**

Proposal packages should be provided in simple spiral binders or stapled.

1. Qualifications shall be addressed to the attention of:  
Andrew J. Sheehan, Town Administrator  
Town of Middleton  
48 South Main Street  
Middleton, MA 01949  
Tel: 978-777-3617  
Fax: 978-774-3589  
Email: [andrew.sheehan@middletonma.gov](mailto:andrew.sheehan@middletonma.gov)
  
2. Qualifications must be clearly identified by marking the package or envelope with the following:  
**Town of Middleton – Master Development Plan**  
**Qualifications for \_\_\_\_\_** [Insert Name of Applicant]
  
3. All questions regarding this RFQ should be addressed exclusively in writing to:  
Andrew J. Sheehan, Town Administrator  
Town of Middleton  
48 South Main Street  
Middleton, MA 01949  
Tel: 978-777-3617  
Fax: 978-774-3589  
Email: [andrew.sheehan@middletonma.gov](mailto:andrew.sheehan@middletonma.gov)

The deadline for questions is noted in the Procurement Schedule.

#### **F. Pre-Proposal Meeting (optional)**

A Pre-Proposal meeting will be held as noted in the Procurement Schedule. Attendance is

encouraged but not required for submission of qualifications.

### **III. Selection**

The Owner, through the Town Administrator and Master Development Planning Committee (Committee), will consider the following criteria in evaluating Qualifications:

Selection criteria include, but are not limited to the following:

- a. prior similar experience;
- b. past performance on public and private projects;
- c. financial stability;
- d. identity and qualifications of the consultants who will work with the applicants on the project; and
- e. any other criteria that the Committee considers relevant to the project

The Committee shall select at least three finalists. Finalists may be required to appear for an interview or provide additional information to the Committee, provided that all finalists are afforded an equal opportunity to do so. The Committee shall rank the finalists in order of qualification and transmit the list of ranked finalists to the Approving Body. No person or firm, including applicants' listed consultants, debarred pursuant to M.G.L. c. 149, § 44C, shall be included as a finalist on the list. The list must be accompanied by a written explanation of the reasons for selection including the recorded vote, if any. The written explanation and recorded vote, if any, shall be public records and shall be maintained in the contract file.

### **IV. Other**

#### *Rule for Award*

The Town reserves a period up to sixty (60) calendar days following the opening of the qualifications in which to evaluate and award the contract.

The Town herein declares its express purpose not to award the contract to any Designer unable to furnish evidence, satisfactory to the Town that it has sufficient ability, experience, and capital to execute and complete the work in accordance with the contract. The Designer must possess and identify the physical resources, equipment and personnel necessary to carry out the work in accordance with the specified requirements. If requested, any Designer may be required to demonstrate financial stability satisfactory to the Town.

Prior to negotiating a contract with the top-ranked designer, the Committee will advise the firm to be prepared to provide the following information:

- Rationale for the development of fee proposal,

- Hourly rates for the designer's personnel and consultants,
- The markup, if any, that the designer will add to costs, including sub-consultant fees, or reimbursable expenses, resulting from a change in the scope of work (if any).

The Board of Selectmen is the awarding authority for the contract (Attachment A, or a contract substantially in this form). Award, payment, and performance obligations shall depend on the availability and appropriation of funds.

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

The Award of this Master Development Plan will not preclude the selected designer from future Detailed Design work associated with this project.

#### *Federal and State Taxes*

The Town is exempt from federal and state sales taxes and or use taxes. Taxes are not to be included in the Proposal price to be negotiated with the winning Designer.

#### *Information about changes to the RFQ (Addenda)*

In the event that changes/additions are made to this RFQ, an addendum will be issued. Addenda or a web link to addenda will be emailed to every potential responder on record as receiving the RFQ package.

#### *Examination of documents and questions*

The Designer shall be satisfied as to the requirements of the contemplated services to enable intelligent preparation of this Proposal. The Designer shall be familiar with all of the RFQ documents before submitting the Proposal in order that no misunderstanding shall exist in regard to the nature and character of the contemplated services to be performed. No allowance will be made for any claim that the Proposal is based on incomplete information.

Inquiries concerning any part of this RFQ shall be directed to the individual(s) listed under the Procurement Schedule. Designers should note that oral communications are not binding on the Town. All requests/questions must be submitted in writing. Questions must be sent in writing and may be delivered by hand, fax, or email as referenced under the Procurement Schedule by the deadline. The Town will respond to written questions that are received by the deadline and will forward responses to all persons who are on record as receiving the Proposal package. Questions received after the due date will not be responded to unless the Town determines it is necessary. Designers, please allow enough time for hand delivery or facsimile transmissions.

#### *Proposal modifications or withdrawals*

Qualifications may be corrected, modified, or withdrawn prior to the submission deadline; requests to do so must be received in writing to the Town Administrator. After the submission deadline, qualifications may not be changed. Minor mistakes may be waived by the Town.

*Premature opening of a Proposal*

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

*Unexpected closure of delays*

If, at the time of the scheduled proposal submission deadline, the building is closed due to uncontrolled events such as fire, snow, ice, wind, building evacuation, or other the deadline will be postponed until 11:00 A.M. on the next normal business day. Qualifications will be accepted until that date and time.

*Late submissions*

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

*Rejection of qualifications*

The Qualifications must satisfy all the requirements of the RFQ, in order to be considered for award. Failure to complete the required forms, answer any questions, or provide the required documentation will be deemed **NON-RESPONSIVE** and result in rejection of the qualifications unless the Town determines that such failure constitutes a minor informality that can be corrected without prejudice to other Designers. A proposal may be rejected if the Designer:

- Fails to adhere to one or more of the provisions established in the RFQ;
- Fails to submit its proposal by the time or in the format specified herein or to supply the minimum information requested herein;
- Fails to submit its proposal to the required address on or before the specified submission deadline;
- Misrepresents its service or provides demonstrably false information in its proposal;
- Fails to provide material information; or
- Qualifications that are incomplete, not properly endorsed, or signed.

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

*General and special provisions*

The consideration of all bids and subsequent selection of the successful applicant shall be made without regard to race, color, sex, age, handicap, religion, political affiliation, or national origin.

The Designer shall adhere to the provisions of the Fair Employment Practices Law of the Commonwealth (Massachusetts General Laws, Chapter 151B)

The provisions relating to non-discrimination and affirmative action in employment shall flow through all contracts and subcontracts that the successful Designer may receive or award as a result of this contract.

Services provided by the Designer shall be rendered through a professional services contract; the Designer will not be considered an employee of the Town and will not receive any benefits of an employee.

The Designer shall comply with Massachusetts General Laws, Chapter 66A if the Designer becomes a “holder” of “personal data”. The Designer shall also protect the physical security and restrict any access to personal or other Town data in the Designers’ possession, or used by the Designer in the performance of the Contract, which shall include, but is not limited to the Town’s public records, documents, files, software, equipment, or systems.

Ownership of Documents: All qualifications, materials, drawings, plans, etc. shall become the property of the Town and may not be disposed of without notification and shall be considered public information.

The Designer selected shall be expected to comply with all applicable federal and state laws in the performance of services.

By execution of a contract with the Town of Middleton, the Designer acknowledges that the Town of Middleton is a municipality for the purposes of Massachusetts General Laws, Chapter 268A (the Massachusetts conflict of interest statute), and agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with the obligations of the contractor based on said statute.

*Contract terms and conditions*

The contract is anticipated to be executed by the date indicated under Procurement Schedule for this Proposal. The Town reserves the right to change, delay, cancel, or expedite the contract execution date. The selected Designer is required to furnish all bonds and certificate of insurances required under the contract, in a form acceptable to the Town prior to the execution date.

The Town’s Standard Contract is incorporated herein as Attachment A. Bidders are expected to review the sample contract. Unless otherwise noted by the Town in this RFQ, the terms and conditions contained therein are NOT negotiable.

**V. Attachments**

- Attachment A: Agreement between Owner and Designer
- Attachment B: Certificate of Good Faith/Non-Collusion
- Attachment C: Certificate of Tax Compliance
- Attachment D: Certificate of Authority

**ATTACHMENT A**

**AGREEMENT BETWEEN  
OWNER AND DESIGNER**

This Agreement is made and entered into on the \_\_\_ day of \_\_\_\_\_, 20\_\_\_ by and between the TOWN OF MIDDLETON, (hereinafter **OWNER**), a municipal corporation organized under the laws of the Commonwealth of Massachusetts, acting through its **Town Administrator** and \_\_\_\_\_ (hereinafter **DESIGNER**), a corporation organized under the laws of the Commonwealth of Massachusetts, with a usual place of business at \_\_\_\_\_, for \_\_\_\_\_ (hereafter **PROJECT**).

**WITNESSETH** that the **DESIGNER** and the **OWNER**, for the consideration hereinafter named, agree as follows:

**ARTICLE 1: CONTRACT DOCUMENTS**

The Contract Documents consist of the following, and in the event of conflicts or discrepancies among them, they shall be interpreted on the basis of the following priorities:

- FIRST            THIS AGREEMENT
  
- SECOND        **DESIGNER’S PROPOSAL, DATED \_\_\_\_\_**
  
- THIRD         PROPOSAL SPECIFICATIONS, REQUEST FOR QUALIFICATIONS OR PURCHASE DESCRIPTION
  
- FOURTH       DRAWINGS REQUIRED FOR THE PROJECT, IF APPLICABLE
  
- FIFTH         COPIES OF ALL REQUIRED BONDS, CERTIFICATES OF INSURANCE AND LICENSES REQUIRED UNDER THE CONTRACT,

EACH OF WHICH IS ATTACHED HERETO. These documents form the entire Agreement between the parties and there are no other agreements between the parties. Any amendment or modification to this Agreement must be in writing and signed by an official with the authority to bind the **OWNER**.

**ARTICLE 2: SCOPE OF THE WORK**

The **DESIGNER** shall furnish all materials, labor, and equipment and perform all work shown on the contract documents, and the **DESIGNER** agrees to do everything required by this Agreement and the contract documents.

**ARTICLE 3: TIME OF COMPLETION**

3.1 The work to be performed under this Contract shall be commenced immediately upon execution of this Agreement, and shall be entirely completed by\_\_\_\_\_.

3.2 The **DESIGNER** hereby agrees that if it fails to carry on the work with reasonable speed or stops work altogether without due cause, as determined in each case by the **OWNER**, the **OWNER** may give notice to the **DESIGNER** in writing to proceed with the work or to carry on the work more speedily. Three days after the presentation of such notice, if the work is not proceeding to the satisfaction of the **OWNER**, the **DESIGNER** shall be considered to have defaulted in the performance of this Agreement.

**ARTICLE 4: THE CONTRACT SUM**

The **OWNER** shall pay the **DESIGNER** for the performance of this Agreement the sum of \$\_\_\_\_\_ (\_\_\_\_\_) (words), including all reimbursable expenses.

**ARTICLE 5: PAYMENT**

5.1 The **OWNER** shall make payment as follows:

a) On a monthly basis, thirty days after receipt of an invoice for work performed or materials supplied the previous month.

5.2 With an invoice the **DESIGNER** shall submit evidence satisfactory to the **OWNER** that the goods or supplies have been delivered, or that the work has been completed and that all payrolls, material bills and other indebtedness connected with the work has been paid.

5.3 The fees established under this Agreement are lump sum fees and include all of the expenses for all of the **DESIGNER'S** Consultants.

5.4 Pursuant to M.G.L., c. 7, § 38H, paragraph (j), **DESIGNER** shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by **DESIGNER** in the preparation of the bid documents, as reasonably determined by **OWNER**.

**ARTICLE 6: NO RELEASE**

The approval of any invoice by the **OWNER**, any payment by the **OWNER** to the **DESIGNER**, any use of the **DESIGNER'S** work or any part thereof by the **OWNER**, or any correction of the **DESIGNER'S** defective work by the **OWNER** shall not constitute the **OWNER'S** acceptance of the **DESIGNER'S** work which is not in accordance with the terms of this Agreement, nor shall it

constitute a release of the **DESIGNER'S** obligation to perform the Project in strict compliance with all terms of this Agreement.



**ARTICLE 7: USE OF DESIGNER'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

- 7.1 All Drawings, Specifications, and other documents (including sketches, computations, test data, survey results, photographs, renderings, models, and other material peculiar to the Services) prepared by the **DESIGNER** or **DESIGNER'S** Consultants shall become the property of the **OWNER** upon payment of sums due under the contract. The **OWNER** acknowledges the copyright of the **DESIGNER** and the **DESIGNER'S** Consultants.
- 7.2 The **OWNER** may use the Drawings, Specifications and such other documents prepared by the **DESIGNER** or the **DESIGNER'S** Consultants as needed for the construction, maintenance, repair, or modification of the **PROJECT**.
- 7.3 The **OWNER** shall indemnify the **DESIGNER** or the **DESIGNER'S** Consultants and release and hold them harmless from any claims arising out of any use of or changes to the documents made by the **OWNER** or his representatives during any other construction not a part of this contract.

**ARTICLE 8: NONPERFORMANCE**

In the case of any default on the part of the **DESIGNER** with respect to any of the terms of this Agreement, the **OWNER** shall give written notice thereof, and if said default is not made good within such time as the **OWNER** shall specify in writing, the **OWNER** shall notify the **DESIGNER** in writing that there has been a breach of the Agreement and thereafter the **OWNER** shall have the right to secure the completion of the work remaining to be done on such terms and in such manner as the **OWNER** shall determine, and the **DESIGNER** shall pay for the completion of such work and reimburse the **OWNER** for all expenses incurred by reason of said breach. The **DESIGNER** in case of such breach shall be entitled to receive payment only for work completed satisfactorily prior to said breach, so long as the total paid hereunder does not exceed the Contract sum, and the amount of any balance due the **DESIGNER** shall be determined by the **OWNER** and certified to the **DESIGNER**.

**ARTICLE 9: TERMINATION**

- 9.1 This Agreement may be terminated by either party upon not less than seven days written notice should the other party substantially fail to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- 9.2 The **DESIGNER** shall have the right to terminate this Agreement if the **OWNER** fails to make payment within thirty (30) days after it is due.

**ARTICLE 10: NOTICE**

Request for Qualifications  
Master Development Plan  
Town of Middleton

All notices required to be given under this Agreement shall be given in writing and shall be effective upon receipt by hand delivery or certified mail to:

The Town of Middleton: Andrew J. Sheehan, Town Administrator  
Town of Middleton  
48 South Main Street  
Middleton, MA 01949

Notices to the Town of Middleton must be sent to BOTH in order for it to be effective.

The **DESIGNER**: Name \_\_\_\_\_  
Title \_\_\_\_\_  
Company \_\_\_\_\_  
Address \_\_\_\_\_

**ARTICLE 11: INSURANCE**

- 11.1 The **DESIGNER** shall at its own expense, obtain and maintain a Professional Liability Policy for errors, omissions, or negligent acts arising out of the performance of this agreement with limits of at least \$1,000,000 per claim and \$2,000,000 aggregate.
- 11.2 The **DESIGNER** shall, at its own expense, obtain and maintain general liability and motor vehicle liability insurance policies protecting the **OWNER** in connection with any operations included in this Contract. General liability coverage shall be in the amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury liability and \$1,000,000 per occurrence and \$2,000,000 aggregate for property damage liability. Motor vehicle coverage shall include coverage for owned, hired and non-owned vehicles and shall be in the amount of at least \$1,000,000 per person and \$2,000,000 per occurrence for bodily injury liability and \$1,000,000 per occurrence for property damage liability.
- 11.3 The **DESIGNER** shall carry insurance in a sufficient amount to assure the restoration of any plans, drawings, computations, field notes, or other similar data relating to the work covered by this contract in event of loss or destruction until the final fee payment is made or all data is turned over to the **OWNER**.
- 11.4 The **DESIGNER** shall, before commencing performance of this contract, provide by insurance for the payment of compensation and the furnishing of other benefits in accordance with Massachusetts General Laws, Chapter 152, as amended, to all employed under the contract and shall continue such insurance in full force and effect during the term of the contract.
- 11.5 All insurance coverage shall be in force from the time of the Agreement to the date when all work designed under the contract is completed and accepted by the

**OWNER.** Since this insurance is normally written on a year-to-year basis, the **DESIGNER** shall notify the **OWNER** should coverage become unavailable or if its policy should change.

- 11.6 Certificates and any and all renewals substantiating that required insurance coverage be in effect shall be delivered at the time of the execution of the Agreement and filed with the contract. Any cancellation of insurance whether by the insurers or by the insured shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the **OWNER** at least fifteen days prior to the intended effective date thereof, which date should be expressed in said notice.

#### **ARTICLE 12: INDEMNIFICATION**

The **DESIGNER** shall indemnify, defend, and save harmless the **OWNER**, and all of its or their members officers, agents, and employees against all suits, claims of liability of every name and nature, for or on account of any injuries to persons or damage to property arising out of the negligence of the **DESIGNER** in the performance of the work covered by this Agreement and/or failure to comply with terms and conditions of this Agreement, whether by itself or its employees or subcontractors, but only in respect of such injuries or damages sustained during the performance and prior to the completion and acceptance of the work covered by this Agreement. The foregoing provisions shall not be deemed released, waived or modified in any respect by reason of any surety or insurance provided by the **DESIGNER** under the Agreement.

#### **ARTICLE 13: ASBESTOS REMOVAL**

Without in any way limiting the **DESIGNER's** liability for any other negligent performance or failure to perform professional services, the **DESIGNER** shall incur no liability for claims arising out of the performance of or failure to perform professional services related to asbestos, except that the **DESIGNER** shall promptly notify the **OWNER** of any asbestos the **DESIGNER** observes that may affect the PROJECT. The **DESIGNER** shall include in the contract documents specific provisions requiring the contractor to include the time required for the asbestos abatement work in the PROJECT schedule, to organize its own work in such a way that it will not conflict with concurrent asbestos abatement work, and to coordinate all of the work at the site (including the asbestos abatement work), so as to minimize disruption and delay. The **DESIGNER** shall enforce the foregoing requirements, utilizing such authority as it may have under the contract documents. The **DESIGNER** shall confer with the asbestos abatement consultant to ascertain that similar and consistent requirements are being included in contract documents prepared by the consultant. The **DESIGNER** shall also be responsible for providing to any asbestos abatement engineer and any asbestos abatement contractor, contract documents and plans which precisely indicate the scope of the renovations and additions to the building. The **OWNER** hereby agrees to bring no claim for negligence,

breach of contract, indemnity or otherwise against the **DESIGNER**, his principals, employees, agents and consultants if such claim in any way would involve the **DESIGNER's** services for remedial work related to asbestos in the **PROJECT** unless otherwise agreed to in writing.

#### **ARTICLE 14. SUBCONTRACTING OF WORK**

The **DESIGNER** shall not subcontract any of the work, which it is required to perform under this Contract to any corporation, entity or person without the prior approval of the **OWNER**.

#### **ARTICLE 15: PREVAILING WAGE RATES**

If the work under this Agreement involves the construction of public works the **DESIGNER** agrees to pay the prevailing wage and comply with G. L. c. 149, S 26 - 27D and a Statement of Compliance is included in the Contract Documents.

#### **ARTICLE 16: MBE/WBE PARTICIPATION**

If funding for this Project is provided by the Commonwealth of Massachusetts, in whole or in part (such as reimbursements, grants and the like), then the **OWNER** shall incorporate into this Contract the current applicable minority-owned business enterprise (MBE) and women-owned business enterprise (WBE) participation goals, as determined by DCAM. Reductions or waivers of these goals may be permitted by the **OWNER** where the size, nature or location of the project makes achieving such levels of MBE or WBE participation unfeasible.

#### **ARTICLE 17: GOVERNING LAW**

The **DESIGNER** shall perform the work required under this contract in conformity with requirements and standards of the **OWNER** and all applicable laws of the Commonwealth of Massachusetts, its political subdivisions, and the Federal Government.

#### **ARTICLE 18: DISPUTE RESOLUTION**

18.1 **Mediation Mandatory.** In the case of a dispute where the dollar amount in dispute is \$20,000 or more, the **OWNER** and the **DESIGNER** shall engage in good faith in a non-binding mediation process using the services of a neutral mediator, which process shall be concluded within sixty days from the date that the either party submits to the other a written request therefore. The parties shall make good faith efforts to agree on the selection of a Neutral mediator experienced in mediating building design and construction disputes. The cost of the services of any mediator selected jointly by the parties to this Contract shall be borne equally by the **DESIGNER** and the **OWNER**.

- 18.2 **Arbitration Optional.** If mediation fails to resolve a claim, dispute or other matter in question between the parties, then the parties may mutually agree to submit their claim, dispute or other matter in question to binding or non-binding arbitration.

#### **ARTICLE 19: CONSENT TO VENUE**

The **DESIGNER** agrees that it shall commence and litigate all actions or proceedings arising in connection with this Agreement exclusively in the **Salem** District Court or in the **Essex** Superior Court, both of which are located in the County of Essex, Commonwealth of Massachusetts. The aforementioned choice of venue is intended to be mandatory and not permissive in nature, thereby precluding the possibility of the **DESIGNER** commencing or prosecuting any litigation against the **OWNER**, with respect to or arising out of this Agreement, in any court or forum other than those specified in this paragraph. It is further agreed that the parties to this Agreement hereby waive their rights to a jury trial. Prior to entering into any agreement with a subcontractor, the **DESIGNER** shall require the subcontractor to agree to be subject to the terms of this Article.

#### **ARTICLE 20: LIFE-CYCLE COST ESTIMATES**

- 20.1 All contracts for architectural or engineering services necessary for the preliminary design of all new buildings or for the modification or replacement of an energy system in an existing building entered into by a public awarding authority subject to the bidding requirements of Sections 44A to 44L inclusive, of M.G.L. c. 149, shall contain a stipulation that life-cycle cost estimates shall be obtained at an initial stage and as a regular part of the services to be performed under said contract.
- 20.2 M.G.L. c. 149, § 44M defines "energy system" as: "any equipment that is employed to heat or cool a building, or to heat hot water used in a building, or to generate electricity for a building and that uses the sun, wind, water, biomass, oil, natural gas, or electricity as its power supply in whole or in part."

#### **ARTICLE 21: RECORDS, DISCLOSURE STATEMENTS, ACCOUNTING CONTROLS, AUDITS**

The **DESIGNER** shall maintain complete, accurate, and detailed records of all time devoted to the **PROJECT** by the **DESIGNER** and each consultant or subcontractor employed by the **DESIGNER**. The **OWNER** may at all reasonable times audit such records. On contracts where the total design fees exceed \$10,000 or which are for the design of a building for which the budgeted or estimated construction cost exceeds \$100,000, the **DESIGNER** shall comply with M.G.L., c. 30, § 39R, which requires the

**DESIGNER** to:

- 21.1 Make, and keep for at least six (6) years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the **DESIGNER**. [M.G.L. c. 30, § 39R(b)(1)-(2)].
- 21.2 Until the expiration of six (6) years after final payment, the **OWNER** and any other public official authorized by law, shall have the right to examine any books, documents, papers or records of the **DESIGNER** or of its consultants and subcontractors that directly pertain to, and involve transactions relating to, the **DESIGNER** or its consultants and subcontractors. [M.G.L. c. 30, § 39R(b)(1)-(2); Executive Order 195]
- 21.3 If the **DESIGNER** shall make any change in its method of maintaining records that would materially affect any statements filed by the **DESIGNER** with the **OWNER**, the **DESIGNER** shall forthwith deliver to the **OWNER** a written description of such change, the effective date thereof, and the reasons therefore. The **DESIGNER** shall submit with such description a letter from the **DESIGNER'S** independent certified public accountant approving or otherwise commenting on the change. [M.G.L. c. 30, § 39R(b)(3)] The **DESIGNER** hereby represents that there have been no such changes to date that have not been so reported to the **OWNER**.
- 21.4 The **DESIGNER** shall file with the **OWNER** a statement of management as to whether the system of internal accounting controls of the **DESIGNER** and its subsidiaries reasonably assures that: (1) transactions are executed in accordance with management's general and specific authorization; (2) transactions are recorded as necessary i) to permit preparation of financial statements in conformity with generally accepted accounting principles, and ii) to maintain accountability for assets; (3) access to assets is permitted only in accordance with management's general or specific authorization; and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference. The **DESIGNER** shall also file with the **OWNER** a statement prepared and signed by an independent certified public accountant, stating that the accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to (1) whether the representations of management in response to this section are consistent with the result of management's evaluation of the system of internal accounting controls; and (2) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statements. [M.G.L. c. 30, §39R(c)]. The **DESIGNER** warrants and represents that **DESIGNER** has filed a statement of management on internal accounting controls as set forth in this section prior to the execution hereof. [M.G.L. c. 7, §38H(e)(iv)]

- 21.5 The **DESIGNER** shall annually file with the Commissioner of DCAM during the term of this Contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report. Such statements shall be made available to the **OWNER** upon request. [M.G.L. c. 30, §39R(d)] The **DESIGNER** represents that it has filed prior to the execution hereof and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in this section. [M.G.L. c. 7, §38H(e)(iv)]
- 21.6 Records and statements required to be made, kept or filed under the provisions of this Article shall not be public records as defined in M.G.L. c. 4, § 7 and shall not be open to public inspection; provided, however, that such records and statements shall be made available pursuant to the provisions of section 21.2 above.

**ARTICLE 22: DESIGNER'S CONTRACT SUPPLEMENTARY DATA**

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

- 22.1 **DESIGNER'S Beneficial Owners.** By signing this Contract, the **DESIGNER** certifies under the penalties of perjury that the following named entities and individuals are the legal and beneficial owners of the **DESIGNER** as of the date of the execution hereof [M.G.L. c. 7, §38E(a)](attach additional sheets if necessary):

CORPORATION: (Names of Officers and Shareholders of Corporation, including their titles)

\_\_\_\_\_  
 \_\_\_\_\_

PARTNERSHIP: (Names of all Partners):

\_\_\_\_\_  
 \_\_\_\_\_

INDIVIDUAL (Name of Owner):

\_\_\_\_\_



22.2 **Professional Registrations.** By signing this Contract, the individual executing this Contract on behalf of the **DESIGNER** certifies under the penalties of perjury that the following named individuals are registered by the Commonwealth as architects, landscape architects, or engineers pursuant to the provisions of General Laws Chapter 112, §§ 60A -60O and further that i) if the **DESIGNER** is an individual the **DESIGNER** is the individual named below, ii) if the **DESIGNER** is a partnership, the majority of all the partners are persons who are registered architects, landscape architects, or engineers, iii) if the **DESIGNER** is a corporation, sole proprietorship or joint stock company or other entity, the majority of the directors or a majority of the stock ownership and the chief executive officer, are persons who are registered architects, landscape architects, or engineers and the person to have the Project in his or her charge is registered in the discipline required for the Project, or iv) if the **DESIGNER** is a joint venture, each joint venturer satisfies the requirements of the preceding clauses i – iii as the case may be. [M.G.L. c. 7, §38E(a)(i)]

<u>Name</u>	<u>Title</u>	<u>Mass. Registration</u>

NOTE: The above information must be completed to comply with the provisions of M.G.L. c. 7, §38A 1/2. Programmers and construction managers are not required to be registered under §38A 1/2.]

**DESIGNER** warrants that the Massachusetts registered principal of the **DESIGNER** responsible for the project is:

Name  
 \_\_\_\_\_

**ARTICLE 23. CERTIFICATIONS REQUIRED BY LAW**

- 23.1 **Resume on File with Designer Selection Board.** By signing this Contract, the **DESIGNER** certifies under the penalties of perjury that in accordance with the provisions of M.G.L. c. 29, § 29A (4) a resume of the **DESIGNER** has been filed with the Designer Selection Board.
- 23.2 **No Inducements.** By signing this Contract, the **DESIGNER** certifies under the penalties of perjury that the **DESIGNER** has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the Contract for design services; no consultant to or subcontractor for the **DESIGNER** has given, offered or agreed to give any gift, contribution or offer of employment to the **DESIGNER**, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the **DESIGNER**; and no person, corporation or other entity, other than a bona fide full-time employee of the **DESIGNER** has been retained or hired by the **DESIGNER** to solicit for or in any way assist the **DESIGNER** in obtaining the Contract for design services upon an Contract or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the Contract to the **DESIGNER**. [M.G.L. c. 7, §. 38H(e)(i)-(iii)]
- 23.3 **Existing Government Contracts.** By signing this Contract, the **DESIGNER** certifies under the penalties of perjury that the following is a listing of all other existing contracts or income derived by **DESIGNER** from the Commonwealth or any political subdivision thereof or public authority therein, from the Federal Government or any agency thereof, and from the **OWNER** or any governmental source for services rendered. [M.G.L. c. 7, § 38E(a)(v)]:

Contract Description & Awarding Authority	Present Status % Design/Construction	Fee Received	Total Fee Anticipated

- 23.4 **Annual Reports; Corporate Filings.** By signing this Contract, the **DESIGNER**

certifies under the penalties of perjury that, if the **DESIGNER** is a corporation, the Corporation has filed with the State of Secretary all certificates and annual reports required by M.G.L.c. 156B, §109 (Business Corporation), by M.G.L.c. 181, §4 (Foreign Corporation), or by M.G.L.c. 180, §26A (Non-Profit Corporation).

23.5 **Debarment: Suspension.** By signing this Contract, the **DESIGNER** certifies under the penalties of perjury that the **DESIGNER** is not currently debarred or suspended by the Commonwealth of Massachusetts, or any if its entities or subdivisions under any Commonwealth law or regulation, including but not limited to M.G.L.c. 29, § 29F and M.G.L.c. 152, § 25C and that it is not currently debarred or suspended by the Federal Government under any federal law or regulation.

#### **ARTICLE 24. BINDING AGREEMENT AND ASSIGNMENT OF INTEREST**

This Agreement shall be binding upon the **OWNER** and the **DESIGNER** and the partners, successors, heirs, executors, administrators, assigns and legal representatives of the **OWNER** and the **DESIGNER**. Neither the **OWNER** nor the **DESIGNER** shall assign, sublet or transfer any interest in this Agreement without the written consent of each other, and such consent shall not be unreasonably withheld.

#### **ARTICLE 25. INDEPENDENT CONTRACTOR**

All of the services to be performed under the terms of this Agreement will be rendered by the **DESIGNER** as an independent contractor. None of the terms of this Agreement shall create a principal-agent, master-servant or employer-employee relationship between the **OWNER** and the **DESIGNER**.

#### **ARTICLE 26. CONFLICT OF INTEREST**

By execution of this Agreement with the **OWNER**, the **DESIGNER** acknowledges that the **OWNER** is a municipality for the purposes of Massachusetts General Law Chapter 268A (the Massachusetts conflict of interest statute), and agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with the obligations of the **DESIGNER** based on said statute.

#### **ARTICLE 27. CONFIDENTIALITY**

The **DESIGNER** shall comply with Massachusetts General Law Chapter 66A if the **DESIGNER** becomes a "holder" of "personal data". The **DESIGNER** shall also protect the physical security and restrict any access to personal or other Town data in the **DESIGNER'S** possession, or used by the **DESIGNER** in the performance of this Contract, which shall include, but is not limited to the Town's public records, documents, files, software, equipment or systems.

**ARTICLE 28. COMPLIANCE WITH TAXLAWS**

Pursuant to M.G.L., c. 62C, §49A, the undersigned, acting on behalf of the **DESIGNER**, certifies under the pains and penalties of perjury, to the best of the undersigned's knowledge and belief, that the **DESIGNER** is in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Social Security Number or  
Corporate Name Federal Identification  
Number \_\_\_\_\_

Signature of Individual or

By: \_\_\_\_\_  
Corporate Officer (if applicable)

**IN WITNESS WHEREOF** the parties hereto have executed THREE copies of this Agreement the day and year first above written.

**DESIGNER:** \_\_\_\_\_ **Date:** \_\_\_\_\_

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

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

*\* My signature above certifies that I am duly authorized, or that I have attached a signed Certificate of Vote from my Board of Directors giving me authority, to sign this Contract.*

**TOWN OF MIDDLETON, by its** Town Administrator:

\_\_\_\_\_  
Andrew J. Sheehan

This is to certify that the funds have been appropriated by the Town of Middleton for the purposes set forth in the Contract herein.

A/C#:

\_\_\_\_\_  
Sarah Wood, Town Accountant

Date:

Approved As To Form:

\_\_\_\_\_  
Thomas Fallon, Town Counsel

Town of Middleton

Date:

**ATTACHMENT B**  
**CERTIFICATION OF GOOD FAITH**

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

The Contractor by:

\_\_\_\_\_

Print Name

\_\_\_\_\_

Title/Authority

\_\_\_\_\_

**ATTACHMENT C**  
**CERTIFICATE OF STATE TAX COMPLIANCE**

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

\_\_\_\_\_, authorized signatory for  
name of signatory

\_\_\_\_\_, whose  
name of contractor

principal place of business is at \_\_\_\_\_,

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

name of contractor

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Federal Tax ID # or Social Security #



**ATTACHMENT D**  
**EXAMPLE CLERK'S CERTIFICATE**

\_\_\_\_\_  
Action of Shareholders  
Written Consent  
(Date)

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

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

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

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

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

Clerk of Corporation Certificate

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

\_\_\_\_\_  
Clerk of Corporation

SEAL