

REQUEST FOR PROPOSALS

FOR

RFP 2025-03

OPEB Actuarial Services



FY 2025

WINTHROP TOWN HALL

School Business Office, Room 12A

1 Metcalf Square

Winthrop, MA 02152

617-846-5500

**TOWN OF WINTHROP
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SPECIAL PROVISIONS

Sample Town Contract

**TOWN OF WINTHROP
LEGAL NOTICE IFB 2025-03
OPEB ACTUARIAL SERVICES**

The TOWN of WINTHROP invites sealed bids from Contractors for **OPEB Actuarial Services**.

Bids will be received until: **10:00 AM on July 11, 2024** at the Procurement Office, Town Hall Room #12A, 1 Metcalf Square, Winthrop, MA 02152. Immediately following the deadline for bids all qualified bids received within the time specified will be publicly opened and read aloud.

All bids are subject to the provisions of M.G.L. Chapter 30b.

Invitation for Bid. It is the sole responsibility of the contractor to ensure they have received any and all addenda prior to the bid opening. The TOWN of WINTHROP reserves the right to waive any informalities in any or all bids, or to reject any or all bids, if it be in the public interest to do so.

TOWN OF WINTHROP
Dylan Cook, MCPPO, MPA
Procurement Officer / CFO

TOWN OF WINTHROP
FINANCE DEPARTMENT
INSTRUCTIONS TO PROPOSER S

ARTICLE 1 - PROPOSER 'S REPRESENTATION

- 1.1 Each General Proposer (hereinafter called the "Proposer ") by making a Proposal (hereinafter called "Proposal") represents that:
1. The Proposer has read and understands the Contract Documents and the Proposal is made in accordance therewith.
 2. The Proposer has experience with the Work to be performed.
- 1.2 Failure to so examine the Contract Documents and site will not relieve any Proposer from any obligation under the Proposal as submitted.

ARTICLE 2 - REQUEST FOR INTERPRETATION

- 2.1 Proposer s shall promptly notify the TOWN of any ambiguity, inconsistency, or error which they may discover upon examination of the Contract Documents, the site, and local conditions.
- 2.2 Proposer s requiring clarification or interpretation of the Contract Documents shall make a written request to the Procurement Officer via email at dcook@winthropma.gov. The TOWN will use its best efforts to answer such requests if received seven (7) calendar days before the date for receipt of the Proposals.
- 2.3 Interpretation, correction, or change in the Contract Documents will be made by Addendum which will become part of the Contract Documents. The TOWN will not be held accountable for any oral instruction..
- 2.4 Addenda will be emailed to every individual or firm on record as having taken a set of Contract Documents.
- 2.5 Copies of addenda will be posted to the Town's webpage.

ARTICLE 3 - MBE PARTICIPATION

- 3.1 By Proposalding on this project each Proposer certifies its intent to comply with the Massachusetts Minority/Women Business Enterprise Plan to further expand business opportunities for minority firms
- 3.2 The awarded Proposer shall, prior to the award of any sub-contract, obtain from each of its sub-contractors the Sub-Contractors Certification certifying the Sub-Contractor shall comply with the minority manpower ratio.

ARTICLE 4 - PREPARATION AND SUBMISSION OF PROPOSALS

- 4.1 Proposals shall be submitted on the "Proposal Price Form" as appropriate, as furnished by the TOWN.
- 4.2 All entries on the Proposal Price Form shall be made by typewriter or in ink.
- 4.3 Any quantities indicated on the Proposal Form or elsewhere in the Project Manual or Drawings are estimates only and are given solely as a basis for the comparison of Proposals. The TOWN does not by implication or otherwise guarantee them to be even approximately correct. The Contractor shall have no claim for additional compensation, or refuse to do the work called for, because of the actual quantities involved being greater or lesser by any amount than those called for in the proposal.

- 4.4 Where so indicated on the Proposal Form, sums shall be expressed in both words and figures. Where there is a discrepancy between the Proposal sum expressed in words and the Proposal sum expressed in figures, the words shall control.
- 4.5 All proposals which contain abnormally high prices, or abnormally low prices, for any class of work, or those which contain unbalanced Proposaling in any form or manner may be rejected as informal.
- 4.6 The Proposal shall be enclosed in a sealed envelope with the following plainly marked on the outside:
- * PROPOSAL FOR TOWN OF WINTHROP “**OPEB Actuarial Services**”
 - * PROPOSER 'S NAME and BUSINESS ADDRESS
- 4.7 Date and time for receipt of Proposals is set forth in the Request for Proposals.
- 4.8 Timely delivery of a Proposal at the location designated shall be the full responsibility of the Proposer .

ARTICLE 5 - WITHDRAWAL OF PROPOSALS

- 5.1 Any Proposal may be withdrawn prior to the time designated for receipt of Proposals on written or telegraphic request. Telegraphic withdrawal of Proposals must be confirmed over the Proposer 's signature by written notice postmarked on or before the date and time set for receipt of Proposals.
- 5.2 Withdrawn Proposals may be resubmitted up to the time designated for the receipt of Proposals.
- 5.3 No Proposals shall be withdrawn for sixty days, Saturdays, Sundays and legal holidays excluded, after the opening of the Proposals.

ARTICLE 6 - CONTRACT AWARD

- 6.1 The TOWN of WINTHROP will award the contract to the lowest responsive and responsible Proposer within 10 days, Saturdays, Sundays, and legal holidays excluded after the opening of Proposals.
- 6.2 The TOWN of WINTHROP reserves the right to waive any informalities in or to reject any or all Proposals if it be in the public interest to do so.
- 6.3 As used herein, the term "lowest responsive and responsible Proposer " shall mean the Proposer (1) whose Proposal is the lowest of those Proposer s possessing the skill, ability and integrity necessary for the faithful performance of the work; (2) who shall certify that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (3) who, where the provisions of section eight B of chapter twenty-nine apply, shall have been determined to be qualified thereunder.
- 6.4 It is the purpose of the TOWN not to award this contract to any Proposer who does not furnish evidence satisfactory to the Chief Procurement Officer that he has the ability and experience in this class of work and that he has sufficient capital and plans to enable him to prosecute the same successfully and to complete it within the specified time and that he will complete it in accordance with the terms thereof.
- 6.5 Subsequent to the award and within five (5) days, Saturday, Sundays and legal holidays excluded, after the prescribed forms are presented for signature, the successful Proposer shall execute and deliver to the TOWN two originally signed copies of the Contract in the form included in the Contract Documents.
- 6.6 In the event that the TOWN receives low Proposals in identical amount from two or more responsive and responsible Proposer s, the TOWN shall select the successful Proposer by a blind selection process such as flipping a coin or drawing names from a hat. The low Proposer s who are under consideration will be invited to attend and observe the selection process.

ARTICLE 8 - TAXES

- 7.1 The Proposer shall not include in this Proposal any tax imposed upon the sale or rental of tangible personal property in this Commonwealth, such as any and all building materials, supplies, services and equipment required to complete the work.
- 7.2 The TOWN is exempt from payment of the Massachusetts Sales Tax, and the Proposer shall not include any sales tax on its Proposal.

END OF SECTION

TOWN OF WINTHROP
Price Proposal Form

- A.** The undersigned proposes to furnish all labor and materials required in accordance with the Contract Documents supplied by the TOWN of WINTHROP entitled:

OPEB Actuarial Services.

for the contract price specified below, subject to additions and deduction according to the terms of the specifications.

- B.** This Proposal includes addenda number(s) _____, _____, _____, _____,
- C.** The proposed contract price is:

Total Proposal Price in Year One (Words): _____

Total Proposal Price in Year One (Figures): \$ _____

Total Proposal Price in Year Two (Words): _____

Total Proposal Price in Year Two (Figures): \$ _____

Total Proposal Price in Year Three (Words): _____

Total Proposal Price in Year Three (Figures): \$ _____

Grand Total Proposal Price in Year Three (Words): _____

Grand Total Proposal Price in Year Three (Figures): \$ _____

- D.** The undersigned has completed and submits herewith the following documents:

- ☐ Price Proposal Form - signed, 2 pages (to be in a separate sealed envelope).
- ☐ Proposer 's Qualification Form and References;

- E.** The undersigned agrees that, if selected as general contractor, s/he will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the TOWN of WINTHROP, execute a contract in accordance with the terms of this Proposal.

The undersigned hereby certifies that it is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work and that they will comply fully with all laws and regulations applicable to awards made subject to M.G.L. Chapter 30, Section 39M.

The undersigned further certifies under the penalties of perjury that this Proposal is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from public contracting or subcontracting in the Commonwealth under the provisions of M.G.L. Chapter 29, Section 29F or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

Date _____

(Name of General Proposer)

BY: _____

(Printed Name and Title of Signatory)

(Business Address)

(TOWN, State, Zip)

_____/_____
(Telephone) (FAX)

(E-mail address)

TOWN OF WINTHROP

PROPOSER 'S QUALIFICATIONS AND REFERENCES FORM

All questions must be answered, and the data given must be clear and comprehensive. Please type or print legibly. If necessary, add additional sheet for starred items. This information will be utilized by the TOWN of WINTHROP for purposes of determining Proposer responsiveness and responsibility with regard to the requirements and specifications of the Contract.

1. FIRM NAME: _____

2. WHEN ORGANIZED: _____

3 INCORPORATED? ☐ YES ☐ NO DATE AND STATE OF INCORPORATION: _____

* 4. LIST ALL CONTRACTS CURRENTLY ON HAND, SHOWING CONTRACT AMOUNT AND ANTICIPATED DATE OF COMPLETION:

* 5. HAVE YOU EVER FAILED TO COMPLETE A CONTRACT AWARDED TO YOU?

☐ YES ☐ NO

IF YES, WHERE AND WHY?

* 6. HAVE YOU EVER DEFAULTED ON A CONTRACT? ☐ YES ☐ NO

IF YES, PROVIDE DETAILS.

* 7. LIST YOUR VEHICLES/EQUIPMENT AVAILABLE FOR THIS CONTRACT:

* 8. IN THE SPACES FOLLOWING, PROVIDE INFORMATION REGARDING CONTRACTS COMPLETED BY YOUR FIRM SIMILAR IN NATURE TO THE PROJECT BEING PROPOSAL. A MINIMUM OF FOUR (4) CONTRACTS SHOULD BE LISTED. PUBLIC PROPOSAL CONTRACTS ARE PREFERRED, BUT NOT MANDATORY.

PROJECT NAME: _____

OWNER: _____

TOWN/STATE: _____

DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____

PUBLICLY PROPOSAL? ☐ YES ☐ NO

TYPE OF WORK?: _____

CONTACT PERSON: _____ TELEPHONE #: (____) _____

CONTACT PERSON'S RELATION TO PROJECT?: _____

(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: _____
OWNER: _____
TOWN/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY PROPOSAL? ☐ YES ☐ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: _____
OWNER: _____
TOWN/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY PROPOSAL? ☐ YES ☐ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

PROJECT NAME: _____
OWNER: _____
TOWN/STATE: _____
DOLLAR AMOUNT: \$ _____ DATE COMPLETED: _____
PUBLICLY PROPOSAL? ☐ YES ☐ NO
TYPE OF WORK?: _____
CONTACT PERSON: _____ TELEPHONE #: (____) _____
CONTACT PERSON'S RELATION TO PROJECT?: _____
(i.e., contract manager, purchasing agent, etc.)

9. The undersigned certifies that the information contained herein is complete and accurate and hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the TOWN of WINTHROP in verification of the recitals comprising this statement of Proposer 's qualifications and experience.

DATE: _____ PROPOSER : _____

SIGNATURE: _____

PRINTED NAME: _____ TITLE: _____

This form required at the time of Proposal submittal:

AFFIDAVIT OF NON-COLLUSION

The undersigned certifies under the penalties of perjury that this Proposal or proposal is in all respects bona fide and fair and has been made and submitted in good faith without collusion or fraud with any other person. As used in this affidavit, the word "person" shall mean any natural person, joint venture, business, partnership, corporation, union, committee, club, organization, group of individuals, or other business or legal entity.

Signature: _____

Date: _____

Name [Printed]: _____

Title: _____

Company: _____

PROPOSER S/RESPONDENTS MUST SUBMIT THIS FORM FULLY COMPLETED

SIGNATURE AUTHORITY CERTIFICATION

I hereby certify, on behalf of _____ (Company Name),

that _____ (Name of Signer) of this Company, be and hereby is authorized to execute contracts and bonds in the name and on behalf of said Company, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this Company's name on its behalf by such person under seal of the Company, shall be valid and binding upon this Company.

Signature

Name & Title

Date

PROPOSER S/RESPONDENTS MUST SUBMIT THIS FORM FULLY COMPLETED

TAX COMPLIANCE ATTESTATION

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

**Signature of Individual
or Corporate Contractor (Mandatory)

*** Contractor's Social Security Number
Federal Identification Number

By: _____ Date: _____
Corporate Officer
(Mandatory, if applicable)

* The provision in the Attestation relating to child support applies only when the Contractor is an individual.

** Approval of a contract or other agreement will not be granted unless the applicant signs this certification clause.

*** Your social security number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended. This request is made under the authority of MGL c. 62C, § 49A.

PROPOSER S/RESPONDENTS MUST SUBMIT THIS FORM FULY COMPLETED

I. INTRODUCTION:

The Town of Winthrop is soliciting proposals from qualified Firms for an actuarial valuation of the Town's Other Post Employment Benefits (OPEB) liability. This RFP is for actuarial valuation services as of July 1, 2023, on post-retirement benefits other than pensions. The completion date for GASB 75 information is June 30, 2024. The Town of Winthrop reserves the right to renegotiate a contract with the successful bidder for additional GASB 75 Actuarial services relating to the July 1, 2023, valuation.

This contract may be renewed, at the sole discretion of the Town for two additional one-year options.

INSTRUCTIONS TO PROPOSERS:

- Submission of a proposal shall be deemed representation and certification that the Firm:
- Has read and fully understands the information that was provided by the Town.
- Has the capability to successfully undertake and complete the responsibilities and obligations of the quote being submitted.
- Represents that all information contained in the quote is true and correct.
- Did not, in any way, collude; conspire to agree, directly or indirectly, with any person, firm, or corporation regarding the amount, terms or conditions of this quote.
- Acknowledges that the Town has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by the Firm, and Firm hereby grants the Town permission to make these inquiries, and to provide all related documentation in a timely manner. No request for modification of the quote shall be considered after its submission on grounds that the Firm was not fully informed of any fact or condition. The Town shall not be responsible for, nor be bound, by any oral instructions, interpretations or explanations issued by the Town or its representatives.

INFORMATION TO BE SUBMITTED IN THE NON-PRICE PROPOSAL:

- 1.) Profile on the Firm:
 - a. Include a discussion of the firm's financial stability, capacity, and resources. Include all other firms participating in the project, and similar information about the firms. Include a listing of any lawsuits or litigation and the result of that action resulting from (a) any public project undertaken by the Firm or by its subcontractors where litigation is still pending or has occurred within the last five years or (b) any type of project where claims or settlements were paid by the consultant or its insurers within the last five years.
- 2.) Qualifications of the Firm:
 - a. List team members who will be working on the valuation, identify the supervising actuary and responsibilities of other actuaries and personnel who will have key roles in the valuation. Include resumes of each of those individuals and indicate related experience with this type of actuarial valuation for all team members.
 - b. Experience with similar projects must include the name of other municipalities for which a similar study was conducted, the name of a contact person and their phone number. Give a brief statement of the firm's adherence to the schedule and budget for the project.
- 3.) Work Plan:
 - a. Describe how the firm will work with the Town to determine the proper actuarial cost method, actuarial asset valuation method, amortization method, and key assumptions to the valuation based on relevant accounting and actuarial standards. Some key assumptions to consider as part of this discussion are:
 - o Turnover
 - o Retirement age
 - o Disability retirement age

- o Mortality
 - o Projected salary increases
 - o Inflation rate
 - o Healthcare cost trend data for appropriate region
 - o Amortization timeframe
 - o Investment return
 - o Post-retirement benefit changes
 - o Actuarial assumptions associated with the method (projected unit credit, normal entry age, etc.)
- Describe how the firm would assist in interpreting the plan and value the associated costs in situations where there is ambiguity related to the substantive plan.
 - Timeline – The firm will identify the major tasks in the valuation engagement and suggested timeline for completion.
 - Data Requirements – The firm should list all data requirements that they require to complete the valuation and in what type of format the data must be provided.
 - Support – Provide a description and estimate of hours of any support that may be required by the Town’s staff.
 - Sample Report – Include a sample report in the Appendix of the firm.
- 4.) Forms:
- a. All required signature forms shall be signed and submitted in the non-price proposal envelope, including the cover sheet, certificate of tax compliance and certificate of non-collusion.
- 5.) Additional Information:
- a. Include a copy of any additional proposed contract terms and conditions

INFORMATION TO BE PROVIDED IN THE PRICE PROPOSAL:

Project Costs:

- 1.) Include the cost to provide the services for the FY2024 valuation including providing for a minimum of one meeting explaining the results to Town staff and one meeting with the Town Council. Include any other cost and price information that would be contained in a potential agreement with the Town. Hourly rates must also be provided for pricing the cost of additional services outlined in the Scope of Services.

REVIEW AND SELECTION PROCESS:

Town staff will evaluate the proposals provided in response to this RFP based on the following criteria:

- Quality and completeness of proposal.
- Firm’s experience, including the experience of staff to be assigned to the project, the engagements of similar scope and complexity.
- Firm’s proposed timeline and need for/use of Town resources.
- Firm’s prior record of performance with other municipalities or government agencies.

ORAL INTERVIEWS:

Firms may be required to participate in an oral interview as part of the review process.

EVALUATION OF PROPOSALS:

Each technical proposal shall first be reviewed to ascertain whether the following minimum evaluation criteria have been met:

1. The proposed firm has successfully provided GASB 75 Actuarial Services to at least 5 municipalities for a continuous period over the past 5 years.
2. The proposed firm has successfully provided GASB 75 Actuarial Services to at least 5 municipalities in the Commonwealth of Massachusetts with a resident population of 30,000 or more.

COMPARATIVE EVALUATION CRITERIA:

Each non-price proposal meeting the Minimum Evaluation Criteria requirements shall be further rated according to the following Comparative Evaluation Criteria:

1. Experience in GASB 45/75 Actuarial Services with particular emphasis on experience provided to Massachusetts municipalities and schools. For this criterion, the proposal will be rated:

Highly advantageous - the proposer has successful experience with ten or more municipalities, eight or more of which are in Massachusetts.

Advantageous - the proposer has successful experience with ten or more municipalities, at least three of which are in Massachusetts.

Not advantageous - the proposer has successful experience with five or more municipalities, one of which is in Massachusetts.

Unacceptable - if the proposer has no successful municipal experience in Massachusetts.

2. Ability to meet the general requirements and specific requirements listed in the Request for Proposal.

Highly advantageous - if the proposal is clear, complete, and demonstrates that the proposer can provide all general and specific requirements and that the company organization, controls, disaster plans, and security measures are thoroughly documented and indicate a superior organization.

Advantageous - if the proposal is clear, complete, and demonstrates that the proposer can provide all general and specific requirements and that the company organization, controls, disaster plans, and security measures are thoroughly documented and indicate an acceptable organization.

Not advantageous - if the proposal is clear, complete, and demonstrates that the proposer cannot provide all the general and specific requirements and / or that the company organization, controls, disaster plans, and security measures are not thoroughly documented and / or indicate a questionable organization.

Unacceptable – proposal is unclear and/or incomplete.

PROJECT PURPOSE:

The Town of Winthrop is seeking an actuarial review of the Town's post-employment benefits obligation for current and retired employees. The review will allow implementation of the Government Accounting Standards Board (GASB) rules regarding accounting for Other Post Employment Benefits (OPEB).

INFORMATION ABOUT HEALTH CARE BENEFITS:

The Town of Winthrop offers health care benefits on a premium basis to all active employees who work 20 or more hours per week to their spouses and eligible dependents and all eligible spouses, and dependents. Town employees participate in the GIC.

On April 25, 1994, the Town adopted section 18A of M.G.L., Chapter 32B. The Town provides an open enrollment period before the start of each fiscal year wherein all employees and retirees can register for one of the medical plans or to amend their medical coverage. The fiscal year runs from July 1 to June 30 of the following calendar year.

SCOPE OF SERVICES:

The proposer should prepare the actuarial valuation following GASB 75 standards as of July 1, 2023, with a roll forward of the valuation for the fiscal year ending June 30, 2025. It should include the following:

- a) Actuarial value of benefits, separately identifying amounts for active employees and retirees, including:
 - Present Value of Future Benefits;
 - Total OPEB Liability;
- b) Net OPEB Liability; and Normal Cost GASB 75 accounting information required for financial reporting and footnote, including:
 - Annual Required Contribution (ARC), as a dollar amount and percentage of payroll, identifying (1) Normal Cost and (2) the outstanding balance and amortization amount for each component of the Net OPEB Liability; Annual OPEB Cost (AOC), as a dollar amount and percentage of payroll; and Reconciliation Of Net OPEB Obligation (NOO) during the current year, and projected NOO at end of year.
- c) GASB Requirements:
 - The actuarial valuation needs to comply with any technical bulletins or guidance issued by GASB to ensure this actuarial valuation provides the data needed to meet GASB 75 financial reporting requirements.
- d) Determine the implicit rate subsidy, if any, and the impact it would have on the OPEB liability.
- e) The proposer shall provide a breakdown of OPEB liability and Annual Required Contribution (ARC) for active employees and retirees.
- f) The proposer shall also provide a breakdown of OPEB liability and annual required contribution (ARC) for the Water enterprise fund, the Sewer enterprise fund, School Department, other Town Departments, and retired employees.
- g) The proper shall include all information necessary to comply with the reporting requirements of GASB 74 & 75.

II. INSURANCE REQUIREMENTS

- A. The Contractor shall carry and maintain until acceptance of the work such Workmen's Compensation , Automobile Liability, Public Liability, Contingent Public Liability, Property Damage and Contingent Property Damage Insurance as shall protect him and any sub-contractor performing work covered by this contract from all claims and liability for damages for personal injury, including accidental death, and for property damage which may arise from operations under this contract, whether such operations be by himself or by any sub-contractor or by any one directly or indirectly employed by either of them.
- B. The TOWN shall be named as an "additional insured" on such policy.
- C. The amounts of such insurance shall be as follows:
 - 1. Workmen's Compensation Insurance as required by Massachusetts General Law.
 - 2. Automobile Liability Insurance on all vehicles owned or hired for
 - a. Bodily Injury in an amount not less than \$500,000.00 for each occurrence, and not less than \$1,000,000.00 aggregate.
 - b. Property Damage in an amount not less than \$250,000.00 each occurrence, and not less than \$500,000.00 aggregate.
 - 3. Public Liability Insurance and Contingent Public Liability Insurance in an amount not less than \$500,000.00 for injuries, including accidental death to any one person, and subject to the same limit for each person, in an amount not less than \$1,000,000.00 on account of one accident.
 - 4. Property Damage Insurance and Contingent Property Damage Insurance in an amount not less than \$250,000.00 on account of one accident, and in an amount of not less than \$500,000.00 on account of all accidents.
 - 5. General Liability Insurance shall include Contractual Liability Insurance.
- D. Before any work is started, the successful Proposer shall be required to file with the TOWN certificates of insurance coverage as detailed above, with policy numbers and dates of expiration.
- E. The Contractor shall indemnify, hold harmless and defend the TOWN and its departments, officers, employees, servants, and agents from and against all actions, causes of actions, claims, demands, damages, costs, loss of services, expenses and compensation, including attorney's fees and interest arising out of or resulting directly or indirectly from the services rendered pursuant to this Contract, provided that any such action, cause of action, claim, demand, damage, cost, loss of service, expense, compensation (1) in any way grows out of bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, which (2) is caused in whole or in part by any act or omission of the Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is based in part by a party indemnified hereunder.

III. AUDIT AND/OR INSPECTION

- A. The TOWN, or the Comptroller General of the United States shall be permitted to examine and inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records.

END OF SECTION

SAMPLE TOWN-CONTRACTOR AGREEMENT

Contract # _____

OWNER-CONTRACTOR AGREEMENT **FOR PUBLIC WORKS CONSTRUCTION**

THIS AGREEMENT made this ____ day of ____ in the year ____, between _____, with a usual place of business at _____, hereinafter called the CONTRACTOR, and the Town of Winthrop, acting by its town manager, with a usual place of business at 1 Metcalf Square, Winthrop, MA 02152, hereinafter called the OWNER.

The CONTRACTOR and the OWNER, for the consideration hereinafter named, agree as follows:

1. **Scope of Work**

The Contractor shall furnish all labor, materials, equipment and insurance to perform all work required for the project known as _____, in strict accordance with the Contract Documents and all related Drawings and Specifications. The said Documents, Specifications, Drawings and any GENERAL SUPPLEMENTARY CONDITIONS are incorporated herein by reference and are made a part of this Agreement.

2. **Contract Price**

The Owner shall pay the Contractor for the performance of this Agreement, subject to additions and deductions provided herein, in current funds, the sum of Sixty Three Thousand and 00/100 Dollars (63,000.0).

3. **Commencement and Completion of Work and Liquidated Damages**

It is agreed that time is of the essence of this Agreement. The Contractor shall commence and prosecute the work under this Agreement upon execution hereof and shall complete the work on or before June 15, 2015.

- A. **Definition of Term:** The Term "Substantial completion" shall mean the date certified by the Owner when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner may occupy the project, or designated portion(s) thereof, for the use for which it is intended.
- B. **Time as Essential Condition:** It is understood and agreed that the commencement of and substantial completion of the work are essential conditions of this Agreement. It is further agreed that time is of the essence for each and every portion of the Contract Documents wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract Documents any additional time is allowed for the completion of any work, the new time fixed by such extension shall be of the essence of this

Agreement. It is understood and agreed that the times for the completion of the work are reasonable, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

- C. Progress and Completion: Contractor shall commence work promptly upon execution of this Agreement and shall prosecute and complete the work regularly, diligently and uninterruptedly at such a rate of progress as will insure Substantial Completion within the stipulated number of calendar days.
- D. Liquidated Damages: It is expressly agreed between the Contractor and the Owner that the Contractor will be responsible for all damages which may arise due to the Contractor's failure to substantially complete the work within the above specified time. If the Contractor shall neglect, fail or refuse to complete the work within the specified number of days, or any extension thereof authorized by the Owner, Contractor agrees, as a part of the consideration for the execution of this Contract by the Owner, to pay the Owner the amount specified herein, not as a penalty, but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day, excluding Saturdays, Sundays and legal Holidays, that the Contractor shall be in default of Substantial completion after the date specified in the Agreement. Due to the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, said amount is agreed to be the amount of damages which the Owner would sustain, and said amount shall be retained from time to time by the Owner from current periodic estimates. The amount of liquidated damages shall be \$200.00 per day.

4. Performance of the Work

- A. Direction of the Work: The Contractor shall supervise and direct the Work, using his best skills and attention which shall not be less than such state of skill and attention generally rendered by the contracting profession for projects similar to the Project in scope, difficulty and location. The Contractor shall maintain adequate supervisory personnel at the project site during the performance of the Work. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement.
- B. Responsibility for the Work: (1) The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor. This obligation shall also extend to the presence on the Site of suppliers of materials or equipment, their employees, contractors, and agents engaged in the work.

(2) The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Owner in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the Contractor.
- C. Permits and Fees: Unless otherwise expressly provided, the Contractor shall secure and pay for all permits and fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Agreement and which are

legally required at the time the Proposals are received, and the same shall at all times be the property of the Owner and shall be delivered to the Owner upon completion of the Project.

- D. Notices, Compliance With Laws: (1) The Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. The Contractor shall provide the Owner with reproductions of all permits, licenses and receipts for any fees paid. The Owner represents that it has disclosed to the Contractor all orders and requirements known to the Owner of any public authority particular to this Agreement.
- (2) If the Contractor observes that any of the Contract Documents are at variance with applicable laws, statutes, codes and regulations in any respect, he shall promptly notify the Owner in writing, and any necessary changes shall be accomplished by appropriate modification.
- (3) If the Contractor performs any Work which he knows or should know is contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner, he shall assume full responsibility therefor and shall bear all costs attributable thereto.
- (4) In the performance of the Work, the Contractor shall comply with all applicable federal, state and local laws and regulations including those relating to workplace and employee safety. The Contractor shall notify the Owner immediately of any conditions at the place of the work which violate said laws and regulations and shall take prompt action to correct and eliminate any such violations.
- E. Project Superintendent: The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.
- F. Progress Schedule: The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Owner's information an estimated progress schedule for the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.
- G. Drawings, Specifications and Submittals: (1) The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, and "As-Built" Drawings and Specifications in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be delivered to the Owner upon completion of the Work.
- (2) By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

(3) The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's approval of Shop Drawings, Product Data or Samples unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Owner's approval thereof.

(4) The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Owner on previous submittals.

(5) No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Owner. All such portions of the Work shall be in accordance with approved submittals.

H. Protection of the Work and Owner's Property: The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this Agreement. He shall at all times safely guard and protect his own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury. The Contractor shall clean the work area and restore it to its original condition upon completion of the work.

I. Quality of the Work: The Contractor shall perform the work in a good, workmanlike manner. The Contractor hereby guarantees that the entire work constructed by him under the Agreement will meet fully all requirements thereof as to quality of workmanship and materials. The Contractor hereby agrees to make at his own expense any repairs or replacements made necessary by defects in materials or workmanship supplied to him that become evident within one (1) year after the date of the final payment, and to restore to full compliance with the requirements set forth herein any part of the work constructed hereunder, which during said one (1) year period is found to be deficient with respect to any provisions of the Contract Documents. The Contractor also agrees to hold the Owner harmless from claims of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written orders for same from the Owner. If the Contractor fails to make the repairs and replacements promptly, the Owner may do the work and the Contractor shall be liable to the Owner for the cost thereof.

J. Warranty: The Contractor guarantees to Owner that all materials incorporated into the work will be new unless otherwise specified or agreed. Prior to final payment, the Contractor shall deliver to the Owner all manufacturers' warranties, together with such endorsements or assignments as are necessary to ensure to the Owner the full rights and benefits of such warranties.

5. Affirmative Action/Equal Employment Opportunity

The Contractor is directed to comply with all applicable State Laws, Ordinances, Bylaws, and rules and regulations regarding affirmative action/equal employment opportunity requirements. Failure of the Contractor to comply with any such law, rule or regulation shall constitute grounds for the Owner to terminate the Agreement.

6. Site Information Not Guaranteed; Contractor's Investigation

All information given in the Contract Documents relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the Owner. All such information is furnished only for the information and convenience of the Contractor and is not guaranteed.

It is agreed and understood that the Owner does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures encountered during construction will be the same as those indicated in the Contract Documents.

Contractor has familiarized himself with the nature and extent of the Contract Documents, work, locality, and with all local conditions and federal, state, and local laws, rules, ordinances, and regulations that in any manner may affect costs, progress, or performance of the work. Contractor has made, or has caused to be made, examinations, investigations, and tests and studies of such reports and related data in addition to those referred to in the paragraph above as he deems necessary for the performance of the work at the Contract Price, within the Contract Time, and in accordance with the other Terms and Conditions of the Contract Documents; and no additional examinations, tests, investigations, reports, and similar data are or will be required by the Contractor for such purposes.

Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the Contract Documents. Contractor has given the Owner written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents, and the resolution thereof by the Owner is acceptable to the Contractor.

It is further agreed and understood that the Contractor shall not use or be entitled to use any of the information made available to him or obtained in any examination made by him in any manner as a basis of or ground for any claim or demand against the Owner, arising from or by reason of any variance which may exist between the information made available and the actual subsurface conditions or other conditions or structures actually encountered during the construction work, except as may otherwise be expressly provided for in the Contract Documents.

7. Project Architect or Engineer

There no project architect-engineer for this project. Except as otherwise indicated in the Contract Documents, _____ shall be a representative of the Owner and the Contractor shall direct all communications, questions and comments on the work and the performance thereof to him. Except as otherwise provided, he shall have all the authority of the Owner set forth in the Contract Documents. In general, he shall have the authority to review the performance of the work, reject work which is defective or otherwise does not comply with the Contract Documents and to order the Contractor to remedy defective work and take such actions which are necessary to make the work conform to the Contract Documents.

8. Wage Rates

Prevailing Wage Rates as determined by the Commissioner of the Department of Labor and Workforce Development under the provisions of Massachusetts General Laws, Chapter 149, Section 26 to 27G, as amended, apply to this project. It is the responsibility of the Contractor to provide the Town with certified payrolls and to comply with all requirements of the above-cited statutes.

The schedules of prevailing wage rates are included in the Contract Documents.

9. Payments to the Contractor

- A. The Owner shall make payment to the Contractor in accordance with the provisions of Sections 39F and 39G of Chapter 30 of the General Laws of the Commonwealth of Massachusetts. The Contractor shall submit requisitions for payment as required by said provisions and the directions of the Owner.
- B. The Contractor's applications for payment shall be subject to approval by the Director of Public Works, Steve Calla.
- C. Changes in the Work: No changes in the work covered by the approved Contract Documents shall be made without prior written approval of the Owner. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:
 - (a) Unit Proposal prices previously approved.
 - (b) An agreed lump sum.
 - (c) The actual cost of:
 - (1) Labor.
 - (2) Materials entering permanently into the work.
 - (3) The ownership or rental cost of construction equipment during the time of use on the extra work.
 - (4) Power and consumable supplies for the operation of power and equipment.
 - (5) Wages to be paid.

To the cost under (c) there shall be added a fixed fee to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of work. The fee shall be compensation to cover the cost of supervision, overhead, bonds, profit and any other general expenses.

- D. Claims for Additional Costs: If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Owner written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

10. Final Payment, Effect

The acceptance of final payment by the Contractor shall constitute a waiver of all claims by the Contractor arising under the Agreement.

11. Contract Documents

The Contract Documents consist of the following, together with this Agreement:

Invitation to Proposal
This Contract Form
Proposal Form
Non-Collusion Certificate
Tax Compliance Certificate
Clerk's Certificate of Corporate Vote
Certificate of Insurance
Schedule of Prevailing Wages

12. Terms Required By Law

This Agreement shall be considered to include all terms required to be included in it by the Massachusetts General Laws, and all other laws, as though such terms were set forth in full herein.

13. Indemnification

The Contractor shall indemnify and hold harmless the Owner from and against any and all claims, damages, losses, and expenses, including attorney's fees, arising out of the performance of this Agreement when such claims, damages, losses, and expenses are caused, in whole or in part, by the acts, errors, or omissions of the Contractor or his employees, agents, subcontractors or representatives.

14. Insurance

The Contractor shall purchase and maintain such insurance as will protect both the Owner and the Contractor from claims which may arise under the Agreement, including operations performed for the named insured by independent contractors and general inspection thereof by the named insured. In addition, the Contractor shall require its subcontractors to maintain such insurance. Coverage shall be provided for:

1. claims under workers' or workmans' compensation, disability benefit and other applicable employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;
- .5 claims for damages, including damages to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

- .6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and
- .7 claims involving contractual liability applicable to the Contractor's obligations under Article 13.

The limits of liability for coverage required under the preceding paragraph shall be as required by the Owner.

Except for Workmen's Compensation, all liability coverage shall name the Town of Winthrop as an additional insured and shall provide for 30 days prior written notice to the Town of any modification or termination of coverage provided thereby. The Contractor shall provide the Owner with appropriate certificate(s) of insurance evidencing compliance with this provision prior to the commencement of any work under this Agreement.

15. Notice

All notices required to be given hereunder shall be in writing and delivered to, or mailed first class to, the parties' respective addresses stated above. In the event that immediate notice is required, it may be given by telephone or facsimile, but shall, to the extent possible, be followed by notice in writing in the manner set forth above.

16. Termination

- A. Each party shall have the right to terminate this Agreement in the event of a failure of the other party to comply with the terms of the Agreement. Such termination shall be effective upon seven days' notice to the party in default and the failure within that time of said party to cure its default.
- B. The Owner shall have the right to terminate the Agreement without cause, upon ten (10) days' written notice to the Contractor. In the event that the Agreement is terminated pursuant to this subparagraph, the Contractor shall be reimbursed in accordance with the Contract Documents for all Work performed up to the termination date, and for all materials or equipment not incorporated in the Work, but delivered and suitably stored at the site. Payment for material or equipment stored at the site shall be conditioned upon submission by the Contractor of bills of sale or such other evidence as is satisfactory to Owner to establish the Owner's title to such material or equipment or otherwise protect the Owner's interests.

17. Miscellaneous

- A. Royalties and Patents: The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified; but if the Contractor believes or has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Owner, and thereafter the Owner insists on the use of the design, process or products specified.

- B. Assignment: The Contractor shall not assign or transfer any of its rights, duties or obligations under this Agreement without the written approval of the Owner.
- C. Governing Law: This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.
- D. Statutory Compliance: By its signature hereon, the Contractor certifies, under the pains and penalties of perjury, that it has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals, the Owner by its authorized representatives who, however, incur no personal liability by reason of the execution hereof or of anything herein contained, as of the day and year first above written.

CONTRACTOR:

By its _____

OWNER: Town of Winthrop

Anthony Marino,
Town Manager

By: _____

Title:

Name:

In accordance with M.G.L. C.44, Section 31C, this is to certify that an appropriation in the amount of this contract is available therefor and that the \$_____ has been authorized to execute the contract and approve all requisitions and change orders.

By _____
Dylan Cook, CFO

Approval as to Form.

Town Counsel