



Town of Medway

**BOARD OF SELECTMEN**

155 Village Street, Medway MA 02053  
(508) 533-3264 • FAX: (508) 321-4988

*Glenn Trindade, Chairman  
Dennis Crowley, Vice Chairman  
Richard D'Innocenzo, Clerk  
John Foresto, Member  
Maryjane White, Member*

**Board of Selectmen's Meeting**

**Joint Meeting with School Committee and Finance Committee**

**January 11, 2014, 8:30 AM**

**Sanford Hall**

**155 Village Street**

**Agenda**

8:30 AM

1. Legislative Breakfast – General discussion of topics of interest to Medway and region with Sen. Karen Spilka, Rep. John Fernandes and Rep. Jeff Roy  
[Topics to include: Sustainable Water Management Initiative Grant, Chapter 90 (State transportation funding), Ambulance Transport – Insurance Reimbursement, Police/Fire Radio Infrastructure, Budget Projections]
2. Authorization of Chairman to Execute Contract with Gale Assoc. for Athletic Field Design and Engineering Services

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Upcoming Meetings, Agenda and Reminders

January 21, 2014 ---- Regular Meeting (holiday week)

February 3, 2014-----Regular Meeting

# **AGENDA**

# **ITEM #1**

## **Legislative Breakfast**

*Associated back up materials attached.*

- Discussion topics

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**Legislative Breakfast  
January 11, 2014**

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**Topics For Discussion**

1. Sustainable Water Management Initiative Grant
2. Chapter 90
3. Ambulance Transport – Insurance Reimbursement
4. Police/Fire Radio Infrastructure
5. Budget Projections

# AGENDA

## ITEM #2

### **Authorization of Chairman to Execute Contract with Gale Assoc. for Athletic Field Design and Engineering Services**

*Associated back up materials attached.*

- Proposed contract

**Proposed Motion:** I move that the Board authorize the Chairman to execute a contract with Gale Associates for athletic field design and engineering services in an amount not to exceed \$82,120 pending review and approval by Town Counsel and the Town Accountant.

## **EXHIBIT B**

### **AGREEMENT BETWEEN THE TOWN OF MEDWAY AND GALE ASSOCIATES, INC.**

#### **PROFESSIONAL ENGINEERING SERVICES**

THIS IS AN AGREEMENT made on the **31<sup>st</sup>** day of **December, 2013**, by and between the Town of Medway, 155 Village Street, Medway, Norfolk County, Massachusetts (hereinafter referred to as "Town"), and **Gale Associates, Inc.**, (hereinafter "Consultant"), a design firm incorporated in the state of Massachusetts with its principle place of business at **163 Libbey Industrial Parkway, Weymouth, MA 02189**.

Town and Consultant agree to the performance and furnishing of certain professional services by Consultant concerning **Town of Medway Athletic Facilities Improvements** (hereinafter referred to as the "Project") for certain consideration to be paid to Consultant by Town, as set forth more specifically in the mutual covenants set forth below.

This Agreement will become effective on the date that the last party fully executes the same.

#### **1.0 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:

- 1) This agreement between Town and Consultant
- 2) Invitation for bids, RFQ, quotation specifications, or request for proposals.
- 3) Consultant's quotation or proposal dated **December 4, 2013**.
- 4) Town letters of all Addendums and clarifications.
- 5) Copies of all required bonds, certificates of insurance, and licenses required under the contract.

#### **2.0 CONSULTANT'S SERVICES**

The full execution of this Agreement by Town and Consultant constitutes the Town's written authorization for Consultant to proceed with the professional services described in the Consultant's proposal (hereinafter referred to as "Design Services").

#### **3.0 GUARANTEES AND WARRANTIES BY ENGINEER**

**The Consultant agrees that the services provided hereunder shall conform to the standard of care and practice exercised by design professionals engaged in performing comparable services; that the personnel furnishing said services shall**

**be qualified and competent to perform adequately the services assigned to them; and that the recommendations, guidance and performance of such personnel shall reflect such standards of care and practice.**

#### **4.0 OWNERSHIP OF DOCUMENTS AND WORK PRODUCT**

Copies of all documents produced pursuant to this Agreement shall be the property of Town. All information acquired from the Town, or from others at the expense of Town, in the performance of this Agreement shall be and remain the property of Town. This includes but is not limited to all records, data files, computer records, work sheets, deliverable products (complete and incomplete) and all other types of information prepared or acquired by Consultant in the performance of Design Services. The Consultant shall not be liable for any use, reuse, or modification of Consultant authored documents prepared under this Agreement that occurs without the Consultant's consent and professional involvement.

#### **5.0 TOWN'S RESPONSIBILITIES**

Town shall appoint a person to serve as liaison between Town and Consultant with respect to the Project and Design Services. In addition to serving as Town Liaison, this person shall be responsible for scheduling all meetings between Consultant and Town's representatives. This person, however, shall have no authority to bind Town to make payments in excess of the specific appropriation for this Agreement. Town shall provide all information requested by Consultant that is necessary for the completion of Design Services. However, Town shall not be required to provide information not readily available to it.

#### **6.0 PAYMENT BY THE TOWN FOR DESIGN SERVICES**

The Town shall pay the Consultant for the performance of this Agreement, not to exceed sum of **\$82,120.00 (Eighty-Two Thousand, One Hundred and Twenty Dollars)**.

The Town shall make payment per the Consultant's proposal and payment schedule within. Payment will be forty five days after receipt of an invoice stamped in by the appropriate Town office for work performed or materials supplied. Upon satisfactory completion of the work, forty five days after receipt of an invoice for final payment, the Town shall pay the Consultant all amounts due under the Contract.

This Agreement does not provide for the payment by Town to Consultant for any expenses incurred by Consultant outside of allowable expenses approved by the Town. The acceptance by Consultant of its final payment under this Agreement shall operate as a release of the Town of all claims and all liability by the Consultant. No payment, however, final or otherwise, shall operate to release Consultant from its obligations under this Agreement.

The Consultant shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the

Consultant in the preparation of the bid documents, as reasonably determined by the individual responsible for administering the design contract.

## **7.0 SUSPENSION OF WORK**

If Town is unable to proceed with the Project or its obligations under this Agreement either before or after the execution of this Agreement for any reason, regardless of whether such inability is caused by or is within the control of Town, Consultant shall not be entitled to make or assert any claim for damage by reason of said delay. However, the time for completion of Design Services shall be extended to such reasonable time as the Town may determine that will compensate for time lost by such delay, with such determination to be set forth by Town in writing.

## **8.0 TERMINATION**

### **8.1 By Town**

**8.1.1** In the case of any default on the part of Consultant with respect to any of the terms of this Agreement, Town shall give written notice thereof. If said default is not remedied by Consultant within such time as Town shall specify in writing, Town shall notify Consultant in writing that there has been a breach of this Agreement. Thereafter, Town shall have the right to secure the completion of Design Services remaining to be done on such terms and in such manner as Town shall determine, and Consultant shall pay Town any money that Town shall pay another designer for the completion of Design Services, in the excess of what Town would have paid Consultant for the completion of Designer Services, and Consultant shall reimburse Town for all expenses incurred by reason of said breach, including attorney's fees incurred by the Town. In case of such breach, Consultant shall be entitled to receive payment only for work satisfactorily completed prior to said breach in good faith and the amount of any balance due consultant shall be determined by Town in good faith.

**8.1.2** Notwithstanding any other provision of this Agreement, the Town reserves the right at any time to suspend or terminate this Agreement in whole or in part for its convenience or due to an unavailability of funds upon fourteen days written notice to Consultant. Town shall incur no liability by reason of such termination for convenience except for the obligation to pay for work performed and accepted accruing through the date of termination less any offset or claim of Town. Such obligation shall not exceed the available appropriation. Consultant shall have no right to recover other amounts, including but not limited to amounts for lost profits, indirect, incidental or consequential damages.

**8.1.3** In the event of termination by Town, all finished work and documentation, complete and incomplete, shall be delivered to Town. Consultant shall be entitled to receive payment for any work performed and accepted under this Agreement, which was completed prior to the date of termination. In the event of termination prior to the completion of the work, Consultant shall have no right to recover other amounts, including but not limited to amounts for lost profits, indirect, incidental, or consequential damages.

**8.1.4** After the notice of termination for cause under Section 8.1.1 above, it is determined that said cause was invalid, the termination shall be deemed to have been effected for the convenience of Town under Section 8.1.2. In such event, a payment adjustment shall be made as provided in Section 8.1.2.

**8.1.5** Any termination or suspension of this Agreement shall not impair Town's right to recover damages occasioned by the fault of Consultant. Any suspension shall not limit the right of Town to terminate this Agreement.

## **8.2 By Consultant**

Consultant shall have no damages for delay or hindrance. In the event of delay or hindrance not the fault of the Consultant, an extension of time shall be the Consultant's sole remedy.

## **8.3 Force Majeure**

Neither party shall be liable to the other or deemed to be in breach under this agreement for any failure to perform, including, without limitation, a delay in rendering performance due to causes beyond its reasonable control, such as an order, injunction, judgment, or determination of any Court of the United States or the Commonwealth of Massachusetts, an Act of God, war, civil disobedience, extraordinary weather conditions, labor disputes, or shortages, or fluctuation in electric power, heat, light, or air conditioning. Dates or time of performance shall be extended automatically to the extent of such delays, provided that the party whose performance is affected promptly notifies the other of the existence and nature of such delay.

## **9.0 INSURANCE**

Consultant shall provide and maintain insurance at its own expense until the completion of Design Services as set forth below:

**9.1** Worker's compensation insurance in accordance with state law;

**9.2** Comprehensive general liability, comprehensive automobile liability and property damage insurance in the amount of not less than \$1,000,000.00 for each occurrence and \$2,000,000.00 in the aggregate. The Town shall be named an additional insured.

**9.3** The Town must be named as an additional insured on a certification of insurance filed with the Town Administrator at time of contract issue. This Certificate of Insurance will be attached as part of Exhibit B to this Agreement.

**9.4** Professional liability insurance covering Consultant's errors and omissions with limits of at least \$1,000,000.00 for each occurrence and at least \$2,000,000.00 in the aggregate.

**9.5** All insurance coverage shall be in force from the time of the Agreement to the



date when all work under the Agreement is completed and accepted by the Town. Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the Town and shall list the Town as additional insured for each applicable policy. Since this insurance is normally written on a year-to-year basis, the Consultant shall notify the Town should coverage become unavailable or if its policy should change. Any cancellation of insurance, whether by the insurers or the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the Town prior to the intended effective date thereof, which date should be expressed in said notice. Cancellation of required insurance shall be grounds for termination of this contract. The Consultant shall provide a copy of additional insured endorsements for all policies that require the Town to be listed as an additional insured.

## **10.0 INDEMNIFICATION**

Consultant hereby agrees to indemnify and hold harmless Town and its officers, employees and agents from and against claims (including workers' compensation and wage claims) demands, suits, actions, liabilities, damages, penalties, judgments, and costs and expenses, including without limitation the costs and expenses of defending any action, of or by anyone to the extent caused by negligent act or omission of the Consultant, its subcontractors and its and their agents or employees in the performance of the work covered by this Agreement and/or failure to comply with terms and conditions of this Agreement.

## **11.0 MISCELLANEOUS PROVISIONS**

### **11.1 Entire Agreement**

Unless contained in this Agreement, or the Exhibits incorporated into and made a part of this Agreement, no warranties, statements, promises, or representations shall be considered a part of this Agreement or a basis upon which Consultant or Town entered into this Agreement.

### **11.2 Assignment of Interest**

Consultant shall not assign, transfer, or convey any interest in this Agreement without the prior written consent of Town, which consent shall not be unreasonably withheld.

### **11.3 Subcontractors**

Consultant shall not assign, subcontract, or delegate the performance of its services to any person, corporation, or entity without the prior written consent of Town. Provided that such consent is obtained, it is understood and agreed that any such persons, corporations, or entities hired by Consultant shall be deemed agents of Consultant and that Consultant shall be responsible for the methods, means, and materials used in connection with the performance of any such services, and for any breach of this Agreement or any delays or damages occasioned by such work.

#### **11.4 Inspection by Town**

The authorized representatives and agents of Town shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records of Consultant upon demand.

#### **11.5 Incorporation of Applicable Law**

Each and every provision of law required to be included in this Agreement shall be deemed to be included in this Agreement, and this Agreement shall be read and enforced as though such provisions were included herein. If through mistake or otherwise any such provision has not been included in this Agreement, or is not correctly inserted, then upon the application of either party to this Agreement, the Agreement shall forthwith be physically amended to make such inclusion or insertion.

#### **11.6 Governing Law**

Town and Consultant shall perform its services in conformity with the requirements and standards of Town, and with all applicable laws and regulations of the Commonwealth of Massachusetts and its political subdivisions, and with all applicable laws and regulations of the Federal Government.

In the event of any dispute concerning the meaning or application of this Agreement, any such dispute shall be resolved pursuant to law of the Commonwealth of Massachusetts and, if necessary, by a Court of the Commonwealth of Massachusetts. Both parties hereby consent to the jurisdiction of any such Court.

#### **11.7 Licensure and Compliance with Massachusetts Tax Law**

By executing this Agreement, Consultant agrees and certifies that it is licensed to perform the services required by this Agreement, and that it will secure such licensure for so long as it is bound to perform services under this Agreement. Documentation of such licensure shall be attached to this Agreement. Consultant shall comply with all applicable laws, ordinances, rules or regulations or codes of the State or Town in performing the work embraced by this Agreement. Pursuant to Mass. General Laws chapter 62C, section 49A, the Consultant certifies under the penalties of perjury that the Consultant has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

#### **11.8 Corporate Contractor**

The Consultant shall endorse upon this Agreement (or attach hereto) a Clerk's Certificate certifying the authority of the party signing this Agreement for the corporation and the existence of such corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in force and effect as of the date of submission. This Agreement shall not be enforceable against the Town unless and until the Consultant complies with this section.

**11.9 Interpretation & Severability**

For purposes of interpreting this Agreement in the context of a dispute over its terms or otherwise neither party shall be considered the drafter of this Agreement and neither party shall have any provision of this Agreement construed in its favor as a result of its role in drafting this Agreement or its bargaining power with respect to this Agreement, Design Services, the Project, or otherwise.

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

\*If a Corporation, attach to each signed copy of this Agreement an attested copy of the vote of the Corporation authorizing the said signing and sealing.

**Consultant**

By its duly authorized representative

By: Jon F. Lindberg, P.E., RRC

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

\_\_\_\_\_  
Thomas Holder- Director  
Department of Public Service

**TOWN OF MEDWAY  
By its Board of Selectmen**

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

Funding Source:

Account: \_\_\_\_\_

\_\_\_\_\_

***Town Accountant***

Dated: \_\_\_\_\_

Approved as to availability of funds

\_\_\_\_\_

***Town Counsel***

Dated: \_\_\_\_\_

Approved as to form

**CERTIFICATE AS TO CORPORATE CONSULTANT**

I Kathleen A. Forrand

Certify that I am Secretary of the Corporation named as Consultant in the Proposal; that William J. Seymour, P.E. who signed said Proposal on behalf of the Consultant was then Director of Civil Engineering of said Corporation; that I know his signature and that his signature hereto is genuine and that said Proposal was duly signed, sealed, and executed for and on behalf of said Corporation by authority of its Board of Directors.

(Corporate Seal)

\_\_\_\_\_  
(Signature)

Secretary  
\_\_\_\_\_  
(Title)

This Certificate must be completed where the Consultant is a Corporation, and should be so completed by its Clerk. In the event that the Clerk is the person signing the proposal on behalf of the Corporation, this Certificate must be completed by another Officer of the Corporation.

**CERTIFICATE OF VOTE**

(to be filed if Consultant is a Corporation)

I, Kathleen A. Forrand, hereby certify that I am the duly qualified and acting  
(Secretary of the Corporation)

Secretary of Gale Associates, Inc. and I further certify that at  
(Name of Corporation)

a meeting of the Directors of said Company, duly called and held on 1/17/12 ,  
(Date of Meeting)

at which all Directors were present and voting, the following vote was unanimously

passed:

VOTED: \_\_\_\_\_ To authorize and empower

Jon F. Lindberg, P.E. \_\_\_\_\_

Edward J. Madden \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Anyone acting singly, to execute Forms of General Quotation, Contracts or Bonds on  
behalf of the Corporation.

I further certify that the above vote is still in effect and has not been changed or

modified in any respect.

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

(Secretary of Corporation)

A True Copy:

Attest: \_\_\_\_\_

(Notary Public)

My Commission Expires: \_\_\_\_\_

(Date)

**CERTIFICATE OF NON-COLLUSION**

The undersigned certifies under the 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, partnerships, corporation, union, committee, club, or other organization, entity, or group of individuals.

Name of Business: Gale Associates, Inc.

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

Name of Person signing Proposal: William J. Seymour, P.E.