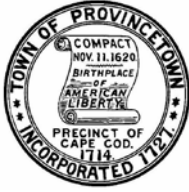




# Meeting Agenda

**The Provincetown Board of Selectmen will hold a special public work session on Thursday, October 23, 2014 at 5:00 p.m. in the Judge Welsh Meeting Room, Town Hall, 260 Commercial Street, Provincetown, MA 02657.**

1. Request by Joseph Vasta, Zoning Board of Appeals member, for Conflict of Interest Exemption pursuant to MGL c 268A, Section 19. Votes may be taken.
2. Public Records Request by Michael Canizales and Mark Hatch – Chairman Donegan. Votes may be taken.
3. Fall STM Article 14, Police Station Repairs, Estimates for Proposed & Required Repairs. Votes may be taken.
4. Execute contract with GFM Enterprises, for the reconstruction of the East End Playground Basketball reconstruction, 211 Bradford Street.
5. Other - Other matters that may legally come before the board not known at the time of posting - votes may be taken.
6. Executive Session – Vote to go into Executive Session - M.G.L. c30A Sec 21(a)
  - A. Clause 7, to consider release of information protected by the attorney/client privilege, M.G.L. c214 Section 1B and/or M.G.L. c4 Section 7 Clause 26. Votes may be taken.
  - B. Clause 6 - To consider the purchase, exchange, lease or value of real estate, if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body.



Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**  
Thursday, October 23, 2014

1

## CONFLICT OF INTEREST EXEMPTION

Joseph Vasta, Member ZBA

Requested by: Joe Vasta

Action sought: Approval

### Proposed Motion(s)

**MOVE that the Board of Selectmen vote to the conflict of interest exemption for Joseph Vasta, Member ZBA, pursuant to MGL c 268A, Section 19.**

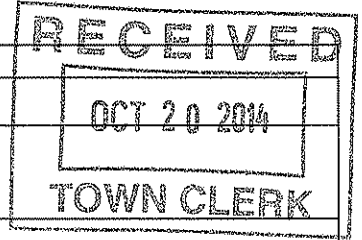
### Additional Information

See attached disclosure forms.

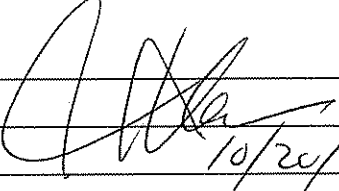
### Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>

**DISCLOSURE BY NON-ELECTED MUNICIPAL EMPLOYEE OF FINANCIAL INTEREST  
AND DETERMINATION BY APPOINTING AUTHORITY  
AS REQUIRED BY G. L. c. 268A, § 19**



<b>MUNICIPAL EMPLOYEE INFORMATION</b>	
Name:	Joseph J. VASTA
Title or Position:	Member ZBA
Municipal Agency:	ZBA
Agency Address:	260 Commercial Street
Office Phone:	* Cell: 401-529-4140
Office E-mail:	mbordman@gmail.com
	My duties require me to participate in a particular matter, and I may not participate because of a financial interest that I am disclosing here. I request a determination from my appointing authority about how I should proceed.
<b>PARTICULAR MATTER</b>	
Particular matter  E.g., a judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, or finding.	Please describe the particular matter.  I am an abutter to 10 Telegraph Hill due to my location @ 52 Commercial. I have never met the owner of this property.
Your required participation in the particular matter:  E.g., approval, disapproval, decision, recommendation, rendering advice, investigation, other.	Please describe the task you are required to perform with respect to the particular matter.  As a member of the ZBA, I would be on the panel making a finding on the application
<b>FINANCIAL INTEREST IN THE PARTICULAR MATTER</b>	
Write an X by all that apply.	<input checked="" type="checkbox"/> I have a financial interest in the matter. Abutter <input type="checkbox"/> My immediate family member has a financial interest in the matter. <input type="checkbox"/> My business partner has a financial interest in the matter. <input type="checkbox"/> I am an officer, director, trustee, partner or employee of a business organization, and the business organization has a financial interest in the matter. <input type="checkbox"/> I am negotiating or have made an arrangement concerning future employment with a person or organization, and the person or organization has a financial interest in the matter.

Financial interest in the matter	Please explain the financial interest and include a dollar amount if you know it.  <i>None, only in matter.</i>
Employee signature:	
Date:	<i>10/20/14</i>

**DETERMINATION BY APPOINTING OFFICIAL**

<b>APPOINTING AUTHORITY INFORMATION</b>	
Name of Appointing Authority:	
Title or Position:	
Agency/Department:	
Agency Address:	
Office Phone:	
Office E-mail:	
<b>DETERMINATION</b>	
Determination by appointing authority:	As appointing official, as required by G.L. c. 268A, § 19, I have reviewed the particular matter and the financial interest identified above by a municipal employee. I have determined that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.
Appointing Authority signature:	
Date:	
Comment:	

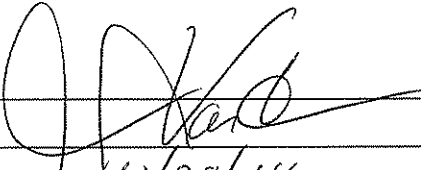
Attach additional pages if necessary.

**The appointing authority shall keep this Disclosure and Determination as a public record.**

**DISCLOSURE BY NON-ELECTED MUNICIPAL EMPLOYEE OF FINANCIAL INTEREST  
AND DETERMINATION BY APPOINTING AUTHORITY  
AS REQUIRED BY G. L. c. 268A, § 19**

**RECEIVED**  
OCT 20 2014  
TOWN CLERK

MUNICIPAL EMPLOYEE INFORMATION	
Name:	Joseph J. VASTA
Title or Position:	Member ZBA
Municipal Agency:	ZBA
Agency Address:	260 Commercial Street
Office Phone:	cell: 401 529-4140
Office E-mail:	mbondman@gmail.com
	My duties require me to participate in a particular matter, and I may not participate because of a financial interest that I am disclosing here. I request a determination from my appointing authority about how I should proceed.
PARTICULAR MATTER	
Particular matter  E.g., a judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, or finding.	Please describe the particular matter.  I have been identified as an abutter to 60A Commercial Street, due to the fact that I live @ 52 Commercial. My relationship with the owners is a passing wave or hello. AS A MATTER OF FACT, before last meeting I didn't know he was there.
Your required participation in the particular matter:  E.g., approval, disapproval, decision, recommendation, rendering advice, investigation, other.	Please describe the task you are required to perform with respect to the particular matter.  As a member of the ZBA, I would be sitting on the panel when this application is presented. I know that I can sit & make an objective decision in the matter.
FINANCIAL INTEREST IN THE PARTICULAR MATTER	
Write an X by all that apply.	<input checked="" type="checkbox"/> I have a financial interest in the matter. abutter. <input type="checkbox"/> My immediate family member has a financial interest in the matter. <input type="checkbox"/> My business partner has a financial interest in the matter. <input type="checkbox"/> I am an officer, director, trustee, partner or employee of a business organization, and the business organization has a financial interest in the matter. <input type="checkbox"/> I am negotiating or have made an arrangement concerning future employment with a person or organization, and the person or organization has a financial interest in the matter.

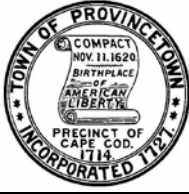
Financial interest in the matter	Please explain the financial interest and include a dollar amount if you know it. <i>NONE, only an abutter</i>
Employee signature:	
Date:	<i>10/20/14</i>

**DETERMINATION BY APPOINTING OFFICIAL**

APPOINTING AUTHORITY INFORMATION	
Name of Appointing Authority:	
Title or Position:	
Agency/Department:	
Agency Address:	
Office Phone:	
Office E-mail	
DETERMINATION	
Determination by appointing authority:	As appointing official, as required by G.L. c. 268A, § 19, I have reviewed the particular matter and the financial interest identified above by a municipal employee. I have determined that the financial interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.
Appointing Authority signature:	
Date:	
Comment:	

Attach additional pages if necessary.

**The appointing authority shall keep this Disclosure and Determination as a public record.**



## PUBLIC RECORDS REQUEST REVIEW

Requested by: Town Manager

Action Sought: Discussion & Approval

### Proposed Motion(s)

*Move that the Board of Selectmen, working with Town Counsel, vote to waive our exemptions under Massachusetts law and release emails withheld from the Vincent Currier request with the following exceptions:*

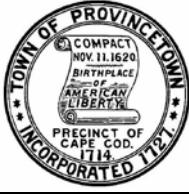
- 1) Any email related to or impacting upon pending litigation, arbitration or other legal proceedings, including but not limited to items protected by the attorney-client privilege or other legal confidentiality requirement;*
- 2) Any email that contains personnel information that an employee of the Town would have the valid expectation would remain confidential, and*
- 3) Any email that contains medical information or diagnosis, and any related matters, or other information the disclosure of which potentially constitutes an unwarranted invasion of personal privacy, of a town employee or private citizen.*

*And further when determining what emails to release the Board of Selectmen, with and through Town Counsel, adhere to a policy of full disclosure unless the Town interests are at risk and when doing so the Board of Selectmen may on occasion waive attorney client privilege.*

### Additional Information

### Board Action

<i>Motion</i>	<i>Second</i>	<i>In favor</i>	<i>Opposed</i>	<i>Disposition</i>



Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**  
Thursday - October 23, 2014

3

## POLICE STATION REPAIRS

### Fall STM Article 14, Recommendation

Requested by: Chairman

Action Sought: Discussion

#### Proposed Motion(s)

*Discussion dependent*

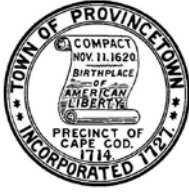
#### Additional Information

Police Chief Golden and DPW Director Waldo, will be present. See attached list of recommended repairs.

#### Board Action

<i>Motion</i>	<i>Second</i>	<i>In favor</i>	<i>Opposed</i>	<i>Disposition</i>





## EAST END PLAYGROUND RECONSTRUCTION

### Execute Contract with GFM Enterprises

Requested by: Eric L. Larsen, DPW Deputy Director

Action Sought: Approval

#### Proposed Motion(s)

**MOVE that the Board of Selectmen vote to approve and execute a contract with GFM Enterprises, P.O. Box 1061, Truro, MA 02666, for the “211 Bradford Street Basketball Court Reconstruction Project”.**

#### Additional Information

This project was bid pursuant to M.G.L. c.30, §39M. The project was advertised in the Central Register beginning 10/1/2014 and the Provincetown Banner on 10/2/2014 and 10/9/2014. Sealed bids were publicly opened 10/16/2014 and the lowest eligible bidder was determined and selected on 10/20/2014. (Please refer to the attached plans and bid opening information)

This project is funded through the Community Preservation Act.

#### Board Action

<i>Motion</i>	<i>Second</i>	<i>In favor</i>	<i>Opposed</i>	<i>Disposition</i>



# Town of Provincetown

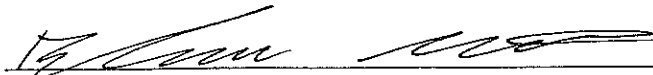
260 Commercial Street, Town Hall  
Judge Welsh Hearing Room

Date: 10/16/2014

Time 12:00pm

## Bids for: 211 BRADFORD STREET BASKETBALL COURT RECONSTRUCTION

NAME AND ADDRESS OF BIDDER	AMOUNT OF BID
GFM P.O. Box 1061 TRURO, MA 02666	79,900
LAWRENCE LYNCH 396 GIFFORD STREET P.O. BOX 913 FALMOUTH, MA 02541	97,300
CHASE LANDSCAPE, INC. T NEW VENTURE DRIVE SOUTH DENNIS, MA 02660	111,800
RJ NARDONE P.O. BOX 262 228 GREAT WESTERN RD. SOUTH DENNIS, MA 02660	104,000

Bids Received By:  10/16/14

Witnessed By:  10/16/14

SECTION 00300

FORM OF GENERAL BID

Bid of GFM ENTERPRISES, INC. (hereinafter called "Bidder")\*

- a corporation, organized and existing under the laws of the state of MASSACHUSETTS
- a partnership
- a joint venture
- an individual  
doing business as \_\_\_\_\_

To the City/Town of PROVINCETOWN, Massachusetts (hereinafter called "Owner").

Gentlemen:

A) The undersigned Bidder, in compliance with your invitation for bids for the project known as **211 Bradford Street Basketball Court Reconstruction**, having examined the plans and specifications and related documents and the site of the proposed work, and being familiar with all of the conditions surrounding the construction of the proposed project including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies, and to construct the project in accordance with the contract documents and the plans and specifications within the time set forth below, and at the prices stated below. These prices are to cover all expenses incurred in performing the work required under the contract documents, of which this bid is a part.

The Bidder hereby agrees to commence work on or before the date to be specified in written "Notice to Proceed" of the Owner, and to fully complete the project within sixty (60) days consecutive calendar days thereafter unless otherwise stated in writing by the Town of Provincetown. The Bidder further agrees to pay as liquidated damages the sum of two-hundred (\$ 200) Dollars for each consecutive calendar day thereafter that the work is not complete as provided in the contract.

\*Specify corporation partnership or individual as applicable.

B) Bidder acknowledges receipt of and this bid includes the following addenda: *N/A*

No. \_\_\_\_\_ Dated: \_\_\_\_\_

No. \_\_\_\_\_ Dated: \_\_\_\_\_

No. \_\_\_\_\_ Dated: \_\_\_\_\_

No. \_\_\_\_\_ Dated: \_\_\_\_\_

C) The Bidder agrees to perform the bid work described in the specifications and shown on the plans for the following contract price: \$ 79,900.00

UNIT PRICES, if used, are as follows: (Attach additional sheets if required) *N/A*

<u>Item</u>	<u>Quantity</u>	<u>Price</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

The above unit prices shall include all labor, materials, bailing, shoring, removal, overhead, profit, insurance, etc., to cover the finished work of the several kinds called for.

The Bidder understands that all bids for this project are subject to the applicable bidding laws of the Commonwealth of Massachusetts, including General Laws Chapter 149 and Chapter 30, Section 39M, as amended.

The Bidder understands that the Owner reserves the right to reject any or all bids and to waive any informalities in the bidding.

The Bidder agrees that this bid shall be good and may not be withdrawn for a period of 30 days, Saturdays, Sundays and legal holidays excluded, after the opening of bids.

Within 10 days of receipt of the written notice of acceptance of this bid, the Bidder will execute the formal Agreement set forth in Section 00500 CONTRACT.

Bid security is attached in the sum of five percent (5%) of the total bid in accordance with the conditions of Section 00100 INSTRUCTIONS TO BIDDERS. The bid security may become the property of the Owner in the event the contract and bond are not executed within the time set forth above.

The selected Contractor shall furnish a payment bond in an amount at least equal to fifty percent (50%) of the contract price in accordance with Section 00620 PAYMENT BOND, and as stipulated in the contract.

The undersigned offers the following information as evidence of his qualifications to perform the work as bid upon according to all the requirements of the plans and specifications.

1. Have been in business under present name for 8 years.
2. The names and addresses of all persons interested in the bid (if made by a partnership or corporation) as principals, are as follows:

GREGORY F. MORRIS  
JENNIFER MORRIS  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(attach supplementary list if necessary)

3. The bidder is requested to state below what work of a similar character to that included in the proposed contract he has done, and give references that will enable the Owner to judge his experience, skill and business standing (add supplementary page if necessary).

Completion Date	Project Name	Contract Amount	Design Engineer	Reference Name	Telephone No.
a.	Boice Ball court	\$ 24,000	N/A	Charlie Benvenuto	978-569-5200
	Installed base ball court @ Boice restaurant Wellfleet MA				
b.	Asphalt Parking lot	\$ 46,500	N/A	Charlie Benvenuto	978-569-5200
	Installed & graded base material for new asphalt parking lot @ Boice restaurant Wellfleet MA				
c.	Tennis Basketball Courts	\$ 115,000	N/A	Steve Duggan	781-354-1493
	Installed tennis basketball courts & play area @ Turo Adventures Turo MA				
d.	Asphalt Parking & Driveway	\$ 29,000	Large Associates	Trevor Meyer	508-237-2655
	Installed & graded base material for new asphalt parking lot & driveway @ Large Associates Office Eastham MA				
e.	None Available Upon Request				
f.					

Bank reference HEIDI CLEMENTS  
(Name)

SANTANDER (SOVEREIGN)  
(Bank)

51 MAIN STREET ORLEANS, MA. 02653  
(Address)

508-240-2000  
(Telephone No.)

Pursuant to G.L. c.62C, §49A, I certify hereby in writing, under penalties of perjury, that the within named Bidder/Contractor has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

The undersigned Bidder hereby certifies under penalties of perjury, as follows: (1) that he/she is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work; (2) that all employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and who shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and (3) that all employees to be employed in the work subject to this bid have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

The undersigned certifies under penalties of perjury that this bid 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 bidder hereby certifies, under pains and penalties of perjury, that the foregoing bid is based upon the payment to laborers to be employed on the project of wages in an amount no less than the applicable prevailing wage rates established for the project by the Massachusetts Department of Labor and Workforce Development. The undersigned bidder agrees to indemnify the awarding authority for, from and against any loss, expense, damages, actions or claims, including any expense incurred in connection with any delay or stoppage of the project work arising out of or as a result of (1) the failure of the said bid to be based upon the payment of the said applicable prevailing wage rates or (2) the failure of the bidder, if selected as the contractor, to pay laborers employed on the project the said applicable prevailing wage rates.

Date: 10.14.14

Respectfully submitted:

By: Grey F Morris  
(Signature)

Grey Morris  
(Type Name of Bidder)

Owner  
(Title)

PO BOX 1061  
(Business Address)

TRURO, MA. 02666  
(City and State)

508-349-7300  
(Telephone Number)



## SECTION 00500

### AGREEMENT

THIS AGREEMENT made this Twenty-third day of October in the year Two Thousand and Fourteen, between GFM Enterprises, with a usual place of business at P.O. Box 1061, Truro, MA, hereinafter called the CONTRACTOR, and the Town of Provincetown, acting by its Chief Procurement Officer, through the Board of Selectmen, with a usual place of business at 260 Commercial Street, Provincetown, MA 02657, 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 the 211 Bradford Street Basketball Court Reconstruction Project, 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 **(\$79, 900) Seventy-nine Thousand Nine-hundred Dollars and Zero cents.**

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 December 31, 2014; unless otherwise stated in writing by the Town of Provincetown.

- 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 bids 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 a project architect-engineer for this project who is Eric L. Larsen, Deputy Director, Provincetown Department of Public Works. Except as otherwise indicated in the Contract Documents, the Architect/Engineer 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 the Architect/Engineer. Except as otherwise provided, the Architect/Engineer shall have all the authority of the Owner set forth in the Contract Documents. In general, the Architect/Engineer 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

Within fifteen (15) days after receipt from the Contractor of a proper and satisfactory periodic estimate requesting payment of the amount due for the preceding month, the Owner shall have fifteen (15) days to make payment for:

- A. The work performed during the preceding month.
- B. The materials not incorporated in the Work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the Contractor has title, or to which a Subcontractor has title and has authorized the Contractor to transfer title to the Owner.
- C. Less the following retention items:

1. A retention based on an estimate of the fair value of the Owner's claims against the Contractor.
  2. A retention for direct payments to Subcontractors, if any, based on demands for same in accordance with the provisions of Section 39F of Chapter 30 of the General Laws.
  3. A retention not exceeding five percent (5%) of the approved amount of the periodic payment.
- D. After the receipt of a periodic estimate requesting final payment and within sixty-five (65) days after the Contractor fully completes the Work, or substantially completes the Work so that the value of the Work remaining to be done is, on the estimate of the Owner, less than 1% of the original Contract Price, or substantially completes the Work and the Owner takes possession or occupancy, whichever occurs first, the Owner shall pay the Contractor the entire balance due on the Contract less:
1. A retention based on an estimate of the fair value of the Owner's claims against the Contractor and of the cost of completing the incomplete and unsatisfactory items of work.
  2. A retention for direct payments to Subcontractors, if any, based on demands of same in accordance with the provisions of Section 39F of Chapter 30 of the General Laws, or based on the record of payments by the Contractor to the Subcontractors under this Contract if such record of payment indicates that the Contractor has not paid Subcontractors as provided in Section 39F of Chapter 30 of the General Laws.

If the Owner fails to make payment as herein provided, there shall be added to each such payment, daily interest at the rate of 3 percentage points above the rediscount rate than charged by the Federal Reserve Bank of Boston, commencing on the first day after said payment is due, and continuing until the payment is delivered or mailed to the Contractor; provided that no interest shall be due, in any event, on the amount of a periodic estimate for final payment until fifteen (15) days after receipt of such a periodic estimate by the Owner as provided in the first paragraph of this Article. The Contractor agrees to pay to each subcontractor a portion of any such interest paid in accordance with the amount due each subcontractor.

The Owner may make changes in any periodic estimate submitted by the Contractor and the payment due on said periodic estimate shall be computed in accordance with the changes so made, and such changes and any requirements for a corrected periodic estimate shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided further, that the Owner may, within seven (7) days after receipt, return to the Contractor for correction, any periodic estimate which is not in acceptable form or which contains computations not arithmetically correct, and in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic

estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter.

- E. 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 bid 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 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, bond, profit and any other general expenses.

- F. 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.

The Contractor hereby agrees that the Contractor shall have no claim for damages of any kind against the Town on account of any delay in the commencement or performance of the work and/or any hindrance, delay or suspension of any portion of the work including, but not limited to, any claims or damages on account of having to perform out of sequence work, claims for damages on account of loss of production or other interference with the work whether such delay is caused by the Town or otherwise, except as and to the extent expressly provided under G.L. c.30, §39O in the case of written orders by the Town. The Contractor acknowledges that the Contractor's sole remedy for any such claim will be an extension of time as provided herein.



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 Bid
- Instructions to Bidders
- This Contract Form
- Bid Form
- Labor & Materials Payment Bond
- Non-Collusion Certificate
- Tax Compliance Certificate
- Clerk's Certificate of Corporate Vote
- Certificate of Insurance
- General Conditions
- Supplementary General Conditions
- General Requirements
- Specifications and Addenda
- Contract Drawings
- 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 workmen's 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; and
- .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.
- .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 Specified in the Supplemental Conditions.

Except for Workmen's Compensation, all liability coverage shall name the Town 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. 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.

[Remainder of page intentionally blank.]

AGREED:

**TOWN OF PROVINCETOWN, MASSACHUSETTS**  
(Owner)

By: Provincetown Board of Selectmen

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Name)

**CONTRACTOR:** GFM Enterprises

By \_\_\_\_\_

\_\_\_\_\_  
(Name)

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

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City and State)

**CERTIFICATIONS REQUIRED BY LAW  
FOR PUBLIC CONSTRUCTION CONTRACTS**

**You must COMPLETE and SIGN the following certifications. You must also print, at the bottom of this page, the name of the contractor for whom these certifications are submitted.**

**TAX COMPLIANCE**

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, the undersigned, authorized signatory for the below named contractor, do hereby certify under the pains and penalties of perjury that said contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

---

**NON-COLLUSION**

The undersigned certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

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**PUBLIC CONTRACTOR DEBARMENT**

The undersigned certifies under penalty of perjury that the below named contractor is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

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**OSHA TRAINING**

Pursuant to G.L. c. 30, §39S, the Contractor hereby certifies under penalties of perjury as follows:

- (1) Contractor is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work;
- (2) All employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and they shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and
- (3) All employees to be employed in the work subject to this contract have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

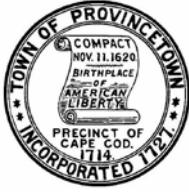
**COMPLETE AND SIGN BELOW:**

\_\_\_\_\_  
Authorized Person's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name & Title of Signatory

\_\_\_\_\_  
Name of Contractor



Provincetown Board of Selectmen  
**AGENDA ACTION REQUEST**  
Thursday, October 23, 2014

5

## OTHER

Requested by: Acting Town Manager David Gardner

Action Sought: Discussion

### Proposed Motion(s)

Discussion dependent.

Votes may be taken.

### Additional Information

### Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>



## EXECUTIVE SESSION MOTION

### MGL c30A Sec. 21 (a) Clause 7 and 6

Requested by: Board of Selectmen

Action Sought: Discussion

#### Proposed Motion(s)

**MOVE that the Board of Selectmen vote to go into Executive Session pursuant to MGL c30A Section 21 (a) Clause 7 and 6 for the purpose of:**

**Clause 7 – Clause 7 - To consider release of information protected by the attorney/client privilege MGL c214 Section 1B and/or MGL c4 Section 7 Clause 26.**

**Clause 6 – Clause 6 - To consider the purchase, exchange, lease or value of real estate, if the Chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body**

**and not to convene in open session thereafter.**

**Roll Call Vote: Cheryl Andrews:  
Raphael Richter:  
Tom Donegan:  
Erik Yingling:  
Bobby Anthony:**

#### Additional Information

#### Board Action

<i>Motion</i>	<i>Second</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Disposition</i>