

HILL ORCHARD

REQUEST FOR PROPOSALS (RFP)

TO MANAGE AND OPERATE

**THE HILL ORCHARD AND HILL ORCHARD FARM STAND AND PICK YOUR
OWN APPLES ACTIVITY**

OWNED BY TOWN OF WESTFORD

DECEMBER, 2014

**REQUEST FOR PROPOSALS
TO MANAGE A FRUIT ORCHARD AND OPERATE A FARM STAND AND
PICK YOUR OWN APPLES OPERATION
OWNED BY TOWN OF WESTFORD**

The Town of Westford, Massachusetts invites proposals to manage and harvest approximately twenty (20) acres of fruit orchard and to operate an associated farm stand and pick your own apples activity. The orchard is located off of Chamberlin and Hunt Roads and is comprised of approximately 1500 trees consisting of apple, peach, pear, plum, nectarine and apricot varieties.

It is the desire of the Town to establish an agreement that provides for the proper maintenance of the orchard, the operation of the farm stand, and pick your own apples activity and for the preservation of the historical and agricultural aesthetics of the land. The term of the agreement will be three years, from March 31, 2015 through March 30, 2018.

The request for proposals (RFP) may be obtained at the Conservation Commission Office, Town Hall, 55 Main Street, Westford, MA 01886 (Telephone: 978-692-5524) beginning December 17, 2014 until noon on January 20, 2015.

The Town reserves the right to waive informalities in the proposals, and to reject any proposal, or all proposals, if it is determined that such rejection is in the best interest of the Town. Any and all questions must be made in writing and be hand delivered or mailed to the Conservation Commission at the address listed above or faxed to 978-399-2732, and in any case received at the Commission's office no later than Noon on Wednesday, January 7, 2015. If and when deemed necessary or appropriate by the Town, the Town will respond to written questions in the form of written addenda to the RFP, receipt of which addenda must be acknowledged by offerors where indicated in the Form of Price Proposal that is attached to the RFP. Offerors may rely only on answers (to questions) that have been issued by the Town in the form of written addenda. Proposals will be evaluated by the members of the Conservation Commission, the Director of Land Use Management and the Conservation/Resource Planner. The Town Manager will make the ultimate decision to award the contract for managing the orchard and operating the farm stand and pick your own apples operation. Sealed bids and proposals must be submitted no later than 12:00 Noon on Tuesday, January 20, 2015 to the Conservation Commission, Town Hall, 55 Main Street, Westford, Massachusetts 01886. The non-price and price proposals will be opened simultaneously on January 20, 2015 at 12:30 P.M. at the Main Meeting Room of Town Hall, 55 Main St., Westford, MA

REQUEST FOR PROPOSALS

TO MANAGE A FRUIT ORCHARD AND OPERATE A FARM STAND AND PICK YOUR OWN APPLES ACTIVITY OWNED BY TOWN OF WESTFORD

GENERAL INSTRUCTIONS AND SPECIFICATIONS

The Town of Westford Conservation Commission is requesting proposals to manage and harvest approximately twenty (20) acres of fruit orchard known as the Hill Orchard off Chamberlin and Hunt Roads, (Town of Westford Assessors' Map 33, Parcels 6, 7.3 and 12, Deed recorded at Middlesex North District Registry of Deeds at Book 10697 Page 252) and to operate an associated Farm Stand located on Hunt Road and to manage a seasonal pick your own apples activity.

The successful proposer (the "manager") will be responsible to carry out all the functions pertaining to the operation, care, maintenance, and harvesting of the fruit orchard for three years commencing March 31, 2015 and ending March 30, 2018. The orchard, and farm stand and associated equipment must be kept in good working order.

The manager shall have the use of the following machines and equipment that are located on the Town property and are specific to the Hill Orchard:

- A. Perfect Rotary Mower
- B. Agway Herbicide Sprayer
- C. Phil Brown Welding, Inc. Brush Pusher
- D. Miscellaneous boxes, buckets, ladders, and other minor equipment

The manager shall ensure that said equipment is in good running/working order.

The manager must provide the remainder of all other equipment necessary for orchard maintenance activities, including but not necessarily limited to a tractor and pesticide sprayer and shall be responsible for the expense of maintenance and any repairs of Town equipment.

The manager shall be responsible for all utility costs (including water, electric and telephone) and crop insurance. The manager is expected to keep the orchard in good working condition by pruning, mowing and insect, fungus, plant and animal pest control through an integrated pest management control program.

The successful bidder shall execute a document substantially similar to the "Agreement to Maintain the Hill Orchard Located on Chamberlin and Hunt Roads," attached hereto. The Agreement will set forth the terms of the manager's responsibilities, maintenance obligations, the insurance requirements and other terms related to the operation of the orchard and farm stand with a seasonal pick your own apples activity. The Town reserves the right to accept or reject any proposal, in whole or in part, and to alter or waive conditions by these specifications that may be in the best interest of the Town.

Attached are the two separate proposal forms (Form A – Non-Price and Form B – Price). **Both forms, non-price and price are to be submitted no later than noon on Tuesday, January 20, 2015,** to the Conservation Commission, Town Hall, 55 Main Street, Westford, MA 01886 and **clearly** marked "**Non-Price Proposal – Hill Orchard**" **and** "**Price Proposal – Hill Orchard**" **in separate envelopes.**

The non-price proposals will be evaluated first by the members of the Conservation Commission, the Director of Land Use Management and

Conservation/Resource Planner using the information listed in the non-price proposal form. A list will be developed of all those proposals that meet the minimum criteria. Those that meet the minimum criteria will then be evaluated using the comparative criteria. The Town, acting through the Town Manager, will award the contract to the bidder based on their experience in managing fruit orchards and farm stands; amount of orchard maintenance equipment possessed; pesticide application licensing and experience in operation of pesticide application equipment; experience growing fruit on property owned by third parties and operation of a farm stand. The members of the Conservation Commission, Director of Land Use Management and Conservation/Resource Planner shall assign a single rating for each proposal and shall make a recommendation of award to the Town Manager, who shall award the contract, if at all, to the “responsive and responsible proposer” whose proposal is deemed the most advantageous, taking into consideration the recommendation of the members of the Conservation Commission, the Director of Land Use Management and Conservation/Resource Planner, and the proposed contract price in the proposal.

The successful bidder will also be required to submit the following before signing the management agreement, draft copies of which are attached for review: 1. Certificate of Non-Collusion (Attachment); 2. Proof of Maintenance of Applicable Insurance Coverage.

The Town Manager is the awarding authority for this contract.

SAMPLE

AGREEMENT TO MAINTAIN THE HILL ORCHARD LOCATED ON CHAMBERLIN AND HUNT ROADS AND OPERATE THE ASSOCIATED FARM STAND WITH A SEASONAL PICK YOUR OWN APPLES OPERATION

AGREEMENT made as of this (Date) by and between the TOWN OF WESTFORD, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, Westford, Middlesex County, Massachusetts 01886, hereinafter referred to as "TOWN" and ("Name"), hereinafter referred to as "the Manager."

WHEREAS, the Town is the owner of two certain parcels of land located on Chamberlin and Hunt Roads consisting of approximately twenty (20) acres, upon which are located a farm stand and storage shed (hereinafter referred to as the "Town property");

WHEREAS, a portion of the Town property has been maintained as an apple and other varieties of fruit orchard; and there has been a farm stand and pick your own apples activity maintained on the Town property;

WHEREAS, the Town is desirous of having a fruit orchard and farm stand and pick your own apples activity maintained on the Town property;

WHEREAS, the use of the Town property for a fruit orchard and farm stand will greatly enhance the continued value of the Town property;

WHEREAS, the Manager is experienced in the business of developing, maintaining, and managing fruit orchards, operating farm stands and pick your own apple activities; and

WHEREAS, the Manager is desirous of maintaining a fruit orchard, farm stand and pick your own apple activity on the Town property and has submitted a proposal to do so which has been accepted by the Town.

NOW THEREFORE, it is agreed by and between the parties hereto as follows:

1. The Town agrees to allow the Manager to use, for the maintenance of a fruit orchard and to run a fruit farm business including a farm stand sale operation

and “pick your own” apples activity, those portions of the Town property, including onsite structures, which in the past have been used for these purposes (see Exhibit A). The Manager, with the approval of the Westford Conservation Commission, may also use portions of the Town property not currently forested or occupied with fruit trees for the establishment of other fruit crops. This use is not exclusive to the Manager; said Town property may also be used by the citizens of Westford at the Town's sole discretion; said Town property may also be used in accordance with all Public Access Easements that may include but are not limited to a passive recreational trail system and associated parking on site. The Manager shall have the right to restrict and control access to the orchard and other fruit cultivation areas of the Town property during that period when the fruit is ripe and harvestable, in order to protect the fruit from theft, unauthorized picking, or disturbance.

2. The Manager agrees to maintain the fruit orchard on the portion of Town property that is currently established as orchard and shall perform pesticide spraying, mowing, and pruning as shall be necessary during the term of this Agreement to maintain the fruit orchard in a healthy, productive state. The Manager agrees to institute an integrated pest management system and that all applications of pesticides and herbicides shall be done in accordance with the Massachusetts Pesticide Control Act. cite. The Manager agrees to operate the farm stand and a “pick your own” apples activity. The Manager shall cooperate with the Town in the promotion of community events at the property and community participation in the agricultural operation of the property.

3. INSURANCE

(a) The Manager, at its own expense, shall procure and maintain during the Term of this Agreement and for one year following, policies of insurance to include the following coverage: (a) Workers' Compensation Insurance as required by law, including Employers Liability Part B, (b) Employers Liability of: Bodily Injury by Accident: \$1,000,000 Each accident; Bodily Injury by Disease: \$1,000,000 Contract Limit; Bodily Injury by Disease: \$1,000,000 Each Employee (c) Broad Form General Liability written on a per occurrence basis of not less than \$1,000,000 per occurrence and \$3,000,000 Annual Aggregate Limit, (d) Comprehensive Automobile Liability including coverage for owned, hired, non-owned, leased and borrowed vehicles with a combined single limit of \$1,000,000 bodily injury and property damage per accident, (e) umbrella coverage of at least \$2,000,000 per occurrence and \$2,000,000 in the aggregate.

- (b) The Town of Westford shall be named as additional insured as its interest may appear under the aforementioned policies. All coverage listed above shall apply on a primary and non-contributory basis and include a waiver of

subrogation in favor of the Town of Westford. The Manager shall furnish Westford with a Certificate(s) of Insurance evidencing such coverage and such Certificate(s) is to provide 30 days written notice to the Town prior to the effective date of any modification or termination of coverage. Nothing in this Section shall be deemed to limit the Manager's liability to the amounts stated above or to limit any coverage of the Manager's insurance policies.

(c) Insurance certificates and notices of modification or termination that this Agreement requires to be sent to The Town shall clearly state the Manager's name and shall be sent to:

Town of Westford
55 Main Street
Westford, MA 01866
Attn: Conservation Commission and

Town Manager
Town of Westford
55 Main Street
Westford, MA 01886

4. The Manager shall not assign this agreement.
5. The parties agree that the Manager shall use and occupy the Town property under this Agreement but that no tenancy-at-will or any other tenancy shall be created. This agreement shall not be considered a lease or any other disposition of property.
6. The Manager shall maintain the Town property in a safe condition, shall utilize sound land management practice, and shall conform to all Local, State, and Federal laws, rules, and regulations
7. The Manager shall not hold or attempt to hold the Town liable or responsible for, and hereby forever releases the Town from, any and all claims, actions, rights of action and causes of action, damages, costs, expenses, attorneys' fees that may arise in the future, directly or indirectly, which Manager may now or hereafter have or hereafter may acquire, from known and unknown personal injuries or property damage related to the entry upon and/or use and maintenance of the Town property,

The Manager shall defend, indemnify, and hold harmless the Town from any and all liability, loss, damage, costs, expenses (including, without limitation,

reasonable attorneys' fees and expenses), causes of action, suits, claims, demands or judgments of any nature whatsoever, in law and equity, which are or may be brought against the Town arising from or related to the entry upon and/or use and maintenance of the Town property.

8. The Manager shall be responsible for the cost of all utility costs associated with use of the existing farm stand, including the cold storage room, said utilities to include but not necessarily be limited to electricity or natural gas, water and telephone service.
9. The Town shall have the responsibility for maintenance, repairs, and improvements of the structures, equipment, (except as noted below) and property in general, as well as the compressor/cooler for the cold storage room. The Manager may arrange for such maintenance activities and associated expenses only following notice to and approval by the Town's Conservation Commission or the Conservation Commission's agent.
10. The Manager shall have the use of the following machines and equipment that are located on the Town property and are specific to the Hill Orchard:
 - Perfect Rotary Mower
 - Agway Herbicide Sprayer
 - Phil Brown Welding, Inc. Brush Pusher
 - Miscellaneous boxes, buckets, ladders, and other minor equipment

The Manager shall ensure that said equipment is kept in good running/working order and shall be responsible for the cost of any repairs including parts for the aforementioned equipment.

The Manager must provide the remainder of all other equipment necessary for orchard maintenance activities, including but not necessarily limited to a tractor and pesticide sprayer and be responsible for maintenance and any repairs of Manager equipment. The Manager must also provide any additional equipment necessary for operation of the farm stand.

11. To enable the Manager to carry out the provisions of this Agreement the Manager shall have the right in its sole discretion to control and sell the fruit harvested from the Town property and to operate the associated farm stand to market said fruit and other produce and merchandise as appropriate and customary for a farm stand as defined under Massachusetts statutes.

12. The farm stand shall be opened on an annual basis by August 1 of each year and kept open a minimum of five days a week until the day before Thanksgiving.

13. The term of this Agreement shall commence on March 31, 2015 and shall terminate on March 30, 2018, with annual compensation of \$_____.

14. This Agreement is executed under and is to be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts.

15. The Manager shall provide the above-described services under the direction of the Westford Conservation Commission and/or its agent and shall provide the Commission with any reports when requested by the Commission.

16. The Manager shall perform this service as an independent contractor in accordance with his own methods; the terms of this agreement; and all applicable bylaws, contracts, statutes, laws and regulations. For all purposes, including but not limited to Mass. Gen. Laws c. 258, the so-called "Massachusetts Tort Claims Act," The Manager and its employees and agents who perform services under this agreement shall be considered to be independent contractors and not employees of the Town.

17. The Manager shall, at the expiration or other termination of this Agreement, remove all Manager's goods and effects from the Town property including its equipment and other trade fixtures. In the event of the Manager's failure to remove any of the Manager's property from the Town property, the Town is hereby authorized, without liability to the Manager for loss or damage thereto, and at the sole risk of the Manager, to remove and store any of the property at the Manager's expense, or to retain same under the Town's control, or sell at public or private sale, without notice, any or all of the property and to apply the net proceeds of such sale to the payment of any sum due hereunder, or to destroy such property.

18. The Manager certifies, under the penalties of perjury, as follows: (1) the Manager is qualified to perform this Agreement and possesses, or shall obtain, all requisite licenses and permits to complete performance under this

Agreement; (2) the Manager is in compliance with all federal and state tax laws, including M.G.L. c. 62C, sec. 49A (state taxes); (3) the Manager will comply with all laws and regulations relating to payments to the Employment Security System and required workers' compensation insurance policies pursuant to M.G.L. c. 151A, sec. 19A (employment security) and M.G.L. 152 (worker's compensation); (4) the Manager will carry professional and personal liability insurance sufficient to cover its performance under this Agreement; (5) the Manager will comply with all relevant prevailing wage rate and employment laws; (6) the Manager is in compliance with the provisions of Section 7 of Chapter 521 of the Acts of 1990, as amended by Chapter 329 of the Acts of 1991 (child care assistance offered by employers having fifty or more full time employees), and 102 CMR 12.00 (minimum standards for child care); (7) the Manager has filed all required annual reports and/or certificates with the Secretary of State and the Attorney General's Office pursuant to M.G.L. c. 156B, sec. 109 (business corporations), c. 180, sec. 26A (non-profit corporations), c. 181, sec. 4 (foreign corporations) and c. 12, sec. 8F (public charities), whichever is applicable; (8) the Manager is not currently debarred or suspended by the federal government or the state under any law or regulation, including Executive Order 147 (governor's code for suspension and debarment of public contractors), M.G.L. c. 29, sec. 29F (debarment from public contracting); (9) the Manager will comply with Executive Orders 130 (prohibiting participation in international boycotts), 346 (prohibiting hiring of state employees on privatization projects), M.G.L. c. 268A (conflict of interest law governing state employees), and M.G.L. c. 7, sec. 22C (concerning companies with offices or other facilities in Northern Ireland).

19. In the event of the failure of the Manager to comply with any of the requirements set forth in this agreement, notification of such non-compliance shall be given to the Manager in writing by the Town. Failure of the Manager to remedy any breach of the terms and conditions of this Agreement within twenty-one (21) days after receipt of such notice shall be grounds for termination of the same by the Town. In the event that the Town elects to terminate this Agreement pursuant to this paragraph 19., notice of such termination shall be given to the Manager in writing.
20. Any notice from the Town to the Manager relating to this Agreement shall be deemed duly served if mailed, registered or certified, mail return receipt requested, postage prepaid, addressed to the Manager at (Address). Any notice from the Manager to the Town relating to this Agreement shall be deemed served if mailed to the Town by registered or certified mail, return receipt requested, postage prepaid.

21. In the event that any provision of this Agreement shall be determined to be in violation of any law, such provision for all intents and purposes shall be deemed eliminated from this Agreement and all other provisions shall survive for the benefit of the parties hereto.

22. Notwithstanding the provision of paragraph 13 above, this agreement may be terminated by either party by giving thirty (30) days written notice during the month of December in any year of the contract period.

23. This instrument contains the entire agreement between the parties hereto with respect to the subject matter hereof and may be changed or modified only by written instrument duly executed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this agreement under seal on the date first written above.

For the Manager

TOWN OF WESTFORD:

Jodi Ross, Town Manager
Duly Authorized

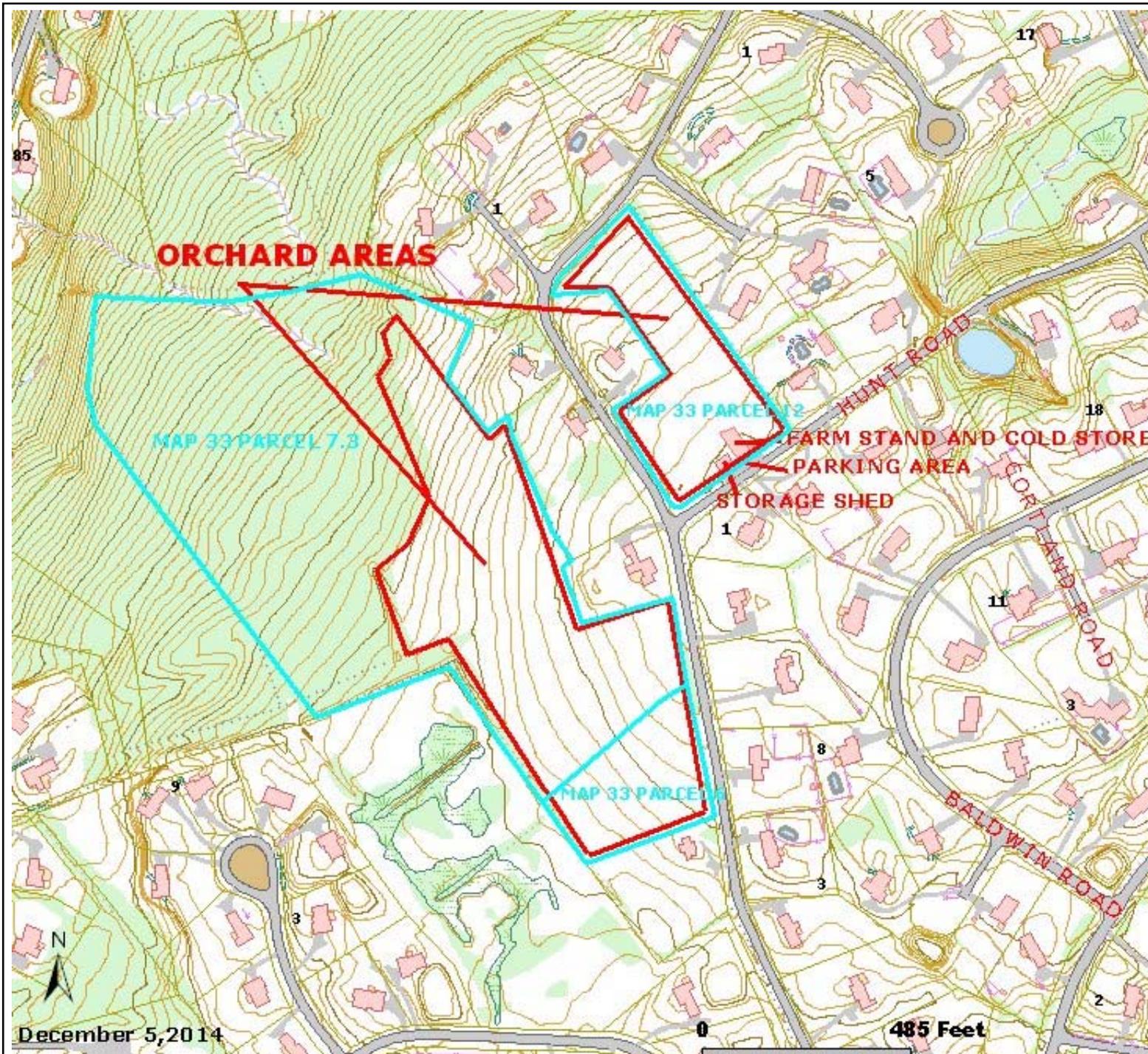


Town of Westford, MA

GIS Map Print

EXHIBIT A - Maintenance Agreement for Hill Orchard, Westford MA, Showing Location of Orchard Areas, Farm Stand and Cold Store Building, Storage Shed and Parking Area as of December, 2014

Overview Map



Disclaimer

Town of Westford, MA makes no warranty or representation as to the accuracy, timeliness or completeness of any of the data. The Town of Westford, MA, shall have no liability for the data or lack thereof, or any decision made or action taken or not

Legend

- Address Numbers
- StreetNames
-  Parcels
- Parcels Clear
- Parcels Buffer
-  Main Buildings
-  Out Buildings
-  Driveway
-  Parking Area
-  Decks
-  Pool
-  Bridges
-  Fences
-  Wall
-  Retaining Wall
-  RailRoad Centerline

RoadSurface

Layer

-  DIRT ROAD
-  PAVED ROAD
-  RiversStreams

**FORM A
NON-PRICE PROPOSAL
HILL ORCHARD**

Submit this form in a **separate envelope** clearly marked on the outside as “**Non-Price Proposal – HILL ORCHARD**”
Use additional paper as necessary

Name of Bidder: _____

Firm: _____

Address: _____

Town: _____ State: _____ Zip: _____

Telephone: _____

Minimum Evaluation Criteria

The bidder must meet and complete Criteria #1, 2, 3 and 4 to be considered.

1. Experience of Firm Managing Fruit Orchards
2. Experience of Firm Managing a Farm Stand
3. Insurance (see below)
4. Outstanding Financial Obligations to Town of Westford – None Outstanding

Comparative Evaluation Criteria

Each of the following criteria will be evaluated as: very advantageous; advantageous or not-advantageous to the Town.

5. Experience Managing Fruit Orchards
6. Possession of Fruit Orchard Farming Equipment,
7. Experience and licensing of pesticide application
8. Experience managing fruit orchards on other owners' lands
9. Experience operating a farm stand

MINIMUM CRITERIA

Criteria #1 – Experience Managing Fruit Orchards

A minimum of 5 years' experience managing fruit orchards is required. Do you have 5 years experience managing fruit orchards?

_____ Yes _____ No

Criteria #2 – Experience Managing a Farm Stand

A minimum of 5 years' experience managing a farm stand is required. Do you have 5 years experience managing a farm stand?

_____ Yes _____ No

Criteria #3 – Insurance

I shall provide the Town with certificate(s) of insurance, naming the Town as an additional insured, as appropriate, as follows for any and all claims that may arise for any reason out of my use of the Town property: (a) Workers' Compensation Insurance as required by law, including Employers Liability Part B, (b) Employers Liability of Bodily Injury by Accident: \$1,000,000 Each accident; Bodily Injury by Disease: \$1,000,000 Contract Limit; Bodily Injury by Disease: \$1,000,000 Each Employee (c) Broad Form General Liability written on a per occurrence basis of not less than \$1,000,000 per occurrence and \$3,000,000 Annual Aggregate Limit, (d) Comprehensive Automobile Liability including coverage for owned, hired, non-owned, leased and borrowed vehicles with a combined single limit of \$1,000,000 bodily injury and property damage per occurrence, (e) umbrella coverage of at least \$2,000,000 per occurrence and \$2,000,000 in the aggregate.

_____ Yes _____ No

Criteria #4 – Outstanding Financial Obligations

I have no outstanding overdue obligations (fees, taxes, rent), owed to the Town of Westford.

_____ Yes _____ No

Signature _____

COMPARATIVE CRITERIA
(Use Additional Paper, if necessary)

Criteria #5 – Experience Managing Fruit Orchards

List any experience you have growing and managing fruit orchards. Give name, address and acreage of orchard, address, and telephone number of landowner. Please describe the varieties of fruit managed. Provide proof such as deed, contract, tax bill, or crop receipts.

- 5 years to 20 years = Advantageous
- 20 years or more = Very Advantageous

Criteria #6 – Fruit Orchard Farming Equipment Owned or Leased

List any equipment you own or lease for at least a three-year period that would be used for managing the orchard.

- No equipment = Not Advantageous
- Tractor and pesticide sprayer = Advantageous
- Tractor and pesticide sprayer and hay wagon/cart = Very advantageous

Criteria #7 – Experience and licensing for pesticide application

List experience and licensing for pesticide application in Massachusetts

- Less than 5 years licensing and experience of pesticide application in Massachusetts = Not Advantageous
- Licensing and 5 -10 years' experience of pesticide application in Massachusetts = Advantageous
- Licensing and 10+ years experience of pesticide application in Massachusetts = Very Advantageous

Criteria #8 – Experience Managing Fruit Orchards Owned by Someone Else

List any experience you have managing fruit orchards upon property owned by others.. Give name, address and acreage of orchard, address, and telephone number of landowner. Provide proof such as deed, lease, contract, tax bill, or crop receipts.

- Five (5) to Ten (10) years = Advantageous
- Ten (10) or more years = Very Advantageous

Criteria #9 – Experience Operating a Farm Stand

Describe experience operating a farm stand, including the name, address, nature and activities conducted at the farm stand.

- Five (5) to Twenty (20) years = Advantageous;
- Twenty (20) or more years = Very Advantageous

I understand that this non-price proposal information will be evaluated by the Conservation Commission Chair and the Conservation/Resource Planner and separate from the price proposal.

Signature _____

Print Name _____

Date _____

**FORM B - PRICE PROPOSAL
HILL ORCHARD**

Submit this form and attachments in a **separate envelope** clearly marked on the outside as **"Price Proposal Hill Orchard"**

Offeror acknowledges receipt of the following addenda:

Name of Bidder: _____

Name of Firm: _____

Address: _____

Town: _____

Telephone: _____

Bidder shall provide orchard maintenance activities, including pruning, pest control, replanting and harvesting, as well as operation of the farm stand and a seasonal pick your own apples operation, each year in return for annual consideration as follows:

_____ per year

Signature

Print Name

Date

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under the pains and penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the work "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals

Signature

Title:

Name of Business

Date