

Town of Westford, Massachusetts

Request for Qualifications

Designer Services for Historic Rehabilitation of the Roudenbush Community Center Building Located at 65 Main Street



A. Purpose and Background:

The Town Manager's office on behalf of the Board of Selectmen, is requesting proposals for design services for the historic rehabilitation of the former Westford Academy Building, now the Roudenbush Community Center, located at 65 Main Street in Westford, Massachusetts. The selected designer will develop construction plans and specifications in keeping with the Secretary of the Interior's Standards for the Treatment of Historic Structures for the proposed improvements identified in the attached Appendix A.

The Roudenbush Community Center is a four story, Romanesque Revival structure, located in the Westford Center Historic District. The original building was constructed in 1897 with a gymnasium added in 1928. The architect for the building was H. M. Frances (1836-1908) of Fitchburg, and the contractor for the building was William C. Edwards. The building contains approximately 16,000 square feet of floor area. The building was the second Westford Academy building, and was operated as a school until 1973. It was used by the YWCA for

two years. Since 1975, it has been the Roudenbush Community Center, named for William C. Roudenbush to honor the man who served as principal in the building for 25 years, from 1912-1937. The building is currently leased from the Town by The Roudenbush Community Center, Inc., a private non-profit corporation that uses the building for before and after school childcare, all-day childcare, and day and evening community programs for all ages.

B. Scope of Services:

A Planning Study for the Community Center was completed by Gienapp Design in September 2014. The study recommends exterior repairs to the building including a new slate roof, interior accessibility changes including the addition of a five stop elevator, and mechanical systems improvements to meet current building codes. The Planning Study estimates construction costs including design contingency and escalation for the Proposed Scope of Work included as Appendix A to be \$4.02M.

The design firm selected will be responsible for working with the Town to develop construction plans, specifications, and cost estimates, in anticipation of a March 2016 Town Meeting vote to authorize final design and construction funding for the renovation project.

B.1 Contract Phasing and Design Fees:

- B.1.1.** The design contract will have three separate phases. The design fee for Phase One shall not exceed \$135,000. The initial contract is for Phase One only. Phases Two and Three, if funded, will be subject to a contract amendment. The total design fee, inclusive of all three phases, is not to exceed \$400,000.
- B.1.2.** Phase One will include schematic design, design development and a refined construction estimate to set a project budget. Phase one work shall be complete by June 15, 2015 to allow for possible grant applications. The designer shall assist the Town with grant applications.
- B.1.3.** Phase Two, if approved and funded by the Town, will include full construction documents and bidding administration. The bidding process shall be completed by January 7, 2016.
- B.1.4.** Phase Three, if approved and funded by the Town, will include construction administration and management to complete the building renovation project in a timely manner.

B.2. Assessment Activities:

- B.2.1.** Conduct an on-site survey of the building and review all relevant documentation provided by the town of work previously performed on the buildings
- B.2.2.** Meet with the appropriate town officials to understand the project goals.
- B.2.3.** Review the following existing reports and assessments that are available for download from the town website:

http://westfordma.gov/Pages/Government/WestfordMA_procurement/procurements/2015/Related Docs/

- Planning Study Roudenbush Community Center - September 5, 2014
- Historic Buildings Condition Assessment May – 2013
- Feasibility Study and Investigation – May 15, 2002
- Roudenbush Community Center Existing Conditions Floor Plans – August 22, 2012
- Roof Replacement Roudenbush Community Center October 20, 1999
- RCC 1928 Renovation and Addition Plans with HVAC Plans

B.3. Project Deliverables:

- B.3.1.** Provide construction ready plans and specifications for all improvements listed in Appendix A. All plans and specifications must be made in keeping with the Secretary of the Interior's Standards for the Treatment of Historic Structures; in appropriate fashion to allow the listed improvements to be made utilizing public funding which requires construction to be put out for public bid in compliance with appropriate state legislation (MGL Chapters 7C and 149).
- B.3.2.** In developing cost estimates consider the relocation/removal and installation of engineering systems (electrical, HVAC, etc.) and utilities (water supply, septic, phone, etc.) and necessary structural repairs.
- B.3.3.** All documentation and plans shall be presented in draft form for comment and approval by the town prior to being finalized.
- B.3.4.** All final documentation shall be printed and bound with supporting materials. Three copies of such printed materials (and one additional one loose to be used for additional copies if needed) and one electronic copy in adobe pdf format shall be submitted.

B.4. Attendance Requirements:

- B.4.1.** Meet with the appropriate town officials to discuss project goals.
- B.4.2.** Meet with building tenants to gain an understanding of programming and space needs.
- B.4.3.** Attend a minimum of two Historical Commission meetings.
- B.4.4.** Attend a minimum of four additional public meetings as required.

C. The Proposal Submission Package

- C.1.** The proposal package shall consist of a completed copy of the Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction, with attachments including the additional, project-specific information requested below. The form is available on the Mass.gov website accessed using the following link: <http://www.mass.gov/anf/docs/dcam/dlforms/dsb/13-2-5-munic-app.pdf>
- C.2. Each proposal shall describe the following with the maximum length indicated:**
 - C.2.1.** Understanding of the Project. Description of the issues and the work plan that would be followed by the proposer in meeting the specified services (no more than four pages).
 - C.2.2.** A proposed timeline for completing the project (no more than one page).
 - C.2.3.** Proposer shall describe in detail the approach that will be used to gather existing information and institutional knowledge from town officials (no more than two pages).
 - C.2.4.** Proposer shall provide a client list with names, addresses, telephone numbers and e-mail addresses (if available), especially for clients for whom the proposer has performed similar services within the past five (5) years.
 - C.2.5.** Any other information deemed relevant to the project which the proposer believes will further the competitiveness of the proposal.
 - C.2.6.** Proposer shall complete Certificate of Tax Compliance from the Department of Revenue, Department of Taxation as to all taxes paid in the Commonwealth of Massachusetts.
 - C.2.7.** Proposer must complete Certificate of Non-Collusion and a Statement on MGL and Building Code. (examples attached)
 - C.2.8.** The successful respondent will be required to indemnify, hold harmless, and defend the town against any and all claims, including attorney's fees, for all damages to life and property that may

occur, by the contractor, any subcontractors, or any others under his/her control or influence. Proof of insurance is required indicating coverage for General Liability, Automobile Liability, and Professional Liability, each in the amount of \$1,000,000 minimum, and possess the statutory Workers Compensation insurance requirement per the Commonwealth of Massachusetts, with the Town of Westford named as additional insured.

C.2.9. All proposals must be unconditional and shall be deemed to be public records and will become the property of the Town of Westford.

C.2.10. The selected firm shall be expected to comply with all applicable state and federal laws in the performance of services.

C.2.11. The selection of the successful firm shall be made without regard to race, color, sex, age, religion, political affiliation, or national origin. Women and minority owned businesses are encouraged to apply.

C.2.12. Purchases of goods and services by the Town of Westford are exempt from the payment of federal and Massachusetts state taxes.

D. The Evaluation of Proposals

D.1. Proposals will be evaluated by members of the designer selection committee. Evaluations will be based on the comparative evaluation criteria below. Proposals will be evaluated in accordance with the provisions of Chapter 7C, Sections 44 through 58 of the Massachusetts General Laws.

D.2. The objective in reviewing proposals is to select a qualified designer to complete the development of plans and specifications for use in bidding the construction of the proposed improvements, and also for applying for funding from the organization such as the Community Preservation Committee, Massachusetts Historical Commission, Massachusetts Cultural Facilities Fund, and other related organizations.

D.3. Any proposal that fails to include all of the information specified below in D.5 and does not follow the proposal format and length limitation instructions above may be rejected as unresponsive by the evaluators. Any proposer may be required to discuss or clarify its proposal with the evaluation committee. The committee may determine that any unresponsiveness is not substantial and can be clarified. In such cases, the committee may allow the proposer to make minor corrections, and apply the change in the evaluation.

D.4. The town reserves the right to request additional information from any proposer. The selection committee may elect to interview proposers during the selection process and to request presentations, including demonstrations/representations of products and services.

D.5. Minimum Criteria: Each proposal will be reviewed against the following Minimum Criteria. Any proposal that fails to meet the Minimum Criteria will be rejected. Each proposal determined by the evaluators to meet the Minimum Criteria will be ranked by the evaluators according to the comparative evaluation criteria described herein, and the evaluators will determine, in writing, an overall subjective rating for each proposal. The Minimum Criteria are:

D.5.1. The proposer must possess current license and registration by the Commonwealth of Massachusetts as an architect or professional engineer, with a minimum of 5 years of experience in historic preservation projects. Evidence of the registration and licensing must be provided in the proposal.

D.5.2. The proposer must have managed or designed at least 3 historic public building rehabilitation projects that were procured with public funds under Mass General Law.

- D.5.3.** The proposer must have completed 1 design project that was used to apply for MPPF funding.
- D.5.4.** The proposer must have completed 1 design project on a building with a slate roof.
- D.5.5.** The proposer must have completed at least 5 years’ experience working with Secretary of the Interior’s Standards for the Treatment of Historic Structures.
- D.5.6.** The proposer must have managed at least 1 project involving building rehabilitations for late 19th century buildings.
- D.5.7.** All subcontractors utilized in this design must possess current Massachusetts licenses or registrations in the applicable disciplines.

D.6. Evaluation Criteria: The designer selection committee appointed by the Town Manager is the evaluating committee. After the evaluating committee has determined that a proposal meets the minimum criteria and is complete, the proposal will be rated according to the following criteria:

D.6.1. Criterion A General Quality of the Response

Evaluation Criteria	Scoring Rubric		
	Highly Advantageous	Advantageous	Acceptable
General Quality of Response	Exceeded all RFQ requirements, including format, understanding of project, completeness of proposal	Met all RFQ requirements, including format, understanding of project, completeness of proposal	Met all basic proposal requirements, some follow-up for clarification and amplification of proposal elements may be allowed.

D.6.2. Criterion B Project Approach

Evaluation Criteria	Scoring Rubric		
	Highly Advantageous	Advantageous	Acceptable
Project Approach	Proposer provided an excellent response which made appropriate reference to all of the items under the Scope of Services and proposal content	Proposer provided an excellent response and addressed most of the items under Scope of Services and proposal content	Proposer provided an adequate response that addressed the items under Scope of Services and proposal content

D.6.3. Criterion C Previous Project Experience

Evaluation Criteria	Scoring Rubric		
	Highly Advantageous	Advantageous	Acceptable
b. Experience with projects of similar size and scope	Management of at least 10 historic building rehabilitations for public buildings.	Management of between 4 and 9 historic building rehabilitations for public buildings.	Management of at least 3 historic building rehabilitations for public buildings.
c. Rehabilitation of late 19 th century buildings	Management of at least 5 projects involving rehabilitation of 19 th century buildings.	Management of between 2 and 4 projects involving rehabilitations of 19 th century buildings.	Management of 1 project involving the rehabilitation of a 19 th century building.
d. Experience with the MPPF program	Completed design projects that were used for successful funding applications for more than 1 MPPF grant.	Completed a design project that was used for the successful funding application for 1 MPPF grant.	Completed a design project that was used to apply for at least 1 MPPF grant.
e. Experience with Slate Roof Construction	Design work on more than 3 of existing facilities with slate roofing.	Design work on 2 or 3 rehabilitation/preservation projects of existing facilities with slate roofing.	Design work on 1 rehabilitation/preservation project of an existing facility with slate roofing.

D.6.4. Criterion D Proposed Staffing

Evaluation Criteria	Scoring Rubric		
	Highly Advantageous	Advantageous	Acceptable
Team Members	Highly qualified staff; project leader with more than 10 years of specifically relevant experience (public historic buildings, slate roofing); staff back-up and additional resources available if needed.	Highly qualified staff; project leader with between 5 and 10 years of specifically relevant experience.	Qualified staff and project leader.

D.6.5. Criterion E Firm Stability and Capacity

Evaluation Criteria	Scoring Rubric		
	Highly Advantageous	Advantageous	Acceptable
Firm Stability and Capability	Strong demonstration of financial stability and capacity to undertake project. Demonstration of civic recognition, and overall excellent company reputation.	Strong demonstration of financial stability and capacity to undertake project.	Adequate demonstration of financial stability and capacity.

D.6.6. Finalist Interview - if invited

Evaluation Criteria	Scoring Rubric		
	Highly Advantageous	Advantageous	Acceptable
Interview	Proposer clearly reviewed the process as it would unfold, described the work that would be delivered, was convincing of the depth of their expertise and established a comfortable dialogue with the selection committee.	Proposer clearly reviewed the process and work product and established a comfortable dialog with selection committee.	Proposer described the process and the work product.

D.6.7. Finalist References and Reputation

Evaluation Criteria	Scoring Rubric		
	Highly Advantageous	Advantageous	Acceptable
Reference checks	Outstanding recommendations from all reference checks	Good recommendations from all reference checks	“Would-repeat” recommendations.

E. Submittal Process

- E.1.** Proposals are due by 11:00 a.m. on Tuesday, February 10, 2015 in hard copy form. No FAX or emailed submissions will be considered.
 - E.1.1.** Deliver proposals by hand or by delivery service to: Town Hall , Office of the Town Manager, 55 Main Street, Westford, MA 01886
 - E.1.2.** Proposals must be sealed in an envelopes or packages, clearly marked “Proposal for Historic Building Rehabilitation of the Roudenbush Community Center”.
 - E.1.3.** The proposer’s name and address should be on the outside of the envelope.
 - E.1.4.** Please make note of the Town Hall open hours, available on the town’s website <http://www.westfordma.gov> when scheduling delivery.
 - E.1.5.** Provide 9 copies of the proposal in final form (one loose copy in case additional copies are needed). Provide 1 copy in electronic pdf format.
 - E.1.6.** Late proposals or modifications received after the date and hour of deadline will not be considered.
 - E.1.7.** Information contained in the proposal shall be incorporated into and become part of the contractual obligations in the event the applicant is selected.
 - E.1.8. Questions** must be submitted in writing, via email, FAX, or U.S. Mail to the Assistant Town Manager at least five (5) calendar days prior to the deadline for proposal submittal. All parties who have received a copy of the RFQ will also be notified of any published answers to substantive questions.
 - E.1.9.** Neither the town of Westford, nor the designer selection committee shall be liable for any costs incurred by proposers in preparing, submitting or presenting proposals, or in satisfying and demonstrating requirements.
 - E.1.10.** A proposal may be withdrawn by written request prior to the deadline. Modifications may be submitted prior to the deadline in writing, no later than the time bids are due and accompanied by a letter of transmittal signed by an authorized official of the firm.

F. Pre-proposal Briefing Session:

A Pre-bid Information Session will be held on Monday, January 26, 2015 at 11:00AM at the Town Hall, 65 Main Street, Westford, MA and will include a brief tour of the Roudenbush building. After the conclusion of the Briefing Session, any questions or requests for clarification must be submitted in writing to John Mangiaratti, Assistant Town Manager, Westford Town Hall, 55 Main Street, Westford, MA 01886 or via email jmangiaratti@westfordma.gov.

G. Designer Selection Process

G.1. The Westford Board of Selectmen is the awarding authority. It has assigned the Town Manager and the designer selection committee the task of soliciting and evaluating proposals, with the ultimate goal of recommending a contract for award.

G.2. No member of the designer selection committee may have any financial interest or any other connections to a design firm being considered for the project.

G.3. The designer selection committee will select a minimum (if available) of three applicants for an interview after evaluating all proposals using the same criteria outlined in this RFQ. The committee will interview the finalists, and will rank them in order of qualification and quality of response. The committee requires that the designer intended to be the principal contact for the project, participate in the interview. All actions by the committee will be made in posted public meetings with appropriate minutes taken, including any and all votes, and applicable written statements explaining the choice of rankings.

G.4. Determination of the winning applicant will be made by the Town Manager, based upon the recommendations of the designer selection committee.

H. The Town Manager reserves the right to reject any and all applicants if such rejection is in the best interests of the Town of Westford.

H.1. The town reserves the right to negotiate the contracted fee for the design services. The winning applicant shall submit a fee proposal that includes a lump sum fixed fee, along with the following information:

- Percentage of time to be devoted to the project by key individuals;
- Hourly rates for personnel and the estimated number of hours each will devote to the project;
- Hourly rates proposed to charge for each sub-consultant and the estimated number of hours that will be devoted by each sub-consultant;
- Itemized breakdown of all other costs included in the fee proposal; and
- Markup, if any, that will be added to costs, including sub-consultant fees, resulting from a change in the scope of the work.

H.2. If the Town Manager or designee is unable to negotiate a reasonable fee with the top-ranked proposer, negotiations will be terminated and undertaken with the remaining designers, one at time, in the order in which they were ranked by the designer selection committee, until an agreement is reached.

H.3. In no event may a fee for Phase One design services be negotiated which is higher than the maximum fee of \$135,000. If the Town Manager is unable to negotiate a satisfactory fee with any of the finalists, the Town Manager shall recommend that the committee select additional finalists.

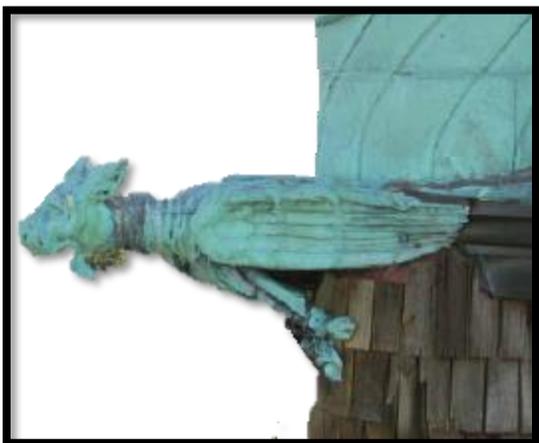
H.4. The awarding authority will be reserving the right to contract with the selected designer for follow-on design services.

I. Proposed Timeline

- RFQ Issued: January 2, 2015
- Ads for Designer published in Central Register: January 7, 2015
- Pre-bid Information Session: Monday, January 26, 2015 - 11:00 a.m.
- Proposal Submission Deadline: Tuesday, February 10, 2015 - 11:00 a.m.
- Contract Award Announced: March 2015
- Phase One Work and Refined Cost Estimate Due: June 15, 2015
- Presentation to Public Officials: TBD
- Final Design Documents and Bidding Complete by: January 7, 2016

J. General Provisions:

- J.1.** The Town of Westford reserves the right to reject any or all proposals or any parts thereof or to solicit new proposals and to award contracts as it deems in the best interest of the Town.
- J.2.** All proposals must be unconditional and will become the property of the Town of Westford.
- J.3.** The selected proposer shall be expected to work under the town’s standard contract for designer services attached as Appendix B, and comply with all applicable state and federal laws in the performance of services.
- J.4.** All plans, proposals, various design alternatives, specifications, and other documents resulting from this contract shall become the property of the Town of Westford.
- J.5.** The Town of Westford reserves the right to allow that the successful proposer be eligible for the contract for construction administration, pending independent review, in accordance with Massachusetts Designer Selection Law, and subject to appropriation for additional project phases.
- J.6.** The selection of the successful proposer shall be made without regard to race, color, sex, age, religion, political affiliation, or national origin. Women and minority owned businesses are encouraged to apply.



CERTIFICATE OF NON-COLLUSION

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 statement must be signed by the person signing the proposal, accompanied by the company name. [M.G.L. c.149A, §19(6)]

(Signature of individual submitting bid or proposal)

(Name of business)

TAX CERTIFICATION

Pursuant to M.G.L. Chapter 7C, Sec. 51, Chapter 62C, Sec. 49A, and M.G.L. Ch. 151A, Section 19A, the undersigned acting on behalf of the Contractor, certifies under the penalty of perjury that, to the best of the under-sign's knowledge and belief, the Contractor is in compliance with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support*.

**Signature of Individual

*** Corporate Contractor Federal Identification Number

By: _____

Date: _____

Corporate Officer
(Mandatory, if applicable)

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

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

**Your Contractor Federal Identification Number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed or extended. This request is made under the authority of Massachusetts General Laws, Chapter 62C, section 49A.

STATEMENT ON MGL AND BUILDING CODE

I certify that all information is submitted under penalties of perjury and that I am familiar with the State Building Code and also Massachusetts General Laws, Chapter 149, Section 44A-44H, Section 44M, Chapter 149A, Chapter 193 of the Acts of 2004, Chapter 30, Section 39M and Chapter 7C, Sections 44-58.

Signed

Date

Title

Appendix A

Planning Study

Roudenbush Community Center

SUMMARY OF PROPOSED SCOPE OF WORK

Based upon the Conditions Assessment and cost of work, the Town has elected to undertake a repair project with a Scope of Work summarized as follows and illustrated on the Planning Study Concept Plans:

General Building

- Add walls to create enclosed stairs
- Add toilets to the second and third floors
- Add walls to create two means of egress as required
- Provide second means of egress from 3rd floor
- Existing vinyl windows to remain

Accessibility

- Change the South stair to accommodate a new elevator
- Provide compliant accessible entrance at South grade level entrance
- Add 5 stop elevator servicing all floors (four floor levels plus entry level)
- Modify toilets, ramp and corridors to make the building accessible
- Change over all door hardware for accessibility requirements

Exterior

- Replace the slate roof with a new slate roof
- Remove the exterior steel stair fire escape
- Replace the siding finishes on the cupola
- Scrape and repaint all wood trim, repair as necessary
- Repoint all foundation masonry
- Replace damaged shingle siding with new, repaint siding
- Paint exterior

Interior

- Remove counters and equipment from corridors
- Remove items from service clearance areas

Fire/Sprinkler/Plumbing

- Remove sinks in corridors
- Update toilets for accessibility and efficiency
- Provide a Fire Protection system to the building
- Update Fire Alarm system

Electrical

- Replace wall outlets to tamper resistant outlets
- Replace outlets in wet locations for GFCI outlets
- Replace covers to the branch circuit panels
- Provide emergency/stand by power
- Provide Carbon Monoxide monitoring system

Heating Ventilation and Air Conditioning

- Replace HVAC unit on the third floor
- Provide DX unit for heating and cooling for the building
- Provide new systems for the ventilation and cooling
- Utilize existing (recently new) boilers for heating

September 5, 2014

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APPENDIX B

AGREEMENT TOWN OF WESTFORD, MA Contract for Designer Services

PROJECT TITLE: Facility Condition Assessment for Three Historic Buildings

PROJECT TYPE: Facility Condition Assessment

This AGREEMENT is made under seal the ___ day of _____ in the year Two Thousand and _____, between the Town of Westford, Massachusetts, by its _____, the AWARDING AUTHORITY, and _____, with an address of _____ acting as PROJECT ARCHITECT (the DESIGNER).

The scope of services is set forth in Attachment A.

ARTICLE 1: DEFINITION OF TERMS

- 1.1 GENERAL LAWS -- the General Laws of the Commonwealth of Massachusetts as amended, including any rules, regulations and administrative procedures implementing said laws.
- 1.2 DESIGNER -- the individual or firm performing professional services under this AGREEMENT.
- 1.3 PRINCIPALS -- the registered professional Architects or Engineers listed in ARTICLE 16.
- 1.4 NOTICE TO PROCEED -- written communication from the Awarding Authority, constituting an essential condition of this AGREEMENT, authorizing the Designer to perform services for the project phase to which such Notice shall relate. The Notice to Proceed shall include the basis for compensation, the fixed limit construction cost, if any, and may include the time of submittal. Subsequent written communications amending the Notice to proceed are required to change either a submittal date or the fixed limit construction cost. Proceeding with various phases of contract work is contingent upon the Awarding Authority or its designees' satisfaction with and acceptance of services performed for each phase.
- 1.5 SUBMITTAL DATES -- those dates referred to in the Notice to Proceed or any subsequent amendment thereto.
- 1.6 CONSTRUCTION CONTRACT -- contract for construction of a whole or part of the project, including all change orders.
- 1.7 TOTAL CONSTRUCTION COST -- the sum of the actual construction contract award price and each authorized change order revising the construction contract award price. The construction contract award price

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shall be the same as the construction price of the lowest responsible and eligible bidder.

- 1.8 AWARDING AUTHORITY -- The board, commission, agency or department of the Town having authority to award design and construction contracts in connection with the Project.
- 1.9 PROJECT -- the building project for which designer services have been procured under this AGREEMENT, and which is identified on Page 1 (Project Title).

ARTICLE 2: CONSULTANTS, SUBCONTRACTING, SUCCESSORS AND ASSIGNS

- 2.1 The Designer shall not employ additional consultants not named in the proposal(s) nor sublet, assign or transfer any part of his services or obligations under this AGREEMENT without the prior approval and written consent of the Awarding Authority. The Awarding Authority shall not unreasonably withhold such approval. Written consent shall not in any way relieve the Designer from his responsibility for the professional and technical accuracy and the coordination of all data, designs, drawings, specifications, estimates and other work or materials furnished.
- 2.2 Except as otherwise provided in this AGREEMENT or authorized by the Awarding Authority, the Designer shall employ within the basic fee for this project the following consultants where their specific services are required: Architect, Structural Engineer, Civil Engineer, Sanitary Engineer, Mechanical Engineer, Landscape Architect, Cost Estimator, and Electrical Engineer, and any other consultant specifically listed in the proposal. Consultants must be registered in their respective disciplines if registration is required under the applicable General Laws.
- 2.3 When the Designer receives payment from the Awarding Authority, the Designer shall promptly make payment to each consultant whose work was included in the work for which payment was made by the Town. The Awarding Authority shall have the contractual right, but not the obligation, to require corrective measures necessary for the best interests of the Town.

ARTICLE 3: SURVEYS, BORINGS, TESTS, LABORATORIES, PHOTOGRAPHS

- 3.1 The Awarding Authority shall furnish to the Designer available surveys of the project building site, showing the grades and lines of streets, pavements and adjoining properties; the rights, restrictions, easements, boundaries and controls of the site, or sites; reports from any borings, test pits, chemical, mechanical or other tests, any photographs and information as to water, sewer, electricity, steam, gas, telephone and other services.
- 3.2 The Awarding Authority does not guarantee the accuracy of information furnished and the Designer must satisfy himself as to the correctness of data, except in instances where written exception to the contrary is

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specifically indicated by the Awarding Authority. If the above data are not available or they are in the opinion of the Designer insufficient, the Designer, upon request, may be given authorization to obtain the services of a consultant or perform the work with his own employees. In no case shall the Designer commence such work without prior written authorization of the Awarding Authority.

- 3.3 During the construction phase of this contract, the Designer may retain the services of a photographer, a qualified testing laboratory, and special field inspectors when required by the project, subject to the prior approval of the Awarding Authority or its designee.
- 3.4 If a consultant's services estimated to cost more than \$25,000 are required, including the services of a qualified testing laboratory functioning under the jurisdiction of both a Massachusetts registered Engineer and licensed inspectors, a detailed description of the proposed services shall be prepared by the Designer and approved by the Awarding Authority. Consultant fee proposals shall be received by the Designer and accompanied with recommendations of approval submitted to the Awarding Authority before any work is authorized. Such consultants shall carry adequate Liability Insurance. When a consultant's services are estimated to cost \$25,000 or less, the Designer shall use established standard rates for such services.
- 3.5 Drawings and/or specifications needed to obtain survey or subsoil information, and any other soils engineering shall be prepared by the Designer as part of the basic fee. The Designer shall then analyze and evaluate such surveys and tests and make his design conform to the results of such evaluation.
- 3.6 The Awarding Authority will compensate and reimburse the Designer as provided in ARTICLE 9 for the cost of consultant services performed under this Article. For responsibility, coordination inspection, analysis and evaluation of consultant services retained under this ARTICLE, the Designer shall similarly be compensated as provided by ARTICLE 9.

ARTICLE 4: COMPLIANCE WITH LAWS

- 4.1 The Designer shall perform the work required under this AGREEMENT in conformity with all requirements and standards of the Awarding Authority, all applicable laws, statutes, ordinances, by-laws, codes, rules and regulations, and executive orders of the Commonwealth and its political subdivisions, and the Federal Government. The Construction Documents shall comply with all applicable laws, statutes, ordinances, by-laws, codes, rules and regulations, and executive orders. The Designer, including all approved consultants and subcontractors, shall comply with all applicable provisions of the rules and regulations of the President's Committee on Equal Employment Opportunity and Procedures promulgated by the Governor of Massachusetts or his designees, insuring equal opportunity for employees and minority and women-owned business enterprises.

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ARTICLE 5: PROFESSIONAL RESPONSIBILITY

5.1 The Designer shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, specifications, estimates and other work furnished by him or his consultants and subcontractors. The Designer shall staff his office with sufficient personnel to complete the services required under this contract in a prompt and continuous manner, and shall meet the approval schedule and submittal dates established during the course of this AGREEMENT.

The Designer shall commence work under this AGREEMENT upon written notice to proceed issued by the Awarding Authority in conformance with the provisions of Section 1.4 of this AGREEMENT. The Designer shall complete the services required under this AGREEMENT in a prompt and continuous manner, and to meet such time limits as are established during the course of the AGREEMENT and stated in each Notice to Proceed. If the completion of the scope of work is delayed through no fault of the Designer, the time limit may be extended upon written approval of the Awarding Authority.

5.2 The Designer shall furnish appropriate competent professional services for each of the phases to the point where detail checking and reviewing by the Awarding Authority will not be necessary. Any changes, corrections, additions or deletions made by the Awarding Authority shall be incorporated in the design of the Project unless detailed objections thereto are received from the Designer and approved by the Awarding Authority.

5.3 The designer shall thoroughly acquaint his employees and consultants with all provisions of the General Laws governing the conduct of public construction projects, including but not limited to M.G.L. c.149, and c.30, and in particular, M.G.L. c.30, §39M, wherein the description of material specifications and proprietary items in construction bid documents is governed.

5.4 Neither the Awarding Authority's review, approval or acceptance of, nor payment for any of the services furnished shall be construed to operate as a waiver of any rights under the AGREEMENT or any cause of action arising out of the performance of the AGREEMENT.

ARTICLE 6: DESIGNER SERVICES

6.1 **TYPE 1 CONTRACTS; STUDIES, PROGRAMS, MASTER PLANS, REPORTS**

1. Upon receipt of a Notice to Proceed from the Awarding Authority acceptable to the Designer, the Designer shall meet as necessary within the Awarding Authority and shall prepare and submit programs, preliminary reports, master plans, studies, sketches, space utilization criteria and estimates in accordance with

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the Scope of Services set forth in Attachment A to this AGREEMENT. Monthly progress reports shall be submitted by the Designer to the Awarding Authority. The Designer shall prepare and submit concept sketches of various design ideas to determine a workable plan solution in terms of the programs, funds available, and as complete an overall design concept as possible, including cost estimates. The Designer shall furnish to the Awarding Authority eight (8) copies of the report for final approval on or before the date set forth in the Notice to Proceed or any supplement thereto.

6.2 TYPE 2 CONTRACTS -- DESIGN AND CONSTRUCTION

1. Phase 1. - Schematics

Upon receipt of a Notice to Proceed from the Awarding Authority acceptable to the Designer, the Designer shall meet as necessary with the Awarding Authority for the purpose of arriving at a mutual understanding of the Awarding Authority's project needs. Thereafter, the Designer shall prepare and submit to the Awarding Authority single line schematic drawings including floor plans, elevations and space criteria to establish basic design ideas and respective cost estimates as set forth in the scope of services included as Attachment A. The Designer shall submit to the Awarding Authority for approval six (6) copies of said schematic plans, outline specifications and cost estimates, on or before the date or time for submission specified in the Notice to Proceed or any supplement thereto, unless the Designer shall have obtained from the Awarding Authority an extension of time in writing.

Estimated construction cost and fee as set forth in the original Notice to Proceed will not be changed by the Awarding Authority without the agreement of the Designer.

2. Phase 2. - Design Development

Upon receipt of a Notice to Proceed the Designer shall prepare from the approved Phase 1 documents complete design development documents consisting of plans, outline specifications, and cost estimates and other documents to fix and describe the size and character of the project as to architectural, structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate to enable the Awarding Authority to study and understand the progress and development of the Project. Such plans outline specifications and cost estimate shall be subject to the written approval of the Awarding Authority. The Designer shall submit to the Awarding Authority for approval six (6) copies of said design development documents on or before the date or time for submission specified in the Notice to Proceed or any supplement thereto, unless the Designer shall have obtained from the Awarding Authority an extension of time in writing.

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3. Phase 3. - Construction Documents

Upon receipt of a Notice to Proceed from the Awarding Authority for Phase 3 of the Project, the Designer shall meet as necessary with the Awarding Authority, and shall prepare and submit to the Awarding Authority on or before the date or time specified in the Notice to Proceed or any supplement thereto, complete working plans and specifications in sufficient detail to permit firm bids in open competition for construction of the project, and a detailed cost estimate. Said plans and specifications shall be based on the design development, outline specifications and construction cost estimate approved in Phase 2 of the Project, the Notice to Proceed with Phase 3, or any subsequent modification thereto. The detailed estimate of the cost of the Project shall include quantities of all materials and unit prices of labor and materials as well as cost estimates for each item of work. Such working plans and specifications and cost estimates shall be subject to the written approval of the Awarding Authority. The Designer shall furnish to the Awarding Authority for approval six (6) sets of the said plans, specifications and construction cost estimates.

Following the approval of the plans, specifications and construction cost estimates, the Designer shall incorporate all changes required by the Awarding Authority in the working drawings and specifications and shall prepare and transmit to the Awarding Authority one set of Construction Contract Documents for approval.

Phase 4. - Bidding Phase

Upon written approval of Construction Contract Documents, and a Notice to Proceed, the Designer shall prepare the final Construction Contract Documents, including advertisements for receipt of proposals for construction contractors, shall assist in distributing the bidding documents to prospective bidders, and shall prepare and transmit all addenda. The Designer shall assist the Awarding Authority in pre-qualifying bidders, shall conduct a pre-bid conference with potential bidders, shall assist in obtaining bids, shall conduct a qualification review of the low bidder and transmit his recommendations as to the award of the construction contract to the Awarding Authority, and shall prepare all notices required to be published in the Central Register. All services shall be in accordance with the requirements of the General Laws relating to public construction projects.

If the bid of the lowest responsible and eligible bidder exceeds the Fixed Limit of Construction Cost, if any, the Awarding Authority shall have the option to (a) give written approval of an increase in such Fixed Limit, (b) re-bid the Contract within a reasonable period of time, or (c) instruct the Designer in writing to provide such revised Construction Contract Documents as the Awarding Authority may require to bring the cost within the Fixed Limit. In the case of (c), the Designer may in connection with such revisions make reasonable adjustments in the scope of the Construction Contract or quality of the work allowed therein subject to the

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written approval of the Awarding Authority, which approval shall not be unreasonably withheld. The Designer shall not be entitled to any additional compensation for such services.

The Designer shall review all construction bids for the purpose of advising the Owner on whether the bids are based upon the payment of the prevailing wage rates established for the project by the Massachusetts Department of Labor and Workforce Development. The Designer shall inform the Owner of any bid which, because of its amount, does not realistically appear to contemplate the actual payment of said prevailing wage rates to laborers to be employed on the project.

5. Phase 5 - Designer's Services During Construction

Upon the award of the construction contract the Designer and his consultants shall, for the purpose of protecting the Awarding Authority against defects and deficiencies in the work of the Project: (1) be charged with general administration of the construction contract, including review and processing of the General Contractor's applications for payment and change order proposals; preparation of a monetized "punch list" of remaining work following substantial completion of the project work, and subsequent inspection to determine completion of such punch list work; review and processing of the General Contractor's final completion and close out documentation and assistance to the Awarding Authority in the close out process; (2) furnish the General Contractor with information for establishing lines and grades and such large scale drawings and full sized detailed drawings as the Awarding Authority may require; (3) promptly check and approve samples, schedules, shop drawings and other submissions by the General Contractor; (4) make weekly visits to the site or sites of the Project; (5) conduct semi-final and final inspections of the construction project and report the results of such inspections in writing to the Awarding Authority; (6) require each consultant employed in accordance with ARTICLE 2 above to make visits when necessary, and more often if requested by the Awarding Authority, for the same purposes during the progress of that portion of the said construction to which the consultant's services relate and to report in writing thereon to the Designer; (7) report to the Awarding Authority weekly in writing on the progress of construction including whether or not the contractor is keeping record drawings; (8) recommend rejection of all project work observed by the Designer which fails to conform to the Contract Documents; (9) decide all questions regarding interpretation of or compliance with the Contract Documents, except as the Awarding Authority may in writing otherwise determine; (10) review and act on all requests for changes in plans, specifications, work, or contracts for the Project; and (11) upon written instructions from the Awarding Authority, furnish working plans and specifications for any such change.

The Designer shall be familiar with the provisions of the General Laws for payment to contractors and shall submit to the Awarding Authority all requisitions for payment submitted by the general contractor. With respect to each such requisition, he or she shall certify to the best of the

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Designer's knowledge that the percentage of work included in the requisition is accurate and the work performed conforms to the contract documents. In the event the Designer does not approve the requisition exactly as submitted by the General Contractor, said Designer shall forward it for payment to the Awarding Authority dated but unsigned with an accompanying letter of explanation setting forth objections and recommended changes. The Designer shall coordinate the required weekly visit to the construction site in such a manner to be able to return to his office with the contractor's payment bearing the Designer's approval or letter of exceptions. Timely payments of general contractors is required by General Laws Chapter 30, section 39K; therefore, the Designer shall establish office procedures assuring either immediate mail or messenger delivery of the requisition for payment to the Awarding Authority, and shall process requisition for payment within forty-eight hours of receipt.

The Designer's responsibility to provide basic services for the construction phase under this agreement commences with the award of the contract for construction and terminates upon the issuance to the Awarding Authority of the final certificate of payment and the Awarding Authority's acceptance of the completed project.

The Designer will exercise the utmost care and diligence in discovering and promptly reporting to the Awarding Authority any defects or deficiencies in the work of the General Contractor or any of its subcontractors, or their agents or employees, or any other person performing any of the Work in the construction of the Project. The Designer represents that it will follow the highest professional standards in performing all architectural services under this Agreement. Any defective Designs or Specifications furnished by the Architect will be promptly corrected by the Designer at no cost to the Awarding Authority, and the Designer will promptly reimburse the Awarding Authority for all damages, if any, resulting from the use of such defective Designs or Specifications. The Awarding Authority's approval, acceptance, use of or payment for all or any part of the Designer's services hereunder or of the Project itself shall in no way alter the Designer's obligations or the Awarding Authority's rights hereunder.

Phase 6. - Record Drawings, Reports, Calculations

Before examining the requisition for final payment submitted to the Awarding Authority by the General Contractor and making any certification in response thereto, the Designer shall obtain from the General Contractor record drawings showing the actual installation of the plumbing, heating, ventilating and electrical work under the construction contract and all variations, if any. The Designer shall ascertain by his review that changes authorized by change orders are shown on the contractor's record drawings and on the applicable original reproducible and shall submit to the Awarding Authority the complete set as revised, which reproducible shall become the property of the Awarding Authority.

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Two suitably bound legible copies of all original design and quantity calculations including those pertinent to change orders and shop drawings if applicable shall be furnished by the Designer to the Awarding Authority at the conclusion of the construction contract and prior to the expiration of the construction period.

As-Built Record Drawings shall be furnished to the Awarding Authority by the Designer.

ARTICLE 7: DESIGNER'S BASIC FEE

- 7.1 For the performance of all services required under the terms of this AGREEMENT and excluding those services specified under ARTICLES 8, 9 and 10, the Designer shall be compensated by the Awarding Authority in accordance with the lump sum fee for this project. The fee is a lump sum of \$_____.
- 7.2 If there is a material change in the scope of services provided in this agreement, the Designer and the Awarding Authority will mutually agree to an adjustment in the Designer's Basic Fee. Delay of one year or more by the Awarding Authority plus a significant change in the estimated construction cost of the project will be considered a change in scope of services.
- 7.3 The basic fee shall be paid to the Designer in accordance with Attachment B to this agreement. Billings for services shall be made monthly and shall be in proportion to the amount of work completed.

ARTICLE 8: ADDITIONAL COMPENSATION

1. With the formal written approval of the Awarding Authority, the Designer shall perform all or any of the following services in addition to the services performed pursuant to ARTICLE 6 above: (1) revising previously approved drawings, specifications or other documents to accomplish changes authorized by the Awarding Authority, and preparation of change orders related thereto; (2) preparing documents for alternate bids requested by the Awarding Authority except alternates prepared by the Designer to adjust the fixed limit construction cost, if any; (3) providing consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing professional services of the type set forth in ARTICLE 6 as may be required in connection with the replacement of such work; (4) providing services after final payment to the contractor; (5) revising working plans and specifications submitted in their final and complete form for which bids were not received within six months after submission; (6) making studies other than those normally required and preparing applications and reports to assist the Awarding Authority in obtaining federal and/or state aid; (7) preparing operating and

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maintenance manuals; (8) assisting the Awarding Authority in litigation arising out of the construction contract; and (9) performing any other professional services not otherwise required under this Contract.

2. For the services provided pursuant to paragraph 1 of this ARTICLE, the Designer shall be compensated by the Awarding Authority at the rates set forth in Attachment B.

ARTICLE 9: REIMBURSEMENT

- 9.1 The Designer shall be reimbursed by the Awarding Authority:(a) at one and one tenth (1.1) times the actual cost to the Designer of consultants hired to obtain any data in accordance with ARTICLE 3 above, provided, however, that no reimbursement for such expense shall be made unless the rates of compensation for said consultant services have been approved by the Awarding Authority or its designee, which may approve a lump sum fee; (b) at one and one tenth (1.1) times the actual cost to the Designer of special consultants not specified in ARTICLE 2, and approved by the Awarding Authority or its designee, provided, however, that no reimbursement for such expense shall be made unless the rates of compensation for said consultant services shall have been approved in writing by the Awarding Authority or its designee, which may approve a lump sum fee; (c) any other specially authorized reimbursement, including special printing; and (d) for all printing and reproduction costs.

ARTICLE 10: DESIGN FEES AND CHANGE ORDERS

- 10.1 The Designer shall be compensated in accordance with the rates specified in ARTICLE 8 for the services of its employees or any consultant listed in ARTICLE 2 for services associated with changes and change orders described in ARTICLE 8. The Designer shall not be compensated for any services involved in preparing change orders required to make unit price adjustments due to existing conditions. Changes for which the Designer receives no compensation under this ARTICLE shall be "no fee modifications" or "no fee change orders." The fact that the Designer receives no fee shall not limit the Town's legal remedies regarding such changes.

Any services in connection with change orders and change directives which are necessitated by a lack of reasonable clarity, deficiencies or conflicts in the Construction Documents or other errors or omissions of the Designer, or which result from existing conditions encountered in the building which should have been anticipated by the Designer based on reasonable investigation of said building as required herein, shall not qualify as additional services and shall be performed within the scope of Basic Services.

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- 10.2 Payments for modifications or change orders to the Designer shall be made upon completion of the Designer's work under such modifications or change orders.

ARTICLE 11: TERMINATION, NO AWARD

- 11.1 By written notice to the Designer, the Awarding Authority may terminate this contract at any time. If any such termination shall occur without the fault of the Designer, all compensation and reimbursement due to the Designer up to the date of termination, in accordance with all contract terms, shall be paid to the Designer by the Awarding Authority. Such payment shall not exceed the fair value of the work, as the Awarding Authority shall determine.
- 11.2 By written notice to the Awarding Authority, the Designer may terminate this contract (1) if the Awarding Authority, within sixty (60) days following written notice from the Designer of any default by the Awarding Authority under the AGREEMENT, shall have failed to remove such default or (2) if, after the Designer shall have performed all services required of the Designer in Phase 1, Phase 2, or Phase 3 of the Project, if applicable, at least six (6) months shall have lapsed without receipt by the Designer of Notice to Proceed with the next phase of the Project. Upon any such termination by the Designer all compensation and reimbursement payable to the Designer in accordance with the AGREEMENT up to and including the date of termination shall be paid to the Designer by the Awarding Authority.

ARTICLE 12: RELEASE AND DISCHARGE

- 12.1 The acceptance by the Designer of the last payment for services paid under the provisions of ARTICLES 11 and 12 in the event of contract termination shall in each instance operate as and be a release to the Awarding Authority, and every member or agent thereof, from all claims and liability to the Designer for payment on account of services performed or reimbursable expenses incurred under this AGREEMENT, except for those written claims submitted by the Designer to the Awarding Authority with the last payment requisition.

ARTICLE 13: NOTICES, APPROVALS, INVOICES

- 13.1 Any notice required under this contract to be given by the Awarding Authority to the Designer, or by the Designer to the Awarding Authority, shall be deemed to have been so given, whether or not received, if mailed by prepaid postage by, respectively, the Awarding Authority to the Designer at the address specified for the Designer on Page 1, or the Designer to the Awarding Authority.

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- 13.2 Written approval by the Awarding Authority for Extra compensation as provided under ARTICLES 8 and 9, Reimbursements, shall be in the form of a letter issued by the Awarding Authority.
- 13.3 All invoices may be submitted monthly and subject to contract terms and proper documentation will be promptly processed by the Awarding Authority or returned to the Designer. No invoice, however, shall be required to be submitted or processed when the net amount due is less than \$100.00.
- 13.4 Invoices for services under ARTICLE 6 where such invoices pertain to design services during construction shall also describe the names, payroll titles, and dates of site visits required for construction-phase services.
- 13.5 Invoices submitted for services which have not been previously authorized in writing shall be returned to the Designer.
- 13.6 Requests for previously authorized expenses of any nature must be accompanied by a billing or receipt from the source of the expense.

ARTICLE 14: INSURANCE

- 14.1 The Designer shall at his own expense obtain and maintain a Professional Liability Insurance policy for errors, omissions or negligent acts arising out of the performance of this AGREEMENT in a minimum amount of \$1,000,000.
- 14.2 The coverage shall be in force from the time of the agreement to the date when all construction work designed under the contract is completed and accepted by the Awarding Authority. If, however, the policy is a claims made policy, it shall remain in force for a period of six (6) years after substantial completion.
- Since this insurance is normally written on a year-to-year basis, the Designer shall notify the Awarding Authority should coverage become unavailable.
- 14.3 The Designer shall, before commencing performance of this contract, provide by insurance for the payment of compensation and the furnishing of other benefits in accordance with M.G.L. c.152, as amended, to all employed under the contract and shall continue such insurance in full force and effect during the term of the contract. The Designer shall also maintain broad public liability insurance to protect against damage or injury to persons or property.
- 14.4 The Designer shall carry insurance in a sufficient amount to assure the restoration of any plans, drawings, computations, field notes or other similar data relating to the work covered by this contract in event of loss or destruction until the final fee payment is made or all data are turned over to the Awarding Authority.

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- 14.5 Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the Agreement. Any cancellation of insurance whether by the insurers or by the insured shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the Town at least fifteen days prior to the intended effective date thereof, which date should be expressed in said notice. The Designer shall indemnify, defend, and hold the Awarding Authority harmless from and against any and all claims, demands, liabilities, actions, causes of action, costs and expenses arising out of the Designer's breach of the Agreement or the negligence or misconduct of the Designer or the Designer's agents or employees.
- 14.6 Upon request of the Designer, the Awarding Authority reserves the right to modify any conditions of this Article.

ARTICLE 15: SUPPLEMENTAL CONTRACT DATA; LEGAL REQUIREMENTS

- 15.1 The Designer hereby certifies:
- (i) if an individual, the individual is a registered architect;
 - (ii) if a partnership, a majority of all the partners are persons who are registered architects;
 - (iii) if a corporation, sole proprietorship, joint stock company or other entity, the majority of the directors or a majority of the stock ownership and the chief executive officer are persons who are registered architects, and the person to have the project in his or her charge is a registered architect;
 - (iv) if a joint venture, each joint venture satisfies the requirements of this section.
(Statutory reference: M.G.L. c.7, §38A½)
- 15.2 The Designer hereby certifies that it has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with the award of this Agreement. (Statutory reference: M.G.L. c.7, §38H(e)(i))
- 15.3 The Designer hereby certifies that no consultant to or subcontractor for the Designer has given, offered or agreed to give any gift, contribution or offer of employment to the Designer, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the Designer. (Statutory reference: M.G.L. c.7, §38H(e)(ii))
- 15.4 The Designer hereby certifies that no person, corporation or other entity, other than a bona fide full-time employee of the Designer, has been retained or hired by the Designer to solicit for or in any way assist the Designer in obtaining this Agreement upon an agreement or understanding that such person, corporation or other entity be paid a fee

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or other consideration contingent upon the award of this Agreement to the Designer. (Statutory reference: M.G.L. c.7 §38H(e)(iii))

- 15.5 The Designer hereby certifies that it has internal accounting controls as required by subsection (c) of section thirty-nine R of chapter thirty and that the Designer filed and will continue to file an audited financial statement as required by subsection (d) of said section thirty-nine R. (Statutory reference: M.G.L. c.7, §38H(e)(iv))
- 15.6 The Designer shall maintain all books, records, and accounts related to the Project in compliance with the following:
1. The Designer shall make, and keep for at least six years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Designer.
 2. Until the expiration of six years after final payment, the Awarding Authority, the office of the inspector general and the deputy commissioner of capital planning and operations shall have the right to examine any books, documents, papers or records of the Designer or of its consultants that directly pertain to, and involve transactions relating to, the Designer or its consultants.
 3. The Designer shall describe any change in the method of maintaining records or recording transactions which materially affects any statements filed with the Awarding Authority, including in the Designer's description the date of the change and reasons therefore, and shall accompany said description with a letter from the Designer's independent certified public accountant approving or otherwise commenting on the changes.
 4. The Designer has filed a statement of management on internal accounting controls as set forth in Paragraph (6) below prior to the execution of this Agreement.
 5. The Designer has filed prior to the execution of this Agreement and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in subparagraph 15.6.8 below.
 6. The Designer shall file with the Awarding Authority a statement of management as to whether the system of internal accounting controls of the Designer and its subsidiaries reasonably assures that:
 - (a) transactions are executed in accordance with management's general and specific authorization;

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- (b) transactions are recorded as necessary:
 - 1. to permit preparation of financial statements in conformity with generally accepted accounting principles; and
 - 2. to maintain accountability for assets;
 - (c) access to assets is permitted only in accordance with management's general or specific authorization; and
 - (d) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any difference.
7. The Designer shall also file annually with the Awarding Authority a statement prepared and signed by an independent certified public accountant, stating that such accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to:
- (a) whether the representations of management in response to this paragraph and paragraph 15.6.6(b) above are consistent with the result of management's evaluation of the System of internal accounting controls; and
 - (b) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the Designer's financial statements.
8. The Designer shall annually file with the Awarding Authority during the term of this Agreement a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by accountant's report.
9. Records and statements required to be made, kept or filed in compliance with the provisions of this paragraph 15.6 shall not be public records and shall not be open to public inspection, except as provided in subparagraph 15.6.2. (Statutory reference: M.G.L. c.30, §39R)
- 15.7 The Designer and its consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Designer in the preparation of bid documents, as reasonably determined by the Awarding Authority. (Statutory reference: M.G.L. c.7, §38H(J))

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- 15.8 Life-cycle cost estimates for the Project shall be obtained at an initial stage and as a regular part of the services to be performed under this Agreement. (Statutory reference: M.G.L. c.149, §44M)
- 15.9 The Designer hereby certifies under penalties of perjury that the Designer has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support. (Statutory reference: M.G.L. c.62C, §49A)

For agreements not in excess of \$100,000, Section 15.5 and subsections 15.6.3 – 15.6.8 do not apply.

ARTICLE 16: MISCELLANEOUS PROVISIONS

- 16.1 One (1) reproducible copy of all Drawings and Specifications furnished by the Designer and all other documents prepared by the Designer shall become the property of the Awarding Authority. Ownership of the stamped drawings and specifications shall not include the Designer's certification or stamp. Any re-use of such Drawings and/or Specifications without the Designer's written verification of suitability for the specific purpose intended shall be without liability or legal exposure to the Designer or to the Designer's independent professional associates, subcontractors or consultants. Distribution or submission to meet official regulatory requirements or for other purposes in connection with the project is not to be construed as an act in derogation of the Designer's rights under this AGREEMENT.
- 16.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and personal representatives.
- 16.3 This Agreement represents the entire agreement between the Awarding Authority and the Designer, and supersedes any prior agreements whether oral or written. This Agreement may be amended only by written instrument executed by both the Awarding Authority and the Designer.
- 16.4 The Designer agrees that the Awarding Authority and any of its officer or employee assume no personal liability under this Agreement.
- 16.5 This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.
- 16.6 In the event any provision of this Agreement shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall attach only to such provision and shall not affect or render invalid or unenforceable any other provision of this Agreement.

SIGNATURES

IN WITNESS WHEREOF, on the day and year hereinabove first written, the Designer has caused this agreement to be signed and sealed in its name and behalf,

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and its corporate seal to be hereto affixed by the signatory below authorized to do so,
and the _____ has signed this agreement on behalf of the Awarding Authority.

Accepted by Designer

Accepted by Awarding Authority

By: _____

Name:

Title: _____

Approved as to Form

Town Counsel

234996/kope/0003

SAMPLE