

**Town of Lanesborough
Request for Qualifications
Feasibility/Siting Study for the Development of a Police Station**

1. General Information

The Town of Lanesborough located in Berkshire County, Massachusetts, through its Select Board (“the Board”) requests proposals from registered architects, engineers or other firms/ individuals to conduct a detailed feasibility study and preliminary design plan for a Police Station. All interested parties must submit responses in conformance with this Request for Qualifications (RFQ) documents in the Town Manager’s Office at 83 North Main Street. This RFQ shall be governed by the Town of Lanesborough’s Designer Selection Procedure and G.L. c.7C, Sections 44-57.

The Applicant that receives the award presented by this RFQ may also be considered for the final design services contract at the Town’s sole discretion. Any contract resulting from this RFQ is subject to the availability and appropriation of funds.

A. Submission Deadline and Instructions

Proposals shall be addressed to the Town Manager and must be submitted on the Designer Selection application form for “Municipalities and Other Public Agencies Form 2016”, a copy of which is attached, in a sealed envelope marked **“Request for Qualifications: Police Station Feasibility Study and Preliminary Design,”** with the applicant’s name and address. All responses shall include a non-price proposal only. No fee proposal shall be submitted since the final fee will be negotiated with the vendor deemed to be most advantageous. Five copies of the proposal are required. The proposal shall also include the name, title and/or position, role, and a current resume for each individual who will contribute to this project.

Applicants must also execute and include in the sealed submission the Certificate of Non-Collusion and Certificate of Tax Compliance in section VI of this RFQ as required by law. The Town reserves the right to accept any proposal in whole or in part, and to reject any and all proposals if it shall be deemed in the best interest of the Town to do so.

Proposals must be signed as follows: (1) if the applicant is an individual, by her/him personally; (2) if the applicant is a partnership, by the name of the partnership, followed by the signature of each general partner; and (3) if the applicant is a corporation, by the authorized officer, whose signature must be attested to by the Clerk/Secretary of the corporation and the corporate seal affixed.

All proposals must contain 5 copies, be sealed, and be received and registered by the Town Manager’s office, Lanesborough Town Hall, 83 North Main Street, Lanesborough, MA 01237, by **12:00 P.M on Monday August 26, 2019**

B. Questions, Addendum or Proposal Modification

Questions concerning this RFQ must be submitted in writing to: Kelli A. Robbins, Town Manager, Lanesborough Town Hall 83 North Main Street, Lanesborough, MA 01237. All inquiries received five or more days prior to the opening will be considered. Questions may be delivered, mailed, E-mailed, or faxed. Written responses will be E-mailed (or mailed in the case of documents not available electronically) to all proposers on record as having picked up the RFQ.

If any changes are made to this RFQ, an addendum will be issued. Addenda will be mailed or E-mailed to all proposers on record as having picked up the RFQ.

All proposals submitted in response to this RFQ shall remain firm for ninety (90) days following the bid opening. The contract will be awarded within ninety (90) days after the opening. The time for award may be extended for up to forty-five (45) additional days by mutual agreement between the Town and the highest ranked responsive and responsible applicant.

An applicant may correct, modify, or withdraw a proposal by written notice received by the Town prior to the time and date set for the opening. Proposal modifications must be submitted in a sealed envelope clearly labeled “**Modification No. _____**”. Each modification must be numbered in sequence, and must reference the original RFQ.

After the opening, an applicant may not change any provision of the proposal in a manner prejudicial to the interests of the Town or fair competition. Minor informalities may be waived or the applicant may be allowed to correct them.

II. Project Background

The Town is located in Berkshire County, Massachusetts. The town has a total area of 29.6 square miles, of which 28.8 square miles is land and 0.73 square miles, or 2.49%, is water.

Lanesborough is bordered by New Ashford to the north, Cheshire to the northeast, Dalton to the east, Pittsfield to the south, and Hancock to the west. The town center is 5 miles north of Pittsfield, 50 miles northwest of Springfield and 140 miles west of Boston. Population as of the 2010 census was 3,091.

The Town of Lanesborough currently houses its Police Department at 8 Prospect Street. The Proposal will look at the current and future Police Department needs.

The Board of Selectmen is presently focused on the development of a potential site for the Police Station to house the town’s Police Department. At present, the Board has not rejected, nor accepted any offers for sites that may be suitable for the project.

It should be noted, that Feasibility Study has been supported favorably by the Board of Selectmen and by Town Meeting as demonstrated by the affirmative vote June 11, 2019 Article #27.

III. Scope of Work

The Town of Lanesborough is now seeking proposals from qualified registered architectural consulting firms/individuals to conduct a **Feasibility Study** and prepare a preliminary design for the construction of a Police Station on a site to be determined.

The general scope of work shall include, but not be limited to, the following tasks;

Task #1: Space Needs Assessment

DESCRIPTION:

Conduct an independent analysis of the current and future space needs of the Lanesborough Police Department, including, a space needs analysis for the police department, to give recommendations and options on the sizes, types, and layouts of internal spaces, including, for example, offices, interview rooms, meeting rooms, holding areas as well as any exterior amenities such as parking spaces. Needs assessment to include technology and ADA compliance specifically for police stations.

DELIVERABLES:

A written report summarizing the space needs of Police Department regardless of location.

Task #2: Site Evaluation

DESCRIPTION:

Provide a preliminary assessment and evaluation of existing site conditions (8 Prospect Street) to determine the suitability of the site for remodel, or reconstruction of the Police Station based in part on Task #1 and in part on the actual conditions at the site. Consultant shall consult town staff and make maximum use of available engineering and other data for the 8 Prospect Street site prior to proceeding with assessment. Perform site analyses to include hazardous materials investigation and archaeological, if deemed appropriate, storm water drainage issues, location of utilities (sewer, water, other), evaluate vehicular access. Should the present site be deemed unsuitable, other sites are to be considered and the consultant shall provide all pertinent information for each individual site being considered. (see further tasks)

DELIVERABLES:

Report detailing the adequacy of this site including detailed explanations as to all results.

Task #3: Site Development

DESCRIPTION:

Prepare preliminary conceptual site plans and conceptual layouts for three (3) possible candidate locations, using information on zoning, including but not limited to setbacks, floodplains, wetlands, traffic, and neighborhood issues as such may be readily available from the Town and/or Berkshire Regional Planning Commission.

1. Location 1: 8 Prospect Street, where the police station is currently located. (subject to Task #2 results¹)
2. Location 2: 20 WILLIAMSTOWN RD Assessor's map 101-42 to remodel one of the pre-existing buildings on the property known as the "Vacation Village."²
3. Location: 3 NORTH MAIN ST Assessor's map 105-60 –new construction or modular building.
4. Alternate site pending results of task #2: NORTH MAIN STREET, Assessor's map 103-3.1 – new construction or modular building.

DELIVERABLES:

Site evaluations list with function and square footage and diagram. Report confirming the adequacy of each site considered and a Site Analysis Matrix based on the development potential of each site.

Task #4: Pre-Schematic Design Plan – subject to Selectboard choice from task #3

DESCRIPTION:

Develop preliminary design drawings focusing on site plan, building plans fitted to the selected site, furnishing plans, exterior evaluations, and preliminary building systems. Process should be interactive facilitating maximum involvement by Board of Selectmen members. A minimum of three schematic design sessions reflecting the incorporation of changes recommended by the Board of Selectmen should be anticipated.

DELIVERABLES:

Prepared preliminary schematic design plan for a Police Station.

Also develop communication tools including plans, models, color renderings and sketches to use at public forums and presentation at town meeting at a date yet to be determined³.

The applicant's proposal should describe in detail the quality of the plans and any other promotional materials that will be provided.

¹ If the current location of 8 Prospect Street is deemed unsuitable based on results of task #2, alternative site #4 will be considered.

² If this site is chosen a further task may be negotiated to fully explore this site's buildings for repair to make useable.

³ Subject to the Selectboard choice of site for station

Task #5: Total Project Cost Estimate and Schedule

DESCRIPTION:

Provide a Total Project Cost Estimate that includes all soft costs related to the design and construction of the building (i.e. construction cost estimate, furniture/ equipment, project management, fees, contingencies, etc.). Provide a complete project schedule including realistic deadlines for future design development and construction phases.

DELIVERABLES:

A report summarizing the costs of all project elements and estimated time frames, for implementing all phases of design and construction.

Task #6: Implementation Plan for Development of Police Station

Complete the above five tasks and provide five (5) copies of a bound written report based on the described scope of services. The report and preliminary plans shall also be provided to the Board in an electronic format acceptable to the Board for widespread reproduction and distribution. The Town of Lanesborough shall own all rights to any reports, plans, or promotional materials produced under this Scope of Services.

The Consultant should also anticipate attending, in addition to a possible town meeting, a minimum of five (5) meetings with the Board and/ or the public.

IV. Project Schedule and Meetings

It is the goal of the Board of Selectmen to complete the work in this Scope of Services section within approximately five months following a Notice to Proceed. The Board will need as much time as possible to explain the project to the general public prior to going before Town Meeting for a vote. The applicant's proposal should also provide detail regarding the number of meetings to be held with the Board of Selectmen, user groups, and any other Town body.

V. Fee

The consultant's fee will be negotiated between the Board of Selectmen or their representative and the successful consultant. The fee shall not exceed \$27,000.00. Fee proposals shall **not** be submitted as part of the RFQ submittal. The negotiation process will be conducted in accordance with the procedure outlined in G.L. Chapter 7C, Section 54. Negotiations will begin with the top ranked finalist, consistent with uniform procedures; and if the Board is unable to negotiate a fee with the top ranked finalist, negotiations will take place with the second ranked finalist and so forth. The Applicant shall execute the Town's Standard Contract for Designer Services (See Attachment A to this RFQ) within ten (10) days of the notice of award. **The Board of Selectmen reserve the right to hire the finalist for the actual design of a police station.**

VI. Proposal Requirements

Each applicant must submit a written Application on the Designer Selection Board application form for “Municipalities and Other Public Agencies Form 2016”, a copy of which is attached. The following information is specifically required:

1. Name and address of Applicant.
2. Brief resume of principals and of the staff to be assigned to the Project.
3. List of completed projects, which would best illustrate qualifications for the Project. References must be included.
4. List of ongoing projects of a similar nature with anticipated schedule(s) for completion.
5. Names of architects, engineers and other consultants that may be used for the Project.
6. Statement of the scope and type of services proposed for the Project. The applicant should describe the process and methodology to be used in the completion of services with specific reference to examples of similar projects in which this methodology has been used.
7. Work plan and schedule which reflects timetable for completion of Project.
8. Statement of any legal administrative proceedings pending, or concluded, adversely to the applicant, within the past five (5) years, which relate to the applicant’s performance of this type of work.
9. Appropriate certificates of insurance.
10. MBE/WBE eligibility certification, if applicable
11. Evidence of financial stability.
12. Certificate of compliance with local, state, and federal tax laws (forms attached).
13. Certificate of Non-collusion (forms attached).
14. Three (3) references for projects completed with name and number of contacts.

VII. Evaluation Criteria

All proposals will be evaluated based upon minimum and comparative criteria. The Town will award a contract for this project to the firm(s) or individual(s) who submit(s) the most advantageous proposal based on a consideration of specified evaluation and selection criteria. The Town will then evaluate the proposals using the comparative evaluation criteria. The Town may at its own discretion schedule interviews and score them.

Minimum Criteria

Each applicant must demonstrate that it meets the following minimum requirements:

- A. Firm must have a minimum of five (5) years' experience in the design and renovation of public buildings in Massachusetts. In documenting this qualification, the applicant should describe the professional background of the firm and the extent of previous experience of firm personnel or consultants to be assigned to the project and identify the role that is anticipated each will play in the project.
- B. Firm must demonstrate knowledge of, and experience in, legal and administrative requirements, procedures, and practices related to the design, funding, and construction of Massachusetts public building projects including the State Building Code, regulations of the Architectural Barriers Board and Massachusetts public building and procurement law.
- C. Applicant Firm must provide detailed description of at least three recent similar projects on which the Applicant has performed similar services, identifying owners of these projects as well as the personnel who worked on them and stating whether those individuals will be assigned to the Project.
- D. Firm must provide three (3) written professional references for similar projects, including names, addresses, projects you worked on, their costs, funding sources, and phone numbers.
- E. Firm must not be debarred under G.L. c. 149, section 44C or disqualified under G.L. c. 7C, section 47.

Comparative Criteria

The following rating will be used to evaluate those firms that meet the minimum evaluation criteria listed above. Those proposals that do not meet the minimum criteria may be reviewed at the town's discretion. If a proposal scores "Not Advantageous/ Does not Meet" on any of the following comparative criteria the Town may consider the proposal unacceptable and not review it any further. The Town will consider the following comparative criterion and award each on the following point schedule:

Highly Advantageous: Proposal excels on the specific criterion

Advantageous: Proposal meets evaluation standard for the criterion

Not advantageous/ Does Not Meet: Proposal does not fully meet criterion.

The criteria that will be used for comparative purposes are the following:

A. Evaluation of Management Experience

A firm's work examples and approach to the problem will be evaluated in conjunction with examples submitted of similar projects the firm references.

Evaluation criterion: Firms that clearly demonstrate their experience in conducting feasibility studies and completing preliminary designs for similar public projects in

Massachusetts, that understand the community and that articulate an understanding of the Project based upon experience background, and examples, that have more than 5 years of experience conducting feasibility studies/ performing preliminary design on Public Safety projects, that have experience working with local Boards and that have direct experience working with state or federally funded projects will be considered **“Highly Advantageous.”**

Firms with at least 5 years of experience with Public Safety projects and some demonstrated design experience on federal and/ or state funded projects will be considered **“Advantageous.”**

Firms that demonstrate only minimal understanding of the RFQ, that have less than 5 years of relevant experience, only minimally address the problem identification (simply addresses and/ or repeats the RFQ conditions), or that demonstrate no clear understanding of the problems or the community will be considered **“Not Advantageous/ Does Not Meet.”**

B. Qualification of the Project Personnel/ Project Team (Project Manager and Assigned Professionals)

A key consideration for the Town is the ability of the team to go begin work immediately, work with town staff and voluntary Board members, complete the preliminary architectural design, prepare accurate cost estimates, identify potential funding sources, prepare presentation graphics and assist the Board in promoting the implementation of the project to the general community and Town Meeting.

Evaluation Criteria: A Design Team that demonstrates extensive experience with Public Safety Project feasibility studies/ preliminary design, in presenting reports/ plans to the public and other town boards and commission and has seen its work translated into actual construction will be considered **“Highly Advantageous.”** This will be amplified by the implementation of the design, the ability to identify and incorporate community design concerns and suggestions and demonstrated experience and familiarity with state and federal funding resources. The team would have experience working together on past projects and has a strong history of cost controls during construction. Cost estimator has experience with similar projects.

A team that demonstrates good engineering/ design ability but whose proposals may not have been constructed, or if constructed, construction has not been completed in a timely fashion, or work has not adequately taken into account community concerns, or does not have a strong history of cost controls during construction, will only be considered to be **“Advantageous”** and meet the criteria. Design team has some experience working together on past projects. Cost estimator has some experience with similar projects.

A Design Team with no experience on Public Safety Project Feasibility Studies/ Preliminary Design or has no federal/ state funded project experience or only a minimum

of public design experience will be considered “**Not Advantageous/ Does Not Meet.**” Design team has no experience working together on past projects and has a poor history of cost controls during construction. Cost estimator has no experience with similar projects.

C. Responsiveness to Request for Qualification

The Town is interested in how well the proposing firm understands the project requirements, the firm’s approach to the project in meeting the specific needs of the Town, the firm’s level of interest, that the firm has demonstrated a commitment to the project timetable, and the overall quality of the firm’s proposal.

Highly Advantageous: Proposal excels on the specific criterion

Advantageous: Proposal meets evaluation standard for the criterion

Not advantageous/ Does Not Meet: Proposal does not fully meet criterion

D. Interview

The Town, after reviewing proposals and at its sole discretion, **may** interview the three (3) top ranked firms that meet minimum criteria (finalists).

If the Town chooses to conduct, the interviews will be held to determine the most **highly advantageous** firm based on the following:

1. The professional experience of the consulting team with feasibility analyses and design of Public safety projects.
2. The specific details of the work plan presented by the design team and questions asked of the interviewers.
3. The experience of personnel assigned to the project
4. Presentation skills.

VIII. Project Timetable

The following is a projected timetable. It can be adjusted as needed should each step be completed in a timely manner that warrants moving forward to the next step.

July 24, 2019	Advertise Request for Qualifications
Aug. 26, 2019	Bids due at Town Hall by 12:00 PM
Aug. 26, 2019 – Sept. 16, 2019	Review/ Evaluate RFQ Responses and announce Award
Sept. 16, 2019 – Jan. 6, 2020	Conduct Feasibility Study/ Preliminary Design
Jan. 21, 2020	Deliverables Due
January – May 2020	Public Presentations and Annual or Special Town Meeting

IX. Miscellaneous Articles

1. The Contractor shall maintain worker's compensation for all employees in accordance with Massachusetts General Laws.
2. The Contractor shall deposit evidence of such insurance prior to the commencement of the project.
3. The Contractor shall be solely responsible for all claims of whatever nature arising out of the rendering of services by the Contractor during the term of this proposal and the Contractor shall indemnify and hold the Town harmless against the same to the extent permitted by law.
4. The selection of the successful Contractor shall be made without regard to race, sex, age, religion, political affiliation or national origin.

TOWN OF LANESBOROUGH

Request for Qualifications

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under 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 word "person" shall mean natural person, business, firm, corporation, union, Board, club, or other organization, entity, or group of individuals.

Signature

Typed Name/ Title

Name of Business

CERTIFICATE OF TAX COMPLIANCE

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A (b), I
_____ (Name of Individual) authorized
signatory for

_____ (Name of Consultant) do hereby
certify under the pains and penalties of perjury that said contractor has complied with all
laws of the Commonwealth of Massachusetts, and the Town of Lanesborough and is
current with all local, state, and federal taxes and other assessments, including child
support payments.

Consultant: _____

By: _____

Signature of authorized representative

Title: _____

Date: _____

AGREEMENT
TOWN OF LANESBOROUGH, MA
Contract for Designer Services

PROJECT TITLE:

PROJECT TYPE:

This AGREEMENT is made under seal the ___ day of _____ in the year Two Thousand and _____, between the Town of LANESBOROUGH, Massachusetts, by its Board of Selectmen, the AWARDDING 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 shall be the same as the construction price of the lowest responsible and eligible bidder.
- 1.8 AWARDED 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 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.

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 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.

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 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 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.

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: PAYMENT AND COMPENSATION

7.1 Basic Services

For the performance of all services required under the terms of this AGREEMENT and excluding those services specified under ARTICLES 7.2, 7.3 and 7.4, 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 \$_____. 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.

7.1.1 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 material change in scope of services.

7.2 Additional Compensation

7.2.1. 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 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.

- 7.2.2. For the services provided pursuant to Section 7.2.1 of this ARTICLE, the Designer shall be compensated by the Awarding Authority at the rates set forth in Attachment B.

7.3 Reimbursement

- 7.3.1 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 8: DESIGN FEES AND CHANGE ORDERS

- 8.1 The Designer shall be compensated in accordance with the rates specified in ARTICLE 7 for the services of its employees or any consultant listed in ARTICLE 2 for services associated with changes and change orders described in ARTICLE 7. 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.

- 8.2 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 9: TERMINATION, NO AWARD

- 9.1 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.
- 9.2 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 10: RELEASE AND DISCHARGE

- 10.1 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 11: NOTICES, APPROVALS, INVOICES

- 11.1 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.

- 11.2 Written approval by the Awarding Authority for Extra compensation as provided under ARTICLES 7 and 8, Reimbursements, shall be in the form of a letter issued by the Awarding Authority.
- 11.3 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.
- 11.4 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.
- 11.5 Invoices submitted for services which have not been previously authorized in writing shall be returned to the Designer.
- 11.6 Requests for previously authorized expenses of any nature must be accompanied by a billing or receipt from the source of the expense.

ARTICLE 12: INDEMNIFICATION

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.

ARTICLE 13: INSURANCE

- 13.1 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.
- 13.2 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.

- 13.3 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.
- 13.4 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.
- 13.5 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 Awarding Authority at least fifteen days prior to the intended effective date thereof, which date should be expressed in said notice.
- 13.6 Upon request of the Designer, the Awarding Authority reserves the right to modify any conditions of this Article.

ARTICLE 14: SUPPLEMENTAL CONTRACT DATA; LEGAL REQUIREMENTS

- 14.1 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.7C, §44)
- 14.2 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.7C, §51)
- 14.3 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.7C, §51)
- 14.4 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 or other consideration contingent upon the award of this Agreement to the Designer. (Statutory reference: M.G.L. c.7C §51)
- 14.5 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.7C, §51)
- 14.6 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;
 - (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)

14.7 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.7C, §51)

14.8 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)

14.9 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 14.5 and subsections 14.6.3 – 14.6.8 do not apply.

ARTICLE 15: MISCELLANEOUS PROVISIONS

- 15.1 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.
- 15.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and personal representatives.
- 15.3 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.
- 15.4 The Designer agrees that the Awarding Authority and any of its officer or employee assume no personal liability under this Agreement.
- 15.5 This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.
- 15.6 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.

(signature page to follow)

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, 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

By: _____

Name: _____

Title: _____

Accepted by Awarding Authority

John Goerlach, Chairman

Approved as to Form

Town Counsel

234996/kope/0003

Attachment A
Designer's Scope of Services

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

a. Upon receipt of a Notice to Proceed from the Awarding Authority, 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 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.

2 TYPE 2 CONTRACTS -- DESIGN AND CONSTRUCTION

a. 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.

b. 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.

c. 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.

d. 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 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.

e. 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 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.

f. 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.

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.