
Town of Provincetown
Town Manager/Chief Procurement Officer

260 Commercial Street Provincetown, MA 02657

REQUEST FOR PROPOSALS
DESIGN AND CONSTRUCTION PHASE SERVICES
RENOVATION OF
HARBOR HILL COMPLEX

Provincetown Year Round Rental Housing Trust
260 Commercial Street
Provincetown, MA 02657
September 2017



INVITATION

The Town of Provincetown through its Provincetown Year Round Rental Housing Trust Board of Trustees [the Trust] is seeking proposals from qualified registered architects and engineering firms for Architectural & Engineering [A/E] Services for the renovation design and construction of the Harbor Hill residences including full service design development and value engineering, preparation of final plans and specifications, bidding documents, and construction administration services during the construction phase as described more fully below for the

Harbor Hill Resident complex. The objective of this Request for Proposal [RFP] is to renovate the Harbor Hill residences for occupancy as soon as possible following town acquisition estimated at December 2017. As part of this project, the successful applicant will prepare surveys and field tests; prepare sketches and schematic drawings, including site plans, floor plans and façade drawings showing size and layout of the project; analyze major building components, including foundations, structures, electrical, heating, and ventilating systems in the distinct areas so identified for construction along with septic system upgrades; prepare final plans, specifications and other bid documents; and provide updated project cost estimates based on the final plans and specifications.

Qualified persons or firms are requested to submit proposals to the Town Manager as the Chief Procurement Officer, Town of Provincetown, 260 Commercial Street, Provincetown, MA 02657 no later than Thursday, October 12, 2017 at 4:00 pm. The Provincetown Year Round Rental Housing Trust Board of Trustees is the awarding authority and reserves the right to reject any and all proposals or parts of proposals; to waive any defects, information, and minor irregularities; to accept exceptions to these specifications; to award contracts or to cancel this Request for Proposal if in the Town's best interest to do so.

A pre-proposal briefing will be held on Tuesday September 26, 2017 at 4:00 pm at Town Hall located at 260 Commercial Street. All interested qualified proposers are encouraged to attend the briefing.

The Town of Provincetown is an affirmative action/equal opportunity employer.

Proposal Submission Deadline:

Proposals are due **by Thursday, October 12, 2017 at 4:00 p.m.** to:

Town Manager/Chief Procurement Officer
Town of Provincetown
Town Hall
260 Commercial Street
Provincetown, Massachusetts, 02657

The successful proposer shall comply with all applicable federal, state, and local laws and regulations. Purchases made by the Town are exempt from taxes and bids must exclude any taxes. Tax Certificates will be provided upon request. Verbal orders are not binding on the Town and work done without an executed Change Order or Contract are at the risk of the Contractor and may result in an unenforceable claim. Proposals which are conditional, obscure or which contain additions not called for in the specifications, erasure, alteration or irregularities may be rejected.

PROJECT DESCRIPTION:

The Town of Provincetown through its Provincetown Year Round Rental Housing Trust Board of Trustees anticipates acquiring the property known as Harbor Hill, a 26 unit condominium development at 3, 4 & 8 Harbor Hill and 37 Bradford Street Extension, formerly operated as a timeshare development and acquired through foreclosure process. It is the Trust's intention to provide these units as year-round Community Housing rentals as soon as possible as described in the underlying legislation [Chapter 305 of the Acts of 2016]. This may include some units as determined by the Architect/Engineer being immediately available following acquisition

[anticipated December 2017] and rolling lease-up of units as they become available. Renovations can be phased.

The Harbor Hill Opportunity:

Location & General Description:

West End, Bradford Street Extension, 1056 feet from the Cape Cod National Seashore

- 4 Buildings built in early 1990's, set on 1.2 elevated acres
- 26 condominium units with 23 2-bedroom units of approximately 1119 SF space; 2 1-bedroom units with 671 SF; and 1 3-bedroom unit with 1956 SF; 51 total bedrooms.
- Units include washer/dryers, electric heat, some have fireplaces, many are furnished, and 1 parking spot per unit.
- There are common outdoor spaces, trash receptacles, and bike racks.

Following Town inspections [Building Department, DPW], the Town determined that the units overall are in good condition, but dated, and many are move-in ready with minor upgrades. Many doors need to be replaced in all four buildings; some sliding doors need to be replaced in all four buildings. Some windows need replacement or repair in all four buildings. One entry and staircase needs major renovation; other staircases and entries need minor renovation. Three buildings need roof replacement. Outside common areas need some renovation. Septic systems need upgrades.

It is the intent of the Trust to complete necessary repairs and code corrections as needed to allow for occupancy as quickly as possible. Phased construction is expected to allow for units to become available on a rolling basis.



SCOPE OF SERVICES:

Working on behalf of the Provincetown Year Round Rental Housing Trust Board of Trustees [Trust], the person or firm shall comply with local, state, and federal statutes and regulations, be

an advocate for the Trust through the Design and Construction Phases of the project to insure that the quality of design and construction meets all standards that are specified, as detailed in Massachusetts General Law Chapter 149.

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

PRE-DESIGN:

Architectural & Engineering Services are expected to commence on or before November 2017. During this phase, the Architect/Engineer [A/E] shall gather information required to become familiar with the project and meet with the people that must be communicated with during the design process including the Year Round Rental Housing Trust and Town staff. The A/E shall provide advice, consultation, and guidance to the Town of Provincetown and the Trust with the development of the project design:

- a) Conduct independent site evaluation and testing including, but not necessarily limited to, site surveys, environmental evaluations, subsurface testing, etc.; provide independent review
- b) Preparation of the project scopes, budgets, and schedule;
- c) The A/E shall meet with the Town and the Trust as necessary.
- d) Product will include phasing schedule, cost, determination of unit conditions.

DESIGN & CONSTRUCTION:

A. Design Development. This phase will consist of preparing detailed design and program documents and related services. The program documents will consist of:

1. Complete well detailed construction drawings and specifications including site plans, floor plans, and facade drawings from all angles based upon approved educational specifications.
2. Capital construction cost estimates and schedules, including phasing, site development and construction staging areas.
3. Furnishings and equipment cost estimates and coordination into design spaces.
4. Annual Operation/maintenance cost estimates, based on accepted engineering practices for energy consumption of installed equipment.
5. The Designer shall be required to work closely with the Trust and Town staff designee, in the provision of services for the project including but not limited to, value engineering, construction phasing, and overall coordination.

B. Construction Documents.

1. The Designer shall prepare complete working plans and specifications in sufficient detail to permit firm bids in open competition for construction of the Project.
2. Detailed cost estimates for the Project shall be further developed, and shall include quantities of all materials and unit prices for labor and materials as well as cost estimates for each item of work.

C. Bidding.

1. The Designer shall prepare the final construction contract documents, including advertising for receipt of bids from construction contractors and prevailing wage rates.
2. The Designer shall assist in distributing the bidding documents to prospective

bidders, and assist the Awarding Authority in prequalifying proposers.

3. The Designer shall prepare and distribute all addenda, and shall conduct a pre-bid conference.

4. The Designer shall review all bids and make a recommendation of award to the Awarding Authority.

D. Construction Administration Services.

1. The Designer will be charged with the general administration of the construction contract, although the Trust reserves the right to contract with a separate project Management firm for certain services.

2. The Designer must be present and active on the site regularly during the lifetime of the project. The Designer will provide a Clerk-of-the-Works. Construction oversight should be coordinated with a Clerk of the Works to assure work is in accordance with specifications until the completion and acceptance of the project.

3. Participation, on-site, in weekly project meetings with General Contractor, Site Coordinator, and Clerk of the Works and others as required by the Town.

4. Require each consultant employed by the Designer to make site visits periodically for the same purposes during the progress of that portion of the construction to which the consultant's services relate; and to report in writing thereon to the Designer.

5. Check and approve samples, schedules, shop drawings and other submissions by the General Contractor.

6. Recommend condemnation of all project work observed by the Designer that fails to conform to the contract documents.

7. Decide all questions regarding interpretation of or compliance with the construction documents, except as the Town may, in writing, otherwise determine.

8. Review and act on all requests for changes in the plans, specifications or contracts for the project.

9. Report to the Town, in writing, on the progress of the construction.

10. Conduct semi-final and final inspections of the construction project and report the results of such inspections in writing to the Town.

EXPERIENCE:

Pursuant to MGL c. 149, s. 44A ½, the Architect/Engineer shall be a person and/or firm who is registered by the Commonwealth as an Architect or Professional Engineer and who has at least five (5) years' experience in the construction and supervision of construction of buildings.

Proposers must provide all of the services described above in Scope of Services and comply with Proposal Submission Procedures and Criteria. Each person and/or firm must submit 1) a certificate of non-collusion, and 2) a certification of tax compliance [See Attachment]

All applicants must possess the following minimum qualifications:

1. Massachusetts professional registration and licensing in all applicable disciplines.
2. Thorough knowledge of the Massachusetts State Building Code and Regulations of the Architectural Access Board, and all statutes and regulations governing public building construction projects including public procurement laws. Possess and demonstrate a thorough knowledge of and familiarity with the requirements of the Federal Americans with Disabilities Act.
3. Maintain sufficient levels of staff to complete the project in an acceptable time frame.

4. Must have prior to signing of the contract:
 - a. Professional liability insurance of \$1,000,000.00 or such other higher amount as may be agreed to during contract negotiations.
 - b. Workers' Compensation insurance in accordance with all applicable state laws.

REQUEST FOR SERVICES:

Proposals must be in a sealed envelope, clearly marked "Consulting Services – Architect/Engineer Harbor Hill Renovation" with the proponent's name and address clearly identified.

Submit:

NON-PRICE: ten [10] copies plus an original non-price proposal along with an electronic copy of the non-price proposal on a CD or flash drive.

Proposals are due **by Thursday, October 12, 2017 at 4:00 p.m.** to:

Town Manager/Chief Procurement Officer
Town of Provincetown
Town Hall
260 Commercial Street
Provincetown, Massachusetts, 02657

Late proposals will not be considered and faxed or electronic proposals will not be accepted. (Please note that overnight carriers do not deliver to Provincetown in the morning. If using Fed-Ex, USPS Express Mail, UPS Overnight, DSL or similar carriers, please allow two days for delivery.)

Questions regarding the RFP and/or technical requirements may be addressed in writing to Michelle Jarusiewicz. Questions may be hand delivered, mailed, or emailed to mjarusiewicz@provincetown-ma.gov **by Thursday, October 5, 2017 at 4:00 p.m.** For more information, please contact Community Housing Specialist/Grant Administrator Michelle Jarusiewicz at (508) 487-7087.

The Town reserves the right to reject any or all proposals or to cancel this Request for Proposals if it is in the Town's best interest to do so.

FEE:

Qualified proposers shall submit separate "Price" and "Non-Price" proposals; both such envelopes must then be enclosed in a single larger envelope or box:

- PRICE: one (1) sealed single copy of the "price" proposal and
- NON-PRICE: ten (10) copies plus an original along with an electronic copy of non-price proposal must be enclosed in separate, clearly marked envelopes, and

PRICE: The Price Proposal should identify all costs associated with individual tasks and

shall include all costs and expenses to complete the work. Price proposals shall be opened only after all non-price proposals are evaluated and ranked. The final price will be negotiated. In addition, the proposers are asked to provide a Consultant's Fee Schedule of Hourly Rates and to identify all consultants who will be engaged in this project. Include the name, estimated hours, responsibilities, and anticipated tasks.

Each proposer agrees, by virtue of submitting a proposal, that said proposal shall be available for acceptance by the Town for a period of thirty (30) business days from the deadline for the receipt of proposals. The time for acceptance may be extended by mutual agreement of the Town and the proposers.

General Conditions

The successful proposer shall comply with all applicable federal, state and local laws and regulations. Proposals, which are conditional, obscure or which contain additions not called for in the specifications, erasure, alteration or irregularities may be rejected. The Town of Provincetown reserves the right to reject all proposals, to waive technicalities and minor informalities, to advertise for new proposals, and to make awards as may be in the best interest of the Town.

Reports and materials developed by the successful proposer after awards are made and submitted to the Town of Provincetown are considered public information and cannot be copyrighted. All proposals and deliverables become the property of the Town. The Town has the right to disclose information contained in the proposals once awards have been made.

Contract Period:

The contract period shall be from the Notice of Award until completion of the project, which is anticipated to be a twelve (12) month project.

Form of Contract:

The successful designer will be required to execute the Town's Designer Services contract within five business days of presentation of the contract by the Town; see ATTACHMENT B. Applicant should submit any comments on the Contract with their proposal.

Proposal Requirements

Applicants must submit an original non-price proposal and ten [10] copies plus an electronic copy on a CD or flash-drive. At a minimum, the following information should be provided:

- Completed Designer Selection Committee Application.
- Use form available at the Commonwealth's website: <http://www.mass.gov/anf/docs/dsb/forms/14-5-12-dsb-application-form.pdf> or your own, provided the same information, similarly organized, is provided.
- Name, location, size and type of organization, and years in business for all consultants including any subcontractors;
- Names and registration numbers of all partners, officers, directors and owners;

- Names and resumes of all key persons who will be directly involved with this project and identification of the lead consultant. Include the name, estimated hours, and duties for each person;
- List of and client contact information for all public design projects undertaken within the past five years including descriptive material of comparable projects completed with emphasis on work involved with public building projects;
- List of projects and description of familiarity with public projects in Massachusetts;
- List of and client contact information for all current design projects;
- Additional qualifying statements (training and/or experience of project personnel) that may be relevant when reviewing qualifications and experience;
- Proposed method of organizing and executing this project along with a projected timeline;
- Statement that the applicant certifies under penalties of perjury that the information provided is correct;
- Conditions of proposal offered, if any; and
- Amount and type of general liability insurance. Provide proof of coverage for General Liability insurance in the amount of a minimum of \$1,000,000. Other normal insurances to statutory limits are required;
- A minimum of two client references with names, addresses, telephone numbers and contact person for whom the consultant has performed similar services in the past;
- Certificates of non-collusion and tax compliance (Attachment A).

Any proposal that fails to include all of the above information will be rejected as unresponsive, and will not be afforded a complete review by the evaluation team.

CONTRACT

Upon selection, the successful Architect/Engineer will execute Contract documents [Attachment B] within 7 days of Notice of Award. Upon execution of the Contract, the Architect will be instructed to commence providing the work outlined in the contract. All information, data, documents, photos, computer records, and other materials of any kind acquired or developed by the Architect pursuant to this project shall be the property of the Town of Provincetown. Proposals should include any comments/conditions for consideration in the contract.

SELECTION / EVALUATION CRITERIA

The selection process will be conducted in compliance with Massachusetts General Laws and according to the minimum and comparative criteria described herein. The Town will evaluate all proposals that offer all of the required project consulting services, to determine the most advantageous proposal. The Town will then select firms to be interviewed. Interviews will be conducted the week of October 16. Consultants should be available that week should they be selected. After the interview process, the final ranking of the firms will be prepared. Contract negotiations will start with the highest ranking firm shortly afterward.

MINIMUM EVALUATION CRITERIA

Each proposal must meet all the following criteria in order to be considered for further evaluation.

- **Years in Business** – Provide evidence that the Architectural/Engineering Firm has been in business for a minimum of five (5) years.
- **Architect/Engineer Experience of Municipal Facilities** – Provide evidence of completing A/E services for municipal facilities of a similar magnitude;
- **Architect/Engineer Experience of Residential Facilities** – Provide evidence of completing A/E services for residential facilities of a similar magnitude; preferably public housing. Give at least 3 examples.
- **Estimating, Scheduling and Cost Control Experience for Municipal & Residential Facilities of a similar magnitude** – Provide evidence of management processes or tools used in the management of other municipal projects.
- **Project Completion** – Acknowledgement of other projects that have been completed with a similar scope of work as described in the RFP.

Proposals which do not meet the minimum criteria will be judged unacceptable.

COMPARATIVE EVALUATION CRITERIA

The following grading system will be used to measure the relative merits of each proposal which has met the above minimum evaluation criteria.

| Criteria | Maximum Grade |
|--|----------------------|
| 1. Quality of Proposal | 5 |
| 2. Number of Municipal clients | 2 |
| 3. Years of experience of project leader | 2 |
| 4. Years firm has been in business | 1 |
| 5. Oral Presentation / Interview | 6 |
| 6. References | 3 |
| Total (maximum) | 19 |

1. Quality of Proposal

The proposal will be graded on the following:

- a. Evidence of the Firm's experience with similar Public projects. Including a thorough knowledge of the Massachusetts State Building Code(s), Architectural Access Board (AAB) regulations, Americans with Disabilities Act (ADA), and all other pertinent codes and regulations related to successful completion of the project.
- b. A detailed description of the methodology, level of detail, project approach including staffing, information management, change order process management, value engineering, claims avoidance, and other management and administrative systems related to services that will be undertaken to fulfill the A/E role.

- c. Evidence of the Firm's experience with projects of a similar value.
- d. Qualifications of all personnel involved in the project, including cost estimators.
- e. Clarity and organization of the document.

Grading from 0 to 5 is based on the following:

- 5 Five of the above criteria are positive
- 4 Four of the above criteria are positive
- 3 Three of the above criteria are positive
- 2 Two of the above criteria are positive
- 1 One of the above criteria is positive
- 0 None of the above criteria are positive

2. Number of Municipal/Public Clients

Provide evidence of Municipal/Public Projects where A/E services were provided to complete tasks described in the RFP.

Grading from 0 to 2 as follows:

- 2 Six or more Municipal/Public Clients
- 1 Two to five Municipal/Public Clients
- 0 Less than two Municipal/Public Clients

3. Project team leader – Years of A/E experience

Document the name of the Team Leader for this project if an award is made. Outline the experience and the number of years this leader has worked on similar building projects which have been constructed.

Grading from 0 to 2 as follows...

- 2 More than twenty years of experience
- 1 Ten to twenty years of experience
- 0.5 Five to ten years of experience
- 0 Less than five years of experience

4. Years Firm has been in business

Document the relevant number of years that the firm has been in business.

Grading from 0 to 1 is based on the following:

- 1 More than ten years in business
- 0.5 Five to ten years in business
- 0 Less than five years in business

5. Oral Presentation / Interview

Those firms meeting the Minimum Evaluation Criteria and scoring well in items 1 through 5 of the Comparative Evaluation Criteria *may* be asked to make an oral presentation to the RFP Selection Committee and other Town Officials. Interviews will be conducted week of October 16th 2017. Consultants should be available should they be selected. In addition to presenting the organization and

qualifications of the firm, the presentation should include information of relevant past design projects. It would also be helpful if the Project Leader and other key personnel assigned to this project participate in the presentation.

The Oral Presentation / Interview should cover the following topics:

- A. Explanation of experience in providing A/E services for Public Housing, Residential, & Municipal facilities.
- B. Ability to work with a wide range of agents (Architects, Engineers, Contractors, Subcontractors, Consultants, municipal bodies, etc.) on behalf of the Awarding Authority in providing information relevant to the progress of the project on a timely basis.
- C. Explanation of the management tools that will be used for scheduling, estimating, cost tracking and cost forecasting.
- D. Provide insight of progressive problem solving skills and a demonstrated history of bringing projects of similar magnitude to completion on time and on budget.
- E. Provide insight as to how your firm's expertise has beneficially affected the Contractors' project execution.
- F. Presentation and interview interaction with the lead person, staff personnel and Consultants.

Grading from 0 to 6 is based on the following:

- 6 All of the above topics and more were covered in a positive manner
- 5 All of the above topics were covered in a positive manner
- 4 Four of the above topics were covered in a positive manner
- 3 Three of the above topics were covered in a positive manner
- 2 Two of the above topics were covered in a positive manner
- 1 One of the above topics were covered in a positive manner
- 0 None of the above topics were covered in a positive manner

6. References

Provide a list of references with names, addresses and telephone numbers for contact people for relevant construction projects completed during the past 10 years. The references will be graded on the following:

- a. Quality, completeness and ability to provide A/E services for similar projects.
- b. The ability to anticipate and manage in-progress changes and their potential cost implications.
- c. Working relationship with Committees and Town officials.

Grading from 0 to 3 is based on the following:

- 3 All of the above criteria are positive
- 2 Two of the above criteria are positive
- 1 One of the above criteria is positive
- 0 If none of the above criteria are positive

End of administrative section

ATTACHMENT A: Certificate of non-collusion & tax compliance

CERTIFICATION OF COMPLIANCE

Pursuant to Section 49A of Chapter 62C of the General Laws of Massachusetts, I hereby certify that I have complied with all Laws of the Commonwealth of Massachusetts relating to taxes. This statement is made under the pains and penalties of perjury this _____ day of _____, 2017.

Signed:

Printed Name:

Name of Agency/Organization:

Social Security or Federal Identification Number: _____

CERTIFICATION OF NON-COLLUSION

The undersigned certifies under the 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 any natural person, agency, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

Signed:

Printed Name:

Name of Agency/Organization:

Date: _____

ATTACHMENT B: DRAFT Agreement

**DRAFT AGREEMENT
PROVINCETOWN YEAR ROUND RENTAL TRUST
TOWN OF PROVINCETOWN, MA
Contract for Designer Services**

PROJECT TITLE: Renovation of Harbor Hill Complex

PROJECT TYPE: Design & Construction Architectural & Engineering Services

This AGREEMENT is made under seal the ___ day of _____ in the year Two Thousand and Seventeen, between the Town of Provincetown, Massachusetts, by its Provincetown Year Round Rental Trust, the AWARDING AUTHORITY, and _____, with an address of _____ acting as PROJECT ARCHITECT or PROJECT ENGINEER (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 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 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 her 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 conduct an independent review of the property, 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; which may include construction Phasing to allow occupancy of units to be phased as soon as possible. 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 services under this Agreement. Any defective Designs or Specifications furnished by the Designer 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: DESIGNER'S BASIC FEE

- 7.1 For the performance of all services required under the terms of this AGREEMENT, the Designer shall be compensated by the Awarding Authority in accordance with the not-to-exceed fee of \$_____ as outlined in Attachment B. The total payment due hereunder for basic design fees may be an amount less than the not-to-exceed fee, but in no event shall payment, including any payments made under Articles 8, 9 and 10 of this Agreement, be greater than the not-to-exceed fee without a written amendment, or change order, to this Agreement.
- 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 material 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 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.

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

11.1 By written notice to the Designer, the Awarding Authority may terminate this contract at any time including the right to suspend operations. 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 or suspension, 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.
- 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.
- 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 Awarding Authority 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 or engineer;
 - (ii) if a partnership, a majority of all the partners are persons who are registered architects or engineers;
 - (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 or engineers, and the person to have the project in his or her charge is a registered architect or engineer;
 - (iv) if a joint venture, each joint venture satisfies the requirements of this section.
(Statutory reference: M.G.L. c.7C, §44)
- 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.7C, §51)
- 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.7C, §51)

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 or other consideration contingent upon the award of this Agreement to the Designer. (Statutory reference: M.G.L. c.7C §51)

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.7C, §51)

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;
 - (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.7C, §51)

- 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)
- 15.9.1.1 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, 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

ATTACHMENTS:

| | |
|---------------|-------------------|
| Attachment A: | Scope of Services |
| Attachment B: | Fee Schedule |