



SETTI D. WARREN  
MAYOR

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## MAIN LIBRARY ADDITION/RENOVATION PROJECT

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### REQUEST FOR QUALIFICATIONS DESIGNER SERVICES (RFQ) #16-103 May 19, 2016

The City of Newton, Massachusetts, (“Owner”), acting through the Designer Selection Committee (DSC), is seeking the services of a qualified designer (“Designer”) within the meaning of the Massachusetts Designer Selection Law M.G.L. Chapter 7C, Sections 44 through 58, to provide design services for the design, construction or addition to/renovation of the City’s Main Library, 330 Homer Street, Newton, Massachusetts (the “Project”).

The City, acting through its Owner’s project Manager (OPM),<sup>1</sup> is requesting the qualifications of a Designer to provide professional design and construction administration services during one and perhaps two Project phases. First, the Designer will prepare plans and specifications for the schematic design and grant application phase of the Project. Subject to the approval of the Project and further subject to continued funding authorized by the City, the contract between the City and the Designer may be amended to include continued Design Services through the Project’s design development, construction documents, bid and award, construction administration and final closeout. A potential Project may include a renovation and addition of the existing building. The estimated total project costs of an approved potential Project may be approximately \$33,123,000, of which \$24,384,000 is estimated as the Construction Cost. The fee shall not exceed \$75,000 for all Phase 1 services. Extra Services fees will not be allowed for Phase 1. Subsequent phases will be negotiated once approved.

The design work will begin in June 2016 with scheduled completion by the beginning of January 2017, in order that the City may submit a construction grant application by January 26, 2017. Minimum requirements include current license and registration by the Commonwealth of Massachusetts to render architectural or professional engineering services,<sup>2</sup> with a minimum of 5 years’ experience.

The RFQ documents will be available after **9:00 a.m. on May 19, 2016** at the City Purchasing Department, listed at <http://www.newtonma.gov/gov/purchasing/current.asp> ; or by email to: [purchasing@newtonma.gov](mailto:purchasing@newtonma.gov) . There will be a **mandatory** pre-bid meeting of the existing library in the Drucker Auditorium on Thursday, **May 26, 2016 at 10:00 am**. Qualified persons or firms must submit Statements of Qualification (SOQs) no later than **3:00 p.m. on June 9, 2016** addressed to: City of Newton, c/o Daedalus Projects, Inc. 112 South Street Boston, Massachusetts 02111. SOQs will not be accepted nor may submitted SOQs be corrected, modified or withdrawn after the deadline. There will be

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<sup>1</sup> Daedalus Projects, Inc., 112 South St, Boston, Massachusetts 02111, Attn: Sidni Bragg, (t), 617 451 2717. (e) [sbragg@dpi-boston.com](mailto:sbragg@dpi-boston.com), (f) 617 451 2679.

<sup>2</sup> To the extent applicable, all terms used herein shall have the same meaning assigned to such terms in the Massachusetts Designer Selection Law M.G.L. Chapter 7C, Sections 44 through 58.

no public opening of the SOQs, though on the deadline date a list of all persons who submitted an SOQ will be published. Proposers are responsible for downloading the specifications from the City's web site, and are requested to email the Purchasing Department ([purchasing@newtonma.gov](mailto:purchasing@newtonma.gov)) their company name, address, email address, phone & facsimile number and what bid # (i.e. #16-103) they have downloaded. Proposers requiring clarification or interpretation of the RFQ shall make a written request to Sidni Bragg at [sbragg@dpi-boston.com](mailto:sbragg@dpi-boston.com). Daedalus Projects will only answer such requests if received by **May 27, 2016 at 3:00pm**. Proposers contacting ANY CITY EMPLOYEE or any other person regarding this RFQ outside of the Purchasing Department, once the RFQ has been released, may be disqualified from the procurement process.

Once the SOQs are opened, the DSC will evaluate SOQs and select candidates to be interviewed. The DSC will provide a ranked list of selection recommendations to the Board of Library Trustees, who are funding the project, and to the Office of Mayor Setti Warren, who is the Awarding Authority, for award of the contract. The City of Newton, operating through the DSC, reserves the right to reject any and all SOQs, to waive any defects, informalities, and minor irregularities; and to award contracts or cancel this RFQ if it is in the City's best interest to do so. The City of Newton is an AA/EEO employer, and encourages MBE and WBE firms to apply.

## 1. Introduction

The City of Newton, Massachusetts, ("Owner"), acting through its DSC is seeking the services of a qualified "Designer."

The Owner believes in a design approach where all Project stakeholders are involved in the design process from start to finish on a collaborative basis. The process recognizes that non-inclusive and compartmentalized design decisions made unilaterally may have adverse impacts on achieving sustainable design goals. An integrated design approach is required for the Project.

The Owner's Project Manager (OPM) for the project is Daedalus Projects, Inc. (DPI) who will coordinate the collaborative design team process for options analysis, criteria development and strategic plan approval. The Fee for services related to the completion of the Feasibility Study through Schematic Design ("Basic Services") will be negotiated, but will not exceed \$75,000. The fee shall not exceed \$75,000 for all Phase 1 services. "Extra Services" fees will not be allowed for Phase 1. Subsequent phases will be negotiated once approved.

For additional information on Designer qualifications see Sections 6 and 7 in this RFQ.

## 2. Background

### City's History, Profile and Organizational Structure:

The City of Newton was settled in 1639 and incorporated as a City in 1873. The City is located approximately seven miles from downtown Boston, has a population of approximately 87,971 and occupies a land area of 18.33 square miles. The City is principally suburban-residential in character and consists of 13 distinct villages – Auburndale, Chestnut Hill, Newton Centre, Newton Corner, Newton Highlands, Newton Lower Falls, Newton Upper Falls, Newtonville, Nonantum, Oak Hill, Thompsonville, Waban, and West Newton.

The City is governed under a home-rule charter, which vests executive authority and responsibility in an elected Mayor, who serves a four-year term. Legislative authority is vested in a 24-member City Council,

of which eight members are elected from the City's eight wards and sixteen are elected at large. Members of the City Council are elected every two years.

### The Newton Free Library

The Newton Free Library is governed by a board of five Library Trustees appointed by the Mayor and confirmed by the City Council. They operate under the authority defined in Section 16 of the Newton City Ordinances (**Attachment F**).

Newton opened its Main Library in the fall of 1991. It was designed by a multi-firm architectural team comprised of Anthony Tappe & Associates in joint venture with Kallmann, McKinnell & Wood Architects, Inc. The design and equipping of the library were done to meet the service needs and models of the late 1980s. The model was very print-centric and the heart of the new library building was a reference reading room set in a three-story atrium. The computer use was envisioned as terminals for staff transaction processing and staff assisted database lookup. Within a few years of opening it was realized that the space allocated to Children's Services and to Audio-Visual Services was completely inadequate. The Audio-Visual department was moved into a more spacious location on the third floor. The firm Wilson Rains and Associates was engaged to revise the layout of the Children's room and shift space to it from what was originally envisioned as Special Library Services. The former AV space was later divided, some going to the nearby Fiction stack area, and the rest enclosed and made into a computer lab used both for classes and drop-in computer use throughout the day. The only other notable physical improvement done since 1991 was in the Teen Services Area in 2007 when an LSTA grant supported installation of distinctive carpeting, shelving and furnishings, and re-carpeting and new shelving in the pre-school area of the Children's Room done in 2012.

The Library engaged in a service visioning exercise and Trustees approved a Vision of Library Service in June of 2014. The direction and needs indicated here led to Trustees to engage Turowski2 Architecture in a feasibility study to see how the building could be adapted to meet these needs. A variety of space allocation options was considered within the current building perimeter and using small additions to the space. The study clearly showed that substantial goals of the vision would not be met within the existing building structure and layout, and that even the most minimalist plan reviewed involved very significant costs. Library Trustees chose to pursue help in costs through the next Library Construction Grant round administered by the Board of Library Commissioners and adopted a Strategic Plan in September 2015 that supported this action.

### The Newton City Archives

A substantial portion of the Newton City Archives is housed within the Newton Free Library in a vault operated by the City Clerk's Office. Special permission from the state was sought and granted when the library was designed to house these records outside of Newton City Hall. The capacity of this space has been exceeded and the library has given over substantial space in its own compact shelving area to house City documents. The City Clerk completed a comprehensive Strategic Plan for Newton Archives and Records in December 2015 that outlined records retention and storage needs for departments across the City. A key recommendation of this plan is to house an expanded archive at the Main Library property to house the permanent retention records of all city departments. The plan

introduced the idea of several automatic retrieval dense storage system options, such as the Hänel Lean Lift system. Library Trustees reviewed the Archives Strategic Plan at their February 24th 2016 meeting and approved the idea of incorporating it into the Library's construction project.

### **3. Project Description and Objectives:**

The City has embarked on a building program to update the Newton Free Public Library. This program will be reviewed by Library Trustees for approval on May 25, 2016, and includes Renovation of the existing Library facility with expanded space and the inclusion of a centralized City Archives.

Project Objectives include:

- Reviewing and assessing the existing documentation and conditions;
- Reviewing and assessing the alternative conceptual designs developed by previous Design Team, and its constructability, and developing cost estimates;
- Identifying any community, traffic, or neighbor concerns that may impact study options;
- Collaborating with the OPM to develop a detailed comprehensive Project Schedule that incorporates the City's approval process, to achieve specified start and completion milestones;
- Investigating the most appropriate design option and phasing plan; including temporary operational space;
- Completing a Schematic Design for the preferred option, including a cost estimate;
- Ensuring that the Library's mission and goals are fully understood, updated as necessary, and incorporated into the process;
- Supporting a design that is of high quality, efficient, cost effective, and conforms to Newton Energy Initiative program and the Massachusetts High Performance Building Guidelines and LEED for Municipal Buildings at a minimum, and complies with all applicable regulatory requirements including the Massachusetts Stretch Code which has been adopted by the City. This includes assessing the level of participation to be sought in relation to the Green Library Incentives offered by the Massachusetts Board of Library Commissioners' Library Construction Grant program as detailed in 605 CMR 6.07 (8)(f);
- Developing and evaluating creative energy efficiency solutions over and above the stretch code and innovative alternative sustainable design solutions, including but not limited to active/passive solar, geothermal, etc., and identifying alternate funding sources, first costs and paybacks;
- Provisioning of EQuest or similar energy modeling services;
- Developing accurate and complete cost estimates, including Life Cycle Costs as requested, at the Feasibility Phase and during all subsequent stages of Design. Reconcile all estimates with the estimates provided by the OPM;
- Collaborating with the OPM to help the Owner determine the appropriateness of a CM-at-Risk or Chapter 149 construction delivery method for the Project;
- Coordinating with the City in identifying other approvals required by any governing agency and coordinating submittal materials for such approvals;
- Assisting in communicating Project details with the public;
- Coordinating with the City as required for submittals, documentation and LEED On-Line for certification of the Project;
- Coordinating the structural peer review in accordance with the requirements of the Massachusetts State Building Code;

- Assisting the OPM in coordinating materials testing in accordance with the requirements of the Massachusetts State Building Code; and other materials and systems tests as may be identified or required by the City or the requirements of the Construction Grant;
- Assisting the City, in collaboration with the OPM, in procuring the services of a Hazardous Materials Consultant, Traffic Engineer, Geotechnical Engineering, Commissioning Agent, Surveyor and any other consultant or consulting services as may be required for this Project.
- Engaging with all stakeholders, in coordination with the OPM, from project outset to ensure a collaborative approach is maintained throughout the design process, including involvement from multiple Owner entities.

The Designer shall ensure that the renovated facility take into account all of the Newton Free Library's current and future space requirements to at least a twenty-year planning horizon, all applicable codes, rules and regulations, including but not limited to, the latest Massachusetts State Building Code, including the recently adopted "Stretch" Energy Code, the rules and regulations of the Architectural Access Board, the Americans with Disabilities Act, as applicable, and the City's goal to reduce the Energy use index by 20% by 2020.

To accomplish this, the selected Designer will be working in partnership with various City departments, committees, and sub-committees, as well as the OPM. The local committees will include at a minimum:

- City Council, Library Trustees and the Mayor.
- Design Review Committee (DRC) – A standing committee appointed by the City Council and Mayor, established to coordinate the design review process for any public City facility.
- Planning and Development Department, Development Review Team (DRT) - Prior to construction at any municipal building, the Director of Planning reviews projects for consistency and compatibility with the *Newton Comprehensive Plan* and other applicable planning and analytical studies.
- Public Facilities Committee of the City Council – For required local reviews.
- Programs and Services Committees of the City Council – For required local reviews.
- Finance Committee of the City Council – For required local reviews.
- Public Buildings Department (PBD) – The Public Buildings Commissioner is responsible for the construction, alteration, repair and maintenance of all public buildings. PBD will provide direction to the OPM and/or Designer. The Public Buildings Commissioner also serves as the Secretary of the DSC and DRC and will be supported by the OPM for those tasks.
- Public Meetings at other City Committees – As may be required for local reviews.
- Other committees including the Committee on Disabilities, Conservation Commission, Fire Department, Department of Public Works, etc. – As may be required for local reviews.

The Designer will assist the Owner in identifying other approvals required by the Commonwealth of Massachusetts and coordinate submittal materials with the OPM for such approvals. Such approvals may include:

- Massachusetts Environmental Protection Agency (MEPA)
- Massachusetts Water Resources Authority (MWRA)

- Massachusetts Architectural Access Board (MAAB)
- Massachusetts Board of Library Commissioners (MBLC)
- Massachusetts Historical Commission (MHC)

Needs and building conditions assessments and other background documents shall be available for informational purposes and include:

- City of Newton Capital Improvements Program  
<http://www.newtonma.gov/gov/executive/cip/>
- City of Newton City Historic Building Survey by BCA, dated September 2011  
<http://www.newtonma.gov/gov/building/>
- Newton Free Library Feasibility Study by Turowski2 Architecture, 2014
- <https://www.dropbox.com/sh/xu8i5alapd4npmw/AAC5admmS41AnaPqGROZ0svga?dl=0>

Note: For documents not available on the web site, please contact Newton Free Library to set up a time to review the information.

The time period within which phase 1 of the Project is to be completed is by the end of December 2016.

Copies of this RFQ may be obtained from the City's Purchasing Department during normal business hours on or after **May 19, 2016, after 9:00am** from

Purchasing Department  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, Massachusetts 02459  
Email: [purchasing@newtonma.gov](mailto:purchasing@newtonma.gov) Phone # 617.796.1220

or on line at

<http://www.newtonma.gov/gov/purchasing/current.asp>

Proposers must submit eleven (11) paper copies and one (1) digital CD copies of their SOQs containing complete information as requested herein by **3:00pm on June 9, 2016**. All SOQs shall be for the entire work required to complete Phase 1 of the project and the fee shall be negotiated.

Applicants may direct written questions regarding the selection process and/or the RFQ by a written request to Sidni Bragg c/o Daedalus Projects [sbragg@dpi-boston.com](mailto:sbragg@dpi-boston.com) The City will only answer questions received prior to 3:00 pm **May 27, 2016**

1. The City will make best efforts to give written Responses to the Questions to all individuals or firms requesting a copy of this RFQ by an email Addendum no later than **June 1, 2016**.
2. To receive Addenda or Responses to Questions that may be issued, Applicants are requested to register with City of Newton Purchasing Department at the [purchasing@newtonma.gov](mailto:purchasing@newtonma.gov) email address.
3. A Project pre-bid briefing will be held at:

Drucker Auditorium, Newton Free Library, 330 Homer Street, Newton, MA 02459 on  
**Thursday, May 26, 2016 at 10:00 am. ATTENDANCE AT THE BRIEFING IS MANDATORY.**

4. State Construction Grant:

This project will start with the filing of a Construction Grant to the Massachusetts Board of Library Commissioners according to the regulations expressed in 605 CMR 6.00: LIBRARY IMPROVEMENT PROGRAM - PUBLIC LIBRARY CONSTRUCTION. Information about this grant program can be obtained at: <http://mblc.state.ma.us/grants/construction/>

5. This Project is multifaceted and has at least two distinct Phases:

- **Phase 1:** Building Program and other document review; Architect Selection; Schematic Design; Required construction grant engineering research, Cost Estimate, grant preparation. The Massachusetts Board of Library Commissioners has set a filing deadline of January 26, 2017. (See <http://mblc.state.ma.us/mblc/news/releases/past-releases/2016/nr160505.php> )
- **Phase interlude:** Grant review and award notice will take six months. A provisional grant awardee is then allotted six months to identify matching funds. Approximately 20% of the projects that pass the minimum scoring threshold are given provisional awards each year, with some awards not coming for five or even more years. Projects that are not given a first year provisional award are placed on a waiting list in order of score. Waiting list jumps are possible if higher ranked projects do not obtain local matching funds.
- **Phase 1a:** If needed. Rejected grant submissions may have an opportunity to revise plans and the application and re-submit, likely due in January 2018. These projects would move to the end of the waiting list. Additional fees for OPM and Architect services would have to be negotiated for this phase, if it is necessary.
- **Phase 2:** The range of services shall include but not be limited to supporting the City and Project Team in the review, re-estimating and possible alteration of schematic design based upon grant commentary & updated conditions; then design development, final estimating, construction drawings and documents, bidding and construction supervision.

#### 4. Project Description

The City will embark on a building program to refresh re-envision and expand the Newton Free Library, and to expand the capacity and organization of City Archival Materials.

If the City decides to proceed with the Project beyond the initial, or Schematic Design Phase, has selected the project delivery method (Design/Bid/Build or CM-at-Risk), and has invited the Designer to continue through Project completion, the Contract between the City and the Designer will be amended accordingly. The total maximum duration of such Contract is estimated as follows.

<b>Feasibility Study/Schematic Design Phase/Site Plan Approval:</b>	<b>4-6 months</b>
<b>Design Development/Construction Documents/Bidding Phase:</b>	<b>6-8 months</b>
<b>Construction Phase:</b>	<b>15-18 months</b>

The anticipated initial Contract period will be from June 2016 through the completion of the Feasibility Study/Schematic Design and Site Plan Approval Phases. The City reserves the right to terminate the services provided by the selected firm/individual at the end of this phase and re-solicit Designer services or to continue with the selected respondent beyond this phase in accordance with the Contract for Designer Services at **Attachment B** below.

## 5. Scope of Services

The Designer will be required to execute the City of Newton's standard Contract for Designer Services (Contract), a copy of which is attached hereto as **Attachment B** which is incorporated herein by reference. The required scope of services is set forth in the Contract. If the Owner decides to proceed with the Project beyond the Schematic Design Phase and when the project delivery method is decided (Design/Bid/Build or CM-at-Risk), the Contract will be amended accordingly. Copies of Designer Services Contract Amendments for Design/Bid/Build and CM-at-Risk are also attached hereto in **Attachment B** and incorporated herein by reference. Unless specifically excluded, the Designer's Basic Services consist of the tasks described in the Contract for Designer Services as amended and this RFQ including all investigative work (to the extent provided for in the Contract), feasibility study, schematic design, and, at the Owner's option, design work, preparation of construction documents, bidding period administration, construction administration, and other related work reasonably inferred in the opinion of the Owner as being necessary to meet the project's stated scope and goals.

During the feasibility, schematic design and design development phases of the project, the Owner will require interactive working group sessions to explore site strategy options, design concepts, evaluation criteria, programming requirements, sustainability goals and potential solutions.

The anticipated scope of the Feasibility Study comprises: Investigating the existing building and site and providing conceptual plans and elevations that meet the program and space requirements of the Owner.

The use of Building Information Modeling (BIM)<sup>3</sup> is seen as advantageous to delivering project goals. The Designer shall advise the Owner on their use of BIM and, at no additional cost, shall prepare all Instruments of Services in a form suitable for use in a BIM model for design, construction, commissioning, and building operations and maintenance. The Designer shall provide the Owner with options on how to apply BIM on the Project and shall make recommendations on alternative methods of BIM implementation. The Designer shall indicate their ability to utilize a BIM model if created by another party such as the General Contractor (GC) or Construction Manager at Risk (CM) for use in, but not limited to, mechanical coordination and construction administration.

This RFQ will be appended to and become part of the Contract for Designer Services. Any Designer selected as a result of this RFQ will be required to execute the Contract for Designer Services and any applicable amendments that are attached hereto.

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<sup>3</sup> Building Information Modeling is a digital representation of physical and functional characteristics of a facility. A BIM is a shared knowledge resource for information about a facility forming a reliable basis for decisions during its life-cycle; defined as existing from earliest conception to demolition

The Designer will review the proposed project as specified in the RFQ. The Designer will meet as required with the City, Library Officials, Building Committee, OPM and other officials (elected or volunteer) to develop a thorough understanding of the project and the needs of the City of Newton.

Designer Services include, but are not limited to, verification of existing record information including building dimensions, details and general existing conditions, cost estimating, all architecture as well as traffic, civil, site development, sanitary, mechanical, electrical, plumbing, fire protection, structural, site planning and landscape architecture, basic environmental permitting, graphics, lighting design, acoustics, data and communication; any specialty consultants; code consultants, accessibility, energy evaluations including the coordination of energy rebates, detailed cost estimates, LEED or sustainable design consultants; Furniture, Fixtures & Equipment (FF&E) including programming, specifications, procurement and coordination of installation; assessments of geotechnical and geo-environmental information; preparation of construction documents; developing and issuing of early bid packages, if needed; bidding and administering the construction contract documents and other design and consulting services incidental and required to fulfill the project goals. Please refer to Article 7 of the Contract and any amendment for a complete summary of Basic Services.

Extra and reimbursable expenses are defined in Articles 8 and 9 of the Contract in **Attachment B**. *Any extra or reimbursable expenses will not be allowed in Phase 1 any subsequent Phase 2 extra or reimbursable expenses must be approved in writing in advance,*

## **6. Minimum Qualifications and Requirements:**

Each Designer responding to this RFQ must certify in its cover letter that it is a qualified Designer within the meaning of the Massachusetts Designer Selection Law, M.G.L. Chapter 7C, Sections 44 through 58, employing a Massachusetts registered architect responsible for and being in control of the services to be provided pursuant to the Contract. Any Designer that fails to include such certification in its response, demonstrating that these criteria have been met, will be rejected without further consideration.

## **7. Evaluation and Selection Criteria:**

In evaluating proposals, the Owner and DSC will consider the members of the proposed design team. Identify those member(s) of the proposed design team who will be responsible for the following categories of work: (Firm's name, individual's name and professional registration or license number, as applicable, must be listed in the application for each category of work).

- a. Architecture*
- b. Environmental Permitting*
- c. Geotechnical Engineering*
- d. Geo-Environmental*
- e. Site Survey*
- f. Archeological Survey*
- g. Hazardous Materials*
- h. Civil Engineering*
- i. Structural Engineering*
- j. Landscape Architecture*
- k. Fire Protection Engineering*

- l. Plumbing Engineering*
- m. HVAC Engineering*
- n. Electrical Engineering*
- o. Lighting Consultant*
- p. Energy Modeling*
- q. Data/Communications Consultant*
- r. Specifications Consultant*
- s. Sustainable/Green Design/Renewable Energy Consultant*
- t. Cost Estimating*
- u. Accessibility Consultant*
- v. Traffic Consultant*
- w. Interior Design, Furniture, Fixtures and Equipment Consultant*
- x. Code Consultant*
- y. Security Consultant*
- z. Acoustical Consultant*
- aa. Library/Media/AV Consultant*

Applicants must address each category of work listed above in their application whether it is to be performed by in-house staff or by sub-consultant(s).

Failure to address each category may result in the elimination of the applicant from consideration on this project.

Applicants should not list any consultants other than those for the categories of work listed above.

The Owner and DSC will consider the following additional criteria in evaluating proposals:

- a. Prior public library or closely related experience best illustrating current qualifications for the project.
- b. Past performance of the firm, if any with regard to public or private projects across the Commonwealth, with respect to:
  - i. Quality of project design.
  - ii. Quality, clarity, completeness and accuracy of plans and contract documents.
  - iii. Ability to meet established program requirements within allotted budget and to design to budget.
  - iv. Ability to meet schedules including submission of design and contract documents, processing of shop drawings, contractor requisitions and change orders.
  - v. Coordination and management of consultants.
  - vi. Working relationship with contractors, subcontractors, local awarding authority, staff and local officials.
- c. Current workload and ability to undertake the contract based on the number and scope of projects for which the firm is currently under contract.
- d. The identity and qualifications of the consultants who will work on the project.
- e. Demonstrated ability to lead a collaborative team approach to the project.
- f. Demonstrated ability to provide documents for CM-at-Risk, M.G.L. c. 149A, CM-at-Risk delivery method for the project, including ability to provide early bid packages for fast-track project.
- g. The financial stability of the firm.
- h. The qualifications of the personnel to be assigned to the project.

- i. Geographical proximity of the firm to the project site or willingness of the firm to make site visits and attend local meetings as required by the client.
- j. Prior experience using BIM on projects of similar type and scope.
- k. Additional criteria that the DSC considers relevant to the project.

## **8. Selection Process and Selection Schedule**

Selection will be made by the City of Newton Designer Selection Committee in accordance with Newton's Designer Selection Ordinance (Section 5-35 through 5-37) and Procedures, attached hereto as **Attachments E & F**.

### Process:

- a. The Owner acting through the DSC will perform a review of all responses as follows:
  - i. The City has appointed the DSC, in accordance with Chapter 5, Article IV of the Owner's Ordinance, for the selection of the Designer.
  - ii. The DSC will be responsible for reviewing each Respondent's proposal to determine if they have met the minimum criteria established in the RFQ. Respondents who do not meet the minimum criteria will not be further considered.
  - iii. The DSC will review the Respondents' applications and check the necessary references.
- b. The DSC members will score each proposal that has met the minimum criteria based on the weighted evaluation criteria identified in Section 4 of the RFQ.
- c. Based on the initial scores the DSC will rank the Respondents and short-list a minimum of three (3) Respondents.
- d. The DSC will schedule interviews with the short-listed Respondents. Each short-listed Respondent will be given an opportunity to make a brief presentation on their experience and capabilities to successfully provide the required project management services. DSC members will have an opportunity to discuss the responses and ask questions.
- e. Following the interviews, the DSC members will develop final rankings based, in part on, the weighted Evaluation Criteria in the RFQ and on additional information obtained during the interviews.
- f. In accordance with the City's Designer Selection Procedures, the DSC will transmit a list of ranked finalists to the Mayor. The submitted list shall be accompanied by a written explanation.
- g. As more fully described in Attachment E, City of Newton Designer Selection Committee Designer Selection Procedures, the Owner, through the OPM, will commence fee negotiations with the first-ranked Respondent.
- h. If the Owner is unable to negotiate a contract with the first-ranked selection, the Owner will then commence negotiations with its second-ranked selection and so on, until a contract is successfully negotiated and approved by the Owner. If fee negotiations fail the Mayor may request three (3) additional recommendations from which he may select, or the City may re-advertise the RFQ.

The Owner may re-advertise the RFQ if fewer than three responses are received.

### Schedule:

- a. The following is a tentative schedule of the selection process, subject to change at the Owner's discretion.

- May 19, 2016 RFQ available after 9:00 AM.
- May 26, 2016 Mandatory Pre-Bid meeting and tour at Library at 10:00 AM
- May 27, 2016 Questions from Respondents due to DPI by 3:00 PM
- June 1, 2016 Responses to Designer Questions issued by DPI by 3:00 PM
- June 9, 2016 Designer Proposals due to DPI by 3:00 PM
- June 15, 2016 Respondents short-listed
- June 16, 2016 Notify Respondents
- June 22, 2016 Interview short-listed Respondents
- June 29, 2016 Notify Selected Designer

## 9. Proposal requirements

Copies of the Request for Qualifications (RFQ) may be obtained from the City's Purchasing Department during normal business hours on or after **May 19, 2016** from:

Purchasing Department  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, Massachusetts 02459  
Email: [purchasing@newtonma.gov](mailto:purchasing@newtonma.gov)  
Phone # 617 796 1220

Persons or firms interested in applying must meet the following requirements:

- Eleven (11) hard copies, and one (1) digital copy** in PDF format on separate compact disc of the application must be received on or **before 3:00 pm EST, June 9, 2016**. Applications should be printed double-side and bound in such a manner that the pages lie and remain flat when opened. The specific organization and orientation of the proposal is at the applicant's discretion, but it is recommended that the proposal be laid out in such a manner that the reader doesn't need to be constantly rotating the proposal. Applications should not be provided with acetate covers.

Responses are to be delivered in person or by certified/express mail. ***Responses submitted by fax or electronic mail will not be considered.***

The Owner assumes no responsibility or liability for late delivery or receipt of Responses. All Responses received after the stated submittal date and time will be judged to be unacceptable and will be returned unopened to the sender.

- Applications must be accompanied by a concise cover letter that is a maximum of two pages in length. A copy of the cover letter should be attached to each copy of the application. The cover letter must include the certifications as noted in Section 6 of this RFQ.
- Applicants may supplement this proposal with graphic materials and photographs that best demonstrate design capabilities of the team proposed for this project subject to the page limitations as set forth in the Standard Designer Application Form.

d. Proposals shall be addressed to:

**Name:** City of Newton  
  
**Address:** c/o Daedalus Projects, Inc.  
112 South St  
Boston, Ma 02111  
  
**Attention:** Sidni Bragg  
**Phone:** 617 451 2717  
**Email:** sbragg@dpi-boston.com  
**Fax #:** 617 451 2679

e. Proposals must be clearly identified by marking the package or envelope with the following:

**City of Newton: Main Library Addition / Renovation Project**  
"Name of Applicant"

## 10. Questions & Additional Information

All questions regarding this RFQ must be submitted by **May 27, 2016 at 3PM** and should be addressed exclusively in writing by **EMAIL only**, to:

**Name:** Sidni Bragg  
**Email:** sbragg@dpi-boston.com

Questions received after the deadline will not be answered.  
Responses to Questions will be issued on to all applicants via E-MAIL by Daedalus Project Management no later than **3:00 pm EST on June 1, 2016.**

Any additional information or addenda will be issued to all applicants via E-MAIL by Daedalus Project Incorporated. It is the responsibility of the Applicant to confirm with Daedalus Projects of the issuance of any additional information or addenda.

## 11. Pre-Proposal Meeting

All interested parties must attend a Pre-Bid briefing session and facility tour at the **Drucker Auditorium, Newton Free Library, 330 Homer Street, Newton, MA 02459** on Thursday **May 26, 2016 at 10:00AM.** *Attendance at the informational briefing session is mandatory.*

## 12. Requirements for content of response:

All copies of responses shall be:

- Presented in an organized and clear manner;
- Must include the required forms in Attachment C;
- Must include all required certifications;
- Must include the following information:

A. Cover letter shall be a maximum of two pages in length and include:

1. An acknowledgement of any addendum issued to the RFQ.
2. An acknowledgement that the Respondent has read the RFQ. Respondent shall note any exceptions to the RFQ in its cover letter.
3. An acknowledgement that the Respondent has read the Standard Contract and Standard Amendments. Respondent shall note any exceptions to the Standard Contract and/or Standard Amendments in its cover letter.
4. A specific statement regarding compliance with the minimum requirements identified in Item 6 of this Request for Services to include identification of registration, number of years of experience and where obtained (as supported by the resume section of Attachment C).
5. A description of the Respondent's organization and its history.
6. The signature of an individual authorized to negotiate and execute the Contract for Designer Services, in the form that is attached to the RFQ, on behalf of the Respondent.
7. The name, title, address, e-mail and telephone number of the contact person who can respond to requests for additional information.

B. Selection Criteria: The response shall address the Respondent's ability to meet the "Selection Criteria" Section.

**13. Certifications:**

Respondents will be required to submit certifications required in M.G.L. c. 7C, §51(d)(1)-(iv).

**14. Payment Schedule and Fee Explanation:**

The Owner in conjunction with OPM will negotiate the fee for services dependent upon an evaluation of the level of effort required, job complexity, specialized knowledge required, estimated construction cost, comparison with past project fees, and other considerations. As construction cost is but one of several factors, a final construction figure in excess of the initial construction estimate will not, in and of itself, constitute a justification for an increased in fee.

**15. Other Provisions**

**A. Public Record**

All responses and information submitted in response to this RFQ are subject to the Massachusetts Public Records Law, M.G.L. c. 66, § 10 and c. 4, § 7(26). Any statements in submitted responses that are inconsistent with the provisions of these statutes shall be disregarded.

**B. Waiver/Cure of Minor Informalities, Errors and Omissions**

The Owner reserves the right to waive or permit cure of minor informalities, errors or omissions prior to the selection of a Respondent, and to conduct discussions with any qualified Respondents and to take any other measures with respect to this RFQ in any manner necessary to serve the best interest of the Owner and its beneficiaries.

**C. Communications with the Owner**

The Owner's Procurement Officer for this Request for Services is:

Daedalus Projects, Inc.  
112 South Street  
Boston, MA 02111

Project Manager Thomas Gatzunis

Phone: 617 451 2717  
Fax #: 617 451 2679  
Email: tgatzunis@dpi-boston.com

Respondents that intend to submit a response are prohibited from contacting any of the Owner's staff other than Daedalus Projects, Inc. An exception to this rule applies to Respondents that currently do business with the Owner, but any contact made by such persons with the Owner must be limited to that current business, and must not relate to this RFQ. In addition, such respondents shall not discuss this RFQ with any of the Owner's consultants, legal counsel or other advisors.

***FAILURE TO OBSERVE THIS RULE MAY BE GROUNDS FOR DISQUALIFICATION.***

**D. Costs**

The Owner is not liable for any costs incurred by any Respondent in preparing a response to this RFQ or for any other costs incurred prior to entering into and only in accordance with a Contract between the Respondent and the Owner.

**E. Withdrawn/Irrevocability of Responses**

Applicants may withdraw an application as long as the written request to withdraw is received by the City of Newton, c/o Daedalus Projects Incorporated prior to the time and date of the proposal opening.

**F. Rejection of Responses, Modification of RFQ**

The Owner reserves the right to reject any and all responses if the Owner determines, within its own discretion, that it is in the Owner's best interests to do so. This RFQ does not commit the Owner to select any Respondent, award any contract, pay any costs in preparing a response, or procure a contract for any services. The Owner also reserves the right to cancel or modify this RFQ in part or in its entirety, or to change the RFQ guidelines. A Respondent may not alter the RFQ or its components.

**G. Subcontracting and Joint Ventures**

Respondent's intention to subcontract or partner or joint venture with other firm(s), individual or entity must be clearly described in the response.

**H. Validity of Response**

Submitted responses must be valid in all respects for a minimum period of ninety (90) days after the submission deadline.

**FURTHER INFORMATION**

<b>ATTACHMENTS:</b>	<b>PAGE:</b>
<b>Attachment A:</b> 605 CMR 6.00 Board of Library Commissioners Regulations	<b>I</b>
<b>Attachment B:</b> Base Contract for Designer Services;  Base Designer Contract Amendment for Design/Bid/Build;  Base Designer Contract Amendment for CM-at-Risk	<b>II</b>
<b>Attachment C:</b> Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction (Updated July 2011) ( <a href="http://www.mass.gov/anf/docs/dcam/dlforms/dsb/designer-municp-app-11-7-11.doc">http://www.mass.gov/anf/docs/dcam/dlforms/dsb/designer-municp-app-11-7-11.doc</a> )	<b>III</b>
<b>Attachment D:</b> Required Certifications <ul style="list-style-type: none"> <li>▪ Satisfaction of State Tax Requirements</li> <li>▪ Certificate of Authority</li> <li>▪ Certificate of Non-Collusion</li> <li>▪ Certificate of Tax Compliance</li> <li>▪ Proof of Registration by the Commonwealth of Massachusetts an architect or professional engineer (if applicable)</li> <li>▪ Demonstrated ability to secure general liability insurance, worker’s compensation, and automobile insurance for all proposed staff that will be involved in the project</li> <li>▪ List all claims, including insurance claims and claims in litigation or adjudicatory process or settled, brought by or against the firm/individual in the past three (3) years. Including for each the reason for the claim, name (s) of claimant(s) and outcomes.</li> </ul>	<b>IV</b>
<b>Attachment D.1:</b> Certificate of Good Standing and/or Tax Compliance	<b>V</b>
<b>Attachment D.2:</b> Certificate of Authority – Business Corporations	<b>VI</b>
<b>Attachment D.3:</b> Certificate of Non-Collusion	<b>VII</b>
<b>Attachment D.4:</b> Certificate of Tax Compliance	<b>VIII</b>
<b>Attachment E:</b> City of Newton Designer Selection Committee, Designer Selection Procedures Designer Selection Procedures	<b>IX</b>
<b>Attachment F:</b> City of Newton Ordinances Design Review Committee Ordinance	<b>X</b>

**ATTACHMENT A**

**605 CMR 6.00 BOARD OF LIBRARY COMMISSIONERS REGULATIONS**

<http://mbic.state.ma.us/grants/construction/regulations/index.php>

**ATTACHMENT B**

**BASE CONTRACT FOR DESIGNER SERVICES**

CONTRACT FOR DESIGNER SERVICES  
(BASE CONTRACT FOR DESIGN BID BUILD OR CM at RISK PROJECT)

This Contract is made as of this            day of                            in the year            between the City of Newton, Massachusetts, 02459 hereinafter called "the Owner" and XXXXX. at XXXXX hereinafter called the "Designer" for the Designer to provide the designer services required to complete the Basic and Extra Services described herein at Feasibility Study and Schematic Design Services for the Newton Free Library.

The Designer is authorized to perform the services required by this Contract through the Feasibility Study Phase and the Schematic Design Phase. At the Owner's option, the Designer may be authorized to perform services for subsequent design phases and/or the Construction Phases and Completion Phase, at which time a mutually agreed upon amendment to this Contract will be executed between the Owner and the Designer. If the Owner elects to construct the Project using the CM at Risk ("CM-R") construction delivery method pursuant to M.G.L. c. 149A, this Contract shall be amended using the Standard Amendment for CM-R, as it may be amended from time to time by the Owner. If the Owner elects to construct the Project using the Design-Bid-Build ("DBB") construction delivery method pursuant to M.G.L. c. 149, this Contract shall be amended using the Owner's Standard Amendment for DBB, as it may be amended from time to time by the Owner.

For the performance of the services required under this Contract for the Feasibility Study Phase and the Schematic Design Phase, and excluding those services specified under Articles 7.5, 7.6, 7.7, 7.8, 7.9, 7.10, and 8.3, the Designer shall be compensated by the Owner for Basic Services in accordance with the Payment Schedule included as Attachment A.

Designer's Project Architect/Engineer: \_\_\_\_\_

The Sub-consultants to provide services, either as Basic or Extra Services, to the Designer under this contract may include the following, as identified on the RFS:

<b>Discipline</b>	<b>Name of Firm</b>	<b>Name of Principal</b>	<b>MBE/ WBE</b>
Civil Engineering			
Landscape Architecture			
Structural Engineering			
Fire Protection Engineering			
Plumbing Engineering			
HVAC Engineering			
Electrical/Lighting/			
Data/Communications			
Environmental Permitting			
Geotechnical Engineering			
Hazardous Materials			
Cost Estimating			
Geo-Environmental			
Acoustical Consultant			
Specifications Consultant			

Library/Media/Audio Visual Consultant			
Sustainable/Green Design/Renewable Energy Consultant			
Code Consultant			
Accessibility Consultant			
Traffic Consultant			
Furniture, Fixtures and Equipment Consultant			
Site Surveying			
Security Consultant			

IN WITNESS WHEREOF, the Owner and the Designer hereby agree to the terms of the Contract and have caused this Contract to be executed by their respective authorized officers or other authorized representatives.

**OWNER:**

CITY OF NEWTON

Setti D. Warren \_\_\_\_\_  
(print name)  
 Mayor \_\_\_\_\_  
(print title)

By \_\_\_\_\_  
(signature and seal)  
 Date \_\_\_\_\_

\_\_\_\_\_  
 Joshua Morse  
 Public Buildings Commissioner

Approved as to Legal Form & Character

\_\_\_\_\_  
 Associate City Solicitor

**DESIGNER:**

\_\_\_\_\_  
(print name)  
 \_\_\_\_\_  
(print title)

By \_\_\_\_\_  
(signature )

Date \_\_\_\_\_

(Attach Certificate of Owner)

I hereby certify funds are available for this contract in the amount of \$

\_\_\_\_\_  
 Comptroller of Accounts

TABLE OF CONTENTS

PROJECT DESCRIPTION, FEE AND SIGNATURES .....

ARTICLE 1 DEFINITIONS .....

ARTICLE 2 RELATIONSHIP OF THE PARTIES.....

ARTICLE 3 RESPONSIBILITIES OF THE OWNER.....

ARTICLE 4 RESPONSIBILITIES OF THE DESIGNER.....

ARTICLE 5 SUB-CONSULTANTS .....

ARTICLE 6 COMPENSATION .....

ARTICLE 7 BASIC SERVICES.....

ARTICLE 8 EXTRA SERVICES .....

ARTICLE 9 REIMBURSABLE EXPENSES .....

ARTICLE 10 COMPENSATION AND RESPONSIBILITY FOR CHANGE ORDERS

ARTICLE 11 RELEASE AND DISCHARGE .....

ARTICLE 12 ASSIGNMENT, SUSPENSION, TERMINATION, NO AWARD .....

ARTICLE 13 NOTICES .....

ARTICLE 14 INDEMNIFICATION .....

ARTICLE 15 INSURANCE .....

ARTICLE 16 OWNERSHIP OF DOCUMENTS.....

ARTICLE 17 STATUTORY REQUIREMENTS.....

ARTICLE 18 MISCELLANEOUS .....

  

ATTACHMENT A PAYMENT SCHEDULE

ATTACHMENT B REQUEST FOR DESIGNER SERVICES (RFS)

ATTACHMENT C M/WBE PARTICIPATION SCHEDULE

ATTACHMENT D LETTER OF INTERNAL CONTROL (DESIGNER)

ATTACHMENT E LETTER FROM CPA ON INTERNAL CONTROLS

ATTACHMENT F FORM OF DESIGNER CONTRACT AMENDMENT

## ARTICLE 1: DEFINITIONS

All terms that this Contract defines may be used with or without initial capital letters. Other terms, abbreviations and references are defined as they appear herein. Words and abbreviations that are not defined in the Contract Documents but which have recognized technical or trade meanings are used in accordance with those meanings.

**APPLICABLE LAWS** – All applicable laws, statutes, ordinances, by-laws, codes, rules and regulations, of the Commonwealth of Massachusetts, its political subdivisions, and the Federal Government applicable to the Project.

**APPROVAL** -- A written communication from the Owner approving the work of the current Phase, as identified on Attachment A, or authorizing the Designer to proceed to the next Phase or approving the scope and compensation for either Extra Services or Reimbursable Expenses.

**AUTHORITY** – see OWNER.

**BASIC SERVICES** – The scope of services to be provided by the Designer under this Contract, unless the Contract is otherwise terminated pursuant to Article 12, as described in Article 7 of this Contract, and as it may be amended pursuant to Article 18.4.

**CERTIFICATE OF FINAL COMPLETION** – The form prescribed by the Owner which contains the certification of the Designer, OPM and the Owner that the Project has reached Final Completion.

**CERTIFICATE OF SUBSTANTIAL COMPLETION** – The certificate prepared by the Designer and approved by the Owner to the effect that the Work has reached Substantial Completion.

**CHANGE ORDER** – A written instrument prepared by the Designer and signed by the Owner, Owner's Project Manager, Contractor or CM at Risk, and Designer, stating their agreement on a change in the Construction Contract Documents, including, but not limited to, a change in the Contract Sum and/or Contract Time, and/or any other specification in the Construction Contract Documents.

**COMMISSIONING CONSULTANT** – A person or firm engaged by the Owner to provide building commissioning services, including advisory services during design and construction.

**CONSTRUCTION CONTRACT DOCUMENTS** – The Construction Contract Documents consist of the Owner-Contractor or Owner-CM at Risk Agreement, Advertisement, Instructions to Bidders, Bidding Documents, Contract Forms, Conditions of the Contract, Drawings, Plans, Technical Specifications, all addenda issued prior to execution of the Construction Contract, and other documents approved after execution of the Owner-Contractor or Owner-CM at Risk Agreement relating thereto.

**CONSTRUCTION MANAGEMENT AT RISK or CONSTRUCTION MANAGEMENT AT RISK SERVICES or CONSTRUCTION MANAGEMENT AT RISK DELIVERY METHOD or CM at RISK DELIVERY METHOD** - a construction method described in M.G.L. c. 149A wherein a Construction Management at Risk firm provides a range of preconstruction services and construction management services which may include cost estimation and consultation regarding the design of the building project, the preparation and coordination of bid packages, scheduling, cost control, and value engineering, acting as the general contractor during the construction, detailing the Trade Contractor scope of work, holding the trade contracts and other subcontracts, prequalifying and evaluating Trade Contractors and Sub-contractors, and providing management and construction services, all at a Guaranteed Maximum Price, which shall represent the maximum amount to be paid by the public agency for the building project, including the cost of the work, the general conditions and the fee payable to the Construction Management at Risk Firm.

**CONSTRUCTION MANAGER AT RISK, CONSTRUCTION MANAGEMENT at RISK FIRM or CM at RISK** – the individual, corporation, partnership, sole proprietorship, joint stock company, joint venture or other entity with whom the Owner has contracted pursuant to M.G.L. c. 149A, §§ 6 & 7, to provide Construction Management at Risk Services.

**CONTRACT** – This Contract, inclusive of all Attachments, between the Owner and the Designer; all written amendments to this Contract; and all Approvals issued pursuant to this Contract.

**CONTRACTOR OR GENERAL CONTRACTOR** – The person or firm with whom the Owner has contracted pursuant to M.G.L. c. 149, §§ 44A-44M to perform the construction for this Project.

**CONTRACTOR APPLICATION AND CERTIFICATE FOR PAYMENT** – The form prescribed by the Owner which contains the Contractor's or CM at Risk's application or requisition for periodic or final payment for Work performed in accordance with the Construction Contract Documents and the Designer's certificate for payment as approved by the OPM and the Owner.

**DESIGNER** – The individual, corporation, partnership, sole proprietorship, joint stock company, joint venture or other entity identified as such on page one of this Contract performing architecture, landscape architecture, and/or engineering services under this Contract and which meets the qualifications set forth in M.G.L. c. 7 § 38A 1/2.

**DESIGNER SERVICES** – The services to be performed by the Designer and its Sub-contractors under this Contract including developing and providing all data, designs, drawings, specifications and estimates required for the Project.

**DISTRICT** – see “OWNER.”

**EXTRA SERVICES** – Services requested by the Owner to be performed by the Designer but which are additional (or "extra") to the services performed as Basic Services.

**FEE FOR BASIC SERVICES** – The fee to be paid to the Designer for satisfactorily performing the Basic Services required under this Contract, exclusive of the compensation to which the Designer may be entitled pursuant to Articles 8 (Extra Services) and 9 (Reimbursable Expenses).

**FINAL COMPLETION** – The Work has been completed in accordance with the Construction Contract Documents and the project specifications, schematic plans and drawings and the Agreement approved by the Owner.

**FINAL DESIGN PROGRAM** – A description of the programmatic, functional, spatial, and environmental requirements of the Project in written and graphic form indicating the scope of work and design requirements of the Project.

**GENERAL LAWS** – The Massachusetts General Laws as amended, including any rules, regulations and administrative procedures implementing said laws.

**GUARANTEED MAXIMUM PRICE or GMP** - The agreed total dollar amount for the Construction Management at Risk services, including the cost of the Work, the general conditions and the fees charged by the Construction Management at Risk firm.

**GUIDELINES AND STANDARDS** – Documents published by the Owner or the MBLC including regulations and procedures that supplement the tasks of Designers contracting with Owners for, as they may be amended from time to time by the Owner.

**MATERIALS** – The designs, drawings, project manual specifications, and other materials prepared by the Designer as defined in Article 16.1.

**MBE/WBE** – A minority-owned business (MBE) or a women-owned business (WBE) certified by the State Office of Minority and Women Business Assistance (SOMWBA).

**NOTICE TO PROCEED** – The written communication issued by the Owner to the Contractor or CM at Risk authorizing him to proceed with the construction contract and establishing the date for commencement of the contract time.

**OWNER** – The entity identified as such on page one of this Contract, or its authorized representative, that is the owner of the property that is the site of the Project, or has or will have exclusive control over the site for at least the duration of the useful life of the facility that is the subject of the Project, and is responsible for administering this Contract.

**OWNER-CONTRACTOR AGREEMENT or OWNER – GENERAL CONTRACTOR AGREEMENT** – The contract between the Owner and one or more General Contractors and/or

goods or services providers for construction of a whole or part of the Project, including approved change orders.

**OWNER-CM at RISK AGREEMENT** – The contract between the Owner and the CM at Risk, including, but not limited to, the GMP Amendment, for the provision of Construction Management at Risk Services for the Project.

**OWNER'S PROJECT MANAGER or OPM** – The individual, corporation, partnership, sole proprietorship, joint stock company, joint venture or other entity with whom the Owner has contracted to perform the Project Management Services for this Project, and who meets the qualifications of M.G.L. c. 149, § 44A ½ and has been approved by the Owner.

**PHASE** – A distinct portion of the work of this Contract and its associated duration, as identified on Attachment A. Prior Approval to proceed for each Phase is required from the Owner.

**PRINCIPALS** – The owner(s) and/or officer(s) of the Designer or Sub-consultant who are in responsible charge of the Project.

**PROJECT** – All work that pertains to the study, planning, programming, design, construction, reconstruction, installation, demolition, maintenance and repair, if any, as described in the Project Scope and Budget Agreement and Project Funding Agreement.

**PROJECT ARCHITECT AND/OR PROJECT ENGINEER** – The individual designated by the Designer as its Project Architect or Project Engineer. Such Project Architect or Project Engineer shall be a registered architect, engineer or landscape architect as required by the Request For Designer Services, shall be the person who shall oversee the performance of all services provided on the Project and shall be certified in the Massachusetts Certified Public Purchasing Official Program as administered by the Inspector General of the Commonwealth of Massachusetts.

**PROJECT CONSTRUCTION BUDGET** – That portion of the Total Project Budget that enumerates the cost of constructing the Project inclusive of all designed construction, demolition, and renovation work, all supportive and preparatory construction work required for the Project, the General Contractor or the CM at Risk and all Sub-contractors, suppliers, materials, equipment, general conditions, insurance, overhead and profit and all other expenditures that are ordinarily considered as construction cost allocations. The Project Construction Budget includes the design contingency, bidding contingency, and price escalation contingency, as appropriate to the phase of the Project.

**PROJECT SCHEDULE** – A complete list of all activities, time and sequence required to complete the Project, as defined in the Project Scope and Budget Agreement or Project Funding Agreement.

**RECORD DRAWINGS** – The drawings prepared by the Designer and its Sub-contractors pursuant to Article 7.10.5 of this Contract which incorporate the design changes made during the construction period and which incorporate information on the marked-up prints, as-built drawings and other data furnished by the General Contractor or CM at Risk and any Sub-contractors.

**REIMBURSABLE EXPENSES** – Costs and expenses incurred by the Designer that are reimbursable pursuant to the provisions of Article 9 of this Contract.

**REQUEST FOR DESIGNER SERVICES** or RFS – The written document appended hereto as Attachment B specifying various requirements including the project goals and general scope, project site, scope of services, submission requirements, schedule, and construction budget.

**STANDARD OF CARE** – The generally accepted professional standard of care ordinarily used by design professionals performing a similar scope of services in the same geographic area on projects of comparable size and complexity.

**SUB-CONSULTANT** – The Sub-contractors listed on page 1 of this Contract, together with any additional Sub-contractors engaged by the Designer from time to time, which shall be an individual, company, firm, or business having a direct contractual relationship with the Designer, who provides services on the Project.

**SUB-CONTRACTOR** – The person or entity having a direct contractual relationship with the Contractor, or CM at Risk who has the contract to perform the construction of the Project, except as otherwise specifically provided or required herein or by Law. Subcontractor when used also means “Trade Contractor” except when otherwise specified.

**SUBSTANTIAL COMPLETION** – The Work, as evidenced by the Certificate of Substantial Completion, is fully complete or substantially complete so that the value of the Work remaining to be done is, in the estimate of the Owner, less than one percent of the original contract price, or (2) the Contractor substantially completes the work and the Owner takes possession for occupancy, whichever occurs first.

**TOTAL PROJECT BUDGET** – A complete and full enumeration of all costs of the Project, as defined in the Project Scope and Budget Agreement or Project Funding Agreement.

**TRADE CONTRACTOR** – a subcontractor having a direct contractual relationship with a Contractor or CM at Risk to perform one or more so-called sub-bid classes of work listed in M.G.L. c.149, §44F, and any other sub-bid classes of work selected by the Owner for the Project in accordance with the provisions of either M.G.L. 149, §44F(1)(a) or M.G.L. c. 149A, §8(a).

**WORK** – The entire construction required to be furnished under the Construction Contract Documents. Work includes performing and furnishing any and all services, obligations, duties,

responsibilities, labor, materials, equipment, temporary facilities, and incidentals necessary to complete the construction assigned to, or undertaken by the Contractor or the CM at Risk pursuant to the Construction Contract Documents.

## ARTICLE 2: RELATIONSHIP OF THE PARTIES

- 2.1 The Owner's Project Manager shall act as an independent contractor of the Owner in providing certain project management services required for the Project required for the project except where the OPM is an existing public employee of the Owner as described in M.G.L. c. 149, § 149A1/2.
- 2.2 The Designer is solely responsible for providing the design for the Project and for performing in accordance with this Contract.
- 2.3 The Contractor or CM at Risk, as the case may be, shall be solely responsible for construction means, methods, techniques, sequences and procedures, the Contractor's or CM at Risk's schedules, and for safety precautions and programs in connection with the Project and for performing in accordance with the Owner-Contractor or Owner - CM at Risk Agreement. The Designer shall be responsible for the Designer's negligent acts or omissions but shall not have control over or charge of acts or omissions of the Contractor or CM at Risk, Sub-contractors, or the agents or employees of the Contractor or CM at Risk or Sub-contractors, the Owner's Project Manager, the Commissioning Consultant or other technical consultants.
- 2.4 Nothing in this Contract shall be construed as an assumption by the Designer of the responsibilities or duties of the Contractor or CM at Risk or the Owner's Project Manager. It is the intention of the parties that the Designer's services shall be rendered in a manner compatible with and in coordination with the services provided by the Owner's Project Manager and the Commissioning Consultant. It is not intended that the services of the Designer and the Owner's Project Manager or the Commissioning Consultant be competitive or duplicative, but rather complementary. The Designer shall be entitled to rely upon the Owner's Project Manager, Commissioning Consultant and Contractor or CM at Risk for the proper performance of their obligations pursuant to their respective contracts with the Owner.

## ARTICLE 3: RESPONSIBILITIES OF THE OWNER

- 3.1 The Owner shall have the right to approve the Designer's work.
- 3.2 The Owner shall designate an individual who shall have the authority to act on behalf of the Owner under this Contract and who shall be responsible for day-to-day communication between the Owner and the Designer.
- 3.3 Upon satisfactory completion of services performed, the Owner shall make payments to the Designer as provided in Articles 6, 7, 8 and 9, 10 and 11.

- 3.4 To the extent such data is available, the Owner shall furnish to the Designer existing surveys of the site, building plans, borings, test pits, structural, mechanical, chemical or other test data, tests for air and water pollution and for hazardous materials, photographs, reports and utility information. The Designer shall be entitled to reasonably rely upon the sufficiency and accuracy of the information furnished to the Designer under this Article 3.4 and under Article 4.11, provided that the Designer shall coordinate its services with the services of the Owner's consultants and shall notify the Owner in writing of any deficiencies in such data of which the Designer becomes aware.
- 3.5 Except as otherwise provided in this Contract, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor or CM at Risk and the Designer's consultants through the Designer about matters arising out of or relating to the Construction Contract Documents. The Owner shall promptly notify the Designer of any direct communications that may affect the Designer's services.
- 3.6 The Owner shall provide the Designer access to the Project site prior to commencement of the Work and shall obligate the Contractor or CM at Risk to provide the Designer access to the Work wherever it is in preparation or progress.
- 3.7 If the Owner requests the Designer to execute any certificates that are not readily available as of the effective date of this Contract, the proposed language of such certificates shall be submitted to the Designer for review at least 14 days prior to the requested dates of execution. The Designer shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Contract.
- 3.8 The Owner shall deliver to the Designer in a timely manner written copies of all Approvals required by this Contract. If Approval is withheld, the Owner shall notify the Designer in a timely manner in writing why such Approval is being withheld.
- 3.9 The Owner shall not unreasonably withhold, delay, condition, or deny any approval, acceptance, or consent required under this Contract, including any Approval.

#### **ARTICLE 4: RESPONSIBILITIES OF THE DESIGNER**

- 4.1 The Designer shall perform the Designer Services in accordance with the requirements of this Contract, and in accordance with the Standard of Care. The Designer shall exercise due care and diligence in the rendition of all services under this Contract in accordance with such professional standards and shall exercise the Standard of Care to provide the services required under this Contract in conformity with all Applicable Laws.
- 4.2 The Designer shall be responsible for the Designer Services including any changes to such Services that may be required in accordance with this Contract. The Designer shall furnish appropriate competent professional services for each of the Phases in accordance with the Standard of Care. Any changes, corrections, additions or deletions requested by the Owner and shall be incorporated into the design of the Project unless detailed objections thereto are issued in writing by the Designer, subject to Article 8.2.2. Nothing

herein shall be construed as an assumption by the Owner the responsibilities or duties of the Designer.

- 4.3 The Designer Services shall be performed as expeditiously as is consistent with orderly progress of the work, consistent with the agreed upon project design schedule as established under Article 7.4.2 and as it may thereafter be amended by the parties from time to time. In the event of delays due to causes outside of the Designer's control, the project design schedule may be extended as necessary, and Designer's compensation may be equitably adjusted pursuant to Article 6.6 to the extent that Designer incurs additional direct costs caused by the delay. Time is of the essence for the duration of this Contract.
- 4.4 The Designer shall provide the scope of services required by this Contract, as described in more detail in the RFS and Attachment A.
- 4.5 The Designer shall comply with the terms and conditions of all project agreements executed between the Owner and the MBLC and any and all administrative directives issued by the Owner, now in effect or hereafter promulgated during the term of this Contract, without any additional compensation, that are applicable to Designer's Services under this Contract and that have been provided or are readily available to Designer prior to such Services being performed. The Owner shall reasonably compensate the Designer for complying with any term or condition of a project agreement executed between the Owner and the MBLC or any administrative directive issued by the Owner, that was not provided to or was not readily available to the Designer prior to such Services being performed and that materially impacts the Designer's scope or other aspect of its Services, Fee, schedule, or any obligations and responsibilities under this Contract.
- 4.6 The Designer acknowledges the importance that the Owner attributes to the abilities and qualifications of the key members of the Designer's team, including Sub-contractors, and the continuity of key members' participation in the services to be provided under this Contract. This Contract has been entered into in reliance on the Designer's representation that the individuals, consultants, assignments and responsibilities will be maintained throughout the duration of this engagement. No substitution or replacement of individuals or change in the Sub-consultants, listed on pages 1-2 of this Contract, shall take place without the prior written approval of the Owner, except when necessitated by causes beyond the Designer's control (such causes shall include if an individual leaves or is no longer associated with the Designer's firm). If the Designer proposes to replace one of the members of the Designer's team, the Designer shall propose a person or consultant with qualifications at least equal to the person or firm the Designer proposes to replace. The Owner shall have the right to approve any substitution or replacement or change in status for the persons or Sub-consultants listed on page 1-2 of this Contract and such approval shall not be unreasonably withheld. At the request of the Owner, the Designer shall consult with the Owner to resolve any situation in which the Owner determines that a member of the Designer's team is failing to perform services in an acceptable manner to the Owner. The Owner shall have the right to direct the removal of any such person or consultant. The Owner shall work in good faith with the Designer to resolve any material problems identified by the Owner in writing regarding performance of the Designer's obligations under this Contract. No act or omission of the Owner made or permitted under this Article shall relieve the Designer of its responsibility for the performance of the services specified in this Contract.

- 4.7 The Designer shall compile and distribute a job directory which includes all names, addresses, phone and fax numbers, and e-mail addresses of the representatives of the Designer and their Sub-contractors. This shall be distributed upon commencement of the services, and shall be updated and redistributed as project participants and/or contact information change.
- 4.8 The Designer shall employ at all times adequate professional and support personnel with requisite expertise and adequate numbers to assure the complete, timely performance of the obligations of the Designer. The Designer shall acquaint its employees and Sub-contractors with all provisions of the General Laws governing public construction projects, including but not limited to M.G.L. c. 149, M.G.L. 149A, and M.G.L. c. 30, that are relevant to the performance of Designer's obligations under this Contract. When directed by the Owner, the Designer shall fully cooperate with the Owner in obtaining the Criminal Offender Record Information (CORI) of the Designer and its employees and of any Sub-contractors and their employees in accordance with the provisions of M.G.L. c. 71, § 38R, M.G.L. c. 6, §§ 167-178B (the so-called CORI Law), any other applicable law, and District policy. All contracts between the Designer and each Sub-consultant shall include appropriate provisions requiring the Sub-consultant to fully cooperate with the Owner in obtaining the Criminal Offender Record Information (CORI) of the Sub-consultant and its employees as aforesaid.
- 4.9 The Designer shall be and shall remain liable to the Owner for all damages incurred by the Owner as a result of the failure of the Designer or its Sub-consultants to perform in conformance with the terms and conditions of this Contract.
- 4.10 Design Within the Project Construction Budget
- 4.10.1 The Designer shall prepare cost estimates for the Project as described in Article 7 of this Contract or at more frequent intervals as required in the RFS. Unless otherwise specified in the RFS, the cost estimates shall be considered Basic Services and the Designer is not eligible for any additional compensation for preparing the same. The format for cost estimates shall be in accordance with the requirements of the Owner.
- 4.10.2 The Designer shall produce a design for the Project meeting the requirements of the scope of work described in the RFS to be constructed within the Project Construction Budget, provided that the Designer shall be permitted to recommend to the Owner such adjustments to the Project's design, consistent with the Project Funding, as the Designer reasonably believes may be required to adhere to the Project Construction Budget. In the event the Designer's cost estimate for the Project (as reconciled in accordance with the provisions of this Contract) exceeds the Project Construction Budget, the Owner may require the Designer to revise the design, drawings and specifications to keep the cost estimate for the Project within the Project Construction Budget. The Designer shall not be entitled to extra compensation for making such revisions to contain costs within the Project Construction Budget.
- 4.10.3 In a Project constructed pursuant to M.G.L. c. 149, §§ 44A-M, if the Project Construction Budget is exceeded by the lowest bona fide, responsible bid by any

amount, the Owner shall direct the Designer to review and compare the Project Construction Budget with the bids received to identify the variances. Upon completion of this review and submission of the Designer's report to the Owner, the Owner shall:

- (a) direct the Designer to revise the Final Design Program, Project scope and quality as required to reduce the estimated construction costs to be within the Project Construction Budget, in accordance with Article 4.10.5 of this Contract; or
- (b) give written approval to the Designer of an increase in the Project Construction Budget; or
- (c) authorize rebidding of the Project within a reasonable time; or
- (d) terminate this Contract in accordance with Article 12.3; or
- (e) implement any other mutually accepted alternative that the Owner and the Designer may agree on.

4.10.4 In a Project constructed pursuant to M.G.L. c. 149A, the Designer shall be responsible for managing the design of the Project to stay within the Project Construction Budget. If the GMP proposal submitted by the CM at Risk exceeds the Project Construction Budget, the Designer shall review and compare the Project Construction Budget with the GMP proposal submitted by the CM at Risk to identify the variances. Upon completion of this review, if directed by the Owner, the Designer shall assist the Owner in negotiating a GMP within the Project Construction Budget in accordance with Article 7.7.9. If a GMP cannot be successfully negotiated between the Owner and the CM at Risk within the Project Construction Budget, the Owner shall:

- (a) direct the Designer to participate with the Owner, OPM, and CM at Risk in design reviews and revise the design, including appropriate revisions to drawings and specifications, as necessary in order to reach an agreement on a GMP within the Project Construction Budget; in accordance with Article 4.10.5; or
- (b) give written approval to the Designer of an increase in the Project Construction Budget and resume negotiating a GMP with the CM at Risk; or
- (c) terminate this Contract in accordance with Article 12.3; or
- (d) implement any other mutually accepted alternative that the Owner and the Designer may agree on.

4.10.5 (a) If the Owner chooses to proceed under Article 4.10.3(a) or 4.10.4(a), the Designer and its Sub-consultants, without receiving additional compensation, except if fewer than three bona fide, responsible bids were received (in the case of a Project constructed pursuant to M.G.L. c. 149, §§ 44A-44M) or (in the case of a Project

constructed pursuant to G.L. c. 149A) if fewer than three bona fide responsible Trade Contractor or so-called non-trade contractor bids for each category of work were received, or if 4.10.5(b) and/or (c) applies, shall cooperate in revising the designs, drawings and specifications as may be required to reduce or modify the quality or scope or both, of the Project so that they will comply with the Project Construction Budget as approved at the conclusion of the Construction Documents Phase or as amended. Any changes to the program or the approved space summary shall be subject to the written approval of the Owner. Upon completion of these revisions, the Designer shall also be required to produce a revised cost estimate demonstrating that the estimated cost of the Project does not exceed the Project Construction Budget. Revising the designs, drawings, and specifications and updating the cost estimate shall be the sole obligation on the part of the Designer with respect to 4.10.3(a) or 4.10.4(a); (b) If the Owner elects to proceed with revisions that significantly increase the complexity either of the Construction Contract Documents themselves or the Construction Administration Phase services that the Designer will have to provide, then the Designer shall be entitled to an equitable adjustment in its Fee to reflect the impact on its services; (c) If the bid or proposal referenced in 4.10.3 or 4.10.4 above was submitted on a date that is more than three (3) months after approval of the Construction Contract Documents then such revisions shall be Extra Services.

4.10.6 The Designer must receive written approval of the Owner before the Project Construction Budget shall be considered amended.

4.11 Additional Tests and Surveys: The Designer shall be responsible for reviewing the surveys, investigations, testing and reports completed by the Owner and as provided under Article 3.4, and determining the types of additional or expanded surveys, investigations, or testing required for the Project. Such services shall be provided by qualified specialty Sub-consultants as necessary. Both the types of services and the Sub-consultants shall be approved by the Owner. In the event that the Designer employs the services of a Sub-consultant to provide such services, the Designer shall employ such Sub-consultants who have the professional liability insurance coverage described in paragraph 15.8.1 covering such services, to the extent that such insurance coverage is generally available to Sub-consultants. The Designer shall, upon the Owner's written request, assign to the Owner the Designer's contractual right to pursue a claim against such Sub-consultants. Such services shall be paid for as provided in Article 8 – Extra Services unless such services are specifically included as Basic Services in the RFS. Such services may include but need not be limited to:

4.11.1 Site surveys;

4.11.2 Structural tests and materials tests;

4.11.3 Geotechnical and geo-environmental investigations and reports, including existing buildings hazardous material reports, boring tests, test pits, observation wells, testing and chemical analysis of site substrate conditions;

4.11.4 Traffic studies.

## ARTICLE 5: SUB-CONTRACTORS

- 5.1 The Designer may engage Sub-consultants, subject to the prior written approval of the Owner and subject to Article 9.3, in order to perform services under this Contract. If Sub-contractors are engaged, the person responsible for, and in control of, the Sub-consultant services to be provided must be professionally registered or licensed in Massachusetts in the necessary disciplines for the services if such registration or licensing is required under the applicable General Laws. The engagement of Sub-consultants shall not in any way relieve the Designer from its duties and responsibilities for its work, including, without limitation, coordinating all Designer Services furnished under this Contract by the Sub-consultants.
- 5.2 Upon request, the Designer shall provide the Owner with copies of its agreements with Sub-contractors, including any amendments thereto and copies of the Sub-consultant's applicable certificates of insurance.
- 5.3 No substitution of Sub-contractors and no use of additional Sub-contractors or assignment of services shall be made without prior written approval of the Owner, which approval shall not be unreasonably withheld.

## ARTICLE 6: COMPENSATION

- 6.1 For the satisfactory performance of all services required pursuant to this Contract, excluding those services specified under Articles 8 and 9, the Designer shall be compensated by the Owner in the amounts specified in Attachment A as that Fee may be amended by written amendment to this Contract.
- 6.2 When the Designer receives payment from the Owner, the Designer shall promptly make payment to each Sub-consultant whose work was included in the work for which such payment was received unless payment has been theretofore made. The Owner shall have the contractual right to investigate any breach of performance of a Sub-consultant and to initiate corrective measures it determines are necessary and in the best interest of the Owner. All contracts between the Designer and its Sub-contractors shall include a provision in which the Owner's rights to initiate corrective action shall be stipulated.
- 6.3 Payment Schedule
  - 6.3.1 Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each Phase. The amount of fees attributable to each Phase shall be as set out in the schedule in Attachment A. Payment for approved Reimbursable Expenses and/or Extra Services shall be made monthly upon receipt of an approved invoice from the Designer.
  - 6.3.2 The Owner shall make payments to the Designer within 30 days of the Owner's approval of an invoice from the Designer. The Owner's payment for any services provided under this Contract shall not be construed to operate as a waiver of any rights under the Contract or any cause of action arising out of performance of the Contract. The Owner shall not withhold payments to offset costs alleged to have been incurred by the Owner on account of allegedly negligent acts, errors or omissions unless the Designer agrees or has been found liable for specific amounts in a binding agreement or court judgment, or unless the Designer fails to maintain the professional

liability insurance required under paragraphs 15.7.1 and 15.7.2. The Owner may withhold approval of invoice items the Owner reasonably believes have not been performed in accordance with this Contract, including adjustments to payment amounts in instances where required submittals to the Owner may be found to be missing or incomplete. If Owner and Designer continue to disagree, the disagreement shall be immediately submitted to mediation in accordance with paragraph 18.5(b).

#### 6.4 Installment Payments During Construction

- 6.4.1 During the construction Phase, the Designer shall be paid the Fee for Basic Services stipulated in Attachment A.
- 6.4.2 Payments to the Designer during the construction Phase shall be made in equal monthly installments for the duration of the construction Phase. The amount of each payment shall be determined by dividing 95% of the fee for Construction Phase/Final Completion as stipulated in Attachment A by the number of months between the Notice to Proceed and the scheduled issuance of the Certificate of Substantial Completion as indicated in the Project Schedule as approved by the Owner. The Designer shall be entitled to Extra Services in accordance with Article 8.3 should the Project be delayed beyond the 60-day period described in Article 8.3 for reasons beyond the control of the Designer.

6.5 Final Installment: The Designer shall be paid the unpaid balance of the fee for Construction Phase/Final Completion as stipulated in Attachment A (as that fee may be amended), upon compliance with the following requirements:

- 6.5.1 Approval of the Certificate of Final Completion of construction (such Certificate to be in the form acceptable to the Owner). In cases where a Certificate of Partial Release of Retainage is approved, the Designer shall be paid up to an amount commensurate with the percent of retainage released until a Certificate of Final Completion is approved; and
- 6.5.2 Delivery by the Designer to the Owner of the Record Drawings required by this Contract; and
- 6.5.3 Verification of payment to MBE/WBE Sub-contractors or Sub-contractors identified on Attachment C and as required by Article 17.4; and
- 6.5.4 A written evaluation of the General Contractor or CM at Risk by the Designer from which the Owner shall be able to complete its submission of the Contractor Evaluations as required by M.G.L. c.149 § 44D(7).
- 6.5.5 In the event that the Designer is unable to comply with items 6.5.1 and 6.5.2 above due to reasons beyond the Designer's control, as determined by the Owner, Final Installment shall not be unreasonably withheld or delayed beyond 60 days after the date of Substantial Completion, provided that the Designer has complied with all other requirements.

## 6.6 Substantial Change

- 6.6.1 If there is a substantial change in the services described in the RFS to be provided by the Designer under this Contract, the Designer and the Owner will mutually agree to a written amendment describing the services and an amended Fee for Basic Services to reflect the change and reasonable cost of such change. Such changes shall be designated on Attachment F and shall be executed by the Designer and the Owner.
- 6.6.2 Should the Designer and the Owner be unable to negotiate a mutually acceptable amendment to the Fee for Basic Services when there has been a substantial change in the specified services, the Owner shall unilaterally and promptly determine, in good faith and supported by a written explanation in sufficient detail, a reasonable maximum dollar amount for the services as amended and process payments to the Designer subject to said maximum amount, until an amendment to the Fee for Basic Services for such change is set by later agreement between the parties, provided, that the Designer's acceptance of such payments shall not be considered a waiver by the Designer of its right to pursue a claim for additional compensation related to the change in services, and provided that such disagreement shall be immediately submitted to mediation in accordance with paragraph 18.5(b). In no event shall the Designer stop work under this Contract due to a disagreement with the Owner regarding an amendment in the Designer's Fee for Basic Services, provided that the Owner complies with its payment obligations under this Article 6.6.
- 6.6.3 Notwithstanding the foregoing, the amendment to this Agreement described in paragraph 7.4.8 shall be negotiated and executed by both parties prior to the start of the subsequent Phase.

## ARTICLE 7: BASIC SERVICES

- 7.1 The Designer shall discuss with the Owner and the OPM the requirements for each Phase before beginning work on that Phase.
- 7.2 The Owner will promptly review and approve the Designer's submittals. Upon completion of its review, the Owner shall promptly and in writing:
- (a) approve the submittal as made; or
  - (b) approve that part of the submittal that is acceptable and reject the remainder; or
  - (c) reject the submittal; or
  - (d) require the Designer to submit additional information or details in support of its submittal.
- 7.2.1 The description of Designer Services required during the various Phases as described in the RFS and hereinafter may include specification of the number of submittals the Designer will be required to make and estimates of the approximate number of meetings that the Designer will be required to prepare for and attend during each Phase.

- 7.2.2 As a part of Basic Services, the Designer shall provide six copies of each submittal to the Owner and, if the Owner elects to proceed with the CM at Risk construction delivery method, one copy of each submittal to the CM at Risk. Drawings submitted to the Owner shall be reproduced at half full size. A graphic scale shall be placed upon all such drawings prior to construction documents phase submittals. If the Designer is required to make submittals in excess of the number specified or if the Designer is required to prepare for and attend meetings in excess of the number specified for a Phase, the Designer shall be entitled to compensation for Extra Services, provided, however, that the Designer shall not be entitled to such compensation if and to the extent the Owner shall have reasonably determined that the additional submittals or the additional meetings were required due to either the Designer's lack of preparation, or other fault due to deficiencies or omissions in documents prepared by the Designer.
- 7.2.3 All document submittals shall be in the form of neatly bound printed material, and delivered to the location or locations as indicated by the Owner. One or more document submittal components may be submitted in an approved electronic format, subject to specific authorization by the Owner.
- 7.2.4 Electronic Submittals: In addition to all other submittals called for by this Article 7 and elsewhere in the Contract, including but not limited to hard copies and reproducibles of all submittals, the Designer shall submit two (2) electronic copies on compact disks for all required submissions of Deliverables called for by this Contract (“Electronic Submittals”). All Electronic Submittals shall be deemed to be Materials that are subject to all provisions of Article 16. The Electronic Submittals shall be provided on CD electronic format as approved by the Owner and as follows:
- (a) All drawings shall be provided in standard AutoCAD software (release number and version to be established at time of contract execution) or in a compatible electronic CADD (.dxf) format or other industry-standard format as approved by the Owner and acceptable to the Owner. Electronic file naming convention shall be acceptable to the Owner and the Owner.
  - (b) All other documents shall be provided in pdf format, Microsoft Word, Excel, Project, or PowerPoint, as applicable to the particular submittal.
  - (c) All submittals shall be labeled identifying project name and number, file name, drawing title, software and release, and layering system.
  - (d) The Owner reserves the right to require the Designer to provide all electronic media as may be required at any time during the duration of this Contract due to technology upgrades and/or changes to the electronic systems used by the Owner, provided that if such requirement demands that the Designer

purchase new software or train existing employees for the application of media or software such costs shall be a Reimbursable Expense but only to the extent that such purchase of new software or training of existing employees is unique or exclusive to the particular requirements of the Owner for this particular Project.

- (e) The Designer's compliance with the terms of this Article shall be performed as part of the Basic Services under the Contract, and the Designer shall not receive any additional compensation for providing the Electronic Submittals, (including but not limited to conversions or copies of software), except as specified herein. The Designer shall not be responsible for any use of Electronic Submittals on hardware or software for which it was not intended. Creation of a Building Information Model is excluded from the definition of Electronic Submittals; if the Owner requests the Designer to create such a Model, the parties shall execute a separate agreement and Designer shall receive Extra Services for its creation.

7.2.5 In reviewing and preparing all documents for evaluation as part of the Feasibility Study and/or any other design phase for which the Designer may be authorized, the Designer shall determine gross area and net areas in the following manner in order to maintain uniformity in computation and consistency of both gross and net square foot areas of buildings:

Gross Area: The area included within the outside faces of the exterior walls for all stories. Custodial areas such as janitor closets, building maintenance and building employees' locker rooms, circulation areas such as corridors, lobbies, stairs, and elevators, and mechanical areas such as those designated to house mechanical and electrical equipment, utility services, and non-private toilets shall be considered as part of the gross area, but not part of the net area.

Net Areas: In general, those areas which have a specific assignment and functional program use as determined by the facility, including, but not limited to, areas such as collection areas, circulation space, meeting rooms, children's room, administrative and study rooms. These shall be measured from the inside finish of permanent outside walls to the inside finish of corridor walls, and to the inside finish of intermediate partitions.

### 7.3 Feasibility Study Phase:

- 7.3.1 The Designer shall familiarize itself with the Owner's Guidelines and Standards for feasibility studies that further specify the work to be performed by the Designer during this Phase and shall perform its Feasibility Study Phase services in accordance with such Guidelines and Standards and the provisions of this Contract. The Designer shall meet with the Owner to arrive at a mutual understanding of the

requirements of the Feasibility Study. The Designer shall submit a proposed work plan including anticipated tasks and submittals.

7.3.2 INTENTIONALLY OMMITTED

7.3.3 The Designer shall cooperate with the Owner to define and develop a few reasonable, sound, cost effective, and practical solutions for the Owner's evaluation that satisfy the Owner's program requirements, including all requirements of 605 CMR (Attachment A), that were provided by the Owner to the Designer.

7.3.4 Feasibility Study and Schematic Design submittals shall be provided pursuant to Article 7.2.2; 605 CMR (Attachment A) and shall be subject to the written Approval of the Owner.

7.3.5 The Designer shall present and explain the Feasibility Study to the Owner and the Owner and at a local public meeting, if any such meeting is scheduled, or in conference.

7.3.6 The Designer shall meet with the Owner every other week during this Phase.

#### 7.4 Schematic Design Phase

7.4.1 Upon receipt of an Approval to proceed to Schematic Design Phase, the Designer shall meet with the Owner to arrive at a mutual understanding of the requirements of the Final Design Program approved in writing by the Owner.

7.4.2 The Designer shall submit a proposed design work plan pursuant to this Contract including anticipated tasks and submittals. The Designer shall also submit to the Owner a proposed schedule consistent with any Project Schedule included in the RFS (Attachment B) modified as required by any subsequent schedule changes or delays outside of Designer's control. The schedule shall contain dates for submittals, deliverables, actions, milestones, design workshops, meetings and the critical path through all design service activities. It shall include time for the Owner's review and approval of submittals and for necessary submissions for permits in connection with the Project. The work plan shall also include a work plan schedule of values consistent with Attachment A, which shall be the basis for which payments of the Fee for Basic Services within each Phase shall be made. The work plan schedule of values shall identify deliverables within each Phase and percentages of the phase fee payable upon completion of such deliverable. When approved by the Owner as provided in Article 7.4.8, the work plan schedule of values shall govern the timing of payments of the Fee for Basic Services upon completion of deliverables within each Phase and as each Phase progresses.

7.4.3 The Designer shall: Prepare a preliminary evaluation of the Recommended Preferred Solution from the Feasibility Study, the Final Design Program, and Proposed Total Project Budget; collect and study all available drawings, reports, maintenance reports, and other existing data pertaining to the Project; conduct a thorough on-site review of conditions relating to the Project; assure that the "Recommended Preferred Solution" complies with all applicable codes and regulations, including any special design standards supplied by the Owner and its Commissioning Consultant; and meet with local building officials to identify and confirm applicable standards, codes and any project specific criteria.

7.4.4 The Designer shall develop the Recommended Preferred Solution to a full schematic design level. Schematic design level documentation shall be based on the Final Design Program, shall incorporate Owner comments and shall include each of the following, to the extent applicable to the Recommended Preferred Solution:

- (a) Traffic Analysis - analyze the impact of anticipated vehicular and pedestrian traffic, including impacts to existing infrastructure, to determine efficient and safe site access.

- (b) Environmental and Existing Building Assessment – Provide additional site and building assessments as may be required to quantify presence of unsuitable materials and scope of possible remediation efforts.
- (c) Geotechnical and Geoenvironmental Analysis – Provide additional geotechnical analysis as may be required to describe soil conditions, remediation requirements and appropriate foundation.
- (d) Program Analysis - a space measurement analysis for the design which shall verify that the sum of all program floor areas plus all other floor areas equal the gross floor area of the Final Design Program.
- (e) Code Analysis – Determine the impact of all applicable federal, state, regional and local codes, regulations and ordinances, including a listing of permitting and other regulatory filing requirements.
- (f) Utility Analysis – Determine the availability and capacity of all required building utilities. Provide soils analysis and preliminary design for on-site septic/sewage treatment facilities, if required.
- (g) Massing Study – an analysis of the building’s integration into its surroundings and neighborhood with drawings, models, or photographs.
- (h) LEED- Scorecard – Pursuant to the Owner’s sustainability goals complete a LEED Scorecard and describe sustainable design features and each high performance green prerequisite and credit included in the proposed design and a plan for implementation or inclusion of any appropriate public utility energy conservation design programs.
- (i) Accessibility - an analysis of the design's compliance with the Americans with Disabilities Act (ADA) and the Massachusetts Architectural Access Board requirements (MAAB).
- (j) Building Systems Descriptions – Describe in narrative and on schematic plans basic information relative to:
  - 1. Building Structure - a written narrative of the design approach to the structural systems including discussion of the feasible options for foundations and superstructure as well as treatment of special situations such as unusual soils conditions or long spans.
  - 2. Plumbing and HVAC - written narratives of the basic systems and proposed fuel source(s) and a preliminary life cycle cost analysis pursuant to the criteria of M.G.L. c. 149 § 44(m). Provide schematic plans indicating basic distribution concepts and the location of major equipment items such as boilers, water heaters, cooling towers, chillers, air handling

units, heat recovery units, exhaust stacks, and special systems (e.g. fume exhausts).

3. Fire Protection - written narratives of the basic systems and design criteria. Provide schematic plans indicating basic distribution concepts and the location of major equipment items such as fire pumps, standpipes, and fire department connections.
  4. Electrical (including power, lighting, communications, fire alarm, video/CATV, security/surveillance) - written narratives of the proposed electrical and communications systems resources, needs, and proposed scope. Provide schematic plans indicating basic distribution concepts and the location of major equipment items such as switchgear, standby generator, and control centers/panels.
  5. Information Technology - written narratives of the proposed information technology system resources, needs, and proposed scope. Provide schematic plans indicating basic distribution concepts, and location of major equipment items such as switches and hubs.
- (k) Outline specifications in accordance with applicable CSI Divisions that clearly define the scope of construction, identify the sub-trades pursuant to M.G.L. c. 149 § 44F, establish the quality of materials, finishes, products, equipment and workmanship, and the special or unique conditions of construction.
- (l) Project Schedule - Provide a reasonable level of design-related input to the OPM such that the OPM can prepare a draft schedule for the proposed project for the Owner in the form of a graphic representation (Gantt Chart) of the duration of all tasks, activities and phases of the design and construction processes against the progression of time up to a proposed occupancy date. Dependencies between activities and tasks will be delineated. Individual tasks and activities will be rolled up to the major project milestones. Provide input to the OPM regarding priority actions and activities that may have a major impact on the schedule. The OPM, not the Designer, is responsible for preparing and maintaining the draft and updated project schedule document, except as it pertains to the project design schedule developed under Article 7.4.2.
- (m) Construction cost estimate – in a format acceptable to the Owner with aggregated unit rates and quantities supporting each item. If independent cost estimates are prepared for the Owner by the OPM in this or subsequent phases, then the Designer shall work with the OPM to resolve such any differences in a cost reconciliation process and shall involve any relevant parties in such process.
- (n) Siting analysis, including content, traffic and access, topographic and utilities recognition.

- (o) Site Development Plan – Site plan shall be at a minimum scale of 1 inch equals 40 feet and include property lines with bearings and distances, building setbacks, site acreage, wetlands information, proposed and existing topography, proposed and existing buildings and site features, floor and roof elevations for all buildings, proposed and existing utilities and utility connections, and emergency equipment access.
- (p) Schematic Building Floor Plans of all floors and roof at a minimum scale of 1/16" = 1'-0" showing all elements of the building including overall dimensions, gross square footage of each floor and net square footage of each space, response to functional requirements of program, major and minor access, circulation, and room data sheets.
- (q) Schematic Exterior Building Elevations for all sides and orientations indicating all exterior finishes and fenestration.

7.4.5 Schematic design phase drawings, specifications, construction cost estimates and other submittals shall be subject to the written Approval of the Owner, which Approval shall not be unreasonably delayed, withheld, conditioned, or denied. Unless a lesser number is requested by the Owner, the Designer shall submit to the Owner for approval six (6) copies of schematic design drawings, specifications, cost estimates, and other submittals.

7.4.6 The Designer shall present and explain the Schematic Design to the Owner, and the OPM at a local public meeting, if any such meeting is scheduled, or in conference.

7.4.7 The Designer shall meet with the Owner every other week during the Schematic Design Phase.

7.4.8 Prior to the issuance of an Approval to proceed to the Design Development Phase, the Designer and the Owner shall meet to finalize the design work plan, project schedule, and schedule of values described in Article 7.4.2, and they shall if necessary execute an amendment to the Contract to include all required modifications to govern the subsequent phases of the Designer's services.

7.4.9 Construction Delivery Method Evaluation and Selection

- (a) The Designer shall assist the Owner in determining the appropriate construction delivery methodology for the Proposed Project. In providing such assistance, the Designer, in conjunction with the Owner's Project Manager, shall advise the Owner on the relative advantages and disadvantages associated with each of the construction delivery methods provided in M.G.L. Chapters 149 and 149A. The decision to pursue a particular construction delivery method shall be within the sole discretion of the Owner, subject to the approval of the Inspector General as provided in M.G.L. c. 149A, §4. The services provided by the Designer in assisting and advising the Owner in its determination of the

appropriate construction delivery methodology shall be included in Basic Services.

- (b) If the Owner elects to construct the Project using the CM at Risk construction delivery method pursuant to M.G.L. c. 149A, and has obtained the approval of the Office of the Inspector General to do so, with the Approval of the Owner, this Contract shall be amended using the Owner's Standard Amendment for CM-R which includes Articles 7.5 through 7.10. If the Owner elects to construct the Project using the Design-Bid-Build ("DBB") construction delivery method pursuant to M.G.L. c. 149, with the Approval of the Owner, this Contract shall be amended using the Owner's Standard Amendment for DBB, which includes Articles 7.5 through 7.9.

7.5 INTENTIONALLY OMITTED

7.6 INTENTIONALLY OMITTED

7.7 INTENTIONALLY OMITTED

7.8 INTENTIONALLY OMITTED

7.9 INTENTIONALLY OMITTED

7.10 INTENTIONALLY OMITTED

## ARTICLE 8: EXTRA SERVICES

### 8.1 General

8.1.1 Extra Services are those services requested by the Owner to be performed by the Designer but which are additional (or "extra") to the services performed as Basic Services. Such services are not included in the Fee for Basic Services and shall be invoiced and paid for separately. Extra services shall not be deemed authorized until a written Approval is received from the Owner, which Approvals shall not be unreasonably delayed, withheld, denied, or conditioned.

8.1.2 The proposed cost, scope and schedule of all Extra Services shall be presented and approved by the Owner in writing prior to the performance of any Extra Services.

8.1.3 Cost proposals for Extra Services shall be computed in accordance with Attachment A.

8.2 Unless specifically stated elsewhere and only with the prior written Approval of the Owner, the Designer shall perform any of the following services as Extra Services:

8.2.1 preparing measured drawings and detailed construction investigations documentation for existing buildings when such documentation does not exist;

8.2.2 substantially revising previously approved reports, drawings, specifications or other documents to address changes authorized or requested by the Owner, including

substantial changes in its size, quality, complexity, design, Budget, and/or bidding method or bid packages, and changes in Applicable Laws;

(a) Notwithstanding the provisions of 8.2.2, revisions prepared by the Designer to keep construction costs within the Project Budget that are required pursuant to Article 4.10 of this Contract to be without additional compensation, or to correct incorrect items for which the Designer has responsibility, shall not be Extra Services;

- 8.2.3 preparing documents for bidding alternates requested by the Owner, except for a reasonable number and extent of alternates to keep construction costs within the Project Budget which shall be Basic Services;
- 8.2.4 revising Construction Contract Documents which have been initially submitted and approved in their final and complete form, if general bids (Chapter 149) or subcontractor bids (Chapter 149 or 149A) for work required thereunder are not advertised based on such Construction Contract Documents within four months after initial submission;
- 8.2.5 services in connection with rebidding if the need to rebid is not attributable to the Designer;
- 8.2.6 attending meetings with the Owner, Owner's Project Manager, Department of Labor and Workforce Development, the Office of Attorney General, the Office of the Inspector General, or the CM at Risk (if the project is constructed pursuant to M.G.L. c. 149A) in matters of dispute if attendance is required by the Owner, provided such dispute did not arise due to the fault of the Designer;
- 8.2.7 furnishing other services in excess of Basic Services made necessary by the default or failure of performance of the General Contractor or CM at Risk or Sub-contractors;
- 8.2.8 providing consultation with respect to replacement of work damaged by fire or other casualty during construction;
- 8.2.9 preparing change orders and supporting data in accordance with Article 10, or modifying the Construction Documents in response to an unreasonable amount of substitutions proposed by the Contractor or CM at Risk, or responding to unreasonable and excessive requests for information (RFIs) by the Contractor or CM at Risk, where such information is available from a careful study and review of the Construction Documents;
- 8.2.10 assisting the Owner in litigation or claims arising out of the Owner-Contractor Agreement or Owner-CM at Risk Agreement, provided such litigation or claims did not arise due to the fault of the Designer;
- 8.2.11 performing services during a construction period extended beyond the additional 60 calendar day period, specified in Article 8.3;

- 8.2.12 performing professional services which are not otherwise required under this Contract as Basic Services;
- 8.2.13 providing services in connection with partial completion or partial systems completion inspections at the time of Substantial Completion of the Work or of a project construction phase and/or separate bidding package due to delay by the Contractor or CM at Risk in completing the Work on schedule;
- 8.2.14 providing services in connection with Contractor, CM at Risk or Bidder disputes or questions arising out of the bidding process, unless such protest is a result of an act or omission of the Designer. Such services include research and preparation for and appearance at bid protest hearing and similar proceedings.

### 8.3 Construction Phase Services Provided after the Original Construction Completion Date

- 8.3.1 If construction of the Work, or of a project construction phase and/or separate bidding package has not reached substantial completion within the original construction period (as set forth in the Owner-Contractor or Owner-CM at Risk Agreement and as agreed to by the Designer), there shall be added to said construction period a period of sixty (60) calendar days, during which period the Designer shall continue to provide construction phase services for which no extra compensation shall be paid for the services described in Article 7.9 and 7.10.1 through 7.10.4 in a CM at Risk Project or for the services described in Articles 7.8 and 7.9.1 through 7.9.4 in a DBB Project.
  - 8.3.2 If construction has not reached Substantial Completion after the 60 additional calendar days, the Designer shall thereafter be entitled to Extra Services compensation for providing the services described in Articles 7.10.3 (which are fully defined under Article 7.9.2) and 7.10.4 in a CM at Risk Project or for the services described in Articles 7.9.3 (which are fully defined under Article 7.8.2) and 7.9.4 in a DBB Project. The Designer may also be entitled to Extra Services compensation for tasks performed beyond the added sixty (60) calendar days period for tasks related to Article 7.9.1 (d) through (i) in a CM at Risk Project or 7.8.1(d) through (i) in a DBB Project. In any event, the Designer is required to identify and present the anticipated Extra Services contemplated under Article 8.3.2 in accordance with Article 8.1. In no event shall the Designer be entitled to any additional compensation on account of an extended construction period if and to the extent that a binding agreement or decision that results from a dispute resolution proceeding determines that the Designer's acts or inactions caused the construction period to be extended.
- 8.4 In the event of an emergency the Designer may proceed to perform Extra Services as required to meet the emergency after obtaining the verbal approval of the Owner. The Designer shall provide a written report to the Owner, as soon after the emergency arises as possible, and such report shall describe the emergency and the Extra Services that were performed.
- 8.5 Invoices for Extra Services shall be accompanied by a breakdown listing the name, payroll title, date, number of hours by day, hourly rate and extended amount, per specified task of

Extra Services performed. Hourly rates shall be in accordance with the Hourly Rate Schedule in Attachment A.

#### **ARTICLE 9: REIMBURSABLE EXPENSES**

9.1 For coordination and responsibility for the services, materials and costs described in 9.1.1 through 9.1.6, the Designer shall be reimbursed its actual costs and those of its Sub-contractors, supported by invoices or receipts, plus 10%. The following are reimbursable expenses, when authorized by the Owner:

9.1.1 The actual cost to the Designer for Sub-contractors and for additional tests under 4.11 provided, however, that reimbursement for such costs shall not be made unless the rates of compensation, the total estimated cost of the services and the scope of work for said services shall have been previously approved in writing by the Owner.

9.1.2 The cost of printing more than nine (9) sets of design submittals for a CM at Risk project, or more than eight (8) sets of design submittals for a project pursuant to G.L.c. 149, or more than two electronic versions thereof per design submission deliverable phase or sub-phase.

9.1.3 The cost of printing the bid documents and the related copying, postage, and handling services during a prequalification or bid period.

9.1.4 The cost of reproducing the Mylar reproducible of the construction drawings for use by the General Contractor or CM at Risk in preparing the record drawings.

9.1.5 Out of pocket expenses paid by the Designer such as filing fees, testing, and permit fees if such fees would be normally paid by the Owner.

9.1.6 Renderings, models, mock-ups, photographs and any other presentation materials.

9.1.7 Other expenses deemed necessary or appropriate by the Owner in writing.

9.2 Non-Reimbursable Expenses: The Owner shall not reimburse the Designer or its Sub-contractors for travel expenses, sustenance, telephone, copying, facsimiles, electronic mails, postage and delivery expenses or cost estimating, unless specifically required elsewhere in this Contract.

9.3 The Designer shall not be entitled to compensation under this Article for the services of Sub-contractors hired to perform Basic Services under this Contract.

#### **ARTICLE 10: COMPENSATION AND RESPONSIBILITY FOR CHANGE ORDERS**

10.1 The Designer shall be entitled to Extra Services compensation for preparing Change Orders initiated by the Owner except as provided in Article 10.3.

- 10.2 The Designer shall not be entitled to Extra Services compensation for preparing Change Orders to adjust the scope of construction work which arises from existing conditions for which unit prices have been specified in the Construction Contract Documents.
- 10.3 The Designer shall not be entitled to Extra Services compensation for preparing Change Orders necessary to address errors or omissions by the Designer.
- 10.4 Change Orders for which the Designer is not entitled to compensation are to be referred to as “no fee change orders.”
- 10.5 The fact that the Designer is not entitled to compensation for preparing a Change Order shall not limit any legal remedies which the Owner may have for recovering its additional costs necessitated by the Change Order.

#### ARTICLE 11: RELEASE AND DISCHARGE

- 11.1 The acceptance by the Designer of the last payment under the provisions of Article 6.5 or Article 12 in the event of termination of the Contract, shall in each instance, operate as and be a release to the Owner and its employees and officers, from all claims of the Designer and its Sub-contractors for payment for services performed and/or furnished, except for those written claims submitted by the Designer to the Owner with, or prior to, the last invoice.

#### ARTICLE 12: ASSIGNMENT, SUSPENSION, TERMINATION, NO AWARD

##### 12.1 Assignment:

- 12.1.1 The Designer shall not assign or transfer any part of its services or obligations under this Contract (other than as specified in this Article 12), without the prior written approval of the Owner. Likewise, any successor to the Designer must first be approved by the Owner before performing any services under this Contract. Such written consent shall not in any way relieve the Designer or its assignee from its responsibilities under this Contract. The Owner shall not assign this Contract without the written consent of the Designer.

##### 12.2 Suspension:

- 12.2.1 The Owner may, at any time, effective upon fifteen (15) business days written notice to the Designer, suspend this Contract. If the Owner provides such written notice, the Designer shall be compensated for Services satisfactorily performed in accordance with the Contract terms prior to the effective date of such suspension; invoices for such Services shall be properly submitted, but may be submitted after the date of such notice up to the effective date of suspension.
- 12.2.2 If a written notice of suspension issued pursuant to sub-paragraph 12.2.1 lasts for more than 90 consecutive calendar days, the Designer may, upon resumption of the Contract, be entitled to additional compensation for actual costs incurred due to such suspension provided that the suspension was not attributable to the Designer's fault.

##### 12.3 Termination:

12.3.1 (a) By written notice to the Designer, the Owner may terminate this Contract effective on five (5) calendar days notice without cause. All compensation and reimbursement due to the Designer in accordance with the Contract terms, for services satisfactorily performed up to the date of termination, including proportionate payment for portions of the services started but incomplete at the time of termination, shall be paid to the Designer, provided no payment shall be made for services not yet performed or for anticipated profit on unperformed services. (b) Owner may terminate this Contract effective on five (5) calendar days notice for cause, and no further payment shall be due to the Designer to the extent the Owner can reasonably identify damages in specific amounts for which the Designer is liable under this Contract; Owner shall pay other amounts otherwise due and owing to the Designer.

12.4 Suspension or Termination by Designer: By written notice to the Owner, the Designer may suspend or terminate (at Designer's sole option) this Contract:

12.4.1 if the Owner, within thirty (30) days following written notice from the Designer of any material default by the Owner under the Contract (including failure to pay in accordance with the Contract), shall have failed to cure such default; or

12.4.2 if, after the Designer has performed all services required during any Phase prior to construction and at least three (3) months have elapsed without receipt by the Designer of Approval to proceed with the next Phase of the Project, provided the delay was not the fault of the Designer. This provision shall not apply to a Designer who has received a notice of suspension pursuant to 12.2.

12.4.3 Upon a proper termination by the Designer, the Designer shall be compensated as provided in 12.3.1 above regarding termination without cause.

12.5 No Award of Owner-Contractor Agreement: If the Project is constructed pursuant to M.G.L. c. 149, §§ 44A-44M, the Owner-Contractor Agreement is not awarded by the Owner within one hundred twenty (120) days after the receipt of general bids for the Project and the bids have not been rejected and the Project has not been suspended, the Designer shall be paid through the Bidding Phase as if a contract for construction were awarded according to the payment schedule provided in Attachment A. This Article 12.5 does not apply, however, if the Designer has been directed to perform design revisions pursuant to 4.10.2, for the purposes of bringing the design of the Project within the Project Construction Budget.

### ARTICLE 13: NOTICES

13.1 Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person (b) by certified mail, postage prepaid, return receipt requested (c) by facsimile or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

If to \_\_\_\_\_;

If to \_\_\_\_\_;

If to \_\_\_\_\_;

or to such other address as the Owner, and Designer may from time to time specify in writing. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice that has been received by the party to whom it is sent as evidenced by confirmation slip that bears the time and date of request.

#### ARTICLE 14: INDEMNIFICATION

- 14.1 For claims arising out or relating to negligent errors and omissions in the performance of professional services rendered by the Designer, to the fullest extent permitted by law, the Designer shall indemnify and hold harmless the Owner and its officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Owner to the extent caused by the negligence of, or the breach of this Contract by, the Designer or a person employed by the Designer, or Sub-consultant for whom the Designer is responsible under this Contract.
- 14.2 For all other claims, to the fullest extent permitted by law, Designer shall defend, indemnify and hold harmless the Owner and its officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Owner to the extent they result from the performance of its services provided that such claims, damages, liabilities, injuries, costs, fees, expenses, or losses are attributable to bodily injury or death or injury to or destruction of tangible property and are caused by an act or omission of the Designer or a person or Sub-consultant for whom the Designer is responsible under this Contract.

#### ARTICLE 15: INSURANCE

- 15.1 The Designer shall obtain and maintain at its sole expense all insurance required by law and as may be required by the Owner under the terms of this Contract. The insurance required hereunder shall be provided at the sole expense of the Designer or its Sub-consultant, as the case may be, and shall be in full force and effect for the full term of the Contract between the Owner and the Designer or for such longer period as required under this Contract.
- 15.2 All policies shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts with a financial strength rating of "A" or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the Owner.
- 15.3 The Designer, and any of its Sub-contractors, shall submit to the Owner originals of the required certificates of insurance simultaneously with the execution of this Contract. Certificates of insurance evidencing the coverage required hereunder, together with evidence that all premiums for such insurance have been fully paid, shall be filed with the

Owner. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, and policy effective and expiration dates. The Designer shall submit updated certificates to the Owner prior to the expiration of any of the policies referenced in the certificates so that the Owner shall at all times possess certificates indicating current coverage. Failure by the Designer to obtain and maintain the insurance required by this Article, to obtain all policy renewals, or to provide the respective insurance certificates as required shall constitute a material breach of the Contract and shall be just cause for termination of the services of the Designer under this Contract.

- 15.4 Termination, cancellation, or modification or reduction of coverage or limits by endorsement of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the Owner at least thirty days prior to the effective date thereof, which shall be expressed in said notice.
- 15.5 The Designer or its Sub-consultant, as the case may be, is responsible for the payment of any and all deductibles under all of the insurance required below. The Owner shall not be responsible for the payment of deductibles, self-insured retentions or any portion thereof.
- 15.6 Workers' Compensation, Commercial General Liability, Automobile Liability, and Valuable Papers

15.6.1 The Designer shall purchase and maintain at its own expense during the life of this Contract, or such other time period as provided herein, the following types and amounts of insurance, at a minimum:

- (a) Workers' Compensation Insurance in accordance with General Laws Chapter 152. The policy shall be endorsed to waive the insurer's rights of subrogation against the Owner.
- (b) Commercial General Liability Insurance (including Premises/Operations; Products/Completed Operations; Contractual; Independent Contractors; Broad Form Property Damage; and Personal Injury) with a minimum limit of \$1,000,000 per occurrence, \$2,000,000 aggregate. The Designer shall maintain such insurance in full force and effect for a minimum period of one year after final payment and shall continue to provide evidence of such coverage to the Owner. The Owner shall be included as an additional insured in this policy. The policy shall be endorsed to waive the insurer's rights of subrogation against the Owner.
- (c) Automobile Liability Insurance (including owned, non-owned and hired vehicles) at limits of not less than \$1,000,000 combined single limit per accident.

- (d) Valuable Papers insurance in an amount sufficient to assure the restoration of any plans, drawings, computations, field notes, or other similar data relating to the work covered by the Agreement between the Owner and the Designer in the event of loss or destruction while in the custody of the Designer until the final fee payment is made or all data is turned over to the Owner, and this coverage shall include coverage for relevant electronic media, including, but not limited to, documents stored in computer-aided design drafting (CADD) systems.

## 15.7 Professional Liability

- 15.7.1 The Designer shall maintain professional liability insurance covering negligent errors and omissions and negligent acts of the Designer and of any person or entity for whose performance the Designer is legally liable at all times while services are being performed under this Contract and for a period of six years thereafter (as calculated in accordance with the terms below in this 15.7.2). The minimum amount of such insurance shall be \$2,000,000 per claim/\$2,000,000 annual aggregate.
- 15.7.2 If the policy is in a “claims made” format, it shall include a retroactive date that is no later than the effective date of this Contract, and an extended reporting period of at least six years after the earlier of: (1) the date of official acceptance of the completed Project by the Owner; (2) the date of the opening of the Project to public use; (3) the date of the acceptance by the general contractor or the CM at Risk of a final pay estimate prepared by the Owner pursuant to M.G.L. chapter 30; or (4) the date of substantial completion of the Owner-Contractor Agreement or Owner-CM at Risk Agreement and the taking of possession of the Project for occupancy by the Owner, which requirement can be met by providing renewal certificates of professional liability insurance to the Owner as evidence that this coverage is being maintained.

## 15.8 Sub-contractors

- 15.8.1 The Designer shall require by contractual obligation, and shall exercise due diligence to enforce, that any professional engineering or landscape architecture Sub-consultant hired in connection with the services to be provided under this Contract shall, unless otherwise agreed in writing by the Owner, obtain and maintain all insurance required by law and as may be required by the Owner under the terms of this Contract, except that the limit of Sub-consultant’s professional liability insurance shall be not less than \$2,000,000 per claim/\$2,000,000 annual aggregate.
- 15.8.2 All professional liability policies obtained by Sub-contractors shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts with a financial strength rating of “A” or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the Owner.

15.8.3 If the Sub-consultant's insurance policy is in a "claims made" format, it shall include a retroactive date that is no later than the effective date of its contract with the Designer, and an extended reporting period of at least six years after the earlier of: (1) the date of official acceptance of the completed Project by the Owner; (2) the date of the opening of the Project to public use; (3) the date of the acceptance by the General Contractor or CM at Risk of a final pay estimate prepared by the Owner pursuant to M.G.L. chapter 30; or (4) the date of substantial completion of the Owner-General Contractor Agreement or the Owner-CM at Risk Agreement and the taking of possession of the Project for occupancy by the Owner, which requirement can be met by providing renewal certificates of professional liability insurance to the Owner as evidence that this coverage is being maintained.

15.8.4 Other nonprofessional Sub-contractors shall be required to maintain insurance in the types and amounts that they routinely carry in the course of their practice.

#### 15.9 Liability of the Designer

Insufficient insurance shall not release the Designer from any liability for breach of its obligations under this Contract. Without limitation, the Designer shall bear the risk of any loss if its valuable papers insurance coverage is insufficient to cover the loss of any work covered by this Contract.

#### 15.10 Asbestos and Hazardous Materials

15.10.1 Unless otherwise provided in the RFS, the Designer shall have no responsibility for the discovery, presence, handling, removal or disposal of or for the exposure of persons to oil or hazardous materials in any form at the Project, including but not limited to asbestos-containing materials or other hazardous materials, as defined in MGL c.21E §2.

15.10.2 In the event that the Designer employs the services of a sub-consultant to provide services related to either the testing for asbestos-containing materials or oil or hazardous materials or related to the specification of methods and procedures for the removal or remediation of such asbestos-containing materials or oil or hazardous materials, the Designer shall employ such Sub-contractors who have liability insurance coverage covering such services, to the extent that such insurance coverage is generally available to Sub-contractors. Upon the Owner's written request, the Designer shall assign to the Owner the Designer's contractual right to pursue a claim against such Sub-contractors. Such services shall be paid for as provided in Article 9 - Reimbursable Expenses unless such services are specifically included as Basic Services in the RFS.

### ARTICLE 16: OWNERSHIP OF DOCUMENTS

16.1 Unless provided otherwise by law, ownership and possession of all information, data, reports, studies, designs, drawings, specifications, materials, computer programs, documents, models, inventions, equipment, and any other documentation, product of

tangible materials to the extent authored or prepared, in whole or in part, by the Designer pursuant to this Contract (collectively, the “Materials”), other than the Designer’s administrative communications, records, and files relating to this Contract, shall be the sole property of, and shall vest in, the Owner as “works made for hire” or otherwise, provided that the Owner complies with its payment obligations under this Contract. The Owner will own the exclusive rights, worldwide and royalty-free, to and in all Materials prepared and produced by the Designer pursuant to this Contract, including, but not limited to, United States and International patents, copyrights, trade secrets, know-how and any other intellectual property rights, and the Owner shall have the exclusive, unlimited and unrestricted right, worldwide and royalty-free, to publish, reproduce, distribute, transmit and publicly display all Materials prepared by the Designer. The Owner shall provide appropriate credit to the Designer, in terms agreed upon by the Design, in any publicity about or plaque at the Project. The Designer shall have a license to publish and publicly display all Materials prepared by the Designer in its normal marketing and related professional and academic activities. The Designer shall have a license to use the typical or standard details and all other replicable elements of the Materials for this Project on other future projects. At the completion or termination of the Designer's services required pursuant to this Contract, copies of all original Materials shall be promptly turned over to the Owner.

- 16.2 The Owner agrees to waive any and all claims against the Designer and, to the fullest extent permitted by law, to defend, indemnify and hold the Designer harmless from and against any and all claims, losses, liabilities and damages incurred by the Owner or asserted by any other entity or individual arising out of or resulting from any use of the Materials on other projects, modifications of the Materials made by the Owner or others and used on this Project, or any reuse or modification of the Materials or any of Designer’s designs, drawings and specifications. The Owner shall be a party to this Contract solely for the purposes of enforcing its rights and obligations under this Article 16.

#### ARTICLE 17: STATUTORY REQUIREMENTS

- 17.1 Agent for Service of Process: If the Designer's principal place of business is outside of the Commonwealth of Massachusetts, the Designer shall appoint an agent for the service of process as provided in M.G.L. c.227, §5. The power of attorney reflecting such appointment shall be filed with the Secretary of State as provided in M.G.L. c.227, §5. Copies of the power shall be provided to the Owner. There shall be no lapse in such agency for as long as the Designer may have potential liability.

- 17.2 Truth-in-Negotiations Certificate (M.G.L. c.7, §38H)

17.2.1 If the Designer's fee has been negotiated, the Designer must file a truth-in-negotiations certificate prior to execution of this Contract by the Owner. The certificate shall contain the following certifications:

- (a) that wage rates and other costs used to support the Designer's compensation are accurate, complete, and current at the time of contracting; and
- (b) that the Contract price and any additions to the Contract may be adjusted within one year of completion of the Contract to exclude any significant amounts if the Owner determines that the fee was increased by such amounts due to inaccurate, incomplete or noncurrent wage rates or other costs.

17.3 Certification Pursuant to M.G.L. c.7 §38H(e): In accordance with M.G.L. c.7 §38H(e), the person signing this contract certifies, as a duly authorized signatory of the Designer, that the Designer 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 Contract; no Consultant to or Sub-consultant 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 Designer or Sub-consultant of a contract by the Designer; and 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 Contract 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 Contract.

17.4 Minority-Owned and Woman-Owned Business Participation: Pursuant to M.G.L. c. 7, § 40N, the Designer shall subcontract a minimum of eight percent (8%) of its work to SOMWBA Certified minority-owned enterprises (MBEs) and four percent (4%) to SOMWBA Certified women-owned enterprises (WBEs) certified by the State Office of Minority-and-Women-Owned Business Assistance, SOMWBA, 10 Park Plaza Suite 3740, Boston, MA 02116; such percentages shall be based on the listed services defined and required in the RFS. If the Designer is a SOMWBA certified MBE or WBE the requirements in this Article 17.4 are not applicable.

17.4.1 The Designer shall complete and submit at the time of contract execution a completed Participation Schedule which is attached to this contract as Attachment C in order to be in compliance with Article 17.4 above.

17.5 Accounting Requirements: The Designer shall cause to be maintained complete, accurate and detailed records of all time devoted to the Project by the Designer and each Sub-consultant employed by the Designer. The Owner and the Commonwealth's Inspector General may at all reasonable times audit such records that directly pertain to this Contract. On a Contract where the Fee for Basic Services exceeds \$100,000 the Designer shall comply with M.G.L. c.30 §39R which requires the Designer to:

17.5.1 Maintain accurate and detailed accounts for a six-year period after the final payment;

17.5.2 File with the Owner annual audited financial statements or statements from their accountants that their reviews are consistent with state laws.

- 17.5.3 File with the Owner a statement of management on internal accounting controls on its letterhead as prescribed in Attachment D and a statement from an independent certified public accountant (CPA) on its letterhead as prescribed in Attachment E to this Contract.
- 17.6 Revenue Enforcement and Protection Program (REAP): Pursuant to M.G.L. c. 62C §49A, the undersigned certifies under the penalties of perjury that to the best of his/her knowledge and belief that the firm and/or individuals in the firm are in compliance with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.
- 17.7 Interest of Designer: The Designer hereby certifies that it is in compliance with the provisions of M.G.L. c. 268A whenever applicable. The Designer covenants that 1) neither he/she nor any member of the Designer firm presently has any financial interest and shall not acquire any such interest direct or indirect, which would conflict in any manner or degree with the services required to be performed under this Contract or which would violate M.G.L. Chapter 268A, as amended from time-to-time; 2) in the performance of this Contract, no person having any such interest shall be employed by the Designer; and 3) no partner or employee of the Designer firm is related by blood or marriage to any officer, official, or employee of the Owner.
- 17.8 Equal Opportunity: The Designer shall not discriminate in employment against any person on the basis of race, color, religion, national origin, sex, sexual orientation, age, genetics, ancestry, disability, marital status, veteran status, membership in the armed forces, presence of children or political beliefs. Each shall comply with all provisions of Title VII of the Civil Rights Act of 1964 and MGL c.151B.
- 17.9 Certification of Non-Collusion: The signatory certifies under penalties of perjury that the Designer's proposal has been made in 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, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

#### ARTICLE 18: MISCELLANEOUS

- 18.1 Governing Law: This Contract shall be governed by the laws of the Commonwealth of Massachusetts.
- 18.2 Venue: Any suit by either party arising under this Contract shall be brought only in the Superior Court in the county where the Project is located. The parties hereto waive any argument that this venue is improper or that the forum is inconvenient.
- 18.3 Non-Waiver: Neither the Owner's review, approval, or acceptance of, nor payment for any of the services furnished under this Contract shall be construed to operate as a waiver of any rights under the Contract or any cause of action arising out of the performance of the Contract.
- 18.4 Entire Agreement: This Contract represents the entire and integrated agreement between the Owner and the Designer and, except as otherwise provided herein, supersedes all

prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written agreement signed by both the Owner and the Designer.

- 18.5 Dispute Resolution: If a dispute arises between the parties related to this Contract, the parties agree to use the following procedures to resolve the dispute: (a) Negotiation. A meeting shall be held between representatives of the parties with decision-making authority regarding the dispute to attempt in good faith to negotiate a resolution of the dispute; such meeting shall be held within fourteen calendar days of a party's written request for such a meeting; (b) Mediation. If the parties fail to negotiate a resolution of the dispute, they shall submit the dispute to mediation as a condition precedent to litigation and shall bear equally the costs of the mediation. The parties shall jointly appoint a mutually acceptable mediator; they shall seek assistance from an independent third party in such appointment if they have been unable to agree upon such appointment within 30 days of the meeting just noted in (a) above; (c) Litigation. If the parties fail to resolve the dispute through mediation, then either party may file suit in accordance with Article 18.2; and (d) This Article of dispute resolution provisions shall survive termination of this Contract.
- 18.6 Waiver of Subrogation: (a) To the extent damages are covered by property insurance, the Owner and the Designer waive all rights against each other and against the General Contractor or CM at Risk, Sub-contractors, consultants, agents, and employees of the other for damages caused by fire or other causes of loss, except such rights as they may have to the proceeds of such insurance as set forth in the Owner-Contractor Agreement or Owner CM at Risk Agreement. The Owner shall require of the General Contractor or CM at Risk, Sub-contractors, Owner's Project Manager, consultants, Sub-contractors, and agents and employees, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. (b) Nothing in this Contract shall create a contractual relationship with or create a cause of action in favor of a third party against the Owner or the Designer.

# ATTACHMENT A

## PAYMENT SCHEDULE

Payments shall be made in accordance with the provisions outlined in the Contract and with the following schedule:

### Basic Services:

---

Grant Application Phase	\$ _____
Schematic Design Phase	\$ _____
Design Development Phase	\$ _____
Construction Document Phase	\$ _____
Early bid Packages Phase	\$ _____
Bidding & Negotiations Phase	\$ _____
Construction Administration Phase	\$ _____
Project Close Out Phase	\$ _____
<hr/>	
TOTAL	\$ _____

### Extra Services:

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Extra Services provided pursuant to Article 8 shall be compensated as determined by the Owner (a) by a lump sum fee agreed upon in advance in writing by the Owner and the Designer, or (b) on an hourly basis in accordance with the lesser of \$150 per hour or the rate schedule set forth below for time expended, or (c) on an hourly basis in accordance with the lesser of \$150 per hour or a multiple of 2.5 times the direct personnel expense (without benefits) of the Designers or Sub-contractors personnel including principals.

### Hourly Rates:

# **ATTACHMENT B**

## **REQUEST FOR DESIGNER SERVICES (RFS)**

# ATTACHMENT C

## **PARTICIPATION SCHEDULE FOR DESIGNER CONTRACTS BY SOMWBA CERTIFIED MINORITY/WOMEN BUSINESS ENTERPRISES**

This form shall be submitted to the Owner by the Designer upon execution of the Contract for Designer Services attached hereto.

Owner \_\_\_\_\_

Project No: \_\_\_\_\_

<u>Name of Company</u>	<u>Description of Work</u>	<u>M/WBE</u>	<u>Dollar Value Participation</u>
2.	\$ _____		
2. _____	_____	_____	\$ _____
3. _____	_____	_____	\$ _____
4. _____	_____	_____	\$ _____
5. _____	_____	_____	\$ _____
6. _____	_____	_____	\$ _____

Dollar Value of MBE Commitment: \$

Dollar Value of WBE Commitment: \$

Total Dollar Value Commitment: \$

Original Fee for Basic Services Amount \$

### **DESIGNER CERTIFICATION**

The undersigned certifies under the penalties of perjury that (1) it intends to subcontract with the above listed firms for the identified work and dollar amounts and (2) certifies that he/she has read the terms and conditions of the Designer Contract with regards to MBE/WBE participation and is authorized to bind the Designer to the commitment set forth above.

Date \_\_\_\_\_

\_\_\_\_\_  
Name of Architect/Engineer

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State & Zip Code

# ATTACHMENT D

M.G.L. c.30 §39R - INTERNAL ACCOUNTING CONTROLS  
APPLIES TO CONTRACTS OF \$100,000 OR MORE  
SAMPLE LETTER TO BE PREPARED ON DESIGNER'S LETTERHEAD

Date

CEO  
Owner  
123 Reservoir Street  
Enfield, MA 01234

RE: I

Dear:

This Statement of Internal Accounting Controls is being submitted in accordance with Article 17.5.3 of the Contract for Design Services for the above captioned project. Please be advised that our firm, the Designer under the Contract, has a system of internal accounting controls which assures that:

2. transactions are executed in accordance with management's general and specific authorization;
2. transactions are recorded as necessary, to permit preparation of financial statements in conformity with generally accepted accounting principles, and to maintain accountability for assets;
3. access to assets is permitted only in accordance with management's general or specific authorization; and
4. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.

Sincerely,

# ATTACHMENT E

MGL c.30 §39R – INTERNAL ACCOUNTING CONTROLS  
APPLIES TO CONTRACTS OF \$100,000 OR MORE  
SAMPLE LETTER TO BE PREPARED ON CPA'S LETTERHEAD

CEO  
Owner  
123 Reservoir Street  
Enfield, MA 01234

RE:

Dear

Please be advised that we have reviewed the Statement of Internal Accounting Controls prepared by the

\_\_\_\_\_ in connection with the  
**Name of Designer**

above-captioned project. This statement is required under M.G.L. c.30 §39R. In our opinion, representations of management are consistent with our evaluations of the system of internal accounting controls. In addition, we believe that they are reasonable with respect to transactions and assets in the amount which would be material when measured in relation to the firm's financial statements.

Sincerely,

(CPA)

# ATTACHMENT F

## CONTRACT FOR DESIGNER SERVICES

AMENDMENT NO. \_\_\_\_\_

**WHEREAS**, the \_\_\_\_\_ (“Owner”) and \_\_\_\_\_, (the “Designer”) (collectively, the “Parties”) entered into a Contract for Designer Services for \_\_\_\_\_ Project (Project the Number \_\_\_\_\_) at the \_\_\_\_\_ “Contract”; and

**WHEREAS**, effective as of \_\_\_\_\_, the Parties wish to amend the Contract:

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained in this Amendment, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. The Owner hereby authorizes the Designer to perform services for the Design Development Phase, the Construction Phases, and the Final Completion Phase of the Project, pursuant to the terms and conditions set forth in the Contract, as amended.
2. For the performance of services required under the Contract, as amended, the Designer shall be compensated by the Owner in accordance with the following Fee for Basic Services:

Fee for Basic Services:	Original Contract	After this Amendment
Grant Application Phase	\$ _____	\$ _____
Schematic Design Phase	\$ _____	\$ _____
Design Development Phase	\$ _____	\$ _____
Construction Document Phase	\$ _____	\$ _____
Early Bid Packages Phase	\$ _____	\$ _____
Bid & Negotiation Phase	\$ _____	\$ _____
Construction Administration Phase		
Project Close Out Phase	\$ _____	\$ _____
<b>Total Fee</b>	<b>\$ _____</b>	<b>\$ _____</b>

This Amendment is a result of:

\_\_\_\_\_

\_\_\_\_\_

3. The Construction Budget shall be as follows:

Original Budget: \$ \_\_\_\_\_

Amended Budget \$ \_\_\_\_\_

4. The Project Schedule shall be as

Original Schedule: \_\_\_\_\_

Amended Schedule \_\_\_\_\_

5. This Amendment contains all of the terms and conditions agreed upon by the Parties as amendments to the original Contract. No other understandings or representations, oral or otherwise, regarding amendments to the original Contract shall be deemed to exist or bind the Parties, and all other terms and conditions of the Contract remain in full force and effect.

IN WITNESS WHEREOF, the Owner and the Designer have caused this Amendment to be executed by their respective authorized officers.

**OWNER:**

CITY OF NEWTON

Setti D. Warren  
\_\_\_\_\_  
(print name)

Mayor  
\_\_\_\_\_  
(print title)

By \_\_\_\_\_  
(signature and seal)

Date \_\_\_\_\_

\_\_\_\_\_  
Joshua Morse  
Public Buildings Commissioner

Approved as to Legal Form & Character

\_\_\_\_\_  
Associate City Solicitor

**DESIGNER:**

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(print title)

By \_\_\_\_\_  
(signature )

Date \_\_\_\_\_

(Attach Certificate of Owner)

I hereby certify funds are available for this contract in the amount of \$

\_\_\_\_\_  
Comptroller of Accounts

**ATTACHMENT C**  
**STANDARD DESIGNER APPLICATION FORM**

**ATTACHMENT D.1**

**CERTIFICATE OF GOOD STANDING AND/OR TAX COMPLIANCE**

**ATTACHMENT D.2**

**CERTIFICATE OF AUTHORITY - CORPORATE**

1. I hereby certify that I am the Clerk/Secretary of \_\_\_\_\_  
(insert full name of Corporation)
2. corporation, and that \_\_\_\_\_  
(insert the name of officer who signed the **contract and bonds**.)
3. is the duly elected \_\_\_\_\_  
(insert the title of the officer in line 2)
4. of said corporation, and that on \_\_\_\_\_  
(insert a date that is **ON OR BEFORE** the date the officer signed the **contract and bonds**.)

at a duly authorized meeting of the Board of Directors of said corporation, at which all the directors were present or waived notice, it was voted that

5. \_\_\_\_\_ the \_\_\_\_\_  
(insert **name** from line 2) (insert **title** from line 3)

of this corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

6. ATTEST: \_\_\_\_\_ *AFFIX CORPORATE SEAL HERE*  
(Signature of Clerk or Secretary)\*
7. Name: \_\_\_\_\_  
(Please print or type name in line 6)\*
8. Date: \_\_\_\_\_  
(insert a date that is **ON OR AFTER** the date the officer signed the **contract and bonds**.)

\* The name and signature inserted in lines 6 & 7 must be that of the Clerk or Secretary of the \_\_\_\_\_ corporation.

## ATTACHMENT D.3

### 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 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, business, partnership, corporation, union, committee club, or other organization, entity, or group or individuals.

---

(Signature of individual)

---

Name of Business

**ATTACHMENT D.4**

**CERTIFICATION OF TAX COMPLIANCE**

Pursuant to M.G.L. c.62C, §49A and requirements of the City, the undersigned acting on behalf of the Contractor certifies under the penalties of perjury that the Contractor is in compliance with all laws of the Commonwealth relating to taxes including payment of all local taxes, fees, assessments, betterments and any other local or municipal charges (unless the Contractor has a pending abatement application or has entered into a payment agreement with the entity to which such charges were owed), reporting of employees and contractors, and withholding and remitting child support.\*

\_\_\_\_\_  
\*\*Signature of Individual (Mandatory)

\_\_\_\_\_  
\*\*\* Contractor's Social Security Number  
(Voluntary) or Federal Identification Number

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

**OR**

\_\_\_\_\_  
Company Name  
(Corporation, Partnership, LLC, etc.)

By: \_\_\_\_\_  
\*\*Corporate Officer (Mandatory)

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

- \* The provision in this Certification relating to child support applies only when the Contractor is an individual.
- \*\* Approval of a contract or other agreement will not be granted until the City receives a signed copy of this Certification.
- \*\*\* Your social security number may be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended.

ATTACHMENT E:

*City of Newton Designer*

*Selection Committee Designer*

Selection Procedures  
(Adopted *October 26, 2004*)

1. These procedures govern the selection of designers for any municipal building project subject to the state designer selection law, M.G.L. c. 7, §38A1/2-0 or subject to the provisions of §11-8 of the City of Newton Charter. Any other local law governing the procurement of services will be inapplicable to these procurements.
2. the Designer Selection Committee [hereinafter referred to as the "Committee"] has the authority to conduct the designer selection process for the City of Newton (hereinafter referred to as the "City") pursuant to the provisions of §11-8 of the City of Newton Charter and §§ 5-35-5-38 of the Revised Ordinances of the City of Newton, 2001. The Committee may delegate any duties described herein to the extent such delegation is permissible by law.
3. The Committee shall conduct the designer selection process.

No member of the Committee shall participate in the selection of a designer for any project if the member, or any of the member's immediate family:

- a. has a direct or indirect financial interest in the award of the design contract to any applicant;
  - b. is currently employed by, or is a consultant to or under contract to, any applicant;
  - c. is negotiating or has an arrangement concerning future employment or contracting with any applicant; or
  - d. has an ownership interest in, or is an officer or director of, any applicant.
4. A Request for Qualifications (RFQ) for each contract subject to these procedures shall be advertised in a newspaper of general circulation in the locality of the building project, in the *Central Register* published by the Secretary of the Commonwealth, and in any other place required by the Committee, at least two weeks before the deadline for filing applications.
  5. The advertisement shall contain the following information:
    - a. a description of the project, including the specific designer services sought, the estimated construction cost, and the time period within which the project is to be completed;

- b. if there is a program for the building project, a statement of when and where the program will be available for inspection by applicants;
  - c. when and where a briefing session (if any) will be held;
  - d. the qualifications required of applicants;
  - e. the categories of designers' consultants, if any, for which applicants must list names of consultants they may use;
  - f. whether the fee has been set or will be negotiated; if the fee has been set, the amount of the fee must be listed in the advertisement;
  - g. when and where the RFQ can be obtained and the applications must be delivered.
6. The RFQ shall include the Application to Designer Selection Committee Form. The Application Form may be amended to include additional information on a project-specific basis.
7. The Committee shall evaluate applicants based on the following criteria:
- a. prior similar experience;
  - b. past performance on public and private projects;
  - c. financial stability;
  - d. identity and qualifications of the consultants who will work with the applicants on the project;
  - e. any other criteria that the Committee considers relevant to the project.
8. The Committee shall select at least three finalists. Finalists may be required to appear for an interview or provide additional information to the Committee, provided that all finalists are afforded an equal opportunity to do so. The Committee may determine that it is in the best interest of the City to reject all applicants and re-issue the RFQ.
9. The Committee shall rank the finalists in order of qualification and transmit the list of ranked finalists to the Mayor. No person or firm, including applicants' listed consultants, shall be included as a finalist on the list.

The list must be accompanied by a written explanation of the reasons for selection including the recorded vote, if any. The written explanation, which may be the record or the minutes of the Commission's meeting at which the selection was made, and recorded vote, if any, shall be public records and shall be maintained in the contract file of the designer selected by the Mayor.

1. If the fee was set prior to the selection process, the Mayor shall select a designer from the list of finalists. If the Mayor selects a designer other than the one ranked first by the Committee, the Mayor shall file a written justification for the selection with the Committee and maintain a copy in the contract file. In accordance with the provisions of §5-35 of the Revised Ordinances of the City of Newton, 2001, the Mayor may request three (3) additional recommendations from which he may make his selection.

2. If the fee is to be negotiated, the Mayor shall review the list of finalists and may exclude any designer from the list if a written explanation of the exclusion is filed with the Committee and maintained in the contract file. The Mayor shall request a fee proposal from the first ranked designer remaining on the list and begin contract negotiations. If the Mayor is unable to negotiate a satisfactory fee with the first ranked designer, negotiations shall be terminated and undertaken with the remaining designers, one at a time, in the order in which they were ranked by the Committee until agreement is reached. In no event may a fee be negotiated which is higher than the maximum fee set by the Mayor prior to selection of finalists.
  3. If the Mayor is unable to negotiate a satisfactory fee with any of the finalists, in accordance with the provisions of §5-35 of the Revised Ordinances of the City of Newton, 200 I, the Mayor may request three (3) additional recommendations from which he may make his selection.
  4. The City may allow a designer who conducted a feasibility study to continue with the project design, provided that an independent review by a knowledgeable and competent individual or firm doing such work finds the feasibility designer's work to be reasonable and adequate. The City must first advertise for the feasibility study. The City may include a statement in the advertisement and/or RFQ that the feasibility study designer is eligible to compete for the subsequent design services contract. Once the study is complete, the City may publish a second advertisement for the project design. If the feasibility designer is selected, the City may commission the independent review prior to allowing the designer to proceed with the work.
14. Every contract for design services shall include the following:
- a. certification that the designer or construction manager 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 the contract for design services;
  - b. certification that no consultant to, or subcontractor for, the designer or construction manager has given, offered, or agreed to give any gift, contribution, or offer of employment to the designer or construction manager, 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 or construction manager;
  - c. certification that no person, corporation, or other entity, other than a bona fide full-time employee of the designer or construction manager, has been retained or hired by the designer or construction manager to solicit for or in any way assist the designer or construction manager in obtaining the contract for design services upon an agreement or understanding that such person, corporation, or other entity be paid a fee or other consideration contingent upon the award of the contract to the designer; and

- d. certification that the designer has internal accounting controls as required by M.G.L. c. 30, §39R(c) and that the designer has filed and will continue to file an audited financial statement as required by M.G.L. c. 30, §39R(d).

All fees shall be stated in design contracts, and in any subsequent amendments thereto, as a total dollar amount. Contracts may provide for equitable adjustments in the event of changes in scope or services.

15. The City shall not enter into a contract for design services unless the designer has obtained professional liability insurance covering negligent errors, omissions, and acts of the designer or of any person or business entity for whose performance the designer is legally liable arising out of the performance of the contract. The total amount of such insurance shall at a minimum equal the lesser of one million (\$1,000,000) dollars or ten percent (10%) of the project's estimated cost of construction, or such larger amounts as the City may require, for the applicable period of limitations. A designer required by the City to obtain all or a portion of such insurance coverage at its own expense shall furnish a certificate or certificates of insurance coverage to the City prior to the award of the contract.
16. Every contract for design services shall include a provision that the designer or 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 the bid documents, as reasonably determined by the individual responsible for administering the design contract.
17. In the event of an emergency that precludes the normal use of these designer selection procedures, the Committee may elect to authorize expedited procedures to address the emergency. The Committee shall document in writing the reasons for the emergency declaration, the proposed scope of work, the estimated cost of construction, the established fee for the needed design services, and any other relevant information.

The Committee may select three finalists from any standing list of designers who have applied for projects of a similar nature, or may otherwise select three designers to be considered as finalists for the project. The Committee shall rank the finalists in order of qualification and select the designer for the emergency work.

18. The City shall publish the name of any designer awarded a contract in the *Central Register*.
19. The following records shall be kept by the City:
  - a. all information supplied by or obtained about each applicant;
  - b. all actions taken relating to the project; and
  - c. any other records related to designer selection.

All records shall be available for inspection by the state Designer Selection Board and other authorized agencies.

The City shall evaluate designers' performance on contracts in accordance with M.G.L. c. 7, §38E(g).

§ 5-53 NEWTON ORDINANCES - PUBLIC BUILDINGS AND INSPECTIONAL SERVICES § 5-55

chairman annually and establish rules and procedures. Committee members shall serve at the pleasure of their respective appointing authority. The public buildings department shall provide such assistance to the committee as is necessary for the exercise of the committee's responsibilities. Records of the committee shall be public documents. The committee shall make reports no less than annually to the respective appointing authorities. (Rev. Ords. 1973, § 2-348; Ord. No. 190, 12-20-76; Ord. No. 317, 2-20-79; Ord. No. S-301, 2-1-88)

**Secs. 5-38—5-53. Reserved.**

**ARTICLE V.  
DESIGN REVIEW COMMITTEE**

**Sec. 5-54. Established.**

(a) A design review committee is hereby established to coordinate the design review process for any public facility which has been submitted to the committee by the mayor, board of aldermen or any other public agency or committee within the city.

(b) The design review committee shall examine the specifications prepared by the using agency and shall consult with the planning, public buildings and other city departments, or if appropriate, may request the public buildings commissioner to hire outside consultants to assist the design review committee in studying the feasibility of the proposed facility and shall consider to the extent the committee deems appropriate a range of solutions such as renewal, renovation or replacement within realistic budgetary limits and shall make a recommendation. The design review committee's study of the feasibility of the proposed facility shall include a review of indoor environmental health issues. The design review committee may make recommendations for specific program requirements for the proposed facility to address indoor environmental health issues. The design review committee shall include in its feasibility study a review of the proposed facility's use of natural resources and energy. The design review committee may make recommendations as to site planning, building design, or construction that contribute significantly to the proposed facility's efficient use and conservation of natural resources and energy. Whenever an architect is proposed to be engaged by the city in any design or consulting capacity, the design review committee shall review the contract between the city and the architect prior to its execution to assure that the scope of the work, as described in said contract, complies with the program requirements for the proposed public facility.

(c) The design review committee shall review the architect's solution for compliance with the program and time schedule requirements and shall evaluate the quality, appropriateness and functional attributes of the architect's solution. The committee shall have periodic meetings with the architect and hold periodic presentations and reviews and shall make reports as the project moves through the various stages of design to contract development. Prior to the issuance of bid documents, design review recommendations to the architect shall be made by the design review committee in writing to the commissioner of public buildings for his approval and issued from his office. The commissioner of public buildings shall not permit the construction contract to be advertised for public bid until the design review committee certifies in writing that the plans and specifications substantially meet the program requirements of the project.

(d) During the construction of the public facility, the commissioner of public buildings shall consult with the design review committee concerning any changes in the plans or specifications that may affect the design or program of the facility and the committee shall act promptly on all matters before it. (Rev. Ords. 1973, § 2-361; Ord. No. 8, 8-12-74; Ord. No. 190, 12-20-76; Ord. No. S-301, 2-1-88; Ord. No. V-216, 12-21-98; Ord. No. Y-29, 7-9-07)

**Sec. 5-55. Composition, appointment and compensation of members.**

(a) Voting membership. The design review committee shall consist of twelve (12) permanent voting members,

four (4) appointed by the mayor, four (4) selected by the board of aldermen, and four (4) selected by the school committee. There shall be two (2) additional voting members for each facility under design review, who are community representatives who shall represent the interests of the community in which the proposed facility is to be located, and who reside in the immediate area of the facility. One community representative shall be appointed by the mayor and one shall be selected by the board of aldermen. In the event that more than one facility shall comprise a project, and where the board of aldermen determines that the resulting number of community representatives for said project is unreasonably large, it may reduce the total number of community representatives required to not fewer than two. (Ord. No. R-142, 4-21-81)

(b) Nonvoting membership. There shall be the following nonvoting members of the design review committee: one alderman, one school committee member for school department building projects, the planning director or his designee, the head of the using agency or his designee, and the public buildings commissioner or his designee. The public buildings commissioner shall also serve as secretary of the design review committee. (Rev. Ords. 1973, § 2-362; Ord. No. 8, 8-12-74; Ord. No. S-301, 2-1-88)

Cross references—Regulations governing appointment and service on commissions and committees, § 2-8

#### **Sec. 5-56. Terms, vacancies and rules.**

(a) The members of the design review committee, excepting the community representatives, shall serve coterminous with the terms of their respective appointing authority. Vacancies in the committee shall be filled by appointment in the same manner by the same designated appointing authority as the original appointments for the period of the unexpired term. The term of community representatives shall expire upon final acceptance by the city of the facility for which they were appointed.

(b) The design review committee shall have such assistance as is reasonably necessary for the exercise of its responsibilities provided by the department of public buildings. The records of the design review committee shall be public documents. The design review committee shall elect a chairman annually and establish rules and procedures. Members shall serve at the pleasure of their respective appointing authority.

(c) It is the intent of this section that those participating in the design review process as voting members shall be a diversified group of interested citizens, independent of and not directly employed by city government, and that some of these members shall be professionally qualified.

(d) To the extent that citizens make themselves available to serve, there shall be at least one (1), but not more than two (2) voting members from each of the following professions: architect, general construction manager, electrical engineer, mechanical engineer, structural engineer, landscape architect. Professional qualifications of voting members are desirable in the fields of city planning, traffic engineering and real estate development, but shall not be required.

(e) Whenever a vacancy in voting membership occurs, the appointing authority shall make inquiry of the public buildings commissioner and the chairman of the design review committee as to whether an appointee with particular professional qualifications is required, and after written response, the appointment shall be made so that the membership of the design review committee will be professionally balanced and will comply with the requirements and the intent of this section. Community representatives shall be appointed without regard for professional qualifications.

(f) No voting member of the design review committee shall hold an elected or salaried position with the city.

(g) All members shall serve without compensation and all voting members shall be residents of the city. All members shall serve until their successors take office.

(h) The two (2) voting members who are community representatives shall vote only on those matters concerning facilities for which they are appointed. (Rev. Ords. 1973, § 2-363; Ord. No. 8, 8-12-74; Ord. No. 190, 12-20-76; Ord. No. S-301, 2-1-88)

**Sec. 5-57. Other provisions.**

Any public corporation, agency, authority, commission or body of any such private organization which is empowered to construct a public or quasi-public facility within the city and which desires to submit itself to the jurisdiction of the design review committee, may enter into an agreement, in writing, with the city for this purpose, and thereafter the design review committee shall perform all of its functions and duties with respect to such facility. (Rev. Ords. 1973, § 2-364; Ord. No. 8, 8-12-74)

**Sec. 5-58. Site plan approval for construction or modification of municipal buildings and facilities.**

It shall be the policy of the city to apply similar standards of planning and control of density and environmental impact, when the city's public buildings and facilities are constructed or modified, as the city applies under chapter 30, Zoning, of the Revised Ordinances when petitions for changes in land use are initiated by its citizens or property owners. In implementing this policy for land in the public use district or otherwise classified city land, the prior establishment of a zoning classification or district (in accordance with section 30-4 of these Revised Ordinances) shall not be required.

(a) Whenever construction or modification of a municipal building or facility is undertaken which involves new construction or substantial change in usage, and which involves a change in: vehicular access; off-street parking requirements; site grading; drainage; landscape features; or service areas, the following procedures shall apply:

- (1) The executive department shall include in the architect's contract the requirement for preparation and submission of site plans suitable for review and approval in accordance with the procedure outlined in section 30-23 of these Revised Ordinances.
- (2) The department of planning and development shall maintain cognizance over the development of specifications, conceptual designs and site plans to determine the consistency and compatibility of such designs and plans with the city's comprehensive plan and other pertinent planning and analytical studies. The director of planning and development shall make written notification of this finding to the mayor, to the clerk of the board of aldermen, to the design review committee, and (in the case of school buildings) to the secretary of the school committee.
- (3) The design review committee shall consider the project plans, designs, and specifications not only in terms of the details of layout and construction of the building or facility, but also in terms of the site and its surrounding area. Consultations shall be made with such city departments and neighborhood groups as are considered necessary and appropriate.
- (4) Upon its approval of the initial design concept and prior to recommending that the project proceed to the detailed design phase and to the preparation of construction drawings, the design review committee shall file with the clerk of the board of aldermen its approved site plan including building floor plans and architectural schematics, along with a formal petition for site plan approval in accordance with the procedure outlined in section 30-23 of these Revised Ordinances. The design review committee shall not be required to pay a filing fee for purposes of this section.
- (5) At the earliest opportunity, the board of aldermen shall for the purposes of this section assign that petition for public hearing before its committee dealing with matters of public buildings and this committee shall hold a public hearing. Due notice of such public hearing shall be given to the abutters of the proposed building or

facility and to the abutters of such abutters. The committee shall deliberate and negotiate such changes to the site plan and affix such restrictions and conditions as are in the public interest, and it shall make its report to the board of aldermen within forty-five (45) days following the public hearing.

- (6) The site plan, including building floor plans and architectural schematics, as formally approved by the board of aldermen and the mayor (and in the case of school buildings, by the school committee) shall become part of the final set of project plans and construction drawings, and they shall not be changed or altered in any manner without first being resubmitted to the design review committee and to the board of aldermen in accordance with steps (3), (4) and (5) above. The board of aldermen may waive a public hearing on a previously approved site plan if in its judgment the changes proposed are not of sufficient scope as to warrant a public hearing.

(b) The board of aldermen shall not approve an appropriation of any funds for preparation of detailed construction drawings for a project applicable under this section until the requirements of (a)(1) through (a)(6) above have been satisfied.

(c) The executive department shall not formally submit a project applicable under this section to competitive construction bid unless the requirements of (a)(1) through (a)(6) have been satisfied.

(d) The requirements of this section that are not otherwise required by law or by the charter may be waived in whole or in part by a two-thirds (2/3) vote of those members of the board of aldermen present and voting. (Rev. Ords. 1973, § 2-365; Ord. No. 8, 8-12-74; Ord. No. 102, § 4, 12-15-75; Ord. No. V-195, 9-22-98)