TOWN OF BOXBOROUGH
PUBLIC SAFETY SPACE NEEDS ASSESSMENT
REQUEST FOR QUALIFICATIONS
FOR DESIGNER SERVICES

The Town of Boxborough, through its Town Administrator/Chief Procurement Officer, is soliciting Requests for Qualifications from qualified, experienced architectural or engineering consultants (Designers) pursuant to the Massachusetts Designer Selection Law, G.L. c. 7C to initially conduct a feasibility study, and an additional study phase subject to further appropriation, to prepare a preliminary design schematic, and cost estimates for stand-alone facilities or rehabilitation of the existing facilities for the public safety department.

Applicants must have MA registration & licensing in all applicable disciplines; min. of 5 years prof. exp. conducting space needs studies & design services and completion of at least 3 space needs assessments &/or designs for public safety facilities.

RFQ may be obtained at the Boxborough Police Station, located at 520 Massachusetts Avenue, Boxborough, MA from 8:00 AM – 4:00 PM, Monday through Friday, or from the town's website: www.boxborough-ma.gov, commencing September 10. Applicants downloading the RFQ are solely responsible for obtaining any addenda prior to the deadline for applications, and shall notify the Town Administrator by email to: sshaw@boxborough-ma.gov if they have downloaded the RFQ.

Deadline for submission of applications is **Monday, September 29 at 10:00 AM**. The Town will not accept late responses due to any type of mail or courier delay. Applications shall be returned to Selina Shaw, Chief Procurement Officer, Town of Boxborough, 29 Middle Road, Boxborough, MA 01719 in a sealed envelope clearly marked "Public Safety Space Needs Assessment" and shall clearly indicate the name of the applicant on the envelope's exterior. Applications shall not be accepted by fax or e-mail.

An optional pre-proposal conference will be held on at 9 AM on September 18, 2014 in the conference room of the Boxborough Police Station, 520 Massachusetts Avenue, Boxborough, MA, which will be followed by a site visit of the public safety facilities. Applicants are strongly recommended to attend.

The Town of Boxborough reserves the right to reject any or all applications that it deems are not in the best interest of the Town, to waive irregularities, amend the RFQ after giving notice to all known applicants or cancel the procurement.

Per Order
Selina Shaw, MCPPO
Town Administrator

TOWN OF BOXBOROUGH
PUBLIC SAFETY SPACE NEEDS ASSESSMENT

REQUEST FOR QUALIFICATIONS
For Design Services

Invitation: The Town of Boxborough, acting through its Town Administrator, seeks the services of a qualified, experienced architectural or engineering consultant (Designer) pursuant to the Massachusetts Designer Selection Law, G.L. c. 7C to initially conduct a feasibility study, and an additional study phase subject to further appropriation to prepare a preliminary design schematic and cost estimates for stand-alone facilities or rehabilitation of the existing facilities, for the public safety department.

Project: Public Safety Space Needs Assessment

Proposals Due: September 29, 2014 at 10:00 AM (Local Time)

1. Background Information

Located in Middlesex County, Massachusetts, Boxborough is a community of approximately 5,000 residents, located 28 miles west of Boston at the crossroads of Routes 111 and 495, and covers 10.39 square miles.

The Boxborough's Police and Public Safety Dispatch Departments are currently operating in a shared building. The building was constructed in 1989 and was originally designed to house only the Police Department and six full time employees. The building is a two level, wood framed structure consisting of 3,000 square feet, which is too small for its needs. The Police and Public Safety Dispatch Departments currently consist of 11 sworn personnel, 5 non-sworn full-time personnel, 6 non-sworn part-time personnel, and 9 part-time sworn officers. In 2013, the Boxborough Police Department responded to 10,715 calls for service and made 299 adult arrests.

The current facility houses:

- 24/7 Communications Center which dispatches for the Town of Boxborough police and fire departments
- 4 full-time dispatchers
- 4 part-time dispatchers
- 1 full-time Administration staff
- 3 Detectives
- 3 Sergeants
- 4 full-time Officers
- 9 part-time Officers
- 1 Animal Control Officer

There are nine vehicles housed outside of the Police facility, in addition to a motorcycle, mountain bikes and two trailers.

Generally, there are six employees present in the building during the day; however, additional personnel may be present for training, court details and special investigations.

The Fire Department was constructed in the 1950's and is a masonry building consisting of brick veneer exterior, steel, concrete beams, bar joists, and concrete floor slabs. The Fire Department occupies approximately 3,600 square feet of workspace and attached garages. The Department has 5 full-time employees and 30 part-time employees. There are 9 pieces of apparatus including 3 trailers. 8 vehicles are housed inside the station.

The Town anticipates that a new or improved facility or facilities might be built on the same property.

Town Meeting has appropriated funding for the initial phase of the study, which will serve as a planning tool for future phases. Additional phases, including preliminary design schematic and cost estimates for stand-alone facilities or rehabilitation of the existing facilities, will be subject to further appropriation by Town Meeting.

This preliminary assessment phase must be completed no later than February 1, 2015 so that a timely determination may be made with respect to presentation of potential future phases at May 2015's Annual Town Meeting.

2. Scope of Services

2.1 Reporting and Oversight

The Designer will report to the Police Chief, or his designee.

2.2 The minimum scope of services shall include the following:

1) Inspect the existing facilities

2) Define and evaluate the scope of facilities

3) Provide square foot requirements for personnel, vehicles, apparatus, evidence, equipment and records storage, personnel parking, visitor parking and other associated requirements for the daily operations of each department.

4) Considering the safety and functional needs of the facilities, provide suggestions for improvements to the existing facilities including the required site area of a parcel for potential new facilities, with the estimated cost of each, etc.

5) Designer shall provide weekly progress updates to the Police Chief, or his designee, throughout the study by telephone or in person. A least one of the status updates shall be provided on site during the study. Additionally, the Designer shall provide at least one presentation at a Board of Selectmen's meeting.

Future phases may include the preparation of a preliminary design schematic and cost estimates for stand-alone facilities or rehabilitation of the existing facilities for the public safety department, subject to further appropriation by town meeting.

Site selection is not a part of the scope of this project.

Any exceptions to this Scope of Work shall be clearly noted in the Designer's proposal.

3. Minimum Qualifications

All Firms, or the principal Designer for the project, must possess the following minimum qualifications:

1) Massachusetts registration and licensing in all applicable disciplines.

2) No less than five years' professional experience conducting space needs studies and design services.

3) Completion of at least three space needs assessments and/or designs for public safety facilities.

4. Submission Requirements

The Proposal shall consist of the following items and shall be submitted by each firm desiring consideration:

1) Fully completed Designer application form---Commonwealth of Massachusetts Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction, updated May 2014.

2) Number of years in business under the current name

3) Resumes of all personnel assigned to the project, including outside sub-Designer personnel, listing individuals' qualifications and academic and professional work experience, as well as business and/or professional license numbers and expiration dates. Additionally, each individual's role for the project shall be identified as well as the experience of such personnel in relation to successfully completing any similar projects. The Designer shall describe any additional resources that he or she can use to provide expertise if such expertise is not resident in the Designer's organization. A registered architect shall be part of the team. The project manager along with the principal to be assigned to the project shall be named. Designer must be familiar with Massachusetts Public Construction Laws and the Massachusetts State Building Code. Designer must be available to attend local meetings.

4) A list of all similar public projects undertaken in Massachusetts within the past five years and similar to the project described in this RFQ shall be submitted, including a brief description of the projects, their forecast budget and actual cost. Also identify the key personnel (specifically those proposed to be assigned to the project) who were involved in the listed projects and their roles in these projects.

5) A list of projects that were awarded to the firm within the last three years, but were not completed, and why.

6) A completed "Certificate of Good Faith" and "Tax Compliance Certificate."

7) An overview of the workflow, monitoring systems, including status reports and other control methods to be used in performing the study.

8) Recommended Procedure and Time Table: The proposal shall include the Designer's suggested procedures, estimated work hours, personnel assigned and timeline by task to carry out the work as described in the scope of services. The proposal should also include Capacity and capability to perform the work on schedule by referencing current workload.

9) Evidence of Insurability as specified below shall be submitted.

10) Financial Stability: The Designer must submit information demonstrating its sound financial status. Credit references and annual reports may be requested.

11) Any other information that Designer believes will further the competitiveness of the proposal, including work samples, photos from similar completed projects

Interested Firms shall submit an original and 5 (five) copies of the firm's Proposal to:

Selina Shaw, Chief Procurement Officer,
Town of Boxborough,
29 Middle Road, Boxborough, MA 01719

Applications must be signed by an authorized representative of the Firm.

Applications shall be submitted in a sealed envelope clearly marked "Public Safety Space Needs Assessment" and shall clearly indicate the name of the applicant on the envelope's exterior. Applications shall **not** be accepted by fax or e-mail.

Deadline for submission of proposals is September 29, 2014 at 10:00 AM local time. The Town will not accept late responses due to any type of mail or courier delay.

Applicants downloading the RFQ are solely responsible for obtaining any addenda prior to the deadline for applications, and shall notify the Town Administrator at the address below or by email to: sshaw@boxborough-ma.gov, if they have downloaded the RFQ.

The Town of Boxborough reserves the right to reject any or all applications that it deems are not in the best interest of the Town, to waive irregularities, amend the RFQ after giving notice to all known applicants or cancel the procurement.

All material submitted in response to this RFQ shall be public after the final selection has been made.

5. Evaluation and Selection Criteria

The proposals will be reviewed by a designer selection committee appointed by the Town Administrator and shall include the Police and Fire Chiefs, Inspector of Buildings, and a member of the Board of Selectmen.

Evaluation of responding firms will be based on the following criteria:

1) Prior experience with similar projects.

2) Past performance on public projects and working knowledge of the Massachusetts General Laws relating to public construction projects.

3) Financial stability of the Designer.

4) Professional qualifications of staff and consultants who will work on the project.

5) Current workload or clearly established capacity to complete scope of work on a qualitative, timely basis.

6) Completeness of proposal submitted by each firm; and

7) Any other criteria considered relevant to the project.

6. Pre-proposal Conference

An optional pre-proposal conference will be held on at 9 a.m. on September 18, 2014 in the conference room of the Boxborough Police Station, 520 Massachusetts Avenue, Boxborough, MA, which will be followed by a site visit of the public safety facilities.

Questions concerning this Request for Qualifications shall be submitted in writing no later than September 23, 2014 to the Town Administrator, Selina Shaw, by mail to 29 Middle Road, Boxborough, MA 01719, by fax to 978-264-3127 or by e-mail (preferred) to sshaw@ boxborough-ma.gov. Written responses will be mailed, faxed or e-mailed to all applicants no later than September 25, 2014.

7. Award

Using the evaluation criteria stated above, the Public Safety Space Needs Designer Selection Committee will evaluate applicants and choose three finalists and rank them in order of preference.

The proposals of the three finalists will be forwarded to the **Town Administrator, or such other person designated by the Town**, to negotiate with the top-ranked applicant.

The **Town Administrator, or such other person designated by the Town,** shall contact the top ranked finalist and request a fee proposal, and upon receipt of such fee proposal, negotiate with such applicant to reach agreement on a reasonable fee for project management services.

In the event that an agreement cannot be reached with the top-ranked applicant within 15 calendar days, negotiations with such applicant will cease, and negotiations will begin with the next top-ranked applicant, and so on, until agreement on a reasonable fee is reached.

It is expected that the final selection of a Designer will be made no later than October 31, 2014.

8. Contract

The successful applicant will be required to sign the Town's standard contract for design services, a copy of which is attached hereto. To meet project deadlines, the contract must be finalized no later than November 7, 2014, unless extended by mutual agreement.

9. Fee

The fee for Designer Services shall be negotiated.

10. Insurance

Certificates of insurance, as specified below, shall be filed with the Town prior to commencement of the work and must be kept in force for the duration of the contract. These certificates shall contain a provision that coverages afforded under the policies will not be canceled unless at least thirty (30) days prior written notice has been given to the town. The Designer shall provide liability and other coverage as required by law and shall meet the minimum requirements as specified:

1) A commercial general liability insurance policy with the following limits of coverage: Bodily injury and property damage, one million dollars ($1,000,000) each occurrence, three million dollars ($3,000,000.) annual aggregate, to include Products/Completed Operations Liability. The Town of Boxborough shall be named as Additional Insured on a primary and non-contributory basis including completed operations.
2) A comprehensive automobile insurance policy with a combined single limit, bodily injury and property damage of at least one million dollars ($1,000,000) to include Liability coverage for all owned, non-owned and hired vehicles. The Town of Boxborough shall be named as Additional Insured.
3) A Professional Liability insurance policy with coverage no less than One Million Dollars ($1,000,000). The Town of Boxborough shall be named as Additional Insured.
4) An Umbrella or Excess Liability coverage in the amount of at least two million dollars ($2,000,000) per occurrence, two million dollars ($2,000,000) aggregate. The Town of Boxborough shall be named as Additional Insured on a primary and non-contributory basis including completed operations.
5) Workers' Compensation Insurance as required by the then current laws of the Commonwealth of Massachusetts and Employer's Liability Insurance with limits of one million dollars ($1,000,000)/ one million dollars ($1,000,000))/ one million dollars ($1,000,000).

Commonwealth of Massachusetts **Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction (Updated May 2014)**	1. Project Name/Location For Which Firm Is Filing:	2. Project # This space for use by Awarding Authority only.

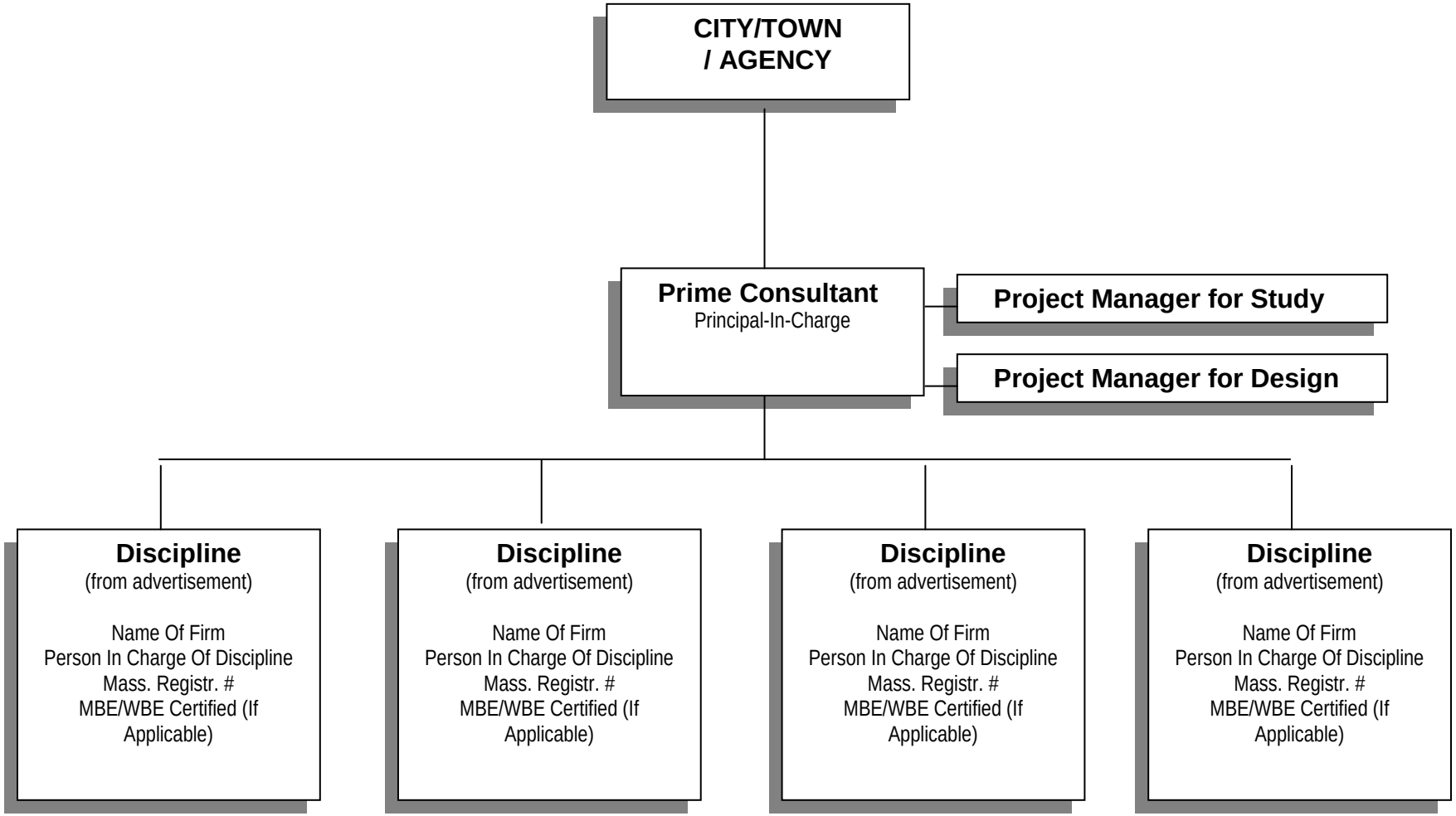
3a. Firm (Or Joint-Venture) - Name and Address Of Primary Office To Perform The Work:	3e. Name Of Proposed Project Manager: For Study: (if applicable) For Design: (if applicable)
3b. Date Present and Predecessor Firms Were Established:	3f. Name and Address Of Other Participating Offices Of The Prime Applicant, If Different From Item 3a Above:
3c. Federal ID #:	3g. Name and Address Of Parent Company, If Any:
3d. Name and Title Of Principal-In-Charge Of The Project (MA Registration Required): Email Address: Telephone No: Fax No.:	3h. Check Below If Your Firm Is Either: (1) SDO Certified Minority Business Enterprise (MBE) ❑ (2) SDO Certified Woman Business Enterprise (WBE) ❑ (3) SDO Certified Minority Woman Business Enterprise (M/WBE) ❑

4. **Personnel From Prime Firm Included In Question #3a Above** By Discipline (List Each Person Only Once, By Primary Function -- Average Number Employed Throughout The Preceding 6 Month Period. Indicate Both The Total Number In Each Discipline And, Within Brackets, The Total Number Holding Massachusetts Registrations):

Admin. Personnel	____	(____)	Ecologists	____	(____)	Licensed Site Profs.	____	(____)	Other ____	____	(____)
Architects	____	(____)	Electrical Engrs.	____	(____)	Mechanical Engrs.	____	(____)	____	____	(____)
Acoustical Engrs.	____	(____)	Environmental Engrs.	____	(____)	Planners: Urban./Reg.	____	(____)	____	____	(____)
Civil Engrs.	____	(____)	Fire Protection Engrs.	____	(____)	Specification Writers	____	(____)	____	____	(____)
Code Specialists	____	(____)	Geotech. Engrs.	____	(____)	Structural Engrs.	____	(____)	____	____	(____)
Construction Inspectors	____	(____)	Industrial Hygienists	____	(____)	Surveyors	____	(____)	____	____	(____)
Cost Estimators	____	(____)	Interior Designers	____	(____)		____	(____)	____	____	(____)
Drafters	____	(____)	Landscape Architects	____	(____)		____	(____)	Total	____	(____)

5. Has this Joint-Venture previously worked together? ❑ Yes ❑ No

6. List **ONLY** Those Prime And Sub-Consultant Personnel Specifically Requested In The Advertisement. This Information Should Be Presented Below In The Form Of An Organizational Chart. Include Name Of Firm And Name Of The One Person In Charge Of The Discipline, With Mass. Registration Number, As Well As MBE/WBE Status, If Applicable:



7. Brief Resume of ONLY those Prime Applicant and Sub-Consultant personnel requested in the Advertisement. Include Resumes of Project Managers. Resumes should be consistent with the persons listed on the Organizational Chart in Question # 6. Additional sheets should be provided only as required for the number of Key Personnel requested in the Advertisement and they must be in the format provided. By including a Firm as a Sub-Consultant, the Prime Applicant certifies that the listed Firm has agreed to work on this Project, should the team be selected.	
a. Name and Title Within Firm:	a. Name and Title Within Firm:
b. Project Assignment:	b. Project Assignment:
c. Name and Address Of Office In Which Individual Identified In 7a Resides: MBE ❑ WBE ❑	c. Name and Address Of Office In Which Individual Identified In 7a Resides: MBE ❑ WBE ❑
d. Years Experience: With This Firm: _____ With Other Firms: _____	d. Years Experience: With This Firm: _____ With Other Firms: _____
e. Education: Degree(s) /Year/Specialization	e. Education: Degree(s) /Year/Specialization
f. Active Registration: Year First Registered/Discipline/Mass Registration Number	f. Active Registration: Year First Registered/Discipline/Mass Registration Number
g. Current Work Assignments and Availability For This Project:	g. Current Work Assignments and Availability For This Project:
h. Other Experience and Qualifications Relevant To The Proposed Project: (Identify Firm By Which Employed, If Not Current Firm):	h. Other Experience and Qualifications Relevant To The Proposed Project: (Identify Firm By Which Employed, If Not Current Firm):

8a. Current and Relevant Work By Prime Applicant Or Joint-Venture Members. Include **ONLY** Work Which Best Illustrates Current Qualifications In The Areas Listed In The Advertisement (List Up To But Not More Than 5 Projects).					
a. Project Name And Location Principal-In-Charge	b. Brief Description Of Project And Services (Include Reference To Relevant Experience)	C. Client's Name, Address And Phone Number (Include Name Of Contact Person)	d. Completion Date (Actual Or Estimated)	e. Project Cost (In Thousands)	
				Construction Costs (Actual, Or Estimated If Not Completed)	Fee for Work for Which Firm Was Responsible
(1)					
(2)					
(3)					
(4)					
(5)					

8b. List Current and Relevant Work By Sub-Consultants Which Best Illustrates Current Qualifications In The Areas Listed In The Advertisement (Up To But Not More Than 5 Projects For Each Sub-Consultant). Use Additional Sheets Only As Required For The Number Of Sub-Consultants Requested In The Advertisement.					
Sub-Consultant Name:					
a. Project Name and Location Principal-In-Charge	b. Brief Description Of Project and Services (Include Reference To Relevant Experience	c. Client's Name, Address And Phone Number. Include Name Of Contact Person	d. Completion Date (Actual Or Estimated)	e. Project Cost (In Thousands)	
				Construction Costs (Actual, Or Estimated If Not Completed)	Fee For Work For Which Firm Was/Is Responsible
(1)					
(2)					
(3)					
(4)					
(5)					

9. List All Projects Within The Past 5 Years For Which Prime Applicant Has Performed, Or Has Entered Into A Contract To Perform, Any Design Services For All Public Agencies Within The Commonwealth.

# of Total Projects:	# of Active Projects:	Total Construction Cost (In Thousands) of Active Projects (excluding studies):

Role P, C, JV *	Phases St., Sch., D.D., C.D.,A.C.*	Project Name, Location and Principal-In-Charge	Awarding Authority (Include Contact Name and Phone Number)	Construction Costs (In Thousands) (Actual, Or Estimated If Not	Completion Date (Actual or Estimated) (R)Renovation or (N)New
		1.			
		2.			
		3.			
		4.			
		5.			
		6.			
		7.			
		8.			
		9.			
		10.			
		11.			
		12.			

* P = Principal; C = Consultant; JV = Joint Venture; St. = Study; Sch. = Schematic; D.D. = Design Development; C.D. = Construction Documents; A.C. = Administration of Contract

10. Use This Space To Provide Any Additional Information Or Description Of Resources Supporting The Qualifications Of Your Firm And That Of Your Sub-Consultants For The Proposed Project. If Needed, Up To Three, Double-Sided 8 ½" X 11" Supplementary Sheets Will Be Accepted. APPLICANTS ARE ENCOURAGED TO RESPOND SPECIFICALLY IN THIS SECTION TO THE AREAS OF EXPERIENCE REQUESTED IN THE ADVERTISEMENT.

Be Specific – No Boiler Plate

11. Professional Liability Insurance:

Name of Company	Aggregate Amount	Policy Number	Expiration Date

12. Have monies been paid by you, or on your behalf, as a result of Professional Liability Claims (in any jurisdiction) occurring within the last 5 years and in excess of $50,000 per incident? Answer YES or NO. If YES, please include the name(s) of the Project(s) and Client(s), and an explanation (attach separate sheet if necessary).

13. Name Of Sole Proprietor Or Names Of All Firm Partners and Officers:

Name	Title	MA Reg #	Status/Discipline	Name	Title	MA Reg #	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

14. If Corporation, Provide Names Of All Members Of The Board Of Directors:

Name	Title	MA Reg #	Status/Discipline	Name	Title	MA Reg #	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

15. Names Of All Owners (Stocks Or Other Ownership):

Name And Title	% Ownership	MA. Reg.#	Status/Discipline	Name And Title	% Ownership	MA. Reg.#	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

16. I hereby certify that the undersigned is an Authorized Signatory of Firm and is a Principal or Officer of Firm. I further certify that this firm is a "Designer", as that term is defined in Chapter 7C, Section 44 of the General Laws, or that the services required are limited to construction management or the preparation of master plans, studies, surveys, soil tests, cost estimates or programs. The information contained in this application is true, accurate and sworn to by the undersigned under the pains and penalties of perjury.

Submitted by (Signature) _____ Printed Name and Title _____ Date _____

Certificate of Good Faith

The undersigned certifies under penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, joint venture, partnership, corporation, or other business or legal entity.

_____

(Name of person signing Standard Designer Application Form)

_____

(Name of Business)

Tax Compliance Certificate

Under provisions of Massachusetts General Law, C. 62C, S49A, all person or companies submitting bids or proposals are required to certify their compliance with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

I Certify under the pains and penalties of perjury that:

_____

has complied with all the law of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

Date _____ _____
(Signature)

Social Security Number or
Federal Identification Number _____
(Title)

_____ _____
(Name of business)

Your Social Security number or Federal Identification number will be furnished to the Massachusetts Department of Revenue (DOR) to determine whether you have met the filing or tax payment obligations. The Town is required to furnish to the DOR at the end of its fiscal year, the vendors to whom more than $5,000 is paid during the 12 months, ending June 30. Providers, who fail to correct the non-filing or delinquency, will not have a contract or other agreement issued, renewed or extended. This is request is made under the authority of the Massachusetts General Laws, Chapter 62C, §49a.

TOWN OF BOXBOROUGH
Designer Selection Procedures
Adopted July 2, 2012

1. These procedures govern the selection of an architect or engineer to provide designer services for any Town building project subject to the state designer selection law, G.L. c. 7, §§38A½-O. "Designer services" include the preparation of master plans, feasibility and other studies, surveys, soil tests, cost estimates and programs; preparation of drawings, plans, and specifications, including schematic drawings and preliminary plans and specifications; supervision or administration of a construction contract; and construction management and scheduling. (M.G.L. c. 7, §38A½). Any other local law governing the procurement of services will be inapplicable to these procurements.

2. The Town of Boxborough ("Awarding Authority") has the authority to conduct the designer selection process for the Town, unless another Town officer, Board or Committee is so designated by vote of the Town Meeting. The Awarding Authority may delegate any duties described herein to the extent such delegation is permissible by law.

3. The Awarding Authority shall designate the individual or group of individuals (hereinafter referred to as "the Committee") who will 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 Town, in the *Central Register* published by the Secretary of the Commonwealth, and in any other place required by the Awarding Authority, 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 time period within which the project is to be completed, and, if available, the estimated construction cost;

b. if there is a program or prior feasibility study for the building project, a statement of when and where the program or study 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 current Massachusetts Designer Selection Board "Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction." 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; and

   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.

9. The Committee shall rank the finalists in order of qualification and transmit the list of ranked finalists to the Awarding Authority. No person or firm, including applicants' listed consultants, debarred pursuant to M.G.L. c. 149, §44C 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 of the Committee, if any. The written explanation and recorded vote, if any, shall be public records and shall be maintained in the contract file.

10. If the fee was set prior to the selection process, the Awarding Authority shall select a designer from the list of finalists. If the Awarding Authority selects a designer other than the one ranked first by the Committee, the Awarding Authority shall file a written justification for the selection with the Committee and maintain a copy in the contract file.

11. If the fee is to be negotiated, the Awarding Authority 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 Awarding Authority shall request a fee proposal from the first ranked designer remaining on the list and begin contract negotiations. If the Awarding Authority 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 Awarding Authority prior to selection of finalists.

12. If the Awarding Authority is unable to negotiate a satisfactory fee with any of the finalists, the Awarding Authority shall recommend that the Committee select additional finalists.

13. The Awarding Authority may allow a designer who conducted a feasibility study to continue with the design of a project, provided that the Awarding Authority conducts a solicitation that complies with the requirements of the Designer Selection Law and these procedures. The Awarding Authority may commission, at its discretion, an independent review of the feasibility study, by a knowledgeable and competent individual or business doing such work, to ensure its reasonableness and its adequacy before allowing the designer to continue on the project.

14. Every contract for design services shall include the following:

    a. certification 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 the contract for design services;

    b. certification that no consultant to, or subcontractor for, the designer has given, offered, or agreed to give any gift, contribution, or offer of employment to the designer, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the designer;

    c. certification that no person, corporation, or other entity, other than a bona fide full-time employee of the designer, has been retained or hired by the designer to

solicit for or in any way assist the designer in obtaining 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 of services.

15. The Awarding Authority shall not enter into a contract for design services unless the Awarding Authority or 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 dollars or ten percent of the project's estimated cost of construction, or such larger amounts as the Awarding Authority may require, for the applicable period of limitations. A designer required by the Awarding Authority 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 Awarding Authority simultaneously with the execution 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 Awarding Authority 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 Awarding Authority may elect to authorize expedited procedures to address the emergency. The Awarding Authority shall document in writing the reasons for the emergency declaration, the proposed scope of services, the estimated cost of construction, the established fee for the needed design services, and any other relevant information.

    The Awarding Authority 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 Awarding Authority shall rank the finalists in order of qualification and select the designer for the emergency work.

18. The Awarding Authority shall publish the name of any designer awarded a contract in the *Central Register*.

19. The following records shall be kept by the Awarding Authority:

    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.

20. The Awarding Authority shall evaluate designers' performance on contracts using the Designer Selection Board evaluation form(s) in accordance with M.G.L. c. 7, §38E(g), and file completed evaluations with the Board and any other agency named in M.G.L. c. 7, Section 38E(g).

21. Nothing in these Procedures shall be interpreted to require the establishment of a local designer selection board or waive or reduce the requirements of any other applicable law or regulation.

22. Any design or construction project that is funded, in whole or in part by the Commonwealth (such as reimbursements, grants and the like) shall include an affirmative marketing program consistent with the requirements of the Construction Reform Law, Chapter 193 of the Acts of 2004, and revisions to G.L. c. 23A, §44 and G.L. c. 7, §40N.

Adopted by the Boxborough Board of Selectmen, this 2nd day of July, 2012

Leslie R. Fox, Chair

Robert T. Stemple

Francis J. Powers 7/2/2012

Francis J. Powers, Clerk

Raid M. Suleiman

Vincent M. Amoroso

AGREEMENT

TOWN OF _____, MA
Contract for Designer Services

PROJECT TITLE:

PROJECT TYPE:

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

The scope of services is set forth in Attachment A.

ARTICLE 1: DEFINITION OF TERMS

1.1 GENERAL LAWS -- the General Laws of the Commonwealth of Massachusetts as amended, including any rules, regulations and administrative procedures implementing said laws.

1.2 DESIGNER -- the individual or firm performing professional services under this AGREEMENT.

1.3 PRINCIPALS -- the registered professional Architects or Engineers listed in ARTICLE 16.

1.4 NOTICE TO PROCEED -- written communication from the Awarding Authority, constituting an essential condition of this AGREEMENT, authorizing the Designer to perform services for the project phase to which such Notice shall relate. The Notice to Proceed shall include the basis for compensation, the fixed limit construction cost, if any, and may include the time of submittal. Subsequent written communications amending the Notice to proceed are required to change either a submittal date or the fixed limit construction cost. Proceeding with various phases of contract work is contingent upon the Awarding Authority or its designees' satisfaction with and acceptance of services performed for each phase.

1.5 SUBMITTAL DATES -- those dates referred to in the Notice to Proceed or any subsequent amendment thereto.

1.6 CONSTRUCTION CONTRACT -- contract for construction of a whole or part of the project, including all change orders.

1.7 TOTAL CONSTRUCTION COST -- the sum of the actual construction contract award price and each authorized change order revising the construction contract award price. The construction contract award price

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

1.8 AWARDING AUTHORITY -- The board, commission, agency or department of the Town having authority to award design and construction contracts in connection with the Project.

1.9 PROJECT -- the building project for which designer services have been procured under this AGREEMENT, and which is identified on Page 1 (Project Title).

ARTICLE 2: CONSULTANTS, SUBCONTRACTING, SUCCESSORS AND ASSIGNS

2.1 The Designer shall not employ additional consultants not named in the proposal(s) nor sublet, assign or transfer any part of his services or obligations under this AGREEMENT without the prior approval and written consent of the Awarding Authority. The Awarding Authority shall not unreasonably withhold such approval. Written consent shall not in any way relieve the Designer from his responsibility for the professional and technical accuracy and the coordination of all data, designs, drawings, specifications, estimates and other work or materials furnished.

2.2 Except as otherwise provided in this AGREEMENT or authorized by the Awarding Authority, the Designer shall employ within the basic fee for this project the following consultants where their specific services are required: Architect, Structural Engineer, Civil Engineer, Sanitary Engineer, Mechanical Engineer, Landscape Architect, Cost Estimator, and Electrical Engineer, and any other consultant specifically listed in the proposal. Consultants must be registered in their respective disciplines if registration is required under the applicable General Laws.

2.3 When the Designer receives payment from the Awarding Authority, the Designer shall promptly make payment to each consultant whose work was included in the work for which payment was made by the Town. The Awarding Authority shall have the contractual right, but not the obligation, to require corrective measures necessary for the best interests of the Town.

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

3.1 The Awarding Authority shall furnish to the Designer available surveys of the project building site, showing the grades and lines of streets, pavements and adjoining properties; the rights, restrictions, easements, boundaries and controls of the site, or sites; reports from any borings, test pits, chemical, mechanical or other tests, any photographs and information as to water, sewer, electricity, steam, gas, telephone and other services.

3.2 The Awarding Authority does not guarantee the accuracy of information furnished and the Designer must satisfy himself as to the correctness of data, except in instances where written exception to the contrary is

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

3.3 During the construction phase of this contract, the Designer may retain the services of a photographer, a qualified testing laboratory, and special field inspectors when required by the project, subject to the prior approval of the Awarding Authority or its designee.

3.4 If a consultant's services estimated to cost more than $25,000 are required, including the services of a qualified testing laboratory functioning under the jurisdiction of both a Massachusetts registered Engineer and licensed inspectors, a detailed description of the proposed services shall be prepared by the Designer and approved by the Awarding Authority. Consultant fee proposals shall be received by the Designer and accompanied with recommendations of approval submitted to the Awarding Authority before any work is authorized. Such consultants shall carry adequate Liability Insurance. When a consultant's services are estimated to cost $25,000 or less, the Designer shall use established standard rates for such services.

3.5 Drawings and/or specifications needed to obtain survey or subsoil information, and any other soils engineering shall be prepared by the Designer as part of the basic fee. The Designer shall then analyze and evaluate such surveys and tests and make his design conform to the results of such evaluation.

3.6 The Awarding Authority will compensate and reimburse the Designer as provided in ARTICLE 9 for the cost of consultant services performed under this Article. For responsibility, coordination inspection, analysis and evaluation of consultant services retained under this ARTICLE, the Designer shall similarly be compensated as provided by ARTICLE 9.

ARTICLE 4: COMPLIANCE WITH LAWS

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

ARTICLE 5: PROFESSIONAL RESPONSIBILITY

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

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

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

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

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

ARTICLE 6: DESIGNER SERVICES

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

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

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

6.2 TYPE 2 CONTRACTS -- DESIGN AND CONSTRUCTION

1. Phase 1. - Schematics

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

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

2. Phase 2. - Design Development

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

3. Phase 3. - Construction Documents

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

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

Phase 4. - Bidding Phase

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

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

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

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

5. Phase 5 - Designer's Services During Construction

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

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

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

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

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

Phase 6. - Record Drawings, Reports, Calculations

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

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

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

ARTICLE 7: DESIGNER'S BASIC FEE

7.1 For the performance of all services required under the terms of this AGREEMENT and excluding those services specified under ARTICLES 8, 9 and 10, the Designer shall be compensated by the Awarding Authority in accordance with the lump sum fee for this project. The fee is a lump sum of $_____.

7.2 If there is a material change in the scope of services provided in this agreement, the Designer and the Awarding Authority will mutually agree to an adjustment in the Designer's Basic Fee. Delay of one year or more by the Awarding Authority plus a significant change in the estimated construction cost of the project will be considered a material change in scope of services.

7.3 The basic fee shall be paid to the Designer in accordance with Attachment B to this agreement. Billings for services shall be made monthly and shall be in proportion to the amount of work completed.

ARTICLE 8: ADDITIONAL COMPENSATION

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

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

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

ARTICLE 9: REIMBURSEMENT

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

ARTICLE 10: DESIGN FEES AND CHANGE ORDERS

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

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

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

ARTICLE 11: TERMINATION, NO AWARD

11.1 By written notice to the Designer, the Awarding Authority may terminate this contract at any time. If any such termination shall occur without the fault of the Designer, all compensation and reimbursement due to the Designer up to the date of termination, in accordance with all contract terms, shall be paid to the Designer by the Awarding Authority. Such payment shall not exceed the fair value of the work, as the Awarding Authority shall determine.

11.2 By written notice to the Awarding Authority, the Designer may terminate this contract (1) if the Awarding Authority, within sixty (60) days following written notice from the Designer of any default by the Awarding Authority under the AGREEMENT, shall have failed to remove such default or (2) if, after the Designer shall have performed all services required of the Designer in Phase 1, Phase 2, or Phase 3 of the Project, if applicable, at least six (6) months shall have lapsed without receipt by the Designer of Notice to Proceed with the next phase of the Project. Upon any such termination by the Designer all compensation and reimbursement payable to the Designer in accordance with the AGREEMENT up to and including the date of termination shall be paid to the Designer by the Awarding Authority.

ARTICLE 12: RELEASE AND DISCHARGE

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

ARTICLE 13: NOTICES, APPROVALS, INVOICES

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

13.2 Written approval by the Awarding Authority for Extra compensation as provided under ARTICLES 8 and 9, Reimbursements, shall be in the form of a letter issued by the Awarding Authority.

13.3 All invoices may be submitted monthly and subject to contract terms and proper documentation will be promptly processed by the Awarding Authority or returned to the Designer. No invoice, however, shall be required to be submitted or processed when the net amount due is less than $100.00.

13.4 Invoices for services under ARTICLE 6 where such invoices pertain to design services during construction shall also describe the names, payroll titles, and dates of site visits required for construction-phase services.

13.5 Invoices submitted for services which have not been previously authorized in writing shall be returned to the Designer.

13.6 Requests for previously authorized expenses of any nature must be accompanied by a billing or receipt from the source of the expense.

ARTICLE 14: INSURANCE

14.1 The Designer shall at his own expense obtain and maintain a Professional Liability Insurance policy for errors, omissions or negligent acts arising out of the performance of this AGREEMENT in a minimum amount of $1,000,000.

14.2 The coverage shall be in force from the time of the agreement to the date when all construction work designed under the contract is completed and accepted by the Awarding Authority. If, however, the policy is a claims made policy, it shall remain in force for a period of six (6) years after substantial completion.

Since this insurance is normally written on a year-to-year basis, the Designer shall notify the Awarding Authority should coverage become unavailable.

14.3 The Designer shall, before commencing performance of this contract, provide by insurance for the payment of compensation and the furnishing of other benefits in accordance with M.G.L. c.152, as amended, to all employed under the contract and shall continue such insurance in full force and effect during the term of the contract. The Designer shall also maintain broad public liability insurance to protect against damage or injury to persons or property.

14.4 The Designer shall carry insurance in a sufficient amount to assure the restoration of any plans, drawings, computations, field notes or other similar data relating to the work covered by this contract in event of loss or destruction until the final fee payment is made or all data are turned over to the Awarding Authority.

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

14.6 Upon request of the Designer, the Awarding Authority reserves the right to modify any conditions of this Article.

ARTICLE 15: SUPPLEMENTAL CONTRACT DATA; LEGAL REQUIREMENTS

15.1 The Designer hereby certifies:

(i) if an individual, the individual is a registered architect;

(ii) if a partnership, a majority of all the partners are persons who are registered architects;

(iii) if a corporation, sole proprietorship, joint stock company or other entity, the majority of the directors or a majority of the stock ownership and the chief executive officer are persons who are registered architects, and the person to have the project in his or her charge is a registered architect;

(iv) if a joint venture, each joint venture satisfies the requirements of this section.
(Statutory reference: M.G.L. c.7C, §44)

15.2 The Designer hereby certifies that it has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with the award of this Agreement. (Statutory reference: M.G.L. c.7C, §51)

15.3 The Designer hereby certifies that no consultant to or subcontractor for the Designer has given, offered or agreed to give any gift, contribution or offer of employment to the Designer, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the Designer. (Statutory reference: M.G.L. c.7C, §51)

15.4 The Designer hereby certifies that no person, corporation or other entity, other than a bona fide full-time employee of the Designer, has been retained or hired by the Designer to solicit for or in any way assist the Designer in obtaining this Agreement upon an agreement or

understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Agreement to the Designer. (Statutory reference: M.G.L. c.7C §51)

15.5 The Designer hereby certifies that it has internal accounting controls as required by subsection (c) of section thirty-nine R of chapter thirty and that the

Designer filed and will continue to file an audited financial statement as required by subsection (d) of said section thirty-nine R. (Statutory reference: M.G.L. c.7C, §51)

15.6 The Designer shall maintain all books, records, and accounts related to the Project in compliance with the following:

1. The Designer shall make, and keep for at least six years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Designer.

2. Until the expiration of six years after final payment, the Awarding Authority, the office of the inspector general and the deputy commissioner of capital planning and operations shall have the right to examine any books, documents, papers or records of the Designer or of its consultants that directly pertain to, and involve transactions relating to, the Designer or its consultants.

3. The Designer shall describe any change in the method of maintaining records or recording transactions which materially affects any statements filed with the Awarding Authority, including in the Designer's description the date of the change and reasons therefore, and shall accompany said description with a letter from the Designer's independent certified public accountant approving or otherwise commenting on the changes.

4. The Designer has filed a statement of management on internal accounting controls as set forth in Paragraph (6) below prior to the execution of this Agreement.

5. The Designer has filed prior to the execution of this Agreement and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in subparagraph 15.6.8 below.

6. The Designer shall file with the Awarding Authority a statement of management as to whether the system of internal accounting controls of the Designer and its subsidiaries reasonably assures that:

   (a) transactions are executed in accordance with management's general and specific authorization;

(b) transactions are recorded as necessary:

1. to permit preparation of financial statements in conformity with generally accepted accounting principles; and

2. to maintain accountability for assets;

(c) access to assets is permitted only in accordance with management's general or specific authorization; and

(d) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any difference.

7. The Designer shall also file annually with the Awarding Authority a statement prepared and signed by an independent certified public accountant, stating that such accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to:

(a) whether the representations of management in response to this paragraph and paragraph 15.6.6(b) above are consistent with the result of management's evaluation of the System of internal accounting controls; and

(b) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the Designer's financial statements.

8. The Designer shall annually file with the Awarding Authority during the term of this Agreement a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by accountant's report.

9. Records and statements required to be made, kept or filed in compliance with the provisions of this paragraph 15.6 shall not be public records and shall not be open to public inspection, except as provided in subparagraph 15.6.2. (Statutory reference: M.G.L. c.30, §39R)

15.7 The Designer and its consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Designer in the preparation of bid documents, as reasonably determined by the Awarding Authority. (Statutory reference: M.G.L. c.7C, §51)

15.8 Life-cycle cost estimates for the Project shall be obtained at an initial stage and as a regular part of the services to be performed under this Agreement. (Statutory reference: M.G.L. c.149, §44M)

15.9 The Designer hereby certifies under penalties of perjury that the Designer has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support. (Statutory reference: M.G.L. c.62C, §49A)

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

ARTICLE 16: MISCELLANEOUS PROVISIONS

16.1 One (1) reproducible copy of all Drawings and Specifications furnished by the Designer and all other documents prepared by the Designer shall become the property of the Awarding Authority. Ownership of the stamped drawings and specifications shall not include the Designer's certification or stamp. Any re-use of such Drawings and/or Specifications without the Designer's written verification of suitability for the specific purpose intended shall be without liability or legal exposure to the Designer or to the Designer's independent professional associates, subcontractors or consultants. Distribution or submission to meet official regulatory requirements or for other purposes in connection with the project is not to be construed as an act in derogation of the Designer's rights under this AGREEMENT.

16.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and personal representatives.

16.3 This Agreement represents the entire agreement between the Awarding Authority and the Designer, and supersedes any prior agreements whether oral or written. This Agreement may be amended only by written instrument executed by both the Awarding Authority and the Designer.

16.4 The Designer agrees that the Awarding Authority and any of its officer or employee assume no personal liability under this Agreement.

16.5 This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

16.6 In the event any provision of this Agreement shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall attach only to such provision and shall not affect or render invalid or unenforceable any other provision of this Agreement.

SIGNATURES

IN WITNESS WHEREOF, on the day and year hereinabove first written, the Designer has caused this agreement to be signed and sealed in its name and behalf, and its corporate seal to be hereto affixed by the signatory below authorized to do so, and the _____ has signed this agreement on behalf of the Awarding Authority.

Accepted by Designer

_____

By: _____
Name:
Title: _____

Accepted by Awarding Authority

_____

Approved as to Form

_____
Town Counsel

234996/kope/0003