

## LEGAL NOTICE

The Town of Needham invites qualifications from Architectural / Engineering Designers to prepare a Study, including cost estimates, for the DPW Complex Feasibility Study in Needham, MA. Design team qualifications shall include Architect/Planner, Civil, MEP, Structural and Traffic Engineers, and Cost Estimator.

Copies of the Request for Qualifications will be available beginning **Thursday, January 12, 2023** at the Office of the Building Design & Construction Dept., 500 Dedham Avenue, Needham, Massachusetts 02492 or by emailing a request to the Kathryn Copley at [kcopley@NeedhamMa.gov](mailto:kcopley@NeedhamMa.gov) or from the Town's web site [www.needhamma.gov](http://www.needhamma.gov) and will be available until the submission deadline.

Qualifications (1 original, 10 copies and 1 electronic copy) must be returned to the Office of the Building Design & Construction Dept., c/o Kathryn Copley, 500 Dedham Avenue, Needham, Massachusetts 02492 **by 2:00PM Thursday, February 9, 2023**. Qualifications must be placed in a sealed envelope marked:

**Town of Needham – DPW Complex Feasibility Study**  
**Contract ID# 23BDC 186D**  
**Qualifications for - “Insert the Name of Applicant”**

Fax transmissions will not be accepted.

Briefing Session will be held on **January 19, 2023 at 11am** at the Public Services Admin. Bldg, 500 Dedham Ave, Needham, MA. Selected interviews of a short list of candidates, if required, will be conducted by the Town of Needham Permanent Public Building Committee (PPBC) and are tentatively scheduled to take place on Monday, February 27, 2023.

The Designer Fee including all reimbursable expenses will be negotiated with a not to exceed limit of \$55,000. The Selected Designer will not be precluded from providing continuing services on the project under a negotiated fee. Detailed Study shall be completed and approved on or before August 28, 2023.

The Town of Needham reserves the right to reject any or all qualifications and/or to accept any proposal that it considers to be in the best interests of the Town. This legal notice is also posted on the Massachusetts Newspaper Publishers Association's (MNPA) website at <http://masspublicnotices.org>.

**ACKNOWLEDGEMENT OF RECEIPT**

Release Date	<b>Thursday, January 12, 2023</b>
Qualifications Title	<b>DPW Complex Feasibility Study</b>
ID Number	<b>23BDC 186D</b>
Qualifications Due	<b>2:00PM Thursday, February 9, 2023</b> at the Building Design & Construction Dept., Public Services Administration Building, 500 Dedham Ave, Needham, MA 02492
<p>Please provide the requested information below as acknowledgment that you have received our Request for Qualifications (“RFQ”) noted above. It is <b>required</b> that interested bidders complete this <b>acknowledgment and return via Fax to the Town of Needham, Attn: Kathryn Copley – c/o Permanent Public Building Committee at (781) 453-2510</b> or by e-mail to <a href="mailto:kcopley@NeedhamMa.gov">kcopley@NeedhamMa.gov</a> or by U.S. mail. Only by doing this, will the Town be able to provide notification of any addenda or answered questions relating to this RFQ. <b>Only those companies or individuals shown on the Distribution Register will receive addenda to this RFQ. By completing and returning this acknowledgment will ensure you are recorded on the Distribution Register.</b> Qualifications from companies or individuals <b>not</b> acknowledging the addenda may be <b>rejected as not responsive.</b></p>	
Name of Company or Individual <b>(Print)</b>	
Name / Title of Contact <b>(Print)</b>	
Address (line 1) <b>(Print)</b>	
Address (line 2) <b>(Print)</b>	
Telephone Number	
Fax Number	
E-mail Address <b>(Print)</b>	
Signature	
Date	
Notes: * Any hand delivery or facsimile received after the due date and time will not be addressed. Please allow enough time for hand delivery or facsimile transmissions. ** Designer acknowledges that documents related to this RFQ will be found at two different locations (1) Town of Needham bid page for RFQ documents & Addenda (if any); (2) Town of Needham web site for the Facilities Master Plan -2014– Final Report	

RFQ – Designer – DPW Complex Feasibility Study  
Town of Needham - Permanent Public Building Committee  
Contract ID# 23BDC 186D  
January 12, 2023

<b>Town of Needham Procurement Schedule</b>		
<b>RFQ ID # 23BDC 186D</b>		
Primary Contact for this Procurement <i>(Note new Address, Phone &amp; Fax numbers)</i>		Kathryn Copley, Administrative Specialist Telephone 781-455-7550 x 314 Email <a href="mailto:kcopley@NeedhamMa.gov">kcopley@NeedhamMa.gov</a>
<b>Event</b>	<b>Date</b>	<b>Details</b>
Project Name		<b>DPW Complex Feasibility Study</b>
Contract ID Number		<b>23BDC 186D</b>
Request for Qualifications (RFQ) Available	Starting Thursday, January 12, 2023	At the Building Design & Construction Dept., Public Services Administration Building, 500 Dedham Avenue, Needham, MA 02492 or by e-mail request to Kathryn Copley at <a href="mailto:kcopley@NeedhamMa.gov">kcopley@NeedhamMa.gov</a> or on-line at the <b>Town’s web site</b> <a href="http://www.needhamma.gov/bids.asp">http://www.needhamma.gov/bids.asp</a>
Pre-Proposal Meeting (Optional)	Thursday January 19, 2023 Starting at 11:00 AM	<b>500 Dedham Ave, Needham, MA 02492</b> <b>NOTE:</b> - <b>Site Visits are not planned.</b> - <b>The Pre-Proposal Meeting will explain the work completed to date as well as the proposed process for this study.</b>
Deadline for Written Questions	2:00PM – Thursday January 26, 2023	<b>By Fax:</b> Attn <b>Kathryn Copley</b> Fax # 781-453-2510 <b>By Email: <a href="mailto:kcopley@NeedhamMa.gov">kcopley@NeedhamMa.gov</a></b> Questions are to be clearly labeled as: <b><i>DPW Complex Feasibility Study</i></b>
Addenda		If any changes are made to this RFQ, an addendum will be issued. Addenda will be e-mailed to every individual on record as receiving the RFQ package AND A COPY WILL BE POSTED ON THE Town’s web site. As the RFQ package is being made available through the Town’s web site ( <a href="http://www.needhamma.gov">www.needhamma.gov</a> ) it is necessary for the perspective Bidder to return the <b>“ACKNOWLEDGEMENT OF RECEIPT”</b>

RFQ – Designer – DPW Complex Feasibility Study  
Town of Needham - Permanent Public Building Committee  
Contract ID# 23BDC 186D  
January 12, 2023

<b>Town of Needham Procurement Schedule</b>		
<b>RFQ ID# 23BDC 186D</b>		
Primary Contact for this Procurement <i>(Note new Address, Phone &amp; Fax numbers)</i>		Kathryn Copley Telephone 781-455-7550 x 314 Email: kcopley@NeedhamMa.gov
<b>Event</b>	<b>Date</b>	<b>Details</b>
<b>When and Where Qualifications are Due*</b>	Deadline: Thursday February 9, 2023 at 2:00PM LATE BIDS WILL NOT BE ACCEPTED	Town of Needham Building Design & Construction Dept., Public Services Administrative Building 500 Dedham Avenue Needham, MA 02492 Refer to How and Where to Submit Bids.
Bid Surety Requirement (Bid Deposit)		Bid Surety is NOT required.
Proposal Opening		Qualifications will not be publicly opened. A register of proposers received will be made available upon request after Friday, February 10, 2023
Notify all bidders of finalists selected for interviews	Wednesday, February 15, 2023	Time of late afternoon interviews will be scheduled at time of notification
Finalist interviews (if required)	Monday, February 27, 2023	Interviews will be scheduled with the PPBC selection subcommittee in Needham, MA
Contract Awarded **	The contract will be awarded within eight (8) working days of the interview	Approval of the PPBC, Town Manager, and Town Counsel is REQUIRED
<p>* Facsimile transmissions for written inquiries must be sent prior to the above date and time deadlines. Any hand delivery or facsimile received after the due date and time will not be addressed. Please allow enough time for hand delivery or facsimile transmissions.</p> <p>** The time for award may be extended by the Town. The Town reserves the right to change, delay, cancel, or expedite the contract award date. <b>The Town reserves the right to reject any and all bids as determined to be in the best interests of the Town and to waive minor informalities.</b></p>		

End of Procurement Schedule

REQUEST FOR DESIGNER QUALIFICATIONS (RFQ)  
DPW Complex Feasibility Study  
23BDC 186D  
Permanent Public Building Committee  
Town of Needham, MA  
January 12, 2023

**I. Introduction, Background, Objectives and Funding:**

**A. Introduction**

The Town of Needham, through the Town Manager and its Permanent Public Building Committee (PPBC), (“Owner”) are seeking the services of a qualified “Designer” within the meaning of M.G.L. Chapter 7C, Section 44, to provide Architectural and Engineering Design services for the preparation of the Department of Public Works (DPW) Complex Feasibility Study. The Designer selected would be eligible to complete the full design services on the project if project funding is approved at future Town Meetings. The Town Manager and the PPBC will act as the Awarding Authority for the project. The Department of Public Works is the jurisdictional body overseeing the sites and the facilities with operations management also provided by the DPW, and maintenance provided by the Building Maintenance Division (BMD). The Building Design & Construction Department (BDCD) will act as the Town of Needham employee Owners Project Manager (OPM).

**B. Background**

The Town of Needham is located approximately 12 miles southwest of Boston with a population of about 32,000 residents. The Town maintains 160 miles of town roads and adjacent sidewalks, and approximately 30 acres of the municipal and school parking areas, as well as 15 town parks and recreation fields, eight school buildings, five municipal buildings, multiple water and sewer pump stations and related facilities within the 12.75 square mile town boundary.

During 2014 the Permanent Public Building Committee (PPBC) and the Facilities Working Group (FWG) working with the HKT Architects, Inc. completed a Facilities Master Plan for the town owned schools, public buildings and lands. This Facilities Master Plan identified renovation and replacement needs and priorities for the Town of Needham. Various locations for a new Department of Public Works facility were identified, within this study. The master plan is available on the Town of Needham website by navigating as follows:

[www.needhamma.gov](http://www.needhamma.gov) > Government>Publications> [Facilities Master Plan](#) or,  
<http://www.needhamma.gov/index.aspx?nid=2119>

Weston & Sampson completed the previous “Department of Public Works Feasibility Study” in 2016. This study reviewed all the existing DPW sites, buildings, operations, vehicle fleet and equipment. Then interviewed staff and prepared a summary of space needs for the department. It

assessed the existing facilities, identified site opportunities and constraints and developed several alternative concept plans to solve future needs. After reviews with the PPBC, DPW, Select Board and others a preferred alternative was developed with a conceptual cost estimate.

This study can be viewed using the following link:

<https://needhamma.sharefile.com/d-s999095bfb037430bab53d12a8f436fe4>

The DPW administrative offices operate out of the Public Services Administration Building (PSAB) at 500 Dedham Ave. The 1950's DPW building located at 470 Dedham Ave serves as the DPW maintenance and garage building (the upper floor is used for storage). Other adjacent DPW facilities on this campus include the six-bay storage building, sign trailer, refueling station, materials handling area, and the Water Building (484 Dedham Avenue), which is located adjacent to PSAB. The Water and Sewer Division manages the Charles River Water Treatment Plant (WTP), the St Mary Pump Station, two water towers, the Reservoir B Pump Station and 9 sewer pump stations of various capacities. At 1407 Central Ave DPW manages the Recycling and Transfer Station (RTS), a 3-acre leaf composting area, Salt Storage Building, and the Jack Cogswell Building for seasonal storage. The capped landfill is home to a 12-acre 3.58 Mw solar array that is privately managed under a power purchase agreement. The DPW- Building Maintenance Division (BMD) has a garage and workshops at the Daley Building (257 Webster St). The DPW also has several storage facilities in Park & Recreation buildings around Town.

### **C. Objectives**

The goal of the Study is to assist the Town's decision making process with regard to the further improvement of aging facilities, disposition and consolidation of DPW facilities, and potential future phasing and funding requirements in concert with the Town's Facility Financing Plan.

### **D. Funding**

The 2022 Annual Town Meeting approved Article 27 appropriating monies for the DPW Complex Feasibility Study design services.

## **II. Scope, Meetings, Schedule and Fees for Design Services:**

### **A. Project Scope**

The scope for this study includes:

1. Review and analysis of existing documents and research to ascertain and update information that will guide the decision making with respect to:
  - a. Confirming/ updating the program for DPW
  - b. Identifying, and gaining an understanding of the various DPW divisions as well as the inter-relationship between the various divisions
  - c. Continued use of existing facilities (470 / 484 / 500 Dedham Avenue) as a continued location for a modern DPW facility.
  - d. Consolidation of existing functions/services in existing and/or new facilities,

- e. Phasing for relocation of functions, all or in part, to a proposed alternate location or hybrid that splits the functions.
2. Existing documents include, but are not limited to:
  - a. The Facilities Master Plan (available on Town web site) prepared in 2014 by HKT Architects, Inc.
  - b. DPW Feasibility Study -2016 by Weston & Sampson.
  - c. Facility files and reports located in: Needham Building Department, Needham Conservation Department, Town Engineering Department, etc.
  - d. Drawings, including Surveys and Buildings for the potential locations.
  - e. The Needham WebGIS database
3. Study the potential locations for DPW Operations, review prior options, evaluate the cost benefit of the alternatives for multiple sites determined during the study.
4. Determination of appropriate standards which would allow continued use at 470 / 484 / 500 Dedham Avenue for a modern DPW facility. This will include, but not be limited to, an understanding of non-compliant existing conditions and NPDES regulations which may have an impact on other areas of the building and/or compromise the reconstruction of a modern facility.
5. Determine if relocation to alternate locations is in the best interest of the DPW for all, or part of, operations at 470 / 484 / 500 Dedham Avenue, and whether consolidation of operations offers long term benefits. Relocation considerations shall include understanding and consideration for location relative to Town-wide needs and inter-relationship of equipment and staff, as well as adjacencies of other Departments and/or uses (e.g. playing fields, schools, conservation lands).
6. Investigate and assess such factors as:
  - a. Parking and site access
  - b. Utilities serving the site
  - c. Handicapped accessibility
  - d. Traffic impacts
  - e. Future transitions to electric vehicle (EV) fleets
  - f. Net Zero Building goals for sustainable design
  - g. Resiliency of the infrastructure and operations
  - h. Operational cost consideration
  - i. Project phasing
  - j. Temporary facilities (if required)
7. Provide a plan for addressing the current storage usage for the 470 Dedham Ave facility to clear space for potential redevelopment.

8. Provide cost estimates for the various proposed solutions, including phasing considerations that account for financial funding and borrowing limitations set by the Town. Outline potential federal, state or private grant funding for future projects.
9. Prepare the Study Report to include:
  - a. Proposed solutions for future renovation/repair/reconstruction/phasing that would allow for a modern DPW facility within the funding limitations
  - b. Identification of program spaces assigned to proposed solutions
  - c. Concept plans, sections, elevations or models that define the proposed solutions.
  - d. Identification of detailed testing, borings, surveys and permitting, required for next stages of project development
  - e. Cost estimates – Construction and Project
  - f. Determine key schedule and timeframes for implementation

**B. Meetings and Communication**

Based upon the agreed Work Plan, the Designer shall attend progress workshops and review meetings as necessary with Needham Working Group, Town Departments and Public Facilities representatives for gathering information and to provide project updates and or recommendations through out the project.

The Designer shall maintain a high level of communication with the PPBC’s project representatives, and selected Town Administrators during the study. The Town Project Manager (PM) will work with the Designer to gather information related to the Study.

The designer shall make presentations to the PPBC, DPW, Town boards and/or Select Board in a comprehensive format (with PowerPoint show and/or boards) at project milestones. A minimum of eight (8 presentations and/or workshops) are included as a part of the project basic services.

**C. Preliminary Project Schedule**

The following schedule is required to be met.

Task	Completion Date
RFQ Available	January 12, 2023
Pre-Proposal Meeting (optional)	11:00AM - January 19, 2023
Deadline for written Questions	2:00 PM – January 26, 2023
Designer Submit Qualifications (deadline)	2:00PM – February 9, 2023
PPBC to rank and short list Designer	February 15, 2023
Shortlisted Designer Interviews(if required)	February 27, 2023



Authorization to proceed	(around ) February 28, 2023
Study phases per selected Designer’s -Work Plan	March- July 2023
Draft Study Report	July 24,2023
Final Study Report	August 28, 2023

It is expected the selected Designer will augment this schedule to include milestone dates for each deliverable in their detailed Project Work Plan.

**D. Design Fee**

**The Fee for Basic Services and Expenses will be negotiated and shall not exceed a total cost of \$55,000 for the DPW Feasibility Study Phase of the project.**

Prior to negotiating a contract with the top-ranked designer, the Permanent Public Building Committee will advise the firm to be prepared to provide the following information:

- Rationale for the development of fee proposal,
- Hourly rates for the designer’s personnel and sub-consultants,
- Letter goals to meet the designer’s MBE / WBE goals for the project
- The markup, if any, that the designer will add to costs, including sub-consultant fees, or reimbursable expenses, resulting from a change in the scope of work.

**III. Response to RFQ – Designer Qualifications**

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 “Agreement between Owner and Designer” that is attached hereto (Attachment A). Designers submitting an application in response to this RFQ must specify any exceptions to the Contract at the time of application. The Owner may consider any such exceptions but shall not be bound by any such exceptions. A failure to specify exceptions will be deemed an acceptance of the Contract's terms and conditions.

The successful Respondent will be required to provide a certificate of professional liability insurance, at the time of contract execution, in accordance with Article 11 of the Agreement – Attachment A. The successful respondent shall identify **reimbursable expenses which shall be included within the not to exceed fee.**

**A. Project Work Plan**

The estimated total duration of this Contract for Designer Services for the Study is estimated to be six (6) months. **As a requirement of this RFQ, each respondent must include a project work plan.** It is anticipated that a contract for services will be awarded on or before February 28, 2023. Detailed Study shall be completed and approved on or before August 28, 2023.

The Designer's Work Plan submitted with his/her proposal will be considered an estimate. After award of a contract the Owner and Designer will review the Work Plan originally submitted, accept as submitted or modify to meet the Owners milestones. The Designer's adherence to the accepted Work Plan times will be part of the Owner's performance evaluation of the Designer's work, which will be conducted at the end of the Project.

### ***B. Qualifications Required***

In evaluating qualifications, the Owner and Permanent Public Building Committee 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 Massachusetts professional registration or license number, as applicable, must be listed in the application for each category of work or expertise.

1. *Architect / Planner*
2. *Civil Engineer*
3. *Traffic Engineer\**
4. *Structural Engineer\**
5. *MEP/FP Engineers\**
6. *Landscape Architect\**
7. *Environmental / Wetlands Engineer / Consultant\**
8. *Cost Estimator*

**Applicants must address each category of work listed above in their application whether it is to be performed by in-house staff or by a sub-consultant(s). Some of these categories of Design expertise (noted with an asterisk\*) may have minimal involvement in the Feasibility Report phase of the work, but could have more detailed involvement in the final Detailed Design documents and therefore should be identified at this time.**

**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.**

### ***C. SDO Requirements***

Pursuant to M.G.L. c 7C, §6 and M.G.L. c. 7, §61, the Supplier Diversity Office ("SDO") (formerly SOMWBA) and the Division of Capital Asset Management ("DCAM") have set revised participation goals for Minority Business Enterprise ("MBE") and Women Business Enterprise ("WBE") participation for affected state funded building projects and state assisted municipal building projects as defined in the above referenced laws and related Executive Orders, including Executive Orders 524 and 526.

Effective July 1, 2020, and until such time as the goals may be revised, the MBE and WBE participation goals for building construction and design awards and expenditures on new projects advertised on or after the effective date will be a combined MBE/WBE goal as follows:

MBE 4.2% & WBE 8.8% participation on construction contract awards; and,  
MBE 6.6% & WBE 15% participation on design contract awards.

Overall annual designations by awarding authorities, as well as MBE/WBE participation on individual projects with a combined MBE/WBE participation goal, must include a reasonable representation of both MBE **and** WBE firms that meets or exceeds the combined goal. Proposed MBE/WBE participation plans that include solely MBE or solely WBE participation or do not include a reasonable amount of participation by both MBE and WBE firms to meet the combined goal will not be considered responsive. Where the prime contractor or designer is an SDO certified MBE or WBE, the prime must bring a reasonable amount of participation by a firm or firms that hold the certification which is not held by the prime contractor or designer on the project. Proposed participation on construction projects or design projects which consists solely of either an MBE or WBE representing 100% of the overall combined goal will not be considered reasonable participation.

The SDO and the Awarding Authority will determine whether there is reasonable participation by both MBE and WBE firms on individual projects under their respective oversight. Firms submitting MBE/WBE participation plans which do not provide reasonable participation by both MBE/WBE firms shall be provided an opportunity to revise and resubmit their plans within the time frame set by the awarding authority; however no price adjustments shall be permitted as a result of the revised plan. Firms failing to submit an MBE/WBE participation plan deemed reasonable and accepted by the awarding authority shall not be awarded the contract.

Participation by MBE and WBE firms must be documented, tracked and reported on separately as MBE participation and WBE participation by prime vendors, subcontractors and awarding authorities.

Participation by MBE and WBE firms will continue to be tracked, reported and monitored separately to ensure that both MBE and WBE firms are participating on these projects. Not every project will have the full MBE/WBE goals set forth above as certain projects due to their size, scope or geographic location may have reduced goals, or in some cases no goals, as determined by the public awarding authority.

#### ***D. RFQ Response Requirements***

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

1. Applications - one (1) original, ten (10) copies and one (1) electronic copy in PDF or similar format - must be received on or before 2:00PM Thursday, February 9, 2023. The applications must include the following:

- a. Cover letter – 2 page maximum,
- b. Completed DCAM Designer Application Form. Applications are limited to the application plus a maximum of 3 supplementary pages, double sided, not including the required documents listed below. Information in excess of three pages may be the basis of rejection. The Applications shall be on “Standard Designer Application Form for

- Municipalities and Public Agencies not within DSB Jurisdiction” (updated July 2016) or most recent version as developed by the Designer Selection Board of the Commonwealth of Massachusetts. The form can be found at the Massachusetts DCAM web site.
- c. Evidence of professional liability insurance with at least the minimum liability coverage amounts noted in this RFQ -Attachment A- Article 11,
  - d. Preliminary Work Plan identifying design tasks and responsible sub-consultants and incorporating the specified schedule into a project calendar (Maximum of two double sided pages),
  - e. Attachment B- Certificate of Non-collusion; Attachment C: Certifications; Attachment D: Certificate of Authority (if applicable); and Attachment E: Certificate of Compliance with Massachusetts Tax Laws,
  - f. SDO (formerly known as SOWMBA) - MBE or WBE certificates (as applicable to project team members).

Proposal packages should be provided in simple spiral binders or stapled. Double sided printing is encouraged where appropriate to reduce paper.

2. Qualifications shall be addressed to the attention of:

Building Design & Construction Dept.,  
Town of Needham  
500 Dedham Ave  
Needham, MA 02492  
c/o Kathryn Copley  
Tel: (781) 455-7550 x 314  
Fax: (781) 453-2510  
Email: [kcopley@NeedhamMa.gov](mailto:kcopley@NeedhamMa.gov)

3. Qualifications must be clearly identified by marking the package or envelope with the following:

**Town of Needham – DPW Complex Feasibility Study**  
**Contract ID# 23BDC 186D**  
**Qualifications for - “Insert Name of Applicant”**

4. All questions regarding this RFQ should be addressed exclusively in writing to:

Kathryn Copley, Administrative Specialist  
Building Design & Construction Dept.  
Town of Needham  
500 Dedham Ave  
Needham, MA 02492  
Tel: (781) 455-7550 x314  
Fax: (781) 453- 2510  
Email: [kcopley@NeedhamMa.gov](mailto:kcopley@NeedhamMa.gov)

**The deadline for questions is 2:00 PM Thursday, January 26, 2023.**

***F. Pre-Proposal Meeting (optional)***

A Pre-Proposal meeting will be held as follows:

***When: Thursday, January 19, 2023 at 11:00AM***

***Where: Charles River Room, Public Services Administration Building,  
500 Dedham Ave, Needham, MA.***

A tour of sites is not scheduled.

The **Charles River Room** is on the ground level of the PSAB. ***Attendance is encouraged but not required for submission of qualifications.***

**VI. Selection**

The Owner, through its Permanent Public Building Committee (PPBC), will consider the following criteria in evaluating Qualifications:

1. Demonstrated recent experience and expertise with similar Designs with specific emphasis on Public Works building designs, performed within the past ten years as well as team expertise in project, conservation and environmental permitting.
2. Past performance of the firm, if any with regard to public, or private projects across the Commonwealth, with respect to:
  - a. Quality of project design
  - b. Quality, clarity, completeness and accuracy of plans and reports
  - c. Sustainable and resilient design
  - d. Ability to meet established program requirements within allotted budget
  - e. Ability to permit complex projects
  - f. Coordination and management of consultants
  - g. Working relationship with local awarding authority, staff and local officials;
3. Identification and quality of work of the firm, if any, with regard to prior similar design services provided to the Town of Needham or other municipalities, and state agencies;
4. Current workload and ability to undertake the contract based on the number and scope of projects for which the firm is currently under contract. Capacity of the firm to meet the time commitments required by the project.
5. The financial stability of the firm;
6. The identity and qualifications of the consulting firms who will work on the project. The qualifications of the key personnel and consultants to be assigned to the project;

7. 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;
8. References from recent clients for similar projects;
9. Team’s ability to meet the SDO goals for MBE & WBE participation;
10. Any other criteria the selection committee considers relevant to the project.

## **VII. Other**

### *Rule for Award*

The Town reserves a period up to forty-five (45) calendar days following the opening of the qualifications in which to evaluate and award the contract.

The Town herein declares its express purpose not to award the contract to any Designer unable to furnish evidence, satisfactory to the Town, that it has sufficient ability, experience, and capital to execute and complete the work in accordance with the contract. The Designer must possess and identify the physical resources, equipment and personnel necessary to carry out the work in accordance with the specified requirements. If requested, any Designer MAY be required to demonstrate financial stability satisfactory to the Town.

The PPBC and Town Manager are the awarding authority for the contract (Attachment A, or a contract substantially in this form). Further the contract will not be binding until it has been approved as to form by Town Counsel. Award, payment and performance obligations shall depend on the availability and appropriation of funds.

The Town reserves the right to reject any and all qualifications as determined to be in the best interests of the Town and to waive minor informalities.

The Award of this Feasibility Study will not preclude the selected designer from future Detailed Design work associated with this project.

### *Federal and State Taxes*

The Town is exempt from federal and state sales taxes and or use taxes. Taxes are not to be included in the Proposal price to be negotiated with the winning Designer.

### *Information about changes to the RFQ (Addenda)*

In the event that changes/additions are made to this RFQ, an addendum will be issued. Addenda will be emailed to every potential responder on record as receiving the RFQ package. It is necessary for the prospective Designer to submit the “ACKNOWLEDGEMENT OF RECEIPT” so that Addenda can be forwarded to interested firms.

### *Examination of documents and questions*

The Designer shall be satisfied as to the requirements of the contemplated services to enable intelligent preparation of this Proposal. The Designer shall be familiar with all of the RFQ documents before submitting the Proposal in order that no misunderstanding shall exist in regard to the nature and character of the contemplated services to be preformed. No allowance will be made for any claim that the Proposal is based on incomplete information.

Inquiries concerning any part of this RFQ shall be directed to the individual(s) listed under the Procurement Schedule. Designers should note that oral communications are not binding on the Town. All requests/questions must be submitted in writing. Questions must be sent in writing and may be delivered by hand, fax or email as referenced under the Procurement Schedule by the deadline. The Town will respond to written questions that are received by the deadline and will forward responses to all persons who are on record as receiving the Proposal package. Questions received after the due date will not be responded to unless the Town determines it is necessary. Designers, please allow enough time for hand delivery or facsimile transmissions.

*Proposal modifications or withdrawals*

Qualifications may be corrected, modified, or withdrawn prior to the submission deadline; requests to do so must be received in writing to the Town Manager. After the submission deadline, qualifications may not be changed. Minor mistakes may be waived by the Town.

*Premature opening of a Proposal*

The Town will not be responsible for the premature opening of any qualifications not properly identified. The Town may reject qualifications which are incomplete, not properly endorsed, or signed, or which otherwise are contrary to these instructions.

*Unexpected closure of delays*

If, at the time of the scheduled proposal submission deadline, the building is closed due to uncontrolled events such as fire, snow, ice, wind, building evacuation, or other the deadline will be postponed until 2:00 P.M. on the next normal business day. Qualifications will be accepted until that date and time.

*Late submissions*

The Town assumes no responsibility for late submissions due to mail, courier, or delivery problems. **LATE QUALIFICATIONS WILL NOT BE CONSIDERED.**

*Rejection of bids*

The Qualifications must satisfy all the requirements of the RFQ, in order to be considered for award. Failure to complete the required forms, answer any questions, or provide the required documentation will be deemed NON-RESPONSIVE and result in rejection of the qualifications unless the Town determines that such failure constitutes a minor informality that can be corrected without prejudice to other Designers. A proposal may be rejected if the Designer:

- Fails to adhere to one or more of the provisions established in the RFQ;
- Fails to submit its proposal by the time or in the format specified herein or to supply the minimum information requested herein;

- Fails to submit its proposal to the required address on or before the specified submission deadline;
- Misrepresents its service or provides demonstrably false information in its proposal
- Fails to provide material information.

OR

- Qualifications that are incomplete, not properly endorsed, or signed.

The Town reserves the right to reject any and all qualifications as determined to be in the best interests of the Town and to waive minor informalities.

*General and special provisions*

The consideration of all bids and subsequent selection of the successful applicant shall be made without regard to race, color, sex, age, handicap, religion, political affiliation or national origin.

The Designer shall adhere to the provisions of the Fair Employment Practices Law of the Commonwealth (Massachusetts General Laws, Chapter 151B)

The provisions relating to non-discrimination and affirmative action in employment shall flow through all contracts and subcontracts that the successful Designer may receive or award as a result of this contract.

Services provided by the Designer shall be rendered through a professional services contract; the Designer will not be considered an employee of the Town and will not receive any benefits of an employee.

The Designer shall comply with Massachusetts General Laws, Chapter 66A if the Designer becomes a “holder” of “personal data”. The Designer shall also protect the physical security and restrict any access to personal or other Town data in the Designers’ possession, or used by the Designer in the performance of the Contract, which shall include, but is not limited to the Town’s public records, documents, files, software, equipment or systems.

Ownership of Documents: All qualifications, materials, drawings, plans, etc. shall become the property of the Town and may not be disposed of without notification and shall be considered public information.

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

By execution of a contract with the Town of Needham, the Designer acknowledges that the Town of Needham is a municipality for the purposes of Massachusetts General Laws, Chapter 268A (the Massachusetts conflict of interest statute), and agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with the obligations of the contractor based on said statute.



*Contract terms and conditions*

The contract is anticipated to be executed by the date indicated under Procurement Schedule for this Proposal. The Town reserves the right to change, delay, cancel, or expedite the contract execution date. The selected Designer is required to furnish all bonds and certificate of insurances required under the contract, in a form acceptable to the Town prior to the execution date.

The Town's Standard Contract is incorporated herein as Attachment A. Bidders are expected to review the sample contract. Unless otherwise noted by the Town in this RFQ, the terms and conditions contained therein are NOT negotiable.

**VIII. Attachments**

Attachment A: Sample Contract for Design Services

Attachment B: Certificate of Non-Collusion

Attachment C: Certifications

Attachment D: Certificate of Authority

Attachment E: Certificate of Compliance with Massachusetts Tax Laws

ATTACHMENT A  
**SAMPLE CONTRACT**  
**CONTRACT FOR SERVICES**  
**AGREEMENT FOR DESIGN SERVICES**

This Contract, effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Town of Needham, a municipal corporation with a principal place of business at 1471 Highland Avenue, Needham MA 02492, acting by and through its \_\_\_\_\_, (the “Town”) and \_\_\_\_\_, a \_\_\_\_\_ with a principal place of business at \_\_\_\_\_ (the “Designer”) for Design Services in connection with the \_\_\_\_\_ Project (the “Project”).

The Designer is authorized to perform the services required by this Contract through the \_\_\_\_\_ Design Phase. At the Town’s option, the Designer may be authorized to perform services for subsequent \_\_\_\_\_ *[list phases]* \_\_\_\_\_, at which time a mutually agreed upon amendment to this Contract will be executed between the Town and Designer.

Subconsultants:

**1.0 DEFINITIONS**

**Approval:** A signed written communication from the Town to the Designer expressing the Town’s approval of submittals, services or documents prepared by the Designer. An Approval shall not relieve the Designer from any of its professional responsibilities under this Contract.

**Approved:** An item for which an Approval has been issued.

**As-Built Drawings:** All Drawings, Specifications, Approved shop drawings, catalogue cuts and other items bearing markings or containing information provided by the general contractor to indicate construction details and changes made during the construction period.

**Basic Fee:** The Designer’s Basic Fee specified in Section 5.0 of this Contract.

**Basic Services:** All services required to be performed by the Designer under this Contract except those for which reimbursement or additional compensation is specified in Sections 6.0 and 7.0.

**Construction Contract:** One or more contracts between the Town and a general contractor for the construction of the Project.

**Construction Cost:** 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, all general contractors, subcontractors, suppliers, materials, equipment, general conditions, insurance, overhead and profit and all other allowances. The Construction Cost includes change orders during the construction administration phase of the Project.

**Construction Cost Estimate:** The written estimate of the Construction Cost of the Project prepared by the Designer at various phases of the Project to the level of detail specified in this Contract.

**Consultant:** A subcontractor of the Designer.

**Contract Documents:** The Contract Documents consist of this Contract, the Request for Qualifications and any Addenda issued prior to the execution of this Contract (collectively, the “RFQ”), the Study, other documents listed in this Contract and Modifications issued after execution of this Contract.

**Contract Schedule:** A critical path management or Gantt schedule for the activities of the Designer and its Consultants required by this Contract.

**Deliverable:** Work product of the Designer that is required to be delivered or submitted to the Town pursuant to the terms of this Contract.

**Laws:** Applicable statutes, acts, rules, regulations, requirements, orders, directions, ordinances, judgments, decrees, and injunctions of or by the United States of America, the Commonwealth of Massachusetts; and any political subdivisions of either of them; and any agency, department, commission, board, bureau, or instrumentality of any of them.

**Materials:** All reports, drawings, designs, calculations, surveys, inspections, plans, specifications, photographs, images, notes, and other data, material and ideas of the Designer and its Consultants and subcontractors related to the performance of this Contract, including computer programs and other material in electronic media that are produced by the Designer and its Consultants and subcontractors pursuant to this Contract, regardless of whether such Materials were furnished to the Town.

**Milestone:** An Approval of a completed Deliverable or group of Deliverables, which Approval entitles the Designer to a payment of a portion of its fee for Basic Services as specified in Section 8.0 as modified by the Work Plan.

**Modification:** A written amendment to this Contract signed by both Parties.

**Permits:** Governmental, quasi-governmental, and other necessary permits and approvals, including the filing of notices or information with governmental or quasi-governmental entities and authorities that are necessary for the implementation of the Project at the site. Without limitation, the term “Permits” shall include permits and approvals from and notices to electrical, water, gas, communications and other utility providers and also permissions and consents from and notices to private parties necessary for the design and construction of the Project, such as an approval or consent of a landlord or other holder of an easement, restriction or other interest in the Project site.

**Premises:** The property located at \_\_\_\_\_, Massachusetts.

**Record Drawings:** The Drawings prepared by the Designer and its Consultants pursuant to this Contract which incorporate the changes made during the construction period and which incorporate information from the marked-up prints, As-Built Drawings and other data furnished by the general contractor and subcontractors.

**Work Plan:** An Approved written plan of services that is consistent with the Scope of Work and that meets the requirements of Section 4.0 of this Contract and the RFQ. In the case of any conflict between the terms of the Work Plan and the RFQ, the terms of the Work Plan shall be controlling. The Approved Work Plan shall become a part of this Contract.

## **2.0 RESPONSIBILITIES OF THE TOWN**

2.1. Project Data: The Town shall deliver to the Designer any existing and available plans of the Premises; studies and reports concerning the existing building; reports from any borings, test pits, chemical, mechanical or other tests; photographs and information as to water, sewer, electricity, steam, gas, telephone and other services; and data and drawings regarding existing buildings. All items and data provided to the Designer by the Town shall remain the property of the Town. The Designer may use items and data provided by the Town only for the purposes of this Contract, unless the Town shall give the Designer specific written permission for some other use. The Town does not guarantee nor does it make any express or implied warranties concerning the accuracy of any such information furnished to the Designer and the Designer must satisfy itself as to the correctness of data, except in instances where the Town makes specific written exceptions. The Designer shall analyze and evaluate the information provided by the Town.

2.2. Review and Approval of Submittals: The Town shall review certain submittals required by this Contract and shall, without unreasonable delay either: (1) render to the Designer any Approval required by this Contract, or (2) notify the Designer in writing why such Approval is being withheld. The Town shall not unreasonably withhold any Approval, acceptance, or consent required under this Contract. Approval by the Town shall not in any way relieve the Designer from its responsibility for all data, designs, drawings, specifications, area calculations, surveys, cost estimates and other work or materials furnished by the Designer and its Consultants. The Town's review, approval or acceptance of, or payment for, any of the services furnished by the Designer shall not be construed as a waiver of rights under Contract or any cause of action arising out of performance of this Contract.

2.3. Payments to Designer: For satisfactory performance of all of the Designer's obligations under this Contract, the Town shall compensate the Designer in accordance with the provisions of the Sections 5.0 through 8.0 of this Contract.

2.4. Bidding Assistance and Construction Contract Procurement: Should the Town engage the Designer in the Bidding Assistance phase of the project, the Designer shall provide all bidding phase services from preparing the IFB to recommending bid award. The Designer shall utilize an on-line bidding service, such as Boddocsonline.com, to print bid documents, allow access to electronic bid documents, issue addenda, receive bids and summarize bids.

Designer shall manage the process necessary for the competitive procurement of the Construction Contract and shall conduct the procurement process with the assistance of the Town as provided in Section 4.4 of this Contract.

### **3.0 DESIGNER’S BASIC SERVICES – GENERAL**

3.1 General: The Designer shall perform professional services in accordance with the terms of this Contract, the Contract Documents, the preliminary design study for the Project, the Scope of Services set forth in Attachment A and the provisions of M.G.L. c. 7C, § 15. In the case of conflict between the terms of this Contract and any of the provisions incorporated herein by reference, the provisions of this Contract shall control. The Designer shall be responsible for the professional accuracy and coordination of all designs, drawings, specifications, cost estimates, and other services and submittals furnished by Designer and by its Consultants in accordance with the standard of care set forth below in Section 3.4. The Basic Fee shall compensate Designer for all of Designer’s obligations specified in this Contract except as otherwise specifically provided herein.

3.2 Scope of Services: The services that the Designer shall perform include those services outlined in the in Contract Documents, as amended and further defined from time to time by a Modification or upon the Town’s direction. The Town may, at any time, amend or limit the Scope of Services as it deems appropriate.

3.3 Performance Schedule: The Designer shall perform its service in accordance with the Contract Schedule developed by the Designer and the Town in accordance with Section 4.1, below. The Designer acknowledges that time is of the essence in the performance of this Contract. The Designer further acknowledges that it has reviewed the Contract Schedule and that it is a reasonable schedule. The Contract Schedule shall only be extended for causes that are beyond the Designer’s control, or if mutually agreed by Town and Designer.

3.4 Standard of Care: The Designer and its Consultants shall perform its services in accordance with the highest professional standards of skill, care and diligence. All services shall be performed by qualified personnel competent to adequately perform the services assigned to them and the recommendations, guidance and performance of such personnel shall reflect the standard of due care and professional practice. Because time is of the essence of this Contract, the Designer shall staff his or her office with sufficient personnel to complete the Work required by this Contract in a continuous and expeditious manner, and shall meet the approved schedule and submittal dates established during the course of this Contract.

3.5 Professional and Technical Accuracy: The Designer shall be responsible for the professional and technical accuracy and the coordination of all studies, reports, designs, drawings, specifications, estimates and other work furnished by the Designer and its Consultants.

3.6 Compliance with Laws and Contract Documents: The Designer’s work and services performed hereunder shall conform to the standards set forth in this Contract, the Contract Documents and to all applicable Laws. It is the responsibility of the Designer that the Project be conducted, and that all Services and other work performed by the Designer hereunder be

performed so as to comply with all applicable Laws and any permit conditions as to which the Designer has knowledge, as the same may be in effect as of the time of the performance of such work. In particular, without limitation, the Designer agrees to comply with (1) all regulations pertaining to approvals for local, federal and state grants, and with all local, federal and state environmental laws and regulations, and assist in making any submissions with respect thereto and (2) all applicable requirements of the Massachusetts public construction and procurement laws, which are incorporated by reference herein.

3.7 Brands/Description of Materials and Manufacturers/Producers: The Designer shall thoroughly acquaint his or her employees and Consultants with the provisions of M.G.L. c.30, §39M, which provides, in part “[f]or each item of material the specifications shall provide for either a minimum of three named brands of material or a description of material which can be met by a minimum of three manufacturers or producers, and for the equal of any one of said name or described materials.” The Designer shall ensure all plans and other work product comply with the law regarding proprietary items, and shall notify the Town when they believe items should be specified on a proprietary basis.

3.8 Designer to Evaluate Town Information and Data: The Designer shall analyze and evaluate the information furnished by the Town pursuant to this Contract.

3.9 Staffing; Personnel Changes: The Designer’s personnel who shall provide services under this Contract are those listed in its response to the RFQ. No changes or additions may be made to Designer’s personnel without Approval by the Town. The Designer shall provide sufficient competent personnel to complete the services required by this Contract in a continuous and timely manner in accordance with this Contract.

3.10 Assignment; Contracts with Consultants: Except as specifically provided in this Contract, the Designer shall not employ Consultants, or sublet, assign or transfer any part of its services or obligations under this Contract without the prior Approval by the Town. The Designer may not request Approval for the hiring of a substitute for any Consultant that was part of the team presented in the Designer’s response to the RFQ unless such Consultant has, in the Designer’s opinion, become unable or unwilling to perform its services in a satisfactory manner or unless the Consultant has voluntarily requested in writing to be relieved of its duties as a team member. The Designer shall make the request for substitution in writing and the request shall state with specificity the reasons why the Designer believes that the Consultant has become unable or unwilling to perform its services in a satisfactory manner, or if the Consultant has voluntarily requested to be relieved of its duties as a team member, the Designer shall include with the request a copy of the Consultant’s written request for such relief.

- .1 Special Consultants: The Designer shall retain the services of a Qualified Testing Laboratory, special field inspectors, and other special Consultants not referenced in Section 3.9 when required for the Designer’s services for the Project. To the extent applicable, Designer shall comply with the requirements of the Massachusetts Prevailing Wage Law, M.G.L. c. 149, §§26-27D, in the employment of and such special Consultants. The identity of such Consultants shall be Approved in advance by the Town, which Approval shall not be withheld

unreasonably. When such a special Consultant's services 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 shall be subject to the Approval of the Town. Each such Consultant whose fee for such services exceeds \$25,000 shall demonstrate coverage by liability insurance in an amount not less than its fee. The cost for services of any Approved Special Consultant not listed in Section 3.9 or the RFQ shall be reimbursed as provided in Section 7. For solicitation, inspection, analysis, coordination, and evaluation of such Consultants' services, and for assuming liability therefore, the Designer shall be compensated as provided in Section 7.

3.11 Town's Right to Rescind Approval of Designer's Employee or Consultants: The Town may rescind the Approval of an employee of Designer or a Consultant if such employee or Consultant is deemed by the Town to be incompetent, irresponsible or otherwise unsatisfactory, and the Designer shall remove such Consultant or employee from work on this Contract. If an employee or Consultant is so removed, the Designer shall provide another employee or Consultant with similar credentials and qualifications (including but not limited to MBE/WBE, if applicable) that meets with the Town's Approval. The removal of such Consultant shall not relieve the Designer from its responsibilities for the services of its Consultants and subconsultants under this Contract.

3.12 Consultants Barred from Construction Work: The Designer shall not employ in any element of design, specification, estimating, evaluation or other work under this Contract any person or firm that expects to be a bidder, subcontractor or supplier for the construction of the Project or any part thereof. The Designer shall obtain from every Consultant a written representation that such Consultant is aware that it is prohibited from serving as a bidder, subcontractor, or supplier for the construction of the Project or any part thereof.

3.13 Prompt payment to Consultants: The Designer shall, within fourteen (14) calendar days after receiving payment from the Town, either make payment to each Consultant whose work was included in the work for which such payment was received or notify the Town in writing of the reason why such payment is not being made within such time period.

3.14 Permits: Unless otherwise agreed to in writing, with the exception of the standard building permits customarily obtained by the general contractor or subcontractor, the Designer shall obtain all other permits required to implement Designer's design. The Designer shall obtain the prior Approval of the Town of all permit applications, notices, MAAB variances and accompanying documentation before filing them with the appropriate governmental entity or other party. The Designer shall provide the Town with a certified list of all Permits required to implement the design at the site as soon as possible during design development, shall schedule target dates for the procurement of such Permits, and shall regularly update such list and schedule during the term of this Contract. The Designer shall certify in writing at the time that construction documents (or changes thereto) are submitted to the Town that the Designer has identified all Permits required to implement the Project and that those not identified in writing as being the responsibility of the Town have been identified in the specifications as being the general contractor's responsibility.

As part of its Basic Services, the Designer shall attend public hearings in connection with any Permit necessary to obtain such permit. Any Permit application fee shall be considered a Reimbursable Expense to be reimbursed in accordance with the provisions of Section 7.

- .1 Permits Related to Change Orders: The Designer shall also provide to the Town a written certification of all Permits required to implement change order work at the site when the Designer submits for approval any change order request to the Town during the construction phase of the Project, whether the change order request was made by the Designer, the Town, or the general contractor.

3.15 Ownership; Intellectual Property Rights:

- .1 The Designer hereby grants to the Town an irrevocable royalty-free license to use for any purpose all Materials which are or may be covered by copyright, patent, or other intellectual property Laws or as to which Designer and its Consultants and subcontractors may assert any rights or establish any claim under any such Laws. The Designer agrees on behalf of itself and its Consultants and subcontractors that the Town shall have unlimited royalty-free rights, for the benefit of the Town any public entity to which the Town may grant the right to share such rights, in any and all Materials, including the right to use the same on any Town or other public entity projects.
- .2 All Materials that are produced by the Designer, its Consultants and subcontractors pursuant to this Contract (regardless of whether such Materials were furnished to the Town) shall be deemed “work for hire” and become the Town’s property. Such Materials may be used by the Town (or such parties as the Town may designate) thereafter in such manner and for such purposes as the Town (or such parties as the Town may designate) may deem advisable, without further employment of or additional compensation to the Designer. The Designer shall not release or disclose to any third party any Materials produced for the Town without obtaining the Town’s prior written consent. At no time shall the Designer release or disclose to any third party any materials, data or other information furnished to the Designer by the Town in connection with the performance of the Designer’s Services.
- .3 Upon the expiration or the termination of this Contract for any reason, all Materials and other work product that have been accumulated, developed or prepared by the Designer, its Consultants and subcontractors (whether completed or in process) shall become the property of the Town and the Designer shall immediately deliver or otherwise make available such Materials to the Town.
- .4 The Designer shall incorporate by reference this provision into all contracts with its Consultants and subconsultants with respect to the services provided under this Contract including, but not limited to, architects, engineers, estimators, surveyors, designers, and photographers. The Designer and its Consultants and subconsultants shall not be responsible for changes made in the documents or other items without



the Designer’s authorization, nor for the Town’s use of the documents on projects other than the Project.

3.16 Confidentiality: The Designer shall not, without the Town’s prior written consent, release or disclose any information relating to the Project to anyone except as necessary to perform its duties hereunder.

3.17 Corrections by the Town: The Designer shall furnish appropriate competent professional services for each of the phases of the Project to the point where excessive or detail checking or reviewing by the Town is not necessary. Any changes, corrections, additions, or deletions made by the Town shall be incorporated into the design of the Project unless specific written objections thereto are made by the Designer and Approved by the Town. The decision of the Town shall be final in matters pertaining to this section, but the Designer shall not be responsible for any such decision by the Town that is inconsistent with generally accepted standards of professional practice provided that the Designer advised the Town in writing of the inconsistency at the time the decision was made.

#### **4.0 PROSECUTION AND PROGRESS OF BASIC SERVICES**

##### **4.1 Preliminary Services**

- .1 Initial Meeting: After executing this Contract, the Designer, its key personnel, and such key Consultants as may be designated by the Town shall attend an administrative conference with the Town for the purpose of making introductions, exchanging contact information, clarifying relationships, communication protocols, arriving at a mutual understanding of the requirements of the Project and reviewing billing procedures.
- .2 Preparation of Work Plan: Upon execution of this Contract the Designer, working with the Town, shall submit a draft work plan for the Designer’s Services pursuant to this Contract including anticipated tasks and submittals. The proposed work plan shall comply with the requirements of this Contract and the Town’s goals, as described in the RFQ. The Designer shall submit the proposed work plan to the Town within one (1) week of the date of the execution of this Contract. The proposed work plan shall:
  - .1 define and identify the tasks and Deliverables required to be provided by the Designer as part of Basic Services;
  - .2 specify the sequences in which these tasks and Deliverables must be performed, prepared and submitted;
  - .3 contain a Contract Schedule;
  - .4 include allowances of time for the Town’s review and for the review and Approval of Deliverables;

- .5 specify the Milestones at which Approvals are required before any succeeding work is permitted to be performed by the Designer; and
- .6 specify method and sequence of payment for services rendered.
- .3 When Approved by the Town, the proposed work plan shall become the Work Plan and shall constitute a part of this Contract. In case of any conflict between the Scope of Work and the Work Plan, the terms of the Work Plan shall be controlling. Approval by the Town of the Work Plan shall constitute the Notice to Proceed with next phase of Basic Services.

4.2 Submittals: All document submissions shall be in the form of neatly bound printed material, and delivered to the location or locations as indicated by the Town. One or more document submission components may be submitted in an approved electronic format, subject to specific authorization by the Town.

- .1 Electronic Submittals: In addition to all other submittals called for by this Section 4 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 or some other approved format 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 Section 11.
  - .1 The Electronic Submittals shall be provided on CD electronic format or some other approved format as approved by the Town 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 (.dfx) format or other industry-standard format as approved by the Owner. Electronic file naming convention shall be acceptable to the Town. Also provide PDF versions of these documents.
    - (b) All other documents shall be provided on Microsoft Word, Excel, Project, or PowerPoint, as applicable to the particular submittal. Also provide PDF versions of these documents.
    - (c) All submissions shall be labeled identifying project name and number, file name, drawing title, software and release, and layer investigation.
    - (d) The Town 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 Town, 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.

- (e) The Designer’s compliance with the terms of this Section 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 Town requests the Designer to create such a Model, the parties shall execute a separate agreement and Designer shall receive Extra Services for its creation.

- .2 Hard Copies: Three full-size sets and three half-size sets of drawings and three bound sets of the project manual, including specifications shall be provided for each submittal.

4.3 Feasibility Study Phase: The Designer’s services shall consist of a feasibility study relating to the proposed renovation/expansion of the existing building, or construction of a new building.

- .1 The Designer shall provide a minimum of Six (6) conceptual design approaches for the new building. Feasibility Study submittals shall be provided pursuant to Section 4.2 and shall be subject to the written Approval of the Town.
- .2 The Designer shall prepare an architectural feasibility study for proposed new construction or a renovation/addition to the existing facility. The study shall include conceptual architectural plans, engineering studies, cost estimates and project schedules and work plans.
- .3 The Designer shall present a written recommendation with supporting documents and explain the Feasibility Study to the Town. The Town will select a “Preferred Option” that will be developed through the Schematic Design phase.
- .4 The Designer shall prepare presentation materials of the “Preferred Option” as may be required for submission to various Town Boards, Committees and Public Hearings as part of basic Services.
- .5 The Designer shall meet with the Town at least every other week during this Phase.

4.4 Schematic Design Phase Services.

- .1 Upon receipt of a Notice to Proceed with the Schematic Design Phase, the Designer and its Consultants shall meet regularly and as necessary with agents of the Town, shall update and refine the Contract Schedule to include appropriate milestones for the Schematic Design Phase, and shall submit, on or before the date specified in the Contract Schedule all schematic design documents required by 4.4.2.
- .2 Upon selection by the Town of the preferred alternative, the Designer shall develop the preferred alternative to a full schematic design level. Designer shall provide the following schematic design level documentation, which shall include and incorporate the Town’s comments:
  - .1 drawings, concept sketches, three dimensional representations, and specifications;
  - .2 a building code analysis historical analysis (if applicable);
  - .3 an environmental assessment, if needed;
  - .4 a preliminary life cycle cost analysis to determine which design decisions related to all energy and water consuming devices and overall building operation and maintenance are the most cost effective pursuant to M.G.L. c. 149, § 44M and c. 7C, § 29;
  - .5 a summary of applicable public utility incentive programs as determined by the Town and a plan for implementation or inclusion of incentives;
  - .6 an analysis of the design’s compliance with the Americans with Disabilities Act/Massachusetts Architectural Access Board requirements, if applicable;
  - .7 [intentionally omitted]
  - .8 a Construction Cost Estimate for the design with aggregated unit rates and quantities supporting each item and verified as accurate and complete by the cost estimator.
  - .9 facilitate “charrette” working group with all project stakeholders to identify potential historical, energy efficiency and sustainability features that can be incorporated into the project.
- .3 Schematic design level documentation shall also include a summary comparing the schematic plans, specifications and Estimated Construction Cost of the design to the Program and Study requirements and shall explain any deviation therefrom.

The Designer shall be aware of the following provisions of M.G.L. c. 7C, § 60 and shall cause its services to comply therewith:

“No state agency . . . administering a capital facility project shall enter into any contracts for that project . . . or cause to be performed design services for that project . . . if such would result in the completion of a project which cannot be accomplished (a) within the appropriation or authorization for the project or within the project cost limits specified by the appropriation or authorization and (b) without substantial deviation from (i) any study or program which must be prepared in accordance with section 59; or (ii) any other pre-design planning document which must be prepared in accordance with any other statute, appropriation or authorization or administrative directive consistent therewith. In no event shall the design work be such as would result in a change in the number of gross square feet to be constructed in the project of more than 10 per cent from the number specified in the study, program or other pre-design document referred to [above].”

- .4 Schematic Design Phase drawings, specifications, Construction Cost Estimates and other submittals shall be subject to the written Approval of the Town. Unless a lesser number is requested by the Town, the Designer shall submit to the Town for approval six (6) copies of schematic design drawings, specifications, cost estimates, and other submittals.

#### 4.5 Design Development Phase Services.

- .1 Upon receipt of a Notice to Proceed with the Design Development Phase, the Designer and its Consultants shall meet at least every two weeks, or more frequently as necessary with agents of the Town, shall update and refine items submitted during the Schematic Design Phase, and shall submit, on or before the date specified in the Contract Schedule, and on the basis of the Approved Schematic Design Phase documents:
  - .1 an updated work plan and Project Schedule
  - .2 a list of all Permits and approvals required to implement the design and a schedule of target dates for the procurement of such Permits and approvals, which list and schedule shall be regularly updated during the term of this Contract;
  - .3 information and documentation within the technical expertise of the Designer and its Consultants that is necessary for the Town to file any filings for Permits and approvals that must be filed during the design development phase;
  - .4 complete design development drawings, draft specifications indicating any filed sub-bid sections based on the cost of the work and other documents necessary to specify the size and character of the Project as to siting,

landscape, architectural, historical, structural, fire protection, plumbing, HVAC, electrical, ADA/MAAB, historic, product requirements, and other features;

- .5 quality control documentation demonstrating without limitation coordination of: specifications and drawings; filed sub- bid work or sections; scheduling; equipment and power; existing and new construction; and phasing;
- .6 design development drawings for which the Designer shall submit for a “tentative approval” review to the public agency having jurisdiction over enforcement of the State Building Code with respect to the Project;
- .7 an updated life cycle cost analysis to determine which design decisions related to all energy and water consuming devices and overall building operation and maintenance are the most cost effective pursuant to M.G.L. c.149, §44M, which are then included in design decision discussions;
- .8 Construction Cost Estimate for the design with unit rates and quantities supporting each item, which shall have been reviewed and approved as accurate and complete by any cost estimator with respect to the Project;
- .9 a summary or summaries comparing the design development drawings, specifications and cost estimates with the Program requirements, and explaining any deviations in writing;
- .10 [intentionally omitted]
- .11 signage and wayfinding graphically coordinated with the project proponent (user group) and the general building requirements, including, without limitation, all signage and wayfinding required by applicable building codes, cautionary signage, signage relative to exterior parking, loading and building areas, interior directories, department names, hours of operation, room names and numbers, and any signage required for American with Disabilities Act;
- .12 Such drawings, specifications, cost estimate and other design development submittals shall be subject to the written Approval of the Town. Unless a lesser number is requested by the Town, the Designer shall submit to the Town for approval six (6) copies of design development drawings, specifications, cost estimates, and other submittals.
- .13 Presentation: Designer shall make a presentation to the Town which highlighting the keys aspects of the Design Development submission.

4.6 Construction Documents Phase Services.

- .1 Upon receipt of a Notice to Proceed with the Construction Documents Phase of the Project from the Town, the Designer and its Consultants shall meet at least every two weeks, or more frequently as necessary with agents of the Town, and based on the submittals Approved in the design development phase of the Project, shall update and refine the items previously submitted and shall submit on or before the date and time specified in the Approved Project Schedule:
  - .1 an updated work plan and Project Schedule;
  - .2 complete construction drawings and specifications, certified by the Designer as having satisfied the applicable quality control review, in sufficient detail to permit fixed-price bids in open competition for construction of the Project;
  - .3 an updated environmental assessment, building code analysis, ADA/MAAB analysis, and a certified list of all required testing and all required Permits/approvals as well as a certification that all applicable local, state and utility officials have been contacted by the Designer regarding each utility connection and that the persons responsible for permits or connection approval has agreed to the systems' use;
  - .4 structural and energy calculations, building code analysis, historic analysis, ADA/MAAB analysis, if required;
  - .5 at the 60% stage of completion of the final drawings and specifications, a Construction Cost Estimate, including quantities of all materials and unit prices of labor, equipment, and materials as well as a cost estimate for each item of work, for review by the Town.
  - .6 signage and wayfinding graphically coordinated with the project proponent (user group) and the general building requirements, including, without limitation, all signage and wayfinding required by applicable building codes, cautionary signage, signage relative to exterior parking, loading and building areas, interior directories, department names, hours of operation, room names and numbers, and any signage required for American with Disabilities Act;
  - .7 review and comment on the revised Construction Cost Estimate for the design of the Project that has been prepared by the Town's Owner's Project Manager;
  - .8 Presentation: Designer shall make a presentation to the \_\_\_\_\_ Committee which highlights the keys aspects of the 95% Construction Document Phase submission;

- .9 Approval of Drawings and Other Construction Documents: Two sets of the foregoing documents shall be approved, stamped and signed by the Town’s building official, the Town’s plumbing inspector (as applicable), the Town’s electrical inspector (as applicable), and the Town’s fire chief respectively;
- .10 Approval of Final Documents: All submittals shall be subject to the written approval of the Town. Unless a lesser number is requested by the Town, the Designer shall furnish to the Town for approval six (6) sets of the drawings, specifications Construction Cost Estimates and other submittals. The Designer shall also furnish electronic media copies of the foregoing drawings and documents if the Town may require.
- .11 Approved Final Documents: From the Approved construction drawings and specifications, with such changes as the Town requires, the Designer shall prepare and transmit to the Town a set of reproducible black and white drawings and original specifications both in electronic format and on high quality white bond paper, single-sided, properly packaged, suitable for reproduction, stamped and signed by all disciplines, which documents shall become the property of the Town. Other suitable methods may be used with the prior Approval of the Town. One copy of the drawings and specifications shall be submitted with the reproducible drawings and specifications. For projects that will be bid using an on-line bidding service, provide documents in the format that is required by the service.

#### 4.7 Bidding Phase Services

- .1 Upon receipt of a Notice to Proceed with the Bidding Phase of the Project from the Town, the Designer and its Consultants shall perform the following services in accordance with MGL Chapter 149 on or before the date and time specified in the Approved Project Schedule.
- .2 General: Designer shall utilize an on-line bidding service to print bid documents, allow access to electronic bid documents, issue addenda, receive bids and summarize bids. The designer shall:
  - .1 prepare the invitation for bid (IFB), advertise and post the IFB in local newspaper, Central Register and COMMBUYS;
  - .2 if applicable, the Designer shall assist the Town with the prequalification of bidders in accordance with M.G.L. c.149, §§44E1/2 and 44D3/4 or M.G.L. c.149A;
  - .3 attend and chair the pre-bid conference if one is scheduled, taking note of all questions asked;



- .4 prepare all addenda (to include bidders' questions and Designer's responses), subject to the Approval of the Town. The Designer and its Consultants shall attend and chair the pre-bid conference if one is scheduled, taking note of all questions asked. Relevant questions submitted in writing shall be answered by means of written addenda to the bid documents as required. The Designer shall attend the bid opening (if not performed by on-line service) and conduct a review of the qualifications, including review of DCAMM file, of the three (3) lowest filed sub-bidders and general bidders (and of other bidders if necessary) and shall, within three (3) business days of the respective bid opening dates, advise the Town in writing of the Designer's opinions as to the sub-bidders' bids and as to which general bidder is the responsible and eligible bidder that has submitted the lowest bid;
- .5 assist Town in obtaining bonds, insurance and other documents necessary to execute the contract, return bid deposits and publicize the contract in Central Register.
- .3 The Designer shall assist in rebidding of sub bid and/or general bid unless such rebidding is made necessary by the fault of the Town, in which event such rebidding shall be deemed an Additional Service.

#### 4.8 Construction Administration Phase Services

- .1 General - Consistent with the standard of care and practice stipulated in Section 3.4 above, upon the award of the Construction Contract the Designer and its Consultants shall:
  - .1 be charged with general administration of the Construction Contract to the extent set forth herein;
  - .2 furnish the general contractor with information for establishing lines and grades and shall prepare a set of plans and specifications that incorporate all addenda and sketch drawings issued during the bidding process;
  - .3 promptly and in accordance with the requirements of the Construction Contract check, obtain testing where necessary, and approve samples, schedules, shop drawings and other submissions by the general contractor;
  - .4 prepare, maintain and update logs for all submittals and changes to the Construction Contract;
  - .5 provide to the Town a list of all Permits, variances or approvals required to implement change order work at the Project site when the Designer submits for Approval any change order request to the Town during the construction

phase of the Project, whether the change order request was made by the Designer, the Town, or the general contractor;

- .6 visit the site at intervals appropriate to the stage of construction but not less than weekly, and observe the progress of the work, issue written progress reports, and conduct job meetings, and prepare and distribute agendas and meeting minutes to assure that the work is being built in conformance with Approved construction documents;
- .7 report to the Town weekly in writing on the progress of the work including whether or not the general contractor is keeping as-built drawings updated;
- .8 on a weekly basis (or more often as may be necessarily), make specific recommendations on rejection of all Project work observed by the Designer that fails to conform to the Construction Contract documents, and review and inspect corrected work;
- .9 require each Consultant employed in accordance with Section 3 to make weekly visits during the progress of any work that relate to the Consultant’s services and to report in writing to the Designer;
- .10 authorize minor changes in Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Construction Cost or an extension of time. The Designer shall prepare Change Orders and Construction Change Directives for the Town’s approval and execution in accordance with the Contract Documents. The Designer shall only be entitled to additional compensation for change orders or construction change directives that are initiated by the Town or that arise due to encountering unanticipated conditions during construction. The Designer will not be entitled to additional compensation related to change orders or construction change directives that arise due to errors, omissions, ambiguities, or conflicts in the Construction Documents. When the Designer is entitled to additional compensation for design services related to change orders or construction change directives, the Designer’s compensation shall be based on the actual labor and expense costs of the additional design work. Designer shall provide timesheets or other documentation to support such requests.
- .11 conduct semi-final and final “punch list” inspections of the Project and report the results of such inspections in writing to the Town. Manage the final inspection “punch list” until all items have been completed or otherwise addressed to the satisfaction of the Town.
- .10 observe the balancing of air and water circulation systems and report the results thereof;

- .11 observe the setting and adjustment of automatic controls and report thereon;
  - .12 in a timely manner, decide all questions regarding interpretation of, or compliance with, the Construction Contract documents, except as the Town may in writing otherwise determine;
  - .13 transmit the Contractor's electronic versions of the Record Drawings, a final cost report, and other required documents to the applicable regulatory agencies; and
  - .14 assist the Town in any bid protest hearings, change order appeal hearings requested under M.G.L. c. 30, § 39Q, and any other litigation, except as provided in Section 6.
  - .15 Except as otherwise specifically set forth in the Construction Contract documents, the Designer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Construction Contract documents.
- .2 General Contractor's Requisition for Payment: The Designer shall submit to the Town in a timely manner all requisitions for payment submitted by the general contractor in the form required by the Town. With respect to each such requisition, the Designer shall certify to the best of its knowledge that the percentage of work included in the requisition is accurate and that the work performed conforms to the Construction Contract documents. In the event the Designer does not approve the requisition exactly as submitted by the general contractor, the Designer shall forward it for payment to the Town dated and signed with corrections and explanations setting forth the Designer's objections and recommended changes. The Designer shall coordinate the required visits to the construction site so as to enable it to submit to the Town the general contractor's monthly requisition for payment bearing the Authorized Representative's approval or accompanied by the Authorized Representative's letter of exceptions. Timely payments to the contractor are required by M.G.L. c. 30, § 39K; therefore, the Designer shall establish procedures assuring either immediate delivery of the requisition for payment to the Town, and shall process requisitions for payment within two working days after receipt of the same.
- .3 Review of As-Built Drawings: Before examining the requisition for final payment submitted to the Town by the general contractor and making any certification in response thereto, the Designer shall obtain from the general contractor As-Built Drawings, including drawings showing the actual installation of the site utilities, envelope repairs and any changes to plumbing, heating, ventilating and electrical work under the Construction Contract, and recording all changes. The Designer

shall review and approve the general contractor’s As-Built Drawings. Such review shall include, but not be limited to, the Designer ascertaining that changes authorized by change orders, construction change directives and/or Designer-approved minor changes in the work are shown on the general contractor’s As-Built Drawings. The Contractor shall revise the applicable original reproducible drawings and electronic media drawings on the basis of the As-Built Drawings and shall submit them through the Architect as Record Drawings electronically along with two (2) sets of prints to the Town; which Record Drawings shall become the property of the Town, all as part of its Basic Fee.

- .4 Evaluation of General Contractor: At the conclusion of the Construction Contract the Designer shall assist the Town and/or the Owner’s Project Manager in the evaluation of the performance of the general contractor and the filed sub-contractors as required by M.G.L. c.149, §44D or any other law.
- .5 Copies of Original Design Drawings: One suitably bound legible copy of all original design drawings including those pertinent to change orders and shop drawings if applicable shall be furnished by the Designer to the Town at the conclusion of the Construction Contract.

4.9 Warranty Phase Services

- .1 The Designer and its Consultants shall perform the following services starting at substantial completion and ending three (3) months after the one-year warranty period has ended:
  - .1 conduct pre-final (9 to 10 months after substantial completion) and final “warranty punch list” inspections of the Project and report the results of such inspections in writing to the Town. Manage the final inspection “punch list” until all items have been completed or otherwise addressed to the satisfaction of the Town.
  - .2 provide Additional services during this phase as may be requested by the Town in accordance with Article 6.

**5.0 DESIGNER’S BASIC FEE**

5.1 Basic Fee: For the performance of all services required in this Contract excluding those services specified under Sections 6.0 and 7.0, the Designer shall be compensated by on a Lump Sum basis on each Phase of Basic Services. The total amount of compensation due the Designer for full performance of each Phase of its Basic Services is:

Study and Evaluation Phase Services	(\$	)
Schematic Design Phase Services	(\$	)

Design Development Phase Services	(\$ )
Construction Document Phase Services	(\$ )
Bidding Phase Services	(\$ )
Construction Administration Phase Services	(\$ )
Warranty Phase Services	(\$ )

5.2 Manner of Payment: Payment of the Designer’s Basic Fee shall be made in accordance with Section 8.0 as modified by any changes Approved by the Town and included in the Work Plan.

**6.0 ADDITIONAL SERVICES**

6.1 Additional Services: If there is a substantial change in the Scope of Services in the opinion of the Town, the Designer and the Town will agree to an equitable adjustment in the Designer’s Basic Fee. For purposes of this Contract, a “substantial change” in services shall include: (i) a substantial change in the Scope of Services that is not the fault of the Designer; or (ii) a significant increase in the duration of the Project that is not the fault of the Designer. Increases to the Designer’s Scope of Services shall be made only by written Amendment to this Contract. Decreases to the Designer’s Scope of Services may be made by written directive of the Town to the Designer. Services requested of the Designer by the Town that are not set forth in the Work Plan shall be considered Additional Services for which the Designer shall be entitled to an increase in the Lump Sum Fee. No increase in the Lump Sum Fee shall occur as a result of the performance of Additional Services unless the Town has given advance written approval for such Additional Services and such increase in the Lump Sum Fee. Neither the Designer nor any of its Consultants shall 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 work products, as reasonably determined by the Town, nor for any services made necessary by the fault or negligence of the Designer or its Consultants. No authorization by the Town for the Designer’s performance of Additional Services shall be valid unless it is made in writing and contains a “not to exceed” limit that may not be exceeded without further Approval by the Town.

6.2 With prior Approval of the Town, the Designer shall perform all or any of the following services in addition to the Basic Services:

- .1 revise previously Approved drawings, specifications or other documents to accomplish changes authorized by the Town or required by changes in applicable Laws, and revisions not occasioned by the Designer’s errors or omissions;
- .2 [intentionally omitted];
- .3 [intentionally omitted];

- .4 [intentionally omitted];
- .5 provide consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing professional services of the type set forth in Section 3 as may be required in connection with the replacement of such work;
- .6 provide professional services necessary to evaluate substitutions proposed by the general contractor and, if necessary, prepare subsequent revisions to drawings and other documents resulting therefrom or furnish professional services made necessary by the default of the general contractor;
- .7 provide services later than three months after the one-year warranty phase has ended, except for services occasioned by the Designer's errors or omissions;
- .8 prepare special documents for or appearing as a witness in change order appeal hearings under M.G.L. c. 30, § 39Q or in judicial litigation arising out of the Construction Contract, except for litigation arising from the Designer's negligent acts or omissions;
- .9 [intentionally omitted];
- .10 revise construction drawings and specifications submitted in their final and complete form for which bids were not received within six (6) months after submission, unless a new building code has been promulgated within that time frame which requires revisions to the documents;
- .11 make studies other than those normally required and preparing applications and reports to assist the Town in obtaining federal aid;
- .12 additional site visits requested by the Town for which additional payment is provided in Section 6.3.
- .13 prepare documents for and manage procurement for fixtures, furniture and equipment (FFE) phase of the project.

6.3 Additional Site Visits. Additional services shall also include site visits by the Designer or its Consultants made at the request of the Town during the construction administration phase, that are in addition to those required by the Contract and have been requested in writing by the Town.

6.4 Compensation for Additional Services: Except as otherwise authorized in writing by the Town, for the services provided pursuant to Sections 6.1 through 6.3 of this Contract, the Designer shall be compensated as determined by the Town as follows:

- .1 by a lump sum fee agreed upon in advance in writing by the Designer and the Town; or

- .2 on an hourly basis (based on pro-rated hourly wages exclusive of benefits) in accordance with the rate schedule attached hereto as Attachment B, which is incorporated by reference herein. Clerical/support staff of the Designer and Consultants to the Designer shall not be compensated and is considered as part of office overhead.

## **7.0 REIMBURSABLE COSTS AND EXPENSES.**

7.1 The Basic Fee shall include all the Designer’s expenses associated with the performance of its services pursuant to this Contract. Any Amendment that increases the Basic Fee shall likewise include all expenses associated with the performance of the services that is the subject of the Contract.

7.2 The Designer shall be reimbursed by the Town for:

- .1 the actual cost to the Designer of special consultants, not specified in its response to the RFQ, and approved in writing by the Town, provided, however, that no reimbursement for such expense shall be made unless the rates of compensation for said consultant services shall have been previously approved in writing by the Town. The Town may approve a lump sum fee;
  - .1 The Designer shall not be entitled to compensation under this Article for the services of Subconsultants hired to perform Basic Services under this Agreement. If a Subconsultant hired to perform Basic Services performs Additional Services approved by the Town, compensation for such Additional Services shall be made under Article 6.
  - .2 other actual costs, including special printing, but only when specifically authorized in writing by the Town or its designee; and
  - .3 for document copies in excess of numbers specified in the Contract if requested by the Town.

7.3 The Town shall not reimburse the Designer for the following:

- .1 any expenses associated with performing its services;
- .2 travel expenses under this Contract, provided, however, that in special circumstances and with prior approval of the Town, the Designer may be reimbursed for out-of-state travel expenses consistent with applicable statutes, rules, and regulations; and
- .3 any telephone (land line and cellular), computer or other out-of-pocket expenses unless specifically authorize as provided above.

7.4 Mark-Up for Overhead and Profit: For solicitation, coordination, inspection, analysis, and evaluation of and for the assumption of responsibility for, services authorized under 7.2.1 of this Contract, the Designer shall be paid 10% of the actual expense where the cost of the specific services is estimated not-to-exceed \$100,000. The aforementioned percentage will be negotiated to a lesser figure in those instances when the not-to-exceed cost is projected to exceed \$100,000.

## **8.0 PAYMENTS TO THE DESIGNER**

8.1 Change Orders: Unless otherwise Approved by the Town, payments to the Designer for a modification or a change order shall be made when the modification or change order has been Approved by the Town and the Designer's services with respect to the same, other than construction administration services, have been completed.

8.2 Schedule for Payment of Basic Fee: The Designer shall submit requisitions on a monthly basis for any Services completed within that month. Town shall not be obliged to pay any claims received more than forty-five (45) days after notification to the Designer of final acceptance of the contractor's work under the Construction Contract.

8.3 Right of Offset: If the Town finds that Deliverables previously paid for by the Town contained deficiencies, errors, or omissions, then the Town may withhold from any future payment due to the Designer under this Contract an amount reasonably calculated by the Town to cover the cost of correcting the deficiencies, errors, or omissions until the deficiencies, errors, or omissions have been corrected. The Town may also offset against any payment due to the Designer under this Contract the amount of any costs incurred by the Town arising from the Designer's failure to provide required services, or the Designer's deficiencies, errors or omissions. Nothing in this paragraph shall limit any legal remedies of the Town against the Designer for default, errors, omissions, erroneous claims, false claims, tort claims, or any breach by the Designer of the terms of this Contract or applicable Laws.

8.4 Subject to Appropriation: The obligations of the Town hereunder shall be subject to appropriation. In the absence of appropriation, this Contract shall be terminated immediately without liability of the Town for damages, lost profits, penalties, or other charges arising from early termination.

## **9.0 TERMINATION**

9.1 Termination by the Town: By written notice to the Designer, the Town may terminate this Contract in whole or in part at any time whether for the Town's convenience or because of the failure of the Designer to fulfill his or her Contract obligations. 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, including proportionate payment for partially completed work, shall be paid to the Designer by the Town. Such payment shall not exceed the fair value of the work, as the Town shall determine. No amount shall be allowed for anticipated profit or overhead on unperformed services.



9.2 Failure of Designer to Perform/Liability: If the Contract is terminated due to the failure of the Designer to fulfill his or her Contract obligations, the Town may take over the Work and prosecute the same to completion by contract or otherwise. In such case, the Designer shall be liable to the Town for any additional cost occasioned to the Town thereby. These rights and remedies of the Town are in addition to any rights and remedies provided by law or under this Contract.

9.3 Termination By Designer: By written notice to the Town, the Designer may terminate this Contract if the Town, within sixty (60) days following written notice to the Town of any default by the Town hereunder, shall have failed to remove such default. The payments to the Designer shall not exceed the fair value of the Designer's work, as the Town shall determine. No amount shall be allowed for anticipated profit or overhead on unperformed services.

9.4 Delivery of Data to Town Upon Termination of Contract: Upon any termination of the Contract, the Designer shall promptly deliver to the Town all Materials, including all documents, work papers, studies, calculations, computer programs, data, drawings, plans, specifications and other tangible work product or materials pertaining to the Services performed under this Contract, whether completed or in process, performed under this Contract to the time of termination, and thereupon the Town shall pay the Designer any unpaid and undisputed balance owing for Services rendered prior to the date of termination.

9.5 Rights of the Town: Any termination of this Contract shall not affect or impair the right of the Town to recover damages occasioned by any default of the Designer or to set off such damages against amounts otherwise owed to the Designer.

## **10.0 RELEASE AND DISCHARGE**

10.1 The acceptance by the Designer of the last payment for services paid under the provisions of either Section 8.0 or Section 9.0, in the event of termination of this Contract, shall in each instance operate as a release of the Town and every employee, member and agent of the Town, from all claims of the Designer arising from this Contract, and from liability for any act or omission relating to or affecting the Designer's services hereunder, except for those written claims submitted by the Designer to the Town with the last payment requisition; and except that such acceptance shall not release such parties from any liability they would otherwise have for injuries to third parties resulting from their negligent acts or omissions.

## **11.0 INSURANCE**

11.1 The Designer shall obtain and maintain the following insurance in amounts not less than the Minimum Insurance Limits set forth below during all times that the Designer is performing Services and for at least one (1) year after termination of this Contract in the case of Commercial General Liability, Worker's Compensation and Employer's Liability insurance, and for at least the applicable period of limitations on actions provided by law in the case of Professional Liability insurance:

- .1 Commercial General Liability insurance covering claims for injury to persons and damage to property. Such insurance shall include contractual liability and shall cover the use of all equipment and motor vehicles on the Site or transporting persons, equipment, materials or debris to and from the Site. Products and Completed Operations insurance shall be maintained for at least three years after completion of this Contract. Minimum Insurance Limits: \$1,000,000 per occurrence, \$3,000,000 aggregate.
- .2 Professional Liability insurance for protection from claims arising out of the performance of professional services, including contractual coverage. Minimum Insurance Limits: \$1,000,000/\$3,000,000
- .3 Worker’s Compensation Liability insurance in amounts not less than those required by law and Employer’s Liability insurance.
- .4 Automobile Liability insurance applicable for any contractor who has an automobile operating exposure for protection against bodily injury and property damage. Minimum Insurance Limits: \$1,000,000 CSL.
- .5 Umbrella Liability insurance, which shall be maintained for at least three years after completion of this Contract. Minimum Insurance Limits: \$2,000,000.

11.2 Certificates of insurance and copies of policies evidencing the coverage required hereunder and copies of the policies, together with evidence that all premiums for such insurance have been paid, shall be filed with the Town at the time of execution of the Contract. All such policies and certificates shall be written through companies and in forms acceptable to the Town’s lender or lenders, if any. All policies shall contain a provision that coverages afforded by them will not be cancelled or amended until at least thirty (30) days prior written notice has been given to the Town. The insurance provided under clauses 11.1.1, 11.1.4 and 11.1.5, above, shall name the Town and such other parties as the Town shall require as “Additional Insured” parties. Insufficient insurance shall not release the Designer from any liability for breach of its obligations under this Contract.

11.3 Any Consultant employed by the Designer shall obtain and maintain a professional liability insurance policy covering negligent errors, omissions and acts of such Consultant or of any person or business entity for whose performance the Consultant is legally liable arising out of the performance of the contract for Consultant services. The Consultant shall furnish a certificate or certificates of such insurance coverage to the Town prior to the employment of such Consultant by the Town. A liability insurance policy maintained under this paragraph shall provide for coverage of such type and duration and in such amount as the Town shall require.

## **12.0 INDEMNIFICATION**

12.1 To the maximum extent permitted by law, the Designer agrees to indemnify, defend with counsel acceptable to the Town and save harmless the Town and its agents and employees from all suits, actions, claims, demands, damages, losses, expenses and costs, including attorneys’ fees,

of every kind and description which the Town may incur or suffer resulting from, in connection with, or arising out of any act, error or omission of, or breach of contractual duties to the Town by, the Designer, its agents, servants, employees or Consultants. The extent of the foregoing indemnification and hold harmless provisions shall not be limited by any provision of insurance required by this Contract and shall survive the termination of this Contract.

### **13.0 EQUAL EMPLOYMENT OPPORTUNITY**

13.1 In connection with the performance of work under this Contract, the Designer shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, age, sex or handicap. The Designer shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Massachusetts Commission Against Discrimination (the “Commission”), setting forth the provisions of the Fair Employment Practices Law of the Commonwealth.

13.2 In connection with the performance of work under this Contract, the Designer shall not discriminate in its relationships with Consultants or suppliers on the basis of race, color, religion, creed, national origin, ancestry, age, sex or handicap.

13.3 The Designer shall comply with all applicable Laws pertaining to non-discrimination, equal opportunity and affirmative action, including without limitation executive orders and rules and regulations of federal and state agencies of competent jurisdiction.

### **14.0 CERTIFICATIONS BY DESIGNER**

14.1 By execution of this Contract, the Designer certifies:

- .1 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.
- .2 No Consultant to or sub-contractor 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.
- .3 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 to the Designer.
- .4 The Designer shall comply with all applicable requirements of M.G.L. c.30, §39R. The Designer has internal accounting controls as required by M.G.L. c.30, §39R(c) and the Designer has and will continue to file an audited financial statement as required by M.G.L. c.30, §39R(d).

## **15.0 TAXES**

15.1 By execution of this Contract the Designer, pursuant to Section 49A of Chapter 62C of the Massachusetts General Laws, certifies under the penalties of perjury that it has, to the best knowledge and belief of the person(s) who signed this Contract on the Designer's behalf, filed all state tax returns and paid all state taxes required under law.

15.2 The Town is exempt from payment of certain Sales and Use taxes applicable in the Commonwealth of Massachusetts. At the Designer's request, Tax Exemption Certificates will be furnished by the Town to the Designer with respect to such tax exempt articles as may be required under this Contract. The Designer shall not pay, and the Town shall not reimburse or pay the Designer or any other party either directly or indirectly for any tax for which an exemption is provided under law.

## **16.0 CONFLICT OF INTEREST**

16.1 The Designer acknowledges that the Town is a public employer for the purposes of Chapter 268A of the Massachusetts General Laws (the Massachusetts conflict of interest statute), and the Designer agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with obligations of the Designer based on said statute.

## **17.0 NOTICES**

17.1 Notices: Any notice required under this Contract to be given by the Town to the Designer, or by the Designer to the Town, shall be deemed to have been so given, whether or not received, if mailed by prepaid postage by, respectively, the Town to the Designer at the address specified for the Designer on Page 1 above, or the Designer to the Town at

---

## **18.0 MISCELLANEOUS PROVISIONS**

18.1 Successors and Assigns. Subject to the provisions of Section 18.2, below, the Town and the Designer each binds itself, its partners, successors, assigns, and legal representatives to the other party.

18.2 Assignment by Designer. The Designer shall not assign, sublet or transfer any of its obligations, responsibilities, rights or interests (including, without limitation, its right to receive any moneys due hereunder) under this Contract without the written consent of the Town. Any assignment, subletting, or transfer by the Designer in violation of this Section 18.2 shall be void and without force or effect.

18.3 Entire Agreement. This Contract represents the entire and integrated agreement between the Town and the Designer with respect to the subject matter hereof and supersedes all prior

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

18.4 Confidentiality. The Designer shall not, without the Town’s prior written consent, release or disclose any information relating to the Project to anyone except as necessary to perform its duties hereunder.

18.5 Certifications. The Designer shall, from time to time, make such certifications and statements to the Town and to such of the Town’s architects, designers, Designers and lenders, and such other parties, as the Town shall reasonably request, in such form as the Town shall reasonably request, provided that the Designer determines that such certifications are true and correct based upon the Services performed by the Designer hereunder.

18.6 Additional Services. If the Town requests the Designer to perform additional services beyond the scope of Services hereunder, the Designer shall perform such additional services only upon obtaining written authorization from the Town including written agreement as to the method and amount of compensation for such additional services.

18.7 Disputes. All claims, disputes and other matters in question between the Town and the Designer arising out of or relating to this Contract or the breach thereof shall be submitted for resolution to a court of competent jurisdiction in Norfolk County, Massachusetts, unless otherwise agreed by the parties. No such action shall be brought, however, until the completion of all Services under this Contract or the earlier termination thereof as provided in Section 9.0 above, the parties agreeing to negotiate in good faith any claims, disputes or other matters in question during the term of this Contract before resorting to litigation. Notwithstanding the foregoing, the Town reserves the following rights in connection with claims and disputes between the Town and the Designer, which rights may be exercised by the Town unilaterally and in the Town’s sole discretion: (1) the right to institute legal action against the Designer in any court of competent jurisdiction in lieu of demanding arbitration; and/or (2) the right to demand mediation or arbitration against the Designer in the Town’s sole discretion.

18.8 Limited Liability. No officer, director, member, employee, Town or other principal, agent or representative (whether disclosed or undisclosed) of the Town, nor any participant with the Town, shall be personally liable to the Designer hereunder, for the Town’s payment obligations or otherwise, the Designer hereby agreeing to look solely to the assets of the Town for the satisfaction of any liability of the Town hereunder. In no event shall the Town ever be liable to the Designer for indirect, incidental or consequential damages.

18.9 Governing Law. This Contract shall be governed by the law of the Commonwealth of Massachusetts.

18.10 No Waiver. The Town’s review, approval, acceptance or payment for Services under this Contract shall not operate as a waiver of any rights under this Contract and the Designer shall be and remain liable to the Town for all damages incurred by the Town as the result of the Designer’s failure to perform in conformance with the terms and conditions of this Contract. The rights and remedies of the Town provided for under this Contract are in addition to any other

rights or remedies provided by law. The Town may assert a right to recover damages by any appropriate means, including but not limited to set-off, suit, withholding, recoupment, or counter-claim either during or after performance of this Contract.

18.11 Interpretation. If any provision of this Contract shall to any extent be held invalid or unenforceable, the remainder of this Contract shall not be deemed affected thereby. Paragraph headings are included herein for reference purposes only and in no way define, limit or describe the scope or intent of any of the provisions of this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Contract under seal as of the date first written above and the individual executing this Contract on behalf of the Designer makes the representations and certifications set forth in this Design Contract under the pains and penalties of perjury.

**DESIGNER:**

\_\_\_\_\_  
By:  
Its:  
(hereunto duly authorized)

**TOWN OF NEEDHAM:**

By: \_\_\_\_\_  
Kate Fitzpatrick, Town Manager

This is to certify that the funds have been appropriated by the Town of Needham for the purposes set forth in the Contract herein.

\_\_\_\_\_  
Town Accountant  
Date:\_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Christopher H. Heep  
Town Counsel

ATTACHMENT B

**CERTIFICATE OF NON-COLLUSION**

1. The undersigned hereby certifies that s/he will comply with all laws and regulations applicable to awards made subject to Massachusetts General Laws Chapter 7C.

1. The undersigned certifies under penalties of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

---

Signature of individual submitting Proposal

---

Name of Business (please type or print)

This form is required with RFQ proposal submission.

ATTACHMENT C

**CERTIFICATIONS**

In accordance with M.G.L. c. 7C § 51, the undersigned states that the wage rates and other costs used to support the designer's compensation are accurate, complete, and current at the time of contracting; and agrees that the original contract price and any additions to the contract may be adjusted within one year of completion of the contract to exclude any significant amount if the fee was increased by such amounts due to inaccurate, incomplete or noncurrent wage rates or other costs.

In accordance with M.G.L. c. 7C § 51, the undersigned certifies under penalties of perjury 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.

The undersigned certifies under penalties of perjury 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.

The undersigned certifies under penalties of perjury 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

---

Signature of individual submitting Proposal

---

Name of Business (please type or print)

This form is required with RFQ proposal submission.



ATTACHMENT D  
**CERTIFICATE OF AUTHORITY**

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 \_\_\_\_\_  
(The date must be **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  
(Signature of **Clerk or Secretary**)\*  
SEAL HERE

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.

This form is required with RFQ Proposal submission if the Proposal is signed by a person other than the owner or president of the company.

ATTACHMENT E

**CERTIFICATE OF COMPLIANCE WITH MASSACHUSETTS TAX LAWS**

*Pursuant to Massachusetts General Laws Chapter 62C, Section 49A, the undersigned acting on behalf of the Bidder\*, certify under the penalties of perjury that to my best knowledge and belief, the Bidder\* is in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and Bidders, and withholding and remitting child support.*

**Individual**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Name (please type or print)

\_\_\_\_\_  
Social Security Number

**Corporate**

\_\_\_\_\_  
Corporate Name (please type or print)

\_\_\_\_\_  
Signature of Corporate Officer Date

\_\_\_\_\_  
Name of Corporate Officer (please type or print)

\_\_\_\_\_  
Title (please type or print)

\_\_\_\_\_  
Taxpayer Identification Number

\*As used in this certification, the word "Bidder" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals

This form is required with RFQ Proposal submission.