



## **REQUEST FOR QUALIFICATIONS (RFQ) FOR BUILDING ENVELOPE CONSULTANT HOUSE DOCTOR SERVICES FOR THE TOWN OF CARLISLE**

Electronic proposals will be received at the Town Administrator's Office via email until 12pm on Wednesday, March 1, 2023.

The Town of Carlisle is seeking proposals from qualified firms to provide building envelope consultant services for various projects, including, but not limited to the relevant projects identified in town's current needs list (Appendix A). The Town may award contracts to more than one offeror to insure maximum responsiveness. The value of the projects' contracts to any one firm will not exceed \$1,000,000. The contract(s) shall be for an initial period of three (3) years.

Notice of this RFQ is published in the Central Register (which is a weekly publication of the Office of the Secretary of State), the Mosquito (a newspaper of general circulation in Carlisle), COMMBUYS, and posted on the Town's procurement website at <https://www.carlislema.gov/1088/Procurement>.

Copies of the Request for Qualifications may be obtained through the Town Administrator's Office on the town's procurement website – <https://www.carlislema.gov/1088/Procurement> on and after Wednesday, February 1, 2023. To be registered as obtaining the documents, you must email [rmclane@carlislema.gov](mailto:rmclane@carlislema.gov) and receive confirmation.

The successful proposer(s) must be an Equal Opportunity Employer. The Town of Carlisle reserves the right to reject any or all proposals, waive any minor informality in the proposal process, and accept the proposal deemed to be in the best interest of the Town.

Price will not be considered when initially evaluating a proposal. After the finalists have been ranked, the Town will enter price negotiations with one or more of the finalists.

**THERE MUST BE NO MENTION OF THE PROPOSOR'S FEE IN THE PROPOSAL. ANY MENTION OF THE FEE WILL SUBJECT THE PROPOSAL TO REJECTION.**

One electronic copy "Request for Qualifications (RFQ) for Building Envelope Consultant House Doctor Services" must be received by Ryan McLane, Town Administrator, Town of Carlisle, prior to 12pm on Wednesday, March 1, 2023. Failure to submit the electronic copy will result in a rejection. Any proposals received after such time will not be accepted unless the date and time has been changed by addendum. Delivery to any other email does not constitute compliance with this paragraph. It is the responsibility of the applicant to assure proper and timely delivery.

## **INSTRUCTIONS TO PROPOSORS**

### **CONTENTS OF THE PROPOSAL**

Each proposal should contain only pertinent information and requested documentation, demonstrate how the proposer meets the minimum qualifications set forth in the advertisement for the Request for Qualifications, demonstrate the previous relevant experience of the proposer and have a table of contents or easily discernible, labeled sections.

Each proposal must contain, at minimum, the following documents: Standard Designer Selection Application for Cities and Towns; a list of at least three entities, of which two must be in the public sector, for which you have conducted similar house doctor/on-call services; Resumes of key staff who will be assigned to this contract or to types of design work that may be performed under the contract, with a description of responsibilities; a signed Americans with Disabilities Form; a signed Anti-Collusion/Tax Compliance Form; and, a signed Truth in Negotiations Certificate. A proposal which does not provide the information and documentation requested or suggested may be deemed nonresponsive and therefore rejected. Failure to answer any question, to complete any form or to provide the documentation required will be deemed non-responsive and result in an automatic rejection of the proposal unless the Town determines that such failure constitutes a minor informality.

### **SUBMISSION OF THE PROPOSAL**

Each original proposal marked “Request for Qualifications (RFQ) for Building Envelope Consultant House Doctor Services” must be delivered electronically to Ryan McLane, Town Administrator, at [rmclane@carlislema.gov](mailto:rmclane@carlislema.gov) no later than 12pm on Wednesday, March 1, 2023. Failure to submit the electronic copy may result in rejection. It is the responsibility of the applicant to ensure that delivery is made in a proper and timely fashion. Any proposals received after such time will not be accepted unless this date and time have been changed by addendum. Delivery to any other office or department does not constitute compliance with this paragraph.

### **QUESTIONS AND CLARIFICATIONS**

Proposer questions or requests for clarification must be emailed to [rmclane@carlislema.gov](mailto:rmclane@carlislema.gov) no later than 12pm on Wednesday, February 22, 2023. At the sole discretion of the Town Administrator, an addendum will be issued with clarifications or answers to the questions to all registered bid holders.

Proposers are not to communicate directly with any employee of the Town of Carlisle, except as specified in this RFQ, and no other individual employee or representative is authorized to provide any information or respond to any question or inquiry concerning this RFQ.

Proposers with disabilities or hardships that seek reasonable accommodations, which may include the receipt of RFQ information and/or addenda and/or modifications in an alternative format, must communicate such requests in writing to the contact person, and reasonable accommodation will be made by agreement with the contact person on behalf of the Town.

## **CORRECTION, MODIFICATION, OR WITHDRAWAL OF PROPOSAL**

Prior to the deadline for receipt of proposals, a proposer may correct, modify, or withdraw its proposal by making the request in writing electronically. All corrections, modifications, or withdrawals must be delivered to the Town Administrator electronically and the electronic submission must contain a correction, modification, or withdrawal of the original proposal submitted for the project.

The Town accepts no liability for and will provide no accommodations to proposers who fail to check for amendments and/or modifications to this RFQ and subsequently submit inadequate or incorrect responses. Proposers may not alter (manually or electronically) the RFQ language or any RFQ component files. Modifications to the body of the RFQ, Scope of Work, terms and conditions, or which change the intent of this RFQ are prohibited and may disqualify a response.

## **ADDITIONAL INFORMATION REGARDING THE PROJECT**

Additional information about the project may be attached hereto. Any such information is deemed incorporated herein and made a part hereof. All proposers must be willing to sign the Town's contract or perspective bidder's submission must include requested/required contract edits based on the contract provided.

## **DURATION OF PROPOSAL**

A proposal will remain in effect for a period of ninety (90) calendar days from the deadline for submission of proposals, until it is formally withdrawn according to the procedures set forth herein, a contract is executed, or this RFQ is cancelled, whichever occurs first. The Town reserves the right to reject all proposals, or portions thereof.

## **ADDENDA**

The Town Administrator will email addenda only to those persons who are registered RFQ holders. To be a registered RFQ holder, bidders must register by sending the Town Administrator an email and receiving confirmation. Emails should be sent to [rmclane@carlislema.gov](mailto:rmclane@carlislema.gov).

## **SELECTION CRITERIA**

The selection of the finalists will be based, at minimum, on the following criteria: prior similar experience; past performance on public and private projects; financial stability; and identity and qualifications of the consultants who will work with the applicant on the project, including professional registration when required.

## **SELECTION PROCESS**

The Town Administrator's Office's Design Selection Committee ("the DSC") will review all proposals. The Committee will select at least three finalists and may require finalists to appear for an interview or provide additional information to the Committee, provided all finalists are afforded an opportunity to do so. The Town Administrator will notify all proposers of the names of the proposers

selected for interviews. The Town may award up to three (3) contracts.

The proposers chosen for interviews will be notified by email, of the date, time and place for their interviews and any other pertinent information related thereto.

Within a reasonable period after the last interview, the DSC will forward to the Town Administrator its recommendation of the final ranking of the short-listed applicants. The Town Administrator may, at his sole discretion, interview any of the finalists.

The Town Administrator may accept or reject the ranking. The proposer(s) selected by the Town Administrator will be notified either by mail, email, or telephone of the selection. The selected proposer(s) will submit a proposal along with a fee to the Town Administrator. Negotiations will commence thereafter, until an acceptable fee has been reached. In the event negotiations are unsuccessful, the Town will request the second ranked finalist, then, if necessary, the third ranked finalist, to submit a proposal in the same manner as for the first ranked finalist. In the unlikely event negotiations are unsuccessful with any of the three top finalists, the Town may re-advertise the RFQ or may select additional finalists from the original pool of proposers.

Once successful negotiations have concluded or if the fee has been set, the Town will prepare the contract(s) and submit them to the successful proposer(s) for signature. Upon receipt of the executed contract and all other required documents, the Town will have the contract(s) signed by Town officials.

## **SECTION I: SCOPE OF SERVICES**

The Town of Carlisle is seeking proposals from qualified firms to provide study and analysis of existing municipal buildings, engineering, design, permitting assistance associated landscape design, public bid phase assistance and construction administration for various projects, including, but not limited to those issues listed in appendix A, and projects on Town property as identified on an as needed basis.

The Town of Carlisle completed a Masterplan in 2022 which included a Path to Net Zero Report. It is endeavoring to improve the thermal performance of its municipal buildings and to electrify the building stock as the State of Massachusetts transitions to clean energy. Carlisle has been a Green Community since 2011.

Services may include but not be limited to analysis and design of mechanical, plumbing, electrical, and fire protection system upgrades; structural renovations and repairs, interior renovations, exterior building enclosure renovations, development of space needs, design, production of working drawings and technical documents, inventory existing furnishings, layout furnishings and to write specifications for new furnishings. Additional scopes of services may be added as needed. The successful designer must have a LEED (Leadership in Energy & Environmental Design) Accredited Professional certification on the proposed team. Familiarity and experience with MGL Public bid laws Chapter 149 and 30B is required.

The successful proposer(s) should be experience in retrofitting and refurbishing existing buildings including historic properties similar in size and scale to Carlisle's existing municipal buildings. They should be experienced in performing municipal building assessments, creating work plans and cost planning for the Town's long term capital plan.

The successful proposer(s) shall be familiar working with municipalities. Experience in working with smaller MA municipalities is desirable.

## **CONSULTANT PROJECT TEAM**

The Town may enter a contract with multiple prime vendors, which may be a person, a corporation, a partnership, or a joint venture (“Project Team”). The proposal must demonstrate that Project Team members have the specific experience outlined in this request. A Team Leader for the Project Team must be designated.

The selected firm or individual must have as part of the team the following disciplines: building envelope consultant. Other disciplines may be added as needed but are not required.

Each member of the Team must have demonstrated successful experience within his or her discipline. Members of the Project Team who are registered with a professional organization should provide evidence of registration or licensing to practice professionally within the Commonwealth of Massachusetts.

The Town may award multiple contracts. Each contract shall be for an initial term of three (3) years.

The Town will solicit fixed hourly rate fee proposals from any firm(s) awarded the contract and then fixed fee proposals for each project will be solicited from the firm as projects arise. The Town will utilize the contract(s) at the Town’s discretion. An award of a contract does not guarantee that the Town will utilize the Consultant’s services. The payment and performance obligation for each succeeding year of the contract will be subject to appropriation and other available funds.

Prospective proposers must demonstrate the ability to provide the services described in this document, must meet all minimum criteria, and must submit a complete proposal.

A contract will be awarded within 90 days of the proposal submission date, unless the award date is extended by consent of all parties concerned.

Please note that the attached list of projects includes many projects Carlisle is current considering and each project may require different disciplines. For this RFQ, the only requirement we are seeking is experience with building envelope consulting.

## **REGULATIONS**

Project designs must comply with all applicable federal and state laws and Town bylaws and regulations.

The Project Team’s recommendations should be informed by requirements in the Americans with Disabilities Act of 1990 (42 U.S.C. § 1210 et seq), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 791 et seq), the Massachusetts Architectural Access Board (M.G. L. c. 22 § 13A), and Universal Design.

Universal design (often inclusive design) refers to broad-spectrum ideas meant to produce buildings, products and environments that are inherently accessible to older people, people without disabilities, and people with disabilities. Examples of universal design include curb cuts or sidewalk ramps, color-contrast dishware with steep sides that assists those with visual or dexterity problems, cabinets with pull-out shelves, kitchen counters at several heights to accommodate different tasks and postures, etc.

## **PROJECT SCHEDULE**

The Town plans to begin work on projects contemplated under this Request for Quotes immediately upon award of the design services contract(s).

## **SECTION II: GENERAL TERMS AND CONDITIONS**

1. The contract(s) for the services will be between the Town and the successful proposer(s) and will be administered by the Town Administrator's Office. A sample of the Town's contract is included herein. All proposers must be willing to sign the Town's contract or perspective bidder's submission must include requested/required contract edits based on the contract provided.
2. A proposal will remain in effect for a period of 90 calendar days from the deadline for submission of proposals or until it is formally withdrawn, a contract is executed, or this RFQ is canceled, whichever occurs first. The Town reserves the right to reject all proposals.
3. The Town will have the option to cancel the contract provided that written notice is given 30 days prior to the effective termination date.
4. Any changes or additions to consultants or personnel named in the application must be submitted in writing and approved by the Town.
5. The Town encourages minority and/or women-owned business enterprises to apply, and if subcontractors are used, encourages the use of minority and/or women-owned subcontractors. The Town Administrator's Office can aid firms wishing to identify minority and/or women-owned subcontractors.

## **SECTION III: EVALUATION OF THE PROPOSALS**

1. **Proposals:** Each proposer must submit a written proposal to this RFQ which includes full and clear descriptions of evaluation criteria outlined in Section IV. A Selection Committee will evaluate each proposal based on these evaluation criteria.
2. **Price Proposal:** Price will not be considered when initially evaluating a proposal. After the finalists have been ranked, the Town will enter price negotiations with the proposer on a per project basis. Note that the Town intends to aggressively negotiate low overhead and mark-up costs for sub-consultants particularly when the work primarily involves only the sub-consultant.
3. **References:** References will be contacted to determine if the proposer is responsive and responsible. References will be asked about their overall impression of the proposer, quality of

work performed, understanding of factors affecting implementation, and the timeliness of the product. The Town reserves the right to use itself as a reference.

4. **Interviews:** The DSC may interview up to three finalists to determine if the proposer is responsive and responsible and meets the needs of the Town. The Town Administrator reserves the right to interview all finalists if he so chooses, after the DSC's deliberations. Proposers should therefore be prepared to travel to Carlisle for this interview, which should include the Team Leader and additional key personnel who will be working on projects on a day-to-day basis. The Town will not assume any travel costs related to these interviews.
5. **Award of Contract:** The Town may award multiple contracts to responsive and responsible proposers(s). The Town reserves the right to reject any and all proposals if it determines that it is in the best interest of the Town to do so.

#### **SECTION IV: PROPOSAL SUBMISSION REQUIREMENTS**

1. Standard Designer Selection Application for Cities and Towns (attached).
2. A list of at least three entities, of which two must be in the public sector, for which you have conducted similar house doctor/on-call services. Please include the name and telephone number of the contact person at each, the year of the contract, and the nature of the project. These contacts shall serve as references. Also, include no less than three personal references of the key members assigned to the project, also from former clients. Such references will be used to determine a proposer's responsibility. It is very important that these references contact numbers are accurate as the Town shall be contacting these references. If there is no person at the number or no one returns our call, then your firm will be determined not to have these required references. The Town reserves the right to use itself as a reference.
3. Responses to all evaluation criteria
4. Resumes of key staff who will be assigned to this project, with a description of responsibilities.
5. A signed Americans with Disabilities Form
6. A signed Anti-Collusion/Tax Compliance Form
7. A signed Truth in Negotiations Certificate

#### **SECTION V: EVALUATION CRITERIA**

The purpose of information requested in this section is to assist the Town in evaluating the proposer's overall qualifications, including its methodologies and technical abilities, and previous experience.

1. **Experience:** demonstrated by the proposed project team in designing similar projects as outlined in the scope of services. The proposer should describe the professional background of the firm and the

extent of previous experience of firm personnel or consultants to be assigned to the project and identify the anticipated role that each will play in the project. The submission must include an organizational chart and a list of potential subconsultants.

2. Quality of Services: as determined by information on other projects on which the firm and the personnel has provided. The proposer should provide detailed information about previous projects that are like those described in this scope of services.
3. Professional qualifications: The Project Team has the requisite knowledge and experience to perform the services described in this RFQ, including knowledge of, and experience in, the legal and administrative requirements, procedures, and practices related to the procurement of design and construction services for public buildings in Massachusetts. In addition, the relevant personnel on the team, either within the firm or through independent consultants, have current professional licenses and registrations required to execute this project.
4. Quality of references: Proposer should provide detailed description of at least three recent similar projects on which the proposer has performed similar services, identifying references with the owners of those projects as well as the personnel who worked on them and stating whether those individuals will be assigned to this Project. The Proposer should provide at least three references that should be able to comment substantively and positively on their experiences with the Proposer. The Town reserves the right to use itself as a reference and to contact references other than those provided by the consultant and to perform further due diligence to determine eligibility.
5. Capacity and Timeliness: The Project Team identifies their in-house capability to demonstrate their ability to help the Town of Carlisle accomplish the types of projects identified in Appendix A. Please note that bidders for this RFQ are not required to have experience with all disciplines, just building envelope consulting.
6. Responsiveness to Scope of Services and Proposed Strategy: The Project Team has demonstrated that it understands the requirements of the scope and has proposed a strategy for carrying out the work effectively.
7. Insurance/Financial Stability: The Proposer provides evidence of insurance for general liability, automobile, worker's compensation (statutory) and professional services liability, as required.
8. Forms: Submission of required statements and forms.



**Americans With Disabilities Act (42 U.S.C. 12131)  
Section 504 of the Rehabilitation Act of 1973**

The Americans with Disabilities Act (the "Act") applies to all employers of fifteen or more employees. All vendors that are subject to the Act must comply with its provisions. In further compliance with the Act, all Contractors who enter contracts with the Town are prohibited from discrimination against the Town's employees, regardless of the size of the Contractor.

The Act protects against discrimination based on "disability", which is defined as a physical or mental impairment that substantially limits at least one "major life activity"; discrimination against a person having a history or record of such impairment; and discrimination against an individual regarded - even if inaccurately - as having such an impairment. The Act also expressly prohibits discrimination that is based on an individual's relationship or association with a disabled person.

The bidder shall not discriminate against any qualified employee or job applicant with a disability and will make the activities, programs and services covered by any contract awarded through this procurement readily accessible to and usable by individuals with disabilities. To be qualified for a job, or to avail oneself of the bidder's services, the individual with the disability must meet the essential eligibility requirements for receipt of the bidder's services or participation in the bidder's programs or activities with or without 1) reasonable modifications to the bidder's rules, policies, and practices; 2) removal of architectural, communication, or transportation barriers; or, 3) provisions of auxiliary aids and services.

By submitting its bid, the bidder certifies to the Town of Carlisle that it understands and will comply with all applicable provisions of the Act, including compliance with applicable provisions of Section 504 of the Rehabilitation Act of 1973, if the bidder is receiving federal funds.

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

\_\_\_\_\_

(Print Name of person signing bid)

\_\_\_\_\_

(Signature & Title)

**This form must be submitted with your proposal**

**TOWN OF  
CARLISLE REQUEST  
FOR PROPOSALS**

**ANTI-COLLUSION/ TAX COMPLIANCE STATEMENT**

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

As required by M.G.L. Chapter 62C, Section 49A, the undersigned further certifies under penalty of perjury that the bidder has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support".

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Signature

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Name and title of person signing proposal

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Date

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Name of business

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Address

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**RETURN THIS FORM WITH YOUR PROPOSAL**

**TOWN OF CARLISLE**

**DESIGNER'S/ENGINEER'S OR CONSTRUCTION MANAGER'S TRUTH-IN-NEGOTIATIONS CERTIFICATE**

**For Negotiated Fees**

The undersigned hereby certifies under the penalties of perjury that the wage rates and other costs used to support its compensation are accurate, complete, and current at the time of contracting.

The undersigned 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 amounts if the Town determines that the fee was increased by such amounts due to inaccurate, incomplete, or noncurrent wage rates or other costs.

BY: \_\_\_\_\_

Name and Title: \_\_\_\_\_

\_\_\_\_\_

Project: \_\_\_\_\_

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

**Reference: M.G.L.c.7C, §51(b)**

**RETURN THIS FORM WITH YOUR PROPOSAL**

## **APPENDIX A – LIST OF CARLISLE ANTICIPATED PROJECTS\*\***

### **Existing Reference Documentation**

2017 Municipal Buildings Report

<https://www.carlislema.gov/DocumentCenter/View/44/Town-Facilities-Condition-Study-Prepared-TBA-Architects-March-2017-PDF?bidId=>

2022 Carlisle Masterplan

<https://www.carlisleplan.org>

2020 Path to Zero Emissions

<https://www.carlislema.gov/758/Path-to-Zero-Emissions>

2022 Library Redesign

Attached

Town Recommendations to Consultants

Existing buildings should be reused/remodeled before proposing new buildings/additions. Structures to be removed should be deconstructed not demolished.

Specified materials and appliances should be evaluated for their embodied carbon, from extract, manufacture, and travel to site. Recycled/ repurposed materials can be used where possible, and materials specified should be durable, and not contain chemicals found on the “Living Futures” Red List. <https://living-future.org/red-list/>

### **Planning**

Update the 2017 Municipal Buildings report as necessary.

Evaluate the status of the existing building envelope, (including thermal imaging).

Evaluate the use of space in and around the building.

Collate all the documentation including plot plans, septic systems, wetland surveys and floor plans into one file for reference. This file should be maintained and updated as work progresses.

Create a prioritized 8-year work plan for renovating and maintaining the buildings, reducing fossil fuel energy use to as close to net zero as is feasible, allowing for future electric heating/cooling systems, vehicle charging, and solar generation.

(The town is currently reviewing the status of the police station and the fire station.)

Provide a list of grant/ incentive opportunities which are relevant to the work undertaken in the workplan.

Provide the town administrator with future cost ballpark figures, (developing to more detailed costings as the projects evolve), to allow the town to develop a detailed long term capital plan and ensure that funding is available for the projects.

## **Department of Public Works**

In 2021 a trailer was added to the exterior of the DPW as break area including a bunkroom for the staff. This trailer still requires a sprinkler system, and the consultant may be asked to tie this planning into recommendations for the DPW building in its entirety.

### Exterior

Evaluate the roofing structure for PV panels.

Reroof the shed with additional insulation and PV panels if possible.

Replace exterior cladding and windows

### Interior

Replace overhead heaters in the garage only

Design and install exhaust mitigation system

Fire Alarm system update

Fire sprinkler design and installation

Wire garage for future Electric Vehicles

### Other Exterior Work.

Design/modify Salt Shed.

Replace fuel pumps

## **Gleason Library**

Swartz Silver Architects in 2002 developed the Gleason Library remodeling plan. The library is currently fundraising for this project.

<https://gleasonlibrary.org/about/library-renovation-design-project/>

The Town of Carlisle is looking to continue maintaining the Gleason Library in concert with any proposed updates. The selected contractor may be asked to help coordinate remodeling plans with existing infrastructure needs.

The exterior and interior LED lighting was installed in 2014 and 2016 respectively.

### Interior

Modify entryway.

Re-condition elevator

Sprinkler/Fire system

Expanding the mechanical room to accommodate a water filtration system to remove per- and polyfluoroalkyl substances (PFAS).

Elevator Upgrading for fire system.

### Landscaping:

Add wiring for future EV charging station

Investigate landscape planting alternatives

## **Town Hall**

### Exterior

Design and replace roof.

Investigate possible improvements with attic insulation.

Repair and replace HVAC systems – Investigate installing heat pumps.

Investigate increasing wall insulation. Investigate location of windows regarding solar gain and room size. Possible replacement of existing windows.

Replace siding as necessary.

### Interior

Recondition elevator

Remodel bathrooms

### Exterior

Redesign car parking layout.

Install EV charger.

## **Carlisle Public Schools**

### Interior

Overall Energy Strategy Analysis to investigate how to reduce the energy use at the school (HVAC Systems/ Heat Pumps/ Geothermal)

Investigate Comfort levels in the classrooms, especially in the 1962 portion of the school and review possible window replacement/ insulation improvement.

Lighting and systems

Flooring

Replace/Repair wastewater systems.

Hot water supply

Replacement of water fountains

The school electrical use needs to be sub-metered to allow for accurate recording of the usage.

Elevator Renewal

### Exterior

Landscaping.

Exterior Lighting.

Repair and upgrade wastewater treatment plant

\*\* This is not an all-inclusive list, but an example of the on-call design services that may be requested by the Town of Carlisle for the next three years

\*\* This RFQ requires a firm capable of assisting with the building envelope consulting discipline only. The Town understands that many of these projects require other disciplines.

# SAMPLE CONTRACT

## CONTRACT FOR ON-CALL BUILDING ENVELOPE CONSULTANT SERVICES

NOT TO EXCEED MAXIMUM CONTRACT AMOUNT (“Contract Amount”):

PROJECT TITLE:

PROJECT LOCATION:

AWARDING AUTHORITY:

AUTHORIZED REPRESENTATIVE:

ON-CALL DESIGNER (“Designer”):

Architect/Engineer Name Address  
City, Town Zip

This Contract for On-Call Building Envelope Consultant Services (the “Contract”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_ (“Effective Date”), by and between the Town of Reading, acting by and through its \_\_\_\_\_ (the “Awarding Authority”), and \_\_\_\_\_, a \_\_\_\_\_ with a principal place of business at, \_\_\_\_\_, (the “Designer”).

### ARTICLE 1: INTRODUCTION

**1.1** This Contract addresses the services required by a Designer, whether it is for the Study Phase, the Design Phase, and/or a third-party review of the Project. The Designer understands that its services are limited to those set forth in ARTICLE 3: ROLE OF DESIGNER and that such services shall be performed in accordance with Exhibit A: On-Call Building Envelope Consultant Study Services, Exhibit B: On-Call Building Envelope Consultant Services, Exhibit C: On-Call Building Envelope Consulting Services, and/or Exhibit D: Other On-Call Building Envelope Consultant Services, to the extent applicable.

**1.2 Term.**

This Contract shall have an initial duration of one (1) year from the Effective Date to \_\_\_\_\_. Notwithstanding any other provision to the contrary, all obligations pursuant to an Approved Scope of Services incorporated into the Contract during the Contract term shall not expire until all terms within the Approved Scope of Services are satisfied unless otherwise terminated. This Contract term may be extended by a written letter agreement, to allow for the completion of all Approved Scope of Services, as appropriate.

### ARTICLE 2: DEFINITIONS

Capitalized terms used in this On-Call Architectural Design Contract shall have the following meanings unless the context clearly otherwise requires.

**Additional Service(s):** Any work performed pursuant to this Contract that is not a Basic Service for which the Designer shall be entitled to compensation in accordance with Section 6.2 (Additional Services).

**Approval:** A signed written communication from an Authorized Representative of Awarding Authority to the Designer expressing Awarding Authority's acceptance of services or documents prepared by the Designer, which acceptance shall not relieve the Designer from any of its professional responsibilities under this Contract for such services or documents.

**Approved:** An item or items for which Approval has been given.

**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.

**Authorized Representative:** The person named as such on the cover page of this Contract (or such other person(s) designated in writing by the person named on the cover page), who has the authority to grant Approval on behalf of Awarding Authority as required under this Contract.

**Basic Fee:** The amount owed to the Designer for Basic Services performed pursuant to the Approved Scope of Services.

**Basic Services:** All services required to be performed by the Designer pursuant to the Approved Scope of Services except for those services specified in Section 6.2 (Additional Services).

**Building Information Model ("BIM"):** A digital representation of the physical and functional characteristics of a facility, which provides a reliable source of information upon which Awarding Authority may rely to make decisions regarding the facility during and after the Project, to be developed and delivered by the Designer, as specified in the Approved Scope of Services and in accordance with model requirements, including, but not limited to, derived documentation, data standards, model set-up, and other prescriptive information and model requirements provided herein.

**BIM Execution Plan:** A strategic and tactical tool to plan the interactions of the BIM team from the initiation of the Study Phase until the completion of construction and delivery by the Designer of the As-Built Drawings and associated BIM Deliverables, including, without limitation, integration of data, records, models, and commissioning information into CAMIS if requested by Awarding Authority, and which meets the requirements set forth in the Approved Scope of Services.

**BIM Manager:** Designer's representative responsible for coordinating the performance and execution of BIM-related services and Deliverables on the Project in accordance with the BIM Execution Plan among the Designer, Consultants, General Contractor, Owner's Project Manager (if any), and appropriate personnel participating in the Project from Awarding Authority.

**Confidential Information:** Shall have the meaning ascribed to it in Section 7.8.

**Construction Contract:** One or more contracts between Awarding Authority and a General Contractor or a Construction Manager for the construction of a Project.

**Construction Contract Documents:** The Construction Contract and any documents incorporated by reference into the Construction Contract.

**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:** A submittal consisting of a written calculation of the estimated Construction Cost prepared by the Designer, (if applicable) Designer's professional cost estimator and (if applicable) the independent cost estimator appointed by Awarding Authority, at various points during the Study Phase and Design Phase on the



basis of the *Uniformat II Elemental Classification for Building Specifications, Cost Estimating, and Cost Analysis* dated October 1999 published by the U.S. Department of Commerce NIST to the level of detail specified in the Approved Scope of Services, as well as the final cost estimate that the Designer is required by its Approved Scope of Services to prepare in *MasterFormat* (2004 edition, as updated 2010 and 2012) published by the Construction Specifications Institute. The Construction Cost Estimate includes contingencies for estimating, phasing and temporary work, and escalation.

**Construction Manager:** A sole proprietorship, partnership, corporation or other legal entity that provides construction management at risk services as defined M.G.L. c. 149A et seq. and procured by Awarding Authority pursuant to the aforementioned statute.

**Construction Phase:** The Phase of a Project that commences with the execution of a Construction Contract or commencement of construction services and concludes upon the completion of Project closeout in accordance with the terms of the Construction Contract Documents.

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

**Contract:** This Contract for Designer Service.

**Contract Amount:** Not to exceed amount referenced on the cover page of this Contract.

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

**Days:** Days shall mean calendar days, which include Monday through Friday excluding any U.S. holidays or any other holidays mutually recognized between the Designer and Awarding Authority, unless otherwise specified.

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

**Design Phase:** The portion of the Project that commences after the Study is Certified and Awarding Authority authorizes a Designer to perform Design Phase Services, during which the final design of the Project and the administration of the Construction Contract will occur. The Design Phase includes Design Development Phase, Construction Documents Phase, Construction Administration Phase, and the Facility Performance Evaluation Phase.

**Designated Representative:** The Designated Representative shall have the meaning prescribed to it in Section 4.22 of this Contract.

**Effective Date:** The latest date of the original execution of this Contract.

**Fixed Limit Construction Cost:** The maximum allowable Construction Cost established by Awarding Authority as set forth in Approved Scope of Services.

**General Contractor:** A person or entity contracting with the Awarding Authority for construction of a Project pursuant to a Construction Contract procured under M.G.L. c. 149 §44 A-F or M.G.L. c. 30 §39M.

**Gross Floor Area:** The total floor area of the Project buildings measured using the perimeter dimensions of the building shells and calculated in accordance with the *ASTM International Standard Classification for Building Floor Area Measurements for Facility Management – E-1236M-09e1*.

**Designer:** The architect or engineer identified on the cover page of this Contract that performs a Study, Design, Commissioning and/or Project Management services for a Project as set forth herein.

**Laws:** Applicable statutes, acts, rules, regulations, codes, requirements, orders, directions, ordinances, judgements, decrees, and injunctions of or by the United States of America, the Commonwealth of Massachusetts, and any political subdivisions of either.

**Notice to Proceed:** A written communication from an Authorized Representative of Awarding Authority directing the Designer to perform services in the Contract or proceed to the next phase of services as required in an Approved Scope of Services. The Designer may not proceed with any services pursuant to this Contract absent receipt of a Notice to Proceed.

**Owner's Project Manager:** A professional consultant or professional construction manager hired by Awarding Authority pursuant to M.G.L. c. 149 s. 44A1/2 or otherwise to work with the Designer as the owner's representative on the Project to ensure an optimum project including, without limitation, construction quality, cost control, and schedule control.

**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. The term "Permits" shall include permits and approvals from utility companies and also include permissions, approvals and consents by private parties necessary for the design and construction of the Project, such as an approval by a landlord or other holder of an interest in the Project site.

**Phase:** Phases shall include the Study Phase, the Design Phase, or Construction Phase.

**Program:** A document prepared "which defines a capital facility project in terms of its content, time, and cost so that it provides a clear and detailed frame of reference for the design and implementation process."

**Project:** The Project identified on the cover page of this Contract, and more specifically detailed in each Approved Scope of Services.

**Public Entity:** The Commonwealth of Massachusetts, Municipality or the political subdivision or subdivisions thereof of which Awarding Authority is an agency or instrumentality.

**Record Drawings:** The drawings prepared by the Designer and its Consultants pursuant to this Contract which incorporates 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 subcontractor(s) (if any).

**Reference Documents:** The guidelines, standards, specifications, templates, and other materials listed in Section 4.1 and incorporated by reference into this Contract, with which Designer services provided hereunder shall comply.

**Resident Engineer:** The on-site representative of Awarding Authority for the Project.

**Scope of Services:** A document describing the services to be performed by the Designer for a particular project, which, when authorized by a Notice to Proceed, shall be incorporated by reference into this Contract.

**Study:** A document that meets the requirements of this Contract, including the Approved Scope of Services to be incorporated into this Contract, that defines and quantifies the Awarding Authority's space needs, develops alternative architectural and/or engineering solutions to meet those needs, and contains a) a space program statement including spatial and relationship requirements, b) a recommended physical solution selected from several alternatives based on a determination of existing conditions and the feasibility of construction, c) a Construction Cost Estimate, d) schematic design and e) if applicable, a proposed construction schedule. The term "Study" as used in this Contract contains and includes a Program as defined herein. A Study may reveal that the Project is not warranted, or that the need can be satisfied without the construction of new, or the renovation of existing, facilities. This definition may be modified if the Approved Scope of Services clearly indicates that aspects of this definition are not intended to be included.

**Study Manager:** The person appointed by Awarding Authority to provide administration of the Study Phase of this Contract.

**Study Phase:** The portion of this Project that commences upon the receipt of a Notice to Proceed for an Approved Scope of Services that includes Study services and concludes upon the decision by Awarding Authority regarding Certification of Study. The Study Phase includes the Schematic Design Phase.

**Subcontractor:** The subcontractors to the General Contractor or Construction Manager of a Project who provide and install building components and systems.

**Substantial Completion:** “Substantial Completion” occurs when the Awarding Authority takes possession of the Project for occupancy.

**Surveys and Data:** Any existing and available surveys of the Project's building site or sites, showing the grades and lines of streets, pavements and adjoining properties; the rights, restrictions, easements, boundaries and contours of the site or sites; 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.

## **ARTICLE 3: ROLE OF DESIGNER**

### **3.1 Service Requirements.**

The Designer shall render the following services, as applicable. As such, the parties agree that the following checked Exhibits are binding:

- EXHIBIT A: On-Call Building Envelope Consultant Study Services
- EXHIBIT B: On-Call Building Envelope Consultant Services
- EXHIBIT C: On-Call Building Envelope Consultant Commissioning Services
- EXHIBIT D: Other On-Call Building Envelope Consultant Services

### **3.2 Amendments.**

The parties agree that if, at any time, the role of the Designer is changed or altered such that the nature of the services performed must be characterized differently, the Contract shall be amended in accordance with Section 7.23 (Amendments, Severability, Waivers).

## **ARTICLE 4: GENERAL PROVISIONS**

### **4.1 Scope of Services.**

#### **4.1.1. Approval of Scopes of Services**

Awarding Authority may send Designer a proposed Scope of Services for a Project at any time with a request for the following: (a) proposed contract schedule; (b) proposed Basic Fee for the requested services; (c) proposed billing rates in the form of Exhibit J: Certified Billing Rates of Designer's and Designer's Consultant's Personnel (to be used for calculation of Additional Services on an hourly basis, if elected by Awarding Authority) along with a Truth in Negotiations certificate; and (d) any suggested modifications to the proposed Scope of Services. Designer shall respond to such a request within ten (10) days of receipt of the proposed Scope of Services from Awarding Authority. Designer shall include in the proposed Scope of Services only information necessary to set forth the scope of work to be performed for a particular Project and shall not include any additional contractual terms which conflict with the terms of this Contract. The Awarding Authority reserves the right to propose changes to the Designer's proposal. If the Designer agrees to such changes, the Designer will resubmit an updated proposal reflecting such changes in a timely manner and, unless otherwise agreed by the parties, in no event later than three (3) business days from the parties' agreement on such changes. The Awarding Authority may Approve a Scope of Services by issuing a Notice to Proceed as set forth below or by a separate written Approval.

#### **4.1.2. Notice to Proceed**

Designer shall commence services for a particular Project upon receipt of a Notice to Proceed from Awarding Authority, which shall include the Approved Scope of Services, the Basic Fee for the services to be performed along with a payment schedule for such Basic Fee, and Certificates of Insurances, if

applicable.

#### **4.1.3. Incorporation of Scope of Services.**

Several Approved Scopes of Services may be incorporated into the Contract provided the aggregate amount of the proposed fees in connection with the Scopes of Services shall not exceed the Contract Amount.

#### **4.2 and 4.3 Intentionally omitted.**

#### **4.4 Study and Design Phase Services.**

In the event the Approved Scope of Services includes Study and Design Phase Services, Awarding Authority's Approval of the Scope of Services in no way obligates Awarding Authority to select the Designer to perform Design Phase Services. Following the conclusion of the Study Phase, the Study must be Certified and an appropriation of sufficient funds must be secured in order for the Project to proceed to the Design Phase. If and only if these requirements are satisfied, Awarding Authority may, in its sole discretion, select the Designer to proceed with the Design Phase of the Project. The Designer shall not incur any costs associated with the Design Phase Scope of Services prior to the receipt of applicable Notice to Proceed.

#### **4.5 Standard of Care.**

The Designer agrees that the services provided hereunder shall conform to the standard of care and the practice exercised by other professionals engaged in performing comparable services. The Designer further agrees that the personnel furnishing said services shall be qualified and competent to perform adequately the services assigned to them. The Designer further agrees that the recommendations, guidance, and performance of such personnel shall reflect such standards of care and practice.

#### **4.6 Time of Essence.**

The parties agree that time is of the essence for the completion of all services required by this Contract. The parties further confirm and agree that any and all Approved Contract Schedules shall reflect a reasonable period of time for completing the required services, obtaining required Approvals, obtaining all necessary Permits, addressing any and all issues, and performing the Basic Services in accordance with this Contract.

#### **4.7 Sequential Order.**

The sequential order of the Designer's services as set forth in this Contract and all documents incorporated by reference is of the essence. Awarding Authority shall have no obligation to Approve or pay the Designer for Deliverables prepared other than in the order required by the Approved Scope of Services, as applicable.

#### **4.8 Staffing.**

The Designer agrees that the Designer's personnel who shall provide services under this Contract are those listed in its application to the Designer Selection Board, attached as Exhibit E: Designer Selection Board Advertisement and Designer Application. No changes or additions may be made to this list without Approval by Awarding Authority, which Approval shall be granted after a showing that the substitution complies with applicable Laws and provides Awarding Authority with a level of skill, qualification, and experience equal to or better than the personnel listed in or outlined in the Approved Scope of Services. The Designer shall provide sufficient personnel to complete the services required by this Contract in a continuous and timely manner in accordance with an Approved plan and, when applicable, in accordance with the Approved Contract Schedule.

#### **4.9 Intentionally omitted.**

#### **4.10 BIM Manager.**

If required by an Approved Scope of Services, the Designer shall appoint an Approved BIM Manager as part of the performance of each Approved Scope of Services, unless otherwise agreed by the Awarding Authority in writing.

#### **4.11 Designer Duties Generally.**

The Designer shall be responsible for the professional accuracy and coordination of all Deliverables, including, without limitation, designs, drawings, specifications, digital files, cost estimates, and other services and submittals furnished by Designer and by its Consultants in accordance with the standard of care set forth in Section 4.5 (Standard of Care). The Basic Fee shall compensate Designer for all of Designer's obligations specified in this Contract except as otherwise provided herein.

#### **4.12 Quality Assurance.**

The Designer is responsible for Quality Assurance/Quality Control (QA/QC) in performance of all services required by the Designer under this Contract. The Designer shall be responsible for the completeness, accuracy, and coordination of all data and information relating to the Phase(s) for which Designer provides services hereunder, as the case may be.

#### **4.13 Calculations.**

Whenever calculating the Building Gross Area, Departmental Gross Area, or Net Assignable Area, as hereinafter defined, the Designer shall rigorously and exclusively adhere to the following specific methods of area calculation:

##### **4.13.1. Building Gross Area.**

The Building Gross Area shall be the floor area of a building for all levels that are totally enclosed within the building envelope, including basements, mezzanines, or penthouses. To compute the Building Gross Area, measure to the outside face of exterior walls, disregarding cornices, pilasters, and buttresses, that extend beyond the wall face. The Building Gross Area of basement space includes the area measured to the outside face of basement foundation walls.

##### **4.13.2. Departmental Gross Area.**

The Departmental Gross shall be the net assignable areas and required secondary circulation assigned to an occupant group or department. To compute the Departmental Gross Area, measure to the outside finished surface of the exterior building walls, to the finished surface of the walls surrounding major vertical penetrations and building core and service areas, and to the center of the walls dividing the space from adjoining Departmental Gross Areas.

##### **4.13.3. Net Assignable Area.**

The Net Assignable Area is the area required to accommodate a function, equipment, occupant, or occupant group. Net Assignable Area includes interior walls, building columns, and projections. Net Assignable Area excludes exterior walls, major vertical penetrations, building core and service areas, primary circulation, and secondary circulation. To compute the Net Assignable Area, measure to the inside surface of the exterior building walls, to the finished surface of the walls surrounding major vertical penetrations, building core areas, and service areas, and to the center of partitions separating the Net Assignable Area from adjoining Net Assignable Areas and from secondary circulation space.

#### **4.14 Designer to Evaluate Information and Conditions**

##### **4.14.1. Surveys and Data.**

The Designer shall analyze and evaluate the Surveys and Data furnished by Awarding Authority. If the Surveys and Data to be provided by Awarding Authority are not available or are, in the reasonable opinion of the Designer, insufficient to permit the Designer to properly perform its services hereunder, the Designer shall

submit a written request to Awarding Authority for permission to obtain the services of one or more Consultants to perform the necessary services. If such services are not included in the Approved Scope of Services the Designer shall be reimbursed for performance of such services in accordance with Section 5.2 (Consultants), or if the services are performed by the Designer's own employees, the Designer shall be compensated in accordance with Section 6.2 (Additional Services). In no case shall the Designer commence or authorize a Consultant to commence such services without the prior Approval of Awarding Authority. In the event that any Surveys and Data are updated, corrected, supplemented, or otherwise modified in accordance with this Section, Designer shall provide such information and documents to Awarding Authority.

#### **4.14.2. Existing Conditions.**

If an Approved Scope of Services calls for an analysis of existing conditions of a site or facility by Designer, the Awarding Authority shall provide Designer with the information related to such facility or site. Designer shall compare the information contained in its existing conditions analysis with such information, and if necessary shall provide any necessary updates.

#### **4.15 Cost Estimates.**

If Awarding Authority has appointed a construction manager or an independent cost estimator for the Project during any Phase, the Designer shall validate its Construction Cost Estimates with such person prior to submitting its Construction Cost Estimates to Awarding Authority for Approval. Awarding Authority's decision in matters pertaining to the Construction Cost Estimates and changes thereto shall be final but the Designer shall not be responsible for any decision by Awarding Authority that is inconsistent with generally accepted standards of professional practice provided that the Designer shall have advised Awarding Authority in writing of the inconsistency at the time of the Approval.

#### **4.16 Corrections by Awarding Authority.**

The Designer shall furnish appropriate competent professional services to the point where Awarding Authority's detail checking or reviewing shall be incorporated into the Project's design unless the Designer makes specific written objections and such objections are agreed to by Awarding Authority. Awarding Authority's decision in matters pertaining to this section shall be final, but the Designer shall not be responsible for any such decision by Awarding Authority that is inconsistent with generally accepted standards of professional practice provided that the Designer advised Awarding Authority in writing of the inconsistency at the time the decision was made.

#### **4.17 Approvals.**

##### **4.17.1. Awarding Authority's Approval Responsibilities.**

Awarding Authority, through an Authorized Representative, shall, without unreasonable delay, either grant any Approval required by this Contract or notify the Designer why such Approval is being withheld, provided that Awarding Authority shall not unreasonably withhold any Approval. If necessary, Awarding Authority shall attend meetings with the Designer to achieve the Approval of a Deliverable. Approval by Awarding Authority shall not, in any way, relieve the Designer from its professional responsibility for all services and duties hereunder.

##### **4.17.2. Designer's Approval Responsibilities.**

The Designer shall not work on any task or Deliverable without first receiving all required Approvals. The Designer shall make all changes in Deliverables required by comments made by Awarding Authority before the Deliverable will be Approved, unless such changes are in the Designer's professional opinion not suitable, in which case the Designer shall communicate, in writing, the reasons why they are not suitable. When necessary, the Designer shall meet with Awarding Authority, the Owner's Project Manager (if applicable) and any appropriate Consultants to develop a mutually satisfactory Deliverable. Within thirty (30) days after the Approval of Deliverables, the Designer shall provide Awarding Authority with clearly identified hard or electronic copies, as specified by Awarding Authority, of the Approved Deliverables.

#### **4.17.3. General Approval Procedures.**

In the case of any action requiring the Approval of Awarding Authority pursuant to the terms of this Contract the Designer shall, in a timely manner, make a written recommendation to Awarding Authority of the action which, in the Designer's judgement, should be taken. This recommendation shall be accompanied by all reasonably necessary supporting documentation as may be required by Awarding Authority. Awarding Authority shall be deemed to have relied on such recommendation and/or supporting information when granting any Approval or disapproval under this Contract. Without limiting the foregoing, in no event shall the Designer, on behalf of the Awarding Authority, grant any Approval or disapproval, waive any legal right or provision of any legal agreement, or impose any contractual sanctions.

#### **4.18 Materials Provided to the Designer**

All items provided to the Designer by Awarding Authority hereunder shall remain the property of Awarding Authority or the Public Entity. The Designer may use items provided by Awarding Authority only for the purposes of this Contract and in accordance with Section 7.8 (Security and Confidentiality; Publication), unless otherwise agreed to in writing by Awarding Authority. Awarding Authority does not guarantee, nor does it make any express or implied warranties concerning, the accuracy of any such information furnished to the Designer.

#### **4.19 Right to Offset.**

If Awarding Authority finds that any services previously paid for by Awarding Authority contained deficiencies, errors or omissions, then Awarding Authority may withhold from any future payment due to the Designer under this Contract an amount reasonably calculated by Awarding Authority to cover the cost of correcting the deficiency, error or omission until the services have been corrected. Awarding Authority may also offset against any payment due to the Designer the amount of any costs incurred by Awarding Authority arising from the deficiencies, errors, omissions, or the Designer's failure to provide required services. If Awarding Authority shall discover that the charge for any previously paid-for services was calculated based upon incorrect information, Awarding Authority may offset any overcharges against any future payment due to the Designer under this Contract. Any disputes related to offsets taken by Awarding Authority shall be subject to resolution pursuant to Section 7.27 (Mandatory Mediation) of this Contract. Nothing in this paragraph shall limit any legal remedies of Awarding Authority 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.

#### **4.20 Independent Contractor.**

The Designer is an independent contractor with respect to its duties under this Contract. No act or direction of the Awarding Authority shall be deemed to be the exercise of supervision or control of the Designer's performance hereunder.

#### **4.21 Designer's Responsibility and Relationship of Other Parties.**

The Designer shall not be relieved of any responsibility for the Designer's recommendations and duties pursuant to this Contract by virtue of any Approval or disapproval which the Awarding Authority shall issue; by the activities or duties of the Awarding Authority or Designer; or by any inspections, tests, or approvals that Awarding Authority, or other agency shall perform or cause to be performed. The Designer shall maintain a good working relationship with the Town, acting by and through Awarding Authority, and other parties hired by the Town, if any, who may perform services with respect to this Project.

#### **4.22 Designated Representative.**

##### **4.22.1. Appointment of Designated Representative.**

The Designated Representative of the Designer shall report directly to the Awarding Authority or its Authorized Representative in the performance of the Designer's duties pursuant to this Contract.

#### **4.22.2. Removal of Designated Representative.**

The Designer shall not remove the Designated Representative absent (i) his/her physical or mental incapacity to perform the services required of him/her hereunder, (ii) his malfeasance, misfeasance, or nonfeasance with respect to his/her obligations to the Designer or the Town, or (iii) the Town's request that the Designer change the Designated Representative. In the case of such removal, the Designer shall forthwith provide a qualified replacement for such individual which replacement must be acceptable to the Deputy Commissioner in her reasonable discretion. The Town has the right to demand removal and replacement of the Designated Representative if, in its sole discretion, the Designated Representative is not a suitable match for the Project. Failure to remove this Designated Representative in response to such demand shall constitute a breach of this Contract.

### **ARTICLE 5: EMPLOYMENT OF CONSULTANTS**

#### **5.1 Generally.**

Subject to the provisions of this Contract, the Designer shall employ the services of Consultants as needed and be responsible for their work, compensation, and the coordination and supervision thereof. Consultants so employed shall be Approved and registered in Massachusetts in their respective disciplines if registration is required by the applicable Laws. Designer shall provide Awarding Authority with complete copies of its contracts with each of its Consultants within fourteen (14) calendar days of the execution of such contracts.

#### **5.2 Retention of Special Consultants.**

##### **5.2.1. Approval.**

If the services of a Consultant not included in the Approved Scope of Services are required, the Designer shall submit a written request with a detailed description of the proposed services to Awarding Authority for the Approval of the solicitation of such a Consultant. Upon Approval of such request to solicit, the Designer shall obtain proposals from at least three (3) such consultants (including at least one MBE or WBE if available), to the extent feasible, and shall submit them to Awarding Authority together with the Designer's recommendation for selection before any work may be Approved. Awarding Authority may waive the requirement for three (3) proposals for good cause provided that such waiver shall be in writing. To the extent applicable, Designer shall comply with the requirements of the Massachusetts Prevailing Wage Law, M.G.L. c. 149, ss. 26-27D, in the employment of such special Consultants. Each such Consultant whose fee for such services exceeds \$25,000 shall demonstrate professional liability insurance coverage in an amount not less than its fee, unless specifically waived or modified by Awarding Authority.

##### **5.2.2. Compensation.**

The actual cost to the Designer for services of any Approved special Consultant shall be reimbursed by Awarding Authority, provided that Awarding Authority previously Approved such costs. The compensation for an Approved special Consultant may be a lump sum fee. For solicitation, inspection, analysis, coordination, and evaluation of such special Consultants' services, and for assuming liability therefore, the Designer shall be paid by Awarding Authority (i) 10% of the actual expense, if the cost of the specific services is estimated not to exceed \$100,000 or (ii) a lesser equitable percentage to be agreed upon by the Designer and Awarding Authority, if the not-to-exceed cost is projected to exceed \$100,000.

#### **5.3 Approval of Consultants.**

The Designer may not request Approval for the hiring of a substitute for any Consultant that was part of the team presented to the Designer Selection Board 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.

#### **5.4 Right to Rescind Approval of Consultants.**

At Awarding Authority's sole reasonable discretion, Awarding Authority may rescind prior consent to a Consultant of the Designer if the Consultant is or becomes incompetent, irresponsible, or otherwise unsatisfactory, and the Designer shall promptly remove such Consultant from the work. Any failure to remove such Consultant shall constitute a material breach of this Contract. If a Consultant is so removed, the Designer shall provide another Consultant with similar, or superior, credentials and qualifications that meets the standard required for Approval by Awarding Authority. The removal of such Consultant shall not relieve the Designer from its responsibilities for services of its Consultants under this Contract.

#### **5.5 Consultants Barred.**

The Designer shall not employ in any element of services under this Contract any person or firm that may create a Conflict of Interest set forth in Section 7.4 or otherwise, including, without limitation, any person or firm that expects to be a bidder, subcontractor, or supplier for other aspects any Project. 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 any aspect of the Project thereafter. In addition, the Designer acknowledges that the services provided under this Contract require trustworthiness, confidentiality, and an absence of conflicts of interest. The Designer shall not perform planning, study, or similar services for any agency or officer of the Town other than Awarding Authority, for any other federal, local or state public agency, or for any for-profit or nonprofit entity if those services are in any way related to the Project.

#### **5.6 Awarding Authority's Right to Assignment of Consultant Contracts.**

Subcontracts entered into by the Designer shall contain provisions permitting assignment of such contracts to Awarding Authority or its nominee in connection with the termination of this Contract should Awarding Authority elect to require such assignment. The Designer shall assign one or more subcontracts to Awarding Authority in connection with the termination of this Contract should Awarding Authority so require.

#### **5.7 Prompt Payments to Consultants.**

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

### **ARTICLE 6: PAYMENTS TO DESIGNER**

#### **6.1 Basic Fee.**

The Awarding Authority shall set forth the Designer's Basic Fee in the Notice to Proceed for each Approved Scope of Services. The total of all Basic Fees paid to the Designer under this Contract shall not exceed the Contract Amount. Any adjustment to this maximum fee amount shall be set forth in an amendment to this Contract. Any Notice to Proceed for an Approved Scope of Services may divide the Basic Fee for Designer Services for specific portions of a Project. In no event shall the Designer be entitled to any payment for the performance of any services for any Phase of a Project without first receiving a Notice to Proceed with Basic Services (with the Additional Services included therein, as applicable) for that Phase of a Project.

#### **6.2 Additional Services.**

With Approval, the Designer shall perform services in addition to those described as Basic Services in the applicable Approved Scope of Services. All services included in Exhibits A, B, C, D, or E shall be included as Basic Services in any Scope of Services unless otherwise expressly indicated by the Awarding Authority. For Additional Services, the Designer shall be compensated as determined by the Awarding Authority as follows:

a) by a lump sum fee agreed upon in advance in writing by the Designer and Awarding Authority, provided that the Designer shall submit a Truth in Negotiations certificate in connection with the negotiation of such lump fee and Designer agrees that the lump sum fee may be adjusted within one year of the completion of the applicable Approved Scope of Services if Awarding Authority's commissioner determines that the lump sum fee was increased due to inaccurate information provided to Awarding Authority in the negotiation of the lump sum fee; or

b) on an hourly basis at the rates submitted by Designer, as part of its proposed Scope of Services and Approved by Awarding Authority, for the Additional Services performed by the principal(s)-in-charge, prime consultant, management, design and production personnel employed by the Designer and, if applicable, by the Consultant(s); provided, however, that such personnel must be included in Exhibit E: Designer Selection Board Advertisement and Designer Application in order to be compensated hereunder for Additional Services. Clerical/support staff of the Designer and Consultants shall not be compensated and is considered part of office overhead. No authorization by Awarding Authority for the performance by the Designer of Additional Services shall be valid unless it is set forth in writing and contains a "not to exceed" fee for such Additional Services. Cost proposals for Additional Services shall also include a similar "not to exceed amount" for any associated reimbursable expenses as set forth in Section 6.3 below. Time expended by the Designer in assisting Awarding Authority in analyzing or providing testimony related to any claim associated with the Project shall be compensable under this Article.

### **6.3 Reimbursable Expenses.**

Awarding Authority shall not reimburse the Designer for any out-of-pocket expenses, including, without limitation, telephone or travel expenses, unless Approved by Awarding Authority in advance. If Approved, such reimbursable expenses must be set forth in a Scope of Services or a written request of the Designer. Awarding Authority will not pay for and Designer shall not include in its request for payment amounts for sales tax applied to any Approved reimbursable expenses. Awarding Authority shall not reimburse the Designer for travel expenses except for out-of-state travel specifically authorized by the Authorized Representative; provided, however, that if such reimbursement is pre-Approved, Awarding Authority shall reimburse such travel at the current travel reimbursement rates established for Town employees. The Designer shall be reimbursed by Awarding Authority for: (i) the Approved actual cost to the Designer of special consultants hired by the Designer, when such consultants' services are beyond what is described in the Approved Scope of Services, plus an additional percentage determined in accordance with Section 5.2 (Retention of Special Consultants); (ii) any other Approved reimbursement, including special printing, computer, and postage services beyond the scope of services described as Basic Services in the Approved Scope of Services.

### **6.4 Requests for Payment.**

All invoices from the Designer shall be submitted to Awarding Authority. All invoices will be promptly processed by Awarding Authority if they are in conformity with this Contract and properly documented; if they are not in conformity with this Contract or properly documented, the invoice(s) will be returned to the Designer who will be given the opportunity to cure the defects.

### **6.5 Method of Payment.**

For performance of all the services required under this Contract, the Designer shall be paid in accordance with the following procedures:

a) The Designer shall submit monthly payment requisitions, in arrears, based upon the payment schedule included in the Approved Scope of Services. The Designer and Awarding Authority may mutually agree, in writing, to revise the payment schedule provided in the Approved Scope of Services if the Authorized Representative determines that the payment schedule does not adequately compensate the Designer for the level of services actually rendered for that particular period. All payments made to the Designer are conditioned upon the satisfactory performance of its obligations hereunder.

b) Awarding Authority shall have the right to retain an appropriate portion of any contract payment up to 5 percent of the total contract fees for an Approved Scope of Services if it reasonably determines that the Designer has failed to acceptably fulfill its obligations hereunder.

- c) Designer shall submit an invoice for final payment in accordance with this Contract within 45 days of completion of an Approved Scope of Services.
- d) Awarding Authority may require that Designer receive payments via electronic funds transfer (EFT).

## **6.6 Errors in Bid Documents Prepared by the Designer.**

To the extent that the Designer prepares any bid documents, neither the Designer nor its Consultants may be compensated for services involving preparing or reviewing changes that should have been anticipated by the Designer in the preparation of the bid documents as reasonably determined by the Awarding Authority.

## **6.7 Equitable Adjustments to Basic Fee.**

If there is a substantial change in the services provided in the Approved Scope of Services as determined by Awarding Authority, the parties will agree to an equitable adjustment in the Basic Fee. For the purposes of this Contract, a “substantial change” in services shall include: (a) a substantial change in the scope of the Designer’s services that is not the fault of the Designer; or (b) a significant increase in the duration of a Project as provided in the Certified Study (if Designer is provided Design Phase Services), or as otherwise agreed upon in the Approved Scope of Services and/or Notice to Proceed, that is not the fault of the Designer.

## **ARTICLE 7: LEGAL PROVISIONS**

### **7.1 No Waiver.**

Awarding Authority’s review, Approval, acceptance of, or payment for, any of the services furnished by the Designer hereunder shall not be construed as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract. Awarding Authority’s Approval shall not, in any way, relieve the Designer from performing all work required under this Contract in accordance with the standard of care set forth in Section 4.5 (Standard of Care).

### **7.2 Intentionally omitted.**

### **7.3 Intentionally omitted.**

### **7.4 Conflicts of Interest.**

#### **7.4.1. Compliance with M.G.L. c. 268A and 231 C.M.R. 4.00.**

The Designer shall familiarize itself with and at all times comply with the conflict of interest law, M.G.L. c. 268A and with the Rules of Professional Conduct, 231 C.M.R. 4.00. The Designer certifies compliance with both the conflict of interest law (M.G.L. c.268A), specifically Section 5(f). If this is a privatization contract then the Designer shall be prohibited from hiring at any time during the term of the Contract, and for any position in the Designer’s company, any municipal management employee who is, was, or will be involved in the preparation of the solicitation for this contract, the negotiations leading to the awarding of the Contract, the decision to award this Contract, and/or the supervision or oversight of performance under this Contract.

#### **7.4.2. Prompt Disclosure of Conflicts of Interest.**

The Designer shall promptly disclose to Awarding Authority any matters which, although they may not violate M.G.L. c. 268A, may give rise to a potential conflict of interest on the part of the Designer or its personnel in its performance of its duties hereunder.

### **7.5 Proprietary Items.**

Without limitation, the Designer, the Designer’s employees and Consultants shall adhere to the provision of M.G.L.

c. 30 s. 39M, which provides in part:

*"Specifications for such contracts, and specifications for contracts awarded pursuant to the provisions of said sections forty-four A to forty-four L of said chapter one hundred and forty-nine, shall be written to provide for full competition for each item of material to be furnished under the contract; except, however, that said specifications may be otherwise written for sound reasons in the public interest stated in writing in the public records of the awarding authority or promptly given in writing by the awarding authority to anyone making a written request therefor, in either instance such writing to be prepared after reasonable investigation. Every such contract shall provide that an item equal to that named or described in the said specifications may be furnished; and an item shall be considered equal to the item so named or described if, in the opinion of the awarding authority: (1) it is at least equal in quality, durability, appearance, strength and design, (2) it will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased, and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the said specifications. For 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 refer to the law and consult with Awarding Authority for procedures regarding proprietary items. Awarding Authority may waive the provisions of this law for "sound reasons in the public interest." No such waiver shall bind Awarding Authority unless made in writing and executed by Awarding Authority. Awarding Authority may require that Designer provide documentation that any proprietary item can be maintained by at least two firms prior to waiving the provisions of this law.

#### **7.6 Accessibility and Non-Discrimination Laws.**

The Designer shall perform its services under this Contract in strict compliance with all Laws relating to architectural and program accessibility for persons with disabilities, including without limitation, the applicable sections of the Americans with Disabilities Act of 1990 amended by ADA Amendments Act of 2008 ("ADA", 42 U.S.C. sections 12101 et. seq.; 47 U.S.C. sections 225, 611), the 2010 ADA Standards for Accessible Design ("2010 ADA Standards"), and the Rules and Regulations of the Massachusetts Architectural Access Board ("MAAB"), codified at Section 521 of the Code of Massachusetts Regulations 521 CMR 1.00 et. seq., latest edition. To the extent related to its services under this Contract, the Designer hereby assumes the Public Entities' obligations, including those that exist under the MAAB's Rules, and/or the 2010 ADA Standards to design a facility accessible to and usable by persons with disabilities.

#### **7.7 Copyrights, Patents, and Intellectual Property Rights.**

The Designer hereby grants to Awarding Authority and the Public Entity an irrevocable royalty-free license to use for any lawful public purpose, including, without limitation, the right to share with other public agencies for their use on projects, the following items developed or made part of the work or services performed under this Contract: all Deliverables, drawings, designs, specifications, photographs, images, notes, materials and other work and ideas of the Designer and its Consultants related to the performance of this Contract which are, or may be, covered by copyright, patent, ore other intellectual property Laws or as to which the Designer and its Consultants may assert any rights or establish any claims under any such Laws. The Designer shall incorporate by reference this provision into all contracts with its Consultants on this Project including, without limitation, architects, engineers, estimators, designers, and photographers. The Designer and its Consultants, if any, shall not be responsible for changes made in the documents without the Designer's authorization, nor for Awarding Authority's or other public entities' use of the documents on projects other than the Project. Awarding Authority assumes the risk resulting from any such changes made in the documents without the Designer's authorization, or for Awarding Authority's or other public entities' use of the documents on projects other than the Project.

#### **7.8 Security and Confidentiality; Publication.**

Except as required for the discharge of its duties to Awarding Authority under this Contract, or required by subpoena or court order, the Designer (and any Consultants) agrees to hold all information, documents, and materials obtained or developed in connection with its services under this Contract (including, without limitation, all prints, plans, policies, procedures, studies, specifications and drawings, which relate to internal layout and structural

elements, electrical and mechanical systems, security measures, emergency preparedness, threat or vulnerability assessments, and any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the Town) that the Designer should reasonably know to be of a confidential or sensitive nature ("Confidential Information") in the strictest confidence, and shall not communicate, release, or disclose Confidential Information in any to any third party without the prior written Approval by Awarding Authority. The Designer shall not use any Confidential Information other than for the performance of services under this Contract. The Designer shall inform all persons to whom any such Confidential Information has been or will be communicated, released or disclosed of the privileged and confidential nature of Confidential Information, and shall ensure that all necessary steps are taken so that such Confidential Information is treated confidentially. Without limiting the foregoing, if the Project is a designated "Security Sensitive Information" project, the Designer shall execute separate Security Sensitive Information Procedures and Confidentiality Agreements and shall comply with such document protection requirements as may be referenced in said agreement.

#### **7.9 Intentionally omitted.**

#### **7.10 Records, Disclosure Statements, Accounting Controls, Audits.**

##### **7.10.1. Records To Be Kept for Six Years.**

The Designer shall make, and keep for at least six (6) years after final payment has been made, books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the Designer. [M.G.L. c. 30, s. 39R(b)(1)-(2)]

##### **7.10.2. Records Open to Inspection.**

Until the expiration of six (6) years after final payment has been made, pursuant to Section 7.10.1 of this Contract, the Awarding Authority and any other public official authorized by law, shall have the right to examine any books, documents, papers, or records of the Designer or of its Consultants, if applicable, that directly pertain to, and involve transactions relating to, the Designer or its Consultants. [M.G.L. c. 30, s. 39R(b)(1)-(2)]

##### **7.10.3. Changes in Method of Accounting.**

If this Contract is a contract for an amount exceeding \$10,000 or is a contract for the design of a Project with an Estimated Construction Cost exceeding \$100,000, and if the Designer shall make any change in its method of maintaining records that would materially affect any statements filed by the Designer with Awarding Authority, the Designer shall forthwith deliver to Awarding Authority a written description of such change, the effective date thereof, and the reasons therefor. The Designer shall submit with such description a letter from the Designer's independent certified public accountant approving or otherwise commenting on the change. [M.G.L. c. 30, s. 39R(b)(3)] The Designer hereby represents that there have been no such changes to date that have not been so reported to Awarding Authority.

##### **7.10.4. Warranty by Designer.**

If this is a Contract for an amount exceeding \$10,000 or is for the design of a Project with an Estimated Construction Cost exceeding \$100,000, the Designer warrants and represents that the Designer has filed a statement of management on internal accounting controls as set forth in Section 7.10.5 (Filing of Statement of Management on Internal Accounting Controls) below prior to the execution hereof.

##### **7.10.5. Filing of Statement of Management on Internal Accounting Controls.**

If this is a Contract for an amount exceeding \$10,000 or is for the design of a Project with an estimated Construction Cost exceeding \$100,000, the Designer shall file with Awarding Authority a statement of management as to whether the system of internal accounting controls of the Designer and its subsidiaries reasonably assures that: (1) transactions are executed in accordance with management's general and specific authorization; (2) transactions are recorded in a standard accounting format (i) to permit preparation of financial

statements in conformity with generally accepted accounting principles, and (ii) to maintain accountability for assets; (3) access to assets is permitted only in accordance with management's general or specific authorization; and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference. The Designer shall also file with Awarding Authority a statement prepared and signed by an independent certified public accountant, stating that the accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to (1) whether the representations of management in response to this section and sections 1 and 2 above are consistent with the result of management's evaluation of the system of internal accounting controls; and (2) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statements. [M.G.L. c. 7C, s. 51 M.G.L. c. 30, s. 39R(c)]

#### **7.10.6. Representation Regarding Audited Financial Statement.**

If this is a contract for an amount exceeding \$10,000 or is for the design of a Project having an estimated Construction Cost exceeding \$100,000, the Designer represents that it has filed prior to the execution hereof and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in Section 7.10.7 (Filing of Annual Statement Required) below.

#### **7.10.7. Filing of Annual Statement Required.**

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

#### **7.10.8. Records Not Public.**

Records and statements required to be made, kept, or filed under the provisions of Section 7.10 shall not be public records as defined in M.G.L. c. 4, s. 7 and shall not be open to public inspection; provided, however, that such records and statements shall be made available pursuant to the provisions of Section 7.10.2 (Records Open to Inspection) above.

### **7.11 Insurance.**

**7.11.1** 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.

**7.11.2** 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 Awarding Authority at the time of execution of the Contract. All such policies and certificates shall be written through companies and in forms acceptable to the Awarding Authority'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 Awarding Authority. The insurance provided under clauses 7.11.1.1, 7.11.1.4 and 7.11.1.5, above, shall name the Awarding Authority and such other parties as the Awarding Authority shall require as "Additional Insured" parties. Insufficient insurance shall not release the Designer from any liability for breach of its obligations under this Contract.

**7.11.3** 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 Awarding Authority prior to the employment of such Consultant by the Awarding Authority. A liability insurance policy maintained under this paragraph shall provide for coverage of such type and duration and in such amount as the Awarding Authority shall require.

#### **7.12 Indemnification.**

To the fullest extent permitted by law, the Designer shall indemnify, defend, and hold harmless the Public Entity, Awarding Authority, and all of their agents, employees, successors and assigns from and against all claims, damages, losses, and expenses, including, but not limited to court costs, reasonable attorneys' fees, interest, and costs to the extent caused by or resulting from the willful misconduct and/or negligent acts, errors, or omission of the Designer in performance of the services covered by this Contract, whether by the Designer or its employees or Consultants, provided that Awarding Authority shall notify the Designer of such suits and claims within a reasonable time after Awarding Authority becomes aware of them. The Designer shall be afforded an opportunity to participate in the defense and/or settlement of all such suits and claims. The Designer shall not be bound by the amount of damages suffered in any litigation or settlement unless the Designer is given the reasonable opportunity to participate in negotiations for settlement and/or defense of such litigation or claim. As used in this paragraph, the term "agent" shall specifically exclude any construction-related personnel.

#### **7.13 Non-Resident Processing; Signatures.**

Every Designer that is a nonresident of the Commonwealth hereby appoints the Secretary of the Commonwealth of Massachusetts to be his true and lawful attorney in and for Massachusetts, upon whom all lawful processes in any action or proceeding arising out of this Contract may be served. When legal process against any such person is served upon the Secretary of State, a copy of such process shall forthwith be sent by registered mail with a return receipt requested by Awarding Authority or its lawful attorney to be said Designer at the address set forth in this Contract. Said Designer hereby stipulates and agrees that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served on said Designer. Such authority shall continue in force so long as any liability remains outstanding against said Designer.

#### **7.14 Intentionally omitted.**

#### **7.15 Truth-In Negotiation Certificate.**

The Designer shall provide a truth-in negotiations certificate and in the form attached hereto as Exhibit I: Truth-In Negotiation Certificate, with each proposed Scope of Services for a Project prior to the issuance of a Notice to Proceed.

#### **7.16 Employment Eligibility Verification Requirements**

The Designer certifies, under the pains and penalties of perjury, that they shall not knowingly use undocumented workers in connection with the performance of the Contract; that, pursuant to federal requirements, they shall verify the immigration status of all workers assigned to Contract without engaging in unlawful discrimination; and that they shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker. The Designer understands and agrees that breach of any of these terms during the period of a Contract may be regarded as a material breach, subjecting the Designer to sanctions, including, but not limited to, monetary penalties, withholding of payments, contract suspension, or termination.

**7.17 Intentionally omitted.**

**7.18 Intentionally omitted.**

**7.19 Intentionally omitted.**

**7.20 Non-Discrimination in Employment and Affirmative Action.**

**7.20.1. Compliance.**

The Designer shall comply with all Laws promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, disability, or sexual orientation, or for exercising any right afforded by Law. The Designer shall comply with all applicable Laws prohibiting discrimination in employment including, but not limited to: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; American with Disabilities Act Title I: Employment, 42 U.S.C. s. 12111 et seq.; M.G.L. c. 151B s. 4(1); and all relevant administrative orders. If a complaint or claim alleging violation of such statutes, rules, or regulations is presented to the Massachusetts Commission Against Discrimination (“MCAD”), the Designer and its agents agree to cooperate fully with MCAD in the investigation and disposition of such complaint or claim. In the event of the Designer’s noncompliance with the provisions of this section, Awarding Authority shall impose such sanctions as it deems appropriate, including, but not limited to, withholding of payments due the Designer under this Contract until the Designer complies, and termination or suspension of this Contract.

**7.20.2. Material Breach.**

Any breach of this Section shall be regarded as a material breach and shall be subject to all other sections of this Contract. Awarding Authority shall have access to all records which are necessary to document compliance with this Section.

**7.21 Sexual Harassment and Workplace Violence Prevention.**

The Town does not tolerate sexual harassment, workplace violence or a hostile work environment. It is the goal of the Town to promote a workplace where people treat each other with dignity and respect. This applies to all Town employees, consultants, contractors and subcontractors regardless of tier, and covers actions within, by, among and across these groups as they interact with each other. As part of this contract, the Designer agrees to promote a workplace that is free from sexual harassment and workplace violence, and to require all of its subcontractors to agree to the same. Without limiting its other rights and remedies of removal and/or termination, the Awarding Authority reserves the right to remove or terminate individuals and/or contractors whose conduct violates any of the provisions of this paragraph.

**7.22 Choice of Law.**

This Contract shall be construed under and governed by the Laws of the Commonwealth of Massachusetts. The Designer, and the agents thereof, agree to bring any federal or state legal proceedings arising under this Contract, in which either the Town or Awarding Authority is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts. This section shall not be construed to limit any rights a party may have to intervene in any action, in any court or wherever, pending, in which the other is a party.



### **7.23 Amendments, Severability, Waivers.**

No amendment to this Contract shall be effective unless it is in writing and is executed by authorized representatives of both parties. If any provision of this Contract is declared or found illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. The remainder of this Contract shall be enforced to the fullest extent permitted by Law. Awarding Authority reserves the right to waive any provision or requirement of this Contract if it, Awarding Authority, determines that such waiver is justified and is in the public interest. No waiver shall be effective unless in writing and signed by an Authorized Representative. No other action or inaction by Awarding Authority shall be construed as a waiver of any provision of this section.

### **7.24 Personal Services – No Assignment.**

In execution of this Contract the Town is relying upon the financial condition and skill of the Designer and the particular individuals employed by the Designer. This is an agreement for personal services. In no event may the Designer's duties hereunder be assigned to any other person or entity except in the case of a merger or reorganization of the Designer where the staff assigned to perform the Designer's duties hereunder does not change, where the merger or reorganization does not have any adverse impact on the salaries or performance of such staff, and where the Deputy Commissioner Approves such assignment. The Awarding Authority shall be entitled to its sole and absolute discretion in granting or withholding such Approval.

### **7.25 Non-Appropriation.**

Payments are subject to appropriation and shall be made only for work performed in accordance with the terms of this Contract. The Designer shall not be obligated to perform, and may not perform, services outside the duration and scope of this Contract without an appropriate amendment to this Contract, and a sufficient appropriation to support such additional services. The Town may immediately terminate or suspend this Contract in the event that the appropriation(s) funding this Contract is eliminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Contract.

### **7.26 Notices, Approvals, Invoices.**

Notices to the Designer shall be deemed given when hand-delivered to the Designer at the Project site, or when deposited in the U.S. mail addressed to the Designer at the Designer's address specified in this Contract, when delivered by courier to said address, or when delivered via email. Unless otherwise specified in writing by Awarding Authority, notices and deliveries to Awarding Authority shall be effective only when delivered at the address specified in this Contract and date-stamped at the reception desk or for which a receipt has been signed by the agent or employee designated by Awarding Authority to receive official notices.

### **7.27 Disputes.**

All claims, disputes and other matters in question between the Awarding Authority 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 Middlesex 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 this Contract, 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 Awarding Authority reserves the following rights in connection with claims and disputes between the Awarding Authority and the Designer, which rights may be exercised by the Awarding Authority unilaterally and in the Awarding Authority's sole discretion: (1) the right to institute legal action against the Designer in any court of competent jurisdiction in lieu of demanding mediation; and/or (2) the right to demand mediation against the Designer in the Awarding Authority's sole discretion.

### **7.28 Certifications of Designer Made under Pains and Penalties of Perjury.**

No changes shall be made in the matters represented in this Section at any time during the life of this Contract without written notification to Awarding Authority and, when required, receipt of written Approval from Awarding Authority.

### **7.28.1. Designer's Beneficial Owners.**

By signing this Contract, the Designer certifies that, under the pains and penalties of perjury, the entities and individuals named in Exhibit M: Beneficial owners, Professional Registrants, Existing Government Contracts are the legal and beneficial owners of the Designer as of the date of the execution hereof. [M.G.L. c. 7C, ss. 48, 51]

### **7.28.2. Professional Registrants.**

By signing this Contract, the individual executing this Contract on behalf of the Designer certifies under the penalties of perjury that the individuals named in Exhibit M: Beneficial owners, Professional Registrants, Existing Government Contracts are registered by the Commonwealth as architects, landscape architects, or engineers pursuant to the provisions of General Laws Chapter 112, ss. 60A - 60O and further that (a) if the Designer is an individual the Designer is the individual named below, (b) if the Designer is a partnership, the majority of all the partners are persons who are registered architects, landscape architects, or engineers, (c) if the Designer is a corporation, sole proprietorship or joint stock company or other entity, the majority of the directors or a majority of the stock ownership and the chief executive officer, are persons who are registered architects, landscape architects, or engineers and the person to have the Project in his or her charge is registered in the discipline required for the Project, or (d) if the Designer is a joint venture, each joint venturer satisfies the requirements of the preceding clauses (a) – (c) as the case may be [M.G.L. c. 7C, s. 48]

### **7.28.3. Reserved.**

### **7.28.4. No Inducements.**

By signing this Contract, the Designer certifies that, under the pains and penalties of perjury, the Designer has not given, offered, or agreed to give any person, corporation, or other entity any gift, contribution, or offer of employment as an inducement for, or in connection with, the award of this Contract. No Consultant of 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 of a contract by the Designer. Lastly, 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 a contract 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.

### **7.28.5. Tax Returns.**

By signing this Contract, the Designer certifies that, under the pains and penalties of perjury, pursuant to M.G.L. c 62C s. 49A, the Designer has filed all state tax returns, paid all taxes, and complied with all Laws of the Commonwealth relating to taxes; and that, pursuant to M.G.L. c. 151A s. 19A, the Designer has complied with all Laws of the Commonwealth relating to contributions and payment in lieu of contributions to the Employment Security System.

### **7.28.6. Existing Government Contracts.**

By signing this Contract, the Designer certifies under the pains and penalties of perjury that the list in Exhibit M: Beneficial owners, Professional Registrants, Existing Government Contracts is a listing of all other existing contracts or income derived by the Designer from the Commonwealth or any political subdivision thereof, or public authority therein, from the Federal Government or any agency thereof, and from Awarding Authority or any governmental source for services rendered [M.G.L. c. 7C s. 48].

### **7.28.7. Annual Reports; Corporate Filings.**

By signing this Contract, the Designer certifies that, under the pains and penalties of perjury, if the Designer is a corporation, the Corporation has filed with the Secretary of State all certificates and annual reports required by M.G.L. c. 156B, s. 109 (Business Corporation), by M.G.L. c. 156D (Foreign Corporation), or by M.G.L. c. 180

s. 26A (Non-Profit Corporation).

#### **7.28.8. Reserved.**

By signing this Contract, the Designer certifies that, under the pains and penalties of perjury, at the time of execution, the Designer is in compliance with the provisions of Section 7 of Chapter 521 of the Acts of 1990 as amended by Chapter 329 of the Acts of 1991, and 102 C.M.R. 12.00 and the Contractor is either a “qualified employer” because it has fifty (50) or more full-time employees and has established a dependent care assistance program, child care tuition assistance, or on-site or near-site child care placements, or is an “exempt employer.”

#### **7.28.9. Debarment; Suspension.**

By signing this Contract, the Designer certifies that, under the pains and penalties of perjury, the Designer is not currently debarred or suspended by the Commonwealth of Massachusetts, or any of its entities or subdivisions under any Commonwealth Law or regulation, including, but not limited to M.G.L. c. 29, s. 29F and M.G.L. c. 152 s. 25C, or any other state and that it is not currently debarred or suspended by the Federal Government under any federal law or regulation.

### **7.29 Events of Default**

#### **7.29.1. Default by the Designer.**

If the Designer fails to cure within thirty (30) days after receipt of a written notice of default, the following shall constitute events of default by the Designer which shall entitle Awarding Authority to terminate this Contract for cause:

- (a) Failure of any representation or warranty made in this Contract or in the performance of the Designer’s duties hereunder;
- (b) Violation of any law by the Designer in the performance of its duties hereunder
- (c) Failure to perform any material duty hereunder, including but not limited to the failure to remove and replace the Designated Representative upon Awarding Authority’s request as set forth in Section 4.22.2 (Removal of Designated Representative);
- (d) Any bankruptcy proceeding voluntarily or involuntarily entered into by the Designer.

#### **7.29.2. Default by Awarding Authority.**

A breach by Awarding Authority of its obligations to the Designer hereunder shall not be considered an event of default unless the Designer shall first give Awarding Authority written notice of the specific matters as to which Awarding Authority is in breach of this Contract and Awarding Authority fails to cure within thirty (30) days after receipt of such notice.

### **7.30 Termination**

#### **7.30.1. Termination by Awarding Authority for Convenience.**

Awarding Authority may terminate this Contract in whole or in part without regard to any fault or failure to perform by the Designer and solely for Awarding Authority’s convenience at any time by written notice to the Designer. In the event of such termination, the Awarding Authority shall incur no liability, except for the obligation to make payments to Designer in accordance with this Contract up to and including the date of termination, including progress payments due under this Contract, proportionate payment for partially completed work, and (if applicable) reimbursable expenses plus reasonable costs incurred in connection with the termination as approved by Awarding Authority. The payments to the Designer shall not exceed the limits established for the services when Approved or the fair value of the Designer’s work, as Awarding Authority

shall determine. No amount shall be allowed for anticipated profit on unperformed services. Termination of this Contract for convenience shall not impair the right of Awarding Authority to recover damages occasioned by the fault or default of the Designer in the performance of its duties under this Contract.

#### **7.30.2. Termination by Awarding Authority for Cause.**

By written notice to Designer, the Awarding Authority may terminate this Contract if Designer fails to remove a material default after thirty (30) days of written notice to Designer from the Awarding Authority of such default. If after thirty days, this Contract is so terminated, Awarding Authority may assume those outstanding obligations and/or enter into a contract with a replacement designer to complete the Project. In such case, Designer shall be liable to Awarding Authority for any damages, including without limitation the administrative costs and attorneys' fees and costs, incurred by Awarding Authority thereby to the extent resulting from Designer's breach. These rights and remedies of Awarding Authority are in addition to any rights and remedies provided by law or under this Contract and shall not impair the right of Awarding Authority to recover damages occasioned by fault or default of the Designer in the performance of its duties under this Contract.

#### **7.30.3. Termination by Designer.**

By written notice to Awarding Authority, the Designer may terminate this Contract if Awarding Authority fails to remove a material default after one hundred twenty (120) days of written notice to Awarding Authority from the Designer of such default. Upon any such termination by the Designer, Awarding Authority shall pay to the Designer all compensation and reimbursement payable to the Designer in accordance with this Contract up to and including the date of termination, plus reasonable costs incurred in connection with the termination as approved by Awarding Authority. The payments to the Designer shall not exceed the limits established for the services when Approved or the fair value of the Designer's work, as Awarding Authority shall determine. No amount shall be allowed for anticipated profit on unperformed services.

#### **7.30.4. Designer's Duties upon Termination.**

Within thirty (30) days of any termination of this Contract the Designer shall deliver to Awarding Authority all data, drawings, specifications, digital files, reports, estimates, summaries, and such other information and materials, whether completed or in process, as may have been accumulated by the Designer in performing this Contract, all such documents, information, and materials being the property of Awarding Authority as set forth in Section 7.7 (Copyrights, Patents, and Intellectual Property Rights) and (b) assign any subcontracts to Awarding Authority or its nominee if so requested by Awarding Authority, as described in Section 5.6 (Awarding Authority's Right to Assignment of Consultant Contracts).

### **7.31 Release and Discharge.**

The acceptance by the Designer of payment for services paid under the provisions of this Contract, shall in each instance operate as a release of the Town, including but not limited to Awarding Authority, and every employee and agent thereof, 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 Awarding Authority within the payment requisition; and except that such acceptance shall not operate as a release of claims not known to the Designer, which the Designer could not reasonably have known about at the time of such acceptance.

### **7.32 Force Majeure.**

Neither party shall be liable to the other or be deemed to be in breach of this Contract for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Dates or times of performance shall be extended to the extent of delays caused by events described in this Exhibit, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.

*REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURES ON FOLLOWING PAGE.*

**SIGNATURES**

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

**DESIGNER:**

Printed Name:

Title:  
hereunto duly authorized

Date:

**MUNICIPALITY:**

Printed Name:

Title:  
hereunto duly authorized

Date:

## **EXHIBIT A: On-Call Building Envelope Consultant Study Services**

**A.1. Introduction.** Unless subsequent exhibits otherwise prescribe the application this Exhibit, this Exhibit and the content herein applies only to the Designer if the Designer's Approved Scope of Services includes Study services. The terms and provisions of this Contract of which this Exhibit is a part are incorporated herein by reference.

**A.2. Definitions.** All terms previously defined are hereinafter incorporated into this Exhibit.

**A.3. Study Phase Term.** The Study Phase shall commence upon the issuance of a Notice to Proceed for an Approved Scope of Services that includes Study services and concludes upon the decision by Awarding Authority regarding Certification of Study.

**A.4. Purposes of the Study.** The purpose of this Study is to ensure that the Municipality does not expend resources on final design services for projects that are not necessary, not technically feasible, or for which sufficient funds are not available for construction.

**A.5. Study Phase Governing Documents.** During the Study Phase, the Designer shall perform its duties in accordance with all applicable Laws, the provisions of this Contract and the Approved Scope of Services, which shall be incorporated herein by reference upon its Approval. In addition, the Designer shall comply with Designer Selection Board Project Criteria advertised by the Designer Selection Board for this Contract, and the guidelines and procedures set forth in the reference documents identified in Section 4.1 (Reference Documents). In the case of conflict between the terms of this Contract and any of the provisions incorporated herein by reference, the Designer shall make a written request for clarification to Awarding Authority and Awarding Authority shall provide a prompt written response, which shall be conclusive.

**A.6. Study Phase Materials.** At the commencement of the Study Phase, Awarding Authority shall deliver to the Designer relevant Surveys and Data related to the Project.

**A.7. Initial Meeting.** After receipt of a Notice to Proceed with Study services for a Project, the Designer, its key personnel, and such key Consultants as may be designated by Awarding Authority, shall attend an administrative conference at the Project location, unless agreed to otherwise, with the Study Manager for the purposes of making introductions, exchanging contact information, clarifying relationships, and reviewing billing procedures.

**A.8. Preparation of Scope of Services.** The Designer, working with the Study Manager, shall revise the Approved Scope of Services, as necessary, and shall submit the revised Scope of Services to Awarding Authority for Approval within two (2) weeks from the Notice to Proceed of this Contract. The Approved Scope of Services shall:

- (a) specify the sequences in which these tasks and Deliverables must be performed, prepared, and submitted; and
- (b) contain a Contract Schedule, including any recommended adjustments to the schedule of payment for the Study Phase Basic Fee, and an estimated Basic Fee for Design Phase.

**A.9. Permits identified during the Study Phase.** During the Study Phase, the Designer shall identify and review all of the Permits required for the construction, use, and occupancy of the Project and shall provide a list of all the Permits required and an indication of when they must be applied for in the Design Phase of the Project. For each such permit, the Designer shall estimate, in detail, the cost of obtaining the Permit and the likely duration of the Permit issuing process. These costs and time requirements shall be accurately reflected in any Construction Cost Estimates that the Designer is required to submit under this Contract, in any proposed Contract Schedule, and included in the Study.

**A.10. Schematic Design Phase Services.**

**A.10.1 Schematic design documentation.** As part of the Study, Designer shall provide a schematic design and shall provide the following schematic design level documentation which shall include and incorporate Awarding Authority comments:

- (a) Building Information Model with the Level of Development specified in the BIM Guidelines for Design and Construction, drawings, concept sketches, three dimensional representations, and specifications;
- (b) an analysis of the design's compliance with building code;
- (c) an environmental assessment;
- (d) a preliminary life cycle cost analysis evaluating the short-term and long-term costs and technical feasibility of using alternate technologies to provide, lighting, heat, water heating, air conditioning, refrigeration, gas or electricity. The Designer shall calculate the life- cycle costs in accordance with assumptions and requirements set forth in M.G.L. c. 7C s. 29 and c. 149 s. 44M and the current Awarding Authority Designers Procedures Manual and, if requested by Awarding Authority, shall coordinate with the Department of Energy Resources regarding the life cycle cost analysis;
- (e) a summary of applicable public utility incentive programs as determined by Awarding Authority and a plan for implementation or inclusion of incentives;
- (f) an analysis of the design's compliance with Massachusetts Architectural Access Board requirements and how it meets Awarding Authority's ADA Title II obligations;
- (g) a space measurement analysis for the design which shall verify that the sum of all program floor areas in the Project plus all other floor areas in the Project equal the Gross Floor Area of the Project;
- (h) a Construction Cost Estimate for the design in Unifomat II Level 2 format with aggregated unit rates and quantities supporting each item and verified as accurate and complete by the cost estimator and/or Owner's Project Manager , if any, employed by Awarding Authority;
- (i) a summary comparing the schematic plans, specifications and Estimated Construction Cost of the design to the Program and Certified Study requirements and an explanation for any deviation therefrom.

**A.10.2 Approval of Schematic Design Phase Building Information Model and documents.** Schematic Design Phase drawings, specifications, Building Information Model (with the Level of Development specified in the BIM Guidelines for Design and Construction), Construction Cost Estimates and other Deliverables shall be subject to the written Approval of Awarding Authority. Unless a lesser number is requested by Awarding Authority, the Designer shall submit to Awarding Authority for Approval two (2) paper and one (1) electronic copy of schematic design drawings, specifications, cost estimates, and other Deliverables.

**A.11. Evaluation of Designer [M.G.L. c.7C s.48].** Awarding Authority shall provide the Designer with a written preliminary evaluation of its performance at the completion of the analysis stage of the Study for informational purposes. Awarding Authority will also evaluate the Designer after the Designer has completed its Study Phase duties under this Contract in accordance with the Approved Scope of Services. A copy of this evaluation will be sent to the Designer Selection Board and may be viewed by state agencies, authorities, cities, and towns for future work. If the Designer disagrees with the evaluation given by Awarding Authority, the Designer may respond with a letter to the Study Manager and send a copy to the Designer Selection Board.

**A.12. Payment for Study Phase Basic Services.**

**A.12.1 Study Phase Basic Fee.**

- (a) For the satisfactory performance of all Study Phase Basic Services, the Designer's Study Phase Basic Fee shall not exceed the Contract Amount and the Approved amount set forth in the Notice to Proceed for the Study Phase, payable in accordance with the Approved Scope of Services.
- (b) If Approved in advance, Awarding Authority shall reimburse the Designer for the actual costs for specific items not included in the Study Phase Basic Fee, such as Permit filing fees and document copies in excess of numbers

specified in the Contract if requested by Awarding Authority. Awarding Authority shall not reimburse the Designer for any out-of-pocket expenses, including without limitation telephone or travel expenses, unless Approved by the Authorized Representative in advance.

#### **A.12.2 Schedule for Payment of Study Phase Basic Fee.**

(a) The Approved Scope of Services shall provide a schedule for payments of the Study Phase Basic Fee with a certain percentage of the Study Phase Basic Fee to be paid upon Approval of a certain Deliverable or group of Deliverables as agreed by Awarding Authority and the Designer.

(b) Awarding Authority shall not be obliged to pay any claims received more than 45 days after the delivery of the Approved Study.

#### **A.13. Study Phase Additional Services.**

**A.13.1 Generally.** With the prior Approval by Awarding Authority, during the Study Phase, the Designer shall perform as Study Phase Additional Services any work that is not included in or inferred by the Approved Scope of Services as being part of Study Phase Basic Services. Prior to performing any Study Phase Additional Services the Designer shall agree with Awarding Authority upon the fee for such services in accordance with Section 6.2 (Additional Services) of this Contract.

**A.13.2 Limitations on Study Phase Additional Services.** Notwithstanding the foregoing, without limitations, the Designer, its Consultants, or subconsultants shall not be entitled to compensation and shall not claim as Study Phase Additional Services for:

1. (a) work required to correct errors and omissions of the Designer, its Consultants, or its subconsultants during the Study Phase;
2. (b) necessary additional work that, in Awarding Authority's reasonable opinion, should have been anticipated by the Designer in the preparation of the Study Phase Deliverables.

**A.14. Compensation for Study Phase Additional Services.** The Designer shall be paid, for Additional Services, pursuant to Section 6.2 (Additional Services) of this Contract.

**A.15. Accessibility and Non-Discrimination Laws.** The Study and all designs provided by the Designer shall reflect the requirements for a design in accordance with standards set forth in Section 7.6 (Accessibility and Non-Discrimination Laws), without waivers unless the seeking of such waivers is Approved by Awarding Authority. Without limiting the foregoing, the Study and all Construction Cost Estimates, and other cost estimates and Deliverables required by this Contract shall reflect specific ADA or MAAB work determined necessary for the Project, and any additional accessibility identified by the Awarding Authority.

#### **A.16. TRANSITION FROM STUDY PHASE TO DESIGN PHASE**

**A.16.1 Selection for Design Phase.** If Awarding Authority selects an entity other than the Designer to perform the Design Phase Services, this Contract shall terminate upon Designer's receipt of notice of such selection by Awarding Authority and upon payment to the Designer for Study Phase Basic Services and, if applicable, Study Phase Additional Services. Regardless of whether the Designer is selected to perform the Design Phase Services, the Designer shall remain responsible for any of its continuing obligations arising during the Study Phase.

**A.16.2 Termination if Design Phase Prerequisites Not Satisfied.** If the Approved Study is not Certified or sufficient funds are not appropriated for the Design Phase of the Project, the Approved Scope of Services will terminate without liability to the Awarding Authority. Such termination shall be deemed a termination for convenience, in accordance with Section 7.30.1 (Termination by Awarding Authority for Convenience).

**A.16.3 Scope of Design Phase Services.** If the Designer is selected to perform the Design Phase Services, the Designer and Awarding Authority shall work in good faith to revise the Approved Scope of Services, as necessary, related to the Design Phase Scope of Services.



**A.16.4 Requirements for Design Phase.** If the Approved Study is Certified and the Designer is selected to proceed with Design Phase Services, the Certified Study shall be incorporated by reference into the Contract and the Designer shall perform its services in accordance with this Contract.

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## **EXHIBIT B: On-Call Building Envelope Consultant Services**

**B.1. Introduction.** Unless subsequent exhibits otherwise prescribe the application this Exhibit, this Exhibit and the content herein applies only to the Designer if the Designer's Approved Scope of Services includes design services. The terms and provisions of this Contract of which this Exhibit is a part are incorporated herein by reference.

**B.2. Definitions.** All terms previously defined are hereinafter incorporated by reference into this Exhibit.

**B.3. Design Phase Term.** The Design Phase shall commence upon an issuance of a Notice to Proceed for the Design Phase and shall continue through the completion of the Approved Design Phase Scope of Services required hereunder, unless terminated earlier.

**B.4. Design Phase Governing Documents.** During the Design Phase, the Designer shall perform its duties in accordance with all applicable Laws, the provisions of this Contract, the Certified Study (which is incorporated herein by reference), the Approved Scope of Services, the provisions of M.G.L. c. 7C s.15, the guidelines and procedures set forth in the Reference Documents, and the Approved BIM Execution Plan. In the case of conflict between the terms of this Contract and any of the provisions incorporated herein by reference, the Designer shall make a written request for clarification to Awarding Authority and Awarding Authority's written response shall be conclusive.

**B.5. Design Phase Basic Services, Generally.** Design Phase services provided by the Designer pursuant to this Contract shall include the administration of a Design Contract, so that: (i) the design results in a project that meets the Awarding Authority's needs and conforms to the Study and the Designers Procedures Manual; (ii) the standards set forth in the Contract and other such guidelines and standards as may be supplied by Awarding Authority and applicable Laws; (iii) all Permits are obtained on schedule by the Designer; and (iv) that any contracts to be put out to bid are properly bid and reviewed and evaluated in accordance with applicable Laws. During the Construction Phase, the Designer shall continue to perform all of the duties described to the extent that they are necessitated by activities occurring or continuing to occur during the Construction Phase.

**B.6. Design Phase Materials.** If applicable, at the commencement of the Design Phase, and at any other time upon request of the Designer, Awarding Authority shall provide any additional or updated copies of Surveys and Data.

**B.7. Permits identified During Design Phase.** During the Design Phase, unless otherwise agreed to in writing, with the exception of the standard building Permits customarily obtained by the General Contractor or Construction Manager, as applicable, the Designer shall obtain all other Permits required to implement Designer's design. The Designer shall obtain the prior Approval of the Awarding Authority of all Permit applications, notices, and accompanying documentation before filing them with the appropriate governmental entity or other party. The Designer shall certify, in writing, at the time that construction documents (or changes thereto) are submitted Awarding Authority that the Designer has identified all Permits required to implement the Project and that those not identified in writing as being the responsibility of Awarding Authority have been identified in the specifications as being the general contractor's responsibility. Notwithstanding the foregoing, any required attendance by the Designer at any public hearing in connection with any Permit shall be considered an Additional Service to be compensated in accordance with Section 6.2 (Additional Services) of this Contract, and any Permit application fee shall be considered a reimbursable expense to be reimbursed in accordance with the provisions of Section 6.1 (Basic Fee).

### **B.8. Design Development Phase Services.**

**B.8.1. Design Development Phase Documentation.** If requested by Awarding Authority, Designer shall update and refine items submitted during the Study Phase, and shall submit, on or before the date specified in the Approved Contract Schedule, and on the basis of the Certified Study and any other applicable Approved Study Phase documents and digital files, including the following:

(a) an updated Contract Schedule;

(b) a list of all Permits required to implement the design and a schedule of target dates for the procurement of such Permits, both of which shall be regularly updated during the remainder of the Design Phase:

- (c) if BIM services are included in the Approved Design Phase Scope of Services, an updated BIM Execution Plan and current Building Information Model and associated database(s), from which the drawings required below shall be generated;
- (d) information and documentation within the technical expertise of the Designer and its Consultants that is necessary for Awarding Authority to file Environmental Notification Forms, Environmental Impact Reports, and any other filings for Permits that must be filed during the Design Development Phase;
- (e) 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, structural, fire protection, plumbing, HVAC, electrical, ADA and MAAB compliance, product requirements, and other features;
- (f) quality control documentation demonstrating without limitation coordination of: ceiling clearances, mechanical room size, and shaft sizes; specifications and drawings; filed sub-bid work or sections; scheduling; equipment and power; existing and new construction; and phasing;
- (g) 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 (the Department of Public Safety of the Commonwealth for state-owned projects or the building commissioner of the city or town in which the Project is located for other projects);
- (h) an updated life cycle cost analysis to evaluating the short-term and long-term costs and technical feasibility of using alternate technologies to provide, lighting, heat, water heating, air conditioning, refrigeration, gas or electricity.
- (i) a space measurement analysis for the design verifying that the sum of all program areas in the Project plus all other floor areas in the Project equals the Gross Floor Area of the Project;
- (j) site and building signage graphically coordinated with the Awarding Authority and the general building requirements and in compliance with the 2010 ADA Guidelines and MAAB, including, without limitation:
  - (i) parking signs, including van-designated parking signs;
  - (ii) room designation signs;
  - (iii) directories;
  - (iv) directions signs, including exterior signs at inaccessible entrances to orient people to the nearest accessible entrance, exterior "you-are-here" maps, interior direction signs, etc.;
  - (v) informational signs, including cautionary signs, hours of operation, rules of conduct, etc.
  - (vi) signage related to loading and building areas; and
  - (vii) signage required by applicable building codes.
- (k) a summary or summaries comparing the design development drawings, specifications and cost estimates with the Program requirements, and explaining any deviations in writing.

**B.8.2. Approval of Design Development Phase Building Information Model and Documents.** Such digital files, drawings, specifications, cost estimate, and other design development submittals shall be subject to the written Approval of Awarding Authority. Unless a lesser number is requested by Awarding Authority, the Designer shall submit to Awarding Authority, for approval, two (2) paper and one (1) electronic copy of design development drawings, specifications, cost estimates, and other submittals.

## **B.9. Construction Documents Phase Services.**

### **B.9.1. Document Updates and Revisions.** The Designer and its appropriate Consultants shall

submit, on or before the date and time specified in the Approved Contract Schedule:

- (a) an updated Contract Schedule;
- (b) a Building Information Model with Level of Development required by the BIM Guidelines for Design and Construction, unless otherwise specified in the most recent Approved BIM Execution Plan, and associated data base(s) from which the drawings required below shall be generated;
- (c) summaries of the completed life-cycle cost estimates, which shall be filed with the building code commission and the director of the office of consumer affairs and business regulation prior to the advertising for bids for the Construction Contract, as required by M.G.L. c. 149 s. 44M;
- (d) complete construction drawings and specifications, certified by the Designer as having satisfied the applicable quality control review, Approved as required, in sufficient detail to permit fixed-price bids in open competition for construction of the Project;
- (e) an updated environmental assessment, building code analysis, ADA and MAAB compliance analysis, and structural and energy calculations;
- (f) a certified list of all required testing and all Permits required to implement the Project (including a certification that all Permits not identified in writing as being the responsibility of Awarding Authority have been identified in the specifications as being the general contractor's responsibility) 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;
- (g) site and building signage graphically coordinated with the Awarding Authority and in compliance with general building requirements and the 2010 ADA Guidelines and MAAB, including, without limitation:
  - (i) parking signs, including van-designated parking signs;
  - (ii) room designation signs;
  - (iii) directories
  - (iv) directions signs, including exterior signs at inaccessible entrances to orient people to the nearest accessible entrance, exterior "you-are-here" maps, interior direction signs, etc.;
  - (v) informational signs, including cautionary signs, hours of operation, rules of conduct, etc.
  - (vi) signage related to loading and building areas; and
  - (vii) signage required by applicable building codes.

### **B.9.2. Approval of Drawings and Other Construction Documents.**

1. (a) For State Projects: Two sets of the final drawings and specifications must be stamped "Approved" and signed by the appropriate state building inspector from the Department of Public Safety. Two sets of Plumbing drawings and specifications shall be signed and stamped "Approved" by the Board of State Examiners of Plumbers and Gas Regulations Board. Two sets of the fire protection, HVAC, and electrical constructions documents shall be approved, stamped and signed by the local fire chief. Two sets of the electrical construction documents shall be approved, stamped and signed by the local electrical inspector.

2. (b) For other projects: Two sets of the foregoing documents shall be approved, stamped and signed by the local building official, the local plumbing inspector, the local electrical inspector, and the local fire chief respectively.

### **B.9.3. Final Construction Cost Estimate.**

(a) The Designer shall furnish a final Construction Cost Estimate, current to the date of the final bid document submission, in Construction Standards Institute Masterformat or Unifomat 2010, as specified by Awarding Authority, cross-referenced to the final Unifomat II Construction Cost Estimate. This estimate shall contain the same total and percentage allowances as the final Unifomat II Construction Cost Estimate for overhead and profit and for any further allowances for escalation and other contingencies.

(b) The Designer shall also submit a summary comparing the final construction drawings and specifications and final Estimated Construction Cost with the Program requirements and submittals made during the Design Development Phase, explaining any significant deviations.

**B.9.4. Approval of Construction Documents Phase Documents.** All submittals shall be subject to the Approval of Awarding Authority. Unless a lesser number is requested by Awarding Authority or is provided below in Section B.9.5 (Copies of Approved Drawings and Specifications), the Designer shall furnish to Awarding Authority, for Approval, two (2) paper and one (1) electronic copy set of the drawings, specifications, Construction Cost Estimates, and other submittals. The Designer shall also furnish electronic media copies of the foregoing drawings and documents in such form as is required by the Designers Procedures Manual or otherwise in such other format as Awarding Authority may require. All drawings and associated databases shall be generated from the latest Approved BIM(s).

**B.9.5. Copies of Approved Drawings and Specifications.** From the Approved construction drawings and specifications, with such changes as Awarding Authority requires, the Designer shall prepare and transmit to Awarding Authority 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, stand, and signed by all other disciplines, which documents shall become the property of Awarding Authority. Other suitable methods may be used with the prior Approval of Awarding Authority. Two (2) paper and one (1) electronic copy of the drawings and specifications shall be submitted with the reproducible drawings and specifications.

**B.9.6. Preparation of Construction Bid Documents.** Awarding Authority shall copy the construction bid documents, including advertisements, for receipt of proposals from construction contractors, and for execution of a Construction Contract(s). The Designer shall prepare all addenda (to include bidders' questions and Designer's responses), subject to the Approval of Awarding Authority. 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 and conduct a review of the qualifications of the low filed sub-bidders and general bidder (and of other bidders, if necessary), and, shall, within three (3) working days of the respective bid opening dates, advise Awarding Authority, 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.

**B.9.7. Fixed Limit Construction Cost Adjustments.** If within three (3) months after Approval of construction documents, in final form, the bids of the lowest responsible and eligible bidders exceed the Fixed Limit Construction Cost, the Designer shall, if so instructed, in writing, by Awarding Authority, provide such revised construction drawings and specifications and construction cost estimates as Awarding Authority shall require for the purpose of bringing the cost within the Fixed Limit Construction Cost; provided the Designer may, in connection with such revision, make reasonable adjustments in the scope of the Project subject to the written approval of the Authorized Representative, which approval shall not be unreasonably withheld. The Designer shall not be paid additional compensation for such services.

### **B.10. Construction Administration Phase Services.**

**B.10.1. Generally.** Upon the award of the Construction Contract, the Designer and its Consultants

shall:

- (a) be charged with general administration of the Construction Contract to the extent set forth herein;
- (b) furnish the General Contractor or Construction Manager, as applicable, with information for establishing lines and grades and shall prepare a set of plans and specifications that incorporate all addenda and SK drawings issued during the bidding process;
- (c) 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 or Construction Manager, as applicable;
- (d) prepare, maintain and update logs for all submittals and changes to the Construction Contract;
- (e) provide to Awarding Authority a written certification of all Permits required to implement change order work at the Project site when the Designer submits for Approval any change order request to Awarding Authority during the construction phase of the Project, whether the change order request was made by the Designer, Awarding Authority, the General Contractor or Construction Manager, as applicable;
- (f) 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 meeting minutes to assure that the work is being built in conformance with Approved construction documents;
- (g) report to Awarding Authority weekly in writing on the progress of the work including whether or not the General Contractor or Construction Manager, as applicable, is keeping As-Built Drawings and BIM(s) updated;
- (h) on a weekly basis (or more often as may be necessary), 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;
- (i) require each Consultant employed in accordance with ARTICLE 5: Employment of Consultants to make visits weekly during the progress of any work to which that Consultant's services relate and to report upon it in writing to the Designer;
- (j) conduct semi-final and final inspections of the Project and report the results of such inspections in writing to Awarding Authority;
- (k) observe the balancing of air and water circulation systems and report the results thereof;
- (l) observe the setting and adjustment of automatic controls and report thereon;
- (m) observe compliance with accessibility regulations and Project requirements and report discrepancies;
- (n) in a timely manner, decide all questions regarding interpretation of, or compliance with, the Construction Contract Documents, except as Awarding Authority may in writing otherwise determine;
- (o) furnish electronic versions of the Record Drawings, a final cost report, and other required documents;  
and
- (p) assist Awarding Authority in any bid protest hearings, change order appeal hearings requested under M.G.L. c. 30, s. 39Q, and any other litigation, except as provided in Section B.14 (Design Phase Additional Services).

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 general contractor's work, since these are

solely the general contractor's rights and responsibilities under the Construction Contract Documents.

**B.10.2. General Contractor's Requisitions for Payment.** The Designer shall submit to Awarding Authority, in a timely manner, all requisitions for payment submitted by the General Contractor or Construction Manager, as applicable, in the form required by Awarding Authority. 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 or Construction Manager, as applicable, the Designer shall forward it for payment to Awarding Authority dated and signed with corrections with an accompanying letter of explanation 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 Awarding Authority the General Contractor's or Construction Manager's, as applicable, monthly requisition for payment bearing the Resident Engineer's approval or accompanied by the Resident Engineer's letter of exceptions. Timely payments to the contractor are required by M. G. L. Chapter 30 s.39K; therefore, the Designer shall establish procedures assuring either immediate mail or messenger delivery of the requisition for payment to Awarding Authority, and shall process requisitions for payment within two (2) working days after receipt of the same.

**B.10.3. Project Close Out Obligations [M.G.L. c. 30 s. 39K].** Within 10 days of General Contractor's request for Substantial Completion, Designer shall submit to Awarding Authority a complete and final list of all incomplete and unsatisfactory work items, including, for each item on the list, a good faith estimate of the fair and reasonable cost of completing such item. Awarding Authority may assign a specific portion of the Basic Fee to the performance of these obligations.

**B.10.4. Review of Close Out Documents.**

(a) Before examining the requisition for final payment submitted to Awarding Authority by the General Contractor or Construction Manager and before making any certification in response thereto, the Designer shall obtain from the General Contractor or Construction Manager, as applicable:

- (i) An As-Built Model File, as set forth in the BIM Guidelines for Design and Construction and consisting of a federated BIM showing the actual installation of the site utilities, plumbing, heating, ventilating, and electrical work as outlined in the Construction Contract, recording all changes, and containing descriptive or tabular data as required by Awarding Authority and associated with the BIM;
- (ii) As-Built Drawings, including drawings showing the actual installation of the site utilities, plumbing, heating, ventilating, and electrical work as outlined in the Construction Contract, and recording all changes; and
- (iii) All other documents required as part of the closeout process under the Construction Contract Documents, including, without limitation, operation and maintenance (O&M) manuals and manufacturer's warranties for the Project.

(b) The Designer shall ascertain that changes authorized by change orders are shown on the General Contractor's or Construction Managers, as applicable, As-Built Drawings and the As-Built Model File required above. The Designer shall revise the original BIM, the applicable original reproducible drawings and electronic media drawings on the basis of the As-Built Drawings and the federated BIM and shall submit them as Record Drawings and a Record Model, respectively. The Designer shall provide Awarding Authority two sets of prints along with an electronic copy of Record Drawings. Record Drawings and the Record Model shall become the property of Awarding Authority, all as part of the Design Phase Basic Fee.

**B.10.5. Evaluation of General Contractor.** At the conclusion of the Construction Contract, the Designer shall assist Awarding Authority's Authorized Representative in the evaluation of the performance of the general contractor as required by M. G. L. c. 149 s.44D or any other applicable Law.

**B.10.6. Copies of Original Design and Calculations.** Two suitably bound legible copies of all original design and quantity calculations, including those pertinent to change orders and shop drawings, if applicable, shall be furnished by the Designer to Awarding Authority at the conclusion of the Construction Contract.

**B.11. Facility Performance Evaluation Phase Services.** Awarding Authority, in consultation with the Designer, and its appropriate Consultants, may conduct a Facility Performance Evaluation (“FPE”) on all new buildings, renovations, and energy projects

**B.12. Change Orders.** Unless otherwise Approved by Awarding Authority, payments to the Designer for a modification or a change order shall be made when the modification or change order has been Approved by Awarding Authority and the Designer’s services with respect to the same, other than construction administration services, have been completed.

**B.13. Payment for Design Phase Basic Services.**

The Designer shall be compensated for services provided hereunder in accordance with Section 6.1 of this Contract unless otherwise agreed to between Awarding Authority and the Designer.

**B.14. Design Phase Additional Services.**

**B.14.1. Generally.** With the prior Approval of Awarding Authority, and in accordance with the Approved Scope of Services, during the Design Phase the Designer shall perform all or any of the following services in addition to the Basic Services:

- (a) revise previously Approved drawings, specifications or other documents to accomplish changes authorized by Awarding Authority or required by changes in applicable Laws, and revisions not occasioned by the Designer's errors or omissions;
- (b) attend Permit or public hearings and preparing presentation renderings and presentation models in connection therewith that are authorized by Awarding Authority;
- (c) prepare documents for alternate bids requested by Awarding Authority except for alternates required to be prepared by the Designer to adjust the estimated Construction Cost to within the Fixed Limit Construction Cost;
- (d) 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 this Exhibit as may be required in connection with the replacement of such work;
- (e) provide professional services necessary to evaluate substitutions proposed by the general contractor and prepare subsequent revisions to drawings and other documents resulting therefrom or furnish professional services made necessary by the default of the General Contractor or Construction Manager, as applicable, including, without limitation, an analysis of maintenance and life cycle cost implications of the proposed substitutions;
- (f) provide services after final payment to the General Contractor, except for services occasioned by the Designer's errors or omissions;
- (g) prepare special documents for or appearing as a witness in change order appeal hearings under M.G.L. c. 30, s. 39Q or in judicial litigation arising out of the Construction Contract, except for litigation arising from the Designer's negligent acts, errors or omissions;
- (h) prepare change orders and supporting data, except as set forth in Section;
- (i) revise construction drawings and specifications submitted in their final and complete form for which bids were not received within six months after submission;
- (j) make studies other than those normally required and preparing applications and reports to assist Awarding Authority in obtaining federal aid;



(k) additional site visits requested by Awarding Authority in excess of the site visits required under this Contract, if the time spent by Designer at the site for the required site visits and for such additional site visits requested by Awarding Authority collectively exceed seven (7) hours in any given calendar week

**B.14.2. Limitations on Design Phase Additional Services.** Notwithstanding the foregoing, without limitations, the Designer, its Consultants, and subconsultants shall not be entitled to compensation and shall not claim as Additional Services:

- (a) Work required to correct errors and omission of the Designer, its Consultants, or subconsultants during the Study Phase or the Design Phase;
- (b) Necessary additional work that, in Awarding Authority's reasonable opinion, should have been anticipated by the Designer in the preparation of the Study Phase or Design Phase Deliverables;
- (c) Preparation of changes required to make unit price adjustments due to existing conditions; or
- (d) Services involved in change orders for time extension only, provided that the time required for review and approval of said change may be included as an Additional Service upon Awarding Authority's Approval.

**B.14.3. Payment for Design Phase Additional Services.** The Designer shall be compensated in accordance with Section 6.2 (Additional Services) of this Contract unless otherwise agreed to between Awarding Authority and the Designer.

#### **EXHIBIT C: On-Call Building Envelope Consultant Commissioning Services**

**C.1. Introduction.** Unless subsequent exhibits otherwise prescribe the application of this Exhibit, this Exhibit and the content herein applies only to the Designer if the Designer's Approved Scope of Services includes commissioning services. The terms and provisions of this Contract of which this Exhibit is a part are incorporated herein by reference.

**C.2. Definitions.** All terms previously defined are hereinafter incorporated by reference into this EXHIBIT C.

**C.3. Schedule of Designer Services.** The Designer shall submit a Contract Schedule in accordance with the Commissioning Specifications for Approval within 3 days of receipt of a Notice to Proceed. During the Project, Designer shall establish the schedule for all commissioning activities, including periodic design reviews.

**C.4. Commissioning Services and Responsibilities.** Unless otherwise clearly stated in the Approved Scope of Services, the Designer shall consult with the Awarding Authority and perform the responsibilities of the "Commissioning Authority" set forth in the Commissioning Specifications during the Study Phase, Design Phase, and Construction Phase, as applicable, which include, but are not limited to the requirements of this Exhibit.

**C.5. Pre-Design Consultation.** Designer shall collaborate in the development and administration of a Project's "Owner's Project Requirements" and "Basis of Design" as required and defined by the Commissioning Specifications;

**C.6. Maintenance Staff Review.** Designer shall review the size and skill levels of Awarding Authority, as applicable, maintenance staff in relation to the requirements of new building and/or systems in order to fill any deficiencies;

**C.7. Commissioning Plan.** The Designer shall prepare and update a "Commissioning Plan" as required and defined by the Commissioning Specifications.

**C.8. Commissioning Specifications.** The Designer shall review the Construction Contract Documents and recommend modifications necessary for coordination with the commissioning requirements and processes, which may include equipment submittal, operation and maintenance manuals, systems readiness tests, and personnel

training. The Designer shall provide Project-specific commissioning specifications for inclusion in the Construction Contract Documents, which will define the contractor's responsibilities related to commissioning and will identify systems to be commissioned and may include detailed checklists, test procedures, and required test results and warranty requirements.

## **C.9. Submittals.**

**C.9.1 Review.** The Designer shall review Project submittals required by the Commissioning Specifications as related to the services to be provided. During the Design Phase, the Designer shall review design calculations and performance criteria, identifying any operation and maintenance problems and providing written comments along with a checklist of required actions to be completed prior to design Approval by Awarding Authority and/or recommended alternatives where appropriate. During the Construction Phase, Designer shall review submittals from the General Contractor or Construction Manager, as applicable, as requested for the limited purpose of evaluating the system's ability to achieve the requirements of the Construction Contract Documents and shall update the "Commissioning Plan" (as defined in the Commissioning Specifications) as necessary. The Designer's review shall be made with such reasonable promptness as to cause no delay in the work or in the activities of Awarding Authority or the Public Entity or their consultants or contractors, while allowing sufficient time in the Designer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the General Contractor or Construction Manager, as applicable, as required by the Construction Contract Documents. The Designer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Designer, of any construction means, methods, techniques, sequences or procedures.

**C.9.2 Completion of Review.** Upon completion of the review, the Designer shall issue written comments for those submittals that deviate from the requirements of the Construction Contract Documents. Awarding Authority may choose to accept the deviations, in which case the Designer shall revise the Construction Contract Documents and the related Commissioning Specifications as an Additional Service.

**C.10. Commissioning Meetings.** The Designer shall schedule, plan, and conduct commissioning meetings, which may occur simultaneous to other Project meetings as necessary and appropriate.

## **C.11. Operations and Maintenance (O&M).**

**C.11.1 O&M Manual Review.** Prior to the start of operator training, the Designer shall review the O&M manuals and develop O&M training plans and videos as required by the Commissioning Specifications.

**C.11.2 Preventive Maintenance Schedules.** Designer shall submit warranty information and preventive maintenance schedules for all building systems in a comprehensive, five-year preventive maintenance plan in accordance with the Commissioning Specifications.

**C.12. Operator Training.** The Designer shall perform the following with respect to operator training:

**C.12.1 Awarding Authority Training.** Review and approve the content and adequacy of the training of User Agency and personnel, including contractors' planning, scheduling, content, and documentation, as required by the Commissioning Specifications.

**C.12.2 Operator Systems Training.** Provide operator systems training covering the requirements of the Construction Contract Documents, special design features, operating sequences and limitations, procedures for the Functional Performance Test to be conducted pursuant to Section C.13, and maintenance cycles of the various systems.

**C.12.3 Observation and Training Log.** Observe any contractors' training and maintain a training log for inclusion into the final commissioning report as required and defined by the Commissioning Specifications. The training log will include the attendees' names, training dates, system or equipment on which training was performed, and the name, title, and contact information of the trainer.

**C.13. Functional Performance Test.** Following completion of operator training pursuant to Section C.12, Designer shall direct, observe, and document the functional performance test and provide field training to User Agency as required in accordance with the Commissioning Specifications.

**C.14. Testing Procedures for Consultants.** The Designer shall develop procedures for each piece of equipment or system to be tested for the Subcontractors based on the specific functional testing requirements.

**C.15. Reporting.** The Designer shall prepare and provide reports to the Awarding Authority and the architect/engineer of record as required by the Commissioning Specifications and Contract Schedule, including, without limitation:

**C.15.1 Deficiency Correction.** The Designer shall generate a corrective action report for each deficiency identified during functional performance testing. The Designer shall maintain a log of the corrective action reports. The Designer, in consultation with the Awarding Authority, shall facilitate the resolution of each deficiency by the appropriate contractor and, after correction of the deficiency, the Designer shall direct, observe, and document re-testing to confirm that the deficiency has been corrected as an Additional Service.

**C.15.2 Final Commissioning Report.** The Designer will prepare a final commissioning report, including the commissioning plan, Construction Contract Documents, Project commissioning specification, blank functional performance test procedure forms, system readiness tests reports, functional performance test reports, corrective action reports and log, and operator training plans and log.

**C.16. Final Debriefing.** Designer shall convene and chair a final debriefing with the Project team (including appropriate representatives from the Awarding Authority, User Agency, General Contractor or Construction Manager (as applicable), and any necessary subcontractors) to coordinate correction of any remaining deficiencies, completion of any re-testing and identification of any training deficiencies prior to building turnover.

**C.17. Post-Occupancy Review.** The Designer shall meet with the Awarding Authority and User Agency prior to one year after the date of Substantial Completion to review the operations and performance of the commissioned systems and to make appropriate recommendations to the Awarding Authority, including, without limitation, providing a review of all system warranties prior to their one-year expiration date. If requested by Awarding Authority, Designer's post-occupancy services shall include performance of any and all off-season testing required to comply with LEED credit requirements for "enhanced commissioning".

**C.18. Measurement and Verification.** The Designer shall implement a measurement and verification plan consistent with the standard set forth in the Commissioning Specifications that covers at least one year of post-construction occupancy.

**C.19. CAMIS.** Designer shall submit O&M information (including, but not limited to, equipment data and preventive maintenance schedules) for each building system, and any updates thereto, in an approved format for entry into CAMIS.

**C.20. Access to Necessary Property and Personnel.** Awarding Authority shall provide access to the property, buildings, and personnel necessary for the Designer to provide the Commissioning services. The personnel shall conduct tours and walk-throughs and explain the facility's original, current, and anticipated future use.

**C.21. Access to Service Providers.** Awarding Authority shall furnish the services of design consultants, testing agencies, and contractors necessary to allow the Designer to provide the Commissioning Services.

*Remainder of page intentionally blank.*

**EXHIBIT D: Other On-Call Building Envelope Consultant Services**

*[to be inserted by Awarding Authority as applicable]*

**EXHIBIT E: Designer Selection Board Advertisement and Designer Application**

See attached sheets.

**EXHIBIT I: Truth-In Negotiation Certificate**

*[To be included with each proposed Scope of Services for a Project]*

The Designer hereby certifies and agrees to the following:

- (a) The Designer certifies that the wage rates and other costs, if any, used to support the Designer’s compensation are accurate, complete, and current at the time of contracting; and
- (b) The Designer agrees that the Basic Fee, fees for Additional Services, and reimbursements for costs and expenses specified in this Contract, as it may be modified from time to time, may be adjusted within one (1) year of completion of this Contract to exclude any significant amounts if Awarding Authority determines that the fee was increased by such amounts due to inaccurate, incomplete, or noncurrent wage rates or other costs.

Designer: \_\_\_\_\_

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

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

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

**EXHIBIT J: Certified Billing Rates of Designer’s and Designer’s Consultant’s Personnel**

*[To be included with each proposed Scope of Services for a Project]*

**(Use additional sheets if necessary. Do not list any support staff.)**

The following categories are to be completed for each Consultant Firm. Use additional sheets if necessary.

**Design Firm Principal:**

**Design Firm Associate:**

**Design Firm Project Manager: Design Firm Project Architect: Design Firm CAD Operator:**

**Name of Consultant Firm: Consultant Principal: Consultant Associate: Consultant Project Manager:**

**Consultant Project Engineer: Consultant CAD Operator:**

\_\_\_\_\_

**Name of Consultant Firm: Consultant Principal: Consultant Associate: Consultant Project Manager:**

**Consultant Project Engineer: Consultant CAD Operator:**

**Name of Consultant Firm: Consultant Principal: Consultant Associate: Consultant Project Manager:**

**Consultant Project Engineer: Consultant CAD Operator:**

**Name of Consultant Firm: Consultant Principal: Consultant Associate: Consultant Project Manager:**

**Consultant Project Engineer: Consultant CAD Operator:**

**EXHIBIT M: Beneficial Owners, Professional Registrants, Existing Government Contracts**

*Attach additional sheets if necessary to complete any of the following information.*

**1) Designer's Beneficial Owners**

CORPORATION: (Names of Officers and Shareholders of Corporation, including their titles)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PARTNERSHIP:

(Names of all Partners):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

INDIVIDUAL

(Name of Owner): \_\_\_\_\_

**2) Professional Registrants**

Name Title Mass. Registration

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTE: The above information must be completed to comply with the provisions of General Laws Chapter 7C, s. 44. Programmers and construction managers are not required to be registered under s. 44.

Designer warrants that the Massachusetts registered principal of the Designer responsible for the project is:

Name \_\_\_\_\_

**3) Existing Government Contracts**

Contract Description Present Status % Fee Total Fee & Awarding Authority Design/Construction Received Anticipated

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By signing below, I certify on behalf of Designer, under the pains and penalties of perjury, that the information in this Exhibit is accurate, complete, and current:

Designer: \_\_\_\_\_

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

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

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