

TOWN OF NORWELL

CONTRACT FOR DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES

Awarding Authority: Town of Norwell

Project Title/Project Location: Highway & Tree Department Operations Facility

Designer:

Authorized Representative of the Town: Glenn Ferguson, Highway Surveyor/
Director, or other such individual(s) as he shall designate in writing.

This Contract, effective as of the _____ day of _____ 2020 by and between the Town of Norwell, a municipal corporation with a principal place of business at 345 Main Street, Norwell, Massachusetts 02061, acting by and through its Board of Selectmen (the “Town” or “Awarding Authority”) and _____, a corporation with a principal place of business at _____ (the “Designer”) for Design Services in connection with the Norwell Highway/Tree Department Operations Facility Renovation & Expansion (the “Project”).

The Designer is authorized to perform the services required by this Contract through the Feasibility Study, Schematic Design, Design Development, Construction Documents, Bidding & Award, Construction Administration, Close Out and Warranty Phases (also known as Construction Period Services).

List Key Consultants:

	Name of Firm	Name of Principal
Civil Engineering/Environmental Permitting		
Structural Engineering		
Fire Protection Engineering		
Plumbing Engineering		
HVAC Engineering		
Electrical/Lighting/		
Cost Estimating		
Specifications Consultant		

Attachments:

- ☐ A-1: Corporate Vote or Other Evidence of Authority
- ☐ A-2: Truth in Negotiations Certificate
- ☐ A-3: Scope of Services
- ☐ A-4: Designer's Personnel Assigned to Project
- ☐ A-5: Certified Billing Rates of Designer's Personnel
- ☐ A-6: Reimbursable Expense Estimate
- ☐ A-7: Assumptions
- ☐ A-8: Schedule
- ☐ A-9: CPA Statement of internal accounting controls in place
- ☐ A-10: Designer's statement of internal controls in place
- ☐ A-11: Certificate of insurance naming the Town of Norwell as additionally insured, as per limits specified in Section 11.
- ☐ A-12: W9
- ☐ A-13: Certificate of Non-Collusion and Tax Compliance Certification
- ☐ A-14: Request for Qualifications
- ☐ A-15: Designer's Response to Request for Qualifications

1.0 DEFINITIONS

Applicable Laws: All applicable laws, statutes, ordinances, by-laws, codes, rules and regulations, of the Commonwealth of Massachusetts, its political subdivisions, and the Federal Government applicable to this project.

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

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

Authorized Representative: The person or organization named as such by the Town in writing, who has the authority to grant Approval on behalf of the Town as required under this Contract. The Norwell Highway Surveyor/Director is the authorized representative for this Project.

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

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

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

Construction Contract Documents: The Construction Contract Documents consist of the Owner-Contractor Agreement, Advertisement, Instructions to Bidders, Bidding Documents,

Contract Forms, Conditions of the Contract, Drawings, Plans, Technical Specifications, all addenda issued prior to execution of the Construction Contract, and other documents approved after execution of the Owner-Contractor Agreement relating thereto.

Construction Cost: The cost of constructing the Project inclusive of all designed construction, demolition, and renovation work, all supportive and preparatory construction work required for the Project, all general contractors, subcontractors, suppliers, materials, equipment, general conditions, insurance, overhead and profit and all other allowances. The Construction Cost includes change orders during the construction administration phase of the Project.

Construction Cost Estimate: The written estimate of the Construction Cost of the Project prepared by the Owner's Project Manager at various phases of the Project

Consultant: A subcontractor of the Designer, listed on page 1 of this Contract, together with any additional Consultants engaged by the Designer from time to time, which shall be an individual, company, firm, or business having a direct contractual relationship with the Designer, who provides services on the Project. A Subconsultant is a subcontractor to the Consultant.

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

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

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

Designer: The Designer named on the cover page of this Contract.

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

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

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

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

Notice to Proceed: A written communication from the Authorized Representative of the Town directing the Designer to perform services for the particular Phase of the Project as set forth in such communication. 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 the Town or working for the Town, pursuant to M.G.L. c. 149, § 44A1/2 or otherwise to work with the Designer as the owner's representative on the Project to ensure an optimum project including 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 quasigovernmental entities and authorities that are necessary for the implementation of the Project at the site. Without limitation, the term "Permits" shall include permits and approvals from and notices to electrical, water, gas, communications and other utility providers and also permissions and consents from and notices to private parties necessary for the design and construction of the Project, such as an approval or consent of a landlord or other holder of an easement, restriction or other interest in the Project site.

Premises: The property located at 310 Main Street (Rear), Norwell, MA 02061.

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

Substantial Completion: The term "Substantial Completion" as used in this Contract shall mean the point at which as certified in writing by the Architect, the Project is at a level of completion in strict compliance with this Contract such that the Town or its designee can enjoy beneficial use and can use or operate it in all respects for its intended purpose and only minor items which can be corrected or completed without any material interference with the Owner's use of the Work remain to be corrected or completed. Partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of substantial completion.

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

2.0 RESPONSIBILITIES OF THE TOWN

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

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

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

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

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

3.0 DESIGNER'S BASIC SERVICES – GENERAL

3.1 General: The Designer shall perform professional services in accordance with the terms of this Contract, the Contract Documents, the Scope of Services set forth in Attachment A-3 and the provisions of M.G.L. c. 7C, § 15. In the case of conflict between the terms of this Contract and

any of the provisions incorporated herein by reference, the provisions of this Contract shall control. The Designer shall be responsible for the professional accuracy and coordination of all designs, drawings, specifications, and other services and submittals furnished by Designer and by its Consultants in accordance with the standard of care set forth below in Section 3.4. The Basic Fee shall compensate Designer for all of Designer's obligations specified in this Contract except as otherwise specifically provided herein.

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

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

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

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

3.6 Compliance with Laws and Contract Documents: The Designer's work and services performed hereunder shall conform to the standards set forth in this Contract, the Contract Documents and to all applicable Laws. It is the responsibility of the Designer that the Project be conducted, and that all Services and other work performed by the Designer hereunder be performed so as to comply with all applicable Laws and any permit conditions as to which the Designer has knowledge, as the same may be in effect as of the time of the performance of such work. In particular, without limitation, the Designer agrees to comply with (1) all regulations pertaining to approvals for local, federal and state grants, and with all local, federal and state environmental laws and regulations, and assist in making any submissions with respect thereto and (2) all applicable requirements of the Massachusetts public construction and procurement laws, which are incorporated by reference herein.

3.7 Brands/Description of Materials and Manufacturers/Producers: The Designer shall thoroughly acquaint his or her employees and Consultants with the provisions of M.G.L. c.30,

§39M, which provides, in part “[f]or each item of material the specifications shall provide for either a minimum of three named brands of material or a description of material which can be met by a minimum of three manufacturers or producers, and for the equal of any one of said name or described materials.” The Designer shall ensure all plans and other work product comply with the law regarding proprietary items, and shall notify the Town when they believe items should be specified on a proprietary basis.

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

3.9 Staffing; Personnel Changes: The Designer’s personnel who shall provide services under this Contract are those listed in the Designer’s response to the RFQ for Designer Services and in Attachment A-4. No changes or additions may be made to Designer’s personnel without Approval by the Town. The Designer shall provide sufficient competent personnel to complete the services required by this Contract in a continuous and timely manner in accordance with this Contract.

- .1 The Designer may engage Consultants, subject to the prior written approval of the Town in order to perform services under this Contract. If Consultants are engaged, the person responsible for, and in control of, the Consultant services to be provided must be professionally registered or licensed in Massachusetts in the necessary disciplines for the services if such registration or licensing is required under the applicable General Laws. The engagement of Consultants shall not in any way relieve the Designer from its duties and responsibilities for its work, including, without limitation, coordinating all Designer Services furnished under this Contract by the Subconsultants.
- .2 Upon request, the Designer shall provide the Owner with copies of its agreements with Consultants, including any amendments thereto and copies of the Consultant’s applicable certificates of insurance.
- .3 CORI Checks: INTENTIONALLY OMITTED

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

requested to be relieved of its duties as a team member, the Designer shall include with the request a copy of the Consultant's written request for such relief.

- .1 Special Consultants:** The Designer shall retain the services of a Qualified Testing Laboratory, special field inspectors, and other special Consultants not referenced in Section 3.9 when required for the Designer's services for the Project. To the extent applicable, the Designer shall comply with the requirements of the Massachusetts Prevailing Wage Law, M.G.L. c. 149, §§26-27D, in the employment of and such special Consultants. The identity of such Consultants shall be approved in advance by the Town, which Approval shall not be withheld unreasonably. When such a special Consultant's services are required, including the services of a Qualified Testing Laboratory functioning under the jurisdiction of both a Massachusetts registered engineer and licensed inspectors, a detailed description of the proposed services shall be prepared by the Designer and shall be subject to the Approval of the Town. The Designer shall employ such Consultants who have the professional liability insurance coverage described in Sections 11.3 and 11.4 of this Contract. The cost for services of any Approved Special Consultant not listed in Section 3.9 or the RFQ shall be reimbursed as provided in Section 7. For solicitation, inspection, analysis, coordination, and evaluation of such Consultants' services, and for assuming liability therefore, the Designer shall be compensated as provided in Section 7.

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

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

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

3.14 Permits: Unless otherwise agreed to in writing, with the exception of the standard building permits customarily obtained by the general contractor or subcontractor, the Designer shall obtain all other permits required to implement Designer's design. The Designer shall obtain the prior Approval of the Town of all permit applications, notices, MAAB variances and accompanying documentation before filing them with the appropriate governmental entity or other party. The Designer shall provide the Town with a certified list of all Permits required to implement the design at the site as soon as possible during design development, shall schedule target dates for the procurement of such Permits, and shall regularly update such list and schedule during the term of this Contract. The Designer shall certify in writing at the time that construction documents (or changes thereto) are submitted to the Town that the Designer has identified all Permits required to implement the Project and that those not identified in writing as being the responsibility of the Town have been identified in the specifications as being the general contractor's responsibility. As part of its Basic Services, the Designer shall attend public hearings in connection with any Permit necessary to obtain such permit. Any Permit application fee shall be considered a Reimbursable Expense to be reimbursed in accordance with the provisions of Section 7.

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

3.15 Ownership; Intellectual Property Rights:

- .1 The Designer hereby grants to the Town an irrevocable royalty-free license to use for any purpose all Materials which are or may be covered by copyright, patent, or other intellectual property Laws or as to which Designer and its Consultants and subcontractors may assert any rights or establish any claim under any such Laws. The Designer agrees on behalf of itself and its Consultants and subcontractors that the Town shall have unlimited royalty-free rights, for the benefit of the Town any public entity to which the Town may grant the right to share such rights, in any and all Materials, including the right to use the same on any Town or other public entity projects.
- .2 All Materials that are produced by the Designer, its Consultants and subcontractors pursuant to this Contract (regardless of whether such Materials were furnished to the Town) shall be deemed "work for hire" and become the Town's property. Such Materials may be used by the Town (or such parties as the Town may designate) thereafter in such manner and for such purposes as the Town (or such parties as the Town may designate) may deem advisable, without further employment of or additional compensation to the Designer. The Designer shall not release or disclose to any third party any Materials produced for the Town without

obtaining the Town's prior written consent. At no time shall the Designer release or disclose to any third party any materials, data or other information furnished to the Designer by the Town in connection with the performance of the Designer's Services.

- .3 Upon the expiration or the termination of this Contract for any reason, all Materials and other work product that have been accumulated, developed or prepared by the Designer, its Consultants and subcontractors (whether completed or in process) shall become the property of the Town and the Designer shall immediately deliver or otherwise make available such Materials to the Town.
- .4 The Designer shall incorporate by reference this provision into all contracts with its Consultants and subconsultants with respect to the services provided under this Contract including, but not limited to, architects, engineers, estimators, surveyors, designers, and photographers. The Designer and its Consultants and subconsultants shall not be responsible for changes made in the documents or other items without the Designer's authorization, nor for the Town's use of the documents on projects other than the Project.

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

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

3.18 Design Within the Construction Budget:

- .1 The Designer shall prepare cost estimates for the Project. The cost estimates shall be considered Basic Services and the Designer is not eligible for any additional compensation for preparing the same. The format for cost estimates shall be in accordance with the requirements of the Town.
- .2 The Designer shall produce a design for the Project meeting the requirements of the scope of work described in the RFQ to be constructed within the Project Construction Budget, provided that the Designer shall

be permitted to recommend to the Owner such adjustments to the Project's design, as the Designer reasonably believes may be required to adhere to the Project Construction Budget. In the event the Designer's cost estimate for the Project (as reconciled in accordance with the provisions of this Contract) exceeds the Project Construction Budget, the Owner may require the Designer to revise the design, drawings and specifications to keep the cost estimate for the Project within the Project Construction Budget. The Designer shall not be entitled to extra compensation for making such revisions to contain costs within the Project Construction Budget.

4.0 PROSECUTION AND PROGRESS OF BASIC SERVICES

4.1 Preliminary Services

- .1 Initial Meeting:** After executing this Contract, the Designer, its key personnel, and such key Consultants as may be designated by the Town shall attend an administrative conference with the Town for the purpose of making introductions, exchanging contact information, clarifying relationships, communication protocols, arriving at a mutual understanding of the requirements of the Project and reviewing billing procedures. The Designer shall compile and distribute a job directory which includes all names, addresses, phone and fax numbers, and e-mail addresses of the representatives of the Designer and the Designer's Subconsultants. This shall be distributed upon commencement of the services, and shall be updated and redistributed as project participants and/or contact information change.
- .2 Preparation of Work Plan:** Upon execution of this Contract the Designer, working with the Town, shall submit a draft work plan for the Designer's Services pursuant to this Contract including anticipated tasks and submittals. The proposed work plan shall comply with the requirements of this Contract and the Town's goals, as described in the RFQ. The Designer shall submit the proposed work plan to the Town within one (1) week of the date of the execution of this Contract. The proposed work plan shall:
 - .1** define and identify the tasks and Deliverables required to be provided by the Designer as part of Basic Services;
 - .2** specify the sequences in which these tasks and Deliverables must be performed, prepared and submitted;
 - .3** contain a Contract Schedule;

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

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

- .1 Electronic Submittals: In addition to all other submittals called for by this Section 4 and elsewhere in the Contract, including but not limited to hard copies and reproducibles of all submittals, the Designer shall submit one (1) electronic copy on compact disks or some other approved format for all required submissions of Deliverables called for by this Contract ("Electronic Submittals"). All Electronic Submittals shall be deemed to be Materials that are subject to all provisions of Section 11.
- .2 The Electronic Submittals shall be provided on CD or flash drive electronic format or some other approved format as approved by the Town and as follows:
 - (a) All drawings shall be provided in standard AutoCAD software (release number and version to be established at time of contract execution) or in a compatible electronic CADD (.dfx) format or other industry-standard format as approved by the Owner. Electronic file naming convention shall be acceptable to the Town. Also provide PDF versions of these documents.
 - (b) All other documents shall be provided on Microsoft Word, Excel, Project, or PowerPoint, as applicable to the particular submittal. Also provide PDF versions of these documents.
 - (c) All submissions shall be labeled identifying project name and number, file name, drawing title, software and release, and layer investigation.

(d) The Town reserves the right to require the Designer to provide all electronic media as may be required at any time during the duration of this Contract due to technology upgrades and/or changes to the electronic systems used by the Town, provided that if such requirement demands that the Designer purchase new software or train existing employees for the application of media or software such costs shall be a Reimbursable Expense.

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

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

4.3 Feasibility Study Phase: (Set Fee for Study: _\$_____)

The Designer's services shall consist of a feasibility study relating to the proposed renovation/expansion of the existing building, such study to make use of prior studies conducted by the Town.

- .1 The Designer shall provide a minimum of ____three____ (_3_) conceptual design approaches for the new building or renovation/addition. Feasibility Study submittals shall be provided pursuant to Section 4.2 and shall be subject to the written Approval of the Town.
- .2 The Designer shall prepare an architectural feasibility study for proposed new construction or a renovation/addition to the existing facility. The study shall include conceptual architectural plans, engineering studies as needed, cost estimates and project schedules and work plans.
- .3 The Designer shall present a written recommendation with supporting documents and explain the Feasibility Study to the Town. The Town will select a "Preferred Option" that will be developed through the Schematic Design phase.

- .4 The Designer shall prepare presentation materials of the “Preferred Option” as may be required for ~~submission to various Town Boards, Committees and Public Hearings as part of basic Services~~ use by the Highway Surveyor/Director.
- .5 The Designer shall meet with the Town at least every other week during this Phase.

4.4 Schematic Design Phase Services (15% of Basic Design Fee)

NOTE: A description of Designer’s Services for this, and all subsequent phases, may be found in this Contract and in Attachment A-3 to this Contract (Scope of Services). In the event of a conflict, the terms of this Contract shall prevail.

- .1 Upon receipt of a Notice to Proceed with the Schematic Design Phase, the Designer and its Consultants shall meet regularly and as necessary with agents of the Town. Designer shall update and refine the Contract Schedule to include appropriate milestones for the Schematic Design Phase, and shall submit, on or before the date specified in the Contract Schedule all schematic design documents required by 4.4.2.
- .2 Upon selection by the Town of the preferred alternative, the Designer shall develop the preferred alternative to a full schematic design level. Designer shall provide the following schematic design level documentation, which shall include and incorporate the Town’s comments:
 - .1 drawings, concept sketches, and specifications;
 - .2 a building code analysis; historical analysis (if applicable)
 - .3 an environmental assessment, if needed;
 - .4 a preliminary life cycle cost analysis to determine which design decisions related to all energy and water consuming devices and overall building operation and maintenance are the most cost effective pursuant to M.G.L. c. 149, § 44M and c. 7C, § 29;
 - .5 a summary of applicable public utility incentive programs as determined by the Town and a plan for implementation or inclusion of incentives;
 - .6 an analysis of the design’s compliance with the Americans with Disabilities Act/Massachusetts Architectural Access Board requirements, if applicable;
 - .7 [intentionally omitted]

- .8 a detailed review of the Construction Cost Estimate for the design prepared by the Owner's Project Manager (OPM) to opine on the same and verify the estimate as accurate and complete; and
 - .9 facilitate "charrette" working group with all project stakeholders to identify potential historical, energy efficiency and sustainability features that can be incorporated into the project.
- .3 Schematic design level documentation shall also include a summary comparing the schematic plans, specifications and OPM's or Architect's Estimated Construction Cost of the design to the applicable Feasibility Study estimate and shall explain any deviation therefrom. The Designer shall be aware of the following provisions of M.G.L. c. 7C, § 60 and shall cause its services to comply therewith:
- "No state agency . . . administering a capital facility project shall enter into any contracts for that project . . . or cause to be performed design services for that project . . . if such would result in the completion of a project which cannot be accomplished (a) within the appropriation or authorization for the project or within the project cost limits specified by the appropriation or authorization and (b) without substantial deviation from (i) any study or program which must be prepared in accordance with section 59; or (ii) any other pre-design planning document which must be prepared in accordance with any other statute, appropriation or authorization or administrative directive consistent therewith. In no event shall the design work be such as would result in a change in the number of gross square feet to be constructed in the project of more than 10 percent from the number specified in the study, program or other pre-design document referred to [above]."
- .4 Schematic Design Phase drawings, and other submittals shall be subject to the written Approval of the Town. Unless a lesser number is requested by the Town, the Designer shall submit to the Town for approval seven (2) PDF copies of schematic design drawings, specifications, and other submittals plus three (2) full-size, hard copy sets of drawings, and three (2) half-size hard copy sets of drawings.
 - .5 Presentation: Designer shall make a summary presentation to the Board of Selectmen highlighting the key aspects of the Schematic Design submission, if requested by the Town. Presenters should include the Project Manager who will provide an overview of the project goals/program, permitting, historical issues, user concerns, budget and schedule..

4.5 Design Development Phase Services (15% of Basic Design Fee)

- .1 Upon receipt of a Notice to Proceed with the Design Development Phase, the Designer and its Consultants shall meet at least every two weeks, or more frequently as necessary with agents of the Town, shall update and refine items submitted during the Schematic Design Phase, and shall submit, on or before the date specified in the Contract Schedule, and on the basis of the Approved Schematic Design Phase documents:
 - .1 an updated work plan and Project Schedule
 - .2 a list of all Permits and approvals required to implement the design and a schedule of target dates for the procurement of such Permits and approvals, which list and schedule shall be regularly updated during the term of this Contract;
 - .3 information and documentation within the technical expertise of the Designer and its Consultants that is necessary for the Town to file any filings for Permits and approvals that must be filed during the design development phase;
 - .4 complete design development drawings, draft specifications indicating any filed sub-bid sections based on the OPM's or Architect's estimated cost of the work and other documents necessary to specify the size and character of the Project as to siting, landscape, architectural, historical, structural, fire protection, plumbing, HVAC, electrical, ADA/MAAB, historic, product requirements, and other features;
 - .5 quality control documentation demonstrating without limitation coordination of: specifications and drawings; filed sub- bid work or sections; scheduling; equipment and power; existing and new construction; and phasing;
 - .6 design development drawings for which the Designer shall submit for a "tentative approval" review to the Town's Building Department;
 - .7 an updated life cycle cost analysis to determine which design decisions related to all energy and water consuming devices and overall building operation and maintenance are the most cost effective pursuant to M.G.L. c.149, §44M, which are then included in design decision discussions;
 - .8 an updated cost estimate;

- .9 a summary or summaries comparing the design development drawings, specifications and OPM's or Architect's cost estimates, and explaining any deviations in writing;
- .10 [intentionally omitted]
- .11 signage and wayfinding graphically coordinated with the project proponent (user group) and the general building requirements, including, without limitation, all signage and wayfinding required by applicable building codes, cautionary signage, signage relative to exterior parking, loading and building areas, interior directories, department names, hours of operation, room names and numbers, and any signage required for American with Disabilities Act;
- .12 Such drawings, specifications and other design development submittals shall be subject to the written Approval of the Town. Unless a lesser number is requested by the Town, the Designer shall submit to the Town for approval seven (1) PDF copy of design development drawings, specifications and other submittals. Provide two full-size, hard copy sets of drawings and two half-size, hard copy sets of drawings, and three hard copies of specifications.
- .13 Presentation: Designer shall make a presentation to the Board of Selectmen and Council on Aging which highlights the keys aspects of the Design Development submission.

4.6 Construction Documents Phase Services (35% of Basic Design Fee)

- .1 Upon receipt of a Notice to Proceed with the Construction Documents Phase of the Project from the Town, the Designer and its Consultants shall meet at least every two weeks, or more frequently as necessary with agents of the Town, and based on the submittals Approved in the design development phase of the Project, shall update and refine the items previously submitted and shall submit on or before the date and time specified in the Approved Project Schedule:
 - .1 an updated work plan and Project Schedule;
 - .2 complete construction drawings and specifications, certified by the Designer as having satisfied the applicable quality control review, in sufficient detail to permit fixed-price bids in open competition for construction of the Project;
 - .3 an updated environmental assessment, building code analysis, ADA/MAAB analysis, and a certified list of all required testing

and all required Permits/approvals as well as a certification that all applicable local, state and utility officials have been contacted by the Designer regarding each utility connection and that the persons responsible for permits or connection approval has agreed to the systems' use;

- .4 structural and energy calculations, building code analysis, historic analysis, ADA/MAAB analysis, if required;
- .5 signage and wayfinding graphically coordinated with the project proponent (user group) and the general building requirements, including, without limitation, all signage and wayfinding required by applicable building codes, cautionary signage, signage relative to exterior parking, loading and building areas, interior directories, department names, hours of operation, room names and numbers, and any signage required for American with Disabilities Act;
- .6 an updated cost estimate;
- .7 Presentation: Designer shall make a presentation to the Board of Selectmen which highlights the keys aspects of the 95% Construction Document Phase submission, if requested;
- .8 Approval of Drawings and Other Construction Documents: Two sets of the foregoing documents shall be approved, stamped and signed by the Town's building official, the Town's plumbing inspector (as applicable), the Town's electrical inspector (as applicable), and the Town's fire chief respectively;
- .9 Approval of Final Documents: All submittals shall be subject to the written approval of the Town. Unless a lesser number is requested by the Town, the Designer shall furnish to the Town for approval seven (7) sets of the drawings, specifications, OPM's Construction Cost Estimates and other submittals. The Designer shall also furnish electronic media copies of the foregoing drawings and documents if the Town may require. Additionally, provide three (3) full-size, hard copy sets and three (3) half-size, hard copy sets of drawings.
- .10 Approved Final Documents: From the Approved construction drawings and specifications, with such changes as the Town requires, the Designer shall prepare a set of reproducible black and white drawings and original specifications both in electronic format and on high quality white bond paper, single-sided, properly packaged, suitable for reproduction, stamped and signed

by all disciplines, which documents shall become the property of the Town. Other suitable methods may be used with the prior Approval of the Town. One copy of the drawings and specifications shall be submitted with the reproducible drawings and specifications. For projects that will be bid using an on-line bidding service, provide documents in the format that is required by the service.

4.7 Bidding and Procurement Phase Services (5% of Basic Design Fee)

- .1 Upon receipt of a Notice to Proceed with the Bidding Phase of the Project from the Town, the Designer and its Consultants shall perform the following services in accordance with MGL Chapter 149 on or before the date and time specified in the Approved Project Schedule.
- .2 **General:** Designer shall utilize an on-line bidding service to print bid documents, allow access to electronic bid documents, issue addenda, receive bids and summarize bids. The designer shall:
 - .1 prepare the invitation for bid (IFB), advertise and post the IFB in local newspaper, Central Register and COMMBUYS;
 - .2 if applicable, the Designer shall assist the Town with the prequalification of bidders in accordance with M.G.L. c.149, §§44E1/2 and 44D3/4 or M.G.L. c.149A;
 - .3 attend and chair the pre-bid conference if one is scheduled, taking note of all questions asked;
 - .4 prepare all addenda (to include bidders' questions and Designer's responses), subject to the Approval of the Town;
 - .5 answer all relevant questions submitted in writing by means of electronic addenda to the bid documents as required;
 - .6 attend the bid opening (if not performed by on-line service) and conduct a review of the qualifications, including review of DCAMM file, of the three (3) lowest filed sub-bidders and general bidders (and of other bidders if necessary) and shall, within three (3) business days of the respective bid opening dates, advise the Town in writing of the Designer's opinions as to the sub-bidders' bids and as to which general bidder is the responsible and eligible bidder that has submitted the lowest bid;

- .7 assist Town in obtaining bonds, insurance and other documents necessary to execute the contract, return bid deposits and publicize the contract in Central Register; and
 - .8 [intentionally omitted]
- .3 If the Project Construction Budget is exceeded by the lowest bona fide, responsible bid by any amount, the Town shall direct the Designer to review and compare the Project Construction Budget with the bids received to identify the variances. Upon completion of this review and submission of the Designer's report to the Town, the Town shall:
- .1 direct the Designer to revise the Final Design Program, Project scope and quality as required to reduce the estimated construction costs to be within the Project Construction Budget, or
 - .2 give written approval to the Designer of an increase in the Project Construction Budget; or
 - .3 authorize rebidding of the Project within a reasonable time; or
 - .4 terminate this Contract in accordance with Section 9.0 of this Contract; or
 - .5 implement any other mutually accepted alternative that the Owner and the Designer may agree on.

4.8 Construction Administration Phase Services (30% of Basic Design Fee)

- .1 **General** - Consistent with the standard of care and practice stipulated in Section 3.4 above, upon the award of the Construction Contract the Designer and its Consultants shall:
 - .1 be charged with general administration of the Construction Contract to the extent set forth herein;
 - .2 furnish the general contractor with information for establishing lines and grades and shall prepare a set of plans and specifications that incorporate all addenda and sketch drawings issued during the bidding process; (Conformed Set)
 - .3 promptly and in accordance with the requirements of the Construction Contract check, obtain testing where necessary, and

approve samples, schedules, shop drawings and other submissions by the general contractor;

- .4 prepare, maintain and update logs for all submittals and changes to the Construction Contract;
- .5 provide to the Town a list of all Permits, variances or approvals required to implement change order work at the Project site when the Designer submits for Approval any change order request to the Town during the construction phase of the Project, whether the change order request was made by the Designer, the Town, or the general contractor;
- .6 visit the site at intervals appropriate to the stage of construction but not less than weekly, and observe the progress of the work, issue written progress reports, and conduct job meetings, and prepare and distribute agendas and meeting minutes to assure that the work is being built in conformance with Approved construction documents;
- .7 report to the Town weekly in writing on the progress of the work including whether or not the general contractor is keeping as-built drawings updated;
- .8 on a weekly basis (or more often as may be necessarily), make specific recommendations on rejection of all Project work observed by the Designer that fails to conform to the Construction Contract documents, and review and inspect corrected work;
- .9 require each Consultant employed in accordance with Section 3 to make weekly visits during the progress of any work that relate to the Consultant's services and to report in writing to the Designer;
- .10 authorize minor changes in Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Construction Cost or an extension of time. The Designer shall prepare Change Orders and Construction Change Directives for the Town's approval and execution in accordance with the Contract Documents. The Designer shall only be entitled to additional compensation for change orders or construction change directives that are initiated by the Town or that arise due to encountering unanticipated conditions during construction. The Designer will not be entitled to additional compensation related to change orders or construction change directives that arise due to errors, omissions, ambiguities, or conflicts in the Construction Documents. When the Designer is entitled to additional

compensation for design services related to change orders or construction change directives, the Designer's compensation shall be based on the actual labor and expense costs of the additional design work. Designer shall provide timesheets or other documentation to support such requests.

- .11 conduct semi-final and final "punch list" inspections of the Project and report the results of such inspections in writing to the Town. Review and incorporate punch lists generated by the Norwell Highway Surveyor/Director into the Contractor's punch list. Verify that the work identified in FM's punch list is addressed by the Contractor. Manage the final inspection "punch list" until all items have been completed or otherwise addressed to the satisfaction of the Town.
- .12 [intentionally omitted]
- .13 [intentionally omitted]
- .14 in a timely manner, decide all questions regarding interpretation of, or compliance with, the Construction Contract documents, except as the Town may in writing otherwise determine;
- .15 transmit the Contractor's electronic versions of the Record Drawings, a final cost report, and other required documents to the applicable regulatory agencies; and
- .16 assist the Town in any bid protest hearings, change order appeal hearings requested under M.G.L. c. 30, § 39Q, and any other litigation, except as provided in Section 6.
- .17 Except as otherwise specifically set forth in the Construction Contract documents, the Designer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Construction Contract documents.

- .2 **General Contractor's Requisition for Payment:** The Designer shall submit to the Town in a timely manner all requisitions for payment submitted by the general contractor in the form required by the Town. With respect to each such requisition, the Designer shall certify to the best of its knowledge that the percentage of work included in the requisition is accurate and that the work performed conforms to the Construction Contract documents. In the event the Designer does not approve the

requisition exactly as submitted by the general contractor, the Designer shall forward it for payment to the Town dated and signed with corrections and explanations setting forth the Designer's objections and recommended changes. The Designer shall coordinate the required visits to the construction site so as to enable it to submit to the Town the general contractor's monthly requisition for payment bearing the Authorized Representative's approval or accompanied by the Authorized Representative's letter of exceptions. Timely payments to the contractor are required by M.G.L. c. 30, § 39K; therefore, the Designer shall establish procedures assuring either immediate delivery of the requisition for payment to the Town, and shall process requisitions for payment within two working days after receipt of the same.

- .3 **Review of As-Built Drawings:** Before examining the requisition for final payment submitted to the Town by the general contractor and making any certification in response thereto, the Designer shall obtain from the general contractor As-Built Drawings, including drawings showing the actual installation of the site utilities, envelope repairs and any changes to plumbing, heating, ventilating and electrical work under the Construction Contract, and recording all changes. The Designer shall review and approve the general contractor's As-Built Drawings. Such review shall include, but not be limited to, the Designer ascertaining that changes authorized by change orders, construction change directives and/or Designer-approved minor changes in the work are shown on the general contractor's As-Built Drawings. The Contractor shall revise the applicable original reproducible drawings and electronic media drawings on the basis of the As-Built Drawings and shall submit them through the Architect as Record Drawings electronically along with two (2) sets of prints to the Town; which Record Drawings shall become the property of the Town.
- .4 **Evaluation of General Contractor:** At the conclusion of the Construction Contract the Designer shall assist the Town and/or the Owner's Project Manager in the evaluation of the performance of the general contractor and the filed sub-contractors as required by M.G.L. c.149, §44D or any other law.
- .5 **Copies of Original Design Drawings:** One suitably bound legible copy of all original design drawings including those pertinent to change orders and shop drawings if applicable shall be furnished by the Designer to the Town at the conclusion of the Construction Contract.

4.9 Warranty Phase Services

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

5.0 DESIGNER’S BASIC FEE

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

Study Fee:

Feasibility Study Services (Dollar Amount: _\$_____)

Basic Design Fees:

Schematic Design Phase Services (15%of Basic Design Fee _____)

Design Development Phase Services (15%of Basic Design Fee: _____)

Construction Document Phase Services (35% of Basic Design Fee: _____)

Bidding and Permitting Phase Services (5% of Basic Design Fee: _____)

Construction Period Services (30% of Basic Design Fee: _____)includes
Warranty Phase Services

Total: \$_____

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

6.0 ADDITIONAL SERVICES

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

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

- .1 revise previously Approved drawings, specifications or other documents to accomplish changes authorized by the Town or required by changes in applicable Laws, and revisions not occasioned by the Designer's errors or omissions;
- .2 [intentionally omitted];
- .3 [intentionally omitted];
- .4 [intentionally omitted];
- .5 provide consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing professional services of the type set forth in Section 3 as may be required in connection with the replacement of such work;
- .6 provide professional services necessary to evaluate substitutions proposed by the general contractor and, if necessary, prepare subsequent revisions to drawings and other documents resulting therefrom or furnish professional services made necessary by the default of the general contractor;

- .7 provide services later than three months after the one-year warranty phase has ended, except for services occasioned by the Designer's errors or omissions;
- .8 prepare special documents for or appearing as a witness in change order appeal hearings under M.G.L. c. 30, § 39Q or in judicial litigation arising out of the Construction Contract, except for litigation arising from the Designer's negligent acts or omissions;
- .9 [intentionally omitted];
- .10 revise construction drawings and specifications submitted in their final and complete form for which bids were not received within six (6) months after submission, unless a new building code has been promulgated within that time frame which requires revisions to the documents;
- .11 make studies other than those normally required and preparing applications and reports to assist the Town in obtaining federal aid;
- .12 additional site visits requested by the Town for which additional payment is provided in Section 6.3.
- .13 prepare documents for and manage procurement for fixtures, furniture and equipment (FFE) phase of the project.

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

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

- .1 by a lump sum fee agreed upon in advance in writing by the Designer and the Town; or
- .2 on an hourly basis (based on pro-rated hourly wages exclusive of benefits) in accordance with the rate schedule attached hereto as Attachment A-5, which is incorporated by reference herein. Clerical/support staff of the Designer and Consultants to the Designer shall not be compensated and is considered as part of office overhead.

7.0 REIMBURSABLE COSTS AND EXPENSES.

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

7.2 The Designer shall be reimbursed by the Town for:

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

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

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

~~7.4 Mark Up for Overhead and Profit: For solicitation, coordination, inspection, analysis, and evaluation of and for the assumption of responsibility for, services authorized under 7.2.1 of this Contract, the Designer shall be paid 10% of the actual expense where the cost of the specific~~

~~services is estimated not to exceed \$100,000. The aforementioned percentage will be negotiated to a lesser figure in those instances when the not to exceed cost is projected to exceed \$100,000.~~

8.0 PAYMENTS TO THE DESIGNER

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

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

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

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

9.0 TERMINATION

9.1 Termination by the Town: By written notice to the Designer, the Town may terminate this Contract in whole or in part at any time whether for the Town's convenience or because of the failure of the Designer to fulfill his or her Contract obligations. If any such termination shall occur without the fault of the Designer, all compensation and reimbursement due to the Designer up to the date of termination, in accordance with all Contract terms, including proportionate payment for partially completed work, shall be paid to the Designer by the Town. Such payment shall not exceed the fair value of the work, as the Town shall determine. No amount shall be allowed for anticipated profit or overhead on unperformed services.

9.2 Failure of Designer to Perform/Liability: If the Contract is terminated due to the failure of the Designer to fulfill his or her Contract obligations, the Town may take over the Work and

prosecute the same to completion by contract or otherwise. In such case, the Designer shall be liable to the Town for any additional cost occasioned to the Town thereby. These rights and remedies of the Town are in addition to any rights and remedies provided by law or under this Contract.

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

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

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

10.0 RELEASE AND DISCHARGE

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

11.0 INSURANCE

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

- .1 Commercial General Liability insurance covering claims for injury to persons and damage to property. Such insurance shall include contractual liability and shall cover the use of all equipment and motor vehicles on the Site or transporting persons, equipment, materials or debris to and from the Site. Products and Completed Operations insurance shall be maintained for at least three years after completion of this Contract. Minimum Insurance Limits: \$1,000,000 per occurrence, \$3,000,000 aggregate.
- .2 Professional Liability insurance for protection from claims arising out of the performance of professional services, including contractual coverage. Minimum Insurance Limits: \$1,000,000 per occurrence, \$3,000,000 aggregate.
 - .1 The Designer shall maintain Valuable Papers Insurance in a sufficient amount to assure the restoration of any plans, drawings, computations, field notes or other similar data relating to the Work covered by this Agreement, in event of loss or destruction regardless of where the papers or files are kept until the final payment is made and all data is turned over to the Town as provided herein.
- .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 with an automobile operating exposure with owned, non-owned, and hired autos, for protection against bodily injury and property damage. Minimum Insurance Limits: \$1,000,000 CSL.
- .5 Umbrella Liability insurance, which shall be maintained for at least three years after completion of this Contract. Minimum Insurance Limits: \$2,000,000.

11.2 Certificates of insurance and copies of policies evidencing the coverage required hereunder, together with evidence that all premiums for such insurance have been paid, shall be filed with the Town at the time of execution of the Contract. All such policies and certificates shall be written through companies and in forms acceptable to the Town's lender or lenders, if any. All policies shall contain a provision that coverages afforded by them will not be cancelled or amended until at least thirty (30) days prior written notice has been given to the Town. The insurance provided under clauses 11.1, 11.4 and 11.5, above, shall name the Town and such other parties as the Town shall require as "Additional Insured" parties. Insufficient insurance shall not release the Designer from any liability for breach of its obligations under this Contract.

11.3 Any Consultant employed by the Designer shall obtain and maintain a professional liability insurance policy covering negligent errors, omissions and acts of such Consultant or of any

person or business entity for whose performance the Consultant is legally liable arising out of the performance of the contract for Consultant services in minimum amounts of \$1,000,000 per occurrence, \$3,000,000 aggregate. The Consultant shall furnish a certificate or certificates of such insurance coverage to the Town prior to the employment of such Consultant by the Town. A liability insurance policy maintained under this paragraph shall provide for coverage of such type and duration and in such amount as the Town shall require.

11.4 To the maximum extent permitted by law, the Designer will require all insurance policies in any way related to the work and secured and maintained by it to include clauses stating each underwriter will waive all rights of recovery, under subrogation and otherwise, against the Town, and all tiers of contractors or consultants engaged by the Town. The Designer will require of Consultants, by appropriate written agreements, similar waivers each in favor of all parties enumerated in this section.

12.0 INDEMNIFICATION

12.1 To the maximum extent permitted by law, the Designer agrees to indemnify, defend with counsel acceptable to the Town and save harmless the Town and its agents and employees from all suits, actions, claims, demands, damages, losses, expenses and costs, including attorneys' fees, of every kind and description which the Town may incur or suffer resulting from, in connection with, or arising out of any act, error or omission of, or breach of contractual duties to the Town by, the Designer, its agents, servants, employees or Consultants. The extent of the foregoing indemnification and hold harmless provisions shall not be limited by any provision of insurance required by this Contract and shall survive the termination of this Contract.

13.0 EQUAL EMPLOYMENT OPPORTUNITY

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

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

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

14.0 CERTIFICATIONS BY DESIGNER

14.1 By execution of this Contract, the Designer certifies:

- .1 The Designer has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Contract.
- .2 No Consultant to or sub-contractor for the Designer has given, offered or agreed to give any gift, contribution or offer of employment to the Designer or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the Consultant or subcontractor of a contract by the Designer.
- .3 No person, corporation or other entity, other than a bona fide full time employee of the Designer, has been retained or hired by the Designer to solicit for or in any way assist the Designer in obtaining this Contract upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Contract to the Designer.
- .4 The Designer shall comply with all applicable requirements of M.G.L. c.30, §39R. The Designer has internal accounting controls as required by M.G.L. c.30, §39R(c) and the Designer has and will continue to file an audited financial statement as required by M.G.L. c.30, §39R (d).

15.0 TAXES

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

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

16.0 CONFLICT OF INTEREST

16.1 The Designer acknowledges that the Town is a public employer for the purposes of Chapter 268A of the Massachusetts General Laws (the Massachusetts conflict of interest statute), and the

Designer agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with obligations of the Designer based on said statute.

17.0 NOTICES

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

Town of Norwell
Norwell Town Hall
345 Main Street
Norwell, MA 02061
Attn: Town Administrator

With a copy to:

Robert W. Galvin, Esq.
Town Counsel
c/o Galvin & Galvin, PC
10 Enterprise Street, Suite 3
Duxbury, MA 02332-3315

18.0 MISCELLANEOUS PROVISIONS

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

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

18.3 Entire Agreement. This Contract represents the entire and integrated agreement between the Town and the Designer with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the Town and the Designer.

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

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

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

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

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

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

18.10 No Waiver. The Town's review, approval, acceptance or payment for Services under this Contract shall not operate as a waiver of any rights under this Contract and the Designer shall be and remain liable to the Town for all damages incurred by the Town as the result of the Designer's failure to perform in conformance with the terms and conditions of this Contract. The rights and remedies of the Town provided for under this Contract are in addition to any other rights or remedies provided by law. The Town may assert a right to recover damages by any appropriate means, including but not limited to set-off, suit, withholding, recoupment, or counter-claim either during or after performance of this Contract.

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

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

DESIGNER:

By its duly authorized representative:

Printed Name of Person Signing

Title
TOWN:

TOWN OF NORWELL

By its Board of Selectmen

Town Administrator

Peter J. Morin

Department Director:

Glenn Ferguson, Highway
Surveyor/Director

TOWN ACCOUNTANT'S CERTIFICATION

I certify that an appropriation in the amount of the contract sum stipulated in Contract of this Agreement has been made and is available for compensation for services to be provided under this Agreement

Donna Mangan, Finance Director/Town Accountant

TOWN COUNSEL'S CERTIFICATION

APPROVED AS TO FORM

Robert W. Galvin, Town Counsel

ATTACHMENTS