

TOWN OF WALES, MASSACHUSETTS
REQUEST FOR QUALIFICATIONS
FOR
DESIGN SERVICES
FOR
OLD TOWN HALL PROJECT

April 2023

Town of Wales
Wales Historical Commission

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REQUEST FOR QUALIFICATIONS – DESIGN SERVICES

The Town of Wales (the “Town”), acting by its Historical Commission, seeks proposals from qualified and duly registered architectural and engineering persons or firms for existing conditions and feasibility and future full service design, bidding, and construction administration services for the OLD TOWN HALL PROJECT DESIGN SERVICES. Fees will be negotiated and not to exceed \$98,000, the amount funded by the Massachusetts One-Stop Rural and Small Town Development Grant.

Request for Qualifications and Proposal Forms may be obtained online on the Town of Wales website, <https://www.townofwales.net/historical-commission/pages/request-qualifications-design-services-old-town-hall>. Sealed proposals, clearly marked “OLD TOWN HALL PROJECT DESIGN SERVICES” must be received at the Office of the Executive Secretary, Wales Town Hall, 3 Hollow Road, Wales, MA 01081 by May 3, 2023, at 11:00 a.m.

The Town’s Historical Commission, acting as the Evaluation Committee for the project, will make a recommendation to the Board of Selectmen for award of the contract. The Town reserves the right to reject any and all proposals, wholly or in part, and make such award as it determines to be in the best interest of the Town.

This RFQ is issued in accordance with, and subject to, M.G.L. c. 7C, §§44-58, inclusive (the Massachusetts Designer Selection Law), and otherwise in accordance with the Town of Wales Designer Selection Procedures attached as **Exhibit A** hereto. The award of any contract awarded hereunder is subject to the appropriation and availability of funds.

DESIGN SERVICES FOR OLD TOWN HALL PROJECT

I. General Information

The Town of Wales (the “Town”) requests proposals from qualified and duly registered architects and engineers registered in Massachusetts, and other appropriate respondents to provide designer services for the OLD TOWN HALL PROJECT DESIGN SERVICES, as further described in this RFQ (the “Project”).

All interested parties must submit five (5) hard copies of their proposals plus one (1) electronic copy (on removable drive) containing complete information as requested in the PROPOSAL SUBMISSION REQUIREMENTS described herein to be received at the Office of the Executive Secretary, Wales Town Hall, 3 Hollow Road, Wales, MA 01081 by May 3, 2023, at 11:00 a.m.

A pre-proposal conference will not be held, but requests can be made via email to Robyn Chrabasz, Historical Commission Clerk, at historicclerk@townofwales.net.

II. Project Description

The Town, is looking for qualified firms to provide services related to the Old Town Hall located at 3 Main Street, Wales, MA 01081 and the vacant adjacent property of 5 Main Street. This RFQ is issued in accordance with, and subject to, M.G.L. c. 7C, §§44-58, inclusive (the Massachusetts Designer Selection Law), and otherwise in accordance with the Town of Wales Designer Selection Procedures attached as **Exhibit A** hereto.

The Wales Historical Commission (WHC) has been working on the Old Town Hall (OTH). It was built in 1802 as a joint multi-denominational meetinghouse and town hall. It was renovated in 1845, and again in 1925 to its current layout and appearance, minus its cupola that was removed about 1985 for safety reasons. The wood-framed structure sits on a stone foundation, and has a shallow basement with dirt floor. The front columns were added in 1845 in the Greek Revival style, and concrete platform under the columns in 1925. The building is on well water and septic tank, as our small town has no public utilities. The Baptist church sold its portion of ownership to the town in 1952, as the taxpayers could not imagine the fate of the town without the OTH. The building has since struggled to be at its best, and its preservation was at the heart of the creation of our local adoption of MGL Chapter 40 Section 8D to create a historical commission in 1969.

The WHC and its volunteers have started to organize and inventory the historical collection of the town, which includes objects large and small as well as historical documents. Examples include a historic scale, horse drawn fire hose, genealogical documents and Wales Old Home Day postcards. Currently, the collection is in two places – the public library and the OTH. A small, 2 room museum has been set up but the collection needs proper storage which cannot currently be provided in the building. The Public Access Studio is in 2 small rooms on the first floor – which of the adjacent towns is the only actual recording studio available for public use. The second floor meeting space would be available for town and cultural functions while not placing undue burden on taxpayers having to travel out of town for large gatherings. However, WHC suspects that these uses alone are not sufficient to support a renovation project or to bring the building up to full occupancy for a significant portion of the year or year-round.

The intent of this RFQ is to select a team to perform initial phases as well as potential future phases for the Town. The Initial Phase is expected to survey, evaluate, and recommend a course of action for Old Town Hall. The intent of the proposed architectural and engineering services described herein is to provide a comprehensive report that will include the following:

- (a) Existing Conditions Evaluations:
 - a. The condition of the overall envelope: windows, doors water tightness of the masonry, any movement, or cracking that can be observed and noted.
 - b. Coordination and evaluation of the historic single pane wood windows.
 - c. Evaluation of existing roof and foundation systems.
 - d. Review and study the structural systems and evaluate whether there are problems.
 - e. Comprehensive evaluation of the mechanical HVAC system.
 - f. Assessment of plumbing, fire protection, electrical, telecommunications, and security systems.
 - g. Condition of the interior and exterior access systems (i.e. ramps, and stairs).
 - h. Condition of the interior finishes.
 - i. Environmental Testing.
 - j. Site/civil services for exterior drainage, underground utilities including septic and well, capacities, etc.
 - k. Accessibility audit and concerns.
- (b) Feasibility:
 - a. Review and recommendations of possible town uses for Town services, including existing Museum and Public Access Studio.
 - b. Proposals for reuse and reopening of the second floor meeting room and recommendations for addressing citizen-owned pews.
 - c. Possible review of other town buildings to review potential program uses that would be appropriately relocated to Old Town Hall.
 - d. Recommendations for funding and financing options for future reuse or phased tasks.
 - e. Evaluation of historic building and feasibility for National Register Nomination or other status that would increase funding.
 - f. Review against Town's Master Plan and needs determined in 2020.
- (c) Client meetings as required, and at least 1 public presentation for the Select Board.
- (d) Cost estimates to be used for purposes of financing, phasing, grant applications, and determinations of projects with filed-sub bidding requirements.
- (e) Construction Budget: None applicable as of the date of this proposal.

The Designer is responsible for final design compliance with the federal and state accessibility codes/guidelines/standards, as well as applicable procurement, building and life safety codes.

The Awarding Authority will be the Town acting through its Board of Selectmen. A project contact will be assigned upon contract award.

III. Scope of Services

The general scope of work shall include, but not be limited to the following tasks, to execute the requirements listed above in Project Description:

- A. Existing Conditions: This phase will consist of architectural and engineering services described to provide a comprehensive report and recommendations.
- B. Feasibility: This phase will consist of reviewing and proposing functions for the longevity and future use of the building and site as a cultural center for the Town of Wales, or other uses as arise during the investigation phase.

- C. Schematic Design and Programming: This phase will consist of preparing schematic design and program documents and related services. The program documents will consist of:
1. Concept plans and sketches.
 2. Layouts and program spaces.
 3. Capital construction cost estimates and schedules, including phasing, site development and construction staging areas if appropriate.

The future scope of work may include, but not be limited to the following tasks, to execute the requirements listed above in Project Description or recommended individual projects or tasks as identified in the Existing Condition and Feasibility Phase:

- D. Design Development: This phase will consist of preparing detailed design and program documents and related services. The program documents will consist of:
1. Complete and well detailed construction drawings and specifications including site plans, floor plans, and facade drawings.
 2. Capital construction cost estimates and schedules, including phasing, site development and construction staging areas if appropriate.
 3. Furnishings and equipment cost estimates and coordination into design spaces.
 4. The Designer shall be required to cooperate with the Town's Project Manager in the provision of services for the project including but not limited to, value engineering, construction phasing, and overall coordination.
- E. Construction Documents
1. The Designer shall prepare complete working plans and specifications in sufficient detail to permit firm filed sub-bids (as applicable) and general contract bids in open competition for construction of the Project.
 2. Detailed cost estimates for the Project shall be further developed, and shall include quantities of all materials and unit prices for labor and materials as well as cost estimates for each item of work.
- F. Bidding
1. The Designer shall prepare the final construction contract documents, including advertising for receipt of bids from construction contractors.
 2. The Designer shall assist in distributing the bidding documents to prospective Respondents, and assist the Awarding Authority in prequalifying Respondents.
 3. The Designer shall prepare and distribute all addenda, and shall conduct a pre-bid conference.
 4. The Designer shall review all bids and make a recommendation of award to the Awarding Authority.

G. Construction Administration Services

1. The Designer will be charged with the general administration of the construction contract, although the Commission reserves the right to contract with a separate project Management firm for certain services.
2. The Designer must be present and active on the site periodically during the lifetime of the project. Construction oversight should be coordinated with the Project Manager to assure work is in accordance with specifications until the completion and acceptance of the project.
3. The Designer shall participate, on-site, in weekly project meetings with General Contractor, Site Coordinator, and Project Manager and others as required by the Town.
4. The Designer shall require each consultant employed by the Designer to make site visits periodically for the same purposes during the progress of that portion of the construction to which the consultant's services relate; and to report in writing thereon to the Designer.
5. The Designer shall check and approve samples, schedules, shop drawings and other submissions by the General Contractor.
6. The Designer shall recommend condemnation of all project work observed by the Designer that fails to conform to the contract documents.
7. The Designer shall decide all questions regarding interpretation of or compliance with the construction documents, except as the Town may, in writing, otherwise determine.
8. The Designer shall review and act on all requests for changes in the plans, specifications or contracts for the project.
9. The Designer shall report to the Town, in writing, on the progress of the construction.
10. The Designer shall conduct semi-final and final inspections of the construction project and report the results of such inspections in writing to the Town.

IV. Minimum Qualifications

All applicants must possess the following minimum qualifications:

- A. Massachusetts professional registration and licensing in all applicable disciplines. The project lead must have a minimum of five (5) years licensed in Massachusetts.
- B. Thorough knowledge of the Massachusetts State Building Code and Regulations of the Architectural Access Board, and all statutes and regulations governing public building construction projects.
- C. Possess and demonstrate a thorough knowledge of and familiarity with the requirements of the Federal Americans with Disabilities Act.
- D. Maintain sufficient levels of staff to complete the project in an acceptable time frame.
- E. Must have prior to signing of the contract:

1. Professional liability insurance of \$1,000,000.00, or such other higher amount as may be agreed to during contract negotiations.
2. Workers' Compensation insurance in accordance with all applicable state laws.

V. Proposal Submission Requirements

- A. Submit five (5) hard copies of their proposals plus one (1) electronic copy (on removable drive) containing complete information as requested in the PROPOSAL SUBMISSION REQUIREMENTS described herein to be received at the Office of the Executive Secretary, Wales Town Hall, 3 Hollow Road, Wales, MA 01081 by May 3, 2023, at 11:00 a.m.
- B. Postmarks will not be considered. It is the sole responsibility of the respondent to insure that its proposal arrives on time at the designated place.
- C. Proposal shall be submitted in a sealed envelope clearly marked on the outside as follows: "DESIGN SERVICES FOR OLD TOWN HALL PROJECT"
- D. Complete proposals must include the following:
 1. A cover letter of 1 to 2 pages that includes an overview of Respondent or firm; competitive advantages over other designers; and appointment of a key point person with contact information during the selection process.
 2. Capacity and capability to perform the work on schedule by referencing current workload.
 3. Completed Designer Selection Application. Use attached DSB form at **Exhibit B** hereto.
 4. A list of five current and past public and private projects of similar nature with the name and telephone number of reference person to contact. Photos may also be submitted. The description should include the scope of work, the extent of your involvement with the community, and a description of the final project. Include the date of completion and the construction cost.
 5. A general company/respondent profile or brochure and list of key personnel who will participate on this project with brief resumes included.
 6. The identification of any and all consultants who will work with the applicant with resumes attached. Please identify the individual who will bear primary responsibility for this project.
 7. A work plan outlining the applicant's approach to the project, schedule and sequencing of tasks, along with a proposed completion date.
 8. Documentation of "Minimum Qualifications" as set forth above.
 9. "Certificate of Non-Collusion" and "Certificate of State Tax Compliance" must be signed by the duly authorized signatory, along with a Corporate Vote or LLC Certification, as applicable, in the forms appearing in **Exhibit C** hereto.
 10. Conditions of proposal offered, if any; and
 11. Any other information that the applicant considers relevant for the purpose of evaluating its qualifications for the project.

VI. Selection Process

Upon receipt of proposals, the Town will review all proposals for completeness with the Minimum Criteria by an Evaluation Committee comprised of the Town's Historical Commission. The Evaluation Committee will then rank the complete proposals based on the Designer Evaluation Criteria listed below. After evaluating the responses, the Evaluation Committee may schedule interviews with at least the two (2) highest scoring Respondents. If selected for the interview, respondent will be expected to provide a presentation of credentials, relevant experience and approach to the project.

Prior to the interview, the Evaluation Committee will review references. References will be evaluated to identify the capabilities of the respondent, and the quality of previous work as a designer on same type of municipal building design, renovation and construction projects with similar size, scope and value.

During the evaluation and interview process, the Evaluation Committee reserves the right to request additional information or clarification from any respondent, or to allow corrections of errors or omissions.

The Evaluation Committee will rank the finalists based on total scores and on consideration of references. The Evaluation Committee will discuss the results and select the successful respondents from that list of finalists and commence the fee negotiations. Final award shall be granted by the Town's Board of Selectmen, as awarding authority.

VII. Designer Evaluation Criteria

The Commission will evaluate responses based upon the following minimum and comparative criteria.

- A. Minimum Criteria: Each response must meet all of the criteria set forth in Section V above.
- B. Rating System: The following rating system will be used by the Commission to evaluate the responses received that have been determined to meet the minimum evaluation criteria listed above. Any responses that do not meet any of the minimum evaluation criteria will be judged unacceptable and not reviewed further. The Commission will utilize the following point schedule:
 - *Highly advantageous*: (4 points) response exceeded all RFQ requirements, including format, understanding of project, completeness of proposal
 - *Advantageous*: (3 points) response met all RFQ requirements, including format, understanding of project, completeness of proposal evaluation standard for the criterion
 - *Acceptable*: (2 points) response does not fully meet the evaluation criterion or leaves a question or issue not fully addressed
 - *Do Not Meet*: (1 point) does not minimum listed requirements
 - *No response*: (0 point) applicant did not provide documentation or response to the RFQ minimum requirements
- C. Comparative Criteria:
 1. Design Experience: The Response will be evaluated in conjunction with examples of municipal projects with similar size and scope, and description of all experience working on municipal building projects.

Highly Advantageous Respondents:

- Experience with working on five (5) or more same type of municipal new and/or historic renovation projects
- Understand the particular needs of a municipality of similar size and project scope of work
- Demonstrate in the proposed work plan understanding of all of the particular needs and challenges of the project and ability for phasing projects
- Have at least five (5) Chapter 149 public project renovations and/or additional projects with the total project costs estimated to be at least \$1 million to \$5 million within the last three (3) years
- Proven successfully completed most projects on- time and on budget
- Sustainable building or LEED experience for energy efficient building design

Advantageous Respondents:

- Experience working on three (3) same type of municipal new and/or historic renovation projects
- Understand the particular needs of a municipality of similar size and project scope of work
- Demonstrate in the proposed work plan understanding of the particular needs and challenges of the project and ability for phasing projects
- Have at least three (3) Chapter 149 public project renovations and/or new projects with the total project costs estimated to be at least \$1 million to \$5 million within the last five (5) years
- Proven successfully completed most projects on- time and on budget

Acceptable Respondents:

- Demonstration of relevant skills or experience in the new/construction of public facilities projects (preferably public facilities)
- Understand the particular needs of a municipality of similar size and project scope of work
- Demonstrate in the proposed work plan understanding of the particular needs and challenges of the project
- Have at least three (3) Chapter 149 public project renovations and/or additional projects with the total project costs estimated to be at least \$1 million to \$5 million within the last five (5) years
- Proven successfully completed most projects on- time and on budget

Respondents that Do Not Meet requirements:

- No experience with same type of projects
 - Did not provide adequate response for to show understanding of the particular needs of a municipality of similar size and project scope of work
 - Did not provide adequate response in the proposed work plan understanding of the particular needs and challenges of the project
 - Have fewer than three (3) Chapter 149 public project renovations and/or projects with the total project costs estimated to be at least \$1 million to \$5 million within the last five (5) years
 - Did not provide adequate response to show record of successfully completed projects on-time and on budget
2. Project Design, Approach and Timetable: A key consideration for the Commission is the ability of the individual/Respondent to begin work immediately, maintain an intensive schedule to meet the municipality's timetable, and to describe how they will produce expected deliverables that meet quality and efficiency of design, as well as cost effectiveness.

Highly Advantageous Respondents:

- The ability to develop presentation materials for this project
- Are able to devote sufficient resources to complete the project in accordance with the municipality's timetable,
- Sufficient resources include highly qualified staff and project leader with specifically relevant experience staff back up is available if needed.
- Provided excellent response which made appropriate reference to each of items under Scope of Services regarding Project Approach
- Immediately available to commence the work

Advantageous Respondents:

- The ability to develop presentation materials for this project
- Respondent has experience in these areas but information provided leaves Commission unsure about the Respondent's ability to meet project deadlines, or the application leaves Commission unclear about Respondent's ability to make adequate public presentations
- Sufficient resources include highly qualified staff
- Provided excellent response which made appropriate reference to most of items under Scope of Services regarding Project Approach

Acceptable Respondents:

- The ability to develop presentation materials for this project
- Respondent has experience in these areas but information provided leaves Commission unsure about the Respondent's ability to meet project deadlines, or the application leaves Commission unclear about Respondent's ability to make adequate public presentations
- Sufficient resources include qualified staff
- Provided adequate response which made appropriate reference to most of items under Scope of Services regarding Project Approach

Respondents that Do Not Meet requirements:

- The ability to develop presentation materials for this project is not adequately displayed in the application
- Application leaves Commission unsure about the Respondent's ability to meet project deadlines, or the application leaves Commission unclear about Respondent's ability to make adequate public presentations
- Inadequate or not enough information provided regarding Respondent's resources, including qualified staff
- Did not provide adequate response to most of items under Scope of Services regarding Project Approach

3. Quality of Written Materials: Evaluators will review the responses in conjunction with any materials provided by the individual/Respondent to determine completeness of the proposal, relative quality, readability, responsiveness to the RFQ, and understanding of the project and the role of the Designer.

Highly Advantageous Respondents:

- Exceeded all RFQ requirements, including format, understanding of project, completeness of proposal
- Organized response according to the minimum and comparative criteria in the RFQ, make it easy for the Commission to evaluate the response, demonstrate a clear ability to

communicate the elements of a publicly designed and funded project and the role of the designer in similar municipal projects

Advantageous Respondents:

- Met all RFQ requirements, including format, understanding of project, completeness of proposal
- Responses that demonstrate an understanding of the role of a designer in similar municipal building projects the Commission deems similar, and that demonstrate an understanding of this project but do not organize their response according to the minimum and comparative criteria in this RFQ

Acceptable Respondents:

- Met all basic proposal requirements, some possible follow-up necessary for clarification
- Responses that demonstrate an understanding of the role of a designer in similar municipal building projects the Commission deems similar, and that demonstrate an understanding of this project but do not organize their response according to the minimum and comparative criteria in this RFQ

Respondents that Do Not Meet:

- Did not meet one or more of the proposal requirements
- Responses that simply reiterate the scope of services or do not demonstrate an understanding of the role of Designer for this project

VIII. General and Special Provisions

- A. The Town reserves the right to reject any and all responses, waive informalities, and to take whatever action may be deemed to be in the best interest of the Town.
- B. All proposals, materials, drawings, plans, etc. submitted in conjunction with the selection process shall become the property of the Town of Wales and may be disposed of without notification and shall be considered public information.
- C. The Designer selected shall be expected to comply with all applicable federal and state laws in the performance of services.
- D. The consideration of all proposals and subsequent selection of the successful proposal shall be made without regard to race, color, sex, age, handicap, religion, political affiliation or natural origin.
- E. The Designer shall adhere to the provisions of the Fair Employment Practices Law of the Commonwealth of Massachusetts (Chapter 151 B of the Massachusetts General Laws).
- F. The provisions relating to nondiscrimination and affirmative action in employment shall follow through all contacts and subcontracts that the successful applicant may receive or award as a result of this contract.

- G. Within 10 days of written notice, the selected respondent shall execute the contract in substantially the same form attached as **Exhibit D** hereto by its duly authorized signatory.
- H. The successful Designer will not be considered an employee of the Town and will not receive any benefits of any employee.
- I. Prospective respondents who have any questions regarding this Request for Qualifications should contact, via email, Robyn Chrabasz, Historical Commission Clerk, at historicclerk@townofwales.net. Any and all such responses and any supplemental instructions will be in the form of written addenda which, when issued, will be posted on the Town website, or sent via email if time requires, and shall be expressly acknowledged by respondents. Failure of any respondent to receive any such addendum or interpretation shall not relieve such respondent from any obligation under their submission. All addenda so issued shall become part of the Contract Documents.
- J. The award of any contract hereunder is subject to the appropriation and availability of funds.

IX. Expected Timeline & Funding Details

For this project, the Town of Wales has not yet funded this project. The team selected will be utilized to put an fee proposal in as part of a grant submission for the MA One-Stop grant to fund the designer fees for this project.

April 12, 2023 -	Advertise RFQ for designer selection
May 3, 2023 -	Receive submissions from interested design teams
May 13, 2023 -	WHC will meet and rank all submissions.
May 20, 2023 -	WHC will conduct interviews, and select a design team, and negotiate fee proposal. NOTE: This is a Saturday for interviews. While unconventional, this is the best available time for the entire Commission. Interviews may be in person or virtual as determined by the Evaluation Committee.
June 5, 2023 -	Estimated date for Board of Selectmen to approve contract
June 2023 -	Contract and Start work
Spring 2024 -	Project complete, grant closeout and budgeting for recommended phases

**EXHIBIT A [TOWN OF WALES DESIGNER SELECTION
PROCEDURES]**

EXHIBIT B [DSB APPLICATION FORM]

EXHIBIT C - CERTIFICATIONS REQUIRED BY LAW

You must COMPLETE and SIGN the following certifications. You must also print, at the bottom of this page, the name of the contractor for whom these certifications are submitted.

TAX COMPLIANCE

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, the undersigned, authorized signatory for the below named contractor, do hereby certify under the pains and penalties of perjury that said contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

NON-COLLUSION

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

COMPLETE AND SIGN BELOW:

Authorized Person's Signature

Date

Print Name & Title of Signatory

Name of Business

Seal if respondent is a corporation

CERTIFICATE OF CORPORATE AUTHORITY

At a duly authorized meeting of the Board of Directors of _____
(Name of Corporation)

held on _____ it was VOTED that:
(Date)

(Name)

(Title)

of this corporation, be and he/she hereby is authorized to submit bids and proposals, execute contracts, deeds and bonds in the name and on behalf of said corporation, and affix its corporate seal thereto; and such execution of any contract, deed or obligation in this corporation's name on its behalf by such _____ under seal of the company, shall be valid and binding upon this corporation.

A True Copy,

ATTEST: _____

TITLE: _____

PLACE OF BUSINESS: _____

DATE OF THIS CERTIFICATE: _____

I hereby certify that I am the clerk of the _____
(Corporation)

that _____ is the duly elected _____ of
(Name) (Title)

said corporation, and that the above vote has not been amended or rescinded and remains in full force and effect as of the date of this Certification.

(Clerk)

CORPORATE SEAL:

_____, MASSACHUSETTS

LLC CERTIFICATE OF INCUMBENCY AND AUTHORITY

_____, LLC

I, _____, do hereby certify that:

1. I am the duly elected and acting _____ of _____ LLC, a limited liability company organized and existing in good standing under the laws of the State of _____ (the "Company").
2. Attached hereto as Exhibit A is a true and correct copy of resolutions which were duly adopted by the members of the Company on _____, 20__.
3. The attached resolutions have not been amended, rescinded or modified and are in full forces and effect on the date hereof in the form originally adopted, and are in conformity with the Articles of Organization and Operating Agreement of the Company.
4. Attached hereto as Exhibit B is a true and correct copy of the Articles of Organization dated _____, 20__ and the Operating Agreement dated _____, 20__.
5. The attached Articles of Organization and Operating Agreement have not been amended, rescinded, or modified and are in full forces and effect on the date hereof.
6. The following person are the Authorized Officers of the Company in the capacities indicated, and the signatures set forth after their names and titles are their true and genuine signatures.

<u>Name</u>	<u>Office</u>	<u>Signature</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Witness, my signature and the seal of the Company this _day of _____, 2023.

Name:
Title:

EXHIBIT D - DESIGNER SERVICES AGREEMENT

This AGREEMENT is made under seal the _____ day of July in the year Two Thousand and Twenty-Three, between the Town of Wales, Massachusetts, by its Board of Selectmen, the AWARDING AUTHORITY, and _____, with an address of _____ acting as PROJECT ARCHITECT or PROJECT ENGINEER (the DESIGNER).

The scope of services is set forth in Exhibit A.

ARTICLE 1: DEFINITION OF TERMS

- 1.1. GENERAL LAWS -- the General Laws of the Commonwealth of Massachusetts as amended, including any rules, regulations, and administrative procedures implementing said laws.
- 1.2. DESIGNER -- the individual or firm performing professional services under this AGREEMENT.
- 1.3. PRINCIPALS -- the registered professional Architects or Engineers listed in ARTICLE 16.
- 1.4. NOTICE TO PROCEED -- written communication from the Awarding Authority, constituting an essential condition of this AGREEMENT, authorizing the Designer to perform services for the project phase to which such Notice shall relate. The Notice to Proceed shall include the basis for compensation, the fixed limit construction cost, if any, and may include the time of submittal. Subsequent written communications amending the Notice to proceed are required to change either a submittal date or the fixed limit construction cost. Proceeding with various phases of contract work is contingent upon the Awarding Authority or its designees' satisfaction with and acceptance of services performed for each phase.
- 1.5. SUBMITTAL DATES -- those dates referred to in the Notice to Proceed or any subsequent amendment thereto.
- 1.6. CONSTRUCTION CONTRACT -- contract for construction of a whole or part of the project, including all change orders.
- 1.7. TOTAL CONSTRUCTION COST -- the sum of the actual construction contract award price and each authorized change order revising the construction contract award price. The construction contract award price shall be the same as the construction price of the lowest responsible and eligible bidder.
- 1.8. AWARDING AUTHORITY -- The board, commission, agency or department of the Town having authority to award design and construction contracts in connection with the Project.
- 1.9. PROJECT -- the building project for which designer services have been procured under this AGREEMENT, and which is identified on Page 1 (Project Title).

ARTICLE 2: CONSULTANTS, SUBCONTRACTING, SUCCESSORS, AND ASSIGNS

- 2.1. The Designer shall not employ additional consultants not named in the proposal or sublet, assign, or transfer any part of its services or obligations under this AGREEMENT without the prior approval and written consent of the Awarding Authority. The Awarding Authority shall not unreasonably withhold such approval. Written consent shall not in any way relieve the Designer from its responsibility for the professional and technical accuracy and the coordination of all data, designs, drawings, specifications, estimates and other work or materials furnished.
- 2.2. Except as otherwise provided in this AGREEMENT or authorized by the Awarding Authority, the Designer shall employ within the basic fee for this project the following consultants where their specific services are required: Architect, Structural Engineer, Civil Engineer, Sanitary Engineer,

Mechanical Engineer, Landscape Architect, Cost Estimator, Electrical Engineer, and any other consultant specifically listed in the proposal. Consultants must be registered in their respective disciplines if registration is required under the applicable General Laws.

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

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

- 3.1. The Awarding Authority shall furnish to the Designer available surveys of the project building site, showing the grades and lines of streets, pavements and adjoining properties; the rights, restrictions, easements, boundaries and controls of the site, or sites; reports from any borings, test pits, chemical, mechanical or other tests, any photographs and information as to water, sewer, electricity, steam, gas, telephone and other services.
- 3.2. The Awarding Authority does not guarantee the accuracy of information furnished and the Designer must satisfy itself as to the correctness of data, except in instances where written exception to the contrary is specifically indicated by the Awarding Authority. If the above data are not available or are in the opinion of the Designer insufficient, the Designer, upon request, may be given authorization to obtain the services of a consultant or perform the work with their own employees. In no case shall the Designer commence such work without prior written authorization of the Awarding Authority.
- 3.3. During the construction phase of this contract, the Designer may retain the services of a photographer, a qualified testing laboratory, and special field inspectors when required by the project, subject to the prior approval of the Awarding Authority or its designee.
- 3.4. If a consultant's services estimated to cost more than \$25,000 are required, including the services of a qualified testing laboratory functioning under the jurisdiction of both a Massachusetts registered Engineer and licensed inspectors, a detailed description of the proposed services shall be prepared by the Designer and approved by the Awarding Authority. Consultant fee proposals shall be received by the Designer and accompanied with recommendations of approval submitted to the Awarding Authority before any work is authorized. Such consultants shall carry adequate Liability Insurance. When a consultant's services are estimated to cost \$25,000 or less, the Designer shall use established standard rates for such services.
- 3.5. Drawings and/or specifications needed to obtain survey or subsoil information, and any other soils engineering shall be prepared by the Designer as part of the basic fee. The Designer shall then analyze and evaluate such surveys and tests and make its design conform to the results of such evaluation.
- 3.6. The Awarding Authority will compensate and reimburse the Designer as provided in ARTICLE 9 for the cost of consultant services performed under this Article. For responsibility, coordination inspection, analysis, and evaluation of consultant services retained under this ARTICLE, the Designer shall similarly be compensated as provided by ARTICLE 9.

ARTICLE 4: COMPLIANCE WITH LAWS

- 4.1. The Designer shall perform the work required under this AGREEMENT in conformity with all requirements and standards of the Awarding Authority, all applicable laws, statutes, ordinances, by-laws, codes, rules and regulations, and executive orders of the Commonwealth and its political

subdivisions, and the Federal Government. The Construction Documents shall comply with all applicable laws, statutes, ordinances, by-laws, codes, rules and regulations, and executive orders. The Designer, including all approved consultants and subcontractors, shall comply with all applicable provisions of the rules and regulations of the President's Commission on Equal Employment Opportunity and Procedures promulgated by the Governor of Massachusetts or their designees, insuring equal opportunity for employees and minority and women-owned business enterprises.

ARTICLE 5: PROFESSIONAL RESPONSIBILITY

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

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

- 5.2. The Designer shall furnish appropriate competent professional services for each of the phases to the point where detail checking and reviewing by the Awarding Authority will not be necessary. Any changes, corrections, additions, or deletions made by the Awarding Authority shall be incorporated in the design of the Project unless detailed objections thereto are received from the Designer and approved by the Awarding Authority.
- 5.3. The designer shall thoroughly acquaint its employees and consultants with all provisions of the General Laws governing the conduct of public construction projects, including but not limited to M.G.L. c.149, and c.30, and in particular, M.G.L. c.30, §39M, wherein the description of material specifications and proprietary items in construction bid documents is governed.
- 5.4. Neither the Awarding Authority's review, approval or acceptance of, nor payment for any of the services furnished shall be construed to operate as a waiver of any rights under the AGREEMENT or any cause of action arising out of the performance of the AGREEMENT.

ARTICLE 6: DESIGNER SERVICES

- 6.1. TYPE 1 CONTRACTS; STUDIES, PROGRAMS, MASTER PLANS, REPORTS
 - 6.1.1. Upon receipt of a Notice to Proceed from the Awarding Authority acceptable to the Designer, the Designer shall meet as necessary within the Awarding Authority and shall prepare and submit existing conditions, feasibility, programs, preliminary reports, master plans, studies, sketches, space utilization criteria, and estimates in accordance with the Scope of Services set forth in Exhibit A to this AGREEMENT. Monthly progress reports shall be submitted by the Designer to the Awarding Authority. The Designer shall prepare and submit concept sketches of various design ideas to determine a workable plan solution

in terms of the programs, funds available, and as complete an overall design concept as possible, including cost estimates. The Designer shall furnish to the Awarding Authority eight (8) copies of the report for final approval on or before the date set forth in the Notice to Proceed or any supplement thereto.

6.2. TYPE 2 CONTRACTS -- DESIGN AND CONSTRUCTION

6.2.1. Phase 1 – Schematics

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

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

6.2.2. Phase 2 - Design Development

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

6.2.3. Phase 3. - Construction Documents

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

approval of the Awarding Authority. The Designer shall furnish to the Awarding Authority for approval six (6) sets of the said plans, specifications, and construction cost estimates.

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

6.2.4. Phase 4 - Bidding Phase

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

If the bid of the lowest responsible and eligible bidder exceeds the Fixed Limit of Construction Cost, if any, the Awarding Authority shall have the option to (a) give written approval of an increase in such Fixed Limit, (b) re-bid the Contract within a reasonable period of time, or (c) instruct the Designer in writing to provide such revised Construction Contract Documents as the Awarding Authority may require to bring the cost within the Fixed Limit. In the case of (c), the Designer may in connection with such revisions make reasonable adjustments in the scope of the Construction Contract or quality of the work allowed therein subject to the written approval of the Awarding Authority, which approval shall not be unreasonably withheld. The Designer shall not be entitled to any additional compensation for such services.

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

6.2.5. Phase 5 - Designer's Services During Construction

Upon the award of the construction contract the Designer and its consultants shall, for the purpose of protecting the Awarding Authority against defects and deficiencies in the work of the Project: (1) be charged with general administration of the construction contract, including review and processing of the General Contractor's applications for payment and change order proposals; preparation of a monetized "punch list" of remaining work following substantial completion of the project work, and subsequent inspection to determine completion of such punch list work; review and processing of the General Contractor's final completion and close out documentation and assistance to the Awarding Authority in the close out process; (2) furnish the General Contractor with information for establishing lines and grades and such large scale drawings and full sized detailed drawings

as the Awarding Authority may require; (3) promptly check and approve samples, schedules, shop drawings and other submissions by the General Contractor; (4) make at least weekly visits to the site or sites of the Project; (5) conduct semi-final and final inspections of the construction project and report the results of such inspections in writing to the Awarding Authority; (6) require each consultant employed in accordance with ARTICLE 2 above to make visits when necessary, and more often if requested by the Awarding Authority, for the same purposes during the progress of that portion of the said construction to which the consultant's services relate and to report in writing thereon to the Designer; (7) report to the Awarding Authority weekly in writing on the progress of construction including whether or not the contractor is keeping record drawings; (8) recommend rejection of all project work observed by the Designer which fails to conform to the Contract Documents; (9) decide all questions regarding interpretation of or compliance with the Contract Documents, except as the Awarding Authority may in writing otherwise determine; (10) review and act on all requests for changes in plans, specifications, work, or contracts for the Project; and (11) upon written instructions from the Awarding Authority, furnish working plans and specifications for any such change.

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

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

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

6.2.6. Phase 6. - Record Drawings, Reports, Calculations

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

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

As-Built Record Drawings in CAD or similar format, PDF format, and two (2) printed sets shall be furnished to the Awarding Authority by the Designer.

ARTICLE 7: DESIGNER'S BASIC FEE

- 7.1. For the performance of all services required under the terms of this AGREEMENT and excluding those services specified under ARTICLES 8, 9 and 10, the Designer shall be compensated by the Awarding Authority in accordance with the lump sum fee for this project. The fee is a lump sum of \$ _____.
- 7.2. If there is a material change in the scope of services provided in this agreement, the Designer and the Awarding Authority will mutually agree to an adjustment in the Designer's Basic Fee.
- 7.3. The basic fee shall be paid to the Designer in accordance with Exhibit A to this agreement. Billings for services shall be made monthly and shall be in proportion to the amount of work completed.

ARTICLE 8: ADDITIONAL COMPENSATION

- 8.1. With the formal written approval of the Awarding Authority, the Designer shall perform all or any of the following services in addition to the services performed pursuant to ARTICLE 6 above: (1) revising previously approved drawings, specifications or other documents to accomplish changes authorized by the Awarding Authority, and preparation of change orders related thereto; (2) preparing documents for alternate bids requested by the Awarding Authority except alternates prepared by the Designer to adjust the fixed limit construction cost, if any; (3) providing consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing professional services of the type set forth in ARTICLE 6 as may be required in connection with the replacement of such work; (4) providing services after final payment to the contractor; (5) revising working plans and specifications submitted in their final and complete form for which bids were not received within six months after submission; (6) making studies other than those normally required and preparing applications and reports to assist the Awarding Authority in obtaining federal and/or state aid; (7) preparing operating and maintenance manuals; (8) assisting the Awarding Authority in litigation arising out of the construction contract; and (9) performing any other professional services not otherwise required under this Contract.

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

ARTICLE 9: REIMBURSEMENT

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

ARTICLE 10: DESIGN FEES AND CHANGE ORDERS

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

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

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

ARTICLE 11: TERMINATION, NO AWARD

- 11.1. By written notice to the Designer, the Awarding Authority may terminate this contract at any time. If any such termination shall occur without the fault of the Designer, all compensation and reimbursement due to the Designer up to the date of termination, in accordance with all contract terms, shall be paid to the Designer by the Awarding Authority. Such payment shall not exceed the fair value of the work, as the Awarding Authority shall determine.
- 11.2. By written notice to the Awarding Authority, the Designer may terminate this contract (1) if the Awarding Authority, within sixty (60) days following written notice from the Designer of any default by the Awarding Authority under the AGREEMENT, shall have failed to remove such

default or (2) if, after the Designer shall have performed all services required of the Designer in Phase 1, Phase 2, or Phase 3 of the Project, if applicable, at least six (6) months shall have lapsed without receipt by the Designer of Notice to Proceed with the next phase of the Project. Upon any such termination by the Designer, all compensation and reimbursement payable to the Designer in accordance with the AGREEMENT up to and including the date of termination shall be paid to the Designer by the Awarding Authority.

ARTICLE 12: RELEASE AND DISCHARGE

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

ARTICLE 13: NOTICES, APPROVALS, INVOICES

- 13.1. Any notice required under this contract to be given by the Awarding Authority to the Designer, or by the Designer to the Awarding Authority, shall be deemed to have been so given, whether or not received, if mailed by prepaid postage by, respectively, the Awarding Authority to the Designer at the address specified for the Designer on Page 1, or the Designer to the Awarding Authority.
- 13.2. Written approval by the Awarding Authority for Extra compensation as provided under ARTICLES 8 and 9, Reimbursements, shall be in the form of a letter issued by the Awarding Authority.
- 13.3. All invoices may be submitted monthly and subject to contract terms and proper documentation will be promptly processed by the Awarding Authority or returned to the Designer.
- 13.4. Invoices for services under ARTICLE 6 where such invoices pertain to design services during construction shall also describe the names, payroll titles, and dates of site visits required for construction-phase services.
- 13.5. Invoices submitted for services which have not been previously authorized in writing shall be returned to the Designer.
- 13.6. Requests for previously authorized expenses of any nature must be accompanied by a billing or receipt from the source of the expense.

ARTICLE 14: INSURANCE

- 14.1. The Designer shall at their own expense obtain and maintain a Professional Liability Insurance policy for errors, omissions or negligent acts arising out of the performance of this AGREEMENT in a minimum amount of \$1,000,000.
- 14.2. The coverage shall be in force from the time of the agreement to the date when all construction work designed under the contract is completed and accepted by the Awarding Authority. If, however, the policy is a claims made policy, it shall remain in force for a period of six (6) years after substantial completion.

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

- 14.3. The Designer shall, before commencing performance of this contract, provide by insurance for the payment of compensation and the furnishing of other benefits in accordance with M.G.L. c.152, as amended, to all employed under the contract and shall continue such insurance in full force and effect during the term of the contract. The Designer shall also maintain broad public liability insurance to protect against damage or injury to persons or property.
- 14.4. The Designer shall carry insurance in a sufficient amount to assure the restoration of any plans, drawings, computations, field notes, or other similar data relating to the work covered by this contract in event of loss or destruction until the final fee payment is made or all data are turned over to the Awarding Authority.
- 14.5. Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the Agreement. Any cancellation of insurance whether by the insurers or by the insured shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the Awarding Authority at least fifteen days prior to the intended effective date thereof, which date should be expressed in said notice. The Designer shall indemnify, defend, and hold the Awarding Authority harmless from and against any and all claims, demands, liabilities, actions, causes of action, costs, and expenses arising out of the Designer's breach of the Agreement or the negligence or misconduct of the Designer or the Designer's agents or employees.
- 14.6. Upon request of the Designer, the Awarding Authority reserves the right to modify any conditions of this Article.

ARTICLE 15: SUPPLEMENTAL CONTRACT DATA; LEGAL REQUIREMENTS

- 15.1. The Designer hereby certifies:
 - i. if an individual, the individual is a registered architect or engineer;
 - ii. if a partnership, a majority of all the partners are persons who are registered architects or engineers;
 - iii. if a corporation, sole proprietorship, joint stock company or other entity, the majority of the directors or a majority of the stock ownership and the chief executive officer are persons who are registered architects or engineers, and the person to have the project in his or her charge is a registered architect or engineer;
 - iv. if a joint venture, each joint venture satisfies the requirements of this section.
(Statutory reference: M.G.L. c.7C, §44)
- 15.2. The Designer hereby certifies that it has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with the award of this Agreement. (Statutory reference: M.G.L. c.7C, §51)
- 15.3. The Designer hereby certifies that no consultant to or subcontractor for the Designer has given, offered or agreed to give any gift, contribution or offer of employment to the Designer, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the Designer. (Statutory reference: M.G.L. c.7C, §51)
- 15.4. The Designer hereby certifies that no person, corporation or other entity, other than a bona fide full-time employee of the Designer, has been retained or hired by the Designer to solicit for or in any way assist the Designer in obtaining this Agreement upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Agreement to the Designer. (Statutory reference: M.G.L. c.7C §51)
- 15.5. The Designer hereby certifies that it has internal accounting controls as required by subsection (c) of section thirty-nine R of chapter thirty and that the Designer filed and will continue to file an audited financial statement as required by subsection (d) of said section thirty-nine R. (Statutory reference: M.G.L. c.7C, §51)

- 15.6. The Designer shall maintain all books, records, and accounts related to the Project in compliance with the following:
- 15.6.1. The Designer shall make, and keep for at least six years after final payment, books, records, and accounts that in reasonable detail accurately and fairly reflect the transactions and dispositions of the Designer.
 - 15.6.2. Until the expiration of six years after final payment, the Awarding Authority, the office of the inspector general and the deputy commissioner of capital planning and operations shall have the right to examine any books, documents, papers or records of the Designer or of its consultants that directly pertain to, and involve transactions relating to, the Designer or its consultants.
 - 15.6.3. The Designer shall describe any change in the method of maintaining records or recording transactions which materially affects any statements filed with the Awarding Authority, including in the Designer's description the date of the change and reasons therefore, and shall accompany said description with a letter from the Designer's independent certified public accountant approving or otherwise commenting on the changes.
 - 15.6.4. The Designer has filed a statement of management on internal accounting controls as set forth in Paragraph (6) below prior to the execution of this Agreement.
 - 15.6.5. The Designer has filed prior to the execution of this Agreement and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in subparagraph 15.6.8 below.
 - 15.6.6. The Designer shall file with the Awarding Authority a statement of management as to whether the system of internal accounting controls of the Designer and its subsidiaries reasonably assures that:
 - a. transactions are executed in accordance with management's general and specific authorization;
 - b. transactions are recorded as necessary:
 - 1. to permit preparation of financial statements in conformity with generally accepted accounting principles; and
 - 2. to maintain accountability for assets;
 - c. access to assets is permitted only in accordance with management's general or specific authorization; and
 - d. the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any difference.
 - 15.6.7. The Designer shall also file annually with the Awarding Authority a statement prepared and signed by an independent certified public accountant, stating that such accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to:
 - a. whether the representations of management in response to this paragraph and paragraph 15.6.6(b) above are consistent with the result of management's evaluation of the System of internal accounting controls; and
 - b. whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts that would be material when measured in relation to the Designer's financial statements.
 - 15.6.8. The Designer shall annually file with the Awarding Authority during the term of this Agreement a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by accountant's report.
 - 15.6.9. Records and statements required to be made, kept, or filed in compliance with the provisions of this paragraph 15.6 shall not be public records and shall not be open to public

inspection, except as provided in subparagraph 15.6.2. (Statutory reference: M.G.L. c.30, §39R)

- 15.7. The Designer and its consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Designer in the preparation of bid documents, as reasonably determined by the Awarding Authority. (Statutory reference: M.G.L. c.7C, §51)
- 15.8. Life-cycle cost estimates for the Project shall be obtained at an initial stage and as a regular part of the services to be performed under this Agreement. (Statutory reference: M.G.L. c.149, §44M)
- 15.9. The Designer hereby certifies under penalties of perjury that the Designer has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support. (Statutory reference: M.G.L. c.62C, §49A)

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

ARTICLE 16: MISCELLANEOUS PROVISIONS

- 16.1. One (1) reproducible copy of all Drawings and Specifications furnished by the Designer and all other documents prepared by the Designer shall become the property of the Awarding Authority. Ownership of the stamped drawings and specifications shall not include the Designer's certification or stamp. Any re-use of such Drawings and/or Specifications without the Designer's written verification of suitability for the specific purpose intended shall be without liability or legal exposure to the Designer or to the Designer's independent professional associates, subcontractors, or consultants. Distribution or submission to meet official regulatory requirements or for other purposes in connection with the project is not to be construed as an act in derogation of the Designer's rights under this AGREEMENT.
- 16.2. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and personal representatives.
- 16.3. This Agreement represents the entire agreement between the Awarding Authority and the Designer, and supersedes any prior agreements whether oral or written. This Agreement may be amended only by written instrument executed by both the Awarding Authority and the Designer.
- 16.4. The Designer agrees that the Awarding Authority and any of its officer or employee assume no personal liability under this Agreement.
- 16.5. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.
- 16.6. In the event any provision of this Agreement shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall attach only to such provision and shall not affect or render invalid or unenforceable any other provision of this Agreement.

SIGNATURES

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

Accepted by Designer

Accepted by Awarding Authority

By: _____

Name: _____

Board of Selectmen

Title: _____

Approved as to Form

Town Counsel

EXHIBIT A - SCOPE OF SERVICES

[To be provided by DESIGNER]

EXHIBIT B – HOURLY RATES

[To be provided by DESIGNER]