

**TOWN OF SHUTESBURY**

**REQUEST FOR QUALIFICATIONS**

**OWNER'S PROJECT MANAGEMENT  
SERVICES FOR THE  
SHUTESBURY PUBLIC LIBRARY**

**RFQ # 23090922**

**Proposals Due by October 11, 2022**

# **TABLE OF CONTENTS**

## ***I. GENERAL INTRO, TERMS AND CONDITIONS***

**A. Introduction/Project History**

**B. Overview of OPM Services Sought**

**C. Project Schedule and Submission Instructions**

**D. Limitation on Funding**

**E. Inspection**

**F. Proprietary Information**

**G. Amendments to the Contract**

## ***II. SCOPE OF SERVICES***

## ***III. EXPERIENCE REQUIREMENTS***

## ***IV. REQUIRED SUBMISSIONS***

## ***V. RESPONSE RATING AND SELECTION PROCESS***

## ***ATTACHMENTS***

***1. General Information Form & Required Certifications***

***2. Standard OPM/DESIGNER APPLICATION***

## ***EXHIBITS***

***I. Sample Contract***

## **I. GENERAL INTRODUCTION, TERMS AND CONDITIONS**

### **A. Introduction/Project History**

The Town of Shutesbury has been awarded the Small Library Pilot Project grant through the Massachusetts Public Library Construction Program administered by the Massachusetts Board of Library Commissioners. The grant and local matching support will provide for the design and construction of a new Public Library at a vacant Town-owned parcel of land, known as Lot O-32, located at 66 Leverett Road, Shutesbury, Massachusetts. The new Shutesbury Library will be designed in accordance with the Library Building Program which specifies 4,223 square feet of assigned spaces, up to 1,267 square feet of unassigned space, and a 700 square-foot outdoor covered porch. The new Library will include spaces for collections, functionality and people. The design will be efficient, flexible and economical. The rural character of Shutesbury is important to our community and the new Library building and its grounds will reflect the rural, woodland setting of the surrounding area. The total projected costs are currently estimated to be \$6,392,079.

The new Shutesbury Library, will replace the M.N. Spear Memorial Library. The M.N. Spear Memorial Library is a one-room, 945-square-foot, antique building largely unchanged since 1902. While electricity and high-speed internet are now available, the building still lacks running water. In 2008, a composting toilet and an accessibility ramp were added, but while patrons who use wheelchairs can now enter the building, the narrow aisles entirely prevent navigating freely through the stacks. Despite the building's limitations, demand for library services continues to increase. Shutesbury is a community of active and engaged library users: Fully 74% of residents have library cards. Circulation has increased 37% in the last ten years. Total circulation for each of the past five years has been more than three times the size of the collection. Shutesbury's circulation was the third highest compared to other libraries in our population group for fiscal year 2020.

### **B. Overview of OPM Services Sought**

Working on behalf of the Town of Shutesbury, consistent with State and Federal statutes, the person or firm shall be an advocate for The Town of Shutesbury, through the Site Selection, Design, Bidding, Construction, and Close-out Phases of the project (if retained for further phases) to ensure that the quality of design meets all standards that are specified, as detailed in Massachusetts General Law Chapter 149 s 44A1/2.

Each Respondent must designate an individual who will serve as the Owner's Project Manager. The Project Manager shall be certified in the Massachusetts Certified Public Purchasing Official Program as administered by the Inspector General of the Commonwealth of Massachusetts.

### **C. Project Schedule and Submission Instructions**

It is the intent of the Town that the services begin as soon as contract negotiations are complete. The Contract between the Town and the selected Firm will be for Phase I-V.

One (1) original signed, nine (9) copies, and one PDF on USB flash drive of the proposal should be submitted with all information identified in this RFQ "Proposal Submittal Requirements" section and any supplementary materials, desired.

Proposals must be submitted in a **sealed envelope** and must be labeled on the outside as: **“Proposal for Owner’s Project Manager – Shutesbury Library”**, and delivered to:

**Town of Shutesbury  
Town Administrator’s Office  
Town Hall  
1 Cooleyville Rd.  
Shutesbury, MA 01072**

**Complete proposal packages must be received at the above address by:**

**Date: Tuesday, October 11, 2022**

**Time: 3:00pm**

Late submissions will not be accepted. Responses submitted by facsimile or other electronic means will not be accepted.

Following is a tentative schedule of the selection process (subject to change at the Town’s discretion). **The Town is planning to conduct a pre-bid informational briefing session.**

**RFQ Issued:** September 14, 2022

Pre-qualifications Informational Session:	9/28/2022 1:00pm
Prospective Bidders Questions due:	9/30/2022 10:00 a.m.
Responses posted on website and on Commbuys due:	10/5/2022, 1:00 p.m.
RFQ due date:	<b>Tuesday, 10/11/22 at 3:00</b>
p.m.	
Review/evaluation period for Responses:	10/14/22
Interviews:	10/17/22-10/19/22
Contract Negotiations Complete:	10/25/22
Contract Issued:	10/28/22
Constructions Services:	Construction Season 2024

A Firm may correct, modify, or withdraw a proposal by written notice received by the Town prior to the time and date set for the proposal opening. Proposal modifications must be submitted in a sealed envelope clearly labeled “Modification No\_\_” Each modification must be numbered in sequence, and must reference the original RFQ.

Questions concerning this solicitation may be submitted electronically only to [library.director@shutesbury.org](mailto:library.director@shutesbury.org). All Questions will be answered via addenda to all persons on record as having received the Request for Qualifications.

Proposers are not to communicate directly with any employee of The Town of Shutesbury, except as specified in this RFQ, and no other individual employee or representative is authorized to provide any information or respond to any question or inquiry concerning this RFQ. The Town reserves the right to cancel this Request for Qualifications, or reject, in whole or in part, any and all proposals, if the Town determines that cancellation or rejection serves in its best interests. The Town reserves the right to waive informalities, and to issue addenda to this RFQ.

All Responses shall become the property of the Town upon receipt. Firms should be aware that any information given to the Town in response to this RFQ or any correspondence between the Firm and the Town may not be deemed to be proprietary or confidential.

**The Town intends to negotiate the Fee with the selected Firm based upon qualifications, experience and the project approach (work/plan/level of effort that best meets the Town's needs).**

#### ***D. Funding***

The Contract for Owner's Project Manager Services resulting from this RFQ is subject to the availability of funds from the Town. The Town has secured funding for the Site Review, Schematic Design and Design Development Phases, Construction Design and Construction Phases, for a total amount of \$6,392,079. This amount does not fully utilize MBLC grant funds. The Friends of the Library continue to fundraise.

#### ***E. Inspection***

Firms shall permit authorized representatives of the Town to inspect the Firm's data, facilities, equipment and records relating to this RFQ. Unsubstantiated statements or the refusal to permit an audit or inspection may cause the Firm to be deemed non-responsive.

#### ***F. Proprietary Information***

All Responses shall become the property of the Town. If any proprietary information is contained in or attached to a Response, it must be clearly identified as such. Please note that the Town is subject to the provisions of Chapter 4, Section 7, Clause twenty-six, of the General Laws of Massachusetts (public records), and other Chapters thereof related thereto.

#### ***G. Amendments to the Contract***

The Town reserves the right to negotiate mutually acceptable amendments to the Contract arising from the RFQ and, in particular, with respect to the addition of services that are consistent with the services solicited by the RFQ. The right to negotiate mutually acceptable amendments applies for the term of the Contract and any extensions.

## **II. SCOPE OF SERVICES**

The Owner's Project Manager will be responsible for, but not limited to providing the following services in accordance with the terms and conditions set forth in the Town's Standard Owner's Project Management Contract.

## **A. Phase I – Architect and Design Selection Phase**

1. The OPM shall review 66 Leverett Rd. and advise Town along with Design Team. The OPM will call attention to any additional information needed to make informed decisions for the project.
2. Attend Town meetings as needed to achieve deliverables and contribute to setting agenda topics and schedule as appropriate;
3. Review with the Town alternative approaches to design and construction of the Project, including, but not limited to, phasing of the construction, life cycle operational costs, construction type, and current best practices for environmental concerns such as energy efficiency, sustainable building materials, water conservation, indoor air quality, and local and/or recycled sourcing;
4. Review/Discuss conceptual designs in consultation with the Town and others, as appropriate, to sufficiently show the building being suitable to the site with site plans and elevation drawings.
5. Review/Discuss preliminary cost estimates based on past similar projects and accepted standard costs. Provide value engineering and resource prioritization suggestions;
6. Generate a timeline and schedule for the project
7. Assist in identifying additional grant and other funding opportunities;
8. Attend Public Meetings for the purpose of presenting the project
9. Assist in the preparation of the RFQ/RFP for the selection of the architect/designer and other engineering services;
10. Assist in releasing/putting out to bid the RFQ/RFP for architectural design and engineer services;
11. Assist the Town at the pre-bid conference prior to the selection of the architectural phase services;
12. Assist the Town in its review of the RFQ for architectural phase services and perform reference checks on no less than three of the architectural firms submitting Qualification Statements. In addition, the OPM shall assist in designer negotiations.

## **B. Phase II - Design**

1. The OPM shall attend meetings with the Town, or its designee, the Library Building Committee and architect on an as-needed basis. Additionally, the OPM shall prepare and submit timely minutes of design and project meetings to the Town;
2. Oversee and review the architect's work as it relates to the quality and efficiency of design and preparation of the architect's schedules and cost estimates;
3. Confirm schedule for bringing forth project to the Town for funding support; if additional funds are needed
4. Review and verify architect's invoices for services rendered in comparison to the architect's budget and make recommendations for payment;
5. Review cost estimates and consider, evaluate and recommend value engineering and resource prioritization;
6. Review the schematic plans, evaluations and specifications for cost effectiveness, constructability issues, review for consistency of documents between overlapping trades, coordination, and compliance with the vision of the Town and the

requirements of M.G.L. Chapter 149, Section 44A-M and all other applicable laws, codes, and regulations;

7. Review detailed independent cost estimates as required by the Town at Schematic Design, Design Development and at the end Construction Documents phase.
8. In general, provide advice and consultation to the Town with respect to design, value engineering, and scope of work, cost estimating, general contractor and sub-contractor pre-qualifications, scheduling and coordination of all work;
9. Attend public meetings, as needed, to present project information to Town
10. When requested by the Town, review bid documents for clarity and completeness prior to Construction Phase and Present to the Library Building Committee as necessary;
11. Coordinate with National Grid efficiency programs that provide assistance with designing energy efficient buildings
12. Ensure design meets stretch code requirements

### **C. Phase III – Construction Design and Bidding**

1. The OPM shall review and critique the Designer's conceptual plans, project cost estimates, and resulting construction and bid documents, for cost, constructability issues, missing items, coordination, and compliance with applicable laws and regulations;
2. Complete Cost Estimating Review and Evaluation – Services include review and acceptance (reconcile if required) of conceptual estimates and provide value engineering and resource prioritization suggestions. Perform systematic cost review as outlined by the Town and provide written acceptance. Work with Designer to reconcile estimates to Project Budget as required;
3. Scheduling – Prepare a Project Master Schedule and preliminary Construction Schedule. Assist in the preparation of the Project Control Specification for inclusion in the contract documents;
4. Assist the Town and Architect with the issuance of a bid(s) for contract work, as well as all required filed sub-bids in accordance and compliance with all public bidding requirements and General Laws of the Commonwealth of Massachusetts;
5. Assist the Town with the pre-bid conferences to clarify the project's needs and assure responsive bids;
6. Contractor Selection/Bidding – Assist the Town and Designer with bid opening, review contractor bids, check bidder references, assist in final selection, prepare Construction Contract and assist in execution of the Contract for Construction;
7. Subcontractor Selection/Bidding – Assist the Town and Designer with bid opening, review subcontractor bids, check bidder references, assist in final selection, prepare Construction Contract and assist in final selection;
8. Oversee the work of the Designer and complete an Architect Evaluation upon completion of the project.
9. Assist in any process/requirements related to Pre-Qualification of file sub bidders and general contracts

### **D. Phase IV - Construction Phase.**

1. OPM Shall oversee the work of the General Contractor or Construction Manager throughout construction;

2. Review and comment on the construction schedule developed by the contractor;
3. When requested by the Town, manage the change order process for maximum effectiveness while minimizing delay and costs by submitting a copy of all change order proposals to the Town;
4. Monitor the construction process and construction budget to anticipate difficulties, resolve issues early, and keep work flowing;
5. As requested by the Town coordinate final stages of construction administration, including contractor punch lists and close-out work;
6. Be responsible for receipt and review of certified payroll compliance with State prevailing wage law and applicable governmental regulations;
7. Attendance at periodic meetings (times to be determined) with the Town and The Library Building Committee/or designated committees to present reports on status of project and progress in meeting the desired schedule which will be agreed upon with the successful applicant.
8. Ensure coordination with National Grid energy efficiency incentive program wherever applicable.

#### **E. Phase V – Close-out.**

1. Project Closeout – At the conclusion of the project, the OPM shall secure and deliver the as-built drawings and all other construction-related documents and materials necessary for occupancy and full operation of the facility. Collect all O&M manuals and instructions, warranties, record drawings and as-builts and deliver same to the Chief Procurement Officer; ensure that the Contractors perform equipment testing and assist with training of Town employees on equipment usage and maintenance;
2. Prepare a standard contractor evaluation form for the Division of Capital Asset Management concerning the Designer, General Contractor and Subcontractors' performance as required. Report to the SLBC on all aspects of the project;
3. Provide support and assistance in any claims-related matters or litigation.

### **III. EXPERIENCE REQUIREMENTS**

1. The OPM shall be a person and/or firm who is registered by the Commonwealth as an Architect or Professional Engineer and who has experience in the construction and supervision of construction of buildings or a person, if not registered as an Architect or Professional Engineer, who has relevant experience in construction and supervision of construction of buildings. The OPM shall be independent of the designer, general contractor, and/or any subcontractor involved in the building project.
2. Proposers must regularly provide all of the services described in Section II: Scope of Service and comply with Section V: Proposal Submission Procedures/Criteria.
3. The OPM must have excellent communication skills
4. The individual or firm must be able to demonstrate financial adequacy and managerial stability.
5. The OPM must demonstrate knowledge of MA. Chapter 149 bidding and construction requirements and practices.
6. Each person and/or firm must submit 1) the Project Manager Qualification Statement 2) a certificate of non-collusion; 3) a certification of tax compliance.



7. Each Respondent must designate an individual who will serve as the Project Manager. The Project Manager shall be certified in the Massachusetts Certified Public Purchasing Officer Program as administered by the Inspector General of the Commonwealth of Massachusetts.

#### **IV. REQUIRED SUBMISSIONS**

1. All information requested shall be provided according to the following instructions in order to be considered responsive. Firms must provide qualifications that meet or exceed all requirements listed in the RFQ. At a minimum, the following should be included:
  - a. Each Response shall be typed and should be concise but comprehensive.
  - b. All required certifications must be completed, signed and submitted with each Response. Failure to return completed certifications may deem the submittal nonresponsive.
  - c. All Responses shall start with General Information Form followed by the Table of Contents.
  - d. All Responses shall submit a completed Standard OPM/Designer Application
2. Cover Letter and General Information Form
  - a. The Firm must provide a Cover Letter which summarizes their acknowledgement and statement of the services outlined in this RFQ. Include a statement of financial stability by your auditing firm, or other similar attestation by an appropriate third party. Summarize what you believe your business offers which might be unique from other businesses in this field. Follow this with the completed and signed General Information Form included in this RFQ.
3. Professional Qualifications and Experience
  - a. The Response should include a statement of qualifications and experience. This statement should, at a minimum, include a discussion of the ability to perform necessary service requirements within the Firm or through the use of subcontractor(s). Skills and resources to be addressed include:
    - i. experience with similar projects; proven knowledge of and experience with Massachusetts procurement and construction laws.
    - ii. The Response must include a description of similar undertakings provided by the Firm or their subcontractors.
  - b. Discuss capabilities of firm's public building management experience including:
    - i. Cost and budget controls
    - ii. Timeliness, construction completion to client's satisfaction
    - iii. Contractor supervision
    - iv. Contract administration
    - v. Working knowledge of current Public Library Building Construction Guidelines.
    - vi. Familiarity and experience of firm with public bidding, including history of previous and successful experiences with general and sub-bid challenges under MGL Chapter 149. MCPPO Certification is required.
    - vii. List all experiences with public contracts in the past ten years that required some form of arbitration or legal action in the state or federal

court systems to complete the contract work and the role your firm played in the resolution of these disputes, if any.

- c. The Response must include a list of at least three (3) references for projects that are similar in scope and complexity to this project. Library projects are preferred.
  - d. The most recent reference should be listed first, then others in reverse chronological order.
  - e. Include the name of the reference, contact person, title of contact person, telephone number, contract cost, period of performance of contract, description of contract work, and any photos available.
  - f. Contact information should be current.
  - g. A comprehensive list of all OPM projects undertaken in the past five years is also desired and should include the OPM's cost estimate and final cost of construction, if constructed.
  - h. The Town reserves the right to seek references beyond those supplied by the proposer, which may be used as part of the evaluation process.
4. Personnel Qualifications and Experience
    - a. Provide a detailed resume for each staff person that will be assigned to this project. Additionally, for each staff person to provide services, the Firm must clearly identify, at a minimum, the individual's current duties, which position the individual would be assigned to, and identification of the tasks to be performed by them. This must include any proposed sub consultants. The Firm is encouraged to highlight the staff persons' relevant experience to the services being requested in this document and show that their qualifications meet or exceed the requirements. An Organization Chart is recommended to identify the proposed Project Manager and key staff and/or sub-consultants. As the project progresses and if staff substitutions are needed, identify the new staff person and provide his or her qualifications.
5. Work Plan
    - a. Provide a detailed program describing the methodology and approaches to be used to accomplish the project services by tasks. The Firm must list, for each task, the number of person hours expected. A detailed project schedule must be supplied which illustrates their capability to complete the project on time. Any recommendations for changes or additions to the Scope of Service consistent with the objectives of the Project Manager services must also be included. The work plan shall illustrate the Firm's capability to manage, coordinate and integrate the work of its personnel and any proposed sub-consultants; to interface with the Town's Library Building Committee and staff and consultants; and to provide the experienced personnel required for successful performance of the services.
6. Additional Information
    - a. The Firm is encouraged to submit other information which may be pertinent to the evaluation of the Response.
7. Required Certifications
    - a. The Response must include the following completed and signed certifications from Attachment A.
    - b. Certification of Eligibility
    - c. Certification of Non-Collusion
    - d. Attestation of Tax Compliance
    - e. Statement on MGL / Building Code

- f. Proof of insurance covering general liability, workers' compensation, professional liability, errors and omissions and Excess Umbrella coverage. Initialed Sample Contract for Acknowledgement of Terms and Conditions

## V. RESPONSE RATING AND SELECTION PROCESS

The Contract will be awarded to the most responsible and responsive firm in accordance with the minimum and comparative criteria in this RFQ. All Responses received will be reviewed by an Evaluation Committee who will evaluate each Response to see that it has met the Minimum Criteria and those Responses that so qualify shall be evaluated based on the Comparative Criteria.

### 1. Minimum Requirements

The following are the MINIMUM Requirements for a Response to be considered and evaluated

- a. Firm shall have professional registration in architecture or engineering with five (5) years of construction management experience, or for those not registered, at least seven (7) years of relevant experience in the construction and supervision of building construction.
- b. Firm must identify and commit an individual Project Manager, employed by the firm, who is registered by the Commonwealth of Massachusetts as an architect or professional engineer and who has a least five (5) years' experience in the construction and supervision of building construction and is MCPPO certified. Firms and identified staff shall demonstrate thorough knowledge of the Massachusetts State Building Codes; the Americans with Disabilities Act; and working knowledge of the Commonwealth of Massachusetts Designer Selection and procurement laws including public building construction with pre-qualified filed sub-bids, general contractors and horizontal construction.
- c. Firms shall demonstrate knowledge of and experience with best environmental practices for new or rehabbed sites.
- d. Proposed OPM team must demonstrate prior successful working relationships with clients similar to the Town on projects of comparable size and complexity.
- e. Firm or individual must have experience as an Owner's Project Manager or experience with related duties on a minimum of three (3) public building projects similar in scope to this project within the last seven (7) years.
- f. The Response must include a list of at least three (3) references for projects that are similar in scope and complexity to this project.

### 2. Comparative Criteria

- a. Firms must adequately address the following in their Responses and will be reviewed by the committee and given scores of Highly Advantageous, Advantageous, Not Advantageous or Unacceptable. The Committee may invite some or all of the proposers to submit additional material to support or clarify their Responses, but this is not required; therefore, Responses shall be as clear and unambiguous as possible. The Committee may request that finalists attend an interview to further explain or clarify any part(s) of their Response. Interviews will be conducted as part of posted public meeting. The Committee shall rank top finalists from all the

Responses received. Top ranked finalists will be recommended to the Shutesbury Selectboard for award.

b. Prior Experience

The Committee will rate Firms based upon the number and complexity of successfully performed full range project management services on similar projects, utilizing the Key Personnel and sub-consultants (if any) identified in the proposal.

- i. *Highly Advantageous* – Firm and its Project Managers have shown excellent capacity and ability to complete all aspects of the project, have experience with more than three similar public projects in size and complexity in Massachusetts, has experience soliciting and managing design and construction consultants, demonstrates experience keeping contractors within time and financial constraints, and has proven their financial stability.
- ii. *Advantageous* – Firm and Project Managers have sufficiently shown their capacity and ability to complete all aspects of the project, has experience with three similar public projects in size and complexity in Massachusetts, has experience soliciting and managing design and construction consultants, demonstrated experience keeping contractors within time and financial constraints, and has proven their financial stability.
- iii. *Not Advantageous* – Firm and Project Managers have either not sufficiently shown their capacity and ability to complete all aspects of the project, has experience with fewer than three similar public projects in size, or has not shown their experience soliciting and managing design and construction consultants and keeping contractors within time and financial constraints, or has not sufficiently shown their financial stability.
- iv. *Unacceptable* – Firm and Project Manager do not have experience with at least three similar projects or has not addressed more than one of the categories in the requirements of this section.

c. Qualifications of Team/Key Staff

The Committee will rate firms on identified Key Personnel who have demonstrated appropriate experience in successfully completing engagements similar to the scope of this engagement.

- i. *Highly Advantageous* – Key staff who may be assigned to this project is extremely qualified to complete this engagement by demonstration of more than five similar projects and Proposal has linked key staff to their projects which includes more than one similar Public Building project and presented complete resumes.
- ii. *Advantageous* – Key staff who may be assigned to this project is qualified to complete this engagement by demonstration of more than three similar projects and Proposal has linked staff to their projects which includes at least one Public Building project and presented complete resumes.
- iii. *Not Advantageous* – Key staff who is assigned to this project is qualified to complete the engagement by demonstrating more than one similar project but has not identified a link from key staff to a Public Building project.

- iv. *Unacceptable* – Key staff who is assigned to this project does not have any similar project experience or does not meet minimum qualifications of an OPM.

3. Work Plan/Technical Approach

The Committee will rate Firms based upon whether their work plan and technical approach clearly sets forth an effective organization for management of the Firm's services, the responsible key personnel assignments for all major tasks, and estimated levels of effort for the performance of tasks that are reasonable and consistent with other aspects of the proposer's work plan and with the scope of services specified in this document, and that reflects a practical, in-depth understanding of the Town's objectives and the requirements of the Project.

- a. *Highly Advantageous* – Firm's proposal clearly demonstrates a work plan/technical approach to meet all of the above criteria and clearly proposes a sound project plan with clear and adequate descriptions and identifiable end products.
- b. *Advantageous* – Firm's proposal demonstrates a work plan/technical approach to meet all of the above criteria and proposes an acceptable project plan with adequate descriptions and identifiable end products.
- c. *Not Advantageous* – Firm's proposal does not address a complete work plan/technical plan or does not propose an adequate end product for the Town.
- d. *Unacceptable* – Proposal does not address a work plan/technical approach to the project.

4. Quality and Responsiveness

Review of this section will be based on the quality of the proposal including if the proposal is well written and concise, addresses all points of the RFQ, and is organized and responsive in meeting the requirements of the RFQ.

- a. *Highly Advantageous* – Proposal is extremely well written, concise, addresses all points, is very organized, and meets and exceeds all requirements of the RFQ.
- b. *Advantageous* – Proposal is well written, addresses all points, is organized, and meets all requirements of the RFQ.
- c. *Not Advantageous* – Proposal is not well written, does not sufficiently address all points in the RFQ, but meets minimum requirements.
- d. *Unacceptable* – Proposal does not meet minimum requirements.

5. Interviews

The Committee reserves the right to conduct or waive interviews based upon the qualifications of each Firm as established through their Response. Firms may be asked to detail their qualifications and their ideas and approach to the project further at an interview via a presentation. The Committee may pose questions as part of the interview process. The parties who make the presentation must be the same as those named to be assigned to the project in the proposal. Through this interview process, the Committee may request additional information which may be applicable to experience, approach, or other items in the Response. OPM must have excellent presentation and communication skills which will be evaluated in Interviews.

- a. *Highly Advantageous* - Firm demonstrates excellent presentation and communication skills by the actual project key staff who will manage the project and demonstrates a clear understanding of project needs.

- b. *Advantageous* – Firm demonstrates satisfactory presentation and communication skills by the actual project staff who will manage the project and demonstrates an understanding of project needs.
- c. *Not Advantageous* – Firm demonstrates poor presentation or communication skills, does not present actual project staff who will manage the project or does not demonstrate an understanding of the project needs.
- d. *Unacceptable* – Firm demonstrates a lack of qualifications and adequate communication and presentation skills.

6. References

The Committee may contact some or all references provided by the Firm and may contact other representatives of clients of the proposer, or other clients, whether or not the Firm has identified them as references. The Committee will rate those Firms based on the number of references for similar projects and whether they have uniformly positive recommendations regarding (i) compliance with the terms of the proposer's contractual obligations; (ii) demonstrated ability to provide effective project management services and sound advice on construction and constructability, achieve savings through value engineering, and assisting the owner in maintaining schedules, controlling costs, assuring quality, minimizing disruptions, and managing information; and (iii) proven and successful experience and ability to interface with project administrators and team, outside consultants, construction contractors, regulatory agencies, and residents. The Committee will rate those Firms based on each of the key personnel and each sub-consultant(s) and whether they have uniformly positive recommendations regarding their demonstrated ability to perform Owner's Project Manager Services within their area(s) of responsibility in an effective, high quality and professional manner.

7. Rejection of Responses

The Town may disqualify any Response it determines to be unresponsive, including, but not limited to:

- a. Responses determined to be non-responsive to any material requirement of this RFQ.
- b. Responses that fail to meet the Minimum Requirements listed in this RFQ.
- c. Responses that are received after the submission deadline.
- d. Responses in which proposers misrepresent services or provide demonstrably false information.
- e. Responses from a firm currently debarred by any agency of the State or Federal government or that identify a sub-consultant currently subject to State or Federal debarment order or determination.

8. Award Recommendation and Rule

The Committee shall determine the most advantageous Response from a responsible and responsive Firm taking into consideration the elements in the Comparative Criteria and Interview, if necessary. Contract award will be based on satisfactory negotiations of scope and fee. If the Town cannot negotiate an agreeable Contract with the top ranked firm, the second ranked firm will enter negotiations, and so on.

**GENERAL INFORMATION FORM**

SUBMIT THIS FORM AS THE FIRST PAGE OF YOUR RESPONSE AFTER THE COVER LETTER

Name of Organization:

Telephone Number:

Years in Business:

Organization is (check one):

Corporation  Partnership  Joint Venture  Sole Proprietorship  Other (explain):

---

Organization's Address:

Email Address of Contact Person:

Name, Title and Telephone Number of the Organization's Authorized Representative:  
Acknowledgment of received Addenda No(s):

The undersigned, being cognizant of the pages, documents and attachments concerned herewith agrees to provide The Town of Shutesbury with the services described in the Request for Qualifications issued on September 11, 2022 and subsequently amended by any Addenda.

The Proposer agrees to comply with all Local, Federal, and State requirements.

The Proposer hereby affirms that this Proposal is genuine, not a sham or collusive, and is not made in the interest of any person not therein named.

The Proposer attests that the firm is financially stable and has included a letter from an auditing firm or other acceptable entity attesting to same.

Authorized Signature:

Date:

## **ATTACHMENT A: REQUIRED CERTIFICATIONS**

### **CERTIFICATION OF ELIGIBILITY**

hereby certifies that it (Name of Consultant) is not included on the Commonwealth of Mass or U.S. Comptroller General's Debarred Bidders List. The Proposer certifies to the best of its knowledge and belief that it and its principals

A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this transaction by any State or Federal department or agency.

B. Have not, within a three-year period preceding the date of this Proposal, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statement, or receiving stolen property.

C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph B of this Certification.

D. Have not, within a three-year period preceding the date of this Proposal, had one or more public transactions (Federal, State or local) terminated for cause or default. Where the Proposer is unable to certify to any of the statements in this certification, such Proposer shall include an explanation in such regard with its Proposal.

(Check One)

I DO CERTIFY       I DO NOT CERTIFY

DATE: Printed Name

SIGNATURE:

TITLE:



## **Statement on MGL/Building Code**

### **(To Be Signed by Principal Officer of Proposer)**

I certify that all information is submitted under penalties of perjury and that I am familiar with the State Building Code and also Massachusetts General Laws, Chapter 149, Sections 44A-44H, Section 44M, Chapter 149A, Chapter 193 of the Acts of 2004 and Chapter 30, Section 39M.

Signed

Printed Name

Title

Company Name

## **Tax Compliance and Non-Collusion Statements**

Any person or corporation that fails to date, sign with original signature, and submit the following statements shall not be awarded this contract.

### **CERTIFICATION AS TO PAYMENT OF STATE TAXES**

Pursuant to M.G.L. c.62C, §49A, I certify under the penalties of perjury that the Project Manager has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Authorized Official's Signature Title of Person Signing

Typed or Printed Name of Person Signing Company or Corporation

Telephone Number Address

Fax Number Address

Date

*Email address*

**CERTIFICATE OF NON-COLLUSION**

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

Authorized Official's Signature Title of Person Signing Typed or Printed Name of Person Signing Company or Corporation

---

Date. \_\_\_\_\_

**EXHIBIT 1 SAMPLE CONTRACT**

**A SAMPLE CONTRACT SUBSTANTIALLY IN ACCORD WITH THE PROVISIONS OF THE FOLLOWING WILL BE SIGNED BETWEEN THE SELECTED OPM AND THE TOWN OF SHUTESBURY.**

**ANY SUBSTANTIAL CHANGE TO THE TERMS AND CONDITIONS MUST BE REQUESTED AS A WRITTEN QUESTION BEFORE THE DEADLINE FOR QUESTIONS IN THIS RFQ PROCESS. OTHERWISE, IT IS ASSUMED THAT THE FIRM WILL SIGN A CONTRACT WITH THE TOWN AFTER NEGOTIATION OF SCOPE AND FEE, USING THIS CONTRACT FORM.**

**SHUTESBURY PUBLIC LIBRARY PROJECT MANAGEMENT SERVICES CONTRACT**

The following provisions shall constitute a Contract between The Town of Shutesbury, acting by and through its Selectboard, hereinafter referred to as "the Owner", with an address of 1 Cooleyville Rd., Shutesbury, MA 01072, and

\_\_\_\_\_, with an address of

\_\_\_\_\_,

hereinafter referred to as the "Owner's Project Manager, or OPM", effective as of the

\_\_\_\_ day of \_\_\_\_\_, 2022,

to provide the Project Management services required to complete the services described herein and in the Request for Qualifications issued on Tuesday, September 14, 2022 for the OPM Services to include architect selection, design, bidding, construction, and closeout of a new Public Library Building project located in Shutesbury, Massachusetts.

For the performance of all services required under this Contract, and excluding those services specified under Articles 9 and 10 of this Contract, the Owner's Project Manager shall be compensated by the Owner as follows and in accordance with the Payment Schedule included as Attachment 1:

Fee for Basic Services: \$ \_\_\_\_\_

This Contract shall not be altered in any particular without the consent of all parties to this Contract. All alterations to this Contract must be in writing and authorized as such by a majority vote of the Selectboard. If the OPM is a Corporation, the certification authorizing the person signing for the OPM must be attached to this contract (Attachment 2) or such signature is void.

Final payment on this contract shall release and discharge The Town of Shutesbury from any and all claims against the Town on account of any work performed hereunder, or any alteration hereto.

This contract shall be governed by Chapter 7 as amended, and Chapter 149 as amended, of the General Laws of the Commonwealth of Massachusetts.

This contract shall be deemed to be a Massachusetts contract and its interpretation and construction shall be governed by the laws of Massachusetts and the Charter and Bylaws of the Town.

The Town of Shutesbury is not bound by this contract until approved by the Shutesbury Select board.

## **TABLE OF CONTENTS**

ARTICLE 1 DEFINITIONS

ARTICLE 2 RELATIONSHIP OF THE PARTIES

ARTICLE 3 RESPONSIBILITIES OF THE OWNER

ARTICLE 4 RESPONSIBILITIES OF THE OWNER'S PROJECT MANAGER

ARTICLE 5 SUB-CONSULTANTS

ARTICLE 6 TERM AND TIMELY PERFORMANCE

ARTICLE 7 COMPENSATION

ARTICLE 8 BASIC SERVICES

ARTICLE 9 EXTRA SERVICES

ARTICLE 10 REIMBURSABLE EXPENSES

ARTICLE 11 RELEASE AND DISCHARGE

ARTICLE 12 ASSIGNMENT, SUSPENSION, TERMINATION

ARTICLE 13 NOTICES

ARTICLE 14 INDEMNIFICATION OF OWNER

ARTICLE 15 INSURANCE

ARTICLE 16 OWNERSHIP OF DOCUMENTS

ARTICLE 17 REGULATORY AND STATUTORY REQUIREMENTS

Attachment 1: PAYMENT SCHEDULE/HOURLY RATE SCHEDULE

Attachment 2: CERTIFICATE OF AUTHORITY

## **ARTICLE 1: DEFINITIONS:**

- 1.1 APPROVAL -- a written communication from the Owner approving either the work of the current Phase, as identified on Attachment 1, or authorizing the Owner's Project Manager to proceed to the next Phase or approving the scope and compensation for either Extra Services or Reimbursable Expenses.
- 1.2 ARCHITECT/ENGINEER -- herein also referred to as the DESIGNER -- the person or firm with whom the Owner has contracted to perform the professional Designer Services for this Project.
- 1.3 BASIC SERVICES -- the minimum scope of services to be provided by the Owner's Project Manager under this Contract, unless the Contract is otherwise terminated pursuant to Article 12.
- 1.4 CONTRACT -- this Contract, inclusive of all Attachments, between the Owner and the Owner's Project Manager; all written amendments to this Contract; and all Approvals issued pursuant to this Contract.
- 1.5 CONTRACTOR or GENERAL CONTRACTOR -- the person or firm with whom the Owner has contracted to perform the construction for this Project.
- 1.6 EXTRA SERVICES -- services requested by the Owner to be performed by the Owner's Project Manager but which are additional (or "extra") to the services performed as Basic Services.
- 1.7 FEE FOR BASIC SERVICES -- the fee to be paid to the Owner's Project Manager for satisfactorily performing, in the Owner's sole discretion, the Basic Services required under this Contract, exclusive of the compensation to which the Owner's Project Manager is entitled pursuant to Articles 9 and 10.
- 1.8 GENERAL LAWS --the Massachusetts General Laws as amended, including any rules, regulations and administrative procedures implementing said laws.
- 1.9 NOTICE to PROCEED -- the written communication issued by the Owner to the Contractor authorizing him to proceed with the construction contract and establishing the date for commencement of the contract time.
- 1.10 OWNER -- the entity identified as such on page one of this Contract, or its authorized representative, that is the owner of the property that is the site of the Project and is responsible for administering this Contract.
- 1.11 OWNER'S PROJECT MANAGER (OPM) -- the individual, corporation, partnership, sole proprietorship joint stock company, joint venture or other entity identified as such on page one of this Contract performing the professional Project Management Services under this Contract.
- 1.12 PHASE -- a distinct portion of the work of this Contract and its associated duration, as identified on Attachment 1. An Approval to proceed for each Phase is required from the Owner.

- 1.13 PROJECT -- all work that pertains to the study, planning, design, construction, reconstruction, installation maintenance or repair, if any, of the project described on page one of this Contract.
- 1.114 PROJECT BUDGET – a complete and full enumeration of all costs of the Project.
- 1.5 PROJECT SCHEDULE – a complete list of all activities, time and sequence required to complete the Project.
- 1.16 PROJECT REPRESENTATIVE – The Owner’s Project Manager, an employee or a Subconsultant of the Owner’s Project Manager, who shall be present on-site during the Construction Phase in accordance with the requirements of Article 8.3.2.
- 1.17 SUBCONTRACTOR -- the person or entity having a direct contractual relationship with the Contractor, who has the contract to perform the construction of the Project, except as otherwise specifically provided or required herein or by Law. Subcontractor when used also means “Trade Contractor” except when otherwise specified.
- 1.18 SUBCONSULTANT -- any individual, company, firm, or business having a direct contractual relationship with the Owner’s Project Manager, who provides services on the Project.
- 1.19 TRADE CONTRACTOR - Subcontractors having a direct contractual relationship with the Contractor, to perform one or more sub-bid classes of work listed in M.G.L. c.149 §44F and all other sub-bid classes of work selected by the public agency for the Project, provided the sub-bid work meets or exceeds the threshold sum identified in M.G.L. 149 §44F(1).

## **ARTICLE 2: RELATIONSHIP OF THE PARTIES**

- 2.1 The Owner’s Project Manager (OPM) shall act as an independent contractor of the Owner in providing the services required under this Contract.
- 2.2 The OPM warrants and represents to the Owner that it has fully, completely and truthfully represented the qualifications and skills of the OPM, its subconsultants, agents, servants and employees in the proposal submitted by the OPM, the Contract documents and in all communications with the Owner relative to this Contract and the services to be performed hereunder by the OPM, its subconsultants, agents, servants and employees.
- 2.3 The Owner’s Project Manager warrants to the Owner that it shall perform its services hereunder with that degree of skill and care ordinarily exercised by similarly situated members of Owner’s Project Manager’s profession on projects of similar size, scope and complexity as is involved on the Project.

The Owner’s Project Manager’s services shall be rendered in accordance with this Contract, based on industry standards and in coordination with the services provided by the Designer.



- 2.4 The Designer is solely responsible for the design requirements and design criteria for the Project (except to the extent specifically delegated to others) and for performing in accordance with the contract between the Owner and Designer.
- 2.5 The Contractor shall be solely responsible for construction means, methods, techniques, sequences and procedures and for safety precautions and programs in connection with the Project and for performing in accordance with the contract between the Owner and Contractor.
- 2.6 Nothing in this Contract shall be construed as an assumption by the Owner's Project Manager of the responsibilities or duties of the Contractor or the Designer. The Owner's Project Manager's services shall be rendered compatibly and in coordination with the services provided by the Designer. It is not intended that the services of the Owner's Project Manager and Designer be competitive or duplicative, but rather complementary. The Owner's Project Manager shall be entitled to rely upon the Designer and Contractor for the proper performance of their obligations pursuant to their respective contracts with the Owner.

### **ARTICLE 3: RESPONSIBILITIES OF THE OWNER**

- 3.1 The Owner shall be responsible to oversee and monitor the performance of the Owner's Project Manager to ensure that it performs its obligations in a satisfactory manner. The Owner shall provide the necessary general direction and broad management coordination required to execute the Project.
- 3.2 The Owner shall designate an individual or individuals who shall have the authority to act on behalf of the Owner under this Contract and who shall be responsible for day-to-day communication between the Owner and the Owner's Project Manager.
- 3.3 Upon satisfactory completion of services performed, the Owner shall make payments to the Owner's Project Manager as provided in Articles 7, 8, 9 and 10.

### **ARTICLE 4: RESPONSIBILITIES OF THE OWNER'S PROJECT MANAGER**

- 4.1 The OPM shall provide project management services to monitor procurement procedures, design, construction and other related activities and to facilitate, coordinate and manage the Project with respect to timely performance in accordance with the Project Schedule and monitor the quality of services and workmanship and shall recommend courses of action to the Owner when the respective contractual requirements are not being fulfilled. Services shall continue through substantial use and occupancy by the Owner and Project closeout.
- 4.2 The Owner's Project Manager shall perform the services required under this Contract in conformance with applicable federal, state, and local laws, ordinances and regulations.
- 4.3 The Owner's Project Manager shall report to the Owner any act or inaction in connection with the Project which the Owner's Project Manager believes creates a substantial health or safety risk.

- 4.4 The Owner's Project Manager acknowledges the importance that the Owner attributes to the abilities and qualifications of the key members of the Owner's Project Manager's team, including Subconsultants, and the continuity of key members participation in the services to be provided under this Contract. This Contract has been entered into on the representation of the Owner's Project Manager that the individuals, consultants, assignments and responsibilities will be maintained throughout the duration of this engagement. No substitution or replacement of individuals or change in the Subconsultants, listed in Attachment 1, shall take place without the prior written approval of the Owner, except when necessitated by causes beyond the Owner's Project Manager's control. If the Owner's Project Manager proposes to replace one of the key members of the Owner's Project Manager's team, the Owner's Project Manager shall propose a person or consultant with qualifications at least equal to the person or firm the Owner's Project Manager proposes to replace. The Owner shall have the right to approve any substitution or replacement or change in status for the persons or Subconsultants listed in Attachment 1 and such approval shall not be unreasonably withheld. At the request of the Owner, the Owner's Project Manager shall consult with the Owner to resolve any situation in which the Owner determines that a member of the Owner's Project Manager's team is failing to perform services in an acceptable manner to the Owner. The Owner shall have the right to direct the removal of any such person or consultant. No act or omission of the Owner made or permitted under this Section shall relieve the Owner's Project Manager of its responsibility for the performance of the services specified in this Contract.
- 4.5 The Owner's Project Manager shall employ at all times professional and support personnel with requisite expertise and adequate numbers to assure the complete, timely and high quality performance of the obligations of the Owner's Project Manager.
- 4.6 The Owner's Project Manager shall be and remain liable to the Owner for all damages incurred by the Owner as a result of the failure of the Owner's Project Manager to perform in conformance with the terms and conditions of this Contract.

## **ARTICLE 5: SUBCONSULTANTS**

- 5.1 The Owner's Project Manager may employ Subconsultants, subject to the prior written approval of the Owner and subject to Paragraph 10.3 in order to perform services under this Contract. The employment of Subconsultants shall not in any way relieve the Owner's Project Manager from its responsibilities under this Contract.
- 5.2 Upon request, the Owner's Project Manager shall provide the Owner copies of its agreements with Subconsultants, including amendments thereto, and shall consult with the Owner with respect to the inclusion therein of appropriate terms and conditions to assure timely, efficient and competent performance of the Subconsultants.

- 5.3 No substitution of Subconsultants and no use of additional Subconsultants shall be made without prior written approval of the Owner, which approval shall not be unreasonably withheld.
- 5.4 No Subconsultant to the Owner's Project Manager shall have recourse against the Owner for payment of monies alleged to be owed to the Subconsultant by the Owner's Project Manager, and the Owner's Project Manager shall include in all contracts with its Subconsultants language so providing.

## **ARTICLE 6: TERM AND TIMELY PERFORMANCE**

- 6.1 The Owner's Project Manager acknowledges that expeditious completion of the Owner's Project Manager's services and the Project is of the utmost importance to the Owner. The term of this Agreement shall commence on the date stipulated in an Approval to Proceed from the Owner. The Owner's Project Manager shall complete the services required under this Contract in a prompt and continuous manner. The Owner's Project Manager shall perform its services in a timely manner and shall not delay the work of the Designer or the Contractor. The Owner's Project Manager shall monitor the performance of the Designer and the Contractor in accordance with schedules of performance that are established under their contracts with the Owner. The Owner's Project Manager shall immediately advise the Owner, as well as the Designer or the Contractor, in writing, anytime the Owner's Project Manager determines that either the Designer or the Contractor's performance is jeopardizing the Project Schedule or the Project Budget.
- 6.2 Time is of the essence in the performance of the Owner's Project Manager's obligations under this Agreement and under any amendment. The Owner's Project Manager agrees that no other work in its organization will be permitted to interfere with its timely performance of the work required under this Agreement or any amendment.
- 6.3 The Owner's Project Manager's services are to be provided in accordance with the time schedule set forth in Attachment 1. If the schedule changes causing the need for revisions to the OPM's services, the OPM shall notify the Owner of the revisions to its services. The Owner shall have the right to extend the term of this Contract by amendment. All the rights and obligations of the parties for such extended periods shall be as set forth in this Contract or in the amendment.

## **ARTICLE 7: COMPENSATION**

- 7.1 For the satisfactory performance of all services required pursuant to this Contract, excluding those services specified under Articles 9 and 10, the OPM shall be compensated by the Owner in an amount to be negotiated for Basic Services, identified on page one of the Contract. The OPM shall submit invoices on a monthly basis in accordance with the Payment Schedule included as Attachment 1. The Owner shall make payments to the OPM within 30 days of the Owner's approval of the invoice.

- 7.2 The Fee for Basic Services shall include, but not necessarily be limited to, all labor, overhead, profit, insurance, legal services, transportation, communication expenses, reasonable printing and copying necessary for completion of the Project. The fee for Basic Services also shall include the costs of (a) rebidding of the general bid if due to the fault of the Owner's Project Manager, and (b) assisting the Owner in litigation or resolution of claims or other administrative proceedings associated with a bid protest arising out of the Designer contract or the construction contract and for additional assistance if such litigation or claims are due to the fault of the Owner's Project Manager.
- 7.3 When the Owner's Project Manager receives payment from the Owner, the Owner's Project Manager shall promptly make payment to each Subconsultant whose work was included in the work for which such payment was received. The Owner shall have the contractual right to investigate any breach of performance of a Subconsultant and to initiate corrective measures it determines are necessary and in the best interest of the Owner.
- 7.4 The Owner's Project Manager shall be paid the remainder of the Fee for Basic Services, less previous payments, upon acceptance by the Owner of the Certificate of Final Completion.
- 7.5 The compensation provided by this Contract is subject to the availability and appropriation of funds.

#### **ARTICLE 8: BASIC SERVICES**

The Owner's Project Manager shall perform the following basic services:

- 8.1 Project Management (For bidding, construction, final completion/closeout phases)
- 8.1.1 The Owner's Project Manager shall prepare a communication and document control procedure for the duration of the Project. This procedure shall detail the responsibilities and lines of communication among all Project participants (Owner, Owner's Project Manager, Designer, Contractor, Subcontractors and other consultants, vendors or suppliers) and establish the procedure for correspondence, document control, designer and contractor submittal logs, change order reporting and other tracking logs, as needed. The draft communication plan shall be submitted to the Owner for approval within 15 days of the execution of this contract. The Owner's Project Manager shall include the Designer and the Contractor in its distribution of the Project Budget, Schedule of Monthly Progress Report and other reports as appropriate and as outlined in the communication procedures.
- 8.1.2 The Owner's Project Manager shall prepare agendas for and attend building committee meetings and meetings with other representatives of the Owner, as applicable. The Owner's Project Manager shall take minutes of all of the above-referenced meetings and promptly distribute minutes of these meetings to the Owner.
- 8.1.3 The Owner's Project Manager shall review all applications for payments, requisitions and invoices relating to the Project as submitted by the Designer, General

Contractor, equipment vendors and all other prime contractors and suppliers and make recommendations to the Owner relative to amounts due.

- 8.1.4 Project Budget - The OPM shall review, maintain and update the Project Budget throughout the term of this Contract. The OPM shall report any variances to the baseline Project Budget as part of the Monthly Progress Report. The OPM shall prepare revisions to the Project Budget, as needed, and submit them to the Owner for approval.
- 8.1.5 Cost Estimating –The OPM shall provide cost estimating services, as may be required, to develop cash flows.
- 8.1.6 Project Schedule – The Owner’s Project Manager shall maintain and update the Project Schedule throughout the term of this Contract. The Owner’s Project Manager shall assess the actual progress of the Project relative to the baseline Project Schedule and report any variances to the baseline Project Schedule as part of the Monthly Progress Report. In the event that actual progress of the Project varies from the baseline Project Schedule, the Owner’s Project Manager shall consult with the Designer and the Contractor and make appropriate recommendations to the Owner relative to actions that should be taken by the Designer or the Contractor to achieve the baseline Project Schedule and/or recommend revisions to the Project Schedule. The Owner’s Project Manager shall prepare revisions to the Project Schedule, as needed, and submit them to the Owner for approval.
- 8.1.7 Construction Schedule – The Contractor shall be responsible for preparing and updating its construction schedule on a monthly basis. The OPM shall meet once each month with the Contractor to review and update its schedule, develop the monthly progress information to support the Contractor’s payment estimate, and monitor the Contractor’s performance for compliance with its contract. The OPM shall notify the Owner of and include in its Monthly Progress Report any significant changes or delays to the construction schedule. The OPM shall make appropriate recommendations to the Owner relative to the actions that should be taken by the Contractor and/or advise the Owner when liquidated damages, if included in the construction contract, are anticipated to be incurred.
- 8.1.8 Monthly Progress Report - The OPM shall submit to the Owner no later than the twelfth day of each calendar month a written Monthly Progress Report summarizing activity during the preceding calendar month. The Monthly Progress Report shall describe work performed by all project participants (OPM, Designer, Contractor) during the reporting period and work planned for the next reporting period. The report shall also address matters of schedule adherence (Project Schedule as well as individual completion percentages for design and construction), costs to date (updated Project Budget and actual expenses incurred), change orders and potential change orders, cash flow projections, safety performance, construction QA/QC, environmental compliance, community issues, MBE/WBE activities, any issues that could result in additional time and/or additional costs and any anticipated problems/concerns together with recommended solutions.

8.1.9 Change Order and Claims Administration - The Owner's Project Manager shall review and coordinate its review with the Designer and make specific document and processing recommendations to the Owner consistent with the General Laws and the construction contract documents, which minimize change order and claims processing costs and time. Services provided by the Owner's Project Manager shall include:

8.1.9.1 Change Order Administration

8.1.9.1.1 Review all Contractor proposals for change orders and supporting schedules for time extension requests.

8.1.9.1.2 Prepare independent cost estimates and schedule impact analysis for those proposed change orders with an estimated value in excess of \$50,000.

8.1.9.1.3 Initiate, conduct, and document negotiations through a memorandum of negotiations with the Contractor.

8.1.9.1.4 For all change order requests by the Contractor, make recommendations to the Owner for their acceptance or rejection.

8.1.9.1.5 Prepare and finalize any documentation required for processing change orders including documentation to support or reject the change

8.1.9.1.6 Maintain a status report system for logging and tracking change orders, claims, and disputes to resolution. At a minimum, monthly reports shall include contract number, description of change order or claim, reason for change, date initiated, magnitude of estimated cost, actions required (identification of action parties and response dates) and status. This report shall be included in the Monthly Progress Report.

8.1.9.2 Claims and Disputes Management

8.1.9.2.1 Implement a claims management procedure consistent with the construction contract documents.

8.1.9.2.2 Analyze Contractor claims and propose recommendations to the Owner in support of the obligations under the claims article of the construction contract documents. Prepare defense positions in coordination with the Designer and the Owner.

8.1.9.2.3 In the event that a dispute arises between the Contractor, and/or any Subcontractors, and/or the Designer, including, but not necessarily limited to, disputes regarding the performance, quality, acceptability, fitness and rate of progress of the Project or the requirements of the Designer's contract or the Contractors' construction contract(s), the Owner's Project Manager shall report any such claims, disputes or other matters in question relating to the performance by the Contractor, Subcontractor, Designer or vendor to the Owner in writing as soon as reasonably possible.

- 8.1.9.2.4 The Owner's Project Manager shall take all reasonable efforts designed to resolve any such claims, disputes, or other matters in question.
- 8.1.9.3 MBE/WBE Compliance Monitoring - The Owner's Project Manager shall oversee and monitor the Designer's and Contractor's compliance with MBE/WBE requirements.
- 8.1.9.4 Project Records and Reports - The Owner's Project Manager shall maintain a complete Project file including, but not necessarily limited to, a copy of the executed agreements of the Owner-Owner's Project Manager, Owner-Designer and the Owner-Contractor including copies of performance and payment bonds, a master list of permits, certificates of insurance, licenses and approvals for the Project, correspondence, daily reports, payment records, shop drawings, submittals, project schedules, requests for information, change orders/amendments, change directives and meeting minutes. The Owner's Project Manager shall assemble for the Owner's review all documents pursuant to a public records request received by the Owner.

## 8.2 Bidding Phase

- 8.2.1 The Owner's Project Manager shall monitor the activities and responsibilities of the Designer in the advertisement, distribution of bidding documents and solicitation of public bids in accordance with M.G.L. c. 149 §§ 44A through 44J and other public construction-related statutes. The Owner's Project Manager shall: (a.) Administer general contractor and subcontractor prequalification requirements pursuant to M.G.L. c. 149 § 44D $\frac{1}{2}$  and § 44D $\frac{3}{4}$  as applicable, including participation as a member of the Owner's Prequalification Committee. (b.) Attend all pre-bid conferences and meetings and, assist, if directed by the Owner. (c.) Attend all sub-bid and general bid openings and, assist, if directed by the Owner. (d.) Review all sub-bids and general bids in conjunction with Designer's determination of responsiveness, bidder eligibility, completeness, accuracy and price. Provide technical guidance to the Owner relative to its acceptance and determination of bidder responsibility. (e.) Review alternates and make written recommendations as to their acceptance. (f.) If the bid of the lowest eligible and responsible general bidder exceeds the construction budget, the Owner's Project Manager shall consult with the Designer and make recommendations to the Owner in regard to maintaining the Project Budget which may include, consistent with Massachusetts public construction laws, reviewing and recommending accepting alternates, re-bidding or seeking additional funding from the Town.
- 8.2.2 The Owner's Project Manager shall make recommendations to the Owner relative to the award of a construction contract.
- 8.2.3 The Owner's Project Manager shall assist the Owner in the preparation and execution of the Owner Contractor Agreement and shall obtain from the Contractor performance and payment bonds, insurance certificates, and all other documents and certificates required for contract execution.

- 8.2.4 The Owner's Project Manager shall assist the Owner and the Designer in preparing and sending the Notice to Proceed to the Contractor.
- 8.2.5 Provide the Contractor, Designer, and Owner with required copies of executed construction contract documents.
- 8.3 Construction - The Owner's Project Manager shall provide supervisory and inspection staff (including specialists), necessary for the safe, quality, on-budget, on-schedule completion of the Project in accordance with the construction contract documents and applicable permits from Notice to Proceed of the construction contract to contract close-out.
  - 8.3.1 The Owner's Project Manager shall monitor the Designer's administration of the Owner-Contractor Agreement including processing of submittals, issuance of timely decisions and directives and assuring each consultant or subconsultant to the Designer make visits to the Project as necessary during the time that construction is occurring on the portions of the work to which the consultant's services relate.
  - 8.3.2 The Owner's Project Manager shall provide on-site project representation in accordance with a schedule agreed upon with the Owner. Said Project Representative may be the OPM, an employee of the OPM, or a subconsultant to the OPM.
    - 8.3.2.1 The Project Representative shall be subject to the approval of the Owner and the Owner reserves the right to require the Owner's Project Manager to replace the Project Representative at any time during the course of the Project.
    - 8.3.2.2 The Project Representative shall have at least five year experience in on-site supervision of projects similar in size and complexity to the Project.
    - 8.3.2.3 The Project Representative shall be present when the Contractor is conducting operations at the site starting from issuance by the Owner of a Notice to Proceed to the Contractor and continuing until issuance to the Contractor of a Certificate of Substantial Completion by the Owner and thereafter on an, as needed basis, until issuance to the Contractor of a Certificate of Final Completion by the Owner.
  - 8.3.3 The Owner's Project Manager shall review the Contractor's schedule of values to determine if it represents a reasonably balanced payment schedule for work to be performed with no items front-end loaded or artificially inflated. The schedule of values shall include line items for all deliverables, testing requirements and specified operations and maintenance materials. The Owner's Project Manager shall submit the recommended schedule of values for the Contractor to the Owner within forty-five days of the Owner's Notice to Proceed to the Contractor.
  - 8.3.4 The Owner's Project Manager shall review the Contractor's submitted baseline schedule. The Owner's Project Manager shall be responsible for monitoring the timeliness of these submittals and enforcing compliance with schedule submittal requirements of the construction documents. The Owner's Project Manager shall



evaluate the Contractor's planning for the execution of the work, evaluate the reasonableness of the proposed schedule and determine if the submitted schedule meets the requirements of the construction documents.

- 8.3.5 The Owner's Project Manager shall provide daily observation and monitoring of construction activities on a schedule agreed upon with the Owner. Responsibilities shall include:
- 8.3.5.1 The Owner's Project Manager shall keep a daily log containing a record of weather, the Contractor's work on site, number of workers, visitors to the site, safety status of the Project, equipment and equipment utilization, material and equipment deliveries, non-compliance with safety procedures and issuance of any safety violation notifications, accidents, general description of work performed and quality of work, visits of code enforcement officials and any resulting reports or orders, verbal instruction to interpretations given to the Contractor, pay items, delays, deficiencies and field problems.
  - 8.3.5.2 The Owner's Project Manager shall prepare weekly progress reports for submittal to the Designer and the Owner that summarize the progress achieved, provide a concise description of problems and include a copy of the daily log.
  - 8.3.5.3 The Owner's Project Manager shall determine if construction and construction related activities are performed in accordance with plans and specifications and the approved shop drawings and are consistent with Massachusetts public construction laws.
  - 8.3.5.4 The Owner's Project Manager shall monitor on a daily basis Time and Materials work on change orders including work installed, volume measurements, time sheets, crew sizes and mixes, and equipment utilized.
  - 8.3.5.5 The Owner's Project Manager shall determine actual quantities and classification of Unit Price work performed by Contractors.
  - 8.3.5.6 The Owner's Project Manager shall evaluate field problems, using the proper channels for solution and communication of the information to the Designer and the Owner.
  - 8.3.5.7 The Owner's Project Manager shall coordinate and track requests for clarification on drawings/specifications, design changes and proposed change orders.
  - 8.3.5.8 The Owner's Project Manager shall prepare responses to Contractor correspondence for the Owner.
  - 8.3.5.9 The Owner's Project Manager shall monitor and coordinate the scheduling and activities of independent materials testing functions at the site, including distribution of reports and any necessary actions resulting.
  - 8.3.5.10 The Owner's Project Manager shall maintain at the Project site, on a current basis, a record copy of Construction Contract Documents, including, but not necessarily limited to, drawings, specifications, addenda, change orders, and directives as well

as all approved shop drawings, product data, samples, submittals, operations and maintenance manuals and all other relevant documents relating to the construction of the Project.

- 8.3.5.11 The Owner's Project Manager shall monitor the Contractor's compliance with Massachusetts prevailing wage requirements pursuant to M.G.L. c. 149 §§ 26 to 27H inclusive including assisting the Owner in cataloging and filing payroll affidavits.
- 8.3.5.12 The Owner's Project Manager shall shoot and maintain Project progress photographs showing construction progress at a frequency sufficient to document major activities or to document safety incidents, differing site conditions and quality issues. The Owner's Project Manager shall maintain a descriptive log and captioning of the photographs on CD.
- 8.3.6 The Owner's Project Manager shall monitor the Contractor's compliance with the construction schedule, identify potential problems, include problem identification on the Monthly Progress Report and make recommendations to the Owner when, in the opinion of the Owner's Project Manager, requirements of the Contractor in the Owner-Contractor Agreement are not being fulfilled.
- 8.3.7 The Owner's Project Manager shall schedule, conduct and prepare minutes of weekly job meetings on progress, coordination and problem resolution and negotiations. The Owner's Project Manager shall prepare and submit minutes to the Owner within three business days of the meeting.
- 8.3.8 The Owner's Project Manager shall monitor, review and analyze proposed change orders, and claims recommending appropriate action and resolution to the Owner in accordance with Article 8.1.4.
- 8.3.9 The Owner's Project Manager shall review and coordinate its review with the Designer to recommend approval of the General Contractor's monthly payment requisitions. The Owner's Project Manager shall verify the Designer's certification that the percentage of work included in the requisition is accurate and the work performed conforms to the construction contract.
- 8.4 Completion Phase
  - 8.4.1 The Owner's Project Manager shall conduct inspections of all completed work at substantial completion to develop punch lists; verify substantial completion of work; assist in final inspection and receipt of documents, manuals, receipts, certifications, and all other materials required for final closeout as described in the construction contract. The Owner's Project Manager shall first prepare its own detailed punch list and shall then coordinate a subsequent walk-through with the Designer, adding to the Owner's Project Manager's prepared punch list. The Owner's Project Manager and the Designer shall then coordinate a walk-through with the Owner to finalize the punch list. The Owner's Project Manager shall then be responsible for tracking and confirming the completion of the punch list items.

- 8.4.2 The Owner's Project Manager shall monitor the activities and responsibilities of the Designer and the Contractor in the close-out of the Project.
- 8.4.3 The Owner's Project Manager shall assist in securing and reviewing and recommending approval of all project completion forms and documentation necessary for occupancy and full operation of the facility including, but not necessarily limited to, inspection certificates of local building authorities, Certificate of Substantial Completion, Certificate of Final Completion, Occupancy Permit, shop drawings, as-built drawings, operations and maintenance manuals, warranties, guarantees and any and all documentation as required by the contract documents.
- 8.4.4 The Owner's Project Manager shall assist the Owner in completing the written evaluation of the Designer(s) pursuant to M.G. L. c. 7 § 38E and prepare, sign and provide to the Owner for its signature the written evaluation of the Contractor(s) and Trade Subcontractors pursuant to M.G.L. c. 149 § 44D.

## **ARTICLE 9: EXTRA SERVICES**

### 9 General

- 9.1.1 Extra Services are those services requested by the Owner to be performed by the Owner's Project Manager but which are additional (or "extra") to the services performed as Basic Services. Such services are not included in the Fee for Basic Services and shall be invoiced and paid for separately. Extra services shall not be deemed authorized until a written Approval is received from the Owner.
- 9.1.2 The proposed cost, scope and schedule of all Extra Services shall be presented to and approved by the Owner in writing prior to the performance of any Extra Services.
- 9.1.3 Cost proposals for Extra Services shall be computed in accordance with the Hourly Rate Schedule established in Attachment 1.
- 9.2 Unless specifically prohibited elsewhere and with the prior written Approval of the Owner, the Owner's Project Manager shall perform any of the following services as Extra Services:
- 9.2.1 Preparing special studies, reports, or applications at the written direction of the Owner, other than those specifically required herein as part of Basic Services;
- 9.2.2 Assisting in the appeals process of permitting boards or commissions;
- 9.2.3 Rebidding of the general bid if not the fault of the Owner's Project Manager;
- 9.2.4 Furnishing services in connection with a bid protest filed in court or with the Office of the Attorney General, provided such activities did not arise due to the fault of the Owner's Project Manager;

- 9.2.5 Furnishing services in excess of Basic Services made necessary by the termination of the General Contractor;
- 9.2.6 Providing consultation concerning replacement of any work damaged by Acts of God, fire, explosion, flood, extreme weather conditions, terrorist acts or other similar cause, but not the result of errors, omissions, negligence, or means and methods employed by the General Contractor or a Subcontractor during construction;
- 9.2.7 Assisting the Owner in litigation, claims resolution or non-binding mediation arising out of the Designer contract and the construction contract, provided such litigation or claims did not arise due to the fault of the Owner's Project Manager; and
- 9.2.8 Provide other services requested by the Owner that are not included as Basic Services pursuant to this Contract.
- 9.3 Invoices for Extra Services shall be accompanied by a complete breakdown listing the name, payroll title, date, number of hours by day, hourly rate and extended amount, per specified task of Extra Services performed. Hourly rates shall be in accordance with the Hourly Rate Schedule in Attachment 1.

#### **ARTICLE 10: REIMBURSABLE EXPENSES**

- 10.1 For coordination and responsibility for the work described in the following paragraphs 10.1.1 and 10.1.2, the Owner's Project Manager shall be reimbursed its actual costs, supported by invoices or receipts, plus 10%. The following are reimbursable expenses:
  - 10.1.1 Certain out of pocket expenses paid by the Owner's Project Manager such as filing fees, and permit fees that are normally paid by the Owner.
  - 10.1.2 Any other specially authorized reimbursement deemed essential by the Owner, in the Owner's sole discretion, in writing.
- 10.2 Non-Reimbursable Items: The Owner shall not reimburse the Owner's Project Manager or its Subconsultants for travel expenses, sustenance, telephone, facsimiles, electronic mails, postage and delivery expenses, unless specifically required elsewhere in this Contract.
- 10.3 The Owner's Project Manager shall not be entitled to compensation under this Article for the services of Subconsultants hired to perform Basic Services under this Contract. If a Subconsultant hired to perform Basic Services performs Extra Services approved by the Owner, compensation for such Extra Services shall be made under Article 9.

#### **ARTICLE 11: RELEASE AND DISCHARGE**

- 11.1 The acceptance by the Owner's Project Manager of the last payment under the provisions of Article 7 or Article 12 in the event of termination of the Contract, shall in each instance, operate as and be a release to the Owner and its employees and

agents, from all claims of the Owner's Project Manager and its Subconsultants for payment for services performed and/or furnished, except for those written claims submitted by the Owner's Project Manager to the Owner with, or prior to, the last invoice.

## **ARTICLE 12: ASSIGNMENT, SUSPENSION, TERMINATION**

### 12.1 Assignment:

12.1.1 The Owner's Project Manager shall not assign or transfer any part of its services or obligations under this Contract (other than as specified in Article 5), without the prior written approval of the Owner. Likewise, any successor to the Owner's Project Manager must first be approved by the Owner before performing any services under this Contract. Such written consent shall not in any way relieve the Owner's Project Manager or its assignee from its responsibilities under this Contract.

### 12.2 Suspension

12.2.1 The Owner may, at any time, upon fifteen (15) days written notice to the Owner's Project Manager, suspend this Contract. If the Owner provides such written notice, the Owner's Project Manager shall be compensated for work satisfactorily performed in accordance with the Contract terms prior to the effective date of such suspension for which invoices have been properly submitted.

### 12.3 Termination

12.3.1 By written notice to the Owner's Project Manager, the Owner may terminate this Contract at any time with or without cause. If such termination shall occur through no fault of the Owner's Project Manager, all compensation and reimbursement due to the Owner's Project Manager in accordance with the Contract terms, for work satisfactorily performed up to the date of termination, including proportionate payment for portions of the work started but incomplete at the time of termination, shall be paid to the Owner's Project Manager, provided no payment shall be made for work not yet performed or for anticipated profit on unperformed work. If such termination is for cause then no further payment shall be due to the Owner's Project Manager.

12.3.2 By written notice to the Owner, the Owner's Project Manager may terminate this Contract: (a) if the Owner, within thirty (30) days following written notice from the Owner's Project Manager of any material default by the Owner under the Contract, shall have failed to cure such default; or (b) if, after the Owner's Project Manager has performed all services required during any phase prior to construction, at least six (6) months have elapsed without receipt by the Owner's Project Manager of approval to proceed with the next phase of the Project, provided the delay was not the fault of the Owner's Project Manager. This provision shall not apply to an Owner's Project Manager who has received a notice of suspension pursuant to Article 12.2. (c) Upon a proper termination by the Owner's Project Manager, the Owner's Project Manager shall be compensated as provided in 12.3.1 above regarding termination without cause.

## **ARTICLE 13: NOTICES**

- 13.1 Any notice required to be given by the Owner to the Owner's Project Manager, or by the Owner's Project Manager to the Owner, shall be deemed to have been so given, whether or not received, if mailed by certified or registered mail to the Owner's Project Manager or the Owner at the addresses indicated on page one.

## **ARTICLE 14: INDEMNIFICATION OF OWNER**

- 14.1 With respect to professional services rendered by Owner's Project Manager, to the fullest extent permitted by law, Owner's Project Manager shall defend, indemnify and hold harmless the Owner, and its officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Owner to the extent caused by the negligence of or the breach of this Contract by the Owner's Project Manager, a person employed by the Owner's Project Manager, or any of its Subconsultants.
- 14.2 With respect to non-professional services rendered by Owner's Project Manager, to the fullest extent permitted by law, Owner's Project Manager shall defend, indemnify and hold harmless the Owner, and their officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Owner arising out of or resulting from the performance of its services provided that such claims, damages, liabilities, injuries, costs, fees, expenses, or losses are attributable to bodily injury or death or injury to or destruction of tangible property and caused by an act or omission of the Owner's Project Manager, a person employed by the Owner's Project Manager, or any of its Subconsultants.

## **ARTICLE 15: INSURANCE**

- 15.1 The Owner's Project Manager shall obtain and maintain at its sole expense all insurance required by law and by the Owner under the terms of this Contract. The insurance required hereunder shall be provided at the sole expense of the Owner's Project Manager or its Subconsultant, as the case may be, and shall be in full force and effect for the full term of this Contract between the Owner and the Owner's Project Manager or for such longer period as otherwise required under this Contract.
- 15.2 All policies shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts with a financial strength rating of "A" or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the Owner.
- 15.3 The Owner's Project Manager, and any of its Subconsultants, shall submit to the Owner original certificates of insurance evidencing the coverage required hereunder, together with evidence that all premiums for such insurance have been fully paid simultaneously with the execution of this Contract. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance,

deductibles/self-insured retentions, and policy effective and expiration dates. The Owner's Project Manager shall submit updated certificates to the Owner prior to the expiration of any of the policies referenced in the certificates so that the Owner shall at all times possess certificates indicating current coverage. Failure by the Owner's Project Manager to obtain and maintain the insurance required by this Section, to obtain all policy renewals, or to provide the respective insurance certificates as required shall constitute a material breach of the Contract and shall be just cause for termination of the services of the Owner's Project Manager under this Contract.

- 15.4 Termination, cancellation, or material modification of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the Owner at least thirty days prior to the effective date thereof, which shall be expressed in said notice.
15. The Owner's Project Manager shall require by contractual obligation, and shall ensure by the exercise of due diligence, that any Subconsultant hired in connection with the services to be provided under this Contract shall obtain and maintain all insurance required by law and as may be required by the Owner under the terms of this Contract.
  - 15.6 The Owner's Project Manager or its Subconsultant, as the case may be, is responsible for the payment of any and all deductibles under all of the insurance required by this Contract. The Owner shall not be responsible for the payment of deductibles, self-insured retentions or any portion thereof.
  - 15.7 Workers' Compensation, Commercial General Liability, Automobile Liability, and Valuable Papers The Owner's Project Manager shall purchase and maintain at its own expense during the life of this Contract, or such other time period as provided herein, the following types and amounts of insurance, at a minimum:
    - 15.7.1 Workers' Compensation Insurance in accordance with General Laws Chapter 152. The policy shall be endorsed to waive the insurer's rights of subrogation against the Owner.
    - 15.7.2 Commercial General Liability Insurance (including Premises/Operations; Products/Completed Operations; Contractual; Independent Contractors; Broad Form Property Damage; and Personal Injury) with a minimum limit of \$1,000,000 per occurrence, \$2,000,000 aggregate. The Owner's Project Manager shall maintain such insurance in full force and effect for a minimum period of one year after final payment and shall continue to provide evidence of such coverage to the Owner. The Owner shall be added as an additional insured on this policy. The policy shall be endorsed to waive the insurer's rights of subrogation against the Owner.
    - 15.7.3 Comprehensive Automobile Liability Insurance (including owned, non-owned and hired vehicles) at limits of not less than:
      - a. \$1,000,000 Each Person for Bodily Injury;
      - b. \$1,000,000 Each Accident for Bodily Injury; and

c. \$1,000,000 Each Accident for Property Damage.

15.7.4 Valuable Papers insurance in an amount sufficient to assure the restoration of any plans, drawings, computations, field notes, or other similar data relating to the work covered by this Contract or by the Agreement between the Owner and the Designer in the event of loss or destruction while in the custody of the Owner's Project Manager until the final fee payment is made or all data is turned over to the Owner, and this coverage shall include coverage for relevant electronic media, including, but not limited to, documents stored in computer-aided design drafting (CADD) systems.

#### 15.8 Professional Liability

The Owner's Project Manager shall maintain professional liability insurance on an occurrence basis covering errors and omissions and negligent acts of the Owner's Project Manager and of any person or entity for whose performance the Owner's Project Manager is legally liable at all times while services are being performed under this Contract. The minimum amount of such insurance shall be a combined single limit of \$1,000,000.

15.9 Liability of the Owner's Project Manager - Insufficient insurance shall not release the Owner's Project Manager from any liability for breach of its obligations under this Contract. Without limitation, the Owner's Project Manager shall bear the risk of any loss if its valuable papers insurance coverage is insufficient to cover the loss of any work covered by this Contract.

### **ARTICLE 16: OWNERSHIP OF DOCUMENTS**

16.1 Unless provided otherwise by law, ownership and possession of all information, data, reports, studies, designs, drawings, specifications, materials, computer programs, documents, models, inventions, equipment, and any other documentation, product of tangible materials authored or prepared, in whole or in part, or purchased, obtained, created by the Owner's Project Manager pursuant to this Contract (collectively, the "Materials"), other than the Owner's Project Manager's administrative communications, records, and files relating to this Contract, shall be the sole property of, and shall vest in, the Owner as "works made for hire" or otherwise. The Owner will own the exclusive rights, worldwide and royalty-free, to and in all Materials prepared and produced by the Owner's Project Manager pursuant to this Contract, including, but not limited to, United States and International patents, copyrights, trade secrets, know-how and any other intellectual property rights, and the Owner shall have the exclusive, unlimited and unrestricted right, worldwide and royalty-free, to publish, reproduce, distribute, transmit and publicly display all Materials prepared by the Owner's Project Manager. At the completion or termination of the Owner's Project Manager's services, all original Materials shall be promptly turned over to the Owner.

### **ARTICLE 17: REGULATORY AND STATUTORY REQUIREMENTS**



- 17.1 Truth-in-Negotiations Certificate: If the Owner's Project Manager's fee is negotiated, by signing this Contract, the Owner's Project Manager hereby certifies to the following:
- 17.1.1 Wage rates and other costs used to support the Owner's Project Manager's compensation are accurate, complete, and current at the time of contracting; and
- 17.1.2 The Contract price and any additions to the Contract may be adjusted within one year of completion of the Contract to exclude any significant amounts if the Owner determines that the fee was increased by such amounts due to inaccurate, incomplete or non-current wage rates or other costs.
- 17.2 The person signing this Contract certifies, as a principal or director of the Owner's Project Manager, that the Owner's Project Manager has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Contract; no consultant to or Subconsultant for the Owner's Project Manager has given, offered or agreed to give any gift, contribution or offer of employment to the Owner's Project Manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the Owner's Project Manager or Subconsultant of a contract by the Owner's Project Manager; and no person, corporation or other entity, other than a bona fide full-time employee of the Owner's Project Manager, has been retained or hired by the Owner's Project Manager to solicit for or in any way assist the Owner's Project Manager 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.
- 17.3 Revenue Enforcement and Protection Program (REAP): Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A, the undersigned certifies under the penalties of perjury that to the best of his/her knowledge and belief that the firm and/or individuals in the firm are in compliance with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.
- 17.4 Interest of Owner's Project Manager: The Owner's Project Manager hereby certifies that it is in compliance with the provisions of General Laws Chapter 268A whenever applicable. The Owner's Project Manager covenants that 1) he/she presently has no financial interest and shall not acquire any such interest direct or indirect, which would conflict in any manner or degree with the services required to be performed under this Contract or which would violate M.G.L. Chapter 268A, as amended from time-to-time; 2) in the performance of this Contract, no person having any such interest shall be employed by the Owner's Project Manager; and 3) no partner or employee of the firm is related by blood or marriage to any officer, official, or employee of the Owner.
- 17.5 Equal Opportunity: The Owner's Project Manager shall not discriminate in employment against any person on the basis of race, color, religion, national origin,

sex, sexual orientation, age, ancestry, disability, marital status, veteran status, membership in the armed forces, presence of children, or political beliefs. The Owner's Project Manager shall comply with all provisions of Title VI of the Civil Rights Act of 1964 and MGL c.151B.

- 17.6 Certification of Non-Collusion: The signatory certifies under penalties of perjury that its proposal has been made in and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.
- 17.7 Governing Law: This Contract shall be governed by the laws of the Commonwealth of Massachusetts.
- 17.8 Venue and Waiver of Jury: Any suit by either party arising under this Contract shall be brought only in the Superior Court in the county where the Project is located. The parties hereto waive any argument that this venue is not appropriate or that the forum is inconvenient. The parties hereto waive all rights, if any, to a jury trial in any dispute arising under this Contract.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

OWNER'S PROJECT MANAGER

TOWN OF SHUTESBURY

By:

By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of Selectboard Chair

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

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

\_\_\_\_\_  
Print Title

\_\_\_\_\_  
Print Title

Certification

Verification of appropriation available in the amount of \$\_\_\_\_\_ to fund this Agreement.

\_\_\_\_\_  
Chief Financial Officer

\_\_\_\_\_  
Print Name and Title

Contract Attachment 1

**TIME SCHEDULE**

Phase 1: Architect Selection	November to December 2022
Phase 2: Design	January to October 2023
Phase 3: Construction Bidding	November to February 2024
Phase 4: Construction	March to December 2024
Phase 5: Close-out	January to March 2025

**PAYMENT SCHEDULE/HOURLY RATE SCHEDULE**

Phase 1: Architect Selection	\$ _____
Phase 2: Design	\$ _____
Phase 3: Construction Bidding	\$ _____
Phase 4: Construction	\$ _____
Phase 5: Close-out	\$ _____

**TOTAL FEE** ..... \$ \_\_\_\_\_

Hourly Rate Schedule

Firm/Title Name Rate/Hour

The OPM may submit requests for payments to the Town on a monthly basis for services provided. Services shall be invoiced according to the percentage of services provided for each Phase, and shall be subject to review and approval by the PSBC and the Town Selectboard of The Town of Shutesbury. Invoices submitted for services which have not been previously authorized in writing shall be returned to the OPM. Requests for previously authorized expenses of any nature must be accompanied by a billing or receipt from the source of the expense.

The TOWN is not responsible for any sales taxes for work and materials incorporated into a public construction project, in accordance with M.G.L. Chapter 64H, section 6(f), therefore the OPM must notify any contractors and vendors that any such purchases made for the project are tax exempt.

Contract Attachment 2

**CERTIFICATE OF AUTHORITY** (Required if a Corporation)  
At a duly authorized meeting of the Board of Directors of the

\_\_\_\_\_  
(Name of Corporation)

held on \_\_\_\_\_ at which all the Directors were present or waived notice,  
(Date)

it was voted that \_\_\_\_\_ of the company be and  
(Officer and Title)

hereby is authorized to execute contracts and bonds in the name and on behalf of said company, and affix its corporate seal thereto, and such execution of any contract or obligation in this company's name on its behalf of such \_\_\_\_\_ under ( \_\_\_\_\_ Officer) seal of the company shall be valid and binding upon this company.

A TRUE COPY

Attest: \_\_\_\_\_  
(Signature/Title)

Place of Business: \_\_\_\_\_

I hereby certify that I am the \_\_\_\_\_ of the \_\_\_\_\_  
(Title) (Corporation)

and that \_\_\_\_\_ is the duly elected \_\_\_\_\_  
(Name of Officer) (Title)

of said company, and the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract/proposal.

Signature: \_\_\_\_\_

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

Name/Title: \_\_\_\_\_

(Corporate Seal)

Notary Public \_\_\_\_\_