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Request for Proposals

Consultant Services for Development of Design Guidelines



**Town of Wellesley
Design Review Board
Johnathan Law, Chair**

RFP Prepared by:

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TOWN OF WELLESLEY SAMPLE CONTRACT FOR SERVICES

**TOWN OF WELLESLEY DESIGN REVIEW BOARD
REQUEST FOR PROPOSALS
CONSULTANT SERVICES FOR DEVELOPMENT OF DESIGN GUIDELINES**

1.0 INTRODUCTION

The Town of Wellesley (“the Town”), acting through its Design Review Board (“the Board”), is seeking to engage a qualified architect, engineer or related professional (“the Consultant”) for the purpose of developing Design Guidelines (“Guidelines”) for the Town. As expanded upon below, the Board and staff of the Planning Department are deeply involved in this initiative and will partner to support the selected Consultant in preparing the Guidelines.

1.1 BACKGROUND

Wellesley is a thriving, mature suburban community approximately 10.51 square miles in area. The Town was incorporated in 1881, and is located in Norfolk County, approximately 10 miles west of Boston. It is bordered by Natick to the west, Weston and Newton to the north and northeast, Needham to the east and southeast, and Dover to the south. According to the 2010 U.S. Census records, the Town of Wellesley has a population of 27,982 persons.

The Town of Wellesley has made a commitment to maintaining and enhancing the “character” of Wellesley. In 1976 the Town adopted a design review section in the Zoning Bylaw and established a Design Review Board to review sign permit applications. Since that time the review process has been expanded to also require review of applications for site plan review, exterior commercial façade changes, antennas, and Large House Review projects, to name a few. The Design Review Board evaluates projects based on the Design Guidelines Handbook (last updated in 1989) and sections of the Zoning Bylaw pertaining to Design Criteria.

The Town is seeking to engage a Consultant who would assist the Board, along with the general public, in developing updated comprehensive Design Guidelines by which projects throughout Town could be reviewed. This will likely not be applicable to one/two-family projects. It is anticipated that these Guidelines would guide development in a way that respects existing village and architectural character, while also identifying preferred and encouraged design decisions with respect to buildings and sites.

2.0 ACCESS TO MATERIALS

The Town of Wellesley Planning Department will make available all relevant public information pertaining to the Design Review Board and current Design Guidelines. Such information includes, but is not limited to, the following:

- *Design Guidelines Handbook*, adopted November 9, 1989;
- *2007-2017 Comprehensive Plan* (i.e. master plan);
- Materials related to the ongoing development of the Town’s *Unified Plan* (i.e. master plan update and Town-wide strategic plan);
- Zoning Bylaw and Zoning Map; and
- Information (description, status) on relevant Design Review Board applications of note.

3.0 SCOPE OF SERVICES

Working with the Design Review Board, the staff of the Planning Department, and the general public, the selected Consultant will be required to prepare and deliver written Guidelines to the Town that achieves the Town’s fundamental objectives as stated above. Additionally, the Consultant will be expected to recommend any changes to the Town’s organizational framework, policies, processes, practices, and/or bylaws to ensure successful implementation of the Guidelines.

These tasks are intended to describe the general extent of services to be provided by the Consultant. This outline should not be considered all-inclusive and the Consultant should include in the proposal any tasks or alternatives and services it deems necessary to satisfactorily complete the project. Consultants are expected to bring both expertise and creative ideas tested elsewhere and tailored to Wellesley to help the Board design the approach that best suits the objectives of this project.

Public participation is a long-standing priority of the Town and a fundamental component of its government structure and operations. Therefore, the active and genuine involvement of all constituencies will be crucial in the ultimate success of the new Guidelines. The Town is committed to ensuring that the process is transparent and encourages the participation of all constituencies.

The Planning Department will administer the contract, be available to respond to questions on a daily basis, and provide administrative support in scheduling and coordinating any meetings associated with the project.

3.1 Development of Design Goals

- a. Work with Planning Department staff to develop a central information source, such as a web page on the Town’s website or other innovative online tool(s), to facilitate community dialogue and extend outreach to those who cannot attend community meetings.
- b. Solicit initial perspectives and opinions from Design Review Board members regarding the design goals and objectives for the Town.
- c. Facilitate a public forum as part of a regular meeting of the Design Review

Board to:

1. Provide an overview of the goals, objectives, and best practices related to design guidelines;
 2. Discuss general characteristics and/or potential criteria for design guidelines; and
 3. Solicit input and ideas from the public and Design Review Board.
- d. Draft a report that identifies the conceptual design goals of the visioning process, and provides comparative information regarding how design guidelines and design criteria are used by other Massachusetts cities and towns. Based on this information, the report should recommend a framework and objectives for the eventual Guidelines.
 - e. Present the report at a meeting of the Design Review Board. Refine preliminary findings based on feedback.

3.2 Development of Guidelines & Implementation Strategies

- a. Develop comprehensive guidelines/strategies addressing architectural design, site design, and signage. Include information regarding the project review process to assist property/business owners.
- b. Recommend Bylaw and regulatory changes/recommendations to ensure effective application of the proposed Guidelines.
- c. Recommend an organizational framework and procedural changes for implementation of the Guidelines.

3.3 Prepare and Present Final Documents

The Consultant's presentation materials, final documents, and in particular the Guidelines, should be graphically appealing, concise, organized, and easy to use for both staff and the general public.

The Consultant shall prepare and present the final report and Guidelines at a meeting of the Design Review Board for public discussion. If necessary, the Consultant shall be prepared to make further revisions to the final report and/or Guidelines.

4.0 PROJECT SCHEDULE

It is preferred that the Consultant is able to complete its work within twenty-six (26) to thirty-four (34) weeks from the notice to proceed. However, each respondent must address the issue of project schedule in its response to this RFP and indicate if an alternative schedule is warranted and/or possible.

5.0 DELIVERABLES

The Consultant will be responsible for providing expert advice throughout the project. The Consultant shall, at a minimum, provide the following deliverables to the Town:

- At least two (2) hardcopies of all reports produced, along with high-quality electronic copies of the same;
- Electronic copies of all PowerPoint presentations used at public meetings identified above; and
- At least two (2) hardcopies each of any final recommendations/reports and final Guidelines, along with high-quality electronic copies of the same. High-quality electronic copies of any images produced as part of the Guidelines shall also be provided separately.

6.0 PROPOSAL CONTENTS

6.1 PRICE PROPOSALS

The Consultant shall submit an estimated cost summary, **not to exceed \$20,000**, to provide the services required to fully complete the project. The Consultant must provide a breakdown of the cost estimate, either on an itemized basis (travel charges, hourly rates, responding to emails/phone calls, attending meeting, etc.) or on a per-task basis. Costs identified on a per task basis shall include the fully burdened hourly rate of each individual assigned to each task.

If modifications are proposed to the Scope of Services, the costs of said modifications should be clearly identified.

6.2 NON-PRICE PROPOSALS

Consultants must respond in writing to all requirements of this RFP in the order of the items listed below. The Board reserves the exclusive right to select or reject the Consultant(s) that it deems to be in the best interest to accomplish the project. Responses should reflect detailed consideration of the issues and opportunities presented. Any additional information that is believed to be relevant by the Consultant, but does not apply to the categories listed, should be added after the items listed below.

- a. Statement of Project Requirements.** State in succinct terms the Consultant's understanding of what is required by this RFP. This includes the Consultant's understanding of the needs, objectives and goals to be achieved, and the work involved.

- b. Response to RFP.** Describe in narrative form the Consultant’s approach and technical plan for accomplishing the work listed in Section 3.0 Scope of Services. The Consultant shall provide a detailed summary of how the project will be accomplished in accordance with Section 3.0.
- c. Similar Experience.** Provide details of experience and past performance of the Consultant in the development of Design Guidelines. Include at least one PDF copy of a comparable study that the consultant has completed within the last five years.
- d. Staff Experience.** If the Consultant anticipates utilizing staff (including in-house and subcontract personnel), please describe in detail the staff that will be involved in this project, including each person’s name, education, experience, and expected amount of time they will be working on this project.
- e. Expected Time for Delivery.** Consultant shall discuss the estimated time anticipated to produce identified deliverables.
- f. Competing Commitments.** Consultants shall discuss the means by which adequate and timely attention to this engagement will be assured.
- g. References.** Provide the names, titles, and telephone numbers of persons who can substantiate the Consultant's summary of qualifications and experience relevant to this project. Indicate the linkage between the persons listed and the work mentioned in the “Similar Experience” section.

7.0 EVALUATION OF PROPOSALS

The Board will use the following chart to rank each Consultant:

Statement of Project Requirements

Highly Advantageous	Consultant provides detailed evidence of their clear understanding of the needs, objectives, goals to be achieved, and work involved. Content is well presented and easy to understand.
Advantageous	Consultant has an understanding of the needs, objectives, goals to be achieved, and work involved.
Not Advantageous	Consultant does not clearly understand the needs of this project.

Response to RFP

Highly Advantageous	Consultant details their process, from beginning to end, and addresses each area of concern in Section 3.0 in a manner that is easily understandable. Consultant addresses potential areas of concern with a well thought-out plan.
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Advantageous	Consultant addresses everything required in Section 3.0.
Not Advantageous	Consultant does not address one or more items in Section 3.0.

Similar Experience

Highly Advantageous	Consultant responds to all aspects of this section while providing summaries of past projects with much similarity to the subject project.
Advantageous	Consultant addresses everything required in section while providing some similar examples of past projects.
Not Advantageous	Consultant does not address all areas in this section or does not indicate comparable past projects.

Expected Time of Delivery

Highly Advantageous	The Consultant agrees to present the Design Guidelines to the Design Review Board for approval 26-30 weeks following commencement of the project.
Advantageous	The Consultant agrees to present the Design Guidelines to the Design Review Board for approval 30-34 weeks following commencement of the project.
Not Advantageous	The Consultant agrees to present the Design Guidelines to the Design Review Board for approval more than 34 weeks following commencement of the project.

References

Highly Advantageous	Consultant provides three or more references that are able to provide examples of the quality of services the Consultant provided to them.
Advantageous	The Consultant provides up to two references that are able to provide examples of the quality of service the Consultant provided to them.
Not Advantageous	The Consultant provides no references OR one or more references was not favorable to the Consultant.

The Board reserves the right to request an interview with one or more of the respondents at the Board’s discretion.

Selection will be made on criteria set forth in this RFP. A contract will be negotiated with the selected Consultant. Should agreement not be reached, the Board may then elect to negotiate with the remaining consultants in order of their ranking until a suitable agreement could be reached.

The Board reserves the right to discontinue the selection process at any time prior to the awarding of a contract. There will be no reimbursement to any candidate, for any reason, if selection is terminated. The Board will determine the proposal that is most advantageous within 90 days of the due date.

8.0 PRE-AWARD CONFERENCE

The selected Consultant shall attend a pre-award conference with assigned staff of the Planning Department within two weeks after contingent selection as the successful Consultant. Contract documentation and the selected Consultant’s proposal shall be reviewed to assure precise understanding of contract requirements and to review the selected Consultant’s proposal to accomplish all tasks.

9.0 PROPOSAL SUBMISSION REQUIREMENTS

9.1 SUBMISSION OF PROPOSALS

Price and non-price proposals must be in separate sealed envelopes. Please mark the price proposal with, “Price Proposal Design Guidelines” and the non-price proposal with “Non-Price Design Guidelines”. Please submit ten (10) copies of each proposal and one CD or flash drive with digital copies of the Price Proposal and Non-Price Proposal.

Consultants must also fill out the Certificate of Non-Collusion and Respondent Information form at the end of this RFP and submit a copy with each non-price proposal.

The Non-Price Proposals will be opened and available for examination at **3PM on Wednesday, February 28, 2018**. The pricing information will be opened by the Boards after the Non-Price Proposal evaluation.

The Boards maintain the authority to wave any minor informalities pertaining to proposal submissions by Consultants.

9.2 MODIFICATION OF PROPOSALS

A Consultant may correct or modify a proposal by written notice received by the Board prior to the receipt deadline. Modifications must be submitted in a sealed envelope clearly labeled “Modification No. ____.” Each modification must be numbered in sequence, and must reference the original RFP.

After the receipt deadline, a Consultant may not change any provision of the proposal in a manner prejudicial to the interests of the Town or fair competition. Minor informalities will be waived or the Consultant will be allowed to correct them. If a mistake and the intended proposal are clearly evident on the face of the document the mistake will be corrected to reflect the intended correct proposal, and the Consultant will be notified in writing; the Consultant may not withdraw the proposal. A Consultant may withdraw a proposal if a mistake is clearly evident on the face of the document, but the intended correct proposal is not similarly evident.

9.3 WITHDRAWAL OF PROPOSALS

Proposals may be withdrawn prior to the time of receipt of proposals, only on written request to the Board. No Consultant shall withdraw his proposal within a period of sixty (60) days after the date set for the receipt of proposals.

9.4 UNEXPECTED CLOSURES

If at the time of the scheduled receipt deadline, the Wellesley Town Hall is closed due to uncontrolled events such as fire, snow, ice, wind, building evacuation, etc. the receipt of proposals will be postponed to the next normal business day at the time posted in the request for proposals. Proposals will be accepted until that date and time.

9.5 RULE FOR AWARD OF CONTRACT

A contract will be awarded to the Consultant offering the most advantageous proposal, taking into consideration all evaluation criteria as well as price. The Town reserves the right to reject any or all proposals as it deems to be in the best interest of the Town.

9.6 EXECUTION OF CONTRACT

Upon the acceptance of selected consultant's submittal, the Town will incorporate into its Standard Contract (attached hereto), appropriate specifics for this procurement and submit the contract to the successful consultant for signing. In the event that the selected consultant fails, neglects or refuses to execute the contract within a specified number of days after receiving a copy of the contract from the Town, the Town may at its option terminate and cancel its action in awarding the contract and the contract shall become null and void and of no effect.

10.0 TOWN'S REPRESENTATIVE

The Town's coordinator responsible for coordinating actions and for responding to all questions will be Jeanette Rebecchi. Her contact information is as follows:

Jeanette Rebecchi, Planner
(T) 781-431-1019 x2237; (E) jrebecchi@wellesleyma.gov

A link to the RFP will be posted on the Design Review Board webpage:
<http://wellesleyma.gov/979/Design-Guidelines-RFP>

No questions regarding this RFP will be answered over the phone. Any questions regarding this RFP should be emailed to Jeanette Rebecchi at jrebecchi@wellesleyma.gov before 4:30pm on Friday, February 23, 2018. Any submitted questions and responses will be posted on the Town

website <http://wellesleyma.gov/979/Design-Guidelines-RFP> as questions are received, and prior to the RFP due date of Wednesday, February 28, 2018.

11.0 DUE DATE

Ten (10) copies of the proposals and one digital copy on CD or flash drive are required, to be delivered on or before **3PM on Wednesday, February 28, 2018** to:

**Jeanette Rebecchi, Planning Department
Town Hall, Ground Floor
525 Washington Street
Wellesley, MA 02482**

12.0 OWNERSHIP OF INFORMATION PROVIDED

All information provided by the Town to the Consultant and all material developed for this project shall be returned or delivered to the Town before final payment and will not be used by the Consultant for other purposes or released to others without permission of the Town.

The Consultant releases all rights to the deliverables to the Town and acknowledges that these research reports will be made available by the Town in the public domain.

CERTIFICATE OF NON-COLLUSION

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

Signature of person signing proposal

Date

Printed Name and Title

Name of Business

RESPONDENT INFORMATION
Development of Design Guidelines

Legal Name of the Respondent: _____

Company Name: _____

Company Address: _____

City State Zip: _____

Company Web Address: _____

Company Telephone: _____ Company Fax Number: _____

State of Incorporation (Date): _____

If the respondent is a partnership, give full names and addresses of all partners;
and if an individual, give residential address if different from business address.

Company Contacts - Required

Individual Submitting the Proposal:

Name: _____ Title: _____

Mailing Address: _____

Telephone: _____ Fax Number: _____

Email Address: _____

Individual to be contacted about the Proposal:

Name: _____ Title: _____

Mailing Address: _____

Telephone: _____ Fax number: _____

Email Address: _____

Best Times to Contact: _____

CONTRACT FOR SERVICES

TOWN: The Town of Wellesley

TOWN’S REPRESENTATIVE:

VENDOR:

PROJECT:

SITE:

DATE:

BUDGET:

The Town hereby accepts the Vendor’s proposal to perform services (“Services”) in connection with the Project in accordance with and subject to: (i) the Terms and Conditions attached hereto as **Exhibit A**; (ii) Scope of Service attached hereto as **Exhibit B**; and (iii) the salary or hourly rate attached hereto as **Exhibit C**. Collectively, these documents constitute this Agreement.

COMMENCEMENT OF WORK (check applicable box):

- This Agreement constitutes a notice to proceed with services.
- Services shall not be performed under this Agreement until the Town so advises the Vendor in writing.

INSURANCE:	MINIMUM INSURANCE LIMITS
General Liability (Bodily Injury & Property Damage):	\$1,000,000.00
General Liability – Aggregate:	\$3,000,000.00
Worker’s Compensation:	\$ (as required by law)
Builder’s Risk Property Coverage:	\$ (completed value)
Property Coverage (Materials in Transit)	\$ (value of materials)
Automobile Liability:	\$1,000,000.00
Umbrella Liability:	\$2,000,000.00
Umbrella Liability – Aggregate:	\$2,000,000.00
Professional Liability (Errors & Omissions):	\$2,000,000.00
Professional Liability – Aggregate:	\$2,000,000.00

COMPLETION DATE:

PERSONNEL AND SUBCONTRACTORS:

Vendor's Team:

Subcontractors:

List of Attached Exhibits (check applicable boxes):

Exhibit	A	B	C
Attached	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Not Attached	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

TOWN:

By: _____

Title: _____

Date Signed: _____

VENDOR:

By: _____

Title: _____

Date Signed: _____

Approved as to availability of funds:

By: _____

Title: _____

Approved as to form:

By: _____

Title: _____

Exhibit A

TERMS AND CONDITIONS

1. PERFORMANCE OF SERVICES

All Services of the Vendor shall be performed by qualified personnel. The Vendor's Project team shall consist of those persons identified on page 2 of this Agreement and the Subcontractors identified on page 2 of this Agreement. The employment by the Vendor of additional Subcontractors for any of the Services shall be subject to the prior written approval of the Town. No member of the Project team shall be replaced without the consent of the Town. The Town shall have the right to require the Vendor to remove any personnel from the Project for reasonable cause. The Vendor shall perform its Services in accordance with the highest professional standards of skill, care, and diligence. Without limiting the foregoing, the Town shall have the right to require the Vendor to cease providing Services immediately upon written notice.

2. TIME

The Vendor shall perform its Services as expeditiously as is consistent with the standards of professional skill and care required hereby. The Vendor shall perform its Services in coordination with the operations of the Town at the Sites specified and with any party engaged by the Town in connection with the Project. It shall be the obligation of the Vendor to request any information necessary to be provided by the Town for the performance of the Vendor's Services. Time is of the essence of this Agreement.

3. REIMBURSABLE EXPENSES

If out-of-pocket expenses are not included in the Vendor's fee, the Town shall compensate the Vendor for reimbursable expenses actually incurred; provided, however, that reimbursable expenses shall only be eligible for reimbursement if they have been submitted in advance and approved in writing by the Town. The Vendor agrees to use reasonable efforts to minimize expenses which are reimbursable by the Town.

4. VENDOR'S COMPENSATION

a. Lump Sum. If Services are to be provided on a Lump Sum basis, the total amount of compensation due to the Vendor in consideration of the full performance of Services by the Vendor is the amount set forth on page one of this Agreement. The Town shall pay the Vendor as Services are performed by the Vendor based upon the portion of Services completed.

b. Upset Limit. If Services are to be provided subject to an Upset Limit, the total amount of compensation due to the Vendor in consideration of the full performance of Services by the Vendor shall in no event exceed the amount set forth on page one of this Agreement. Unless otherwise agreed, payments shall be made to the Vendor on a Time Card/Unit Price basis as provided in paragraph c. below, subject to the Upset Limit.

c. Time Card/Unit Price. If Services are to be provided on a Time Card/Unit Price basis, payments shall be made to the Vendor for Services performed based upon the salary or hourly rate or unit price schedule included in the Proposal or attached as **Exhibit C**. If the agreed rate schedule is not included in the Proposal or attached as **Exhibit C**, the Vendor shall submit to the Town, before proceeding with Services, a rate schedule listing the maximum rates to be charged for the various employees or categories of employees performing Services or categories or services. Compensation for services performed by authorized Subcontractors shall be on the basis of the actual costs to the Vendor unless otherwise specified herein or in the Proposal. The Vendor shall use his best efforts to complete the performance of his Services within the Estimated Amount set forth on the first page of this Agreement. The Vendor shall advise the Town at such time as the Estimated Amount has been reached. The Town shall not be obligated to pay for any amount in excess of the Estimated Amount, unless the Town gives the Vendor a written notice authorizing the further performance of Services and the incurring of additional costs for such Services.

d. No Compensation for Certain Services. Neither the Vendor nor any of its Subcontractors shall be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Vendor in the preparation of construction documents or other work products, as reasonably determined by the executive head of the Town, nor for any services made necessary by the fault or negligence of the Vendor or its Subcontractors.

e. Subject to Appropriation. The obligations of the Town hereunder shall be subject to appropriation on a fiscal year basis. In the absence of appropriation, this agreement shall be terminated immediately without liability of the Town for damages, lost profits, penalties, or other charges arising from early termination.

5. PAYMENT

The Vendor shall submit, not more often than monthly, statements for fees for Services rendered and reimbursable expenses (stated separately) incurred. The Vendor's statements shall include a description of the Services performed for the period in question with a progress report, and shall be in such form and detail and with such supporting data as the Town may reasonably require to show the computational basis for all charges (including reimbursable expenses), including a statement explaining any substantial deviation from the Vendor's anticipated work schedule, staffing plan and costs. Payment shall be due within thirty (30) days after the Town receives a proper statement. In no event shall the Town be liable for interest, penalties, expenses or attorney's fees. No payment made hereunder shall constitute or be construed as final acceptance or approval of that part of the Services to which such payment relates or relieve the Vendor of any of its obligations hereunder with respect thereto.

6. VENDOR'S ACCOUNTING RECORDS

The Vendor shall keep records pertaining to Services performed (including complete and detailed time records) and reimbursable expenses incurred, employing sound bookkeeping practices and in accordance with generally accepted accounting principles. All records pertaining

to Services performed on a time card or unit price basis and reimbursable expenses shall be available to the Town or its authorized representatives for review and audit during normal business hours.

7. REPORTS, DRAWINGS, ETC.

All reports, drawings, plans and other data and material, including computer programs and other material in electronic media (collectively, "Materials") furnished to the Town shall become the Town's property and may be used by the Town (or such parties as the Town may designate) thereafter in such manner and for such purposes as the Town (or such parties as the Town may designate) may deem advisable, without further employment of or additional compensation to the Vendor. The Vendor shall not release or disclose to any third party any Materials produced for the Town without obtaining the Town's prior written consent. At no time shall the Vendor release or disclose to any third party any Materials furnished to the Vendor by the Town in connection with the performance of the Vendor's Services. Upon the expiration or termination of this Agreement for any reason, all Materials and other work product that have been accumulated, developed or prepared by the Vendor (whether completed or in process) shall become property of the Town and the Vendor shall immediately deliver or otherwise make available such Materials to the Town.

8. INSURANCE

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

- a. Commercial General Liability insurance covering claims for injury to persons and damage to property. Such insurance shall include contractual liability and shall cover the use of all equipment and motor vehicles on the Site or transporting persons, equipment, materials or debris to and from the Site. Products and Completed Operations insurance shall be maintained for at least three years after completion of this Agreement.
- b. Professional Liability insurance for protection from claims arising out of the performance of professional services, including contractual coverage.
- c. Worker's Compensation Liability insurance in amounts not less than those required by law and Employer's Liability insurance.
- d. Automobile Liability insurance applicable for any contractor who has an automobile operating exposure for protection against bodily injury and property damage.
- e. Umbrella Liability insurance, which shall be maintained for at least three years after completion of this Agreement.

Certificates of insurance evidencing the coverage required hereunder and copies of the policies, together with evidence that all premiums for such insurance have been paid, shall be filed with the Town prior to the commencement of the Services to be rendered by the Vendor hereunder. All such policies and certificates shall be written through companies and in forms acceptable to the Town's lender or lenders, if any. All policies shall contain a provision that coverages afforded by them will not be cancelled or amended until at least thirty (30) days prior written notice has been given to the Town. In the event that any policy is cancelled or amended, the Vendor shall immediately provide notice to the Town and take all steps necessary to reinstate such policy to conform to the requirements of this Agreement. The insurance provided under clause a, d and e, above, shall name the Town and such other parties as the Town shall require as "Additional Insured" parties. Insufficient insurance shall not release the Vendor from any liability for breach of its obligations under this Agreement.

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

9. INDEMNIFICATION

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

10. COMPLIANCE WITH LAW

It is the responsibility of the Vendor that the Project be conducted, and that all Services and other work performed by the Vendor hereunder be performed so as to comply with all applicable federal, state and municipal laws, regulations, codes, ordinances and orders, and any permit conditions as to which the Vendor has knowledge, as the same may be in effect as of the time of the performance of such work. In particular, without limitation, the Vendor agrees to comply with (a) all regulations pertaining to approvals for federal and state grants, and with all federal and state environmental laws and regulations, and assist in making any submissions with respect thereto and (b) all applicable requirements of the Massachusetts public construction and procurement laws, which are incorporated by reference herein.

11. TERMINATION OF AGREEMENT

The Town may terminate this Agreement as follows:

- a. Without cause, on ten days' prior written notice; or
- b. Immediately, by written notice to the Vendor, if the Vendor violates any of the provisions of this Agreement, or fails to perform or observe any of the terms, covenants or conditions of this Agreement, or abandons in whole or in part its Services, or becomes unable to perform its Services, hereunder. For purposes of this Paragraph 11, it is acknowledged that the Vendor's Services under this Agreement are personal services and may not be assumed by or assigned by a trustee in bankruptcy.

In the event of termination, the Vendor shall promptly deliver to the Town all Materials, including all documents, work papers, studies, calculations, computer programs, data, drawings, plans, specifications and other tangible work product or materials pertaining to the Services performed under this Agreement to the time of termination, and thereupon the Town shall pay to the Vendor any unpaid and undisputed balance owing for Services rendered prior to the date of termination. Any termination of this Agreement shall not affect or impair the right of the Town to recover damages occasioned by any default of the Vendor or to set off such damages against amounts otherwise owed to the Vendor.

12. MISCELLANEOUS PROVISIONS

- a. Successors and Assigns. Subject to the provisions of Subparagraph (b) below, the Town and the Vendor each binds itself, its partners, successors, assigns, and legal representatives to the other party.
- b. Assignment by Vendor. The Vendor shall not assign, sublet or transfer any of its obligations, responsibilities, rights or interests (including, without limitation, its right to receive any moneys due hereunder) under this Agreement without the written consent of the Town. Any assignment, subletting, or transfer by the Vendor in violation of this Paragraph 12(b) shall be void and without force or effect.
- c. Entire Agreement. This Agreement represents the entire and integrated agreement between the Town and the Vendor with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Town and the Vendor.
- d. Confidentiality. The Vendor shall not, without the Town's prior written consent, release or disclose any information relating to the Project to anyone except as necessary to perform its duties hereunder.
- e. Certifications. The Vendor shall, from time to time, make such certifications and statements to the Town and to such of the Town's architects, designers, vendors and lenders, and such other parties, as the Town shall reasonably request, in such form as the Town shall reasonably request, provided that the Vendor determines that such

certifications are true and correct based upon the Services performed by the Vendor hereunder.

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

g. Disputes. All claims, disputes and other matters in question between the Town and the Vendor arising out of or relating to this Agreement or the breach thereof shall be submitted for resolution to a court of competent jurisdiction in _____ County, Massachusetts, unless otherwise agreed by the parties. No such action shall be brought, however, until the completion of all Services under this Agreement or the earlier termination thereof as provided in Paragraph 11 above, the parties agreeing to negotiate in good faith any claims, disputes or other matters in question during the term of this Agreement before resorting to litigation.

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

i. Governing Law. This Agreement shall be governed by the law of the Commonwealth of Massachusetts.

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

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

13. EQUAL EMPLOYMENT OPPORTUNITY

a. In connection with the performance of work under this Agreement, the Vendor shall not discriminate against any employee or applicant for employment because of race, color,

religion, creed, national origin, ancestry, age, sex or handicap. The Vendor shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Massachusetts Commission Against Discrimination (the "Commission"), setting forth the provisions of the Fair Employment Practices Law of the Commonwealth.

b. In connection with the performance of work under this Agreement, the Vendor shall not discriminate in its relationships with Subcontractors or suppliers on the basis of race, color, religion, creed, national origin, ancestry, age, sex or handicap.

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

14. CERTIFICATIONS BY VENDOR

By execution of this Agreement, the Vendor certifies:

a. The Vendor has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement.

b. No Vendor to or subcontractor for the Vendor has given, offered or agreed to give any gift, contribution or offer of employment to the Vendor or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the Vendor or subcontractor of a contract by the Vendor.

c. No person, corporation or other entity, other than a bona fide full time employee of the Vendor, has been retained or hired by the Vendor to solicit for or in any way assist the Vendor in obtaining this Agreement upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Agreement to the Vendor.

d. The Vendor shall comply with all applicable requirements of Section 39R of Chapter 30 of the Massachusetts General Laws.

15. TAXES

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

b. The Town is exempt from payment of certain Sales and Use taxes applicable in the Commonwealth of Massachusetts. At the Vendor's request, Tax Exemption Certificates will be furnished by the Town to the Vendor with respect to such tax exempt articles as

may be required under this Agreement. The Vendor shall not pay, and the Town shall not reimburse or pay the Vendor or any other party either directly or indirectly for any tax for which an exemption is provided under law.

16. CONFLICT OF INTEREST

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

Exhibit B

SCOPE OF SERVICES

Exhibit C

PRICING SCHEDULE