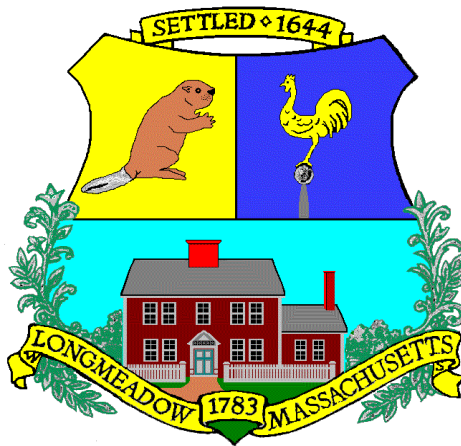


Request for Proposal

# Skatepark Feasibility and Design Services



TOWN OF LONGMEADOW  
MASSACHUSETTS

March 23, 2021

**REQUEST FOR PROPOSAL**

**Skatepark Feasibility & Design Services**

**Town of Longmeadow, Massachusetts**

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**LEGAL NOTICE:**

**REQUEST FOR PROPOSAL (RFP)  
Skatepark Feasibility and Design Services**

The Town of Longmeadow is soliciting proposals for outdoor skatepark feasibility and design services. The contract will be awarded in two phases. Phase I, will be for the feasibility and schematic design phase. The Town of Longmeadow at its sole discretion reserves the right to negotiate with the same designer for Phase II design services in the event a skatepark construction project is approved and funded (construction phase design services).

Sealed proposals for this RFP will be received at the following address: Town of Longmeadow, Purchasing Department, Attn: Chad Thompson, Procurement Manager, 735 Longmeadow Street, Suite 101, Longmeadow, MA 01106 (Phone: 413-565-4185, [cthompson@longmeadow.org](mailto:cthompson@longmeadow.org)). Proposals will be received until the proposal deadline of **2:00PM on Friday, May 7, 2021**. Late proposals will be rejected. Sealed proposals submitted shall be labeled 'RFP – Skatepark Feasibility and Design Services', followed with the contact information of the submitting firm. Include five (5) copies of the RFP response and one (1) thumb drive containing a PDF copy of the proposal. Technical and price proposal information can be submitted within a single proposal response. There will not be a public logging, but the list of those that delivered sealed proposals will be available after the deadline.

The RFP document is available upon request. It may also be obtained online and may be accessed online through the Purchasing Department page of the town website: [www.longmeadow.org](http://www.longmeadow.org). Select 'Government' from the toolbar, then 'Purchasing' Department, then 'Bids & RFPs', then the link labeled 'Bid & RFP Finder' to access documents. Those that download documents online are encouraged to register with the Longmeadow Purchasing Department. Others are required to monitor the website prior to the RFP response deadline for additional information and issued addenda. Failure to acknowledge addenda may result in a RFP response rejection.

The Town of Longmeadow acting through the Town Manager, the Awarding Authority reserves the right to reject any or all responses, waive minor informalities, and to award the contract in the best interest of the Town.

END OF SECTION

## **I. Introduction**

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The Town of Longmeadow is requesting proposals for skatepark feasibility and design services. The design consultant will meet with the Skatepark Working Group and the Longmeadow Parks and Recreation Director to coordinate the completion of a feasibility study, and to facilitate a public forum to discuss skatepark plans, concepts, potential locations, with opportunity for community input. Once the objectives of the feasibility study have been determined, the consultant will prepare a schematic design with estimated public construction costs. As part of the proposal the consultant will also supply with their proposal pricing for various phases of designer service during the construction phase in the event that the Town of Longmeadow through Annual Town Meeting authorizes funding for skatepark construction.

This RFP provides the following:

- Project Background
- Scope of Work
- Instructions for Submitting Response to RFP
- RFP Evaluation
- RFP Response Submission Forms
- Sample Contract Terms and Conditions

### Appendices

- A Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction (Update July 2016)

The Town of Longmeadow requests that interested design contractors provide descriptions of their technical approach to providing the requested services, the Contractor's and subcontractor's personnel that would be assigned with cost for the services.

## **II. Scope of Work**

- The Designer will provide a design and drawings for a skatepark the size of one to two tennis courts (3,000 to 6,000 square feet).
- The Designer shall work with grant recipient Alex Grant and members of the Skatepark Working Group to assess sites on town-owned land previously vetted by the Skatepark Working Group, and provide recommendations with respect to the previously vetted sites. As part of site assessment and final site qualification, the Designer shall assist the Town with determining any needed preliminary geo-technical information, securing geo-technical sampling services, and evaluating geo-technical data to confirm selected site viability.

- Once Alex Grant and the Skatepark Working Group, with input from the Designer, have selected the optimal site, or a potential alternative site, the Designer will develop approved concept plans, schematics, and project budget estimates that include all costs anticipated to bring the approved concept through final design, construction, and project closeout for that optimal or potential alternative site. Budget estimates will, at a minimum, include final design, geo-technical work, construction documents suitable for bidding, bidding assistance, construction administration phase services, project closeout, anticipated construction costs, appropriate contingencies and all soft costs. The concept plans and schematics will depend on the design features of the skatepark selected by Alex Grant and the Skatepark Working Group.
- The Designer shall participate in a minimum of one public meeting to engage the public for input regarding the design elements, overall functionality, and usability of proposed design.
- The Designer shall work closely with Alex Grant and the Skatepark Working Group and hold meetings as necessary to identify the design features desired by users of a Longmeadow skatepark which are also financially feasible in light of the resources and needs of the Town of Longmeadow. The desired design features of the skatepark previously identified by the Skatepark Working Group (see below) may be modified in response to input from the public.
- The Designer will develop schematic and concept plans for two mock-ups incorporating public input and feedback as appropriate within industry acceptable guidelines. The resulting skatepark should be appropriately sized for anticipated use and include a variety of elements and features that will engage users of all ages and abilities, all while blending with the surrounding park aesthetics.
- The Designer will assist the Town with compilation of an appropriate report chronicling the process and outcomes related to the skatepark design effort.
- The Designer will work closely with the Town professional staff as needed to ensure appropriate outcomes are achieved.
- The proposed concept plan should be developed in compliance with current Massachusetts State Building Code, Massachusetts Architectural Access Board regulations, Americans with Disabilities Act and all other applicable codes and regulations.
- It shall be the Designers' responsibility to anticipate any and all services necessary to meet the project objectives, including appropriately licensed/registered professionals when required.

The Longmeadow Skatepark Working Group has already had several meetings and has developed the following:

The town of Longmeadow, MA is seeking to hire an experienced skatepark design firm to draft two or more digital mock-ups of potential concrete skatepark formats, under the assumption that we will be granted a flat space that is equal to the size of approximately one or two tennis courts, (3,000-6,000 square feet). We would like to first create a more conservative, less expensive design with a few crucial features designed for beginner to intermediate skill levels for

usage by skateboarders, bicycle riders, and scooter riders. Then, using that design as a framework, we would then like to create a more expensive design option that includes even more obstacles surrounding the original park. It will be imperative that the designer can estimate the prices of each design, and more specifically, each obstacle.

For each design, we do not believe it will be necessary to exceed a height of 3.5 feet high for any obstacles, for we want the skatepark to be accessible for riders of any skill level. We would like to create designs that will include a mixture of “street-style” obstacles and “transition” obstacles to create a skatepark that will be inclusive for any type of rider. Ideally we would like to have the center of the park used for street-style obstacles, such as ledges, rails, curbs, manual pads and pyramids, and the perimeter of the park to be used for transition-style obstacles, such as quarterpipes, embankments, bowl corners, and hips. Below is a list of high priority features that our design subcommittee has drafted, as well as a list of lesser priority features that would also be desirable if permitted by the budget and area that is granted to the project.

High Priority	Lesser Priority
<ul style="list-style-type: none"> <li>• 12” tall ledge at least 10’ in length and at least 3’ in width</li> <li>• 6” tall manual pad at least 8’ in length and 5’ in width</li> <li>• Free standing, 12” tall, round “flatbar” railing of at least 10’ in length</li> <li>• 3’-3.5’ tall quarterpipe at least 16’ in length</li> <li>• 2.5’-3.5’ tall banked “hip”</li> <li>• As much flat, empty space as possible surrounding each street-style obstacle</li> </ul>	<ul style="list-style-type: none"> <li>• 15” tall ledge at least 10’ in length</li> <li>• 6” tall “California” style concrete curb</li> <li>• “Launch ramp” style quarterpipe with no coping</li> <li>• Dyed concrete (for visual appeal)</li> <li>• Pyramid with flat top</li> </ul>

### **III. Instructions for Submitting Response to RFP**

#### ***Requirements for proposal content and format***

Approach and effort to accomplish project tasks:

Describe your approach, methodology, sequence, rationale, and schedule for meeting all stated project objectives and scope items described above. Describe assumptions, specify circumstances that would require extra work, and describe methods to be used for such extra work

Level of Effort/Cost:

Provide a level of effort/cost for each scope of work section, using the Estimated Cost of Services table Contractor may supplement information provided by the table with spreadsheets to provide further relevant detail. If needed, provide text describing assumptions that apply to the estimate.

## *Delivery of Proposals*

Proposals submissions should be delivered to the Town of Longmeadow, Purchasing Department, Attn: Chad Thompson – Procurement Manager, 735 Longmeadow Street, Suite 101, Longmeadow, MA 01106 and will be received until the proposal deadline stated in the Legal Notice. Late proposals will be rejected. Immediately following the proposal deadline, all proposals will be publicly logged remotely through zoom.com as stated in the Legal Notice (see page 3).

## **Proposal Format**

In submitting the proposal the Designer shall provide the following:

1. Statement of Qualifications (SOQ)
  - Provide one (1) unbound original and five(5) bound hard copies of the SOQ in addition to one (1) electronic submission of all SOQ components in PDF format on a thumb-drive storage device.
2. Project Approach
  - a. Include in the submittal a statement of understanding of the work to be performed on this project, your firm’s proposed approach to the project, firm’s proposed design and construction, and anticipated number of meetings with the Owner and Public to achieve the desired results.
  - b. Discuss your team’s history with including the community in a similar project.
  - c. Based on past experience, provide an anticipated timeline for completion of the proposed work.
3. Project Team
  - a. Specifically identify and give the background, qualifications, and full resume of the Project Manager.
  - b. Describe the organization of the project team, including resumes, background, and experience of key personnel proposed for this project.
  - c. Include a listing of other projects the noted staff will be working on and an estimate of their time to be spent on this project.
  - d. Identify all tasks that will be supported by sub-consultant work.
  - e. Where possible, identify the sub-consultant and demonstrate their qualifications and experience in performing that work. Include full resumes and professional registrations/licenses.
4. Qualifications and Experience
  - a. Provide a list of all public and private skatpark projects performed by the Designer in the, including size, scope, names and telephone numbers of persons familiar with that work. Include the names and roles of key staff who worked on the projects, as well as name and contact information for the general contractor or CMR for each project, and any Owner’s Project Managers.
  - b. For the recent skatepark projects, include photographs/designs and a cost estimating history comparing construction costs estimates with final construction costs on three recent projects.
  - c. Submit a sample cost estimate, or actual cost estimate for a previous project,

identifying approach to cost estimating.

d. Identify Construction Administration experience with similar projects (size, scope, dollar value).

e. Provide information about the depth of the firm with respect to size, complexity of the project, dollar values of projects and financial stability of the firm.

f. Completed Commonwealth of Massachusetts Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction (Updated February 2013)

#### **IV. Proposal Evaluation**

##### Proposal Evaluation Process

Proposals received will be evaluated by a Review Committee. Proposals will be evaluated first for Minimum Requirements. Those that meet the Minimum Requirements will then be evaluated on Comparative Criteria. The Review Committee may select to interview proposers that meet minimum requirements, or may make contact proposers for additional inquiries or questions. Finalists will then be ranked and evaluated. No award will be made to applicants or consultants debarred pursuant to M.G.L. c. 149, 44C.

#### **Designer Minimum Requirements**

Each proposal MUST meet all of the following Minimum Requirements in order to be considered for further proposal evaluation. Proposals that do not meet the following experience and quality requirements will be rejected from further RFP evaluation and consideration for contract award.

- The Principal-In-Charge (MA P.E. Registration Required) must be able to provide evidence that they have experience with delivering completed design services involving construction of a department of public works type facility similar to this project.
  
- The Proposer must supply completed Proposal Submission Forms. A completed Certificate of Non-Collusion is a mandatory form.
  
- The Designer Selection Board application form for Municipalities and public Agencies not within DSB Jurisdiction form shall be utilized so the Town has a consistent format to evaluate proposers and their projects. The Proposer should include ALL similar projects completed for public entities in the last 24 months.

#### **Contract Award:**

The contract will be awarded based on the most advantageous proposal from the proposer that is responsive and responsible taking into consideration the price and the evaluation criteria as evaluated by the Town's evaluation committee. Proposers are required to document a price on



the submission forms for Phase I services, which may be negotiated with the most advantageous technical proposal applicant received, but shall not exceed the available project appropriation for Phase I. The contract award for Phase I services only will be a fixed price for services, inclusive of expenses.

All proposals shall be binding upon the proposer for a minimum period of ninety (90) calendar days following the opening of the proposals. All proposals and related materials submitted in response to the RFP shall become the property of the TOWN and will not be returned to proposers unless the TOWN, at its sole discretion, determines otherwise.

### **Comparative Criteria**

Proposals that meet the minimum requirements will be evaluated by the Review Committee on the basis of proposal submission, qualifications, selection procedures, and other relevant criteria.

#### **1. GENERAL EXPERIENCE WITH SKATEPARK DESIGN**

Relevant experience of the designer with skateparks they have designed and have been constructed:

***Highly Advantageous:*** The designer and proposed consultant's relevant experience as it applies to skatepark design and construction phase skatepark design services is considered to be above average by the Review Committee.

***Advantageous:*** The designer and proposed consultant's relevant experience as it applies to skatepark design and construction phase skatepark design services is considered to be average by the Review Committee.

***Not Advantageous:*** The designer and proposed consultant's relevant experience as it applies to skatepark design and construction phase skatepark design services is considered to be below average by the Review Committee.

***Unacceptable:*** The designer and proposed consultant's relevant experience as it applies to skatepark design and construction phase skatepark design services is considered to be unacceptable by the Review Committee.

## 2. CONSTRUCTED SKATEPARKS OF THE DESIGNER

The number of skateparks that have been designed and constructed by the design team is:

**Highly Advantageous:** The primary design team has be involved with the design of three (3) or more skateparks that have been constructed.

**Advantageous:** The primary design team has be involved with the design of two (2) skateparks that have been constructed.

**Not Advantageous:** The primary design team has be involved with the design of one (1) skatepark that have been constructed.

**Unacceptable:** The primary design team has be involved with the design of no skateparks (0) ,that have been constructed.

## 3. STAFF EXPERIENCE AND QUALIFICATIONS

Relevant capability and experience of proposed project staff in relation to skatepark design services required:

**Highly Advantageous:** The proposer's professional staff experience and staff qualifications in relation to skatepark design is considered to be above average based on the opinion of the review committee.

**Advantageous:** The proposer's professional staff experience and staff qualifications in relation to skatepark design is considered to be average based on the opinion of the review committee.

**Not Advantageous:** The proposer's professional staff experience and staff qualifications in relation to skatepark design is considered to be below average based on the opinion of the

review committee.

***Unacceptable:*** The proposer's professional staff experience and staff qualifications in relation to skatepark design is considered to be unacceptable based on the opinion of the review committee.

**Proposals will be rated on these criteria as follows:**

- **Highly Advantageous** - 3 points
- **Advantageous** - 2 points
- **Not Advantageous** - 1 point
- **Unacceptable** - 0 points

**V. RFP Response Submission Forms**

**REQUEST FOR PROPOSAL**  
**Skatepark Feasibility and Design Services**  
Town of Longmeadow, Massachusetts

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**COMPANY:** \_\_\_\_\_

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**CERTIFICATE OF NON-COLLUSION: REQUIRED FORM**

The undersigned certifies under the penalties of perjury that this bid or 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.

\_\_\_\_\_  
Signature of person submitting contract/bid

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Business

**Have you supplied the completed DSB for municipalities form as requested?**

YES: \_\_\_\_\_ NO: \_\_\_\_\_

**Have you supplied the proposal as requested?**

YES: \_\_\_\_\_ NO: \_\_\_\_\_

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**REQUEST FOR PROPOSAL**  
**Skatepark Feasibility and Design Services**

Town of Longmeadow, Massachusetts

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**COMPANY:** \_\_\_\_\_

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**CERTIFICATE OF TAX COMPLIANCE**

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

\_\_\_\_\_  
*Social Security Number or  
Federal Identification Number*

\_\_\_\_\_  
*Signature of Individual or  
Corporate Name*  
\_\_\_\_\_  
*Corporate Officer  
(if applicable)*

**ACKNOWLEDGEMENT OF ISSUED ADDENDA**

The proposer acknowledges the receipt of the following issued addendum:

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

**REQUEST FOR PROPOSAL**  
**Skatepark Feasibility and Design Services**

Town of Longmeadow, Massachusetts

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**COMPANY:** \_\_\_\_\_

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**RFP Proposal Price**

The designer proposes the following price for the supply of Phase I services only, the feasibility study and schematic design services as outlined in the Scope of Work. The fee supplied will be inclusive of deliverables such as printing, report copies, mileage and travel expenses associated with site inspections and attendance at meetings.

**TOTAL PRICE: \$\_\_\_\_\_ LUMP SUM**

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*(Lump sum total price written in works)*

## **VI. Sample agreement terms and conditions**

### **Phase I contract to be completed upon contract award.**

#### **PHASE I - CONTRACT TERMS AND CONDITIONS FOR THE FEASIBILITY STUDY ONLY.**

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The following provisions shall constitute an Agreement with an Effective Date of \_\_\_\_\_ between the Town of Longmeadow, with an address of 20 Williams Street, Longmeadow, MA 01106 herein referred to as the ‘Town’; and \_\_\_\_\_ VENDOR \_\_\_\_\_ with an address of \_\_\_\_\_, herein referred to as the ‘Contractor’. In consideration of the mutual covenants contained herein, the parties agree as follows:

#### **ARTICLE 1: SCOPE OF SERVICE:**

The Contractor shall provide supplies and services in accordance with the specifications contained in [Attachment A: Request for Qualifications: Skatepark Feasibility and Design Services, Town of Longmeadow, Massachusetts, dated April 23, 2021; and Addendum No... \(if any\).](#)

#### **ARTICLE 2: TIME OF PERFORMANCE:**

Following the receipt of a Notice to Proceed, the Designer shall complete the feasibility study and scope of services for Phase I within sixty (60) calendar days, the Substantial Completion Date. It is agreed that time is of the essence of this Agreement.

#### **ARTICLE 3: COMPENSATION:**

The Town of Longmeadow shall pay the Contractor for the performance of the work outlined in Article 1 above, the contract sum of \$ TBD for Phase I Scope of Services, in accordance with the provisions of the specifications, or as set forth in an attachment hereto in [Attachment B](#), the price proposal.

#### **ARTICLE 4: CONTRACT DOCUMENTS:**

The following documents form the Contract and all are as fully a part of the Contract as if attached to this Agreement herein:

1. This Agreement.
2. Amendments, or other changes mutually agreed upon between the parties.
3. All attachments to the Agreement.

In the event of conflicting provisions, those provisions most favorable to the Town shall govern.

#### **ARTICLE 5: CONTRACT TERMINATION:**

The Town of Longmeadow may suspend or terminate this agreement by providing the Contractor with ten (10) days written notice for the reasons outlined as follows:

1. Failure of the Contractor, for any reason, to fulfill in a timely and proper manner its obligations under this Agreement
2. Violation of any of the provisions of this Agreement by the Contractor.
3. A determination by the Town of Longmeadow that the Contractor has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this Agreement.

**ARTICLE 6: INDEMNIFICATION:**

The Contractor shall, to the maximum extent permitted by law, indemnify and save harmless the Town of Longmeadow, its officers, agents and employees from and against any and all damages, liabilities, actions, suits, proceedings, claims, demands, losses, costs and expenses (including reasonable attorneys' fees) that may arise out of or in connection with the work and/or service being performed or to be performed by the Contractor, its employees, agents, or subcontractors. The existence of insurance shall in no way limit the scope of this indemnification. The Contractor further agrees to reimburse the Town of Longmeadow for damage to its property caused by the contractor, its employees, agents, subcontractors or materials. Contractor shall be solely responsible for all local taxes or contributions imposed or required under the Social Security, Workers Compensation, and income tax laws.

**ARTICLE 7: AVAILABILITY OF FUNDS:**

The compensation provided by this Agreement is subject to the availability and appropriation of funds. The contractor shall be obligated to provide services hereunder, only to the extent that said funds are available.

**ARTICLE 8: APPLICABLE LAW:**

The Contractor agrees to comply with all applicable local, state and federal laws, regulations and orders relating to the completion of this Agreement. This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.

**ARTICLE 9: ASSIGNMENT:**

The Contractor shall not make any assignment of this Agreement without the prior written approval of the Town of Longmeadow.

**ARTICLE 10: DESIGNER CERTIFICATION:**

The designer has not given, offered, or agreed to give any person, corporation, or other entity any gift, contribution, or offer of employment as an inducement for, or in connection with the award of the contract for design services;

Certification that no consultant to, or sub-consultant for, the designer or construction manager has given, offered, or agreed to give any gift, contribution, or offer of employment to the designer or construction manager, or to any other person, corporation, or entity as an inducement for, or in connection with the award of the consultant or subcontractor of a contract by the designer or construction manager;

Certification that no person, corporation, or other entity, other than a bona fide full-time employee of the designer or construction manager, has been retained or hired by the



designer or construction manager to solicit for or in any way assist the designer or construction manager in obtaining the contract for design services upon an agreement or understanding that such person, corporation, or other entity to be paid a fee or other consideration contingent upon the award of the contract to the designer; and

Certification that the designer has internal accounting controls as required by M.G.L. c. 30, 39R(d), and that the designer has filed and will continue to file and audited financial statement as required by M.G.L. c. 30, 39R(d).

**ARTICLE 11: LIABILITY INSURANCE:**

Supply professional liability insurance covering negligent errors, omissions, and acts of the designer or of any person or business entity for whom performance the designer is legally liable arising out of the performance of the contract. The total amount of such insurance shall at a minimum equal the lesser of one million dollars or ten percent of the project's estimated cost of construction. The designer shall at its own expense and shall furnish a certificate or certificates of insurance coverage to the Awarding Authority prior to the award of the contract.

**ARTICLE 12: ANTICIPATED ADDITIONAL WORK:**

The designer or its consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the designer in the preparation of the bid documents, or reasonably determined by the individual responsible for administering the design contract.

**ARTICLE 13: AMENDMENTS:**

All amendments or any changes to the provisions specified in this Contract can only occur when mutually agreed upon by Town and Contractor. Further, such amendments or changes shall be in writing and signed by officials with authority to bind the Town. Additionally, all amendments and changes shall be authorized by the Town of Longmeadow's legal counsel prior to execution by the awarding authority. No amendment or change to the contract provisions shall be made until after the written execution of the amendment or change to the Contract by both parties.

**ARTICLE 14: PHASE 1 SCOPE OF SERVICES:**

This agreement is for the Phase I Scope of Services only. In the event that Phase II Scope of Services is authorized and awarded to the same designer by the Town, the contract award for Phase II services will be at the sole discretion of the Town, then a new contract will be negotiated and drafted which will address in more detail final design service contract requirements.

**PHASE II - CONTRACT TERMS AND CONDITIONS FOR DESIGN SERVICES.  
FINAL DESIGN SERVICES PHASE II, IN THE EVENT THE TOWN OF  
LONGMEADOW AT ITS SOLE DISCRETION AWARDS PHASE II SERVICES TO  
THE SAME DESIGNER**

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**Town of Longmeadow  
Contract for Designer Services Phase II  
DESIGN SERVICES FOR SKATEPARK CONSTRUCTION SERVICES**

**PROJECT TITLE:** Design Services for Skatepark Construction Services., Phase II

**DESIGNER:** TBD.

This AGREEMENT is made under seal the \_\_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand and twenty one, between the Town of Longmeadow hereinafter, the AWARDING AUTHORITY, and \_\_\_\_\_ TBD \_\_\_\_\_, acting as PROJECT ARCHITECT with an address of TBD.

**ARTICLE 1: DEFINITION OF TERMS**

- 1.1 GENERAL LAWS -- the General Laws of the Commonwealth of Massachusetts as amended, including any rules, regulations and administrative procedures implementing said laws.
- 1.2 DESIGNER -- the individual or firm performing professional services under this AGREEMENT.
- 1.3 PRINCIPALS -- the registered professional Architects or Engineers listed in ARTICLE 16.
- 1.4 NOTICE TO PROCEED -- written communication from the Awarding Authority, constituting an essential condition of this AGREEMENT, authorizing the Designer to perform services for the project phase to which such Notice shall relate. The Notice to Proceed shall include the basis for compensation, the fixed limit construction cost, if any, and may include the time of submittal. Subsequent written communications amending the Notice to proceed are required to change either a submittal date or the fixed limit construction cost. Proceeding with various phases of contract work is contingent upon the Awarding Authority or its designees' satisfaction with and acceptance of services performed for each phase.

- 1.5 SUBMITTAL DATES -- those dates referred to in the Notice to Proceed or any subsequent amendment thereto.
- 1.6 CONSTRUCTION CONTRACT -- contract for construction of a whole or part of the project, including all change orders.
- 1.7 TOTAL CONSTRUCTION COST -- the sum of the actual construction contract award price and each authorized change order revising the construction contract award price. The construction contract award price shall be the same as the construction price of the lowest responsible and eligible bidder.
- 1.8 AWARDED AUTHORITY – The Town Manager for the Town of Longmeadow, Massachusetts who is designated as the CPO per Town Charter.
- 1.9 PROJECT -- the building project for which designer services have been procured under this AGREEMENT, and which is identified on Page 1 (Project Title).

**ARTICLE 2: CONSULTANTS, SUBCONTRACTING, SUCCESSORS AND ASSIGNS**

- 2.1 The Designer shall not employ additional consultants, not named in the proposal(s) nor sublet, assign or transfer any part of his services or obligations under this AGREEMENT without the prior approval and written consent of the Awarding Authority. The Awarding Authority shall not unreasonably withhold such approval. Written consent shall not in any way relieve the Designer from his responsibility for the professional and technical accuracy and the coordination of all data, designs, drawings, specifications, estimates and other work or materials furnished.
- 2.2 Except as otherwise provided in this AGREEMENT or authorized by the Awarding Authority, the Designer shall employ within the basic fee for this project the following consultants where their specific services are required: Architect, Structural Engineer, Civil Engineer, Sanitary Engineer, Mechanical Engineer, Landscape Architect, Cost Estimator, and Electrical Engineer, or any other consultant specifically listed in the proposal. Consultants must be registered in their respective disciplines if registration is required under the applicable General Laws.
- 2.3 When the Designer receives payment from the Awarding Authority, the Designer shall promptly make payment to each consultant whose work was included in the work for which payment was made by the Town. The Awarding Authority shall have the contractual right, but not the obligation, to require corrective measures necessary for the best interests of the Town.

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

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

#### **ARTICLE 4: COMPLIANCE WITH LAWS**

- 4.1 The Designer shall perform the work required under this AGREEMENT in conformity with all requirements and standards of the Awarding Authority, all applicable laws, statutes, ordinances, by-laws, codes, rules and regulations, and executive orders of the Commonwealth and its political subdivisions, and the Federal Government. The Construction Documents shall comply with all applicable laws, statutes, ordinances, by-laws, codes, rules and regulations, and executive orders. The Designer, including all approved consultants and subcontractors, shall comply with all applicable provisions of the rules and regulations of the President's Committee on Equal Employment Opportunity and Procedures promulgated by the Governor of Massachusetts or his designees, insuring equal opportunity for employees and minority and women-owned business enterprises.

## **ARTICLE 5: PROFESSIONAL RESPONSIBILITY**

- 5.1 The Designer shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, specifications, estimates and other work furnished by him or his consultants and subcontractors. The Designer shall staff his office with sufficient personnel to complete the services required under this contract in a prompt and continuous manner, and shall meet the approval schedule and submittal dates established during the course of this AGREEMENT.
- The Designer shall commence work under this AGREEMENT upon written notice to proceed issued by the Awarding Authority in conformance with the provisions of Section 1.4 of this AGREEMENT. The Designer shall complete the services required under this AGREEMENT in a prompt and continuous manner, and to meet such time limits as are established during the course of the AGREEMENT and stated in each Notice to Proceed. If the completion of the scope of work is delayed through no fault of the Designer, the time limit may be extended upon written approval of the Awarding Authority.
- 5.2 The Designer shall furnish appropriate competent professional services for each of the phases to the point where detail checking and reviewing by the Awarding Authority will not be necessary. Any changes, corrections, additions or deletions made by the Awarding Authority shall be incorporated in the design of the Project unless detailed objections thereto are received from the Designer and approved by the Awarding Authority.
- 5.3 The Designer shall thoroughly acquaint his employees and consultants with all provisions of the General Laws governing the conduct of public construction projects, including but not limited to M.G.L. c.149, and c.30, and in particular, M.G.L. c.30, §39M, wherein the description of material specifications and proprietary items in construction bid documents is governed.
- 5.4 Neither the Awarding Authority's review, approval or acceptance of, nor payment for any of the services furnished shall be construed to operate as a waiver of any

rights under the AGREEMENT or any cause of action arising out of the performance of the AGREEMENT.

- 5.5 The Designer shall indemnify, defend, and hold the Awarding Authority harmless from and against any and all claims, demands, liabilities, actions, causes of action, costs and expenses arising out of the Designer's breach of the Agreement or the negligence or misconduct of the Designer or the Designer's agents or employees.

## **ARTICLE 6: DESIGNER SERVICES**

### 6.1 DESIGN AND CONSTRUCTION

#### 1. Phase 1. - Schematics

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

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

#### 2. Phase 2. - Design Development

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

### 3. Phase 3. - Construction Documents

Upon receipt of a Notice to Proceed from the Awarding Authority for Phase 3 of the Project, the Designer shall meet as necessary with the Awarding Authority, and shall prepare and submit to the Awarding Authority on or before the date or time specified in the Notice to Proceed or any supplement thereto, complete working plans and specifications in sufficient detail to permit firm bids in open competition for construction of the project, and a detailed cost estimate. Said plans and specifications shall be based on the design development, outline specifications and construction cost estimate approved in Phase 2 of the Project, the Notice to Proceed with Phase 3, or any subsequent modification thereto. The detailed estimate of the cost of the Project shall include quantities of all materials and unit prices of labor and materials as well as cost estimates for each item of work. Such working plans and specifications and cost estimates shall be subject to the written approval of the Awarding Authority. The Designer shall furnish to the Awarding Authority for approval six (6) sets of the said plans, specifications and construction cost estimates.

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

### Phase 4. - Bidding Phase

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

If the bid of the lowest responsible and eligible bidder exceeds the Fixed Limit of Construction Cost, if any, the Awarding Authority shall have the option to (a) give written approval of an increase in such Fixed Limit, (b) re-bid the Contract within a reasonable period of time, or (c) instruct the Designer in writing to provide such revised Construction Contract Documents as the Awarding Authority may require to bring the cost within the Fixed Limit. In the case of (c), the Designer may in

connection with such revisions make reasonable adjustments in the scope of the Construction Contract or quality of the work allowed therein subject to the written approval of the Awarding Authority, which approval shall not be unreasonably withheld. The Designer shall not be entitled to any additional compensation for such services.

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

#### 5. Phase 5 - Designer's Services During Construction

Upon the award of the construction contract the Designer and his consultants shall, for the purpose of protecting the Awarding Authority against defects and deficiencies in the work of the Project: (1) be charged with general administration of the construction contract, including review and processing of the General Contractor's applications for payment and change order proposals, preparation of a monetized "punch list" of remaining work following substantial completion of the project work and subsequent inspection to determine completion of such punch list work, review and processing of the General Contractor's final completion and close out documentation and assistance to the Awarding Authority in the close out process; (2) furnish the General Contractor with information for establishing lines and grades and such large scale drawings and full sized detailed drawings as the Awarding Authority may require; (3) promptly check and approve samples, schedules, shop drawings and other submissions by the General Contractor; (4) make weekly visits to the site or sites of the Project; (5) conduct semi-final and final inspections of the construction project and report the results of such inspections in writing to the Awarding Authority; (6) require each consultant employed in accordance with ARTICLE 2 above to make visits when necessary, and more often if requested by the Awarding Authority, for the same purposes during the progress of that portion of the said construction to which the consultant's services relate and to report in writing thereon to the Designer; (7) report to the Awarding Authority weekly in writing on the progress of construction including whether or not the contractor is keeping record drawings; (8) recommend rejection of all project work observed by the Designer which fails to conform to the Contract Documents; (9) decide all questions regarding interpretation of or compliance with the Contract Documents, except as the Awarding Authority may in writing otherwise determine; (10) review and act on all requests for change in plans, specifications, or contracts for the Project; and (11) upon written instructions from the Awarding Authority, furnish working plans and specifications for any such change.

The Designer shall be familiar with the provisions of the General Laws for payment to contractors and shall submit to the Awarding Authority all requisitions for payment submitted by the general contractor. With respect to each such



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

The Designer shall receive and review, in connection with its review of the Contractor's applications for payment, the weekly payroll records required to be submitted by the Contractor pursuant to G.L. c.149, §27B. Such review shall be for the purpose of determining that the amount of wages paid to laborers employed on the project is no less than the applicable prevailing wage rates established for the project by the Massachusetts Department of Labor and Workforce Development. The Designer shall maintain, as part of the project records, one complete copy of all such payroll records, and shall transmit to the Owner, upon completion of the review provided for herein, the original weekly records as submitted by the Contractor. The Designer shall promptly notify the Owner if (1) any payroll records submitted by the Contractor do not represent payment of at least the applicable prevailing wage rates established for the project or (2) the Designer knows or has reason to believe that the weekly payroll records submitted by the Contractor do not accurately represent the wages actually paid to laborers employed on the project and that the Contractor is not paying said laborers at least the amount of said prevailing wage rates.

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

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

Authority's approval, acceptance, use of or payment for all or any part of the Designer's services hereunder or of the Project itself shall in no way alter the Designer's obligations or the Awarding Authority's rights hereunder.

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

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

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

As-Built Record Drawings shall be furnished to the Awarding Authority by the Designer.

### **ARTICLE 7: DESIGNER'S BASIC FEE**

- 7.1 For the performance of all services required under the terms of this AGREEMENT and excluding those services specified under ARTICLES 8, 9 and 10, the Designer shall be compensated by the Awarding Authority in accordance with the lump sum fee for this project. The fee for this project is a lump sum of \$ TBD.
- 7.2 If there is a material change in the scope of services provided in this agreement, the Designer and the Awarding Authority will mutually agree to an adjustment in the Designer's Basic Fee. Delay of one year or more by the Awarding Authority plus a significant change in the estimated construction cost of the project will be considered a material change in scope of services.
- 7.3 The basic fee shall be paid to the Designer in accordance with **Attachment B** to this agreement. Billings for services shall be made monthly and shall be in proportion to the amount of work completed.

### **ARTICLE 8: ADDITIONAL COMPENSATION**

- 8.1. With the formal written approval of the Awarding Authority, the Designer shall perform all or any of the following services in addition to the services performed pursuant to ARTICLE 6 above: (1) making measured drawings of existing construction facilities when required for planning additions, or alterations thereto; (2) revising previously approved drawings, specifications or other documents to accomplish changes authorized by the Awarding Authority, and preparation of change orders related thereto; (3) preparing documents for alternate bids requested by the Awarding Authority except alternates prepared by the Designer to adjust the fixed limit construction cost, if any; (4) providing consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing professional services of the type set forth in ARTICLE 6 as may be required in connection with the replacement of such work; (5) providing services after final payment to the contractor; (6) revising working plans and specifications submitted in their final and complete form for which bids were not received within six months after submission; (7) making studies other than those normally required and preparing applications and reports to assist the Awarding Authority in obtaining federal and/or state aid; (8) preparing operating and maintenance manuals; (9) assisting the Awarding Authority in litigation arising out of the construction contract; and (10) performing any other professional services not otherwise required under this Contract.
- 8.2 For the services provided pursuant to paragraph 1 of this ARTICLE, the Designer shall be compensated by the Awarding Authority at the rates set forth in Attachment B.

## **ARTICLE 9: REIMBURSEMENT**

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

## **ARTICLE 10: DESIGN FEES AND RESPONSIBILITY FOR MODIFICATIONS,**

## **CHANGE ORDERS**

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

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

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

## **ARTICLE 11: TERMINATION, NO AWARD**

11.1 By written notice to the Designer, the Awarding Authority may terminate this contract at any time. If any such termination shall occur without the fault of the Designer, all compensation and reimbursement due to the Designer up to the date of termination, in accordance with all contract terms, shall be paid to the Designer by the Awarding Authority. Such payment shall not exceed the fair value of the work, as the Awarding Authority shall determine.

11.2 By written notice to the Awarding Authority, the Designer may terminate this contract (1) if the Awarding Authority, within sixty (60) days following written notice from the Designer of any default by the Awarding Authority under the AGREEMENT, shall have failed to remove such default or (2) if, after the Designer shall have performed all services required of the Designer in Phase 1, Phase 2, or Phase 3 of the Project, if applicable, at least six (6) months shall have lapsed without receipt by the Designer of Notice to Proceed with the next phase of the Project. Upon any such termination by the Designer all compensation and reimbursement payable to the Designer in accordance with the AGREEMENT up to and including the date of termination shall be paid to the Designer by the

Awarding Authority.

## **ARTICLE 12: RELEASE AND DISCHARGE**

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

## **ARTICLE 13: NOTICES, APPROVALS, INVOICES**

- 13.1 Any notice required under this contract to be given by the Awarding Authority to the Designer, or by the Designer to the Awarding Authority, shall be deemed to have been so given, whether or not received, if mailed by prepaid postage by, respectively, the Awarding Authority to the Designer at the address specified for the Designer on Page 1, or the Designer to the Awarding Authority.
- 13.2 Written approval by the Awarding Authority for Extra compensation as provided under ARTICLES 8 and 9, Reimbursements, shall be in the form of a letter issued by the Awarding Authority.
- 13.3 All invoices may be submitted monthly and subject to contract terms and proper documentation will be promptly processed by the Awarding Authority or returned to the Designer. No invoice, however, shall be required to be submitted or processed when the net amount due is less than \$100.00.
- 13.4 Invoices for services under ARTICLE 6 where such invoices pertain to design services during construction shall also describe the names, payroll titles, and dates of site visits required for construction-phase services.
- 13.5 Invoices submitted for services which have not been previously authorized in writing shall be returned to the Designer.
- 13.6 Requests for previously authorized expenses of any nature must be accompanied by a billing or receipt from the source of the expense.

## **ARTICLE 14: INSURANCE**

- 14.1 The Designer shall at his own expense obtain and maintain a Professional Liability Insurance policy for negligence based on Engineer's failure to act with

professional care. The professional liability insurance shall be limited to \$3,000,000. Additionally, the Designer shall carry General Liability Insurance in the amount of: \$1,000,000 per occurrence for General Liability which includes: bodily injury liability and property damage, or combined single limit of \$1,000,000 for General Liability. The Designer shall carry Auto Liability in the amount of \$1,000,000 per occurrence which includes: bodily injury liability, property damage liability, or a combined single limit of \$1,000,000 for Auto Liability.

- 14.2 The coverage shall be in force from the time of the agreement to the date when all construction work designed under the contract is completed and accepted by the Awarding Authority. If, however, the policy is a claims made policy, it shall remain in force for a period of six (6) years after substantial completion.

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

- 14.3 The Designer shall, before commencing performance of this contract, provide by insurance for the payment of compensation and the furnishing of other benefits in accordance with M.G.L. c.152, as amended, to all employed under the contract and shall continue such insurance in full force and effect during the term of the contract. The Designer shall also maintain broad form public liability insurance to protect against damage or injury to persons or property.

- 14.4 The Designer shall carry insurance in a sufficient amount to assure the restoration of any plans, drawings, computations, field notes or other similar data relating to the work covered by this contract in event of loss or destruction until the final fee payment is made or all data are turned over to the Awarding Authority.

- 14.5 Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the Agreement. Any cancellation of insurance whether by the insurers or by the insured shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the Town at least fifteen days prior to the intended effective date thereof, which date should be expressed in said notice.

- 14.6 Upon request of the Designer, the Awarding Authority reserves the right to modify any conditions of this Article.

## **ARTICLE 15: SUPPLEMENTAL CONTRACT DATA; LEGAL REQUIREMENTS**

- 15.1 The Designer hereby certifies:

- (i) if an individual, the individual is a registered architect;
- (ii) if a partnership, a majority of all the partners are persons who are registered architects;
- (iii) if a corporation, sole proprietorship, joint stock company or other entity,

the majority of the directors or a majority of the stock ownership and the chief executive officer are persons who are registered architects, and the person to have the project in his or her charge is a registered architect;

- (iv) if a joint venture, each joint venturer satisfies the requirements of this section. (Statutory reference: M.G.L. c.7, §38A½)

- 15.2 The Designer hereby certifies that it has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with the award of this Agreement. (Statutory reference: M.G.L. c.7, §38H(e)(i))
- 15.3 The Designer hereby certifies that no consultant to or subcontractor for the Designer has given, offered or agreed to give any gift, contribution or offer of employment to the Designer, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the Designer. (Statutory reference: M.G.L. c.7, §38H(e)(ii))
- 15.4 The Designer hereby certifies that no person, corporation or other entity, other than a bona fide full-time employee of the Designer, has been retained or hired by the Designer to solicit for or in any way assist the Designer in obtaining this Agreement upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Agreement to the Designer. (Statutory reference: M.G.L. c.7 §38H(e)(iii))
- 15.5 The Designer hereby certifies that it has internal accounting controls as required by subsection (c) of section thirty-nine R of chapter thirty and that the Designer filed and will continue to file an audited financial statement as required by subsection (d) of said section thirty-nine R. (Statutory reference: M.G.L. c.7, §38H(e)(iv))
- 15.6 The Designer shall maintain all books, records, and accounts related to the Project in compliance with the following:
  - 1. The Designer shall make, and keep for at least six years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Designer.
  - 2. Until the expiration of six years after final payment, the Awarding Authority, the office of the inspector general and the deputy commissioner of capital planning and operations shall have the right to examine any books, documents, papers or records of the Designer or of its consultants that directly pertain to, and involve transactions relating to, the Designer or its consultants.

3. The Designer shall describe any change in the method of maintaining records or recording transactions which materially affects any statements filed with the Awarding Authority, including in the Designer's description the date of the change and reasons therefor, and shall accompany said description with a letter from the Designer's independent certified public accountant approving or otherwise commenting on the changes.
4. The Designer has filed a statement of management on internal accounting controls as set forth in Paragraph (6) below prior to the execution of this Agreement.
5. The Designer has filed prior to the execution of this Agreement and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in subparagraph 15.6.8 below.
6. The Designer shall file with the Awarding Authority a statement of management as to whether the system of internal accounting controls of the Designer and its subsidiaries reasonably assures that:
  - (a) transactions are executed in accordance with management's general and specific authorization;
  - (b) transactions are recorded as necessary:
    1. to permit preparation of financial statements in conformity with generally accepted accounting principles; and
    2. to maintain accountability for assets;
  - (c) access to assets is permitted only in accordance with management's general or specific authorization; and
  - (d) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any difference.
7. The Designer shall also file annually with the Awarding Authority a statement prepared and signed by an independent certified public accountant, stating that such accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to:
  - (a) whether the representations of management in response to this paragraph and paragraph 15.6.6(b) above are consistent with the result of management's evaluation of the System of internal accounting controls; and
  - (b) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the Designer's financial statements.



8. The Designer shall annually file with the Awarding Authority during the term of this Agreement a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report.
9. Records and statements required to be made, kept or filed in compliance with the provisions of this paragraph 15.6 shall not be public records and shall not be open to public inspection, except as provided in subparagraph 15.6.2. (Statutory reference: M.G.L. c.30, §39R)

15.7 The Designer and its consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Designer in the preparation of bid documents, as reasonably determined by the Awarding Authority. (Statutory reference: M.G.L. c.7, §38H(J))

15.8 Life-cycle cost estimates for the Project shall be obtained at an initial stage and as a regular part of the services to be performed under this Agreement. (Statutory reference: M.G.L. c.149, §44M)

15.9 The Designer hereby certifies under penalties of perjury that the Designer has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support. (Statutory reference: M.G.L. c.62C, §49A)

## **ARTICLE 16: MISCELLANEOUS PROVISIONS**

16.1 One (1) reproducible copy of all Drawings and Specifications furnished by the Designer and all other documents prepared by the Designer shall become the property of the Awarding Authority. Ownership of the stamped drawings and specifications shall not include the Designer's certification or stamp. Any re-use of such Drawings and/or Specifications without the Designer's written verification of suitability for the specific purpose intended shall be without liability or legal exposure to the Designer or to the Designer's independent professional associates, subcontractors or consultants. Distribution or submission to meet official regulatory requirements or for other purposes in connection with the project is not to be construed as an act in derogation of the Designer's rights under this AGREEMENT.

16.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and personal representatives.

- 16.3 This Agreement represents the entire agreement between the Awarding Authority and the Designer, and supersedes any prior agreements whether oral or written. This Agreement may be amended only by written instrument executed by both the Awarding Authority and the Designer.
- 16.4 The Designer agrees that neither the Awarding Authority nor any of its officers or employees assumes any personal liability under this Agreement.
- 16.5 This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.
- 16.6 In the event any provision of this Agreement shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall attach only to such provision and shall not affect or render invalid or unenforceable any other provision of this Agreement.

## **Appendix A**

### **Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction (Updated July 2016)**

Supply the completed form with your proposal submission.