

EVERETT CITY HALL  
484 Broadway, Room 14  
EVERETT, MA. 02149

## **REQUEST FOR QUALIFICATIONS (RFQ)**

The City of Everett, Massachusetts invites qualifications for:

### **"OWNER'S PROJECT MANAGEMENT (OPM) SERVICES" Contract No. 24-08**

The City of Everett requests proposals from qualified firms for Owner's Project Management (OPM) services related to the design, construction and installation of modular buildings for use by the Everett Public Schools. OPM services will commence immediately after contract award. RFQ documents are available at <https://www.Cityofeverett.com> after **9 am on July 12, 2023**. Sealed responses clearly labeled "Owner's Project Management Services" are due no later than **1:00 PM on July 27, 2023** delivered to the Purchasing Department at Everett City Hall located in Room 14.

The City reserves the right to reject any and all proposals, to waive any defects, informalities, and minor irregularities; and to award contracts or cancel this RFQ if it is in the City's best interest to do so.

The City of Everett encourages MBE and WBE firms to apply.

It is the responsibility of prospective proposers to check the City of Everett's website for new information any addenda or modifications to any solicitation.

It is the responsibility of the prospective proposer to keep current the email address of the proposer's contact person and to monitor that email inbox for communications from the City of Everett, including requests for clarification. If any changes are made to this RFQ, an addendum will be issued. Addenda will be emailed via our website to all proposers on record as having picked up the RFQ. The City assumes no responsibility if a prospective proposer's designated email address is not current, or if technical problems, including those with the prospective proposer's computer, network or internet service provider (ISP) cause email communications sent to/from the prospective proposer to be lost or rejected by any means including email or spam filtering.

If, at the time of the scheduled proposal opening, the RFQ opening location shall be shut down as the result of an emergency, the proposals will be due and opened at the same time and location on the 1st business day the building is able to re-open. Proposals will be accepted until that date and time.

The contract will be awarded under M.G.L 149 as amended.

Massachusetts General Law requires Criminal Offense Record Inquiry (CORI) checks be conducted on individuals commissioned to do work on certain municipal projects. Contractors shall comply with CORI policies by providing CORI forms for all employees to be working on site, when required by the City.

The City of Everett accepts no responsibility and will provide no accommodation to Proposers who submit a response based on an out-of-date solicitation or on information received from a source other than the City of Everett.

## **1. Introduction**

The **City of Everett** ("Owner") is seeking the services of a qualified "Owner's Project Manager" as defined in Massachusetts General Laws Chapter 149, Section 44A½ and as further defined by the provisions of this RFQ, to provide Project Management Services for the design, construction and installation of modular buildings for use by the Everett Public Schools.

The Owner is requesting the services of an Owner's Project Manager to represent the Owner through schematic design, design development, construction documents, bid and award, construction and final closeout of the Project.

## **2. Background**

The student population in Everett is outgrowing the current school footprints within the City of Everett. The city wishes to hire an OPM to manage modular installations at school sites within the city.

## **3. General Information**

Everett is located directly north of Boston northeasterly of the intersection of Route 1 and 93. It has a land area of 3.4 square miles, designated as an Environmental Justice Community, with a population of about 50,000. The diversity of Everett is one of its greatest strengths, with our recent 2020 Federal Census evidencing the municipality as a "Majority-Minority Community".

This project moving forward is dependent on funding being approved at each phase.

## **4. OPM Services**

Chapter 193, §13 of the Acts of 2004, as incorporated in MGL c. 149, s 44A 1/2 lists the minimal required duties of the Owner's Project Manager. The duties of the Owner's Project Manager shall include, but need not be limited to:

- Provide advice and consultation with respect to design, value engineering, scope of the work, cost estimating;
- General contractor and subcontractor prequalification pursuant to section 44D 1/2 or 44 D 3/4 when applicable;
- Scheduling construction;
- Selection, negotiation with, and oversight of a designer if necessary and with a general contractor for the project;
- Ensure the preparation of time schedules which shall serve as control standards for monitoring performance of the building project;
- Assist in project evaluation including, but not limited to, written evaluation of the performance of the design professional, contractors and subcontractors; and
- Perform such other tasks as to minimize schedule delays, ensuring quality construction, facilitate communications among all parties working on the project, and complete the project within budget.

## **PROJECT SCOPE OF SERVICES:**

### **All phases:**

1. The Owner's Project Manager will be required to attend, set the agenda and lead all meetings associated with the project.
2. The Owner's Project Manager will be required to attend periodic meetings with the Facilities Department and provide status reports.
3. The Owner's Project Manager will be required to attend meetings with the Designer and all other meetings as directed by the Facilities Department.
4. The Owner's Project Manager will prepare monthly reports and other such reports related to the project as may be directed by the Facilities Department. The content and format of the reports shall be as directed by the Facilities Department.
5. The Owner's Project Manager shall work with the Facilities Department to establish and monitor the Project Budget.
6. The Owner's Project Manager will report to the City's Facilities Director, who shall oversee the OPM's management of the project.
7. Organize and conduct public meetings with neighbors to review concerns as needed.

### **Preconstruction Phase:**

1. Assist the Owner, through its Facilities Department and Procurement Office, with Designer Selection.
2. Review and critique the Designer's conceptual plans, project cost estimates, and resulting bid documents, for cost, constructability issues, missing items, coordination, and compliance with applicable laws and regulations.
3. Cost Estimating Review and Evaluation - Services include review and acceptance (reconcile if required) of conceptual estimates, and provide value engineering and resource prioritization suggestions. Perform systematic cost review as outlined by the Facilities Department and provide written acceptance. Work with Designer to reconcile estimates to Project Budget as required.
4. Ensure bid documents created by the designer are complete and meet all legal obligations under procurement law.
5. Document Review - Provide constructability and coordination review of the documents at all stages of design, including:
  - Design Development Documents
  - 90% Construction Documents
6. Scheduling - Prepare a Project Master Schedule and preliminary Construction Schedule. Assist in the preparation of the Project Control Specification for inclusion in the contract documents.
7. Quality Control Program - Work with the Facilities Department and Designer to develop a detailed project-specific quality control program that provides the highest quality building possible within project constraints.
8. Organize and conduct meetings with abutters and neighbors to provide project updates, explain project operations and propose resolutions to neighbor concern.

9. Contractor Selection/Bidding – Assist the City and Designer with bid opening, review contractor bids, check bidder references, assist in final selection, prepare the Construction Contract and assist in execution of the Contract for Construction.
10. Subcontractor Selection/Bidding - Assist the City and Designer with bid opening, review subcontractor bids, check bidder references and assist in final selection.

### **Construction Phase**

1. Assist Designer on construction-related issues.
2. Construction Quality Control - Monitor progress and quality of construction. Coordinate owner-provided materials testing services, observe and report ongoing construction means and methods and quality, and facilitate the resolution of construction questions and issues.
3. Project Meetings - Participate in construction meetings as the Owner's advocate; facilitate problem solving and communication among all team members.
4. Submittals - Provide oversight, implementation and expediting of the construction submittal process on the Owner's behalf to ensure compliance with project requirements and coordination of products. Identify and facilitate the resolution of required information or selections such as colors, sizes and finishes.
5. Review the progress of construction, compare progress to construction schedules, and promptly advise the Contractor, Designer, Facilities Department and the Mayor regarding any concerns with the progress of construction, evaluate the contractor's baseline schedule and progress submittals.
6. Provide oversight of the Request for Information process and assist the designer with actions required to resolve issues.
7. Contractor and Designer Change Order Review - Provide detailed review of contractor and designer requests for change orders as well as recommendations for their disposition, assist in negotiation of the Contractor's proposals for these changes, submit recommendations to the Designer, and the Facilities Director, and, if accepted, prepare change orders for the Facilities Director's and the Mayor's approval. Establish and implement a system for monitoring and reporting on change orders, including approved change orders, pending change orders, and anticipated change orders.
8. Contractor and Designer Progress Payment Review - Review contractor and designer applications for progress payments. Develop and implement procedures for prompt review and processing of applications for payment for the Contractor and Designer for progress and final payments, including certification requirements. Submit recommendations to the Facilities Director for payment(s).
9. Organize and conduct meetings with the abutters and neighbors to review construction progress concerns.
10. City's Vendors - Assist Facilities Department with the procurement, coordination and management of all City supplied vendors such as materials testing, building signage, furniture, fixtures and equipment. Coordinate the flow of information among City Officials, the Designer, General Contractor and other parties.
11. Prepare a full monthly written report summarizing the progress of design and construction of the project, highlighting important events and raising pending issues that must be addressed, financial spreadsheet of expenditures authorized and paid in the prior month and charts comparing expenditures to date against approved budget.

12. Review weekly payrolls and certify compliance with prevailing wage requirements for all individuals employed on the project, as required by State law.
13. Maintain a complete project file, including but not limited to, correspondence, monthly reports, daily reports, payment records, photographs, videos, schedules, and files on particular issues as they arise. Inspect and observe the General Contractor's work with respect to quality, contract standards, labor standards, safety, and site security and provide final accounting to the Facilities Department and Mayor at the completion of the project. Obtain satisfactory performance from each Contractor and each Subcontractor. Recommend courses of action to the Facilities Department and Mayor when the requirements of the contract are not being fulfilled and the non-performing party will not take satisfactory corrective action.
14. Punch list - Assist Designer and Facilities Department in the preparation of final project punch lists and facilitate their timely completion.
15. Ensure all building commissioning and turnover is complete.
16. Project Closeout - At the conclusion of the project, secure and deliver the as-built drawings and all other construction related documents and all materials necessary for occupancy and full operation of the facility. Collect all O&M manuals and instructions, warranties, record drawings and as-builts and deliver same to the Owner and Facilities Department; ensure that Contractor(s) perform equipment testing and assist with the training of City employees on equipment usage and maintenance.
17. At the conclusion of the project, prepare a standard contractor evaluation form for the Division of Capital Asset Management concerning the Designer, General Contractor and Subcontractor's performance as required.

#### **4. Minimum Requirements and Evaluation Criteria:**

##### Minimum Requirements

In order to be eligible for selection, each Respondent must certify in its cover letter that it meets the following minimum requirements. Any Respondent that fails to include such certification in its response, demonstrating that these criteria have been met, will be rejected without further consideration.

Each Respondent must designate an individual who will serve as the Project Manager who shall meet the following minimum requirements:

- The Project Manager shall be a person who is registered by the Commonwealth of Massachusetts as an Architect or Professional Engineer and who has at least 5 years of experience in the construction and supervision of construction and design of public buildings:

or,

- If not registered as an architect or Professional Engineer, the Project Manager must be a person who has at least 7 years of experience in the construction and supervision of construction and design of public buildings.

##### Evaluation Criteria

The Committee will evaluate the proposals and assign the rank of “highly advantageous,” “advantageous,” “less advantageous,” or “does not meet” to the package. In addition to the material submitted within the proposal for all firms deemed to have submitted responsive and responsible proposals, the city will likely contact references and may ask for additional information or a clarification of any responses.

RANK	STANDARD OF REVIEW
Highly Advantageous	Respondent excels on the specific criterion
Advantageous	Respondent meets evaluation standard criterion
Less Advantageous	Respondent does not fully meet the criterion, or question/issue was not fully addressed
Does Not Meet requirements	Respondent does not address the criterion

- 1) Past performance: Past successful performance, providing similar services on publicly funded projects across the Commonwealth, as evidenced by:
  - a) Documented performance on previous projects as set forth in Attachments A and E, including the number of projects managed, project dollar value, number and percentage completed on time, number and dollar value of change orders, average number of projects per project manager per year, and number and outcome of any legal actions;
  - b) Satisfactory working relationship with Designers, Contractors, Owners, Committees, and local officials.
- 2) Relevant Municipal Building Experience: Experience and past successful performance in Municipal Buildings.
- 3) Public Sector Experience: Thorough knowledge of Commonwealth construction procurement laws, regulations, policies and procedures, pursuant to the 2004 Construction Reform laws, as amended.
- 4) Management approach: Respondent's approach to providing the level and nature of services required. Approach will be evaluated based on Respondent's proposed project staffing; project management systems; effective information management; and examples of problem-solving approaches to resolving issues that impact time and cost. Describe the Respondent's approach to assisting in feasibility studies for projects of similar type.
- 5) Key personnel: Experience and roles of key personnel to be provided by the Respondent including Project Manager, Project Representative and any other key roles identified by the Respondent, including roles in design review, estimating, cost and schedule control. Respondents will be evaluated based on time commitment, experience and references for these key personnel.
- 6) Capacity and skills: Experience of existing employees by number and area of expertise (e.g., field supervision, cost estimating, schedule analysis, value engineering, constructability review, quality control and safety).
- 7) Current and Projected Workload: Respondent's current and projected workload and any supporting sub consultants.
- 8) Cost Analysis and Estimating: Thorough knowledge and demonstrated experience with life cycle cost analysis; cost estimating and value engineering based on actual examples of recommendations and associated benefits to Owners.
- 9) Commissioning: Knowledge of the purpose and practices of the services of Building Commissioning Consultants.

- 10) Sustainability: Familiarity with LEED Guidelines and/or demonstrated experience working on high performance green buildings (if any).
- 11) Quality of Response: The response is an example of the Respondent's work. Responses will be evaluated for conciseness, clarity and relevance of included materials.

In order to establish a short list of Respondents to be interviewed, the Owner will base its initial ranking of Respondents on the above Evaluation Criteria. At the Owner's option, short-listed Respondents will be further evaluated based on financial stability. These Respondents may be asked to provide current balance sheet and income statement as evidence of the Respondent's financial stability and capacity to support the proposed contract and provide evidence of sufficient office support. The Owner will establish its final ranking of the short-listed Respondents based on all information provided after conducting optional interviews and reference checks.

The Owner reserves the right to consider any other relevant criteria that it may deem appropriate, within its sole discretion. The Owner may or may not, within its sole discretion, seek additional information from Respondents.

This Request for Qualifications, any addenda issued by the Owner, and the selected Respondent's response, will become part of the executed contract. The key personnel that the Respondent identifies in its response must be contractually committed for the Project. No substitution or replacement of key personnel or change in the Sub consultants identified in the response shall take place without the prior written approval of the Owner.

The selected Respondent(s) will be required to execute a Contract for Project Management Services with the Owner in the form that is attached hereto as Attachment F (Sample Contract). Prior to execution of the Contract for Project Management Services with the Owner, the selected Respondent will be required to submit to the Owner a certificate of insurance that meets the requirements set forth in the Contract for Project Management Services.

Prior to execution of the Contract for Project Management Services, the fee for services shall be negotiated between the Owner and the selected Respondent to the satisfaction of the Owner, within its sole discretion. The selected Respondent will be required to provide pricing information for all Phases specified in the Contract at the time of fee negotiation.

## **5. Selection Process and Schedule**

### Process

The mayor and/or his designee(s) will review all proposals based upon the above criteria. Findings from this evaluation will be used to select finalists. The mayor and or his designee(s) may elect to conduct interviews of multiple finalists. The mayor and/or his designee(s) will rank the finalists in order of qualifications. All finalists will be treated equally and the reasons for the rankings will be set down in writing. This information will be forwarded to the mayor who may choose to appoint an OPM from among the finalists in order of rank, subject to successful fee negotiations as appropriate. The City of Everett reserves the right to reject any and all responses.

Any questions concerning this Request for Qualifications must be submitted in writing **July 20, 2023, prior to the 4:00 p.m.** to: [allison.jenkins@ci.Everett.ma.us](mailto:allison.jenkins@ci.Everett.ma.us)

**6. Submission of Response:**

7. Each proposal must contain two (2) sealed envelopes clearly labeled **NO LATER THAN 1:00 PM ON July 27, 2023 @ 1 pm**. The Owner assumes no responsibility or liability for late delivery or receipt of Responses. All Responses received after the stated submittal date and time will be judged to be unacceptable and will be returned unopened to the sender.

Unexpected closures. If, at the time of the scheduled response opening, the city hall is closed due to uncontrolled events such as fire, snow, ice, wind or building evacuation, the response opening will be postponed until 1:00 PM on the next normal business day. Submittals will be accepted until that date and time.

Please note the envelopes may be sent in a single envelope (package, box, carton, etc.) provided that all the separate envelopes are individually sealed and clearly mark as noted.

<b>ENVELOPE 1</b>	<b>ENVELOPE 2</b>
24-08 OPM MODULAR PROJECT <b>TECHNICAL PROPOSAL</b>	24-08 OPM MODULAR Project <b>PRICE PROPOSAL</b>

**Envelope 1 – Technical Proposal** – As this is an RFP, respondents shall submit: **Seven (7) copies of the technical (non-price)** proposal, which includes everything responsive to this RFP except the proposed contract price. There is no specific form for the technical proposal, although it should be responsive to all information requested in or required by the RFP. The technical proposal must be in a separate envelope from the price proposal.

**Envelope 2 – Price Proposal** – Seven (7) copies of the Price Proposal form

**8. Requirements for content of response:**

Submit seven (7) hard copies of the Response to this Request for Qualifications. All Responses must:

- a. Be presented in an organized and clear manner, 8½ x 11” pages, bound.
  - i. Respondents may supplement this proposal with graphic materials and photos that best demonstrate its project management capabilities of the team proposed for this project.
  - ii. Responses shall be concise. Excessive boiler plate and superfluous materials not directly relevant to the project are discouraged.
  - iii. Include an electronic copy in PDF format on USB Flash Drive.
- b. Include a cover letter which:
  - i. Acknowledges of any addendum issued to the RFQ.
  - ii. Acknowledges that the Respondent has read the Request for Qualifications. Respondent shall note any exceptions to the RFQ in its cover letter.
  - iii. Acknowledges Respondent meets minimum criteria.
- c. Include all the required forms and certifications in Attachments A, B, C, and D;
  - i. Attachment A (Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction (Updated July 2016)) has been provided for Respondents.
  - ii. Attachment B (Tax Compliance Certification), Attachment C (Non-collusion affidavit of the Bidder), and Attachment D (Certificate of Authority)
  - iii. Attachment E Price Proposal
  - iv. Attachment F (Sample Contract) Do not submit with your proposal.



- d. Include a firm profile describing the Respondent's organization and its history.
- e. Provide a list of seven (7) most recent projects accomplishing Substantial Completion.
- f. Identify the Respondent's current and projected workload for projects estimated to cost in excess of \$1.5 million (part of Attachment A).
  
- g. Identify experience with life cycle cost analysis; cost estimating and value engineering with actual examples of recommendations and associated benefits to Owners.
- h. Include a description of management approach, including proposed project staffing; project management systems; and effective information management.
- i. Identify firm's existing employees by number and area of expertise (e.g., field supervision, cost estimating, schedule analysis, value engineering, constructability review, quality control and safety) and which will be assigned to this project (may be incorporated into Attachment A).
  
- j. Identify any services to be provided by Sub consultants (part of Attachment A).

Selection Criteria: The Response shall address the Respondent's ability to meet the "Selection Criteria" Section including submittal of additional information as needed.

#### **9. Payment Schedule and Fee Explanation:**

The Owner will negotiate the fee for services dependent upon an evaluation of the level of effort required, job complexity, specialized knowledge required, estimated construction cost, comparison with past project fees, and other considerations. As construction cost is but one of several factors, a final construction figure in excess of the initial construction estimate will not, in and of itself, constitute a justification for an increased Owner's Project Manager fee.

#### **10. Other Provisions**

##### **A. Public Record**

All Responses and information submitted in response to this RFQ are subject to the Massachusetts Public Records Law, M.G.L. c. 66, § 10 and c. 4, § 7(26). Any statements in submitted responses that are inconsistent with the provisions of these statutes shall be disregarded.

##### **B. Waiver/Cure of Minor Informalities, Errors and Omissions**

The Owner reserves the right to waive or permit cure of minor informalities, errors or omissions prior to the selection of a Respondent, and to conduct discussions with any qualified Respondents and to take any other measures with respect to this RFQ in any manner necessary to serve the best interest of the Owner and its beneficiaries.

##### **C. Communications with the Owner**

The Owner's Procurement Officer for this Request for Qualifications is:

Allison Jenkins, Everett City Hall 484 Broadway, Room 14

Everett, MA 02149 allison.jenkins@ci.Everett.ma.us

Respondents that intend to submit a Response are prohibited from contacting any of the Owner's staff other than the Procurement Officer. An exception to this rule applies to Respondents that currently do business with the Owner, but any contact made with persons other than the Procurement Officer must be limited to that business, and must not relate to this RFQ. In addition, such Respondents shall not discuss this RFQ with any of the Owner's consultants (other than directed herein), legal counsel or other advisors. FAILURE TO OBSERVE THIS RULE MAY BE GROUNDS FOR DISQUALIFICATION.

#### **D. Costs**

The City of Everett will NOT be liable for any costs incurred by any Respondent in preparing a Response to this RFQ or for any other costs incurred prior to entering into a Contract.

#### **E. Withdrawn/Irrevocability of Responses**

A Respondent may withdraw and resubmit their Response prior to the deadline. No withdrawals or re- submissions will be allowed after the deadline.

#### **F. Rejection of Responses, Modification of RFQ**

The Owner reserves the right to reject any and all Responses if the Owner determines, within its own discretion, that it is in the Owner's best interests to do so. This RFQ does not commit the Owner to select any Respondent, award any contract, pay any costs in preparing a Response, or procure a contract for any services. The Owner also reserves the right to cancel or modify this RFQ in part or in its entirety, or to change the RFQ guidelines. A Respondent may not alter the RFQ or its components.

#### **G. Subcontracting and Joint Ventures**

Respondent's intention to subcontract or partner or joint venture with other firm(s), individual or entity must be clearly described in the response.

#### **H. Validity of Response**

Submitted Responses must be valid in all respects for a minimum period of ninety (90) days after the submission deadline.

### **FURTHER INFORMATION**

#### **ATTACHMENTS:**

Attachment A: Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction

Attachment B: Tax Compliance Certification

Attachment C: Non-Collusion Certification

Attachment D: Certificate of Authority

Attachment E: Price Proposal

Attachment F: Sample Contract



6. List **ONLY** Those Prime And Sub-Consultant Personnel Specifically Requested In The Advertisement. This Information Should Be Presented Below In The Form Of An Organizational Chart. Include Name Of Firm And Name Of The One Person In Charge Of The Discipline, With Mass. Registration Number, As Well As MBE/WBE Status, If Applicable:

**CITY / CITY / AGENCY**

**Prime Consultant**  
Principal-In-Charge

**Project Manager for Study**

**Project Manager for Design**

**Discipline**  
(from advertisement)  
  
Name Of Firm  
Person In Charge Of Discipline  
Mass. Registr. #  
MBE/WBE Certified (If Applicable)

**Discipline**  
(from advertisement)  
  
Name Of Firm  
Person In Charge Of Discipline  
Mass. Registr. #  
MBE/WBE Certified (If Applicable)

**Discipline**  
(from advertisement)  
  
Name Of Firm  
Person In Charge Of Discipline  
Mass. Registr. #  
MBE/WBE Certified (If Applicable)

**Discipline**  
(from advertisement)  
  
Name Of Firm  
Person In Charge Of Discipline  
Mass. Registr. #  
MBE/WBE Certified (If Applicable)

7. Brief Resume of ONLY those Prime Applicant and Sub-Consultant personnel requested in the Advertisement. <u>Include Resumes of Project Managers.</u> Resumes should be consistent with the persons listed on the Organizational Chart in Question # 6. Additional sheets should be provided only as required for the number of Key Personnel requested in the Advertisement and they must be in the format provided. By including a Firm as a Sub-Consultant, the Prime Applicant certifies that the listed Firm has agreed to work on this Project, should the team be selected.	
a. Name and Title Within Firm:	a. Name and Title Within Firm:
b. Project Assignment:	b. Project Assignment:
c. Name and Address Of Office In Which Individual Identified In 7a Resides: <div style="text-align: right;"> MBE <input type="checkbox"/>  WBE <input type="checkbox"/>  SDVOBE <input type="checkbox"/>  VBE <input type="checkbox"/> </div>	c. Name and Address Of Office In Which Individual Identified In 7a Resides: <div style="text-align: right;"> MBE <input type="checkbox"/>  WBE <input type="checkbox"/>  SDVOBE <input type="checkbox"/>  VBE <input type="checkbox"/> </div>
d. Years Experience: With This Firm: _____ With Other Firms: _____	d. Years Experience: With This Firm: _____ With Other Firms: _____
e. Education: Degree(s) /Year/Specialization	e. Education: Degree(s) /Year/Specialization
f. Active Registration: Year First Registered/Discipline/Mass Registration Number	f. Active Registration: Year First Registered/Discipline/Mass Registration Number
g. Current Work Assignments and Availability For This Project:	g. Current Work Assignments and Availability For This Project:
h. Other Experience and Qualifications Relevant To The Proposed Project: (Identify Firm By Which Employed, If Not Current Firm):	h. Other Experience and Qualifications Relevant To The Proposed Project: (Identify Firm By Which Employed, If Not Current Firm):

8a. Current and Relevant Work By Prime Applicant Or Joint-Venture Members. Include <b>ONLY</b> Work Which Best Illustrates Current Qualifications In The Areas Listed In The Advertisement (List Up To But Not More Than 5 Projects).					
a. Project Name And Location Principal-In-Charge	b. Brief Description Of Project And Services (Include Reference To Relevant Experience)	c. Client's Name, Address And Phone Number (Include Name Of Contact Person)	d. Completion Date (Actual Or Estimated)	e. Project Cost (In Thousands)	
				Construction Costs (Actual, Or Estimated If Not Completed)	Fee for Work for Which Firm Was Responsible
(1)					
(2)					
(3)					
(4)					
(5)					

8b. List Current and Relevant Work By Sub-Consultants Which Best Illustrates Current Qualifications In The Areas Listed In The Advertisement (Up To But Not More Than 5 Projects For Each Sub-Consultant). Use Additional Sheets Only As Required For The Number Of Sub-Consultants Requested In The Advertisement.

Sub-Consultant Name:					
a. Project Name and Location Principal-In-Charge	b. Brief Description Of Project and Services (Include Reference To Relevant Experience	c. Client's Name, Address And Phone Number. Include Name Of Contact Person	d. Completion Date (Actual Or Estimated)	e. Project Cost (In Thousands)	
				Construction Costs (Actual, Or Estimated If Not Completed)	Fee For Work For Which Firm Was/Is Responsible
(1)					
(2)					
(3)					
(4)					
(5)					

9. List All Projects Within The Past 5 Years For Which Prime Applicant Has Performed, Or Has Entered Into A Contract To Perform, Any Design Services For All Public Agencies Within The Commonwealth.

# of Total Projects:		# of Active Projects:	Total Construction Cost (In Thousands) of Active Projects (excluding studies):		
Role P, C, JV *	Phases St., Sch., D.D., C.D.,A.C.*	Project Name, Location and Principal-In-Charge	Awarding Authority (Include Contact Name and Phone Number)	Construction Costs (In Thousands) (Actual, Or Estimated If Not	Completion Date (Actual or Estimated) (R)Renovation or (N)New
		1.			
		2.			
		3.			
		4.			
		5.			
		6.			
		7.			
		8.			
		9.			
		10.			
		11.			
		12.			

\* P = Principal; C = Consultant; JV = Joint Venture; St. = Study; Sch. = Schematic; D.D. = Design Development; C.D. = Construction Documents; A.C. = Administration of Contract



10. Use This Space To Provide Any Additional Information Or Description Of Resources Supporting The Qualifications Of Your Firm And That Of Your Sub-Consultants For The Proposed Project. If Needed, Up To Three, Double-Sided 8 1/2" X 11" Supplementary Sheets Will Be Accepted. **APPLICANTS ARE ENCOURAGED TO RESPOND SPECIFICALLY IN THIS SECTION TO THE AREAS OF EXPERIENCE REQUESTED IN THE ADVERTISEMENT.**

**Be Specific – No Boiler Plate**

11. Professional Liability Insurance:

Name of Company	Aggregate Amount	Policy Number	Expiration Date
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12. Have monies been paid by you, or on your behalf, as a result of Professional Liability Claims (in any jurisdiction) occurring within the last 5 years and in excess of \$50,000 per incident? Answer **YES** or **NO**. If YES, please include the name(s) of the Project(s) and Client(s), and an explanation (attach separate sheet if necessary).

13. Name Of Sole Proprietor Or Names Of All Firm Partners and Officers:

Name	Title	MA Reg #	Status/Discipline	Name	Title	MA Reg #	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

14. If Corporation, Provide Names Of All Members Of The Board Of Directors:

Name	Title	MA Reg #	Status/Discipline	Name	Title	MA Reg #	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

15. Names Of All Owners (Stocks Or Other Ownership):

Name And Title	% Ownership	MA. Reg.#	Status/Discipline	Name And Title	% Ownership	MA. Reg.#	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

16. I hereby certify that the undersigned is an Authorized Signatory of Firm and is a Principal or Officer of Firm. I further certify that this firm is a "Designer", as that term is defined in Chapter 7C, Section 44 of the General Laws, or that the services required are limited to construction management or the preparation of master plans, studies, surveys, soil tests, cost estimates or programs. The information contained in this application is true, accurate and sworn to by the undersigned under the pains and penalties of perjury.

Submitted by \_\_\_\_\_ Printed Name and Title \_\_\_\_\_ Date \_\_\_\_\_  
 (Signature)

**ATTACHMENT B**  
**TAX COMPLIANCE CERTIFICATION**

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.

\_\_\_\_\_  
Signature of authorized person submitting bid or proposal

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed name of authorized individual signing above

\_\_\_\_\_  
Name of business

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

\*Your social security number and or federal identification number may be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended.

**ATTACHMENT C**  
**CERTIFICATE OF NON-COLLUSION**

The undersigned certifies under penalties of perjury that this bid or proposal is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, joint venture, partnership, corporation, union, committee, club, or other organization, entity, business, group of individuals or legal entity.

\_\_\_\_\_  
Signature of authorized person submitting bid or proposal

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed name of authorized individual signing above

\_\_\_\_\_  
Name of business

**ATTACHMENT D**  
**CERTIFICATE OF AUTHORITY - CORPORATION**

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

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

that \_\_\_\_\_  
(Name) (Officer/Title)

of this company be and he hereby is authorized to execute contracts and bonds in the name and behalf of said company, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this company's name on its behalf of such \_\_\_\_\_ under  
(Officer)

seal of the company, shall be valid and binding upon this company.

A TRUE COPY, ATTEST: \_\_\_\_\_  
(Signature/Title)

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

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

that \_\_\_\_\_ is duly elected \_\_\_\_\_  
(Officer, Name) (Title)

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

\_\_\_\_\_  
Full Legal Name of Business

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
State of Incorporation\*

\_\_\_\_\_  
Principal Place of Business

\_\_\_\_\_  
Qualified in Massachusetts

\_\_\_\_\_  
Place of Business in Massachusetts

\_\_\_\_\_  
Signature

\*If state of incorporation is Massachusetts, insert MASSACHUSETTS on State of Incorporation line and disregard other parts of the form.

-----  
(Affix Corporate Seal)

**ATTACHMENT E**  
**PRICE PROPOSAL FORM**  
CONTRACT 24-08 - RFP OPM MODULAR PROJECTS

*If the Price Proposals is found within the Technical Proposal, the proposal will be automatically disqualified*

Price submitted must be a "Not to Exceed" price for all tasks as described in the Request for Proposal document. The CONSULTANT's fee will be subject to negotiation and should be anticipated to be an amount not to exceed \$150,000.00.

Attached to this pricing sheet include:

1. Complete rate structure including all hourly rates by discipline/position and any other associated charges. For Example:

Title	Name	No. of Hours	Hourly Rate	Total
Project Manager	Jane Doe	10	\$50	\$500

Your signature below acknowledges your understanding of these parameters and your willingness to live within the stated financial constraint of the project. This proposal **MUST** be signed by authorized individual(s). The proposal must be signed as follows: 1) if the respondent is an individual, by her/him personally; 2) if the respondent a partnership, by the name of the partnership, followed by the signature of each general partner; and 3) if the respondent is a corporation, by the authorized officer, whose signature must be attested to by the Clerk/Secretary of the corporation and the corporate seal affixed.

The undersigned agrees that, ifs/he is selected as general Vendor, s/he will within five days, Saturdays, Sundays and legal holidays excluded, after presentation thereof by the awarding authority, execute a contract in accordance with the terms of this proposal.

The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the Commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder. The undersigned certifies under penalties of perjury that all information contained in the required is accurate and complete.

Business Name: \_\_\_\_\_

Business Address: \_\_\_\_\_

Town/State/Zip: \_\_\_\_\_

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

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

F.I.D/SS #: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

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

**ATTACHMENT F**  
**AGREEMENT BETWEEN**  
**THE CITY OF EVERETT, MASSACHUSETTS**  
**AND**  
**OWNER'S PROJECT MANAGER**

This Agreement is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ between \_\_\_\_\_ (the "Owner's Project Manager"), with offices at \_\_\_\_\_ and the City of Everett (the "Owner"), with offices at 484 Broadway, Everett, MA 02149. For Owner's Project Manager Services, as described herein, on the \_\_\_\_\_ Project (the "Project").

**ARTICLE 1:           RELATIONSHIP OF THE PARTIES**

- 1.1     The Owner's Project Manager shall act as an independent contractor of the Owner in providing the services required under this Agreement.
- 1.2     The Owner's Project Manager warrants and represents to the Owner that it has fully, completely and truthfully represented the qualifications and skills of the Owner's Project Manager, its Sub consultants, agents, servants and employees in the proposal submitted by the Owner's Project Manager, the Contract documents and in all communications with the Owner relative to this Agreement and the services to be performed hereunder by the Owner's Project Manager, its Sub consultants, agents, servants and employees.
- 1.3     The Owner's Project Manager shall perform its services under this Agreement with no less than that degree of skill and care ordinarily exercised by similarly situated members of the Owner's Project Manager's profession on projects of similar size, scope and complexity as is involved on the Project. The Owner's Project Manager's services shall be rendered in accordance with this Agreement.
- 1.4     The Parties hereto agree that the Designer is solely responsible for the design requirements and design criteria for the Project (except to the extent specifically delegated to others) and for performing in accordance with the contract between the Owner and Designer.
- 1.5     The Parties hereto agree that the Contractor shall be solely responsible for construction means, methods, techniques, sequences and procedures, the Contractor's schedules, and for safety precautions and programs in connection with the Project and for performing in accordance with the Owner-Contractor Agreement. The Owner's Project Manager shall be responsible for the Owner's Project Manager's negligent acts or omissions but shall not have control over or charge over acts or omissions of the Contractors, Subcontractors, or the agents or employees of the

Contractor, the Designer, or the Owner.

- 1.6 Nothing in this Agreement shall be construed as an assumption by the Owner's Project Manager of the responsibilities or duties of the Contractor or the Designer. The Owner's Project Manager's services shall be rendered compatibly and in coordination with the services provided by the Designer. It is not intended that the services of the Owner's Project Manager and Designer be competitive or duplicative, but rather complementary. The Owner's Project Manager shall be entitled to rely upon the Designer and Contractor for the proper performance of their obligations pursuant to their respective contracts with the Owner.

**ARTICLE 2: RESPONSIBILITIES OF THE OWNER**

- 2.1 The Owner shall be responsible to oversee and monitor the performance of the Owner's Project Manager to ensure that it performs its obligations in a satisfactory manner. The Owner shall provide the necessary general direction and broad management coordination required to execute the Project.
- 2.2 Upon satisfactory completion of services performed, the Owner shall make payments to the Owner's Project Manager as provided in Articles 5, 6, 7 and 8.
- 2.3 To the extent such data is available, the Owner shall furnish to the Owner's Project Manager existing surveys of the Project site, building plans, borings, test pits, structural, mechanical, chemical or other test data, tests for air and water pollution and for hazardous materials, photographs and utility information. The Owner makes no representation as to the sufficiency or accuracy of the information furnished under this Article 2.3. The Owner's Project Manager shall notify the Owner in writing of any deficiencies in such data that the Owner's Project Manager becomes aware of.

**ARTICLE 3: RESPONSIBILITIES OF THE OWNER'S PROJECT MANAGER**

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

sole responsibility of the Contractor.

- 3.4 The Owner's Project Manager acknowledges the importance that the Owner attributes to the abilities and qualifications of the key members of the Owner's Project Manager's team, including Sub consultants, and the continuity of key member's participation in the services to be provided under this Agreement. This Agreement has been entered into on the representation of the Owner's Project Manager that the individuals, consultants, assignments and responsibilities will be maintained throughout the duration of this engagement. No substitution or replacement of individuals or change in the Sub consultants, listed in Attachment B, shall take place without the prior written approval of the Owner, except when necessitated by causes beyond the Owner's Project Manager's control. If the Owner's Project Manager proposes to replace one of the key members of the Owner's Project Manager's team, the Owner's Project Manager shall propose a person or consultant with qualifications at least equal to the person or firm the Owner's Project Manager proposes to replace. The Owner shall have the right to approve any substitution or replacement or change in status for the persons or Sub consultants listed in Attachment B and such approval shall not be unreasonably withheld. At the request of the Owner, the Owner's Project Manager shall consult with the Owner to resolve any situation in which the Owner determines that a member of the Owner's Project Manager's team is failing to perform services in an acceptable manner to the Owner. The Owner shall have the right to direct the removal of any such person or consultant. No act or omission of the Owner made or permitted under this Section shall relieve the Owner's Project Manager of its responsibility for the performance of the services specified in this Agreement.
- 3.5 The Owner's Project Manager shall employ at all times professional and support personnel with requisite expertise and adequate numbers to assure the complete, timely and high quality performance of the obligations of the Owner's Project Manager.
- 3.6 The Owner's Project Manager shall be and shall remain liable to the Owner for all damages incurred by the Owner as a result of the failure of the Owner's Project Manager to perform in conformance with the terms and conditions of this Agreement.
- 3.7 Except as provided in the immediately following sentence, the Owner's Project Manager will not have the authority to enter into agreements on the Owner's behalf or otherwise bind the Owner by its decisions and the Owner's Project Manager will not hold itself out as the Owner's agent. The Owner's Project Manager shall act in the capacity of an agent or representative of the Owner as expressly authorized by the terms of this agreement or as the Owner may from time to time otherwise expressly authorize the Owner's Project Manager in writing.

#### **ARTICLE 4: TERM AND TIMELY PERFORMANCE**

- 4.1 The Owner's Project Manager acknowledges that expeditious completion of the Owner's Project Manager's services and the Project is of the utmost importance to the Owner. The term of this Agreement shall commence on the date stipulated in an



Approval to proceed from the Owner. The Owner's Project Manager shall complete the services required under this Agreement in a prompt and continuous manner. The Owner's Project Manager shall perform its services in a timely manner and shall not delay the work of the Designer or Contractor. The Owner's Project Manager shall monitor the performance of the Designer and the Contractor in accordance with schedules of performance that are established under their contracts with the Owner. The Owner's Project Manager shall immediately advise the Owner, as well as the Designer or the Contractor, in writing, any time the Owner's Project Manager determines that either the Designer or the Contractor's performance is jeopardizing the Project Schedule or the Project Budget.

- 4.2 Time is of the essence in the performance of the Owner's Project Manager's obligations under this Agreement and under any amendment. The Owner's Project Manager agrees that no other work in its organization will be permitted to interfere with its timely performance of the work required under this Agreement or any amendment.

## **ARTICLE 5:           COMPENSATION**

- 5.1 For the satisfactory performance of all services required pursuant to this Agreement, excluding those services specified under Articles 7 and 8, the Owner's Project Manager shall be compensated by the Owner in an amount up to the Not-to-Exceed Fee for Basic Services, identified on Attachment A. The Owner's Project Manager shall submit invoices on a monthly basis in accordance with the Payment Schedule included as Attachment A. The Owner shall make payments to the Owner's Project Manager within 30 days of the Owner's approval of the invoice.
- 5.2 The Fee for Basic Services shall include, but not necessarily be limited to, all labor, overhead, profit, insurance, legal services, transportation, communication expenses, reasonable printing and copying necessary for completion of the Project. The fee for Basic Services also shall include (a) the costs of rebidding and resolicitation of proposals, bids, or qualifications if due to the fault of the Owner's Project Manager, and (b) assisting the Owner as provided by section 7.2.7 in litigation or resolution of claims or other administrative proceedings associated with a bid protest arising out of the Designer contract or the construction contract and for assistance beyond the requirements of 7.2.7 if such litigation or claims are due to the fault of the Owner's Project Manager.
- 5.3 The Owner's Project Manager shall be paid the remainder of the Fee for Basic Services, less previous payments, upon acceptance by the Owner of the Certificate of Final Completion and submission of evaluations.
- 5.4 Subject to Appropriation. The obligations of the Owner hereunder shall be subject to appropriation. In the absence of appropriation, this agreement shall be terminated immediately without liability of the Owner for damages, lost profits, penalties, or other charges arising from early termination.

## **ARTICLE 6: BASIC SERVICES**

Upon execution of this Agreement, the Owner's Project Manager shall proceed with all Basic Services described through the Design Development Phase (Section 6.3). The Owner's Project Manager shall not proceed past the Design Development Phase without the Owner's prior written authorization.

For all Phases that the Owner's Project Manager has been authorized by the Owner to perform, the Owner's Project Manager shall perform the following Basic Services:

### **6.1 Project Management (For All Phases):**

6.1.1 The Owner's Project Manager shall prepare a communication and document control procedure during the Design Phase and continue to update it as specified for the duration of the Project. This procedure shall detail the responsibilities and lines of communication among all Project participants (Owner, Owner's Project Manager, Designer, Contractor, Subcontractors, peer review consultants and other consultants, vendors or suppliers) and establish the procedure for correspondence, document control, designer and contractor submittal logs, change order reporting logs and other tracking logs, as needed. The Owner's Project Manager shall include the Designer in its distribution of the Project Budget, Schedule, Monthly Progress Report and other reports as appropriate and as outlined in the Communications Plan.

6.1.1.2 The Owner's Project Manager shall prepare agendas for and attend meetings with other representatives of the Owner, as well as any neighborhood meetings relating to the Project. The Owner's Project Manager shall take minutes of all of the above-referenced meetings and promptly distribute minutes of these meetings to the Owner.

6.1.1.3 The Owner's Project Manager shall review all applications for payments, requisitions and invoices relating to the Project as submitted by the Designer, equipment vendors and all other contractors and suppliers and make recommendations to the Owner relative to amounts due.

### **6.1.2 Project Control:**

6.1.2.1 Project Budget. Over the course of the Project, the Owner's Project Manager shall work with the Owner to prepare a detailed baseline Project Budget in a form acceptable to the Owner. The Owner's Project Manager shall monitor and compare all Designer estimates, contractor bids, and other cost information to this Project Budget and identify and report all variances to the Owner. The Owner's Project Manager shall maintain and update the baseline Project Budget throughout the term of this Agreement. The Owner's Project Manager shall report any variances to the baseline Project Budget as part of the Monthly Progress Report. The Owner's Project Manager shall prepare revisions to the baseline Project Budget, as needed, and submit them to the Owner for approval.

6.1.2.2 Cost Estimating. The Owner's Project Manager shall prepare detailed independent

cost estimates when required by the Owner. If the Owner requires the Owner's Project Manager to prepare an independent cost estimate, the Owner's Project Manager shall compare its cost estimate to that prepared by the Designer to identify and notify the Owner of any variances. In the event that the cost as estimated by the Designer exceeds the construction cost in the Project Budget at any of the Design phases, the Owner's Project Manager shall consult with the Designer and recommend to the Owner appropriate revisions to the scope of work. The Owner's Project Manager shall provide cost estimating services, as may be required, to develop cash flows. During the schematic design Phase, the Owner's Project Manager shall prepare a construction cost estimate in Uniformat II Level 3 format, with unit rates and quantities supporting each item. The estimated cost shall be projected, to the mid-point of the construction period.

At the 60% stage of completion of the final drawings and specifications, the Owner's Project Manager shall prepare a construction cost estimate using the Uniformat II Classification to Level 3, the CSI Master Format 6-digit format to Level 3 and M.G.L. c.149 §44F (filed sub-bid) format including quantities of all materials and unit prices of labor, equipment, and materials as well as a cost estimate for each item of work. The Owner's Project Manager shall prepare a final construction cost estimate in Uniformat II Elemental Classification to Level 3 (Sections A-G inclusive), the CSI MasterSpec format to Level 3 and M.G.L. c. 149, §44F (filed sub-bid) format, complete with a single line outline specification description for each item with the detailed unit rate or item cost buildup provided as a backup in each case.

- 6.1.2.3 Project Schedule. The Owner's Project Manager shall prepare a Project Schedule in a form acceptable to the Owner, which will be reviewed and agreed upon by the Owner. The Owner's Project Manager shall prepare revisions to the Project Schedule, as needed, and submit them to the Owner for approval. The Owner's Project Manager shall assess the actual progress of the Project relative to the baseline Project Schedule and report any variances from the baseline Project Schedule as part of the Monthly Progress Report.
- 6.1.2.4 Construction Schedule. The Contractor shall be responsible for preparing and updating its construction schedule on a monthly basis. The Owner's Project Manager shall meet once each month with the Contractor and Designer to review and update its schedule, develop the monthly progress information to support the Contractor's payment estimate, and monitor the Contractor's performance for compliance with its contract. The Owner's Project Manager shall notify the Owner of and include in its Monthly Progress Report any significant changes or delays to the construction schedule. The Owner's Project Manager shall make appropriate recommendations to the Owner relative to the actions that should be taken by the Contractor and/or advise the Owner when liquidated damages are anticipated to be incurred.
- 6.1.3 Monthly Progress Report. The Owner's Project Manager shall submit to the Owner no later than the fifteenth day of each calendar month a written Monthly Progress Report summarizing activity during the preceding calendar month. The Monthly Progress Report shall be submitted in a format acceptable to the Owner and shall describe work performed by all project participants (OPM, Designer, Contractor or subcontractors) during the reporting period and work planned for the next reporting

period. The report shall also address matters of schedule adherence (Project Schedule as well as individual completion percentages for design and construction), costs to date (updated Project Budget and actual expenses incurred), change orders and potential change orders, cash flow projections, Contractor's safety performance, Designer's QA/QC, Contractor's environmental compliance, community issues, Designer and Contractor MBE/WBE activities, any issues that could result in additional time and/or additional costs and any anticipated problems/concerns together with recommended solutions.

6.1.4 Site Investigations and Environmental Testing. <sup>[[1]]</sup><sub>SEP</sub> Prior to Designer Selection, the Owner's Project Manager shall assist the Owner in determining the need for and the implementation of site evaluation and testing including, but not necessarily limited to, site surveys, wetlands evaluation, environmental evaluations, hazardous materials evaluation, subsurface testing (percolation tests, test pits, borings, etc.), destructive testing and other investigative work in the case of renovation projects. The determination that any additional services or testing need to be performed shall rest with the Owner or Designer.

6.1.5 Project Records and Reports (All Phases). <sup>[[1]]</sup><sub>SEP</sub> The Owner's Project Manager shall maintain a complete Project file including, but not necessarily limited to, a copy of the executed agreements of the Owner-Owner's Project Manager, Owner-Architect and the Owner-Contractor, including copies of performance and payment bonds, a master list of permits, certificates of insurance, licenses and approvals for the Project, correspondence, daily reports, payment records, shop drawings, submittals, project schedules, requests for information, change orders/amendments, change directives and meeting minutes. The Owner's Project Manager shall assist the Owner in responding to any public records request received by the Owner.

## 6.2 Feasibility Study/Schematic Design Phase.

6.2.1 Designer Selection. The Owner's Project Manager shall coordinate the designer selection process for the Owner. Services shall include:

6.2.1.1 The Owner's Project Manager shall assist the Owner in preparing the schedule for designer selection, advertisement, request for qualifications, selection criteria and other materials required for the application package in accordance with the Owner's Designer Selection Procedures.

6.2.1.2 The Owner's Project Manager shall record the names and addresses of all designers who request an application package, shall notify all interested designers of any changes to the request for services or application package and shall respond to project specific questions. The Owner's Project Manager shall complete reference checks on all applicants and provide the Owner with a report on the references.

6.2.1.3 The Owner's Project Manager shall review each submitted application to be sure it is complete and shall submit the application packages as well as the completed references to the Owner at least one week before Owner's meeting to review applicants. The Owner's Project Manager shall present the project particulars and the results of the reference checks to the Owner.

6.2.1.4 The Owner's Project Manager shall assist the Owner in the negotiation of the design contract with the designer or designers selected by the Owner for contract negotiations.

6.2.2 Feasibility Study/Schematic Design. The Owner's Project Manager shall monitor the activities and responsibilities of the Designer during this phase and assist the Owner in the review of the proposed scope, schedule and budget, developed by the Designer, including the review of the Designer's preliminary drawings. The Owner's Project Manager shall: (a) prepare independent construction cost estimates pursuant to Section 6.1.2.2 of this Contract for comparison with the Designer's cost estimates; and (b) work with the Owner and Designer to prepare the Project Schedule.

6.2.2.1 The Owner's Project Manager shall review the schematic design to recommend Value Engineering Changes (VEC) to the Owner. A Value Engineering Change shall include an analysis of the constructability, cost, quality and schedule impact. The Designer will be responsible for a thorough review and recommendation on the technical merit of any VEC.

6.2.2.2 The Owner's Project Manager shall lead design coordination meetings every two weeks, between the Designer and the Owner to provide for review and discussion of design/engineering related issues. The Owner's Project Manager shall provide technical assistance to the Owner. The Owner's Project Manager shall take and distribute minutes of these meetings to the Owner.

6.2.2.3 The Owner's Project Manager shall assist in the implementation of additional site evaluation and testing as required by the Designer, including, but not necessarily limited to, site surveys, wetlands evaluation, environmental evaluations, hazardous materials evaluation, subsurface testing (percolation tests, test pits, borings, etc.), destructive testing and other investigative work in the case of renovation projects.

6.2.2.4 The Owner's Project Manager shall monitor the status of the Designer contract including monitoring the schedule of the Designer, provide review and comment of Designer's work product and make recommendations to the Owner when, in the opinion of the Owner's Project Manager, requirements of the Designer's contract with the Owner are not being fulfilled.

6.2.2.5 The Owner's Project Manager shall meet with the Owner, Designer and other project participants as necessary.

6.3 Design Development.

6.3.1 The Owner's Project Manager shall oversee the activities and responsibilities of the Designer in the development of the scope, schedule and budget including a general review of the Designer's detailed scaled plans, elevations and sections of all aspects of the design. The Owner's Project Manager shall:

- 6.3.1.1 Prepare independent construction cost estimates pursuant to Section 8.1.2.2 of this Contract, for comparison with the Designer's cost estimates. (One Estimate during Task 6.3.)
- 6.3.1.2 Work with the Owner and Designer to update the Project Budget and Schedule.
- 6.3.2 The Owner's Project Manager shall monitor and coordinate the schedule, technical accuracy, efficiency, coordination, and constructability of the Project and cost-effectiveness of all designs, drawings, reports, estimates and other work furnished by the Designer, and make recommendations to the Owner when, in the opinion of the Owner's Project Manager, requirements of the Designer's contract with the Owner are not being fulfilled.
- 6.3.3 The Owner's Project Manager shall promptly review all Designer submissions and shall meet with the Designer to discuss those submissions. Upon completion of its review, the Owner's Project Manager shall recommend that the Owner: (1) approve the submission as made; (2) approve that part of the submission that is acceptable and reject the remainder; (3) reject the submission; or (4) require the Designer to submit additional information or details in support of its submission.
- 6.4 Construction Documents. Upon receipt of Notice to Proceed with the Construction Documents Phase, the Owner's Project Manager shall perform the following Basic Services:
  - 6.4.1 The Owner's Project Manager shall review the construction documents for quality, cost, and schedule improvements, conciseness and clarity. The Owner's Project Manager shall:
    - 6.4.1.1 Prepare independent construction cost estimates pursuant to Section 8.1.2.2 of this Contract, for comparison with the Designer's cost estimates. (Two estimates during Task 6.4.)
    - 6.4.1.2 Provide advice, consultation and guidance to the Owner relative to value engineering recommendations.
    - 6.4.1.3 Work with the Owner and Designer to update the construction budget and schedule.
    - 6.4.1.4 Provide advice, consultation and guidance to the Owner and the Designer relative to general contractor and subcontractor prequalification requirements pursuant to M.G.L. c. 149 § 44D½ and § 44D¾ as applicable, including participation as a member of the Owner's Prequalification Committee.
    - 6.4.1.5 Review the construction documents. The review shall include constructability, operability and bid-ability as well as document clarity and coordination between drawings and to identify conflicts between drawings and specification. The constructability review will identify potential conflicts, make recommendations specific to any phasing issues, recommend appropriate milestones, constraints and liquidated damages and a review of the project specific requirements.

- .1 The Owner's Project Manager's review of the construction documents shall also include, but not be limited to, any concerns of the Owner's Project Manager and/or the Owner relative to access, usable area, parking, utilities, anticipated noise and dust sources during construction that may impact building occupants and identification of potential locations for field offices, facilities, supplies and equipment.
- 6.4.1.6 Monitor the schedule of the Designer, provide review and comment of Designer's work product and make recommendations to the Owner when, in the opinion of the Owner's Project Manager, requirements of the Designer's contract with the Owner are not being fulfilled.
- 6.5 Bidding Phase. Upon receipt of Notice to Proceed with the Bidding Phase, the Owner's Project Manager shall perform the following Basic Services:
  - 6.5.1 The Owner's Project Manager shall monitor the activities and responsibilities of the Designer in the advertisement, distribution of bidding documents and solicitation of public bids in accordance with M.G.L. c. 149 §§ 44A through 44J and other public construction related statutes. The Owner's Project Manager shall:
    - 6.5.1.1 Administer general contractor and subcontractor prequalification requirements pursuant to M.G.L. c. 149 § 44D½ and § 44D¾ as applicable, including participation as a member of the Owner's Prequalification Committee.
    - 6.5.1.2 Attend, and assist the Owner with, all pre-bid conferences and meetings and, assist, if directed by the Owner.
    - 6.5.1.3 Attend, and assist the Owner with, all sub-bid and general bid openings and, assist, if directed by the Owner.
    - 6.5.1.4 Review all sub-bids and general bids in conjunction with Designer's determination of responsiveness, bidder eligibility, completeness, accuracy and price including investigation at DCAMM. Provide technical guidance to the Owner relative to its acceptance of bids and determination of bidder responsibility.
    - 6.5.1.5 Review alternates and make written recommendations as to their acceptance.
    - 6.5.1.6 If the bid of the lowest eligible and responsible general bidder exceeds the construction budget, the Owner's Project Manager shall consult with the Designer and make recommendations to the Owner in regard to maintaining the Project Budget which may include, consistent with Massachusetts public construction laws, reviewing and recommending acceptance of alternates, re-bidding or seeking additional funding from the City.
  - 6.5.2 The Owner's Project Manager shall make recommendations to the Owner relative to the award of a construction contract.
  - 6.5.3 The Owner's Project Manager shall assist the Owner in the preparation and execution of the Notice of Award and Owner-Contractor Agreement and shall obtain

from the Contractor performance and payment bonds, insurance certificates, and all other documents and certificates required for contract execution.

6.5.4 The Owner's Project Manager shall assist the Owner and the Designer in preparing and sending the Notice to Proceed to the Contractor.

6.5.5 The Owner's Project Manager shall provide the Contractor, Designer and Owner with required copies of executed construction contract documents.

6.6 Construction Phase. Upon receipt of Notice to Proceed with the Construction Phase, the Owner's Project Manager shall perform the Basic Services as described in this Section 6.6. The Owner's Project Manager shall provide supervisory staff for each of the following activities, from Notice to Proceed of the construction contract to end of the one-year warranty period.

6.6.1 The Owner's Project Manager shall monitor the Designer's administration of the Owner-Contractor Agreement including the processing of submittals, issuance of timely decisions and directives and consultant's or sub consultants' visits to the Project as necessary during the time that construction is occurring on the portions of the work to which the consultant's services relate.

6.6.2 The Owner's Project Manager shall provide a full-time (40 hours per week minimum) on-site Project Representative, who shall be dedicated exclusively to the Project, either as an employee of the Owner's Project Manager or as a sub consultant to the Owner's Project Manager.

6.6.2.1 The Project Representative shall be subject to the approval of the Owner and the Owner reserves the right to require the Owner's Project Manager to replace the Project Representative at any time during the course of the Project.

6.6.2.2 The Project Representative shall have at least five years' experience in on-site supervision of projects similar in scope, size and complexity to the Project.

6.6.2.3 Unless otherwise directed, the Project Representative shall be present at all times when the Contractor is conducting operations at the site starting from issuance by the Owner of a Notice to Proceed to the Contractor and continuing until issuance to the Contractor of a Certificate of Substantial Completion by the Owner and thereafter on an, as needed basis, until issuance to the Contractor of a Certificate of Final Completion by the Owner.

6.6.3 The Owner's Project Manager shall review the Contractor's schedule of values to determine if it represents a reasonably balanced payment schedule for work to be performed with no items front-end loaded or artificially inflated. The schedule of values shall include line items for all deliverables, testing requirements and specified operations and maintenance materials. The Owner's Project Manager shall submit recommendations for the Contractor's schedule of values to the Owner within forty-five days of the Owner's Notice to Proceed to the Contractor.



- 6.6.4 The Owner's Project Manager shall review the Contractor's submitted baseline schedule. The Owner's Project Manager shall be responsible for monitoring the timeliness of these submittals and enforcing compliance with schedule submittal requirements of the construction documents. The Owner's Project Manager shall evaluate the Contractor's planning for the execution of the work, evaluate the reasonableness of the proposed schedule and determine if the submitted schedule meets the requirements of the construction documents.
- 6.6.5 The Project Representative hired by the Owner's Project Manager shall provide daily observation and monitoring of construction activities such that all shifts and work activities are observed and documented. Responsibilities of the Project Representative shall include:
- 6.6.5.1 Keeping a daily log containing a record of weather, the Contractor's work on site, number of workers, visitors to the site, safety status of the Project, equipment and equipment utilization, material and equipment deliveries, non-compliance with safety procedures and issuance of any safety violation notifications, accidents, general description of work performed and quality of work, visits of code enforcement officials and any resulting reports or orders, verbal instruction to interpretations given to the Contractor, pay items, and any observed delays, deficiencies and field problems.
- 6.6.5.2 Preparing weekly progress reports for submittal to the Designer and the Owner that summarize the progress achieved, provide a concise description of problems and include a copy of the daily log.
- 6.6.5.3 Assisting the Designer in determining if construction and construction related activities are performed in accordance with plans and specifications and the approved shop drawings and are consistent with Massachusetts public construction laws.
- 6.6.5.4 Monitoring on a daily basis Time and Materials work on change orders for less than \$50,000, including work installed, volume measurements, time sheets, crew sizes and mixes, and equipment utilized.
- 6.6.5.5 Evaluating actual quantities and classification of Unit Price work performed by Contractors.
- 6.6.5.6 Evaluating field problems, using the proper channels for solution and communication of the information to the Designer and the Owner.
- 6.6.5.7 Shoot and maintain Project progress photographs showing construction progress at a frequency sufficient to document major activities or to document safety incidents, differing site conditions and quality issues. The Project Representative shall maintain a descriptive log and captioning of the photographs on CD or store on web based system for document storage.
- 6.6.6 The Owner's Project Manager shall coordinate and track requests for clarification on drawings/specifications, design changes and proposed change orders.

- 6.6.7 The Owner's Project Manager shall prepare responses to Contractor correspondence for the Owner.
- 6.6.8 The Owner's Project Manager shall monitor and coordinate the scheduling and activities of independent materials testing functions at the site, including distribution of reports and any necessary actions resulting.
- 6.6.9 The Owner's Project Manager shall maintain at the Project site, on a current basis, a record copy of Construction Contract Documents, including, but not necessarily limited to, drawings, specifications, addenda, change orders, and directives as well as all approved shop drawings, product data, samples, submittals, operations and maintenance manuals and all other relevant documents relating to the construction of the Project.
- 6.6.10 The Owner's Project Manager shall monitor the Contractor's compliance with Massachusetts prevailing wage requirements pursuant to M.G.L. c. 149 §§ 26 to 27H inclusive including assisting the Owner in cataloging and filing payroll affidavits.
- 6.6.11 The Owner's Project Manager shall monitor the Contractor's compliance with the construction schedule, identify potential problems, include problem identification on the Monthly Progress Report and make recommendations to the Owner when, in the opinion of the Owner's Project Manager, requirements of the Contractor in the Owner-Contractor Agreement are not being fulfilled.
- 6.6.12 The Owner's Project Manager shall monitor, review and analyze proposed change orders, and claims recommending appropriate action and resolution to the Owner in accordance with Article 6.1.4.
- 6.6.13 The Owner's Project Manager shall review and coordinate its review with the Designer to recommend approval of the General Contractor's monthly payment requisitions. The Owner's Project Manager shall review the Designer's certification that the percentage of work included in the requisition is accurate and the work performed conforms to the construction contract.
- 6.6.14 The Owner's Project Manager shall verify substantial completion of work; assist the Designer in the Designer's final inspection and receipt of documents, manuals, receipts, certifications, and all other materials required for final closeout as described in the construction contract. The Owner's Project Manager shall coordinate the detailed punch list with the Designer, including a subsequent walk-through with the Designer. The Owner's Project Manager and the Designer shall then coordinate a walk-through with the Owner to finalize the punch list. The Owner's Project Manager shall then be responsible for tracking and confirming the completion of the punch list items.
- 6.7 Completion Phase. Upon receipt of Notice to Proceed with the Completion Phase, the Owner's Project Manager shall perform the following Basic Services:

- 6.7.1 The Owner's Project Manager shall monitor the activities and responsibilities of the Designer and the Contractor in the close-out and commissioning of the Project.
- 6.7.2 The Owner's Project Manager shall assist in securing and reviewing and recommending approval of all project completion forms and documentation necessary for occupancy and full operation of the facility including, but not necessarily limited to, inspection certificates of local building authorities, Certificate of Substantial Completion, Certificate of Final Completion, Occupancy Permit, shop drawings, as-built drawings, operations and maintenance manuals, warranties, guarantees and any and all documentation as required by the contract documents.
- 6.7.3 The Owner's Project Manager shall assist the Owner in completing the written evaluation of the Designer(s) pursuant to M.G.L. c. 7C § 48 and prepare, sign and provide to the Owner for its signature the written evaluation of the Contractor(s) and Trade Subcontractors pursuant to M.G.L. c. 149 § 44D.
- 6.8 Warranty Phase: The Owner's Project Manager shall perform the following Basic Services:
- 6.8.1 Owner's Project Manager shall coordinate an inspection by the Architect and commissioning agent two months prior to the end of the one-year warranty period, and assist in resolving all warranty items identified.
- 6.8.2 Owner's Project Manager shall manage the warranty punch list work to be performed approximately two months prior to the end of warranty and assist the Owner in resolving all warranty issues identified.
- 6.8.3 Any other work requested of the Owner's Project Manager during the warranty phase will be paid for on an hourly basis as Extra Services.
- 6.9 Change Order and Claims Administration: Throughout the Project, the Owner's Project Manager shall review and coordinate its review with the Designer and make specific document and processing recommendations to the Owner, consistent with the General Laws and the construction contract documents, which minimize change order and claims processing costs and time. Services provided by the Owner's Project Manager shall include:
- 6.9.1 Change Order Administration.
- 6.9.1.1 Review all Contractor proposals for change orders and supporting schedules for time extension requests. For change orders in excess of \$100,000, prepare independent cost estimate analysis with associated schedule impact.
- 6.9.1.2 Initiate, conduct, and document negotiations through a memorandum of negotiations with the Contractor.
- 6.9.1.3 For all change order requests by the Contractor, make recommendations to the Owner for their acceptance or rejection.

6.9.1.4 Prepare and finalize any documentation required for processing change orders including a summary of the Owner's Project Manager's review of the reasonableness of the costs and documentation to support or reject the change.

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

6.9.2 Claims and Disputes Management.

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

6.9.2.2 Analyze Contractor claims and make recommendations to the Owner in support of the Owner's obligations under the claims provisions of the construction contract documents. Prepare responsive positions in coordination with the Owner, and obtain appropriate input from the Designer and/or Contractor.

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

6.9.2.4 The Owner's Project Manager shall take all reasonable efforts designed to resolve any such claims, disputes, or other matters in question.

**ARTICLE 7:           EXTRA SERVICES**

7.1 General

7.1.1 Extra Services are those services requested by the Owner to be performed by the Owner's Project Manager but which are additional (or "extra") to the services performed as Basic Services. Such services are not included in the Fee for Basic Services and shall be invoiced and paid for separately. Extra services shall not be deemed authorized until a written Approval is received from the Owner. [L]  
[SEP]

7.1.2 The proposed cost, scope and schedule of all Extra Services shall be presented to and approved by the Owner in writing prior to the performance of any Extra Services. [L]  
[SEP]

7.1.3 Cost proposals for Extra Services shall be computed in accordance with the Hourly Billing Rate Schedule established in Attachment A.

- 7.2 Unless specifically prohibited elsewhere and with the prior written Approval of the Owner, the Owner's Project Manager may be requested to perform any of the following services as Extra Services:
- 7.2.1 Preparing special studies, reports, or applications at the written direction of the Owner, other than those specifically required herein as part of Basic Services;
  - 7.2.2 Assisting in the appeals process of permitting boards or commissions;
  - 7.2.3 Rebidding, re-solicitation, or re-advertising for bids, proposals, or qualifications unless made necessary by the fault of the Owner's Project Manager, in which events such rebidding shall be deemed part of Basic Services;
  - 7.2.4 Furnishing services in connection with a bid protest filed in court or with the Office of the Attorney General, provided such activities did not arise due to the fault of the Owner's Project Manager; <sup>[1]</sup>~~[SEP]~~
  - 7.2.5 Furnishing services in excess of Basic Services made necessary by the termination of the General Contractor;
  - 7.2.6 Providing consultation with respect to replacement of work damaged by fire or other casualty during construction;
  - 7.2.7 Assisting the Owner in litigation, claims resolution or non-binding mediation arising out of the Designer contract or the construction contract, provided such litigation or claims did not arise due to the fault of the Owner's Project Manager; and
  - 7.2.8 Providing other services requested by the Owner that are not included as Basic Services pursuant to this Agreement.
- 7.3 Invoices for Extra Services shall be accompanied by a complete breakdown listing the name, payroll title, date, number of hours by day, hourly rate and extended amount, per specified task of Extra Services performed. Hourly rates shall be in accordance with the Hourly Rate Schedule in Attachment A. The Owner may request lump sum fees for certain Extra Services.

**ARTICLE 8: REIMBURSABLE EXPENSES**

- 8.1 The Fee for Basic Services and for Extra Services shall include all the Owner's Project Manager's expenses associated with the performance of its services pursuant to this Contract.
  - 8.1.1 The Owner's Project Manager shall be reimbursed by the Owner for:
    - 8.1.1.1 the actual cost to the Owner's Project Manager of special consultants, not specified in its response to the RFQ, and approved in writing by the Owner, provided, however, that no reimbursement for such expense shall be made unless the rates of compensation for said consultant services shall have been previously approved in writing by the Owner. The Owner may approve a lump sum fee;

- 8.1.1.1.1 The Owner's Project Manager shall not be entitled to compensation under this Article for the services of Sub consultants hired to perform Basic Services under this Agreement. If a Sub consultant hired to perform Basic Services performs Extra Services approved by the Owner, compensation for such Extra Services shall be made under Article 7.
- 8.1.1.2 other actual costs, including special printing, but only when specifically authorized in writing by the Owner or its designee; and
- 8.1.1.3 for document copies in excess of numbers specified in the Contract if requested by the Owner.
- 8.2 The Owner shall not reimburse the Owner's Project Manager for the following:
  - 8.2.1 any expenses associated with performing its services (Basic or Extra);
  - 8.2.2 travel expenses under this Contract, provided, however, that in special circumstances and with prior approval of the Owner, the Owner's Project Manager may be reimbursed for out-of-state travel expenses consistent with applicable statutes, rules, and regulations; and
  - 8.2.3 any telephone or other out-of-pocket expenses unless specifically authorize as provided above.
- 8.3 Mark-Up for Overhead and Profit: For solicitation, coordination, inspection, analysis, and evaluation of and for the assumption of responsibility for, services authorized under 8.1.1.1 of this Contract, the Owner's Project Manager shall be paid 10% of the actual expense where the cost of the specific services is estimated not-to-exceed \$100,000. The aforementioned percentage will be negotiated to a lesser figure in those instances when the not-to-exceed cost is projected to exceed \$100,000.

**ARTICLE 9: RELEASE AND DISCHARGE**

- 9.1 The acceptance by the Owner's Project Manager of the last payment under the provisions of Article 5 or Article 10 in the event of termination of the Contract, shall in each instance, operate as and be a release to the Owner and its employees and agents, from all claims of the Owner's Project Manager and its Sub consultants for payment for services performed and/or furnished, except for those written claims submitted by the Owner's Project Manager to the Owner with, or prior to, the last invoice.

**ARTICLE 10: ASSIGNMENT, SUSPENSION, TERMINATION**

- 10.1 Assignment:
  - 10.1.1 The Owner's Project Manager shall not assign or transfer any part of its services or obligations under this Agreement without the prior written approval of the Owner. Such written consent shall not in any way relieve the Owner's Project Manager or its assignee from its responsibilities under this Agreement.

10.2 Suspension:

10.2.1 The Owner may, at any time, upon seven (7) days written notice to the Owner's Project Manager, suspend this Agreement. If the Owner provides such written notice, the Owner's Project Manager shall be compensated for work satisfactorily performed in accordance with the Contract terms prior to the effective date of such suspension for which invoices have been properly submitted.

10.3 Termination:

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

**ARTICLE 11: NOTICES**

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

**ARTICLE 12: INDEMNIFICATION OF OWNER**

12.1 To the maximum extent permitted by law, the Owner's Project Manager agrees to indemnify, defend with counsel acceptable to the Owner and save harmless the Owner from all suits, actions, claims, demands, damages, losses, expenses and costs, including attorneys' fees, of every kind and description which the Owner 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 Owner by, the Owner's Project Manager, its agents, servants, employees or Consultants. The extent of the foregoing indemnification and hold harmless provisions shall not be limited by any provision of insurance required by this Contract and shall survive the termination of this Contract.

**ARTICLE 13: INSURANCE**

13.1 The Owner's Project Manager shall obtain and maintain at its sole expense all insurance required by law and by the Owner under the terms of this Agreement. The insurance required hereunder shall be provided at the sole expense of the Owner's Project Manager or its Sub consultant, as the case may be, and shall be in full force and effect for the full term of this Agreement between the Owner and the Owner's Project Manager or for such longer period as otherwise required under this

Agreement.

- 13.2 All policies shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts with a financial strength rating of “A” or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the Owner. [SEP]
- 13.3 The Owner’s Project Manager and its Sub consultants, shall submit to the Owner original certificates of insurance evidencing the coverage required hereunder, together with copies of policies and evidence that all premiums for such insurance have been fully paid simultaneously with the execution of this Agreement. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, and policy effective and expiration dates. The Owner’s Project Manager shall submit updated certificates to the Owner prior to the expiration of any of the policies referenced in the certificates so that the Owner shall at all times possess certificates indicating current coverage. Failure by the Owner’s Project Manager to obtain and maintain the insurance required by this Section, to obtain all policy renewals, or to provide the respective insurance certificates as required shall constitute a material breach of the Contract and shall be just cause for termination of the services of the Owner’s Project Manager under this Agreement.
- 13.4 Termination, cancellation, or material modification of any insurance required by this Agreement, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the Owner at least thirty days prior to the effective date thereof, which shall be expressed in said notice.
- 13.5 The Owner’s Project Manager shall require by contractual obligation, and shall ensure by the exercise of due diligence, that any Sub consultant hired in connection with the services to be provided under this Agreement shall obtain and maintain all insurance required by law and as may be required by the Owner under the terms of this Agreement. [SEP]
- 13.6 The Owner’s Project Manager or its Sub consultant, as the case may be, shall be responsible for the payment of any and all deductibles under all of the insurance required by this Agreement. The Owner shall not be responsible for the payment of deductibles, self-insured retentions or any portion thereof.
- 13.7 Workers’ Compensation, Commercial General Liability, Automobile Liability, and Valuable Papers. [SEP] The Owner’s Project Manager shall purchase and maintain at its own expense during the life of this Agreement, or such other time period as provided herein, the following types and amounts of insurance, at a minimum:
- 13.7.1 Workers’ Compensation Insurance in accordance with General Laws Chapter 152.
- 13.7.2 Commercial General Liability Insurance (including Premises/Operations; Products/Completed Operations; Contractual; Independent Contractors; Broad Form Property Damage; and Personal Injury) with a minimum limit of \$1,000,000 per occurrence, \$3,000,000 aggregate. The Owner’s Project Manager shall maintain such insurance



in full force and effect for a minimum period of one year after final payment and shall continue to provide evidence of such coverage to the Owner. The Owner shall be named additional insured on this policy.

- 13.7.3 Comprehensive Automobile Liability Insurance (including owned, non-owned and hired vehicles) at limits of not less than \$1,000,000 CSL. The Owner shall be named as additional insured on this policy.
- 13.7.4 Valuable Papers insurance in an amount sufficient to assure the restoration of any plans, drawings, computations, field notes, or other similar data relating to the work covered by this Agreement or by the Agreement between the Owner and the Designer in the event of loss or destruction while in the custody of the Owner's Project Manager until the final fee payment is made or all data is turned over to the Owner, and this coverage shall include coverage for relevant electronic media, including, but not limited to, documents stored in computer-aided design drafting (CADD) systems.
- 13.8 Professional Liability. The Owner's Project Manager shall maintain professional liability insurance covering errors and omissions and negligent acts of the Owner's Project Manager and of any person or entity for whose performance the Owner's Project Manager is legally liable at all times while services are being performed under this Agreement. Certificates of professional liability insurance evidencing such coverage shall be provided to the Owner on or before the effective date of this Agreement and for a period of at least six years after the earlier of: (1) the date of official acceptance of the completed Project by the Owner; (2) the date of the opening of the Project to public use; or (3) the date of substantial completion of the Construction Contract and the taking of possession of the Project for occupancy by the Owner. The certificates shall indicate a retroactive date that is no later than the effective date of this Agreement and a limit of not less than \$2,000,000.
- 13.9 Umbrella Liability - Following the same form as the underlying general liability, automobile liability and employer's liability with a minimum limit of \$2,000,000 per occurrence, \$2,000,000 aggregate. The Owner shall be named as additional insured on this policy.
- 13.10 Liability of the Owner's Project Manager. Insufficient insurance shall not release the Owner's Project Manager from any liability for breach of its obligations under this Agreement. Without limitation, the Owner's Project Manager shall bear the risk of any loss if its valuable papers insurance coverage is insufficient to cover the loss of any work product covered by this Agreement.

#### **ARTICLE 14: OWNERSHIP OF DOCUMENTS**

- 14.1 All reports, drawings, plans and other data and material, including computer programs and other material in electronic media (collectively, "Materials") furnished to the Owner shall become the Owner's property and may be used by the Owner (or such parties as the Owner may designate) thereafter in such manner and for such purposes as the Owner (or such parties as the Owner may designate) may deem

advisable, without further employment of or additional compensation to the Owner's Project Manager. The Owner's Project Manager shall not release or disclose to any third party any Materials produced for the Owner without obtaining the Owner's prior written consent. At no time shall the Owner's Project Manager release or disclose to any third party any Materials furnished to the Owner's Project Manager by the Owner in connection with the performance of the Owner's Project Manager'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 Owner's Project Manager (whether completed or in process) shall become property of the Owner and the Owner's Project Manager shall immediately deliver or otherwise make available such Materials to the Owner.

**ARTICLE 15: REGULATORY AND STATUTORY REQUIREMENTS**

- 15.1 Truth-in-Negotiations Certificate: If the Owner's Project Manager's fee is negotiated, by signing this Agreement, the Owner's Project Manager hereby certifies to the following:
  - 15.1.1 Hourly billing rates and other costs used to support the Owner's Project Manager's compensation are accurate, complete, and current at the time of contracting; and
  - 15.1.2 The Contract price and any additions to the Contract may be adjusted within one year of completion of the Contract to exclude any significant amounts if the Owner determines that the fee was increased by such amounts due to inaccurate, incomplete or non-current wage rates or other costs.
- 15.2 The person signing this Agreement certifies, as a principal or director of the Owner's Project Manager, that the Owner's Project Manager has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement; no consultant to or Sub consultant for the Owner's Project Manager has given, offered or agreed to give any gift, contribution or offer of employment to the Owner's Project Manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the Owner's Project Manager or Sub consultant of a contract by the Owner's Project Manager; and no person, corporation or other entity, other than a bona fide full-time employee of the Owner's Project Manager, has been retained or hired by the Owner's Project Manager to solicit for or in any way assist the Owner's Project Manager in obtaining this 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.
- 15.3 Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A, the undersigned certifies under the penalties of perjury that to the best of his/her knowledge and belief that the Owner's Project Manager and the principals thereof are in compliance with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.
- 15.4 The Owner's Project Manager hereby certifies that it is in compliance with the

provisions of General Laws Chapter 268A whenever applicable. The Owner's Project Manager covenants that (1) he/she presently has no financial interest and shall not acquire any such interest direct or indirect, which would conflict in any manner or degree with the services required to be performed under this Agreement or which would violate M.G.L. Chapter 268A, as amended from time-to-time; (2) in the performance of this Agreement, no person having any such interest shall be employed by the Owner's Project Manager; and (3) no partner or employee of the firm is related by blood or marriage to any officer, official, or employee of the Owner, unless approved by the State Ethics Commission.

- 15.5 Equal Opportunity: The Owner's Project Manager shall not discriminate in employment against any person on the basis of race, color, religion, national origin, sex, sexual orientation, age, ancestry, disability, marital status, veteran status, membership in the armed forces, presence of children, or political beliefs. The Owner's Project Manager shall comply with all provisions of Title VI of the Civil Rights Act of 1964 and M.G.L. c.151B.
- 15.6 Certification of Non-Collusion: The Owner's Project Manager certifies under penalties of perjury that its proposal has been made in and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.
- 15.7 Governing Law: This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.
- 15.8 Dispute Resolution: If a dispute arises between the parties related to this Agreement, the parties agree to use the following procedures to resolve the dispute:
- 15.8.1 Negotiation. A meeting shall be held between representatives of the parties with decision-making authority regarding the dispute to attempt in good faith to negotiate a resolution of the dispute; such meeting shall be held within fourteen calendar days of a party's written request for such a meeting;
- 15.8.2 Litigation. If the parties fail to resolve the dispute through negotiation, then either party may file suit in accordance with Article 15.9.
- 15.8.3 Mediation. The Owner may, in its sole discretion, submit any dispute to mediation in lieu of or prior to litigation. The Parties shall bear equally the costs of any such mediation.

This paragraph 15.8 shall survive termination of this Agreement.

- 15.9 Venue: Any suit by either party arising under this Agreement shall be brought only in a court of competent jurisdiction in the county where the Project is located. The parties hereto waive any argument that this venue is improper or that the forum is inconvenient.

- 15.10 Limited Liability. No officer, director, member, employee, or other principal, agent or representative (whether disclosed or undisclosed) of the either party, nor any participant with either party, shall be personally liable to the other party hereunder, for that party's obligations. The Owner's Project Manager hereby agrees to look solely to the assets of the Owner for the satisfaction of any liability of the Owner hereunder. In no event shall the Owner ever be liable to the Owner's Project Manager for indirect, incidental or consequential damages.
- 15.11 No Waiver. The Owner'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 Owner's Project Manager shall be and remain liable to the Owner for all damages incurred by the Owner as the result of the Owner's Project Manager's failure to perform in conformance with the terms and conditions of this Agreement. The rights and remedies of the Owner provided for under this Agreement are in addition to any other rights or remedies provided by law. The Owner 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.
- 15.12 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.
- 15.13 Confidentiality. The Owner's Project Manager shall not, without the Owner's prior written consent, release or disclose any information relating to the Project to anyone except as necessary to perform its duties hereunder. This section shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the Owner's Project Manager from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction.

**IN WITNESS WHEREOF**, on the day and year hereinabove first written, the Owner's Project Manager has caused this Agreement to be signed and sealed in its name and behalf, and its corporate seal to be hereto affixed by the signatory below authorized to do so, and the \_\_\_\_\_ has signed this Agreement as the Owner.

**VENDOR**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**CITY OF EVERETT:**

\_\_\_\_\_  
Allison Jenkins  
Chief Procurement Officer

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Eric Demas  
Chief Financial Officer/City Auditor

\_\_\_\_\_  
Date Signed

Account Number: \_\_\_\_\_

\_\_\_\_\_  
Colleen Mejia, Esq.  
City Solicitor

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Carlo DeMaria  
Mayor

\_\_\_\_\_  
Date Signed

**ATTACHMENT A**

**PAYMENT SCHEDULE**

In consideration of Owner’s Project Manager’s delivery of Basic Services, the Owner shall pay the Owner’s Project Manager on an hourly basis, up to a total fee that shall not exceed **[\$insert total fee amount]**. The **[\$insert total fee amount]** fee is a cap for Basic Services related to this Agreement, and the actual amount paid by the Owner for Basic Services required during the duration of this Agreement may be an amount less than **[\$insert total fee amount]**. The Owner’s Project Manager shall invoice the Owner based on hours worked pursuant to this Agreement, according to the hourly rates below and the schedule set forth below. During the course of this Agreement, the rates in effect shall not be increased above those delineated in the following table:

**Hourly Billing Rate Schedule**<sup>[SEP]</sup>

<b>Title</b>	<b>Rate/Hr.</b>
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The Owner’s Project Manager shall perform the Services in accordance with the following Schedule:

<b>Project Phase/Item of Work</b>	<b>Not-to-Exceed Fee Completion Date</b>
<ul style="list-style-type: none"><li>• Feasibility Study/Schematic Design Development</li><li>• Construction Document/Bidding Phase Construction Phase/Final Completion</li><li>• Warranty Phase (1 year after substantial completion)</li><li>• Extra Services (Identify by Category) Reimbursable Services (Identify by Category)</li></ul>	

**ATTACHMENT B**  
**LIST OF CONSULTANTS**