

February 27, 2015
Wellesley Aquatics Facility Subcommittee
Of the 900 Worcester Street Committee
Request for Proposal

A. Invitation

The Aquatics Facility Subcommittee (“Subcommittee”) of the 900 Worcester Street Committee of the Town of Wellesley, Massachusetts (“Town”), is seeking proposals from qualified consulting firms to provide professional services to the Town in the form of an aquatics facility needs assessment study (“Study”). The objective of the study is to determine the design, components and configuration of an aquatics facility that meets the important and unmet needs and desires of all Town residents. The aquatics facility is to be located at 900 Worcester Street in Wellesley (“the Property”), with possible other recreational facilities described below. The Town does not intend to operate any of the uses except as specified below.

Proposals are due by **March 25, 2015 at 5:00 pm** and should be sent to:

Meghan Jop, Deputy Director
Board of Selectmen’s Office
Town Hall
525 Washington Street
Wellesley, MA 02482.

Delivery of submissions to any office or location other than the address indicated will not constitute receipt. Late proposals will be rejected. If, at the time scheduled for receipt of proposals, Town Hall is closed due to uncontrolled events such as fire, snow, ice, wind or building evacuation, the deadline for receipt of proposals will be postponed until **March 26, 2015 at 5:00 p.m.** Proposals will be accepted until that date and time. Postmarks will not be considered. It is the sole responsibility of the respondent to be sure that the proposal arrives on time.

Respondents shall provide two submissions. One shall be marked “RFP – Wellesley Aquatics Subcommittee Needs Assessment Study Technical Proposal”. The other shall be in a sealed envelope marked: “RFP – Wellesley Aquatics Subcommittee Needs Assessment Study Price Proposal”. The Price Proposal **shall not exceed \$50,000** to provide the services required to fully complete the project.

Technical Proposal: The technical proposal must provide information sufficient to respond to the requirements provided herein and must submit a staffing plan showing the name, title and/or position and role of each individual who will substantially contribute to this project. For each individual, attach a current resume. The technical proposal shall include 3 references. Include ten (10) copies of the technical proposal.

Price Proposal: This proposal should include a schedule of hourly rates for each individual that will work on the project. The price proposal shall list the cost of conducting the needs assessment. Include one (1) copy of the price proposal.

All proposals shall include the following required certifications found in Appendix A:

Certificate of Non-Collusion
Certificate of Tax Compliance

Following the proposal deadline, proposals received will be publically logged at the address listed above. A contract will be awarded within thirty (30) days after opening of proposals. Consultants should be prepared to attend an interview the week of March 30, 2015. Questions concerning this RFP may be sent to Meghan Jop at mjop@wellesleyma.gov or by calling 781-431-1019 ext. 2205.

A respondent may correct, modify or withdraw a proposal by written notice received by the Town prior to the date and time set for opening of proposal. Modifications must be submitted in a sealed envelope clearly labeled "Modification No. _____." Each modification must be numbered in sequence and must reference the original RFP.

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

A contract will be awarded to the respondent offering the most advantageous proposal, taking into consideration all evaluation criteria, the interview as well as price. A copy of the Town's standard contract form is attached hereto as Appendix B. In the event that the successful candidate fails, neglects or refuses to execute the contract within fifteen (15) days after receiving the contract, the Town may, at its option, and without incurring any liability to the respondent, terminate negotiations with the respondent and award the contract to the next most advantageous proposal.

The Town may cancel this RFP or reject in whole or in part any or all proposals, waive minor informalities, and to award in the best interests of the Town.

B. Project Description

The purpose of this needs assessment is to gain an in-depth understanding of the aquatic facility attitudes, opinions, behaviors, needs, and wishes of Town residents. The goals of the needs assessment are to:

- Determine the aquatic facility characteristics that are important to residents, including but not limited to usage, temperature, depth, and features;
- Determine the space required and separate cost for each separate amenity requested by residents;
- Determine prevailing and appropriate rental fees for community groups to use the aquatics facility;
- Analyze and prioritize resident wishes in the context of demand, space requirements and cost.
- Determine current and potential uses and users of aquatic facilities, frequency of specific use(s) requested, and optimal schedule
- Identify reasons why residents are not using currently-existing facilities;
- Determine levels of acceptable costs in the form of user fees and charges, for varied aquatic programs and access and the level of interest in annual memberships (individual or family);

- Identify future interests regarding the implementation of new programs, facilities and services that meet the needs of the community and respond to new trends in the aquatics industry;
- Gather information that the Committee can utilize in order to gain a better understanding of its constituency and their needs and desires;
- Afford residents and guests the opportunity to offer suggestions, comments and concerns about the aquatic opportunities they would like provided.
- Determine whether the Wellesley Public School system would add any additional sports or physical education with the addition of the aquatic facility;
- Identify comparable facilities considered in evaluating data and resident use and demand

C. Background

The Town has investigated the construction of a swimming facility for more than 30 years, but has not found the appropriate site or financing for a facility. Town residents are serious about health and wellness, exercise and fitness, and are physically active and willing to pay for recreational services. Youth sports participation typically leads or is near the top in the region.

In 2004 the Archdiocese of Boston reconfigured its parish designations and closed and desecralized the St. James the Great Church located at 900 Worcester Street. For over 5 years parishioners held vigil while appealing the closure of the church. The Planning Board seeing the potential for the site to be sold and redeveloped conducted an Alternative Land Use Study in 2010 to begin to determine potential redevelopment scenarios. One concept that garnered significant support was a recreational facility, potentially consisting of a rectangular field, aquatic center, and skating facility.

At a Special Town Meeting in June 2012, the Town overwhelmingly approved the purchase of the Property on the eastbound side of Route 9 at the western entrance to Wellesley. The 900 Worcester Street Committee was formed by the same Town vote, and the Committee was charged with analyzing and further refining a recreational use plan for the Property. Since that time, the Town has planned to create a public-private partnership with organizations interested in constructing and operating both the skating and aquatic facilities. Originally, the Property would also contain a rectangular playing field, although that is no longer certain.

In October 2014 the Town approved additional funding to conduct a needs-assessment study for the planned aquatic facility, to ascertain the design and constituent components of the aquatic facility that would best serve the Town's residents wishes and needs. The Committee intends to report to Annual Town Meeting in March 2015 on the progress made in determining the best "use design" for an aquatics facility to be located on the Property.

The Committee has been actively engaged in the process of considering and developing the recreational use plan, focusing on at least one hockey rink with spectator seating, a multi-generational use aquatic facility, and a synthetic turf field.

At the current time, a large number of youth and adult town residents participate in various organized swimming programs. Wellesley High School has a competitive swim team for girls in the fall season and a team for boys in the winter season. Wellesley Swimming Association (WSA) holds try-outs and is at capacity at approximately 185 swimmers. Wellesley youth also try out for all five USA Swimming teams within a five-mile radius of town and most of the fourteen USA Swimming Teams within a ten-mile radius. Many Wellesley youth are also on teams in a Health Club League, as well as a Country Club League. Many Wellesley youth try

out for and are rejected from the five teams within a five-mile radius and the ten teams within a 14-mile radius due to space constraints.

Wellesley adults participate in many of the approximately thirty US Masters Swimming teams within a ten-mile radius, including three within the Town. In addition to swimming, Wellesley residents also participate on teams in the area for diving, synchronized swimming and water polo.

There is no dedicated aquatic facility in Wellesley for these residents' use. Participants use the facilities of local colleges, YMCAs, health clubs, and country clubs. These facilities provide limited access to residents and competing programming. The lack of local facilities sometimes requires commutes of over thirty miles, or one hour. Swimmers do not have access to a facility at ideal times and are swimming as early as 5:00 in the morning and as late as 10:00 in the evening.

The 2011 survey showed that over 2400 residents would be interested in taking swimming lessons and that over 7200 residents would be interested in using the aquatic facility in general. The Committee believes that Town residents need and would request multiple water components for varied uses, such as diving, swim meets, shallower facilities (potentially warm water) for physical therapy and water aerobics, and possibly a water option for toddlers. The facilities must be accessible for the disabled and comply with USA Swimming requirements for swim meets.

D. Scope of Service

The Consultant will work closely with the Subcommittee and assigned staff to:

- Develop a structure and schedule of public participation visioning activities such as but not limited to, social media, interviews, public hearings and/or charrettes to solicit Town resident input and gather information;
- Focus public participation and activities to help all Town residents share the ways in which they currently use local and surrounding area aquatic facilities, and their needs and wishes for a facility to be located in Town. Included in this exploration, but not exclusive, are the following potential multi-generational uses:
 - Youth, school, and adult swim teams and swim meets;
 - Recreational use by children, adults, seniors and families;
 - Rehabilitative use;
 - Diving competitions;
 - Swimming lessons;
 - Appropriate locker room, office and safety equipment space; and
 - Viewing area

The following list of requirements is offered to describe the general extent of services to be provided by the selected Consultant. This outline is not necessarily all-inclusive and the respondents should include in their proposals any tasks or alternatives and services deemed necessary to satisfactorily complete the project. Please note that facility design is not included in this project, but rather the identification of desired and needed amenities for town residents and regional groups. Respondents are encouraged to bring both industry expertise and creative ideas tested elsewhere and tailored to Wellesley to help the community design the approach that best suits the Town.

E. General Requirements

- At least two (2) Committee and/or Subcommittee meetings;

- At least two (2) community open meetings;
- Electronic data collection via a web-site or e-mail;
- Statistical sampling;
- Data collection;
- Data entry;
- Data analysis.

F. Evaluation Criteria

Proposals submitted shall address the following comparative evaluation criteria:

- (a) A clear understanding of the Town's needs, the objective and goals to be achieved, the work involved, and the content of the proposal;

Highly Advantageous: The proposal demonstrates a clear understanding of the Town's needs, the objective and goals to be achieved, the work involved and the content of the proposal.

Advantageous: The proposal demonstrates a general understanding of the Town's needs, the objective and goals to be achieved, the work involved and the content of the proposal.

Not Advantageous: The proposal does not demonstrate an understanding of the Town's needs, the objective and goals to be achieved, the work involved and the content of the proposal.

- (b) Relevant experience of the firm and/or the quality, depth of the experience, expertise of the individuals who will do the work;

Highly Advantageous: The respondent has at least 15 years of experience consulting with municipalities on projects of similar size and scope to this project.

Advantageous: The respondent has at least 10 years of experience consulting with municipalities on projects of similar size and scope to this project.

Not Advantageous: The respondent has at less than 5 years of experience consulting with municipalities on projects of similar size and scope to this project.

- (c) Past performance in multi-use aquatic facility design, including a broad understanding of the needs of various users (list all projects completed within the past five (5) years; provide the project name, contact, brief description, date of completion);

Highly Advantageous: The respondent has demonstrated superb performance in multi-use aquatic facility design and has demonstrated a broad understanding of the needs of various users.

Advantageous: The respondent has demonstrated competent performance in multi-use aquatic facility design and has demonstrated a broad understanding of the needs of various users.

Not Advantageous: The respondent has demonstrated inadequate performance in multi-use aquatic facility design and has demonstrated a broad understanding of the needs of various users.

- (d) A background and track record in promoting and sustaining a high degree of participation and active involvement of elected officials, boards and commissions as well as community residents, which must include experience in conducting forums or similar large-scale "brainstorming" sessions;

Highly Advantageous: The respondent has demonstrated that it has an excellent track record in promoting and sustaining a high degree of participation and active involvement of elected officials, boards and commissions as well as community residents, including experience in conducting forums or similar large-scale "brainstorming" sessions.

Advantageous: The respondent has demonstrated that it has a good track record in promoting and sustaining a high degree of participation and active involvement of elected officials, boards and commissions as well as community residents, including experience in conducting forums or similar large-scale "brainstorming" sessions.

Not Advantageous: The respondent has not demonstrated that it has a good or excellent track record in promoting and sustaining a high degree of participation and active involvement of elected officials, boards and commissions as well as community residents, and/or has no experience in conducting forums or similar large-scale "brainstorming" sessions.

- (e) A plan: Respondents shall document their plan for providing the scope of service and the appropriateness to the needs of the Town;

Highly Advantageous: The proposal contains a clear and comprehensive plan that addresses all of the project objectives stated in the RFP.

Advantageous: The proposal contains a clear plan that addresses most of the project objectives stated in the RFP.

Not Advantageous: The proposal does not contain a clear plan that addresses most of the project objectives stated in the RFP.

- (f) Appropriateness of the Project organization and team members. The identity, qualifications and competence of the individuals (including sub-consultants) who would actually do and/or be responsible for conducting the Project, and the role of each in its completion. The Committee desires to obtain an individual or a team composed of individuals who will actively participate throughout the duration of the Project, and shall not be replaced without prior agreement of the Committee;

Highly Advantageous: The plan of services proposes a detailed, logical and highly efficient scheme for producing a complete needs assessment that addresses all of the required issues.

Advantageous: The plan of services proposes a credible scheme for producing a complete needs assessment that addresses all of the required issues.

Not Advantageous: The plan of services is not sufficiently detailed to fully evaluate, or the plan does not contain all the components necessary to produce a complete needs assessment that addresses all of the required issues.

- (g) Availability to complete the project;

Highly Advantageous: Respondent is immediately available to complete the project.

Advantageous: Respondent will be available to complete the project within 4 weeks of executing a contract.

Not Advantageous: Respond is unavailable to complete the project within 8 weeks of executing a contract.

- (h) Quality of past work, evaluation from past clients, demonstrated ability to complete projects on time;

Highly Advantageous: All of respondent's references indicate that the projects were completed accurately, on schedule with minimal or insignificant delays.

Advantageous: Only one of respondent's references indicates that the project was completed poorly or inaccurately, or with substantial delays attributable to the respondent, and no current project or project completed in the last three years experienced substantial delays attributable to the respondent.

Not Advantageous: More than two of the respondent's references indicate that the project was completed poorly or inaccurately or with substantial delays attributable to the respondent.

(i) Preference to Massachusetts firms.

Highly Advantageous: Respondent is a Massachusetts firm.

Advantageous: Respondent is a firm located within 25 miles of Massachusetts.

Not Advantageous: Respondent is a firm located more than 100 miles from Massachusetts.

Proposals that include all required information and certifications will be evaluated by the Wellesley Aquatics Subcommittee on the comparative criteria described above. Proposals that fail to include all the required information and certifications will be rejected. Once evaluated, proposals will be ranked by the Subcommittee and reasons for ranking will be documented. The price proposals will then be opened. Price proposals will ultimately play a factor in determining contract award.

The Committee reserves the right to discontinue the selection process at any time prior to the awarding of a contract. There will be no reimbursement to any candidate, for any reason, if selection is terminated.

G. Deliverables

The expected date of completion of the study is May 31, 2015

- Adequate number of meetings with Subcommittee and Committee members;
- An interim report following the qualitative data collection;
- A hard copy and electronic version of the final questionnaire;
- A final written report presented both in hard copy (20 copies) and in electronic format;
- A final executive summary with recommendations presented in hard copy (20 copies) as well as in a publicly distributable format such as a web page;
- An oral presentation of results and recommendations at public meeting;
- The entire data set along with a computerized method for continuing data analysis.

H. Pre-Award Conference

The selected Consultant shall attend a pre-award conference with the Committee approximately one week after selection as the successful Consultant. Contract documentation and the selected Consultant's proposal shall be reviewed to assure precise understanding of the contract requirements and to review the selected Consultant's proposal to accomplish all tasks.

I. Available Reports

The Committee will make available all relevant public information on file at the Board of Selectmen's Office. This information is available for inspection from Meghan Jop, Deputy

Director, Wellesley Town Hall, 525 Washington Street, Wellesley, MA 02481. Please call 781-431-1019 ext. 2205 for an appointment to access applicable materials.

The following reports are available for examination at Town Hall or online:

- St. James Alternative Land Use Study (maps of site):
http://www.wellesleyma.gov/Pages/WellesleyMA_Planning/St.james/index
- Gale Assessment and Feasibility Study (maps of site):
http://www.wellesleyma.gov/Pages/WellesleyMA_Planning/St.james/StJamesReport_Part1.pdf
- 2011 Community Survey:
http://www.wellesleyma.gov/Pages/WellesleyMA_900/Pool_Sub/Final_Pool_Survey.pdf
- Activities of the 900 Worcester Street Committee:
http://www.wellesleyma.gov/Pages/WellesleyMA_900/900_Worcester_Index

APPENDIX A – REQUIRED FORMS

CERTIFICATE OF NON-COLLUSION: REQUIRED FORM

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

Signature of person submitting contract/bid

Date

Name of Business

CERTIFICATE OF TAX COMPLIANCE

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

*Social Security Number or
Federal Identification Number*

*Signature of Individual or
Corporate Name*

*Corporate Officer
(if applicable)*

APPENDIX B – CONTRACT FORM

TERMS AND CONDITIONS

1. PERFORMANCE OF SERVICES

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

2. TIME

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

3. REIMBURSABLE EXPENSES

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

4. VENDOR'S COMPENSATION

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

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

c. Time Card/Unit Price. If Services are to be provided on a Time Card/Unit Price basis, payments shall be made to the Vendor for Services performed based upon the salary or hourly rate or unit price schedule included in the Proposal or attached as **Exhibit C**. If the agreed rate schedule is not included in the Proposal or attached as

Exhibit C, the Vendor shall submit to the Town, before proceeding with Services, a rate schedule listing the maximum rates to be charged for the various employees or categories of employees performing Services or categories or services. Compensation for services performed by authorized Subcontractors shall be on the basis of the actual costs to the Vendor unless otherwise specified herein or in the Proposal. The Vendor shall use his best efforts to complete the performance of his Services within the Estimated Amount set forth on the first page of this Agreement. The Vendor shall advise the Town at such time as the Estimated Amount has been reached. The Town shall not be obligated to pay for any amount in excess of the Estimated Amount, unless the Town gives the Vendor a written notice authorizing the further performance of Services and the incurring of additional costs for such Services.

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

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

5. PAYMENT

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

6. VENDOR'S ACCOUNTING RECORDS

The Vendor shall keep records pertaining to Services performed (including complete and detailed time records) and reimbursable expenses incurred, employing sound bookkeeping practices and in accordance with generally accepted accounting principles. All records pertaining to Services performed on a time card or unit price basis and reimbursable expenses shall be available to the Town or its authorized representatives for review and audit during normal business hours.

7. REPORTS, DRAWINGS, ETC.

All reports, drawings, plans and other data and material, including computer programs and other material in electronic media (collectively, "Materials") furnished to the Town shall become the Town's property and may be used by the Town (or such parties as the Town may designate) thereafter in such manner and for such purposes as the Town (or such parties as the Town may designate) may deem advisable, without further employment of or additional

compensation to the Vendor. The Vendor shall not release or disclose to any third party any Materials produced for the Town without obtaining the Town's prior written consent. At no time shall the Vendor release or disclose to any third party any Materials furnished to the Vendor by the Town in connection with the performance of the Vendor's Services. Upon the expiration or termination of this Agreement for any reason, all Materials and other work product that have been accumulated, developed or prepared by the Vendor (whether completed or in process) shall become property of the Town and the Vendor shall immediately deliver or otherwise make available such Materials to the Town.

8. INSURANCE

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

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

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

At the request of the Town, a Subcontractor employed by the Vendor shall obtain and maintain a professional liability insurance policy covering negligent errors, omissions and acts of such Subcontractor or of any person or business entity for whose performance the

Subcontractor is legally liable arising out of the performance of the contract for Subcontractor services. The Subcontractor shall furnish a certificate or certificates of such insurance coverage to the Town prior to the employment of such Subcontractor by the Vendor. A liability insurance policy maintained under this paragraph shall provide for coverage of such type and duration and in such amount as the Town shall require.

9. INDEMNIFICATION

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

10. COMPLIANCE WITH LAW

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

11. TERMINATION OF AGREEMENT

The Town may terminate this Agreement as follows:

a. Without cause, on ten days' prior written notice; or

b. Immediately, by written notice to the Vendor, if the Vendor violates any of the provisions of this Agreement, or fails to perform or observe any of the terms, covenants or conditions of this Agreement, or abandons in whole or in part its Services, or becomes unable to perform its Services, hereunder. For purposes of this Paragraph 11, it is acknowledged that the Vendor's Services under this Agreement are personal services and may not be assumed by or assigned by a trustee in bankruptcy.

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

12. MISCELLANEOUS PROVISIONS

- a. Successors and Assigns. Subject to the provisions of Subparagraph (b) below, the Town and the Vendor each binds itself, its partners, successors, assigns, and legal representatives to the other party.
- b. Assignment by Vendor. The Vendor shall not assign, sublet or transfer any of its obligations, responsibilities, rights or interests (including, without limitation, its right to receive any moneys due hereunder) under this Agreement without the written consent of the Town. Any assignment, subletting, or transfer by the Vendor in violation of this Paragraph 12(b) shall be void and without force or effect.
- c. Entire Agreement. This Agreement represents the entire and integrated agreement between the Town and the Vendor with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Town and the Vendor.
- d. Confidentiality. The Vendor shall not, without the Town's prior written consent, release or disclose any information relating to the Project to anyone except as necessary to perform its duties hereunder.
- e. Certifications. The Vendor shall, from time to time, make such certifications and statements to the Town and to such of the Town's architects, designers, vendors and lenders, and such other parties, as the Town shall reasonably request, in such form as the Town shall reasonably request, provided that the Vendor determines that such certifications are true and correct based upon the Services performed by the Vendor hereunder.
- f. Additional Services. If the Town requests the Vendor to perform additional services beyond the scope of Services hereunder, the Vendor shall perform such additional services only upon obtaining written authorization from the Town including written agreement as to the method and amount of compensation for such additional services.
- g. Disputes. All claims, disputes and other matters in question between the Town and the Vendor arising out of or relating to this Agreement or the breach thereof shall be submitted for resolution to a court of competent jurisdiction in Norfolk County, Massachusetts, unless otherwise agreed by the parties. No such action shall be brought, however, until the completion of all Services under this Agreement or the earlier termination thereof as provided in Paragraph 11 above, the parties agreeing to negotiate in good faith any claims, disputes or other matters in question during the term of this Agreement before resorting to litigation.
- h. Limited Liability. No officer, director, member, employee, or other principal, agent or representative (whether disclosed or undisclosed) of the Town, nor any participant with the Town, shall be personally liable to the Vendor hereunder, for the Town's payment obligations or otherwise, the Vendor hereby agreeing to look solely to the assets of the Town for the satisfaction of any liability of the Town hereunder. In no event shall the Town ever be liable to the Vendor for indirect, incidental or consequential damages.
- i. Governing Law. This Agreement shall be governed by the law of the Commonwealth of Massachusetts.

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

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

13. EQUAL EMPLOYMENT OPPORTUNITY

a. In connection with the performance of work under this Agreement, the Vendor shall not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, age, sex or handicap. The Vendor shall post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Massachusetts Commission Against Discrimination (the "Commission"), setting forth the provisions of the Fair Employment Practices Law of the Commonwealth.

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

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

14. CERTIFICATIONS BY VENDOR

By execution of this Agreement, the Vendor certifies:

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

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

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

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

15. TAXES

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

b. The Town is exempt from payment of certain Sales and Use taxes applicable in the Commonwealth of Massachusetts. At the Vendor's request, Tax Exemption Certificates will be furnished by the Town to the Vendor with respect to such tax exempt articles as may be required under this Agreement. The Vendor shall not pay, and the Town shall not reimburse or pay the Vendor or any other party either directly or indirectly for any tax for which an exemption is provided under law.

16. CONFLICT OF INTEREST

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