

PART 1
BERKLEY TOWN HALL
REQUEST FOR PROPOSAL (R.F.P.)
ARCHITECTURAL DESIGN & ENGINEERING SERVICES

Invitation

The Town of Berkley invites proposals from firms, herein called qualified proposers, for the design development and preparation of final plans and specifications for the Berkley Town Hall. The objective is for the Architectural Design Team to first analyze existing conditions, second, define by plans and specifications for the required work and, third, provide the necessary construction assistance to implement the work detailed by the approved plans and specifications.

As part of this project, the successful applicant will prepare surveys and field tests; prepare sketches and schematic drawings, including demolition plans, site plans, floor plans and façade drawings showing size and layout of the project; analyze major building components, including foundations, structures, electrical, heating, ventilating, air conditioning, and septic systems; prepare final plans, specifications, and bidding documents; and develop a minimum of two project cost estimates, one at the completion of design development and second when the construction plans and specifications are at or near the 90% completion.

Of critical importance is schedule. It is the intent of the Town Office Building Project Committee to receive filed sub bids and general contractor bids for the work by July 31, 2013. Please see the detailed schedule in Part 2 of this RFP.

Proposal Submission Deadline – January 7, 2013 at 2:00 pm.

10 copies plus an original signed proposal are due by the above Proposal Submission Deadline at offices of the **Berkley Executive Secretary, 1 North Main Street, Berkley, MA 02779-1336**. All proposals must be accompanied by a completed copy of the Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction 2005, a copy of which is attached. This document can also be accessed electronically at <http://www.mass.gov/cam/DSB/DSB App 2005 CT.doc>. Proposals not received by the above deadline will be returned unopened and will not be considered by the Town of Berkley.

A briefing session has been scheduled for December 17 at 7:00 PM. For more information, please contact the Project Manager, NETCO Construction Project Managers (Tom Kondel) at 781-863-6270.

Interviews

The tentative week for applicant interviews is the week of January 14, 2013. The Town will choose three firms who best meet the RFP requirements for interviews. Proposers selected for interviews will be interviewed at a mutually agreed upon time at a location to be announced. Each interview is expected to last up to one hour. The Town Office Building Project Committee may request that the Architect bring his/her proposed structural consultant to the interview.

General Conditions

The successful proposer shall comply with all applicable federal, state and local laws and regulations. The Town of Berkley reserves the right to reject all proposals, to waive informalities, to advertise for new proposals and to make awards as may be in the best interests of the Town of Berkley.

Proposals, reports and materials developed by the successful proposer after an award is made and submitted to the Town of Berkley are considered public information and cannot be copyrighted. All proposals become the property of the Town of Berkley, and the Town has the right to disclose information contained in the proposals once awards have been made.

Contract Period

The contract period shall be from the Notice to Proceed until certification of the completed project, and work on any punch list items is completed.

Proposal Requirements

- The Architect and the Architect's major sub-consultants are required to submit all of the information listed below.
- Cover Letter
- Submission of Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction 2005. This document can be accessed electronically at http://www.mass.gov/cam/DSB/DSB_App_2005_CT.doc.
- Name, location, size and type of organization, years in business for the architectural firm and all consultants.
- Names and registration numbers for all partners, officers, directors and owners
- Names and registration numbers for all personnel assigned to the project, including Massachusetts registration numbers.
- List and contact information for all public sector design projects undertaken in the Commonwealth of Massachusetts in the last five years including descriptive information for projects comparable to Berkley Town Hall Project. The emphasis should be on projects with conditions similar to those conditions itemized in Part 2 of the RFP.
- List and current contact information for all current design projects.
- If the applicant is a joint venture, all required information should be submitted for both joint venture partners along with the name of the firms and person who will be the managing partner of the joint venture.
- Certification that the architect applicant meets the statutory definition of designer, and a separate certification that the structural engineer meets the statutory definition of a structural engineer.
- Proposed schedule for the project recognizing the objective is to receive bids for the work by July 31, 2013. Please indicate that all sub-consultants agree to meet the scheduling requirements for receiving bids by July 31, 2013. If the applicant believes this schedule is not possible, please indicate why.
- Proposed method of organizing and executing the work for the project.
- Proposed organizational chart with resumes of all key personnel
- Statement that the applicant certifies under the penalties of perjury that the information contained in his/her proposal is correct.
- Amount and type of professional liability insurance for the both the architect and all engineering consultants.
- Certificates of non-collusion, tax compliance, design services contract certification and certificate of authority (attached).

Form of Contract

The successful designer will be required to execute the Towns' Designer Services contract within five business days of the presentation of the contract by the Town (attached).

Fee Negotiations

Following completion of interviews the Town will select a first ranked designer. The Town, through its Town Office Building Project Committee will negotiate with the first ranked designer on the list of finalists. Should the Town be unable to negotiate a satisfactory fee with the first ranked designer, negotiations will be terminated and

negotiations undertaken with the remaining designers, one at a time, in the order in which they are ranked, until an agreement is reached. **The proposal must not contain any mention or price for cost for services.**

In reviewing proposals, the Town will use the following evaluation criteria:

Experience and Quality of Like Work

Standard Criteria: The Design Team needs to demonstrate they have the necessary design skills, knowledge, experience, and technical competency in managing to completion the complex design, development, and construction issues associated with Town Hall buildings. Such Team capability demonstration shall include review documentation for at least three (3) town hall building projects in which the Team was involved; and at least three (3) other municipal projects the Team was responsible for during the past five (5) years.

<i>Highly advantageous</i>	A proposal which exceeds the evaluation criteria
<i>Advantageous</i>	A proposal which satisfactorily meets the evaluation criteria
<i>Not Advantageous</i>	A proposal which does not meet the evaluation criteria or leaves significant questions or issues not fully addressed

Quality Letters of Recommendation

Standard Criteria: The degree to which the required three (3) written letters identify the Design Team's organization and staff having a high standard of integrity, competence, judgment, initiative, professionalism, and communication skills during the multiple years of association with the reference letter originator.

<i>Highly advantageous</i>	A proposal which exceeds the evaluation criteria
<i>Advantageous</i>	A proposal which satisfactorily meets the evaluation criteria
<i>Not Advantageous</i>	A proposal which does not meet the evaluation criteria or leaves significant questions or issues not fully addressed

Working with the Public and Town Committees

Standard Criteria: Each Design Team must demonstrate past sensitivity to concerns expressed by the public, dealing fairly, openly, and honestly in a cooperative manner with the general public, town officials, media staff and others typically involved with community project work encouraging an open expression of ideas while respecting the views/ideas of others. Proposers shall also demonstrate their knowledge and experience with Massachusetts public design and construction laws and procedures.

<i>Highly advantageous</i>	A proposal which exceeds the evaluation criteria
<i>Advantageous</i>	A proposal which satisfactorily meets the evaluation criteria
<i>Not Advantageous</i>	A proposal which does not meet the evaluation criteria or leaves significant questions or issues not fully addressed

Staff

Standard Criteria: The proposal shall include applicants intended project organization and specific staffing assigned to the project to include experience and qualifications in providing desired services. Proposers are required to identify the engineering consultants who will be used on the project. Preference will be given in the evaluation process to applicants who have staffing capabilities with demonstrated experience in the analysis, design, specification and construction administration/oversight for building projects of similar design, including a detailed understanding of the Massachusetts Building Code, the Massachusetts Architectural Access Board requirements, the Americans with Disabilities Act, and Massachusetts public building construction laws (Chapter 149. et. al.).

Highly advantageous	A proposal which exceeds the evaluation criteria
Advantageous	A proposal which satisfactorily meets the evaluation criteria
Not Advantageous	A proposal which does not meet the evaluation criteria or leaves significant questions or issues not fully addressed

Staffing Capacity and Timeline

Standard Criteria: Each Firm in the Design Team must demonstrate that their current manpower as it relates to their current designs in process and can provide the staffing that this project will require. A management and staffing chart for the project is essential in the evaluation of the Design Team. The timeline for this project is addressed relative to the design phases requested in the RFP. A history of maintaining project timelines in similar projects is required. The proposed design schedule is the following:

- Designer under contract with the Town – no later then February 1, 2013
- Kickoff meeting with Town Office Building Committee – week of February 4, 2013
- Completion of Space Planning Schematics – week of March 4, 2013
- Completion of Design Development Drawings (and Estimate) – April 24, 2013
- Completion of Construction Plans & Specifications – June 24, 2013
- Advertise for Bids – Week of June 24, 2013
- Receive General Contract Bids – Week of July 29, 2013

Highly advantageous	A proposal which exceeds the evaluation criteria
Advantageous	A proposal which satisfactorily meets the evaluation criteria
Not Advantageous	A proposal which does not meet the evaluation criteria or leaves significant questions or issues not fully addressed

Professional Registrations

Standard Criteria: The proposal shall have a list of staff possessing professional registrations. Preference will be given in the evaluation process to the applicant with the widest variety of professional registrations at its direct disposal (on staff), and the level of relevant experience of each individual. **EXAMPLE:** At least one member of the design team must meet the following qualifications: town hall or senior center planning or a closely related

field, and two years of full-time experience in an area relevant to the project. The team must also include a registered architect, a structural engineer, a HVAC engineer, a civil engineer, a building code analyst and an estimator with town hall/senior center experience.

<i>Highly advantageous</i>	A proposal which exceeds the evaluation criteria
<i>Advantageous</i>	A proposal which satisfactorily meets the evaluation criteria
<i>Not Advantageous</i>	A proposal which does not meet the evaluation criteria or leaves significant questions or issues not fully addressed

Cost Estimating

Standard Criteria: The Design Team needs to demonstrate their development of cost estimates have proven to be realistic; allow the owner to award the project with the estimate fee, and project has been constructed within the proposed budget. If the Design Team uses a professional estimator, demonstrate the checks and balances used by the design firm to insure accuracy of the estimate to the design elements.

<i>Highly advantageous</i>	A proposal which exceeds the evaluation criteria
<i>Advantageous</i>	A proposal which satisfactorily meets the evaluation criteria
<i>Not Advantageous</i>	A proposal which does not meet the evaluation criteria or leaves significant questions or issues not fully addressed

Background Materials

The Town of Berkley will provide background materials on the history of any previous engineering and design documents developed by previous Building Committees. The material will be available for review at the Town Office Building briefing session on December 17, 2012. Members of the Town Office Building Project Committee and Administrative Staff will also be present at the briefing session for discussion of the project.

The Town of Berkley reserves the right to reject any or all proposals, to waive any informalities in a proposal, or to reject the applicant's choice of any engineering consultant or assigned staff if the awarding authority determines such actions to be in the best interests of the Town of Berkley.

PART 2

BERKLEY TOWN HALL **Architectural and Engineering Services** **Project Summary & Tasks**

Project Summary

The Town of Berkley is requesting proposals from architectural and engineering firms to design a new Berkley Town Hall. The project includes demolition of an existing building and plans and specifications for a new two story Town Office Building that includes roughly 2,000 square feet of space to be used by the Town's Council on Aging as senior space. It is anticipated that the new building will be roughly 5,000 square feet per floor with a full basement. A preliminary space needs assessment was completed in 2007 by the firm of DiMarinisi and Wolfe

Architects, and will be available for viewing at the Briefing Session. The space needs survey and the preliminary drawings by DiMarinisi and Wolfe form the basic design that the Town Office Building Committee is looking for.

As such, the Town is seeking proposals from registered architects and supporting engineering firms (the Team) for design development and preparation of plans and specifications and bid documents including surveys and field tests; analyze major building components, including foundations and structures, space planning and workplace functionality; provide updated project cost estimates based on the final plans and specifications; and administering the construction bid process and subsequent construction administration.

The Town will provide, from previous studies, (1) building plans, sections and elevations showing previously proposed new construction.

Proposed Project Tasks

The successful Proposer will organize this project around **TASKS**. **Task One** is investigation and design development and formation of an overall plan and associated costs. **Task Two** is taking that information, producing final bid documents and procuring a contractor, and **Task Three** is the bidding and award of the construction contract. **Task Four** is the construction administration for the project. **Task Five** is the Project Close-out.

Task 1 – Schematic/Design Development Phase: Perform investigations in support of the preparation of initial plans, specifications, and other project scope issues related to work planned. This Task should also include a hazardous material survey of the existing building in preparation of the building’s demolition.

The architect/engineer will prepare initial schematic plans based on comments and input from the Town Staff, the Town Office Building Project Committee, and any other relevant Committees or Commissions having jurisdiction over any aspect of the proposed Project. These documents will consist of drawings, sketches and the procedures needed that adequately describe the size and character of the Project as to architectural, space planning and associated engineering requirements as appropriate. The architect/engineer shall prepare an estimate of construction costs at the conclusion of Task 1.

Task 1 is to include space planning for the first and second floor Town offices and the space designated for the seniors. The design team will be expected to examine all departmental space configurations and workspace functionality. Upon completion of this examination, provide detailed plan to address space needs/issues.

All recommendations contained in Task 1 will be designed to assure compliance with all applicable codes and laws which also include building floor loading, structural skeleton, parking, code compliance issues, ADA and transitional costs. As part of this task, the architect/engineer may provide special surveys, tests, studies and submissions and shall assist the Town in seeking approvals of governmental authorities or others having jurisdiction over the Project.

TASK 2 – Construction Documents Phase: Prepare final bid documents & bid schedules

Based on the approved design development documents and any further adjustments in the scope or the quality of the Project, or in the construction budget authorized by the Town, the Architect/ Engineer shall prepare, for the approval by the Town, Construction Documents consisting of Drawings and Specifications detailing the requirements for the construction of the project.

The Architect/Engineer shall assist the Town in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract and the form of Agreement between the Town and the Contractor.

The Architect/Engineer shall prepare an estimate using an independent estimating consultant at the 90% completion stage of the plans and specifications. The Architect/Engineer shall assist the Town in connection

with the Town's responsibility for filing documents required for approval of governmental authorities having jurisdiction over the Project

The final cost estimate and construction bid documents prepared for the Town will contain one copy delivered electrically in Microsoft Excel or Word and ten printed loose-leaf copies. The format must be reproducible. Plans will be provided in electronic PDF format and paper copy.

Task 3 – Bidding of the Project

The Architect/Engineer, in accordance with M.G.L. Chapter 149, will assist the Town with administering the bidding process consisting of the advertising for the appropriate sub-bids and general bids, conducting a pre-bid meeting if necessary, answering questions of perspective bidders during the bidding process, preparing and issuing addendums during the bidding process, evaluating the bids received, and providing a recommendation to the Town as to the capability of the contractor submitting the low bid.

Task 4 – Construction

Provide construction assistance to the Town Project Management Team for the execution of the project as defined in Task 2, including but not limited to the following:

- General Administration of the construction contract
- Providing interpretation of construction documents as required
- Checking of samples, submittals, schedules, shop drawings and other submissions by the general contractor
- A regular schedule of site visits and participation in construction site meetings with the general contractor, owner's project manager and town administration including visits by the architect's sub-consultants as required
- Confirmation that all work conforms to the contract documents
- Review and preparation of recommendations for all requests for changes in the plans and specifications
- Review and approval of change orders and assistance in the review of change orders and appeal hearings
- Review and approval of the general contractor requisitions for payment and weekly payroll records for compliance with prevailing wage requirements.

Task 5 – Project Closeout

At the final stage of the project, the Architect/Engineer shall make frequent inspections with Subcontractors, the Design Team, and the Owner's Representative to check for and correct faulty work. The Project Closeout Phase must ensure construction quality and that the Town Inspectors accepts all health and safety issues prior to substantial building occupancy.

A. Closeout Requirements

1. Architect's/Engineer's Closeout Submittals

- a. Review of Contractors Closeout Submittals
- b. Review of Certification, from the design Registered Professional Engineer, stating that the fire protection systems have been installed in accordance with the approved fire protection construction documents and meet the requirements of 780 CMR 903.1
- c. Review and acceptance of the HVAC balancing report
- d. The Structural Engineer-of-Record's (SER's) final report, as required by 780 CMR 1705.3.
- e. Certification from the Design Registered Professional Engineer, stating that the emergency lighting and power systems have been installed in accordance with the approved electrical construction documents

- f. List of deficiencies noted by the Commissioning Agent during functional performance tests on all building systems and the resolution of these deficiencies.
- g. Utility rebate submittals and approvals.

2. Final Inspection

- a. Upon completion of the Work for which a permit has been issued, the Town's building official shall conduct a final inspection pursuant to 780 CMR115.5.
- b. Temporary (Beneficial) Occupancy as follows:
 - 1. Temporary occupancy is allowed under 780 CMR 120.3.

3. Certificate of Use and Occupancy

- Prior to requesting a Certificate of Use and Occupancy, the Owner's Project Representative should have ready and available the following approved items (referred to as Closeout Submittals):
- a. O & M manuals and written operating instructions for the various systems
 - b. Catalog data sheets for each item of mechanical or electrical equipment actually installed including performance curves, rating data and parts lists
 - c. Catalog sheets, maintenance manuals, and approved shop drawings of all mechanical and electrical equipment controls and fixtures with all details clearly indicated, including size of lamps

4. The Balancing Report

The names, addresses, and telephone numbers of repair and service companies for each of the major systems installed under the construction contract

5. A signed Certificate of Occupancy per 780 CMR 120.0

6. Licensed Builder Final Affidavit/Report

7. Designer and Consultants Affidavit of Compliance

8. Monetized punch list of the remaining Work that must be done before Final Acceptance

9. Record drawings should be completed (both electronic and Mylar files if required) and ready to be transferred over to the Town Project Manager.

10. As-built documents shall consist of, but not be limited to, the following:

- a. Drawings (in AutoCAD ver.14 or latter format)
- b. Contract drawings, for all disciplines, marked-up clearly to indicate the as-built condition
- c. All clarification and/or changed condition sketches
- d. Specifications (in MS Word format)
- e. All construction specifications
- f. All addenda
- g. Shop drawings, submittals, etc. (electronic format)
- h. All approved shop drawings, submittals, etc.

PART 3

BERKLEY TOWN HALL
Architectural and Engineering Services
Attachments

Certificates of Vote

December 6, 2012

To Whom It May Concern:

As duly qualified Town Clerk of the Town of Berkley, I hereby certify that at the Annual Town Election held in the Town of Berkley on May 12, 2012 the following action was taken:

Question 1.

“Shall the Town of Berkley be allowed to exempt from the provisions of proposition two and one-half , so-called, the amounts required to pay for the bonds to be issued in order to design, construct, originally equip and furnish, a new Town Hall, including the payment of all costs incidental and related thereto?”

YES 336

NO 102

BLANK 102

A true copy of record:

ATTEST:

Carolyn Awalt, CMMC
Town Clerk

December 6, 2012

To Whom It May Concern:

As duly qualified Town Clerk of the Town of Berkley, I hereby certify that at the Special Town Election held in the Town of Berkley on November 14, 2012 the following action was taken:

ARTICLE 2. A motion was made and seconded to vote to that three million five hundred thousand dollars (\$3,500,000) is appropriated to pay costs of designing, constructing, originally equipping and furnishing a new Town Hall, including the payment of all costs incidental and related thereto, and that to meet this appropriation, the Treasurer, with the approval of the Selectmen, is authorized to borrow said under and pursuant to Chapter 44, Section 7(3) of the General Laws, or pursuant to any other enabling authority, and to issue bonds or notes of the Town thereof. The Selectmen are authorized to take any and all actions necessary or convenient to carry out this project.

The Moderator called for a report from the Town Hall Project Committee.

The Committee showed a video which showed the history of the Town Offices from in department houses through the current make shift arrangements between the Old Town Hall and office trailers presently being utilized.

The Finance Committee gave a presentation. Ed Hoak, Chairman, stated the Finance Committee voted in favor of the project.

The Capital Improvement Planning Committee Chairman, Richard Moroff stated their Committee voted in favor of the project and continues to recommend in favor of the much needed town office building project.

A motion was made and seconded, and it was voted: To call the Question.

Under Town of Berkley Bylaw Article 3, Section 5, the Moderator called for a "YES/NO" ballot vote by use of the check list.

After the ballot vote, the Moderator declared the count. There were 222 voting with 186 YES and 36 NO, the Moderator declared Article 2 passed by the 2/3rd required for borrowing.

A true copy of record:

ATTEST:

Carolyn Awalt, CMMC
Town Clerk

- Tax Compliance Certification:



Form ST-2
Certificate of Exemption

Massachusetts
Department of
Revenue

Certification is hereby made that the organization herein named is an exempt purchaser under General Laws, Chapter 64H, sections 6(d) and (e). All purchases of tangible personal property by this organization are exempt from taxation under said chapter to the extent that such property is used in the conduct of the business of the purchaser. Any abuse or misuse of this certificate by any tax-exempt organization or any unauthorized use of this certificate by any individual constitutes a serious violation and will lead to revocation. Willful misuse of this Certificate of Exemption is subject to criminal sanctions of up to one year in prison and \$10,000 (\$50,000 for corporations) in fines. (See reverse side.)

TOWN OF BERKLEY
7 NORTH MAIN STREET
BERKLEY

02779

MA

NOT ASSIGNABLE OR TRANSFERABLE

COMMISSIONER OF REVENUE
ALAN LEBOVIDGE

EXEMPTION NUMBER E

046-001-086

ISSUE DATE

09/28/03

CERTIFICATE EXPIRES ON

NONE

Equal Employment Opportunity is THE LAW

Private Employers, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex (including pregnancy), or national origin. Religious discrimination includes failing to reasonably accommodate an employee's religious practices where the accommodation does not impose undue hardship.

DISABILITY

Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

AGE

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

SEX (WAGES)

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

GENETICS

Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

RETALIATION

All of these Federal laws prohibit covered entities from retaliating against a person who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice.

WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED

There are strict time limits for filing charges of employment discrimination. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected.

The U.S. Equal Employment Opportunity Commission (EEOC), 1-800-669-4000 (toll-free) or 1-800-669-6820 (toll-free TTY number for individuals with hearing impairments). EEOC field office information is available at www.eeoc.gov or in most telephone directories in the U.S. Government or Federal Government section. Additional information about EEOC, including information about charge filing, is available at www.eeoc.gov.

Employers Holding Federal Contracts or Subcontracts

Applicants to and employees of companies with a Federal government contract or subcontract are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

INDIVIDUALS WITH DISABILITIES

Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level.

DISABLED, RECENTLY SEPARATED, OTHER PROTECTED, AND ARMED FORCES SERVICE MEDAL VETERANS

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits job discrimination and requires affirmative action to employ and advance in employment disabled veterans, recently separated veterans (within

three years of discharge or release from active duty), other protected veterans (veterans who served during a war or in a campaign or expedition for which a campaign badge has been authorized), and Armed Forces service medal veterans (veterans who, while on active duty, participated in a U.S. military operation for which an Armed Forces service medal was awarded).

RETALIATION

Retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes discrimination under these Federal laws.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 1-800-397-6251 (toll-free) or (202) 693-1337 (TTY). OFCCP may also be contacted by e-mail at OFCCP-Public@dol.gov, or by calling an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

Programs or Activities Receiving Federal Financial Assistance

RACE, COLOR, NATIONAL ORIGIN, SEX

In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal financial assistance.

INDIVIDUALS WITH DISABILITIES

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.

If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance.

CERTIFICATION OF GOOD FAITH

The undersigned certifies under pains and penalties of perjury that this contract has been obtained 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.

CONTRACTOR

By: _____

Name: _____

Title: _____

CERTIFICATE OF STATE TAX COMPLIANCE

Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A

_____, authorized signatory for
name of signatory

_____, whose
name of contractor

principal place of business is at _____,

_____ does hereby certify under the pains and penalties of perjury that
_____ has paid all

name of contractor

Massachusetts taxes and has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Federal Identification No. of _____ : _____
name of contractor number

Designer Services Contract -

Agreement Between Owner and Architect

AGREEMENT made as of _____, 2013

BETWEEN the Owner:

Town of Berkley
1 North Main Street
Berkley, MA 02779-1336

and the Architect:

For the Project:

Town Offices

The Owner and Architect agree as set forth below.

ARTICLE 1

ARCHITECT'S RESPONSIBILITIES

1.1 ARCHITECT'S SERVICES

1.1.1 The Architect's services to be provided under this Agreement (the "Services") consist of those services performed by the Architect, the Architect's employees and the Architect's engineers and consultants ("Consultants") as enumerated in Articles 2 and 3 of this Agreement, and all other obligations and responsibilities of the Architect pursuant to the provisions hereof.

1.1.2 The Architect's Services shall at all times be performed consistent with the standard of professional skill and care set forth in 1.1.3 below and as expeditiously as is consistent with professional skill and care and the orderly progress of the work required to complete the Project and in accordance with the project schedule attached hereto as **Exhibit E** including any modifications or updates to such schedule provided by the Owner (the "Project Schedule"). The schedule for performance of the Architect's Services as reflected in the Project Schedule shall not be amended or modified

by the Architect without obtaining the prior written consent of the Owner, which shall not be unreasonably withheld. During each Phase of its Services, the Architect and its Consultants shall at all times assist, cooperate and work closely with the Owner's representatives, contractors, consultants and other professionals employed by the Owner in order to obtain the Owner's review and input and to promote the best interests of the Owner and the Project.

1.1.3 The Architect shall perform the Services under this Agreement in accordance with the professional standards of skill and care exercised by members of the architectural and engineering professions on projects of comparable size and complexity to the Project in the area where the Project is located. The Architect shall be responsible for all Services performed by its Consultants. The Consultants shall perform Services under any subconsultant agreement with the Architect in accordance with the professional standards set forth in this Subparagraph 1.1.3.

1.1.4 The Architect shall staff the Project with qualified personnel, as proposed in its response to the Town's Request for Proposals and including the

personnel listed on **Exhibit C** (“Key Personnel”), to provide effective and timely production, management, administration and superintendence with respect to the Services. It is expressly understood and agreed that, in retaining the Architect to perform the Services, the Owner is relying upon the Architect’s proposal that provides that the Key Personnel will be available for, and actively participate in, provision of the Services required of the Architect and its consultants under this Agreement as appropriate for each stage or phase of the Project. Any additional personnel who have key management or technical responsibilities shall be subject to the Owner’s prior written approval, which shall not be unreasonably withheld, and upon such approval shall become Key Personnel. The Architect shall not remove, replace or substitute Key Personnel without the Owner’s prior written approval, which shall not be unreasonably withheld. In the event one or more Key Personnel dies, becomes disabled, terminates his/her employment, or is terminated by the Architect or its Consultant for cause, the Architect shall cause such individual(s) to be replaced with individuals approved in writing by the Owner, which approval shall not be unreasonably withheld. The Owner may request replacement of any member of the Key Personnel. Nothing herein to the contrary shall relieve the Architect of its obligation to provide its Services in accordance with Subparagraphs 1.1.2 and 1.1.3.

1.1.5 The Architect shall exercise due care in accordance with the standard of care set forth in Subparagraph 1.1.3, to assure that all drawings, specifications and other documents prepared by the Architect or its Consultants and all Services performed by the Architect or its Consultants under this Agreement shall comply with all federal, state and local laws, ordinances, codes, rules, and regulations as they may be amended, and all other requirements, approvals and permits applicable to the Project (collectively, “Laws and Requirements”).

ARTICLE 2

SCOPE OF ARCHITECT’S BASIC SERVICES

2.1 DEFINITION

2.1.1 The Architect’s Basic Services consist of those described in this Article 2, and include, without limitation, all structural, mechanical and electrical engineering services and all services identified as Basic Services in **Exhibit A** or other provisions of this Agreement. **Exhibit A** contains further definition of the Architect’s Scope of Services under this Agreement.

2.1.2 The identity and scope of work of each Consultant retained by the Architect to perform work in connection with Basic Services shall be subject to the prior written approval of the Owner, the Owner hereby approving retention of the Architect’s Consultants specifically identified in **Exhibit B**. The Architect shall, as part of its Basic Services, provide the services of the Consultants identified on **Exhibit B** as being retained by the Architect (except for any Consultants listed on **Exhibit B** that are expressly indicated as being retained by the Architect as an Additional Service) and such other Consultants as may be required to meet the Architect’s obligations to perform Basic Services under this Agreement, provided that each such additional Consultant shall be subject to prior approval by the Owner, which shall not be unreasonably withheld.

2.1.3 During all Phases of the Architect’s Services, the Architect shall coordinate and schedule the efforts required of its Consultants and will work to coordinate and schedule these efforts with those of any consultants engaged by the Owner (“Owner’s Consultants”). It is understood that the Architect’s Services are under the direction of the Board of Selectmen and its designated Owner’s Representative. The Architect’s Basic Services shall include required meetings with the Board of Selectmen, the Owner’s Representative and customary reviews by the Town’s Building Inspector.

2.1.4 The Owner acknowledges that the Architect is not responsible for the quality and accuracy of the work performed by the Owner’s consultants.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 When Project requirements have been sufficiently identified, the Architect shall prepare and periodically update a schedule identifying milestone dates for decisions required of the Owner and design services furnished by the Architect.

2.2.2 The Architect shall review with the Owner alternative approaches to design and construction of the Project.

2.2.3 Based on the agreed program, the Project Schedule and approximate Construction Budget (if any), the Architect shall prepare for approval by the Owner Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

2.2.4 The Architect and its Consultants will, in connection with the Schematic Design Documents, prepare preliminary outline specifications for the structural, mechanical and electrical systems.

2.2.5 The Architect shall, as necessary or appropriate in connection with the Schematic Design, Design Development and Construction Documents Phases, investigate existing site conditions and existing facilities, and attempt to verify the accuracy of drawings and other information furnished by the Owner as to locations of any existing structures and utility systems.

2.2.6 At the end of the Schematic Design Phase, the Architect shall prepare an estimate of Construction Cost (as defined in Subparagraph 5.1.1).

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the Schematic Design Documents, the Project Schedule and the Construction Budget, all as approved by the Owner, together with any adjustments thereto approved in writing by the Owner, the Architect shall prepare for approval by the Owner Design Development Documents consisting of drawings and other documents reasonably required to illustrate and describe the size and appearance of the Project as to architectural, structural, mechanical and electrical systems. The Design Development Documents will resolve any remaining issues of program and design, and will be prepared in accordance with the standard of care set forth at Subparagraphs 1.1.3 and 1.1.5.

2.3.2 In preparing the Design Development Documents, the Architect shall develop and present to the Owner for consideration any appropriate alternative design options for inclusion in the Construction Documents as Alternates (both add and deduct) so as to ensure that the final Construction Cost will be consistent with the Construction Budget.

2.3.3 At the end of the Design Development Phase the Architect shall prepare an estimate of Construction Cost, and shall work with the Owner, any Owner's Consultants, and such other parties as the Owner shall designate so that the estimated Construction Cost for the Project does not exceed the Construction Budget, it being understood that if the estimated Construction Cost based on the Design Development Documents exceeds the Construction Budget, through no fault of the Owner, its other consultants or other factors outside of the Architect's control in terms of the scope or cost of the project or delay, the Architect shall, at its own expense, revise the Design Development Documents so that the estimated Construction Cost for the Project does not exceed the Construction Budget.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the Design Development Documents approved by the Owner, together with any further

adjustments in the scope or quality of the Project or in the Construction Budget approved in writing by the Owner, the Architect shall prepare for approval by the Owner Construction Documents consisting of Drawings, Specifications and, if applicable, supplemental general conditions setting forth in detail the requirements for the construction of the Project.

2.4.2 The Architect shall provide such services as are necessary to assist the Owner in the identification of any and all governmental permits, approvals and licenses of any kind which must be obtained and all public review requirements which must be met in connection with the design, construction, use and occupancy of the Project ("Permits and Approvals"). Drawings, Specifications and other design information for the Project shall be prepared by the Architect in accordance with the standard of care set forth at Subparagraphs 1.1.3 and 1.1.5. Such designs, information and related materials shall be furnished to the appropriate agency or authority by the Architect on a timely basis so as to meet the required schedule for Permits and Approvals. All applications, requests, appeals, filings and other documents, materials and information prepared by the Architect to be submitted to governmental authorities in connection with the Permits and Approvals shall be subject to the prior approval of the Owner, and the Architect shall to the best of its ability deliver to the Owner sufficiently in advance of the time of their proposed filing or submission so as to permit a reasonable period for the review and comment of the Owner and the Owner's counsel. The Architect shall provide to the Owner final copies of all documents or filings within two business days of submittal. If requested by the Owner at any time, any such documents or materials to be used in connection with the Permits and Approvals (not including Drawings, Specifications and other design information for the Project) may be prepared by the Owner or other persons designated by the Owner.

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 Following the Owner's approval of the Construction Documents and of the latest adjustments, if any, in the Construction Budget or estimates of Construction Cost, the Architect will assist the Owner in obtaining bids (or negotiated proposals where permitted by Laws and Requirements), preparing clarifications or addenda to the Construction Documents, and preparing and awarding contracts for construction, including compliance with all requirements of M.G.L. c. 149, §§44A et seq. and M.G.L. c. 30. In connection therewith, the Architect shall, with assistance from the Owner, hold a pre-bid conference and keep written notes of the conference. The Architect shall arrange for the

compilation and reproduction of bid documents for distribution to prospective contractors, issuance of addenda, receipt and review of filed sub-bids, tabulation and distribution of filed sub-bid results (if applicable), receipt and review of general bids, preparation of the final construction contract and award and execution of the contract. To the extent permitted by law, the Architect, at the request of the Owner, shall develop and issue separate Contract Documents and bid documents for each phase of the Project, as outlined in the Further Definition of the Scope of Services in **Exhibit A**.

2.5.2 If the lowest bona fide bid from an eligible and responsible bidder satisfactory to the Owner for the construction of the Project pursuant to the approved Construction Documents exceeds the Construction Budget, then, provided that the exceedance is not attributable to delay or some other cause that is not the fault of the Architect, if requested by the Owner, the Architect shall, at its sole cost and expense, revise the Construction Documents to reduce or modify the quality or quantity, or both, of the Work, and assist in re-bidding the Work, so that the Construction Cost of the Project will not exceed the Construction Budget. If the exceedance is attributable to delay or some other cause that is not the fault of the Architect, the Architect will revise the Construction Documents and assist in re-bidding the Work as an Additional Service.

2.5.3 If re-bidding is required for any other reason not the fault of the Architect, the Architect will assist in re-bidding the Work as an Additional Service.

2.6 CONSTRUCTION PHASE —ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Architect's responsibility to provide Services for the Construction Phase under this Agreement shall commence with the award of the construction contract for the Project and terminate upon the earlier to occur of (i) the Owner's written acceptance of the completed Project or (ii) two (2) months from the date of Substantial Completion (as defined in the Contract Documents) of the Project, including the usual and customary assistance in the utilization of equipment and systems, such as start-up, testing, adjusting and balancing. If the Basic Services described in this Agreement are not completed by the date established in **Exhibit E**, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in AIA

Document A201, General Conditions of the Contract, as modified by the Owner, provided that such modifications shall be consistent with the terms of this Agreement (the "Project General Conditions").

2.6.3 As part of Basic Services, and subject to Subparagraph 2.6.1, the Architect shall be a representative of and shall advise and consult with the Owner during construction until final payment to the Contractor is made and from time to time during the correction period described in the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent expressly provided in this Agreement.

2.6.4 Basic Services include assistance with a single construction project and an appropriate number of Site Visits during construction as noted in Subparagraph 2.6.19. Site visits will include a pre-construction conference (following execution of the Owner-Contractor Agreement), visits at appropriate intervals during construction and visits to determine project completion. The Architect shall keep the Owner informed as to the progress and quality of the Work, and shall endeavor to guard the Owner against defects or deficiencies in the Work. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. If the Architect observes or otherwise becomes aware of any fault, defect or deficiency in the Work, or any nonconformance with the Contract Documents, notice thereof shall be given by the Architect to the Owner.

2.6.5 The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility under the Contract for Construction. The Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents, unless and to the extent such failure is caused by errors or omissions of the Architect. The Architect shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

2.6.6 The Architect shall, at all times during the term of this Agreement and to the extent necessary to perform its obligations hereunder, have access to the Project site and the Work.

2.6.7 Based on the Architect's observations of the Work and evaluation of the Contractor's applications for

payment, the Architect shall review and certify the amounts due the Contractor. Such review and certification shall be performed within the time period necessary to permit the Owner a reasonable time to review the certified applications for payment and make timely payment in accordance with Laws and Requirements and the terms of the Contract Documents. The Architect shall, from time to time upon the request of the Owner, issue to the Owner such other certificates, instruments and information in connection therewith as the Owner or any such other party may reasonably require of the Architect.

2.6.8 The Architect's certification of the amount due pursuant to each application for payment shall constitute a representation to the Owner, in accordance with the standards set forth in Subparagraph 1.1.3, that the Work has progressed to the point indicated in the application for payment and that the quality of Work, to the best of Architect's knowledge, information and belief, is in accordance with the Contract Documents. The foregoing representations shall be subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect in such certification. The issuance of a Certificate for Payment shall further constitute a representation by the Architect that the record Drawings maintained by the Contractor are current and that the Contractor is entitled to payment in the amount certified.

2.6.9 The Architect or the Owner shall have the right to reject non-conforming Work. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect shall have authority to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed, provided, however, that the Architect shall obtain the prior written approval of the Owner before ordering any such special inspection or testing. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

2.6.10 The Architect shall keep a log of, and shall review and approve or take other appropriate action upon, the Contractor's submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information

given and determining whether or not the Work, if completed in accordance with the approved submittals, will comply with the requirements of the Contract Documents. Approval by the Architect of submittals is not intended for purposes of determining the accuracy and completeness of other details such as dimensions or quantities, or for substantiating instructions for installation of equipment or systems, all of which shall remain the responsibility of the Contractor. The Architect's review and approval of the Contractor's submittals shall not relieve the Contractor of its obligations with respect to submittals as specified in the Contract Documents. The Architect's action shall be taken with reasonable promptness (and in accordance with any specific requirements contained in the Contract Documents) so as to cause no delay to the Work or in the activities of the Owner, the Contractor or the Owner's Consultants, while allowing sufficient time in the Architect's professional judgment to permit adequate review. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents, unless the Architect discovers or believes that such performance criteria will not be met. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. For purposes of this Agreement, a notation by the Architect of "No Exception Taken" or similar notation on a submittal constitutes an approval.

2.6.11 The Architect shall keep a log of, and shall issue appropriate responses to, requests for information by the Contractor. The Architect's action shall be taken with reasonable promptness (and in accordance with any specific requirements contained in the Contract Documents) so as to cause no delay in the Work, while allowing sufficient time in the Architect's professional judgment to respond appropriately to the request for information. If deemed appropriate by the Architect, the Architect shall prepare supplemental Drawings and Specifications, in response to requests for information from the Contractor or otherwise to clarify the intent of the design of the Project.

2.6.12 As part of its Basic Services, the Architect shall analyze written requests by the Owner or Contractor for changes to the Work, provided such requests are consistent with the original plans and specifications, and the Architect shall report the results of its analysis in writing to the Owner and the Contractor within a reasonable time, but in no case later than seven (7) days after the Architect's receipt of the request. The Architect shall prepare Change Orders and Construction Change

Directives with appropriate supporting documentation and data if deemed necessary by the Architect for the Owner's approval and execution in accordance with the Contract Documents, provided that changes required to the Architect's Instruments of Service in connection with Change Orders or Construction Change Directives will be an Additional Service. The Architect may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time provided that such minor changes are consistent with the intent of the Contract Documents. The Architect shall assist the Owner in evaluating claims submitted by the Contractor or others in connection with the Work, including claims submitted to mediation or other alternative dispute resolution methods.

2.6.13 There may be unforeseen or concealed conditions at the site that may require modification of the Construction Documents. The Architect shall invoice the Owner as an Additional Service for the modifications to the Construction Documents and related services necessary to address unforeseen or concealed conditions.

2.6.14 If the Architect has reason to believe that a concealed condition may exist, the Owner shall authorize and pay for all costs associated with the investigation of such a condition. If (1) the Owner fails to authorize such investigation after due notification, or (2) the Architect has no reason to believe that such a condition exists, the Architect shall not be responsible for the existing condition nor any resulting costs, services, or damages to persons or property.

2.6.15 The Architect shall assist the Owner in developing a schedule of testing and inspection services required in connection with the Project, and a scope of work description for all necessary testing and inspection services. The Owner will engage one or more qualified, independent testing laboratories to perform such services. The Architect will provide customary assistance in the interpretation of the results of tests and inspections. The Architect shall serve as, and perform all functions required to be performed by, a registered professional architect or engineer under the Massachusetts State Building Code, including the services required to be performed by a registered architect or professional engineer under 780 CMR 107.6 – Construction Control, with respect to the Project.

2.6.16 The Architect shall observe the Project from time to time to enable the Architect to determine the dates of both Substantial Completion and final completion of the Project. The Architect also shall review and forward to the Owner for the Owner's review and retention all written warranties and related documents submitted by

the Contractor as required by the Contract Documents. The Architect shall notify the Owner in writing whether the warranties and related documents required by the Contract Documents and assembled by the Contractor are in conformance with the Contract Documents. The Architect shall issue a final Certificate for Payment upon the Contractor's full compliance with the requirements of the Contract Documents. The Architect shall give prompt notice to the Owner if the Architect becomes aware of any material error or omission in the Project or in the Contract Documents. In conducting inspections to determine the date of Substantial Completion, the Architect, in conjunction with the Owner's Representative and the Contractor, shall supplement the list submitted by the Contractor of those items to be completed or corrected as part of the Work required under the Contract Documents. When such list has been finalized and after consultation with the Owner's Representative and the Contractor, the list shall be issued by the Architect with the Certificate of Substantial Completion. If requested, the Architect shall inform the Owner of the Architect's estimate of the cost of final completion or correction of the Work. The Architect's inspection of the Work to determine the date of final completion or correction of the Work. The Architect's inspection of the Work to determine the date of final completion shall include, but not be limited to, an inspection of all of the Work performed by the Contractor pursuant to the list of uncompleted or uncorrected Work previously issued by the Architect. The Architect shall receive from the Contractor and forward to the Owner: (i) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment, and (ii) affidavits, receipts, releases and waivers of claims of liens or bonds indemnifying the owner against liens.

2.6.17 Upon the request of the Owner, the Architect shall interpret the provisions of the Contract for Construction and all documents related thereto (the "Contract Documents") concerning the obligations of the Owner and the Contractor thereunder. All such interpretations by the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be delivered to the Owner in writing promptly and, in all events, no later than ten (10) business days after request therefor.

2.6.18 The Architect and its Consultants shall periodically, and at the conclusion of the Work, review the record as-built Drawings to be maintained (and marked currently to record all changes) by the Contractor, solely to confirm the degree of completion. The Architect shall be entitled to rely upon the accuracy of the Contractor's record as-built drawings.

2.6.19 Construction phase services beyond the following limits shall be provided by the Architect as an Additional Service in accordance with Article 3: (i) up to two (2) reviews of any Shop Drawings, Product Data items, Samples, Field Mockups, Record As-Built Drawings and other required submittals of the Contractor; and (ii) up to twenty (20) Site Visits during construction (per 2.6.4) by the Architect and its Consultants over the duration of the Project.

2.7 OTHER BASIC SERVICES

2.7.1 The Architects shall maintain Project records in an orderly manner, including complete and accurate records of the Architect's observations of construction progress, Project correspondence, applications for payment and certifications for payment, Change Orders, Construction Change Directives, change proposals, deficiency notices, Architect's Supplemental Instructions, Project meeting minutes, submittals including Shop Drawings, Product Data and Samples, requests for information and responses thereto, supplementary Drawings, and such other schedules, reports and other documents as are prepared or received by the Architect and its Consultants in connection with the Project. The Owner and its representative shall have the right to obtain copies of such documents.

ARTICLE 3

ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services and they shall be paid for by the Owner, if and as provided in this Agreement, in addition to the compensation for Basic Services. Prior to performing any service which the Architect claims to be an Additional Service, the Architect shall give written notice to the Owner that such service is an Additional Service, which notice shall include a proposed lump sum or an estimate of the additional compensation payable to the Architect on account thereof including, without limitation, compensation for preparation of any necessary changes to the Drawings, design work, management services, and all other costs, fees and other compensation claimed on account of such services, and an estimate of the amount of time required to perform such services and any modifications of the schedule for the Services or the Project Schedule necessitated thereby. Such service shall not be performed without the Owner's prior approval. If the Owner's approval is given and a lump sum payment on account of such Additional services has not been agreed upon, the compensation payable to the Architect on account of

such Additional Services shall not exceed the estimated compensation therefor proposed by the Architect, nor shall the time for performance of such Additional Services exceed the estimated time proposed by the Architect, without prior approval from the Owner. If the Owner deems that a service proposed by the Architect as an Additional Service is not required, he shall give prompt notice to the Architect. The Architect shall have no obligation to provide such services that have not been authorized by the Owner. Failure of the Architect to obtain the Owner's prior written approval for performance of the Additional Services, or for any change in the estimated compensation or time required therefor as specified above, shall constitute a waiver by the Architect of any claim for any additional compensation or reimbursement with respect to such services.

3.1.2 Services shall be compensated as Additional Services only to the extent that the need for such services is not attributable to and does not arise from the negligent errors or omissions, breach, or wrongful acts of the Architect or its Consultants.

3.2 ADDITIONAL SERVICES

3.2.1 Making material revisions in Drawings, Specifications or other documents when such revisions are (i) inconsistent with approvals or instructions previously given by the Owner, including revisions required by changes in the Construction Budget made by the Owner; provided, however, that services in connection with the Architect's redesign obligations pursuant to Subparagraphs 2.2.9, 2.3.3, 2.4.1 and 2.5.2 shall be provided as a part of Basic Services; or (ii) due to changes required as a result of the Owner's failure to render decisions in a timely manner.

3.2.2 Making revisions in Drawings, Specifications or other documents when such revisions are required by the enactment or revision of codes, laws, regulations or policies subsequent to the preparation of such documents.

3.2.3 Providing services required because of significant changes in the Project, including size, quality, complexity, the method of bidding or negotiating, or the method of contracting for construction, except for changes made in connection with the Architect's redesign obligations as provided in Article 2. If the Architect believes that any proposed change is a significant change in the Project within the meaning of this subparagraph, the Architect shall so notify the

Owner in advance of performing any services related to such change.

3.2.4 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

3.2.5 Providing services made necessary by the default of the Contractor or by major defects or deficiencies in the Work of the Contractor under the Contract for Construction.

3.2.6 Providing financial feasibility or other special studies.

3.2.7 Providing special surveys, studies or services relating to zoning approvals.

3.2.8 Providing services relative to future facilities, systems and equipment not contemplated by the Owner and the Architect on the date hereof as included in the Project.

3.2.9 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

3.2.10 Making valuations or detailed appraisals of existing facilities.

3.2.11 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation, except as provided in Subparagraph 2.6.1.

3.2.12 Providing interior design and similar services in connection with the selection, procurement or installation of movable furniture and furnishings.

3.2.13 Providing services for planning tenant or rental spaces.

3.2.14 Other than as required as a part of Basic Services under this Agreement, providing services after the Architect's responsibility to provide Basic Services for the Construction Phase has terminated pursuant to Subparagraph 2.6.1.

3.2.15 Providing services of consultants other than those listed in **Exhibit B**.

3.2.16 Providing services beyond the completion date established in **Exhibit E**, through no fault of the Architect.

3.2.17 Any public hearings required for variances.

3.2.18 Providing assistance to the Owner in evaluating and applying for funding grants or other financing for the Project.

3.2.19 Providing Construction Phase Services in excess of the limits set forth in Section 2.6.19.

3.2.20 Assisting in the re-bidding of the Work for any reason not the fault of the Architect.

3.2.21 Preparation of changes required to the Architect's Instruments of Service in connection with Change Orders or Construction Change Directives not the fault of the Architect.

3.2.22 Providing any other services not otherwise referenced in this Agreement and not customarily furnished in accordance with generally accepted architectural and engineering practice.

ARTICLE 4

OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide sufficient information regarding requirements for the Project, and consult with the Architect in the Architect's evaluation of the program materials, identifying the Owner's objectives, constraints and criteria. The Owner shall provide the background information as listed in **Exhibit F** to the Architect in a timely fashion.

4.2 The Owner shall consult with the Architect to establish and update the Construction Budget.

4.3 Only the Owner's Representative, as designated by the Owner from time to time, and such other individuals as may be expressly designated in writing from time to time by the Board of Selectmen of Berkley, are authorized to act on the Owner's behalf with respect to the Project, including, without limitation, delivering the Owner's authorizations, approvals, requests, revisions or changes described in Subparagraphs 2.3.1, 2.4.1, 2.5.1, 2.5.2, 3.1.1, 3.2.1 and 3.2.3. The Owner or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's Services. Until such time as the Owner notifies the

Architect to the contrary, the Owner's Representative shall be Anthony M. Sasso, Town Administrator.

4.4 The Owner shall furnish the services of the Owner's Consultants, if any, specified on **Exhibit B** in a timely manner and when and as such services are reasonably required for the implementation of the Project.

4.5 Prompt written notice shall be given by the Owner to the Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

4.6 All certificates or certifications to be executed by the Architect or the Architect's Consultants at the Owner's request shall be submitted to the Architect for review and approval at least ten (10) days prior to the date the Architect is required to execute and return such certificates to the Owner. The Owner shall not request certifications from the Architect that would require knowledge or services beyond the scope of this Agreement. Certifications by the Architect and its Consultants shall be in accordance with the standard of skill and care set forth in Subparagraph 1.1.3.

4.7 The Owner shall furnish all legal, accounting and insurance counseling services as may be determined necessary by the Owner at any time for the Project, including auditing services the Owner may require to verify the Contractor's Applications for Payment.

4.8 The services and information required by paragraphs 4.4 and 4.7 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely thereon.

ARTICLE 5

CONSTRUCTION COST

5.1 DEFINITION

5.1.1 "Construction Cost" shall mean the actual total cost (or the then estimated total cost if the actual cost has not been determined) to the Owner of all elements of the Project designed or specified by the Architect and its Consultants.

5.1.2 The Construction Cost shall include the cost at then-current market rates of labor and materials furnished by the Owner, and materials and equipment designed, specified, selected or specially provided for by the Architect and its Consultants, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies,

approved by the Owner, shall be included to allow for changes in market conditions prior to the time of bidding. If the Construction Cost includes a contingency for changes in the Work during construction, such contingency shall not be less than the contingency for changes in the Work during construction included in the Construction Budget.

5.1.3 Construction Cost does not include the compensation of the Architect and the Architect's Consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner hereunder.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

5.2.1 The Architect's participation in the development of the Construction Budget and estimates of Construction Cost represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, or over contractors' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Construction Budget or from any estimate of Construction Cost or evaluation prepared by the Architect.

5.2.2 The Construction Budget established or approved by the Owner shall be the fixed limit of Construction Cost.

5.2.3 If the Bidding or Negotiation Phase referred to in Paragraph 2.5 hereof has not commenced within ninety (90) days after the date the Architect submits to the Owner the final, approved Construction Documents referred to in Paragraph 2.4, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry in the area where the Project is located between the date of submission of the final Construction Documents to the Owner and the date on which bids or proposals are sought.

ARTICLE 6

USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND DOCUMENTS

6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and its Consultants pursuant to this Agreement (collectively, "Instruments of Service") are instruments

of the Architect's service and the Architect shall be deemed the author of such Instruments of Service and shall retain all common law, statutory and other reserved rights, including the copyright. Upon execution of this agreement, the Architect grants to the Owner legal title to the Instruments of Service in their physical form and grants the Owner a nonexclusive, perpetual, royalty-free right license to copy, distribute and use the Instruments of Service for the construction, reconstruction, renovation, extension, expansion, repair, maintenance, use and occupancy of the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement.. The Architect shall be responsible for obtaining from the Architect's Consultants all license agreements necessary in order for the Architect to grant the License to the Owner. If this Agreement is terminated for any reason prior to completion of the Project, the Owner may use the Instruments of Service in whole or in part, or in modified form, in connection with the completion of the Project, in accordance with Paragraph 6.3 and provided that the Owner has paid Architect all sums due under this Agreement, including termination expenses due under Article 8. Owner shall remove all identification of Architect from the Instruments of Service prior to any use undertaken without the involvement of Architect. The Architect recognizes that the Instruments of Service must not infringe upon the copyright of any third party, and agrees to indemnify and hold the Owner harmless from any loss, damage or expense, including reasonable attorneys' fees, arising from any claimed infringement by the copyright material of any copyright of any third party. The Owner understands that copies of the Instruments of Service in electronic format delivered to the Owner are not official copies of the Instruments of Service (only the paper copies of the Instruments of Service are official). Use of electronic files provided by the Architect are for informational purposes only, and anyone using the information contained in electronic files provided by the Architect shall verify all information and actual Project conditions. These files have been and shall be prepared to conform to the Architect's electronic file standards, and may not run accurately on other equipment or software. The Architect cautions any user of the Electronic Files that subsequent changes may have been made to the Project and/or Contract Documents, which are not reflected on the electronic files. Only final stamped drawings represent an accurate record of the design. The Owner shall release, indemnify and defend the Architect, its officers, agents, and employees from and against all liability arising out of (a) changes to the Architect's Electronic Files made by the Owner or by anyone to whom the Owner might release such files, (b) discrepancies or differences of any kind between any electronic files and hard copies of the Instruments of

Service delivered to the Owner by the Architect, and (c) the failure of any electronic files to run accurately on equipment of software other than those on which they were produced. and The Architect reserves the right to remove its name, title block, professional seal, and all other evidence of ownership from any Project data, including without limitation Drawings and Specifications, submitted to the Owner in electronic form.

6.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or the Owner's reserved rights.

6.3 Use and reuse of the Instruments of Service by the Owner or Owner's representatives without written authorization by the Architect will be at the Owner's risk. The Architect shall not be responsible for changes made in the Instruments of Service by anyone other than the Architect and its Consultants, or for the Owner's use of the Instruments of Service without the participation of the Architect as provided in this Agreement; and the Owner, to the extent permitted by law, shall indemnify and hold harmless the Architect from any claim, liability or cost arising out of any such use or reuse of, or changes to, the Instruments of Service.

ARTICLE 7

DISPUTE RESOLUTION

7.1 Unless otherwise agreed, the Architect shall carry out the Services to be performed under this Agreement in accordance with the terms hereof notwithstanding any claim, dispute or other matter in question arising out of or relating to this Agreement or breach thereof. All such claims or disputes or other matters shall be submitted to a court of competent jurisdiction in Bristol County, Massachusetts, subject to any applicable statute of limitations, on condition that they shall first be submitted to non-binding dispute resolution procedures outlined in Paragraph 7.2 below.

7.2 The Architect and the Owner shall cooperate with the intent that all disputes which arise while this Agreement is executory shall be resolved as expeditiously as possible without adverse impact upon the delivery of the Architect's Services hereunder or delay in the progress of such Services and of construction of the Project. To this end, any dispute or controversy under this Agreement arising prior to completion of construction of the Project shall first be submitted to the Owner's Representative and the Architect's Principal-in-Charge for resolution, if

possible, within five (5) business days. If such parties cannot resolve the dispute within such period it shall be submitted to non-binding mediation conducted by a mutually agreeable mediator under the current Construction Industry Mediation Rules of the American Arbitration Association; provided that neither party shall be required to delay commencing legal action seeking resolution of any claim, dispute or other matter in question if deferral of filing such action would result in such claim, dispute or other matter in question being barred by statutes of limitations or repose. The mediator may join in any such mediation the disputing parties and any other party willing and available to participate who may be necessary for a mutually acceptable resolution of the dispute. Each party shall participate in good faith in all dispute resolutions hereunder. Fees and expenses of the mediator shall be borne equally by the parties. During the pendency of any dispute resolution process, the Architect shall continue to perform its obligations under this Agreement, and the Owner shall continue to make payments to the Architect for all amounts due hereunder that are not, in good faith, disputed by the Owner, or that are not necessary to provide the Owner with fair retention to cover the value of other claims that the Owner shall have asserted against the Architect with regard to the Project.

7.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 8. The Architect's liability to the Owner for all damages to which the foregoing waiver does not apply shall in no event exceed the aggregate amount of all indemnity payments made under any applicable insurance policy.

ARTICLE 8

TERMINATION, SUSPENSION OR ABANDONMENT

8.1 This Agreement may be terminated by either party upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination and such failure is not cured within seven (7) days after receipt of such notice.

8.2 If the Project is suspended by the Owner for more than sixty (60) consecutive days, the Architect shall be compensated for Services performed prior to notice of such suspension. If the Project is resumed, the Architect shall be entitled to equitable additional compensation as a result of such interruption and resumption of the

Architect's Services. However, if the Project is suspended or the Architect's Services are suspended for more than ninety (90) consecutive days, the Architect may terminate the Agreement by giving not less than seven (7) days written notice.

8.3 This Agreement may be terminated by the Owner for its convenience and without cause upon not less than fifteen (15) days' written notice to the Architect.

8.4 Failure by the Owner to make any payment which is not in dispute under this Agreement, subject to Paragraph 10.2.4, within fifteen (15) days after the date the same is due in accordance with this Agreement shall be considered an event of substantial non-performance and the Architect may, after seven (7) days' written notice to the Owner of such failure, terminate performance of Services under this Agreement.

8.5 In the event the Owner terminates this Agreement without cause, or if the Architect terminates this Agreement in accordance with either Paragraph 8.2 or 8.4, the Architect shall be compensated for Services performed prior to termination, together with Reimbursable Expenses, as described in Paragraph 10.1 hereof due and payable on the date of termination. .

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 This Agreement shall be governed by the laws of Massachusetts.

9.2 Any capitalized term appearing herein which is not defined herein shall have the same meaning as such term is given in the Project General Conditions.

9.3 The Architect, at its expense, shall indemnify and hold harmless the Owner (the Town of Berkley, Massachusetts) and any of its boards, committees, subcommittees, and other affiliated or related entities and its or their officials, members, directors, officers and employees from and against all claims, causes of action, suits, losses, damages, liabilities and expenses (including reasonable attorneys' fees) to the extent the same is caused by the negligent acts, errors or omissions of the Architect, its engineers or consultants in performance of Services under this Agreement. The Architect shall cause this indemnity obligation to be insured under its commercial general liability and professional liability insurance policies, as applicable, to the extent that such obligation is covered by generally available policy terms or endorsements and subject to the terms, conditions and exclusions of the Architect's insurance policies. The lack of said coverage shall not relieve the indemnification obligation of the Architect hereunder This indemnification shall survive

the full performance or

earlier termination of this Agreement. It shall, however, expire and be of no further force and effect on the date when an action may no longer be commenced against the Architect under the provisions of M.G.L. chapter 260, Section 2B. The Architect shall specifically include in its agreements with its engineers and consultants an indemnification provision identical in substance to the provisions of this Paragraph 9.3, by which the engineer or consultant agrees to indemnify the Architect and the Owner.

9.4 The Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by property insurance maintained by the Owner or the Architect, as applicable, and only to the extent that such waiver shall not result in a denial or reduction in coverage under such property insurance policies. The Owner and the Architect shall each require similar waivers from their contractors, consultants and agents.

9.5 This Agreement shall be binding upon and inure to the benefit of the Owner and Architect and their respective successors, assigns and legal representatives. Neither the Architect nor the Owner shall directly or indirectly assign this Agreement without the written consent of the other.

9.6 This Agreement represents the entire and integrated agreement between the Owner and Architect 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 Owner and the Architect.

9.7 Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either the Owner or the Architect.

9.8 If the Architect and the Architect's Consultants discover the presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances at the Project site, the Architect shall notify Owner as soon as practicable. Upon receipt of such notice, the Owner shall retain a Licensed Site Professional (LSP) at its sole expense, to determine whether the Architect's continued performance of any of its Services hereunder could expose the Architect to loss, damage or liability as a result of the presence of such hazardous materials. If the LSP so determines, the Architect may, upon reasonable prior notice to the Owner, suspend performance of those of its Services affected thereby until adequate

arrangements are made by the Owner to remediate the hazardous materials.

9.9 Any and all notices, demands, consents, approvals, offers, elections and other communications required or permitted under this Agreement shall be given in writing and the same shall be delivered either in hand, by telecopier with written acknowledgment of receipt, or by mail or Federal Express or similar expedited commercial carrier, addressed to the recipient of the notice, postpaid and registered or certified with return receipt requested (if by mail), or with all delivery charges prepaid (if by Federal Express or similar carrier).

All notices required or permitted to be sent hereunder shall be deemed to have been given for all purposes of this Agreement upon the date of acknowledged receipt, in the case of a notice by telecopier, and, in all other cases, upon the date of receipt or refusal, except that whenever under this Agreement a notice is either delivered on a day which is not a business day or is required to be delivered on or before a specific day which is not a business day, the day of receipt or required delivery shall automatically be extended to the next business day.

All such notices shall be addressed, if to the Owner to:

Town of Berkley
1 North Main Street
Berkley MA 02779

Attention: Paul Modlowski, Executive Secretary

and if to the Architect, to:

Attention: _____

By notice given as herein provided, the parties hereto and their respective successors and assigns shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses effective upon receipt by the other parties of such notice and each shall have the right to specify as its address any other address within the United States of America.

9.10 No action by the Owner or the Architect pursuant to this Agreement or with respect to the Project shall operate as a waiver of any rights under this

Agreement, except as expressly provided herein. This provision shall survive the termination of this Agreement.

9.11 No official, member, director, officer, consultant, trustee, joint venturer, partner, beneficiary, employee, volunteer, agent or representative of the Owner or any affiliate or related entity of the Owner shall be personally liable to the Architect under any term or provision of this Agreement for the Owner's payment obligations or otherwise, or because of any breach hereof, the Architect agreeing to look solely to the assets of the Owner for the satisfaction of any liability of the Owner hereunder. Likewise, no person affiliated with the Architect or its consultants shall be personally liable to the Owner under any term or provision of this Agreement because of any breach hereof.

9.12 Duties, responsibilities and limitations of authority of the Architect under any provision of this Agreement shall not be restricted, modified or extended except by the written agreement of the Owner and the Architect.

9.13 Except as expressly provided for herein, 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. The rights and remedies of the Owner provided for under this Agreement are in addition to and not in limitation of any other rights or remedies provided by law or in equity.

9.14 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.

9.15 The provisions of Article 6, Article 7, Paragraph 9.3, Paragraph 9.9, Paragraph 9.10, Paragraph 9.11, Paragraph 12.1, Paragraph 12.15, and any other provisions of this Agreement that by their terms or by implication are intended to continue in effect after the expiration (full performance) or earlier termination of this Agreement, shall survive the expiration (full performance) or termination for any reason of this Agreement.

ARTICLE 10

PAYMENTS TO THE ARCHITECT

10.1 REIMBURSABLE EXPENSES

10.1.1 Reimbursable Expenses, which are in addition to compensation for Basic and Additional Services, shall mean those expenses incurred by the Architect and the Architect's employees and Consultants in the interest of

the Project and described in Subparagraphs 10.1.1.1 through 10.1.1.5 below; provided, however, that in no event shall the Owner have any obligation to reimburse the Architect for any expenses incurred (i) in connection with the preparation of the Architect's response to the Owner's request for proposals; or (ii) more than one hundred and twenty (120) days prior to presentation to the Owner of the Architect's application for payment of such expenses.

10.1.2 The Owner shall not be responsible for any of the following charges: charges for mileage expenses of travel between the offices of the Architect and the offices of the Owner or the Project site, and other out-of-town travel; long-distance communications, communication, telephone and telecopier expenses between the offices of the Architect and the offices of the Owner or the Project site shall also not be considered a reimbursable expense; The Owner shall be responsible for filing and application fees paid for securing approval of authorities having jurisdiction over the Project. .

10.1.3 Expense of reproduction and delivery of Drawings, Specifications and other documents. Reproduction work done in-house will be charged at competitive rates provided, however, that the Architect shall provide two (2) set of documents required hereunder to the Owner without additional charges.

10.1.4 If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates (only the difference between the regular rates and the overtime rates is reimbursable).

10.1.5 Expense of renderings, models, photography and mock-ups requested by the Owner.

10.2 PAYMENTS ON ACCOUNT OF BASIC SERVICES

10.2.1 Payments for Basic Services shall be made monthly and in accordance with Article 11.

10.2.2 The Architect shall submit to the Owner a monthly Request for Payment, in form and substance satisfactory to the Owner. Each Request for Payment shall set forth the amount due on account of Basic Services, Additional Services and Reimbursable Expenses for the preceding month and shall contain a

detailed breakdown of each amount, the sum of all prior payments, and such other information required under this Article 10. The Owner shall review each such Request for Payment, and may make such exceptions or adjustments as the Owner reasonably considers necessary. Within twenty-one (21) days after submission of each such Request for Payment to the Owner, the Owner shall make payment to the Architect in the amount payable in accordance with the provisions of this Agreement subject to Subparagraph 10.2.4 below. The cumulative amounts of such progress payments to the Architect shall not exceed the amounts specified or allocated for each Phase of the Architect's services in Subparagraph 11.1.2.

10.2.3 Promptly after the termination of the Construction Phase and completion of the Architect's Services hereunder, the Architect shall submit a final Request for Payment which shall set forth all amounts due and remaining unpaid to the Architect, and, upon approval thereof by the Owner, the Owner shall pay to the Architect the amount due thereunder.

10.2.4 Any provision of this Agreement to the contrary notwithstanding, the Owner shall not be obligated to make any payment (whether a progress payment or final payment) to the Architect hereunder if any one or more of the following conditions exists:

.1 The Architect is in material default of any of its obligations hereunder;

.2 Any part of such payment is attributable to services which are not performed in accordance with this Agreement; provided, however, that payment shall be made as to the part thereof attributable to services which were performed in accordance with this Agreement

If the Owner believes that the conditions described in clauses 1 or 2 above exist and withholds all or a portion of a payment requested by the Architect hereunder, then the Architect may proceed to invoke the dispute resolution process provided in Paragraph 7.2 immediately to decide the matter on any fast track options available, and the mediator shall decide whether the above-stated conditions exist and if they do how much of the payment withheld is attributable to such condition(s), and if the mediator determines that such conditions do not exist then the Owner shall pay the Architect the amount withheld within five (5) business days. The mediator shall issue his or her decisions in writing. Any party aggrieved by a decision of the mediator may bring an action in court as provided in Paragraph 7.1.

10.2.5 No progress payment made shall be construed as final acceptance or approval of that part of the Services to which such progress payment relates, or relieve the Architect of any of its obligations hereunder. The Architect shall promptly pay all bills for labor and materials performed and furnished by others in connection with the performance of services.

10.3 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

10.3.1 Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred, together with such substantiation therefore as the Owner may reasonably require. The Town shall not pay any mark up on out of pocket, reimbursable or additional service charges. The Town shall pay only the direct cost to the Architect.

10.4 PAYMENTS WITHHELD

10.4.1 No deduction shall be made from the Architect's compensation, except for disputed amounts which may be owed to the Architect hereunder on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work.

10.5 ARCHITECT'S ACCOUNTING RECORDS

10.5.1 The Architect shall keep detailed records of all Reimbursable Expenses and all charges for Basic Services and Additional Services to the extent that such charges are calculated on the basis of billable hourly rate(s) of the applicable employee(s). Such records shall, to the extent required by applicable law, be kept in accordance with generally accepted accounting principles and shall be made available to the Owner or the Owner's authorized representative at the Architect's office or at another mutually agreeable location upon seven days prior notice during the term of this Agreement and thereafter as provided herein or required by law.

ARTICLE 11

BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

11.1 BASIC COMPENSATION

11.1.1 For Basic Services as described in Article 2 and other applicable provisions of this Agreement, Basic

Compensation shall as set forth in **Exhibit A**.

11.1.2 Payments for Basic Services shall be made in proportion to the services performed. The elements of the Basic Services are set forth in **Exhibit A**.

11.2 COMPENSATION FOR ADDITIONAL SERVICES

11.2.1 At the option of the Owner, compensation to the Architect on account of Additional Services shall be on either (i) a lump sum basis or (ii) the basis of hourly billing rates set forth in **Exhibit D**, which billing rates are all-inclusive, or other billing rates agreed upon by the Owner and the Architect. Whenever possible, and unless the Owner otherwise agrees in writing, compensation to the Architect on account of Additional Services shall be on the basis of agreed lump sum amounts. Unless otherwise stated in the Owner's written authorization for the performance of Additional Services, the Architect may request payment for Additional Services on a monthly basis based upon the services performed and costs incurred by the Architect.

11.2.2 The billable hourly rates of the Architect's and its Consultants' principals and employees as set forth on **Exhibit D** may not be increased during the life of the contract.

11.3 REIMBURSABLE EXPENSES

11.3.1 For Reimbursable Expenses, as described in Paragraph 10.1, the reimbursement amount payable by the Owner shall be on a direct cost basis and shall not be marked up.

ARTICLE 12

OTHER CONDITIONS OR SERVICES

12.1 The Architect shall maintain at the Architect's expense, and shall file with the Owner a certificate evidencing, professional liability insurance issued by an insurance company admitted to conduct business in Massachusetts or a non admitted company listed on the Massachusetts Insurance Commissioner's approved list and otherwise acceptable to the Owner having minimum limits of \$1,000,000.00 for each claim and \$1,000,000.00 annual aggregate. Such professional liability insurance shall have a deductible not in excess of \$50,000.00, for which the Owner shall not be responsible, shall cover the

negligent professional errors, omissions and acts of the Architect or of any Consultant or other person or business entity engaged by the Architect to provide services in connection with this Agreement or for whose performance the Architect is legally liable, and shall remain in full force and effect from the date hereof until substantial completion of the Project and for a period of six (6) years following completion of the Architect's Services provided pursuant to this Agreement. Architect shall notify Owner of any cancellation or alteration to the policy at least thirty (30) days before such change or cancellation by the Architect. The Architect shall notify the Owner within five (5) business days of receiving a cancellation notice from the insurer. The Architect shall also maintain statutory workers' compensation coverage and occupational disease insurance in accordance with the laws of the Commonwealth of Massachusetts; employer's liability insurance coverage with limits not less than \$100,000.00 each occurrence; automobile liability insurance, including coverage for owned, leased, hired, and non-owned vehicles with limits not less than \$1,000,000.00 combined single limit per accident; general liability insurance including contractual liability coverage with limits not less than \$1,000,000.00 each occurrence and \$2,000,000 aggregate; and valuable papers insurance coverage. The Architect shall require its engineers and Consultants to maintain appropriate insurance coverages, in amounts reasonably acceptable to the Owner. The Owner shall be included as additional insureds on the Architect's insurance policies, except for professional liability and workers' compensation. The Architect shall deliver signed original insurance certificates to the Owner evidencing all of the foregoing insurance at the execution of this Agreement and on an annual basis thereafter, and shall, if requested by the Owner, deliver to the Owner originals or certified copies of the required insurance policies.

12.2 The Architect shall not employ additional consultants not identified in **Exhibit B**, nor sublet, assign or transfer any part of its Services or other obligations under this Agreement without the prior approval and written consent of the Owner. Written consent shall not in any way relieve the Architect from its responsibility for the professional and technical accuracy and the coordination of all data, designs, Drawings, Specifications, estimates and other work or materials furnished hereunder.

12.3 The Architect agrees as follows:

12.3.1 In connection with the performance of the Services under this Agreement, the Architect shall not discriminate against any employee or applicant for employment because of race, color, religion, creed,

national origin, ancestry, age, gender or disability. The Architect 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.

12.3.2 In connection with the performance of Services under this Agreement, the Architect shall not discriminate in its relationships with consultants or suppliers on the basis of race, color, religion, creed, national origin, ancestry, age, gender or disability. In all the Architect's solicitations for bids or proposals it shall notify in writing each potential consultant or supplier of the Architect's obligations under this Paragraph 12.3, and it shall be a term of each contract with a consultant or supplier in connection with the performance of the Services under this Agreement that the consultant or supplier shall be bound to non-discrimination and equal opportunity requirements equivalent to the obligations of the Architect hereunder.

12.3.3 The Architect 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 as well as the requirements of the Owner. The Architect shall be subject, at the request of the Commission, to the Commonwealth's Supplemental Equal Employment Opportunity, Anti-discrimination and Affirmative Action Program, appropriately adapted by the Commission.

12.3.4 The Architect's non-compliance with any provision of this Paragraph 12.3 shall constitute a material breach of this Agreement, for which the Owner may, in its discretion, upon failure to cure said breach within thirty (30) days after written notice thereof, terminate this Agreement upon ten (10) days written notice. The Architect shall indemnify and hold harmless the Owner from any claims and demands of third parties resulting from the Architect's non-compliance with any of the provisions of this Paragraph 12.3 and in case of termination or cancellation of this Agreement, the Architect shall indemnify the Owner during the remainder of the original term against any loss and damage suffered by reason of such termination.

12.4 By execution of this Agreement, the Architect incorporates herein by reference the truth-in-negotiation certificate filed with the Owner, and hereby confirms:

12.4.1 The wage (salary) rates and other costs used to support the Architect's compensation are accurate, complete and current at the time of contracting; and

12.4.2 The Architect agrees that the compensation hereunder may be adjusted within one (1) year of final completion of this Agreement to exclude any significant amounts if the Owner determines that the compensation was increased by such amounts due to inaccurate or incomplete wage (salary) rates or other costs.

12.5 By execution of this Agreement, the Architect, 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 undersigned on the Architect's behalf, filed all state tax returns and paid all state taxes required under law.

12.6 The Architect acknowledges that the Owner is a municipality for the purposes of Chapter 268A of the Massachusetts General Laws (the Massachusetts conflict of interest statute), and the Architect 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 Architect based on said statute.

12.7 If necessary, life cycle cost estimates for the Project shall be obtained at an initial stage and as a regular part of the services to be performed under this Agreement, in accordance with M.G.L. c. 149, § 44M.

12.8 This Agreement is governed by the provisions of M.G.L. c. 7, § 38A½ et seq. (the "Act"); if any provision of this Agreement is inconsistent with the Act, or with any other applicable law or regulation, the provisions of the Act or such other applicable law or regulation shall govern.

12.9 The Architect agrees to cooperate with the Owner and the Owner's Consultants to facilitate any value engineering reviews the Owner is required to obtain pursuant to the Act.

12.10 The Architect hereby certifies that it has not given, offered or agreed to give, any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement.

12.11 The Architect hereby certifies that none of its Consultants or subcontractors have given, offered or agreed to give, any gift, contribution or offer of employment to the Architect or to any other person, corporation or entity as an inducement for, or in connection with, the award to the Consultant or subcontractor of a contract by the Architect.

forth

12.12 The Architect hereby certifies that no person, corporation or other entity, other than a bona fide full-time employee of the Architect, has been retained or hired to solicit for, or in any way assist, the Architect in obtaining this Agreement upon an agreement or understanding that such a person, corporation or other entity be paid a fee or other consideration contingent upon the award of the Agreement.

12.13 The Architect shall thoroughly acquaint its employees and Consultants with all provisions of the Massachusetts General Laws governing the conduct of public construction projects, including but not limited to M.G.L. c. 149 and c. 30.

12.14 When the Architect receives payment from the Owner, the Architect shall promptly make payment to each Consultant whose work was included in the Services for which payment was made by the Owner.

12.15 The Architect shall comply with M.G.L. c. 30, § 39R. Without limitation, the Architect hereby certifies that it has internal accounting controls as required by M.G.L. c. 30, § 39R(c) and that the Architect has filed and will continue to file an audited financial statement as required by subsection (d) of said Section 39R. Chapter 30, § 39R further requires that every contract awarded pursuant to the Act shall provide that:

12.15.1.1 The entity awarded the contract (as used in this Paragraph, the “Contractor”) shall make, and keep for at least six years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Contractor.

12.15.1.2 Until the expiration of six years after final payment, the Owner, the Office of the Inspector General of Massachusetts and the Massachusetts Commissioner of Capital Asset Management and Maintenance shall have the right to examine any books, documents, papers or records of the Contractor or of its subcontractors that directly pertain to, and involve transactions relating to, the Contractor or its subcontractors.

12.15.1.3 The Contractor shall describe any change in the method of maintaining records or recording transactions which materially affects any statements filed with the Owner, including in the Contractor’s description the date of the change and reasons therefor, and shall accompany said description with a letter from the Contractor’s independent certified public accountant approving or otherwise commenting on the changes.

12.15.1.4 The Contractor has filed a statement of management on internal accounting controls as set

in Paragraph 12.16 below prior to the execution of this Agreement.

12.15.1.5 The Contractor has filed prior to the execution of this Agreement and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in Paragraph 12.18 below.

12.16 The Contractor shall file with the Owner a statement of management as to whether the system of internal accounting controls of the Contractor and its subsidiaries reasonably assures that:

.1 transactions are executed in accordance with management's general and specific authorization;

.2 transactions are recorded as necessary:

(a) to permit preparation of financial statements in conformity with generally accepted accounting principles; and

(b) to maintain accountability for assets;

.3 access to assets is permitted only in accordance with management's general or specific authorization;
and

.4 the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any difference.

12.17 The Contractor shall also file annually with the Owner a statement prepared and signed by an independent certified public accountant, stating that such accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to:

.1 whether the representations of management in response to this paragraph and Paragraph 12.15 above are consistent with the result of management's evaluation of the system of internal accounting controls; and

.2 whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the Contractor's financial statement.

12.18 The Contractor shall annually file with the Owner (and with such other agencies as are required by

applicable law) during the term of this Agreement, a financial statement prepared by an independent certified public accountant on the basis of an audit by such

accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report.

This Agreement entered into as of the day and year first written above.

TOWN OF BERKLEY

ARCHITECT

B
y (y:
: S

(Signature)

(Printed name and title)

(Printed name and title)

APPROVED AS TO
FORM:

Town Counsel

Date

CERTIFICATION AS
TO AVAILABILITY OF
FUNDS:

Accountant Town

Da

