

TOWN OF PLYMOUTH
PROCUREMENT DIVISION
11 LINCOLN STREET
PLYMOUTH, MASSACHUSETTS 02360

BID 21532, HARBOR MASTER FACILITY DESIGNER

Issued: June 16, 2015
Pre-Bid: June 22, 2015, at 1:30 p.m.
Due: July 1, 2015, at 11:00 a.m.

TOWN OF PLYMOUTH
11 Lincoln Street
Plymouth, Massachusetts 02360

REQUEST FOR PROPOSAL 21532
DESIGN SERVICES FOR HARBOR MASTER FACILITY

June 16, 2015

I. GENERAL INFORMATION

The Town of Plymouth requests proposals from qualified registered architects or engineers to provide professional services to include, but not be limited to, complete design development, projected cost estimates, final bid and construction documents, oversight of bidding, and construction oversight for the construction of Harbor Master Facility.

Specifications are available online at <http://www.plymouth-ma.gov/current-bids/> or in the Procurement Office, 11 Lincoln St, Plymouth, MA, 0236. The office hours are M-F 7:30 am-4:00 pm. Call first for availability at 508-747-1620 x210.

All interested parties must submit a proposal in the form and in accordance with the criteria, prescribed in this RFP by 11:00 a.m., Wednesday, July 1, 2015. The proposal will be submitted as one (1) set of unbound original materials containing an original signature of the firm's principal, eight (8) copies of the same which shall be bound, and one (1) electronic copy.

II. BACKGROUND

The Town of Plymouth's Harbor Master's 'shack' is currently located on the edge of the Town Wharf overlooking Plymouth Harbor. The building is staffed year-round by four full-time personnel, however, many seasonal employees are added for the summer months. They are responsible for all operations in the harbor area and waterways throughout the Town.

The Department has received a grant to design a new, larger building at the State Boat Ramp to provide more services to the public and transient boaters. The new location will facilitate greater oversight of the boat ramp, breakwater and aquaculture development zone while providing additional amenities including public restrooms and transient boating facilities within Plymouth Harbor.

III. PROJECT DESCRIPTION

The project is for the design of a new building to house the Harbor

Master's office space, meeting room space, storage space, public restrooms, and facilities for transient boater. Other identifiable amenities would include security lighting and ice machine capabilities. The project should be designed with a historic New England harbor theme.

Primary considerations are: survivability, communications, and security.

The design:

- shall meet all applicable FEMA requirements new building construction;
- shall connect to existing sewer utilities in the area;
- shall connect to existing water utilities in the area;
- shall include necessary re-design of the parking lot for a no net loss of parking spaces;
- shall comply with all applicable stormwater regulations;
- shall include solar power capability to reduce energy costs
- shall include entry and exit points from the new construction into the existing walkways and parking areas;
- shall address landscaping as required to address the construction; shall be designed to be sustainable in this environment
- shall adjust drainage to accommodate the site changes;
- will include proper exterior lighting for the facility;
- must include computer cabling and connection points at multiple areas as well as provisions for an extensive telephone bank;
- uninterrupted back up electrical supply, sufficient to handle the new construction;
- will require multi-level security that can adapt to regular daily operations and be able to provide a secure, lock down facility during emergency operations.
- include the following minimum interior features in the new construction:
 - A communications room to contain all radio transceivers
 - An IT room for computer servers
 - Storage room(s)
 - A conference room
 - Office(s)

IV. SCOPE OF SERVICES

The designer will provide all services to assist the Town in the planning, design, and administration of this project. The general scope of work shall include, but not be limited to, the following tasks:

A. Design Phase

The firm selected will be required to furnish all labor, transportation, material, equipment, insurance, and required permits to perform, including the following:

1. Provide all services necessary to complete applications and acquire all applicable permits for the project;
2. Provide all architectural and engineering services to develop drawings, finish schedules, specifications, and estimates for the project, and assemble bid packages;
3. Support the bidding process, including assistance in review of contractors and assistance in the selection of contractors and other bidders.
4. The design and an estimated construction cost shall be completed within forty five (45) calendar days of award;
5. Attendance at design phase meetings with Town boards, committees, weekly, or as required by the Building Committee.

B. Construction Phase

The firm selected will be required to perform the following construction administration services, including, but not limited to:

1. Preparation of bid specifications, plans, and contracts; assistance in review of contractor's qualifications during the bid process; assistance in the selection of contractors and other bidders; preparation and administration of contract with the selected contractor(s);
2. Assistance in review of contractor's submittals and recommendations to the awarding authority and/or Building Committee;
3. Attendance at pre-construction and construction phase meetings with Town boards, committees, and contractor, weekly, or as required by the Building Committee;
4. Weekly inspection of the site and inspection as required by state statute governing controlled construction;
5. Review of requisitions for payment;
6. Ensure compliance with specifications;
7. Ensure compliance with all federal, state, and local statutes, regulations, ordinances, rules, and Plymouth By-laws, including the Americans with Disabilities Act;
8. Final inspection, project closeout, and report;

9. Upon completion of construction, prepare record drawings and Auto Cad CD Rom containing pertinent information revised during the course of construction.

V. PROPOSAL SUBMISSION REQUIREMENTS

A. One (1) unbound original, eight (8) bound copies, and one (1) electronic copy of the proposal must be submitted no later than 11:00 a.m., Wednesday, July 1, 2015. Proposals should be submitted to and addressed as follows:

Town of Plymouth
ATTN: Procurement Officer
Town Office Building
11 Lincoln Street
Plymouth, MA 02360

Postmarks will not be considered. It is the sole responsibility of the proposer to insure that their proposal arrives on time at the designated place.

B. Proposals should be clearly marked:
"Harbor Master Designer"

C. Complete proposals must include the following:

1. An expanded scope of services for all work required;
2. Completed Designer Selection Board Application - only Commonwealth of Massachusetts Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction (updated May 2014) will be accepted. Please include any trade/industry certifications (e.g. LEEDS) or affiliations;
3. A listing of all current and past public and private projects of a similar nature with name and telephone number of reference person to contact. Provide detailed description of at least two (2) similar projects completed in the last three (3) years. Photos may also be submitted;
4. A listing of projects completed within the last five (5) years. Provide a brief outline of project requirements, design response, estimated vs. actual construction cost, estimated vs. actual completion date, and any other pertinent information;
5. A general company/firm profile or brochure and list of key personnel who will participate on this project with resumes included;
6. The identification of any and all consultants who will work with the applicant with resumes attached; please identify the

individual who will bear primary responsibility for this project;

7. Conditions of proposal offered, if any;
8. Statement of any legal administrative proceedings pending or concluded adversely to the proposer within the past five (5) years that relate to the proposer's performance of this type of work;
9. Appropriate certificates of insurance;
10. Evidence of financial stability;
11. Any other information that the proposer considers relevant for the purpose of evaluating its qualification for the project.

ALL PROPOSALS MUST BE COMPLETE TO BE CONSIDERED BONA FIDE

VI. SELECTION PROCESS

A. Each proposal submitted to the Town will be reviewed by the Designer Selection Board for completeness. Any proposal that fails to meet any of the minimum qualifications will be rejected as non-responsive. Any proposal that contains significant conditions or changes may also be rejected as non-responsive.

Proposals will be reviewed and ranked by the Board according to the following criteria:

1. Prior experience with similar projects; specifically, successful completion of similarly sized projects;
2. Past performance on public projects and working knowledge of Chapter 149 of the M.G.L. relating to public construction projects;
3. Financial stability of proposer;
4. Professional qualifications of staff and consultants who will work on the project;
5. Current workload or clearly established capacity to complete scope of work on a qualitative, timely basis;
6. Reliability in cost estimating for public construction projects including the estimate to low bid price and bid price to final construction cost;
7. Record of projects being completed as designed, on time and within budget and the degree of satisfaction of owner;

8. Completeness of proposal submitted by each firm; and

9. Any other criteria that the Board considers relevant to the project.

B. Based upon the ranked proposals, the Board will select at least three (3) firms, ranked according to preference, to be interviewed jointly by the Board and the Building Committee.

C. In accordance with those interviews, the Designer Selection Board will then rank those finalists and make a recommendation of award to the Town Manager as the awarding authority on this project. If the Town is unable to negotiate a contract, including the fee, with the top-ranked finalist, the Town will then commence negotiations with the next ranked finalist and so on, until a contract is successfully negotiated and approved by the Town Manager.

D. During the evaluation or interview process, the Board reserves the right to request additional information or clarification from any proposer, or to allow corrections of errors or omissions.

VII. GENERAL AND SPECIAL PROVISIONS

A. The Town reserves the right to reject any and all proposals, waive informalities, and to award contracts as may be in the best interests of the Town.

B. Ownership of Documents: All proposals, materials, drawings, plans, etc. shall become the property of the Town and may be disposed of without notification and shall be considered public information. These documents shall be provided in electronic and paper formats.

C. The proposer selected shall be expected to comply with all applicable federal and state laws in the performance of services.

D. The consideration of all proposals and subsequent selection of the successful proposer shall be made without regard to race, color, sex, age, handicap, religion, political affiliation or national origin.

E. The successful proposer shall adhere to the provisions of the Fair Employment Practices Law of the Commonwealth (Chapter 151B of the M.G.L.).

F. The provisions relating to non-discrimination and affirmative action in employment shall flow through all contracts and subcontracts that the successful proposer may receive or award as a result of this contract.

G. Services provided by the successful bidder shall be rendered through the Town's standard contract for designer services; the successful proposer will not be considered an employee of the Town and will not receive any benefits of an employee.

H. Insurance Requirements:

1. The firm selected shall carry and continuously maintain until completion of the Contract, insurance as specified below and in such form as shall protect him performing work covered by this Contract, or the Town of Plymouth and its employees, agents and officials, from all claims an liability for damages for bodily injury, including accidental death, and for property damage, which may arise from operations under this Contract. The firm selected covenants and agrees to hold the Town and its employees, agents and officials harmless from loss or damage due to claims for personal injury and/or property damage arising from, or in connection with operations under this Contract.
2. Except as otherwise stated, the amounts of such insurance shall be for each policy, not less than:
 - (1) **General Liability** of at least \$1,000,000 Bodily Injury and Property Damage Liability; Combined Single Limit with a \$2,000,000 Annual Aggregate Limit. **The Town and Engineer shall be named as an "Additional Insured"**. Products and Completed Operations should be maintained for up to 3 years after the completion of the project.
 - (2) **Automobile Liability** of at least \$1,000,000 Bodily Injury and Property Damage per accident. **The Town and Engineer shall be named as an "Additional Insured"**.
 - (3) **Workers' Compensation Insurance** as required by law.
 - (4) **Professional Services Liability/Errors and Omissions** coverage in an amount no less than \$2,000,000;
 - (5) **Umbrella Liability** of at least \$3,000,000/ occurrence, \$3,000,000/aggregate. **The Town and Engineer shall be named as an Additional Insured.**
3. All policies shall be so written that the Owner will be notified of cancellation or restrictive amendment at least fifteen (15) days prior to the effective date of such cancellation or amendment. A certificate from the successful bidder's Insurance Carrier showing at least the coverage and limits of liability specified above and expiration date shall be filed with the Owner before operations are begun.
4. Such certificates shall not merely name the types of policy provided, but shall specifically refer to this Contract and shall state that such insurance is required by this Contract. The successful bidder shall make no claims against the Town of Plymouth or its officers for any injury to any of his officers or employees or for damage to its trucks or equipment arising out of work contemplated by this Contract.

5. The successful bidder shall, to the maximum extent permitted by law, indemnify and save harmless the Town of Plymouth, its officers, agents and employees from and against any and all damages, liabilities, actions, suits, proceedings, claims demands, losses, costs and expenses (including reasonable attorney's fees) that may arise out of or in connection with the work being performed or to be performed by the Contractor, his employees, agents, sub-contractors or materialmen. The existence of insurance shall in no way limit the scope of this indemnification. The Contractor further agrees to reimburse the Town of Plymouth for damage to its property caused by the Contractor, his employees, agents, sub-contractors or materialmen, including damages caused by his, its or their use of faulty, defective or unsuitable material or equipment, unless the damage is caused by the Town of Plymouth's gross negligence or willful misconduct.

VIII. FEE

To be negotiated between the Town Manager and successful proposer for each project. Before negotiations, the successful proposer will be expected to submit a cost proposal reflecting costs per task, hourly rates for personnel and sub-consultants, markup, and any other costs.

IX. ATTACHMENTS

- A. Attachment A and Other Submittals Required to be Returned with Proposal
- B. 2014 Designer Selection Board Application
- C. Town's Standard Designer Contract

ATTACHMENT A

Non-Collusion and Certification of Tax Payment

NON-COLLUSION AND TAX COMPLIANCE CERTIFICATION

THE UNDERSIGNED BIDDER HEREBY CERTIFIES UNDER THE PAINS AND PENALTIES OF PERJURY THE FOLLOWING:

This bid in all respects is bonafide, fair, and made without collusion or fraud with any The Contracting Party has complied with all laws of the other person. As used in this paragraph, the word PERSON shall mean any natural person, joint venture, partnership, corporation, or other business or legal entity.

The Contracting Party has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support in accordance with MGL Chapter 62C, Section 49A.

Date: _____

(Corporation Name)

(Name and Title)

(Signature)

(Business Street Address)

(Business Mail Address, if different from
above)

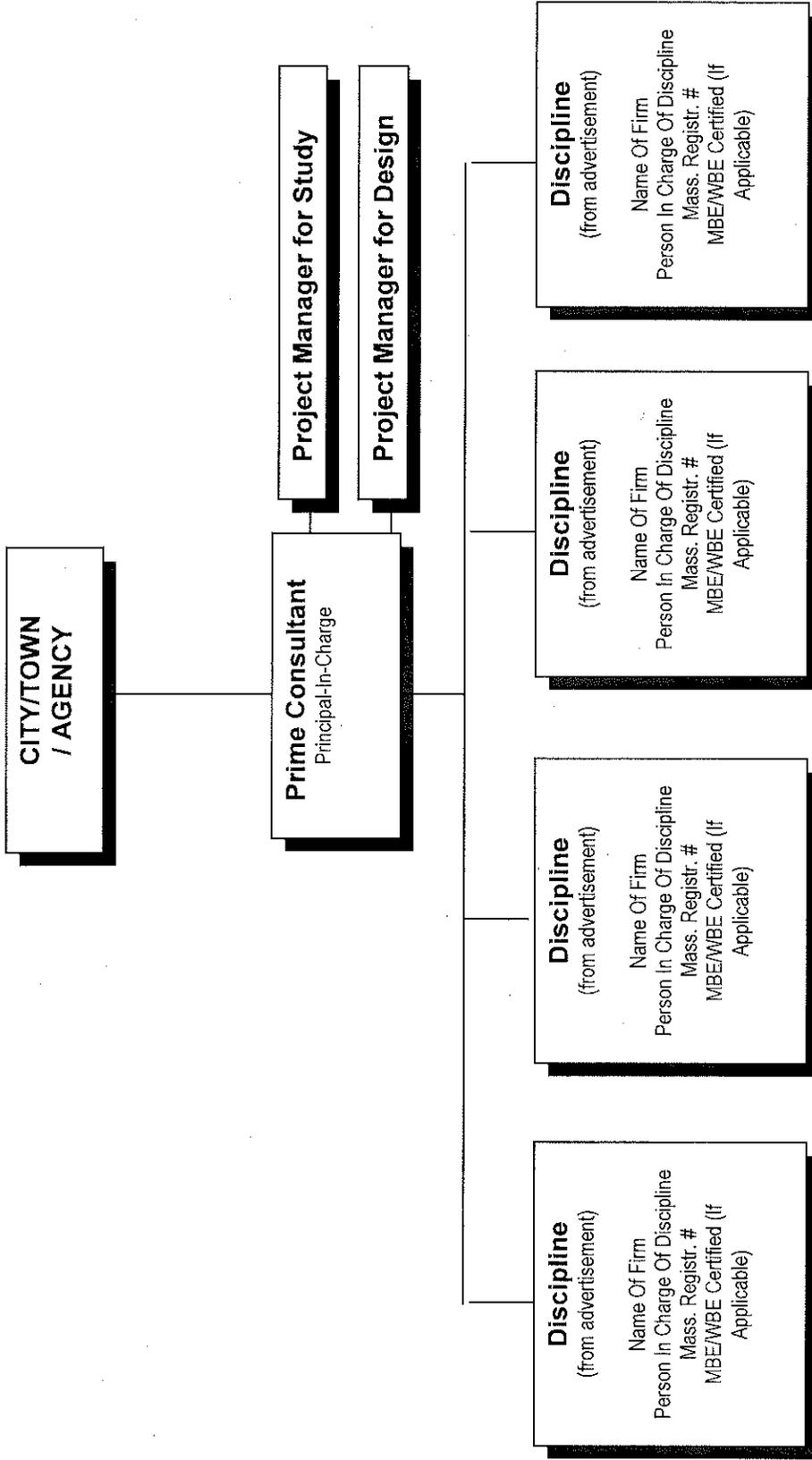
(City, State, Zip Code)

(Telephone Number)

ATTACHMENT B

2014 Standard Designer Application Form for
Municipalities and Public Agencies Not Within DSB Jurisdiction

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



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

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

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

Sub-Consultant Name:

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

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

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

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

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

Be Specific -- No Boiler Plate

11. Professional Liability Insurance:				
Name of Company	Aggregate Amount	Policy Number	Expiration Date	
12.	Have monies been paid by you, or on your behalf, as a result of Professional Liability Claims (in any jurisdiction) occurring within the last 5 years and in excess of \$50,000 per incident? Answer YES or NO. If YES, please include the name(s) of the Project(s) and Client(s), and an explanation (attach separate sheet if necessary).			
13.	Name Of Sole Proprietor Or Names Of All Firm Partners and Officers:			
Name a. b. c.	Title	MA Reg #	Status/Discipline	Name d. e. f.
14.	If Corporation, Provide Names Of All Members Of The Board Of Directors:			
Name a. b. c.	Title	MA Reg #	Status/Discipline	Name d. e. f.
15.	Names Of All Owners (Stocks Or Other Ownership):			
Name And Title a. b. c.	% Ownership	MA Reg.#	Status/Discipline	Name And Title d. e. f.
16.	I hereby certify that the undersigned is an Authorized Signatory of Firm and is a Principal or Officer of Firm. I further certify that this firm is a "Designer", as that term is defined in Chapter 7C, Section 44 of the General Laws, or that the services required are limited to construction management or the preparation of master plans, studies, surveys, soil tests, cost estimates or programs. The information contained in this application is true, accurate and sworn to by the undersigned under the pains and penalties of perjury.			
Submitted by (Signature)	Printed Name and Title	Date		

ATTACHMENT C

Town's Standard Designer Contract

TOWN OF PLYMOUTH
Contract for Designer Services

PROJECT TITLE: RFP 21532, Harbor Master Facility Designer

PROJECT TYPE: Design Services

This AGREEMENT is made under seal the day of in the year Two Thousand Fifteen, between the Town of Plymouth, with an office at 11 Lincoln Street, Plymouth, Plymouth County, Massachusetts, 02360, acting by and through its Town Manager, hereinafter, the AWARDING AUTHORITY and , acting as DESIGNER.

ARTICLE 1: DEFINITION OF TERMS

- 1.1 GENERAL LAWS -- the General Laws of the Commonwealth of Massachusetts as amended, including any rules, regulations and administrative procedures implementing said laws.
- 1.2 DESIGNER -- the individual or firm performing professional services under this AGREEMENT.
- 1.3 NOTICE TO PROCEED -- written communication from the Awarding Authority, constituting an essential condition of this AGREEMENT, authorizing the Designer to perform services for the project phase to which such Notice shall relate.
- 1.4 SUBMITTAL DATES -- those dates referred to in the Notice to Proceed or any subsequent amendment thereto.
- 1.5 AWARDING AUTHORITY -- The board, commission, agency or department of the Town having authority to award design and construction contracts in connection with the Project.
- 1.6 PROJECT -- the building project for which designer services have been procured under this AGREEMENT, as requested in RFP 21532 attached and incorporated herein as Attachment A and proposed in the Designer's proposal dated , attached and incorporated herein as Attachment B, and the Designer's fee proposal dated , attached and incorporated herein as Attachment C, which is identified on Page 1 (Project Title).

ARTICLE 2: CONSULTANTS, SUBCONTRACTING, SUCCESSORS AND ASSIGNS

- 2.1 The Designer shall not employ additional consultants, not named in the proposal(s) nor sublet, assign or transfer any part of his services or obligations under this AGREEMENT without the prior approval and written consent of the Awarding Authority. Written consent shall not in any way

relieve the Designer from his responsibility for the professional and technical accuracy and the coordination of all data, designs, drawings, specifications, estimates and other work or materials furnished.

- 2.2 Except as otherwise provided in this AGREEMENT or authorized by the Awarding Authority, the Designer shall employ within the basic fee for this project consultants specifically listed in the proposal. Consultants must be registered in their respective disciplines if registration is required under the applicable General Laws.
- 2.3 When the Designer receives payment from the Awarding Authority, the Designer shall promptly make payment to each consultant whose work was included in the work for which payment was made by the Town. The Awarding Authority shall have the contractual right, but not the obligation, to require corrective measures necessary for the best interests of the Town.

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

- 3.1 The Awarding Authority shall furnish to the Designer available surveys of the project building site, showing the grades and lines of streets, pavements and adjoining properties; the rights, restrictions, easements, boundaries and controls of the site, or sites; reports from any borings, test pits, chemical, mechanical or other tests, any photographs and information as to water, sewer, electricity, steam, gas, telephone and other services.
- 3.2 The Awarding Authority does not guarantee the accuracy of information furnished and the Designer must satisfy himself as to the correctness of data, except in instances where written exception to the contrary is specifically indicated by the Awarding Authority. If the above data are not available or they are in the opinion of the Designer insufficient, the Designer, upon request, may be given authorization to obtain the services of a consultant or perform the work with his own employees. In no case shall the Designer commence such work without prior written authorization of the Awarding Authority.
- 3.3 Drawings and/or specifications needed to obtain survey or subsoil information, and any other soils engineering shall be prepared by the Designer as part of the basic fee. The Designer shall then analyze and evaluate such surveys and tests and make his design conform to the results of such evaluation.

ARTICLE 4: COMPLIANCE WITH LAWS

- 4.1 The Designer shall perform the work required under this

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

ARTICLE 5: PROFESSIONAL RESPONSIBILITY

5.1 The Designer shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, specifications, estimates and other work furnished by him or his consultants and subcontractors. The Designer shall staff his office with sufficient personnel to complete the services required under this contract in a prompt and continuous manner, and shall meet the approval schedule and submittal dates established during the course of this AGREEMENT.

The Designer shall commence work under this AGREEMENT upon written notice to proceed issued by the Awarding Authority in conformance with the provisions of Section 1.3 of this AGREEMENT. The Designer shall complete the services required under this AGREEMENT in a prompt and continuous manner, and to meet such time limits as are established during the course of the AGREEMENT and stated in each Notice to Proceed. If the completion of the scope of work is delayed through no fault of the Designer, the time limit may be extended upon written approval of the Awarding Authority.

5.2 The Designer shall furnish appropriate competent professional services for each of the phases to the point where detail checking and reviewing by the Awarding Authority will not be necessary. Any changes, corrections, additions or deletions made by the Awarding Authority shall be incorporated in the design of the Project unless detailed objections thereto are received from the Designer and approved by the Awarding Authority.

5.3 The Designer shall thoroughly acquaint his employees and consultants and shall comply with all provisions of the General Laws governing the conduct of public construction projects, including but not limited to M.G.L. c.149, and c.30, and in particular, M.G.L. c.30, §39M, wherein the description of material specifications and proprietary items in construction bid documents is governed. Also, the Designer, his employees, and consultants shall thoroughly acquaint themselves and shall comply with all provisions of

the Town of Plymouth's Responsible Contractor Bylaw.

- 5.4 Neither the Awarding Authority's review, approval or acceptance of, nor payment for any of the services furnished shall be construed to operate as a waiver of any rights under the AGREEMENT or any cause of action arising out of the performance of the AGREEMENT.

ARTICLE 6: DESIGNER SERVICES

- 6.1 Upon receipt of a Notice to Proceed from the Awarding Authority acceptable to the Designer, the Designer shall meet as necessary with the Awarding Authority and shall prepare and submit programs, preliminary reports, master plans, studies, sketches, space utilization criteria and estimates in accordance with the Scope of Services set forth in Attachment A to this AGREEMENT. Monthly progress reports shall be submitted by the Designer to the Awarding Authority. The Designer shall prepare and submit concept sketches of various design ideas to determine a workable plan solution in terms of the programs, funds available, and as complete an overall design concept as possible including cost estimates. The Designer shall furnish to the Awarding Authority ten (10) copies of the report for final approval on or before the date set forth in the Notice to Proceed or any supplement thereto.
- 6.2 Upon receipt of a Notice to Proceed from the Awarding Authority acceptable to the Designer, the Designer shall meet as necessary with the Awarding Authority for the purpose of arriving at a mutual understanding of the Awarding Authority's project needs. Thereafter, the Designer shall prepare and submit to the Awarding Authority single line schematic drawings including floor plans, elevations and space criteria to establish basic design ideas and respective cost estimates as set forth in the scope of services included as Attachment A. The Designer shall submit to the Awarding Authority for approval ten (10) copies of said schematic plans, outline specifications and cost estimates, on or before the date or time for submission specified in the Notice to Proceed or any supplement thereto, unless the Designer shall have obtained from the Awarding Authority an extension of time in writing.
- 6.3 Estimated construction cost and fee as set forth in the original Notice to Proceed will not be changed by the Awarding Authority without the agreement of the Designer.

ARTICLE 7: DESIGNER'S BASIC FEE

- 7.1 For the performance of all services required under the terms of this AGREEMENT and excluding those services specified under ARTICLE 8, the Designer shall be compensated by the Awarding Authority in accordance with the lump sum fee for this project. The fee for this project is a lump sum not to

exceed

- 7.2 If there is a material change in the scope of services provided in this agreement, the Designer and the Awarding Authority will mutually agree to an adjustment in the Designer's Basic Fee. Delay of one year or more by the Awarding Authority plus a significant change in the estimated construction cost of the project may, at the discretion of the Awarding Authority, be considered a change in scope of services.
- 7.3 Payment of the design fee shall be made in accordance with ARTICLE 10.

ARTICLE 8: ADDITIONAL COMPENSATION

- 8.1 With the formal written approval of the Awarding Authority, the Designer shall perform all or any of the following services in addition to the services performed pursuant to ARTICLE 6 above: (1) making measured drawings of existing construction facilities when required for planning additions, or alterations thereto; (2) revising previously approved drawings, specifications or other documents to accomplish changes authorized by the Awarding Authority; (3) preparing documents for alternate bids requested by the Awarding Authority except alternates prepared by the Designer to adjust the fixed limit construction cost, if any; (4) providing consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing professional services of the type set forth in ARTICLE 6 as may be required in connection with the replacement of such work; (5) providing professional services made necessary by the default of the contractor in the performance of the construction contract; (6) providing services after final payment to the contractor; (7) for preparing change orders and supporting data, except as set forth in ARTICLE 10; (8) revising working plans and specifications submitted in their final and complete form for which bids were not received within six months after submission; (9) making studies other than those normally required and preparing applications and reports to assist the Awarding Authority in obtaining federal and/or state aid; (10) preparing operating and maintenance manuals; (11) observing the balancing of air and water circulation systems and reporting the results thereof; (12) observing and setting and adjusting automatic controls and reporting the results thereof; (13) assisting the Awarding Authority in litigation arising out of the construction contract; and (14) performing any other professional services not otherwise required under this Contract.
- 8.2 For the services provided pursuant to paragraph 1 of this ARTICLE, the Designer shall be compensated by the Awarding Authority at the rates set forth in Attachment C.

**ARTICLE 9: DESIGN FEES AND RESPONSIBILITY FOR MODIFICATIONS,
CHANGE ORDERS**

- 9.1 The Designer shall be compensated in accordance with the rates specified in ARTICLE 8 for the services of its employees or any consultant listed in ARTICLE 2 for the preparation of modifications, change orders and supporting data. The Designer shall not be compensated for any services involved in preparing changes that are required for additional work that should reasonably have been anticipated by the Designer, as reasonably determined by the Awarding Authority. Changes for which the Designer receives no compensation under this ARTICLE shall be "no fee modifications" or "no fee change orders." The fact that the Designer receives no fee shall not limit the Town's legal remedies regarding such changes.
- 9.2 Payments for modifications or change orders to the Designer shall be made upon completion of the Designer's work under such modifications or change orders.

ARTICLE 10: METHOD OF PAYMENT TO THE DESIGNER

- 10.1 The basic fee shall be paid to the Designer in accordance with Attachment C to this AGREEMENT

ARTICLE 11: TERMINATION, NO AWARD

- 11.1 By written notice to the Designer, the Awarding Authority may terminate this contract at any time. If any such termination shall occur without the fault of the Designer, all compensation and reimbursement due to the Designer up to the date of termination, in accordance with all contract terms, shall be paid to the Designer by the Awarding Authority. Such payment shall not exceed the fair value of the work, as the Awarding Authority shall determine.
- 11.2 By written notice to the Awarding Authority, the Designer may terminate this contract if the Awarding Authority, within sixty (60) days following written notice from the Designer of any default by the Awarding Authority under the AGREEMENT, shall have failed to remove such default. Upon any such termination by the Designer all compensation and reimbursement payable to the Designer in accordance with the AGREEMENT up to and including the date of termination shall be paid to the Designer by the Awarding Authority.

ARTICLE 12: RELEASE AND DISCHARGE

- 12.1 The acceptance by the Designer of the last payment for services shall in each instance operate as and be a release to the Awarding Authority, and every member or agent thereof, from all claims and liability to the Designer for payment on account of services performed or reimbursable

expenses incurred under this AGREEMENT, except for those written claims submitted by the Designer to the Awarding Authority with the last payment requisition.

ARTICLE 13: NOTICES, APPROVALS, INVOICES

- 13.1 Any notice required under this contract to be given by the Awarding Authority to the Designer, or by the Designer to the Awarding Authority, shall be deemed to have been so given, whether or not received, if mailed by prepaid postage by, respectively, the Awarding Authority to the Designer at the address specified for the Designer on Page 1, or the Designer to the Awarding Authority.
- 13.2 All invoices may be submitted monthly and subject to contract terms and proper documentation will be promptly processed by the Awarding Authority or returned to the Designer. No invoice, however, shall be required to be submitted or processed when the net amount due is less than \$100.00.
- 13.3 Invoices submitted for services which have not been previously authorized in writing shall be returned to the Designer.
- 13.4 Requests for previously authorized expenses of any nature must be accompanied by a billing or receipt from the source of the expense.

ARTICLE 14: INSURANCE

- 14.1 The Designer shall at his own expense obtain and maintain a Professional Liability Insurance policy for errors, omissions or negligent acts arising out of the performance of this AGREEMENT in a minimum amount of \$2,000,000.00.
- 14.2 The coverage shall be in force from the time of the agreement to the date when all construction work designed under the contract is completed and accepted by the Awarding Authority. If, however, the policy is a claims made policy, it shall remain in force for a period of six (6) years after substantial completion.
- Since this insurance is normally written on a year-to-year basis, the Designer shall notify the Awarding Authority should coverage become unavailable.
- 14.3 The Designer shall, before commencing performance of this contract, provide by insurance for the payment of compensation and the furnishing of other benefits in accordance with M.G.L. c.152, as amended, to all employed under the contract and shall continue such insurance in full force and effect during the term of the contract. The Designer shall also maintain broad public liability insurance to protect against damage or injury to persons or property.

- 14.4 The Designer shall carry insurance in a sufficient amount to assure the restoration of any plans, drawings, computations, field notes or other similar data relating to the work covered by this contract in event of loss or destruction until the final fee payment is made or all data are turned over to the Awarding Authority.
- 14.5 Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the Agreement as Attachment C. Any cancellation of insurance whether by the insurers or by the insured shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the Town at least fifteen days prior to the intended effective date thereof, which date should be expressed in said notice. The Designer shall indemnify and save harmless the Awarding Authority, and all municipal boards, commissions, departments or officers against suits, claims of liability for or on account of any injuries to persons or damage to property to the extent that the same are the result of the negligence of the Designer in the performance of work covered by this AGREEMENT and/or failure to comply with the terms and conditions of this AGREEMENT, whether by himself or his employees, consultants or subcontractors.
- 14.6 Upon request of the Designer, the Awarding Authority reserves the right to modify any conditions of this Article.

ARTICLE 15: SUPPLEMENTAL CONTRACT DATA; LEGAL REQUIREMENTS

- 15.1 The Designer hereby certifies:
- (i) if an individual, the individual is a registered architect;
 - (ii) if a partnership, a majority of all the partners are persons who are registered architects;
 - (iii) if a corporation, sole proprietorship, joint stock company or other entity, the majority of the directors or a majority of the stock ownership and the chief executive officer are persons who are registered architects, and the person to have the project in his or her charge is a registered architect;
 - (iv) if a joint venture, each joint venturer satisfies the requirements of this section. (Statutory reference: M.G.L. c.7, §38A½)

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

materially affects any statements filed with the Awarding Authority, including in the Designer's description the date of the change and reasons therefor, and shall accompany said description with a letter from the Designer's independent certified public accountant approving or otherwise commenting on the changes.

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

- accounting controls; and
- (b) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the Designer's financial statements.
8. The Designer shall annually file with the Awarding Authority during the term of this Agreement a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by accountant's report.
9. Records and statements required to be made, kept or filed in compliance with the provisions of this paragraph 15.6 shall not be public records and shall not be open to public inspection, except as provided in subparagraph 15.6.2. (Statutory reference: M.G.L. c.30, §39R)
- 15.7 The Designer and its consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Designer in the preparation of bid documents, as reasonably determined by the Awarding Authority. (Statutory reference: M.G.L. c.7, §38H(J))
- 15.8 Life-cycle cost estimates for the Project shall be obtained at an initial stage and as a regular part of the services to be performed under this Agreement. (Statutory reference: M.G.L. c.149, §44M)
- 15.9 The Designer hereby certifies under penalties of perjury that the Designer has complied with all laws of the Commonwealth of Massachusetts relating to taxes. (Statutory reference: M.G.L. c.62C, §49A)

ARTICLE 16: MISCELLANEOUS PROVISIONS

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

construed as an act in derogation of the Designer's rights under this AGREEMENT.

- 16.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and personal representatives.
- 16.3 This Agreement represents the entire agreement between the Awarding Authority and the Designer, and supersedes any prior agreements whether oral or written. This Agreement may be amended only by written instrument executed by both the Awarding Authority and the Designer.
- 16.4 The Designer agrees that the Awarding Authority and any of its officer or employee assumes no personal liability under this Agreement.
- 16.5 This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.
- 16.6 In the event any provision of this Agreement shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall attach only to such provision and shall not affect or render invalid or unenforceable any other provision of this Agreement.