



TOWN OF FOXBOROUGH
40 SOUTH STREET
FOXBOROUGH, MASSACHUSETTS 02035

House Doctor-Architectural Services

ADDENDUM #1

May 25, 2022

NOTICE TO BIDDERS

The Bid Due Date has been extended to June 8, 2022 at 1:00PM.

Please see attached revised Owner/Designer Agreement

Acknowledgement of Addendum #1 _____

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AGREEMENT

The following provisions shall constitute an Agreement between the Town of Foxborough, acting by and through its Town Manager hereinafter referred to as "Town", and

_____ hereinafter referred to as "Consultant", effective as of _____ . In consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF WORK:

The Consultant shall furnish all labor, materials, equipment and insurance to perform all work required for the project known as _____ (the Project), in accordance with the Scope of Services set forth in Attachment A.

ARTICLE 2: COMPENSATION:

The Town shall pay the "Consultant for the performance of the work outlined in Article 1 above the negotiated project quote in accordance with the provisions of the specifications, or as set forth in Attachment 'A' hereto. Timely payment is a material term of this Agreement. Town shall pay all undisputed portions of Consultant's invoices within 30 days of receipt without holdback or retention. If amounts are remaining unpaid 30 days after the invoice date, Consultant may terminate this Agreement or suspend the services pending receipt of such payment.

ARTICLE 3: CONTRACT DOCUMENTS:

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

1. This Agreement.
2. Amendments, or other changes mutually agreed upon between the parties that are in writing and signed by both parties.
3. All attachments to the Agreement.

ARTICLE 4: CONTRACT TERMINATION AND FORCE MAJEURE:

The Town may suspend or terminate this Agreement by providing the "Consultant with ten (10) days written notice for the reasons outlined as follows:

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

FORCE MAJEURE Neither party shall be responsible for a delay or disruption in, or inability to provide its respective performance under this Agreement if such delay is caused by events or contingencies, existing or future, beyond the reasonable control of the claiming party, including "acts of God," abnormal weather conditions or other natural catastrophes, war (whether declared or not), terrorism, sabotage, computer viruses, civil unrest, strikes, lockouts or other industrial disturbances, pandemics, epidemics, health emergencies, virus (e.g., SARS Cov-2), disease (e.g. COVID-19), plague, changes in law or regulations, quarantine, travel restrictions, discovery of hazardous materials, differing or unforeseeable site conditions, acts of governmental agencies or authorities (whether or not such acts are made in response to other Force Majeure Events), or any other events or circumstances not within the reasonable control of the party affected, whether or not of a similar kind or nature to any of the foregoing (a "Force Majeure Event"). The party seeking application of this provision shall notify the other party in writing promptly upon learning of the impact of the Force Majeure Event upon the notifying party's performance of its obligations under this Agreement. Upon the occurrence of a Force Majeure Event, Consultant shall be entitled to an equitable adjustment to the project schedule and compensation sufficient to compensate Consultant for any increase in the time or costs necessary to perform the services under this Agreement. Should a Force Majeure Event substantially prevent or be reasonably likely to substantially prevent Consultant's performance of the Services for more than thirty (30) days, then Consultant shall be entitled to terminate this Agreement without breach. In case of such termination, Consultant shall be entitled to compensation for those services performed as of the date of termination.

ARTICLE 5: INDEMNIFICATION, CONSEQUENTIAL DAMAGES WAIVER AND RISK ALLOCATION AND RESTRICTION OF REMEDIES:

INDEMNIFICATION Consultant agrees to indemnify and hold harmless the Town, its officers, directors and employees, from third party claims of loss or damage, exclusive of defense obligations, for bodily

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injury or property damage ("Claims"), to the proportional extent caused by the Consultant's negligence or willful misconduct or breach of its duties and obligations hereunder.

CONSEQUENTIAL DAMAGES WAIVER NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THIS AGREEMENT AND TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY, ITS PARENTS, AFFILIATES AND SUBSIDIARIES OR THEIR RESPECTIVE DIRECTORS OFFICERS OR EMPLOYEES BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF REVENUE, LOSS OF USE OR INTERRUPTION OF BUSINESS) ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND AECOM HEREBY RELEASES CLIENT AND CLIENT HEREBY RELEASES AECOM FROM ANY SUCH LIABILITY.

RISK ALLOCATION AND RESTRICTION OF REMEDIES THE PARTIES HAVE EVALUATED THE RESPECTIVE RISKS AND REMEDIES UNDER THIS AGREEMENT AND AGREE TO ALLOCATE THE RISKS AND RESTRICT THE REMEDIES TO REFLECT THAT EVALUATION. NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN THIS AGREEMENT AND TO THE FULLEST EXTENT PERMITTED BY LAW, TOWN AGREES TO RESTRICT ITS REMEDIES UNDER THIS AGREEMENT AGAINST CONSULTANT, ITS PARENTS, AFFILIATES AND SUBSIDIARIES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, SHAREHOLDERS AND EMPLOYEES, ("CONSULTANT COVERED PARTIES"), SO THAT THE TOTAL AGGREGATE LIABILITY OF THE AECOM COVERED PARTIES SHALL NOT EXCEED, \$1,000,000 OR THE ACTUAL PAID COMPENSATION FOR THE SERVICES, WHICHEVER IS GREATER. THIS RESTRICTION OF REMEDIES SHALL APPLY TO ALL SUITS, CLAIMS, ACTIONS, LOSSES, COSTS (INCLUDING ATTORNEY FEES) AND DAMAGES OF ANY NATURE ARISING FROM OR RELATED TO THIS AGREEMENT WITHOUT REGARD TO THE LEGAL THEORY UNDER WHICH SUCH LIABILITY IS IMPOSED. CLAIMS MUST BE BROUGHT WITHIN ONE CALENDAR YEAR FROM PERFORMANCE OF THE SERVICES UNLESS A LONGER PERIOD IS REQUIRED BY LAW.

ARTICLE 6: AVAILABILITY OF FUNDS:

The compensation provided by this Agreement is subject to the availability and appropriation of funds. Notwithstanding anything to the contrary, Consultant shall not be required to begin work if there is a lack of availability or appropriation of funds.

ARTICLE 7: APPLICABLE LAW:

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

ARTICLE 8: ASSIGNMENT:

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Neither party shall make any assignment of this Agreement without the prior written approval of the Town.

ARTICLE 9: AMENDMENTS:

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

ARTICLE 10: PURCHASE ORDER:

This agreement shall not be valid unless and until accompanied by a purchase order signed by the Town Procurement Officer.

ARTICLE 11: INSURANCE:

The Consultant shall be responsible to the Town or any third party for any property damage or bodily injury caused by it, any of its sub consultant, employees or agents in the performance of, or as a result of, the work under this Agreement. The Consultant and any sub consultants used hereby certify that they are insured for workers' compensation, property damage, personal and product liability. The Consultant and any sub consultant it uses shall purchase, furnish copies of, and maintain in full force and effect insurance policies in the amounts here indicated.

General Liability

Bodily Injury Liability:	\$1,000,000 per occurrence and aggregate
Property Damage Liability	\$ 500,000 per occurrence and aggregate
(or combined single limit)	\$1,000,000 per occurrence and aggregate

Automobile Liability

Bodily Injury Liability:	\$1,000,000 per occurrence
Property Damage Liability	\$ 500,000 per occurrence
(or combined single limit)	\$1,000,000 per occurrence

Workers' Compensation Insurance

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Coverage for all employees in accordance with Massachusetts General Laws

Professional Liability Insurance

Coverage

\$1,000,000 per claim and aggregate

Prior to commencement of any work under this Agreement, the Consultant shall provide the Town with Certificates of Insurance in a form satisfactory to the Town which shall include the Town as an additional insured under the required general liability and automobile liability policies and which shall include a thirty-day notice of cancellation to the Town.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CONSULTANT

William G. Keegan, Jr.,
Town Manager

_____ Date

Printed Name & Title

Approved as to Availability of Funds:

George Samia,
Finance Director

_____ Date

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CERTIFICATION AS TO PAYMENT OF STATE TAXES

Pursuant to M.G.L. c.62C, §49A, I certify under the penalties of perjury that the Consultant has complied with all laws of the Commonwealth of Massachusetts relating to taxes.

Social Security Number or
Federal Identification Number

Signature of Individual or
Corporate Name

By: _____

Corporate Officer (if applicable)

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CERTIFICATE OF TAX COMPLIANCE

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A (b), I,

_____, authorized signatory for _____, do hereby certify under the pains and penalties of perjury that said contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature

Name: _____

Title: _____

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CERTIFICATE OF NON-COLLUSION

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

Signature

Name: _____

Title: _____

Business Name: _____

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CERTIFICATE AS TO CORPORATE CONTRACTOR

I _____
Certify that I am _____ of
the Corporation named as Contractor in the within Proposal Form that
_____ who signed said Proposal Form on behalf of the
Contractor was then _____ of said Corporation; that
I know his signature and that his signature hereto is genuine and that said Proposal Form was
duly signed, sealed, and executed for and on behalf of said Corporation by authority of its Board
of Directors.

(Corporate Seal)

(Signature)

(Title)

This Certificate must be completed where the Contractor is a Corporation, and should be so completed by its Clerk. In the event that the Clerk is the person signing the Proposal on behalf of the Corporation, this Certificate must be completed by another Officer of the Corporation.

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CERTIFICATE OF VOTE

(To be filed if Contractor is a Corporation)

I, _____ "hereby certify that I am the duly qualified and acting
(Secretary of the Corporation)

Secretary of _____ and I further certify that at
(Name of Corporation)

A meeting of the Directors of said Company, duly called and held on _____
(Date of Meeting)

At which all Directors were present and voting, the following vote was unanimously passed:

VOTED: _____ authorize and empower
To _____

Anyone acting singly, to execute Forms of General Proposal, Contracts or Bonds on behalf of the Corporation.

I further certify that the above vote is still in effect and has not been changed or modified in any respect.

By: _____
(Secretary of Corporation)

A True Copy:

Attest: _____
(Notary Public)

My Commission Expires: _____
(Date)

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ATTACHMENT 'A'
(COMPENSATION)

