



# Finance Committee Agenda

## City of Newton In City Council

Monday, May 10, 2021

The Finance Committee will hold this meeting as a virtual meeting on Monday, May 10, 2021 at 7:00 pm. To view this meeting using Zoom use this link:

<https://us02web.zoom.us/j/87682595170> or call 1-646-558-8656 and use the following Meeting ID: 876 8259 5170

### Item scheduled for discussions:

**#169-21      Appropriate \$200,000 from the CATV Capital Receipts**  
HER HONOR THE MAYOR requesting authorization to appropriate and expend the sum of two hundred thousand dollars (\$200,000) from the CATV Capital Receipts for the purpose of funding enhancements to the Council Chambers and Conference Rooms 204, 205 and 211 at City Hall as well as the Education Center School Committee room.

**#161-21      Appointment of Lucia Panichella to the Horace Cousens Industrial Fund**  
HER HONOR THE MAYOR appointing LUCIA PANICHELLA, 53 Anthony Circle, Newton, as a trustee of the Horace Cousens Industrial Fund for a term to expire on June 1, 2024. (60 days: 07/02/2021)

**#162-21      Acceptance of \$133,380 from the Massachusetts Office of Business Development**  
HER HONOR THE MAYOR requesting authorization to accept and expend the sum of one hundred thirty-three thousand three hundred and eighty dollars (\$133,380) in grant funding from the Massachusetts Office of Business Development's Reginal Pilot Project grant to implement a program to activate 5-8 vacant storefronts.

### Referred to Public Facilities & Finance Committees

**#167-21      Appropriate \$2.5 million for the Transportation Network Improvement Plan**  
HER HONOR THE MAYOR requesting the authorization to appropriate and expend two million five hundred thousand dollars (\$2,500,000) to supplement funding for the Transportation Network Improvement Plan.  
**Public Facilities Approved 8-0 on 05/05/21**

---

The location of this meeting is accessible and reasonable accommodations will be provided to persons with disabilities who require assistance. If you need a reasonable accommodation, please contact the city of Newton's ADA Coordinator, Jini Fairley, at least two business days in advance of the meeting: [jfairley@newtonma.gov](mailto:jfairley@newtonma.gov) or (617) 796-1253. The city's TTY/TDD direct line is: 617-796-1089. For the Telecommunications Relay Service (TRS), please dial 711.

**Referred to Programs & Services and Finance Committees**

#166-21

**CPC Recommendation to appropriate \$60,000 in CPA funding for the Gath Pool**

COMMUNITY PRESERVATION COMMITTEE recommending the appropriation of sixty-thousand dollars (\$60,000) in Community Preservation Act Recreation funds to the control of the Planning & Development for the hiring of a consultant to work with the Public Building and parks, Recreation and Culture Departments to complete a conditions assessment and feasibility study on the Gath Memorial Pool Complex.

**Programs & Services Approved as Amended from the FY21 Current Year Budgeted Reserve Account 8-0 on 05/05/21**

**Referred to Programs & Services and Finance Committees**

#49-20(2)

**Requesting establishment of a fee for the registration of leaf blower contractors**

Programs and Services Committee requesting an appropriate fee be set for registration of leaf blower contractors pursuant to possible revisions in the Noise provisions of Newton Ordinances, Chapter 20, relating to leaf blowers, to provide for registration of leaf blower contractors and their certification of understanding and intention to comply with the provisions of the Noise ordinance, contained in possible revisions to Chapter 20, prepared by the Newton Law Department to improve compliance with existing standards for leaf blower operation.

**Finance Held 5-0 (Councilor Kalis not voting) on 10/28/2020**

**Programs & Services Approved with effective date of 09/06/2021 7-0-1 (Councilor Albright abstaining)**

**Referred to Programs & Services and Finance Committees**

#163-21

**Request for an increase to off-leash dog fines**

COUNCILORS KRINTZMAN AND ALBRIGHT requesting an increase to the fine for failure to leash a dog under section 3-26 and the off leash dog program under section 3-30, as well as implementing a separate penalty for a second and third offense of the same ordinance.

**Programs & Services Approved 8-0 on 05/05/21**

**Referred to Programs & Services and Finance Committees**

#164-21

**Request for an increase to dog license fees**

COUNCILORS KRINTZMAN AND ALBRIGHT requesting an increase in the canine registration fee to help support pet waste disposal efforts across the city.

**Programs & Services Approved 7-1 (Councilor Ryan opposed) on 05/05/21**

#168-21

**Appropriate \$1,000,000 for the Rainy Day Stabilization Account**

HER HONOR THE MAYOR requesting authorization to appropriate and expend the sum of one million dollars (\$1,000,000) from June 30, 2020 Certified Free Cash to the Rainy Day Stabilization Fund for the purpose of bringing the Rainy Day Stabilization Fund to slightly over \$23.1 million or 5% of the Mayor's Proposed FY22 General Fund Operating Budget.

**#114-21 Discussion on Covid-19 expenditures**

FINANCE COMMITTEE requesting updates from the Chief Financial Officer on the expenditure of funds for Covid-19.

**Finance Held 6-0 (Councilors Norton and Noel not voting) on 04/26/21**

Respectfully submitted,

Rebecca Walker Grossman, Chair



RUTHANNE FULLER  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

**169-21**  
Telephone  
(617) 796-1100

Telefax  
(617) 796-1113

TDD  
(617) 796-1089

E-mail  
[rfuller@newtonma.gov](mailto:rfuller@newtonma.gov)

April 29, 2021

Honorable City Council  
Newton City Hall  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

Councilors:

I respectfully submit a docket item to your Honorable Council requesting authorization to appropriate and expend the sum of \$200,000 from CATV Capital Receipts for the purpose of funding enhancements to the Council Chambers and Conference Rooms 204, 205 and 211 at City Hall as well as the Education Center School Committee room. This will allow high quality Zoom meetings for people attending in-person and remotely.

Thank you for your consideration of this matter.

Sincerely,

Ruthanne Fuller  
Mayor

RECEIVED  
2021 APR 29 PM 3:02  
CITY CLERK  
NEWTON, MA 02459



Ruthanne Fuller, Mayor  
Joseph P. Mulvey  
Chief Information Officer

## CITY OF NEWTON, MASSACHUSETTS

### DEPARTMENT OF INFORMATION TECHNOLOGY

Telephone (617) 796-1180  
Facsimile (617) 796-1196  
TDD/tty # (617) 796-1089

To: Maureen Lemieux, CFO  
From: Joseph Mulvey, CIO  
Date: April 27, 2021  
Re: Docket Request for funding audio visual conference room enhancements at City Hall and the Education Center

Good Day, Maureen,

I respectfully request your consideration for submission of a docket item for \$200,000 to fund NewTV in their proposal to enhance the Council Chambers and conference rooms 204, 205 and 211 at City Hall as well as the Education Center School Committee room.

Goals for this proposal include:

- Implementing a hybrid, Zoom-compatible environment that will accommodate the various demands from day and night meetings for both onsite as well as web-based attendees and participants.
- Additional cameras for the City Hall Council Chambers, replacement of existing cameras to a significantly higher resolution.
- Major enhancements to City Hall rooms 204, 205 and 211 including monitor upgrades, permanently mounted cameras and microphones.
- Replacement of back-end equipment at City Hall to accommodate upgrading to modern video signals.
- Enhanced cameras for the Education Center School Committee Room, replacement of the existing cameras to a significantly higher resolution.
- Replacement of back-end equipment at the Education Center to accommodate these upgrades.

These renovations will enable consistent, hybrid connectivity in all of the above main conference rooms and will easily integrate with enhanced audio and video coverage by NewTV for streaming via Vimeo, our PEG channels, and Zoom sessions.

Our plan is to have the whole project complete, tested and staff trained before the fall so that the new season of meetings will fully benefit from this plan.

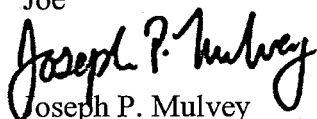
With oversight from the City Council, an evaluation team was formed with staff members of NewTV and the City IT Department.

We performed extensive interviews with three respected vendors. We hosted multiple onsite visits. We used Zoom to review. We requested updates and enhancements to the proposals. We met with President Albright and Councilor Lipof as we approached the final proposal to confirm the expectations of everyone involved were still solidly in focus.

After deliberation among our team, it was unanimous that the proposal by Ockers stood head and shoulders above the proposals of the other candidates. Ockers was able to address both the technically demanding expectations of NewTV but also the needs for day to day internal use.

Upgrades to audio visual resources at City Hall and the Education Center are not a common occurrence. We certainly have gotten our value from the previous video installation. We are confident that this investment will serve us extremely well for the foreseeable future.

Thank you for your consideration,  
Joe



Joseph P. Mulvey  
Chief Information Officer  
City of Newton Information Technology Dept.  
1000 Commonwealth Ave.  
Newton Centre, MA 02459  
617-796-1188

CITY OF NEWTON

IN CITY COUNCIL

DRAFT

ORDERED:

That, in accordance with the recommendation of the Finance Committee through its Chair Rebecca Walker Grossman, the authorization to appropriate and expend the sum of two hundred thousand dollars (\$200,000) from the CATV Capital Receipts for the purpose of funding enhancements to the Council Chambers and Conference Rooms 204, 205 and 211 at City Hall as well as the Education Center School Committee room be and is hereby approved as follows:

FROM:	Verizon CATV Fees-Capital (5517R114-442033) .....	\$170,000
	Comcast CATV Fees-Capital (5515R114-442033) .....	\$30,000
TO:	Upgrade Audiovisual City Hall/ECTR- Undistributed (01C11109-579500) .....	\$200,000

Under Suspension of Rules  
Readings Waived and Approved  
DRAFT

(SGD) NADIA H KHAN  
Acting City Clerk

(SGD) RUTHANNE FULLER  
Mayor

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



Ruthanne Fuller  
Mayor

City of Newton, Massachusetts  
Office of the Mayor

161-21

Telephone  
(617) 796-1100  
Fax  
(617) 796-1113  
TDD/TTY  
(617) 796-1089  
Email

rfuller@newtonma.gov

April 2, 2021

Honorable City Council  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

To the Honorable City Councilors:

I am pleased to appoint Lucia Panichella of 53 Anthony Circle, Newton as a trustee of the Horace Cousens Industrial Fund. Her term of office shall expire on June 1, 2024 and her appointment is subject to your confirmation.

Thank you for your attention to this matter.

Warmly,

Ruthanne Fuller  
Mayor

RECEIVED  
2021 APR 21 AM 9:39  
CITY CLERK  
NEWTON, MA 02459





**Why are you interested in serving on a board or commission?**

---

Since I moved back to Newton (I was born and raised here) I have been looking for an opportunity for more civic engagement and a deeper connection to the community as a whole. I have long appreciated and benefited from all that this city has to offer and would like to play an active role in supporting the resources that make this city strong and a desirable place to live. I come from a family of service providers - my father in city, state and federal government and my mother as a special education teacher - and I have continued the tradition as a social worker. Since getting my MSW from BU I have worked in Framingham and have years of experience working with low-income families, immigrant families, public school systems, government agencies and community social service providers. Our agency works closely with many families who are similar to those who might apply for the Cousens Fund and I have insight into the struggles these families face as well as the difference the right kind of support can make in their lives. This fund was of particular interest to me as I felt it was a way for me to draw upon my professional experience and allow me to contribute to my own community on a personal level that extends beyond just my neighborhood and my sons' schools. \*Update to add that I have now served as a Trustee for the Cousens Fund for a few years now and have really appreciated the experience. I feel honored to be playing a role in the community where I can assist Newton residents in need, especially during this pandemic. I see how the fund makes a difference in the lives of many residents who need a helping hand to avoid a crisis, retain their housing and care for their families.

[panichella\\_resume\\_2018.docx](#)

Upload a Resume

## **WORK EXPERIENCE**

---

### **Director of Immigrant Services**

*Jewish Family Service of Metrowest, Framingham, MA • 2009-present*

- **Refugee and Asylee Resettlement Program**

Oversee all program operations for resettlement program serving 60 individuals. Supervise case management staff, interns and extensive volunteer network. Manage relationships and logistics with community partners. Responsible for all reporting and compliance with state and federal programs. Piloted community based program to serve 8 refugee families from Syria utilizing an extensive network of faith based institutions, academic institutions, community partners and individual volunteers.

- **Citizenship for New Americans Program (CNAP)**

Oversee CNAP, a program serving 100 clients a year. Supervise CNAP program manager, Americorps members and volunteers assisting clients with the naturalization process. Responsible for reporting, assuring grant compliance, and coordinating community relationships.

- **Reducing Achievement Gaps**

Oversee project to provide opportunities for financial, career and academic success for immigrant families in Framingham. Programs include: academic enrichment for elementary school students, parent outreach and education, case management and basic needs assistance, and support for first generation college students.

### **Program Specialist**

*Jewish Family Service of Metrowest, Framingham, MA • 2006-2009*

Led after-school program for 5<sup>th</sup> grade girls; coordinated agency fundraising and strategic initiatives; managed programs for adoptive families; provided citizenship case management; assisted with grant writing.

### **Substitute Teacher**

*Horace Mann School for the Deaf and Hard of Hearing (Boston Public Schools), Boston, MA • 2005 & 2006*  
Substitute taught for all grade levels; assisted school administrators.

### **Summer Program Director**

*Chilmark Community Center, Chilmark, MA • 2004, 2005*

Oversaw and managed the day to day of the morning program for children ages 4-13. Managed and trained staff of 40, communicated with parents and community stakeholders, managed daily finances and registrations.

### **Program Support Intern**

*Primary Source, Watertown, MA • 2002-2005*

Assisted in research and editing of "Making Freedom," sourcebooks on teaching African American history. Provided administrative support preparing materials for professional development workshops and seminars.

## **OTHER**

---

- Languages: Intermediate Spanish
- Participant, Metrowest Community Healthcare Foundation Health Leadership Program 2009.
- 2017 recipient of Sharp Rescuer Prize
- Partial Accreditation – Board of Immigration Appeals
- Certified Personal Trainer

**LUCIA CARBALLO PANICHELLA, LCSW**

53 ANTHONY CIRCLE, NEWTON, MA 02460



**EDUCATION**

---

**Masters of Social Work**

Boston University, Boston, MA

May 14, 2006

**Bachelors of Arts, Sociology**

Tufts University, Medford, MA

May 23, 2004, *Summa Cum Laude*



162-21

City of Newton, Massachusetts  
Office of the Mayor

Telephone  
(617) 796-1100  
Fax  
(617) 796-1113  
TDD/TTY  
(617) 796-1089

Ruthanne Fuller  
Mayor

Email  
rfuller@newtonma.gov

Honorable City Council  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

RECEIVED  
APR 26 2021  
CITY CLERK  
NEWTON, MA 02459  
APR 26 2021  
PM 4:47

Honorable City Councilors:

I respectfully submit this docket item to this Honorable Council requesting the authorization to accept and expend \$133,380 in grant funding from the Massachusetts Office of Business Development's Regional Pilot Project grant to implement a program to activate 5-8 vacant storefronts. They will be used as pop-up retail and/or innovation centers, by a mix of small businesses, artists and/or makers. The pilot will: a) support emerging businesses by providing a low-risk entree into brick-and-mortar; b) support village centers and commercial corridors by filling empty storefronts with creative businesses to attract customers; and c) foster innovation through a pilot that is designed to expand to scale.

The pilot is in partnership with the Town of Needham.

The grant requires quick implementation, with an invoice deadline of June 30, 2021 and a project completion deadline of August 31, 2021. We have already been approved to sole source contract with our key partner UpNext Consulting and they have assured us they have the capacity to complete this project with us.

Thank you for your consideration of this matter.

Sincerely,

Mayor Ruthanne Fuller



Commonwealth of Massachusetts  
**EXECUTIVE OFFICE OF  
 HOUSING & ECONOMIC DEVELOPMENT**  
 ONE ASHBURTON PLACE, ROOM 2101  
 BOSTON, MA 02108  
[www.mass.gov/eohed](http://www.mass.gov/eohed)

CHARLES D. BAKER  
 GOVERNOR

KARYN POLITO  
 LIEUTENANT GOVERNOR

MIKE KENNEALY  
 SECRETARY

TELEPHONE  
 (617) 788-3610

FACSIMILE  
 (617) 788-3605

March 25, 2021

Ruthanne Fuller  
 City of Newton  
 Mayor  
 1000 Commonwealth Ave  
 Newton, MA 02495

Dear Mayor Fuller:

Thank you for applying to the FY2021 Regional Pilot Project Grant Program. On behalf of the Baker-Polito Administration, I am pleased to award the City of Newton a **\$133,380.00** grant in response to your application on behalf of Newton and Needham.

We believe your pilot program project will promote regional recovery from the economic impacts of the 2019 novel coronavirus and have a significant impact on the municipalities and businesses in your area. We thank you for your efforts to support these businesses and communities experiencing such economic hardships.

Please note, this grant commitment is contingent upon successful execution of a contract. MOBD will reach out to follow up with a contract, reporting templates and other supporting documentation via email. If there are expenses incurred prior to the execution of a contract, you will be required to provide documentation of all expenses. If you have any questions about the contract, please contact Nhat Le at [nhat.le@mass.gov](mailto:nhat.le@mass.gov).

Congratulations again and thank you for your continuing work!

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Kennealy".

Mike Kennealy  
 Secretary



Ruthanne Fuller  
Mayor

City of Newton, Massachusetts  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

Barney S. Heath  
Director

---

MEMORANDUM

**Date:** April 7, 2021  
**To:** Maureen Lemieux, Chief Financial Officer  
**From:** Nicole Freedman, Director of Transportation Planning  
**Cc:** Jonathan Yeo, Chief Financial Officer Barney Heath, Director of Planning  
**Subject:** Request to Docket Item to Accept Massachusetts Office of Business Development  
Regional Pilot Project Grant

---

We request approval to accept and expend \$133,380 in grant funding from MOBD's Regional Pilot Project grant to implement a program to activate 5-8 vacant storefronts as pop-up retail and/or innovation centers, for use by a mix of small businesses, artists and/or makers. The pilot will: a) support emerging businesses by providing a low-risk entree into brick-and-mortar b) support village centers and commercial corridors by filling empty storefronts with creative businesses to attract customers, and c) foster innovation through a pilot that is designed to expand to scale. The pilot is in partnership with the Town of Needham.

The grant requires quick implementation, with an invoice deadline of June 30, 2021 and a project completion deadline of August 31, 2021. We have already been approved to sole source contract with our key partner UpNext Consulting and they have assured us they have the capacity to complete this project with us.

Attached:

- Award Letter
- Sole Source confirmation

CITY OF NEWTON

IN CITY COUNCIL

DRAFT

ORDERED:

That, in accordance with the recommendation of the Finance Committee through its Chair Rebecca Walker Grossman, the authorization to accept and expend the sum of one hundred thirty-three thousand three hundred and eighty dollars (\$133,380) in grant funding from the Massachusetts Office of Business Development's Regional Pilot Project grant to implement a program to activate 5-8 vacant storefronts be and is hereby approved.

Under Suspension of Rules  
Readings Waived and Approved  
DRAFT

(SGD) NADIA KHAN  
Acting City Clerk

(SGD) RUTHANNE FULLER  
Mayor





167-21

City of Newton, Massachusetts  
Office of the Mayor

Ruthanne Fuller  
Mayor

Telephone  
(617) 796-1100  
Fax  
(617) 796-1113  
TDD/TTY  
(617) 796-1089  
Email  
rfuller@newtonma.gov

Honorable City Council  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

2021 APR 26 PM 5:00  
RECEIVED  
CITY CLERK  
NEWTON, MA 02459

Honorable City Councilors:

I respectfully submit this docket item to this Honorable Council requesting the authorization to appropriate and expend \$2,500,000 to supplement funding for the Transportation Network Improvement Plan. Funding will come from the City's first tranche of American Rescue Plan Act funds set to arrive in City accounts shortly. In the last few years, this supplemental funding has come from Free Cash, Overlay Surplus or the Capitalization Fund. The pandemic-related revenue shortfalls left the City with much less Free Cash this fiscal year.

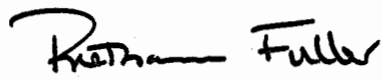
Below is a table showing the Transportation Network Improvement Plan's sources of funding since FY2018. The FY2021 budget for the program, revised when the pandemic hit, was \$5.5 million. This additional \$2.5 million increases it to \$8.0 million.

Newton Transportation Network Improvement Program Funding FY18-FY21				
Source	FY18	FY19	FY20	FY21
Chapter 90	\$ 2,445,000	\$ 2,309,000	\$ 1,850,000	\$ 2,750,000
2013 Override and Operating Budget	\$ 2,154,873	\$ 1,640,117	\$ 1,710,000	\$ 1,350,000
Reclassified Revenues/Savings	\$ 982,903	\$ 669,235		\$ 400,000
Free Cash	\$ 3,929,011	\$ -	\$ 3,000,000	\$ 1,000,000
Overlay Surplus	\$ -	\$ 5,000,000	\$ 1,750,000	
Capital Stabilization			\$ 1,250,000	
ARPA	\$ -	\$ -	\$ -	\$ 2,500,000
<b>TOTAL</b>	<b>\$ 9,511,787</b>	<b>\$ 9,618,352</b>	<b>\$ 9,560,000</b>	<b>\$ 8,000,000</b>

As noted in Commissioner McGonagle's attached memo and road listings, the additional funds will allow the city to address high priority road and sidewalk improvements in village center areas. The American Rescue Plan Act is designed in part to allow municipalities to move forward with economic recovery projects and to fund projects hurt by lost revenues. The City is anticipating approximately \$65 million in total ARPA funding, as well as grant program funds that are expected at the state level.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in black ink that reads "Ruthanne Fuller". The signature is written in a cursive style with a large initial "R" and a distinct "Fuller" at the end.

Mayor Ruthanne Fuller

City of Newton

DEPARTMENT OF PUBLIC WORKS

OFFICE OF THE COMMISSIONER

1000 Commonwealth Avenue  
Newton Centre, MA 02459-1449

Ruthanne Fuller  
Mayor

To: Maureen Lemieux, Chief Financial Officer  
Jonathan Yeo, Chief Operating Officer

From: James McGonagle, Commissioner of Public Works

Subject: Request to Appropriate \$2,500,000 for the Transportation Network Improvement Plan

Date: April 26, 2021

---

I respectfully request that the Mayor docket the following request to appropriate and expend two million five hundred thousand dollars (\$2,500,000) to supplement funding for the Transportation Network Improvement Plan.

The Department of Public Works will use the funds to increase the number of streets being paved. In addition, these funds will allow for additional bicycle accommodations, sidewalk safety improvements and curb ramp adjustments to increase ADA compliance.

Given the American Rescue Plan Act's focus on economic recovery, DPW has highlighted sections of the city near village centers that need substantial road and sidewalk improvements based on the latest road condition assessment. Please see the attached list of streets.

Thank you for your consideration of this matter.

James McGonagle  
Commissioner

Telephone: (617) 796-1009 • Fax: (617) 796-1050 • [jmcgonagle@newtonma.gov](mailto:jmcgonagle@newtonma.gov)

## 2021 ARPA-Funding: Roadways in Economic Development Areas

- Albemarle Road (between Watertown Street and Crafts Street) – This portion of Albemarle Road is the access and parking for a major recreation area used by residents and visitors to the City. The recreation area includes soccer, football, baseball, and softball fields, tennis courts, a playground, and a public pool. In addition, this portion of Albemarle Road is the bus and parent drop-off for a public preschool and middle school. This road project will include paving, sidewalk and ramp improvements, new pavement markings including ADA symbols, potentially a new bike path, and a refreshed parking area that will better serve the residents and visitors.
- The following pavement management projects are roadways that serve as gateways to village centers and serve several small businesses. Roadway improvements and new pavement markings including ADA symbols to these streets will provide better access for pedestrians, cyclists, and motor vehicle users to retail shops, restaurants, community centers, and houses of worship in these centers.
  - Parker Street and Cypress Street – Newton Centre
  - Centre Street (from the Route 9 ramps to Walnut Street) - Highlands
  - Washington Street from Commonwealth Avenue to Perkins Street – West Newton
  - Curve Street from Prospect Street to Auburn Street – West Newton
- Auburndale: Grove Street from Woodland Road to just before Hotel Indigo – This portion of road serves a large commuter rail/bus station, several large office buildings, a college, and an assisted living center. Roadway and pavement marking improvements to this area will benefit employees of the businesses, public transportation users, and residents and visitors to both the college and assisted living center.
- Nonantum: Watertown Street (between Pearl Street to Walnut Street) – This portion of roadway runs through a village center with a variety of retail shops, small businesses, restaurants, and a small but well-utilized park. The pavement project and new pavement markings will compliment recent ADA improvements along this portion of Washington Street and will encourage shopping and dining.
- Newton Corner: Belmont Street, Arlington Street, Ricker Road, Marlboro Street, and Ricker Terrace (cluster of streets in Newton Corner) are major walking routes to a nearby village Center with small businesses, restaurants, and a transportation node. In addition, these roadways are in proximity to Bigelow Middle School and are walking routes for the students. Improvements to roadways, sidewalks, and pavement markings will encourage visits to the village center and use of public transportation.

CITY OF NEWTON

IN CITY COUNCIL

DRAFT

**This funding is subject to the receipt of ARPA funds in FY21.**

ORDERED:

That, in accordance with the recommendation of the Public Facilities Committee through its Chair Alison Leary and the Finance Committee through its Chair Rebecca Walker Grossman, the authorization to appropriate and expend two million five hundred thousand dollars (\$2,500,000) to supplement funding for the Transportation Network Improvement Plan be and is hereby approved as follows:

FROM:	ARPA Transfer to General Fund (2223CV21-590001) .....	\$2,500,000
TO:	Accelerated Roads ARPA-Undistributed (01C40126-579500) .....	\$2,500,000

Under Suspension of Rules  
Readings Waived and Approved  
DRAFT

(SGD) NADIA H KHAN  
Acting City Clerk

(SGD) RUTHANNE FULLER  
Mayor

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



Ruthanne Fuller  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

**166-21**  
Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
www.newtonma.gov

Barney S. Heath  
Director

## Community Preservation Committee

### MEMORANDUM

**Date:** May 5, 2021  
**From:** Lara Kritzer, Community Preservation Program Manager  
**To:** Finance Committee  
Programs & Services Committee  
**Cc:** Sue Dzikowski, Comptroller  
Cassidy Flynn, Committee Clerk  
**RE:** Funding account clarification for Finance Committee Review of Gath Memorial Pool Feasibility Study Project CPA Funding Recommendation

This memo seeks to clarify the funding source for the CPC’s CPA funding recommendation for the Gath Memorial Pool Feasibility Study Project. The recommendation and docketing request begin with a reference to the project as requesting “CPA Recreation funding” to complete the proposed study of the Gath Memorial Pool Facility. This statement was intended as a reference to the CPA funding category that the project falls under – the project is eligible for CPA funding as it is a step towards the preservation, restoration, and rehabilitation of an existing city-wide recreational resource. The CPC is required to document and track how the City’s CPA funding is used and considers this project to contribute to its established goal of spending 20% of the City’s annual CPA funding on recreation projects.

Unfortunately, the wording of this reference has caused confusion as to the CPA account to be used for this project. While 10% of CPA funding is required to be set aside annually for Community Housing, Historic Resource, and Open Space projects, there is no required set aside for Recreation. The wording of the recommendation suggested that the project should be funded from a recreation account which does not exist. Instead, all recreation projects must be funded out of general CPA funds. In this case, the CPC has recommended that the project be funded out of the FY21 Current Year Budgeted Reserve Account (Account #58R10498-579000) which has a current total of \$949,541 available for use in any category.

*website* [www.newtonma.gov/cpa](http://www.newtonma.gov/cpa)  
*contact* Lara Kritzer, Community Preservation Program Manager  
*email* [lkritzer@newtonma.gov](mailto:lkritzer@newtonma.gov) *phone* 617.796.1144

CITY OF NEWTON

IN CITY COUNCIL

DRAFT

ORDERED:

That, in accordance with the recommendation of the Community Preservation Committee through its Chair, Mark Armstrong, the Programs & Services through its Chair Joshua Krintzman and the Finance Committee through its Chair Rebecca Walker Grossman, the appropriation of sixty-thousand dollars (\$60,000) in Community Preservation Act FY21 Current Year Budgeted Reserve Account funds to the control of the Planning & Development for the hiring of a consultant to work with the Public Building and Parks, Recreation and Culture Departments to complete a conditions assessment and feasibility study on the Gath Memorial Pool Complex be and is hereby approved as follows:

FROM:	CPA Budget Reserves Current Year (58R10498-579000) .....	\$60,000
TO:	Gath Pool Feasibility Study-Undistributed (58D11409-579500) .....	\$60,000

Under Suspension of Rules  
Readings Waived and Approved  
DRAFT

(SGD) NADIA H KHAN  
Acting City Clerk

(SGD) RUTHANNE FULLER  
Mayor

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

CITY COUNCIL

# \_\_\_\_\_

CITY OF NEWTON

DOCKET REQUEST FORM

**DEADLINE NOTICE: Council Rules require items to be docketed with the Clerk of the Council NO LATER THAN 7:45 P.M. ON THE MONDAY PRIOR TO A FULL COUNCIL MEETING.**

To: Clerk of the City Council

Date: April 21, 2021

From (Docketer): Lara Kritzer, Community Preservation Program Manager

Address: Planning Department, Newton City Hall, 1000 Commonwealth Avenue Newton MA 02459

Phone: 617-796-1144

E-mail: lkritzer@newtonma.gov

Additional sponsors: Community Preservation Committee

RECEIVED  
2021 APR 21 10:53  
CITY CLERK  
NEWTON, MASSACHUSETTS

1. Please docket the following item (it will be edited for length if necessary):

Recommendation from the Community Preservation Committee for the allocation of \$60,000 in Community Preservation Act Recreation funds to the control of the Planning & Development for the hiring of a consultant to work with the Public Building and Parks, Recreation and Culture Departments to complete a conditions assessment and feasibility study on the Gath Memorial Pool Complex.

2. The purpose and intended outcome of this item is:

- Fact-finding & discussion
- Appropriation, transfer,
- Expenditure, or bond authorization
- Special permit, site plan approval,
- Zone change (public hearing required)
- Ordinance change
- Resolution
- License or renewal
- Appointment confirmation
- Other: \_\_\_\_\_

3. I recommend that this item be assigned to the following committees:

- Programs & Services
- Zoning & Planning
- Public Facilities
- Finance
- Public Safety
- Land Use
- Real Property
- Special Committee
- No Opinion

4. This item should be taken up in committee:

Immediately (Emergency only, please). Please state nature of emergency:  
\_\_\_\_\_

- As soon as possible, preferably within a month
- In due course, at discretion of Committee Chair
- When certain materials are made available, as noted in 7 & 8 on reverse
- Following public hearing



5. I estimate that consideration of this item will require approximately:

- One half hour or less
- More than one hour
- More than one meeting
- Up to one hour
- An entire meeting
- Extended deliberation by subcommittee

6. The following people should be notified and asked to attend deliberations on this item. (Please check those with whom you have already discussed the issue, especially relevant Department Heads):

City personnel	Citizens (include telephone numbers/email please)
<input checked="" type="checkbox"/> <u>Lara Kritzer</u>	<input checked="" type="checkbox"/> _____
<input checked="" type="checkbox"/> <u>Luis Perez Demorizi</u>	<input checked="" type="checkbox"/> _____
<input checked="" type="checkbox"/> <u>Nicole Banks</u>	<input type="checkbox"/> _____
<input checked="" type="checkbox"/> <u>Rafik Ayoub</u>	<input type="checkbox"/> _____
<input checked="" type="checkbox"/> <u>Josh Morse</u>	<input type="checkbox"/> _____

7. The following background materials and/or drafts should be obtained or prepared by the Clerk's office prior to scheduling this item for discussion:

8. I  have or  intend to provide additional materials and/or undertake the following research independently prior to scheduling the item for discussion. \*

CPC Funding Recommendation, the City's Proposal for the Gath Pool Renovation Project, and the Project Presentation made at the CPC's public hearing on April 13, 2021

(\*Note to docketer: Please provide any additional materials beyond the foregoing to the Clerk's office by 2 p.m. on Friday before the upcoming Committee meeting when the item is scheduled to be discussed so that Councilors have a chance to review all relevant materials before a scheduled discussion.)

Please check the following:

- 9.  I would like to discuss this item with the Chairman before any decision is made on how and when to proceed.
- 10.  I would like the Clerk's office to contact me to confirm that this item has been docketed. My daytime phone number is:
- 11.  I would like the Clerk's office to notify me when the Chairman has scheduled the item for discussion.

Thank you.

Lara Kritzer  
Signature of person docketing the item

[Please retain a copy for your own records]



Ruthanne Fuller  
Mayor

**City of Newton, Massachusetts**  
Department of Planning and Development  
1000 Commonwealth Avenue Newton, Massachusetts 02459

**166-21**  
Telephone  
(617) 796-1120  
Telefax  
(617) 796-1142  
TDD/TTY  
(617) 796-1089  
[www.newtonma.gov](http://www.newtonma.gov)

Barney S. Heath  
Director

---

## **Community Preservation Committee Funding Recommendation for Gath Memorial Pool Feasibility Project**

**Date:** April 20, 2021  
**From:** Community Preservation Committee  
**To:** The Honorable City Council  
**CC:** Her Honor Mayor Ruthanne Fuller

### **PROJECT GOALS & ELIGIBILITY**

This proposal requests CPA Recreation Funding to complete an existing conditions assessment and feasibility study of the existing Gath Memorial Pool Facility. At nearly 60 years of age, much of the existing facility's equipment, systems, and infrastructure have reached the end of their useful life and significant work will be needed to preserve this resource for the future. The current proposal will fund the hiring of a consultant to complete the necessary assessment and feasibility study, which will include a list of needed improvements based both on the current facility and community needs, a plan and costs for the phased renovation of the existing facility, and information to allow the City to assess the merits of replacing versus repairing the swim facility. This is understood to be a necessary first step to a much larger Recreation project to improve and restore the Gath Memorial Pool Complex.

The project is eligible for CPA funding for the preservation, rehabilitation and restoration of a city-wide Recreation resource.

### **RECOMMENDED FUNDING**

At its regular monthly meeting on Tuesday, April 16, the Community Preservation Committee unanimously recommended, with a vote of 8 to 0, the appropriation of \$60,000 in Community Preservation Act Recreation funding to the control of the Planning & Development for the hiring of a consultant to complete a conditions assessment and feasibility study on the Gath Memorial Pool Complex.

### **SPECIAL ISSUES CONSIDERED BY THE CPC**

**Community Needs:** Gath Memorial Pool Complex is the City's only public swimming pool facility and is heavily used throughout the summer by Newton residents. The Parks, Recreation and Culture Department has estimated that 30,000 residents use the pool each summer. The facility is also the home of the local Blue Fish swim team and hosts an areawide swim competition each summer. The aging facility is already having serious issues meeting the needs of the community with the existing facility and

[www.newtonma.gov/cpa](http://www.newtonma.gov/cpa)

Lara Kritzer, Community Preservation Program Manager  
[lkritzer@newtonma.gov](mailto:lkritzer@newtonma.gov) 617.796.1144

CPC members agreed that this was a reasonable request to look closely at the existing needs of the facility in order to plan for its future.

This project has been listed for several years in the City of Newton's Capital Improvement Plan (CIP) and was moved up the list in the last year due to the increased urgency of addressing the issues at the site. The project is currently listed as Priority #44 in the FY22-26 CIP, with a renovation plan noted to be the first step towards undertaking any future capital improvements on the site. The project is also specifically noted in the Open Space and Recreation Plan's Seven Year Action Plan as a "Possible Aquatic Project" in Goal 2, Objective 2A, #25. This reference also notes the need to develop a feasibility study before the City can implement a plan that addresses replacing the key elements of the facility. (<https://www.newtonma.gov/Home/ShowDocument?id=47207>, Section 9, Pages 151-152)

**Funding Uses and Sources:** The CPA funding will be used to hire an outside consultant to complete the full assessment of the facility's existing conditions and develop a report which includes a phased plan for its renovation which includes costs as well as an assessment of the merits of renovation versus replacement of the facility. The CPA funding will be matched by the City with staff time that will be used to oversee the project. Anticipated project work includes drafting the Request for Qualifications, hiring the project consultant, working with them on data collection, and reviewing and finalizing the final report.

**Project Finances:** This request is the first step in the process of replacing and restoring the Gath Memorial Pool Facility to ensure that it can continue be a resource for Newton residents in the future. The CPC understands that the ultimate cost of the completed project is currently unknown but that this report will provide a clear understanding of how to move forward at the site, including a cost analysis of the various elements of the project and alternative approaches to the project. The CPC anticipates additional proposals for CPA funding in the future for the physical restoration of the site once an approach is chosen.

**Accessibility:** The existing pool facility has a number of accessibility challenges which the City plans to address in the proposed study and future renovation project.

#### **ADDITIONAL RECOMMENDATIONS** (*funding conditions*)

1. CPA funding is limited to the hiring of consultants to complete the conditions and needs assessment and feasibility study at the Gath Memorial Pool Complex.
2. The funding must be used within one year of the City Council's approval of this recommendation. If this funding deadline cannot be met, the Applicants must submit a written request to extend that deadline to the CPC.
3. Any periodic reports or interim deliverables prepared as part of this project, and any City or State reviews of those deliverables, must be shared with the CPC for online posting.
4. A copy of the final report from the consultants must be submitted to the CPC for posting online.
5. Any remaining CPA funds at the completion of the 100% design project will be returned to the Newton Community Preservation Fund.

#### **KEY OUTCOMES**

The Community Preservation Committee will evaluate this project based on its success in completing the conditions and needs assessment and feasibility study of the Gath Memorial Pool Complex, and its ability to lay out a clear plan for the property's future renovation and restoration.

**ATTACHMENTS**

- March 2021 Proposal and selected attachments submitted to the CPC for the April 13, 2021 public hearing
- Project Presentation given at the April 13 CPC meeting.

Additional information not attached to this recommendation, including petitions and letters of support, are available on the CPC's website at:

<https://www.newtonma.gov/government/planning/community-preservation-program/proposals-projects/gath-memorial-pool-renovation-project>

City of Newton



Ruthanne Fuller  
Mayor

**Newton, Massachusetts Community Preservation Program  
FUNDING REQUEST**

**166-21**

*(For staff use)  
date rec'd:*

03/26/21

PRE-PROPOSAL

PROPOSAL

Last updated March 26, 2021.

Please submit this completed file directly – do not convert to PDF or other formats.

For full instructions, see [www.newtonma.gov/cpa](http://www.newtonma.gov/cpa) or contact:

Lara Kritzer, Community Preservation Program Manager

City of Newton Planning & Development Department, 1000 Commonwealth Ave., Newton, MA 02459

[lkritzer@newtonma.gov](mailto:lkritzer@newtonma.gov)

617.796.1144

You may adjust the space for each question, but the combined answers to all questions on this page must fit on this page.

<b>Project TITLE</b>	<b>GATH POOL RENOVATION PROJECT</b>			
<b>Project LOCATION</b>	256 Albemarle Road, Newtonville MA 02460			
<b>Project CONTACTS</b>	Name & title or organization                      Email                      Phone                      Mailing address			
<b>Project Manager</b>	Luis Perez Demorizi, Open Space Coordinator Parks, Recreation & Culture/ Rafik Ayoub, Project Manager, Public Buildings Department	<a href="mailto:lpdemorizi@newtonma.gov">lpdemorizi@newtonma.gov</a> <a href="mailto:rayoub@newtonma.gov">rayoub@newtonma.gov</a>	617-769-1507 617-796-1621	246 Dudley Road, Newton MA, 02459/52 Elliot Street, Newton, 02461
<b>Other Contacts</b>	Nicole Banks, Commissioner Parks, Recreation & Culture/ Josh Morse, Commissioner Public Buildings	<a href="mailto:nbanks@newtonma.gov">nbanks@newtonma.gov</a> <a href="mailto:jmorse@newtonma.gov">jmorse@newtonma.gov</a>	617-796-1502 617-796-1608	246 Dudley Road, Newton MA, 02459/ 52 Elliot Street, Newton, 02461
<b>Project FUNDING</b>	<b>A. CPA funds requested:</b> \$ 60,000.00 – Facilities Study	<b>B. Other funds to be used:</b> \$ 21,300.00 – approximate cost for staff time	<b>C. Total project cost (A+B):</b> \$ 81,300.00	
<b>Project SUMMARY</b>	Explain how the project will use the requested CPA funds. You may provide more detail in attachments, but your PROJECT SUMMARY MUST FIT IN THE SPACE BELOW. Use a cover letter for general information about the sponsoring organization's accomplishments.			

The Gath Pool is situated within the Russell J. Halloran Sports and Recreation Complex, a.k.a. Albemarle Park. The property is owned and operated by the City of Newton under the jurisdiction of the Parks, Recreation & Culture Department. Design and construction of the pool facility falls under the jurisdiction of the Public Buildings Department.

Gath Pool is the sole public outdoor swimming pool for Newton's +85,000 residents and non-resident guests. It welcomes 30,000 users per season. Newton Parks, Recreation & Culture (PRC) has managed Gath Pool since it was constructed 55 years ago. The pool is used daily during open season, hosting swim lessons, summer camps, recreational and lap swimming, Special Athletes programs, senior programs and the City's coed Bluefish Swim Team made up of 200 members ages 5-18. Gath Pool also hosts the annual Summer Suburban Swim League regional championships with teams from 12 nearby communities and over 5,000 visitors.

Neither pools meet current ADA or MAAB accessibility guidelines; the 55-year-old pools, deck, systems and equipment are past end-of-life; the pool leaks 18,000 gals/day; the decks are in need of renovation; drain covers and other infrastructure are dated and in need of replacement; there is a need for more lap lanes.

PRC and co-sponsor Public Buildings, with the support of the Friends of Albemarle, are seeking to pursue a contract for an existing facilities study that will include a robust examination of the facility's current conditions and development of annotated improvements along with costs for a phased renovation of both the main and wading pools. In the process of evaluating the existing Gath pool, program needs, and options, the City will evaluate alternative approaches to achieve an updated facility. Options will include needs identified by the Parks, Recreation & Culture Department as well as other City entities and stakeholders.

Phase I of the project is an existing facilities study to include the following tasks:

- review of information, site visits and familiarity with the facility, programs, neighborhood and City needs
- existing conditions survey and existing conditions site plan
- meetings with PRC and Public Buildings Departments, PRC Commission, Community Preservation Committee, Conservation Commission and other appropriate City staff and committees
- perform geotechnical borings of concrete deck and potentially pool shell
- perform and provide findings from CCTV inspection of piping, main drain, and gutter system
- provide options for solutions(s) and related cost(s)
- identify Americans with Disabilities Act (ADA) & Massachusetts Architectural Access Board (CMR 521.00) compliance needs
- identify Massachusetts Department of Public Health (MDPH) compliance needs
- identify and provide options and costs to replace existing equipment and furnishings
- provide conceptual costs and plans of proposed design options
- provide projected cost differential of modifying pool configuration allowing the addition of two (2) additional lap lanes;
- provide projected cost differential for all new pool(s) with zero entry and decking
- provide projected operating costs for the new systems.

The RFQ for a designer is included as an attachment to this application. Phase II, Schematic Design, would rely on further city approval and funding.

Luis Perez Demorizi, Open Space Coordinator, has 7 years of experience as a landscape designer 5 of which were spent designing parks, playground, streetscape and inspecting post-construction contractor work in the private sector. He helped manage an 11-million-dollar contract with the City of New York's Department of Environmental Protection's green infrastructure program retrofitting sidewalks, schools and parks to manage stormwater. For PRC, Luis has managed and supervised the construction of Heartbreak Hill Park at Waban Hill Reservoir(368K value), the design and construction of the athletic field lights at Newton South High School (~450K value), structural field and court lighting assessment at Albemarle Park, Forte Park and Newton South High School tennis courts, retaining wall assessment at Burr Park, Life course trail renovation at Cold Spring Park, and landscape improvements at the Newton Corner traffic islands. He is currently overseeing the design and engineering of the Improvements to Levingston Cove. He is also in the process of developing trail improvements plan at the Marty Sender greenway. Under his oversight, Luis has been able to deliver quality open space projects to the city of Newton. He puts extra focus on minimizing project unknowns when possible. He is also able to connect effectively with other departments, various city commissions and the public.

Rafik Ayoub, Facilities Project Manager, is experienced in architectural design of institutional, public, and residential projects. Rafik has a proven track record in managing new construction, additions, and renovation projects from design through construction and closeout, completing projects on time and on budget. He is skilled in: Development of scope of work; selection of design team; design constructability review; management of bid/award process; budgets and timelines; coordination of design process; oversight of project execution; and conflict resolution. At the Public Building's department, Rafik has managed and supervised a \$1.2M renovation and accessibility project at Jackson Homestead and Museum, a \$1.5M accessibility and alteration project for the War Memorial wing of Newton City Hall, interacted with the Commission on Disability to determine accessibility deficiencies in the city's buildings and come with appropriate solutions to the problems, designed in-house and managed several projects related to city buildings including the city hall, schools, and branch libraries.

You may adjust the space for each question, but the combined answers to all questions on this page must fit on this page.

<b>Project TITLE</b>	<b>GATH POOL RENOVATION PROJECT</b>		
<b>USE of CPA FUNDS</b>	<b>RECREATION</b>		
	<b>Preservation</b>	x	
	<b>Rehabilitate/ Restore</b>	x	
<b>COMMUNITY NEEDS</b>	<p>From each of at least 2 plans linked to the <a href="#">Guidelines &amp; Forms</a> page of <a href="http://www.newtonma.gov/cpa">www.newtonma.gov/cpa</a>, provide a brief quote with plan title, year, and page number, showing how this project meets previously recognized community needs. You may also list other community benefits not mentioned in any plan.</p> <p><u>Open Space and Recreation Plan Update 2020-2027</u></p> <ul style="list-style-type: none"> <li>Section 8, Page 141 Goal 2 Objective 2B: Improved City parks, playgrounds, and other recreational facilities.</li> <li>Section 8, Page 141 Goal 3 Objective 3A: Increased accessibility in the City’s park land.</li> <li>Section 8, Page 142 Goal 4 Objective 4A: Improved existing open space resources where need is greatest.</li> <li>Section 9, Pages 145-146 Goal 2 Objective 2A #25: Gath Pool: Develop feasibility study and implement an improvement plan that addresses: Replacing the pool, kiddie pool, and bath house</li> </ul> <p><u>Capital Improvement Plan FY2022-2026</u></p> <ul style="list-style-type: none"> <li>Page 11, <i>Protecting Woods and Open Spaces &amp; Caring for our Parks and Recreational Spaces</i> – “...The need to renovate or replace the Gath Pool has been raised in priority in this CIP. A study will be conducted this year to analyze the maintenance needs and provide possible options for more substantial renovations...”</li> <li>CIP by Priority FY 2022-2026, Priority 44:                      “Gath Memorial Pool has served Newton residents for over 50 years. Though the building was recently renovated in 2013, the swimming pool and all attendant components (i.e., pump, filter, piping, decking, electrical, and chemical feeder) require complete renovation and replacement work to ensure continued enjoyment by the community.”                      “A renovation plan is needed to determine the cost to upgrade systems and restore the pool shell to stop water loss through leaks.”</li> </ul>		
<b>COMMUNITY CONTACTS</b>	<p>List at least 3 Newton residents or organizations willing and able to comment on the project and its manager’s qualifications. No more than 1 should be a supervisor, employee or current work colleague of the project manager or sponsor. Consult staff on the community contacts required for your specific proposal.</p>		
Name & title or organization	Email	Phone	Mailing address
Arthur Magni, Chairman Parks & Recreation Commission	<a href="mailto:magni@rcn.com">magni@rcn.com</a>	617-821-8351	107 Mt. Vernon Street Newton, MA 02465
Cedar Pruitt, President Friends of Albemarle	<a href="mailto:friendsofalbemarle@gmail.com">friendsofalbemarle@gmail.com</a> <a href="mailto:cpruitt@gmail.com">cpruitt@gmail.com</a>	617-515-0111	Friends of Albemarle c/o Cedar Pruitt, President 2 Wyoming Road Newton MA 02460
The Newton Bluefish Swim Team, Managed by Mary & Scott Pohlman	<a href="mailto:newtonbluefish@aol.com">newtonbluefish@aol.com</a>	(C) Mary 617-291-2271 (C) Scott 617-775-4971	Newton Bluefish, LLC c/o Mary and Scott Pohlman 3 Proctor Street Newtonville, MA 02460

You may adjust the space for each question, but the combined answers to all questions on this page must fit on this page.  
 Full proposals must include separate, detailed budgets in addition to this page.

Project TITLE		GATH POOL RENOVATION PROJECT	
<b>SUMMARY CAPITAL/DEVELOPMENT BUDGET</b>			
<b>Uses of Funds</b>			
Phase I: Existing Facilities Study – Not-to-exceed amount.		\$60,000.00	
Approximate staff time for the duration of the feasibility study @ 10/hrs per week for 6 months		\$21,300.00	
		\${amount}	
		\${amount}	
		\${amount}	
<b>D. TOTAL USES</b> (should equal C. on page 1 and E. below)		<b>\$81,300.00</b>	
<b>Sources of Funds</b>		<b>Status</b> (requested, expected, confirmed)	
CPA funding		Requested	
Approximate staff time for the duration of project		expected	
<b>E. TOTAL SOURCES</b> (should equal C. on page 1 and D. above)		<b>\$81,300.00</b>	
<b>SUMMARY ANNUAL OPERATIONS &amp; MAINTENANCE BUDGET (cannot use CPA funds)</b>			
<b>Uses of Funds</b>			
Approximate Staff Payroll		\$141,316.00	
Pool testing supplies		\$500.00	
Pool treatment materials (chlorine, Carbon Dioxide, Calcium Chloride and Sodium bicarbonate)		\$17,520.00	
Pool water – Includes filling, backwashes & leak		\$70,000.00	
Staff Uniforms		\$500.00	
<b>F. TOTAL ANNUAL COST</b> (should equal G. below)		<b>\$229,836.00</b>	
<b>Sources of Funds</b>			
Revolving Fund Account (Part-time and seasonal staff only)		\$70,316.00	
Operating budget (Aquatics manager salary and supplies )		\$159,520.00	
<b>G. TOTAL ANNUAL FUNDING</b> (should equal F. above)		<b>\$229,836.00</b>	
<b>Project TIMELINE</b>		<b>Phase or Task</b>	
		<b>Season &amp; Year</b>	
Site visits & meetings		August-September 2021	
Investigate and identify source of pool leak/Provide permanent solution		September-December 2021	
Prepare and submit draft and final Existing Facilities Study report		November – December 2021	
Total Phase 1 duration		Approximately 3-4 Months	



Project TITLE		GATH POOL RENOVATION PROJECT	
↓ Check off submitted attachments here.			
REQUIRED.	x	<b>PHOTOS</b>	of existing site or resource conditions (2-3 photos may be enough)
		<b>MAP</b>	of site in relation to nearest major roads (omit if project has no site)
Pre-proposals: separate attachments not required, just use page 3 of form.  Full proposals: separate, detailed budget attachments REQUIRED.	<b>PROJECT FINANCES</b> printed and as computer spreadsheets, with both uses & sources of funds		
		<b>Development budget:</b> include total cost, hard vs. soft costs and contingencies, and project management – amount and cost of time from contractors or staff (in-kind contributions by existing staff must also be costed) <b>Operating/maintenance budget, projected separately for each of the next 10 years</b> (CPA funds may not be used for operations or maintenance)	
	NA	<b>Non-CPA funding:</b> commitment letters, letters of inquiry to other funders, fundraising plans, etc., including both cash and est. dollar value of in-kind contributions	
	<b>Purchasing of goods &amp; services:</b> briefly summarize sponsor’s understanding of applicable state statutes and City policies		
REQUIRED for all full proposals.	<b>SPONSOR FINANCES &amp; QUALIFICATIONS, INSTITUTIONAL SUPPORT</b>		
	x	<b>For sponsoring department or organization, most recent annual operating budget</b> (revenue & expenses) & <b>financial statement</b> (assets & liabilities); each must include both public (City) and private resources (“friends” organizations, fundraising, etc.)	
	x	<b>For project manager: relevant training &amp; track record</b> of managing similar projects	
REQUIRED for all full proposals involving City govt., incl. land acquisition.	x	<b>CAPITAL IMPROVEMENT PLAN</b>	current listing/ranking & risk factors for this project
	x	<b>COVER LETTER</b>	from head of City department, board or commission confirming: current custody, or willingness to accept custody, of the resource and commitment of staff time for project management
	<b>ZONING &amp; PERMITTING</b>		
	NA	<b>Permits required:</b> including building permits, environmental permitting, parking waivers, demolition, comprehensive permit, or special permits (if applicable)	
	NA	<b>Other approvals required:</b> Newton Conservation Commission, Newton Historical Commission, Newton Commission on Disabilities, Parks and Recreation Commission, Massachusetts Historical Commission, Massachusetts Architectural Access Board, etc.	
	<b>DESIGN &amp; CONSTRUCTION</b>		
	NA	<b>Professional design &amp; cost estimates:</b> include site plans, landscape plans, etc.	
NA	<b>Materials &amp; finishes;</b> highlight “green” or sustainable features & materials		
OPTIONAL for all proposals.	x	<b>LETTERS of SUPPORT</b>	from Newton residents, organizations, or businesses



Ruthanne Fuller  
Mayor

**City of Newton, Massachusetts**  
Office of the Mayor

**166-21**

Telephone  
(617) 796-1100  
Fax  
(617) 796-1113  
TDD/TTY  
(617) 796-1089  
Email  
rfuller@newtonma.gov

March 25, 2021

Community Preservation Committee  
c/o Lara Kritzer  
Newton City Hall  
1000 Commonwealth Avenue  
Newton, MA 02459

Dear Members of the Community Preservation Committee:

I strongly support the City of Newton's application for funding for the Gath Pool facilities study.

Gath Pool has provided a wonderful summer respite for the community for nearly 60 years. Gath Pool is our sole public outdoor swimming pool for Newton's 88,000+ residents. The pool is used daily in the summer, hosting swim lessons, summer camps, recreational and lap swimming, Special Athletes programs, programs for older residents and the City's coed Bluefish Swim Team made up of 200 members ages 5-18. At least 30,000 people use the pool each summer. Gath Pool also hosts the annual Summer Suburban Swim League regional championships with teams from 12 nearby communities and over 5,000 visitors. It is truly a critical City-wide recreational resource.

Gath Pool needs significant improvements. This facilities study, which will be bid out, will provide valuable information on options for renovating the main and kiddie pools, mechanical pump and filtration systems, and pool decks. City of Newton staff from the Parks, Recreation & Culture Department and Public Buildings Department will manage the project.

Once we receive the findings and recommendations, we will solicit input from across the City through a series of public meetings to discuss the options and determine the best path forward for Gath Pool's next 60 years.

Thank you for your consideration of this important facilities study which will provide the City with an analysis and game plan for Gath Pool.

Sincerely,

Mayor Ruthanne Fuller

Newton Parks, Recreation & Culture Department  
246 Dudley Road, Newton, MA 02459  
Office: (617) 796-1500  
parks@newtonma.gov

March 25, 2021

Lara Kritzer  
Community Preservation Program Manager  
Newton Planning & Development Department  
1000 Commonwealth Avenue  
Newton, MA 02459

Dear Ms. Kritzer:

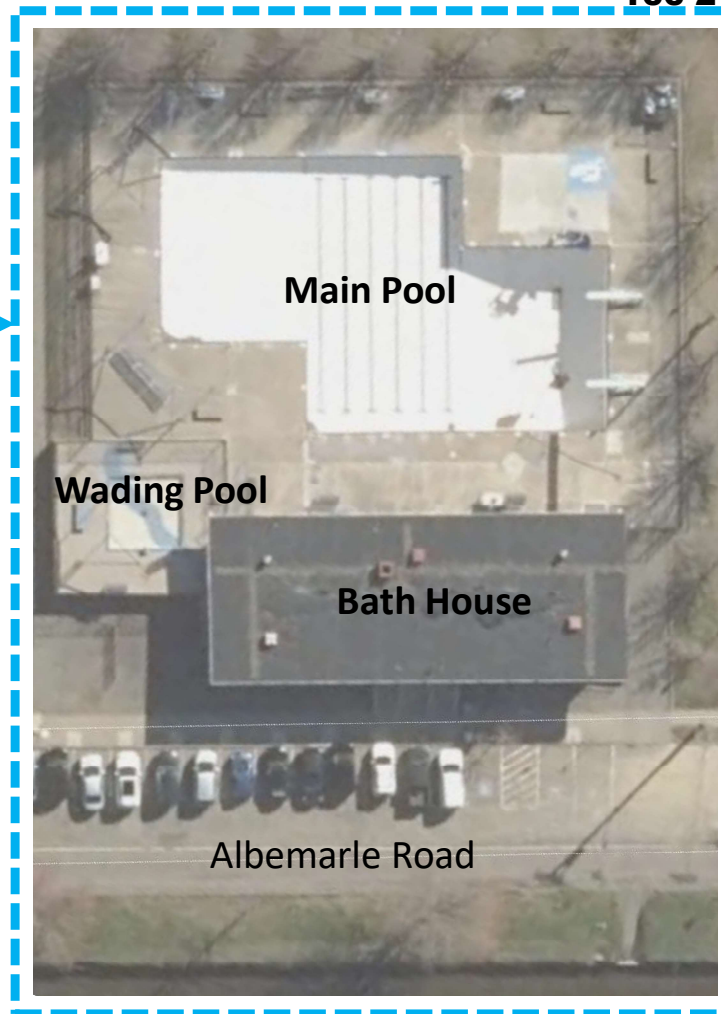
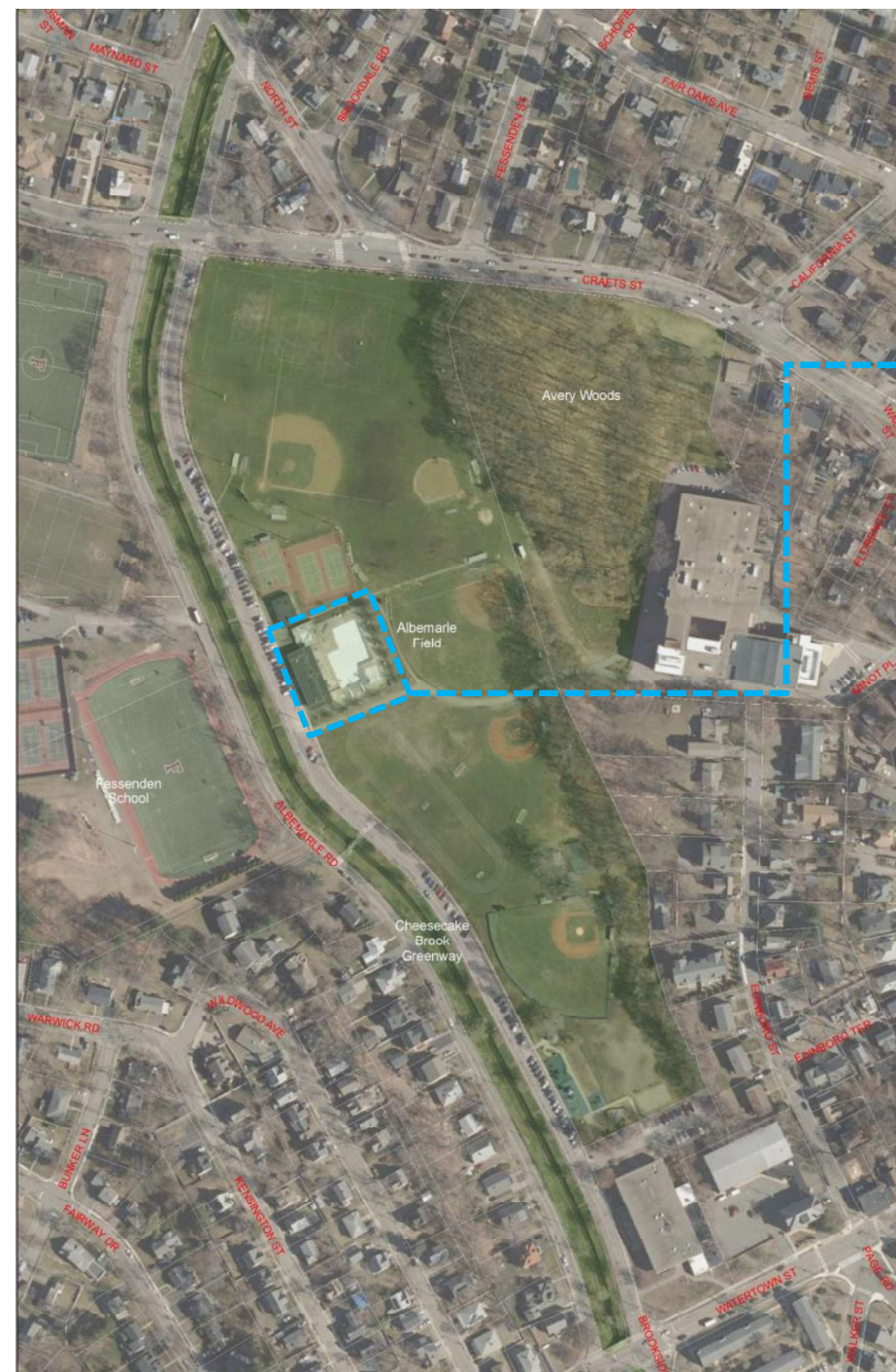
This letter is to confirm the Parks, Recreation & Culture Department has current custody and the commitment of staff time for project management of the Gath Memorial Pool Renovation Project.

If you have any questions, please call the Parks, Recreation & Culture Office at 617.796.1500.

Sincerely,



Nicole Banks  
Parks, Recreation & Culture Commissioner



### Gath Pool Site Location:

- Located within the 24.9-acre Russ Halloran Sports and Recreation Complex AKA Albemarle Park
- Bound by ball fields, sport courts and Albemarle Road



RUTHANNE FULLER  
MAYOR

# GATH MEMORIAL POOL EXISTING FACILITIES STUDY

**DRAFT Rev 3.0**

## REQUEST FOR QUALIFICATIONS DESIGNER SERVICES (RFQ) #xx-xx March 10, 2021

### 1. INTRODUCTION

The City of Newton, Massachusetts Parks, Recreation & Culture Department (PRC), (“Owner”), acting through the Designer Selection Committee (DSC), is seeking the services of a qualified designer (“Designer”) within the meaning of the Massachusetts Designer Selection Law M.G.L. Chapter 7C, Sections 44 through 58, to provide Designer Services for an Existing Facilities Study (to the extent possible exclusive of the bathhouse), and to provide recommendations for the renovation or new construction of the main and wading pools at the Harry N. Gath Jr. Memorial Pool, 256 Albemarle Road, Newton, Massachusetts 02460 (the “Project”).

The City is requesting the qualifications of a Designer to provide professional services during one and perhaps subsequent multiple Project phases.

- First, in Phase 1 the Designer will prepare an Existing Facilities Study to identify the existing conditions, needs, options, and anticipated costs in order that the Owner may determine how best to address potential renovations and upgrades or new construction for the Gath Pool Facility. Phase 1 services shall be referred to herein as the Basic Services.
- Second, subject to the approval of the Project and further subject to continued funding authorized by the City, the contract between the City and the Designer may be amended to include continued Designer services for Phase II, Schematic Design and Site Plan Approval of a Preferred Option identified and selected by the Owner in Phase 1.
- Third, subject to the approval of the Project and further subject to continued funding authorized by the City, the contract between the City and the Designer may be amended again to include continued Designer services through the Project’s Design Development, Construction Documents, Bid and Award.
- Finally, subject to the approval of the Project and further subject to continued funding authorized by the City, the contract between the City and the Designer may be amended again to include continued Designer services through Construction Administration and Final Closeout.

A potential Project may include, but not be limited to, replacement or renovations of, the pool shell structure the accessibility upgrades in and around both pool areas, concrete deck replacement, replacement of filtration, chemical, mechanical and electrical components, grading and drainage improvements, shade structures, and pool slide/diving board upgrade. Additional improvements to the pool area shall focus on site security to include refurbishment of fence enclosure to reduce potential for scaling.

The Fee for services related to the completion of the Basic Services will be negotiated but will not exceed **\$60,000**. “Extra Services” fees will not be allowed for Phase 1. Subsequent phases will be negotiated once approved.

## 2. GENERAL INFORMATION

The Owner believes in a design approach where all Project stakeholders are involved in the design process from start to finish on a collaborative basis as indicated in the City of Newton – Public Buildings Department Building Design and Construction Sustainability Guidelines, **Attachment G**. The process recognizes that non-inclusive and compartmentalized design decisions made unilaterally may have adverse impacts on achieving sustainable design goals. An integrative design approach is required for the Project.

The Designer will coordinate the collaborative design team process for options analysis, criteria development and strategic plan approval.

## 3. BACKGROUND

### City's History, Profile and Organizational Structure:

Newton was settled in 1639 and incorporated as a City in 1873. The City is located approximately seven miles from downtown Boston, has a population of approximately 85,146 and occupies a land area of 18.33 square miles. The City is principally suburban-residential in character and consists of 13 distinct villages – Auburndale, Chestnut Hill, Newton Centre, Newton Corner, Newton Highlands, Newton Lower Falls, Newton Upper Falls, Newtonville, Nonantum, Oak Hill, Thompsonville, Waban, and West Newton.

The City is governed under a home-rule charter, which vests executive authority and responsibility in an elected Mayor, who serves a four-year term. Legislative authority is vested in a 24-member City Council, of which eight members are elected from the City's eight wards and sixteen are elected at large. Members of the City Council are elected every two years.

### Parks and Recreation Commission

Newton City Ordinances Chapter 21, Article III establishes the Parks and Recreation Commission. Among its duties it advises the mayor and city council on matters pertaining to sports, recreation, parks, open space and preservation of scenic beauty. The Commission renders decisions concerning parks and recreation programs and the use of lands under its jurisdiction **Attachment A**.

### Parks, Recreation & Culture Department

The Department of Parks, Recreation & Culture is established under Chapter 21, Article I of the Newton City Ordinances. The Parks, Recreation & Culture Commissioner is charged with the maintenance, care and management of playgrounds and all recreational lands, except to the extent conferred upon the Parks and Recreation Commission. The Parks, Recreation & Culture Department is responsible for planning, scheduling, organizing and supervising programs for designated city groups and citizens. Under the direction of the Parks, Recreation & Culture Commissioner the department supervises and patrols activities at swimming ponds and pools, skating areas, playgrounds and all other recreational areas. The department also conducts all senior citizens recreation programs **Attachment A**.

### Newton Recreational Facilities

The Parks, Recreation & Culture Department oversees more than 55 different programs and activities including active and passive recreation, camps, social programs, dance, organized leagues, trips, and wellness programs. The department manages some 18 different buildings and facilities. Among these are the Lower Falls Community Center, the Upper Falls Community Center, Gath Pool and Field House, Crystal Lake Park and Bath House, Hawthorn Field House and Nahanton Park and Field House

### The Gath Memorial Pool

The pool facility is situated within the Russell J. Halloran Sports and Recreation Complex, a.k.a. Albemarle Park. The property is owned and operated by the City of Newton under the jurisdiction of the Parks, Recreation & Culture Department.

The facility is comprised of two separate pools, a main and wading pool. They operate seasonally from the second Monday in June to Labor Day each Summer. The facility is used for programs including general family swim, lap swim, swim lessons, a youth swim team, aqua aerobics, and special events. Over the past three seasons, the pool has seen an average of 30,000 bathers use the pool each summer. Approximately 40 staff including lifeguards, swim instructors, cashiers and supervisors are hired each season to operate the facility and programs.

The main pool is 325,000-gallons (at 7,200 sq. ft). It is composed of three contiguous but separate areas of use: a shallow swimming area, lap lane area (6 lanes x 25 yards each), and deep end for use of two (2) diving boards and slide. Pool depths range from 3 feet to 12 feet. The pool shell is made of poured-in-place concrete with a stainless-steel overflow gutter around its entire perimeter. The current deck surface is concrete around the entire facility with numerous patches and tripping hazards resulting from aging manhole and other service covers and grates. The renovation shall maintain the existing footprint of the facility.

The wading pool is 3,000-gallons (at 400 sq. ft). It is 1.5 ft deep with a spray feature. The wading pool deck can be accessed from the main pool area or through separate stair access from the street. A soft touch aqua flex deck surface was installed in 2017 and is starting to show wear around the edges.

The pool system is currently losing 18,000 gallons of water per day during normal operation. Previously performed dye tests and isolation tests have been inconclusive. PRC has determined the identification of the source of the leak and a permanent resolution to be a priority.

Filtration of the pools is taken from a mix of top and bottom water. Top water is taken from a stainless-steel overflow gutter and bottom water is taken from the main drain. The two sources meet in a mixing tank controlled by a modulating float valve. The water is pumped using a single pump operating at approximately 900 GMP. A hair catch and four Neptune Benson sand filters clean the water, it is then returned to the pool from a pressurized line within the backside of the gutter.

Chemical sanitation is completed with liquid sodium hypochlorite 15% via peristaltic pumps directly injected into return lines. Ph balance is achieved with CO<sub>2</sub> to create carbonic acid via direct injection into return lines. Alkalinity balance is achieved with sodium bicarbonate and calcium hardness balance is achieved with calcium chloride, both are added, as needed, directly into the mixing tank

The current design of the bathhouse, deck and pools is accessible for people with disabilities. There are railed wheelchair ramps onto the decks and into the bathhouse for the use of restrooms, lockers, and showers. The bathhouse includes the office, employee lockers, and first aid room. Most pool equipment is housed in the bathhouse. A portable chair lift is stationed at the facility to allow for water access to either the main pool or wading pool. The employee only areas are currently not accessible.

#### **4. PROJECT GOALS AND OBJECTIVES**

In the process of evaluating the existing Gath pool, program needs, and options, the City seeks to evaluate alternative approaches to repair/replace or renovate the existing components and or elements to achieve an updated facility. Approach options will include needs identified by the Parks, Recreation & Culture Department as well as other City entities and stakeholders.

Overall Project Objectives include:

- Ensuring that the Parks, Recreation & Culture Department's mission and goals are fully understood, and incorporated into the process, while establishing potential goals for the Gath Memorial Pool Facility.
- Engaging with all stakeholders, in coordination with the Owner, from project outset to ensure a collaborative approach is maintained throughout the design process, including involvement from multiple Owner entities.
- Assisting in communicating Project details with the public.

- Reviewing and assessing the existing programs, documentation and conditions.
- Providing an Existing Facilities Study which will allow the Owner to determine which option(s) is /are appropriate for the City.
- Investigating the most appropriate design options and phasing plans; including temporary operational space, if required.
- Developing accurate and complete cost estimates, including Life Cycle Costs as requested, at the Study Phase and during all subsequent stages of Design. Reconcile all estimates with the Owner's budget.
- Collaborating with the Owner to develop a detailed comprehensive Project Schedule that incorporates the City's approval process, to achieve specified start and completion milestones. Completing a Schematic Design for the preferred option, including a cost estimate.
- Supporting a design that is of high quality, efficient, cost effective, and conforms to Newton Energy Initiative program and the Massachusetts High Performance Building Guidelines and LEED for Municipal Buildings at a minimum, and complies with all applicable regulatory requirements including the Massachusetts Stretch Code which has been adopted by the City. In addition, design teams are directed to the City of Newton - Building Design and Construction Sustainability Guidelines **Attachment G** for additional requirements.
- Developing and evaluating creative energy efficiency solutions over and above the stretch code and innovative alternative sustainable design solutions, including but not limited to active/passive solar, geothermal, etc., and identifying alternate funding sources, first costs and paybacks.
- Provisioning of E-Quest or similar energy modeling services.
- Assisting the Owner in coordinating materials testing in accordance with the requirements of the Massachusetts State Building Code; and other materials and systems tests as may be identified or required by the City.
- Provide the services of a Hazardous Materials Consultant, Geotechnical Engineering, Commissioning Agent, Surveyor and any other consultant or consulting services as may be required for this Project.

To accomplish this, the selected Designer will be working in partnership with various City departments, committees, and sub-committees. The local committees will include at a minimum:

- City Council, Parks and Recreation Commission, Working Group, Parks, Recreation & Culture Department, and the Mayor.
- Design Review Committee (DRC) – A standing committee appointed by the City Council and Mayor, established to coordinate the design review process for any public City facility.
- Planning and Development Department, Development Review Team (DRT) - Prior to construction at any municipal building, the Director of Planning reviews projects for consistency and compatibility with the *Newton Comprehensive Plan* and other applicable planning and analytical studies.
- Public Facilities Committee of the City Council – For required local reviews.
- Programs and Services Committees of the City Council – For required local reviews.
- Finance Committee of the City Council – For required local reviews.
- Public Buildings Department (PBD) – The Public Buildings Commissioner is responsible for the construction, alteration, repair and maintenance of all public buildings. PBD will provide direction to the Designer and will administer the contract between the City and the Designer. The Public Buildings Commissioner also serves as the Secretary of the DSC and DRC.
- Public Meetings at other City Committees – As may be required for local reviews.
- Other committees including the Commission on Disabilities, Conservation Commission, Fire Department, Department of Public Works, etc. – As may be required for local reviews.



The Designer will assist the Owner in identifying other approvals required by the Commonwealth of Massachusetts and coordinate submittal materials for such approvals. Such approvals may include:

- Massachusetts Department of Public Health (MDPH)
- Massachusetts Architectural Access Board (MAAB)

Needs and building conditions assessments and other background documents shall be available for informational purposes and include:

- City of Newton Capital Improvements Program

**5. PROJECT PHASING DESCRIPTION**

**Phase I: Existing Facilities Study**

**3-4 months**

The City will embark on an Existing Facilities Study to evaluate alternative approaches to repair/replace or renovate the existing components and or elements to achieve an updated facility that meets the needs identified by the Parks, Recreation & Culture Department. Phase I tasks include but are not limited to:

Task 1: Site visits & meetings

- Conduct site visits and develop familiarity with the facility, programs, neighborhood, City needs.
- Conduct an existing conditions survey.
- Attend meetings with the Project Manager, the Parks, Recreation & Culture Department, and Parks & Recreation Commission, Community Preservation Committee, Conservation Commission and other appropriate City staff, committees, and community.
- Review Information provided by the City.

Task 2: Investigate and identify source of pool leak/Provide permanent solution

Should the 2021 outdoor swim season be operational, invasive investigation work may not be performed between June 1 and Labor Day.

- Perform geotechnical borings of pool shell and concrete deck as appropriate.
- Perform and provide findings from CCTV inspection of piping, main drain, and gutter system.
- Provide options for solutions(s) and related cost(s).

Task 3: Prepare and submit draft and final Existing Conditions Report, Options and Costs

- Existing Conditions site plan.
- Identify Americans with Disabilities Act (ADA) & Massachusetts Architectural Access Board (CMR 521.00) compliance needs.
- Identify Massachusetts Department of Public Health (MDPH) compliance needs.
- Identify and provide options to replace and options to modify/ repair existing pool shell, deck, equipment, and furnishings.
- Provide conceptual costs and plans of each option as appropriate.
- Provide projected costs for replacement of all equipment and furnishings.
- Provide projected cost differential of modifying pool configuration allowing for two (2) additional lap lanes. Both as new construction and modification of existing.
- Provide projected operating costs for the new systems.
- If the City decides to proceed with the Project beyond the Existing Facilities Study Phase, the Contract between the City and the Designer may be amended accordingly. The total estimated duration of such Contract is estimated as follows.

- **Phase II: Schematic Design Phase/Site Plan Approval** **6-8 months**

**Phase III: Design Development/Construction Documents/Bidding Phases:** **10-12 months**

**Phase IV: Construction Administration and Close-Out Phases:** **T B D**

The anticipated initial Contract period will be from **xx x, 2021** or the date of contract execution, whichever is later, through the completion of the Existing Facilities Study Phase. The City reserves the right to terminate the services provided by the selected firm/individual at the end of this phase and re-solicit Designer services or to continue with the selected Designer beyond this phase in accordance with the Contract for Designer Services at **Attachment B** below.

## **6. SCOPE OF SERVICES**

The Designer will be required to execute the City of Newton's standard Contract for Designer Services (Contract), a copy of which is attached hereto as **Attachment B** which is incorporated herein by reference. The required scope of services is set forth in the Contract. If the Owner decides to proceed with the Project beyond the Existing Facilities Study Phase the Contract will be amended accordingly. Copies of Designer Services Contract Amendments for Design/Bid/Build and are also attached hereto in **Attachment B** and incorporated herein by reference. Unless specifically excluded and agreed to by the Owner, the Designer's Basic Services consist of the tasks described in the Contract for Designer Services and as amended by this RFQ including all investigative work (to the extent provided for in the Contract), and, at the Owner's option, Designer's Basic Services may be amended to include schematic design & site plan approval, design development, preparation of construction documents, bidding period administration, construction administration, and other related work reasonably inferred in the opinion of the Owner as being necessary to meet the project's stated scope and goals.

During the schematic design and design development phases of the project, the Owner will require interactive working group sessions to explore site strategy options, design concepts, evaluation criteria, programming requirements, sustainability goals and potential solutions.

The anticipated scope of the Schematic design Phase includes but is not limited to: further Investigating the existing building and site and potential alternate schematic plans and elevations that meet the program and space requirements of the project based on the preferred option selected by the Owner as a result of the Phase I Existing Facilities Study.

The use of Building Information Modeling (BIM)<sup>1</sup> is seen as advantageous to delivering project goals. The Designer shall advise the Owner on their use of BIM and, at no additional cost, shall prepare all Instruments of Services in a form suitable for use in a BIM model for design, construction, commissioning, and building operations and maintenance. The Designer shall provide the Owner with options on how to apply BIM on the Project and shall make recommendations on alternative methods of BIM implementation. The Designer shall indicate their ability to utilize a BIM model if created by another party such as the General Contractor (GC) or Construction Manager at Risk (CM) for use in, but not limited to, mechanical coordination and construction administration.

This RFQ will be appended to and become part of the Contract for Designer Services. Any Designer selected as a result of this RFQ will be required to execute the Contract for Designer Services and any applicable amendments that are attached hereto.

The Designer will review the proposed project as specified in the RFQ. The Designer will meet as required with the City, Committees, and other officials (elected or volunteer) to develop a thorough understanding of the project and the needs of the City of Newton.

---

<sup>1</sup> Building Information Modeling is a digital representation of physical and functional characteristics of a facility. A BIM is a shared knowledge resource for information about a facility forming a reliable basis for decisions during its life-cycle; defined as existing from earliest conception to demolition

Designer Services may include, but are not limited to, verification of existing record information including building dimensions, details and general existing conditions, cost estimating, all architecture as well as civil, site development, sanitary, mechanical, electrical, plumbing, fire protection, structural, site planning and landscape architecture, basic environmental permitting, graphics, lighting design, acoustics, data and communication; any specialty consultants; code consultants, accessibility, energy evaluations including the coordination of energy rebates, detailed cost estimates, LEED or sustainable design consultants; Furniture, Fixtures & Equipment (FF&E) including programming, specifications, procurement and coordination of installation; assessments of geotechnical and geo-environmental information; preparation of construction documents; developing and issuing of early bid packages, if needed; bidding and administering the construction contract documents and other design and consulting services incidental and required to fulfill the project goals. Please refer to Article 8 of the Contract and any amendment for a complete summary of Basic Services.

Extra and reimbursable expenses are defined in Article 10 of the Contract in **Attachment B**. *Any extra or reimbursable expenses will not be allowed in Phase 1 any subsequent Phase extra or reimbursable expenses must be approved in writing in advance,*

## **7. MINIMUM QUALIFICATIONS & REQUIREMENTS**

Each Designer submitting a Statement of Qualifications (SOQ) must certify in its cover letter that it is a qualified Designer within the meaning of the Massachusetts Designer Selection Law, M.G.L. Chapter 7C, Sections 44 through 58, employing a Massachusetts registered architect responsible for and being in control of the services to be provided pursuant to the Contract. Any Designer that fails to include such certification in its response, demonstrating that these criteria have been met, will be rejected without further consideration.

## **8 EVALUATION & SELECTION CRITERIA**

In evaluating proposals, the Owner and DSC will consider the members of the proposed design team. Identify those member(s) of the proposed design team who will be responsible for the following categories of work: (Firm's name, individual's name and professional registration or license number, as applicable, must be listed in the application for each category of work).

- a. Architecture*
- b. Aquatics Design / Engineering*
- c. Geotechnical Engineering*
- d. Geo-Environmental*
- e. Site Survey*
- f. Environmental Permitting*
- g. Hazardous Materials*
- h. Civil Engineering*
- i. Structural Engineering*
- j. Landscape Architecture*
- k. Fire Protection Engineering*
- l. Plumbing Engineering*
- m. HVAC Engineering*
- n. Electrical Engineering*
- o. Lighting Consultant*
- p. Energy Modeling*
- q. Data/Communications Consultant*
- r. Specifications Consultant*

- s. *Sustainable/Green Design/Renewable Energy Consultant*
- t. *Cost Estimating*
- u. *Accessibility Consultant*
- v. *Furniture, Fixtures and Equipment Consultant*
- w. *Code Consultant*
- x. *Security Consultant*
- y. *Acoustical Consultant*

Applicants must address each category of work listed above in their application whether it is to be performed by in-house staff or by sub-consultant(s).

Failure to address each category may result in the elimination of the applicant from consideration on this project.

Applicants should not list any consultants other than those for the categories of work listed above.

The Owner and DSC will consider the following additional criteria in evaluating proposals:

- a. Prior Aquatics and Pool Facilities design or closely related experience best illustrating current qualifications for the project. Firms / teams demonstrating significant experience with Facilities Programming for these particular project types as documented on **Attachment C** are deemed to be highly desirable.
- b. Past performance of the firm, if any with regard to public or private projects across the Commonwealth, with respect to:
  - i. Quality of project design.
  - ii. Quality, clarity, completeness and accuracy of plans and contract documents.
  - iii. Ability to meet established program requirements within allotted budget and to design to budget.
  - iv. Ability to meet schedules including submission of design and contract documents, processing of shop drawings, contractor requisitions and change orders.
  - v. Coordination and management of consultants.
  - vi. Working relationship with contractors, subcontractors, local awarding authority, staff and local officials.
- c. Current workload and ability to undertake the contract based on the number and scope of projects for which the firm is currently under contract.
- d. The identity and qualifications of the consultants who will work on the project.
- e. Demonstrated ability to lead a collaborative team approach to the project.
- f. Demonstrated ability to provide documents for CM-at-Risk, M.G.L. c. 149A, delivery method for the project, including ability to provide early bid packages for fast-track project.
- g. The financial stability of the firm.
- h. The qualifications of the personnel to be assigned to the project.
- i. Geographical proximity of the firm to the project site or willingness of the firm to make site visits and attend local meetings as required by the client.
- j. Prior experience using BIM on projects of similar type and scope.
- k. Additional criteria that the DSC considers relevant to the project.

## 9. SELECTION PROCESS & SELECTION SCHEDULE

Selection will be made by the City of Newton Designer Selection Committee in accordance with Newton's Designer Selection Ordinance (Section 5-35 through 5-37) and Procedures, attached hereto as **Attachments E**.

### Process:

- a. The Owner acting through the DSC will perform a review of all responses as follows:
  - i. The City has appointed the DSC, in accordance with Chapter 5, Article IV of the Owner's Ordinance, for the selection of the Designer.
  - ii. The DSC will be responsible for reviewing each Respondent's proposal to determine if they have met the minimum criteria established in the RFQ. Respondents who do not meet the minimum criteria will not be further considered.
  - iii. The DSC will review the Respondents' applications and check the necessary references.
- b. The DSC members will score each proposal that has met the minimum criteria based on the weighted evaluation criteria identified in Section 4 of the RFQ.
- c. Based on the initial scores the DSC will rank the Respondents and short-list a minimum of three (3) Respondents.
- d. The DSC will schedule interviews with the short-listed Respondents. Each short-listed Respondent will be given an opportunity to make a brief presentation on their experience and capabilities to successfully provide the required project management services. DSC members will have an opportunity to discuss the responses and ask questions.
- e. Following the interviews, the DSC members will develop final rankings based, in part on, the weighted Evaluation Criteria in the RFQ and on additional information obtained during the interviews.
- f. In accordance with the City's Designer Selection Procedures, the DSC will transmit a list of ranked finalists to the Mayor. The submitted list shall be accompanied by a written explanation.
- g. As more fully described in **Attachment E**, City of Newton Designer Selection Committee Designer Selection Procedures, the Owner will commence fee negotiations with the first-ranked Respondent.
- h. If the Owner is unable to negotiate a contract with the first-ranked selection, the Owner will then commence negotiations with its second-ranked selection and so on, until a contract is successfully negotiated and approved by the Owner. If fee negotiations fail the Mayor may request three (3) additional recommendations from which he may select, or the City may re-advertise the RFQ.
- i. The Owner may re-advertise the RFQ if fewer than three responses are received.

### Schedule:

The following is a tentative schedule of the selection process, subject to change at the Owner's discretion.

M D, 2021	Advertise in the <i>Boston Globe</i> .
M D, 2021	Advertise in the <i>Central Register</i> of the Commonwealth of Massachusetts
M D, 2021	RFQ available on City's website: <a href="http://www.newtonma.gov/bids">www.newtonma.gov/bids</a>
M D, 2021	Project briefing and facility tour 11:00 AM 256 Albemarle Road
M D, 2021	Last day for questions 12 noon
M D, 2021	Responses to Questions issued by Purchasing Department
M D, 2021	SOQs due to Purchasing Department 11:00 AM
M D, 2021	Respondents short-listed
M D, 2021	Notify Respondents for interviews
M D, 2021	Interview short-listed Respondents
M D, 2021	Start negotiations with selected Respondent
M D, 2021	Execute contract

This RFQ may be obtained after 10:00 a.m. on **MONTH DATE, 2021**

from: Purchasing Department  
 Newton City Hall  
 1000 Commonwealth Avenue  
 Room 201  
 Newton, Massachusetts 02459  
 Email: [purchasing@newtonma.gov](mailto:purchasing@newtonma.gov)  
 Phone # 617 796 1220

or at

[www.newtonma.gov/bids](http://www.newtonma.gov/bids)

Proposers requiring clarification or interpretation of the RFQ shall make a written request to the Purchasing Department as indicated above, by noon on **Friday, M D, 2021**. Proposers contacting ANY CITY EMPLOYEE or any other person regarding this RFQ outside of the Purchasing Department, once the RFQ has been released, may be disqualified from the procurement process.

The City will make best efforts to give written Responses to the Questions no later than **M D, 2021** to all individuals or firms requesting a copy of this RFQ by an email Addendum.

A Project briefing will be held at:

The Gath Memorial Pool, 256 Albemarle Road, Newton, MA 02460 **M D, 2021** at **XX:00 a.m.**  
 Attendance at the briefing is not mandatory.

Sealed responses to the RFQ from qualified persons or firms must be clearly labeled “RFQ #18-109 Designer Services for Newton Center for Active Living” and delivered to the Purchasing Department at its address above no later than **11:00 AM on Thursday, M D, 2021**. The sealed responses must include eleven (11) hard copies and a CD copy of the response. SOQs may be delivered in person, by courier or by mail. *SOQs submitted by fax or electronic mail will not be considered.*

SOQs will not be accepted nor may submitted SOQs be corrected, modified or withdrawn after the deadline. There will be no public opening of the SOQs, though on the deadline date a list of all persons who submitted an SOQ will be published. Proposers are responsible for downloading the specifications from the City’s web site, and are requested to email the Purchasing Department ([purchasing@newtonma.gov](mailto:purchasing@newtonma.gov)) their company name, address, email address, phone & facsimile number and what bid # (i.e. #18-109) they have downloaded.

The City of Newton, operating through the DSC, reserves the right to reject any and all SOQs, to waive any defects, informalities, and minor irregularities; and to award contracts or cancel this RFQ if it is in the City’s best interest to do so. The City of Newton is an AA/EEO employer and encourages MBE and WBE firms to apply.

## **10. SOO REQUIREMENTS**

Persons or firms submitting an SOQ must meet the following requirements:

- a. Submit eleven (11) hard copies, and one (1) digital copy** in PDF format on separate compact disc. Responses should be printed double-side and bound in such a manner that the pages lie and remain flat when opened. The specific organization and orientation of the proposal is at the applicant’s discretion, but it is recommended that the proposal be laid out in such a manner that the reader doesn’t need to be constantly rotating the proposal. Proposals should not be provided with acetate covers.

The Owner will only accept hard original copies of SOQs. *Responses submitted by fax or electronic mail will not be considered.*

The Owner assumes no responsibility or liability for late delivery or receipt of Responses. All Responses received after the stated submittal date and time will be judged to be unacceptable and will be returned unopened to the sender.

- b. Applications must be accompanied by a concise cover letter that is a maximum of two pages in length. A copy of the cover letter should be attached to each copy of the application. The cover letter must include the certifications as noted in Section 7 of this RFQ.
- c. Applicants may supplement this proposal with graphic materials and photographs that best demonstrate design capabilities of the team proposed for this project subject to the page limitations as set forth in the Standard Designer Application Form.

## **11. REQUIREMENTS FOR SOO CONTENT**

All copies of SOQs shall be:

- Presented in an organized and clear manner.
- Must include the required forms in **Attachment C**.
- Must include all required certifications.
- Must include the following information:

A. Cover letter shall be a maximum of two pages in length and include:

1. An acknowledgement of any addendum issued to the RFQ.
2. An acknowledgement that the Respondent has read the RFQ. Respondent shall note any exceptions to the RFQ in its cover letter.
3. An acknowledgement that the Respondent has read the Standard Contract and Standard Amendments. Respondent shall note any exceptions to the Standard Contract and/or Standard Amendments in its cover letter.
4. A specific statement regarding compliance with the minimum requirements identified in Item 7 of this Request for Services to include identification of registration, number of years of experience and where obtained (as supported by the resume section of Attachment C).
5. A description of the Respondent's organization and its history.
6. The signature of an individual authorized to negotiate and execute the Contract for Designer Services, in the form that is attached to the RFQ, on behalf of the Respondent.
7. The name, title, address, e-mail and telephone number of the contact person who can respond to requests for additional information.

B. Selection Criteria: The response shall address the Respondent's ability to meet the "Selection Criteria" Section.

C. Certifications: Respondents will be required to submit certifications required in M.G.L. c. 7C, §51(d)(1)-(iv).

## **12. PAYMENT SCHEDULE & FEE EXPLANATION**

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

## **13. OTHER PROVISIONS**

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

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

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

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

### **D. Communications with the Owner**

The City's Purchasing Department:

Purchasing Department Newton City Hall  
1000 Commonwealth Avenue  
Newton, Massachusetts 02459  
Phone # 617.796.1220  
Email: [purchasing@newtonma.gov](mailto:purchasing@newtonma.gov)  
Fax # 617.796.1227

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

### **E. Costs**

The Owner is not liable for any costs incurred by any Respondent in preparing its SOQ or for any other costs incurred prior to entering into and only in accordance with a Contract between the Respondent and the Owner.

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

Applicants may withdraw an SOQ as long as the written request to withdraw is received by the City of Newton Purchasing Department prior to the time and date of the SOQ opening.



**G. Rejection of Responses, Modification of RFQ**

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

**H. Subcontracting and Joint Ventures**

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

**H. Validity of Response**

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

CITY OF NEWTON



Nicholas Read  
*Chief Procurement Officer*  
May 24, 2018

**ATTACHMENTS:****RFQ Attachment A:**

City of Newton Ordinance

Chapter 21 Parks, and Recreation, Public Grounds and Trees

**RFQ Attachment B:**

Designer Services Base Contract for both DBB and CM-R Projects;

Base Designer Contract Amendment for Design/Bid/Build;

**RFQ Attachment C:**

Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction (Updated July 2011) (<http://www.mass.gov/anf/docs/dcam/dlforms/dsb/designer-municp-app-11-7-11.doc>)

**RFQ Attachment D:**

Required Certifications

- **D.1** Satisfaction of State Tax Requirements
- **D.2** Certificate of Authority
- **D.3** Certificate of Non-Collusion
- **D.4** Certificate of Tax Compliance
  - Proof of Registration by the Commonwealth of Massachusetts an architect or professional engineer (if applicable)
  - Demonstrated ability to secure general liability insurance, worker's compensation, and automobile insurance for all proposed staff that will be involved in the project
  - List all claims, including insurance claims and claims in litigation or adjudicatory process or settled, brought by or against the firm/individual in the past three (3) years. Including for each the reason for the claim, name (s) of claimant(s) and outcomes.

**RFQ Attachment E:**

City of Newton Designer Selection Committee,

Designer Selection Procedures

**RFQ Attachment F:**

City of Newton Ordinances

Design Review Committee Ordinance

**RFQ Attachment G**

City of Newton – Public Buildings Department

Building Design and Construction Sustainability Guidelines

**RFQ ATTACHMENT A**

**CITY OF NEWTON ORDINANCE**

**CHAPTER 21 PARKS, AND RECREATION, PUBLIC GROUNDS AND TREES**

## Chapter 21

**PARKS, AND RECREATION, PUBLIC GROUNDS AND TREES\***

- Art. I. In General, §§ 21-1—21-45**  
**Art. II. Parks and Recreation Commission, §§ 21-46—21-59**  
**Art. III. Trees, §§ 21-60—21-89**  
**Div. 1 Urban Tree Commission, §§ 21-60—21-71**  
**Div. 2 Regulation of Public Trees, §§ 21-72—21-80**  
**Div. 3 Tree Preservation, §§ 21-81—21-89**

**ARTICLE I.  
IN GENERAL**

**Sec. 21-1. Parks and recreation commissioner—Designation; duties generally; compensation.**

(a) The office of commissioner of parks and recreation and the department of parks and recreation are established. The commissioner shall be an officer of the city and the provisions of the law for the appointment and removal of heads of departments shall be applicable to such office. He shall have under his immediate control and direction such assistants and employees as may from time to time be duly authorized. The commissioner shall consult with the Director of the history museum regarding the manner of maintenance, care and management of the burial grounds. He shall receive for his services such salary as shall be fixed by the mayor and city council.

(b) The parks and recreation commissioner shall have charge of maintenance, care and management of playgrounds and all recreation lands, except to the extent conferred upon the Parks and Recreation Commission, pursuant to Chapter 426 of the Acts of 1982 and G.L. c. 45. He shall have and exercise the power conferred by G. L. c. 45, sec. 14, except that of taking by eminent domain. He shall also be responsible for the control and supervision of the parks and recreation department. The commissioner also shall have charge of the maintenance, care and management of burial grounds and the grounds about public buildings and the maintenance of lands under the jurisdiction and control of the conservation commission. The commissioner shall consult with the conservation commission regarding the manner of maintaining lands under the commission's jurisdiction.

(c) The parks and recreation commissioner shall also be designated as the local superintendent of insect pest control pursuant to the G.L. c. 132, sec. 13. He shall perform the duties of tree warden and have the care and control of all public shade trees and the planting, trimming and cutting thereof. He shall make and keep an itemized account with vouchers, showing the definite amounts expended for the purposes named in the General Laws for the suppression of insects. He shall, under the direction of the mayor, cause notices as required by the statutes to be sent to owners of parcels of land infested with such insects. He shall make lists of the amounts expended on spraying as provided by law, containing the names of the owners of estates, the locations thereof and the amounts expended thereon. (Rev. Ords. 1973, § 2-125, § 19-39; Ord. No. 90, 10-6-75; Ord. No. 190, 12-20-76; Ord. No. 220, 6-7-77; Ord. No. 233, 8-15-77; Ord. No. 317, 2-20-79; Ord. No. R- 267, 10-18-82; Ord. No. T-318, 12-6-93; Ord. No. V-289, 3-20-00)

---

**State law references**—Office of tree warden, G.L. c. 41, § 1; statements of expenditures of local superintendents of pest control, G.L. c. 132, § 15

\***Cross references** – Cultural affairs committee, Ch. 2, Art. VI, Div. 3

**State law reference**—Parks and playgrounds generally, G.L. c. 45

## § 21-2 NEWTON ORDINANCES — PARKS AND RECREATION, PUBLIC GROUNDS AND TREES§ 21-8

**Sec. 21-2. Same—Authority over school property.**

(a) The parks and recreation commissioner shall have charge of the management, care and maintenance of the city's school yards and school grounds. No layout of a school yard or school ground shall be made by the parks and recreation commissioner until the plan and design of the same has received the written approval of the school committee.

(b) Control of the use of school yards and school grounds shall be entirely within the jurisdiction of the school committee which shall determine the persons entitled to use the grounds and how the same shall be used. The school committee may, however, during vacation periods of the school, turn over the control of the use of designated school yards and school grounds to the parks and recreation commissioner and it may turn over the control of the use of any designated portion of such ground during the school year to the parks and recreation commissioner. The release of jurisdiction provided for in this section shall only be accomplished if and when the parks and recreation commissioner in writing applies for and the school committee in writing authorizes the same. In the event of such turning over of jurisdiction, the adjoining school building and the equipment of the school department shall only be used under such regulations as to use as the school committee makes. (Rev. Ords. 1973, § 2-270; Ord. No. 190, 12-20-76; Ord. No. 220, 6-6-77; Ord. No. R-267, 10-18-82)

**Cross reference**—Newton community education program, Ch. 2, Art. VI, Div. 2

**Sec. 21-3. Operation of vehicles.**

No person, unless by permission of the commissioner of public works or, on parks and playgrounds, of the parks and recreation commissioner, shall operate a motor vehicle in or upon parks or other public grounds except upon the driveways thereof. (Rev. Ords. 1973, § 19-102; Ord. No. 90, 10-6-75)

**Sec. 21-4. Selling goods and wares; amusement tents, booths, etc.**

No person, except by permission of the commissioner of public works, or, on parks and playgrounds, of the parks and recreation commissioner, shall expose for sale or sell any goods, wares or merchandise in or upon any park or other public grounds, nor erect or maintain a booth, stand, tent or apparatus of any kind for the purpose of amusement or show in any park or on public grounds. (Rev. Ords. 1973, § 19-103; Ord. No. 90, 10-6-75)

**Cross reference**—Licensing and permits generally, Ch. 17

**Sec. 21-5. Nuisances generally.**

No person shall commit a nuisance in parks or on other public grounds. (Rev. Ords. 1973, § 19-104; Ord. No. 90, 10-6-75)

**Sec. 21-6. Playing games, etc.**

No person, except by the permission of the commissioner of public works, or, on parks and playgrounds, of the parks and recreation commissioner, shall engage in a game of ball, football, baseball or other athletic sports in or upon any park or public grounds, except upon such portions thereof as may be set apart for such purposes. (Rev. Ords. 1973, § 19-105)

**Sec. 21-7. Throwing missiles.**

No person shall throw a stone, snowball or other missile in or upon any park or public playground. (Rev. Ords. 1973, § 19-106; Ord. No. 90, 10-6-75)

**Sec. 21-8. Damaging property.**

§ 21-9 NEWTON ORDINANCES — PARKS AND RECREATION, PUBLIC GROUNDS AND TREES § 21-14

No person shall pull up, break, cut or deface any of the seats, fences or railings upon or around any park or other public grounds, nor deface any monument or statue in any park or on public grounds. (Rev. Ords. 1973, § 19-107)

**Sec. 21-9. Climbing, posting bills on trees.**

No person shall climb a tree in any park or upon other public grounds, nor post a bill, nor place a sign upon or around any tree in any park or upon other public grounds of the city. (Rev. Ords. 1973, § 19-108)

**Sec. 21-10. Digging, carrying dirt, etc.**

No person, except by permission of the commissioner of public works, or, on parks and playgrounds, of the parks and recreation commissioner, and for some public use, shall dig or carry away any sward, gravel, sand, turf or earth from, nor place or deposit or cause to be placed or deposited any stones, sand, gravel or other substance upon, any park, playground or other public grounds. (Rev. Ords. 1973, § 19-109; Ord. No. 90, 10-6-75)

**Sec. 21-11. Damaging flowers.**

No person shall walk, stand, sit or lie down in or upon, or pull a flower or plant out of a flower bed, in any park or upon public grounds. (Rev. Ords. 1973, § 19-110)

**Sec. 21-12. Walking on grass.**

No person shall stand, walk or lie upon the grass in any park or upon public grounds where such walking, standing or lying has been prohibited, and notice of such prohibition is given to the public by legible notices placed in or upon such park or public grounds. (Rev. Ords. 1973, § 19-111)

**Sec. 21-13. City-owned burial grounds.**

No further burials are to be permitted in that portion of the City-owned burial ground located on Centre Street, said portion being bounded on the west side by Centre Street and Loring Park, on the south side by Cotton Street, on the east by the land of the Franciscan Sisters, and on the north by a driveway, as more specifically shown on a plan entitled "Plan of Centre Street Cemetery, January 1901; Amended 1918", on file in the engineering division of the department of public works. (Ord. No. R-251, 6-21-82; Ord. No. V-289, 3-20-00)

**Sec. 21-14. Spraying for insects.**

(a) The commissioner of parks and recreation may, at the request of owners of private property in the city, spray trees and shrubs thereon for the purpose of destroying or suppressing insects or pests and preventing or controlling the spread of Dutch Elm Disease. The commissioner of parks and recreation may establish rules and regulations governing such spraying, including the time and manner of making requests and payments therefor.

(b) There shall be charged for each such spraying an amount determined by the size of the lot upon which such spraying is done according to the following table:

Size of lot (square feet)	
Amount under 7,500 .....	\$ 5.00
7,500 to 9,999.....	7.50

§ 21-15 NEWTON ORDINANCES — PARKS AND RECREATION, PUBLIC GROUNDS AND TREES § 21-46

10,000 to 14,999.....	10.00
15,000 to 19,999.....	12.50
20,000 to 24,999.....	15.00

25,000 and over            the cost of labor and materials employed for the purpose as estimated by the commissioner.

(c) The amount to be charged shall in each case be paid to the parks and recreation commissioner before the spraying is done. (Rev. Ord. 1973, § 2-129, § 19-44; Ord. No. 90, 10-6-75; Ord. No. R-267, 10-18-82)

**Sec. 21-15. Parks and recreation department; functions generally.**

The parks and recreation department shall be responsible for planning, scheduling, organizing and supervising programs for designated city groups and citizens. Under direction of the parks and recreation commissioner, it shall provide supervision and patrol activities at swimming ponds, swimming pools, skating areas, playgrounds and all other recreation areas; it shall also conduct all senior citizens recreation programs. (Rev. Ord. 1973, § 2-271; Ord. No. 190, 12-20-76; Ord. No. R-287, 1-19-83)

**Secs. 21-16—21-45. Reserved.**

**ARTICLE II.  
PARKS AND RECREATION COMMISSION**

**Sec. 21-46. Composition; appointment of members; vacancies; chairman.**

(a) There shall be a parks and recreation commission comprised of eight (8) voting members together with the parks and recreation commissioner who shall serve, ex officio, as a non-voting member of the parks and recreation commission. One resident from each ward of the city shall be appointed as permanent members by the mayor with the approval of the city council. Four (4) alternate members selected at large shall also be appointed by the mayor with the approval of the city council.

(b) Appointments by the mayor shall strive to balance the concerns of parks and open space preservation with the concerns of recreation.

- (c)(i) Permanent members of the parks and recreation commission shall be appointed for a term of three (3) years.
- (ii) Four (4) alternate members shall be appointed by the mayor following the effective date of passage of this ordinance. The initial terms of three (3) of the alternate members shall be shortened as follows to stagger expiration of their terms: one member shall be appointed for one (1) year; two members shall be appointed for two (2) years; one member shall be appointed for three (3) years. All alternate member appointments subsequent to the initial appointments shall be for a term of three (3) years.
- (iii) Both permanent and alternate members shall continue to serve after expiration of their terms until their successors shall be duly appointed and qualified. Vacancies in the offices of either permanent or alternate members shall be filled in the same manner as the original appointment for any unexpired term.

## § 21-47 NEWTON ORDINANCES — PARKS AND RECREATION, PUBLIC GROUNDS AND TREES § 21-61

(d) The permanent members shall elect one member to act as chair. In the event that a permanent member is absent or unable to act for any reason, the chair shall designate an alternate member to act. (Rev. Ords. 1973, §2-267; Ord. No. R-287, 1-19-83; Ord. No. T-317, 12-6-93)

**Editor's note**—As amended in 1970, this section provided for the members of the former recreation commission whose terms had not expired to serve until December 31, 1970, as well as for the mayor to appoint additional members to serve until December 31, 1970. The section also provided for appointment of members, commencing January 1, 1971, for staggered terms of one, two (2) and three (3) years.

**Cross references**—Commissions generally, Ch. 2,  
Art. VII; regulations governing appointment to and service on commissions and committees, § 2-8

**State law reference**—Recreation commission for city of Newton, c. 631, Acts of 1969

**Sec. 21-47. Powers and duties.**

The parks and recreation commission shall advise the mayor and city council in relation to matters pertaining to sports, recreation, parks, open space and preservation of scenic beauty and shall render decisions concerning parks and recreation programs and the use of lands under its jurisdiction in accordance with written guidelines or policies. The guidelines or policies established by the parks and recreation commission shall preserve and enhance access to parks and recreation opportunities for Newton citizens. The parks and recreation commission shall also advise the mayor and city council as to the amount of money to be spent annually by the department of parks and recreation. Pursuant to Chapter 426 of the Acts of 1982, the parks and recreation commission shall have all the rights, powers, duties and obligations of a park commission as set forth in Chapter 45 of the General Laws, and shall exercise the powers of eminent domain conferred by Sections 2 and 14 of Chapter 45 of the General Laws.

Pursuant to Section 2 of Chapter 87 of the General Laws, the commission may delegate its powers as tree warden under Section 5 of Chapter 45 to the parks and recreation commissioner. (Rev. Ords. 1973, § 2-268; Ord. No. 190, 12-20-76; Ord. No. R-287, 1-19-83; Ord. No. T-317, 12-6-93)

**Secs. 21-48. —21-59. Reserved.**

### ARTICLE III. TREES

#### DIVISION 1. URBAN TREE COMMISSION

**Sec. 21-60. Establishment and purpose.**

There is hereby established the urban tree commission to advise and assist the tree warden in carrying out his duties and responsibilities. The purpose of the urban tree commission shall be to advise the tree warden, the mayor, the city council and the general public on all matters concerning public trees, including but not limited to, the selection of trees for planting, planting and pruning of trees, the treatment of disease, and the preservation and regular maintenance of trees. (Ord. No. V-71, 3-4-96)

**Cross reference**—Tree warden, Ch. 21, Art. I, § 21-1

**Sec. 21-61. Powers and duties.**

(a) The commission shall issue a city tree maintenance manual which shall set forth the standards for planting and maintaining all public shade trees in the city and which shall also set forth the general policies in regard to those trees. The commission shall regularly revise and distribute the tree maintenance manual and review the implementation of the practices and policies it enunciates.



## § 21-62 NEWTON ORDINANCES — PARKS AND RECREATION, PUBLIC GROUNDS AND TREES § 21-70

(b) The commission shall annually review the needs of various geographical areas of the city for the planting and replacement of trees and shall recommend priorities based on the annual review to the tree warden and superintendent of urban forestry or such other municipal officials as may hereafter be assigned the duties of tree warden and superintendent of urban forestry.

(c) Whenever a hearing is required to be held in regard to cutting down or removal of a tree, the commission may offer written recommendation(s) to the tree warden.

(d) Whenever the tree warden prepares an impact statement on the effect of any construction project on existing trees or the ability to plant trees in that area in the future, the tree commission may submit its advice as part of a submission to appropriate city agencies and/or to the city council for its review of the project. (Ord. No. V-71, 3-4-96)

**Sec. 21-62. Composition and organization.**

(a) The commission shall consist of twelve (12) voting members who shall serve for three year terms in accordance with Section 2-8 of these Revised Ordinances. Ten (10) members shall be appointed by the mayor in accordance with Section 3-3 of the Charter. The commissioner of parks and recreation, in his capacity as tree warden, or such other municipal official as may hereafter be assigned the duties of tree warden, shall serve, ex officio, as the eleventh voting member. The superintendent of urban forestry, or such other municipal official as may hereafter be assigned the duties of superintendent of urban forestry, shall serve, ex officio, as the twelfth voting member. Three (3) of the initial appointees shall serve for a term of one year; three (3) of the initial appointees shall serve for a term of two years; and four (4) of the initial appointees shall serve for a term of three years.

(b) Members of the commission, so far as practicable, shall be selected so as to provide representation of citizens with expertise or interest in the preservation and care of trees. Consistent with this requirement, whenever a vacancy occurs on the commission, the commission shall offer a list of prospective members for the mayor's consideration in making appointments.

In making the initial appointees to the urban tree commission, the city council requests that the mayor consider any active members of the urban tree task force who wish to be appointed, it being the will of the city council that the urban tree commission be established as the successor to the urban tree task force. The city council also requests that the mayor also consider appointing any such members of the urban tree task force to the longest terms of office available prior to appointing persons who are not currently serving on the urban tree task force. (Ord. No. V-71, 3-4-96)

**Secs. 21-63. —21-69. Reserved.****Sec. 21-70. Volunteer work on city property.**

(a) Improvements to and maintenance of real property owned or controlled by the City of Newton may be carried out by volunteer workers in accordance with a permit issued by the head of the department having care, custody or control of such real property, or his designee. Every such permit shall state the location, scope and nature of the project and any other limitations and requirements which, in the opinion of the department head, are necessary in order to carry out the city's policies for the use of such real property.

(b) Whenever such a permit has been issued, the head of the department shall provide city personnel who shall act as supervisors of the volunteer work on the improvement project. All persons serving as volunteer workers shall follow all instructions of and act under the supervision of the city personnel supervising such work.

## § 21-71 NEWTON ORDINANCES — PARKS AND RECREATION, PUBLIC GROUNDS AND TREES § 21-72

(c) Volunteer workers who work on improvement and maintenance projects in accordance with such a permit shall be deemed to be "public employees" within the meaning of section one of chapter 258 of the Massachusetts General Laws for the purpose of third party claims; provided that any such claim arises as a result of the project described in the applicable permit.

(d) In order to facilitate the protection provided to volunteer workers pursuant to subsection (c), the head of the department shall keep a record of the names and addresses of every volunteer worker who works at the site of each such project; and every such volunteer worker shall provide his/her name and address for inclusion in such record. (Ord. No. V-96, 11-18-96)

**Sec. 21-71. Reserved.**

## DIVISION 2. REGULATION OF PUBLIC TREES

**Sec. 21-72. Public Tree Regulation**

## (a) Purpose

The purpose of this ordinance is to promote a diverse, healthy and sustainable urban forest in order to provide for the general welfare of Newton's citizens. A healthy urban forest improves the quality of air and water, controls erosion, moderates air temperature, absorbs carbon, reduces noise, enhances appearance and increases property values. Public trees also define public spaces and create civic identity. This ordinance sets out measures to protect trees located on city property and on public rights of way from construction and other preventable damage; to establish conditions for long-term preservation and expansion of the urban forest; to extend the protections afforded by the Tree Preservation Ordinance to city-owned trees and supplement Chapter 87 of the Massachusetts General Laws.

## (b) Definitions

*Aggregate diameter:* The combined diameter of a multiple trunk tree measured at breast height.

*Building:* The term "building" shall be as defined in section 30-1.

*Caliper:* The measure of a newly installed tree and is determined in the following manner - Caliper measurement of the trunk shall be taken six inches above the ground up to and including four-inch caliper size. If the caliper at six inches above the ground exceeds four inches, the caliper should be measured at twelve inches above the ground.

*Certified arborist:* An arborist certified by the Massachusetts Arborists Association, or any successor organization.

*Diameter breast height (DBH):* The diameter of the trunk of a tree 4½ feet above the existing grade at the base of the tree.

*Drip line:* A vertical line running through the outermost portion of the crown of a tree and extending to the ground.

*Person:* Any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to, the person removing a public tree or public shade tree.

*Pruning standards:* Standards for pruning as defined in the City of Newton Tree Management Manual, 1995 and any future amendments or revisions to the same.

## § 21-72 NEWTON ORDINANCES — PARKS AND RECREATION, PUBLIC GROUNDS AND TREES § 21-72

*Public tree:* Any tree having a diameter of eight inches (8") DBH or larger or having an aggregate diameter of fifteen inches (15") DBH or larger and which is located on land owned by the city of Newton.

*Public Shade Tree:* Any tree within the city that fits the definition of public shade tree under G.L. Ch. 87

*Remove* (including removing and removal): The cutting down of any public tree or public shade tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a public tree, including, but not limited to, excessive or improper pruning.

*Tree Manual:* The City of Newton Tree Management Manual, 1995, and any future amendments and revisions to the same. (Ord. No. V-275, 12-6-99)

*Tree warden:* The commissioner of parks and recreation or his designee.

(c) *Applicability:* The terms and provisions of this article shall be administered by the tree warden and shall apply to any public shade tree as defined in G.L. Ch. 87 and to any public tree located on land owned and managed by the city of Newton, with the exception of the land under the auspices of the conservation commission.

(d) *Permit:* No person other than the tree warden shall remove, prune, or alter a public tree or public shade tree located on land subject to the provisions of this article without first obtaining a tree permit from the tree warden. Applications shall be made in writing on forms specified by the tree warden.

(e) *Activities requiring a Tree Permit:* A tree permit issued by the tree warden is required prior to any of the following activities:

- (1) Any exterior work that requires the removal of a public tree;
- (2) Any construction on city property within the dripline of a public tree;
- (3) Removal of a public shade tree. This requirement is in addition to the requirements of G.L. Ch. 87 pertaining to removal of a public shade tree;
- (4) Construction within that portion of the dripline of a public shade tree that is located over the public right of way;
- (5) Pruning or treatment for the benefit of the health, safety, or overall well-being of a public shade tree and/or public tree, as deemed appropriate by the tree warden, by anyone other than the tree warden or his designee as provided in G.L. Ch. 87;
- (6) Planting of a tree in the public right of way or on city property by anyone other than the tree warden or his designee as outlined under G.L. Ch. 87;
- (7) Pruning or altering of a public shade tree and/or public tree for the purposes of overhead utility line clearance;
- (8) Affixing or hanging anything from a public shade tree or public tree.

(f) *Permit application; fee:* An application for a tree permit shall be submitted to the tree warden. Such application shall be on a form prescribed by the tree warden and shall include any materials or information

## § 21-72 NEWTON ORDINANCES — PARKS AND RECREATION, PUBLIC GROUNDS AND TREES § 21-72

required by the tree warden based on the nature of the activity for which application is made. The application for a tree permit shall be accompanied by an administrative fee of \$150.00. Such fee shall be waived if the applicant is a city department, agency, commission or other public instrumentality of the city or if the tree warden determines in writing that the proposed activity will benefit the health of the tree or the wellbeing of the public.

(g) *Review of permit applications:* The tree warden shall review applications for tree permits in accordance with the provisions of this article and with any rules or regulations promulgated hereunder. The tree warden shall date stamp or otherwise record the date of filing of each application for a tree permit. The tree warden shall complete the review of each tree permit application no later than ten (10) business days after the submission of a completed application to the tree warden except in the case of a request to remove a public shade tree which shall be subject to the procedures set forth in G.L. Ch. 87.

(h) *Conditions:* The tree warden may condition issuance of a tree permit upon such measures as he deems necessary to protect existing public trees or public shade trees. Such conditions shall be in writing. The tree warden shall make a determination that the prescribed protected measures have been adequately provided before site disturbance related to the permitted activity may begin.

(i) *Construction:* Except as provided in a tree permit, construction activities on city-owned property and public right of ways under the drip line of a public tree or public shade tree are prohibited. Prohibited construction activities include, but are not limited to, trenching or grading, storage of materials or equipment, passage of heavy equipment within the drip line and spillage of chemicals or other materials, which are damaging to trees.

(j) *Suspension or revocation:* The tree warden may suspend or revoke a tree permit at any time upon written notice to the permit holder that the permit holder has failed to comply with any provisions of this section, or with any rules or regulations promulgated hereunder, or with conditions of the permit. Written notice shall be sent by certified mail, return receipt requested, or by hand delivery and shall provide an opportunity for the permit holder to correct the noncompliance and apply for a renewal of the tree permit upon compliance, where practicable. The suspension or revocation of a tree permit in accordance with this subsection shall not affect the validity of a building permit issued in reliance upon the issuance of such tree permit nor shall such suspension or revocation be cause for withholding the issuance of a certificate of occupancy.

(k) *Public Tree Removal:* The tree warden shall notify the urban tree commission upon receipt of an application to cut down or remove a public tree, and no public tree shall be removed pursuant to a permit until five (5) days after its issuance unless such removal of the tree(s) is necessary based on a determination by the tree warden that at least one of the following conditions are met:

- (1) The public tree is interfering with existing structure, utilities, streets, sidewalks or proposed necessary improvements, and there is no alternative to removal;
- (2) The public tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of public utility service, is causing drainage or passage problems upon rights of way, or poses a threat to pedestrian or vehicular safety.
- (3) The removal of the public tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as certified to the tree warden by a certified arborist.

(l) *Appeal:* Any person aggrieved by a decision of the tree warden may file an appeal with the mayor or his designee. Said appeal must be in writing and must be received by the mayor or his designee within five (5) business days of issuance of the tree warden's decision. Upon receipt of such appeal, the mayor or his designee shall provide a copy to the clerk of the city council and to each councilor for the ward in which the trees are located. The mayor or his designee shall make a final decision on the matter within thirty (30) days from the date

## § 21-72 NEWTON ORDINANCES — PARKS AND RECREATION, PUBLIC GROUNDS AND TREES § 21-72

of receipt of the appeal request. The mayor or his designee shall include in the decision the rationale there for. Upon issuance of the final decision, the mayor or his designee shall provide a copy to the clerk of the city council and to each ward councilor for the ward in which the trees are located. There shall be no further appeal of the matter decided by the mayor or his designee. No public trees shall be removed while an appeal is pending.

(m) *Permit length:* Any permit issued by the tree warden shall be valid for sixty (60) days from issuance. Length may be extended by tree warden following written request by the applicant. The tree warden may grant the extension for any length of time as he deems necessary and appropriate.

(n) *Emergencies:* A public tree or public shade tree may be removed without first obtaining a written permit as otherwise required by this section only if the tree warden determines that the condition of the public tree or public shade tree is hazardous and immediately endangers the public health, safety or welfare or causes an immediate disruption of public services such that immediate removal is required. If such determination is made, the tree warden may remove the tree or provide oral authorization for its removal, utilizing such professional criteria and technical assistance as he deems necessary. The tree warden shall memorialize in writing each such oral authorization to remove a hazardous tree and keep a record of same.

(o) *Waiver:* The requirements of this section may be waived by the tree warden during the period of an emergency such as a tornado, windstorm, flood or other act of God.

(p) *Tree replacement:* The tree warden may require that replacement of a removed public tree or public shade tree in the manner required in section 21-85 of these ordinances and in any rule or regulation of the tree warden

(q) *Payment in lieu of planting replacement tree(s):* In lieu of planting a replacement tree as provided in section (p) above, a person who has been granted a tree permit may make a contribution to the tree replacement fund as established in section 21-86 in an amount equal to the cost to replace the tree in accordance with the provisions of section 21-85, which cost shall be determined by the tree warden who shall maintain on file the city's current tree planting costs.

(r) *Rules and regulations:* The tree warden is authorized to promulgate reasonable rules and regulations to implement administration and enforcement of this section

(s) *Enforcement:* The commissioner of parks and recreation, in his capacity as tree warden, or such other municipal official as may hereafter be assigned the duties of tree warden, shall be authorized to enforce the provisions of this section. The tree warden shall provide written notice to the offender of the specific violation and provide a reasonable time for compliance. Such notice shall be sent by certified mail, return receipt requested, or by hand delivery. Thereafter, the tree warden may impose the fines described in (t) below.

(t) *Penalties:* Violations of any portion of this section, including violations of any regulation promulgated hereunder, or failure to comply with conditions of a permit, or failure to replace any removed tree as required by the tree warden, or failure to pay the required amount into the tree replacement fund shall be punishable by a fine of three hundred dollars (\$300.00) for each day during which the violation continues. Nothing herein shall be construed to require the city to make a payment for violation of this section; however the city agency that caused the violation shall be responsible for the costs of replacement or repair of the tree(s) which were damaged or removed.

(u) *Severability:* The provisions of this article are severable. If any section, provision, or portion of this article is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this article shall continue to be valid.

## § 21-73 NEWTON ORDINANCES — PARKS AND RECREATION, PUBLIC GROUNDS AND TREES § 21-79

(v) *Conflict of laws*: Nothing herein is intended to conflict with the General Laws, Chapter 87 and to the extent that any provision hereof conflicts with said Chapter 87, such provision shall not be valid. Nothing herein is intended to conflict with existing special permit procedures as provided in section 30-24 and to the extent that any provision hereof conflicts with said special permit procedures, such provision shall not be valid. Nothing herein is intended to conflict with any state law regulating public utilities and to the extent that any provision hereof conflicts with state law, such provision shall not be valid. (Ord. No. Z-80, 02-22-11; Rev. Ord. 2007, § 20-72)

**Secs. 21-73. —21-79. Reserved.**

## DIVISION 3. TREE PRESERVATION

**Sec. 21-80 Findings, intent, and purpose.**

The city council has determined that many trees are being lost without replacement incident to demolition of existing buildings in order to construct new buildings and lot clearing in connection with the construction of new buildings on previously undeveloped land. The city council has further determined that trees have been lost, severely damaged or disfigured through excessive or improper pruning or other than natural causes. The result is a net loss of the tree population in the city. The city council has further determined that the city has insufficient legal vehicles to assure that such development adequately preserves, protects and provides for replacement of trees.

The preservation of the private tree canopy and the planting of replacement trees is intended to enhance the quality of life and the environment of the city; to preserve the character of the wooded and natural areas; to reduce energy consumption; to protect air quality; to baffle noise; to preserve and enhance habitat for wildlife; to reduce topsoil erosion and storm water runoff; to protect and increase property values; and to enhance the overall appearance of the city. (Ord. No. A-38, 05-05-14)

**Sec. 21-81. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Aggregate diameter*: The combined diameter of a multiple trunk tree measured at breast height.

*Building*: The term "building" shall be as defined in section 30-1.

*Certified arborist*: An arborist certified by the Massachusetts Arborists Association or International Society of Arboriculture, or any successor organization.

*Diameter breast height (DBH)*: The diameter of the trunk of a tree 4½ feet above the existing grade at the base of the tree.

*Drip line*: A vertical line running through the outermost portion of the crown of a tree and extending to the ground.

*Exempt lot*: A lot which meets all of the following criteria:

- (1) The lot is occupied and used primarily as a dwelling for up to four families at the time any protected tree(s) are removed.

## § 21-79 NEWTON ORDINANCES — PARKS AND RECREATION, PUBLIC GROUNDS AND TREES § 21-79

- (2) The lot owner at the time of protected tree removal has owned the lot continuously for a minimum of ninety (90) days prior to the removal of any protected tree(s).
- (3) The existing structure on the lot remains occupied as a dwelling with a person or persons living in it for eighteen consecutive months from the date any protected tree(s) are removed.
- (4) The lot remains owned by the same person for eighteen consecutive months from the date any protected tree(s) are removed.

*Exterior work permit:* A permit or approval which is required in order to perform work on a vacant lot or to the exterior of a building on a lot, including, but not limited to the following: a building permit; a review of an alteration of contour of land if required pursuant to section 30-5(c)(1); curb cut and street opening permits; an order of conditions; certificates of appropriateness, nonapplicability, or hardship; a demolition permit pursuant to section 22-44; site plan approval pursuant to section 30-23; subdivision approval; a special permit pursuant to section 30-24; a comprehensive permit.

*Occupied Lot:* A lot containing a legally constructed, permanent structure, used primarily as a dwelling that is currently being legally occupied and lived in and used as a residence by a person or persons. The dwelling must have a functioning, legally permitted, permanent water service, permanent sanitary service, and permanent electrical service.

*Person:* Any person, firm, partnership, association, corporation, company or organization of any kind including, but not limited to, the person removing a protected tree as well as the owner of the real property from which the tree is removed. The definition of "person" shall not include the City of Newton.

*Protected tree:* Any tree having a diameter of eight inches (8") DBH or larger or having an aggregate diameter of fifteen inches (15") DBH or larger and which is located on land subject to the provisions of section 21-82.

*Pruning standards:* Standards for pruning as defined in the City of Newton Tree Management Manual, 1995 and any future amendments or revisions to the same.

*Remove (including removing and removal):* The cutting down of any protected tree and all other acts which cause the actual removal or the effective removal through damaging, poisoning or other direct or indirect actions resulting in the death of a protected tree, including, but not limited to, excessive or improper pruning.

*Tree Manual:* The City of Newton Tree Management Manual, 1995, and any future amendments and revisions to the same. (Ord. No. V-275, 12-6-99)

*Tree Warden:* The commissioner of parks and recreation or his designee. (Rev. Ord. 2007, § 20-31; Ord. No. A-38, 05-05-14)

### **Sec. 21-82. Applicability, permit or certificate of exemption required.**

(a) *Applicability:* The terms and provisions of this article shall apply to any protected tree located on land within the city not owned by the city, the commonwealth, or any independent authority of the commonwealth, or by the federal government except protected tree(s) located on an exempt lot pursuant to paragraphs (c) and (d) below.

(b) *Permit, certificate of exemption:* No person shall remove a protected tree on a non-exempt lot located on land subject to the provisions of this article, or commence legally permitted exterior work on any lot without first

## § 21-79 NEWTON ORDINANCES — PARKS AND RECREATION, PUBLIC GROUNDS AND TREES § 21-79

obtaining a tree permit or a certificate of exemption from the tree warden. Applications shall be made in writing on forms specified by the tree warden.

(c) *Exempt lot, certificate of exemption:* The owner of an exempt lot shall not be required to apply for a tree permit, provided however, that an owner of an exempt lot who seeks an exterior work permit must certify to the tree warden on form(s) provided by the tree warden, that as of the date on the form(s) the lot qualifies as an exempt lot and will remain an exempt lot for eighteen months following tree removal. There shall be no fee for filing a certificate of exemption.

- (1) The tree warden shall determine whether a property is an occupied lot for the purposes of establishing exempt lot status. The property owner shall, if requested by the tree warden provide proof of ownership as well as a written statement confirming ownership and that a person or persons are living in the property.
- (2) If lot ownership changes during the eighteen consecutive months following the removal of any protected tree(s) on an exempt lot, the new owner must apply for a tree permit and shall be required to replace any protected tree(s) that were removed. If, however, a change of ownership occurs on a lot for which an extension of exempt lot status for non-occupancy during construction has been issued within the eighteen months prior to the change in ownership, the person issued such extension shall apply for a tree permit and shall be required to replace any protected tree(s) that were removed.

(d) *Extension of exempted lot status:* If at any point during the eighteen consecutive months following the removal of any protected tree(s) the property is no longer an occupied lot, the current owner of the lot must apply for a tree permit. If the non-occupancy is due to legally permitted construction, the tree warden may grant an extension of exempt lot status for the duration of the construction, provided:

- (1) The owner intends to own the lot for eighteen consecutive months from the date a certificate of occupancy is issued for the construction for which the extension was issued; and
- (2) The property remains an occupied lot for eighteen consecutive months from the date a certificate of occupancy is issued for the construction for which the extension was issued.
- (3) Upon request of an applicant for exempt lot status extension, the tree warden may also waive the requirement that the lot be continuously owned by the same owner for ninety (90) days prior to protected tree removal provided the owner intends to own the lot for twenty-one months from the date a certificate of occupancy is issued for the construction for which the extension is granted..
- (4) If at any time during the applicable eighteen or twenty-one month period the lot ownership changes or the lot is not occupied, the tree warden shall revoke the tree permit and exempt lot status extension. The person issued the extension shall file a new tree permit application and shall replace any protected trees that were removed.
- (5) Any person issued an extension of exempt lot status must report to the tree warden any change of ownership and any change of occupancy status within fifteen (15) days of the change if that change takes place during the applicable eighteen (18) month or twenty-one (21) month period following the date the certificate of occupancy issued. (Ord. No. A-38, 05-05-14)

### **Sec. 21-83. Permit application.**



## § 21-79 NEWTON ORDINANCES — PARKS AND RECREATION, PUBLIC GROUNDS AND TREES § 21-79

(a) *Contents, fee:* An application for a tree permit shall be submitted to the tree warden. The application for a tree permit shall be accompanied by a fee in the amount of one hundred fifty dollars (\$150.00) and shall include, but not be limited to, the following:

- (1) The shape and dimensions of the parcel of real property to be developed, together with the existing and proposed locations of structures and improvements, if any;
- (2) A tree plan showing the location, type and size of each protected tree indicating which protected tree(s) are to be removed, and the location, type and size of replacement trees;
- (3) The proposed relocation of any existing protected tree with a statement prepared by a certified arborist explaining how each such protected tree is to be relocated and maintained;
- (4) The location of existing and proposed underground or overhead utility services, existing and proposed roadways, bikeways, walkways and parking areas;
- (5) Any proposed grade changes which might adversely affect or endanger any protected tree with a statement prepared by a certified arborist explaining how each such protected tree shall be protected and maintained;
- (6) The proposed method of protecting the remaining protected trees during the course of the construction.

(b) *Review of permit applications:* The tree warden shall review applications for tree permits in accordance with the provisions of this article. The tree warden shall date stamp or otherwise record the date of filing of each application for a tree permit. The tree warden shall complete the review of each tree permit application no later than ten (10) business days after the submission of a completed application to the tree warden and shall report to the commissioner of inspectional services within ten (10) business days of a request with respect to any tree permit application submitted in connection with a building permit as to whether said tree permit has been granted or denied. If no such report is received by the commissioner within the above-stated time period, he shall accept an application for a building permit without receipt of such report.

(c) *Standards for grant or denial:* No tree permit shall be issued unless one of the following conditions exists:

- (1) The protected tree will be relocated or replaced on site.
- (2) The protected tree will be replaced by payment in lieu of planting replacement trees as outlined in section 21-86.
- (3) The protected tree is interfering with existing structures, utilities, streets, sidewalks or other existing improvements
- (4) The protected tree is dead, diseased, injured, in danger of falling, dangerously close to existing structures, is causing disruption of public utility service, is causing drainage or passage problems upon rights-of-way, or poses a threat to pedestrian or vehicular safety.
- (5) The removal of the protected tree is necessary and desirable in order to enhance or benefit the health or condition of other trees on the same site as certified to the tree warden by a certified arborist.
- (6) No protected tree(s) are to be removed from the site and appropriate tree protection measures will be in place where necessary as determined by the tree warden.

## § 21-79 NEWTON ORDINANCES — PARKS AND RECREATION, PUBLIC GROUNDS AND TREES § 21-79

(d) *Conditions*: Upon the issuance of a tree permit, the tree warden may prescribe in writing such protective measures for existing protected trees as he deems necessary. Before site disturbance may begin, the tree warden may make a determination that the prescribed protective measures have been adequately provided.

(e) *Construction*: Except as provided in a tree permit, construction activities under the drip line of a protected tree are prohibited. Activities include, but are not limited to, trenching or grading, storage of materials or equipment, passage of heavy equipment within the drip line and spillage of chemicals or other materials, which are damaging to trees.

(f) *Suspension or revocation*: A tree permit may be suspended or revoked at any time by the tree warden upon written notice to the permit holder that the permit holder has failed to comply with either this article or the conditions of the permit. The written notice shall be sent by certified or registered mail, return receipt requested, or by hand delivery and shall provide an opportunity for the permit holder to correct the noncompliance and apply for a renewal of the tree permit upon compliance, where practicable. The suspension or revocation of a tree permit in accordance with this subsection shall not affect the validity of a building permit issued in reliance upon the issuance (granting) of such tree permit nor shall such suspension or revocation be cause for withholding the issuance of a certificate of occupancy.

(g) *Appeal*: Any person aggrieved by a decision of the tree warden may file an appeal with the mayor or his designee. Said appeal must be in writing and must be received by the mayor or his designee within five (5) business days of issuance of the tree warden's decision. Upon receipt of such appeal, the mayor or his designee shall provide a copy to the clerk of the city council and to each councilor for the ward in which the trees are located. The mayor or his designee shall make a final decision on the matter within thirty (30) days from the date of receipt of the appeal. The mayor or his designee shall include in the decision the rationale therefor. Upon issuance of the final decision, the mayor or his designee shall provide a copy to the clerk of the city council and to each ward councilor for the ward in which the trees are located. There shall be no further appeal of the matter decided by the mayor or his designee. No protected trees shall be removed while an appeal is pending. (Ord. No. V-275, 12-6-99; Ord. No. X-202, 04-03-06; Rev. Ord. 2007, § 20-33; Ord. No. A-38, 05-05-14)

#### **Sec. 21-84. Activities not requiring a permit.**

(a) *Pruning*: A permit is not required for the pruning of protected trees. However, in order to prevent excessive pruning and topping of trees and to prevent pruning that will be hazardous to the health and natural appearance of the tree, compliance with approved pruning standards is required, and failure to meet these standards is a violation of this article. The tree warden shall maintain on file at all times a copy of the current edition the Tree Manual and shall make copies of the Tree Manual available for the cost of reproduction upon request.

(b) *Emergencies*: If any protected tree shall be determined to be in a hazardous condition so as to immediately endanger the public health, safety or welfare or cause an immediate disruption of public services and require immediate removal without delay, oral authorization may be given by the tree warden to remove such tree, utilizing such professional criteria and technical assistance as he deems necessary, and the protected tree may be removed without obtaining a written permit as otherwise required by this article. The tree warden shall memorialize in writing each such oral authorization to remove a tree and keep a record of the same.

(c) *Waiver*: The requirements of this article may be waived by the tree warden during the period of an emergency such as a tornado, windstorm, flood or other act of God. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-34; Ord. No. A-38, 05-05-14)

#### **Sec. 21-85. Tree replacement.**

## § 21-79 NEWTON ORDINANCES — PARKS AND RECREATION, PUBLIC GROUNDS AND TREES § 21-79

(a) *Required:* A protected tree shall be replaced in the manner provided in subsection (b) hereof in each instance in which a protected tree was removed from land subject to the provisions of section 21-82 without a tree permit.

(b) *Standards:* A person who has removed a protected tree and is required to replace such tree pursuant to subsection (a) hereof or as a condition of granting a tree permit in accordance with section 21-83, shall replace such tree within eighteen (18) months, or prior to transfer of property ownership whichever comes first from the date the tree permit is issued and in accordance with the following standards:

- (1) A replacement tree shall be of the same or similar species or such other species as deemed advisable by the tree warden in accordance with the Tree Manual and shall have the same or equivalent size as measured in DBH inches as that of the protected tree that has been removed.
- (2) In the event that a tree of the same or equivalent size as measured in DBH inches cannot be planted, then multiple smaller replacement trees may be planted provided that, wherever practicable, as determined by the tree warden, the total DBH of the replacement trees shall, when added together, equal the total DBH of the protected tree that has been removed. The tree warden may specify that replacement trees be of a minimum caliper when consistent with current accepted practice as stated in the Tree Manual.
- (3) A replacement tree shall be required to survive for a minimum of eighteen (18) months from the date it is planted. The person planting the tree shall provide documentation as to the date of planting and file the same with the tree warden within fifteen (15) days of the planting of said replacement tree.
- (4) A replacement tree shall be planted on the same lot from which the tree was removed.. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-35, Ord. No. A-38, 05-05-14)

#### **Sec. 21-86. Tree replacement fund.**

(a) *Established:* There is hereby established a tree replacement fund which shall be held in a separate identifiable account and administered in accordance with applicable provisions of the General Laws. Any payments into the tree replacement fund required by this article shall be deposited in the tree replacement fund and shall be used in accordance with subsection (c) hereof.

(b) *Payment in lieu of planting replacement tree(s):* In lieu of planting a replacement tree as provided in section 21-85, a person who has been granted a tree permit may make a contribution to a tree replacement fund in an amount equal to the cost to replace the tree in accordance with the provisions of section 21-85, which cost shall be determined by the tree warden based on the City's current cost to purchase and install trees.

(c) *Maintenance of tree replacement fund:* The tree replacement fund shall be maintained in a separate account in accordance with state law. All sums deposited into such fund shall be used solely for the purpose of buying, planting and maintaining trees in the city. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-36; Ord. No. A-38, 05-05-14)

#### **Sec. 21-87. Rule and regulations.**

The tree warden is authorized to promulgate reasonable rules and regulations to implement administration of sections 21-80 through 21-90. (Ord. No. A-38, 05-05-14)

#### **Sec. 21-88. Enforcement.**

(a) *Notice of violation:* Any person who violates any of the provisions of this article shall be notified by the tree warden of the specific violation by certified mail, return receipt requested, or by hand delivery. The notice shall

## § 21-79 NEWTON ORDINANCES — PARKS AND RECREATION, PUBLIC GROUNDS AND TREES § 21-79

set forth the nature of the violation and a reasonable time period within which compliance must be had. The tree warden shall send notice of violation of section 21-86), which notice shall include the date by which trees were to be replaced or payment was to be made for purposes of computing the "per day" violation fine, as provided in section 21-89.

(b) *Stop work order:*

- (1) Upon notice from the tree warden that work on any protected tree, or lot on which a protected tree is located, is being performed contrary to the provisions of this article, such work shall be immediately stopped. The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner's agent, or to the person doing the work; and shall state the conditions under which work will be permitted to resume.
- (2) The tree warden is also authorized to request the agency which has granted an exterior work permit to order, to the extent permissible by law, that the owner cease any activity pursuant to the exterior work permit that might affect such protected tree while a stop work order is pending.
- (3) Any person who shall continue any work in or about the protected tree or lot on which a protected tree is located after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be liable to a fine of not more than three hundred dollars (\$300.00) for each such violation. Each day during which a violation exists shall constitute a separate offense.

(c) *Injunctive relief:*

- (1) Whenever there exists reasonable cause to believe that a person is violating this article or any standards adopted pursuant to this article or any term, condition or provision of an approved tree permit, the city may, either before or after the institution of any other action or proceeding authorized by this article, institute a civil action in the name of the city for a mandatory or prohibitory injunction and an order of abatement demanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property.
- (2) Upon determination of a court that an alleged violation is occurring, it shall enter such order or judgment as is necessary to abate the violation. The institution of an action for injunctive relief under this subsection shall not relieve any party to such proceedings from any civil penalty prescribed for violation of this article. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-37; Ord. No. A-38, 05-05-14)

**Sec. 21-89. Penalties.**

(a) *Removal without a permit:* Each instance in which a protected tree is removed without a permit shall constitute a violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00).

(b) *Failure to replace trees or make payment:* Each failure to replace a tree or make a payment into the tree replacement fund shall constitute a separate violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00). Each day such violation continues shall constitute a separate offense.

(c) *Failure to comply with a condition contained in a tree permit or stop work order:* Each instance where there is a failure to comply with a condition contained in a tree permit or stop work order shall constitute a violation of this article which shall be subject to a fine in the amount of three hundred dollars (\$300.00). Each day such violation continues shall constitute a separate offense.

## § 21-79 NEWTON ORDINANCES — PARKS AND RECREATION, PUBLIC GROUNDS AND TREES § 21-79

(d) *City trees*: Nothing herein shall be construed to require the city to make a payment into the tree replacement fund for any tree(s) which it removes. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-38; Ord. No. A-38, 05-05-14)

**Sec. 21-90. Severability, effect on other laws.**

(a) *Severability*: The provisions of this article are severable. If any section, provision, or portion of this article is determined to be invalid by a court of competent jurisdiction, then the remaining provisions of this article shall continue to be valid.

(b) *Conflict of laws*: This article shall not apply to any public shade tree as that term is defined by the General Laws, Chapter 87 or any amendments thereto. Nothing herein is intended to conflict with the General Laws, Chapter 87 and to the extent that any provision hereof conflicts with said Chapter 87, such provision shall not be valid. Nothing herein is intended to conflict with existing special permit procedures as provided in section 30-24 and to the extent that any provision hereof conflicts with said special permit procedures, such provision shall not be valid. (Ord. No. V-275, 12-6-99; Rev. Ord. 2007, § 20-39; Ord, No. A-38, 05-05-14)

L# \_\_\_\_\_

**RFQ ATTACHMENT B**  
**BASE CONTRACT FOR DESIGNER SERVICES**  
CONTRACT FOR DESIGNER SERVICES  
 (BASE CONTRACT FOR DESIGN BID BUILD OR CM at RISK PROJECT)

This Contract is made as of this \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_ between the City of Newton, Massachusetts, 02459 hereinafter called "the Owner" and **Designer Name**. at **Address** hereinafter called the "Designer" for the Designer to provide the designer services required to complete the Basic and Extra Services described herein for **Existing Facilities Study Phase Services for the Harry N. Gath Memorial Pool Renovation**.

The Designer is authorized to perform the services required by this Contract through the Existing Facilities Study Phase as described in the Owner's RFQ and Designer's proposal dated **Proposal Date**. At the Owner's option, the Designer may be authorized to perform services for subsequent design phases and/or the Construction Phase and Completion Phase as further defined herein, at which time a mutually agreed upon amendment to this Contract will be executed between the Owner and the Designer. The Owner expects to construct the Project using the Design-Bid-Build ("DBB") construction delivery method pursuant to M.G.L. c. 149, this Contract shall be amended using the Owner's Standard Amendment for DBB, as it may be amended from time to time by the Owner.

For the performance of the services required under this Contract for the Existing Facilities Study Phase, and excluding those services specified under Articles 7.4, 7.5, 7.6, 7.7, 7.8, 7.9, 7.10, and 8.3, the Designer shall be compensated by the Owner for Basic Services in accordance with the Payment Schedule included as Contract Attachment A.

Designer's Project Architect/Engineer: \_\_\_\_\_

The Sub-consultants to provide services, either as Basic or Extra Services, to the Designer under this contract may include the following, as identified on the RFS:

<b>Discipline</b>	<b>Name of Firm</b>	<b>Name of Principal</b>	<b>MBE/ WBE</b>
Aquatics Design / Engineering			
Civil Engineering			
Landscape Architecture			
Structural Engineering			
Fire Protection Engineering			
Plumbing Engineering			
HVAC Engineering			
Electrical/Lighting/			
Data/Communications			
Environmental Permitting			
Geotechnical Engineering			
Hazardous Materials			
Cost Estimating			
Geo-Environmental			

L# \_\_\_\_\_

Specifications Consultant			
Acoustical Consultant			
Sustainable/Green Design/Renewable Energy Consultant			
Code Consultant			
Accessibility Consultant			
Furniture, Fixtures and Equipment Consultant			
Site Surveying			
Security Consultant			

IN WITNESS WHEREOF, the Owner and the Designer hereby agree to the terms of the Contract and have caused this Contract to be executed by their respective authorized officers or other authorized representatives.

**OWNER:**

CITY OF NEWTON

Ruthanne Fuller  
(print name)

Mayor  
(print title)

By \_\_\_\_\_  
(signature and seal)

Date \_\_\_\_\_

\_\_\_\_\_  
Joshua Morse  
Public Buildings Commissioner

Approved as to Legal Form & Character

\_\_\_\_\_  
Associate City Solicitor

**DESIGNER:**

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(print title)

By \_\_\_\_\_  
(signature )

Date \_\_\_\_\_

(Attach Certificate of Owner)

I hereby certify funds are available for this contract in the amount of \$

\_\_\_\_\_  
Comptroller of Accounts

## TABLE OF CONTENTS

PROJECT DESCRIPTION, FEE AND SIGNATURES .....	
ARTICLE 1 DEFINITIONS .....	
ARTICLE 2 RELATIONSHIP OF THE PARTIES.....	
ARTICLE 3 RESPONSIBILITIES OF THE OWNER.....	
ARTICLE 4 RESPONSIBILITIES OF THE DESIGNER.....	
ARTICLE 5 SUB-CONSULTANTS .....	
ARTICLE 6 COMPENSATION .....	
ARTICLE 7 BASIC SERVICES.....	
ARTICLE 8 EXTRA SERVICES .....	
ARTICLE 9 REIMBURSABLE EXPENSES .....	
ARTICLE 10 COMPENSATION AND RESPONSIBILITY FOR CHANGE ORDERS	
ARTICLE 11 RELEASE AND DISCHARGE .....	
ARTICLE 12 ASSIGNMENT, SUSPENSION, TERMINATION, NO AWARD .....	
ARTICLE 13 NOTICES .....	
ARTICLE 14 INDEMNIFICATION .....	
ARTICLE 15 INSURANCE .....	
ARTICLE 16 OWNERSHIP OF DOCUMENTS.....	
ARTICLE 17 STATUTORY REQUIREMENTS.....	
ARTICLE 18 MISCELLANEOUS .....	
CONTRACT ATTACHMENT A	PAYMENT SCHEDULE
CONTRACT ATTACHMENT B	REQUEST FOR QUALIFICATIONS FOR DESIGNER SERVICES (RFQ)
CONTRACT ATTACHMENT C	M/WBE PARTICIPATION SCHEDULE
CONTRACT ATTACHMENT D	LETTER OF INTERNAL CONTROL (DESIGNER)
CONTRACT ATTACHMENT E	LETTER FROM CPA ON INTERNAL CONTROLS
CONTRACT ATTACHMENT F	FORM OF DESIGNER CONTRACT AMENDMENT



## ARTICLE 1: DEFINITIONS

All terms that this Contract defines may be used with or without initial capital letters. Other terms, abbreviations and references are defined as they appear herein. Words and abbreviations that are not defined in the Contract Documents but which have recognized technical or trade meanings are used in accordance with those meanings.

**APPLICABLE LAWS** – All applicable laws, statutes, ordinances, by-laws, codes, rules and regulations, of the Commonwealth of Massachusetts, its political subdivisions, and the Federal Government applicable to the Project.

**APPROVAL** -- A written communication from the Owner approving the work of the current Phase, as identified on Attachment A, or authorizing the Designer to proceed to the next Phase or approving the scope and compensation for either Extra Services or Reimbursable Expenses.

**AUTHORITY** – see OWNER.

**BASIC SERVICES** – The scope of services to be provided by the Designer under this Contract, unless the Contract is otherwise terminated pursuant to Article 12, as described in Article 7 of this Contract, and as it may be amended pursuant to Article 18.4.

**CERTIFICATE OF FINAL COMPLETION** – The form prescribed by the Owner which contains the certification of the Designer, and the Owner that the Project has reached Final Completion.

**CERTIFICATE OF SUBSTANTIAL COMPLETION** – The certificate prepared by the Designer and approved by the Owner to the effect that the Work has reached Substantial Completion.

**CHANGE ORDER** – A written instrument prepared by the Designer and signed by the Owner, Contractor or CM at Risk, and Designer, stating their agreement on a change in the Construction Contract Documents, including, but not limited to, a change in the Contract Sum and/or Contract Time, and/or any other specification in the Construction Contract Documents.

**COMMISSIONING CONSULTANT** – A person or firm engaged by the Owner to provide building commissioning services, including advisory services during design and construction.

**CONSTRUCTION CONTRACT DOCUMENTS** – The Construction Contract Documents consist of the Owner-Contractor or Owner-CM at Risk Agreement, Advertisement, Instructions to Bidders, Bidding Documents, Contract Forms, Conditions of the Contract, Drawings, Plans, Technical Specifications, all addenda issued prior to execution of the Construction Contract, and other documents approved after execution of the Owner-Contractor or Owner-CM at Risk Agreement relating thereto.

**CONSTRUCTION MANAGEMENT AT RISK or CONSTRUCTION MANAGEMENT AT RISK SERVICES or CONSTRUCTION MANAGEMENT AT RISK DELIVERY METHOD or CM at RISK DELIVERY METHOD** - a construction method described in M.G.L. c. 149A wherein a Construction Management at Risk firm provides a range of preconstruction services and construction management services which may include cost estimation and consultation regarding the design of the building project, the preparation and coordination of bid packages, scheduling, cost control, and value engineering, acting as the general contractor during the construction, detailing the Trade Contractor scope of work, holding the trade contracts and other subcontracts, prequalifying and evaluating Trade Contractors and Sub-contractors, and providing management and construction services, all at a Guaranteed Maximum Price, which shall represent the maximum amount to be paid by the public agency for the building project, including the cost of the work, the general conditions and the fee payable to the Construction Management at Risk Firm.

**CONSTRUCTION MANAGER AT RISK, CONSTRUCTION MANAGEMENT at RISK FIRM or CM at RISK** – the individual, corporation, partnership, sole proprietorship, joint stock company, joint venture or other entity with whom the Owner has contracted pursuant to M.G.L. c. 149A, §§ 6 & 7, to provide Construction Management at Risk Services.

**CONTRACT** – This Contract, inclusive of all Attachments, between the Owner and the Designer; all written amendments to this Contract; and all Approvals issued pursuant to this Contract.

**CONTRACTOR OR GENERAL CONTRACTOR** – The person or firm with whom the Owner has contracted pursuant to M.G.L. c. 149, §§ 44A-44M to perform the construction for this Project.

**CONTRACTOR APPLICATION AND CERTIFICATE FOR PAYMENT** – The form prescribed by the Owner which contains the Contractor's or CM at Risk's application or requisition for periodic or final payment for Work performed in accordance with the Construction Contract Documents and the Designer's certificate for payment as approved by the Owner.

**DESIGNER** – The individual, corporation, partnership, sole proprietorship, joint stock company, joint venture or other entity identified as such on page one of this Contract performing architecture, landscape architecture, and/or engineering services under this Contract and which meets the qualifications set forth in M.G.L. c. 7 § 38A 1/2.

**DESIGNER SERVICES** – The services to be performed by the Designer and its Sub-contractors under this Contract including developing and providing all data, designs, drawings, specifications and estimates required for the Project.

**DISTRICT** – see “OWNER.”

**EXTRA SERVICES** – Services requested by the Owner to be performed by the Designer but which are additional (or "extra") to the services performed as Basic Services.

**FEE FOR BASIC SERVICES** – The fee to be paid to the Designer for satisfactorily performing the Basic Services required under this Contract, exclusive of the compensation to which the Designer may be entitled pursuant to Articles 8 (Extra Services) and 9 (Reimbursable Expenses).

**FINAL COMPLETION** – The Work has been completed in accordance with the Construction Contract Documents and the project specifications, schematic plans and drawings and the Agreement approved by the Owner.

**FINAL DESIGN PROGRAM** – A description of the programmatic, functional, spatial, and environmental requirements of the Project in written and graphic form indicating the scope of work and design requirements of the Project.

**GENERAL LAWS** – The Massachusetts General Laws as amended, including any rules, regulations and administrative procedures implementing said laws.

**GUARANTEED MAXIMUM PRICE or GMP** - The agreed total dollar amount for the Construction Management at Risk services, including the cost of the Work, the general conditions and the fees charged by the Construction Management at Risk firm.

**GUIDELINES AND STANDARDS** – Documents published by the Owner including regulations and procedures that supplement the tasks of Designers contracting with the Owner, and as they may be amended from time to time by the Owner.

**MATERIALS** – The designs, drawings, project manual specifications, and other materials prepared by the Designer as defined in Article 16.1.

**MBE/WBE** – A minority-owned business (MBE) or a women-owned business (WBE) certified by the State Office of Minority and Women Business Assistance (SOMWBA).

**NOTICE TO PROCEED** – The written communication issued by the Owner to the Contractor or CM at Risk authorizing him to proceed with the construction contract and establishing the date for commencement of the contract time.

**OWNER** – The entity identified as such on page one of this Contract, or its authorized representative, that is the owner of the property that is the site of the Project, or has or will have exclusive control over the site for at least the duration of the useful life of the facility that is the subject of the Project, and is responsible for administering this Contract.

**OWNER-CONTRACTOR AGREEMENT or OWNER – GENERAL CONTRACTOR AGREEMENT** – The contract between the Owner and one or more General Contractors and/or

goods or services providers for construction of a whole or part of the Project, including approved change orders.

**OWNER-CM at RISK AGREEMENT** – The contract between the Owner and the CM at Risk, including, but not limited to, the GMP Amendment, for the provision of Construction Management at Risk Services for the Project.

**OWNER'S PROJECT MANAGER or OPM** – The individual, corporation, partnership, sole proprietorship, joint stock company, joint venture or other entity with whom the Owner has contracted to perform the Project Management Services for this Project, and who meets the qualifications of M.G.L. c. 149, § 44A ½ and has been approved by the Owner.

**PHASE** – A distinct portion of the work of this Contract and its associated duration, as identified on Attachment A. Prior Approval to proceed for each Phase is required from the Owner.

**PRINCIPALS** – The owner(s) and/or officer(s) of the Designer or Sub-consultant who are in responsible charge of the Project.

**PROJECT** – All work that pertains to the study, planning, programming, design, construction, reconstruction, installation, demolition, maintenance and repair, if any, as described in the Project Scope and Budget Agreement and Project Funding Agreement.

**PROJECT ARCHITECT AND/OR PROJECT ENGINEER** – The individual designated by the Designer as its Project Architect or Project Engineer. Such Project Architect or Project Engineer shall be a registered architect, engineer or landscape architect as required by the Request For Designer Services, shall be the person who shall oversee the performance of all services provided on the Project and shall be certified in the Massachusetts Certified Public Purchasing Official Program as administered by the Inspector General of the Commonwealth of Massachusetts.

**PROJECT CONSTRUCTION BUDGET** – That portion of the Total Project Budget that enumerates the cost of constructing the Project inclusive of all designed construction, demolition, and renovation work, all supportive and preparatory construction work required for the Project, the General Contractor or the CM at Risk and all Sub-contractors, suppliers, materials, equipment, general conditions, insurance, overhead and profit and all other expenditures that are ordinarily considered as construction cost allocations. The Project Construction Budget includes the design contingency, bidding contingency, and price escalation contingency, as appropriate to the phase of the Project.

**PROJECT SCHEDULE** – A complete list of all activities, time and sequence required to complete the Project, as defined in the Project Scope and Budget Agreement or Project Funding Agreement.

**RECORD DRAWINGS** – The drawings prepared by the Designer and its Sub-contractors pursuant to Article 7.10.5 of this Contract which incorporate the design changes made during the construction period and which incorporate information on the marked-up prints, as-built drawings and other data furnished by the General Contractor or CM at Risk and any Sub-contractors.

**REIMBURSABLE EXPENSES** – Costs and expenses incurred by the Designer that are reimbursable pursuant to the provisions of Article 9 of this Contract.

**REQUEST FOR DESIGNER SERVICES** or RFS – The written document appended hereto as Attachment B specifying various requirements including the project goals and general scope, project site, scope of services, submission requirements, schedule, and construction budget.

**STANDARD OF CARE** – The generally accepted professional standard of care ordinarily used by design professionals performing a similar scope of services in the same geographic area on projects of comparable size and complexity.

**SUB-CONSULTANT** – The Sub-contractors listed on page 1 of this Contract, together with any additional Sub-contractors engaged by the Designer from time to time, which shall be an individual, company, firm, or business having a direct contractual relationship with the Designer, who provides services on the Project.

**SUB-CONTRACTOR** – The person or entity having a direct contractual relationship with the Contractor, or CM at Risk who has the contract to perform the construction of the Project, except as otherwise specifically provided or required herein or by Law. Subcontractor when used also means “Trade Contractor” except when otherwise specified.

**SUBSTANTIAL COMPLETION** – The Work, as evidenced by the Certificate of Substantial Completion, is fully complete or substantially complete so that the value of the Work remaining to be done is, in the estimate of the Owner, less than one percent of the original contract price, or (2) the Contractor substantially completes the work and the Owner takes possession for occupancy, whichever occurs first.

**TOTAL PROJECT BUDGET** – A complete and full enumeration of all costs of the Project, as defined in the Project Scope and Budget Agreement or Project Funding Agreement.

**TRADE CONTRACTOR** – a subcontractor having a direct contractual relationship with a Contractor or CM at Risk to perform one or more so-called sub-bid classes of work listed in M.G.L. c.149, §44F, and any other sub-bid classes of work selected by the Owner for the Project in accordance with the provisions of either M.G.L. 149, §44F(1)(a) or M.G.L. c. 149A, §8(a).

**WORK** – The entire construction required to be furnished under the Construction Contract Documents. Work includes performing and furnishing any and all services, obligations, duties,

responsibilities, labor, materials, equipment, temporary facilities, and incidentals necessary to complete the construction assigned to, or undertaken by the Contractor or the CM at Risk pursuant to the Construction Contract Documents.

## ARTICLE 2: RELATIONSHIP OF THE PARTIES

- 2.1 The Owner's Project Manager - N/A.
- 2.2 The Designer is solely responsible for providing the design for the Project and for performing in accordance with this Contract.
- 2.3 The Contractor or CM at Risk, as the case may be, shall be solely responsible for construction means, methods, techniques, sequences and procedures, the Contractor's or CM at Risk's schedules, and for safety precautions and programs in connection with the Project and for performing in accordance with the Owner-Contractor or Owner - CM at Risk Agreement. The Designer shall be responsible for the Designer's negligent acts or omissions but shall not have control over or charge of acts or omissions of the Contractor or CM at Risk, Sub-contractors, or the agents or employees of the Contractor or CM at Risk or Sub-contractors, the Commissioning Consultant or other technical consultants.
- 2.4 Nothing in this Contract shall be construed as an assumption by the Designer of the responsibilities or duties of the Contractor or CM at Risk. It is the intention of the parties that the Designer's services shall be rendered in a manner compatible with and in coordination with the services provided by the Commissioning Consultant. It is not intended that the services of the Designer and the Commissioning Consultant be competitive or duplicative, but rather complementary. The Designer shall be entitled to rely upon the Commissioning Consultant and Contractor or CM at Risk for the proper performance of their obligations pursuant to their respective contracts with the Owner.

## ARTICLE 3: RESPONSIBILITIES OF THE OWNER

- 3.1 The Owner shall have the right to approve the Designer's work.
- 3.2 The Owner shall designate an individual who shall have the authority to act on behalf of the Owner under this Contract and who shall be responsible for day-to-day communication between the Owner and the Designer.
- 3.3 Upon satisfactory completion of services performed, the Owner shall make payments to the Designer as provided in Articles 6, 7, 8 and 9, 10 and 11.

- 3.4 To the extent such data is available, the Owner shall furnish to the Designer existing surveys of the site, building plans, borings, test pits, structural, mechanical, chemical or other test data, tests for air and water pollution and for hazardous materials, photographs, reports and utility information. The Designer shall be entitled to reasonably rely upon the sufficiency and accuracy of the information furnished to the Designer under this Article 3.4 and under Article 4.11, provided that the Designer shall coordinate its services with the services of the Owner's consultants and shall notify the Owner in writing of any deficiencies in such data of which the Designer becomes aware.
- 3.5 Except as otherwise provided in this Contract, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor or CM at Risk and the Designer's consultants through the Designer about matters arising out of or relating to the Construction Contract Documents. The Owner shall promptly notify the Designer of any direct communications that may affect the Designer's services.
- 3.6 The Owner shall provide the Designer access to the Project site prior to commencement of the Work and shall obligate the Contractor or CM at Risk to provide the Designer access to the Work wherever it is in preparation or progress.
- 3.7 If the Owner requests the Designer to execute any certificates that are not readily available as of the effective date of this Contract, the proposed language of such certificates shall be submitted to the Designer for review at least 14 days prior to the requested dates of execution. The Designer shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Contract.
- 3.8 The Owner shall deliver to the Designer in a timely manner written copies of all Approvals required by this Contract. If Approval is withheld, the Owner shall notify the Designer in a timely manner in writing why such Approval is being withheld.
- 3.9 The Owner shall not unreasonably withhold, delay, condition, or deny any approval, acceptance, or consent required under this Contract, including any Approval.

#### ARTICLE 4: RESPONSIBILITIES OF THE DESIGNER

- 4.1 The Designer shall perform the Designer Services in accordance with the requirements of this Contract, and in accordance with the Standard of Care. The Designer shall exercise due care and diligence in the rendition of all services under this Contract in accordance with such professional standards and shall exercise the Standard of Care to provide the services required under this Contract in conformity with all Applicable Laws.
- 4.2 The Designer shall be responsible for the Designer Services including any changes to such Services that may be required in accordance with this Contract. The Designer shall furnish appropriate competent professional services for each of the Phases in accordance with the Standard of Care. Any changes, corrections, additions or deletions requested by the Owner and shall be incorporated into the design of the Project unless detailed objections thereto are issued in writing by the Designer, subject to Article 8.2.2. Nothing

herein shall be construed as an assumption by the Owner the responsibilities or duties of the Designer.

- 4.3 The Designer Services shall be performed as expeditiously as is consistent with orderly progress of the work, consistent with the agreed upon project design schedule as established under Article 7.4.2 and as it may thereafter be amended by the parties from time to time. In the event of delays due to causes outside of the Designer's control, the project design schedule may be extended as necessary, and Designer's compensation may be equitably adjusted pursuant to Article 6.6 to the extent that Designer incurs additional direct costs caused by the delay. Time is of the essence for the duration of this Contract.
- 4.4 The Designer shall provide the scope of services required by this Contract, as described in more detail in the RFS and Attachment A.
- 4.5 The Designer shall comply with the terms and conditions and any and all administrative directives issued by the Owner, now in effect or hereafter promulgated during the term of this Contract, without any additional compensation, that are applicable to Designer's Services under this Contract and that have been provided or are readily available to Designer prior to such Services being performed. The Owner shall reasonably compensate the Designer for complying with any term or condition or any administrative directive issued by the Owner, that was not provided to or was not readily available to the Designer prior to such Services being performed and that materially impacts the Designer's scope or other aspect of its Services, Fee, schedule, or any obligations and responsibilities under this Contract.
- 4.6 The Designer acknowledges the importance that the Owner attributes to the abilities and qualifications of the key members of the Designer's team, including Sub-contractors, and the continuity of key members' participation in the services to be provided under this Contract. This Contract has been entered into in reliance on the Designer's representation that the individuals, consultants, assignments and responsibilities will be maintained throughout the duration of this engagement. No substitution or replacement of individuals or change in the Sub-consultants, listed on pages 1-2 of this Contract, shall take place without the prior written approval of the Owner, except when necessitated by causes beyond the Designer's control (such causes shall include if an individual leaves or is no longer associated with the Designer's firm). If the Designer proposes to replace one of the members of the Designer's team, the Designer shall propose a person or consultant with qualifications at least equal to the person or firm the Designer proposes to replace. The Owner shall have the right to approve any substitution or replacement or change in status for the persons or Sub-consultants listed on page 1-2 of this Contract and such approval shall not be unreasonably withheld. At the request of the Owner, the Designer shall consult with the Owner to resolve any situation in which the Owner determines that a member of the Designer's team is failing to perform services in an acceptable manner to the Owner. The Owner shall have the right to direct the removal of any such person or consultant. The Owner shall work in good faith with the Designer to resolve any material problems identified by the Owner in writing regarding performance of the Designer's obligations under this Contract. No act or omission of the Owner made or permitted under this Article shall relieve the Designer of its responsibility for the performance of the services specified in this Contract.



- 4.7 The Designer shall compile and distribute a job directory which includes all names, addresses, phone and fax numbers, and e-mail addresses of the representatives of the Designer and their Sub-contractors. This shall be distributed upon commencement of the services, and shall be updated and redistributed as project participants and/or contact information change.
- 4.8 The Designer shall employ at all times adequate professional and support personnel with requisite expertise and adequate numbers to assure the complete, timely performance of the obligations of the Designer. The Designer shall acquaint its employees and Sub-contractors with all provisions of the General Laws governing public construction projects, including but not limited to M.G.L. c. 149, M.G.L. 149A, and M.G.L. c. 30, that are relevant to the performance of Designer's obligations under this Contract. When directed by the Owner, the Designer shall fully cooperate with the Owner in obtaining the Criminal Offender Record Information (CORI) of the Designer and its employees and of any Sub-contractors and their employees in accordance with the provisions of M.G.L. c. 71, § 38R, M.G.L. c. 6, §§ 167-178B (the so-called CORI Law), any other applicable law, and District policy. All contracts between the Designer and each Sub-consultant shall include appropriate provisions requiring the Sub-consultant to fully cooperate with the Owner in obtaining the Criminal Offender Record Information (CORI) of the Sub-consultant and its employees as aforesaid.
- 4.9 The Designer shall be and shall remain liable to the Owner for all damages incurred by the Owner as a result of the failure of the Designer or its Sub-consultants to perform in conformance with the terms and conditions of this Contract.
- 4.10 Design Within the Project Construction Budget
- 4.10.1 The Designer shall prepare cost estimates for the Project as described in Article 7 of this Contract or at more frequent intervals as required in the RFS. Unless otherwise specified in the RFS, the cost estimates shall be considered Basic Services and the Designer is not eligible for any additional compensation for preparing the same. The format for cost estimates shall be in accordance with the requirements of the Owner.
- 4.10.2 The Designer shall produce a design for the Project meeting the requirements of the scope of work described in the RFS to be constructed within the Project Construction Budget, provided that the Designer shall be permitted to recommend to the Owner such adjustments to the Project's design, consistent with the Project Funding, as the Designer reasonably believes may be required to adhere to the Project Construction Budget. In the event the Designer's cost estimate for the Project (as reconciled in accordance with the provisions of this Contract) exceeds the Project Construction Budget, the Owner may require the Designer to revise the design, drawings and specifications to keep the cost estimate for the Project within the Project Construction Budget. The Designer shall not be entitled to extra compensation for making such revisions to contain costs within the Project Construction Budget.
- 4.10.3 In a Project constructed pursuant to M.G.L. c. 149, §§ 44A-M, if the Project Construction Budget is exceeded by the lowest bona fide, responsible bid by any

amount, the Owner shall direct the Designer to review and compare the Project Construction Budget with the bids received to identify the variances. Upon completion of this review and submission of the Designer's report to the Owner, the Owner shall:

- (a) direct the Designer to revise the Final Design Program, Project scope and quality as required to reduce the estimated construction costs to be within the Project Construction Budget, in accordance with Article 4.10.5 of this Contract; or
- (b) give written approval to the Designer of an increase in the Project Construction Budget; or
- (c) authorize rebidding of the Project within a reasonable time; or
- (d) terminate this Contract in accordance with Article 12.3; or
- (e) implement any other mutually accepted alternative that the Owner and the Designer may agree on.

4.10.4 In a Project constructed pursuant to M.G.L. c. 149A, the Designer shall be responsible for managing the design of the Project to stay within the Project Construction Budget. If the GMP proposal submitted by the CM at Risk exceeds the Project Construction Budget, the Designer shall review and compare the Project Construction Budget with the GMP proposal submitted by the CM at Risk to identify the variances. Upon completion of this review, if directed by the Owner, the Designer shall assist the Owner in negotiating a GMP within the Project Construction Budget in accordance with Article 7.7.9. If a GMP cannot be successfully negotiated between the Owner and the CM at Risk within the Project Construction Budget, the Owner shall:

- (a) direct the Designer to participate with the Owner, CM at Risk in design reviews and revise the design, including appropriate revisions to drawings and specifications, as necessary in order to reach an agreement on a GMP within the Project Construction Budget; in accordance with Article 4.10.5; or
- (b) give written approval to the Designer of an increase in the Project Construction Budget and resume negotiating a GMP with the CM at Risk; or
- (c) terminate this Contract in accordance with Article 12.3; or
- (d) implement any other mutually accepted alternative that the Owner and the Designer may agree on.

4.10.5 (a) If the Owner chooses to proceed under Article 4.10.3(a) or 4.10.4(a), the Designer and its Sub-consultants, without receiving additional compensation, except if fewer than three bona fide, responsible bids were received (in the case of a Project constructed pursuant to M.G.L. c. 149, §§ 44A-44M) or (in the case of a Project

constructed pursuant to G.L. c. 149A) if fewer than three bona fide responsible Trade Contractor or so-called non-trade contractor bids for each category of work were received, or if 4.10.5(b) and/or (c) applies, shall cooperate in revising the designs, drawings and specifications as may be required to reduce or modify the quality or scope or both, of the Project so that they will comply with the Project Construction Budget as approved at the conclusion of the Construction Documents Phase or as amended. Any changes to the program or the approved space summary shall be subject to the written approval of the Owner. Upon completion of these revisions, the Designer shall also be required to produce a revised cost estimate demonstrating that the estimated cost of the Project does not exceed the Project Construction Budget. Revising the designs, drawings, and specifications and updating the cost estimate shall be the sole obligation on the part of the Designer with respect to 4.10.3(a) or 4.10.4(a); (b) If the Owner elects to proceed with revisions that significantly increase the complexity either of the Construction Contract Documents themselves or the Construction Administration Phase services that the Designer will have to provide, then the Designer shall be entitled to an equitable adjustment in its Fee to reflect the impact on its services; (c) If the bid or proposal referenced in 4.10.3 or 4.10.4 above was submitted on a date that is more than three (3) months after approval of the Construction Contract Documents then such revisions shall be Extra Services.

4.10.6 The Designer must receive written approval of the Owner before the Project Construction Budget shall be considered amended.

4.11 Additional Tests and Surveys: The Designer shall be responsible for reviewing the surveys, investigations, testing and reports completed by the Owner and as provided under Article 3.4, and determining the types of additional or expanded surveys, investigations, or testing required for the Project. Such services shall be provided by qualified specialty Sub-consultants as necessary. Both the types of services and the Sub-consultants shall be approved by the Owner. In the event that the Designer employs the services of a Sub-consultant to provide such services, the Designer shall employ such Sub-consultants who have the professional liability insurance coverage described in paragraph 15.8.1 covering such services, to the extent that such insurance coverage is generally available to Sub-consultants. The Designer shall, upon the Owner's written request, assign to the Owner the Designer's contractual right to pursue a claim against such Sub-consultants. Such services shall be paid for as provided in Article 8 – Extra Services unless such services are specifically included as Basic Services in the RFS. Such services may include but need not be limited to:

4.11.1 Site surveys;

4.11.2 Structural tests and materials tests;

4.11.3 Geotechnical and geo-environmental investigations and reports, including existing buildings hazardous material reports, boring tests, test pits, observation wells, testing and chemical analysis of site substrate conditions;

4.11.4 Traffic studies.

## ARTICLE 5: SUB-CONTRACTORS

- 5.1 The Designer may engage Sub-consultants, subject to the prior written approval of the Owner and subject to Article 9.3, in order to perform services under this Contract. If Sub-contractors are engaged, the person responsible for, and in control of, the Sub-consultant services to be provided must be professionally registered or licensed in Massachusetts in the necessary disciplines for the services if such registration or licensing is required under the applicable General Laws. The engagement of Sub-consultants shall not in any way relieve the Designer from its duties and responsibilities for its work, including, without limitation, coordinating all Designer Services furnished under this Contract by the Sub-consultants.
- 5.2 Upon request, the Designer shall provide the Owner with copies of its agreements with Sub-contractors, including any amendments thereto and copies of the Sub-consultant's applicable certificates of insurance.
- 5.3 No substitution of Sub-contractors and no use of additional Sub-contractors or assignment of services shall be made without prior written approval of the Owner, which approval shall not be unreasonably withheld.

## ARTICLE 6: COMPENSATION

- 6.1 For the satisfactory performance of all services required pursuant to this Contract, excluding those services specified under Articles 8 and 9, the Designer shall be compensated by the Owner in the amounts specified in Attachment A as that Fee may be amended by written amendment to this Contract.
- 6.2 When the Designer receives payment from the Owner, the Designer shall promptly make payment to each Sub-consultant whose work was included in the work for which such payment was received unless payment has been theretofore made. The Owner shall have the contractual right to investigate any breach of performance of a Sub-consultant and to initiate corrective measures it determines are necessary and in the best interest of the Owner. All contracts between the Designer and its Sub-contractors shall include a provision in which the Owner's rights to initiate corrective action shall be stipulated.
- 6.3 Payment Schedule
  - 6.3.1 Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each Phase. The amount of fees attributable to each Phase shall be as set out in the schedule in Attachment A. Payment for approved Reimbursable Expenses and/or Extra Services shall be made monthly upon receipt of an approved invoice from the Designer.
  - 6.3.2 The Owner shall make payments to the Designer within 30 days of the Owner's approval of an invoice from the Designer. The Owner's payment for any services provided under this Contract shall not be construed to operate as a waiver of any rights under the Contract or any cause of action arising out of performance of the Contract. The Owner shall not withhold payments to offset costs alleged to have been incurred by the Owner on account of allegedly negligent acts, errors or omissions unless the Designer agrees or has been found liable for specific amounts in a binding agreement or court judgment, or unless the Designer fails to maintain the professional

liability insurance required under paragraphs 15.7.1 and 15.7.2. The Owner may withhold approval of invoice items the Owner reasonably believes have not been performed in accordance with this Contract, including adjustments to payment amounts in instances where required submittals to the Owner may be found to be missing or incomplete. If Owner and Designer continue to disagree, the disagreement shall be immediately submitted to mediation in accordance with paragraph 18.5(b).

#### 6.4 Installment Payments During Construction

6.4.1 During the construction Phase, the Designer shall be paid the Fee for Basic Services stipulated in Attachment A.

6.4.2 Payments to the Designer during the construction Phase shall be made in equal monthly installments for the duration of the construction Phase. The amount of each payment shall be determined by dividing 95% of the fee for Construction Phase/Final Completion as stipulated in Attachment A by the number of months between the Notice to Proceed and the scheduled issuance of the Certificate of Substantial Completion as indicated in the Project Schedule as approved by the Owner. The Designer shall be entitled to Extra Services in accordance with Article 8.3 should the Project be delayed beyond the 60-day period described in Article 8.3 for reasons beyond the control of the Designer.

6.5 Final Installment: The Designer shall be paid the unpaid balance of the fee for Construction Phase/Final Completion as stipulated in Attachment A (as that fee may be amended), upon compliance with the following requirements:

6.5.1 Approval of the Certificate of Final Completion of construction (such Certificate to be in the form acceptable to the Owner). In cases where a Certificate of Partial Release of Retainage is approved, the Designer shall be paid up to an amount commensurate with the percent of retainage released until a Certificate of Final Completion is approved; and

6.5.2 Delivery by the Designer to the Owner of the Record Drawings required by this Contract; and

6.5.3 Verification of payment to MBE/WBE Sub-contractors or Sub-contractors identified on Attachment C and as required by Article 17.4; and

6.5.4 A written evaluation of the General Contractor or CM at Risk by the Designer from which the Owner shall be able to complete its submission of the Contractor Evaluations as required by M.G.L. c.149 § 44D(7).

6.5.5 In the event that the Designer is unable to comply with items 6.5.1 and 6.5.2 above due to reasons beyond the Designer's control, as determined by the Owner, Final Installment shall not be unreasonably withheld or delayed beyond 60 days after the date of Substantial Completion, provided that the Designer has complied with all other requirements.

## 6.6 Substantial Change

- 6.6.1 If there is a substantial change in the services described in the RFS to be provided by the Designer under this Contract, the Designer and the Owner will mutually agree to a written amendment describing the services and an amended Fee for Basic Services to reflect the change and reasonable cost of such change. Such changes shall be designated on Attachment F and shall be executed by the Designer and the Owner.
- 6.6.2 Should the Designer and the Owner be unable to negotiate a mutually acceptable amendment to the Fee for Basic Services when there has been a substantial change in the specified services, the Owner shall unilaterally and promptly determine, in good faith and supported by a written explanation in sufficient detail, a reasonable maximum dollar amount for the services as amended and process payments to the Designer subject to said maximum amount, until an amendment to the Fee for Basic Services for such change is set by later agreement between the parties, provided, that the Designer's acceptance of such payments shall not be considered a waiver by the Designer of its right to pursue a claim for additional compensation related to the change in services, and provided that such disagreement shall be immediately submitted to mediation in accordance with paragraph 18.5(b). In no event shall the Designer stop work under this Contract due to a disagreement with the Owner regarding an amendment in the Designer's Fee for Basic Services, provided that the Owner complies with its payment obligations under this Article 6.6.
- 6.6.3 Notwithstanding the foregoing, the amendment to this Agreement described in paragraph 7.4.8 shall be negotiated and executed by both parties prior to the start of the subsequent Phase.

## ARTICLE 7: BASIC SERVICES

- 7.1 The Designer shall discuss with the Owner the requirements for each Phase before beginning work on that Phase.
- 7.2 The Owner will promptly review and approve the Designer's submittals. Upon completion of its review, the Owner shall promptly and in writing:
- (a) approve the submittal as made; or
  - (b) approve that part of the submittal that is acceptable and reject the remainder; or
  - (c) reject the submittal; or
  - (d) require the Designer to submit additional information or details in support of its submittal.
- 7.2.1 The description of Designer Services required during the various Phases as described in the RFQ and hereinafter may include specification of the number of submittals the Designer will be required to make and estimates of the approximate number of meetings that the Designer will be required to prepare for and attend during each Phase.

- 7.2.2 As a part of Basic Services, the Designer shall provide six copies of each submittal to the. Drawings submitted to the Owner shall be reproduced at half full size. A graphic scale shall be placed upon all such drawings prior to construction documents phase submittals. If the Designer is required to make submittals in excess of the number specified or if the Designer is required to prepare for and attend meetings in excess of the number specified for a Phase, the Designer shall be entitled to compensation for Extra Services, provided, however, that the Designer shall not be entitled to such compensation if and to the extent the Owner shall have reasonably determined that the additional submittals or the additional meetings were required due to either the Designer's lack of preparation, or other fault due to deficiencies or omissions in documents prepared by the Designer.
- 7.2.3 All document submittals shall be in the form of neatly bound printed material and delivered to the location or locations as indicated by the Owner. One or more document submittal components may be submitted in an approved electronic format, subject to specific authorization by the Owner.
- 7.2.4 Electronic Submittals: In addition to all other submittals called for by this Article 7 and elsewhere in the Contract, including but not limited to hard copies and reproducibles of all submittals, the Designer shall submit two (2) electronic copies on compact disks for all required submissions of Deliverables called for by this Contract (“Electronic Submittals”). All Electronic Submittals shall be deemed to be Materials that are subject to all provisions of Article 16. The Electronic Submittals shall be provided on CD electronic format as approved by the Owner and as follows:
- (a) All drawings shall be provided in standard AutoCAD software (release number and version to be established at time of contract execution) or in a compatible electronic CADD (.dxf) format or other industry-standard format as approved by the Owner and acceptable to the Owner. Electronic file naming convention shall be acceptable to the Owner and the Owner.
  - (b) All other documents shall be provided in pdf format, Microsoft Word, Excel, Project, or PowerPoint, as applicable to the particular submittal.
  - (c) All submittals shall be labeled identifying project name and number, file name, drawing title, software and release, and layering system.
  - (d) The Owner reserves the right to require the Designer to provide all electronic media as may be required at any time during the duration of this Contract due to technology upgrades and/or changes to the electronic systems used by the Owner, provided that if such requirement demands that the Designer

purchase new software or train existing employees for the application of media or software such costs shall be a Reimbursable Expense but only to the extent that such purchase of new software or training of existing employees is unique or exclusive to the particular requirements of the Owner for this particular Project.

- (e) The Designer's compliance with the terms of this Article shall be performed as part of the Basic Services under the Contract, and the Designer shall not receive any additional compensation for providing the Electronic Submittals, (including but not limited to conversions or copies of software), except as specified herein. The Designer shall not be responsible for any use of Electronic Submittals on hardware or software for which it was not intended. Creation of a Building Information Model is excluded from the definition of Electronic Submittals; if the Owner requests the Designer to create such a Model, the parties shall execute a separate agreement and Designer shall receive Extra Services for its creation.

7.2.5 In reviewing and preparing all documents for evaluation as part of the Facilities Program Phase and/or any other design phase for which the Designer may be authorized, the Designer shall determine gross area and net areas in the following manner in order to maintain uniformity in computation and consistency of both gross and net square foot areas of buildings:

Gross Area: The area included within the outside faces of the exterior walls for all stories. Custodial areas such as janitor closets, building maintenance and building employees' locker rooms, circulation areas such as corridors, lobbies, stairs, and elevators, and mechanical areas such as those designated to house mechanical and electrical equipment, utility services, and non-private toilets shall be considered as part of the gross area, but not part of the net area.

Net Areas: In general, those areas which have a specific assignment and functional program use as determined by the facility, including, but not limited to, areas such as collection areas, circulation space, meeting rooms, children's room, administrative and study rooms. These shall be measured from the inside finish of permanent outside walls to the inside finish of corridor walls, and to the inside finish of intermediate partitions.

### 7.3 Existing Facilities Study Phase:

- 7.3.1 The Designer shall familiarize itself with the Owner's requirements and standards for existing facilities studies identified in the RFQ that further specify the work to be performed by the Designer during this Phase and shall perform its Existing Facilities Study Phase services in accordance with such requirements and standards and the provisions of this Contract. The Designer shall meet with the Owner to arrive at a mutual understanding of the requirements of the Existing Facilities Study. The Designer shall submit a proposed work plan including anticipated tasks and submittals.



### 7.3.2 INTENTIONALLY OMMITTED

7.3.3 The Designer shall cooperate with the Owner to define and develop a few reasonable, sound, cost effective, and practical options for the Owner's evaluation that satisfy the Owner's program requirements, including all requirements of 605 CMR (Attachment A), that were provided by the Owner to the Designer.

7.3.4 Existing Facilities Study submittals shall be provided pursuant to Article 7.2.2; 605 CMR (Attachment A) and shall be subject to the written Approval of the Owner.

7.3.5 The Designer shall present and explain the existing Facilities Study to the Owner at local public meeting(s), if any such meeting(s) is scheduled, or in conference.

7.3.6 The Designer shall meet with the Owner every other week during this Phase.

### 7.4 Schematic Design Phase

7.4.1 Upon receipt of an Approval to proceed to Schematic Design Phase, the Designer shall meet with the Owner to arrive at a mutual understanding of the requirements of the Final Design Program approved in writing by the Owner.

7.4.2 The Designer shall submit a proposed design work plan pursuant to this Contract including anticipated tasks and submittals. The Designer shall also submit to the Owner a proposed schedule consistent with any Project Schedule included in the RFQ (Contract Attachment B) modified as required by any subsequent schedule changes or delays outside of Designer's control. The schedule shall contain dates for submittals, deliverables, actions, milestones, design workshops, meetings and the critical path through all design service activities. It shall include time for the Owner's review and approval of submittals and for necessary submissions for permits in connection with the Project. The work plan shall also include a work plan schedule of values consistent with Contract Attachment A, which shall be the basis for which payments of the Fee for Basic Services within each Phase shall be made. The work plan schedule of values shall identify deliverables within each Phase and percentages of the phase fee payable upon completion of such deliverable. When approved by the Owner as provided in Article 7.4.8, the work plan schedule of values shall govern the timing of payments of the Fee for Basic Services upon completion of deliverables within each Phase and as each Phase progresses.

7.4.3 The Designer shall: Prepare a preliminary evaluation of the Recommended Preferred Solution from the Existing Facilities Study, the Final Design Program, and Proposed Total Project Budget; collect and study all available drawings, reports, maintenance reports, and other existing data pertaining to the Project; conduct a thorough on-site review of conditions relating to the Project; assure that the "Recommended Preferred Solution" complies with all applicable codes and regulations, including any special design standards supplied by the Owner and its Commissioning Consultant; and meet with local building officials to identify and confirm applicable standards, codes and any project specific criteria.

7.4.4 The Designer shall develop the Recommended Preferred Solution to a full schematic design level. Schematic design level documentation shall be based on the Final Design Program, shall incorporate Owner comments and shall include each of the following, to the extent applicable to the Recommended Preferred Solution:

- (a) Traffic Analysis -N/A.
- (b) Environmental and Existing Building Assessment – Provide additional site and building assessments as may be required to quantify presence of unsuitable materials and scope of possible remediation efforts.
- (c) Geotechnical and Geoenvironmental Analysis – Provide additional geotechnical analysis as may be required to describe soil conditions, remediation requirements and appropriate foundation.
- (d) Program Analysis - a space measurement analysis for the design which shall verify that the sum of all program floor areas plus all other floor areas equal the gross floor area of the Final Design Program.
- (e) Code Analysis – Determine the impact of all applicable federal, state, regional and local codes, regulations and ordinances, including a listing of permitting and other regulatory filing requirements.
- (f) Utility Analysis – Determine the availability and capacity of all required building utilities. Provide soils analysis and preliminary design for on-site septic/sewage treatment facilities, if required.
- (g) Massing Study – an analysis of the building’s integration into its surroundings and neighborhood with drawings, models, or photographs.
- (h) LEED- Scorecard – Pursuant to the Owner’s sustainability goals complete a LEED Scorecard and describe sustainable design features and each high performance green prerequisite and credit included in the proposed design and a plan for implementation or inclusion of any appropriate public utility energy conservation design programs.
- (i) Accessibility - an analysis of the design's compliance with the Americans with Disabilities Act (ADA) and the Massachusetts Architectural Access Board requirements (MAAB).
- (j) Building Systems Descriptions – Describe in narrative and on schematic plans basic information relative to:
  - 1. Building Structure - a written narrative of the design approach to the structural systems including discussion of the feasible options for foundations and superstructure as well as treatment of special situations such as unusual soils conditions or long spans.
  - 2. Plumbing and HVAC - written narratives of the basic systems and proposed fuel source(s) and a preliminary life cycle cost analysis pursuant

- to the criteria of M.G.L. c. 149 § 44(m). Provide schematic plans indicating basic distribution concepts and the location of major equipment items such as boilers, water heaters, cooling towers, chillers, air handling units, heat recovery units, exhaust stacks, and special systems (e.g. fume exhausts).
3. Fire Protection - written narratives of the basic systems and design criteria. Provide schematic plans indicating basic distribution concepts and the location of major equipment items such as fire pumps, standpipes, and fire department connections.
  4. Electrical (including power, lighting, communications, fire alarm, video/CATV, security/surveillance) - written narratives of the proposed electrical and communications systems resources, needs, and proposed scope. Provide schematic plans indicating basic distribution concepts and the location of major equipment items such as switchgear, standby generator, and control centers/panels.
  5. Information Technology - written narratives of the proposed information technology system resources, needs, and proposed scope. Provide schematic plans indicating basic distribution concepts, and location of major equipment items such as switches and hubs.
- (k) Outline specifications in accordance with applicable CSI Divisions that clearly define the scope of construction, identify the sub-trades pursuant to M.G.L. c. 149 § 44F, establish the quality of materials, finishes, products, equipment and workmanship, and the special or unique conditions of construction.
- (l) Project Schedule - Provide a reasonable level of design-related input and prepare a draft schedule for the proposed project for the Owner in the form of a graphic representation (Gantt Chart) of the duration of all tasks, activities and phases of the design and construction processes against the progression of time up to a proposed occupancy date. Dependencies between activities and tasks will be delineated. Individual tasks and activities will be rolled up to the major project milestones. Provide input to the Owner regarding priority actions and activities that may have a major impact on the schedule. The Designer, is responsible for preparing and maintaining the draft and updated project schedule document, except as it pertains to the project design schedule developed under Article 7.4.2.
- (m) Construction cost estimate – in a format acceptable to the Owner with aggregated unit rates and quantities supporting each item. If independent cost estimates are prepared for the Owner or subsequent phases, then the Designer shall work with the Owner to resolve such any differences in a cost reconciliation process and shall involve any relevant parties in such process.

- (n) Siting analysis, including content, access, topographic and utilities recognition.
- (o) Site Development Plan – Site plan shall be at a minimum scale of 1 inch equals 40 feet and include property lines with bearings and distances, building setbacks, site acreage, wetlands information, proposed and existing topography, proposed and existing buildings and site features, floor and roof elevations for all buildings, proposed and existing utilities and utility connections, and emergency equipment access.
- (p) Schematic Building Floor Plans of all floors and roof at a minimum scale of 1/16" = 1'-0" showing all elements of the building including overall dimensions, gross square footage of each floor and net square footage of each space, response to functional requirements of program, major and minor access, circulation, and room data sheets.
- (q) Schematic Exterior Building Elevations for all sides and orientations indicating all exterior finishes and fenestration.

7.4.5 Schematic design phase drawings, specifications, construction cost estimates and other submittals shall be subject to the written Approval of the Owner, which Approval shall not be unreasonably delayed, withheld, conditioned, or denied. Unless a lesser number is requested by the Owner, the Designer shall submit to the Owner for approval six (6) copies of schematic design drawings, specifications, cost estimates, and other submittals.

7.4.6 The Designer shall present and explain the Schematic Design to the Owner, and other such interested parties at a local public meeting, if any such meeting is scheduled, or in conference.

7.4.7 The Designer shall meet with the Owner every other week during the Schematic Design Phase.

7.4.8 Prior to the issuance of an Approval to proceed to the Design Development Phase, the Designer and the Owner shall meet to finalize the design work plan, project schedule, and schedule of values described in Article 7.4.2, and they shall if necessary execute an amendment to the Contract to include all required modifications to govern the subsequent phases of the Designer's services.

7.4.9 Construction Delivery Method Evaluation and Selection

- (a) The Designer shall assist the Owner in determining the appropriate construction delivery methodology for the Proposed Project. In providing such assistance, the Designer, shall advise the Owner on the relative advantages and disadvantages associated with each of the construction delivery methods provided in M.G.L. Chapters 149 and 149A.

The decision to pursue a particular construction delivery method shall be within the sole discretion of the Owner, subject to the approval of the Inspector General as provided in M.G.L. c. 149A, §4. The services provided by the

Designer in assisting and advising the Owner in its determination of the appropriate construction delivery methodology shall be included in Basic Services.

- (b) If the Owner elects to construct the Project using the CM at Risk construction delivery method pursuant to M.G.L. c. 149A, and has obtained the approval of the Office of the Inspector General to do so, with the Approval of the Owner, this Contract shall be amended using the Owner's Standard Amendment for CM-R which includes Articles 7.5 through 7.10. If the Owner elects to construct the Project using the Design-Bid-Build ("DBB") construction delivery method pursuant to M.G.L. c. 149, with the Approval of the Owner, this Contract shall be amended using the Owner's Standard Amendment for DBB, which includes Articles 7.5 through 7.9.

7.5 INTENTIONALLY OMITTED

7.6 INTENTIONALLY OMITTED

7.7 INTENTIONALLY OMITTED

7.8 INTENTIONALLY OMITTED

7.9 INTENTIONALLY OMITTED

7.10 INTENTIONALLY OMITTED

## ARTICLE 8: EXTRA SERVICES

### 8.1 General

8.1.1 Extra Services are those services requested by the Owner to be performed by the Designer but which are additional (or "extra") to the services performed as Basic Services. Such services are not included in the Fee for Basic Services and shall be invoiced and paid for separately. Extra services shall not be deemed authorized until a written Approval is received from the Owner, which Approvals shall not be unreasonably delayed, withheld, denied, or conditioned.

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

8.1.3 Cost proposals for Extra Services shall be computed in accordance with Attachment A.

8.2 Unless specifically stated elsewhere and only with the prior written Approval of the Owner, the Designer shall perform any of the following services as Extra Services:

8.2.1 preparing measured drawings and detailed construction investigations documentation for existing buildings when such documentation does not exist;

8.2.2 substantially revising previously approved reports, drawings, specifications or other documents to address changes authorized or requested by the Owner, including

- substantial changes in its size, quality, complexity, design, Budget, and/or bidding method or bid packages, and changes in Applicable Laws;
- (a) Notwithstanding the provisions of 8.2.2, revisions prepared by the Designer to keep construction costs within the Project Budget that are required pursuant to Article 4.10 of this Contract to be without additional compensation, or to correct incorrect items for which the Designer has responsibility, shall not be Extra Services;
- 8.2.3 preparing documents for bidding alternates requested by the Owner, except for a reasonable number and extent of alternates to keep construction costs within the Project Budget which shall be Basic Services;
  - 8.2.4 revising Construction Contract Documents which have been initially submitted and approved in their final and complete form, if general bids (Chapter 149) or subcontractor bids (Chapter 149 or 149A) for work required thereunder are not advertised based on such Construction Contract Documents within four months after initial submission;
  - 8.2.5 services in connection with rebidding if the need to rebid is not attributable to the Designer;
  - 8.2.6 attending meetings with the Owner, Department of Labor and Workforce Development, the Office of Attorney General, the Office of the Inspector General, or the CM at Risk (if the project is constructed pursuant to M.G.L. c. 149A) in matters of dispute if attendance is required by the Owner, provided such dispute did not arise due to the fault of the Designer;
  - 8.2.7 furnishing other services in excess of Basic Services made necessary by the default or failure of performance of the General Contractor or CM at Risk or Sub-contractors;
  - 8.2.8 providing consultation with respect to replacement of work damaged by fire or other casualty during construction;
  - 8.2.9 preparing change orders and supporting data in accordance with Article 10, or modifying the Construction Documents in response to an unreasonable amount of substitutions proposed by the Contractor or CM at Risk, or responding to unreasonable and excessive requests for information (RFIs) by the Contractor or CM at Risk, where such information is available from a careful study and review of the Construction Documents;
  - 8.2.10 assisting the Owner in litigation or claims arising out of the Owner-Contractor Agreement or Owner-CM at Risk Agreement, provided such litigation or claims did not arise due to the fault of the Designer;
  - 8.2.11 performing services during a construction period extended beyond the additional 60 calendar day period, specified in Article 8.3;

- 8.2.12 performing professional services which are not otherwise required under this Contract as Basic Services;
- 8.2.13 providing services in connection with partial completion or partial systems completion inspections at the time of Substantial Completion of the Work or of a project construction phase and/or separate bidding package due to delay by the Contractor or CM at Risk in completing the Work on schedule;
- 8.2.14 providing services in connection with Contractor, CM at Risk or Bidder disputes or questions arising out of the bidding process, unless such protest is a result of an act or omission of the Designer. Such services include research and preparation for and appearance at bid protest hearing and similar proceedings.

### 8.3 Construction Phase Services Provided after the Original Construction Completion Date

- 8.3.1 If construction of the Work, or of a project construction phase and/or separate bidding package has not reached substantial completion within the original construction period (as set forth in the Owner-Contractor or Owner-CM at Risk Agreement and as agreed to by the Designer), there shall be added to said construction period a period of sixty (60) calendar days, during which period the Designer shall continue to provide construction phase services for which no extra compensation shall be paid for the services described in Article 7.9 and 7.10.1 through 7.10.4 in a CM at Risk Project or for the services described in Articles 7.8 and 7.9.1 through 7.9.4 in a DBB Project.
  - 8.3.2 If construction has not reached Substantial Completion after the 60 additional calendar days, the Designer shall thereafter be entitled to Extra Services compensation for providing the services described in Articles 7.10.3 (which are fully defined under Article 7.9.2) and 7.10.4 in a CM at Risk Project or for the services described in Articles 7.9.3 (which are fully defined under Article 7.8.2) and 7.9.4 in a DBB Project. The Designer may also be entitled to Extra Services compensation for tasks performed beyond the added sixty (60) calendar days period for tasks related to Article 7.9.1 (d) through (i) in a CM at Risk Project or 7.8.1(d) through (i) in a DBB Project. In any event, the Designer is required to identify and present the anticipated Extra Services contemplated under Article 8.3.2 in accordance with Article 8.1. In no event shall the Designer be entitled to any additional compensation on account of an extended construction period if and to the extent that a binding agreement or decision that results from a dispute resolution proceeding determines that the Designer's acts or inactions caused the construction period to be extended.
- 8.4 In the event of an emergency the Designer may proceed to perform Extra Services as required to meet the emergency after obtaining the verbal approval of the Owner. The Designer shall provide a written report to the Owner, as soon after the emergency arises as possible, and such report shall describe the emergency and the Extra Services that were performed.
- 8.5 Invoices for Extra Services shall be accompanied by a breakdown listing the name, payroll title, date, number of hours by day, hourly rate and extended amount, per specified task of

Extra Services performed. Hourly rates shall be in accordance with the Hourly Rate Schedule in Attachment A.

#### **ARTICLE 9: REIMBURSABLE EXPENSES**

- 9.1 For coordination and responsibility for the services, materials and costs described in 9.1.1 through 9.1.6, the Designer shall be reimbursed its actual costs and those of its Sub-contractors, supported by invoices or receipts, plus 10%. The following are reimbursable expenses, when authorized by the Owner:
- 9.1.1 The actual cost to the Designer for Sub-contractors and for additional tests under 4.11 provided, however, that reimbursement for such costs shall not be made unless the rates of compensation, the total estimated cost of the services and the scope of work for said services shall have been previously approved in writing by the Owner.
  - 9.1.2 The cost of printing more than nine (9) sets of design submittals for a CM at Risk project, or more than eight (8) sets of design submittals for a project pursuant to G.L.c. 149, or more than two electronic versions thereof per design submission deliverable phase or sub-phase.
  - 9.1.3 The cost of printing the bid documents and the related copying, postage, and handling services during a prequalification or bid period.
  - 9.1.4 The cost of reproducing the Mylar reproducible of the construction drawings for use by the General Contractor or CM at Risk in preparing the record drawings.
  - 9.1.5 Out of pocket expenses paid by the Designer such as filing fees, testing, and permit fees if such fees would be normally paid by the Owner.
  - 9.1.6 Renderings, models, mock-ups, photographs and any other presentation materials.
  - 9.1.7 Other expenses deemed necessary or appropriate by the Owner in writing.
- 9.2 Non-Reimbursable Expenses: The Owner shall not reimburse the Designer or its Sub-contractors for travel expenses, sustenance, telephone, copying, facsimiles, electronic mails, postage and delivery expenses or cost estimating, unless specifically required elsewhere in this Contract.
- 9.3 The Designer shall not be entitled to compensation under this Article for the services of Sub-contractors hired to perform Basic Services under this Contract.

#### **ARTICLE 10: COMPENSATION AND RESPONSIBILITY FOR CHANGE ORDERS**

- 10.1 The Designer shall be entitled to Extra Services compensation for preparing Change Orders initiated by the Owner except as provided in Article 10.3.



- 10.2 The Designer shall not be entitled to Extra Services compensation for preparing Change Orders to adjust the scope of construction work which arises from existing conditions for which unit prices have been specified in the Construction Contract Documents.
- 10.3 The Designer shall not be entitled to Extra Services compensation for preparing Change Orders necessary to address errors or omissions by the Designer.
- 10.4 Change Orders for which the Designer is not entitled to compensation are to be referred to as “no fee change orders.”
- 10.5 The fact that the Designer is not entitled to compensation for preparing a Change Order shall not limit any legal remedies which the Owner may have for recovering its additional costs necessitated by the Change Order.

#### **ARTICLE 11: RELEASE AND DISCHARGE**

- 11.1 The acceptance by the Designer of the last payment under the provisions of Article 6.5 or Article 12 in the event of termination of the Contract, shall in each instance, operate as and be a release to the Owner and its employees and officers, from all claims of the Designer and its Sub-contractors for payment for services performed and/or furnished, except for those written claims submitted by the Designer to the Owner with, or prior to, the last invoice.

#### **ARTICLE 12: ASSIGNMENT, SUSPENSION, TERMINATION, NO AWARD**

##### **12.1 Assignment:**

- 12.1.1 The Designer shall not assign or transfer any part of its services or obligations under this Contract (other than as specified in this Article 12), without the prior written approval of the Owner. Likewise, any successor to the Designer must first be approved by the Owner before performing any services under this Contract. Such written consent shall not in any way relieve the Designer or its assignee from its responsibilities under this Contract. The Owner shall not assign this Contract without the written consent of the Designer.

##### **12.2 Suspension:**

- 12.2.1 The Owner may, at any time, effective upon fifteen (15) business days written notice to the Designer, suspend this Contract. If the Owner provides such written notice, the Designer shall be compensated for Services satisfactorily performed in accordance with the Contract terms prior to the effective date of such suspension; invoices for such Services shall be properly submitted, but may be submitted after the date of such notice up to the effective date of suspension.
- 12.2.2 If a written notice of suspension issued pursuant to sub-paragraph 12.2.1 lasts for more than 90 consecutive calendar days, the Designer may, upon resumption of the Contract, be entitled to additional compensation for actual costs incurred due to such suspension provided that the suspension was not attributable to the Designer's fault.

##### **12.3 Termination:**

- 12.3.1 (a) By written notice to the Designer, the Owner may terminate this Contract effective on five (5) calendar days notice without cause. All compensation and reimbursement due to the Designer in accordance with the Contract terms, for services satisfactorily performed up to the date of termination, including proportionate payment for portions of the services started but incomplete at the time of termination, shall be paid to the Designer, provided no payment shall be made for services not yet performed or for anticipated profit on unperformed services. (b) Owner may terminate this Contract effective on five (5) calendar days notice for cause, and no further payment shall be due to the Designer to the extent the Owner can reasonably identify damages in specific amounts for which the Designer is liable under this Contract; Owner shall pay other amounts otherwise due and owing to the Designer.
- 12.4 Suspension or Termination by Designer: By written notice to the Owner, the Designer may suspend or terminate (at Designer's sole option) this Contract:
- 12.4.1 if the Owner, within thirty (30) days following written notice from the Designer of any material default by the Owner under the Contract (including failure to pay in accordance with the Contract), shall have failed to cure such default; or
- 12.4.2 if, after the Designer has performed all services required during any Phase prior to construction and at least three (3) months have elapsed without receipt by the Designer of Approval to proceed with the next Phase of the Project, provided the delay was not the fault of the Designer. This provision shall not apply to a Designer who has received a notice of suspension pursuant to 12.2.
- 12.4.3 Upon a proper termination by the Designer, the Designer shall be compensated as provided in 12.3.1 above regarding termination without cause.
- 12.5 No Award of Owner-Contractor Agreement: If the Project is constructed pursuant to M.G.L. c. 149, §§ 44A-44M, the Owner-Contractor Agreement is not awarded by the Owner within one hundred twenty (120) days after the receipt of general bids for the Project and the bids have not been rejected and the Project has not been suspended, the Designer shall be paid through the Bidding Phase as if a contract for construction were awarded according to the payment schedule provided in Attachment A. This Article 12.5 does not apply, however, if the Designer has been directed to perform design revisions pursuant to 4.10.2, for the purposes of bringing the design of the Project within the Project Construction Budget.

### ARTICLE 13: NOTICES

- 13.1 Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person (b) by certified mail, postage prepaid, return receipt requested (c) by facsimile or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

If to \_\_\_\_\_;

If to \_\_\_\_\_;

If to \_\_\_\_\_;

or to such other address as the Owner, and Designer may from time to time specify in writing. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice that has been received by the party to whom it is sent as evidenced by confirmation slip that bears the time and date of request.

#### ARTICLE 14: INDEMNIFICATION

- 14.1 For claims arising out or relating to negligent errors and omissions in the performance of professional services rendered by the Designer, to the fullest extent permitted by law, the Designer shall indemnify and hold harmless the Owner and its officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Owner to the extent caused by the negligence of, or the breach of this Contract by, the Designer or a person employed by the Designer, or Sub-consultant for whom the Designer is responsible under this Contract.
- 14.2 For all other claims, to the fullest extent permitted by law, Designer shall defend, indemnify and hold harmless the Owner and its officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Owner to the extent they result from the performance of its services provided that such claims, damages, liabilities, injuries, costs, fees, expenses, or losses are attributable to bodily injury or death or injury to or destruction of tangible property and are caused by an act or omission of the Designer or a person or Sub-consultant for whom the Designer is responsible under this Contract.

#### ARTICLE 15: INSURANCE

- 15.1 The Designer shall obtain and maintain at its sole expense all insurance required by law and as may be required by the Owner under the terms of this Contract. The insurance required hereunder shall be provided at the sole expense of the Designer or its Sub-consultant, as the case may be, and shall be in full force and effect for the full term of the Contract between the Owner and the Designer or for such longer period as required under this Contract.
- 15.2 All policies shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts with a financial strength rating of "A" or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the Owner.
- 15.3 The Designer, and any of its Sub-contractors, shall submit to the Owner originals of the required certificates of insurance simultaneously with the execution of this Contract. Certificates of insurance evidencing the coverage required hereunder, together with evidence that all premiums for such insurance have been fully paid, shall be filed with the

Owner. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, and policy effective and expiration dates. The Designer shall submit updated certificates to the Owner prior to the expiration of any of the policies referenced in the certificates so that the Owner shall at all times possess certificates indicating current coverage. Failure by the Designer to obtain and maintain the insurance required by this Article, to obtain all policy renewals, or to provide the respective insurance certificates as required shall constitute a material breach of the Contract and shall be just cause for termination of the services of the Designer under this Contract.

- 15.4 Termination, cancellation, or modification or reduction of coverage or limits by endorsement of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the Owner at least thirty days prior to the effective date thereof, which shall be expressed in said notice.
- 15.5 The Designer or its Sub-consultant, as the case may be, is responsible for the payment of any and all deductibles under all of the insurance required below. The Owner shall not be responsible for the payment of deductibles, self-insured retentions or any portion thereof.
- 15.6 Workers' Compensation, Commercial General Liability, Automobile Liability, and Valuable Papers

15.6.1 The Designer shall purchase and maintain at its own expense during the life of this Contract, or such other time period as provided herein, the following types and amounts of insurance, at a minimum:

- (a) Workers' Compensation Insurance in accordance with General Laws Chapter 152. The policy shall be endorsed to waive the insurer's rights of subrogation against the Owner.
- (b) Commercial General Liability Insurance (including Premises/Operations; Products/Completed Operations; Contractual; Independent Contractors; Broad Form Property Damage; and Personal Injury) with a minimum limit of \$1,000,000 per occurrence, \$2,000,000 aggregate. The Designer shall maintain such insurance in full force and effect for a minimum period of one year after final payment and shall continue to provide evidence of such coverage to the Owner. The Owner shall be included as an additional insured in this policy. The policy shall be endorsed to waive the insurer's rights of subrogation against the Owner.
- (c) Automobile Liability Insurance (including owned, non-owned and hired vehicles) at limits of not less than \$1,000,000 combined single limit per accident.

- (d) Valuable Papers insurance in an amount sufficient to assure the restoration of any plans, drawings, computations, field notes, or other similar data relating to the work covered by the Agreement between the Owner and the Designer in the event of loss or destruction while in the custody of the Designer until the final fee payment is made or all data is turned over to the Owner, and this coverage shall include coverage for relevant electronic media, including, but not limited to, documents stored in computer-aided design drafting (CADD) systems.

## 15.7 Professional Liability

- 15.7.1 The Designer shall maintain professional liability insurance covering negligent errors and omissions and negligent acts of the Designer and of any person or entity for whose performance the Designer is legally liable at all times while services are being performed under this Contract and for a period of six years thereafter (as calculated in accordance with the terms below in this 15.7.2). The minimum amount of such insurance shall be \$2,000,000 per claim/\$2,000,000 annual aggregate.
- 15.7.2 If the policy is in a “claims made” format, it shall include a retroactive date that is no later than the effective date of this Contract, and an extended reporting period of at least six years after the earlier of: (1) the date of official acceptance of the completed Project by the Owner; (2) the date of the opening of the Project to public use; (3) the date of the acceptance by the general contractor or the CM at Risk of a final pay estimate prepared by the Owner pursuant to M.G.L. chapter 30; or (4) the date of substantial completion of the Owner-Contractor Agreement or Owner-CM at Risk Agreement and the taking of possession of the Project for occupancy by the Owner, which requirement can be met by providing renewal certificates of professional liability insurance to the Owner as evidence that this coverage is being maintained.

## 15.8 Sub-contractors

- 15.8.1 The Designer shall require by contractual obligation, and shall exercise due diligence to enforce, that any professional engineering or landscape architecture Sub-consultant hired in connection with the services to be provided under this Contract shall, unless otherwise agreed in writing by the Owner, obtain and maintain all insurance required by law and as may be required by the Owner under the terms of this Contract, except that the limit of Sub-consultant’s professional liability insurance shall be not less than \$2,000,000 per claim/\$2,000,000 annual aggregate.
- 15.8.2 All professional liability policies obtained by Sub-contractors shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts with a financial strength rating of “A” or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the Owner.

15.8.3 If the Sub-consultant's insurance policy is in a "claims made" format, it shall include a retroactive date that is no later than the effective date of its contract with the Designer, and an extended reporting period of at least six years after the earlier of: (1) the date of official acceptance of the completed Project by the Owner; (2) the date of the opening of the Project to public use; (3) the date of the acceptance by the General Contractor or CM at Risk of a final pay estimate prepared by the Owner pursuant to M.G.L. chapter 30; or (4) the date of substantial completion of the Owner-General Contractor Agreement or the Owner-CM at Risk Agreement and the taking of possession of the Project for occupancy by the Owner, which requirement can be met by providing renewal certificates of professional liability insurance to the Owner as evidence that this coverage is being maintained.

15.8.4 Other nonprofessional Sub-contractors shall be required to maintain insurance in the types and amounts that they routinely carry in the course of their practice.

#### 15.9 Liability of the Designer

Insufficient insurance shall not release the Designer from any liability for breach of its obligations under this Contract. Without limitation, the Designer shall bear the risk of any loss if its valuable papers insurance coverage is insufficient to cover the loss of any work covered by this Contract.

#### 15.10 Asbestos and Hazardous Materials

15.10.1 Unless otherwise provided in the RFS, the Designer shall have no responsibility for the discovery, presence, handling, removal or disposal of or for the exposure of persons to oil or hazardous materials in any form at the Project, including but not limited to asbestos-containing materials or other hazardous materials, as defined in MGL c.21E §2.

15.10.2 In the event that the Designer employs the services of a sub-consultant to provide services related to either the testing for asbestos-containing materials or oil or hazardous materials or related to the specification of methods and procedures for the removal or remediation of such asbestos-containing materials or oil or hazardous materials, the Designer shall employ such Sub-contractors who have liability insurance coverage covering such services, to the extent that such insurance coverage is generally available to Sub-contractors. Upon the Owner's written request, the Designer shall assign to the Owner the Designer's contractual right to pursue a claim against such Sub-contractors. Such services shall be paid for as provided in Article 9 - Reimbursable Expenses unless such services are specifically included as Basic Services in the RFS.

### ARTICLE 16: OWNERSHIP OF DOCUMENTS

16.1 Unless provided otherwise by law, ownership and possession of all information, data, reports, studies, designs, drawings, specifications, materials, computer programs, documents, models, inventions, equipment, and any other documentation, product of

tangible materials to the extent authored or prepared, in whole or in part, by the Designer pursuant to this Contract (collectively, the “Materials”), other than the Designer’s administrative communications, records, and files relating to this Contract, shall be the sole property of, and shall vest in, the Owner as “works made for hire” or otherwise, provided that the Owner complies with its payment obligations under this Contract. The Owner will own the exclusive rights, worldwide and royalty-free, to and in all Materials prepared and produced by the Designer pursuant to this Contract, including, but not limited to, United States and International patents, copyrights, trade secrets, know-how and any other intellectual property rights, and the Owner shall have the exclusive, unlimited and unrestricted right, worldwide and royalty-free, to publish, reproduce, distribute, transmit and publicly display all Materials prepared by the Designer. The Owner shall provide appropriate credit to the Designer, in terms agreed upon by the Design, in any publicity about or plaque at the Project. The Designer shall have a license to publish and publicly display all Materials prepared by the Designer in its normal marketing and related professional and academic activities. The Designer shall have a license to use the typical or standard details and all other replicable elements of the Materials for this Project on other future projects. At the completion or termination of the Designer's services required pursuant to this Contract, copies of all original Materials shall be promptly turned over to the Owner.

- 16.2 The Owner agrees to waive any and all claims against the Designer and, to the fullest extent permitted by law, to defend, indemnify and hold the Designer harmless from and against any and all claims, losses, liabilities and damages incurred by the Owner or asserted by any other entity or individual arising out of or resulting from any use of the Materials on other projects, modifications of the Materials made by the Owner or others and used on this Project, or any reuse or modification of the Materials or any of Designer’s designs, drawings and specifications. The Owner shall be a party to this Contract solely for the purposes of enforcing its rights and obligations under this Article 16.

#### ARTICLE 17: STATUTORY REQUIREMENTS

- 17.1 Agent for Service of Process: If the Designer's principal place of business is outside of the Commonwealth of Massachusetts, the Designer shall appoint an agent for the service of process as provided in M.G.L. c.227, §5. The power of attorney reflecting such appointment shall be filed with the Secretary of State as provided in M.G.L. c.227, §5. Copies of the power shall be provided to the Owner. There shall be no lapse in such agency for as long as the Designer may have potential liability.
- 17.2 Truth-in-Negotiations Certificate (M.G.L. c.7, §38H)
- 17.2.1 If the Designer's fee has been negotiated, the Designer must file a truth-in-negotiations certificate prior to execution of this Contract by the Owner. The certificate shall contain the following certifications:

- (a) that wage rates and other costs used to support the Designer's compensation are accurate, complete, and current at the time of contracting; and
- (b) that the Contract price and any additions to the Contract may be adjusted within one year of completion of the Contract to exclude any significant amounts if the Owner determines that the fee was increased by such amounts due to inaccurate, incomplete or noncurrent wage rates or other costs.

17.3 Certification Pursuant to M.G.L. c.7 §38H(e): In accordance with M.G.L. c.7 §38H(e), the person signing this contract certifies, as a duly authorized signatory of the Designer, that the Designer 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 Contract; no Consultant to or Sub-consultant 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 Designer or Sub-consultant of a contract by the Designer; and 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 Contract 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 Contract.

17.4 Minority-Owned and Woman-Owned Business Participation: Pursuant to M.G.L. c. 7, § 40N, the Designer shall subcontract a minimum of eight percent (8%) of its work to SOMWBA Certified minority-owned enterprises (MBEs) and four percent (4%) to SOMWBA Certified women-owned enterprises (WBEs) certified by the State Office of Minority-and-Women-Owned Business Assistance, SOMWBA, 10 Park Plaza Suite 3740, Boston, MA 02116; such percentages shall be based on the listed services defined and required in the RFS. If the Designer is a SOMWBA certified MBE or WBE the requirements in this Article 17.4 are not applicable.

17.4.1 The Designer shall complete and submit at the time of contract execution a completed Participation Schedule which is attached to this contract as Attachment C in order to be in compliance with Article 17.4 above.

17.5 Accounting Requirements: The Designer shall cause to be maintained complete, accurate and detailed records of all time devoted to the Project by the Designer and each Sub-consultant employed by the Designer. The Owner and the Commonwealth's Inspector General may at all reasonable times audit such records that directly pertain to this Contract. On a Contract where the Fee for Basic Services exceeds \$100,000 the Designer shall comply with M.G.L. c.30 §39R which requires the Designer to:

17.5.1 Maintain accurate and detailed accounts for a six-year period after the final payment;

17.5.2 File with the Owner annual audited financial statements or statements from their accountants that their reviews are consistent with state laws.



- 17.5.3 File with the Owner a statement of management on internal accounting controls on its letterhead as prescribed in Attachment D and a statement from an independent certified public accountant (CPA) on its letterhead as prescribed in Attachment E to this Contract.
- 17.6 Revenue Enforcement and Protection Program (REAP): Pursuant to M.G.L. c. 62C §49A, the undersigned certifies under the penalties of perjury that to the best of his/her knowledge and belief that the firm and/or individuals in the firm are in compliance with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.
- 17.7 Interest of Designer: The Designer hereby certifies that it is in compliance with the provisions of M.G.L. c. 268A whenever applicable. The Designer covenants that 1) neither he/she nor any member of the Designer firm presently has any financial interest and shall not acquire any such interest direct or indirect, which would conflict in any manner or degree with the services required to be performed under this Contract or which would violate M.G.L. Chapter 268A, as amended from time-to-time; 2) in the performance of this Contract, no person having any such interest shall be employed by the Designer; and 3) no partner or employee of the Designer firm is related by blood or marriage to any officer, official, or employee of the Owner.
- 17.8 Equal Opportunity: The Designer shall not discriminate in employment against any person on the basis of race, color, religion, national origin, sex, sexual orientation, age, genetics, ancestry, disability, marital status, veteran status, membership in the armed forces, presence of children or political beliefs. Each shall comply with all provisions of Title VII of the Civil Rights Act of 1964 and MGL c.151B.
- 17.9 Certification of Non-Collusion: The signatory certifies under penalties of perjury that the Designer's proposal has been made in and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

#### ARTICLE 18: MISCELLANEOUS

- 18.1 Governing Law: This Contract shall be governed by the laws of the Commonwealth of Massachusetts.
- 18.2 Venue: Any suit by either party arising under this Contract shall be brought only in the Superior Court in the county where the Project is located. The parties hereto waive any argument that this venue is improper or that the forum is inconvenient.
- 18.3 Non-Waiver: Neither the Owner's review, approval, or acceptance of, nor payment for any of the services furnished under this Contract shall be construed to operate as a waiver of any rights under the Contract or any cause of action arising out of the performance of the Contract.
- 18.4 Entire Agreement: This Contract represents the entire and integrated agreement between the Owner and the Designer and, except as otherwise provided herein, supersedes all

prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written agreement signed by both the Owner and the Designer.

18.5 Dispute Resolution: If a dispute arises between the parties related to this Contract, the parties agree to use the following procedures to resolve the dispute:

- (a) Negotiation. A meeting shall be held between representatives of the parties with decision-making authority regarding the dispute to attempt in good faith to negotiate a resolution of the dispute; such meeting shall be held within fourteen calendar days of a party's written request for such a meeting;
- (b) Mediation. If the parties fail to negotiate a resolution of the dispute, they shall submit the dispute to mediation as a condition precedent to litigation and shall bear equally the costs of the mediation. The parties shall jointly appoint a mutually acceptable mediator; they shall seek assistance from an independent third party in such appointment if they have been unable to agree upon such appointment within 30 days of the meeting just noted in (a) above; (c) Litigation. If the parties fail to resolve the dispute through mediation, then either party may file suit in accordance with Article 18.2; and (d) This Article of dispute resolution provisions shall survive termination of this Contract.

18.6 Waiver of Subrogation:

- (a) To the extent damages are covered by property insurance, the Owner and the Designer waive all rights against each other and against the General Contractor or CM at Risk, Sub-contractors, consultants, agents, and employees of the other for damages caused by fire or other causes of loss, except such rights as they may have to the proceeds of such insurance as set forth in the Owner-Contractor Agreement or Owner CM at Risk Agreement. The Owner shall require of the General Contractor or CM at Risk, Sub-contractors, consultants, Sub-contractors, and agents and employees, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
- (b) Nothing in this Contract shall create a contractual relationship with or create a cause of action in favor of a third party against the Owner or the Designer.

CONTRACT ATTACHMENT A**PAYMENT SCHEDULE**

Payments for services shall be made in accordance with the provisions outlined in the Contract and with the following schedule:

## Basic Services:

Existing Facilities Study Phase	\$ _____
Schematic Design / Site Plan Approval Phase	\$ _____
Design Development Phase	\$ _____
Construction Document Phase	\$ _____
Early bid Packages Phase	\$ _____
Bidding & Negotiations Phase	\$ _____
Construction Administration Phase	\$ _____
Project Close Out Phase	\$ _____
<b>TOTAL</b>	<b>\$ _____</b>

## Reimbursable Services:

	\$ _____
	\$ _____
	\$ _____

## Extra Services:

Extra Services provided pursuant to Article 8 shall be compensated as determined by the Owner (a) by a lump sum fee agreed upon in advance in writing by the Owner and the Designer, or (b) on an hourly basis in accordance with the lesser of \$150 per hour or the rate schedule set forth below for time expended, or (c) on an hourly basis in accordance with the lesser of \$150 per hour or a multiple of 2.5 times the direct personnel expense (without benefits) of the Designers or Sub-contractors personnel including principals.

## Hourly Rate Schedule:

Personnel:	Rate / Hr.
	\$ _____
	\$ _____
	\$ _____

CONTRACT ATTACHMENT B

**REQUEST FOR QUALIFICATIONS FOR DESIGNER SERVICES (RFQ)**

CONTRACT ATTACHMENT C**PARTICIPATION SCHEDULE FOR DESIGNER CONTRACTS  
BY SOMWBA CERTIFIED MINORITY/WOMEN BUSINESS ENTERPRISES**

This form shall be submitted to the Owner by the Designer upon execution of the Contract for Designer Services attached hereto.

**Owner** \_\_\_\_\_**Project No:** \_\_\_\_\_

<u>Name of Company</u>	<u>Description of Work</u>	<u>M/WBE</u>	<u>Dollar Value Participation</u>
1. _____	_____	_____	\$ _____
2. _____	_____	_____	\$ _____
3. _____	_____	_____	\$ _____
4. _____	_____	_____	\$ _____
5. _____	_____	_____	\$ _____
6. _____	_____	_____	\$ _____

**Dollar Value of MBE Commitment: \$ \_\_\_\_\_ Dollar Value of WBE Commitment:**

**\$ \_\_\_\_\_ Total Dollar Value Commitment: \$ \_\_\_\_\_**

**Original Fee for Basic Services Amount \$ \_\_\_\_\_**

DESIGNER CERTIFICATION

The undersigned certifies under the penalties of perjury that (1) it intends to subcontract with the above listed firms for the identified work and dollar amounts and (2) certifies that he/she has read the terms and conditions of the Designer Contract with regards to MBE/WBE participation and is authorized to bind the Designer to the commitment set forth above.

**Date** \_\_\_\_\_\_\_\_\_\_  
Name of Architect/Engineer\_\_\_\_\_  
Authorized Signature\_\_\_\_\_  
Address\_\_\_\_\_  
City, State & Zip Code

CONTRACT ATTACHMENT D

M.G.L. c.30 §39R - INTERNAL ACCOUNTING CONTROLS  
APPLIES TO CONTRACTS OF \$100,000 OR MORE  
SAMPLE LETTER TO BE PREPARED ON DESIGNER'S LETTERHEAD

Date

CEO  
Owner  
123 Reservoir Street  
Enfield, MA 01234

RE: I

Dear:

This Statement of Internal Accounting Controls is being submitted in accordance with Article 17.5.3 of the Contract for Design Services for the above captioned project. Please be advised that our firm, the Designer under the Contract, has a system of internal accounting controls which assures that:

2. transactions are executed in accordance with management's general and specific authorization;
2. transactions are recorded as necessary, to permit preparation of financial statements in conformity with generally accepted accounting principles, and 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 the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.

Sincerely,

CONTRACT ATTACHMENT E

MGL c.30 §39R – INTERNAL ACCOUNTING CONTROLS  
APPLIES TO CONTRACTS OF \$100,000 OR MORE  
SAMPLE LETTER TO BE PREPARED ON CPA'S LETTERHEAD

CEO  
Owner  
123 Reservoir Street  
Enfield, MA 01234

RE:

Dear

Please be advised that we have reviewed the Statement of Internal Accounting Controls prepared by the

\_\_\_\_\_ in connection with the

**Name of Designer**

above-captioned project. This statement is required under M.G.L. c.30 §39R. In our opinion, representations of management are consistent with our evaluations of the system of internal accounting controls. In addition, we believe that they are reasonable with respect to transactions and assets in the amount which would be material when measured in relation to the firm's financial statements.

Sincerely,

(CPA)

CONTRACT ATTACHMENT F

**CONTRACT FOR DESIGNER SERVICES**

**AMENDMENT NO. \_\_\_\_\_**

**WHEREAS**, the \_\_\_\_\_ (“Owner”) and \_\_\_\_\_, (the “Designer”) (collectively, the “Parties”) entered into a Contract for Designer Services for the \_\_\_\_\_ Project (Project Number \_\_\_\_\_) at the \_\_\_\_\_, “Contract”; and

**WHEREAS**, effective as of \_\_\_\_\_, the Parties wish to amend the Contract:

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained in this Amendment, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. The Owner hereby authorizes the Designer to perform the following services:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_,

pursuant to the terms and conditions set forth in the Contract, as amended.

2. For the performance of services required under the Contract, as amended, the Designer shall be compensated by the Owner in accordance with the following Fee for Basic Services:

Fee for Basic Services:	Original Contract	After this Amendment
Existing Facilities Study Phase	\$ _____	\$ _____
Schematic Design / Site Plan Approval Phase	\$ _____	\$ _____
Design Development Phase	\$ _____	\$ _____
Construction Document Phase	\$ _____	\$ _____
Early Bid Packages Phase	\$ _____	\$ _____
Bid & Negotiation Phase	\$ _____	\$ _____
Construction Administration Phase	\$ _____	\$ _____
Project Close Out Phase	\$ _____	\$ _____
<b>Total Fee</b>	\$ _____	\$ _____

3. The Construction Budget shall be as follows:

Original Budget: \$ \_\_\_\_\_



Amended Budget \$ \_\_\_\_\_

4. The Project Schedule shall be as follows:

Original Schedule: \_\_\_\_\_

Amended Schedule \_\_\_\_\_

5. This Amendment contains all of the terms and conditions agreed upon by the Parties as amendments to the original Contract. No other understandings or representations, oral or otherwise, regarding amendments to the original Contract shall be deemed to exist or bind the Parties, and all other terms and conditions of the Contract remain in full force and effect.

IN WITNESS WHEREOF, the Owner and the Designer have caused this Amendment to be executed by their respective authorized officers.

**OWNER:**

**DESIGNER:**

CITY OF NEWTON

Ruthanne Fuller

(print name)

Mayor

(print title)

By \_\_\_\_\_

(signature and seal)

Date \_\_\_\_\_

\_\_\_\_\_

(print name)

\_\_\_\_\_

(print title)

By \_\_\_\_\_

(signature )

Date \_\_\_\_\_

(Attach Certificate of Owner)

\_\_\_\_\_  
Joshua Morse

Public Buildings Commissioner

I hereby certify funds are available for this contract  
in the amount of \$

Approved as to Legal Form & Character

\_\_\_\_\_  
Associate City Solicitor

\_\_\_\_\_  
Comptroller of Accounts

**DESIGNER SERVICES CONTRACT AMENDMENT**  
**CONTRACT FOR DESIGNER SERVICES**  
**AMENDMENT FOR DESIGN BID BUILD**

**7.5 Design Development Phase**

- 7.5.1 Upon receipt of an Approval to proceed to the Design Development Phase, the Designer shall meet regularly and as necessary with the Owner. This shall include meeting at least once every other week during this Phase.
- 7.5.2 The Designer shall update and refine items submitted during the Schematic Design Phase, and shall submit to the Owner, on or before the date specified in the Project Schedule, and on the basis of the approved Schematic Design Phase Documents, the following deliverables as they are defined in this Article 7.5.2 and as they are further defined in Articles 7.5.3, 7.5.4, 7.5.5, 7.5.6 and 7.5.7:
- (a) a list of all filings and permits within Designer's scope of services and professional expertise required to implement the design and a schedule of target dates for the procurement of such permits, which list and schedule shall be regularly updated during the term of this Contract;
  - (b) information and documentation within the technical expertise of the Designer and that is necessary for the Owner to file local basic zoning and environmental permits. The Designer, as Extra Services, shall provide information and documentation for the Owner to file Environmental Notification Forms, Environmental Impact Reports, and any other filings for permits that must be filed during the design development phase;
  - (c) soils exploration data, geotechnical and geo-environmental reports, showing exploratory locations relative to siting of proposed structures;
  - (d) complete design development drawings; outline specifications indicating any filed sub-bid sections and sub-sub trades based on the cost of the work and other documents necessary to specify the size and character of the Project as to siting, landscape, architectural, structural, fire protection, plumbing, heating, ventilating and air conditioning, electrical, ADA/MAAB, product requirements and other features;
  - (e) quality control documentation demonstrating, without limitation, coordination of: ceiling clearances, mechanical room size, and shaft sizes; specifications and drawings; filed sub-bid work or sections; scheduling; equipment and power; existing and new construction; and phasing;
  - (f) design development drawings which the Designer shall submit for review to the local building official;
  - (g) a life cycle cost analysis to determine which design decisions related to all energy and water consuming devices and overall building operation and maintenance are the most cost effective [M.G.L. c. 149, s. 44M];
  - (h) a construction cost estimate for the design in Unifomat II Level 3 format, with unit rates and quantities supporting each item and reconciled with the detailed construction cost estimate and any updated cost estimates in accordance with Article 7.5.6. The estimate cost shall be projected, to the mid point of the construction period;

- (i) a space measurement analysis for the design verifying that the sum of all program areas in the Project plus all other floor areas in the Project equals the gross floor area of the Project;
- (j) a written summary or summaries comparing the project design, as represented in the design development drawings, specifications and cost estimates with the Final Design Program requirements, and explaining any deviations in writing.

7.5.3 Design Development Drawing Requirements: The Design Development drawings shall illustrate and describe the refinement of the design of the Project to a level of detail that is customary and standard, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. Drawings shall delineate locations and elements of Work which may be proposed to be assigned to project construction phases and/or separate bidding packages. Documents shall include, but not be limited to, the following:

- (a) Site and utility drawings showing:
  - 1. Existing and proposed contours and locations of the proposed building or addition(s). Show entry level elevation and key exterior grades at perimeter. Indicate all retaining walls. Include benchmarks of site if survey is available.
  - 2. All utilities existing and proposed, indicating location, elevation, composition and size e.g., manholes, sewers, hydrants, light standards. Include work by others, e.g., gas and electric utility providers.
  - 3. Roads, laid out parking areas, walks, recreation areas, terraces and other site improvements.
  - 4. Building locations fixed and referenced from main survey baseline, if available.
  - 5. Plant materials with preliminary schedule.
- (b) Building drawings and other graphic and written requirements with floor plans showing: (minimum scale 1/8" = 1'0");
  - 1. building perimeter with exterior wall thicknesses and overall dimensions;
  - 2. structural grid;
  - 3. plan requirements of mechanical and electrical systems;
  - 4. building core; elevators, stairs, shafts, toilet rooms;
  - 5. interior partitions; appropriate thicknesses and dimensions to fix basic organizations; indicate fire separations, ratings;
  - 6. door swings;
  - 7. floor elevations;
  - 8. built-in furniture and equipment; and
  - 9. furniture layout concept drawings.
- (c) Roof plans showing;

1. proposed systems type;
  2. pitch and drainage patterns;
  3. roof drains, gutters and scuppers;
  4. skylights, stairs through roof, penthouses, major equipment, chimneys.
- (d) Building sections: One transverse and one longitudinal section. Indicate floor to ceiling heights and floor-to-floor heights. Label all spaces;
- (e) Building elevations showing;
1. full height elevations including roof structures, e.g., mechanical equipment, chimneys, and penthouses;
  2. floor elevations, floor-to-floor heights, and overall height related to benchmarks on site plans;
  3. all fenestration;
  4. column centerlines;
  5. principal finish materials indicating major control and expansion joints, and divisions of materials where required;
  6. louver and equipment enclosure systems; and
  7. exterior grades and topographical features in context.
- (f) Full height wall sections for main elevations and at special conditions. Show foundation and perimeter treatment, wall construction including insulation and supporting structure, fenestration and mechanical penetrations, and floor construction;
- (g) Interior elevations: Major spaces, e.g. library, lobby, and all typical spaces, e.g. classrooms;
- (h) Reflected ceiling plans: show prototypical structural, fire protection, mechanical and electrical information for classrooms and major spaces, including lighting layouts with ceiling heights and material changes;
- (i) Colored interior elevations and perspectives of major and typical spaces
- (j) Schedules;
1. finish schedule by room types;
  2. door schedule by room;
  3. window schedule;
  4. equipment schedules, e.g., food service, instructional media.
- (k) Structural Concepts;
1. Foundation plan showing sizes and locations of typical components.
  2. Framing plans: typical floor framing, roof framing, special framing, show framing at major openings and sizes of members.
  3. Column locations.

4. Preliminary details including floor and roof deck, statements as to methods of lateral bracing and how requirements of earthquake code will be met.
  5. Details for special and/or incidental structural features, e.g. tunnels, connecting bridges and unique architectural features.
  6. Connection to existing buildings at foundation and at key points at existing structure if applicable.
- (l) Fire Protection: floor plans indicating wet or dry type systems, hose racks or cabinets and fire department tie-ins. Indicate whether a fire pump will be required and, if so, show location within the building. Show typical sprinkler head layout;
- (m) Plumbing and sanitary systems: floor plans indicating locations of all plumbing fixtures and special features, and approximate location and size of all piping systems and principal items of equipment;
- (n) Heating, Ventilating and Air Conditioning Systems;
1. Show locations and approximate sizes of piping systems, air handling systems and principal items of equipment such as compressors or cooling towers.
  2. Indicate space requirements of major equipment and their location in mechanical rooms and fan rooms. Major shafts.
- (o) Electrical Systems;
1. All services including those for special purposes shall be located and indicated.
  2. Lighting shall be indicated as to type, location and intensities in foot-candles for each special and typical space.
  3. Switchgear and emergency generator.
  4. Fire alarm system drawings showing all initiation and signaling devices, control panels, annunciator panels, etc.
  5. Security system drawings.
  6. Communications drawings showing chases, major equipment locations and any special distribution requirements.
  7. CATV/CCTV drawings showing chases, major equipment locations and any special distribution requirements.
  8. Information Technology drawings showing chases, major equipment locations and any special distribution requirements.
- 7.5.4 Other Consultant's Drawings and Other Graphic and Written Requirements: For special consultants, e.g., kitchen, elevator, library, media room, equipment where appropriate, provide drawings that locate and define the scope of the work. Coordinate with other disciplines. Provide cuts of all major pieces of equipment.
- 7.5.5 Project Manual Requirements (Specifications):
- (a) Outline Specifications that are to accompany Design Development Drawings shall be prepared to a level of detail that is standard and customary and shall include,

but not be limited to, a comprehensive description of the Project and the materials proposed for use in the work. No detailed specifications of materials or workmanship procedures need be included; however, the general scope shall be indicated by CSI MasterFormat as applicable to proposed construction.

1. The Design Development Outline Specification shall also include a comprehensive "BASIS OF DESIGN." The "BASIS OF DESIGN" shall be a narrative description of the Project and shall include all applicable architectural, civil, structural, mechanical and electrical programs and/or systems. Identify all proposed filed sub-bid categories.
  2. Project Manual shall include a statement to define Work which is proposed to be included in separate construction phases and/or bid packages.
- (b) The following is a list of items that shall at a minimum be identified or outlined in this Phase:
1. Site work; clearing, drives, walks, parking areas, fences, excavation, backfill, planting.
  2. Footings; on earth, rock, piles, caissons, proposed bearing pressures, boring logs.
  3. Foundation walls; type of concrete, reinforcing, type and extent of waterproofing.
  4. Footing drains; type, disposal of drainage.
  5. Exterior walls: superstructure, type, materials, brick type, alternate cladding, back-up materials, dampproofing material and extent, special features.
  6. Roofs; types, vapor barrier, insulation, flashings, all materials.
  7. Flashings; general types, all materials, weights, where each type is to be used.
  8. Sheet metal; gutters, leaders, others uses, except flashings.
  9. Windows; general types, materials, sub-frames, finish, glazing, screens.
  10. Doors, exterior and interior; types.
  11. Steps, exterior; including platforms and landings' materials.
  12. Stairs, interior; including platforms, landings, walls, materials and finishes.
  13. Framing; wood, concrete or metal systems in accordance with general design.
  14. Partition construction related to room type.
  15. Cabinet and casework; types and materials.
  16. Food Service Equipment; types and materials.
  17. Furring; lathing, plastering, materials and locations.
  18. Insulation thermal; types, thicknesses, methods of application and locations.
  19. Acoustical treatments; types, thicknesses, methods of application and location.
  20. Interior finishes; materials for floors, walls, bases, wainscots, trim, ceilings, ceiling heights.

21. Fire Protection; standpipe systems, sprinkler systems, fire pumps and accessories.
22. Water supply; source; location of main to which connection will be made; type of pipe for service main; load requirements; load factors and pressures.
23. Sanitary sewers; sewage disposal system, pipe and other materials.
24. Storm sewers; storm drainage disposal system (institution or local facility), pipe and other materials.
25. Gas main; material, size, location. Interface with utility company.
26. Plumbing; systems such as wastes, vents, hot water, cold water, gas, air, oxygen, vacuum, main source of supply, materials for each, water heaters, pumps, thermal insulation fixture quality, all special features.
27. Heating, ventilating and air conditioning; type of heating and refrigeration plants, type and capacity of boilers and cooling equipment, fuel, type of burners, fuel storage, heaters, feed water pumps and heaters, thermal insulation, type of heating medium, supply and return piping, radiation, unit heaters, radiant heating, principal air conditioning equipment types, special features, supply, return and exhaust ductwork.
28. Electric work; service connection, location, institution or public utility, overhead or underground, transformers including type and location, types of conduit and wiring, types of fixtures, location of main switchboard, radio, fire alarm, telephone, public address, emergency lighting and wiring, emergency or other generators, special features, including Master TV, information retrieval and/or data processing system.
29. Elevators, dumbwaiters and platform lifts; capacities, speed, travel in feet, landings, operation, controls, platform sizes, machine type and location, car and entrance finishes, signals.
30. Other built-in equipment, types and materials.
31. Special features.

7.5.6 Construction Cost Estimate Requirements – The Designer shall provide a construction cost estimate in Unifomat II Level 3 format with aggregated unit rates and quantities supporting each item referenced in Article 7.5.5(b). The estimate cost shall be projected, to the mid point of the construction period.

- (a) The Designer shall review its construction cost estimate, to clarify assumptions upon which the cost estimates are based and to address any concerns or questions with the cost estimates that are raised by the Owner.

The Designer shall cooperate with the Owner in identifying, specifying and recommending changes in, or additional specification of materials, equipment, component systems and types of construction, or other adjustments in the scope or quality of the Project, including contingencies or alternative bid items, so as to facilitate revision of the design of the Project to reduce the cost of construction so as to comply with the authorized Project Construction Budget.

(b) Cost estimate data shall be organized to identify elements of project work which may be proposed to be advanced under separate construction phases and/or separate bidding packages. When so proposed, estimates shall develop cost data relative to corresponding bidding and work execution dates established in project schedules.

7.5.7 Reports, drawings, specifications, cost estimates and other design development submittals shall be subject to the written approval of the Owner. Unless a lesser number is requested by the Owner, the Designer shall submit to the Owner for approval six (6) copies of Design Development drawings, specifications, cost estimates, and other submittals.

7.5.8 The Designer shall present and explain the Design Development submittal to the Owner at a local public meeting scheduled by the Owner, if any such meeting is scheduled or in conference.

7.5.9 The Designer and its Subconsultants shall collaborate with the Commissioning Consultant to develop design criteria which will support the purposes of building commissioning and energy/resources conservation concepts as commonly understood and as prescribed by the Commissioning Consultant.

7.6 Construction Documents Phase: In addition to the requirements specified in the RFS (Contract Attachment B), upon receipt of an Approval to proceed with the Construction Documents Phase of the Project from the Owner, the Designer shall do the following:

7.6.1 The Designer shall meet regularly and as necessary with the Owner, and the Commissioning Consultant. This shall include meeting at least twice per month (or more frequently if needed) with the Owner during this Phase.

7.6.2 Based on the submittals approved in the Design Development Phase of the Project, the Designer shall update and refine the items previously submitted and shall submit the following on or before the date and time specified in the Project Schedule:

(a) Construction documents progress submittals as follows:

1. a 60% Construction Documents Submittal, with deliverables as defined in Article 7.6.3;
2. a 90% Construction Documents Submittal, with deliverables as defined in Article 7.6.4;



3. a Final Construction Documents Submittal, with deliverables as defined in Article 7.6.5;
  4. a Bid Documents Submittal, with deliverables as defined in Article 7.6.6
- (b) As a part of each of the submittals required under Articles 7.6.3, 7.6.4, and 7.6.5, an updated work plan and recommended updates for incorporation into the Project Schedule;
- (c) As a part of each of the submittals required under Articles 7.6.3, 7.6.4, and 7.6.5, a report on the status of environmental, zoning, planning, building code, and ADA/MAAB approvals and permitting processes and a certified list of all required testing and all required permits identified in 7.5.2(a).
- (d) All submittals by the Designer shall be subject to the written approval of the Owner, which approval shall not be unreasonably delayed, withheld, conditioned, or denied. Unless a lesser number is requested by the Owner or is specifically provided hereinafter, the Designer shall furnish to the Owner for approval six (6) sets of the drawings, specifications, construction cost estimates and all other submittals. The Designer shall also furnish to the Owner electronic media copies of the foregoing drawings and documents in such form as may be required by the Owner.

#### 7.6.3 60 Percent Construction Documents Submittal:

- (a) The Designer shall provide, on or before the date and time specified in the Project Schedule, a 60 % Construction Documents Submittal (60% CD Submittal), which shall include:
1. Construction Documents and other deliverables, as defined in this Article 7.6.3 and as further defined in Articles 7.6.2, 7.6.7, 7.6.8, and 7.6.9, advanced to a level of intermediate (60 percent) completion and incorporating corrections to indicate compliance with Owner review comments related to prior submittals.
  2. In instances where the Designer takes exception to the Owner's previous review comments on the Design Development submittal, a written statement explaining its position.
  3. The Basis of Design that accompanied the Outline Specifications in the Design Development Phase shall be updated and expanded to include all proposed architectural, structural, fire protection, plumbing, mechanical, electrical, civil, and landscape design concepts for the Project.
  4. A space summary, in the form and format prescribed by the Owner, that sets forth the current space calculations and totals and certifies that said space calculations and totals are in compliance with those previously authorized by the Owner.

5. Keying of graphics shall be sufficient to allow a reviewer to make his or her way through the set.
  6. A list of all drawings related to the Project.
  7. A materials selection statement identifying typical interior and exterior surfaces and their materials.
  8. A color theory statement indicating proposed paint colors and material selections for typical and special spaces and why they have been selected and how these selections relate to surrounding materials and colors.
  9. Large scale plans of all mechanical and electrical spaces with major equipment indicated.
  10. Project Manual, including all sections to be included in final technical specifications, developed to include a list of all materials in the building with their manufacturers. Identify all specifications sections which need to be filed sub-bid.
  11. Identify all proposed bid alternates by inclusion in a project manual section to be titled "Alternates." Alternates shall be listed in sequence as approved by the Owner. Work required under bid alternates shall be described and/or drawn, as appropriate, to clearly define the design criteria and extent of work involved for implementation of the bid alternate. In each instance, the existing conditions and/or new design criteria for base bid work shall also be described and indicated in documents.
  12. Code analysis: Provide a building code analysis. Any deviation from methods of compliance described in earlier submittals shall be indicated. Code analysis shall identify its preparer, code edition referenced, and include a comprehensive description of operative building code provisions, with floor plans showing fire separation types, area calculations, egress capacity for exits and exitways, and any special features required to comply.
- (b) As a requirement of the 60% CD Submittal, and in accordance with the provisions of this paragraph and Article 7.6.9, the Designer shall provide a construction cost estimate prepared using the Uniformat II Classification to Level 3, the CSI MasterFormat 6-digit format to Level 3 and MGL c.149 §44F (filed sub-bid) format including quantities of all materials and unit prices of labor, equipment, and materials as well as a cost estimate for each item of work, for review by the Owner. The Designer shall submit said construction cost estimate separately, as a supplement to the 60% CD Submittal, no later than twenty-one days after the submission of the 60% CD Submittal described in Article 7.6.3(a). The development of said construction cost estimate shall under no circumstances delay the timely submission of the remainder of the 60% CD Submittal.

7.6.4 90 Percent Construction Documents Submittal:

- (a) The Designer shall provide, on or before the date and time specified in the Project Schedule, a 90 % Construction Documents Submittal (90% CD Submittal), which shall include:
1. Construction documents and other deliverables as defined in this Article 7.6.4 and as further defined in Articles 7.6.2, 7.6.7, 7.6.8, and 7.6.9, advanced to a level of substantial (90 percent) completion, and incorporating corrections to indicate compliance with Owner review comments related to prior submittals.
  2. A space summary, in the form and format prescribed by the Owner, that sets forth the current space calculations and totals and certifies that said space calculations and totals are in compliance with those authorized by the Owner.
  3. Interior Materials Color Boards, including samples of principal interior materials, labeled and mounted to indicate locations.
  4. Final structural and energy design calculations.
  5. A statement confirming that the Owner has been provided with structural design drawings, specifications, and calculations sufficient to enable execution of an independent structural peer review process, as defined in the Massachusetts Building Code to satisfy Owner requirements. The Designer shall have advised the Owner of this requirement in writing not less than sixty (60) days prior to delivery of the 90% CD Submittal in order for the Owner to arrange for the services of an Independent Structural Peer Reviewer. Upon reaching 90 percent completion of construction documents, Designer's structural engineering consultant shall have reached a level of 100 percent completion of its construction documents to enable advancement of the independent structural peer review.
  6. The Designer and its consultants shall fully cooperate with the Independent Structural Peer Reviewer in the process. The Designer shall obtain a copy of the Independent Structural Engineering Review report and submit same to the Owner at the time of completion of the remainder of the construction documents at the level of final completion.
  7. In instances where the Designer takes exception to any of the Owner's 60% CD Submittal review comments, a written position statement explaining the Designer's position on its exceptions to said review comments.

### 7.6.5 Final Construction Documents Submittal:

- (a) The Designer shall provide, on or before the date and time specified in the Project Schedule, a Final Construction Documents Submittal, which shall include:
1. construction documents and other deliverables as defined in this Article 7.6.5 and as further defined in Articles 7.6.2, 7.6.7., 7.6.8, and 7.6.9, advanced to a level of final (100 percent) completion, and incorporating corrections to indicate compliance with Owner review comments related to prior submittals.
  2. a final construction cost estimate, in accordance with the provisions of this paragraph and Article 7.6.9, based on 90% Construction Documents, including cost estimates for general conditions, overhead and profit, insurance, bonds, and all other items expressed as percentage rates for design contingencies and construction contingencies and escalation to the bid date; and other mutually agreed upon contingencies. The final construction cost estimate shall be prepared in Uniformat II Elemental Classification to Level 3 (Sections A-G inclusive), the CSI MasterFormat to Level 3 and M.G.L. c.149, §44F (filed sub-bid) format and shall be complete with a single line description for each item with the detailed unit rate or item cost buildup provided in each case.
  3. complete construction drawings and specifications, certified by the Designer as having satisfied the firm's quality control review process as previously confirmed with the Owner, in sufficient detail to permit fixed-price bids in open competition for construction of the Project when documents have been approved for issuance for bidding.
  4. no later than at the 100% stage of completion of the final drawings and specifications, two sets of the final drawings and specifications that shall be provided to the local building official to be signed and stamped "Approved" by the local building official; two sets of plumbing drawings and specifications that shall be provided to the local plumbing inspector to be signed and stamped "Approved" by the local plumbing inspector; two sets of the fire protection, HVAC, and electrical construction documents that shall be provided to the local fire official to be signed and stamped "Approved" by the local fire official; two sets of the electrical construction documents that shall be provided to the local electrical inspector to be signed and stamped "Approved" by the local electrical inspector. Notwithstanding the foregoing, the Owner acknowledges that building officials, department inspectors, and fire officials have varying policies on approvals and submittal procedures, and the only obligation of the Designer in this regard is to promptly make the submittals described herein and assist the Owner in receiving the approvals to the extent available.
  5. at the 100 percent stage of completion of final drawings and specifications, a written summary comparing the final construction drawings and specifications and final estimated construction cost with the Final Design Program requirements and submittals made during the Design Development Phase and

earlier in the Construction Documents Phase, explaining any significant deviations.

6. In instances where the Designer takes exception to any of the Owner's 90% CD Submittal review comments, a written position statement explaining the Designer's position on its exceptions to said review comments.
7. The Independent Structural Engineering Peer Review Report obtained from the Independent Structural Engineering Peer Reviewer referenced in Article 7.6.4(e). The Designer shall include a certification statement from the project structural engineer designer of record to acknowledge receipt of the Report and to indicate response actions pursuant thereto. The Designer shall also forward a copy of said Report to the Building Inspector.
8. A certification that all applicable local, state and utility officials have been contacted by the Designer regarding each utility connection and that the persons responsible for permits or connection approval have agreed to the systems' use.

#### 7.6.6 Bid Documents Submittal:

- (a) The Designer shall provide, on or before the date and time specified in the Project Schedule, a Bid Documents Submittal which shall include:
  1. Construction documents and other deliverables as defined in this Article 7.6.6 and as further defined in Articles 7.6.2, 7.6.7, and 7.6.8, incorporating corrections to indicate compliance with Owner review comments related to prior submittals.
  2. From the construction drawings and specifications approved by the Owner, incorporating such changes as the Owner requires, a set of reproducible black and white drawings and original specifications on high quality white bond paper, single-sided, properly packaged, suitable for reproduction, stamped and signed by all disciplines, that shall be prepared by the Designer and transmitted to the Owner; which documents shall become the property of the Owner as provided under Article 16. Other suitable reproducible media, having the same content shall be substituted, when so directed or authorized by the Owner.
  3. Upon receipt of Owner authorization to advance to reproduction the approved documents for distribution to bidders and, upon reproduction thereof, the Designer shall promptly submit complete sets of bid documents to the Owner (two sets). Any subsequent addenda shall be promptly submitted to the Owner.

#### 7.6.7 Drawing Requirements:

- (a) The documents prepared during the Construction Documents Phase shall set forth the requirements for construction of the Project to a level of detail that is customary and standard and shall include, but not be limited to:
1. General information showing drawing index, symbols, abbreviations, notes, locations map.
  2. Site drawings shall be complete to define the extent and detail of site work. Show the following:
    - a. Layout and location of all proposed work including buildings, structures, retaining walls, parking, walls and all other site improvements, with details.
    - b. Existing and proposed grades and contours including floor elevations, existing structures and topography, survey base line, benchmarks and boring locations.
    - c. Landscaping and planting.
    - d. All utility service lines, systems and structures for electricity, gas, oil, water, steam, telephone, CATV, fire alarm, sanitary and storm drainage including size, composition, grades and directions of flow.
    - e. Contract Limit Line and Storage Area for construction materials.
    - f. All existing foundations, obstructions and other physical characteristics of the site which may affect the construction work.
    - g. Site survey.
    - h. Cuts of benches, light standards.
  3. Demolition drawings and temporary work required.
  4. Architectural drawings shall include at a minimum:
    - a. Floor plans of each floor, including basement and lofts or attic with room and corridor dimensions, wall thicknesses, column locations, floor elevations, mechanical and electrical openings, door and window designations, partition types, floor materials, built in furniture and equipment, keyed to other architectural drawings. All rooms numbered.
    - b. Large scale floor plans where required to illustrate detailed requirements of rooms.
    - c. Large scale plans showing key areas e.g. lobby, special spaces. Indicate surface materials. (minimum scale  $\frac{1}{4}'' = 1' - 0''$ )
    - d. Roof plans showing openings, drainage, slopes, expansion joints and all projections, including equipment.
    - e. Key plans on all floor plans and section drawings, where appropriate.
    - f. Building Sections as required to show spatial organization of building but no less than one longitudinal and one transverse.
    - g. Building elevations. All building elevations shall be fully developed, and hidden elevations shall be shown. Elevations shall be shown in a sequence as unfolded from a certain point.

- h. Full height wall sections indicating dimensions, flashing, anchorage, reinforcing, coursing, cladding, and all other conditions at wall, roof, foundation, interior floors.
  - i. Exterior details, for roofing, flashing, expansion control and construction joints, waterstops and other details showing all conditions both vertical and horizontal, including schedules.
  - j. Door, window, entrance, and storefront, schedules, and details.
  - k. Vertical circulation plans, sections and details including stairs, elevators, conveyors, dumbwaiters.
  - l. Interior elevations of all significant and typical spaces.
  - m. Interior details including casework, paneling surfacing and acoustical treatment.
  - n. Reflected ceiling plans coordinated with fire protection, mechanical and electrical drawings, and ceiling details.
  - o. Schedules (clearly define new or existing)
    - i. Doors
    - ii. Equipment, e.g. for services
    - iii. Partitions
    - iv. Finishes
5. Structural drawings shall indicate the following:
- a. Indicate or refer to location of geotechnical exploration data and reports related thereto.
  - b. Foundation plans with bottom grades showing layout of all footings, walls, slabs on grade including reinforcing, grade beams, and columns; include design soil bearing pressures and live loads.
  - c. Floor and roof plans of structural systems including framing, grades of finished floors and depressed areas, with locations and dimensions for all openings. Also indicate design floor loads.
  - d. Complete foundation wall elevation and typical sections, with reinforcing indicating location, dimensions and grades for all footings, steps and wall openings.
  - e. Complete details and sections with dimensions for all construction including expansion and construction joints, reinforcing and other embedded items.
  - f. Schedules (with dimensions) for all lintels, beams, joists, and columns.
  - g. Unless detailed on the Drawings, the following information shall appear in the general notes: class and 28 day strength of concrete for each portion, structural steel and concrete reinforcing design stresses for each type of structural member, concrete cover for each type of structural member, shrinkage and temperature steel requirements, reinforcing laps for main reinforcing and temperature steel; bendpoint, cutoff, and hook locations for all members, minimum beam and lintel bearing. Reinforcing steel fabrication shall be in accordance with most recent ACI, "Manual of Standard Practice for Detailing Reinforced Concrete." Structural steel fabrication shall be in accordance with the AISC "Manual of Steel Construction."

6. Fire protection drawings shall indicate standpipe systems, sprinkler systems, suppression systems, access panels, fire pumps, accessories, and piping. All piping, equipment, fixtures and devices shall be located and sized. Design criteria shall be provided on the drawings in accordance with NFPA requirements.
  - a. Fire protection work, other than site work, shall not be combined on the same sheets with the Plumbing, HVAC, Electrical, or other drawings except with the prior approval of the Owner.
  
7. Plumbing drawings shall indicate the following:
  - a. All work done by the Plumbing Subcontractor, which includes all water, gas, air, vacuum, medical gases, sanitary and storm wastes, and accessories. Include foundation drain lines unless established as the work of the General Contractor and shall not be indicated on the Plumbing Drawings. Site utilities shall be indicated on the utility drawings.
  - b. Plumbing work, other than site work, shall not be combined on the same sheets with the Fire Protection, HVAC, Electrical, or other drawings except with the prior approval of the Owner.
  - c. Trapping and venting of all plumbing fixtures including floor drains.
  - d. Water and gas supply sources, storm and sanitary discharge mains.
  - e. All piping shall be carefully sized and all sizes shall be indicated on drawings and riser diagrams. Indicate all directions of flow and pitch on piping.
  - f. All accessories, valves, fixtures including all drinking fountains, grease traps for kitchen waste and all necessary panels, identified as to type and size.
  - g. All piping and connections required for other trades (e.g., kitchen equipment, HVAC make-up water, etc.).
  - h. Acid waste, vents and neutralization systems for laboratories.
  - i. Plumbing Legend and/or graphical symbols on the first sheet of the Plumbing Drawings in accordance with the American National Standards Institute (ANSI).
  - j. Plumbing riser diagrams for structures two or more stories in height above the ground level.
  - k. Domestic water booster pumps, boiler feed water, meter location, hose bibbs, and wall hydrants.
  - l. Domestic hot water: storage tanks, piping material, hanger details.
  - m. All required access panels shall be indicated.
  - n. Backflow preventors and cleanouts. Verify that access and clearance provisions for periodically inspected devices, including backflow prevention, are adequate to satisfy requirements of inspecting agencies.
  
8. Heating, Ventilating and Air Conditioning Drawings shall indicate the following:



- a. HVAC work, other than site work, shall not be combined on the same sheets with Fire Protection, Plumbing, Electrical, or other drawings except with the prior approval of the Owner.
- b. All piping and ductwork systems shall be located and sized. All ductwork shall be shown double line.
- c. All systems shall be sized at all reductions and riser diagrams of piping and duct systems shall be indicated.
- d. All directions of flow and pitch on piping, and direction of flow, volumes for duct systems shall be indicated.
- e. All equipment shall have sufficient servicing and/or replacement space indicated on drawings.
- f. All equipment, accessories, valves and dampers with all necessary access panels, identified as to type and size. Access panels, where required for access to valves and dampers shall be indicated on drawings.
- g. Cooling system pumps, chillers, cooling towers, air handling units, ductwork system and dampers, fan details, temperature control system, air and hydronic balancing equipment, and schedules shall be indicated.
- h. Cooling tower design shall be indicated on the drawings showing site location, elevations and floor plan of equipment layout and typical flow diagram as related to the total HVAC system.
- i. All fire and smoke dampers, access panels and doors.
- j. Mechanical room designs:
  - i. Vent pipes for safety valves, relief valves, back pressure valves and tanks shall be extended above flat roofs in accordance with all governing authorities.
  - ii. In all designs for boiler and refrigeration plants, include a complete floor plan indicating location of all major mechanical equipment and sufficient service space.
  - iii. In designs of new and/or replacement boiler and refrigeration plants, provide a flow diagram detailing steam or hot water distribution systems, return systems, including all existing equipment and their function, as well as any proposed expansions with all necessary instrumentation and controls.

9. Electrical Drawings shall indicate the following:

- a. Site utilities shall be indicated on separate electrical site drawings, unless ample space is available on common site for utility drawings.
- b. Electrical work, other than site work, shall not be combined on the same sheets with Fire Protection, Plumbing, HVAC, or other drawings except with the prior approval of the Owner.
- c. General arrangement: Outline layout of each floor. Typical sections through the structure shall be indicated when necessary to define requirements, floor and ceiling heights, elevations, and type construction, including concrete pads shall be indicated. Indicate interface with other systems. Identify any work by general contractor or other trades.
- d. Interior lighting system: Light fixture schedules, circuiting location and mounting heights of all fixtures, receptacle and switch outlets, sizes and

types of all lamps, conduits, all other accessories and riser diagrams shall be indicated on drawings. Indicate details and method of supporting electrical fixtures and conduits. Designer shall specify that all electrical lighting fixtures be supported from the building structure, and shall be independent of ducts, pipes, ceilings and their supporting members. Comply with seismic design criteria.

- e. Power system: Locations, types and method of control for all motors, heaters, appliances, controllers, starters, branch circuits, feeder conductors and conduits. Indicate riser diagrams. Show details and indicate method of supporting electrical conduit. For larger projects, thermostats and control wiring are normally covered under the HVAC sub-contract, assure coordination.
- f. Fire Alarm, Data, Communications, CATV/CCTV Systems: Locations and types of all devices, outlets and equipment, service connections, wiring diagrams, all other essential details.
- g. Services: Location and details of all services, whether overhead or underground, feeder sizes, plans and elevations of switchgear and transformers, metering and service switchboard arrangements, wiring and ground fault diagram and bus ducts.
- h. General and sub-stations: Location, size, method of connection and protection of all generators, transformers, exciters, motor generators, switch gear, and associated equipment, current characteristics and equipment capacities. Indicate equipment connections by means of one line and/on wiring diagrams and schedule all major items of equipment and all instruments.
- i. Underground work: The size and locations of manholes and types of cables, number, size, and location of ducts, locations, sizes and types of cable supports, fireproofing, duct line profile, and one line diagram of connections. All underground chambers, including manholes and pull-boxes, shall be constructed of cast in place or one piece pre-cast concrete.
- j. Pole line work: if required as contract work, indicate location, length, treatment and class of poles, guying, cross arms, insulators, circuiting, transformers, protective and switching devices, lightning arresters, special structures, diagrams, current characteristics and grounding.
- k. Exterior lighting: Location, size, and type of transformers, luminary, poles, light standards, cables, ducts, and manholes, details of control equipment and connection diagrams.
- l. Emergency system details including transfer switch, type of fuel.
- m. One line diagram indicating load KVA, and available short circuit amperes at each transformer, switchboard, distribution panel board, branch circuit panel board, and at major pieces of equipment.
- n. Riser diagrams for all systems.

#### 7.6.8 Project Manual Requirements:

- (a) The format for the Project Manual, including its technical specifications, shall be in accordance with the current CSI MasterFormat with separate sections for each of class of work required by M.G.L. c. 149 §44F.

(b) The following general information applies to the development of final Specifications:

1. Describe the extent of the work, the materials and workmanship, and include the work under the proper section. If any portion of the work included in a section of the Specifications is to be performed by a trade covered by another section, there shall be clear and distinct cross-referencing between the sections. Merely to state “by others” is not acceptable.
2. For each item of material or equipment, the specifications shall provide for a minimum of three named brands of material or equipment and the words “or equal” or a description of material or equipment which can be met by a minimum of three manufacturers or producers, and the words “or equal.” Proprietary products shall not be specified except as provided by M.G.L. c. 30, § 39M; however, when they are specified, proprietary specifications are subject to the “or equal” provisions of M.G.L. c.30, § 39M.
3. Specify materials mined or manufactured in Massachusetts first and the United States of America second whenever possible.
4. Do not use general clauses intended to be all-inclusive in lieu of complete descriptions.
5. Do not duplicate standard requirements that are contained in the contract form.
6. Use consistency throughout. The word “will” shall be used to designate what the Owner, Commissioning Consultant, or the Designer can be expected to do, and the word “shall” shall be used to designate what is mandatory for the Contractor or subcontractors to do.
7. Use the same term throughout for the same subject and the term shall be the same as that used on the drawings.
8. Do not use the term “etc.”
9. Avoid such terms as “to the satisfaction of the Designer,” “as directed by the Designer,” “as approved,” and “as required”.
10. Specify work in appropriate Sections according to local trade jurisdiction.
11. Avoid the use of the following symbols:

<u>Symbol</u>	<u>Use Instead</u>
#	number, no., or pounds
%	percent
"	inch or in.
x	by
'	feet or ft.
o	degree
/	per or at

12. In sections for which filed sub-bids are required, refrain from using such terms as “the Contractor,” the “Heating Contractor,” or “the Plumbing Contractor,” but where necessary for clarity refer to the “HVAC Subcontractor,” the “General Contractor” and the like.

13. Do not give numbers both in words and figures. Numbers less than 10 shall be written in words, 10 and higher numbers shall be written in figures. In expressing dimensions, figures such as 2 in., 16 in., 7 ft., 6 in., shall be used.
14. Each filed sub-bid section shall detail all labor and materials required by the particular sub-trade and list, by number, those drawings (and only those drawings) indicating work of that sub-trade. In addition, list drawings indicating work of a particular trade that appears on drawings that are not customarily included in the work of the trade, when applicable.
15. Do not specify that a product or system shall require prequalification or advance approval for use prior to bidding.
16. Established unit price items shall be used for work categories which cannot be ascertained for exact quantities in bid documents (e.g. earthwork removal and/or replacement items). In such cases, the Designer shall establish ranges of quantities with associated unit price values for each range. Unit price values shall be established for added work, for deleted work, for base bid quantities when conditions so-suggest. Unit price values shall be ascertained through consultation with cost estimators, be current, equitable, and well defined as to elements of work, overhead, like issues to be encompassed. Established unit prices shall be published within the applicable technical specification sections, and referenced from general conditions as being operative as the basis for determining values to be used for payment or recovery for change order work.
17. Staging, scaffolding, cutting and patching, refuse collection and disposal, demolition work and cleaning task, allocation policy and proposed language shall be carefully assigned to avoid duplication or omission.
18. A final draft of Project Advertisement, Notice to Bidders, Instructions to Bidders, Contract Forms, General Conditions, Supplementary General Conditions, and other “front end” documents shall be included in the 90% construction documents submittal, along with a final version of all text to appear in Division 1, General Requirements. The Designer may defer insertion of final advertising / bid dates and wage rates, understanding that they are to be established and inserted immediately prior to release of documents for bidding.

#### 7.6.9 Construction Cost Estimate Requirements

The Designer shall provide the construction cost estimates described in Articles 7.6.3 and 7.6.5 in accordance with the following provisions:

- (a) The Designer shall review its construction cost to clarify assumptions upon which the cost estimate is based and to address any concerns or questions with the cost estimates that are raised by the Owner. The Designer shall provide a detailed explanation of the differences to the Owner. If, in any

case, the agreed-upon, construction cost estimate exceeds the Project Construction Budget, the Designer shall cooperate with the Owner in identifying, specifying and recommending changes in materials, equipment, component systems and types of construction, or other adjustments in the scope or materials selections for the Project, including contingencies or alternative bid items, so as to facilitate revision of the design of the Project to reduce the cost of construction so as to comply with the Project Construction Budget.

- (b) Cost estimate data shall be organized to identify elements of project work which may be proposed to be advanced under separate construction phases and/or separate bidding packages. When so proposed, estimates shall develop cost data relative to corresponding bidding and work execution dates established in project schedules.
- (c) Cost estimates shall be projected to the mid point of the construction period.
- (d) The summary sheets shall contain the following:
  - 1. The date that the estimate was prepared. (Value Date).
  - 2. The anticipated bid date.
  - 3. The project and contract number.
  - 4. The title and location of the project.
  - 5. The name of the Designer.
  - 6. The name of the Estimator.
  - 7. The site work cost (including all utilities).
  - 8. The building cost (including fixed equipment).
  - 9. The estimated construction cost of each Phase of the work, totaled.

7.6.10 The Designer shall participate in a final review of the Construction Documents with the Owner, and the Commissioning Consultant, and the Designer shall incorporate such changes as are necessary to satisfy the Owner's review comments.

## 7.7 Bidding Phase

7.7.1 The Designer shall, when authorized by the Owner, prepare for reproduction and distribution the construction bid documents, including advertisements, for receipt of proposals from construction contractors, and for execution of the Owner-Contractor Agreement. The Designer shall prepare all addenda (to include bidder questions and Designer responses), subject to the Approval of the Owner. The Designer shall attend the pre-bid conference if one is scheduled, taking note of all questions asked. Relevant questions submitted in writing shall be answered by the

- Designer by means of written addenda to the bid documents as required. The Designer shall attend each bid opening and conduct a review of the qualifications of the low filed sub-bidders and general bidder (and of other bidders if necessary) and shall, within five working days of the respective bid opening dates, advise the Owner in writing of the Designer's opinions as to the sub-bidders' bids and as to which general bidder is the responsible and eligible bidder that has submitted the lowest bid.
- 7.7.2 The Designer shall assist the Owner in the prequalification of prime contractors and subcontractors in the filed sub-bidder or trade contractor scopes of work pursuant to M.G.L. c. 149, §§44D½ and 44D¾ including participation as a member of the Owner's Prequalification Committee.
- 7.7.3 The Designer shall receive all inquiries relating to the bid documents and, when necessary, answer questions by preparing and issuing written addenda. The Owner shall review and approve all such addenda prior to issuance to bidders.
- 7.7.4 When sub-bids are required:
- (a) Attend sub-bid openings.
  - (b) Assist in reviewing sub-bids with the Owner for completeness and accuracy.
  - (c) Assess sub-bid amounts relative to cost estimates.
  - (d) Assist in checking references of sub-bidders and make written recommendations as to their qualifications, only required for projects in which pre-qualification has not occurred.
  - (e) Issue a letter of recommendation to Owner upon acceptance of sub-bids, identify any categories to be re-bid and reason(s) therefor.
  - (f) Prepare and distribute the filed sub-bid tabulation to all prospective bidders. The tabulation shall be reviewed and approved by the Owner prior to its issuance to bidders.
- 7.7.5 Unless otherwise directed by the Owner, attend and conduct the general bid opening.
- 7.7.6 Review with the Owner general bids for completeness and accuracy.
- 7.7.7 Review bidder responses for alternates and make written recommendations as to their acceptance.
- 7.7.8 If the Project has to be re-bid because of a defect in the bid documents prepared by the Designer or in procedures proposed by the Designer, the Designer shall correct the defect and take the necessary actions for re-bidding the Project on proper bid documents without any additional compensation to the Designer.
- 7.7.9 If within three (3) months after approval of Construction Contract Documents, in final form, the bids of the lowest responsible and eligible bidders or negotiated proposals exceed the approved Project Construction Budget, the provisions of Article 4.10 shall apply.

7.7.10 If the Owner awards a construction contract for an amount that exceeds the amount established in the Project Construction Budget, such an award will not affect the Fee for Basic Services.

7.8 Construction Administration Phase - Obligations During Construction: Following the execution of the Owner-Contractor Agreement, the Designer shall undertake certain of the obligations of administering the Owner-Contractor Agreement on behalf of the Owner, provided that Designer shall not be subject to provisions of the Owner-Contractor Agreement that would have the effect of expanding Designer's responsibilities or liabilities under this Contract without Designer's written consent. Services during this phase include, but are not necessarily limited to:

7.8.1 Upon commencement of construction activities for the Work or early bid packages or at times established in Project schedules, the Designer shall:

- (a) Furnish the General Contractor with information for establishing lines and grades and such supplemental drawings as are reasonably needed to implement the intent of the Construction Contract Documents;
- (b) With reasonable promptness and in accordance with schedules agreed upon by the Designer and Contractor, observe testing when required under this Contract, and review and act upon samples, schedules, shop drawings and other submissions from the General Contractor;
- (c) Prepare, maintain and update logs for all submittals;
- (d) Visit the site at intervals appropriate to the stage of construction, weekly or as otherwise agreed to by the parties, and observe the progress of the Work, issue written progress reports, and attend job meetings, prepare meeting minutes, and to determine in general if the Work observed is being built in a manner indicating the Work when completed will be in accordance with approved Construction Contract Documents;
- (e) Collaborate with the Owner's on-site Project Representative to identify and monitor issues of concern relative to the progress of the Work, and establish communications processes to help assure that matters of mutual concern are exchanged on a timely basis with one another, Commissioning Consultant, and Owner;
- (f) On a weekly basis, make specific recommendations on rejection of any Work observed by the Designer that fails to conform to the Construction Contract Documents, and observe corrected Work;
- (g) Require each Subconsultant engaged in accordance with Article 5 to make visits weekly or as otherwise agreed to by the parties during the progress of any work to which that Subconsultant's services relate, and to report upon it in writing to the Designer;
- (h) Recommend actions to be taken which may include condemnation or rejection of any work that the Designer determines fails to conform to the Owner-Contractor Agreement;

- (i) Review and recommend appropriate action for proposed requests for changes and where required by the Owner, prepare documents associated with requests for a change in any Construction Contract Documents. Compensation for change order work by the Designer shall be determined in accordance with Article 10;
- (j) Conduct semi-final and final inspections of the Project and report the results of such inspections in writing to the Owner;
- (k) In association with the Commissioning Consultant, review the report by such Commissioning Consultant on the balancing of air and water circulation systems;
- (l) In association with the Commissioning Consultant, review the report by such Commissioning Consultant on the setting and adjustment of automatic controls;
- (m) In a timely manner, decide all questions regarding interpretation of, or compliance with, the Construction Contract Documents, except as the Owner may in writing otherwise determine;
- (n) In association with the Commissioning Consultant, review the recommendations of such Consultant for requirements upon operating and maintenance documents and building user training events and instructional media as established in the Construction Contract Documents; such Consultant shall coordinate involvement of contracting parties, the Designer, and Owner;
- (o) Furnish the Record Drawings as submitted by the General Contractor in accordance with 7.8.3, and other required documents;
- (p) Assist the Owner in providing the written Contractor Evaluations required of the Owner pursuant to M.G.L. c.149 §44D(7) at the completion of approximately 50% of the Construction Phase on forms prescribed by M.G.L. c.149 §44D(16);
- (q) Perform inspections of the work as necessary to prepare a punch list identifying each incomplete or deficient Work item and performing re-inspections to authorize removal of satisfactorily completed Work items from the punch list, or to determine that the Project is complete. In association with the Owner, a cost shall be assigned to each incomplete or deficient Work item when it has been determined that the Project has reached Substantial Completion; and
- (r) Receive from the General Contractor all maintenance and operating manuals, occupancy permits, guarantees and other similar relevant materials.

7.8.2 The Designer shall submit to the Owner within 48 hours all requisitions for payment submitted by the General Contractor in the form required by the Owner. The Designer may establish procedures with the Contractor for advance notification of requisition and/or draft version processing. With respect to each such requisition, the Designer shall certify to the best of its knowledge that the percentage of Work included in the requisition is accurate and that the work performed is in accordance with the Construction Contract Documents. In the event the Designer does not approve the requisition exactly as submitted by the General Contractor, the Designer shall forward it for payment to the Owner dated and signed with corrections and with an accompanying letter of explanation setting forth the Designer's objections and recommended changes. The Designer shall coordinate



the required visits of its own staff and those of its Subconsultants, to the construction site so as to enable it to submit to the Owner the General Contractor's monthly requisition for payment. Timely payments to the Contractor are required by M.G.L. c. 30, § 39K. Therefore, the Designer shall establish procedures to help assure either immediate mail or messenger delivery of the requisition for payment to the Owner, and shall process requisitions for payment within five business days after receipt of the same, provided the Contractor has submitted a full and complete requisition for payment in the correct form.

7.8.3 Prior to issuance of the Certificate of Substantial Completion, the Designer shall obtain from the General Contractor as-built drawings, including drawings showing the actual installation of the site utilities, plumbing, heating, ventilating and electrical work under the Owner-Contractor Agreement, and recording all changes. The Designer shall ascertain that changes authorized by change orders are shown on the General Contractor's as-built drawings, but Designer shall be entitled to rely upon the accuracy and completeness of the Contractor's as-built information, and shall forward such to the Owner as Record Drawings.

7.8.4 Issue the Certificate of Substantial Completion of Construction.

7.8.5 The Designer shall meet with the Owner monthly during this Phase.

7.9 Completion Phase: Upon acceptance of the Certificate of Substantial Completion of Construction by the Owner, the Designer shall thereafter provide the following services:

7.9.1 With respect to a completed Project, preparing a Certificate of Final Completion.

7.9.2 With respect to a punch list, re-inspecting the work up to three times in order to determine that the punch list work is satisfactorily completed.

7.9.3 Reviewing and certifying the Contractor's Application(s) and Certificate(s) for Payment as necessary.

7.9.4 Attending meetings as reasonably necessary in the opinion of the Owner, unless such meetings involve continued discussions of incomplete or deficient work and the Basic Services punch list site visits have been expended. In such instance, the meetings shall be paid for as Extra Services.

7.9.5 Using the as-built information maintained by the General Contractor during construction referred to in Article 7.8.3, and revising the applicable original reproducible drawings and electronic media drawings on the basis of the as-built drawings, provided that Designer shall be entitled to rely upon the accuracy and completeness of the Contractor's as-built information. Upon completion of the required drafting and editing, provide one set of mylar reproducibles, two sets of prints and two (2) electronic version copies to the Owner which shall become the property of the Owner. The cost for printing the mylar reproducibles and two sets of prints are Reimbursable Expenses.

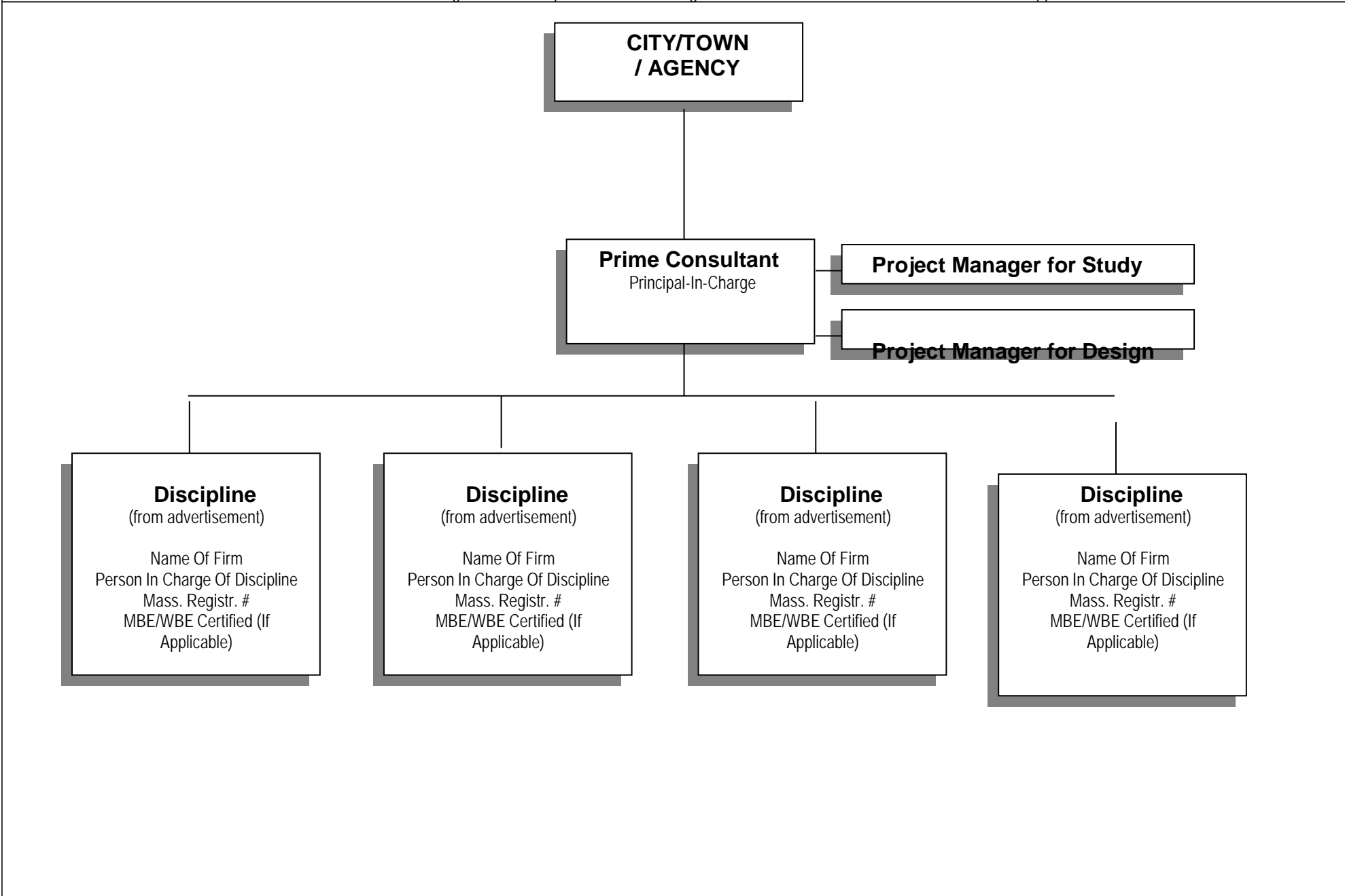
7.9.6 Ten (10) months after the date of substantial completion, performing one (1) site inspection and preparing a list of construction warranty deficiencies. The Designer shall consult with the Commissioning Consultant upon the acceptability of warranty compliance requirements and response actions.

7.9.7 Informing the Owner in writing, of all such warranty deficiencies that should be addressed.

- 7.9.8 Performing one (1) site inspection within a further sixty (60) days to see that all such warranty deficiencies have been corrected.
- 7.9.9 Evaluation of Contractor: The Designer shall assist the Owner with providing the written Contractor Evaluations required of the Owner pursuant to M.G.L. c.149 § 44D(7) within 70 days of the date of Substantial Completion for construction, on forms prescribed by M.G.L. c.149 § 44D(16).
- 7.9.10 Two (2) suitably bound legible copies of all original design and quantity calculations including those pertinent to change orders and shop drawings if applicable shall be furnished by the Designer to the Owner at the conclusion of the Owner-Contractor Agreement.

<b>Commonwealth of Massachusetts</b>  <b>Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction (Updated July 2011)</b>	1. Project Name/Location For Which Firm Is Filing:	2. Project #																																
		This space for use by Awarding Authority only.																																
3a. Firm (Or Joint-Venture) - Name and Address Of Primary Office To Perform The Work:	3e. Name Of Proposed Project Manager:  For Study: (if applicable) For Design: (if applicable)																																	
3b. Date Present and Predecessor Firms Were Established:	3f. Name and Address Of Other Participating Offices Of The Prime Applicant, If Different From Item 3a Above:																																	
3c. Federal ID #:	3g. Name and Address Of Parent Company, If Any:																																	
3d. Name and Title Of Principal-In-Charge Of The Project (MA Registration Required):   Email Address: Telephone No:	3h. Check Below If Your Firm Is Either: (1) SDO Certified Minority Business Enterprise (MBE) <input type="checkbox"/> (2) SDO Certified Woman Business Enterprise (WBE) <input type="checkbox"/> (3) SDO Certified Minority Woman Business Enterprise (M/WBE) <input type="checkbox"/>																																	
4. <b>Personnel From Prime Firm Included In Question #3a Above</b> By Discipline (List Each Person Only Once, By Primary Function -- Average Number Employed Throughout The Preceding 6 Month Period. Indicate Both The Total Number In Each Discipline And, Within Brackets, The Total Number Holding Massachusetts Registrations):																																		
<table style="width:100%; border: none;"> <tr> <td style="width:33%;">Admin. Personnel _____ ( _____ )</td> <td style="width:33%;">Ecologists _____ ( _____ )</td> <td style="width:33%;">Licensed Site Profs. _____ ( _____ )</td> <td style="width:33%;">Other _____ ( _____ )</td> </tr> <tr> <td>Architects _____ ( _____ )</td> <td>Electrical Engrs. _____ ( _____ )</td> <td>Mechanical Engrs. _____ ( _____ )</td> <td>_____ ( _____ )</td> </tr> <tr> <td>Acoustical Engrs. _____ ( _____ )</td> <td>Environmental Engrs. _____ ( _____ )</td> <td>Planners: Urban./Reg. _____ ( _____ )</td> <td>_____ ( _____ )</td> </tr> <tr> <td>Civil Engrs. _____ ( _____ )</td> <td>Fire Protection Engrs. _____ ( _____ )</td> <td>Specification Writers _____ ( _____ )</td> <td>_____ ( _____ )</td> </tr> <tr> <td>Code Specialists _____ ( _____ )</td> <td>Geotech. Engrs. _____ ( _____ )</td> <td>Structural Engrs. _____ ( _____ )</td> <td>_____ ( _____ )</td> </tr> <tr> <td>Construction Inspectors _____ ( _____ )</td> <td>Industrial Hygienists _____ ( _____ )</td> <td>Surveyors _____ ( _____ )</td> <td>_____ ( _____ )</td> </tr> <tr> <td>Cost Estimators _____ ( _____ )</td> <td>Interior Designers _____ ( _____ )</td> <td>_____ ( _____ )</td> <td>_____ ( _____ )</td> </tr> <tr> <td>Drafters _____ ( _____ )</td> <td>Landscape Architects _____ ( _____ )</td> <td>_____ ( _____ )</td> <td>Total _____ ( _____ )</td> </tr> </table>			Admin. Personnel _____ ( _____ )	Ecologists _____ ( _____ )	Licensed Site Profs. _____ ( _____ )	Other _____ ( _____ )	Architects _____ ( _____ )	Electrical Engrs. _____ ( _____ )	Mechanical Engrs. _____ ( _____ )	_____ ( _____ )	Acoustical Engrs. _____ ( _____ )	Environmental Engrs. _____ ( _____ )	Planners: Urban./Reg. _____ ( _____ )	_____ ( _____ )	Civil Engrs. _____ ( _____ )	Fire Protection Engrs. _____ ( _____ )	Specification Writers _____ ( _____ )	_____ ( _____ )	Code Specialists _____ ( _____ )	Geotech. Engrs. _____ ( _____ )	Structural Engrs. _____ ( _____ )	_____ ( _____ )	Construction Inspectors _____ ( _____ )	Industrial Hygienists _____ ( _____ )	Surveyors _____ ( _____ )	_____ ( _____ )	Cost Estimators _____ ( _____ )	Interior Designers _____ ( _____ )	_____ ( _____ )	_____ ( _____ )	Drafters _____ ( _____ )	Landscape Architects _____ ( _____ )	_____ ( _____ )	Total _____ ( _____ )
Admin. Personnel _____ ( _____ )	Ecologists _____ ( _____ )	Licensed Site Profs. _____ ( _____ )	Other _____ ( _____ )																															
Architects _____ ( _____ )	Electrical Engrs. _____ ( _____ )	Mechanical Engrs. _____ ( _____ )	_____ ( _____ )																															
Acoustical Engrs. _____ ( _____ )	Environmental Engrs. _____ ( _____ )	Planners: Urban./Reg. _____ ( _____ )	_____ ( _____ )																															
Civil Engrs. _____ ( _____ )	Fire Protection Engrs. _____ ( _____ )	Specification Writers _____ ( _____ )	_____ ( _____ )																															
Code Specialists _____ ( _____ )	Geotech. Engrs. _____ ( _____ )	Structural Engrs. _____ ( _____ )	_____ ( _____ )																															
Construction Inspectors _____ ( _____ )	Industrial Hygienists _____ ( _____ )	Surveyors _____ ( _____ )	_____ ( _____ )																															
Cost Estimators _____ ( _____ )	Interior Designers _____ ( _____ )	_____ ( _____ )	_____ ( _____ )																															
Drafters _____ ( _____ )	Landscape Architects _____ ( _____ )	_____ ( _____ )	Total _____ ( _____ )																															
5. Has this Joint-Venture previously worked together? <input type="checkbox"/> Yes <input type="checkbox"/> No																																		

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:



7. Brief Resume Of <b>ONLY</b> Those Prime Applicant and Sub-Consultant Personnel Requested In The Advertisement. Confine Responses To The Space Provided On The Form and Limit Resumes To <b>ONE</b> Person Per Discipline Requested In The Advertisement. Resumes Should Be Consistent With The Persons Listed On The Organizational Chart In Question # 6. Additional Sheets Should Be Provided Only As Required For The Number Of Key Personnel Requested In The Advertisement And They Must Be In The Format Provided. By Including A Firm As A Sub-Consultant, The Prime Applicant Certifies That The Listed Firm Has Agreed To Work On This Project, Should The Team Be Selected.	
a. Name and Title Within Firm:	a. Name and Title Within Firm:
b. Project Assignment:	b. Project Assignment:
c. Name and Address Of Office In Which Individual Identified In 7a Resides: MBE <input type="checkbox"/> WBE <input type="checkbox"/>	c. Name and Address Of Office In Which Individual Identified In 7a Resides: MBE <input type="checkbox"/> WBE <input type="checkbox"/>
d. Years Experience: With This Firm: _____ With Other Firms: _____	d. Years Experience: With This Firm: _____ With Other Firms: _____
e. Education: Degree(s) /Year/Specialization	e. Education: Degree(s) /Year/Specialization
f. Active Registration: Year First Registered/Discipline/Mass Registration Number	f. Active Registration: Year First Registered/Discipline/Mass Registration Number
g. Current Work Assignments and Availability For This Project:	g. Current Work Assignments and Availability For This Project:
h. Other Experience and Qualifications Relevant To The Proposed Project: (Identify Firm By Which Employed, If Not Current Firm):	h. Other Experience and Qualifications Relevant To The Proposed Project: (Identify Firm By Which Employed, If Not Current Firm):

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

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

Sub-Consultant Name:

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

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

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

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



10. Use This Space To Provide Any Additional Information Or Description Of Resources Supporting The Qualifications Of Your Firm And That Of Your Sub-Consultants For The Proposed Project. If Needed, Up To Three, Double-Sided 8 ½" X 11" Supplementary Sheets Will Be Accepted. **APPLICANTS ARE REQUIRED 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	Title	MA Reg #	Status/Discipline	Name	Title	MA Reg #	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

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

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

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

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

16. I hereby certify that the undersigned is an Authorized Signatory of Firm and is a Principal or Officer of Firm. I further certify that this firm is a "Designer", as that term is defined in Chapter 7, Section 38A1/2 of the General Laws, or that the services required are limited to construction management or the preparation of master plans, studies, surveys, soil tests, cost estimates or programs. The information contained in this application is true, accurate and sworn to by the undersigned under the pains and penalties of perjury.

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



**RFQ ATTACHMENT D.1**

**CERTIFICATE OF GOOD STANDING AND/OR TAX COMPLIANCE**

## RFQ ATTACHMENT D.2

## CERTIFICATE OF AUTHORITY - CORPORATE

1. I hereby certify that I am the Clerk/Secretary of \_\_\_\_\_  
(insert full name of Corporation)
2. corporation, and that \_\_\_\_\_  
(insert the name of officer who signed the **contract and bonds.**)
3. is the duly elected \_\_\_\_\_  
(insert the title of the officer in line 2)
4. of said corporation, and that on \_\_\_\_\_  
(insert a date that is **ON OR BEFORE** the date the officer signed the **contract and bonds.**)

at a duly authorized meeting of the Board of Directors of said corporation, at which all the directors were present or waived notice, it was voted that

5. \_\_\_\_\_ the \_\_\_\_\_  
(insert **name** from line 2) (insert **title** from line 3)

of this corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

6. ATTEST: \_\_\_\_\_ *AFFIX CORPORATE SEAL HERE*  
(Signature of **Clerk or Secretary**)\*
7. Name: \_\_\_\_\_  
(Please print or type name in line 6)\*
8. Date: \_\_\_\_\_  
(insert a date that is **ON OR AFTER** the date the officer signed the **contract and bonds.**)

\* The name and signature inserted in lines 6 & 7 must be that of the Clerk or Secretary of the corporation.

**RFQ ATTACHMENT D.3****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 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 or individuals.

\_\_\_\_\_  
(Signature of individual)

\_\_\_\_\_  
Name of Business

**RFQ ATTACHMENT D.4****CERTIFICATION OF TAX COMPLIANCE**

Pursuant to M.G.L. c.62C, §49A and requirements of the City, the undersigned acting on behalf of the Contractor certifies under the penalties of perjury that the Contractor is in compliance with all laws of the Commonwealth relating to taxes including payment of all local taxes, fees, assessments, betterments and any other local or municipal charges (unless the Contractor has a pending abatement application or has entered into a payment agreement with the entity to which such charges were owed), reporting of employees and contractors, and withholding and remitting child support.\*

\_\_\_\_\_  
 \*\*Signature of Individual (Mandatory)  
 Number

\_\_\_\_\_  
 \*\*\* Contractor's Social Security  
 (Voluntary) or Federal Identification Number

Print Name: \_\_\_\_\_

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

**OR**

\_\_\_\_\_  
 Company Name  
 (Corporation, Partnership, LLC, etc.)

By: \_\_\_\_\_  
 \*\*Corporate Officer (Mandatory)

Print Name: \_\_\_\_\_

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

\* The provision in this Certification relating to child support applies only when the Contractor is an individual.

\*\* Approval of a contract or other agreement will not be granted until the City receives a signed copy of this Certification.

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

## CITY OF NEWTON DESIGNER SELECTION COMMITTEE

## DESIGNER SELECTION PROCEDURES

City of Newton Designer Selection  
Committee: Designer Selection Procedures

City of Newton Designer Selection  
Committee  
Designer Selection Procedures (Adopted  
October 26, 2004)

1. These procedures govern the selection of designers for any municipal building project subject to the state designer selection law, M.G.L. c. 7, §38A1/2 -0 or subject to the provisions of §11-8 of the City of Newton Charter. Any other local law governing the procurement of services will be inapplicable to these procurements.
2. the Designer Selection Committee [hereinafter referred to as the "Committee"] has the authority to conduct the designer selection process for the City of Newton (hereinafter referred to as the "City") pursuant to the provisions of § 11-8 of the City of Newton Charter and §§ 5-35-5-38 of the Revised Ordinances of the City of Newton, 2001. The Committee may delegate any duties described herein to the extent such delegation is permissible by law.
3. The Committee shall conduct the designer selection process.

No member of the Committee shall participate in the selection of a designer for any project if the member, or any of the member's immediate family:

- a. has a direct or indirect financial interest in the award of the design contract to any applicant;
  - b. is currently employed by, or is a consultant to or under contract to, any applicant;
  - c. is negotiating or has an arrangement concerning future employment or contracting with any applicant; or
  - d. has an ownership interest in, or is an officer or director of, any applicant.
4. A Request for Qualifications (RFQ) for each contract subject to these procedures shall be advertised in a newspaper of general circulation in the locality of the building project, in the *Central Register* published by the Secretary of the Commonwealth, and in any other place required by the Committee, at least two weeks before the deadline for filing applications.

5. The advertisement shall contain the following information:
  - a. a description of the project, including the specific designer services sought, the estimated construction cost, and the time period within which the project is to be completed;
  - b. if there is a program for the building project, a statement of when and where the program will be available for inspection by applicants;
  - c. when and where a briefing session (if any) will be held;
  - d. the qualifications required of applicants;
  - e. the categories of designers' consultants, if any, for which applicants must list names of consultants they may use;
  - f. whether the fee has been set or will be negotiated; if the fee has been set, the amount of the fee must be listed in the advertisement;
  - g. when and where the RFQ can be obtained and the applications must be delivered.
6. The RFQ shall include the Application to Designer Selection Committee Form. The Application Form may be amended to include additional information on a project-specific basis.
7. The Committee shall evaluate applicants based on the following criteria:
  - a. prior similar experience;
  - b. past performance on public and private projects;
  - c. financial stability;
  - d. identity and qualifications of the consultants who will work with the applicants on the project;
  - e. any other criteria that the Committee considers relevant to the project.
8. The Committee shall select at least three finalists. Finalists may be required to appear for an interview or provide additional information to the Committee, provided that all finalists are afforded an equal opportunity to do so. The Committee may determine that it is in the best interest of the City to reject all applicants and re-issue the RFQ.
9. The Committee shall rank the finalists in order of qualification and transmit the list of ranked finalists to the Mayor. No person or firm, including applicants' listed consultants, debated pursuant to M.G.L. c. 149, §44C, shall be included as a finalist on the list.

The list must be accompanied by a written explanation of the reasons for selection including the recorded vote, if any. The written explanation, which may be the record or the minutes of the Commission's meeting at which the selection was made, and recorded vote, if any, shall be public records and shall be maintained in the contract file of the designer selected by the Mayor.

1. If the fee was set prior to the selection process, the Mayor shall select a designer from the list of finalists. If the Mayor selects a designer other than the one ranked first by the Committee, the Mayor shall file a written justification for the selection with the Committee and maintain a copy in the contract file. In accordance with the provisions of §5-35 of the Revised Ordinances of the City of Newton, 2001, the Mayor may request three (3) additional recommendations from which he may make his selection.



2. If the fee is to be negotiated, the Mayor shall review the list of finalists and may exclude any designer from the list if a written explanation of the exclusion is filed with the Committee and maintained in the contract file. The Mayor shall request a fee proposal from the first ranked designer remaining on the list and begin contract negotiations. If the Mayor is unable to negotiate a satisfactory fee with the first ranked designer, negotiations shall be terminated and undertaken with the remaining designers, one at a time, in the order in which they were ranked by the Committee until agreement is reached. In no event may a fee be negotiated which is higher than the maximum fee set by the Mayor prior to selection of finalists.
  3. If the Mayor is unable to negotiate a satisfactory fee with any of the finalists, in accordance with the provisions of §5-35 of the Revised Ordinances of the City of Newton, 200 I, the Mayor may request three (3) additional recommendations from which he may make his selection.
  4. The City may allow a designer who conducted a feasibility study to continue with the project design, provided that an independent review by a knowledgeable and competent individual or firm doing such work finds the feasibility designer's work to be reasonable and adequate. The City must first advertise for the feasibility study. The City may include a statement in the advertisement and/or RFQ that the feasibility study designer is eligible to compete for the subsequent design services contract. Once the study is complete, the City may publish a second advertisement for the project design. If the feasibility designer is selected, the City may commission the independent review prior to allowing the designer to proceed with the work.
14. Every contract for design services shall include the following:
- a. certification that the designer or construction manager has not given, offered, or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the contract for design services;
  - b. certification that no consultant to, or subcontractor for, the designer or construction manager has given, offered, or agreed to give any gift, contribution, or offer of employment to the designer or construction manager, 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 or construction manager;
  - c. certification that no person, corporation, or other entity, other than a bona fide full-time employee of the designer or construction manager, has been retained or hired by the designer or construction manager to solicit for or in any way assist the designer or construction manager in obtaining the contract for design services upon an agreement or understanding that such person, corporation, or other entity be paid a fee or other consideration contingent upon the award of the contract to the designer; and
  - d. certification that the designer has internal accounting controls as required by M.G.L. c. 30, §39R(c) and that the designer has filed and will continue to file an audited financial statement as required by M.G.L. c. 30, §39R(d).

All fees shall be stated in design contracts, and in any subsequent amendments thereto, as a total dollar amount. Contracts may provide for equitable adjustments in the event of changes in scope or services.

15. The City shall not enter into a contract for design services unless the designer has obtained professional liability insurance covering negligent errors, omissions, and acts of the designer or of any person or business entity for whose performance the designer is legally liable arising out of the performance of the contract. The total amount of such insurance shall at a minimum equal the lesser of one million (\$1,000,000) dollars or ten percent (10%) of the project's estimated cost of construction, or such larger amounts as the City may require, for the applicable period of limitations. A designer required by the City to obtain all or a portion of such insurance coverage at its own expense shall furnish a certificate or certificates of insurance coverage to the City prior to the award of the contract.
16. Every contract for design services shall include a provision that the designer or 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 the bid documents, as reasonably determined by the individual responsible for administering the design contract.
17. In the event of an emergency that precludes the normal use of these designer selection procedures, the Committee may elect to authorize expedited procedures to address the emergency. The Committee shall document in writing the reasons for the emergency declaration, the proposed scope of work, the estimated cost of construction, the established fee for the needed design services, and any other relevant information.  
  
The Committee may select three finalists from any standing list of designers who have applied for projects of a similar nature, or may otherwise select three designers to be considered as finalists for the project. The Committee shall rank the finalists in order of qualification and select the designer for the emergency work.
18. The City shall publish the name of any designer awarded a contract in the *Central Register*.
19. The following records shall be kept by the City:
  - a. all information supplied by or obtained about each applicant;
  - b. all actions taken relating to the project; and
  - c. any other records related to designer selection.

All records shall be available for inspection by the state Designer Selection Board and other authorized agencies.

The City shall evaluate designers' performance on contracts in accordance with M.G.L. c. 7, §38E (g)

**RFQ ATTACHMENT F**

**CITY OF NEWTON ORDINANCES DESIGN**

**REVIEW COMMITTEE ORDINANCE**

NEWTON COOE — SIJILDINGS

committee as is DCCCIAIY for the exercise of the committee's raponsibiUties. Rccoob of lbe committee Jboll be public docnmcn4 Tbc committee Jboll make . . . . oo less !han anmW.ly 10 the rapecti>-e oppoiminc ~~es~~ (Rev. Onls. 1 m. § 2-348; Onl. No. 190. 12-21).76; Onl. No. 317,2-21).79; Ord. No. S.JOI,2-1-U)

Sees.S-38-S-53.Rtouted.

ARTICLE IV.DESIGN REVIEW  
COMMJTTEE

5<.S-54.EstablJbcd.

(a) A review committee is bc:n:by established 10 . . . . the review — foe iDy'p>blic facility — . . . .bceo 10 the comaittcc by the mayor, — . ! of aldcnm a. aayotbc<p>blic og<llC) o<ClO!l'Oilittee wilhin lhecity.

(b) The daign mO<W committee shall examine the specilieatioos preporecl by the usins \*seney and shall consultwilb lbe plaMing. public buildinss and **other city department. or if appropriate, may request the public buildings commissio:cr to hire out\$ide wnsuhams to assist the design review committee in lludyina lbe fcasibiUty of lbe poposecl Ca<icily and wn considcs•lbe . . . .lbe c:ommittee dcc:mt: appropriate ■ of \$0Jutios — . . renewal. — ion . . replacement wilbin reafislic budi<<JY limiiS and Jboll make • tWOilltOldalioo. Tbc design mO... committee's SIUdy of lbe feasil>ilily of lbe proposed facily shall ioclue a - review of Indoor mvironmc:Dial beahh issues. lbc design review committee may make rocornenc1Atio01 for specific program n:quimnet>IS for lbo propo\$ed facility IO address indoor environmental hcthh iJSUCS. **The design review committee 1hAU include in its feasibility study a mOew of lbe proposed faciUty's "" of naiUral ,\_ \_ \_ and a>eiLY- Tbc design mOew committee may make mxwnmenctations u to site Platmina. buildina dcai... o< COOSUUCiioo thai ooottibo.<c siefJC11111y 10 the p...-d facility's efficien1 use andof natunJ rciOU"CC: and - Wbalcyer "" atdUioct is proposed 10 be CQ80&0d by lbo city in any design <<consullin& capacity, the dc&ign review commi:ucc shall review lbe eontrac1 between lbe ciily and lbc atclliloel prior to irs excculion to muro II!Ai the scope of the work.****

u daen'bed in said oooaract.. complies with the = > propm rquiremeois f0< lbe p<oposecl public facility.

(c)Tbc review -mace aballn:vicwlbe ..... f<.....,ionoc wilb lbo \_ \_ \_ and time sd>edule and shall evaluate lbo quality, P(lfOPriAencssand funotionalanribulcs of lbe ltlidliiOds solution. Tbc committee shall bave periodic .-ins wilb lbe atdUioct and bold periodic presentations and &hall make rep<<S . . lbe projOCI moveo W...gb lbe variOitS SlaSCI of d<oign IO COottad developrocol.Prior IO lbe issuance of bid documer>U, design review

10 lbe atclliloel shall be mode by the desiso review comaniuec to writin& ro lbe CO\* \* . c r of public building f0< bit lflil'Oval and is!Ucd 6om bis o15ce.Tbc COllbuiwiooa of public bolidings sball 001 pami lbo COftiiNCtioo

10 be f0< public bid Ullil lbe dc:sian review committee certifies in writin& that the plllll and llpOCifu:atiotu suboWl Wly mcd lbe propm rquiremeois of lbe projCCI.

(d) Ourins lbc eoonslnctioo of lbe public Facilyly, lbe <<> of public bWJdioas sball consult with the design review committee COllceming any in the plans Cf spocifieatioas lbalmay affOCI / lbo design << l""SJatt of lbe Facilyly IOd lbe committee Jboll "" prot:ftly 00 all . , . . . .befocclL (Rev. Onls. tm, § 2-361: Ord. No.8. 3-12-74; Ord. No. 190, 12-21).76; Ord. No. S.JOI, 2-1-88; Ord.No. Y-216.12-21-98; Onl. No.Y-29, /

S<. S - Compositioo, •ppoiotmtal a•d compeolatioll of member.

(a) Vo<ins membership. Tbc design review committee sllalJ coosisl or lweh-e (12) pennaneol votina mcmbas. four (4) appointed by lbe may<, four (4) selceled by lbe boanl of llclcnncn, IOd four (4) sel<0aa by the school sball be IWO C2) w!cfirioml YOiida-. f0< cod> facility uncia design review, who — .....mily rq><CIUUii... who shall \_ \_ . lbe a-- or lbe COIDillUDily in which lbe propooed facility is l0be located, and who n:side in lbe immocilllell'CI of lbe facility. One community — sball be appointed by lbe may<< and ooeshall be selce ed by lbe boanl or aldermen. In lbe cvau llw mono than one riiiCliry shall comprise a projcc:c. and where the

NEWTON CODE — BUILDINGS

§S..S1

-on

board of aldermen d<:t:mlnco that lbe ,.....ltina nwnbcr of community represenlives for said project is vv-easooably Jara.e. it may reduce the total number of oomtrulllity rq><acnlati...,roquir<d 10001 fewcrlhonwo. {Ord. No. R-142,4-21-81)

(b) NonYOCing membcnbip. These shall be lbe followlna non.oong mcrOOcr1 of lbe dcsion review committee: **one adctman, one school committee member for school depastmelll buildlna projceiJ, tho plonnina dl=lor or his dcsicnee. <he bead of lbe USIN& •acnoY or bis cJalancc, md lbe public buildingp \_\_\_\_\_ or bis deoipce. The public buildingp \_\_\_\_\_ - ssa - sba1J abo terVC as SCICrCWy of lbe deoiiPl review committee. (Rev. Onls. 1973, f 2 362; On!. No. 8, 8-)2-74; Ord. No. S 301, 2-1-88)**

CroN rercrc:•cu-Rqv lllioN ,owmfla llppC)intmmt and O f t commbsicns and 00t••\*! t 2.1

Sec. 5-56. Terms, vacancies and rules.

(a) The membcn of lbe dcsion l'<"iew ccmninee. ac:•ptinalbe community .\_\_\_\_; VES, shall ,.... oocermious **with the terms of their rcs:pective appointing authority. Vacancica in lbe committee shall be fiUed by appoiomml in lbesame m3Mcr by lbe some dcsiplcd oppoiilna MJihority as lbe oriCinoJ oppoiOimcdIs for lbe period of lbe uncoq>ind tam. The lCml.<f CO1liDUility rques<DI>lives shall expire upon fino! "\*\*\*\*\*",... by lbe <it)' of lbe facilily for which lhey were appoinled.**

(b) The design review commiuce shall hove such assistance as is reaJOOably necas:ary for the excrelle of ica n:spoisibilitico pvvided by lbe deportmmI of publiC borildqJ The rec:ords of lbe dcsion review - - shall be public clocumczcs. The deoiiPl l'<"iew committee shall decl 1 cbairmon lllllllllllly md moblish rules ond procedura. Membal shall serve **at the pleasure of their respec:tive appoinlina authority.**

(c) It is lbe inu:Ol of lbis section that lhoce porticipolq ill lbe dcsion ...;ow process - - "\*\*\*\*\*" mcrOOcn shall be •diwnified — of inlcraled c:illlenl, il-i-1 "\*\*\*\*\*" of and DOl directly by city govmmcot, ond thlt orne of those rncmbcn shall be professiooally qualiged.

(d) To lbe Clrterll !hal citi2cnt make lhcmsc:lves

ovajlable: 10 "\*\*\*\*\*" <here shall be lbe lcuo one (1), but 001 10010 than two (2) voting membcn from each of lbe followlna professioos; orchitOCI, \_\_\_\_-r manag<r, dedrical aJgioocr, — SUUCIUt1) — Jandscape ord>itect. Professioool ...ri6cobono of "\*\*\*\*\*" — ore dcsifiole ill lbe fiddo of city planoing. ltaffic and real cslale elopniCOI, but \_\_\_\_\_ shall . . . be required.

(e) Wbcnevu a vacancy in volin& DIC1llbcBhip occur, lbe "Jllintna auahority shall llJllcc inquiry of lbe public buildqJ " "loner ond lbe dWrmaD o( lbe deoiiPl ...;ow comminee as 10 wbc lhr ao oppoinlee wi1h pOrtic:ular professnal quolificatiool io required, and after wrinen respoosc. **the appoinJneOt shall be made so that the me:mbcnJlip of lbe design review committee will be profcosiooally balanced and wiD CO!qly with lbe roquirancOll md lbe intCDI of lbis — a.nmun;ty — — — — shall be llJJIC)iDled without n:prd for professnal qualif-**

(f) No voelna member of lbe dcsion l'<"ic:w committee ahaU hold an elected or salaried position **with the city.**

(I) AD IDCOilbcn shall serve wilhouc \_\_\_\_\_ ond all YOCing membcn shall bcrsiclcoIs of lbe <it)'. AD IDCOilbcn shall UOilllbeir , \_\_ , III :< office.

(b) The two (2) voting membcn who an: **COOI'OOD.ity reprcs:ntatives shall vorc only on those ma.uen cooccmia, facilities for which they are** appoinled. (Rev. Onls. 1973, f 2 363; Ord. No. 2, 8-12-74; Ord. No. 190. 12-21),76; Ord. No. 5-301, 2-1-88)

Sec. 5-57. Other provisioos.

Arty public corporation, oamcy. authority, commission or bcdy of ony such private orpnzalion which is **-cred** 10 "\*\*\*\*\*" a public or facility — lbe city and — desires 10 — — itself 10 lbe j. .isdiction of lbe **design review committ<; may enter into an agrcrcmt., in writing, with the city ror this pwpose;** and lbercafter lhc dcoign l'<"ic:w conn>ittec shall perfenn all of iiJ limtios and dutico will! l<SJOCl10 sud> faciJ;ty, (Rev. Onls. 1973, §2-364; Ord. No. 8,

NEWTON CODE — BUILDINGS

8-12-74)

See. S.S.S. Site plan approval for construction or modification of public buildings and facilities.

It may be the policy of the city to apply similar standards of planning and control of density and environmental impact with the city's public buildings and facilities constructed or modified. The city applies under chapter 30, Zoning of the Revised Ordinances when petitioned for change in land use are initiated by the applicant or property owners. In all cases, the public use district or other classification of land shall be prior to the filing of a site plan or other plan required by section 10.4 of these Revised Ordinances.

(a) Whenever construction or modification of a municipal building or facility is undertaken which involves new construction or substantial change in usage, and which involves a change in vehicular access, off-street parking, site grading, drainage, landscaping features, or service areas, the following procedures shall apply:

(1) The executive departments shall include in the architectural contract the requirement for preparation and submission of a preliminary suitable for review and approval in

not only in terms of the details or layout and construction of the building or facility, but also in terms of the site and its surrounding area. Consultations shall be made with such city departments and neighborhood IPWPI as are considered necessary and appropriate.

(4) Upon its approval of the initial design concept and prior to recommending that the project proceed to the design phase, the design review committee will file with the clerk or the board of aldermen a site plan, including building floor plans and utility schematic, with a formal plan for site plan. With the site plan, the applicant shall submit a preliminary site plan or these Revised Ordinances. The design review committee shall be required to pay a fee for preparation of this section.

(5) At the earliest opportunity, the board of aldermen shall for the purpose of this section may petition for public hearing before its committee dealing with matters of public building and this committee shall hold a public hearing. Due notice of such public hearing shall be given to the abutters of the lot to be affected by the building to the abutters or such abutters. The committee

to the site plan and other conditions and conditions are: the public hearing. It shall be the duty of the committee of aldermen within forty days of the filing of the public hearing.

(6) The site plan, including building floor plans and other conditions, as Connolly shall be filed by the board of aldermen and the mayor (and in the case of school buildings, by the school committee) shall become part of the final set of project plans and construction drawings, and they shall not be changed or altered in any manner without first being resubmitted to the design review committee and to the board of aldermen in accordance with sections (3), (4) and (5) above. The board of aldermen may waive a public hearing on a preliminary site plan if

with these Rev. scd

(2) The committee shall report to the board of aldermen the committee's findings and recommendations on the designs and plans with the city's site plan and other pertinent planning and technical studies. The director of planning and development shall make written notification of this finding to the mayor, to the clerk of the board of aldermen, to the design review committee. And in the case of school building) to the school committee,

(3) The design review committee shall conduct the project plans, designs and specifications

NEWTON CODE-BUILDINGS

§5-58

in ~~it~~ **jud** the change proposed are 001  
of **sufficent scope is to warrant a public**  
hwi"8-

competitive consti\|Ction bid lllless the U UU=cnls  
of(aXI) lluousb(aX6)have bcco satiafid.

(b) The \_\_\_\_\_ of aldam & hall 001 an  
~~O F~~ my l\nds for p qlll > lioo of ddailed  
clmoings for a project applicable uoder  
Ibis scobllunt the rcquimneniJ of (aXII throuab  
(aX6)above have bccosatisfied.

(d) The rcquimneniJ of Ibis section that are 001  
othawix Rqllir<d by law or by the <bona may be  
waived iD whole or iD part by a....., (213) <  
or those n"nbcn of the \_\_\_\_\_ or aldamen pru<r  
and vocina- (Rev. Ords. **1 m.** § 2-365: Onl. No. S,  
8-12-74; On!. No. 102, § 4, 12-IS-75; Ord. No. V-195,  
9-22-98)

(c) The executive depatlmenl shall 001 fonnaJiy  
submit • project app cable \_\_\_\_\_ litis \_\_\_\_\_ 10





**RFQ ATTACHMENT G****CITY OF NEWTON – PUBLIC BUILDINGS DEPARTMENT  
BUILDING DESIGN AND CONSTRUCTION  
SUSTAINABILITY GUIDELINES**

#216-17

CITY OF NEWTONIN CITY COUNCIL

November 20, 2017

**ORDERED:**

That, in accordance with the recommendation of the Public Facilities Committee through its Chair Deborah J. Crossley, the City of Newton Public Buildings Department Building Design and Construction Sustainability Guidelines be and are hereby approved as follows:

**City of Newton – Public Buildings Department  
Building Design and Construction Sustainability Guidelines****A) Introduction and Summary**

In its decisions regarding the design and construction of new municipal buildings and the major renovation of existing municipal buildings, the City of Newton strives to reach the best balance among many goals. Key goals include those pertaining to building function, construction budget, operating costs, siting, appearance, maintenance requirements, longevity, and flexibility for future needs. This document is intended to better guide decision-makers who seek to achieve the best balance among these goals. They are recommendations and do not alter the existing jurisdiction or authority of the City Council.

- 1) These guidelines will be reviewed at least every three years by the Public Buildings Commissioner as technology developments and experience warrant.
- 2) Newton is a leader in the pursuit of a sustainable built environment. As it plans the construction and major renovation of buildings, it will look beyond minimum regulatory standards and consider intelligent building strategies that will contribute to substantial long term conservation of natural resources and operational economies. For each building design project, in addition to meeting code requirements, the City will evaluate all cost effective features that reduce energy and other operational costs and minimize environmental impacts through the use of sustainable building

materials and other strategies. This document will guide building siting, design, construction, and operations.

- 3) Newton's goal of a sustainable built environment is, to the extent possible, to
  - a. minimize the use of energy, water, and other resources
  - b. maximize the use of renewable sources to provide electricity and heat
  - c. maximize building longevity through rigorous design processes and quality-controlled construction
  - d. minimize environmental impacts of construction materials and methods
  - e. institute building operations and maintenance practices to minimize environmental impacts, achieve optimal performance and maximize occupant health and well-being.
- 4) In all new buildings and in the renovation of existing buildings the City strives to minimize building energy use. To attain that goal, the City has a building design and operation approach that will reduce life cycle costs, demonstrate significant improvements over previous designs, help define a path to net zero, and educate the community regarding feasibility and value. The path to net zero includes reducing building energy use as much possible and maximizing the use of on-site renewable power and heat.
- 5) Per Sec 5-54 of the City of Newton Ordinances, a Design Review Committee (DRC) has been established to coordinate the design review process, examine specifications and study the feasibility of any proposed public facility as submitted to it by the Mayor, City Council, or other public agency (e.g., the Public Buildings Department), and shall make recommendations on a range of solutions within realistic budgetary limits. The DRC may recommend that components of these guidelines be relaxed or modified to accommodate projects whose size or inherent nature make the component inapplicable.

## **B) Guidelines for Design Teams**

- 1) Design Process Requirements
  - a. Newton requires its design teams to use an integrated design approach at all phases of the design process, especially in schematics and design development. Because reduction in energy consuming features and HVAC loads may also reduce the size and cost of other parts of the project, and because choice of building materials may impact durability of construction, Newton requires its consultants to identify all building features that can be affected, when making energy efficiency related decisions. (See the attached commentary by Josh Morse, Newton's Buildings Commissioner, regarding "Integrated Design Approach".)
  - b. During all phases of design
    1. Refer to "lessons learned" list from Public Buildings Department
    2. Evaluate Value Engineering options using life cycle cost analysis with full consideration of the impact on other building systems and components.
    3. Value Engineering options that increase energy use require recommendation by the DRC
    4. Continuously consider, propose and evaluate sustainability options
    5. All budget estimates to include air infiltration testing

- c. During Conceptual Design Phase  
Provide a minimum of three options before completion of Conceptual Development Phase. These options will require creative interactive discussions among the design consultants. These analyses will address onsite alternative energy source options and consider funding sources beyond the established building budget. The City will explore budget sources for Options 2 and 3 before completion of Conceptual Design.

Option 1. Meets all codes and budget

Option 2. Reduces energy use to 30% below code requirements, with any budget implications

Option 3. Reduces energy use to net zero. If net zero is not feasible, show an option that reduces net energy use to the minimum feasible. Estimate budget implications.

- d. During Schematic Design Phase
1. At the start of Schematics, the City will direct the design team regarding the major options developed in Conceptual Design.
  2. The design team will develop options to improve sustainability within the parameters accepted in Conceptual Design. Evaluate life cycle costs of each option.
- e. During Design Development Phase
1. The design team will develop options to improve sustainability within the parameters accepted in Schematic Design. Evaluate life cycle costs of each option.
  2. Make provisions that enable future building modifications to improve sustainability.
- f. During Completion of Construction Drawings
1. Develop options for commissioning building envelope construction
  2. Develop options for air infiltration testing
- g. Modeling for Large Projects. For projects of 20,000 square feet or more of gross floor area the design team is responsible for Building Energy Use Modeling using the following approach:
1. Establish expected schedule of building use before completion of schematics
  2. As the design progresses, refine the model and complete energy model runs at Schematics, Design Development, and near completion of Construction Drawings. These models will be used to guide designers on how to achieve better energy conservation results and the impact of sustainability options being considered.
  - 3.

## 2) Certification and Ratings system requirements

- a. Design teams are responsible to meet the following requirements. While LEED is presently the preferred benchmarking system the DRC/ Public Buildings Department may consider alternative indices.
- b. Projects of less than 20,000 sf shall meet the requirements of the most current applicable US Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) Building Design and Construction (BD+C) building rating system at the level 'Certified' or better.

- c. Projects of 20,000 square feet or more of gross floor area shall meet the requirements of either:
  - 1. The most current applicable LEED BD+C building rating system at the level “Gold” or better. For twelve months from the time of adoption of a new version of LEED projects shall have the option to file under either the old or newly-adopted version.
  - OR
  - 2.
- d. To further support the design, construction, and operation of a project that meets Newton’s requirements for energy, water, indoor environmental quality, and durability, provide for implementing the LEED BD+C Enhanced Commissioning requirements.
- e. The Design Review Committee may recommend any municipal project conform to the certification system without actual participation in the formal process.

### **C) Guidelines for Designer Selection Committee**

Consider the comparative capabilities and experience of design teams, including sub-consultants, to respond to these Guidelines as part of the designer selection criteria. Compare design teams' familiarity with recent sustainability achievements of similar buildings.

### **D) Guidelines for Public Buildings Department**

- 1) Include these Guidelines in RFQs and contracts with Design Teams.
- 2) For all design projects, identify means to fund Life Cycle Cost-effective options that raise the cost higher than the established budget.
- 3) Maintain “lessons learned” list for use by design teams. Update this list after construction of each project and after one year of its occupancy. Semi-annually provide this list to the DRC. Among many other considerations, “lessons learned” shall include:
  - a. Evaluation of high performing windows used on recent projects
  - b. Evaluation of air barrier and insulating wall and roof assemblies used on recent projects
  - c. Evaluation of constructability of thermal break strategies in foundations and structural components on recent projects
  - d. Evaluation of HVAC and lighting approaches used on recent projects
  - e. Evaluation of building controls, management, monitoring and display functions
  - f. Evaluation of durability and performance of building materials
  - g. Evaluation of educational opportunities for users and the community
- 4) Two years after completion of projects larger than 20,000 sf, compare actual energy use to the building model, and include reasonable explanations for significant deviations, recommendations for performance improvements, and a plan to implement such improvements. Require re-measurement and review one year after substantial completion of any significant improvements.

Establish a formal “recommissioning” process to be completed by the third year of occupancy of buildings, and repeated every three years as follows:

- a. Projects of at least 10,000 sf of floor area but less than 20,000 sf shall meet the requirements of the most current applicable LEED Operations and Maintenance (O+M) building rating system at the level ‘Certified’ or better.
- b. Projects 20,000 sf or more shall meet the requirements of the most current applicable LEED O+M building rating system at the level ‘Silver’ or better.

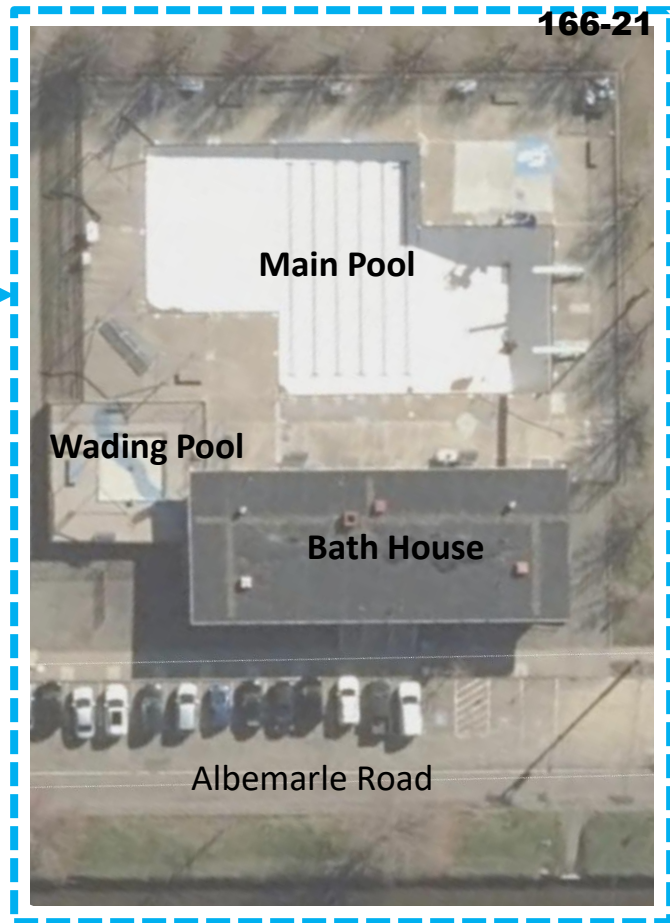
Under Suspension of Rules

Readings Waived and Approved by Voice Vote



Gath Pool - Generations of Splashing in the Sun!

- Newton Parks, Recreation & Culture (PRC) has managed Gath Pool since it was constructed nearly 60 years ago. Gath Pool is the sole public outdoor swimming pool for Newton's 85,000+ residents and non-resident guests. We welcome 30,000 guest entries per season.
- The pool is used daily, hosting swim lessons, summer camps, recreational and lap swimming, senior programs and the City's coed Bluefish Swim Team made up of 200 members ages 5-18. Gath Pool also hosts the annual Summer Suburban Swim League regional championships with teams from 12 nearby communities and over 5,000 visitors.
- The 60-year-old pools, deck, systems and equipment are past end-of-life and deteriorating; the pool leaks significantly; pool deck grading and access to pool need accessibility improvements.
- PRC and co-sponsor Public Buildings, with the support of the Friends of Albemarle, are pursuing a contract for an existing conditions study that will include a robust examination of the facility's current conditions, develop annotated improvements along with costs for a phased renovation of both the main and wading pools.
- The pool is a community destination where families, seniors, and lap swimmers can cool off and get exercise.



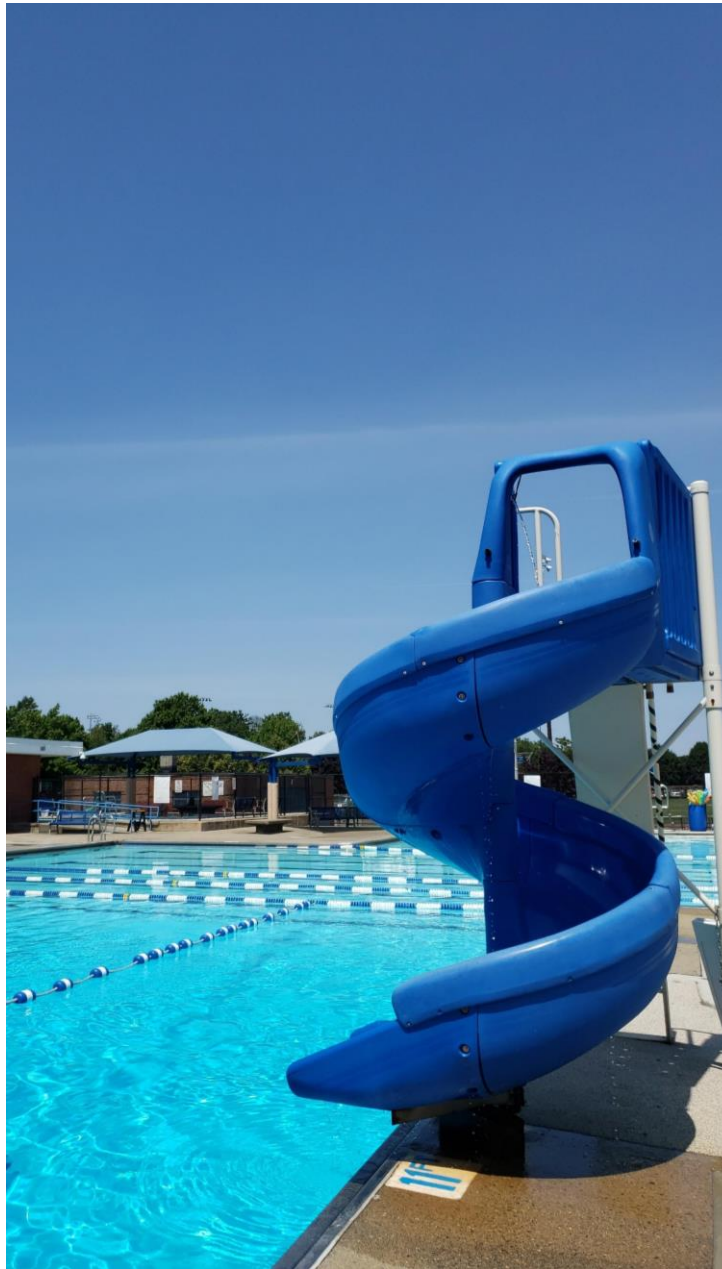
**Gath Pool Site Location:**

- Located within the 24.9-acre Russ Halloran Sports and Recreation Complex AKA Albemarle Park
- Bound by ball fields, sport courts and Albemarle Road





THE  
HARRY N. GATH, JR.  
MEMORIAL  
SWIMMING POOL  
DEDICATED JUNE 1966



166-21





THE  
HARRY N. GATH, JR.  
MEMORIAL  
SWIMMING POOL  
DEDICATED JUNE 1966



### State of Equipment and Decking:

- Most equipment, while functional, is at end of life and in need of imminent replacement:
  - Filtration components including high-rate sand filters
  - Pool pumps
  - Chlorine storage tanks and pumps
  - Piping, valves and plumbing lines
  - Electronic Pool chemical controller
- Previous pool, deck and equipment improvements to date:
  - *Wading Pool Chlorine Injection System Upgrade (~1980)*
  - *Automatic Water Treatment System (1998)*
  - *3 Shade structures and additional seating(2007)*
  - *Water Slide Installation (2007)*
  - *Wading Pool Alligator Spray Feature (2010)*
  - *Pool shell and deck crack repairs and refinish (2013)*
  - *Wading pool resurfacing (2016-2017)*

Despite attempts at finding the source of the pool leak, Gath continues to lose large amounts of water per day. Pool contractors believe the loss is coming from the gutter system and/or pool shell expansion joints. Dye test and isolation test have been inconclusive in determining exact cause.

In Summer 2019, the pool lost an average of 18,000 gallons per day. At that rate, it means the entire volume of water is turned over every ~18 days.

Since pool water is required to meet minimum chemical standards set by the State and the National Swimming Pool Foundation, the water loss also drives up costs of water treatment and makes balancing more difficult.

The water does not warm up.

# **GATH MEMORIAL POOL EXISTING FACILITIES STUDYSUMMARY**

**166-21**

## ***\$60,000.00 Funding request is intended to cover the following:***

### Task 1: Site visits & meetings

- Conduct site visits and develop familiarity with the facility, programs, neighborhood, City needs
- Conduct an existing conditions survey
- Attend meetings with the Project Manager, the Parks, Recreation & Culture Department, and Parks & Recreation Commission, Community Preservation Committee, Conservation Commission and other appropriate City staff, committees, and community
- Review Information provided by the City

### Task 2: Investigate and identify source of pool leak/Provide permanent solution

- Should the 2021 outdoor swim season be operational, invasive investigation work may not be performed between June 1 and Labor Day
- Perform geotechnical borings of pool shell and concrete deck as appropriate
- Perform and provide findings from CCTV inspection of piping, main drain, and gutter system
- Provide options for solutions(s) and related cost(s)

### Task 3: Prepare and submit draft and final Existing Conditions Report, Options and Costs

- Existing Conditions site plan
- Identify Americans with Disabilities Act (ADA) & Massachusetts Architectural Access Board (CMR 521.00) compliance needs
- Identify Massachusetts Department of Public Health (MDPH) compliance needs
- Identify and provide options to replace and options to modify/ repair existing pool shell, deck, equipment, and furnishings
- Provide conceptual costs and plans of each option as appropriate
- Provide projected costs for replacement of all equipment and furnishings
- Provide projected cost differential of modifying pool configuration allowing for two (2) additional lap lanes. Both as new construction and modification of existing
- Provide projected operating costs for the new systems

## GATH POOL RENOVATION PHASING AND TIMELINE

### Phase I:

- Existing facilities Study

3-4 Months

### Phase II:

- Schematic Design Phase/Site Plan Approval

6-8 months

### Phase III:

- Design Development/Construction Documents/Bidding Phases:

10-12 months

### Phase IV:

- Construction Administration and Close-Out Phases:

TBD



Potential programming space improvements:

- Wading pool with additional spray and splash features
- Accessibility
- Reconfigured and expanded shade structures
- Two additional lap lanes
- Smart and sustainable mechanical equipment
- Overall visitor experience

**GATH MEMORIAL POOL EXISTING FACILITIES STUDYSUPPORTERS**

- Mayor Ruthanne Fuller
- Newton Parks and Recreation Commission
- Friends of Albemarle
- Friends of Heartbreak Hill Park
- Councilor Emily Norton
- Councilor Andrea Kelley
- Councilor Maria Scibelli Greenberg
- Councilor John Oliver
- Councilor Pamela Wright
- Numerous Newton Residents



# Questions?



## Memorandum

To: Members of the Finance Committee

From: Councilor Norton

Subject: 49-20 (2) – Improving leaf blower enforcement – proposed amendment to the Programs and Services Committee recommendation to maintain police co-enforcement with ISD

Date: May 7, 2021

The Programs and Services version of the proposed amendments to the noise ordinance relating to leaf blowers is a positive step forward, and having the revised ordinance take effect on Labor Day allows time for educating both landscapers and property owners alike. Having landscapers register that they will use compliant equipment and identify themselves on their trucks, and having them be responsible for their employees – rather than ticket the employees - are all positive improvements in the current ordinance.

I appreciate that the Programs and Services Committee was interested in improving the City's level of enforcement of our leaf blower ordinance and for that reason is proposing moving enforcement to Inspectional Services (ISD). However, I am very concerned that that will actually reduce enforcement further. Effective enforcement requires rapid response. While ISD can help with landscaper registration, it does not have the ability of the Newton Police Department (NPD) to respond swiftly across Newton, much less off-hours or on weekends and holidays.

We have a new Police Chief coming on board who places a value on enforcing quality of life issues, as he communicated to us during our meeting with him on May 6. I believe we should give our new Chief a chance to improve enforcement of this ordinance. In the long term as part of our police reform I would like to see this function carried out by unarmed "quality of life" officers, who could also enforce other quality of life issues such as the noise ordinance, sidewalk snow ordinance and more, but even in that case the enforcement function would remain within NPD.

I will therefore offer the attached language to continue the NPD as a co-enforcer as an amendment the draft leaf blower ordinance modifications approved by the Program and Services Committee, recognizing that this important issue of co-enforcement will likely be resolved finally at the full Council.

Thank you.

Cc: City Council, Jonathan Yeo

*Proposed Amendment Programs and Services Draft Amendments to continue Police Department as co-enforcer for leaf blowers (with thanks to Ms. Lawlor of the Law Department)*

**1. Make no change to Sec.20-13 (l) so it continues to read as follows:**

(l) *Enforcement.* The Newton Police Department and the Inspectional Services Department shall be responsible for enforcement of this ordinance. Each department shall document the disposition of all complaints by written report available to the public. The written report shall clearly indicate whether the complaint resulted in a warning or fine. If a warning or fine was not issued for a complaint, the responding city employee shall clearly indicate the reason.

**2. Amend Sec. 17-23(d) as follows:**

Add the following language (redline underscored) to the provisions of Sec. 17-23 (d):

(d) POLICE DEPARTMENT: City police officers shall be authorized to issue written notice of the following violations:

..... FINE Sec. 20-13.

Noise Control, any section except Sec. 20-13 (h)(6)

( ) First offense in calendar year ..... Warning

( ) Second offense in calendar year ..... \$100.00

( ) Third offense in calendar year ..... \$200.00

( ) Fourth or subsequent offense in calendar year ..... \$300.00

Sec. 20-13 (h)(6) Commercial leaf blower operator– operation of leaf blower without a permit ..... \$300.00

Move the definition of leaf blower from section 20-13 (d) to section 20-13 (h) and amend the provisions of Sections. 20-13 (h), (j) and (n) as follows:

(h) *Restrictions on use of leaf blowers.*

Notwithstanding the provisions of sections 20-13 (f) and (g), ~~on or after January 1, 2017~~ no property owner or property manager or other person in control of a property shall authorize or permit the operation of leaf blowers on property under their control; no contractor or commercial landscaper, including a City contractor or employee, shall use or operate or authorize or permit any agent or employee to use or operate a leaf blower; nor shall any person, including any City employee or contractor, shall use or operate a leaf blower within the City unless they do so in compliance with the provisions of this section. The following definitions shall apply to this section:

*Leaf blower: any portable motorized device, whether carried or pushed, whether powered by gasoline or other fuel, electricity or battery, used in any landscape or property construction or maintenance activity, for the purpose of blowing, dispersing, redistributing, or removing dust, dirt, leaves, grass or plant clippings, litter or other debris.*

*Commercial leaf blower operator: any individual, entity or organization, including a contractor or commercial landscaper, that receives compensation for services that include operation of a leaf blower.*

(1) *Summer Ban.* No leaf blower may be operated from Memorial Day through Labor Day in each year, except that one 65 dB(A) electric or battery powered leaf blower per lot may be used during this period subject to the permitted hours of use specified in (2) below. At all other times leaf blowers may be operated subject to the following provisions:

(~~1~~2) Permitted hours of use. Leaf blowers may be operated only during the following times:

*Monday – Friday:* 7:00 a.m. – 5:00 p.m., except that the City of Newton, through its parks, recreation and culture department, shall be allowed to use leaf blowers prior to 7:00 a.m. for the sole purpose of maintaining city village centers.

*Saturday:* 8:00 a.m. – 5:00 p.m.

*Sundays and legal holidays:* prohibited except for operation by a resident of the property on which the leaf blower is operated between 9:30 a.m. and 5:00 p.m.; and except for operation of leaf blowers on contiguous lots under single ownership that total a minimum of thirty acres used for institutional or recreational purposes between 9:30 a.m. and 12:00 p.m.

(~~3~~2) Only leaf blowers meeting the following criteria are permitted for use:

A. Leaf blowers must be manufactured after January 1, 2005 for EPA Class 4 engines and after January 1, 2008 for EPA Class 5 engines;

B. Leaf blowers must bear an affixed manufacturer’s label indicating the model number of the leaf blower;

C. Leaf blowers must bear an affixed manufacturer's label documenting a noise rating of 65 dB(A) or less; and

D. Leaf blowers may only be used with any muffler, full extension tube and sound attenuating devices supplied by the manufacturer of the leaf blower. Non-factory modifications are not permitted.

(43) During times of emergency caused by a storm or other special circumstance, the Mayor or his designee may temporarily suspend application of all or a portion of this section for purposes of cleaning up from such storm or other special circumstance.

(54) The provisions of section 20-13 (i) shall not apply to leaf blower operation.

(6) Any violation of the restrictions contained in sections 20-13 (h)(1) through (h)(6) above shall be subject to the penalties set forth in sections 20-13 (k) and (m) below, provided that the first offense by any person subject to this section shall be subject to a warning only, and provided further that a violation committed by a commercial operator holding a valid permit and in good standing on the public list provided for in section (7) A, shall be enforced against the commercial operator only, and not against the property owner, manager or person in control of the property upon which the violation has occurred.;

(7) Commercial Leaf Blower Operators – permit required.

A. No commercial leaf blower operator may operate a leaf blower or permit or authorize an agent or employee to operate a leaf blower in the City of Newton without an annual permit from the commissioner of inspectional services, who shall provide application forms; who may establish rules governing the display of permits on permittee's vehicles; and who shall maintain a public list of commercial leaf blower operators who hold a valid permit under this section. ~~The fee for such permit shall be \$1050.00.~~ The commissioner may set a reasonable fee for such permit. Such application form shall require the name and telephone number of a contact and shall require the applicant to certify under pains and penalties of perjury that they have read and understand this ordinance pertaining to leaf blower restrictions, and that they will inform all employees of the restrictions. If a violation of any leaf blower restriction under this ordinance is committed by an employee or agent of and while performing work for said commercial leaf blower operator, the commercial leaf blower operator shall be responsible for the violation and the employee or agent shall not be individually liable.

B. A commercial leaf blower operator shall ensure that its name, address, telephone number and its commercial leaf blower permit number are clearly visible on any vehicle it uses to conduct business in Newton.

C. In addition to the penalties set forth in sections (k) and (m) below, the permit of any commercial leaf blower operator who has received two or more notices of violation of leaf blower restrictions by it or its employees or agents in a 12-month period shall be suspended for a period of sixty days. The permit of any commercial leaf blower operator whose permit has been suspended two times shall be revoked, and the operator shall be ineligible for a permit for a

period of one year. The operator's name shall be removed from the public list during any period of suspension or revocation. The penalty for operating a leaf blower without a commercial operator permit shall be \$300.00.

D. The commissioner of inspectional services may promulgate rules and regulations to implement this section.

(i) *Permits for exemptions from this ordinance and for extensions of time to comply with this ordinance.*

(1) The mayor or his designee may grant a permit for any activity otherwise forbidden by the provisions of this ordinance upon a determination by the mayor or his designee that compliance in the conduct of such activity would cause undue hardship on the person or persons conducting such activity or on the community, taking into account: (i) the extent of noise pollution caused by not requiring such compliance; and (ii) whether reasonable efforts have been made to abate the noise. The mayor or his designee shall establish appropriate procedures for the processing of requests for such permits, including such hearings as the mayor or his designee deems appropriate. In granting any such permit, the mayor or his designee may impose such appropriate conditions as he deems necessary pursuant to this section. Copies of all such permits shall be filed with the clerk of the city council promptly after issuance. Promptly after issuance, copies of all such permits shall be filed with the clerk of the city council and to each ward city councilor for the affected ward.

(2) The mayor or his designee may extend to a specified date the time for compliance with this ordinance in the case of any particular activity with respect to which a determination is made that such extension is necessary to provide a reasonable opportunity for such activity to be brought into compliance. No such extension shall be granted which has the effect of exempting such activity from compliance with this ordinance. The mayor or his designee shall establish appropriate procedures for the processing of requests for such extensions of time, including such hearings as the mayor or his designee deems appropriate.

(j) *Judicial Review.* Any person aggrieved by the grant or denial of a permit pursuant to subsection (h)(1) or an extension of time pursuant to subsection (h)(2), or a suspension or revocation of a commercial leaf blower operator permit pursuant to subsection (h)(7) may seek relief therefrom by a civil action in any court of competent jurisdiction as provided by the laws of the Commonwealth of Massachusetts.

(k) *Penalties.* Violation of any of the provisions of this section shall constitute a misdemeanor and any person, upon conviction of such violation, shall be fined an amount not to exceed three hundred dollars (\$300.00). Each day that such violation continues shall be considered to be a separate offense.

(l) *Enforcement.* The Newton Police Department and the Inspectional Services Department shall be responsible for enforcement of this ordinance, provided that the Newton Police Department shall not be responsible for enforcement of leaf blower restrictions contained in Sec. 20-13(h). Each department shall document the disposition of all complaints by written report available to the public. The written report shall clearly indicate whether the complaint resulted in a warning or fine. If a warning or fine was not issued for a complaint, the responding city employee shall clearly indicate the reason.

(m) *Non-criminal disposition.* In addition to the penalties set forth in subsection (j), where non-criminal disposition of specified sections of this ordinance by civil fine has been provided for in sections 17-22 and 17-23 of the Revised Ordinances, as amended, pursuant to the authority granted by G.L. c. 40, sec. 21D, said violations may be enforced in the manner provided in such statute. The civil penalty for each such violation is set out in Sections 17-23(c) and 17-23(d).

(n) In the event the person in violation of section 20-13 (h) pertaining to leaf blower use is a commercial leaf blower operator~~contractor~~, the property owner shall be notified of the violation and of any warning or other enforcement issued to the operator~~contractor~~.

(o) *Severability*. If any provision(s) of this ordinance or the application of such provision(s) to any person or circumstances shall be held invalid, the validity of the remainder of this ordinance and the applicability of such provision to other persons or circumstances shall not be affected thereby. (Ord. No. R-331, 6-20-83; Ord. No. T-62, 12-4-89; Ord. No. T-200, 12-16-91; Ord. No. V-286, 3-6-00; Ord. Z-32, 7-14-08; Ord. No. Z-78, 02-22-11; Ord. No. Z-104, 04-02-12; Ord. No. A-100, 01-17-17; Ord. No. B-53, 03-02-20)

**Cross reference**—Sounding warning devices on motor vehicles, § 19-72; noise by hawkers and peddlers, § 20-75.

Add the following language (redline underscored) to the provisions of Sec. 17-23 (c):

c) DEPARTMENT OF INSPECTIONAL SERVICES: The commissioner of inspectional services, and/or his or her designee, and building inspectors of the department of inspectional services shall be authorized to issue written notice of the following violations:

..... FINE  
Sec. 20-13. Noise Control, any section except Sec. 20-13 (h)(6)

( ) First offense in calendar year ..... Warning

( ) Second offense in calendar year ..... \$100.00

( ) Third offense in calendar year ..... \$200.00

( ) Fourth or subsequent offense in calendar year ..... \$300.00

Sec. 20-13 (h)(6 ) Commercial leaf blower operator – operation of leaf blower without a permit ..... \$300.00



Add the following language (redline underscored) to the provisions of Sec. 17-23 (d):

(d) POLICE DEPARTMENT: City police officers shall be authorized to issue written notice of the following violations:

..... FINE

Sec. 20-13. Noise Control, any section except Sec. 20-13 (h) (6)

( ) First offense in calendar year ..... Warning

( ) Second offense in calendar year ..... \$100.00

( ) Third offense in calendar year ..... \$200.00

( ) Fourth or subsequent offense in calendar year ..... \$300.00

~~Sec. 20-13 (h) (6) Commercial leaf blower operator – operation of leaf blower without a permit~~ ..... \$300.00

CITY COUNCIL

# \_\_\_\_\_

CITY OF NEWTON

DOCKET REQUEST FORM

**DEADLINE NOTICE: Council Rules require items to be docketed with the Clerk of the Council NO LATER THAN 7:45 P.M. ON THE MONDAY PRIOR TO A FULL COUNCIL MEETING.**

To: Clerk of the City Council

Date: 4/22/21

From (Docketer): Josh Krintzman

Address: 77 Crehore Drive

Phone: 6174488527

E-mail: krintzman@comcast.net

Additional sponsors: Susan Albright

1. Please docket the following item (it will be edited for length if necessary):

Increasing the fine for failure to leash a dog under section 3-26 and the off leash dog program under section 3-30, as well as implementing a separate penalty for a second and third offense of the same ordinance

2. The purpose and intended outcome of this item is:

- |  |  |
|--|--|
| <input type="checkbox"/> Fact-finding & discussion             | <input checked="" type="checkbox"/> Ordinance change |
| <input type="checkbox"/> Appropriation, transfer,              | <input type="checkbox"/> Resolution                  |
| <input type="checkbox"/> Expenditure, or bond authorization    | <input type="checkbox"/> License or renewal          |
| <input type="checkbox"/> Special permit, site plan approval,   | <input type="checkbox"/> Appointment confirmation    |
| <input type="checkbox"/> Zone change (public hearing required) | <input type="checkbox"/> Other: _____                |

3. I recommend that this item be assigned to the following committees:

- |   |   |  |
|---|---|--|
| <input checked="" type="checkbox"/> Programs & Services | <input checked="" type="checkbox"/> Finance | <input type="checkbox"/> Real Property     |
| <input type="checkbox"/> Zoning & Planning              | <input type="checkbox"/> Public Safety      | <input type="checkbox"/> Special Committee |
| <input type="checkbox"/> Public Facilities              | <input type="checkbox"/> Land Use           | <input type="checkbox"/> No Opinion        |

4. This item should be taken up in committee:

Immediately (Emergency only, please). Please state nature of emergency:  
\_\_\_\_\_

- As soon as possible, preferably within a month
- In due course, at discretion of Committee Chair
- When certain materials are made available, as noted in 7 & 8 on reverse
- Following public hearing

PLEASE FILL OUT BOTH SIDES

5. I estimate that consideration of this item will require approximately:

- |  |  |
|--|--|
| <input type="checkbox"/> One half hour or less | <input checked="" type="checkbox"/> Up to one hour             |
| <input type="checkbox"/> More than one hour    | <input type="checkbox"/> An entire meeting                     |
| <input type="checkbox"/> More than one meeting | <input type="checkbox"/> Extended deliberation by subcommittee |

6. The following people should be notified and asked to attend deliberations on this item. (Please check those with whom you have already discussed the issue, especially relevant Department Heads):

City personnel

Citizens (include telephone numbers/email please)

- |  |                                |
|--|--------------------------------|
| <input checked="" type="checkbox"/> Commissioner Nicole Banks _____        | <input type="checkbox"/> _____ |
| <input checked="" type="checkbox"/> Police Department representation _____ | <input type="checkbox"/> _____ |
| <input checked="" type="checkbox"/> Marie Lawlor _____                     | <input type="checkbox"/> _____ |
| <input type="checkbox"/> _____   | <input type="checkbox"/> _____ |
| <input type="checkbox"/> _____   | <input type="checkbox"/> _____ |

7. The following background materials and/or drafts should be obtained or prepared by the Clerk’s office prior to scheduling this item for discussion:

8. I  have or  intend to provide additional materials and/or undertake the following research independently prior to scheduling the item for discussion. \*

*(\*Note to docketer: Please provide any additional materials beyond the foregoing to the Clerk’s office by 2 p.m. on Friday before the upcoming Committee meeting when the item is scheduled to be discussed so that Councilors have a chance to review all relevant materials before a scheduled discussion.)*

Please check the following:

9.  I would like to discuss this item with the Chairman before any decision is made on how and when to proceed.
10.  I would like the Clerk’s office to contact me to confirm that this item has been docketed. My daytime phone number is:
11.  I would like the Clerk’s office to notify me when the Chairman has scheduled the item for discussion.

Thank you.

\_\_\_\_\_  
Signature of person docketing the item

[Please retain a copy for your own records]

CITY COUNCIL

# \_\_\_\_\_

CITY OF NEWTON

DOCKET REQUEST FORM

**DEADLINE NOTICE: Council Rules require items to be docketed with the Clerk of the Council NO LATER THAN 7:45 P.M. ON THE MONDAY PRIOR TO A FULL COUNCIL MEETING.**

To: Clerk of the City Council

Date: 4/22/21

From (Docketer): Josh Krintzman

Address: 77 Crehore Drive

Phone: 6174488527

E-mail: krintzman@comcast.net

Additional sponsors: Susan Albright

1. Please docket the following item (it will be edited for length if necessary):

An increase in the canine registration fee to help support pet waste disposal efforts across the city

2. The purpose and intended outcome of this item is:

- Fact-finding & discussion
- Appropriation, transfer,
- Expenditure, or bond authorization
- Special permit, site plan approval,
- Zone change (public hearing required)
- Ordinance change
- Resolution
- License or renewal
- Appointment confirmation
- Other: \_\_\_\_\_

3. I recommend that this item be assigned to the following committees:

- Programs & Services
- Zoning & Planning
- Public Facilities
- Finance
- Public Safety
- Land Use
- Real Property
- Special Committee
- No Opinion

4. This item should be taken up in committee:

Immediately (Emergency only, please). Please state nature of emergency:  
\_\_\_\_\_

- As soon as possible, preferably within a month
- In due course, at discretion of Committee Chair
- When certain materials are made available, as noted in 7 & 8 on reverse
- Following public hearing

PLEASE FILL OUT BOTH SIDES

5. I estimate that consideration of this item will require approximately:

- |  |  |
|--|--|
| <input type="checkbox"/> One half hour or less | <input checked="" type="checkbox"/> Up to one hour             |
| <input type="checkbox"/> More than one hour    | <input type="checkbox"/> An entire meeting                     |
| <input type="checkbox"/> More than one meeting | <input type="checkbox"/> Extended deliberation by subcommittee |

6. The following people should be notified and asked to attend deliberations on this item. (Please check those with whom you have already discussed the issue, especially relevant Department Heads):

City personnel

Citizens (include telephone numbers/email please)

- |   |                                |
|---|--------------------------------|
| <input checked="" type="checkbox"/> Commissioner Nicole Banks _____ | <input type="checkbox"/> _____ |
| <input checked="" type="checkbox"/> Maureen Lemieux _____           | <input type="checkbox"/> _____ |
| <input checked="" type="checkbox"/> Marie Lawlor _____              | <input type="checkbox"/> _____ |
| <input type="checkbox"/> _____                                      | <input type="checkbox"/> _____ |
| <input type="checkbox"/> _____                                      | <input type="checkbox"/> _____ |

7. The following background materials and/or drafts should be obtained or prepared by the Clerk’s office prior to scheduling this item for discussion:

8. I  have or  intend to provide additional materials and/or undertake the following research independently prior to scheduling the item for discussion. \*

(\*Note to docketer: Please provide any additional materials beyond the foregoing to the Clerk’s office by 2 p.m. on Friday before the upcoming Committee meeting when the item is scheduled to be discussed so that Councilors have a chance to review all relevant materials before a scheduled discussion.)

Please check the following:

9.  I would like to discuss this item with the Chairman before any decision is made on how and when to proceed.
10.  I would like the Clerk’s office to contact me to confirm that this item has been docketed. My daytime phone number is:
11.  I would like the Clerk’s office to notify me when the Chairman has scheduled the item for discussion.

Thank you.

\_\_\_\_\_  
Signature of person docketing the item

[Please retain a copy for your own records]

**Nathan Giacalone**

---

**From:** Susan Albright  
**Sent:** Thursday, April 15, 2021 3:19 PM  
**To:** Nathan Giacalone  
**Subject:** proposal to raise the fines for failure to have a dog onleash

**[DO NOT OPEN links/attachments unless you are sure the content is safe. ]**

**Nathan would you add this to the packet for this docket item**

**Based on research provided by Mr Giacalone we can see that many communities have a graduated fine for having a dog off-leash; a lower fine for a first offense going up for the 2nd and subsequent offenses. Watertown, Arlington, Winchester, Boston, Framingham, Lynn, Dedham, Westwood and Hopkington all have this graduated approach to the fine for an off-leash dog.**

**My proposal is to keep \$50 as the first offense and raise the second offense to \$75, and raise the third and subsequent offenses in a calendar year to \$100.**

**These fines would apply to off-leash dogs in either non-off-leash areas or in off-leash areas, i.e the fine would apply to dogs without an off-leash dog medallion but found off-leash in an off-leash dog park.**

**I look forward to a discussion on this matter at our meeting.**

--  
**Susan Albright, President  
Newton City Council  
Councilor-at-Large Ward 2**

<b>Dog Leash and Licensing Fees Comparison Chart</b>							
City/Town	Ordinance Location	Leash Law Summary	Leash Fines	License Law Summary*	License Fees	License Fines	Enforcement Powers
				<i>*State law mandates that all dogs six months of age and older must be annually licensed through a rabies vaccination. This license is demonstrated with a medallion to be worn by the dog at all times.</i>	<i>*State law does not address the license fee.</i>	<i>*The fine for violation of the state dog licensing law is not more than \$100.</i>	<i>*State law does not address dog license enforcement.</i>
<b>Newton</b>	Sec. 3-22, 3-23, 3-30; <a href="http://www.newtonma.gov/civicax/filebank/documents/45812">http://www.newtonma.gov/civicax/filebank/documents/45812</a>	All dogs must be leashed in public and not allowed to roam free. They are also banned from "tot lots" whether leashed or not. Dogs may go unleashed in designated off-leash areas subject to certain conditions.	\$50 for each offense	All dogs older than 6 months must be regularly vaccinated against rabies on an annual basis.	\$15 or \$10 if dog is spayed/neutered	\$50 for each offense	Dog Officer, Parks, Recreation and Culture Commissioner or their designee
<b>Cambridge</b>	6.04.020, 6.04.030, 6.04.040, 6.04.050, 6.04.060, 6.08.010, 6.04.110, 6.04.120; <a href="https://library.municode.com/ma/cambridge/codes/code_of_ordinances?nodeId=TIT6AN_CH6.04ANCORE">https://library.municode.com/ma/cambridge/codes/code_of_ordinances?nodeId=TIT6AN_CH6.04ANCORE</a>	All dogs must be leashed in public.	\$25 or each offense plus costs for care and confinement	All dogs older than 6 months must be regularly vaccinated against rabies on an annual basis.	\$30 or \$10 if dog is spayed/neutered	\$50 for each offense	Director, Animal Control Officers, Park Rangers, Police Officers, and the Director of the Animal Commission and their designee
<b>Wellesley</b>	47.4, 47.5, 47.6, 47.7, 47.8, 47.9; <a href="https://wellesleyma.gov/DocumentCenter/View/464/Article-47---Animal-Control-Regulations-PDF">https://wellesleyma.gov/DocumentCenter/View/464/Article-47---Animal-Control-Regulations-PDF</a>	Dogs must be on a leash of no-more than 7 feet when not on private property of their owner or with permission.	Maximum penalty is \$300 with each day a violation exists constituting a separate violation.	Dogs older than 6 months must be regularly vaccinated	\$20 or \$12 if the dog is spayed/neutered	Maximum penalty is \$300 with each day a violation exists constituting a separate violation.	Animal Control Officer annually appointed by the Board of Selectmen
<b>Brookline</b>	Article 8.6 (all sections); <a href="https://www.brooklinema.gov/DocumentCenter/View/13635/Brookline-Town-By-Laws-PDF">https://www.brooklinema.gov/DocumentCenter/View/13635/Brookline-Town-By-Laws-PDF</a>	Dogs must be leashed in public when appropriate and refrain from prohibited behavior. They may be off-leash in designated areas but are still subject to certain behavior regulations.	\$25 for the first violation, \$50 for the second, and \$75 for third and subsequent offenses	Dogs must be licensed in accordance with state law (6 months and older)	\$20	\$20 late filing fee	Police officers through the dog officer.
<b>Lexington</b>	Chapter 9, sec 1-3; <a href="https://ecode360.com/10531591">https://ecode360.com/10531591</a>	All dogs must be properly leashed in public. They are allowed off-leash in certain areas of conservation land during specified times Monday through Friday.	Up to \$50 or state maximum, whichever is higher	All dogs older than 6 months must be regularly licensed. An owner must renew the license within 21 days of being notified that a previously issued license has expired.	\$20 or \$15 if the dog is spayed/neutered	All license late fees are not to exceed \$50	
<b>Needham</b>	Section 3.7; <a href="https://www.needhamma.gov/DocumentCenter/View/1859/General-By-Laws-2019-PDF?bidId=">https://www.needhamma.gov/DocumentCenter/View/1859/General-By-Laws-2019-PDF?bidId=</a>	All dogs must be leashed outside of their owner's property.	\$25 for first offense, \$50 for subsequent offenses	Unvaccinated dogs brought into Needham must be licensed and vaccinated within thirty days or reaching six months of age, whichever comes later.	\$25 or \$20 if the dog is spayed/neutered	No more than \$100.	Animal control officer
<b>Waltham</b>	Chapter 3, Article II; <a href="https://ecode360.com/26931073">https://ecode360.com/26931073</a>	All dogs must be leashed when in public on a restraint no longer than 10 feet in length.	\$25 for first offense, \$50 for subsequent offenses	All dogs older than 6 months must be licensed annually	\$10 or \$6 if the dog is spayed/neutered	\$25 for no license, \$50 for no rabies vaccination	Dog officer and their designee, the Chief of Police is involved in additional hearings and investigations.
<b>Watertown</b>	Chapter 91; <a href="https://codelibrary.amlegal.com/codes/watertown/latest/watertown_ma/0-0-0-5991">https://codelibrary.amlegal.com/codes/watertown/latest/watertown_ma/0-0-0-5991</a>	Dogs must be leashed when not in designated off-leash areas.	\$25 for first offense, \$100 for second offense, \$200 for subsequent offenses.	All dogs older than 6 months must be licensed annually. Additionally, they must either be spayed/neutered or a statement explaining the alternative decision.	\$10, \$6 for persons aged 60 and over.	\$25 for first offense, \$100 for second offense, \$200 for subsequent offenses. Dogs not displaying their license medal are subject to impoundment until the license is attained.	Animal Control Officer, animal control agent, any Watertown Police officer, Director of Parks and Recreation and their designee.
<b>Arlington</b>	Title IV Article I Section 8; Title VIII Article 2 Sections 1-6 (See Sec. 2 and 4); <a href="https://www.arlingtonma.gov/home/showdocument?id=27200">https://www.arlingtonma.gov/home/showdocument?id=27200</a>	All dogs must be leashed except when in designated off-leash areas. In these areas, a handler may have up to two unleashed dogs under their control.	\$75 for first offense, \$100 for second offense, \$150 for subsequent offenses.	All dogs older than 6 months must be licensed. No license will be granted to an owner convicted of animal cruelty.	\$20 or \$15 if the dog is spayed/neutered	\$50 for failure to comply	Dog officer, Arlington Police officers,

<b>Winchester</b>	Chapter 10, Sec 1-7; <a href="https://winchester.town.codes/Code/10">https://winchester.town.codes/Code/10</a>	All dogs must be leashed unless otherwise appropriate. Any dog found in violation of the leash ordinance will be confined by the dog officer.	\$40 for first offense, \$50 for second offense, \$60 for subsequent offenses within one calendar year	No dog older than 6 months shall be kept without a rabies license	\$20 or \$15 if the dog is spayed/neutered	\$40 for first offense, \$50 for second offense, \$60 for subsequent offenses within one calendar year	Dog officer and the police department
<b>Reading</b>	Article 8, Section 8.8 <a href="https://www.readingma.gov/sites/g/files/vyhlif1116/ff/uploads/2019-05_general_bylaw.pdf">https://www.readingma.gov/sites/g/files/vyhlif1116/ff/uploads/2019-05_general_bylaw.pdf</a> ; License Fees: <a href="https://www.readingma.gov/town-clerk/pages/dog-licenses">https://www.readingma.gov/town-clerk/pages/dog-licenses</a>	Dogs must be leashed in public when not on private property. The dog may be within effective voice control when within the Town Forest or on other conservation lands if allowed by Conservation Commission rules.		All dogs older than 6 months must be licensed. License fees are set annually by town meeting, but spayed/neutered fees must always be cheaper and no fee shall be charged to an owner over 70.	\$20 or \$10 if dog is spayed/neutered	\$10 fine if not licensed by April 1 and \$5 for each subsequent month. There is a \$50 fine if still unlicensed.	Animal Control Officer appointed by the Town Manager to enforce this ordinance along with other duties determined by the Town Manager or their designee.
<b>Boston</b>	Chapter XVI, Section 16-1.9, and 16-1.9c: <a href="http://library.amlegal.com/nxt/gateway.dll/Massachusetts/boston/chapterxviprohibitionspenaltiesandpermit?f=templates\$fn=default.htm\$3.0\$vid=amlegal:boston_ma\$anc=0-0-0-1449">http://library.amlegal.com/nxt/gateway.dll/Massachusetts/boston/chapterxviprohibitionspenaltiesandpermit?f=templates\$fn=default.htm\$3.0\$vid=amlegal:boston_ma\$anc=0-0-0-1449</a>	Dogs must be leashed when in public.	First offense in calendar year is a written warning, followed by \$50, \$60, and \$100 for each subsequent offense for the remainder of the calendar year	All dogs older than 6 months must be licensed annually.	\$30 or \$15 if the dog is spayed/neutered		Boston Police Department and the Animal Care and control Unit of the Parks and Recreation Department.
<b>Somerville</b>	Chapter 3, Sec 3-5 - 3-30, Article II: <a href="https://library.municode.com/ma/somerville/codes/code_of_ordinances?nodeId=PTIIICOOOR_CH3AN">https://library.municode.com/ma/somerville/codes/code_of_ordinances?nodeId=PTIIICOOOR_CH3AN</a> Licenses found at: <a href="https://www.somervillema.gov/departments/programs/dog-licensing-vaccination-and-ownership">https://www.somervillema.gov/departments/programs/dog-licensing-vaccination-and-ownership</a>	Dogs must be leashed outside of the owner's private property and in designated off-leash areas, in which they must still follow posted rules.	\$50 for each offense	All dogs older than 6 months must be licensed annually.	\$30 or \$20 if dog is spayed/neutered	\$50	Police, animal control, commissioner of public works, inspectional services
<b>Framingham</b>	Article II, Section 14: <a href="https://www.framinghamma.gov/DocumentCenter/View/265/Article-2?bidId=">https://www.framinghamma.gov/DocumentCenter/View/265/Article-2?bidId=</a>	All dogs must be leashed when in public on a restraint no longer than 10 feet in length.	First offense is a written warning, followed by \$50, \$60, and \$100 for each subsequent offense	All dogs older than 6 months must be licensed annually.	\$15 or \$10 if dog is spayed/neutered	\$50 for licenses not purchased between January 2 and February 28. There is a \$10 for each year an owner of an unlicensed dog has neglected to get a license.	Animal Control Officers
<b>Quincy</b>	Part II, Chapter 113, Article III <a href="https://ecode360.com/29043175">https://ecode360.com/29043175</a>	Dogs may go unleashed to exercise and play in a controlled environment under the supervision of their owner.	May be penalized by a noncriminal disposition.	All dogs older than 6 months must be licensed with a current rabies vaccination.	\$10	\$10 late fee for any dog not licensed on or before April 30.	The Animal Control Officer shall be any person who is designated so by the Mayor.
<b>Brockton</b>	Part II, Chapter 3, Article II: <a href="https://library.municode.com/ma/brockton/codes/code_of_ordinances?nodeId=PTIIREOR_CH3ANFO_ARTIIDO">https://library.municode.com/ma/brockton/codes/code_of_ordinances?nodeId=PTIIREOR_CH3ANFO_ARTIIDO</a>	Dogs must be restrained on a leash when in public.	No less than \$38 and no more than \$300	All dogs older than 6 months must be licensed or within 30 days of being brought into Brockton, whichever is first.	\$24 or \$10 if spayed/neutered	No less than \$78	Persons or agencies designated by the City and also law enforcement officials.
<b>Lynn</b>	<a href="http://www.lynnma.gov/departments/isd_animal_control.shtml#gpm1_5">http://www.lynnma.gov/departments/isd_animal_control.shtml#gpm1_5</a> <a href="http://lynnpolice.org/announcements/lynn-ordinances/section/">http://lynnpolice.org/announcements/lynn-ordinances/section/</a>	Dogs must be leashed in public except at the city dog park. When in the park, they must be accompanied by their handler and display a valid license tag.	\$25 for first offense, \$50 for all subsequent offenses	All dogs must be licensed annually by April 1.	\$10		Animal Control Department
<b>Dedham</b>	Part II, Chapter 117, Article III; enforcement found at Chapter 1, Article I: <a href="http://dedham-ma.elaws.us/code/coor_ptii_ch117_artiii">http://dedham-ma.elaws.us/code/coor_ptii_ch117_artiii</a> ; <a href="http://dedham-ma.elaws.us/code/de3083/15734225/#15734225">http://dedham-ma.elaws.us/code/de3083/15734225/#15734225</a>	Dogs must be leashed in public. They are only allowed on public park lands with a special exception in order to chase off geese.	Warning for first offense, \$50 for the second, \$100 for the third, and \$300 for all subsequent	All dogs older than 6 months must be licensed annually with a rabies vaccination.	\$15 or \$10 if the dog is spayed/neutered		Dedham police officer, Town Administrator, DPW Director, other town officials, and their designees.
<b>Westwood</b>	Part II, Chapter 184 Article I: <a href="http://westwood-ma.elaws.us/code/coor_ptii_ch184_arti">http://westwood-ma.elaws.us/code/coor_ptii_ch184_arti</a> ; Fees found at: <a href="https://www.townhall.westwood.ma.us/departments/town-clerk/dog-licensing/-fsiteid-1">https://www.townhall.westwood.ma.us/departments/town-clerk/dog-licensing/-fsiteid-1</a>	Dogs must be restrained on a leash when in public. They may go off-leash in designated areas but must still be under the control of a handler.	\$25 for first offense, \$50 for the second offense, \$75 for all subsequent offenses.	All dogs must be annually licensed. Residents 70 and older are exempt from the license fee for one dog per year.	\$15 or \$10 if dog is spayed/neutered	\$25 for first offense, \$50 for the second offense, \$75 for all subsequent offenses.	Animal Control Officer and/or others appointed from time to time by the Board of Selectmen
<b>Hopkinton</b>	Chapter 62, Article II, Article III, and Article VII: <a href="https://www.hopkintonma.gov/General%20Bylaw%20Book%202019%20(1).pdf">https://www.hopkintonma.gov/General%20Bylaw%20Book%202019%20(1).pdf</a>	Dogs must be leashed when in public.	\$25 for first offense, \$45 for second offense, \$75 for subsequent offenses	All dogs older than 6 months must be licensed annually with a rabies vaccination. Any late fee will be charged per household, not per dog.	\$15 or \$10 if dog is spayed/neutered	\$25 for first offense, \$45 for second offense, \$75 for subsequent offenses; \$25 for license late fee.	Animal Control Officer, any Hopkinton police officer, or the Select Board through any means available by law



<p><b>Milford</b></p>	<p>Article 15A:  <a href="https://www.milfordma.gov/sites/g/files/vyhlf3466/f/uploads/dog_control_law_article_15a.pdf">https://www.milfordma.gov/sites/g/files/vyhlf3466/f/uploads/dog_control_law_article_15a.pdf</a></p>	<p>Dogs must be leashed in public. Under no circumstances are they allowed on schoolyards, cemeteries, playing fields, or public parks.</p>	<p>\$15 for first offense, \$25 for second offense, \$50 for subsequent offenses. \$50 for any offense involving unspayed/neutered dog.</p>	<p>All dogs three months of age or older must be licensed annually.</p>	<p>\$25 or \$6 if dog is spayed/neutered.</p>	<p>\$10 license late fee</p>	<p>Dog officer</p>
-----------------------	--	---	---	---	---	------------------------------	--------------------

DRAFT FOR DISCUSSION 4/16/2021 #156-20

**Sec. 3-23. License fees; Vaccination Certification and Exemptions; Exemption of fee of Seeing Eye dogs; refund of fees.**

(a) The fee for the license for every male and female dog, except as otherwise provided by law, shall be ~~fifteen dollars (\$15.00)~~ twenty-five dollars (\$25.00) except that the license fee for each dog for which written proof as set forth herein can be shown to the City Clerk to be a neutered male dog or spayed female dog shall be ~~ten dollars (\$10.00)~~ twenty dollars (\$20.00). The fee for the issuance of a duplicate dog license shall be two dollars (\$2.00).

**Sec. 17-3. Fees for certain licenses, permits and fees.**

Notwithstanding any contrary provision in any other section of these Revised Ordinances, there shall be paid a fee on an annual basis or unless otherwise noted to the city clerk for each of the following applications, permits, licenses or charges, the sum set forth as follows:

(36) Dog License (Sec. 3-23).....	<del>\$25</del> 15.00
Spayed or Neutered.....	<del>\$20</del> 10.00
(37) Off-Leash Dog Park Permit (Sec. 3-30).....	\$50.00
(38) Public Hearing Advertising Cost .....	See Sec. 6-6
(39) Vehicles Transporting Goods License (Sec. 19-316(b)).....	\$1.00
(40) Bus license fee, each vehicle (Sec. 19-363) .....	\$10.00

SEC. 17-23

d) POLICE DEPARTMENT: City police officers shall be authorized to issue written notice of the following violations:

..... FINE  
 Warning ..... \$0.00

Sec. 3-22. Vaccination certification.

Any offense..... \$50.00

Sec. 3-23. License fees; vaccination; certification and exemptions (dogs)

Any offense..... \$50.00

Sec. 3-24. Disturbing the peace by barking, etc.

Any offense..... \$50.00

Sec. 3-25. Complaint of nuisance; investigation by dog officer.

Any offense..... \$50.00

Sec. 3-26. Restraint of dogs.

First Any offense in calendar year ..... \$50.00

Second offense in calendar year ..... \$75.00

Third and subsequent offenses in calendar year ..... \$100.00

Sec. 3-27. Muzzling or confinement of dogs.

Any offense..... \$50.00

Sec. 3-29. Removal and disposal of canine waste.

Any Offense..... \$50.00

Sec. 3-30. Dogs Off-Leash Program

First offense in calendar year ..... \$50.00

Second offense in calendar year ..... \$75.00

Third and subsequent offenses in calendar year ..... \$100.00

**ARTICLE II. DOGS**

**Sec. 3-22. Vaccination, Rabies, Certification.**

(a) Whoever is the owner or keeper of a dog in the city six months of age or older shall cause such dog to be vaccinated against rabies by a licensed veterinarian using a licensed vaccine according to the manufacturer's directions and shall cause such dog to be re-vaccinated at intervals recommended by the manufacturer. Such vaccination shall be in accordance with chapter 140, section 145B of the General Laws, all relevant regulations of the Commonwealth, and any amendments to the same.

(b) Unvaccinated dogs acquired or moved into the city shall be vaccinated within ninety days after the acquisition or arrival into the city or upon reaching the age of six months, whichever last occurs.

(c) The owner or keeper of such dog shall have available for inspection by authorized persons a tag issued by the veterinarian as evidence of rabies vaccination or such other evidence of rabies vaccination as may be specified by applicable state statute and or regulation(s). Said tag may be secured by the owner or keeper of such dog to the collar or harness made of suitable material to be worn by the dog. (Ord. No.V-62, 2-5-96)

**Sec. 3-23. License fees; Vaccination Certification and Exemptions; Exemption of fee of Seeing Eye dogs; refund of fees.**

(a) The fee for the license for every male and female dog, except as otherwise provided by law, shall be fifteen dollars (\$15.00) except that the license fee for each dog for which written proof as set forth herein can be shown to the City Clerk to be a neutered male dog or spayed female dog shall be ten dollars (\$10.00). The fee for the issuance of a duplicate dog license shall be two dollars (\$2.00).

The City Clerk shall accept either a certificate of a registered veterinarian that such operation was performed or a certified copy of such a veterinarian's certificate from the office of any City or Town Clerk within the Commonwealth as proof that a dog has been neutered or spayed and has thereby been deprived of the power of propagation. If the City Clerk is satisfied that the certificate of the veterinarian who spayed the dog cannot be obtained, a statement may be accepted in lieu thereof signed under the penalties of perjury by a veterinarian registered and practicing in the Commonwealth describing the dog and stating that such dog has been examined and that it appears to have been spayed or neutered and thereby deprived of the power of propagation.

(b) No license shall be granted for any dog unless the owner or keeper thereof provides either a veterinarian's certification that such dog has been vaccinated and sets forth the date of such vaccination and the duration of immunity or provides a notarized letter from a veterinarian that a certification was issued or provides a metal rabies tag bearing an expiration date indicating that such certification is still in effect, or has been certified exempt, as hereinafter provided.

A vaccination exemption may be granted for any dog which has not yet attained the age of six months, any dog which the commissioner of health and human services of the City of Newton, for a specified period of time, declared exempt upon presentation of a veterinarian's certificate stating that because of infirmity, other physical condition or regimen or therapy, that inoculation is thereby deemed inadvisable, or any dog in transit, or dog brought into the Commonwealth of Massachusetts temporarily, for the sole purpose of showing in dog shows or exhibitions.

(c) No fee shall be charged for a license for a dog specially trained to lead or serve a blind person; provided, that the Division of the Blind certifies that such dog is so trained and actually in the service of a

blind person.

(d) No license fee or part thereof shall be refunded because of the subsequent death, loss, neutering, spaying or removal from the Commonwealth or other disposal of the dog, nor shall any license fee or part thereof paid be recovered after it has been paid over to the City Treasurer. (Rev. Ords. 1973, § 3-18; Ord. No. S-51, 3-19-84; Ord. No. S-56, 4-18-84; Ord. No. S-337, 11-7-88; Ord. No. T-168, 9-3-91; Ord. No. X-175, 05-26-05)

**Cross references**—Receipt of money from dog fund, § 2-139; licenses and fees generally, Ch. 17

**State law references**—Authority to regulate dogs, G.L. c. 140, § 173; Establishment of dog licensing fees, G.L. c. 140, § 147A; dog licenses generally, G.L. c. 140, § 137 et seq.

**Sec. 3-24. Disturbing the peace by barking, etc.**

No person shall own or keep in the city any dog which, by barking, biting, howling or in any other manner, disturbs the quiet of any person. (Rev. Ords. 1973, § 3-19)

**State law reference**—Barking dogs, G.L. c. 140, § 157

**Sec. 3-25. Complaint of nuisance; investigation by dog officer.**

If any person shall make a complaint in writing to the dog officer of the city that any dog owned or harbored within his jurisdiction is a nuisance by reason of a vicious disposition or excessive barking or other disturbance, the dog officer shall investigate such complaint, which may include an examination on oath of the complainant, and may order such dog to be confined or muzzled. (Rev. Ords. 1973, § 3-20)

**Sec. 3-26. Restraint of dogs.**

(a) Prohibitions:

- (1) No person owning or harboring a dog shall suffer or allow it to run at large in any of the streets or public places in the city. No person owning or harboring a dog shall allow it upon the premises of anyone other than the owner or keeper of such dog without the permission of the owner or occupant of the premises. No dog shall be permitted in any street or public place within the city unless it is effectively restrained by a chain or leash not exceeding ten (10) feet in length.
- (2) Tot Lots: No person owning or harboring a dog shall suffer or allow a dog, leashed or unleashed, to enter a tot lot as hereinafter defined. For the purposes of this section, the term “tot lot” shall mean an outdoor play area located on land owned or controlled by the city intended for use by young children, the boundaries of which may be designated by a fence and/or sand, ground cover, grass or otherwise, and which may contain play equipment. Without limiting the foregoing, tot lot shall include currently designated tot lots which are listed below. Tot lots are fenced unless otherwise noted.

- Albemarle Park
- \*Angier School (approximately 155' x 30')
- \*Burr Park (approximately 95' x 75')
- Burr School
- Carleton Street area
- Cabot Park. East Side Parkway
- \*Crescent Street Playground (approximately 90' x 70')
- Davis School Playground

- Emerson Playground
- Franklin School
- Hawthorn Park
- Hunnewell Park
- \*\*Lower Falls Community Center (approximately 80' x 80')
- \*Memorial-Spaulding School (approximately 90' x 90')
- \*\*Newton Centre Playground, (approximately 115' x 105')
- Newton Highlands Playground
- Winchester Street (Centre and Needham Streets)
- Newton North High School
- Newton South High School
- \*Richardson Playground, Allen Avenue (approximately 150' x 62')
- River Street Playground
- Sterns Playground
- Upper Falls Playground
- \*Ware's Cove (approximately 200' x 60')
- Wellington Playground
- West Newton Common, Elm and Webster Streets
- \*Williams School (approximately 50' x 60')

\* Tot lots which are not surrounded by a fence. Area measurements of non-fenced sites are in excess of ground cover.

\*\* Tot lots which are partially surrounded by a fence.

(b) Penalties: Any owner or keeper of a dog who shall fail to comply with the foregoing provisions of subparagraph (a) shall be punished by a fine of fifty dollars (\$50.00) for the first each offense in a calendar year; seventy-five dollars (\$75.00) for the second offense in a calendar year; and \$100.00 for the third and subsequent offenses in a calendar year.

(c) It shall be the duty of the department of animal control to apprehend any dog found running at large in any street or public place within the city, or any dog, leashed or unleashed, found within a tot lot, or any dog found in violation of any of the provisions of this article, and to impound such dog in the place provided therefor. The department, upon receiving any such dog, shall make a complete registry, entering the breed, color, and sex of such dog and whether licensed. If licensed, he shall enter the name and address of the owner and the number of the license tag. The owner, if known, shall be notified as soon as possible that the dog has been impounded. The owner of any dog so impounded may reclaim such dog upon payment of the license fee, if unpaid, and of all costs and charges incurred by the city for impounding and maintenance of such dog as provided by law.(Rev. Ords. 1973, § 3-21; Ord. No. 626, 2-19-74; Ord. No. 77, 7-7-75; Ord. No. 271, 4-18-78; Ord. No. S-50, 3-19-84; Ord. V-72, 3-4-96; Ord. No. Z-92, 06-20-11)

**Sec. 3-27. Muzzling or confinement of dogs.**

(a) The dog officer may order a dog to be muzzled or confined to its owner's premises, whichever in his judgment may be required, for any of the following reasons:

- (1) If found at large or unmuzzled, as the case may be, while an order of the dog officer for the confinement or muzzling of such dog is in effect;
- (2) If found in a school, school yard or public recreational area;

- (3) For having bitten any person;
- (4) For having killed or maimed or otherwise damaged any other domesticated animal;
- (5) For chasing any vehicle upon any public way or way open to public travel in the city;
- (6) For any violation of section 3-24 or 3-26.

(b) The owner or keeper of any dog that has been ordered to be confined or muzzled or has been confined under this article may, within seven (7) days after such order or confinement, file a request in writing with the dog officer that the confining order be vacated, or that the dog be released, and after investigation by the dog officer such officer may vacate such order or release such dog. If such order is not vacated or the dog is not released, as the case may be, the owner or keeper of such dog, within ten (10) days after such order or confinement, may bring a petition in the District Court of Newton addressed to the justice of such court, praying that the order or confinement may be reviewed by the court, and after such notice to the officer or officers involved as the court may deem necessary, it shall review such action, hear the witnesses and affirm such order or confinement, unless it shall appear that it was made without proper cause or in bad faith, in which case such order shall be reversed or the dog shall be ordered released. The decision of the court shall be final and conclusive upon the parties. (Rev. Ords. 1973, § 3-22)

**Sec. 3-28. Penalty.**

Any owner or keeper of a dog who shall fail to comply with the provisions of this article or any order of the dog officer issued pursuant to this article shall be punished by a fine not to exceed fifty dollars (\$50.00) for each offense, unless otherwise specified. (Rev. Ords. 1973, § 3-23; Ord. No. 626, 2-19-74; Ord. No. T-168, 9-3-91; Ord. No. Z-61, 12-07-09)

**Sec. 3-29. Removal and disposal of canine wastes.**

It shall be the duty of each person who owns, possesses or controls a dog to remove and dispose of any feces left by his/her dog on any sidewalk, gutter, street, park or other public area or on any private property neither owned nor occupied by said person. No person who owns, possesses, or controls such dog shall appear with such dog on any sidewalk, gutter, street, park or other public area or on any private property neither owned nor occupied by said person without the means of removal of any feces left by such dog. For the purposes of this section the means of removal shall be any tool, implement, or other device carried for the purpose of picking up and containing such feces in a manner that such feces shall be unexposed to said person or the public. Disposal shall be accomplished by transporting such feces to a place suitable and regularly reserved for the disposal of human feces, specifically reserved for the disposal of canine feces, or as otherwise designated as appropriate by the commissioner of health and human services. (Ord. No. S-139, 11-18-85; Ord. No. X-175, 05-26-05; Ord. No. Z-61, 12-07-09)

**Sec. 3-30 Dogs Off-Leash Program**

(a) Notwithstanding the provisions of Sec. 3-26(a) *Restraint of Dogs*, in areas officially designated as a “Designated Off –Leash Area” by the commissioner of parks, recreation and culture, a dog may be permitted off-leash under the following minimum conditions, and subject to any additional rules, regulations, and restrictions that may from time to time be in effect for an off-leash area.

- (1) The dog shall at all times be accompanied by and under the control of a person, who shall ensure that the animal does not disturb the surrounding area by excessive barking, and shall ensure that it

does not disturb or threaten other dogs or persons using the designated off-leash area or surrounding area;

- (2) The dog shall be leashed prior to entering and upon exiting the designated off-leash area.
- (3) Any dog left unattended is subject to impoundment by the Newton police;
- (4) The person in charge of a dog inside a designated off-leash area shall, in accordance with Section 3-29, immediately remove and as soon as practicable properly dispose of any fecal waste deposited by that dog.
- (5) The dog shall wear a collar with identification at all times, be licensed and vaccinated, healthy and parasite free.
- (6) Dogs must be at least four months old to be allowed off-leash.
- (7) The number of dogs per person in a designated off-leash area is limited to three, unless otherwise specified in the rules and regulations pertaining to a particular off-leash area.
- (8) The person in charge of a dog or dogs must at all times carry a leash for each dog under that person's supervision.
- (9) The dog owner and/or person in charge of a dog are responsible to ensure that the dog's activity conforms to all rules and regulations pertaining to the off-leash area, as well as for any injury to persons or animals, or damage to public or private property caused by the dog.
- (10) No person shall bring a female dog in heat into any designated off-leash area.
- (11) Any dog which is the subject of a complaint, investigation, order or proceeding under Section 3-25 or Section 3-27 of this ordinance, and/or under General Laws Chapter 140, section 157 shall be banned from designated off-leash areas.

*(b) Selection and Designation of Sites for Off-Leash Areas.*

- (1) *Site selection criteria.* The commissioner of parks, recreation and culture, together with the director of planning and development, shall establish site selection criteria for the identification of appropriate sites for consideration as dogs off-leash areas on public land owned by the city, and shall identify and list potential sites for consideration as an off-leash area in accordance with such criteria. Site selection criteria may include a preference for areas with natural topography or features that would confine dogs to the off leash area. For any particular potential site or sites, the commissioner and director may recommend additional criteria for designation of the particular site or sites. Such additional criteria may include, but are not limited to, seasonal or time restrictions, and the need for fencing, when the commissioner deems it necessary to confine the dogs to the off leash area. The commissioner and director may appoint a group of interested persons to advise or otherwise assist them in their duties.
- (2) *Designation of Off-Leash Areas.* Subject to the established site selection criteria, the commissioner of parks, recreation and culture may designate specific off-leash areas on public land under the control of the city. If the identified area is under the jurisdiction of a municipal agency or commission other than the department of parks, recreation and culture, the commissioner shall obtain permission of that agency or commission prior to such designation.



An agency or commission granting such permission may delegate operation and maintenance of the off-leash area to the commissioner. Prior to designation of any off-leash area, the commissioner or other municipal agency or commission having jurisdiction of the potential site shall conduct a public hearing.

- (3) *Revocation.* A designation of any off-leash area may be revoked at any time by the commissioner or by the municipal agency or commission with jurisdiction of the off-leash area.
- (4) *Areas not eligible for designation.* Notwithstanding anything to the contrary contained herein or hereafter, the following areas shall not be designated under any circumstances as designated off-leash areas: the little league baseball fields on (i) Lyons Playground; (ii) James E. Murphy Field at the Halloran Sports Complex; (iii) Leo H. Riley Field at Cabot Park; (iv) Jay Gordon Field at Newton Centre Playground; and (v) Richardson Field.
- (5) *Other Public Land.* On land in public use districts that is owned by the Commonwealth or other government entity, the commissioner and director may identify appropriate potential sites and seek the appropriate government entity's approval to designate such sites for off-leash areas, subject to such terms and conditions as the Commonwealth or other government entity may require.

(c) *Rules and Regulations.* In addition to the minimum conditions listed in section (a) applicable to all designated off-leash areas, the commissioner may from time to time promulgate rules and regulations for the general operation and use of all off-leash areas, as well as rules and regulations specific to the use and operation of an individual site. The commissioner may require permits and set reasonable fees for participation in the off-leash program. The commissioner may impose time, seasonal, or other restrictions for the use of any area. In the case of off-leash areas on sites under the jurisdiction of another agency or commission, that agency or commission shall approve such rules, regulations and restrictions, and may make such additional rules, regulations, and restrictions it deems necessary.

(d) *Signs.* All conditions, rules and regulations, and other restrictions applicable to a designated off-leash area, as well as the boundaries of such area, shall be conspicuously posted.

(e) *Penalties.* The owner and/or the person in charge of a dog in a designated off-leash area who fails to control said dog or who violates any of the rules, regulations or restrictions pertaining to the designated off-leash area shall be subject to a fine of fifty dollars (\$50.00) for the first each offense in a calendar year; \$75.00 for a second offense in a calendar year; and \$100.00 for a third and subsequent offenses in a calendar year. (Ord. No. Z-11, 12-03-07; Ord. No Z-54, 11-02-09; Ord. No. Z-65, 05-17-10; Ord. No. Z-70, 08-09-10; Ord. No. Z-82, 03-07-11; Ord. No. B-53, 03-02-20)

#157-20 Draft for Discussion 4/16/2021

SEC. 17-23

(e) DEPARTMENT OF PARKS, RECREATION AND CULTURE: The Commissioner of Parks, Recreation and Culture or designee shall be authorized to issue written notice of the following violations:

..... FINE

Sec. 3-30. Dogs Off-Leash Program

- ( ) ~~First~~ Any offense in calendar year ..... \$50.00
- ( ) Second offense in calendar year ..... \$75.00
- ( ) Third and subsequent offenses in calendar year ..... \$100.00

April 16, 2021

Programs and Services Committee:

The Beautification division of the Parks, Recreation & Culture Department (PRC) oversees the contract we hold for pet waste collection. The contract is for disposal of pet waste from the blue pet waste bins, with the frequency of emptying based upon usage rate.

PRC is responsible for the purchase and installation of new bins at a cost of \$450 each. Approximately half of the bins require the minimum weekly recommended pickup, with the more heavily utilized requiring 2 collections per week, and one location, Hunnewell, needing 3. We pay \$10.25 each time a waste bin is emptied. The overall cost of the pet waste collection service is \$53,000 per year; this includes \$5,000 spent on mutt mitts that are made available next to each bin.

The service currently includes 65 barrels distributed throughout the city in park areas, playground areas, and open space areas that see significant canine traffic. These bins are needed and we continue to receive requests for additional bins to be placed strategically to encourage proper pet waste disposal. As most people are aware, pet waste is more than just an odor and shoe tread nuisance; it is also capable of transmitting disease to other pets and to people and is damaging to the environment.

Therefore, I strongly encourage the City of Newton to continue providing this public service.

There is an important discussion about the level and use of off-leash dog license fees. Of the 65 pet waste bins we have, 8 of them are located directly in or around an off-leash area dog park. The City Council is assessing the current dog license fee and is considering how the increased fees might be utilized. At present, 57 pet waste bins are not in proximity to off-leash areas. The purpose of the off-leash tag program is for the revenue to be used toward construction of off-leash parks, and oversight, maintenance, and improvement of these areas. The cost of the pet waste collection might more appropriately be borne by all dog owners, not just those who purchase an off-leash tag for their pet.

Thank you for your attention to this policy.

Respectfully,

Nicole Banks, Commissioner  
Newton Parks, Recreation & Culture  
246 Dudley Rd.  
Newton, MA 02459  
617-796-1500



RUTHANNE FULLER  
MAYOR

City of Newton, Massachusetts  
Office of the Mayor

**168-21**  
Telephone  
(617) 796-1100  
Telefax  
(617) 796-1113  
TDD  
(617) 796-1089  
E-mail  
[rfuller@newtonma.gov](mailto:rfuller@newtonma.gov)

April 29, 2021

Honorable City Council  
Newton City Hall  
1000 Commonwealth Avenue  
Newton Centre, MA 02459

Councilors:

I respectfully submit a docket item to your Honorable Council requesting authorization to appropriate and expend the sum of \$1,000,000 from June 30, 2020 Certified Free Cash to the Rainy Day Stabilization Fund. This action will bring the Rainy Day Stabilization Account to slightly over \$23.1 million or 5% of the Mayor's Proposed FY2022 General Fund Operating Budget.

Thank you for your consideration of this matter.

Sincerely,

Ruthanne Fuller  
Mayor

CITY CLERK  
NEWTON, MA, 02459

2021 APR 29 PM 3:02

RECEIVED

CITY OF NEWTON

IN CITY COUNCIL

DRAFT

ORDERED:

That, in accordance with the recommendation of the Finance Committee through its Chair Rebecca Walker Grossman, the authorization to appropriate and expend the sum of one million dollars (\$1,000,000) from June 30, 2020 Certified Free Cash to the Rainy Day Stabilization Fund for the purpose of bringing the Rainy Day Stabilization Fund to slightly over \$23.1 million or 5% of the Mayor’s Proposed FY22 General Fund Operating Budget be and is hereby approved as follows:

FROM:	General Fund-Free Cash (0001-3240).....	\$1,000,000
TO:	Rainy-Day Stabilization Fund (5900-490001).....	\$1,000,000

Under Suspension of Rules  
Readings Waived and Approved  
DRAFT

(SGD) NADIA H KHAN  
Acting City Clerk

(SGD) RUTHANNE FULLER  
Mayor

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