



CITY OF FITCHBURG
CONTRACT BETWEEN CITY AND CONTRACTOR
(MA GENERAL LAW 7C, §§ 44-57, DESIGN SERVICES)

CONTRACT NO.

CONTRACT TITLE:

THIS CONTRACT is made this [insert day] day of [insert month and year] by and between [insert firm], with a usual place of business at [insert address] (hereinafter called the Designer), and the City of Fitchburg, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts, acting through its Mayor, (hereinafter referred to as the City).

WITNESSETH that the Designer and the City of Fitchburg, for the consideration hereinafter named, agree as follows:

In all respects, this Contract shall be governed by and performed consistently with all laws of the Commonwealth of Massachusetts for public construction Contracts including but not limited to Massachusetts General Law 7C, §§ 44-57. The provisions of the Massachusetts General Laws regarding public designer services shall take precedence over any and all other Contract provisions or documents. Any conflicts among provisions and/or between documents shall be resolved and/or interpreted according to the Massachusetts General Laws. The Designer warrants that it is familiar with and agrees to abide by all laws of the Commonwealth of Massachusetts.

ARTICLE 1. CONTRACT DOCUMENTS

- a) The City and the Designer agree that the Designer's proposal, including any related documents, prices, deliverables, or services promised, and the City's Request for Qualifications, including any purchase description, specifications, submission requirements, scope of work, drawings, and any other related documents are all incorporated and made part of this Contract as if written herein. These documents form the entire Contract between the parties and there are no other Contracts between the parties.
- b) This Contract is only binding upon, and enforceable against the City if the Contract is:
- i. Signed by the Mayor;
 - ii. Signed by the City Auditor as to appropriation or availability of funds;
 - iii. Endorsed with approval of the City Solicitor as to form and legality;
 - iv. Signed by the Chief Procurement Officer as to compliance with procurement statutes.

ARTICLE 2. SCOPE OF THE SERVICES

The Designer shall provide its services called for in its proposal and the City's Request for Qualifications, in accordance with the standard of care as defined in Article 19.c.

ARTICLE 3. TERM OF CONTRACT

This Contract shall commence on [insert date] and is subject to appropriation.

ARTICLE 4. CONTRACT SUM

The City shall pay the Designer a sum **not to exceed [insert amount]** for the performance of this Contract.

ARTICLE 5. AMENDMENTS

No officer, official, agent, or employee of the City shall have the authority to amend, modify or alter this Contract or waive any of its provisions or to bind the City by making any promise or representation not contained herein except by amendment, in writing, executed in the same manner as this Contract is executed. The Designer may not rely on any conduct, statements, action, inaction or courses of conduct of the employees or officers of the other party as having changed, modified, or

amended this Contract. The City shall not be construed as waiving a provision unless the waiver is executed in writing as an amendment to the Contract. No waiver by the City of any default or breach shall constitute a waiver of any subsequent default or breach.

ARTICLE 6. CHANGE ORDERS

Changes to the Contract require a written change order, signed by all parties to the Contract. The Chief Procurement Officer may, by written change order, signed by all parties to the original Contract, make an equitable adjustment in the Contract price if alterations to the project require an increase or decrease to the cost of the project. Changes to the scope of work or project cost which are not confirmed with a written and fully executed Change Order will not be honored and will result in non-payment for such services or work performed.

ARTICLE 7. START OF SERVICES

- a) The Designer shall commence services, at such points as the City may approve, within the time period designated by the City as their Key Project Dates, after the execution of this Contract by the City.
- b) The time of starting may be postponed by written agreement between the City and the Designer because of expected delays in receipt of materials and equipment, or if the season is unsuitable for commencement of the work, or because of other contingencies clearly beyond the control or responsibility of the Designer.
- c) The City may delay the beginning of all or any part of the work if the necessary lands or rights-of-way for such work have not been obtained. The Designer shall have no claim for damages on account of such delay, but shall be entitled to as much additional time in which to perform and complete this Contract on their part as the City shall certify in writing to be equitable.

ARTICLE 8. SUBCONTRACTING

- a) The Designer may employ sub-consultants, subject to the prior written approval of the City. The employment of sub-consultants shall not in any way relieve the Designer from its responsibilities under this Contract. Nor shall the City's approval of a sub-consultant in any way relieve the Designer from its responsibilities under this Contract.
- b) No substitution of sub-consultants and no use of additional sub-consultants shall be made without prior written approval of the City, which approval shall not be unreasonably withheld.
- c) The Designer shall be responsible for all compensation to be paid to a sub-consultant. No sub-consultant shall have recourse against the City for payment of monies alleged to be owed by the Designer, and the Designer shall include in all contracts language so providing.

ARTICLE 9. PAYMENT TERMS

- a) Within thirty (30) days after receipt of an invoice for services performed or materials supplied the previous month, the City shall pay the Designer. Upon completion of the services, within thirty days after receipt of an invoice for final payment, the City shall pay the Designer all amounts due under the Contract, including any retainage.
- b) With any invoice the Designer shall submit evidence satisfactory to the City that the services have been completed and that all payrolls, material bills and other indebtedness connected with the services have been paid in accordance with the law. The billings shall include, if applicable, all charges for consultants, sub-consultants, plans, equipment, models, renderings, travel, reproductions, postage and delivery, and all other expenses. There shall not be any markup for overhead, administration or profit for any of the above-listed services.
- c) If for any reason the City makes a payment under this Contract in error, the City may recover the amount overpaid or, if applicable, may apply any overpayment to a future installment payment.
- d) The City is not responsible for payment of invoices sent to an address other than specified in this Contract.

ARTICLE 10. OBLIGATIONS AND LIABILITY OF DESIGNER

- a) The Designer shall perform its services consistent with the standard of care and shall complete all services to the satisfaction of the City, and in accordance with the specifications and drawings, at the prices agreed upon. All services to be furnished under this Contract shall be furnished strictly pursuant to, and in conformance with the specifications, and the instructions of the City's designee as given from time to time during the progress of the services, under the terms of this Contract, and in accordance with Contract Specifications.
- b) The Designer shall coordinate operations and avoid interference with the operations of any other contractors who may be employed on other work of the City.

ARTICLE 11. CITY TO MANAGE CONTRACT

- a) The City's designee shall in all cases determine the amount, quality, acceptability and fitness of the several kinds of services which are to be paid for under this Contract; shall determine all questions in relation to said services, and shall in all cases decide every question of fact which may arise relative to fulfillment of this Contract on the part of the City and on the part of the Designer. The City's decision shall be final and conclusive upon both parties to this Contract. Any differences or conflicts arising between the Designer and other designers or consultants of the City in regard to their services, shall be adjusted and determined by the City's designee.
- b) The City's designee shall make all necessary explanations as to the meaning and intention of the drawings and specifications, and shall give all necessary orders and directions. The order or sequence of execution of work and the general conduct of the work shall be subject to the approval of the City's designee, who shall have authority to direct the order or sequence where public necessity or welfare shall require. However, such approval or direction shall in no way affect the responsibility of the Designer in the conduct of the work except for extension of time as necessary and approved in writing.

ARTICLE 12. DISCREPANCIES, ERRORS, AND OMISSIONS

- a) Should any discrepancy appear or any misunderstanding arise as to the significance of any part of the specifications or drawings, the City's designee shall review and consult with Designer prior to issuing an interpretation and decision, which shall be final and binding on both parties to this Contract.
- b) The City's designee may reasonably direct Designer to correct errors or omissions in drawings and specifications when such correction is necessary for the proper fulfillment of the Contract. Where said correction of errors or omissions adds to the amount of services to be supplied by the Designer, compensation for said additional services shall be made under a written Change Order.
- c) The fact that specific part of the services has been omitted in the specifications, whether intentionally or otherwise, when the same is usually and customarily required to fully complete such services as is specified herein, will not entitle the Designer to consideration in the matter of any claim for extra compensation, but said services must be performed same as if called for in the specifications.

ARTICLE 13. CONTRACT CONDITIONS SPECIFICALLY REQUIRED BY LAW

- a) Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.
- b) If funding for this Project is provided by the Commonwealth of Massachusetts, in whole or in part (such as reimbursements, grants and the like), then the City shall incorporate into this Contract the current applicable minority-owned business enterprise (MBE) and women-owned business enterprise (WBE) participation goals, as determined by DCAMM. Reductions or waivers of these goals may be permitted by the City where the size, nature or location of the project makes achieving such levels of MBE or WBE participation unfeasible.

- c) This Contract is subject to the Supplemental Equal Opportunity Anti-Discrimination and Affirmative Action Program (EEO/AA).

ARTICLE 14. EMPLOY COMPETENT PEOPLE

The Designer shall employ only competent people to perform the services. Whenever the City shall notify the Designer in writing that any person under the Designer's employ is, in the City's opinion, incompetent, unfaithful, disorderly or otherwise unsatisfactory, or not employed in accordance with the provisions of this Contract, such person shall be discharged from the project and shall not again be employed on the Project, except with the consent of the City.

ARTICLE 15. TIME FOR COMPLETION

- a) The rate of progress shall be such that the whole services shall be performed in accordance with the terms of this Contract within the number of calendar days after the date of execution of the Contract as stipulated in the Contract documents, unless and except as any part may be delayed under the provisions of this Contract.
- b) It is agreed the rate of progress herein required has been conservatively adjusted to allow for ordinary delays incidental to services of this character. No extension of time will be allowed for ordinary delays, inclement weather and accidents, and the occurrence of such will not relieve the Designer from the necessity of maintaining this rate of progress. If delays are caused by acts of God, acts of Government or State, strikes, extra work, floods or other contingencies clearly beyond the control or responsibility of the Designer, the Designer shall be entitled to as much additional time to perform and complete this Contract as the City shall certify in writing to be equitable.
- c) If Additional Services are added to the Scope of Services by amendment, the period of performance shall be specified in the amendment as mutually agreed upon with the Designer.
- d) The Designer shall have no claim for damage for delay or hindrance. In the event of delay or hindrance not the fault of the Designer, an extension of time shall be the Designer's sole remedy.

ARTICLE 16. EXAMINATION OF WORK

- a) Performance evaluation is a component of the City's contract management protocol. Evaluation will be conducted by City personnel and/or the City's representative(s) using direct monitoring, indirect monitoring, survey, interview or milestone reviews.
- b) Evaluations may include written reports and other documents regarding Designer performance, and any written Designer responses or documents. All evaluation material and supporting documentation will be maintained in the Designer's file, and will be considered as a "public record." The evaluation shall be part of the record that the City is required to review, and may be considered in determining future Contract eligibility.
- c) The opinions of the City are not statements of fact, and the Designer shall not institute suit based on statements of opinion made by the City or its employees, officers or representatives.

ARTICLE 17. INSURANCE

- a) The Designer shall, at its own expense, obtain and maintain general liability and motor vehicle liability insurance policies protecting the City in connection with any operations included in this Contract, and shall have the City as an additional insured on the policies.
- b) General Liability of at least \$1,000,000 Bodily Injury and Property Damage Liability, Combined Single Limit with a \$3,000,000 Annual Aggregate Limit. Products and Completed Operations should be maintained for up to three (3) years after the completion of the project.
- c) Automobile Liability (applicable for any contractor who has an automobile operating exposure) for owned, hired and non-owned vehicles shall be in the amount of at least \$1,000,000 combined single limit each occurrence.

- d) Workers' Compensation Insurance as required by law.
- e) Architects and Engineers Professional Liability (applicable for any architects or engineers involved in the project) of at least \$1,000,000/claim, \$3,000,000 aggregate.
- f) Umbrella Liability of at least \$2,000,000 per occurrence, \$2,000,000 aggregate.
- g) Companies providing insurance coverage must be licensed or authorized to transact business in the Commonwealth of Massachusetts.
- h) The Designer shall furnish Certificates of Insurance prior to commencement of this Contract.
- i) Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the Contract. Any cancellation of insurance whether by the insurers or by the insured shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the City at least fifteen days prior to the intended effective date thereof, which date should be expressed in said notice.
- j) The Certificate of Insurance shall be provided to the City in accordance with terms stated. Certificates shall display each type of insurance, insurance company, policy number, amount of insurance and policy effective and expiration dates, and the NA/C number assigned to the insurance company. The Certificate holder shall be listed as The Chief Procurement Officer, City of Fitchburg and shall contain a provision or endorsement that the coverage afforded shall not be cancelled, materially changed, or renewal refused until at least thirty days prior written notice has been provided to the Certificate Holder.
- k) The City of Fitchburg, its employees, agents and representatives shall be named as additional insured with respect to all coverage, except for Workers Compensation.

ARTICLE 18. OWNERSHIP OF DOCUMENTS

- a) The City shall furnish to the Designer all available plans, specifications and data regarding the operations, including, but not limited to current policies related to the operation and maintenance of the facility, schedule(s) of fees, rates for services, both annual and or long term fees assessed, existing infrastructure, facilities and/or structural plans, reports, evaluations and all documentation and all relevant data in the possession of the City. Data may consist of historical drawings, construction records and records of existing conditions available from City records. The Designer shall be entitled to use documents and information the City provides, however the City does not warranty or guaranty the accuracy or completeness of any document or information provided. The Designer may be provided copies of original documents that may be removed by the Designer and taken offsite. It will be the City's determination what original records, if any, may be removed from the City's premises.
- b) All documents prepared by the Designer in conjunction with this contract, including but not limited to, plans, specifications, cost estimates and grant related documents shall be the property of the City. The Designer shall not be responsible for any claims or damages, which may occur by virtue of use of incomplete documents by the City. The Designer shall not be responsible for any claims or damages, which may occur by virtue of the use of the documents for any purpose other than that for which they were intended.

ARTICLE 19. PROFESSIONAL RESPONSIBILITY

- a) Consistent with the standard of care, the Designer shall be responsible for the professional and technical accuracy and the coordination of the services furnished and shall exercise its professional skill and care consistent with the standard of care to meet the approved schedule and submittal dates established in this Contract. The Designer shall exercise its professional skill and care consistent with the standard of care to meet requirements and mandates of all Commonwealth of Massachusetts and Federal laws and regulations as they relate to the project.
- b) The Designer shall furnish appropriate competent professional services for the work contracted so that detailed checking or reviewing by the City is not necessary.

- c) The services performed by the Designer shall be consistent with the professional standard of care and practice customarily expected of those engaged in performing comparable work under the same or similar circumstances and conditions, the personnel furnishing said services shall be qualified and competent to perform adequately the services assigned to them, and the recommendations, guidance and performance of such personnel shall reflect such standards of professional knowledge and judgment.
- d) The Designer shall abide by and thoroughly acquaint his employees, consultants and sub-consultants with the provisions of the Commonwealth of Massachusetts General Laws including but not limited to statutes governing public construction projects and designer services.
- e) Neither the City's review of, approval or acceptance of, nor payment for, any of the services furnished, shall be construed to operate as a waiver of any rights or cause of action the City may have under this Contract.

ARTICLE 20. RESPONSIBILITIES OF CITY

The City shall:

- a) Furnish required information and render approvals and decisions as expeditiously as possible for the orderly progress of the work;
- b) Schedule and coordinate meetings and facilitate communications between the Designer and the City;
- c) Provide prompt written notice to the Designer, if the City observes or becomes aware of any fault or defect in the project, or nonconformance with the contract documents;
- d) For the purposes of facilitating the gathering of information for design purposes in the most efficient manner, the City shall permit the Designer staff reasonable access to, and use of, office equipment, including but not limited to, computers, scanner, telephone, facsimile and copiers, provided such access does not interfere with the normal operations of the office;
- e) Meet with the Designer to provide and exchange data throughout the duration of the project.

ARTICLE 21. FAILURE TO COMPLETE WORK ON TIME

The Designer shall exercise its professional skill and care consistent with the standard of care and shall perform its services in accordance with the terms of the Contract on or before the date stated in the proposal for completion or the date to which the time of completion shall have been extended under the provisions of this Contract.

ARTICLE 22. ABANDONMENT OF WORK

Designer agrees that abandonment or delay of work or services shall be a violation of this Contract. The City may, by whatever legal remedies are available to it, complete or cause to be completed, the work or provision of services and the Designer shall bear full responsibility for the entire cost of completing the terms of the Contract, and agrees to be liable to the City for any losses, damages, costs and expenses sustained or incurred by the City by reason of any of the foregoing causes.

ARTICLE 23. NON-PERFORMANCE

In the case of any default on the part of the Designer with respect to any of the terms of this Contract, the City shall give written notice thereof, and if said default is not made good within such time as the City shall specify in writing, the City shall notify the Designer in writing that there has been a breach of the Contract and thereafter the City shall have the right to secure the completion of the services remaining to be done on such reasonable terms and in such reasonable manner as the City shall determine and upon a finding of Designer's liability in a formal legal proceeding, the Designer shall pay for the correction of such default and reimburse the City for all expenses incurred by reason of said breach. The Designer in case of such breach shall be entitled to receive payment only for services completed satisfactorily prior to said breach, so long as the total paid hereunder does not exceed the Contract sum, and the amount of any balance due the Designer shall be

determined by the City and certified to the Designer. The City shall be reimbursed by the Designer for the cost of additional services required by the City in the case of a breach.

ARTICLE 24. TERMINATION

This Contract may be terminated by either party upon not less than seven days written notice should the other party substantially fail to perform in accordance with the terms of this Contract through no fault of the party initiating the termination.

ARTICLE 25. GOVERNING LAW

This Contract and performance hereunder are governed in all respects by the laws of the Commonwealth of Massachusetts and all other applicable by-laws and administrative rules, regulations and orders.

ARTICLE 26. CONSENT TO VENUE

The Designer agrees that it shall commence and litigate all actions or proceedings arising in connection with this Contract exclusively in the Fitchburg District Court or in the Worcester Superior Court, both of which are located in the County of Worcester, Commonwealth of Massachusetts. The aforementioned choice of venue is intended to be mandatory and not permissive in nature, thereby precluding the possibility of the Designer commencing or prosecuting any litigation against the City, with respect to or arising out of this Contract, in any court or forum other than those specified in this paragraph. It is further agreed that the parties to this Contract hereby waive their rights to a jury trial.

ARTICLE 27. INDEPENDENT CONTRACTOR

All of the services to be performed under the terms of this Contract will be rendered by the Designer as an independent Contractor. None of the terms of this Contract shall create a principle-agent, master-servant or employer-employee relationship between the City and the Designer.

ARTICLE 28. LAWS, PERMITS AND REGULATION

It is the Designer's responsibility to secure, obtain, and pay for all licenses, permits and approvals, and administrative prerequisites to performance of this Contract.

ARTICLE 29. BINDING CONTRACT AND ASSIGNMENT OF INTEREST

This Contract shall be binding upon the City and the Designer and the partners, successors, heirs, executors, administrators, assigns and legal representatives of the City and the Designer. Neither the City nor the Designer shall assign, sublet or transfer any interest in this Contract without the written consent of each other, and such consent shall not be unreasonably withheld.

ARTICLE 30. SEVERABILITY

If a court declares one or more of the provisions of this Contract invalid, the validity of the remaining provision of this Contract shall not be affected thereby.

ARTICLE 31. DISCRIMINATION

In the performance of this Contract, the Designer shall provide equal employment opportunities for all persons, regardless of race, color, religion, creed, sex, age, national origin, disability or political affiliation. The Designer shall comply with the Americans with Disabilities Act.

ARTICLE 32. CRIMINAL OFFENSE RECORD INQUIRY

Massachusetts General Law requires Criminal Offense Record Inquiry (CORI) checks be conducted on contractors, subcontractors or laborers commissioned to do work on certain municipal projects. Contractors shall comply with CORI policies.

ARTICLE 33. COMPLIANCE WITH MASSACHUSETTS TAX LAWS

Pursuant to M.G.L. c. 62C, §49A, the undersigned, acting on behalf of the Contractor, certifies under the pains and penalties of perjury, to the best of the undersigned's knowledge and belief that the Contractor is in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and Contractors, and withholding and remitting child support.

ARTICLE 34. DEBARMENT

Designer certifies under the pains and penalties of perjury that it, its agents, subcontractors, and employees are not presently debarred from entering into a public Contract in the Commonwealth of Massachusetts under the provision of M.G.L. c. 29, §29F, or any other applicable debarment provisions of any other Chapter of M.G.L. or any rule or regulation promulgated thereunder.

ARTICLE 35. CONFLICT OF INTEREST AND NON-COLLUSION

By execution of this Contract with the City, the Designer acknowledges that the City is a municipality for the purposes of M.G.L. c. 268A (the Massachusetts conflict of interest statute), and agrees, as circumstances require, to take actions and to forbear from taking actions so as to be in compliance at all times with the obligations of the Designer based on said statute.

Municipal employees and their family members are not allowed to have a financial interest in a contract with the City they are employed by. Municipal employees and their family members are also forbidden to solicit or accept gifts, gratuities, or favors from anyone looking to conduct business with the City of Fitchburg. Incidents of this nature will be reported to the appropriate authorities for investigation.

All those doing business with the City will be required to certify under penalties of perjury that their quote, bid, or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

ARTICLE 36. CONFIDENTIALITY

The Designer shall comply with M.G.L. Chapter 66A if the Designer becomes a holder of "personal data." The Designer shall also protect the physical security and restrict any access to personal or other City data in the Designer's possession or used by the Designer in the performance of this Contract, which shall include, but is not limited to the City's public records, employee records, document, digital and electronic files, software, equipment, or systems.

ARTICLE 37. INDEMNIFICATION

ARTICLE 37. INDEMNIFICATION

- a) 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-consultants for whom the Designer is responsible under this Contract.
- b) For all other claims, to the fullest extent permitted by law, Designer shall defend, indemnify and hold harmless the Owner and their 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-consultants for whom the Designer is responsible under this Contract.

ARTICLE 38. NOTICE

All notices under this Contract shall be given in writing and shall be effective upon receipt by hand delivery or certified mail to the City of Fitchburg, Chief Procurement Officer, 718 Main Street, Suite 208, Fitchburg, MA 01420.

IN WITNESS WHEREOF the parties hereto have executed this Contract the day and year first above written.

FOR THE CONTRACTOR

FOR THE CITY OF FITCHBURG

Signature
Printed Name:

Stephen L. DiNatale
Mayor

FOR THE CONTRACTING DEPARTMENT:

SUFFICIENT AS TO LEGAL FORM:

[insert name]
[insert title]

Vincent Pusateri II
City Solicitor

Mary A. Delaney
Chief Procurement Officer who certifies, that to the best of their belief and knowledge, the Contract was, procured pursuant to the procurement laws of the Commonwealth of Massachusetts to the extent such laws apply.

Calvin Brooks
City Auditor who certifies, pursuant to Massachusetts General Law C.44, §31C, that the proposed expenditure is not in excess of the appropriation or the unexpended balance thereof and that the Mayor is authorized to sign this Contract.

Account number: _____

Appropriation: _____