

**AGREEMENT  
CITY OF SOUTH PORTLAND, MAINE  
Owner-Designer Agreement**

**PROJECT TITLE:** [ \_\_\_\_\_ ], ME

**PROJECT TYPE:** [TYPE 1] or [TYPE 2], as defined below [ \_\_\_\_\_ ]

**This Agreement** is made under seal as of the \_\_\_ day of \_\_\_\_\_ 2025, between the City of South Portland, Maine, a municipal corporation organized and existing under the laws of the State of Maine (the “City”), and \_\_\_\_\_, with an address of \_\_\_\_\_ acting as Project Architect (the “Designer”).

**WHEREAS**, by a written Request for Proposals (the “RFP”), a copy of which is attached hereto and incorporated herein as Attachment A, dated \_\_\_\_\_, the City solicited proposals for Designer Services for City Renovation and Construction; and

**WHEREAS**, Designer submitted a written proposal dated \_\_\_\_\_ in response to the RFP (the “PROPOSAL”), a copy of which is attached hereto and incorporated herein as Attachment B; and

**WHEREAS**, after due consideration of the Designer’s Proposal, the City has decided to award this Agreement to the Designer, and to engage the Designer pursuant to the terms of the RFP, the Designer’s Proposal and the terms of this Agreement to provide such professional services (the “Project”)

**NOW, THEREFORE**, in consideration of their mutual promises and covenants, the parties agree as follows:

**ARTICLE 1: CONSULTANTS, SUBCONTRACTING, SUCCESSORS AND ASSIGNS**

- 1.1 The Designer shall not employ additional consultants not named in the Proposal(s) nor sublet, assign or transfer any part of his services or obligations under this Agreement without the prior approval and written consent of the City. The City shall not unreasonably withhold such approval. Written consent shall not in any way relieve the Designer from his responsibility for the professional and technical accuracy and the coordination of all data, designs, drawings, specifications, estimates and other work or materials furnished.
- 1.2 Except as otherwise provided in this Agreement or authorized by the City, the Designer shall employ within the basic fee for this project the following consultants where their specific services are required: Architect, Structural Engineer, Civil Engineer, Sanitary Engineer, Mechanical Engineer, Landscape Architect, Cost Estimator, and Electrical Engineer, and any other consultant specifically listed in the proposal. Consultants must be registered and/or licensed in their respective disciplines if registration or licensure is required under the applicable state statutes.

- 1.3 When the Designer receives payment from the City, the Designer shall promptly make payment to each consultant whose work was included in the work for which payment was made by the City. The City shall have the contractual right, but not the obligation, to require corrective measures necessary for the best interests of the City.

## **ARTICLE 2: SURVEYS, BORINGS, TESTS, LABORATORIES, PHOTOGRAPHS**

- 2.1 The City shall furnish to the Designer available surveys, if any, of the project building site, showing the grades and lines of streets, pavements and adjoining properties; the rights, restrictions, easements, boundaries and controls of the site, or sites; reports from any borings, test pits, chemical, mechanical or other tests, any photographs and information as to water, sewer, electricity, steam, gas, telephone and other services.
- 2.2 The City does not guarantee the accuracy of information furnished and the Designer must satisfy himself as to the correctness of data, except in instances where written exception to the contrary is specifically indicated by the City. If the above data are not available or they are in the opinion of the Designer insufficient, the Designer, upon request, may be given authorization to obtain the services of a consultant or perform the work with his own employees. In no case shall the Designer commence such work without prior written authorization of the City.
- 2.3 During the construction phase of this contract, the Designer may retain the services of a photographer, a qualified testing laboratory, and special field inspectors when required by the project, subject to the prior approval of the City or its designee.
- 2.4 If a consultant's services estimated to cost more than \$25,000 are required, including the services of a qualified testing laboratory functioning under the jurisdiction of both a Maine registered Engineer and licensed inspectors, a detailed description of the proposed services shall be prepared by the Designer and approved by the City. Consultant fee proposals shall be received by the Designer and accompanied with recommendations of approval submitted to the City before any work is authorized. Such consultants shall carry adequate Liability Insurance pursuant to Article 13 below. When a consultant's services are estimated to cost \$25,000 or less, the Designer shall use established standard rates for such services.
- 2.5 Drawings and/or specifications needed to obtain survey or subsoil information, and any other soils engineering shall be prepared by the Designer as part of the basic fee. The Designer shall then analyze and evaluate such surveys and tests and make his design conform to the results of such evaluation.
- 2.6 The City will compensate and reimburse the Designer as provided in Article 8 for the cost of consultant services performed under this Article. For responsibility, coordination inspection, analysis and evaluation of consultant services retained under this Article, the Designer shall similarly be compensated as provided by Article 8.

### **ARTICLE 3: COMPLIANCE WITH LAWS**

- 3.1 The Designer shall perform the work required under this Agreement in conformity with all requirements and standards of the City, all applicable laws, statutes, ordinances, by-laws, codes, rules and regulations, and executive orders of the State of Maine and its political subdivisions, and the Federal Government. The Construction Contract Documents shall comply with all applicable laws, statutes, ordinances, by-laws, codes, rules and regulations, and executive orders.

### **ARTICLE 4: PROFESSIONAL RESPONSIBILITY**

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

The Designer shall commence work under this Agreement upon written communication from the City (a "Notice to Proceed"). The Notice to Proceed shall include the basis for compensation, the fixed limit construction cost, if any, and may include the time of submittal. Subsequent written communications amending the Notice to Proceed are required to change either a submittal date or the fixed limit construction cost. Proceeding with various phases of contract work is contingent upon the City or its designees' satisfaction with and acceptance of services performed for each phase. The Designer shall complete the services required under this Agreement in a prompt and continuous manner, and to meet such time limits as are established during the course of the Agreement and stated in each Notice to Proceed. If the completion of the scope of work is delayed through no fault of the Designer, the time limit may be extended upon written approval of the City.

- 4.2 The Designer shall furnish appropriate competent professional services for each of the phases to the point where detail checking and reviewing by the City will not be necessary. Any changes, corrections, additions or deletions made by the City shall be incorporated in the design of the Project unless detailed objections thereto are received from the Designer and approved by the City.
- 4.3 The Designer shall thoroughly acquaint his employees and consultants with all provisions of Maine law governing the conduct of public Design and construction projects, including but not limited to the description of material specifications and proprietary items in construction bid documents.
- 4.4 Neither the City's review, approval or acceptance of, nor payment for any of the services furnished shall be construed to operate as a waiver of any rights under the Agreement or any cause of action arising out of the performance of the Agreement.

**ARTICLE 5: DESIGNER SERVICES**

5.1 TYPE 1 CONTRACTS; STUDIES, PROGRAMS, MASTER PLANS, REPORTS

1. Phase 1. – Study

Upon receipt of a Notice to Proceed from the City, the Designer shall meet as necessary with the City and shall prepare and submit programs, preliminary reports, master plans, studies, sketches, space utilization criteria and estimates in accordance with the Proposal. Monthly progress reports shall be submitted by the Designer to the City. The Designer shall prepare and submit concept sketches of various design ideas to determine a workable plan solution in terms of the programs, funds available, and as complete an overall design concept as possible, including cost estimates. The Designer shall furnish to the City eight (8) copies of the report for final approval on or before the date set forth in the Notice to Proceed or any supplement thereto.

5.2 TYPE 2 CONTRACTS -- DESIGN AND CONSTRUCTION (SUBJECT TO ADDITIONAL APPROPRIATION)

1. Phase 1. - Schematics

Upon receipt of a Notice to Proceed from the Awarding Authority, the Designer shall meet as necessary with the City for the purpose of arriving at a mutual understanding of the City's project needs. Thereafter, the Designer shall prepare and submit to the City single line schematic drawings including floor plans, elevations and space criteria to establish basic design ideas and respective cost estimates as set forth in the Proposal. The Designer shall submit to the City for approval six (6) copies of said schematic plans, outline specifications and cost estimates, on or before the date or time for submission specified in the Notice to Proceed or any supplement thereto, unless the Designer shall have obtained from the City an extension of time in writing.

Estimated construction cost and fee as set forth in the original Notice to Proceed will not be changed by the City without the agreement of the Designer.

2. Phase 2A. - Design Development

Upon receipt of a Notice to Proceed the Designer shall prepare from the approved Phase 1 documents complete design development documents consisting of plans, outline specifications, and cost estimates and other documents to fix and describe the size and character of the project as to architectural, structural, mechanical, and electrical systems, materials, and such other elements as may be appropriate to enable the City to study and understand the progress and development of the Project. Such plans outline specifications and cost estimate shall be subject to the written approval of the City. The Designer shall submit to the City for approval six (6) copies of said design development documents on or before the date or time for submission specified in the Notice to Proceed or any supplement thereto, unless the Designer shall have obtained from the City an extension of time in writing.

### 3. Phase 2B. - Construction Documents

Upon receipt of a Notice to Proceed from the City for Phase 3 of the Project, the Designer shall meet as necessary with the City, and shall prepare and submit to the City on or before the date or time specified in the Notice to Proceed or any supplement thereto, complete working plans and specifications in sufficient detail to permit firm bids in open competition for construction of the project, and a detailed cost estimate. Said plans and specifications shall be based on the design development, outline specifications and construction cost estimate approved in Phase 2 of the Project, the Notice to Proceed with Phase 3, or any subsequent modification thereto. The detailed estimate of the cost of the Project shall include quantities of all materials and unit prices of labor and materials as well as cost estimates for each item of work. Such working plans and specifications and cost estimates shall be subject to the written approval of the City. The Designer shall furnish to the City for approval six (6) sets of the said plans, specifications and construction cost estimates.

Following the approval of the plans, specifications and construction cost estimates, the Designer shall incorporate all changes required by the City in the working drawings and specifications and shall prepare and transmit to the City one set of Construction Contract Documents for approval. "Construction Contract Documents" shall mean the contract for construction of a whole or part of the Project, including all change orders.

### 4. Phase 2C. - Bidding Phase

Upon amendment to this Agreement, approval of Construction Contract Documents, and a Notice to Proceed, the Designer shall prepare the final Construction Contract Documents, including advertisements for receipt of proposals for construction contractors, shall assist in distributing the bidding documents to prospective bidders, and shall prepare and transmit all addenda. The Designer shall assist the City in pre-qualifying bidders, shall conduct a pre-bid conference with potential bidders, shall assist in obtaining bids, shall conduct a qualification review of the low bidder and transmit his recommendations as to the award of the Construction Contract Documents to the City, All services shall be in accordance with the requirements of Maine law relating to public construction projects.

If the bid of the lowest responsible and eligible bidder exceeds the fixed limit of construction cost, if any, the City shall have the option to (a) give written approval of an increase in such fixed limit, (b) re-bid the contract within a reasonable period of time, or (c) instruct the Designer in writing to provide such revised Construction Contract Documents as the City may require to bring the cost within the Fixed Limit. In the case of (c), the Designer may in connection with such revisions make reasonable adjustments in the scope of the Construction Contract Documents or quality of the work allowed therein subject to the written approval of the City, which approval shall not be unreasonably withheld. The Designer shall not be entitled to any additional compensation for such services.

## 5. Phase 2D - Designer's Services During Construction

Upon the award of the construction contract, the Designer and his consultants shall, for the purpose of protecting the City against defects and deficiencies in the work of the Project: (1) be charged with general administration of the construction contract, including review and processing of the general contractor's applications for payment and change order proposals; preparation of a monetized "punch list" of remaining work following substantial completion of the project work, and subsequent inspection to determine completion of such punch list work; review and processing of the general contractor's final completion and close out documentation and assistance to the City in the close out process; (2) furnish the general contractor with information for establishing lines and grades and such large scale drawings and full sized detailed drawings as the City may require; (3) promptly check and approve samples, schedules, shop drawings and other submissions by the general contractor; (4) make weekly visits to the site or sites of the Project; (5) conduct semi-final and final inspections of the construction project and report the results of such inspections in writing to the City; (6) require each consultant employed in accordance with Article 1 above to make visits when necessary, and more often if requested by the City, for the same purposes during the progress of that portion of the said construction to which the consultant's services relate and to report in writing thereon to the Designer; (7) report to the City weekly in writing on the progress of construction including whether or not the general contractor is keeping record drawings; (8) recommend rejection of all project work observed by the Designer which fails to conform to the Construction Contract Documents; (9) decide all questions regarding interpretation of or compliance with the Construction Contract Documents, except as the City may in writing otherwise determine; (10) review and act on all requests for changes in plans, specifications, work, or contracts for the Project; and (11) upon written instructions from the City, furnish working plans and specifications for any such change.

The Designer shall be familiar with the provisions of Maine law for payment to contractors and shall submit to the City all requisitions for payment submitted by the general contractor. With respect to each such requisition, he or she shall certify to the best of the Designer's knowledge that the percentage of work included in the requisition is accurate and the work performed conforms to the Construction Contract Documents. In the event the Designer does not approve the requisition exactly as submitted by the general contractor, said Designer shall forward it for payment to the City dated but unsigned with an accompanying letter of explanation setting forth objections and recommended changes. The Designer shall coordinate the required weekly visit to the construction site in such a manner to be able to return to his office with the contractor's payment bearing the Designer's approval or letter of exceptions. Timely payments of general contractors is required by Title 10 M.R.S. §1111 et seq.; therefore, the Designer shall establish office procedures assuring either immediate mail or messenger delivery of the requisition for payment to the City, and shall process requisition for payment within forty-eight hours of receipt.

The Designer's responsibility to provide basic services for the construction phase under this Agreement commences with the award of the contract for construction and terminates upon the issuance to the City of the final certificate of payment and the City's acceptance of the completed project.

The Designer will exercise the utmost care and diligence in discovering and promptly reporting to the City any defects or deficiencies in the work of the general contractor or any of its subcontractors, or their agents or employees, or any other person performing any of the work in the construction of the Project. The Designer represents that it will follow the highest professional standards in performing all architectural services under this Agreement. Any defective Designs or specifications furnished by the architect will be promptly corrected by the Designer at no cost to the City, and the Designer will promptly reimburse the City for all damages, if any, resulting from the use of such defective Designs or Specifications. The City's approval, acceptance, use of or payment for all or any part of the Designer's services hereunder or of the Project itself shall in no way alter the Designer's obligations or the City's rights hereunder.

6. Phase 2E. - Record Drawings, Reports, Calculations

Before examining the requisition for final payment submitted to the City by the general contractor and making any certification in response thereto, the Designer shall obtain from the general contractor record drawings showing the actual installation of the plumbing, heating, ventilating and electrical work under the construction contract and all variations, if any. The Designer shall ascertain by his review that changes authorized by change orders are shown on the general contractor's record drawings and on the applicable original reproducible and shall submit to the City the complete set as revised, which reproducible shall become the property of the City.

Two 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 City at the conclusion of the construction contract and prior to the expiration of the construction period.

As-built record drawings shall be furnished to the City by the Designer.

**ARTICLE 6: DESIGNER'S BASIC FEE**

- 6.1 For the performance of all services required under the terms of this Agreement and excluding those services specified under Articles 7, 8 and 9, the Designer shall be compensated by the City in accordance with the negotiated fee for this project. The negotiated fee for this project is a fixed price not to exceed.
- 6.2 If there is a material change in the scope of services provided in this agreement, the Designer and the City will mutually agree to an adjustment in the Designer's basic fee.

6.3 The basic fee shall be paid to the Designer in accordance with the following schedule:

Schematic Design	10%
Design Development	40%
Contract Documents	25%
Bidding Services	05%
Construction Admin	20%

Billings for services shall be made monthly and shall be in proportion to the amount of work completed.

### **ARTICLE 7: ADDITIONAL COMPENSATION**

7.1 With the formal written approval of the City, the Designer shall perform all or any of the following services in addition to the services performed pursuant to Article 5 above: (1) revising previously approved drawings, specifications or other documents to accomplish changes authorized by the City, and preparation of change orders related thereto; (2) preparing documents for alternate bids requested by the City except alternates prepared by the Designer to adjust the fixed limit construction cost, if any; (3) providing consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing professional services of the type set forth in Article 6 as may be required in connection with the replacement of such work; (4) providing services after final payment to the contractor; (5) revising working plans and specifications submitted in their final and complete form for which bids were not received within six months after submission; (6) making studies other than those normally required and preparing applications and reports to assist the City in obtaining federal and/or state aid; (7) preparing operating and maintenance manuals; (8) assisting the City in litigation arising out of the construction contract; and (9) performing any other professional services not otherwise required under this Agreement.

7.2 For the services provided pursuant to paragraph 1 of this Article, the Designer shall be compensated by the City at the rates set forth in Attachment C.

7.3 Notwithstanding anything contained in this Agreement to the contrary, including without limitation those provisions contained in Article 6 and this Article 7, the Designer and/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 any bid documents, as reasonably determined by the City.

### **ARTICLE 8: REIMBURSEMENT**

8.1 The Designer shall be reimbursed by the City:(a) at one and one tenth (1.1x) times the actual cost to the Designer of consultants hired to obtain any data in accordance with Article 2 above, provided, however, that no reimbursement for such expense shall be made unless the rates of compensation for said consultant services have been approved by the City or its designee, which may approve a lump sum fee; (b) at one and one tenth (1.1x) times the actual

cost to the Designer of special consultants not specified in Article 1, and approved by the City or its designee, provided, however, that no reimbursement for such expense shall be made unless the rates of compensation for said consultant services shall have been approved in writing by the City or its designee, which may approve a lump sum fee; (c) any other specially authorized reimbursement, including special printing; and (d) for all printing and reproduction costs.

### **ARTICLE 9: DESIGN FEES AND CHANGE ORDERS**

- 9.1 The Designer shall be compensated in accordance with the rates specified in Article 7 for the services of its employees or any consultant listed in Article 1 for services associated with changes and change orders described in Article 7. The Designer shall not be compensated for any services involved in preparing change orders required to make unit price adjustments due to existing conditions. Changes for which the Designer receives no compensation under this Article shall be "no fee modifications" or "no fee change orders." The fact that the Designer receives no fee shall not limit the City's legal remedies regarding such changes.

Any services in connection with change orders and change directives which are necessitated by a lack of reasonable clarity, deficiencies or conflicts in the Construction Contract Documents or other errors or omissions of the Designer, or which result from existing conditions encountered in the building which should have been anticipated by the Designer based on reasonable investigation of said building as required herein, shall not qualify as additional services and shall be performed within the scope of Basic Services, as described in the AIA B101 Owner-Architect Agreement, as amended by the City.

- 9.2 Payments for modifications or change orders to the Designer shall be made upon completion of the Designer's work under such modifications or change orders.

### **ARTICLE 10: TERMINATION, NO AWARD**

- 10.1 By written notice to the Designer, the City may terminate this contract at any time. If any such termination shall occur without the fault of the Designer, all compensation and reimbursement due to the Designer up to the date of termination, in accordance with all contract terms, shall be paid to the Designer by the City. Such payment shall not exceed the fair value of the work, as the City shall determine.
- 10.2 By written notice to the City, the Designer may terminate this contract (1) if the City, within sixty (60) days following written notice from the Designer of any default by the City under the Agreement, shall have failed to remove such default or (2) if, after the Designer shall have performed all services required of the Designer in Phase 1 and/or Phase 2 of the Project, if applicable, at least six (6) months shall have lapsed without receipt by the Designer of Notice to Proceed with the next phase of the Project. Upon any such termination by the Designer all compensation and reimbursement payable to the Designer in accordance with the Agreement up to and including the date of termination shall be paid to the Designer by the City.

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

- 11.1 The acceptance by the Designer of the last payment for services paid under the provisions of Articles 10 and 11 in the event of contract termination shall in each instance operate as and be a release to the City, and every member or agent thereof, from all claims and liability to the Designer for payment on account of services performed or reimbursable expenses incurred under this Agreement, except for those written claims submitted by the Designer to the City with the last payment requisition.

## **ARTICLE 12: NOTICES, APPROVALS, INVOICES**

- 12.1 Any notice required under this contract to be given by the City to the Designer, or by the Designer to the City, shall be deemed to have been so given, whether or not received, if mailed by prepaid postage by, respectively, the City to the Designer at the address specified for the Designer on Page 1, or the Designer to the City.
- 12.2 Written approval by the City for Extra compensation as provided under Articles 7 and 8, reimbursements, shall be in the form of a letter issued by the City.
- 12.3 All invoices may be submitted monthly and subject to contract terms and proper documentation will be promptly processed by the City or returned to the Designer.
- 12.4 Invoices for services under Article 5 where such invoices pertain to design services during construction shall also describe the names, payroll titles, and dates of site visits required for construction-phase services.
- 12.5 Invoices submitted for services which have not been previously authorized in writing shall be returned to the Designer.
- 12.6 Requests for previously authorized expenses of any nature must be accompanied by a billing or receipt from the source of the expense.

## **ARTICLE 13: INSURANCE AND INDEMNIFICATION**

- 13.1 The Designer shall at his own expense obtain and maintain a Professional Liability Insurance policy for errors, omissions or negligent acts arising out of the performance of this Agreement in a minimum amount of at least \$1,000,000 per claim and \$3,000,000 in the aggregate. Designer will also procure and maintain occurrence-based Comprehensive General Liability Insurance and Automobile Liability Insurance coverage in amounts of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate for bodily injury, death and property damage, naming the City as an additional insured thereon. The Designer shall also carry Workers' Compensation Insurance coverage to the extent required by law.

- 13.2 All coverages shall be in force from the time of the Agreement to the date when all construction work designed under the Agreement is completed and accepted by the City. If, however, the policy is a claim made policy, it shall remain in force for a period of six (6) years after substantial completion.
- 13.3 With respect to Automobile Liability and Commercial General Liability Insurance, Designer shall name the City as an additional insured for coverage only in those areas where government immunity has been expressly waived by 14 M.R.S. § 8104-A, as limited by § 8104-B and § 8111. This provision shall not be deemed a waiver of any defenses, immunities or limitations of liability or damages available to the City under the Maine Tort Claims Act, other Maine statutory law, judicial precedent, common law, or any other defenses, immunities or limitations of liability available to the City.
- 13.4 Prior to execution of this Agreement, Designer shall furnish the City and thereafter maintain certificates evidencing all such coverages, which certificates shall guarantee thirty (30) days' notice to the City of termination of insurance from the insurance provider or agent. Designer shall also provide a copy of any endorsement naming the City as additional insured. A certificate that merely has a box checked under "Addl Insr," or the like, or that merely states the City of South Portland is named as an Additional Insured, will not be acceptable. The Workers' Compensation insurance shall include an endorsement waiving all rights of subrogation against the City of South Portland, its agents, officers or employees. Upon the City's request, Designer shall provide the City with a complete copy of any of the above-referenced policies. Designer shall be responsible for any and all deductibles and/or self-insured retentions. The City's acceptance or lack of acceptance of Designer's Certificate of Insurance or other evidence of insurance shall not be construed as a waiver of Designer's obligation to obtain and maintain such insurance as required by this Agreement. If Designer maintains broader coverage and/or higher limits than the minimum shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by Designer. The above referenced insurance coverages shall be procured through an insurance carrier licensed to do business in the State of Maine.
- 13.5 To the fullest extent permitted by law, Designer shall indemnify and hold harmless the City, its agents, officers and employees, from and against all claims, damages, losses, and expenses, just or unjust, including, but not limited to, the costs of defense and reasonable attorney's fees arising out of or resulting from the performance of this Agreement by Designer, its officers, agents, employees or project team members under this Agreement, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use therefrom, and (2) is caused in whole or in part by any negligent act or omission of Designer, anyone directly or indirectly employed by it, or anyone for whose act it may be liable. Such obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the City that otherwise exists. The extent of the indemnification provision shall not be limited by the provision for insurance in this Agreement. Designer's obligations under this section shall survive termination of this Agreement. The parties acknowledge that City is a political subdivision of the State of Maine to which the Maine Tort Claims Act applies. Nothing in this Agreement is intended, or shall

be construed, to constitute a waiver of any defense, immunity or limitation of liability that may be available to the City, its officers, agents and employees, pursuant to the Maine Tort Claims Act or as otherwise provided by law.

#### **ARTICLE 14: SUPPLEMENTAL CONTRACT DATA; LEGAL REQUIREMENTS**

- 14.1 The Designer hereby certifies:
- (i) if an individual, the individual is a registered architect;
  - (ii) if a partnership, a majority of all the partners are persons who are registered architects;
  - (iii) if a corporation, sole proprietorship, joint stock company or other entity, the majority of the directors or a majority of the stock ownership and the chief executive officer are persons who are registered architects, and the person to have the project in his or her charge is a registered architect;
  - (iv) if a joint venture, each joint venture satisfies the requirements of this section.
- 14.2 The Designer hereby certifies that it has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with the award of this Agreement.
- 14.3 The Designer hereby certifies that no consultant to or subcontractor for the Designer has given, offered or agreed to give any gift, contribution or offer of employment to the Designer, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the Designer.
- 14.4 The Designer hereby certifies that no person, corporation or other entity, other than a bona fide full-time employee of the Designer, has been retained or hired by the Designer to solicit for or in any way assist the Designer in obtaining this Agreement upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Agreement to the Designer.
- 14.5 The Designer shall maintain all books, records, and accounts related to the Project for at least six years after final payment. Until the expiration of six years after final payment, the City shall have the right to examine any books, documents, papers or records of the Designer or of its consultants that directly pertain to, and involve transactions relating to, the Designer or its consultants.

## ARTICLE 15: MISCELLANEOUS PROVISIONS

- 15.1 One (1) reproducible copy of all Drawings and Specifications furnished by the Designer and all other documents prepared by the Designer shall become the property of the City. Ownership of the stamped drawings and specifications shall not include the Designer's certification or stamp. Any re-use of such Drawings and/or Specifications without the Designer's written verification of suitability for the specific purpose intended shall be without liability or legal exposure to the Designer or to the Designer's independent professional associates, subcontractors or consultants. Distribution or submission to meet official regulatory requirements or for other purposes in connection with the project is not to be construed as an act in derogation of the Designer's rights under this AGREEMENT.
- 15.2 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and personal representatives.
- 15.3 This Agreement represents the entire agreement between the City and the Designer, and supersedes any prior agreements whether oral or written. This Agreement may be amended only by written instrument executed by both the City and the Designer.
- 15.4 The Designer agrees that the City and any of its officer or employee assume no personal liability under this Agreement.
- 15.5 In an effort to resolve any conflicts that arise during the completion of the Project, the City and Contractor agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation, the cost of which shall be shared equally by the parties. The City and Contractor further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors and subconsultants, thereby providing for mediation as the primary method for dispute resolution among the parties to all those agreements.
- 15.6 This Agreement shall be governed by the laws of the State of Maine. Except as otherwise expressly agreed by the parties in writing, exclusive venue for any such civil action shall be in Maine Superior Court (Cumberland County).
- 15.7 In the event any provision of this Agreement shall be held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall attach only to such provision and shall not affect or render invalid or unenforceable any other provision of this Agreement.

**SIGNATURES**

**IN WITNESS WHEREOF**, on the day and year hereinabove first written, the Designer has caused this agreement to be signed and sealed in its name and behalf, and its corporate seal to be hereto affixed by the signatory below authorized to do so, and the City Manager has signed this agreement on behalf of the City.

Accepted by Designer

Accepted by City

By: \_\_\_\_\_

\_\_\_\_\_

Printed Name: \_\_\_\_\_

By: Scott Morelli

Title: \_\_\_\_\_

Title: City Manager

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT A**

CITY OF SOUTH PORTLAND REQUEST FOR PROPOSALS:

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AS AMENDED BY:  
ADDENDUM \_\_\_\_\_

**EXHIBIT B**

DESIGNER PROPOSAL DATED

**EXHIBIT C**

DESIGNER RATES

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