

**ATTACHMENT B
AGREEMENT BETWEEN OWNER AND ARCHITECT**

AGREEMENT made as of the ____ day of December 2016.

BETWEEN the Owner: Town of North Haven
 Memorial Town Hall
 18 Church Street
 North Haven, CT 06473

and the Architect: _____

For the following Project: Addition to and renovation of the North Haven Police Department facility at 8 Linsley Street, North Haven, Connecticut (“Project”).

The Town of North Haven, a municipality organized and existing under the laws of the State of Connecticut (“Owner”) and _____ (“Architect”) agree as set forth below.

ARTICLE 1

INTRODUCTION TO ARCHITECT’S RESPONSIBILITIES

1.1 ARCHITECT’S SERVICES

The Architect represents that it is experienced in the architectural design and engineering of police department and public safety facilities in Connecticut, including the preparation of construction documents to implement such police facilities construction in accordance with the Owner’s budget. The Architect will prepare plans, specifications and drawings as described herein and shall cooperate with the Construction Manager and the Owner in order to comply with the Owner’s program and the applicable Codes, laws, statutes, regulations and other legal requirements.

1.1.1 The Architect’s services consist of those services performed by the Architect, Architect’s employees and Architect’s consultants as enumerated in Article 2 of this Agreement and any other services included in Article 3.

1.1.2 The Architect’s services shall be performed as expeditiously as is consistent with professional skill and care as required by Connecticut law and shall ensure the orderly progress of the Work in reasonable accordance with the time schedule agreed upon by the Architect and the Owner. Attached hereto is a time schedule agreed to by the

parties (Exhibit A). The time limits set forth in Exhibit A, except for reasonable cause, shall not be exceeded by the Architect or Owner.

1.1.3 The Architect shall carry professional liability insurance in accordance with Article 10 of this Agreement.

ARTICLE 2

SCOPE OF ARCHITECT'S BASIC SERVICES

The scope of the Architect's Basic Services for all phases shall include items specified in this Article 2 and the Scope of Services attached hereto as Exhibit B. To the extent that this Article 2 contradicts Exhibit B, Exhibit B shall control and take precedence over Article 2. It is the intent of the parties that Exhibit B take precedence over any other provision provided herein.

2.1 DEFINITION

2.1.1 The Architect's Basic Services consist of the services described in Exhibit B herein and any other services typically performed by an architect employed to design a municipal police department headquarters facility in Connecticut, but do not include Additional Services. The Architect shall promptly notify the Owner of any discrepancy or claimed discrepancy between this Agreement and any other document. The Owner, in its sole discretion, shall resolve any discrepancy and notify the Architect of its decision. The scope of the Architect's Basic Services also includes those services that are reasonable, consistent and necessary for a police department facility complete and functioning, and shall include but not in any way be limited to the Architect's attendance at all meetings of Owner's Boards, Commissions and Committees, scope review and value engineering meetings, Project meetings held during the Construction Phase, pre-bid meetings, Town Meetings (if requested to do so), meetings of any land use agencies (if necessary to obtain any required approvals) and any other meetings of any other Town boards, commissions or agencies if the Architect's attendance is reasonably required. The Architect will use professional diligence to identify laws, rules, codes and regulations which apply to the Project, to interpret the same in a reasonable manner, to seek the advice of governmental officials and/or legal counsel when questions of interpretation and/or applicability arise, and to produce reports, plans and/or other documents which are consistent therewith. Architect is obligated to provide its services in accordance with the standard of care required of architects on similar projects under Connecticut law. All of Architect's services and documents shall comply with the restrictions and requirements of all governmental and quasi-governmental authorities, utility companies, fire underwriters, public authorities and other agencies and organizations having jurisdiction over this Project, in force as of the date that this Agreement for the Project is executed, or which is known to the Architect or which in the exercise of an independent architect's reasonable and prudent professional judgment should have been known to the Architect. The Architect acknowledges and agrees that

an essential requirement of this Agreement is that the Architect produce and provide a design within the Owner's budget.

In the event the Architect determines that compliance with any such restriction or requirement is not in the best interest of the Project, Architect shall seek Owner's written consent to depart from this requirement and said consent shall not be unreasonably withheld. The Architect shall assist the Owner in applying for the permits and approvals typically required by law for projects similar to the Project for which Architect's services are being engaged. This assistance consists of completing and submitting forms as to the results of certain work included in the scope of services. This assistance does not include, however, special studies, special research, special testing or special documentation not normally required for a police department facility project in Connecticut unless otherwise provided herein. The Architect will provide any such requested special services as an Additional Service to be authorized in writing by the Owner. The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in **Exhibit B** as part of Basic Services.

2.1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in the schedule prepared by the Construction Manager and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by the Construction Manager's schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or the Owner.

No work shall be undertaken by Architect hereunder until it receives written authorization from Owner to proceed with each phase of the Project. Further, the Owner reserves the right to terminate the Project for Owner's convenience at any time.

2.2 SCHEMATIC DESIGN PHASE

Exhibit B details the scope of the Architect's duties as it relates to this phase.

2.2.1 The Architect shall review the Owner's Space Needs Assessment attached hereto as **Exhibit C** approved by the Owner to ascertain the requirements of the Project and shall arrive at a mutual written understanding of such requirements with the Owner. It is hereby understood and agreed that the Owner's requirements include providing a cost effective design to satisfy the Owner's specified needs. The Architect shall also review the program and any other specifications furnished by the Owner and analyze the Owner's requirements, applicable building and zoning code requirements, physical characteristics of the Project site, other information and applicable laws, statutes, ordinances and regulations to ascertain the requirements of the Project and to confirm

such requirements to the Owner. Architect shall provide the Owner with assistance in identifying and pursuing grant opportunities.

2.2.2 The Architect shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 6.2.1.

2.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project. It is understood that the Owner may choose to modify the scope of the Project prior to the construction phase. Revisions to documents previously approved by Owner shall be an Additional Service unless the revisions are made necessary due to omissions or errors of Architect.

2.2.4 Based on the program, schedule and construction budget requirements selected by the Owner, the Architect shall prepare for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

2.2.5 All the deliverables in all phases shall be prepared using the following computer programs: drawings in Revit or other comparable BIM software. A minimum of three (3) hard copies and digital files for each deliverable shall be provided by the Architect to the Owner, unless otherwise directed by Owner.

2.2.6 Once the Construction Manager prepares a cost estimate, based on current area, volume or other unit costs, the same will be attached hereto as Exhibit D. Owner will begin the process of procuring the services of a Construction Manager promptly following the approval of an appropriation for the Project by the Owner's legislative body.

2.3 DESIGN DEVELOPMENT PHASE

Upon receipt of the Owner's written acceptance of the Schematic Design Phase, and the approval of the Owner's legislative body of an appropriation for the Project, the Architect shall:

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings 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. Drawings shall consist of final-scale plans, elevations and detail sections sufficient in detail to describe the work and fix the size and character of the work as to site improvements, structures, mechanical systems, electrical systems, as well as other aspects or systems of the work, and to identify all materials and other elements of the work as may be appropriate and to submit those documents for approval by Owner and authorities having jurisdiction. The Design

Development Documents shall be prepared for consultation with the Owner, the Construction Manager and other consultants retained by Owner, if any, for the Project. The Architect shall also furnish the Owner with copies of Design Development Documents prepared of the type and number set forth in Paragraph 2.2.5 hereof.

2.3.2 The Architect shall collaborate with the Construction Manager and the Owner to provide value engineering, shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost, and shall propose feasible alternatives to reduce construction costs.

2.4 CONSTRUCTION DOCUMENTS PHASE

Upon receipt of Owner's written acceptance of the Design Development Documents presented in the Design Development Phase and direction to proceed with the Construction Documents Phase:

2.4.1 Based upon the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project including drawings, technical specifications and necessary bidding information supplementing the Construction Manager's documentation and incorporating and submitting those documents for approval by Owner. The Construction Documents shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations.

2.4.2 The Architect shall assist the Owner in the preparation of any necessary bidding information, bidding forms and the Conditions of the Contract. However, the Owner shall determine the form and substance of the contract to be used between the Owner and the Construction Manager.

2.4.3 The Architect shall work with the Construction Manager to advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

2.4.4 The Owner's decisions with respect to constructability are final unless in the professional opinion of the Architect any such decision is in conflict with or violation of laws, rules, regulations, permits or approvals specifically referred to herein or otherwise applicable to the project. Should the public bids exceed the cost estimates by 5% or more, the Architect shall revise the construction drawings in accordance with the decision of the Owner at no additional cost to Owner.

2.4.5 The Architect shall assist the owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

2.4.6 The Architect shall furnish the Owner such copies as Owner reasonably requests of all documents prepared in this phase of the type and number set forth in Paragraph 2.2.5 hereof.

2.4.7 Prior to the commencement of construction, the Architect shall inform the Owner and any funding source for the Project that in its professional opinion, all plans, specifications and drawings conform to all the applicable governmental regulations, statutes and ordinances relevant to the Project and the improvements when built in accordance therewith, subject to the provisions of Subparagraph 2.1.1.

2.5 BIDDING OR NEGOTIATION PHASE

Upon receipt of Owner's written acceptance of the Construction Documents presented in the Construction Document Phase and authorization to proceed with the Bidding or Negotiation Phase:

2.5.1 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner and Construction Manager in obtaining bids and assist in awarding contracts for construction except as provided in Paragraph 2.4.2.

2.6 CONSTRUCTION PHASE – ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Architect shall be a representative of and shall advise and consult with the Owner (1) during construction until the earlier of 120 calendar days after the date of substantial completion or the date when final payment to the Construction Manager is due, and (2) as an Additional Service at the Owner's direction from time to time during the correction period described in the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written instrument.

2.6.2 Duties During Construction. The Architect shall exercise its professional judgment in administering the construction contract and in advising and consulting with the Owner and Construction Manager to protect the interests of the Owner.

2.6.3 Site Visits. The Architect shall make at least weekly visits to the Project site then under construction to familiarize itself with the progress and quality of the construction and to determine if the construction is proceeding in substantial accordance with the Construction Documents governing the installation of or the progress of such construction and shall attend weekly job meetings. On the basis of its on-site observations as an Architect, the Architect shall endeavor to guard the Owner against defects and deficiencies in construction and shall notify the Owner and the Construction Manager in writing if any portion of the work is not in conformity with the requirements of the Construction Documents and make recommendations to the Owner for its correction. The Architect shall be available to and shall consult with Owner and

Construction Manager on the occasion of all circumstances arising during the course of the construction which would make such consultation in the best interest of the Owner.

2.6.4 Rejection of Work; Additional Testing. The Architect shall promptly advise the Owner to reject Work observed by the Architect which does not conform to the Construction Documents. Whenever proper professional judgment would indicate a probability of a non-conforming or adverse circumstance, and in order to ensure the proper implementation of the intent of the Construction Documents, the Architect will advise the Owner to require special inspection or testing of any work in accordance with the provision of the Construction Documents whether or not such work has been then fabricated, installed or completed; provided, however, that neither this authority of the Architect nor a decision made in good faith in the exercise of its professional judgment either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the contractors, subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the work.

2.6.5 Certificate of Substantial Completion. The Architect shall conduct observations to determine the date or dates of substantial completion and the date of final completion. The Architect shall receive and review written guarantees, manufacturers' manuals, parts lists and all documents assembled by the Construction Manager for the Project. Upon request of the Owner, but not before, the Architect shall issue a certificate of final completion stating that, based upon its observations of the Project, the Project has been completed in accordance with the Construction Documents, except for punch list items which are the responsibility of the Contractor to complete prior to issuance of the certificate of final payment by the Architect.

2.6.6 Participation in Disputes and Claims. The Architect will give full and prompt attention to any claims or controversies that arise during the course of construction of the Project. In the event of any legal action, mediation, arbitration (solely at the option of Owner) or litigation proceeding to resolve any claim, the Architect shall be present and shall participate in such proceedings. The Architect consents to joinder in any litigation or arbitration proceeding concerning the Project. The Architect shall be compensated as an Additional Service for time spent in resolving claims which are not alleged to be related to the Services furnished by the Architect under this or any other Agreement related to the Project. Architect shall not be compensated for time spent in connection with claims alleged to be related to the Services furnished by the Architect.

Architect will reply to all written requests for information/clarification ("RFI") submitted to it within ten (10) calendar days of its receipt of any RFI. Architect shall process submittals provided to it in a timely manner so as to not impede the progress of the Project.

2.6.7 Notice of Meetings. The Architect will give timely notice to Owner of any meetings the Architect feels are necessary in connection with this Project with utility companies or Town, State or other regulatory agencies. Scheduling of such meetings is to be done by the Architect.

2.6.8 Cooperation with Consultants. The Architect shall cooperate with any consultant employed by the Owner in connection with the Project.

2.6.9 Assistance with Negotiations. The Architect shall assist the Owner in any negotiations with governing authorities necessary to obtain any Town or State sign-offs on permitting, etc.

2.6.10 Preparation of Punch List. The Architect shall assist the Construction Manager in the development of a punch list, and participate with the Owner and the Construction Manager in interim and final acceptance procedures, which includes the monitoring of the progress in completing the punch list. The Architect shall schedule a final review with the Construction Manager and the Owner to verify completion of punch list items.

2.6.11 Record Drawings. At the completion of the Project, the Architect shall, based upon dimensional field information furnished by the Construction Manager, provide Record Documents (as-built drawings) on electronic media (CD, DVD or the like) in a Windows format compatible with Owner's software. Said documents shall show the reported location of the work and significant changes made during the construction process. Because these drawings will be based upon unverified information provided by other parties, which are assumed by the Architect to be reliable, the Architect cannot and does not warrant their accuracy. In addition to the computer media, the Architect shall provide Owner with two (2) sets of blackline prints. The costs of the prints and mylars are chargeable against Architect's allowance for reimbursables.

2.6.12 Work Reports and Records. The Architect shall keep accurate written records of its observation of the progress of the Project, copies of which shall be furnished to the Owner. Weekly field reports are to be produced and submitted to the Owner, no later than five (5) calendar days after the date of the field observation.

2.6.13 Attendance at Pre-Bid, Pre-Construction and Scope Review Conferences. The Architect shall attend all pre-bid, pre-construction and scope review conferences and prepare minutes of these meetings.

2.6.14 Construction Close-Out. The Architect shall assist the Owner in obtaining all operating manuals and warranties for all equipment and systems from the Construction Manager as required by the Construction Documents. Architect shall coordinate with Construction Manager to avoid duplication of efforts.

2.6.15 Limitation of Liability For Construction Means. The Architect shall not be responsible, directly or indirectly, for any construction means, methods, technology, supervision, safety policies, sequences or procedures or for performing any construction activities. In no way shall this provision be construed as a limitation of liability for the Architect's services. In accordance with law, no such limitation of liability shall apply.

2.6.16 The Architect shall, at all times, have access to the Work wherever it is in preparation or progress.

2.6.17 Based on the Architect's observations and evaluations of the Construction Manager's/Contractor's Applications for Payment, the Architect shall review and certify the actual amounts due the Construction Manager/Contractor.

2.6.18 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site and on the data comprising the Construction Manager's/Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections due to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Construction Manager is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of Work, (2) reviewed construction means, methods, techniques, safety, sequences or procedures, (3) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

2.6.19 The Architect shall review and take appropriate action upon Construction Manager's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the construction of the Owner or of separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the Construction Manger/Contractor, all of which remain the responsibility of the Construction Manager to the extent required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the items is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that

the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

2.6.20 The Construction Manager and Architect shall work cooperatively to prepare Change Orders and Construction Change Directives, with supporting documentation and data deemed necessary by the Architect, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

ARTICLE 3

ADDITIONAL SERVICES

3.1 If the Architect, or any of the Architect's consultants, are requested to perform services that otherwise would not be required by the terms of this agreement, the Architect shall, unless it is reasonably unable to do so, upon prior written authorization from the Owner, proceed to provide such services. Such services shall be considered an additional service and shall be paid for by the Owner as described in Paragraph 12.2. *Except as provided in **Exhibit B** herein, the following are additional services.*

- A. Providing financial feasibility studies.
- B. Providing planning surveys, environmental studies or comparative studies related to the Project *except* those provided in **Exhibit B**.
- C. Providing design services relative to future facilities, systems and equipment which are intended as part of the Project.
- D. Providing services of professional consultants for other than those described herein.
- E. Making major or extensive revisions to drawings, specifications or other documents when such revisions are: (1) inconsistent with written approvals or instructions previously given by the Owner or the Construction Manager, including revisions made necessary by adjustments in the Owner's program or Project Budget; (2) Required by the enactment or revisions of codes, laws, or regulations subsequent to the preparation of such documents; or (4) Due to changes required as a result of the Owner's failure to render decisions in a timely manner.
- F. Providing special surveys, environmental studies and submissions, including applications, making presentations required for approvals of governmental authorities or others having jurisdiction over the Project.

- G. Providing Architectural/Engineering services made necessary by a default or termination of the Construction Manager or a Contractor, by major defects or deficiencies in the Work of a Contractor, or by failure of performance of either the Owner or a Contractor under a contract for construction; including evaluating claims in connection with the construction, provided these claims are not as a result of errors, or omissions of the Architect, its subcontractors or consultants, in the performance of their services.
- H. Providing services to verify the accuracy of drawings or other information furnished by the Owner, if the Architect demonstrates to the satisfaction of the Owner that such verification is necessary.
- I. Preparing a set of reproducible record drawings showing significant changes in the work made during construction based on marked-up prints, drawings and other data furnished by the Construction Manager to the Architect at the request of Owner except if due to Architect error or omission.
- J. Providing detailed quantity surveys or inventories of material, equipment or labor not included in **Exhibit B**.
- K. Providing analyses of owning and operating costs, except for the provision of a lifecycle analysis (as required by Exhibit C).
- L. Making investigations, inventories of materials or equipment or valuations and detailed appraisals of existing facilities.
- M. Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.
- N. Providing services 120 calendar days after issuance to the Owner of the Certificate of Substantial Completion.
- O. Providing Services to investigate existing facilities for the purpose of making measured drawings thereof in the absence of drawings to be provided by the Owner.
- P. Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with general accepted architectural practice.
- Q. Providing services required because of significant changes in the Project not necessitated by the Architect, including, but not limited to, changes in the size, quality, complexity, the Owner's or Construction Manager's schedule, or the method of bidding or negotiating and contracting for construction.

- R. Preparing Drawings, Specifications, and other documentation and supporting data, and providing other services in connection with Change Orders and Construction Change Directives. Notwithstanding the foregoing, in the event that any of the foregoing services described in this paragraph are rendered in connection with any Change Order or Construction Change Directive necessitated by an error, omission, defect or mistake by Architect or contained in Architect's work product, then such services will not be compensable as additional services.
- S. Providing services in connection with evaluating more than a reasonable number of substitution proposals by Contractors and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.
- T. Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.
- U. Providing services in connection with a public hearing, mediation or arbitration proceeding or litigation, except where the Architect is a party thereto or there is an allegation by one of the parties thereto that Architect is liable for all or part of the damages claimed by a plaintiff/claimant.
- V. Providing services in connection with Construction Manager or subcontractor(s) disputes or questions arising out of the bidding process, such services include research and presentation for and appearance at bid protests, hearings, and similar proceedings.
- W. Providing coordination of construction performed by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.
- X. Providing services in connection with the work of separate consultants retained by the Owner.
- Z. In addition to those services noted in Article 3, the following will constitute Additional Services as requested and authorized by the Owner and will be compensated in accordance with 12.2.1:

1. Hazardous Materials

To the fullest extent permitted by law, the owner shall indemnify and hold harmless the Architect, Architect's consultants and agents and employees of any of them from and against claims, damages,

losses and expenses, including but not limited to, attorney's fees, arising out of or resulting from performance of the work where hazardous material is present and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury or destruction of tangible property (other than the work itself) including loss of the use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Owner, any one directly or indirectly employed by the Owner or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity in this Agreement.

2. Signage and Graphics

Architect shall design and provide drawings/plans/specifications for signage required by the Owner, as well as street signage and signing on the police station. However, design and preparation of documentation suitable for bidding of all interior and exterior non-code signage and graphics required for the project shall be an additional service.

3. Special Inspections and Testing

Provision of special inspections and testing by an Independent Testing Lab as stipulated in the Connecticut State Building Code, as amended. If the Owner requests the Architect to conduct said inspections and testing, such services shall be provided according to Architect's standard hourly rates.

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1 If more extensive representation at the Project Site than is described herein is required, and if the Owner requests in writing, the Architect shall provide as an Additional Service one or more full-time project representatives to assist. Such full-time Project representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefore as mutually agreed between the Owner and the Architect, at such time as services are requested. The duties, responsibilities and limitations of authority of such full-time Project representatives shall be agreed to between the Owner and the Architect in writing.

3.2.2 Through the observations by such Project Representatives provided by the Architect, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.

No Additional Services shall be performed without prior written consent of the Owner.

3.2.3 Project Representation Beyond Basic Services, provided by Architect, for the sums stipulated under 12.2.1, shall be provided based on receipt of the Owner's written authorization.

ARTICLE 4

OWNER'S RESPONSIBILITIES

Unless otherwise indicated in **Exhibit B**, the following are the Owner's Responsibilities:

4.1 The Owner shall provide information to the Architect regarding its requirements for the Project. The Owner shall furnish to the Architect such information with reasonable promptness to avoid delay in the progress of the work. The Architect shall be entitled to rely upon the completeness and accuracy of any Owner-supplied information *unless*, in the exercise of its professional judgment, it knew or should have known such reliance would be unreasonable. Architect shall have no claim or cause of action against Owner for any deficiencies in the information provided by Owner to Architect.

4.2 The Owner will act in connection with this Agreement through a Construction Manager/constructor. The Owner shall examine documents, at each phase of the work, submitted by the Architect and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect's services. Any approvals given by Owner shall not relieve Architect of any of its obligations hereunder.

4.3 Tests. The Owner shall furnish, to the extent that it is in possession of such, or shall request the Architect to obtain as an additional service, structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials and other laboratory and environmental tests related to the Project.

4.4 Special Inspections and Testing. The Owner shall provide for all special inspections and testing required by it.

4.5 Hazardous Materials Testing. The Owner shall provide any testing for hazardous materials that may be required by it.

4.6 The Owner shall furnish, at its expense, all legal, insurance, financial arrangements, project funding, and accounting services to meet the Owner's needs and interests. The Architect shall be entitled to rely upon the accuracy and completeness thereof.

4.7 The Owner shall communicate to the Architect on all matters related to this Project through the Architect's Designated Representative, Joseph Costa, as the Primary Contact for the Owner, or his designee in the event of his unavailability.

ARTICLE 5

ARCHITECT'S RESPONSIBILITIES

The Architect's responsibilities, as of the date hereof and throughout the Term of this Agreement, in addition to those set forth herein, are as follows:

5.1 The Architect has and shall maintain the requisite experience to undertake and complete the Services pursuant to the requirements of this Agreement, will employ, or will engage at its sole cost and expense, licensed (where required), experienced, qualified and trained personnel, subcontractors and consultants, and will use, or require those in its employ, to use quality equipment accurately calibrated to competently perform the Services required by this Agreement.

5.2 Architect Possesses Adequate Resources and Personnel. The Architect shall maintain financial stability and adequate resources and personnel to complete the Services in a timely fashion.

5.3 No Conflict or Violation of Law. The Architect has disclosed, or shall disclose, in writing prior to the execution of this Agreement and at any time subsequent to the execution of this Agreement while Architect is providing Services to Owner hereunder, all conflicts or potential conflicts of interest that may or are likely to have an adverse effect on its ability to independently protect the Owner's interests in connection with the Project, including but not limited to, the nature and specifics of its relationship with any other participants in the Project, for example, with the Construction Manager, other consultants and subcontractors, and the like. The Architect represents that its performance of the Services described herein, and its representation of the Owner, will not result in a conflict of interest, will not violate any laws or contractual obligations with third parties, and is an enforceable obligation of the Architect.

5.4 Prior Approval of All Subcontractors and Consultants. The Architect will not engage any consultant or subcontractor for any of the Services without prior written notice to and written approval by the Owner and receipt of the Owner's written consent, except for those subcontractors and consultants specifically identified in this Agreement.

5.5 No Violation of Law. The Architect, its officers, directors, owners, employees or, to the best of its knowledge any of its approved subcontractors and consultants, has not

committed a criminal violation of federal or state laws arising directly or indirectly from its business operations that resulted in the imposition of a monetary fine, injunction, criminal conviction or other sanction. Further, the Architect shall take all reasonable steps to ensure that its officers, directors, owners, employees, agents, subcontractors and consultants shall comply with the requirements of all laws, rules and regulations applicable to this Agreement or to the conduct of its or their businesses in the performance of the Services under this Agreement.

5.6 Quality and Performance of Services. The Architect will perform, or coordinate the performance by others of, the Services in a good and workmanlike manner consistent with the degree of care and skill ordinarily exercised by members of the architectural/engineering profession currently practicing under similar circumstances on projects of this type and scope in the State of Connecticut, and will diligently pursue the completion of such Services in accordance with the terms of this Agreement.

5.7 Licenses and Permits. The Architect possesses, and will ensure that its subcontractors and consultants possess, all professional licenses and other licenses and permits that may be required to perform the Services required by this Agreement. Architect shall ensure that its structural engineering, civil engineering and MEP subcontractors and consultants possess adequate liability insurance and shall provide Owner with a certificate of insurance for each of the aforementioned subcontractors or consultants prior to the commencement of services by said subcontractor/consultant. All subcontractors and consultants shall name the Owner as an additional insured on their respective liability insurance policies.

5.8 Observance of Proprietary Rights. The Architect will take reasonable steps in the performance of the Services to not knowingly infringe upon or misappropriate any United States copyright, trademark, service mark, patent or trade secret or other proprietary material of any third persons applicable to, for example, but not limited exclusively to, computer software and other instruments of service employed by the Architect. Upon being notified of such a claim, the Architect shall, at the request of the Owner and in the Owner's sole discretion, (i) defend through litigation or obtain through negotiation the right of the Owner to continue using the Services of the Architect while such claim of infringement is contested; (ii) modify the Services to be rendered at no cost, expense or damage to the Owner so as to make such Services non-infringing while preserving the original functionality, and/or (iii) replace the Services or the infringing or potentially infringing portion thereof with the functional equivalent. If the Owner determines that none of the foregoing alternatives provide an adequate remedy or resolution of the claim of infringement, the Owner may terminate all or any part of the Services and, in addition to other relief, shall be entitled to recover the amounts previously paid to the Architect hereunder related to such claim of infringement.

5.9 Communications and Coordination. The Architect shall receive, control and distribute as necessary all documents submitted to the Architect by the Owner or by others, and shall arrange all meetings requested by the Owner or required or desired by the Architect for the completion of the Project. The Owner shall be informed of the

nature and content of all direct communications with the State of Connecticut and U.S. Government representatives in connection with the Project.

5.10 Owner Not to be Billed for Taxes. The Owner is not obligated to pay certain sales, use, gross receipts taxes, ad valorem or other taxes with respect to the Services rendered by the Architect, its consultants and subcontractors, as provided by statute, and the Architect agrees not to invoice the Owner therefore. Upon request of the Architect, the Owner's Finance Department will issue tax-exempt certificates to any consultant, subcontractor or other party rendering services to the Project.

5.11 Recordkeeping and Audits. The Architect hereby agrees that its invoicing for all monies due under this Agreement shall be configured or formatted in a manner consistent with the accounting needs of the Owner including, without limitation, breakdown into amounts per phase (Schematic, Design Development, Construction Documents, Bidding, Construction Administration, FF&E). Such formatting shall be as mutually agreed between the Owner and the Architect, and the Architect will endeavor to accommodate reasonable requests from the Owner. Upon the Owner's request, Architect shall provide Owner with backup documentation (including but not limited to receipts, time sheets or the electronic equivalent) for any charge invoiced by Architect to Owner. Architect shall retain all documents and files relating to the Project for a minimum of ten (10) years from Substantial Completion.

ARTICLE 6

CONSTRUCTION COST

6.1 DEFINITION

6.1.1 The Construction Cost, for purposes of this Agreement, shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

6.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect. In addition, a reasonable contingency shall be included by Owner for market conditions at the time of bidding and for changes in the Work during construction.

6.1.3 Construction Cost does not include the cost of financing, the Owner's administrative expenses, legal and accounting fees of the Owner, the Compensation payable to the Architect hereunder, advertising costs, the cost of consultants retained by the Owner, the CM fee paid by Owner to Construction Manager, computer hardware and software, FF&E, testing, the amounts paid by Owner to Owner's Construction Representative, renderings and models, the cost of the land, rights-of-way, or financing which are the responsibility of the Owner.

6.2 RESPONSIBILITY FOR CONSTRUCTION COST

6.2.1 Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Architect, represent the Architect's judgment as a design professional familiar with the construction industry and the Connecticut marketplace. The Architect and its consultants and subcontractors shall control the design so that in the professional opinion of each, the construction work at the Project can be constructed within the Budget.

6.2.2 The Architect understands that, prior to the commencement of each phase of the work required for the Project, a separate budget will be prepared for each such phase. The Construction Manager in collaboration with the Architect will prepare the budget for each phase and forward the budget (with comments) to the Owner for review. The Owner will then require and schedule a meeting with the Construction Manager and the Architect in order to resolve discrepancies, if any.

6.2.3 The Owner reserves the right to place a fixed limit on Construction Cost. If such a fixed limit has been established, the Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project (without adversely impacting the Owner's program and compliance with the Education Specifications) and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. Any changes made as a result must be approved by the Owner. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

6.2.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect obtains approval of the Construction Documents by the Owner, any Project budget or fixed limit of Construction Cost may be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

6.2.5 If a fixed limit of Construction Cost (adjusted as provided in Subparagraph 6.2.3) is exceeded by the lowest bona fide bid or negotiated proposal in an amount greater than 5%, the Owner shall, at its discretion:

1. give written approval of an increase in such fixed limit;
2. authorize rebidding or renegotiating of the Project (or trade package(s)) within a reasonable time;
3. if the Project is abandoned, terminate in accordance with Article 9; or

4. allow the revision of the Project design as required to reduce the Construction Cost, with the Owner's approval.

6.2.6 If the Owner chooses to proceed under 6.2.5.4, the Architect, shall modify the Contract Documents as necessary to comply with the fixed limit, if established as a condition of this Agreement. The modification of Contract Documents without additional compensation shall be the limit of the Architect's responsibility arising out of the establishment of a fixed limit. The Architect shall be entitled to compensation in accordance with this Agreement for all services actually performed to date whether or not the Construction Phase is commenced.

ARTICLE 7

TIME

7.1 Time. The Architect shall complete each phase of its work required by this Agreement in a timely fashion in accordance with the schedule attached hereto as **Exhibit A** ("Schedule") and incorporated herein by reference. **TIME IS OF THE ESSENCE IN THIS AGREEMENT** as to any interim milestones and the final completion date specified in the Schedule. Architect shall submit a Schedule, in a form acceptable to the Owner, of all activities required to meet the scheduled completion dates. The Architect shall be liable to Owner for damages recoverable under applicable law for all losses, costs and expenses sustained by the Owner should the Architect fail to meet the interim milestone dates and/or the final completion date in the Schedule, as the Schedule may be amended from time to time in accordance with this Agreement, or should the Architect otherwise fail to comply with any material term or provision of this Agreement, but not including any period or periods of delay or disruption caused by entities or events not under the control of the Architect. The Owner shall indemnify and hold the Architect harmless from and against any third-party claims, demands, or liabilities arising out of any delays to the completion of the Architect's duties and obligations under this Agreement which are caused by Owner.

7.2 Essential Conditions. It is hereby understood and agreed by the Architect and the Owner that the date of commencement, the dates of milestones, and the time for completion, as specified in the Schedule, are ESSENTIAL CONDITIONS of this Agreement; and it is further mutually understood and agreed that the work embraced in this Agreement shall be commenced immediately after the date of execution and delivery of a fully-executed original of this Agreement to the Architect or upon delivery of a Notice to Proceed, whichever occurs first.

7.3 Schedule Deemed Reasonable. It is expressly understood and agreed that the time for the completion of intermediate milestones and for the final completion of the work on the Project set forth in the Schedule prepared by the Architect is a reasonable time to achieve each such event. If work on the Project is behind the Schedule, the

Architect must submit a revised Schedule to the Owner, showing how the attainment of a milestone will be achieved by the Architect. The Architect's plan for attaining the milestone will not be approved by the Owner if it reflects procedures or resource requirements which the Owner determines are unreasonable or in violation of other requirements of the Agreement.

7.4 Owner's Right to Accelerate. With respect to this Agreement, the Owner has the right to review, accept and/or reject the work of this Agreement, as well as to approve/disapprove or modify payment of monthly Compensation to the Architect and monitor/comment upon and as necessary require the Architect to place additional resources onto the Project in order to meet the Schedule.

7.5 The Owner agrees that the Architect is not responsible for damages arising directly or indirectly from any delays caused by circumstances beyond the Architect's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters; fires, riots, war or other emergencies or acts of God; failure of any government agency to act in a timely manner; failure of performance by the Owner or the Owner's contractors or consultants; or discovery of any hazardous substances or differing site conditions.

In addition, if the delays resulting from any such causes increase the cost or time required by the Architect to perform its services in an orderly and efficient manner, the Architect may be entitled to an equitable adjustment in schedule and/or compensation for its direct costs. In the event that the Architect claims that a delay caused by the Owner or the Owner's contractors or consultants, or discovery of any hazardous substances or differing site conditions, entitles the Architect to an extension of time or additional compensation, the Architect must, within 21 calendar days of the onset of such delay, present a written request for time extension or equitable adjustment to the Owner. Failure to comply with the aforementioned claim presentation deadline shall result in waiver of Architect's claim for a time extension or equitable adjustment.

7.6 Unless otherwise stated, all references to "days" in this Agreement shall mean calendar days.

ARTICLE 8

RIGHTS AND REMEDIES

8.1 Default by Architect. A default on the part of the Architect shall exist in the event that any of the following occur: (i) the Architect fails to expeditiously perform the services required to be performed under the terms of this Agreement thereby materially delaying the commencement, progress or completion of the Project; (ii) the Architect, or any subcontractor or consultant of the Architect, shall file or record a mechanic's or materialmen's lien against the Project site or any property of the Owner; (iii) the

Architect is declared to be bankrupt or insolvent, an assignment for the benefit of creditors is made by the Architect, the Architect shall file a voluntary petition in bankruptcy or insolvency, or a receiver shall be appointed for the Architect and the same is not set aside within thirty (30) days of such occurrence; (iv) any material representation or certification made by Architect to Owner shall prove to be false or misleading on the date said representation or certification is made; (v) the Architect shall fail to observe or perform any material covenant, agreement or condition contained in this Agreement required to be kept, performed or observed by the Architect; (vi) the Architect, or any principal or officer of the Architect, shall be convicted of a felony in the conduct of or related to the business of the Architect; (vii) the Architect violates any laws, ordinances, rules, regulations or orders of any public authority in the performance of its duties hereunder; (viii) Architect fails to design the Project within Owner's stated budget requirements (each an "Event of Default"); provided, however, that if an Event of Default has occurred, the same shall not be considered a breach of this Agreement if cured within fourteen (14) calendar days of occurrence without notice from the Owner being required or, if not reasonably capable of being cured within fourteen (14) days, the Architect has commenced appropriate and action to cure such default within such 14-day period and continues to pursue a cure using its best efforts with due diligence until such cure is timely achieved to the reasonable satisfaction of the Owner ("Cure Period"). If an Event of Default has occurred, the Architect shall give the Owner prompt written notice of such Event of Default, its cure of such default, if any, or its efforts to commence the cure of such default, including information and documentation related to such efforts or as may be otherwise requested by the Owner. Upon the occurrence of an Event of Default which is not cured within the Cure Period, the Owner has the right to terminate this Agreement and pursue all remedies available to it under this Agreement or at law.

8.2 Default by Owner. If the Owner shall fail to pay Compensation as required hereunder, in the event the Owner shall fail to perform any of its other material obligations under this Agreement, such failure shall constitute an Event of Default on the part of the Owner unless the Owner cures such default or commences to cure such default under the same conditions as the Cure Period applicable to a default of the Architect described in Paragraph 8.1 hereof. If such an Event of Default by the Owner shall have occurred and such default shall not have been cured within the Cure Period, the Architect may exercise any remedies available to it under this Agreement or at law. In the event of any dispute between the parties, Architect shall continue its performance of its obligations under this Agreement and may avail itself of the dispute resolution procedures set forth in Article 10 hereof.

8.3 Termination by Owner due to Architect's Default. If the Architect fails to observe the Schedule, as such Schedule may be modified under this Agreement, or fails to supply enough properly-skilled professionals or proper materials, or if the Architect violates any applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise has committed an Event of Default which has not been cured under this Agreement, the Owner may, without prejudice to any right or remedy, terminate the employment of Architect and take possession of all plans,

specifications, drawings and other data theretofore prepared by Architect, which the Architect shall deliver to the Owner within ten (10) calendar days of written demand therefore. Additionally, the Owner may pursue any action available to it under law to obtain relief for actual damages suffered by reason of defaults, failures or breaches of Architect hereunder. In the event of termination for default, the Architect shall be liable to the Owner for all of the Owner's loss, cost, damage and expense, including reasonable attorneys' fees, which result from the Architect's breach of this Agreement. The provisions of Article IX are hereby excluded.

8.4 In the event of termination of this Agreement by either party, the Owner shall within thirty (30) days of termination pay the Architect for all services rendered and all reimbursable costs incurred by the Architect up to the date of termination, in accordance with the payment provisions of this Agreement.

The Owner may terminate this Agreement for the Owner's convenience and without cause upon giving the Architect not less than seven (7) calendar days' written notice. Architect expressly acknowledges that Owner's obligation to proceed with the Project is contingent upon approval by all applicable Town boards and commissions and Town Meeting, as well as Owner's receipt of the currently anticipated level of funding from the Town Meeting and the State of Connecticut Department of Education and that in the event said funding is reduced, delayed or otherwise adversely impacted and/or any necessary approvals are not obtained, Owner expressly reserves the right to terminate this Agreement and Owner's liability to Architect in such instance shall be limited to Architect's fees and costs incurred for provision of Services pursuant to this Agreement as of the date of such termination and shall not include any profit or overhead on work not yet performed.

Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days' written notice for any of the following reasons:

- Substantial failure by the other party to materially perform in accordance with the terms of this Agreement and through no fault of the terminating party;
- Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
- Suspension of the project or the Architect's services by the Owner for more than ninety (90) calendar days, consecutive or in the aggregate;
- Material changes in the conditions under which this Agreement was entered into, the Scope of Services or the nature of the project, and the failure of the parties to reach

agreement on the compensation and schedule adjustments necessitated by such changes.

In the event of any termination that is not the fault of the Architect and is further not due to any reduction or delay in funding from the State of Connecticut but rather is due to an uncured material breach by Owner, the Owner shall pay the Architect for services rendered and reimbursable costs incurred by the Architect in connection with the orderly termination of this Agreement. In the event of any termination that is not the fault of the Owner, the Architect shall be liable to the Owner for any costs incurred by the Owner, including any increased costs associated with the replacement architect's performance and all other expenses directly resulting from the termination.

8.5 Transfers on Termination. In the event of any termination of this Agreement by the Owner, the Architect shall, within ten (10) calendar days of written demand from the Owner, return to the Owner all papers, materials and other items created or held by the Architect relating to the Project, including digital source files. In addition, each party will assist the other party in an orderly termination of this Agreement and the transfer of all aspects hereof, tangible and intangible.

8.6 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination, or at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven (7) days written notice and opportunity to cure to the Owner. In the event of a failure by the Owner to cure and resulting suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

8.7 In the event that Owner requests that the Architect provide any services during any suspension period, Architect shall be paid for such services on an hourly basis according to the rates set forth in the Staffing Plan attached hereto as **Exhibit E**

ARTICLE 9

INDEMNIFICATION

9.1 Indemnification. To the fullest extent permitted by law, each party shall, for itself (herein sometimes collectively referred to as the "Indemnitors"), fully defend, indemnify and hold harmless each other respectively, its officers, members, partners, employees and related entities, (all of said parties are herein collectively referred to as the "Indemnitees"), from and against all liability, damage, loss and expense, including reasonable attorney's fees and defense costs, which arise out of or connected with: (i)

any negligent or willful act, error or omission by any Indemnitor in the performance of its obligations under this Agreement; or (ii) the negligent failure of the Indemnitor to comply with the laws, statutes, ordinances, or regulations of any governmental agency or authority having jurisdiction over the Project; or (iii) the breach of any material term or condition of this Agreement by any of the Indemnitors. This indemnification shall survive the full performance of this Agreement or any earlier termination thereof.

ARTICLE 10

MISCELLANEOUS PROVISIONS

10.1 This Agreement shall be governed by the laws of the State of Connecticut.

10.2 Prohibition Against Assignment. The Architect may not transfer, hypothecate or in any way alienate or assign its interest in this Agreement or delegate any duties to be performed by it hereunder without the prior written consent of the Owner. The Owner may assign its interest in this Agreement at any time to any person who assumes the Owner's obligations hereunder from the date of such assignment; provided, however, absent express consent in writing by the Architect, such assignment shall not release the Owner from its obligations to the Architect hereunder for payment of all amounts due the Architect pursuant to this Agreement.

10.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall the statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

10.4 Owner's Approval. Whenever provision is made in this Agreement that requires the approval, consent, direction or decision of the Owner, unless specifically stated to the contrary, such approval, consent, direction or decision of the Owner shall be made only by the Owner, or its designee, in writing.

10.5 Personal Service Contract. This Agreement is entered into solely to provide for the design and administration of the Project and to define the rights, obligations and liabilities of the parties hereto. This Agreement, and any document or agreement entered into in connection herewith, shall not be deemed to create any other relationship between the Architect and the Owner other than as expressly provided herein. The Architect acknowledges that the Owner is not a partner or joint venturer of the Architect and that the Architect is not an employee or agent of the Owner. The Owner and Architect also expressly agree that there are no third party beneficiaries of this Agreement and it is not the intention of either party that any third party be a beneficiary of this Agreement.

10.6 Notices. All notices required to be provided by either party shall be in writing and shall be personally delivered by overnight mail or messenger service, or shall be given by certified mail, return receipt requested, postage prepaid, and delivered or addressed to the parties at the address heretofore set forth. All notices, requests and demands shall be deemed received no later than forty-eight (48) hours from the time of dispatch of such notice, if not by mail, or if made by mail, no later than forty-eight (48) hours after deposit in a receptacle maintained by the United States Postal Service.

All notices required to be provided by either party shall be delivered as follows:

IF TO OWNER:

Office of the First Selectman
North Haven Town Hall
18 Church Street
North Haven, CT 06473

and

Edward Swinkoski
Director of Finance and Administration
North Haven Town Hall
18 Church Street
North Haven, CT 06473

Jeffrey M. Donofrio, Esq.
Ciulla & Donofrio, LLP
127 Washington Avenue
North Haven, CT 06473
idonofrio@cd-LLP.com

IF TO ARCHITECT:

10.7 No Waiver. No waiver of any default hereunder shall be construed as a waiver of any subsequent breach.

10.8 Ownership of Documents. All drawings, specifications, surveys, results, models, plans, computer files and databases and other work product (instruments of service) prepared by the Architect or anyone employed by the Architect are and shall be the joint property of the Owner and Architect. The Owner shall be entitled to use copies of all

such instruments of service prepared under this Agreement in the use and occupancy of the Project, and the Architect hereby extends irrevocable permission of such exclusive use to the Owner at no charge to Owner. The Owner and any entity affiliated with or designated by the Owner may continue to use all such materials in connection with the Project. The Owner shall not use such materials on any other project. If the Owner or its agent makes any modifications to the plans and specifications, it is understood and agreed that the Architect shall not be responsible for such modifications and the Owner shall indemnify and hold harmless the Architect from and against all claims and actions that may be brought against the Architect alleging reliance by such person upon such modifications, including costs, expenses and reasonable attorney's fees.

10.9 Insurance. The following insurance coverages are required of the Architect and it is understood that the Architect will require other appropriate coverage from its consultants and subcontractors in any tier according to the work being performed and shall verify that all insurance coverage is issued in force in accordance with the terms hereof.

- A. Coverage Required. The Architect shall procure, present to the Owner in advance of any Services performed, and maintain in effect for the term of this Agreement, without interruption, the insurance coverages identified below with insurers licensed to conduct business in the State of Connecticut and having a minimum A.M. Best's A- financial rating or otherwise acceptable to the Owner.

Errors and Omissions Insurance (occurrence basis) will be provided by all architects and design professionals involved in the Project with minimum limits of \$1,000,000 per occurrence/\$3,000,000.00 aggregate. Both the base policy and rider shall not have a deductible greater than \$75,000.00. Coverage shall be maintained in effect continuously for a period of at least seven (7) years from the date of Substantial Completion. If the Owner elects to have increased insurance coverage, and if the Architect qualifies for such coverage, the cost of such additional coverage shall be treated as an additional Reimbursable Expense.

Commercial General Liability (occurrence form) insurance against claims or suits brought by members of the public alleging bodily injury or personal injury or property damage and claimed to have arisen out of operations conducted under this Agreement with limitations of a minimum of \$1,000,000 per occurrence and \$2,000,000 combined primary and excess coverage for each occurrence/aggregate and \$300,000 property damage.

Business Automobile insuring against claims or suits brought by members of the public alleging bodily injury or personal injury or property damage and claimed to have arisen out of the use of owned, hired or non-owned vehicles in connection with business. Coverage will be broad enough to include contractual liability, with limitations of \$1,000,000 combined primary and

excess coverage for each occurrence/aggregate with a combined single limit for bodily injury, personal injury and property damage.

Workers' Compensation insuring in accordance with statutory requirements in order to meet obligations towards employees in the event of injury or death sustained in the course of employment.

Property Damage insuring against direct damage loss to buildings, structures or improvements and all materials and equipment to become part of any temporary construction requirements or to any permanent buildings, structures or improvements, including materials and equipment in transit and thereafter stored on-site or off-site, covering the interest of the Owner, the Architect, its contractors and subcontractors and parties having an interest therein. Waivers of subrogation will be provided for all interested parties named herein. The Owner shall be named as loss payee as its interests may appear. The Architect, its consultants and subcontractors will be responsible for insuring their respective equipment, tools and materials, if any, brought to the job site but which are not intended to become part of any temporary construction requirements or part of any permanent structures, buildings or improvements.

Excess/Umbrella Insurance in the amount of \$1,000,000.00 overlaying employer's liability, CGL, and business automobile liability coverage shall be maintained.

B. General Requirements. All policies shall include the following provisions:

Cancellation notice: The Owner shall be entitled to receive from the insurance carriers not less than 30 days' written notice of cancellation, non-renewal or reduction in coverage, such cancellation notices to be given to the Owner's Purchasing Office c/o Director of Purchasing.

Certificates of Insurance – All policies will be evidenced by an original certificate of insurance on an ACORD-25S form or other form acceptable to Owner and delivered to the Owner and authorized and executed with an original signature or original stamp of the insurer or a properly-authorized agent or representative reflecting all coverage required, such certificate required to be delivered to the Owner prior to any work or other activity commencing under this Agreement.

Additional insured – The Architect, its consultants and subcontractors will arrange with their respective insurance agents or brokers to name the Owner, its elected and appointed officials, officers, department heads, employees and agents on all policies of primary and excess insurance coverages, except for Professional Errors and Omissions and Workers' Compensation coverage, as additional insured parties, and as loss payee with respect to any damage to

property of the Owner, as its interest may appear. The undersigned shall submit to the Owner upon commencement of this Agreement and periodically thereafter, but in no event less than once during each year of this Agreement, evidence of the existence of such insurance coverages in the form of original Certificates of Insurance issued by reputable insurance companies licensed to do business in the State of Connecticut and having minimum Best's A-financial rating or otherwise acceptable to the Owner. Such certificates shall designate the Owner in a form specified by the Town's Purchasing Director.

10.10 Excusable Delay. The parties hereto, respectively, shall not be in default of this Agreement if either is unable to fulfill, or is delayed in fulfilling, any of its obligations hereunder, or is prevented or delayed from fulfilling its obligations, in spite of its utilization of best efforts and due diligence, as a result of extreme weather conditions, natural disasters, catastrophic events, mass casualties to persons or significant destruction of property, war, governmental preemption in a national emergency, enactment of law, rule or regulation or change in existing laws, rules or regulations which prevent any party's ability to perform its respective obligations under this Agreement, or actions by other persons beyond the exclusive control of the party claiming hindrance or delay. If a party believes that a hindrance or delay has occurred, it shall give prompt written notice to the other party of the nature of such hindrance or delay, its effect upon such party's performance under this Agreement, the action needed to avoid the continuation of such hindrance or delay, and the adverse effects that such hindrance or delay has or may have in the future on such party's performance. Notwithstanding notification of a claim of hindrance or delay by one party, such request shall not affect, impair or excuse the other party hereto from the performance of its obligations hereunder unless its performance is impossible, impractical or unduly burdensome or expensive, or cannot effectively be accomplished without the cooperation of the party claiming delay or hindrance. The occurrence of such a hindrance or delay may constitute a change in the scope of Services, and may result in the need to adjust the Compensation in accordance with the terms of this Agreement.

10.11 Non-Discrimination. The Architect hereby agrees that it will not refuse to hire or employ or to bar or to discharge from employment an individual or to discriminate against him in compensation or in terms, conditions or privilege of employment because of race, color, religious creed, age, sex, national origin or ancestry, except in the case of bona fide occupational qualification or need. The Architect further agrees that it will not discharge expel or otherwise discriminate against any person because he has opposed any unfair employment practice or because he has filed a complaint or testified or assisted in any proceeding under Section 31-127 of the Connecticut General Statutes. The advertisement of employment opportunities will be carried out in such a manner as not to restrict or discriminate against individuals because of their race, color, religious creed, age, sex, national origin or ancestry, except in the case of bona fide occupational qualification or need.

10.12 Resolution of Disputes and Choice of Law. The parties agree that any and all disputes between them in connection with this Agreement or the interpretation thereof, if

they cannot be resolved by mutual agreement, shall be litigated in Connecticut Superior Court in and for the Judicial District of New Haven at New Haven or, if Owner elects, arbitrated. Prior to the institution of any litigation by either party, the parties shall first mediate any dispute via the American Dispute Resolution Center in New Britain, CT. In the event that a dispute between the parties is not resolved via mediation, the Owner, in its sole discretion, may elect to either arbitrate the dispute or proceed to litigation in the aforementioned forum and venue.

ARTICLE 11

PAYMENT TO THE ARCHITECT

11.1 REIMBURSABLE EXPENSES

11.1.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants in the best interest of the Project, as identified in the following Clauses.

11.1.2 Expense of pre-authorized out-of-state travel transportation and subsistence, and electronic communications in connection with the Project; fees paid for securing approval of authorities having jurisdiction over the Project; expense of overtime work requiring higher than regular rates if authorized in advance by the Owner; expense of renderings, models and mock-ups requested by Owner; expense of professional liability insurance dedicated exclusively to this Project; Phase I Environmental Assessment; Soil Borings and Analysis required by Code; Structural Peer review required by Code; Structural Special Inspections required by Code; DOT Study (determination letter) if required.

11.1.3 Reimbursable Expenses for the entire Project shall not exceed a maximum of _____ (\$ _____), as more specifically set forth in Architect's Bid Price in Architect's Bid Proposal dated _____ made a part hereof.

11.2 PAYMENTS ON ACCOUNT OF BASIC SERVICES

11.2.1 Payments for Basic Services shall be made monthly after submission of an invoice to the Owner, and Owner's satisfaction that work to date of invoice has been performed.

11.2.2 If and to the extent that the time initially established in **Exhibit B** of this Agreement is exceeded or extended significantly through no fault of the Architect, compensation for any services rendered during the additional period of any time shall be computed in the manner set forth in Subparagraph 12.2.2 and 12.2.3.

11.3 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

11.3.1 Payments on account of the Architect’s properly approved Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect’s statement of services rendered or expenses incurred.

11.4 PAYMENTS WITHHELD

11.4.1 No deductions shall be made from the Architect’s compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the work other than those for which the Architect has been found to be liable. However, Owner may withhold payment if Architect is in default of this Contract under Paragraph 8.1, and only to the extent that such default is not cured provided the amount to be withheld shall not exceed an amount of damages which have been reasonably estimated to be caused by the Architect’s default, including those damages and costs recoverable under Article 8 and the balance owed, if any, shall be paid to the Architect.

11.5 ARCHITECT’S ACCOUNTING RECORDS

11.5.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of multiple Direct Personnel Expense shall be available to the Owner or the Owner’s authorized Representative promptly upon demand by Owner or its duly authorized representative at mutually convenient times.

ARTICLE 12

BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

12.1 BASIC COMPENSATION

12.1.1 The compensation is based on a stipulated sum. Progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable as provided for in **Exhibit G**. The total compensation for the Project shall not exceed \$_____ (_____dollars) excluding the reimbursables described in Article 11 above herein and as set forth in Architect’s Bid Price in Architect’s Bid Proposal dated _____ and made a part hereof.

12.1.2 Progress payments for Basic Services in each phase shall not exceed those fees as set forth in **Exhibit G**.

12.2 COMPENSATION FOR ADDITIONAL SERVICES

12.2.1 Project Representation Beyond Basic Services, as described in Paragraph 3.2, shall be compensated in accordance with Subparagraph 12.2.2.

12.2.2 For additional services of the Architect, as described in Article 3, other than (1) Additional Project Representation, as described in Paragraph 3.2, but excluding services of consultants, compensation shall be computed in accordance with the Hourly Fee Schedule, **Exhibit F** attached hereto and made a part hereof, except as specifically negotiated.

12.2.3 For additional services of the consultants, including additional structural, mechanical and electrical engineering services and those provided under Subparagraph Article 3 as part of Additional Services, payment shall be a multiple of 1.15 times the amounts billed to the Architect for such services.

12.4 ADDITIONAL SERVICES

12.4.1 If the Basic Services covered by this Agreement have not been completed by one hundred twenty calendar (120) days following substantial completion, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Subparagraphs 12.2.

12.4.2 Payments are due and payable thirty (30) days from the date that the Architect's invoice is approved by the Owner.

ARTICLE 13

OTHER CONDITIONS OR SERVICES

13.1 The Documents attached hereto as Exhibits A, B, C, D, E, F and G are incorporated herein and made part of this Agreement. Also incorporated herein and made a part hereof are the Owner's RFQ/P # _____, the Owner's RFQ/P # _____, the Bid Specifications for Architectural, Engineering and Construction Administration Services for the Project, the Architect's Price Proposal and Project Approach.

13.2 Owner reserves the right to terminate this Contract at any time and Architect expressly recognizes that continuation of this Project is conditional upon obtaining funding authorization from the Town Meeting and funding and/or reimbursement from the State of Connecticut at a level acceptable to the Owner.

13.3 All duties and obligations undertaken by the parties pursuant to this Agreement shall be for the sole and exclusive benefit of the Owner and the Architect, and no third

party is intended, nor shall be deemed, an express or implied beneficiary of this Agreement.

13.4 Neither the professional activities of the Architect, nor the presence of the Architect or the Architect's employees and consultants at a construction site, shall relieve the Construction Manager and any other entity of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or coordinating all portions of the Work of construction in accordance with the Contract Documents and any health or safety precautions required by any regulatory agencies. The Architect and the Architect's personnel have no authority to exercise any control over any construction contractor or other entity or their employees in connection with their work or any health or safety precautions. The Owner agrees that the Construction Manager is solely responsible for the job site safety, and warrants that this intent shall be made evident in the Owner's agreement with the Construction Manager.

13.5 The Owner agrees that the Architect may include a provision in the Construction Documents with regard to the Construction Manager's use of electronic copies of portions of the Architect's instruments of service for the preparation of shop drawings and/or other submittal data pertaining to the Project. Such provision is intended to recognize the time efficiencies realized by the Contractor or Construction Manager in their preparation of submittal data with resulting economies being passed along to the Owner within the cost of the Work. The Architect, within the provision of the Construction Documents, shall allow for the use of specified portions of the Instruments of Service by the Construction Manager's prior execution of a release of liability to the Owner and Architect for such use, and payment of a stipulated fee to the Architect for said use. The Architect shall extend this opportunity only to the Construction Manager, and any subsequent allocation of costs and sharing of information among subcontractors, vendors, etc. shall be solely determined by the primary constructing entity. The Instruments of Service shall remain the property of the Architect set forth elsewhere in this Agreement.

13.7 If any required item or component of the Project is omitted from the Construction Documents, the Architect shall not be responsible for the cost of adding such item or component to the extent that such item or component would have been otherwise necessary to the Project or adds betterment or value to the Project. In no event will the Architect be responsible for any cost or expense that provides betterment, upgrade or enhancement to the Project. The Architect will, however, provide services necessary to incorporate necessary items and components without additional charge to the Owner, and will be responsible for any damages which are proximately caused by its failure to provide for a necessary item or component in the Construction Documents.

THIS AGREEMENT entered into as of the day and year first written above.

OWNER
TOWN OF NORTH HAVEN

By: _____
Michael J. Freda
Its First Selectman

By: _____

Its _____

EXHIBIT A

Project Description

The Project is the design and construction of an addition to and renovation of the existing North Haven Police Department facility in accordance with the Space Needs Assessment by the Owner.

EXHIBIT B

Schedule

The schedule for the Architect's services is as proposed by the Architect in the attached.