

## **TAFT LIBRARY ADDENDUM**

### **STANDARD FORM OF AGREEMENT BETWEEN TOWN OF MENDON (“THE TOWN”) AND**

**\_\_\_\_\_ (“ARCHITECT”)**

This Addendum is attached to and modifies the Standard Form of Agreement between the Town and Architect, AIA Document B101-2007 as amended by the Town. Its provisions supersede and, where applicable, modify and supplement the corresponding numbered provisions of those standard forms. Modifications include, but are not limited to the following:

- 1.1 Delete space if no additional information.
- 1.2 To be completed.
- 2.5 Strike the current text and replace with the following:

“The Architect shall provide and maintain throughout the term of the Agreement and any extension or renewal thereof the following insurance with companies that are authorized and licensed in the Commonwealth of Massachusetts to issue policies for the coverages and limits so required: The Architect shall provide and maintain throughout the term of this Contract and any extension or renewal thereof the following insurance with companies that are authorized and licensed in the Commonwealth of Massachusetts to issue policies for the coverages and limits so required.

Workers' Compensation Insurance as required by the laws of the Commonwealth of Massachusetts and employer's liability insurance in the amount of \$500,000/\$500,000/\$500,000.

Commercial General Liability Insurance, \$1,000,000 each occurrence and \$2,000,000 aggregate limit. Commercial General Liability insurance shall include personal injury liability, broad form property damage liability, products/completed operations liability and broad form contractual liability.

Automobile Liability Insurance - Combined single limit of \$1,000,000.

Professional Liability Insurance, covering errors and omissions, \$1,000,000 each occurrence and \$2,000,000 aggregate limit.

Excess Liability Insurance, Umbrella Form - \$2,000,000 aggregate, which shall be following form, providing coverage over commercial general liability insurance, automobile liability insurance, professional liability insurance, and employer's liability under workers' compensation insurance.

The Town of Mendon shall be named as an additional insured on each such policy of Commercial General Liability Insurance, Automobile Liability Insurance, and Excess Liability Insurance, Umbrella Form.

The Architect shall also be required to provide to the Town of Mendon with its proof of insurance coverage, endorsements or riders to the policies of Commercial General Liability Insurance, Automobile Liability Insurance, and Excess Liability Insurance, Umbrella Form, which indicate that the Town of Mendon is named as an additional insured on each such policy.

Certificates evidencing such insurance in five (5) copies shall be furnished to the Town of Mendon at the execution of this Contract. Such certificates shall not merely name the types of policy provided, but shall specifically refer to this Contract and shall state that such insurance is as required by this Contract.

No insurance shall be obtained from an insurer which:

- (1) is not licensed to sell insurance in the Commonwealth of Massachusetts;
- (2) is not authorized to provide insurance as an excess or surplus lines insurer, and does not have a current Best's rating of A or better; or
- (3) is a risk retention group lawfully providing insurance to its members in Massachusetts.

Failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of this Contract and shall operate as an immediate termination thereof.

4.1 Delete additional services (assuming none are provided.)

And

4.2

4.3.3 To be determined.

4.3.4 Insert twenty-four (24) months.

- 8.1.2 Delete the second sentence.
- 8.2.1 Delete the second sentence.
- 8.2.2 Delete everything after the word “mediation” in line 2.
- 8.2.3 Amend the text to read as follows: “If the parties fail to reach resolution by mediation, the dispute or claim shall be settled by litigation in a court of competent jurisdiction. Venue shall lie in the Superior Court of the State of Massachusetts for Norfolk County.”
- The following box shall be checked: “Litigation in a court of competent jurisdiction.”
- 8.3 Delete this Paragraph.
- 11.1 To be completed.
- 11.2 Delete if no additional services to be provided.
- And
- 11.3
- 11.4 Insert ten percent (10%) for the amount allowed.
- 11.5 Add the following percentages as appropriate:
- |                              |                           |
|------------------------------|---------------------------|
| Schematic Design Phase       | Fifteen Percent (15%)     |
| Design Development Phase     | Fifteen Percent (15%)     |
| Construction Documents Phase | Twenty-Five Percent (25%) |
| Bidding or Negotiation Phase | Fifteen Percent (15%)     |
| Construction Phase           | Thirty Percent (30%)      |
- 
- |                          |                            |
|--------------------------|----------------------------|
| Total Basic Compensation | One Hundred Percent (100%) |
|--------------------------|----------------------------|
- 11.7 To be completed if applicable.
- 11.8.2 Insert ten percent (10%) for the amount of reimbursable expenses.
- 11.9 Insert zero dollars (\$0.00) for the amount of the licensing fee to be paid.
- 11.10.1 Insert zero dollars (\$0.00) for the amount of the initial payment.
- 11.10.2 Insert zero percent (0%) for the amount of interest to be paid.
- 12.1 Add the following provision:

The personnel assigned to this Project shall be as follows:

#### **TO BE SUPPLIED BY ARCHITECT**

There shall be no change to these personnel assignments without the prior written consent of the Town, which consent shall not be unreasonably withheld. In the event substitution of personnel is requested by Architect or the Town, written notice of such request shall be timely provided in writing to the other party. The Town shall have authority to reject any proposed replacement personnel if it reasonably and timely deems such proposed replacement to be unsatisfactory.

Architect warrants that it has in its employ, and will continue to have for the term of this Agreement or any extension or renewal thereof, sufficient personnel experienced in performing design services such that Architect's obligations under this Agreement will be carried out in a prompt and professional manner. Architect further warrants that it is experienced in performing design services, and agrees that it will perform the services required by this Agreement in accordance with the prevailing standard of professionalism and care applicable to such professionals and services in Massachusetts.

Architect shall not subcontract any services to be performed under this Agreement without the advance, written consent of the Town. The Architect's employees, servants and agents shall not be considered to be The Town's employees for any purpose, including matters of workers' compensation and unemployment insurance.

12.2 Add the following provision:

Any and all consultants for Basic Services retained by the Architect shall be retained at the Architect's own expense in connection with this Project.

12.3 Add the following provision:

The Architect hereby certifies that:

- (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 the Township and the chief executive officer are persons who are

registered architects, landscape architects or engineers, and the person to have the project in his or her charge is a registered architect; or

- (iv) If a joint venture, each joint venturer satisfies the requirements of M.G.L. c.7, §38A½.

12.4 Add the following provision:

The Architect 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 contract.

The Architect hereby certifies that no consultant to or subcontractor for the Architect has given, offered or agreed to give any gift, contribution or offer of employment to the Architect, 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 Architect.

The Architect hereby certifies that no person, corporation or other entity, other than a bona fide full time employee of the Architect, has been retained or hired by the Architect to solicit for or in any way assist the Architect in obtaining this contract upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this contract to the Architect.

The Architect hereby certifies that it has internal accounting controls as required by subsection (c) of section thirty-nine R of chapter thirty of the Massachusetts General Laws and that the Architect has filed and will continue to file an audited financial statement as required by subsection (d) of said section thirty-nine R.

12.5 Add the following provision:

The Architect hereby certifies that it has filed the written certification of compliance with state tax laws, reporting of employees and contractors, and withholding and remitting of child support. (Statutory reference: M.G.L. c.62C, §49A).

12.6 Add the following provision:

The Architect shall maintain all books, records and accounts related to the Project in compliance with the following:

- 1 The Architect shall make, and keep for at least six (6) years after final payment, books, records and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Architect.
- 2 Until the expiration of six (6) years after final payment, the Town, the Office of the Inspector General and the Commissioner of Capital Asset Management and Maintenance shall have the right to examine any books, documents, papers or records of the Architect and of its subcontractors and consultants that directly pertain to, and involve transactions relating to the Project and to the Architect or its consultants in relation to the Project.
- 3 The Architect shall describe any change in the method of maintaining records or recording transactions which materially affects any statements filed with the Town, including in the Architect's description the date of the change and reasons therefor, and shall accompany said description with a letter from the Architect's independent certified public accountant approving or otherwise commenting on the changes.
- 4 The Architect has filed a statement of management on internal accounting controls prior to the execution of this Agreement.
- 5 The Architect has filed prior to the execution of this Agreement and will continue to file annually, an audited financial statement for the most recent completed fiscal year.
- 6 The Architect shall file with the Town a statement of management as to whether the system of internal accounting controls of the Architect and its subsidiaries reasonably assures that:
  - (a) Transactions are executed in accordance with the management's general and specific authorization;
  - (b) Transactions are recorded as necessary (i) to permit preparation of financial statements in conformity with generally accepted accounting principles, and (ii) to maintain accountability for assets;
  - (c) Access to assets is permitted only in accordance with management's general or specific authorization; and

- (d) The recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any difference.
- 7 The Architect shall also file annually with the Town a statement prepared and signed by an independent certified public accountant, stating that such accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to:
  - (a) whether the representations of management are consistent with the result of management's evaluation of the system of internal accounting controls; and
  - (b) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the Architect's financial statements.
- 8 During the term, the Architect shall annually file with the Commissioner of Capital Asset Management and Maintenance and the Town of this Agreement a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report. Such statements shall be made available to the Town upon request.
- 9 Records and statements required to be made, kept or filed in compliance with the provisions of this Agreement shall not be public records, as defined in section seven of chapter four of the Massachusetts General Laws (Statutory reference: M.G.L. c. 30, §39R)

12.7 Add the following provision:

This Agreement shall be governed by the law of the Commonwealth of Massachusetts, without regard to conflict-of-law principles.

12.8 Add the following provision:

If any provision or portion thereof, of this Agreement is determined by final judgment of a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions shall continue in effect to the

extent permitted by law.

12.9 Add the following provision:

The Architect understands that the Massachusetts Conflict of Interest Law, Chapter 268A of the Massachusetts General Laws, applies to The Architect with respect to the services required to be provided under this Agreement. The Architect and its officers, employees, agents, subcontractors and affiliated agencies shall not participate in any activity which constitutes a violation of the Massachusetts Conflict of Interest Law or which creates an appearance of a violation of the Massachusetts Conflict of Interest Law.

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

12.10 Add the following provision:

Neither the Town'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 this Agreement or any cause of action arising out of the performance of this Agreement.

12.11 Add the following provision:

The Architect shall thoroughly acquaint its employees and consultants with all provisions of the Massachusetts General Laws governing the conduct of public construction projects including but not limited to M.G.L. c. 149, c. 7 and c. 30, wherein the description of material specifications and proprietary items in construction design and bid documents is governed.

12.12 Add the following provision:

The Architect shall agree to the following:

The Architect shall compensate the Town of Mendon for all damage to Town property of any nature arising out of the Architect's work. To the fullest extent permitted by law, the Architect shall indemnify and hold harmless the Town of Mendon



and all of its officers, employees, boards, commissions, committees, agents and representatives from and against all claims, causes of action, suits, costs, damages, and liability of any kind which arise out of the breach by the Architect of its obligations under this Contract, or the act or omission of the Architect, its subcontractors, or their officers, employees, agents and representatives or anyone directly or indirectly employed by them, or anyone for whose acts or omissions they may be liable, regarding the work to be performed by the Architect under this Contract, or which arise out of the violation of any federal, Massachusetts or Town of Mendon statute, by-law, rule, regulation, order or directive, or which relate to personal injury or property damage suffered by the Architect or any of its officers or employees regarding the subject matter of this Contract.

Neither the Town of Mendon, nor its officers, employees, boards, committees, commissions, agents and representatives shall be under any personal obligation or incur any personal liability by reason of this Contract, the execution thereof or anything relating thereto which arises out of the breach or violation of any provision of this Contract, or the violation of any Federal, Massachusetts or Town of Mendon statute, by-law, rule, regulation, order or directive, or which relates to personal injury or property damage suffered by the Architect or its employees, regarding the subject matter of this Contract.

The Town of Mendon will not indemnify, hold harmless or defend the Architect or its officers, employees, agents, consultants, representatives, successors and assigns.

12.13 Add the following provision:

Architect shall review and comply with all laws, codes, regulations, ordinances, and by-laws of the Federal Government, Commonwealth of Massachusetts, and the Town of Mendon, MA, applicable to the services to be provided under this Contract. This Contract shall be construed to include in their entirety all terms respecting workers' compensation insurance and other terms required to be incorporated herein by law. Architect shall respond in the performance of its services, including the preparation of documents and maintenance of records, to requirements imposed by governmental authorities having jurisdiction over the project, including M.G.L. c. 30, § 39R.

12.14 Add the following provision:

Architect covenants and agrees that it has carefully examined the contract documents, including any Request for Qualifications and any Addenda, and that it

has had a full and fair opportunity to investigate the nature and location of the services to be performed, the general and local conditions, and all matters which may in any way affect the services or their performance, and that it fully understands the intent, purpose and terms of the contract documents and this Agreement. Architect further covenants and agrees that it has entered into this Agreement in reliance on its own examinations and estimates as to the amount and character of its services, and conditions which may be encountered in the performance thereof, and shall assume all risks and bear all losses pertaining thereto.

12.15 Add the following provision:

Architect shall maintain the confidentiality of information provided by the Town and shall not release, publish, distribute or otherwise disclose same to any third party without prior written permission from the Town or unless compelled by law or order of a court or regulatory body of competent jurisdiction. Architect shall not represent or purport that it speaks for the Town vis-à-vis the media or the public without the Town's express, written consent in advance.

12.16 Add the following provision:

The Architect is hereby prohibited from receiving any extra payments for additional work that should have reasonably been anticipated by the Architect.

12.17 Add the following provision:

For each employee of the Architect, the Architect shall, subject to its confidentiality and privacy obligations owing to its employees and third parties, and subject to any restrictions imposed by law, provide a written confirmation to the Town that such employee passed the Architect's pre-employment criminal background screen. In the event that any employee refuses to permit the Architect to provide such information to the Town, the Architect shall not assign such employee to perform services for the Town, and such employee shall not be authorized to perform services for the Town. The Town shall be permitted to keep such information in its files.

12.18 Add the following provision:

This agreement is signed under seal.

Signed under seal this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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THE TOWN – Town of Mendon

By the Mendon Board of Selectmen

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ARCHITECT (Signature)

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Lawney Tinio, Chairman

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(Printed name and title)

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Michael Goddard, Member

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Mark Reil, Member

CERTIFICATE OF VOTE

I, \_\_\_\_\_, hereby certify  
(Clerk/Secretary)

that I am the duly qualified and acting \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_  
(Title) (Corporation Name)

and I further certify that at a meeting of the Directors of said Corporation duly called and held on \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_, at which meeting all Directors were present and voting, the following vote was  
unanimously passed:

VOTED: To authorize and empower either \_\_\_\_\_,  
\_\_\_\_\_  
(Name) (Title);  
\_\_\_\_\_, \_\_\_\_\_; or  
(Name) (Title)  
\_\_\_\_\_, \_\_\_\_\_  
(Name) (Title),

any one acting singly, to execute all contracts and bonds on behalf of the Corporation.

I, further certify that the above vote is still in effect on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and has  
not been changed or modified in any respect.

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Printed Title

The certification contained here above shall be executed by ARCHITECT or copy of current "certification  
of authority to sign for the Corporation" shall be attached.

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