

AGREEMENT

AGREEMENT made as of the ____ day of _____ in the year of Two Thousand (2000) BETWEEN the Owner: *

Town of Belmont
455 Concord Avenue
Belmont, MA 02478

(*Referred to sometimes below as "The _____ Project"),

AND the Architect:

The total compensation to _____ for Basic Services (including its consultants) shall be \$_____.

The scope of services to be provided under this agreement will also include services described further in the following documents: (a) the Request for Proposals for Designer Services to _____ (RFP), (b) the Architect's proposal in response to the RFP dated _____, (c) the Architect's response to follow-up questions dated _____, and (d) _____. Without limitation, the scope of services included within Basic Services includes working with the Town of Belmont representatives and advisors (e.g. Project Managers, Advisory Committee or Committees, and any other persons or entities that the Town may choose to retain or consult, as the case may be) in full spirit of cooperation.

Any and all approvals and any and all actions of the Owner required throughout this agreement must be in writing and in advance.

All work shall be consistent with the scope of work described in the RFP. Said RFP is incorporated and made part of this agreement.

The Architect further agrees:

- To investigate the entire Project and to build into the design/construction documents any and all remedies necessary to make the structure compliant with the latest design of industry standards;
- To design _____;
- To design _____;
- To design _____;
- To redesign _____;
- To redesign _____;

- To design the entire project (building and site) to meet or exceed all accessibility codes with input from the Disability Access Commission designee;
- To assist the Town in _____;
- To certify that _____;
- It is mutually agreed that there will be separate bidding and administration of by the Architect under this contract for: (a) _____, and (b) _____ (if applicable).

ARTICLE 1

ARCHITECT'S RESPONSIBILITIES

1.1 ARCHITECT'S SERVICES

1.1.1 The Architect's services consist of those services performed by the Architect, Architect's employees and Architect's consultants as specified above and further enumerated in Articles 2 and 3 of this Agreement and any other services included in Article 12.

1.1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the Owner, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted in writing by mutual agreement of the parties as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

1.1.3 [THERE IS NO PARAGRAPH 1.1.3]

1.1.4 The Architect shall exercise all due professional diligence and shall perform all services in accordance with the highest level of skill and care ordinarily exercised by competent members of the profession currently practicing under similar circumstances. The Architect shall acknowledge that the Owner will be relying on the Architect's due professional skills in connection with the construction of the Project.

1.1.5 The Architect will attend all public hearings, public meetings, committee meetings, etc., which are relevant to the Project, and in all Phases, and the Architect will do so at the Owners request through the completion of the Project at no additional cost to the Owner.

ARTICLE 2

SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

2.1.1 The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical and electrical engineering services and any other engineering services necessary to produce a reasonably complete and accurate set of Construction Documents, as described in Paragraph 2.4.

2.1.2 The Architect shall from time to time as requested by the Owner provide detailed estimates of Construction Cost and Project Cost. In addition, without limiting the foregoing, the Achitect shall procure the

services of an independent cost estimator, at no additional charge to the Owner, to generate and provide the Owner with detailed estimates of Construction Cost and Project Cost as set forth more specifically in Paragraph 5.2.2.

2.1.3 The Architect shall furnish, as necessary, the services of geotechnical engineers, which services shall include but are not limited to: test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations as required to prepare Construction Documents for the Project.

2.1.4 The Architect shall furnish, as necessary, structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials; and other laboratory and environmental tests, inspections and reports required to prepare Construction Documents for the Project.

2.1.5 The Architect shall to the extent necessary furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site, when approved by the Owner. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a project benchmark.

2.2 SCHEMATIC DESIGN PHASE - CONTRACT PHASE I

2.2.1 The Architect, in consultation with the directors of the Town's departments, shall: (a) obtain a working knowledge of _____, (b) arrive at a mutual understanding of such requirements with the Owner, (c) commit such understanding to writing, and (d) furnish a copy to the Owner for approval at the time of proceeding with preliminary designs.

2.2.2 The Architect shall provide a preliminary evaluation of, and recommendations regarding, _____, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2.1.

2.2.3 The Architect shall insure _____. Additionally, the Architect shall provide, to the extent feasible, for future contingencies that can be reasonably anticipated.

2.2.4 Based on the written mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare (1) in conjunction with and for approval by the Owner, Schematic Design Documents consisting of Drawings and other documents illustrating the scale and relationship of the Project components and (2) for review by the Owner, a preliminary estimate of the "Construction Cost" as that phrase is defined in Article 5 of this Agreement. The Design Documents shall comply with all applicable laws, statutes, ordinances, codes, orders, rules, and regulations in force as of the date of the development of the documents. Without limitation, the Architect shall provide for all applicable disability access features required under the ADA (Americans with Disabilities Act of 1990) Architectural Guidelines for State and Local facilities, as published in the *Federal Register*, and/or the rules and regulations of the Massachusetts Architectural Barriers Board, whichever is more stringent. Approval by the Owner shall be deemed to be approval of the concept though not the means, techniques or particular material recommended by the Architect.

2.2.5 The Architect shall submit to the Owner a preliminary estimate of Construction Cost prepared by an independent cost estimate based on current area industry standards, current labor market, and volume or other unit costs.

2.3 DESIGN DEVELOPMENT PHASE - CONTRACT PHASE II

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized and suggested 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, plumbing, HVAC, telecommunications, fire protection, hazardous abatement, electrical systems, materials and such other elements as may be appropriate.

2.3.2 The Architect shall advise the Owner on a continuing basis of any adjustments to the estimate of Construction and project Cost in a timely fashion.

2.3.3 The Architect shall meet as often as necessary with the Owner to review the status of the Project.

2.4 CONSTRUCTION DOCUMENTS PHASE - CONTRACT PHASE III

2.4.1 Based on an approval in writing of the 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 of the Project, including, but not limited to, the work required for the architectural, structural, mechanical, electrical, plumbing, service-connected equipment, and site work, and the necessary general conditions of the contract. The Architect shall provide the services of Professional Engineers, as needed, to address the requirements of the Project, and shall require such Professional Engineers to place their seal, name and signature on the Drawings and Specifications including any changes prepared by them. The Architect shall coordinate with the design consultant for hazardous material so as to incorporate hazardous material specifications into the Construction Documents. Said Construction Documents shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations in force at the time of their completion and final written approval by the Owner. Approval by the Owner shall not constitute approval of the means, techniques or particular material recommended by the Architect for the Project.

2.4.2 The Architect, after consultation with the Owner at least 30 days before publication, shall prepare the necessary bidding information, bidding forms and contract documents, including but not limited to the Conditions of the Contract, estimates of the "Project Cost" as defined in Article 5 of the Agreement, and the form of Agreement between the Owner and Contractor. Said documentation shall be subject to the review and approval of the Owner's legal counsel. "Project Costs" shall include: (a) construction costs as defined in Article 5 below; and (b) all other costs associated with the project specified by the owner.

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

2.4.4 The Architect shall be responsible, with the assistance of the Owner, for filing documents required for the approval of all governmental authorities having jurisdiction over the Project. The Architect shall be responsible for making all such changes in the Construction Documents as may be suggested by said governmental authorities at his expense when instructed to do so by the Owner. The provision of services as referenced above in this subparagraph shall be (a) a Basic Service with respect to all approvals required by any town agency, department or instrumentality, and (b) a Basic Service with respect to approvals required by any other State agencies and/or any Federal agencies. Filing for construction permits shall be the responsibility of the General Contractor.

2.4.5 The Architect shall include in the bidding information, plans or specifications, a requirement that the contractor(s) provide operation manuals and adequate training for the Owner in the operation of any and all systems installed by the contractor(s). The Architect shall include in the specifications for each discipline a

provision for additional materials for maintaining the building following construction.

2.5 BIDDING OR NEGOTIATION PHASE - CONTRACT PHASE IV

2.5.1 The Architect, following the Owner's written approval of the Construction Documents and of the latest estimate of Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction. The Architect shall administer and organize the bidding process, including the scheduling for bid proposals and all necessary advertisement, preparation and delivery of bid documentation and review of bids, in accordance with but not limited to, the Massachusetts Public Construction statutes (Massachusetts General Laws c. 149 §§ 29, 34, 34A and 44A-44M and c. 30 § 39A-39R) and all rules and regulations in connection therewith. The Architect shall prepare a proposed form of Construction Contract for inclusion in the bid documentation and submit it, in both hard copy and electronic media formats, at least 30 days prior to publication, to the Owners and the Owner's counsel's for their review and written approval. The Architect shall coordinate the reproduction of documents for and compile such bid packages, which the Architect shall furnish to the Owner ready for distribution to prospective bidders, unless the Owner requests that the Architect effect the distribution. The Architect's services in this phase shall include evaluation and tabulation of filed sub-bids and evaluation of general bidders for responsibility and eligibility pursuant to G.L. c.149, § 44A et. seq.

2.5.2 [THERE IS NO PARAGRAPH 2.5.2]

2.6 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT - CONTRACT PHASE V

2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the awarding of any Contract for Construction and terminates sixty days after the later of the issuance to the Owner of the final Certificate for Payment to all Contractors, issuance of a certificate of occupancy, submission of record drawings and total completed punch list and written acknowledgment by the Owner that the services are complete. The Owner will withhold \$15,000 pending submission of said documentation.

2.6.2 The Architect, in close coordination with and subject to monitoring by the Owner, shall provide administration of the Contract for Construction as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction (1987 Edition), together with and as amended by the Owner's supplementary general conditions and other documents included or incorporated into the Construction Contract.

2.6.3 Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect and notice to the Contractor.

2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner. Instructions to the Contractor(s) shall be forwarded through the Architect. 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.

2.6.5 The Architect shall visit the site at least on a weekly basis while work is in progress, and as often as necessary and appropriate to the stage of construction, to inspect the site and Work; to familiarize himself /herself with the progress and quality of the Work; and to determine for the Owner's benefit and protection if the Work is proceeding in accordance with the intent of the Contract Documents (which, throughout this Agreement and Exhibits, shall be deemed also to include, without limitation, the Construction Documents and the Drawings and Specifications) and the construction schedule. The Architect shall attend all construction progress meetings in conjunction with or in addition to visiting the site in satisfaction of other responsibilities. Site visits by the Architect shall include weekly field meetings to review the status of the Project. The Architect

shall record the decisions reached at the meetings and shall provide copies of the meeting minutes to the Owner and Clerk of the Works and General Contractor. While construction is in progress, the Architect shall inspect the construction with the Contractor and the Clerk of the Works (and, at the Owner's discretion, a nominee and/or nominees of the Town of Belmont, who shall be entitled to participate in a functional capacity) and record his observations in the meeting minutes. The Architect shall use the highest care to guard the Owner against defects and deficiencies in the Work and the Contractor's failure to carry out the Work in accordance with the Contract Documents and the construction schedule. On the basis of his on-site observations and inspections as an Architect, the Architect shall keep the Owner and Clerk of the Works informed of the progress and quality of the Work, and shall give prompt notice to the Owner and Clerk of the Works in writing of any major or material deviations from the Contract Documents in the Work, and of any deviation from the construction schedule or from good and acceptable building standards. The Architect shall provide services made necessary by any material defect or deficiencies in the Work of the Contractor which through the highest care should have been discovered by the Architect and promptly reported to the Owner and Clerk of the Works and Contractor(s) but which the Architect failed to discover and/or report. The terms of the immediately preceding sentence shall not constitute a waiver by any party of any claims of any party against the Contractor for damages, indemnity, reimbursement, or, without limitation, any other relief.

2.6.6 The Architect shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, except to ensure that the Work is in accordance with the Contract Documents all as set forth in Paragraphs 2.6.4 and 2.6.5 hereof. Except as provided in this Agreement, the Architect shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents and shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

2.6.6.1 Any defect in the design or Specifications furnished by the Architect shall be promptly corrected by the Architect at no cost to the Owner. The Owner's approval, acceptance, use of or payment for all or any part of the Architect's services hereunder or the Project itself shall in no way diminish or limit the Architect's obligations and liabilities or the Owner's rights.

2.6.7 Both the Owner and the Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.8 The Owner and Contractor shall communicate through the Architect; except (1) as may otherwise be provided in the Contract Documents, (2) when direct communications have been specifically authorized, or (3) when such communication has been attempted and could not reasonably be accomplished in a timely manner in consideration of the requirements of the Project. Where direct communication between Owner and Contractor has occurred, the Owner and Contractor shall promptly and jointly document the nature and result of the communication as well as the reason for the direct communication and shall provide a copy of said document to the Architect. Communications by and with the Architect's consultants shall be through the Architect. The Owner and Clerk of the Works shall not be foreclosed from informal discussions, communications or consultations with the Contractor.

2.6.9 Based on the Architect's and Owner's observations, inspections of the Work, the terms of the Construction Contract entered into between the Owner and the Contractor, and evaluations of the Contractor's Applications for Payment, the Architect shall review and certify the amounts due the Contractor. Said review and certification shall be completed within so many days of the Architect's receipt of the Application as is required by law, and shall be subject to assent by the Owner. The Architect shall require a "pencil requisition" to be submitted by the Contractor 7 days prior to submission of the actual Contractor's Application for Payment, and shall relay a copy immediately upon receipt to the Clerk of the Works and Owner.

2.6.10 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's inspections and observations at the site as provided in Subparagraph 2.6.5 and on the data

comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated, that the quality of the Work is in accordance with the Contract Documents and that the Work has been performed in a good and workmanlike fashion. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor 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 reviewed construction means, methods, techniques, sequences or procedures (except to the extent that such review is necessary to ascertain the quality of the work) or ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

2.6.11 Where Work does not conform to the Contract Documents, the Architect shall promptly notify the Owner in writing of the Architect's intent to reject such Work and shall reject nonconforming Work unless the Owner countermands such rejection in writing within twenty-four (24) hours of being notified (provided, that any action or inaction by the Owner during the twenty-four (24) hour period shall not be binding against the Owner as an approval of the Architect's rejection). Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. Where such additional inspection and testing is to be at additional cost to the Owner, such additional inspection and testing is to be required by the Architect only upon advance notice to and prior written approval by the Owner. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons performing portions of the Work.

2.6.12 The Architect shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of checking for conformance with the Contract Documents and all applicable laws, statutes, ordinances, codes, rules, and regulations. 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. The Architect shall keep a log of the contractor's submittals and the Architect's action thereon. Review of such submittals is conducted, without limitation, 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 Contractor, all of which still remain the responsibility of the Contractor 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 item 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. Prior to the Architect's approval of any submittal, shop drawings or other item of documentation, the Architect must give the Owner an opportunity to review and comment upon the item; provided however, that neither the Owner's exercise nor the Owner's failure to exercise this opportunity as to any item shall relieve the Architect of any obligations, responsibilities or liabilities hereunder.

2.6.13 The Architect, shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect and/or Owner, as provided in Subparagraphs 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the 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.

2.6.14 In conjunction with the Owner, the Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, shall receive, review and make recommendations

thereon and forward to the Owner for the Owner's review written warranties and related documents required by the Contract Documents and assembled by the Contractor; and shall, in conjunction with the Owner, issue a Substantial Completion Certificate and Final Certificate for Payment upon compliance with the requirements of the Contract Documents.

2.6.15 The Architect shall interpret and decide matters concerning performance of the Contractor under the requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made with reasonable promptness and within any time limits agreed upon. All interpretations in relation to paragraph 2.6.15 will be in writing.

2.6.16 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by the Contractor.

2.6.17 The Owner shall have final authority on questions relating to aesthetic effect.

2.6.18 The Architect shall render written opinions within a reasonable time on all claims, disputes or other matters in question between the Owner and Contractor relating to the execution or progress of the Work as provided in the Contract Documents. The Owner shall in any event retain all rights and remedies notwithstanding such written opinions.

2.6.19 [THERE IS NO PARAGRAPH 2.6.19]

2.6.20 [THERE IS NO PARAGRAPH 2.6.20]

2.6.21 The Architect shall provide coordination of construction performed by separate Contractors or by the Owner's own forces and coordination of services in connection with construction performed and equipment supplied by the Owner, including establishing and conducting a regular schedule of weekly meetings between Contractors, Clerk of the Works and the Owner. Such weekly meetings shall be held in combination or coordination with the regular weekly site meetings throughout the entire Construction Phase of the Project and shall be for the primary purpose of assessing the progress of the Work of each Contractor and recommending to the Owner such remedial actions as are necessary to ensure required progress and completion in accordance with the construction schedule and within contract time. The Architect shall submit to the Owner, to the Clerk of the Works, and to the Contractors a full report of each such meeting as soon after the meeting as is practical. Provided, however, that the only separate contractors or Owner's own forces presently anticipated by either Owner or Architect are contractors for furnishings and equipment, and the Clerk of the Works. Coordination services as to other separate contractors or Owner's own forces shall generally be a Basic Service, and shall be subject to Article 3 only if the need therefor could not have been anticipated by the Architect at the time of the parties' execution of this Agreement, and it shall be the Architect's burden to demonstrate that no such need should have been anticipated.

2.6.22 The Architect shall be prepared to serve and shall serve when requested by the Owner as a witness in connection with any public hearing, arbitration proceeding, legal proceeding or administrative law proceeding to which the Architect is a party concerning the Project, or in which the Owner is a party and a claim of responsibility on the part of the Architect is in good faith with reasonable basis asserted by the Owner and/or contractor either formally or informally, or where otherwise required by law, as part of his Basic Services.

2.6.23 The Architect shall review 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 Contractor(s) to the Architect including, but not limited to, the location of water, sewer, plumbing, mechanical, HVAC, telephone, electric, gas and any other utility lines. Both the Architect and Contractor shall certify these Drawings as accurate.

2.6.24 The Architect shall provide services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom, except that revisions for major substitutions with respect to project systems or basic features beyond those that should have been identified and provided by the Architect in his own design of the Project shall be an optional Additional Service under Article 3, if the Architect so demonstrates.

2.6.25 The Architect shall provide services in evaluating claims submitted by the Contractor or others in connection with the Work, except to the extent that any such claims arise in the circumstances referenced in Paragraph 3.3.5 of this Agreement.

2.6.26 As part of basic services, the Architect shall provide, with his final documentation and prior to his final invoice, a complete set of project record documents on CAD disk. All documents prepared on CAD shall be updated and submitted in the form of two (2) hard copies and one (1) set of CAD disks. All other documents, including but not limited to field orders, sketches, clarifications and construction change directives, shall be in bound folders in chronological order.

2.6.27 [THERE IS NO PARAGRAPH 2.6.27]

2.6.28 [THERE IS NO PARAGRAPH 2.6.28]

2.6.29 Architect hereby represents, promises and warrants to Owner that Architect is financially solvent and possesses sufficient experience, licenses, authority, personnel and working capital to complete the services required hereunder; that Architect has visited the site for the Project and thoroughly familiarized itself with the local conditions under which the services required hereunder are to be performed; and that Architect shall correlate its observations of same with all of the requirements of this Agreement and of the Contract Documents.

2.6.30 The Architect shall require the General Contractor and all applicable subcontractors to provide assistance to the Owner's personnel 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.

ARTICLE 3

ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified elsewhere in this Agreement as being included in Basic Services, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 3.2 and 3.4 shall only be provided and additional compensation therefor under this Article 3 shall only be paid if the services and the amount of additional compensation therefor are authorized and approved in advance in writing by the Owner. If, in the opinion of the Architect, services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the Architect's control, the Architect shall advise the Owner of the need for those services in writing prior to commencing such services. If the Owner deems that such services described under Paragraph 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of any such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services. If, however, services described under Paragraph 3.3 are required due to circumstances within the control of the Architect, such services shall be provided as a part of Basic Services. Notwithstanding any provision to the

contrary, no compensation shall be paid to the Architect for additional services that became necessary as a result of the fault of the Architect or his agents or employees.

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1 If the Owner determines that more extensive representation at the site than is described in Subparagraph 2.6.5 is required, the Architect shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

3.2.2 Project representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as agreed by the Owner and Architect in accordance with Paragraph 11.3.1. The duties, responsibilities and limitations of authority of Project Representatives shall be mutually agreed to between the Owner and the Architect in writing at the time that the Owner determines that a Project Representative is required.

3.2.3 Through the observations by such Project Representatives, the Architect shall 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.

3.2.4 Provisions of this Agreement with respect to the appointment and employment of a Clerk of the Works are separately addressed in Paragraph 12.12 of this Agreement.

3.3 CONTINGENT ADDITIONAL SERVICES

3.3.1 Making material revisions in Drawings, Specifications or other documents after Owner has given written approval and when such revisions are:

- .1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
- .2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents and acceptance of the construction documents by the Owner in writing; or
- .3 due to changes required as a result of the Owner's failure to render decisions in a reasonably timely manner.

3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5.

3.3.3 Preparing extensive numbers of Drawings, Specifications and other documentation and supporting data other than those necessary and appropriate for the scope of the Project, and providing other services in connection with Change Orders and Construction Change Directives resulting from design changes by the Owner or unforeseeable circumstances. The provision of such services in connection with any other Change Orders or Construction Change Directives, including without limitation those initiated by the Architect and those resulting from errors or omissions of the Architect or its contractors, subcontractors or consultants, shall be a Basic Service.

3.3.4 [THERE IS NO PARAGRAPH 3.3.4]

3.3.5 Providing consultation concerning replacement of Work damaged by fire or acts of God or other cause

(not otherwise addressed in defining Basic Services hereunder) or resulting from fault or negligence of the Owner during construction, and furnishing services required in connection with the replacement of such Work.

3.3.6 Providing services made necessary by the failure of performance of the Owner under the Contract for Construction. As to the work of the Contractor, see Subparagraph 2.6.5.

3.3.7 [THERE IS NO PARAGRAPH 3.3.7]

3.3.8 Providing services in connection with an arbitration proceeding or legal proceeding except where the Architect is a party thereto, or where the Owner is a party and a claim of responsibility on the part of the Architect is in good faith and with reasonable basis asserted by the Owner and/or Contractor either formally or informally, or where otherwise required by law.

3.4 OPTIONAL ADDITIONAL SERVICES

3.4.1 [THERE IS NO PARAGRAPH 3.4.1]

3.4.2 Providing financial feasibility or other special studies, provided, that the provision of construction, Architectural, site evaluation, and related activity cost estimates is a Basic Service.

3.4.3 [THERE IS NO PARAGRAPH 3.4.3]

3.4.4 [THERE IS NO PARAGRAPH 3.4.4]

3.4.5 Providing services relative to future facilities, systems and equipment.

3.4.6 [THERE IS NO PARAGRAPH 3.4.6]

3.4.7 [THERE IS NO PARAGRAPH 3.4.7]

3.4.8 [THERE IS NO PARAGRAPH 3.4.8]

3.4.9 [THERE IS NO PARAGRAPH 3.4.9]

3.4.10 [THERE IS NO PARAGRAPH 3.4.10]

3.4.11 Providing detailed quantity surveys or inventories of material, equipment and labor.

3.4.12 [THERE IS NO PARAGRAPH 3.4.12]

3.4.13 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment, except as provided herein.

3.4.14 [THERE IS NO PARAGRAPH 3.4.14.]

3.4.15 Making inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

3.4.16 [THERE IS NO PARAGRAPH 3.4.16]

3.4.17 [THERE IS NO PARAGRAPH 3.4.17]

3.4.18 Providing services after the issuance to the Owner by the Architect of the final Certificate for Payment,

except as provided in Subparagraph 11.5.1. Services that are required under Subparagraph 2.6.22 shall remain as Basic Services whenever performed.

3.4.19 Providing services of consultants for other than those specified as part of Basic Services.

3.4.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted Architectural practice.

3.4.21 Providing services directly or through consultants to investigate existing site conditions and shall, from a consultant, obtain a plan of the site stamped by a registered land surveyor showing property lines, utilities, and other necessary and appropriate details.

3.4.22 [THERE IS NO PARAGRAPH 3.4.22]

3.4.23 [THERE IS NO PARAGRAPH 3.4.23]

3.4.24 The Architect, as an Additional Service, shall to the extent necessary furnish the services of consultants other than those referenced in Article 2 when such services are reasonably required by the scope of the Project and are approved by the Owner in writing.

3.4.25 Cooperating in the services to be provided in connection with specification, selection bidding or approvals of movable furnishings and equipment.

ARTICLE 4

OWNER'S RESPONSIBILITIES (EXCEPT AS REDEFINED HEREUNDER)

4.1 The Owner shall, with the Architect's assistance, which shall be a part of Basic Services, identify requirements for the Project, including a program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expand ability, special equipment, systems and site requirements. The Architect shall refine and finalize the program as part of Basic Services.

4.2 The Owner shall, in conjunction with the Architect, whose services shall be a part of Basic Services, establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

4.3 If requested by the Architect, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.

4.4 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall render decisions in a reasonably timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

4.5 [THERE IS NO PARAGRAPH 4.5]

4.6 [THERE IS NO PARAGRAPH 4.6]

4.6.1 [THERE IS NO PARAGRAPH 4.6.1]

4.7 [THERE IS NO PARAGRAPH 4.7]

4.8 Except with respect to the Basic Services to be provided by the Architect (including, without limitation, services resulting from questions as may arise over the course of the project as to the correctness, sufficiency or adequacy of the work performed by the Architect), the Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

4.9 [THERE IS NO PARAGRAPH 4.9]

4.10 Prompt written notice shall be given by the Owner to the Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, but the Owner's failure or omission to do so shall not relieve the Architect of his responsibilities hereunder and the Owner shall have no duty of observation, inspection or investigation.

4.11 The proposed language of certificates or certifications requested by the Architect or Architect's consultants shall be submitted to the Owner for review and approval at least 14 days prior to execution. The Owner shall not request certifications that would require knowledge or services beyond the scope of this Agreement. Owner may require and Architect shall execute, as part of its Basic Services hereunder, any certificates or certifications customarily, commonly or reasonably required on similar projects.

ARTICLE 5

CONSTRUCTION COST

5.1 DEFINITION

5.1.1 The Construction Cost shall be the estimated cost to the Owner of all elements of the Project designed or specified by the Architect. The Project Cost shall be the total cost or estimated cost to the Owner of all elements of the project.

5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished to the Owner and equipment designed, specified, selected or specially provided for by the Architect, plus a reasonable allowance for the Contractor's overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding.

5.1.3 Construction Cost does not include the compensation of the Architect and Architect's consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

5.2.1 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 best judgment as a design professional familiar with the construction industry.

5.2.2 The Owner and the Architect agree that a fixed limit of construction cost for the Project will be agreed to at the end of schematic design. As a condition and requirement of this Agreement, at the close of Contract Phase I (Schematic Design) such fixed limit will be established based on a written, detailed, independent estimate of Construction Cost provided by the Architect, subject to review and written approval by the Owner. In order to assure the Construction Cost does not exceed the fixed limit, 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 and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit, all of which shall be subject to prior written approval by the Owner. Further, it shall be the responsibility of the Architect as a Basic Service during Contract Phases II and III (Design Development and Construction Documents Phases) to provide such Architectural services as are necessary to ensure that the Project continues to meet the requirements for the Project provided by the Owner and that the estimate of Construction Cost at the end of Phase III is equal to or lesser than the fixed limit of construction cost established at the end of Phase I. To assist the Owner in confirming that the provisions of the foregoing sentence have been satisfied, the Architect shall at 90% completion of Construction Documents, and again as promptly as practicable at the end of Phase III, provide the Owner with a then-current written, detailed, independent estimate of Construction Cost, updated through that point in the process, including labor and materials unit costs, and such additional supporting documentation and detail as the Owner may reasonably request. To assist the Owner in monitoring Project Cost, the Architect shall provide, along with each of the three written, detailed, independent estimates of Construction Cost required by this Paragraph, a written, detailed, independent estimate of Project Cost, updated through the same point in the process. Pursuant to Paragraph 2.1.2, each of the written, detailed, independent estimates of Construction Cost and Project Cost required by this Paragraph shall be provided as a part of Basic Services, at no additional cost to the Owner.

5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Owner gives final written approval of the Construction Documents, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of such written, final approval of the Construction Documents by the Owner and the date on which proposals are sought, which adjustment shall be subject to prior written approval by the Owner, and subject to any funding approval for the Project given by the Town of Belmont.

5.2.4 If the fixed limit of Construction Cost (adjusted as provided in Subparagraph 5.2.3) is exceeded by the sum of the lowest bona fide bid, the Owner at its option shall:

- (1) give written approval of an increase in such fixed limit;
- (2) authorize rebidding or renegotiating of the Project within a reasonable time;
- (3) if the Project is abandoned, terminate in accordance with Paragraph 8.3; or
- (4) cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

5.2.5 If the Owner chooses to proceed under Clause 5.2.4(4), the Architect, without additional charge, shall present the Owner with options to reduce the Construction Cost to meet the fixed limit, and shall, upon approval by the Owner, modify (again without additional charge) the Contract Documents, Construction Documents, and Drawings and Specifications as approved by the Owner to comply with the fixed limit, as well as organize and conduct further bidding (including distribution of bid packages).

ARTICLE 6

USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

6.1 The Drawings, Specifications and other documents prepared by the Architect for this Project are instruments of the Architect's service for use solely with respect to this Project and, unless otherwise provided, the Architect shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright, provided, however, that the Owner shall be permitted to retain

and make copies, including reproducible copies, of the Architect's Drawings, Specifications and other documents for information, reference and use in connection with the Owner's use and occupancy of the Project, for repairs, replacements, alterations or additions to this Project or for completion of this Project by others if the Architect is terminated before completion, and for such other purposes as the Owner may choose other than for other projects, without further employment or compensation of the Architect.

6.2 Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Architect's reserved rights.

ARTICLE 7

[THERE IS NO ARTICLE 7]

ARTICLE 8

TERMINATION, SUSPENSION OR ABANDONMENT

8.1 This Agreement may be terminated by either party upon not less than seven (7) days written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Should either party exercise his right of termination, the written notice shall set forth the nature of the other party's breach.

8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services provided up until the suspension. The Owner reserves the right to suspend with or without cause.

8.3 This Agreement may be terminated by the Owner upon not less than seven (7) days' written notice to the Architect in the event that the Project is abandoned, deferred or significantly abridged or in the event that the Owner determines it is in its best interest to do so. "Best interest" shall be determined by the Owner in its sole discretion and may be determined by the Owner to exist with or without cause.

8.4 Failure of the Owner to make payments to the Architect in accordance with this Agreement shall be considered substantial nonperformance and cause for termination, provided, however, that the Architect shall give the Owner written notice of such intention to terminate and a period of thirty days after receipt of such notice within which the Owner may cure such nonperformance by making payment to the Architect of any overdue amounts.

8.5 Subject to the notice and cure provision of Paragraph 8.4, if the Owner fails to make payment when due the Architect for services and expenses, the Architect may, upon thirty days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within thirty days of the date of the notice, the suspension shall take effect without further notice. In the event of a 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.

8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due, and Owner shall have no further liability for compensation, expenses, or fees to Architect hereunder.

8.7 [THERE IS NO PARAGRAPH 8.7]

.1 [THERE IS NO PARAGRAPH 8.7.1]

.2 [THERE IS NO PARAGRAPH 8.7.2]

.3 [THERE IS NO PARAGRAPH 8.7.3]

8.8 [THERE IS NO PARAGRAPH 8.8]

8.9 Upon termination of this Agreement, the Architect shall perform no further services except as requested in writing by the Owner or as may be necessary to preserve the Work, which shall be considered a Basic Service.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the Owner.

9.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201, General Conditions of the Contract for Construction (1987 Edition), or in the Construction Contract between the Owner and the Contractor where inconsistent with the definitions in AIA Document A201.

9.3 [THERE IS NO PARAGRAPH 9.3]

9.4 The Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent that such damages are covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction (1987 Edition), or in the Construction Contract between the Owner and the Contractor where inconsistent with the definitions in AIA Document A201. The Owner and Architect each shall require similar waivers from their contractors, consultants and agents.

9.5 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Architect shall assign this Agreement without the express written consent of the other, provided, however, that the Owner may assign this Agreement in connection with any financing it obtains for construction of the Project.

9.6 This Agreement represents the entire and integrated agreement between the Owner and the Architect. This Agreement may be amended only by written instrument signed by both Owner and Architect.

9.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect, except to the extent this Agreement is assigned as provided in Paragraph 9.5 hereof.

9.8 The Architect shall not specify or approve for use in the Project any new materials containing asbestos, asbestos products, polychlorinated biphenyl (PCB), oil or other substances known or regarded as toxic and/or hazardous based on the best knowledge or practice within the Architectural profession or the construction industry at the time of the specification or approval. The Architect shall provide special consultants, as described in Subparagraph 2.1.3 and 2.1.4 above, who shall be responsible for the

discovery and/or presence of, and the preparation of documents relating to the safe and appropriate handling, removal, and disposal of or exposure of persons to, hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances .

9.9 The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. The Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect on the construction sign and in the promotional materials for the Project, if any.

9.10 In the event of any claim, dispute, or other matter at issue or controversy involving the Owner and Contractor, the Owner and Architect agree to work together in the joint defense of any claims of the Contractor and in support of any claims of the Owner. However, this obligation shall not limit the Architect's right and obligation to interpret the contract documents for purposes of advancing the project.

9.11 Architect agrees to indemnify, hold harmless, protect and defend Owner and Owner's agents, representatives and employees from and against all claims, loss, liability, damage, costs and expenses, including but not limited to attorneys' fees, which arise out of or result from or are due to the negligence, acts, errors or omissions of Architect, its agents, consultants, employees or representatives.

ARTICLE 10

PAYMENTS TO THE ARCHITECT

10.1 DIRECT PERSONNEL EXPENSE

10.1.1 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

10.2 REIMBURSABLE EXPENSES

10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and shall be payable provided they are approved in advance and in writing by the Owner. Reimbursable Expenses consist of actual expenses incurred by the Architect and Architect's employees and consultants in the interest of the Project, as identified in the following Clauses.

10.2.1.1 [THERE IS NO PARAGRAPH 10.2.1.1]

10.2.1.2 Expenses of reproductions, postage and handling of Drawings, Specifications and other documents, excluding reproductions for the office use of (1) the Architect, (2) the Architect's consultants, and (3) the Owner including but not limited to the Clerk of the Works, Furnishing Consultants or any other nominee of the Owner.

10.2.1.3 [THERE IS NO PARAGRAPH 10.2.1.3]

10.2.1.4 Expense of renderings, models and mock-ups requested by the Owner, except those referenced in Subparagraph 12.4.1 of this Agreement.

10.2.1.5 [THERE IS NO PARAGRAPH 10.2.1.5]

10.2.1.6 [THERE IS NO PARAGRAPH 10.2.1.6]

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

10.3.1 An initial payment as set forth in Paragraph 11.1 is the minimum payment under this Agreement.

10.3.2 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Subparagraph 11.2.2.

10.3.3 [THERE IS NO PARAGRAPH 10.3.3]

10.3.4 [THERE IS NO PARAGRAPH 10.3.4]

10.3.5 Architect shall not be entitled to receive payment hereunder until Architect has provided such detailed description of services, and sworn statements or certificates regarding Architect's services and compliance with the requirements of this Agreement as Owner may reasonably require.

10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

10.4.1 Unless otherwise mutually agreed by Architect and Owner, payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

10.4.2 Architect shall submit to Owner each month a statement of additional services rendered and reimbursable expenses incurred for the preceding month. Architect expressly waives any right to payment for any additional services if Architect has not requested and received written approval for such additional services prior to rendering the services, and if Architect does not give written notice of its claim that the services are additional within 30 days of rendering the services, and such services are not billed as additional services within 60 days after they have been rendered.

10.5 PAYMENTS WITHHELD

10.5.1 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 is liable.

10.6 ARCHITECT'S ACCOUNTING RECORDS

10.6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 11

BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

11.1 [THERE IS NO PARAGRAPH 11.1]

11.2 BASIC COMPENSATION

11.2.1 For Basic Services, as described in Article 2, and any other services included in Articles 4, 12 or elsewhere herein as part of Basic Services, Basic Compensation shall be computed as follows:

Phase I Services (Schematic Design): A stipulated sum of _____ Dollars (\$ _____) (10%)

Phase II Services (Design Development): A stipulated sum of _____ Dollars (\$ _____) (15%)

Phase III Services (Construction Document): A stipulated sum of _____ Dollars (\$ _____) (45%)

Phase IV Services (Bidding): A stipulated sum of _____ Dollars (\$ _____) (5%)

Phase V Services (Construction): A stipulated sum of _____ Dollars (\$ _____) (25%)

Phase IV and V Services will be billed on an apportioned basis by the Architect, based on the relative estimated construction cost for the _____ as determined by the General Contractors schedule of values and requisitions.

11.2.2 [THERE IS NO PARAGRAPH 11.2.2]

11.3 COMPENSATION FOR ADDITIONAL SERVICES OR OTHER SERVICES REQUIRED BEYOND BASIC SERVICES

11.3.1 FOR ADDITIONAL SERVICES AND/OR PROJECT REPRESENTATION BEYOND BASIC SERVICES, as described in Article 2, should additional project representation be required, compensation will be billed at a rate to be negotiated at the time of need, unless otherwise agreed in writing with the Owner. No additional project representation will be undertaken without prior express written consent of the Owner.

11.3.2 [THERE IS NO PARAGRAPH 11.3.2]

11.3.3 FOR PROJECT SERVICES BEYOND BASIC SERVICES OF CONSULTANTS, there will be a multiple of One point One (1.1) times the amounts billed to the Architect for such services. No such services of consultants shall be undertaken without prior express written consent of the Owner.

11.3.4 [THERE IS NO PARAGRAPH 11.3.4]

11.4 REIMBURSABLE EXPENSES

11.4.1 FOR REIMBURSABLE EXPENSES, as described in Paragraph 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of One (1.0) times the expenses incurred by the Architect, the Architect's employees and consultants in the interest of the Project. No additional reimbursable expenses shall be undertaken without prior express written consent of the Owner.

11.5 ADDITIONAL PROVISIONS

11.5.1 [THERE IS NO PARAGRAPH 11.5.1]

11.5.2 Invoices for payments shall be submitted by the Architect during the 1st 5 days of the month. Payments are due and payable thirty (30) days from the date of the Owner's written approval of the Architect's invoice. Amounts unpaid ninety (90) days after said written approval shall bear interest at the rate of six percent (6%) per annum.

11.5.3 [THERE IS NO PARAGRAPH 11.5.3]

ARTICLE 12

OTHER CONDITIONS OR SERVICES

12.1 [THERE IS NO PARAGRAPH 12.1]

12.2 In the event the Owner suspends the completion of any Phase and then resumes it; no additional fee will be due to the Architect either upon suspension or resumption.

12.3 Before requesting any payment under this Agreement, and as a condition precedent to any enforceability of this Agreement by Architect, Architect shall have submitted to Owner and Owner shall have accepted in writing a proposed schedule in accordance with Subparagraph 1.1.2 setting out the dates on which Architect plans to complete schematic design phase, design development phase, construction document phase, and bidding or negotiation phase. This schedule shall also set out the dates by which any actions, decisions, or information are required from the Owner in order to permit the Architect to perform according to this schedule.

12.4 Architect's services covered by this Agreement and by the compensation amounts that are stated in Paragraph 11.2 include the following:

12.4.1 Provision by the Architect of presentation material showing the detailed scope of the Project and such other presentation material as the Owner may reasonably require, as specifically requested by Owner, for the public information and approval process are part of Basic Services.

12.4.2 [THERE IS NO PARAGRAPH 12.4.2]

12.4.3 Provision by the Architect of design, specification and other services in connection with built-in equipment and casework are part of Basic Services.

12.5 Architect shall submit for Owner's approval prior to entering into this Agreement a project organization chart setting out Architect's personnel, and their responsibilities in connection with the Project, which Architect proposes to use for this Project, together with an identification of any consultants or outside firm which Architect proposes to use in connection with the performance of its services on this Project. If at any time after entering into this Agreement, Owner has any reasonable objection to any such person or entity, Architect shall promptly propose substitutes to whom the Owner has no reasonable objection.

12.6 It shall be the duty of the Architect throughout the term of this Agreement, as part of Basic Services, to make a prompt written record of all meetings, conferences, discussions and decisions made between and/or among the Owner, Architect, and Contractor during all phases of the Project and concerning any material condition in the requirements, scope, performance and/or sequence of the Work and to provide promptly a copy of such record to the Owner, Clerk of the Works, and (if appropriate) the Contractor.

12.7 The Architect will utilize the following individuals to perform its Work of the Project through the completion of all Phases if such individuals are at that time still employed with the Architect:

_____.

12.8 The Architect certifies to the Owner (i) that it has internal accounting controls as required by the Massachusetts General Laws Chapter 30, Section 39R(c) and (ii) that it has filed an audited financial statement as required by subsection (d) of said Section 39R. The Architect hereby agrees that it will continue to file an audited financial statement as required by subsection (d) of said Section 39R.

12.9 INSURANCE REQUIREMENTS

The Architect and his consultants will only provide insurance with companies licensed, registered and with representation in the State of Massachusetts.

12.9.1 The Architect shall at its own expense obtain and maintain a Professional Liability Policy (or a rider with respect to this project) for errors, omissions or negligent acts arising out of the performance of this Agreement in an amount not less than _____ (\$_____). At all times the Architect will maintain insurances in accordance of the dictates of the Town of Belmont.

12.9.2 The Architect agrees to maintain at no additional cost to the Owner the following insurances until the termination of services of this Agreement: (a) worker's compensation coverage that meets or exceeds legal requirements; (b) automobile and truck liability coverage with a minimum combined single limit of liability of \$_____; and (c) insurance in a sufficient amount to assure the restoration of any plans, drawings, computations, field notes or other similar data relating to the work covered by this Agreement in event of loss or destruction before the final fee payment is made and all data is turned over to the Owner.

12.9.3 All insurance required hereunder shall be on an occurrence basis, unless the Owner gives written prior waiver of this requirement. With respect to any of the insurance policies provided by the Architect pursuant to this Agreement which are "claims made" policies, in the event at any time any such policies are canceled or not renewed, the Architect shall provide a substitute insurance policy(ies) with terms and conditions and in amounts which comply with the terms of this Agreement and which provides for retroactive coverage to the date of cancellation or nonrenewal so as to fill any gaps in coverage which may exist due to the cancellation or nonrenewal of the prior "claims made" policy(ies). With respect to all "claims made" policies which are renewed, the Architect shall provide coverage retroactive to the date of commencement of work under this Agreement. All said substitute or renewed "claims made" policies shall be maintained in full force and effect for three (3) years from the date of completion of the Project. Since this insurance is normally written on a year-to-year basis, the Architect shall notify the Owner should coverage become unavailable, or if there is any material change in the Architect's policy or deductible under such year-to-year insurance.

12.9.4 The Architect shall submit to the Owner with this agreement certificates and any and all renewals substantiating that the required insurance coverage is in effect. Any cancellation of insurance whether by the insurers or by the insured shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the Owner within at least Thirty days in advance thereof, which date shall be expressed in said notice.

12.10 CERTIFICATIONS

12.10.1 The Architect hereby certifies that the statements made in Subparagraphs 12.8, 12.10.2, 12.10.3 and 12.10.4 hereof are true, correct and complete.

12.10.2 The Architect has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement for design services.

12.10.3 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.

12.10.4 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 Agreement for design services upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Agreement to the Architect.

12.11 Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Agreement shall forthwith be amended to make such insertion or correction.

12.12 CLERK OF THE WORKS

12.12.1 The Owner and the Architect agree that a Clerk of the Works may be employed, the period of employment to begin with the awarding of a construction contract and to terminate at the end of the Construction Phase on a date to be determined by the Owner.

12.12.2 The Architect, as part of Basic Services, in conjunction with the Owner, may interview no more than three (3) candidates for the position of Clerk of the Works, and from such candidates may recommend one or more candidates for the Owner's consideration and approval, provided, however, that the Owner may at its option elect to select (or replace) the Clerk of the Works independently of the Architect.

This Agreement entered into as of the day and year first written above.

Approved as to Form

_____ Town Counsel
Date

I certify that the amount of \$ _____ has been appropriated and is available to compensate the Architect pursuant to the foregoing Agreement.

_____ Finance Officer/Town Accountant
Date

Account # _____

Contract # _____

Pursuant to MGL c. 62C, Sec. 49A, I certify under the penalties of perjury that _____, to my best knowledge and belief, has filed all state income tax returns and paid all state taxes required under law.

Federal Identification Number

BY:

OWNER:

ARCHITECT:

TOWN OF BELMONT
--Project Manager _____

By its Board of Selectmen

By its Principal

Chief Architect
A registered Architect pursuant to M.G.L. c. 112, § 60A-600 [Registration Seal]

Belmont _____ Project