AGREEMENT FOR OWNER'S PROJECT MANAGEMENT SERVICES

Jones Library Renovation/Expansion

The following provisions shall constitute an Agreement between the Town of Amherst, MA ("Town of Amherst"), acting by and through its Town Manager, hereinafter referred to as "Awarding Authority," with an address of 4 Boltwood Avenue, Amherst, MA 01002 and Strategic Building Solutions dba Colliers International, with a usual place of business located at 67 Hunt Street, Suite 119, Agawam, MA 01001, hereinafter referred to as "Owner’s Project Manager," effective as of the 6th day of October, 2015. Each such party may also be referred to individually as a "Party" or collectively as the "Parties." In consideration of the mutual covenants contained herein and such other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1: SCOPE OF WORK:

1.1. Generally.

1.1.1. The Owner’s Project Manager will perform all project management services in connection with the management of the design, construction and commissioning of the Project as set forth in and reasonably inferable from the scope of services attached to this Agreement as Attachment A and, to the extent not included in that scope of services, all of the services set forth in and reasonably inferable from the Awarding Authority’s Request for Qualifications ("RFQ") attached to this Agreement as Attachment B, the Proposal or Statement of Qualifications submitted by Owner’s Project Manager in response to the RFQ attached to this Agreement as Attachment C, and M.G.L. c. 149A, § 44A½(a), as well as all other services as are customarily performed by an Owner’s Project Manager in New England for the construction of a new building or addition/renovation (collectively, the “Scope of
Services" or "Owner's Project Management Services"). The Scope of Services described in this Agreement is, in the reasonable opinion of the Owner's Project Manager, expected to cover all necessary services of the Owner's Project Manager for the Project. Therefore, the Owner's Project Manager shall perform all such services related to the Project through Project completion at the fixed fee set forth below.

1.1.2. In providing the Owner's Project Management Services, the Owner's Project Manager shall maintain an effective and cooperative working relationship with the Designer (as hereinafter defined), general contractors and subcontractors (collectively, the "Contractors") and other consultants and contractors performing services on any aspect of the Project.

1.1.3. The Owner's Project Manager shall be the Awarding Authority's trusted advisor in providing the Owner's Project Management Services. The Owner's Project Manager and the Awarding Authority shall perform as stated in this Agreement, and the Owner's Project Manager accepts the relationship of trust and confidence established between it and the Awarding Authority by this Agreement.

**ARTICLE 2: AWARDING AUTHORITY RESPONSIBILITIES:**

2.1. The Awarding Authority may, from time to time, designate one or more representatives to work with Owner's Project Manager under this Agreement. The persons so designated shall be reasonably acquainted with the Project and shall have the authority, unless otherwise limited in any written notice from the Awarding Authority, to request services under this Agreement. Notwithstanding the foregoing, the designation or lack of designation of a representative shall not relieve Owner's Project Manager of any of its obligations under this Agreement. Owner's Project Manager shall fully cooperate with and assist any and all such designees in connection with the Project and the performance of Owner's Project Manager's Scope of Services hereunder.
2.2. The Awarding Authority will retain a design firm (the "Designer") to design and to prepare contract documents for the Project. Owner’s Project Manager shall assist and fully cooperate with the Awarding Authority in the process of procuring a Designer, including preparation of a scope of services for the Designer.

2.3. The Awarding Authority shall be responsible for the removal of any hazardous materials in connection with the Project; provided, however, that the Owner’s Project Manager shall coordinate, in close consultation with the Awarding Authority's abatement consultant, the oversight of such work until completion.

2.4. The Awarding Authority shall require, for the Owner’s Project Manager’s use at the Project site, that the Contractor(s) retained to perform construction services for the Project furnish a trailer equipped for field office use, furniture, a fax machine, a copy machine, file cabinets, computers, phone service and other utility services and Internet access.

ARTICLE 3: TIME OF PERFORMANCE

3.1 The Owner’s Project Manager shall perform the Scope of Services in a prompt and expeditious manner, consistent with, and to further, the interests of the Awarding Authority. If, through no fault of its own, the Owner’s Project Manager performs any services for the Project after 90 days after the date of “substantial completion” of the Project as such date shall be set forth in the Construction Contract Documents to be prepared by the Designer, such services shall be deemed additional services, and the Owner’s Project Manager shall be entitled to be paid for such additional services in accordance with Paragraph 4.3 below.
ARTICLE 4: COMPENSATION:

4.1. In consideration of the performance of the Agreement, the Awarding Authority shall pay to the Owner’s Project Manager a fixed fee of $19,000, which shall constitute full payment for the Scope of Services.

4.2. The fixed fee in Section 4.1 includes all reimbursable and out-of-pocket costs of the Owner’s Project Manager with respect to the Project, all of which costs are included in the fixed fee and shall not be otherwise chargeable to or reimbursable by the Awarding Authority.

4.3. If additional services, not required under the Agreement, are requested in writing by the Awarding Authority, unless such services were made necessary by an act or omission of the Owner’s Project Manager, its employees, consultants, representatives or agents, the Awarding Authority shall pay the Owner’s Project Manager at the hourly rates set forth on Attachment A for reasonable hours worked. Such rates shall include all salary, benefits, overhead and profit and all reimbursable expenses; provided, however, such rates shall not include actual necessary and reasonable third party out-of-pocket expenditures. The Awarding Authority reserves the right to request that the Owner’s Project Manager provide a lump sum fee for any additional services, and if such lump sum fee is agreed upon by the parties, the agreed upon lump sum fee shall be the fee for that particular additional service to include all reimbursable and out-of-pocket expenses.

4.4. The Owner’s Project Manager shall provide the Awarding Authority with an estimate of expected costs for any requested additional services prior to undertaking such work, and such other information reasonably requested by the Awarding Authority in connection therewith. Any services performed without advance written request or approval (as an additional service) from the Awarding Authority shall be deemed part of the Scope of Services and included in the fixed fee set forth above.
4.5. Records of reimbursable expenses pertaining to additional services and other cost information with respect to additional services shall be available to the Awarding Authority or the Awarding Authority's authorized representatives at mutually convenient times.

4.6. The Owner’s Project Manager shall submit monthly to the Awarding Authority a statement for its services rendered in the prior month. Payment by the Awarding Authority to the Owner’s Project Manager of undisputed amounts included in said statement shall be made within thirty (30) days after it is submitted.

ARTICLE 5: AGREEMENT DOCUMENTS:

5.1. The following documents form the Agreement and all are as fully a part of the Agreement as if attached to this Agreement or repeated herein:

1. This Agreement.
2. Amendments to this Agreement.
3. The Scope of Services (Attachment A)
4. The Awarding Authority’s Request for Proposals/Qualifications (Attachment B)
5. The Owner’s Project Manager’s proposal (Attachment C)
6. Any and all other attachments to the Agreement.

In the event that the provisions of any of the above documents are in direct conflict, those provisions most favorable to the Awarding Authority shall govern, as reasonably determined by the Awarding Authority. Alternatively, in the event that the above documents prescribe for the same work different quantities or quality of goods or services, the Owner’s Project Manager shall provide the greater quantity or higher quality. In the event that the procedures for resolving conflicts set forth above do not result in resolution of a particular conflict, the provisions of each document shall control in the order (from top to bottom) in which they appear above.

ARTICLE 6: AGREEMENT TERMINATION:

6.1. The Awarding Authority may suspend or terminate this Agreement by providing the Owner’s Project Manager with ten (10) days written notice for any of the following reasons:
1. Failure of the Owner's Project Manager, for any reason, to fulfill in a timely and proper manner any of its obligations under this Agreement.

2. Violation of any of any of the material provisions of this Agreement by the Owner's Project Manager.

3. A determination by the Awarding Authority that the Owner's Project Manager has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this Agreement.

6.2. In addition, the Awarding Authority may terminate this agreement without cause (for its convenience or any other reason, or no reason) upon thirty (30) days written notice to the Owner's Project Manager.

6.3. If the Awarding Authority fails to make payment to the Owner's Project Manager of undisputed sums due and owing as provided in Article 4, then, after thirty (30) days written notice to the Awarding Authority, provided the Awarding Authority has not cured such non-performance within such thirty (30) day period, the Project Manager may terminate this Agreement.

6.4. If the Awarding Authority fails to perform any of its material obligations, then, after thirty (30) days written notice to the Awarding Authority, provided the Awarding Authority has not cured such non-performance within such thirty (30) day period, the Owner's Project Manager may terminate this Agreement.

6.5. In the event of a termination of this Agreement other than a termination under Section 6.1, the Owner's Project Manager shall be compensated for all services rendered prior to the date of termination, subject, however, to a deduction for the value of all claims of the Awarding Authority, if any.

ARTICLE 7: INDEMNIFICATION:

7.1. The Owner's Project Manager shall defend, indemnify and hold harmless the Awarding Authority, its officers, agents, and employees, from and against any and all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the Owner's Project Manager's performance of the services under this Agreement, provided that such claim, damage, loss or expense is directly or indirectly, in whole or in part, caused by or the result of the
willful misconduct or negligent acts or omissions of the Owner’s Project Manager, anyone directly or indirectly employed by it, its consultants, representatives, agents, and anyone for whose acts it may be responsible; regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. This indemnification obligation does not require the Owner’s Project Manager to indemnify the Awarding Authority for such claims, damages, losses or expenses where such are caused solely by parties other than the Project Manager, anyone directly or indirectly employed by the Owner’s Project Manager, its consultants, representatives, agents, and anyone for whose acts the Owner’s Project Manager may be responsible.

7.2 The indemnification obligation under paragraph 7.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Owner’s Project Manager under workers’ or workmen’s compensation acts, disability benefit acts or other employee benefit acts.

7.3 The Owner’s Project Manager shall be solely responsible for all local taxes or contributions imposed or required under the Social Security, Workers’ Compensation, and Income Tax laws applicable to it with respect to its duties and obligations under the Agreement. The forgoing language shall not be construed as a limitation of the Owner’s Project Manager’s liability under this Agreement or under any applicable law.

7.4 The indemnification obligations in this Article 8 are in addition to, and not in limitation of, any other rights and remedies available to the Awarding Authority, and shall survive the expiration or earlier termination of this Agreement.

ARTICLE 8: AVAILABILITY OF FUNDS:

8.1 The compensation provided by this Agreement is subject to the availability and appropriation of funds.

8.2 In connection with the grant funds that have been or may be made available for this Project by the Massachusetts Board of Library Commissioners or any other governmental agency pursuant to certain grant agreement(s) between such agencies and the Awarding Authority, Owner’s Project Manager shall, as to the use and disbursement of such funds, be as obligated to the Awarding
Authority as the latter is obligated to such agencies and be subject to the same restrictions to which the Awarding Authority is subject under said grant agreements and all terms and conditions applicable thereto (the “Grant Agreements”).

8.3 Owner’s Project Manager shall take no action, or make any omission, that constitutes, or causes, a violation of the Grant Agreements.

ARTICLE 9: PERFORMANCE STANDARD – COMPLIANCE WITH LAW:

9.1 The Owner’s Project Manager will provide all Owner’s Project Management Services promptly and in a manner (i) that is expeditious and economical based on established compensation provisions in this Agreement, (ii) that is consistent with service standards for comparable projects by qualified and experienced project managers, and (iii) that demonstrates full understanding of the established schedule, budget and other Awarding Authority objectives for the Project and each component thereof.

9.2 The Owner’s Project Manager represents that all Owner’s Project Management Services will be performed in accordance with all applicable Federal, State, and local laws, ordinances, by-laws, codes, and regulations and in accordance with sound project management practice, and the requirements of The Request for Qualifications (RFO) for Owner’s Project Manager for the Renovation/Expansion of The Jones Library dated July 29, 2015 and attached hereto as Attachment B.

9.3 The Owner’s Project Manager agrees that, in performing the Owner’s Project Management Services under this Agreement, it shall comply with all of the terms of all governmental approvals in connection with all aspects of the Project.

ARTICLE 10: ASSIGNMENT:

10.1 The Owner’s Project Manager shall not make any assignment of this Agreement without the prior written approval of the Awarding Authority.
ARTICLE 11: AMENDMENTS:

11.1. All amendments or any changes to the provisions specified in this Agreement can only occur when mutually agreed upon by the Awarding Authority and Owner’s Project Manager. Further, such amendments or changes shall be in writing and signed by officials with authority to bind the Awarding Authority and Owner’s Project Manager.

ARTICLE 12: INSURANCE:

12.1 The Owner’s Project Manager shall obtain and maintain throughout the duration of the Project the following insurance limits and coverages:

   General Liability of at least $1,000,000 Bodily Injury and Property Damage Liability, Combined Single Limit with a $3,000,000 Annual Aggregate Limit. The Town shall be named as an “Additional Insured”.

   Products and Completed Operations shall be maintained for up to three (3) years after the completion of the project.

   Automobile Liability (applicable for any Contractor who has an automobile operating exposure) of at least $1,000,000 Bodily Injury and Property Damage per accident. The Town shall be named as an “Additional Insured”.

   Workers’ Compensation Insurance as required by law; and Umbrella Liability of at least $1,000,000/occurrence, $3,000,000/aggregate. The Town shall be named an “Additional Insured”.

   Professional Liability/Errors and Omissions Insurance written on an occurrence basis in an amount of no less than $1,000,000 per claim.

12.2. The Owner’s Project Manager’s Commercial General Liability Insurance shall include premises - operations (including explosion, collapse and underground coverage) independent contractors and completed operations, all including broad form property damage coverage.

12.3. Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.
12.4. The Awarding Authority shall be named as additional insured parties on the Owner’s Project Manager’s insurance policies for the Project, except for workers’ compensation.

12.5. The foregoing policies shall contain a provision that coverages afforded under the policies will not be canceled, modified or not renewed until at least thirty (30) days prior written notice has been given to the Awarding Authority. Certificates of Insurance showing such coverages to be in force shall be filed with the Awarding Authority prior to the execution of this Agreement, and upon the renewal of any such coverage during the term of this Agreement. Certificates shall indicate effective dates and dates of expiration of policies. All insurance policies required hereunder shall be written by companies satisfactory to the Awarding Authority and licensed to do business in the Commonwealth of Massachusetts and shall be in form satisfactory to the Awarding Authority.

12.6. Owner’s Project Manager shall also provide endorsement forms indicating the Awarding Authority’s additional insured status and any other endorsements to the insurance policies of Owner’s Project Manager.

**ARTICLE 13: DOCUMENTS AND DELIVERABLES:**

13.1. All documents, plans, drawings, reports and data prepared for and delivered to the Awarding Authority by the Owner’s Project Manager under this Agreement including, without limitation, all schedules, cost estimates, daily reports, requests for information, proposed change orders, change directives, and similar documentation shall become the property of the Awarding Authority. Owner’s Project Manager shall not be liable to the Awarding Authority for the latter’s re-use of such materials for a project other than the project specified herein without the Owner’s Project Manager’s written verification of suitability of such materials for the specific purpose intended. Distribution or submission of such materials to meet official regulatory requirements or for other purposes shall not be construed as an act in derogation of any of Owner’s Project Manager’s rights under this Agreement.
ARTICLE 14: NOTICE:

14.1. All notices required to be given hereunder shall be in writing and delivered, or mailed first class, to the parties' respective addresses stated above. In the event that immediate notice is required, it may be given by telephone or facsimile, but shall subsequently be followed by notice in writing in the manner set forth above.

ARTICLE 15: DISPUTE RESOLUTION

15.1. All claims, disputes and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall, be subject to review only by a Massachusetts court having appropriate jurisdiction.

ARTICLE 16: STAFFING

16.1. It is understood that the unique abilities of the Project Manager have been a substantial inducement for the Awarding Authority to enter into this Agreement. Therefore, the Owner's Project Manager will perform the work itself and will not assign or subcontract the work to third parties without the prior written consent of the Awarding Authority. The Awarding Authority shall have the right of approval of Owner's Project Management staff assigned to the project in accordance with Section 16.2.

16.2. The Owner's Project Manager hereby agrees and acknowledges that one of the conditions of this Agreement is that the individuals in charge of the direction and supervision of the Project on behalf of the Owner's Project Manager shall be subject to approval by the Awarding Authority at least one month prior to the commencement of construction work on the Project, and such individuals and the members of the Owner's Project Manager's project team set forth below (the "Owner's Project Manager's Project Team") shall be available to attend meetings and respond to requests, comments,
questions and concerns of the Awarding Authority and other parties identified by the Awarding Authority. This condition is a substantial inducement to the Awarding Authority without which the Awarding Authority would not have entered into this Agreement with the Owner’s Project Manager. Notwithstanding the foregoing, the Owner’s Project Manager shall, upon execution of this Agreement, submit to the Awarding Authority information on the credentials of the proposed project manager and assistant project manager. In consideration of the foregoing, the Owner’s Project Manager agrees that for so long as any such member of the Owner’s Project Manager’s Project Team is employed by (or, as appropriate, a principal of) the Owner’s Project Manager, such member(s) shall direct, shall be responsible for, and shall be available to provide the Owner’s Project Management Services in connection with the Project. If at any time any such member of the Owner’s Project Manager’s Project Team is no longer available as aforesaid, then his/her replacement shall be subject to the prior approval of the Awarding Authority. The Owner’s Project Manager’s Project Team will consist of the persons noted below and necessary assistants and other technical and administrative personnel. All of the Owner’s Project Manager’s Project Team shall be experienced in projects similar in size, scope and complexity of the Project. Each member of the Owner’s Project Manager’s Project Team shall be appropriately licensed and certified and qualified by training and experience in their respective fields. No change will be made in the composition of the Owner’s Project Manager’s Project Team without the Awarding Authority’s written approval. No personnel in the Owner’s Project Manager’s Project Team designated as full-time on the Project shall assume additional responsibilities outside of the Project without the written consent of the Awarding Authority. The Awarding Authority may require replacement of any member of the Owner’s Project Manager’s Project Team upon written notice to the Owner’s Project Manager with or without cause.
The members of the Owner’s Project Manager’s Project Team are as follows:

Managing Director: Mel Overmoyer
PM Director: Ken Guyette
Project Manager: George Barnes

Notwithstanding the foregoing, the approval or lack of approval by the Awarding Authority of any of Owner’s Project Manager’s Project Team shall not relieve Owner’s Project Manager of its obligations under this Agreement, including, but not limited to, its responsibility for the actions and omissions of the Owner’s Project Team.

16.3. The Owner’s Project Manager shall provide the Awarding Authority with a schedule listing the names, job descriptions and professional biographical information for all other staff expected to work on the Project. The Owner’s Project Manager shall provide emergency contact information to the Awarding Authority for all members of the Project Team.

16.4. The Owner’s Project Manager will at all times remain an independent contractor and is not an agent of, employee of, or a joint venturer with, the Awarding Authority.

16.5. Except as provided in the next sentence, the Owner’s Project Manager will not have the authority to enter into agreements on the Awarding Authority’s behalf or otherwise bind the Awarding Authority and the Owner’s Project Manager will not hold itself out as the Awarding Authority’s agent. The Owner’s Project Manager shall act in the capacity of an agent or representative of the Awarding Authority only to the extent as expressly authorized by the terms of this Agreement or as the Awarding Authority may from time to time otherwise expressly authorize the Owner’s Project Manager in writing.
ARTICLE 17: CERTIFICATIONS:

17.1. The Owner's Project Manager certifies that:

1. The wage rates and other costs used to support the Owner's Project Manager's compensation are accurate, complete and current at the time of contracting.

2. The original Agreement price and any additions to the Agreement may be adjusted within one year of completion of the Agreement to exclude any significant amounts due to inaccurate, incomplete or non-concurrent wage rates or other costs.

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

4. No consultant to or sub-Project Manager for the Owner's Project Manager has given, offered or agreed to give any gift, contribution or offer of employment to the Owner's Project Manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or sub-Project Manager of a contract by the Owner's Project Manager.

5. No person, corporation or other entity, other than a bona fide full time employee of the Owner's Project Manager, has been retained or hired by the Owner's Project Manager to solicit for or in any way assist the Project Manager in obtaining this Agreement upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Agreement to the Owner's Project Manager.

6. It has internal accounting controls as required by M.G.L. c.30, §39R and that the Owner's Project Manager filed and will continue to file an audited financial statement as required by M.G.L. c.30, §39R(d).
18. **ARTICLE 18: MISCELLANEOUS**

18.1. This Agreement will be interpreted in accordance with and governed by the laws of the Commonwealth of Massachusetts.

18.2. If any portion of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provisions.

18.3. This Agreement represents the entire and integrated agreement between the Awarding Authority and the Owner’s Project Manager and supersedes all prior negotiations, representations or agreements, either written or oral.

18.4. This Agreement shall be binding upon and inure to the benefit of the Awarding Authority and its successors and assigns. This Agreement shall be binding upon and inure to the benefit of the Owner’s Project Manager and its permitted successors and permitted assigns, if any. The Owner’s Project Manager may not assign any right or delegate any obligation hereunder without the Awarding Authority's prior written approval.

18.5. 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 this 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, the Agreement shall be interpreted and deemed as having the provision or correct provision inserted, and such provisions or clauses shall, to the extent they directly conflict with any other provision of the Agreement, control.

18.6. The Awarding Authority will obtain the services of, among other Project participants, the Designer (which term shall be understood to also include all design professionals utilized in the Project), Contractors, testing and inspection agencies, and attorneys. Owner’s Project Manager shall,
subject to Section 1.1.3, perform all its services under this Agreement in cooperation and coordination with such Project participants.

18.7 No employee or official of either the Awarding Authority or the Owner’s Project Manager shall assume any personal liability pursuant to this Agreement.

18.8 By signing this Agreement, Owner’s Project Manager hereby makes all the statements, representations, acknowledgements, certifications, and agreements required of it by the Federally Required Contract Clauses set forth in Exhibit I of the RFQ, and shall take all actions and engage in the conduct required of it by such clauses, and shall refrain from taking any actions and engaging in any conduct that is prohibited by such clauses.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

OWNER’S PROJECT MANAGER

By: ________________
Signature

Mel Overmoyer
Print Name

Managing Director
Print Title

TOWN OF AMHERST

By: ________________
Signature

M. David Ziomek
Print Name

Interim Town Manager
Print Title

Comptroller 10/26/15
Certified as to Appropriation
214/15-50,000
$19,000

Town Counsel
Certified as to Form
TOWN OF AMHERST

TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. c.62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

8/11/15
(Date)

(Signature of individual submitting bid or proposal)

Jonathan Winikur, Executive Managing Director
(Printed name of person signing bid or proposal)

Strategic Building Solutions, LLC (dba Colliers Int)
(Name of business)

67 Hunt Street, Agawam, MA 01001
(Business address)

(413) 592-0030
(Business phone number)

MUST BE RETURNED SIGNED WITH THE SEALED BID PACKET
TOWN OF AMHERST

CERTIFICATE OF CORPORATE AUTHORITY

The principal, officer or person to sign below pledges under penalties of perjury, that he or she has been designated by the owner(s) or the board of directors of the below named firm as an authorized representative.

8/11/15
(Date)

(Signature of individual submitting bid or proposal)

Jonathan Winikur, Executive Managing Director
(Printed name and title of person signing bid or proposal)

Strategic Building Solutions, LLC (dba Colliers Inti)
(Name of business)

67 Hunt Street, Agawam, MA 01001
(Business address)

(413) 592-0030
(Business phone number)

MUST BE RETURNED SIGNED WITH THE SEALED BID PACKET

TOWN OF AMHERST
NON-COLLUSION STATEMENT
CONTRACTOR'S CERTIFICATION IN BID/PROPOSAL TO BE ATTACHED TO CONTRACT

Any person submitting a Bid or Proposal for the procurement or disposal of supplies and services to any governmental body shall certify in writing, on the Bid or Proposal, as follows:

"The undersigned certifies under penalties of perjury that this Bid or Proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity or group of individuals."

8/11/15                      
(Date)                      

(Signature of person signing bid or proposal)

Jonathon Winikur
(Printed name of person signing bid or proposal)

Executive Managing Director
(Title)

Strategic Building Solutions, LLC
(Name of Business)

67 Hunt Street, Agawam, MA 01001
(Business address)

(413) 592-0030
(Business Phone Number)

MUST BE RETURNED SIGNED WITH THE SEALED BID PACKET
SIGNATURE PAGE

The applicant hereby certifies that:

1. The applicant has not given, offered, or agreed to give any gift, contribution, or offer of employment as an inducement for, or in connection with, the award of contract for these services.

2. No consultant to, or subcontractor for the applicant has given, offered, or agreed to give any gift contribution or offer of employment to the applicant, or to any other person, corporation, or entity as an inducement for, or in connection with, the award of the consultant or subcontractor of a contract by the applicant.

3. That no person, corporation, or other entity other than a bona fide full time employee of the applicant has been retained or hired to solicit for or in any way assist the applicant in obtaining the contract for services upon an agreement or understanding that such person, corporation, or entity be paid a fee or other compensation contingent upon the award of the contract to the applicant.

I hereby attest with full knowledge of the penalties for perjury, as in accordance with Massachusetts GL C.7, S.38E, that all information provided in this application for services is correct.

Strategic Building Solutions, LLC (aka Colliers International)
Firm

Jonathan Winkur
Signee (typed)

Signee (written)

Executive Managing Director
Title

8/11/15
Date

MUST BE RETURNED SIGNED WITH THE SEALED BID PACKET
SCAPE OF SERVICES
The Town of Amherst Jones Library, Inc. Owner’s Project Manager will be responsible for, but not limited to, providing the following services:

1. Assist in the preparation of the RFQ/RFP for the selection of the architect/designer.
2. Assist the library in evaluating architect/designer proposals using designer selection procedures, determining interview techniques, and negotiating a contract with selected architect.
3. Oversee and review the architect’s work as it relates to the Library’s Building Program, the quality and efficiency of design, and preparation of architect’s schedules and cost estimates.
4. Define any conflicts in design with the Library’s Building Program and make recommendations to the architect and the Library Trustees and the Library Feasibility Committee to resolve them.
5. Set a timeline and schedule for taking the project successfully through the Massachusetts Board of Library Commissioners Public Library Construction Grant program.
6. Review architect’s invoices for services rendered and make recommendations for payment.
7. Review cost estimates and consider, evaluate and recommend value engineering and resource prioritization.
8. Review the schematic plans, evaluations and specifications for cost effectiveness, constructability issues, review for consistency of documents between overlapping trades, coordination, and compliance with the vision of the Library’s Building Program and the requirements of M.G.L. Chapter 149, Section 44A-M and all other applicable laws, codes, and regulations.
9. Attendance at periodic meetings (times to be determined) with the Library Trustees and/or designated committees to present reports on status of project and progress in meeting the desired schedule which will be agreed upon with the successful applicant.
10. Provide information and documents as requested by the Town of Amherst in preparing a grant application for the Massachusetts Board of Library Commissioners’ Public Library Construction grant program.
REQUEST FOR QUALIFICATIONS (RFQ)
FOR OWNER'S PROJECT MANAGER

For the Renovation/Expansion/Construction

of The Jones Library

in accordance with The Jones Library, Inc. Building Program

By the
Town of Amherst and the
Board of Library Trustees
Amherst, Massachusetts

July 29, 2015

Advertising Dates:
Central Register July 29, 2015
Daily Hampshire Gazette July 29, 2015

Pre-Proposal Briefing/Walk-through
Monday, August 3, 2015 at 10 a.m.
43 Amity St, Amherst, MA 01002

RFQ Due Date: Wednesday, August 12, 2015 at 3:00 p.m.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>INVITATION TO SUBMIT PROPOSAL</td>
<td>3</td>
</tr>
<tr>
<td>PROJECT DESCRIPTION</td>
<td>3</td>
</tr>
<tr>
<td>SCOPE OF SERVICES</td>
<td>4</td>
</tr>
<tr>
<td>DATES</td>
<td>5</td>
</tr>
<tr>
<td>SUBMISSION DEADLINE AND INSTRUCTIONS</td>
<td>5</td>
</tr>
<tr>
<td>INSURANCE AND INDEMNIFICATION</td>
<td>6</td>
</tr>
<tr>
<td>QUESTIONS, ADDENDUM, OR PROPOSAL MODIFICATION</td>
<td>7</td>
</tr>
<tr>
<td>PRE-BID CONFERENCE/WALK THROUGH</td>
<td>7</td>
</tr>
<tr>
<td>OPM FEE</td>
<td>7</td>
</tr>
<tr>
<td>MINIMUM QUALIFICATIONS</td>
<td>8</td>
</tr>
<tr>
<td>SELECTION CRITERIA</td>
<td>8</td>
</tr>
<tr>
<td>FORMS</td>
<td></td>
</tr>
<tr>
<td>Tax Compliance Certification</td>
<td>9</td>
</tr>
<tr>
<td>Certificate of Corporate Authority</td>
<td>10</td>
</tr>
<tr>
<td>Certificate of Non-Collusion</td>
<td>11</td>
</tr>
<tr>
<td>SIGNATURE PAGE</td>
<td>12</td>
</tr>
</tbody>
</table>
INVITATION TO SUBMIT PROPOSAL

The Town of Amherst invites qualified applicants to submit proposals to provide Owner's Project Manager (OPM) services overseeing the Planning and Design phase, in accordance with the Library’s Building Program, of Library renovation/expansion of approximately 87,000 square feet. All applicants must submit in conformance with this Request for Qualifications (RFQ) document available at Town Hall, 4 Boltwood Ave, Amherst, MA 01002. This RFQ shall be governed by the designer selection law, M.G.L. Chapter 7, Section 38A 1/2 to 38O and M.G.L., Chapter 149, Section 44A 1/2.

It is expected that the proposed services will be required from calendar year 2015 through calendar year 2016. Design development, including preparation of contract documents, will likely commence in 2015. The Construction Phase is expected to begin no earlier than 2017 depending on Town approval and construction grants from the Massachusetts Board of Library Commissioners. While it is anticipated the same OPM individual or firm might oversee both phases, Planning and Design and Construction, the requested proposal here shall cover only the Planning and Design phase.

Upon completion of the Planning and Design phase, the Library Trustees and the Town of Amherst reserve the right to continue with the OPM to include the Construction Phase of the project.

PROJECT DESCRIPTION

The Jones Library building has served the residents of Amherst and surrounding towns for almost a century. On November 2, 1928, the Jones Library was dedicated to serve the people of Amherst. The architect and trustees worked closely together to design a building which broke from the standardized, institutional, monumental libraries constructed during this period. They achieved their vision in a friendly, attractive building which has become a home away from home to the people of Amherst.

The Jones was renovated/expanded in the early 1990’s to a building of approximately 50,000 square feet to meet the existing needs of the community. The renovation/expansion followed along the lines of the original vision for a warm, inviting homelike atmosphere.

Now in 2015, The Jones is finding its facility increasingly antiquated and inefficient. With a current service population of 50,000, Wisconsin Standards recommend a total library square footage of at least 87,000 square feet. In order to serve our patrons’ needs for at least the next twenty years, The Jones Library, Inc. Building Program describes a facility which includes, but is not limited to, the following qualities:

1. Seeks to preserve the existing “homey,” comfortable feeling;
2. Maintains a print collection appropriately sized for the constituency served;
3. Maintains the existing outdoor green spaces;
4. Utilizes proven, energy efficient, cost-effective “green” features;
5. Offers clearly defined quiet study rooms and noisy spaces;
10. Provide information and documents as requested by the Town of Amherst in preparing a grant application for the Massachusetts Board of Library Commissioners’ Public Library Construction grant program.

DATES:

➢ Advertising dates and venues:
  o July 29, 2015
  o Central Register
  o Daily Hampshire Gazette

➢ Pre-proposal Information Briefing
  o Monday, August 3, 2015, 43 Amity St, Amherst, MA 01002 at 10 a.m.

➢ RFQ Due Date:
  o Wednesday, August 12, 2015 by 3 p.m.

➢ Written proposals must be received at Town Hall, 4 Boltwood Ave, Amherst, MA 01002 no later than 3:00 p.m. on Wednesday, August 12, 2015 to be considered. Proposals submitted by fax or by electronic mail will not be considered. Postmarks will not be considered.

➢ A walk-through of the library will be held Monday, August 3, at 10:00 a.m. Individuals or firms are encouraged to attend. The library will be open immediately after the walk-through for additional inspection and photographs.

SUBMISSION DEADLINE AND INSTRUCTIONS
Sealed proposals must be received and registered by the Accounting office, Town Hall, 4 Boltwood Ave, Amherst, MA 01002 by Wednesday, August 12, 2015 by 3:00 p.m. at which time and place the sealed proposals shall be publicly opened. No proposals will be accepted after the time and date noted. Amherst Town Hall is open to receive proposals from 8:00 a.m. - 3:00 p.m. on Monday through Friday.

Request for Qualifications documents may be obtained at Town Hall, 4 Boltwood Ave, Amherst, MA 01002.

A briefing session for the project will be held on Monday, August 3, at 10 a.m. in the Woodbury Room, basement level of The Jones Library, 43 Amity St. A site tour will follow the Pre-Proposal Briefing.

Applicants must also execute, as required by law, and include in the sealed submission the Certificate of Non-Ccclusion, the Certificate of Corporate Authority and the Certificate of Tax Compliance, copies of which are attached. Proposers should provide one (1) signed original bid and nine (9) copies.

Proposals are to be sealed and properly identified on the outer envelope as Qualifications for Project Management Services for Library Building Project in Amherst, Massachusetts with the applicant’s name and address and delivered to:
The following information is specifically required:
1. Statement of the scope and type of services proposed for the Project. The applicant should describe the process and methodology to be used in the completion of services with specific reference to examples of similar projects in which this methodology has been used.
2. A schedule which reflects time table for completion of the Project.
3. Appropriate certifications of insurance.
4. Most recent year-end balance sheet and income statement.
5. Completed Standard Designer Application Form for Municipalities and Public Agencies not within DS3 Jurisdiction (must be completely filled out or your proposal will be deemed non-responsive).

A current firm brochure may be submitted with the proposal.

**INSURANCE AND IDEMNIIFICATION**
As a condition of application, each applicant agrees to carry, if selected for this project, professional malpractice or an errors and omissions insurance policy with limits of at least $1,000,000 per claim and $3,000,000 aggregate, with a deductible of no more than $25,000 per claim. Additionally, the selected OPM shall obtain and maintain at its own expense, general liability and motor vehicle liability insurance policies protecting the Town of Amherst in connection with any operations included in the contract, and shall have the Town of Amherst listed as additionally insured on the policies. General coverage shall be in the amount of $1,000,000 per occurrence and $3,000,000 aggregate for bodily injury and property damage liability.

**Indemnification:** The successful applicant shall agree to indemnify and hold harmless the Jones Library, Inc., The Jones Library Board of Trustees, the Town of Amherst and its officers, employees, boards, commissions, agents and representatives from and against all claims, courses of action, suits, damages and liability of any kind which arise out of the negligence or willful misconduct of the successful applicant or its officers, employees, agents and representatives regarding the project manager services to be performed by the successful applicant regarding the design phase of The Jones Library renovation/expansion construction project.

Proposals must be signed as follows:
1. If the bidder is an individual, by her/him personally.
2. If the bidder is a partnership, by the name of the partnership, followed by the signature of each general partner.
3. If the bidder is a corporation, by the authorized officer, whose signature must be attested to by the Clerk/Secretary of the corporation and corporate seal affixed.
The Town of Amherst, as the awarding authority, reserves the right to accept any proposal in whole, and to reject any and all proposals if it shall be deemed in the best interests of the Town of Amherst to do so.

QUESTIONS, ADDENDUM, OR PROPOSAL MODIFICATION
Questions concerning this request must be submitted in writing to Sharon Sharry, the Library Director, 43 Amity St. Amherst MA 01002. All inquiries received 5 or more days prior to the opening will be considered. Questions may be delivered, mailed, or faxed (413-256-4096). Written responses will be mailed or faxed to all applicants on record as having received the RFQ.

If any changes are made to the RFQ, an addendum will be issued. Addenda will be mailed, emailed or faxed to all applicants on record as having received the RFQ.

All proposals submitted in response to this RFQ shall remain firm for sixty (60) days following the bid opening. The contract will be awarded within 60 days after the bid opening. The time for award may be extended for up to 45 additional days by mutual agreement between the Library Trustees and the highest ranked responsive and responsible applicant.

An applicant may correct, modify, or withdraw a proposal by written notice received by the Town of Amherst prior to the time of opening. Proposal modifications must be submitted in a sealed envelope clearly labeled "Modification No. ___." Each modification must be numbered in sequence, and must reference the RFQ.

After the opening, an applicant may not change any provision of the proposal in a manner prejudicial to the interests of the Town of Amherst or fair competition. Minor informalities may be waived or the applicant may be allowed to correct them.

PRE-BID CONFERENCE/WALK-THROUGH
A pre-proposal conference/walk-through will be conducted on Monday, August 3, at 10 a.m. at The Jones Library, 43 Amity St, Amherst, MA 01002. Answers provided during the conference are informational only. Only verified responses provided in writing by the Library Trustees shall be considered official for purposes of this RFQ. It is highly recommended that interested parties attend the pre-bid conference and walk-through.

OPM FEE
The fee for this project is to be negotiated upon selection. Price or the fee is not a consideration under this proposal. The fee however will include all expenses, direct and indirect, for this project. OPM services resulting from this RFQ are subject to available funds, not to exceed $19,000.00. All proposals shall belong to the Town of Amherst. The OPM agrees to comply with all the federal, state and local laws in its performance of its contract with the Town of Amherst. The Town of Amherst reserves the right to negotiate mutually acceptable amendments to the contract arising from the RFQ and in particular with respect to additional services.
MINIMUM QUALIFICATIONS
M.G.L. chapter 149, section 44A/2 requires public awarding authorities to engage the services of an Owner’s Project Manager (OPM) on all building projects estimated to cost $1.5 million or more.

Each applicant must possess the following minimum qualifications:
1. Massachusetts registered architect or professional engineer and have at least five (5) years of relevant experience in the construction and supervision of construction buildings. In the event the applicant is not a registered architect or professional engineer s/he must have at least seven (7) years of relevant experience in the construction and supervision of construction of buildings.
3. A thorough knowledge of all public bid laws, including without limitation M.G.L. Chapter 149, Section 44A/2.
4. Prior experience administering design and construction on projects of similar size and scope.
5. Financial and operational ability to perform project management services on the project within all established budget limits and time schedules.
6. Familiarity and/or experience relating to “green” construction, energy efficiency and generation, the LEED certification process and grant sources for same.

The Town of Amherst reserves the right to reject any proposal which does not demonstrate compliance with each of the foregoing minimum qualifications.

SELECTION CRITERIA
1. Compliance with the minimum qualifications.
2. Compliance with the submission requirements.
3. Prior successful experience within the public sector, especially in library design and construction. Demonstrated ability to work with municipal and library building committees. Experience in historically sensitive building renovations is Desirable.
4. Evaluation of references for similar projects.
5. Proposed approach to this project which will minimize project management costs while assuring high quality standards of performance in meeting the Town of Amherst’s goals and objectives for completion of a well-constructed building within budget and on time and giving maximum value for money.
6. Depth and breadth of experience and qualifications of the personnel and consultants to be assigned to this project.
7. Evaluation of the financial stability and insurance requirements of the firm and that of any of the sub-consultants.
8. Applicants experience in applying LEED certification standards.

Selection will be performed by the four member Planning and Design Group sub-committee.

The Town of Amherst, as the awarding authority, may request that one or more applicants provide additional information during the process.
TOWN OF AMHERST

TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. c.62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

(Date)  (Signature of individual submitting bid or proposal)

(Printed name of person signing bid or proposal)

(Name of business)

(Business address)

(Business phone number)

MUST BE RETURNED SIGNED WITH THE SEALED BID PACKET
TOWN OF AMHERST

CERTIFICATE OF CORPORATE AUTHORITY

The principal, officer or person to sign below pledges under penalties of perjury, that he or she has been designated by the owner(s) or the board of directors of the below named firm as an authorized representative.

(Date) (Signature of individual submitting bid or proposal)

(Printed name and title of person signing bid or proposal)

(Name of business)

(Business address)

(Business phone number)

MUST BE RETURNED SIGNED WITH THE SEALED BID PACKET
TOWN OF AMHERST

NON-COLLUSION STATEMENT
CONTRACTOR’S CERTIFICATION IN BID/PROPOSAL TO BE ATTACHED TO CONTRACT

Any person submitting a Bid or Proposal for the procurement or disposal of supplies and services to any governmental body shall certify in writing, on the Bid or Proposal, as follows:

"The undersigned certifies under penalties of perjury that this Bid or Proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity or group of individuals.”

(Date) (Signature of person signing bid or proposal)

(Printed name of person signing bid or proposal)

(Title)

(Name of Business)

(Business address)

(Business Phone Number)

MUST BE RETURNED SIGNED WITH THE SEALED BID PACKET
SIGNATURE PAGE

The applicant hereby certifies that:
1. The applicant has not given, offered, or agreed to give any gift, contribution, or offer of employment as an inducement for, or in connection with, the award of contract for these services.
2. No consultant to, or subcontractor for the applicant has given, offered, or agreed to give any gift contribution or offer of employment to the applicant, or to any other person, corporation, or entity as an inducement for, or in connection with, the award of the consultant or subcontractor of a contract by the applicant.
3. That no person, corporation, or other entity other than a bona fide full time employee of the applicant has been retained or hired to solicit for or in any way assist the applicant in obtaining the contract for services upon an agreement or understanding that such person, corporation, or entity be paid a fee or other compensation contingent upon the award of the contract to the applicant.

I hereby attest with full knowledge of the penalties for perjury, as in accordance with Massachusetts GL C.7, S.38E, that all information provided in this application for services is correct.

Firm

Signee (typed)

Signee (written)

Title

Date

MUST BE RETURNED SIGNED WITH THE SEALED BID PACKET
SAMPLE CONTRACT

AGREEMENT FOR OWNER'S PROJECT MANAGEMENT SERVICES

Jones Library Renovation/Expansion

The following provisions shall constitute an Agreement between the

_________________________________ (" "), acting by and through its

_________________________________, hereinafter referred to as "Awarding Authority," with an address of

_________________________________, MA and _________________, with a usual place of business
located at: _________________, hereinafter referred to as "Owner's
Project Manager," effective as of the ___ day of __________, 2015. Each such party may
also be referred to individually as a "Party" or collectively as the "Parties." In consideration of
the mutual covenants contained herein and such other good and valuable consideration the
receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1: SCOPE OF WORK:

1.1. Generally,

1.1.1. The Owner’s Project Manager will perform all project management services in
connection with the management of the design, construction and commissioning of the Project as
set forth in and reasonably inferable from the scope of services attached to this Agreement as
Attachment A and, to the extent not included in that scope of services, all of the services set forth
in and reasonably inferable from the Awarding Authority’s Request from Qualifications ("RFQ")
attached to this Agreement as Attachment B, the Proposal or Statement of Qualifications
submitted by Owner’s Project Manager in response to the RFQ attached to this Agreement as
Attachment C, and M.G.L. c. 149A, § 44A1/2(a), as well as all other services as are customarily
performed by an Owner’s Project Manager in New England for the construction of a new
building or addition/renovation (collectively, the "Scope of Services" or "Owner’s Project Management Services"). The Scope of Services described in this Agreement is, in the reasonable opinion of the Owner’s Project Manager, expected to cover all necessary services of the Owner’s Project Manager for the Project. Therefore, the Owner’s Project Manager shall perform all such services related to the Project through Project completion at the fixed fee set forth below.

1.1.2. In providing the Owner’s Project Management Services, the Owner’s Project Manager shall maintain an effective and cooperative working relationship with the Designer (as hereinafter defined), general contractors and subcontractors (collectively, the "Contractors") and other consultants and contractors performing services on any aspect of the Project.

1.1.3. The Owner’s Project Manager shall be the Awarding Authority’s trusted advisor in providing the Owner’s Project Management Services. The Owner’s Project Manager and the Awarding Authority shall perform as stated in this Agreement, and the Owner’s Project Manager accepts the relationship of trust and confidence established between it and the Awarding Authority by this Agreement.

ARTICLE 2: AWARDING AUTHORITY RESPONSIBILITIES:

2.1. The Awarding Authority may, from time to time, designate one or more representatives to work with Owner’s Project Manager under this Agreement. The persons so designated shall be reasonably acquainted with the Project and shall have the authority, unless otherwise limited in any written notice from the Awarding Authority, to request services under this Agreement. Notwithstanding the foregoing, the designation or lack of designation of a representative shall not relieve Owner’s Project Manager of any of its obligations under this Agreement. Owner’s Project Manager shall fully cooperate with and assist any and all such designees in connection
with the Project and the performance of Owner’s Project Manager’s Scope of Services hereunder.

2.2. The Awarding Authority will retain a design firm (the "Designer") to design and to prepare contract documents for the Project. Owner’s Project Manager shall assist and fully cooperate with the Awarding Authority in the process of procuring a Designer, including preparation of a scope of services for the Designer.

2.3. The Awarding Authority shall be responsible for the removal of any hazardous materials in connection with the Project; provided, however, that the Owner’s Project Manager shall coordinate, in close consultation with the Awarding Authority's abatement consultant, the oversight of such work until completion.

2.4. The Awarding Authority shall require, for the Owner’s Project Manager's use at the Project site, that the Contractor(s) retained to perform construction services for the Project furnish a trailer equipped for field office use, furniture, a fax machine, a copy machine, file cabinets, computers, phone service and other utility services and Internet access.

**ARTICLE 3: TIME OF PERFORMANCE**

3.1 The Owner’s Project Manager shall perform the Scope of Services in a prompt and expeditious manner, consistent with, and to further, the interests of the Awarding Authority. If, through no fault of its own, the Owner’s Project Manager performs any services for the Project after 90 days after the date of “substantial completion” of the Project as such date shall be set forth in the Construction Contract Documents to be prepared by the Designer, such services shall be deemed additional services, and the Owner’s Project Manager shall be entitled to be paid for such additional services in accordance with Paragraph 4.3 below.
ARTICLE 4: COMPENSATION:

4.1. In consideration of the performance of the Agreement, the Awarding Authority shall pay to the Owner’s Project Manager a fixed fee of $\_
\_
\_
\_
\_
\_, which shall constitute full payment for the Scope of Services.

4.2. The fixed fee in Section 4.1 includes all reimbursable and out-of-pocket costs of the Owner’s Project Manager with respect to the Project, all of which costs are included in the fixed fee and shall not be otherwise chargeable to or reimbursable by the Awarding Authority.

4.3. If additional services, not required under the Agreement, are requested in writing by the Awarding Authority, unless such services were made necessary by an act or omission of the Owner’s Project Manager, its employees, consultants, representatives or agents, the Awarding Authority shall pay the Owner’s Project Manager at the hourly rates set forth on Attachment A for reasonable hours worked. Such rates shall include all salary, benefits, overhead and profit and all reimbursable expenses; provided, however, such rates shall not include actual necessary and reasonable third party out-of-pocket expenditures. The Awarding Authority reserves the right to request that the Owner’s Project Manager provide a lump sum fee for any additional services, and if such lump sum fee is agreed upon by the parties, the agreed upon lump sum fee shall be the fee for that particular additional service to include all reimbursable and out-of-pocket expenses.

4.4. The Owner’s Project Manager shall provide the Awarding Authority with an estimate of expected costs for any requested additional services prior to undertaking such work, and such other information reasonably requested by the Awarding Authority in connection therewith. Any services performed without advance written request or approval (as an additional service) from
the Awarding Authority shall be deemed part of the Scope of Services and included in the fixed fee set forth above.

4.5. Records of reimbursable expenses pertaining to additional services and other cost information with respect to additional services shall be available to the Awarding Authority or the Awarding Authority's authorized representatives at mutually convenient times.

4.6. The Owner’s Project Manager shall submit monthly to the Awarding Authority a statement for its services rendered in the prior month. Payment by the Awarding Authority to the Owner’s Project Manager of undisputed amounts included in said statement shall be made within thirty (30) days after it is submitted.

ARTICLE 5: AGREEMENT DOCUMENTS:

5.1. The following documents form the Agreement and all are as fully a part of the Agreement as if attached to this Agreement or repeated herein:

1. This Agreement.
2. Amendments to this Agreement.
3. The Scope of Services (Attachment A)
4. The Awarding Authority’s Request for Proposals/Qualifications (Attachment B)
5. The Owner’s Project Manager’s proposal (Attachment C)
6. Any and all other attachments to the Agreement.

In the event that the provisions of any of the above documents are in direct conflict, those provisions most favorable to the Awarding Authority shall govern, as reasonably determined by the Awarding Authority. Alternatively, in the event that the above documents prescribe for the same work different quantities or quality of goods or services, the Owner’s Project Manager shall provide the greater quantity or higher quality. In the event that the procedures for resolving conflicts set forth above do not result in resolution of a particular conflict, the provisions of each document shall control in the order (from top to bottom) in which they appear above.
ARTICLE 6: AGREEMENT TERMINATION:

6.1. The Awarding Authority may suspend or terminate this Agreement by providing the Owner's Project Manager with ten (10) days written notice for any of the following reasons:

1. Failure of the Owner's Project Manager, for any reason, to fulfill in a timely and proper manner any of its obligations under this Agreement.

2. Violation of any of any of the material provisions of this Agreement by the Owner's Project Manager.

3. A determination by the Awarding Authority that the Owner's Project Manager has engaged in fraud, waste, mismanagement, misuse of funds, or criminal activity with any funds provided by this Agreement.

6.2. In addition, the Awarding Authority may terminate this agreement without cause (for its convenience or any other reason, or no reason) upon thirty (30) days written notice to the Owner's Project Manager.

6.3. If the Awarding Authority fails to make payment to the Owner's Project Manager of undisputed sums due and owing as provided in Article 4, then, after thirty (30) days written notice to the Awarding Authority, provided the Awarding Authority has not cured such non-performance within such thirty (30) day period, the Project Manager may terminate this Agreement.

6.4. If the Awarding Authority fails to perform any of its material obligations, then, after thirty (30) days written notice to the Awarding Authority, provided the Awarding Authority has not cured such non-performance within such thirty (30) day period, the Owner's Project Manager may terminate this Agreement.

6.5. In the event of a termination of this Agreement other than a termination under Section 6.1, the Owner's Project Manager shall be compensated for all services rendered prior to the date of termination, subject, however, to a deduction for the value of all claims of the Awarding Authority, if any.
ARTICLE 7: INDEMNIFICATION:

7.1. The Owner’s Project Manager shall defend, indemnify and hold harmless the Awarding Authority, its officers, agents, and employees, from and against any and all claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from the Owner’s Project Manager’s performance of the services under this Agreement, provided that such claim, damage, loss or expense is directly or indirectly, in whole or in part, caused by or the result of the willful misconduct or negligent acts or omissions of the Owner’s Project Manager, anyone directly or indirectly employed by it, its consultants, representatives, agents, and anyone for whose acts it may be responsible, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. This indemnification obligation does not require the Owner’s Project Manager to indemnify the Awarding Authority for such claims, damages, losses or expenses where such are caused solely by parties other than the Project Manager, anyone directly or indirectly employed by the Owner’s Project Manager, its consultants, representatives, agents, and anyone for whose acts the Owner’s Project Manager may be responsible.

7.2. The indemnification obligation under paragraph 7.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Owner’s Project Manager under workers’ or workmen’s compensation acts, disability benefit acts or other employee benefit acts.

7.3. The Owner’s Project Manager shall be solely responsible for all local taxes or contributions imposed or required under the Social Security, Workers’ Compensation, and Income Tax laws applicable to it with respect to its duties and obligations under the Agreement. The foregoing language shall not be construed as a limitation of the Owner’s Project Manager’s liability under this Agreement or under any applicable law.
7.4 The indemnification obligations in this Article 8 are in addition to, and not in limitation of, any other rights and remedies available to the Awarding Authority, and shall survive the expiration or earlier termination of this Agreement.

**ARTICLE 8: AVAILABILITY OF FUNDS:**

8.1. The compensation provided by this Agreement is subject to the availability and appropriation of funds.

8.2 In connection with the grant funds that have been or may be made available for this Project by the Massachusetts Board of Library Commissioners or any other governmental agency pursuant to certain grant agreement(s) between such agencies and the Awarding Authority, Owner’s Project Manager shall, as to the use and disbursement of such funds, be as obligated to the Awarding Authority as the latter is obligated to such agencies and be subject to the same restrictions to which the Awarding Authority is subject under said grant agreements and all terms and conditions applicable thereto (the “Grant Agreements”).

8.3 Owner’s Project Manager shall take no action, or make any omission, that constitutes, or causes, a violation of the Grant Agreements.

**ARTICLE 9: PERFORMANCE STANDARD – COMPLIANCE WITH LAW:**

9.1 The Owner’s Project Manager will provide all Owner’s Project Management Services promptly and in a manner (i) that is expeditious and economical based on established compensation provisions in this Agreement, (ii) that is consistent with service standards for comparable projects by qualified and experienced project managers, and (iii) that demonstrates full understanding of the established schedule, budget and other Awarding Authority objectives for the Project and each component thereof.
9.2. The Owner's Project Manager represents that all Owner's Project Management Services will be performed in accordance with all applicable Federal, State, and local laws, ordinances, by-laws, codes, and regulations and in accordance with sound project management practice, and the requirements of ____________.

9.3. The Owner's Project Manager agrees that, in performing the Owner's Project Management Services under this Agreement, it shall comply with all of the terms of all governmental approvals in connection with all aspects of the Project.

**ARTICLE 10: ASSIGNMENT:**

10.1. The Owner's Project Manager shall not make any assignment of this Agreement without the prior written approval of the Awarding Authority.

**ARTICLE 11: AMENDMENTS:**

11.1. All amendments or any changes to the provisions specified in this Agreement can only occur when mutually agreed upon by the Awarding Authority and Owner's Project Manager. Further, such amendments or changes shall be in writing and signed by officials with authority to bind the Awarding Authority and Owner's Project Manager.

**ARTICLE 12: INSURANCE:**

12.1. The Owner's Project Manager shall obtain and maintain throughout the duration of the Project the following insurance limits and coverages:

   General Liability of at least $1,000,000 Bodily Injury and Property Damage Liability, Combined Single Limit with a $3,000,000 Annual Aggregate Limit. The Town shall be named as an "Additional Insured".

   Products and Completed Operations shall be maintained for up to three (3) years after the completion of the project.
Automobile Liability (applicable for any Contractor who has an automobile operating exposure) of at least $1,000,000 Bodily Injury and Property Damage per accident. The Town shall be named as an “Additional Insured”.

Workers’ Compensation Insurance as required by law; and Umbrella Liability of at least $1,000,000/occurrence, $3,000,000/aggregate. The Town shall be named an “Additional Insured”.

Professional Liability/Errors and Omissions Insurance written on an occurrence basis in an amount of no less than $1,000,000 per claim.

12.2. The Owner’s Project Manager’s Commercial General Liability Insurance shall include premises - operations (including explosion, collapse and underground coverage) independent contractors and completed operations, all including broad form property damage coverage.

12.3. Commercial General Liability Insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.

12.4. The Awarding Authority shall be named as additional insured parties on the Owner’s Project Manager’s insurance policies for the Project, except for workers’ compensation.

12.5. The foregoing policies shall contain a provision that coverages afforded under the policies will not be canceled, modified or not renewed until at least thirty (30) days prior written notice has been given to the Awarding Authority. Certificates of Insurance showing such coverages to be in force shall be filed with the Awarding Authority prior to the execution of this Agreement, and upon the renewal of any such coverage during the term of this Agreement. Certificates shall indicate effective dates and dates of expiration of policies. All insurance policies required hereunder shall be written by companies satisfactory to the Awarding Authority and licensed to do business in the Commonwealth of Massachusetts and shall be in form satisfactory to the Awarding Authority.
12.6. Owner’s Project Manager shall also provide endorsement forms indicating the Awarding Authority’s additional insured status and any other endorsements to the insurance policies of Owner’s Project Manager.

ARTICLE 13: DOCUMENTS AND DELIVERABLES:

13.1. All documents, plans, drawings, reports and data prepared for and delivered to the Awarding Authority by the Owner’s Project Manager under this Agreement including, without limitation, all schedules, cost estimates, daily reports, requests for information, proposed change orders, change directives, and similar documentation shall become the property of the Awarding Authority. Owner’s Project Manager shall not be liable to the Awarding Authority for the latter’s re-use of such materials for a project other than the project specified herein without the Owner’s Project Manager’s written verification of suitability of such materials for the specific purpose intended. Distribution or submission of such materials to meet official regulatory requirements or for other purposes shall not be construed as an act in derogation of any of Owner’s Project Manager’s rights under this Agreement.

ARTICLE 14: NOTICE:

14.1. All notices required to be given hereunder shall be in writing and delivered, or mailed first class, to the parties’ respective addresses stated above. In the event that immediate notice is required, it may be given by telephone or facsimile, but shall subsequently be followed by notice in writing in the manner set forth above.

ARTICLE 15: DISPUTE RESOLUTION

15.1. All claims, disputes and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof shall, be subject to review only by a Massachusetts court having appropriate jurisdiction.
ARTICLE 16: STAFFING

16.1 It is understood that the unique abilities of the Project Manager have been a substantial inducement for the Awarding Authority to enter into this Agreement. Therefore, the Owner’s Project Manager will perform the work itself and will not assign or subcontract the work to third parties without the prior written consent of the Awarding Authority. The Awarding Authority shall have the right of approval of Owner’s Project Management staff assigned to the project in accordance with Section 16.2.

16.2. The Owner’s Project Manager hereby agrees and acknowledges that one of the conditions of this Agreement is that the individuals in charge of the direction and supervision of the Project on behalf of the Owner’s Project Manager shall be subject to approval by the Awarding Authority at least one month prior to the commencement of construction work on the Project, and such individuals and the members of the Owner’s Project Manager’s project team set forth below (the "Owner’s Project Manager’s Project Team") shall be available to attend meetings and respond to requests, comments, questions and concerns of the Awarding Authority and other parties identified by the Awarding Authority. This condition is a substantial inducement to the Awarding Authority without which the Awarding Authority would not have entered into this Agreement with the Owner’s Project Manager. Notwithstanding the foregoing, the Owner’s Project Manager shall, upon execution of this Agreement, submit to the Awarding Authority information on the credentials of the proposed project manager and assistant project manager. In consideration of the foregoing, the Owner’s Project Manager agrees that for so long as any such member of the Owner’s Project Manager’s Project Team is employed by (or, as appropriate, a principal of) the Owner’s Project Manager, such member(s) shall direct, shall be responsible for, and shall be available to provide the Owner’s Project Management Services in connection with
the Project. If at any time any such member of the Owner's Project Manager's Project Team is no longer available as aforesaid, then his/her replacement shall be subject to the prior approval of the Awarding Authority. The Owner's Project Manager's Project Team will consist of the persons noted below and necessary assistants and other technical and administrative personnel. All of the Owner's Project Manager's Project Team shall be experienced in projects similar in size, scope and complexity of the Project. Each member of the Owner's Project Manager's Project Team shall be appropriately licensed and certified and qualified by training and experience in their respective fields. No change will be made in the composition of the Owner's Project Manager's Project Team without the Awarding Authority's written approval. No personnel in the Owner's Project Manager's Project Team designated as full-time on the Project shall assume additional responsibilities outside of the Project without the written consent of the Awarding Authority. The Awarding Authority may require replacement of any member of the Owner's Project Manager's Project Team upon written notice to the Owner's Project Manager with or without cause.

The members of the Owner's Project Manager's Project Team are as follows:

____________________________

____________________________

____________________________

Notwithstanding the foregoing, the approval or lack of approval by the Awarding Authority of any of Owner's Project Manager's Project Team shall not relieve Owner's Project
Manager of its obligations under this Agreement, including, but not limited to, its responsibility for the actions and omissions of the Owner’s Project Team.

16.3. The Owner’s Project Manager shall provide the Awarding Authority with a schedule listing the names, job descriptions and professional biographical information for all other staff expected to work on the Project. The Owner’s Project Manager shall provide emergency contact information to the Awarding Authority for all members of the Project Team.

16.4. The Owner’s Project Manager will at all times remain an independent contractor and is not an agent of, employee of, or a joint venturer with, the Awarding Authority.

16.5. Except as provided in the next sentence, the Owner’s Project Manager will not have the authority to enter into agreements on the Awarding Authority’s behalf or otherwise bind the Awarding Authority and the Owner’s Project Manager will not hold itself out as the Awarding Authority’s agent. The Owner’s Project Manager shall act in the capacity of an agent or representative of the Awarding Authority only to the extent as expressly authorized by the terms of this Agreement or as the Awarding Authority may from time to time otherwise expressly authorize the Owner’s Project Manager in writing.

**ARTICLE 17: CERTIFICATIONS:**

17.1. The Owner’s Project Manager certifies that:

1. The wage rates and other costs used to support the Owner’s Project Manager’s compensation are accurate, complete and current at the time of contracting.

2. The original Agreement price and any additions to the Agreement may be adjusted within one year of completion of the Agreement to exclude any significant amounts due to inaccurate, incomplete or non-concurrent wage rates or other costs.
3. It has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement.

4. No consultant to or sub-Project Manager for the Owner’s Project Manager has given, offered or agreed to give any gift, contribution or offer of employment to the Owner’s Project Manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or sub-Project Manager of a contract by the Owner’s Project Manager.

5. No person, corporation or other entity, other than a bona fide full time employee of the Owner’s Project Manager, has been retained or hired by the Owner’s Project Manager to solicit for or in any way assist the Project Manager in obtaining this Agreement upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Agreement to the Owner’s Project Manager.

6. It has internal accounting controls as required by M.G.L. c.30, §39R and that the Owner’s Project Manager filed and will continue to file an audited financial statement as required by M.G.L. c.30, §39R(d).

18. **ARTICLE 18: MISCELLANEOUS**

18.1. This Agreement will be interpreted in accordance with and governed by the laws of the Commonwealth of Massachusetts.

18.2. If any portion of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provisions.
18.3. This Agreement represents the entire and integrated agreement between the Awarding Authority and the Owner's Project Manager and supersedes all prior negotiations, representations or agreements, either written or oral.

18.4. This Agreement shall be binding upon and inure to the benefit of the Awarding Authority and its successors and assigns. This Agreement shall be binding upon and inure to the benefit of the Owner's Project Manager and its permitted successors and permitted assigns, if any. The Owner's Project Manager may not assign any right or delegate any obligation hereunder without the Awarding Authority's prior written approval.

18.5. 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 this 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, the Agreement shall be interpreted and deemed as having the provision or correct provision inserted, and such provisions or clauses shall, to the extent they directly conflict with any other provision of the Agreement, control.

18.6. The Awarding Authority will obtain the services of, among other Project participants, the Designer (which term shall be understood to also include all design professionals utilized in the Project), Contractors, testing and inspection agencies, and attorneys. Owner's Project Manager shall, subject to Section 1.1.3, perform all its services under this Agreement in cooperation and coordination with such Project participants.

18.7 No employee or official of either the Awarding Authority or the Owner's Project Manager shall assume any personal liability pursuant to this Agreement.

18.8 By signing this Agreement, Owner's Project Manager hereby makes all the statements, representations, acknowledgements, certifications, and agreements required of it by the Federally
Required Contract Clauses set forth in Exhibit I of the RFQ, and shall take all actions and engage in the conduct required of it by such clauses, and shall refrain from taking any actions and engaging in any conduct that is prohibited by such clauses.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

OWNER'S PROJECT MANAGER
By: _____________________________
    Signature
    ________________ _____________________________
    Print Name & Title

TOWN OF AMHERST
By: _____________________________
    Signature
    ________________ _____________________________
    Print Name & Title

Comptroller
Certified as to Appropriation

Town Counsel
Certified as to Form
ATTACHMENT A

Legal AD

INSERTION ORDER

TYPE OF AD: Legal

PUBLICATION(S) & PUBLICATION DATES:
DAILY HAMPSHIRE GAZETTE—Wednesday, July 29, 2015

PLEASE BILL:
Town Accountant’s Office
4 Boltwood Ave.
Amherst, MA 01002

BODY OF AD: Request for Proposals for OPM Services - The Town of Amherst invites qualified applicants to submit proposals to provide Owner’s Project Manager (OPM) services overseeing the Planning and Design phase, in accordance with the Library’s Building Program, of the Jones Library renovation/expansion of approx 87,000 sq ft. All applicants must submit in conformance with the Request for Qualifications (RFQ) document available at Town Hall, 4 Boltwood Ave, Amherst, MA 01002 or via email by contacting Holly Bowser at bowserh@amherstma.gov or 413-259-3026. A pre-proposal informational briefing will be held on Monday, August 3, 2015 at 10:00 AM at the Jones Library, 43 Amity St, Amherst, MA.

It is expected that the proposed services will be required from calendar year 2015 through calendar year 2016. Design development, including preparation of contract documents, will likely commence in 2015. The Construction Phase is expected to begin no earlier than 2017 depending on Town approval and construction grants from the Massachusetts Board of Library Commissioners. While it is anticipated the same OPM individual or firm might oversee both phases, Planning and Design and Construction, the requested proposal here shall cover only the Planning and Design phase. The fee for services is not to exceed $19,000. Proposals shall be submitted no later than 3:00 PM on Wednesday, August 12, 2015 to the above address.

Upon completion of the Planning and Design phase, the Library Trustees and the Town of Amherst reserve the right to continue with the OPM to include the Construction Phase of the project. The Town of Amherst reserves the right to reject or accept any or all proposals, in whole or in part. The Town Manager has final approval of all awarded contracts. In accordance with the Town of Amherst’s M/WBE Program, minority and women-owned business are encouraged to submit proposals.