

AGREEMENT FOR OWNER'S PROJECT MANAGEMENT SERVICES

HANOVER FIRE STATION PROJECT

The following provisions shall constitute an Agreement between the Town of Hanover ("Town"), acting by and through the Town Manager and Select Board, hereinafter referred to as "Awarding Authority," with an address of 550 Hanover Street, Hanover, MA and Pomroy Associates, LLC, with a usual place of business located at 49 Bedford Street hereinafter referred to as "Owner's Project Manager," effective as of the 25th day of May, 2022. 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 (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 \$41,000.00, which shall constitute full payment for the Scope of Services for "Phase I".

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 a rate agreed to by the parties for reasonable hours worked. Such rate 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 provided to the Awarding Authority or the Awarding Authority's authorized representatives upon request.

4.6. The Owner's Project Manager shall submit monthly to the Awarding Authority a statement for its services rendered in the prior month in accordance with the compensation described in Article 4. 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 properly 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.

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.

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 \$3,000,000/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 \$2,000,000 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:

Taylor Macdonald – Prime point of Contact

Richard Pomroy

Jessica Martin

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 time 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.

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: Taylor MacDonald

Signature

Taylor MacDonald

Print Name

Partner

Print Title

5.25.22

TOWN OF HANOVER
TOWN MANAGER

By: [Signature]

Joe Cunniff

Town Manager

25. May. 2022