

**AGREEMENT** made as of the \_\_\_\_\_ day of February, 2020

**BETWEEN** the Owner:

City of Beacon  
One Municipal Plaza  
Beacon, NY 12508

and the Architect:

Mitchell Associates Architects, PLLC  
29 Thacher Park Road  
Voorheesville, NY 12186

for the following Project:

Feasibility Study, for the consolidation of 3 fire stations into two in accordance with the Beacon RFP-COB-05-19, and the architects proposal dated September 27, 2019.

The Owner and Architect agree as follows.

#### **ARTICLE 1 ARCHITECT'S RESPONSIBILITIES**

**§ 1.1** The Architect shall provide the professional services as described in Exhibit "A," attached hereto.

**§ 1.2** The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

**§ 1.3** Peter Signorelli, Ken Gale and Robert Mitchell are each authorized to act on behalf of the Architect with respect to the Project.

**§ 1.4** Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

**§ 1.5** Prior to commencement of any work under this Agreement and until completion and final acceptance of the work, the Architect shall, at its sole expense, maintain the following insurance on its own behalf, and furnish to the Owner certificates of insurance evidencing same and reflecting the effective date of such coverage as follows:

1. General Liability: \$1,000,000 each occurrence, \$2,000,000 general aggregate
2. Automobile Liability: \$1,000,000 combined single limit
3. Workers' Compensation: \$1,000,000
4. Professional Liability: \$1,000,000

Certificates shall provide that thirty (30) days written notice, by registered mail with return receipt requested, prior to cancellation or expiration be given to the Owner. Policies that lapse and/or expire during term of work shall be recertified and received by the Owner no less than thirty (30) days prior to expiration or cancellation

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**Mitchell Associates**  
**Architects PLLC**

## ARTICLE 2 OWNER'S RESPONSIBILITIES

§ 2.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written response to the program template provided by M-A which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 2.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect may thereafter agree to a corresponding change in the Project's scope and quality. This section shall have no bearing on the provisions of Article 5 of this Contract unless the Architect and Owner otherwise agree.

§ 2.3 Upon written request from the Architect, within 15 days, the Owner shall furnish surveys to describe the physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designate wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 2.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 2.5 Upon request of the Architect, the Owner shall furnish services of geotechnical engineers or other consultants, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluations, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. Upon request of the Architect **and upon consent and approval of the owner**, the Owner shall furnish services of geotechnical engineers or other consultants, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluations, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project.

## ARTICLE 3 COPYRIGHTS AND LICENSES

§ 3.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 3.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official



regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

**§ 3.3** Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Sections 4.4 and 4.5, the license granted in this Section 3.3 shall terminate.

**§ 3.3.1** In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 3.3.1. To the extent the Owner provides the Architect with drawings, specifications, or other documents, the Owner shall defend, indemnify and hold harmless the Architect for any expense, loss, damages, or claims, including reasonable attorney's fees arising out of a copyright or related claim against the Architect or its Consultants.

**§ 3.4** Except for the licenses granted in this Article 3, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

#### **ARTICLE 4 TERMINATION OR SUSPENSION**

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

**§ 4.2** If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 4.3** If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

**§ 4.4** Either party may terminate this Agreement upon not less than fourteen days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

**§ 4.5** The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.



§ 4.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 4.7.

§ 4.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect. Termination expenses shall be computed as follows:

- .1 For services provided on the basis of stipulated sum, 10 percent of the stipulated sum per Section 5.1.1 of this Agreement irrespective of the services provided by the Architect.

§ 4.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3 and Section 5.3.

## ARTICLE 5 COMPENSATION

§ 5.1.1 The Owner shall compensate the Architect for services described in Exhibit "A," attached.

§ 5.1.2 For additional services not described in Exhibit "A" that may arise during the course of the Project the Owner shall compensate the Architect in accordance with the fee schedule in Exhibit "A".

§ 5.1.3 Compensation for Additional Services of the Architect's consultants when not specifically included in any other section of this Agreement, shall be the amount invoiced to the Architect plus 15%.

§ 5.1.4 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth in Exhibit "A," attached. Compensation for Additional Services of the Architect's consultants when not specifically included in any other section of this Agreement, shall be the amount invoiced to the Architect plus 15%.

## § 5.2 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 5.2.1 Reimbursable Expenses are in addition to compensation for the Architect's professional services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 In-house reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service, electronic communications, telephone, and fax will be billed at five (5) percent of the invoiced portion of the Contract value;
- .2 Special printing, reproductions, plots, standard form documents, outsourced printing, and photography will be billed at 115% of cost without markup defined in 5.2.1.1;
- .3 Outsourced postage, handling and delivery will be billed at cost without markup defined in 5.2.1.1;
- .4 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner in addition to that provided in Exhibit "A" as part of the base services will be billed at 115% of cost, without markup defined in 5.2.1.1;
- .5 Transportation and authorized out-of-town travel and subsistence will be billed at cost. Mileage will be billed at the current federally recognized;
- .6 Fees paid for securing approval of authorities having jurisdiction over the Project; and
- .7 Other similar Project-related expenditures.



### § 5.3 PAYMENTS TO THE ARCHITECT

§ 5.3.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at the rate of eight (8) percent per annum.

§ 5.3.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 5.3.3 Records of Reimbursable Expenses, expenses related to additional services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times

### ARTICLE 6 MISCELLANEOUS PROVISIONS

§ 6.1 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 6.2 Unless otherwise expressly required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site(s).

§ 6.3 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 6.4 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

### ARTICLE 7 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

§7.1 To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Architect, Architect's Consultants, its agents and employees for all expenses, loss, damages and claims, including reasonable attorney's fees arising out of the negligent acts, errors, or omissions of the Owner, its consultants, contractors, or anyone acting on their behalf. To the fullest extent permitted by law, the Architect shall defend, indemnify and hold harmless the Owner, its officers, employees, volunteers and agents for all expenses, damages and claims, including reasonable attorneys' fees, loss, damages, or claims arising out of the negligent acts, errors, or omissions of the Architect, its agents, employees, consultants or contractors.

§7.2 To the extent the Owner provides the Architect with drawings, specifications, or other documents, the Owner shall defend, indemnify and hold harmless the Architect for any expense, loss, damages, or claims, including reasonable attorney's fees arising out of a copyright or related claim against the Architect or its Consultant's.

§7.3 The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of the services and work or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with this Agreement.

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**Mitchell Associates**  
**Architects PLLC**

**§7.4** Limitation of Liability: The liability of the Architect and the Architect's Consultants for actions, damages, claims, demands, judgments, losses, costs or expenses arising out of or resulting from the Architect's or its Consultants' negligent acts, errors, or omissions, is limited to the Architect's fee collected pursuant to this Agreement.

**§7.5** Hazardous Materials: The Owner shall be responsible for the detection of any and all toxic or hazardous substances which may be encountered on the site(s). However, if the Architect reasonably believes that a substance is either toxic or hazardous, the Owner shall be notified immediately. The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance and, in the event such material or substances are found to be present to verify that it has been rendered harmless. The Owner shall furnish in writing to the Architect the names and qualifications of the persons or entities who are to perform tests verifying the presence or absence of such materials or substances or who are to perform the task(s) of removal or safe containment of such material or substance. To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Architect, the Architect's Consultants, its agents and employees from any expense, loss, damage, and/or claim, including reasonable attorney's fees, arising out of the presence of such toxic or hazardous substance, provided that such damage, loss, or expense, is not due to the sole negligence of the Architect.

**§7.6** If the Architect or its consultants determine that physical testing or selective demolition is required to verify existing conditions, the Owner shall bear the costs of such testing. Services of the Architect or its consultants related to such testing is an additional service.

**§7.7** It is expressly understood that the evaluation of existing conditions requires that certain assumptions be made by the Architect and that certain assumptions cannot be verified without expending additional sums of money or otherwise destroying portions of the building. As such, the Owner agrees that the Architect shall not be liable for assumptions made in connection with existing conditions. Furthermore, to the extent that the Architect is provided with any information, including but not limited to, drawings, specifications, or studies, the Architect may reasonably rely on said information in the performance of services. To the extent that the information provided to the Architect is inaccurate, contains errors or omissions, the Architect shall have no liability in connection with the information provided or for any damages resulting therefrom. The Owner further agrees, to the fullest extent permitted by law, that the Owner shall indemnify and hold harmless, the Architect, the Architect's consultants, its agents and employees for any expense, loss, damage, and/or claim, including reasonable attorney's fees arising out of the Architect's reliance of this information.

**§7.8** If a court having jurisdiction over the subject matter of this Agreement shall determine that any one or more of the provisions are illegal, void, or otherwise unenforceable as a matter of law, that such provision(s) shall be severed from this Agreement and the balance of this Agreement shall be given full force and effect to accomplish the intention of the parties.

**§7.9** The Architect acknowledges and agrees that none of its employees, contractors, subcontractors or agents shall hold themselves out as being an employee or representative of the Owner. The Architect acknowledges that it is being retained by the Owner only for the purposes and to the extent of this Agreement, and that its services hereunder shall be those of an independent contractor. No employee, contractor, subcontractor or agents of the Architect shall be deemed an employee of the Owner for any purpose. Nothing contained in this Agreement shall be construed as providing the Architect any authority to bind the Owner in any respect.



