

# Elementary School Projects Contract

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The Architect shall at his own expense obtain and maintain a professional liability insurance policy for errors and omissions in an amount of not less than Two Million Dollars (\$2,000,000) per claim and annual aggregate, with a per claim deductible amount of not more than Forty Thousand Dollars (\$40,000), a commercial general liability insurance policy in an amount of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate, and an automobile liability insurance policy in an amount of not less than One Million Dollars (\$1,000,000) per occurrence and in the aggregate, and an umbrella liability insurance policy in an amount of Five Million Dollars (\$5,000,000) per occurrence and in the aggregate with deductible amounts under each policy of not more than Twenty-five Thousand Dollars (\$25,000) and naming the Owner as an additional insured under the commercial general liability insurance policy. All referenced coverages shall be maintained the same for the duration of this Agreement and for a period of six years from the date of substantial completion, subject to availability at commercially reasonable premium rates. The Architect shall provide copies of all certificates of insurance to the Owner.

## ARTICLE 12.5

The Architect shall prepare, at no additional cost to the Owner, alternates determined with the Owner in an estimated value to be determined jointly.

## ARTICLE 12.6

The Architect shall retain as an additional service, if requested by the Owner, a qualified independent professional HVAC engineer, acceptable to the Owner, with experience in air quality design issues, who shall review proposed HVAC design documents as related to air quality.

## ARTICLE 12.7

→ The Architect shall assign Sidney R. Bowen III as Principal in Charge of these Projects and Robert Peirce as Project Manager. These individuals shall remain personally involved in the Project conditions from inception to final completion except for causes beyond the Architect's control.

## ARTICLE 12.8

The Architect shall indemnify to the extent covered by insurance, and hold the Owner, its officers, agents, employees and legal representatives, harmless from and against any loss, damage, liability, expense, claims, demands, actions, and causes of actions or suits at law or in equity, including reasonable attorney's fees, as a result of any injury, claim or loss arising out of the Architect's negligent or wrongful acts, failures to acts, errors or omissions, pursuant to or in the performance of this Agreement.

## ARTICLE 12.9

The Architect agrees to comply with the requirements and provide the certifications set forth in Exhibit A attached hereto and made a part hereof.

## ARTICLE 12.10

Notwithstanding anything to the contrary contained herein, this Agreement shall become null and void and of no further force and effect in the event the Owner is enjoined from entering into a Designer Services Contract with the Architect by a Court of competent jurisdiction or in the event such Court shall determine that the Owner violated the Designer Selection Statute, G.L.c.7, sections 38A1/2-38O, or any other applicable law, in the selection of the Architect for the Project or in negotiating and entering into this Agreement and that as a result this Agreement

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~~3 Five percent of the total compensation for Basic and Additional Services earned to date if termination occurs during any subsequent phase.~~

## ARTICLE 9 MISCELLANEOUS PROVISIONS

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

9.2 Terms in this Agreement shall have the same meaning as those in AIA Document A204, the General Conditions of the Contract for Construction, current as of the date of this Agreement.

~~9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion, or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion.~~

9.4 The Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent recovered through covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A204, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner and Architect each shall require similar waivers from their contractors, consultants and agents.

9.5 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement.

Neither Owner nor Architect shall assign this Agreement without the written consent of the other.

9.6 This Agreement represents the entire and integrated agreement between the Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral.

This Agreement may be amended only by written instrument signed by both Owner and Architect.

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

9.8 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, lead based paints, polychlorinated biphenyl (PCB) or other toxic substances. It is understood that the Architect has no experience or knowledge of ascertaining whether a material is hazardous or not, and therefore the Owner shall not rely on the Architect to discover such hazardous materials.

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

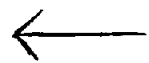
9.10 All notices required by this Agreement or other communications to either party by the other shall be deemed to have been properly given, if given in writing and delivered either (a) by hand in person, (b) by registered or certified mail, return receipt requested or (c) by overnight courier delivery service that provides a return receipt.

To the Owner,

Dr Harry Harutunian  
Superintendent of Schools  
82 Oakland Road  
Reading, MA 01867

To the Architect,

Sidney R. Downen III, Principal  
Flansburg Associates, Inc.  
77 North Washington Street  
Boston, MA 02114



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Public Projects within Last Five Years

Project Name, Location & Principal-in-Charge	Owner Name & Address	Project Cost (in thousands)	Completion Date
Ipswich Middle/High School Ipswich, MA ✓ Sidney R. Bowen, III - <u>PIC</u>	Ipswich Public Schools 1 Lord Square Ipswich, MA 01938 Mr. Richard Korb 978-356-2935	\$31,900	2000
Lowell Public Schools 2 New/Renovated Elementary Schools Lowell, MA Sidney R. Bowen, III - PIC	City of Lowell 275 Merrimack Street Room 60, 3 <sup>rd</sup> Floor Lowell, MA 01852-5986 Mr. Edward Sousa Project Manager 978-446-7086	\$25,000	2004
Manchester Essex Regional High School Site Selection Study Manchester, Essex, MA ✓ Sidney R. Bowen, III - <u>PIC</u>	Manchester Essex Regional School District Lincoln Avenue PO Box 1407 Manchester, Essex, MA 01944 Mr. David Connolly 978-526-4919	\$85 (Study Fee)	2002
Fairhaven High School Addition/Historic Renovation Fairhaven, MA Earl R. Flansburgh, FAIA- PIC	Fairhaven Public Schools 128 Washington Street Fairhaven, MA 02719 Dr. Patricia Ansay 508-979-4000	\$16,836	2000
Waltham Public Schools 6 Elementary Schools/ 2 Middle Schools Waltham, MA David S. Soleau, AIA-PIC	Waltham Public Schools 617 Lexington Street Waltham, MA 02158 Dr. Susan Parrella 781-893-8052	\$150,000	2002- 2007
Beverly Public Schools Six Elementary Schools Beverly, MA Earl R. Flansburgh, FAIA-PIC	Beverly Public Schools 617 Lexington Street Beverly, MA 01915 Ms. Judith Mulligan 978-921-6155	\$37,000	2006
Woburn Public Schools 2 Middle Schools ADA Upgrades for High School Woburn, MA Duncan P. Mc Clelland, AIA-PIC	Woburn Public Schools 55 Locust Street Woburn, MA 01801 Dr. Carl Batchelder 781-937-8200	\$21,300	2000- 2008

Public Projects within Last Five Years

Malden Public Schools 5 New K-8 Schools Pre-K School High School Renovation Malden, MA	Malden Public Schools 77 Salem Street Malden, MA 02148 Mayor Richard Howard 781-397-7000	\$152,200	1999- 2004
David S. Soleau, AIA-PIC			
Stoneham Public Schools Elementary Schools Revitalization (Four K-5 Schools) Stoneham, MA	Stoneham Public Schools 149 Franklin Street Stoneham, MA 02180 Dr. Joseph Connelly 781-279-3826	\$39,000	2000- 2006
Duncan P. McClelland, AIA-PIC			
Salem Public Schools K-12 Long Range Facilities Plan Salem, MA	Salem Public Schools 29 Highland Avenue Salem, MA 01970 Dr. Herbert W. Levine 978-740-1212	\$75,000- \$110,000	2000- 2006
Alan S. Ross, AIA-PIC			
Reading Public Schools 2 Elementary Schools New/Renovation Reading, MA	Reading Public Schools 82 Oakland Road Reading, MA 01867 Dr. Harry Harutunian 781-944-5800	\$13,000	2002- 2003
✓ Sidney R. Bowen-PIC			
Triton Regional Middle/High School Byfield, MA	Triton Regional School District 112 Elm Street Byfield, MA 01922 Dr. Garry Murphy 978-465-2397	\$25,000	2002
David S. Soleau, AIA-PIC			
Weymouth Vocational Technical High School Addition/Renovation Weymouth, MA	Weymouth Public Schools 111 Middle Street Weymouth, MA 02189 Dr. Robert West 781-335-1460	\$26,000	2003
✓ Sidney R. Bowen-PIC			
Chickering Elementary School Dover, MA	Dover Public Schools 137 Farm Street Dover, MA 02030 Dr. Perry Davis 508-785-0036	\$12,100	2001
✓ Sidney R. Bowen-PIC			

**PROCEEDINGS**

**MR. BIERWIRTH:** I agreed with

counsel before we went on the record that we would employ the usual stipulations that we've been using in this case to date, and those are that all objections, except for those as to the form of the question, will be reserved until the time of trial; motions to strike will also be reserved. I've asked that Mr. Bowen read and sign the deposition transcript. We are going to waive the notary on that and give Mr. Bowen 30 days to complete that task.

**MR. SNYDER:** Okay.

**SIDNEY BOWEN**

a witness called for examination by counsel for the Plaintiff, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION  
BY MR. BIERWIRTH:**

**Q:** Can you please state your name for the record.

(1) economics from Boston College, 1971 and a  
(2) master's in business administration from  
(3) Dartmouth College, 1973.

(4) **Q:** Prior to working at Flansburgh &  
(5) Associates, where did you work?

(6) **A:** For myself.

(7) **Q:** And for how long did you do that?

(8) **A:** Approximately a year.

(9) **Q:** And what type of work did you do for  
(10) yourself?

(11) **A:** Architecture.

(12) **Q:** Can you explain to me the difference  
(13) between being a certified architect and  
(14) practicing as an architect without the  
(15) certification?

(16) **A:** The registration rather than  
(17) certification is the term.

(18) Registration requires that you do  
(19) what's called IDP, which is basically meet  
(20) certain numbers of hours doing certain tasks in  
(21) an architecture office working under the  
(22) direction of a licensed architect. Then you  
(23) have to take an exam. The exam is proffered by  
(24) the state. Once you pass that exam, you can

(1) **A:** Sidney R. Bowen, III.

(2) **Q:** And where are you currently employed?

(3) **A:** Flansburgh Associates.

(4) **Q:** Is that Earl R. Flansburgh & Associates?

(5) **A:** Not any longer. Name change as of  
(6) January 15, 2000.

(7) **Q:** How long have you worked for  
(8) Flansburgh & Associates?

(9) **A:** Five years.

(10) **Q:** And what is your position there?

(11) **A:** Principal.

(12) **Q:** When you came on five years ago, were  
(13) you principal?

(14) **A:** I was a rookie.

(15) **Q:** At that time were you a certified  
(16) architect?

(17) **A:** No.

(18) **Q:** Are you currently?

(19) **A:** No.

(20) **Q:** Can you tell me about your educational  
(21) background?

(22) **A:** I have a master's in architecture from  
(23) MIT, 1995. I have a bachelor of arts in  
(24)

(1) become a registered architect.

(2) **Q:** Are you currently working towards  
(3) becoming a registered architect?

(4) **A:** Yes.

(5) **Q:** Just as far as percentage, how far  
(6) along are you?

(7) **A:** I have completed 100 percent of the  
(8) requirements to take the exam but have not taken  
(9) the exam.

(10) **Q:** What has been your experience in the  
(11) planning and design of public school buildings?

(12) **A:** Well, Flansburgh Associates and its  
(13) predecessor are 95 percent school architects.  
(14) So from the time I joined the firm in late  
(15) summer of '95, I've been involved in about 11  
(16) public school projects, from feasibility study  
(17) through construction, some not in construction  
(18) yet, like Reading, but exclusively my time has  
(19) been devoted to public schools, whether it's  
(20) feasibility study, design or construction.

(21) **Q:** When you worked on your own, were you  
(22) engaged in working on public school buildings?

(23) **A:** No.

(24) **Q:** How long has Flansburgh & Associates

[1] or its predecessor been involved in working on  
 [2] public school construction projects?  
 [3] A: 37 years.  
 [4] Q: Other than yourself — strike that.  
 [5] How many principals are there at  
 [6] Flansburgh & Associates?  
 [7] A: Six.  
 [8] Q: How is it ordinarily determined which  
 [9] principal will work on any given public school  
 [10] construction project?  
 [11] A: The simple answer is workload.  
 [12] Q: Who makes the assignments?  
 [13] A: We do as a group.  
 [14] Q: You say you've worked on 11 public  
 [15] school projects. Have you been the principal on  
 [16] those projects, basically in charge of those  
 [17] projects, on each of them?  
 [18] A: Again, I was not a principal when I  
 [19] became a member of the firm. I've been a  
 [20] principal for just about two years. So my role  
 [21] was project manager is the best way to describe  
 [22] it for projects until two years ago, and since  
 [23] then I've been principal in charge of six  
 [24] projects.

[1] beginning, I was not a member of the executive  
 [2] committee, so I don't know the particulars, but  
 [3] she's the person who brings it to discussion as  
 [4] to whether we have capability to pursue a  
 [5] project and whether we're interested.  
 [6] Q: And the determination was made that  
 [7] you were interested in pursuing the Reading  
 [8] project, I take it?  
 [9] A: Correct.  
 [10] Q: What was the next step in the process?  
 [11] A: Every RFQ is different, but ultimately  
 [12] they all require a submittal package, some  
 [13] standard items, some specific to the project.  
 [14] That was prepared by Kate's office and sent to  
 [15] Reading.  
 [16] Q: Did you have a role in preparing that  
 [17] written submission?  
 [18] A: I don't remember.  
 [19] Q: After submitting the written  
 [20] documents, what did your firm do next with  
 [21] respect to the RFQ?  
 [22] A: Waited.  
 [23] Q: And after waiting you received notice  
 [24] from the town?

[1] Q: Can you name those for me?  
 [2] A: Dover, Weymouth, Ipswich, Reading,  
 [3] Westwood. I'm not coming up with it. It may be  
 [4] five.  
 [5] Q: That's fine.  
 [6] Can you tell me how you or your firm  
 [7] first became aware of the feasibility study that  
 [8] was the subject of an RFQ from the Town of  
 [9] Reading in the summer of 1998?  
 [10] A: The central register.  
 [11] Q: Is it your firm's standard practice to  
 [12] review the central register?  
 [13] A: Yes.  
 [14] Q: Do you know who at your firm saw the  
 [15] Reading notice in the central register?  
 [16] A: I do not.  
 [17] Q: What was the next step in your firm's  
 [18] involvement with the project after seeing notice  
 [19] in the central register?  
 [20] A: We have a principal whose primary  
 [21] responsibility is marketing and administration.  
 [22] Her name is Kate Brannelly. Kate ultimately is  
 [23] the person who brings RFQ's to the executive  
 [24] committee. At the time of the Reading project

[1] A: We received notice that we would be  
 [2] interviewed, yes.  
 [3] Q: Is that when you became involved in  
 [4] the project?  
 [5] A: Yes.  
 [6] Q: Prior to responding to this 1998 RFQ,  
 [7] had your firm had any dealings with the Town of  
 [8] Reading?  
 [9] A: Not that I'm aware of.  
 [10] Q: So you received notice from the town  
 [11] that you would be interviewed for conducting the  
 [12] feasibility study; is that correct?  
 [13] A: Correct.  
 [14] Q: What did you do after receiving that  
 [15] notice?  
 [16] A: Put a group together to take the  
 [17] interview, basically, prepared information that  
 [18] we thought was relevant to the scope of the  
 [19] project. I visited all of the existing  
 [20] buildings in Reading just to get a sense of what  
 [21] we were talking about. I think that's the  
 [22] extent of it in that case, though I'm not  
 [23] certain. I don't remember talking with anyone  
 [24] at the superintendent's office, which sometimes

what must be cut, because incorporating every staff member's vision of RMHS' future would not be affordable.

- TT asked if Sid Bowen (Principal, FAI) would perform the same role he played when directing the elementary school project some years ago on Fai's RMHS design team. Mr. Soleau replied that he would be the managing principal for the project with the same responsibilities he had in the previous project.
- PP thanked FAI for their work in preparation for the interview and asked if they had any ideas regarding how to involve the community in the renovation design process. They answered that they would establish a web page to keep the public informed of what is going on with the renovation design. They would write frequent press releases and use cable television as means of communication with the community. They would attend community meetings (large and small) as needed to provide information.
- AM asked if FAI thought that anything was overlooked or overstressed in the RFQ regarding goals and to comment on the schedule as tentatively presented. FAI thought that perhaps the level of investigation sought to ascertain the condition of mechanical systems might not be necessary at the schematic design level for the reason that their condition and code-compliance can be reliably predicted by their age and type. Full exposition of them would not change their treatment in the final analysis, so confirming what is already known about them might be a waste of time and money at the schematic stage. They also thought that the project could be readied for full submission to SBA in the summer of 2003 (after approval by the Town in a debt-exclusion election) with little additional effort. This would be desirable to advance a formal dialogue with the State about the project and to place Reading on the reimbursement list as soon as possible.
- With no further questions being asked, RG thanked FAI for coming and for all their hard work in preparing for the interview.

RG asked DL to report on the sub-committee's final rankings of the candidates that showed the three interviewees as the most favorable ones (DL served as Chair of that sub-committee). DL reiterated that due to his non-numerical scoring of the candidates, a straight numerical averaging of combined scores from the three sub-committee members was not possible. DL had placed his top eight choices in an order of preference. The sub-committee had therefore taken the rank orders of each member (first through eighth) and averaged them to come to a final ranking. In descending order, this ranking became as follows;

1. HMFH Architects, Inc.
2. Flansburgh Associates, Inc.
3. The Design Partnership of Cambridge
4. The Office of Michael Rosenfeld
5. Drummey Rosane Anderson
6. Strekalovsky & Hoit
7. Kaestle Boos
8. Symmes Maini McKee Associates