

## Whitman Middle School Building Committee

### Meeting Minutes

Time: 4:30 PM

Place: Whitman-Hanson Regional High School

Date: Tuesday, May 17, 2022

**Members Present:** Fred Small, Beth Stafford, John Stanbrook, Ernest Sandland, Crystal Regan, Lincoln Heineman, George Ferro, Paul Duprey, Rich Pulkinen, Christopher Scriven, Jeff Szymaniak, Robert Curran

**Absent:** Randy LaMattina, John Galvin, Donald Esson, David Codero,

**Building Team Present:** John Bates, OPM – Colliers Project Leaders (CPL) ~ *participated remotely*

**Absent:** Ken Guyette, OPM - Colliers Project Leaders (CPL)

### Call to Order:

At 4:31pm Fred Small, The Committee Chair opened the meeting by calling it to order.

### Pledge of Allegiance

#### A. Approval of Meeting Minutes

The Chair entertained a motion to approve the minutes:

Motion: Ms. Stafford

Second: Mr. Curran

**The motion was approved by unanimous vote.**

#### B. Designer Contract Review (Colliers)

Mr. Bates provided a recap of the contract negotiation process, noting that Ai3 has agreed to waive their contractually allowed 10% markup on extra services. Both OPM and architect fees now comprise a total of \$812,567.00 of the District's \$850,000 Feasibility budget, therefore creating a contingency amount of \$37,433. Mr. Bates added that Colliers would be comfortable moving forward with the revised contract fees.

Mr. Heineman reminded the Committee of Town Counsel's primary contract concerns regarding the boilerplate MSBA Designer contract. The first concern is the inclusion of indemnification of the Town in addition to the District. To address this concern, both the MSBA and Ai3 have agreed to allow the contract cover sheet to include the same language as was included on the OPM contract regarding indemnification. A draft of the cover sheet will need final review and approval by MSBA legal.

A second concern that has been raised by Mr. Esson is regarding Ai3's attendance at meetings beyond the (1) *Public* meeting covered within the contract. As explained by Mr. Small, the reference to *Public* meeting in the contract refers to *Town* meetings, not Building Committee meetings. As an example of what the contract is referring to, Mr. Small explained that in the event a quorum is not reached at an annual Town Meeting it would require rescheduling an additional Town Meeting, and therefore, would necessitate a second appearance by the architect. The Committee is confident that for an agenda item as important as a middle school construction project, attendance should not be an issue. The last Town meeting is a good indication of that.

Mr. Bates added that he has spoken with Ai3 on this particular topic, and expects that they will participate in any meetings that are required as part of the public approval process.

Mr. Heineman spoke on the third concern raised by Town Counsel regarding the definition of Owner in the contract. With the Owner being the entity that controls the Site, it will be important in new lease negotiations between the Town and the School to define the *Site* as the specific footprint of a new or renovated middle school building. Access would continue to be maintained by the District as it is now for snow removal, etc. The athletic fields are under the control of the District during the school day, and after the school day ends, they are the Town's fields.

Mr. Small entertained a motion by Mr. Heineman that would allow entering into the Designer contract with the following provision, pending MSBA's legal approval:

*The parties acknowledge and agree that, notwithstanding any contrary representation in the standard terms of this contract, including without limitation the definition of "Owner" as set forth in page 6 of 38 hereinafter, record title to the property where the Project is located is held by and shall remain with the Town of Whitman, Massachusetts (the "Town"). To the extent claims are brought against the Town in connection with the Project based on the Town's status as record title owner of the Property, the defense, indemnification and hold harmless obligations of the Designer to the "Owner" pursuant to Article 14 of the Contract shall also extend to the Town.*

Second: Ms. Stafford

Discussion:

Ms. Stafford raised concern about whether the Town and Committee are expending too much effort reviewing the MSBA's standard contracts and procedures. Mr. Small noted that in this case, the concern about indemnification is legitimate and offered an example of why. Based on his conversations with the MSBA, Mr. Bates does not anticipate there being an issue with proceeding with the aforementioned contract provision, and the schedule should not be impacted.

**The motion was approved by unanimous vote.**

Mr. Bates noted that he will update the Design contract cover page with the new language, share with MSBA legal, and once approved, reach out to Ai3 for signature.

It was further noted that Ai3 has begun their existing conditions survey activities. Mr. Small noted that there is a recently updated plot plan that includes some area around the site perimeter that was donated to the Town. Colliers and the Town should coordinate to make sure the architect is in receipt of this new plan.

### **C. WMS Feasibility Study Account/Invoice Approvals**

No invoices to approve at this meeting

### **Adjournment**

The Chair entertained a motion to adjourn.

Motion: Mr. Scriven

Second: Mr. Duprey

The motion was approved unanimously by roll call vote at 4:52 pm.