

Public Building Construction Projects — Issues for Consideration When Drafting Warrant Articles

Municipalities frequently undertake significant building construction and renovation projects, ranging from new Town Hall buildings to new public safety facilities and renovated and expanded library buildings. Following Town Meeting approval, questions have consistently arisen regarding the content of warrant articles and what aspects of the project have been approved. To ensure that municipalities have the full range of options available and sufficient flexibility to accomplish their goals, we have attempted to summarize the issues and propose a sample warrant article that can be adapted for each project.

Issues for initial consideration include:

- Assure a full range of funding options allowing for payment through taxation, available funds, borrowing, and grants
- Authorization for use of alternative construction delivery method known as Construction Manager at Risk or “CMR”
- Authorization for leasing of alternative space for the duration of the project
- Authorization to enter into contracts for periods in excess of three years
- Authorization for any and all incidental and related costs, including building demolition and site preparation language, to assure that ancillary or unanticipated matters can be addressed
- Authorize the Board of Selectman to execute any and all documents necessary to effectuate the purposes of the article
- Authorize project management costs as well as design costs for projects costing in excess of \$1,500,000

If the project is to be funded through borrowing, it would be appropriate to give further consideration to the following:

- Inclusion of debt exclusion language
- Inclusion of bond premium language
- Review by bond counsel prior to approval of the article
- Two-thirds majority vote required for approval of borrowing

Below, please find a sample warrant article for building construction addressing these issues:

To see if the Town will vote to raise and appropriate, transfer from available funds, or borrow a sum of money for the construction, equipping, and furnishing of a new Town Hall building to be located at 1 Main Street, and to authorize any and all incidental and related costs, including but not limited to building demolition and site preparation; and further to authorize use of the construction management at risk delivery method pursuant to the provisions of G.L. c.149A, §§1-13; and further to authorize the Board of Selectmen to enter into a lease or leases of alternative space for the duration of the project; and that to meet this appropriation, the Treasurer with the approval of the Board of Selectmen, is hereby authorized to borrow said sum under and pursuant to G.L. c. 44, §7 or 8 or any other enabling authority, and to issue bonds or notes of the Town therefor, provided that any premium received by the Town upon the sale of any bonds or notes approved by this vote, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved hereunder in accordance with G.L. c. 44, §20, thereby reducing by a like amount the amount authorized to be borrowed to pay such costs; provided however that no funds shall be borrowed or expended hereunder unless and until the Town shall have voted to exclude the amounts required to pay for any such bonds or notes from the limitations of Proposition 2 ½, G.L. c. 59, §21C; and further to authorize the Board of Selectmen to enter into any agreements and execute all documents including contracts for a term in excess of three years, necessary to effectuate the purposes of this Article; or take any action related thereto.

The following is a sample warrant article for building design and project management:

To see if the Town will vote to raise and appropriate and/or transfer from available funds a sum of money to fund the costs of site evaluation, engineering and design services, and project management services for the design, bidding and construction, including but not limited to schematic and final design, construction documents, and bidding and construction oversight of a new Town Hall building to be located at 1 Main Street, and any incidental and related costs; and further to authorize the Board of Selectmen to enter into any agreement and execute all documents including contracts for a term in excess of three years, necessary to effectuate the purposes of this Article, or take any action related thereto.

Please contact Attorney Mark R. Reich (mreich@k-plaw.com) or any member of our Contracts and Procurement Practice Group at 617.556.0007 with any questions about these issues.

Disclaimer: This information is provided as a service by KP Law, P.C. This information is general in nature and does not, and is not intended to, constitute legal advice. Neither the provision nor receipt of this information creates an attorney-client relationship with KP Law, P.C. Whether to take any action based upon the information contained herein should be determined only after consultation with legal counsel.

THE LEADER IN PUBLIC SECTOR LAW

617.556.0007 | 1.800.548.3522 | www.k-plaw.com | ©2017 KP Law, P.C.