

**FILE NO. 5476 – THURSDAY, JUNE 9, 2011 @ 11:00am**

**Request for Landscape and Environmental Restoration Design Services  
for the Cambridge Watershed and Fresh Pond Reservation**

Sealed proposals will be received at the Office of the Purchasing Agent, Room 303, City Hall, 795 Massachusetts Avenue, Cambridge, Massachusetts 02139 until **11:00 am** on **THURSDAY, JUNE 9, 2011** for furnishing the following to the City of Cambridge:

**The City of Cambridge, acting through its Water Department, is seeking proposals from qualified firms to provide landscape design services, construction document preparation and contract administration for Fresh Pond Reservation Master Plan Implementation and the City of Cambridge Watershed Source Water Protection Plan. The contract shall be for a period of one year and may be renewed for two (2) additional (1) year periods at the sole discretion of the awarding authority.**

**This bid may be downloaded from the City's website, [www.cambridgema.gov](http://www.cambridgema.gov), Online Services, Current Bid List, Design RFP.**

Copies of the Request for Proposal may be obtained at the Office of the Purchasing Agent on and after **THURSDAY, MAY 5, 2011** between the hours of 8:30 a.m. to 8:00 p.m, Monday, Tuesday thru Thursday 8:30 a.m. to 5:00 p.m. and 12:00 Noon on Friday.

The successful offeror must be an Equal Opportunity Employer.

The City of Cambridge reserves the right to reject any or all proposals, waive any minor informalities in the proposal process, and accept the proposal deemed to be in the best interest of the City. The City of Cambridge has established or will establish prior to negotiations a not-to-exceed fee.

**THERE MUST BE NO MENTION OF THE APPLICANT'S FEE IN THE PROPOSAL. ANY MENTION OF THE FEE WILL SUBJECT THE PROPOSAL TO REJECTION.**

A pre-submission conference will be held at **11:00 am** on **WEDNESDAY, MAY 18, 2011** at the Cambridge Water Department, Conference Room, 250 Fresh Pond Parkway, Cambridge, MA.

Questions concerning the Request for Design Services may be submitted in writing by **5:00 pm** on **THURSDAY, MAY 19, 2011** to Cynthia H. Griffin, at the address above or by fax (617-349-4008). Answers will be sent to all vendors who received the Request for Design Services through the Purchasing Office.

One original and ten (10) copies of the proposal marked "Fresh Pond Reservation Design Services" must be received by Cynthia Griffin, Purchasing Agent, City of Cambridge, 795 Massachusetts Avenue, Cambridge prior to **THURSDAY, JUNE 9, 2011 @ 11:00 am**. Any proposals received after such time will not be accepted, unless the date and time has been changed by addendum. Delivery to any other office or department does not constitute compliance with this paragraph, unless the proposals are received by the Purchasing Department by the established deadline. It is the responsibility of the applicant to assure proper and timely delivery.

Cynthia H. Griffin  
Purchasing Agent

**CITY OF CAMBRIDGE  
REQUEST FOR PROPOSALS FOR DESIGNER SERVICES**

**FOR LANDSCAPE AND ENVIRONMENTAL RESTORATION FOR THE CAMBRIDGE WATERSHED  
AND FRESH PON RESERVATION**

**INSTRUCTIONS TO APPLICANTS**

**CONTENT OF THE PROPOSAL:** Each proposal should contain only pertinent information and requested documentation; demonstrate how the applicant meets the minimum qualifications set forth in the advertisement for the Request for Proposals; demonstrate the previous relevant experience of the applicant; have a table of contents or easily discernible, labeled sections; and contain exceptions, if any, to the Agreement attached hereto.

Each proposal must contain, at minimum, the following documents: DSB-2000Form; résumés of all persons participating in the Project, including, but not limited to, the principals and consultants; and financial information. A proposal, which does not provide the information and documentation requested or suggested, may be deemed nonresponsive and thereafter rejected.

**SUBMISSION OF THE PROPOSAL:** Each original proposal (marked "ORIGINAL" on the sealed package) along with the number of additional copies set forth in the advertisement for Request for Proposals must be delivered to Cynthia Griffin, Purchasing Agent, City of Cambridge Purchasing Department, 795 Massachusetts Avenue, Third Floor, Cambridge, MA 02139 no later than the date and time set forth in the advertisement and in the manner set forth therein. It is the responsibility of the applicant to insure that delivery is made in a proper and timely fashion. Any proposals received after such time will not be accepted, unless this date and time have been changed by addendum. Delivery to any other office or department does not constitute compliance with this paragraph, unless the proposals are received by the Purchasing Department by the deadline for receipt of proposals.

**QUESTIONS AND CLARIFICATIONS:** Any questions or requests for clarification must be submitted in writing to the Purchasing Agent no later than 5:00 pm. on Thursday, May 19, 2011 prior to the deadline for receipt of proposals. At the sole discretion of the Purchasing Agent, an addendum will be issued with clarifications or answers to the questions. Oral responses by the City are non-binding.

**CORRECTION, MODIFICATION, OR WITHDRAWAL OF PROPOSAL:** Prior to the deadline for receipt of proposals, an applicant may correct, modify, or withdraw its proposal by making the request in writing. All corrections, modifications, or withdrawals must be delivered to the Purchasing Department in a sealed envelope with a notation on the envelope indicating the title of the project, the deadline for the receipt of the proposals and a notation that the envelope contains a correction, modification, or withdrawal of the original proposal submitted for the particular project.

**ADDITIONAL INFORMATION REGARDING THE PROJECT**

Additional information with regard to the project may be attached hereto. Any such information is deemed incorporated herein and made a part hereof.

**DURATION OF PROPOSAL**

A proposal will remain in effect for a period of ninety (90) calendar days from the deadline for submission of proposals, until it is formally withdrawn according to the procedures set forth herein, a contract is executed, or this RFP is cancelled, whichever occurs first. The City reserves the right to reject any and all proposals, or portions thereof.

**ADDENDA**

Addenda will be mailed by the Purchasing Agent only to those persons who were issued a copy of the RFP by the Purchasing Department. The Purchasing Agent may elect to issue any addendum by either regular U.S. mail or by fax.

**GENERAL TERMS AND CONDITIONS**

The Agreement for this project will be between the City and the successful applicant and will be administered by the department designated in the advertisement.

The general terms and conditions of the Agreement between the City and the successful applicant are set forth in the attached Agreement which is incorporated by reference herein.

**SELECTION CRITERIA**

The selection of the finalists will be based, at minimum, on the following criteria: prior similar experience; past performance on public and private projects; financial stability; and identity and qualifications of the consultants who will work with the applicant on the project, including professional registration when required.

Each applicant will be required to state what exceptions it has, if any, to the terms of the proposed Agreement, attached hereto. If no exceptions are raised, the applicant will be deemed to have waived any right to make exceptions thereafter. The City reserves the right to reject an applicant if, in the opinion of the City, the exceptions are inconsistent with the goals of the City.

**SELECTION PROCESS**

All proposals will be reviewed by the Designer Selection Committee ("the Committee"). The Committee will select a minimum of three (3) applicants to be interviewed ("the short list"). The Purchasing Agent will notify all applicants of the names of the applicants selected for the short list.

The short-listed applicants will be notified, either by mail, fax, or telephone, of the date, time and place for their interviews and any other pertinent information related thereto.

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Within a reasonable period of time after the last interview, the Committee will forward to the City Manager its recommendation of the final ranking of the short-listed applicants. The City Manager may, at his sole discretion, interview any of the finalists.

The City Manager may accept or reject the ranking. The applicant selected by the City Manager will be notified either by mail, fax, or telephone of the selection. If the fee is to be negotiated, the selected applicant will be instructed by the Purchasing Agent to submit to the City Manager a fee proposal by a certain date. Negotiations will commence thereafter, until an acceptable fee has been reached. In the event negotiations are unsuccessful, the City will request the second ranked finalist, then if necessary the third ranked finalist, to submit a proposal in the same manner as for the first ranked finalist. In the unlikely event negotiations are unsuccessful with the three top finalists, the City may re-advertise the RFP or may select additional finalists from the original pool of applicants.

Once successful negotiations have concluded or if the fee has been set, the City will prepare the appropriate number of contracts and submit them to the successful applicant for signature. Upon receipt of the executed contract and all other required documents, the City will have the contracts signed by the appropriate City officials and process a purchase order. Unless otherwise stated, the issuance of the purchase order is tantamount to a Notice to Proceed, at which time the successful applicant will be expected to begin work under the contract.

**CITY OF CAMBRIDGE  
Cambridge Water Department**

**Request for Landscape and Environmental Restoration Design Services  
for the Cambridge Watershed and Fresh Pond Reservation**

**SECTION I: SCOPE OF SERVICES**

Overview

The City of Cambridge invites applications from qualified and experienced landscape architects and/or engineers to develop designs for slope stabilization, pond, wetlands and forest restoration and bioretention storm water management systems. Work will also include reservation infrastructure issues such as pathway improvements, fencing, benches and signage. This contract may also include designs of other priority projects as described in the *Fresh Pond Reservation Master Plan, May 2000*, depending on the availability of funding (see attached locus and plan).

Services will include working in the Cambridge Watershed in the communities of Lexington, Lincoln, Waltham and Weston (map enclosed). Types of projects will include storm water management system evaluation, wetland conditions evaluation and eco-system restoration.

Black's Nook Water Quality Assessment

Black's Nook is a 2.3-acre shallow pond on the northern side of the Reservation used by the Maynard Ecology Center to study aquatic life and water quality. Although directly adjacent to Fresh Pond, a Class A water body, Black's Nook Pond has been placed on the state's 303-d Impaired Waters list. A natural resource inventory of the pond completed in 2007 compiled historic water quality data and listed generic opportunities for water quality enhancement to restore oligotrophic conditions and achieve Class B water quality standards.

The designer is expected to assess current levels and types of sediment contamination in Black's Nook Pond. Goals and alternative strategies will be developed in coordination with the CWD to improve benthic habitat, restore wetland function and enhance wildlife carrying capacity. Alternatives may include removing and/or replacing contaminated sediments, improving hydrologic circulation, or optimizing the existing marsh ecosystem through restoration.

Kingsley Park Improvements

Kingsley Park occupies a peninsula on the eastern shore of Fresh Pond Reservoir near the water treatment plant and encompasses approximately 10 acres. Some work has been done to mitigate erosion and other risks to water quality at Kingsley Park, and the designer will be responsible for integrating the prior work into future designs. The requisite designs must include soil stabilization, soil enhancement, visitor flow pattern changes, drainage and storm water management improvements, and invasive species removal.

### Pathway Improvements

A schematic-level pathway improvements plan for the 2.25 mile Perimeter Road and ancillary trails are currently being developed. Improving accessibility and drainage are the two major goals of the study. The designer shall develop contract documents to include drawings, details, specifications and cost estimates associated with bringing the existing pathway system into compliance with city agency standards. Bidding support and construction observation services will be required.

### Hobbs Brook Northern Basin Stormwater Pilot Project

The northern basin of Hobbs Brook Reservoir is an impaired water body on the 303-d list that is subjected to a wide array of non-point source pollutants generated by major highways, maintenance facilities and commercial/private development. The designer will develop a stormwater management pilot project for a 150-acre sub-basin in the watershed that maximizes source control while supporting the City's Surface Water Supply Protection Plan (March 2011 draft). The pilot project will incorporate an array of best management practices (BMPs) and shall be designed, implemented and monitored to quantify long-term benefits. A positive outcome following a predetermined period may result in a watershed-wide source control plan.

### Stormwater BMP Monitoring and Assessment

The Massachusetts Department of Transportation (MassDOT) recently constructed several stormwater treatment best management practices (BMPs) along the RT 128/I-95 corridor within the watershed for the Cambridge drinking water supply. The designer will monitor and assess the temporal performance, condition and function of these BMPs and evaluate the effectiveness of MassDOT's ongoing operations and maintenance practices. The evaluation shall identify, obtain and determine compliance with all applicable federal, state and local permit requirements related to storm water BMP design, operation, maintenance and function.

The designer is responsible for developing cost estimates, construction timelines, and preparation of bid documents, contract administration and permit applications.

### Process

The consultant shall meet with the Water Board, Conservation Commission, Fresh Pond Advisory Board and city officials during the design of these projects. Representatives of various City departments may also be consulted including the City Manager's Office, the Water Department, the Department of Human Services, the Department of Public Works, and the Disability Commission.

Design and construction bids must be completed within schedule agreed upon between the consultant and the City of Cambridge.

**SECTION II: GENERAL TERMS AND CONDITIONS**

1. The contract for this project will be between the City of Cambridge and the consultant, and will be administered by the Cambridge Water Department.
2. A proposal will remain in effect for a period of 90 calendar days from the deadline for submission of proposals or until it is formally withdrawn, a contract is executed or this RFP is canceled, whichever occurs first. The City reserves the right to reject any and all proposals.
3. The City will have the option to cancel the contract provided that written notice is given 30 days prior to the effective termination date.
4. Any changes or additions to consultants or personnel named in the application must be submitted in writing and approved by the City.
5. The City encourages minority firms to apply, and if subcontractors are used, encourages the use of minority subcontractors. The Purchasing Office can provide assistance to firms wishing to identify minority subcontractors.
6. This contract is for one (1) year and may be renewed twice for 1 year each extension

**SECTION III: INSTRUCTIONS TO OFFERORS**

1. One original and (10) copies of the proposal marked "Fresh Pond Master Plan Design Services" must be received by Cynthia H. Griffin, Purchasing Agent, City of Cambridge, 795 Massachusetts Avenue, Cambridge **prior to 11:00 am on THURSDAY, JUNE 9, 2011**. Price will be negotiated after finalists have been selected.
2. All requests for clarification or any questions about information contained in this RFP must be submitted in writing and addressed to Cynthia Griffin, Purchasing Agent, City of Cambridge, City Hall, 795 Massachusetts Avenue, Cambridge, MA 02139. Requests for clarification or questions and responses will be sent to all proposers. All requests for information or questions must be received by **5:00 pm THURSDAY, MAY 19, 2011**. The offerer must provide the name, address, telephone number and FAX number of the person to whom such additional information should be sent
3. Failure to answer any question, to complete any form or to provide the documentation required would be deemed non-responsive and result in an automatic rejection of the proposal unless the City determines that such failure constitutes a minor informality.

**SECTION IV: EVALUATION OF THE PROPOSALS**

1. **Proposals:** Each offeror must submit a written proposal to this RFP, which includes full and clear descriptions of evaluation criteria, outlined in Section VI. A Selection Committee will evaluate each proposal based on these evaluation criteria.
2. **Price Proposal:** Price will not be considered when initially evaluating a proposal. After the finalists have been ranked, the City will enter in price negotiations with the offeror.
3. **References:** References will be contacted to determine if the offeror is responsive and responsible. References will be asked about their overall impression of the offeror, quality of work performed, understanding of factors effecting implementation, and the timeliness of the product.
4. **Interviews:** The Selection Committee may interview no fewer than three finalists to determine if the offeror is responsive and responsible, and meets the needs of the City.
5. **Award of Contract:** The City may award two contracts to responsive and responsible offerors. The City reserves the right to reject any and all proposals if it determines that it is in the best interest of the City to do so.

**SECTION V: PROPOSAL SUBMISSION REQUIREMENTS**

1. Designer Selection Application (DSB-1, attached).
2. A list of at least three entities, of which two must be in the public sector, for which you have conducted landscape design services. Please include the name and telephone number of the contact person at each, the year of the contract, and the nature of the project. These contacts shall serve as references. Also, include no less than three personal references of the key members assigned to the project, also from former clients. Such references will be used to determine an offeror's responsibility.
3. Resumes of key staff who will be assigned to this project, with a description of responsibilities. Identification of additional consultants needed for the duration of the project is important.

## **SECTION VI: EVALUATION CRITERIA**

The purpose of information requested in this section is to assist the City in evaluating the offeror's overall qualifications, including its methodologies and technical abilities, and previous experience.

1. Experience: Demonstrated both by the firm and the proposed project team in conducting community processes and experience in restoration of urban green spaces. Must have experience in both bioengineering and civil engineering for drainage design. Must have experience with invasive species control and designing with native species. Designer must be able to demonstrate that their designs can be maintained with cost effective methods.
2. Quality of work: As determined by references from other projects on which the firm has worked. Project management within budget and cost control will be evaluated as well.
3. Professional registrations: The firm has the professional licenses required to execute this project.
4. Sub-consultants: If the firm chooses to use a sub-consultant, the qualifications of the key consultants will be rated as well. Offeror's shall identify qualifications of the sub-consultants who will work on this project, including professional registrations when required.
5. Capacity: The firm appears to have the capacity to undertake this project in a timely manner. This evaluation will be based on the size of the firm gauged against the number and size of current projects.

**CITY OF CAMBRIDGE  
REQUEST FOR PROPOSALS  
ANTI-COLLUSION/ TAX COMPLIANCE STATEMENT**

The undersigned certifies under penalty of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any person. As used in this certification, "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

As required by M.G.L. Chapter 62C, Section 49A, the undersigned further certifies under penalty of perjury that the bidder has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support".

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and title of person signing proposal

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of business

\_\_\_\_\_  
Address  
  
\_\_\_\_\_

RETURN THIS FORM WITH YOUR PROPOSAL

**CITY OF CAMBRIDGE**

**DESIGNER'S/ENGINEER'S OR CONSTRUCTION MANAGER'S  
TRUTH-IN-NEGOTIATIONS CERTIFICATE**

**For Negotiated Fees**

The undersigned hereby certifies under the penalties of perjury that the wage rates and other costs used to support its compensation are accurate, complete and current at the time of contracting.

The undersigned agrees that the original contract price and any additions to the contract may be adjusted within one year of completion of the contract to exclude any significant amounts if the City determines that the fee was increased by such amounts due to inaccurate, incomplete or noncurrent wage rates or other costs.

BY: \_\_\_\_\_

Name and Title: \_\_\_\_\_  
\_\_\_\_\_

Project: \_\_\_\_\_

Date: \_\_\_\_\_

**Reference: M.G.L. c. 7, §38H(b)**

**Return this form with your proposal**

## Chapter 2.121

### LIVING WAGE ORDINANCE

#### Sections:

- 2.121.010 Title and Purpose
- 2.121.020 Definitions
- 2.121.030 Living Wage
- 2.121.040 Waivers and Exceptions
- 2.121.050 Notification Requirements
- 2.121.060 Duties of covered Employers
- 2.121.070 Community Advisory Board
- 2.121.080 Enforcement
- 2.121.090 Severability
- 2.121.100 Effective Date

#### 2.121.010 Title and Purpose.

This Chapter shall be known as the "Cambridge Living Wage Ordinance". The purpose of this ordinance is to assure that employees of the City of Cambridge and employees of City contractors, subcontractors and beneficiaries of tax abatements, loans, grants, subsidies and other assistance provided by the City earn an hourly wage that is needed to support a family of four.

#### 2.121.020 Definitions.

For the purposes of this ordinance, the term:

(a) "**Applicable Department**" means the Personnel Department for employees of the City of Cambridge, the Purchasing Department, with the advice and assistance of the appropriate department which receives the services, for Covered

Employers who contract or subcontract with the City of Cambridge, the School Department for employees, contractors and subcontractors of the School Department, and the City Manager's Office for any other Person who is a Beneficiary of assistance other than a contract or subcontract.

#### (b) "Assistance" means:

(1) any grant, loan, tax incentive, bond financing, subsidy, or other form of assistance valued at least \$10,000 that an employer receives by or through the authority or approval of the City of Cambridge, including, but not limited to, c. 121A tax abatements, industrial development bonds, Community Development Block Grant (CDBG) loans and grants, Enterprise Zone designations awarded after the effective date of this Chapter, and the lease of city owned land or buildings below market value; and

(2) any service contract, as defined herein, of at least \$10,000 with the City of Cambridge that is made with an employer to provide services pursuant to G.L.c. 30B or other public procurement laws, awarded, renegotiated or renewed after the effective date of this Chapter.

(3) any service subcontract, as defined herein, of at least \$10,000.

#### (c) "Beneficiary" means:

(1) any person who is a recipient of Assistance;

(2) any company or person that is a tenant or sub-tenant, leaseholder or sub-leaseholder of a recipient of Assistance, provided that said company or person employs at least 25 persons and occupies property or uses equipment or property that is improved or

developed as a result of Assistance, after the effective date of this Chapter; and

**(d) "Covered Employer"** means the City of Cambridge or a Beneficiary of Assistance.

**(e) "Covered Employee"** means:

(1) a person employed by the City of Cambridge except for persons in those positions listed in Section 2.121.040(j) of this ordinance; and

(2) a person employed by a Covered Employer, or a person employed by an independent contractor doing business with a Covered Employer, who would directly expend any of his or her time on the activities funded by the contract or the activities for which the Beneficiary received the Assistance, except for persons in those positions listed in Section 2.121.040(j) of this ordinance..

**(f) "Living Wage"** has the meaning stated in Section 2.121.030.

**(g) "Person"** means one or more of the following or their agents, employees, servants, representatives, and legal representatives: individuals, corporations, partnerships, joint ventures, associations, labor organizations, educational institutions, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, fiduciaries, and all other entities recognized at law by the Commonwealth of Massachusetts.

**(h) "Service Contract"** means a contract let to a contractor by the City of Cambridge for the furnishing of services, to or for the City, except contracts where

services are incidental to the delivery of products, equipment or commodities. A contract for the purchase or lease of goods, products, equipment, supplies or other property is not a "service contract" for the purposes of this definition.

**(i) "Service Subcontract"** means a subcontract primarily for the furnishing of services, to or for a recipient of Assistance, except where services are incidental to the delivery of products, equipment or commodities. A contract for the purchase or lease of goods, products, equipment, supplies or other property is not a "service subcontract" for the purposes of this definition.

#### **2.121.030 Living Wage.**

**(a) Applicability.** Covered Employers shall pay no less than the Living Wage to their employees.

**(b) Amount of wage.** The Living Wage shall be calculated on an hourly basis and shall be no less than \$10.00, subject to adjustment as provided herein. The Living Wage shall be upwardly adjusted each year no later than March first in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Annual Average Consumer Price Index for All Urban Consumers (CPI -U) Boston-Lawrence-Salem, MA - NH, as published by the Bureau of Labor Statistics, United States Department of Labor applied to \$10.00.

**(c) No reduction in collective bargaining wage rates.** Nothing in this Chapter shall be read to require or authorize any beneficiary to reduce

wages set by a collective bargaining agreement.

**(d) Cuts in non-wage benefits prohibited.** No Beneficiary will fund wage increases required by this Chapter, or otherwise respond to the provisions of this Chapter, by reducing the health, insurance, pension, vacation, or other non-wage benefits of any of its employees.

#### **2.121.040 Waivers and Exceptions.**

**(a) Waivers.** A Covered Employer may request that the City Manager grant a partial or whole waiver to the requirements of this Chapter.

**(b) General Waivers.** Waivers may be granted where application of this Chapter to a particular form of Assistance is found by the City Solicitor to violate a specific state or federal statutory, regulatory or constitutional provision or provisions, and the City Manager approves the waiver on that basis.

**(c) Hardship Waivers for certain not-for-profit employers.** An employer, who has a contract with the City of Cambridge which is not subject to the provisions of G.L. c. 30B, may apply to the City Manager for a specific waiver where payment of the Living Wage by a not-for-profit Covered Employer would cause a substantial hardship to the Covered Employer.

**(d) Chapter 30B contract waivers.** Prior to issuing an invitation for bids for a procurement contract subject to the provisions of G.L. c. 30B, any

Applicable Department may apply to the City Manager for a waiver of the application of the Living Wage to the contract where payment of the Living Wage by a Covered Employer would make it inordinately expensive for the City to contract for the services or would result in a significant loss of services, because the contracted work cannot be segregated from the other work of the Covered Employer.

**(e) General Waiver Request Contents.** All General Waiver requests shall include the following:

(1) The nature of the Assistance to which this Chapter applies;

(2) The specific or official name of the Assistance and Assistance program, the statutory or regulatory authority for the granting of the Assistance, and a copy of that authority;

(3) The conflicting statutory, regulatory, or constitutional provision or provisions that makes compliance with this Chapter unlawful, and a copy of each such provision; and

(4) A factual explication and legal analysis of how compliance with this Chapter would violate the cited provision or provisions, and the legal consequences that would attach if the violation were to occur.

**(f) Hardship Waiver Request Contents.** All Hardship Waiver requests shall include the following:

(1) The nature of the Assistance to which this Chapter applies;

(2) A detailed explanation of why payment of the Living Wage would cause a substantial hardship to the Covered Employer; and

(3) A statement of proposed wages below the Living Wage.

**(g) Chapter 30B Contract Waiver Request Contents.** A Chapter 30B contract waiver request shall include the following:

(1) The nature of the Assistance to which this Chapter applies;

(2) A detailed explanation of why the contracted work cannot be segregated from the other work of the bidding Covered Employers thereby making the cost of the contract with the payment of the Living Wage inordinately expensive or would result in a significant loss of services;

**(h) Community Advisory Board review and recommendation regarding waiver requests.** The Community Advisory Board, as described in Section 2.121.070 of this ordinance, shall consider waiver requests along with their supporting documentation and analysis, and may hold a public hearing to consider the views of the public before making a recommendation to the City Manager regarding the waiver request. For a hardship waiver, the Community Advisory Board shall offer an opportunity to be heard to employees of the Covered Employer. After reviewing the recommendation of the Community Advisory Board, the City Manager may approve and grant or deny all or part of a request. The City Manager may in his or her discretion grant a temporary hardship waiver pending the hearing before the Community Advisory Board. For Chapter 30B contract waivers, the Community Advisory Board shall make its recommendation to the City Manager no more than thirty days after it is notified of the request for a Chapter 30B contract waiver.

**(i) Terms of exceptions.** If an employer is subject to this Chapter as a result of its receipt of more than one kind of Assistance covered by this Chapter, and if the City Manager grants a waiver with respect to one form of Assistance, the City Manager need not find that this Chapter is inapplicable to the employer with respect to another form of Assistance received by the employer.

**(j) Exceptions.** The following positions will be excepted from the requirement of the payment of the Living Wage upon certification in an affidavit in a form approved by the Applicable Department and signed by a principal officer of the Covered Employer that the positions are as follows:

(1) youth hired pursuant to a city, state, or federally funded program which employs youth as defined by city, state, or federal guidelines, during the summer, or as part of a school to work program, or in other related seasonal or part-time program;

(2) work-study or cooperative educational programs;

(3) trainees who are given a stipend or wage as part of a job training program that provides the trainees with additional services, which may include, but are not limited to, room and board, case management, or job readiness services.

(4) persons working in a recognized supported employment program that provides workers with additional services, which may include, but are not limited to, room and board, case management, counseling, or job coaching:

(5) positions where housing is provided by the employer;

(6) employees who are exempt from federal or state minimum wage requirements; and

(7) individuals employed by the City of Cambridge where the employment of such individuals is intended primarily to provide a benefit or subsidy to such individuals, although the City is compensating them for work performed.

#### **2.121.050 Notification Requirements.**

All Applicable Departments shall provide in writing an explanation of the requirements of this ordinance in all requests for bids for service contracts and to all persons applying for Assistance as defined by this ordinance. All persons who have signed a service contract with the City of Cambridge or a contract for Assistance shall forward a copy of such requirements to any person submitting a bid for a subcontract on the Assistance contract.

#### **2.121.060 Duties of Covered Employers.**

**(a) Notification Requirements.** Covered employers shall provide each Covered employee with a fact sheet about this ordinance and shall post a notice about the ordinance in a conspicuous location visible to all employees. The fact sheet and poster shall be provided to the Covered Employer by the Applicable Department and shall include:

(1) notice of the Living Wage amount;

(2) a summary of the provisions of this ordinance;

(3) a description of the enforcement provisions of the ordinance;

(4) the name, address, and phone number of a person designated by the Applicable Department to whom complaints of noncompliance with this ordinance should be directed.

**(b) Contract for Assistance.** At the time of signing a contract for assistance with the City of Cambridge or with a Beneficiary, the contract must include the following:

(1) the name of the program or project under which the contract or subcontract is being awarded;

(2) a local contact name, address, and phone number for the Beneficiary;

(3) a written commitment by the Beneficiary to pay all Covered Employees not less than the Living Wage as subject to adjustment under this ordinance and to comply with the provisions of this ordinance;

(4) a list of Covered Employees under the contract with the employees' job titles;

(5) a list of all subcontracts either awarded or that will be awarded to Beneficiaries with funds from the Assistance. Upon signing any subcontracts, the Covered Employer shall forward a copy of the subcontract to the Applicable Department.

#### **(c) Maintenance of payroll records.**

Each Covered Employer shall maintain payrolls for all Covered Employees and basic records relating thereto and shall preserve them for a period of three years. The records shall contain the name and address of each employee, the job title and classification, the number of hours

worked each day, the gross wages, deductions made, actual wages paid, and copies of social security wage and withholding reports, and evidence of payment thereof and such other data as may be required by the Applicable Department from time to time.

**(d) Applicable Department duties.**

The Applicable Department shall cause investigations to be made as may be necessary to determine whether there has been compliance with this Ordinance. The Applicable Department shall report the findings of all such investigations to the Community Advisory Board.

**(e) Covered Employer to cooperate.**

The Covered Employer shall submit payroll records on request to the Applicable Department. The Covered Employer shall permit City representatives to observe work being performed upon the work site, to interview employees and to examine the books and records relating to the payrolls being investigated to determine payment of wages.

**(f) City Assistance Reports.** Each Applicable Department shall file a City Assistance Report with the City Manager and the Community Advisory Board by July 31 of each year. The report shall include, for each Assistance package or contract approved during the preceding fiscal year:

(1) the name of the Applicable Department (awarding agency), the name of the specific program under which the Assistance was awarded, and the origin of funds for Assistance;

(2) a description of the purpose or project for which the Assistance was awarded;

(3) the name, address, and phone number of a local contact person for the Covered Employer;

(4) the total cost to the City of Assistance provided to each Beneficiary, including both face-value of Assistance, as well as revenue not collected as a result of the Assistance.

**2.121.070 Community Advisory Board.**

**(a) Purpose.** The purpose of the Community Advisory Board shall be to review the effectiveness of this Ordinance at creating and retaining Living Wage jobs, to make recommendations to the City Manager regarding the granting of Waivers to Covered Employers, to review the implementation and enforcement of this ordinance, and to make recommendations from time to time in connection therewith.

**(b) Composition.** The Community Advisory Board shall be composed of nine members and shall include representatives of labor unions, community organizations and the business community. All members will be appointed by the City Manager. Members of the Board shall serve a three-year term. Whenever a vacancy shall occur the City Manager shall appoint a replacement within thirty days of said vacancy.

**(c) Meetings.** The Community Advisory Board shall meet quarterly and in special session as required. All meetings of the Board shall be open to the public and will allow for public testimony on the uses of the City Assistance generally, and on specific instances of Assistance

or proposed Assistance as received or sought by individual enterprises.

**(d) Conflict of Interest.** No member of the Community Advisory Board shall participate in any proceeding concerning a Beneficiary, a Covered Employer or a Covered Employee, or applicant for waiver or exemption, if the member or any member of his or her immediate family has a direct or indirect financial interest in the outcome of said proceeding.

#### **2.121.080 Enforcement.**

**(a) Enforcement powers.** In order to enforce this Chapter, the Applicable Department may, with the approval and assistance of the City Solicitor, issue subpoenas, compel the attendance and testimony of witnesses and production of books, papers, records, and documents relating to payroll records necessary for hearing, investigations, and proceedings. In case of failure to comply with a subpoena, the City may apply to a court of appropriate jurisdiction for an order requiring the attendance and testimony of witnesses and the productions of books, papers, records, and documents. Said court, in the case of a refusal to comply with any such subpoena, after notice to the person subpoenaed, and upon finding that the attendance or testimony of such witnesses or the production of such books, papers, records, and documents, as the case may be, is relevant or necessary for such hearings, investigation, or proceedings, may issue an order requiring the attendance or testimony of such witnesses or the production of such documents and any violation of the

court's order may be punishable by the court as contempt thereof.

**(b) Complaint procedures.** An employee who believes that he or she is a Covered Employee or an applicant for a position to be filled by a Covered Employee who believes that his or her employer is not complying with requirements of this Chapter applicable to the employer may file a complaint with the Applicable Department or with the Community Advisory Board. Complaints of alleged violations may also be filed by concerned citizens or by the City Council. Complaints of alleged violations may be made at any time, but in no event more than three years after the last date of alleged violation, and shall be investigated promptly by the Applicable Department. Statements written or oral, made by an employee, shall be treated as confidential and shall not be disclosed to the Covered Employer without the consent of the employee.

**(c) Investigations and hearings.** The Applicable Department shall investigate the complaint, and may, in conjunction with the City Solicitor, and in accordance with the powers herein granted, require the production by the employer of such evidence as required to determine compliance. Prior to ordering any penalty the applicable Department shall give notice to the employer and conduct a hearing. If at any time during these proceedings, the employer voluntarily makes restitution of the wages not paid to the employee making the complaint and to any similarly situated employees, by paying all back wages owed plus interest at the average prior year Massachusetts passbook savings bank rate, or otherwise remedies

the violation alleged if the violation involves matters other than wages, then the Applicable Department shall thereafter dismiss the complaint against the employer.

**(d) Remedies.** In the event that the Applicable Department, after notice and hearing, determines that any Covered Employer has failed to pay the Living Wage rate or has otherwise violated the provisions of this Chapter, the Applicable Department may order any or all of the following penalties and relief:

(1) Fines up to the amount of \$300 for each Covered Employee for each day that the Covered Employer is in violation of this Ordinance, except if the violation was not knowing and willful, then the total fine shall not exceed the amount of back wages plus interest owed;

(2) Suspension of ongoing contract and subcontract payments;

(3) Ineligibility for future City Assistance for up to three years beginning when all penalties and restitution have been paid in full. In addition, all Covered Employers having any principal officers who were principal officers of a barred beneficiary shall be ineligible under this section; and

(4) Any other action deemed appropriate and within the discretion and authority of the city.

Remedies in this section shall also apply to the party or parties aiding and abetting in any violation of this chapter.

**(e) Private right of action.** Any Covered Employee, or any person who was formerly employed by a Beneficiary, may bring an action to enforce the provisions of this Chapter to recover back pay and benefits, attorneys fees and

costs, by filing suit against a Beneficiary in any court of competent jurisdiction.

**(f) Remedies herein non-exclusive.** No remedy set forth in this Chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce the right granted under this Chapter in a court of law. This Chapter shall not be construed to limit an employee's right to bring a common law cause of action for wrongful termination.

**(g) Retaliation and discrimination barred.** A Covered Employer shall not discharge, reduce the compensation or otherwise retaliate against any employee for making a complaint to the City, otherwise asserting his or her rights under this Chapter, participating in any of its proceedings or using any civil remedies to enforce his or her rights under the Chapter. The City shall investigate allegations of retaliation or discrimination and shall, if found to be true, after notice and a hearing, order appropriate relief as set out in paragraphs (c) and (d) herein

#### **2.121.090 Severability.**

In the event any provision of this ordinance shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

#### **2.121.100 Effective Date.**

This law shall be effective sixty (60) after final passage.

The Living Wage Ordinance (2.121) provides, at 1.121.030(b) that the wage shall be upwardly adjusted each year no later than March 1<sup>st</sup> in proportion to the increase in the Annual Average Consumer Price Index for the prior calendar year for All Urban Consumers (CPI-U) in the Boston area, as published by the federal Bureau of Labor Statistics.

For calendar year 1999, the CPI-U increased by 2.5%. Therefore the new living wage, as of March 1, 2000 is \$10.25.

For calendar year 2000, the CPI-U increased by 4.3%. Therefore the new living wage, as of March 1, 2001 is \$ 10.68.

For calendar year 2001, the CPI-U increased by 4.3%. Therefore the new living wage, as of March 1, 2002 is \$11.11.

For calendar year 2002, the CPI-U increased by 2.6% . Therefore the new living wage, as of March 1, 2003 is \$11.37.

The City Council has voted to amend the section of the Living Wage Ordinance (1.121.030 (b) that provides the method for calculating cost of living increases each year. As a result of this change, the living wage as of March 30, 2003 is \$11.44.'

For calendar year 2003, the CPI-U increased by 3.76%. Therefore the new living wage, as of March 1, 2004 is \$11.87.

For calendar year 2004, the CPI-U increased by 2.7%. Therefore the new living wage, as of March 1, 2005 is \$12.19.

For calendar year 2005, the CPI-U increased by 3.3%. Therefore the new living wage, as of March 1, 2006 is \$12.59.

For calendar year 2006 the CPI-U increased by 3.1 %. Therefore the new living wage, as of March 1, 2007 is \$12.98.

For calendar year 2007 the CPI-U increased by 1.9 %. Therefore the new living wage, as of March 1, 2008 is \$13.23.

For calendar year 2008 the CPI-U increased by 3.5 %. Therefore the new living wage, as of March 1, 2009 is \$13.69.

For calendar year 2009 the CPI-U decreased by .67 %. Therefore the new living wage, as of March 1, 2010 will remain at \$13.69.

For calendar year 2010 the CPI-U increased by 1.57%. Therefore the new living wage, as of March 1, 2011 is \$13.90.

<b>Commonwealth of Massachusetts</b>  <b>Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction 2005</b>	<p>1. Project Name/Location For Which Firm Is Filing:</p> <p>2. Project #</p> <p>This space for use by Awarding Authority only.</p>																																																																
<p>3a. Firm (Or Joint-Venture) - Name And Address Of Primary Office To Perform The Work:</p>	<p>3e. Name Of Proposed Project Manager: For Study: (if applicable) For Design: (if applicable)</p>																																																																
<p>3b. Date Present And Predecessor Firms Were Established:</p>	<p>3f. Name And Address Of Other Participating Offices Of The Prime Applicant, If Different From Item 3a Above:</p>																																																																
<p>3c. Federal ID #:</p>	<p>3g. Name And Address Of Parent Company, If Any:</p>																																																																
<p>3d. Name And Title Of Principal-In-Charge Of The Project (MA Registration Required):</p> <p>Email Address:</p> <p>Telephone No:</p> <p>Fax No.:</p>	<p>3h. Check Below if Your Firm Is Either:</p> <p>(1) SOMWBA Certified Minority Business Enterprise (MBE) <input type="checkbox"/></p> <p>(2) SOMWBA Certified Woman Business Enterprise (WBE) <input type="checkbox"/></p> <p>(3) SOMWBA Certified Minority Woman Business Enterprise (MWBE) <input type="checkbox"/></p>																																																																
<p>4. Personnel From Prime Firm Included In Question #3a Above By Discipline (List Each Person Only Once, By Primary Function -- Average Number Employed Throughout The Preceding 6 Month Period. Indicate Both The Total Number In Each Discipline And, Within Brackets, The Total Number Holding Massachusetts Registrations):</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:15%;">Admin. Personnel</td> <td style="width:5%;">( )</td> <td style="width:15%;">Ecologists</td> <td style="width:5%;">( )</td> <td style="width:15%;">Licensed Site Profs.</td> <td style="width:5%;">( )</td> <td style="width:15%;">Other</td> <td style="width:5%;">( )</td> </tr> <tr> <td>Architects</td> <td>( )</td> <td>Electrical Engrs.</td> <td>( )</td> <td>Mechanical Engrs.</td> <td>( )</td> <td></td> <td>( )</td> </tr> <tr> <td>Acoustical Engrs.</td> <td>( )</td> <td>Environmental Engrs.</td> <td>( )</td> <td>Planners: Urban./Reg.</td> <td>( )</td> <td></td> <td>( )</td> </tr> <tr> <td>Civil Engrs.</td> <td>( )</td> <td>Fire Protection Engrs.</td> <td>( )</td> <td>Specification Writers</td> <td>( )</td> <td></td> <td>( )</td> </tr> <tr> <td>Code Specialists</td> <td>( )</td> <td>Geotech. Engrs.</td> <td>( )</td> <td>Structural Engrs.</td> <td>( )</td> <td></td> <td>( )</td> </tr> <tr> <td>Construction Inspectors</td> <td>( )</td> <td>Industrial Hygienists</td> <td>( )</td> <td>Surveyors</td> <td>( )</td> <td></td> <td>( )</td> </tr> <tr> <td>Cost Estimators</td> <td>( )</td> <td>Interior Designers</td> <td>( )</td> <td></td> <td>( )</td> <td></td> <td>( )</td> </tr> <tr> <td>Drafters</td> <td>( )</td> <td>Landscape Architects</td> <td>( )</td> <td>Total</td> <td>( )</td> <td></td> <td>( )</td> </tr> </table>		Admin. Personnel	( )	Ecologists	( )	Licensed Site Profs.	( )	Other	( )	Architects	( )	Electrical Engrs.	( )	Mechanical Engrs.	( )		( )	Acoustical Engrs.	( )	Environmental Engrs.	( )	Planners: Urban./Reg.	( )		( )	Civil Engrs.	( )	Fire Protection Engrs.	( )	Specification Writers	( )		( )	Code Specialists	( )	Geotech. Engrs.	( )	Structural Engrs.	( )		( )	Construction Inspectors	( )	Industrial Hygienists	( )	Surveyors	( )		( )	Cost Estimators	( )	Interior Designers	( )		( )		( )	Drafters	( )	Landscape Architects	( )	Total	( )		( )
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<p>5. Has this Joint-Venture previously worked together? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>																																																																	

6. List **ONLY** Those Prime And Sub-Consultant Personnel Specifically Requested In The Advertisement. This Information Should Be Presented Below In The Form Of An Organizational Chart. Include Name Of Firm And Name Of The One Person In Charge Of The Discipline, With Mass. Registration Number, As Well As MBE/WBE Status, If Applicable.

**CITY/TOWN  
/ AGENCY**

**Prime Consultant**  
Principal-In-Charge

**Project Manager for Study**

**Project Manager for Design**

**Discipline**  
(from advertisement)  
Name Of Firm  
Person In Charge Of Discipline  
Mass. Registr. #  
MBE/WBE Certified (if Applicable)

**Discipline**  
(from advertisement)  
Name Of Firm  
Person In Charge Of Discipline  
Mass. Registr. #  
MBE/WBE Certified (if Applicable)

**Discipline**  
(from advertisement)  
Name Of Firm  
Person In Charge Of Discipline  
Mass. Registr. #  
MBE/WBE Certified (if Applicable)

**Discipline**  
(from advertisement)  
Name Of Firm  
Person In Charge Of Discipline  
Mass. Registr. #  
MBE/WBE Certified (if Applicable)

7. Brief Resume Of **ONLY** Those Prime Applicant And Sub-Consultant Personnel Requested In The Advertisement. Confine Responses To The Space Provided On The Form And Limit Resumes To **ONE** Person Per Discipline Requested In The Advertisement. Resumes Should Be Consistent With The Persons Listed On The Organizational Chart In Question # 6. Additional Sheets Should Be Provided Only As Required For The Number Of Key Personnel Requested In The Advertisement And They Must Be In The Format Provided. By Including A Firm As A Sub-Consultant, The Prime Applicant Certifies That The Listed Firm Has Agreed To Work On This Project, Should The Team Be Selected.

<p>a. Name And Title Within Firm:</p>	
<p>b. Project Assignment:</p>	
<p>c. Name And Address Of Office In Which Individual Identified In 7a Resides:</p>	<p>MBE <input type="checkbox"/></p> <p>WBE <input type="checkbox"/></p>
<p>d. Years Experience: With This Firm: _____ With Other Firms: _____</p>	
<p>e. Education: Degree(s) /Year/Specialization</p>	
<p>f. Active Registration: Year First Registered/Discipline/Mass Registration Number</p>	
<p>g. Current Work Assignments And Availability For This Project:</p>	
<p>h. Other Experience And Qualifications Relevant To The Proposed Project: (Identify Firm By Which Employed, If Not Current Firm):</p>	

8a. Current And Relevant Work By Prime Applicant Or Joint-Venture Members. Include **ONLY** Work Which Best Illustrates Current Qualifications In The Areas Listed In The Advertisement (List Up To But Not More Than 5 Projects).

a. Project Name And Location Principal-In-Charge	b. Brief Description Of Project And Services (Include Reference To Relevant Experience)	c. Client's Name, Address And Phone Number (Include Name Of Contact Person)	d. Completion Date (Actual Or Estimated)	e. Project Cost (In Thousands)	
				Construction Costs (Actual, Or Estimated If Not Completed)	Fee for Work for Which Firm Was Responsible
(1)					
(2)					
(3)					
(4)					
(5)					

8b. List Current And Relevant Work By Sub-Consultants Which Best Illustrates Current Qualifications In The Areas Listed In The Advertisement (Up To But Not More Than 5 Projects For Each Sub-Consultant). Use Additional Sheets Only As Required For The Number Of Sub-Consultants Requested In The Advertisement.

Sub-Consultant Name:

	a. Project Name And Location Principal-In-Charge	b. Brief Description Of Project And Services (Include Reference To Relevant Experience	c. Client's Name, Address And Phone Number. Include Name Of Contact Person	d. Completion Date (Actual Or Estimated)	E. Project Cost (In Thousands)	
					Construction Costs (Actual, Or Estimated If Not Completed)	Fee For Work For Which Firm Was/Is Responsible
(1)						
(2)						
(3)						
(4)						
(5)						

9. List All Projects Within The Past 5 Years For Which Prime Applicant Has Performed, Or Has Entered Into A Contract To Perform, Any Design Services For All Public Agencies Within The Commonwealth.

Role P, C, JV *	Phases St., Sch., D.D., C.D., A.C.*	Project Name, Location And Principal-In-Charge	Awarding Authority (Include Contact Name And Phone Number)	Project Cost (In Thousands)	Completion Date (Actual or Estimated) (R)Renovation or (N)New
	1.				
	2.				
	3.				
	4.				
	5.				
	6.				
	7.				
	8.				
	9.				
	10.				
	11.				
	12.				

\* P = Principal; C = Consultant; JV = Joint Venture; St. = Study; Sch. = Schematic; D.D. = Design Development; C.D. = Construction Documents; C.A. = Construction Administration  
Municipalities & Other Public Agencies Form 2005 Page 6

10. Use This Space To Provide Any Additional Information Or Description Of Resources Supporting The Qualifications Of Your Firm And That Of Your Sub-Consultants For The Proposed Project. If Needed, Up To Three, Double-Sided 8 1/2" X 11" Supplementary Sheets Will Be Accepted. **APPLICANTS ARE REQUIRED TO RESPOND SPECIFICALLY IN THIS SECTION TO THE AREAS OF EXPERIENCE REQUESTED IN THE ADVERTISEMENT.**

11. Professional Liability Insurance:  
 Name of Company \_\_\_\_\_ Aggregate Amount \_\_\_\_\_ Policy Number \_\_\_\_\_ Expiration Date \_\_\_\_\_

12. Provide A List Of All Projects On Which Monies Were Paid By You, Or On Your Behalf, As A Result Of Professional Liability Claims Occurring Within The Last 7 Years And In Excess Of \$50,000 Per Incident. Please Include Project, Client Names And Explanation. (Attach Separate Sheet If Necessary):

13. Name Of Sole Proprietor Or Names Of All Firm Partners And Officers:

Name	Title	MA Reg #	Status/Discipline	Name	Title	MA Reg #	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

14. If Corporation, Provide Names Of All Members Of The Board Of Directors:

Name	Title	MA Reg #	Status/Discipline	Name	Title	MA Reg #	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

15. Names Of All Owners (Stocks Or Other Ownership):

Name And Title	% Ownership	MA Reg.#	Status/Discipline	Name And Title	% Ownership	MA Reg.#	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

16. I hereby certify that the undersigned is an Authorized Signatory of Firm and is a Principal or Officer of Firm. I further certify that this firm is a "Designer", as that term is defined in Chapter 7, Section 38A1/2 of the General Laws, or that the services required are limited to construction management or the preparation of master plans, studies, surveys, soil tests, cost estimates or programs. The information contained in this application is true, accurate and sworn to by the undersigned under the pains and penalties of perjury.

Submitted by \_\_\_\_\_ Printed Name and Title \_\_\_\_\_ Date \_\_\_\_\_  
 (Signature)

File No.

**AGREEMENT FOR HOUSE DOCTOR LANDSCAPE DESIGNER SERVICES  
BETWEEN  
THE CITY OF CAMBRIDGE  
AND  
THE LANDSCAPE ARCHITECT**

This Agreement made on the \_\_\_\_\_ is between the City of Cambridge ("the **City**"), City Hall, 795 Massachusetts Avenue, Cambridge, MA 02139 and \_\_\_\_\_ ("the **Landscape Architect**") located at \_\_\_\_\_ services described herein and in the attached Request for Proposals ("RFP")

**The agreement is for one year with two one year options to renew at the sole discretion of the City. The payment and performance obligation of each succeeding year of the multi-year contract will be subject to the appropriation and availability of funds.**

The **City** and the **Landscape Architect** agree to the following:

**ARTICLE 1**

**DEFINITIONS**

**1.1. In General.**

**1.1.1. Well-known meanings.** When words or phrases which have a well-known technical or construction industry or trade meaning are used herein, such words or phrases shall be interpreted in accordance with that meaning, unless otherwise stated.

**1.1.2. Capitalization.** The words and terms defined in this Article are capitalized in this Agreement. Other capitalized words may refer to a specific document found in the Contract Documents or may be defined in the General Terms and Conditions of the Contract.

**1.1.3. Persons.** Whenever the word person or persons is used, it includes, unless otherwise stated, entity or entities, respectively, including, but not limited to, corporations, partnerships, and joint ventures.

**1.1.4. Singular and Plural.** The following terms have the meanings indicated which are applicable to both the singular and the plural thereof.

**1.2. Definitions.**

**1.2.1. Agreement** - The Agreement is this written document between the **City** and the **Landscape Architect** which is titled: Agreement for Designer Services between the City Of Cambridge and the **Landscape Architect**, which is the executed portion of the Contract, and which forms a part of the Contract. The Agreement also includes all documents required to be attached thereto, including, but not limited to, certificates of insurance and all modifications of the Agreement.

**1.2.2. Change Order** - A Change Order is a document which is signed by the Contractor and the **City** which is directed to the Contractor and which authorizes the Contractor to make an addition to, a deletion from, or a revision in the Work, or an adjustment in the sum or in the time of the Contract issued on or after the date of the Contract.

**1.2.3. Construction Cost** - The Construction Cost is the total cost or estimated cost to the **City** of all elements of the Project designed or specified by the **Landscape Architect**. The Construction Cost shall include the cost of labor at current prevailing wage rates established by the Commonwealth and furnished by the **City**, materials and equipment designed, specified, selected, or specially provided for by the **Landscape Architect**, plus a reasonable allowance for the overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction. Construction Cost does not include the compensation of the **Landscape Architect** and the **Landscape Architect's** consultants, the costs of the land, rights-of-way, financing, or other costs which are the responsibility of the **City** as provided herein.

**1.2.4. Construction Documents** - The Construction Documents consist of Plans and Specifications setting forth in detail the requirements for the construction of the Project.

**1.2.5. Contract Documents** - The Contract Documents consist of the Agreement between the City and the Contractor; the notice of award of the Contract; the Notice to Proceed; the entire Project Manual; Change Orders; Work Change Directives; the Contractor's Bid and all accompanying documents accepted by the City; and the **Landscape Architect's** written interpretations and clarifications issued on or after the issuance of the Notice to Proceed.

**1.2.6. Contract** - The Contract consists of all the Contract Documents.

**1.2.7. Contractor** - The Contractor is the person who is awarded the construction contract for the Project pursuant to M.G.L. c. 30, §39M, inclusive, and is identified in the Agreement as such. The term "Contractor" is intended to include the Contractor as well as its authorized representative(s).

**1.2.8. General Terms And Conditions Of The Contract** - General Terms and Conditions of the Contract refers to the General Terms and Conditions of the Contract between the City and the Contractor.

**1.2.9. Product Data** - Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**1.2.10. Project** - The Project is the total construction of which the Work to be provided under the Contract Documents may be the whole or a part of the Project as indicated elsewhere in the Contract Documents and may include construction by the **City** or by separate contractors. The Project is the Work described in the invitation to bid and Specifications, and illustrated by the Plans.

**1.2.11. Proposed Change Order** - A Proposed Change Order is a Change Order that has not been approved by the **City**.

**1.2.12. Reimbursable Expenses** - Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the **Landscape Architect** in the interest of the Project, as identified by the following: long distance calls and faxes; fees paid for securing approval of authorities having jurisdiction over the Project; reasonable expense of reproduction necessary for the rendition of services hereunder, which expense shall not include the expense of producing the sets of documents referred to in the Schematic Design Phase, the Design Development Phase, and the Construction Document Phase

herein, as these expenses are covered in the **Landscape Architect's** compensation for Basic Services; expense of postage and such other expenses incurred in connection with the Project when specifically authorized in advance in writing by the **City**. Payment for photocopying letter or legal size documents shall not exceed 10¢ per page. Payment for all other documents shall be at cost.

**1.2.13. Samples** - Samples are physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

**1.2.14. Shop Drawings** - Shop Drawings are all drawings, diagrams, illustrations, schedules, and other information, which are specifically prepared or assembled by or for the Contractor and submitted by the Contractor to illustrate some portion of the Work.

**1.2.15. Statement of Probable Construction Costs** - The Statement of Probable Construction Costs is a preliminary, detailed estimate of Construction Cost based on current area, volume, or other unit costs. Such estimate shall indicate the cost of each category of work involved in constructing the Project (including, but not limited to, filed sub-trades) and shall establish the period of time for each category from the commencement to the completion of the construction of the Project. The detailed estimate shall include quantities of all materials and unit prices of labor and material, as well as a cost estimate containing individual line items for each item of work.

**1.2.16. Substantial Completion** - Substantial Completion means that the Work has been completed and opened to public use, except for minor incomplete or unsatisfactory items that do not materially impair the usefulness of the Work. The **Landscape Architect** shall decide what constitutes "minor," "incomplete," "unsatisfactory," and "materially" and the **Landscape Architect's** decision shall be final.

**1.2.17. Work Change Directive** - A Work Change Directive is a written directive to the Contractor issued on or after the date of the contract between the **City** and the Contractor and signed by the **City** and recommended by the **Landscape Architect** ordering an addition to, a deletion from, or a revision in the Work.

**1.2.18. Work** - The Work means the construction and services required by the Construction Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project.

## ARTICLE 2

### THE LANDSCAPE ARCHITECT'S RESPONSIBILITIES

**2.1. STANDARD OF PERFORMANCE.** The Landscape Architect shall perform the services under this Agreement with the skill, care, and diligence in accordance with the high level of professional standards prevailing in the greater Boston area for the type of construction required herein. All of the **Landscape Architect's** services under this Agreement shall be performed as expeditiously as is consistent with such standards. The **Landscape Architect** shall be responsible in accordance with those standards for the adequacy, safety, and overall integrity of the Project's design, including, but not limited to, the landscape, structural, mechanical, and electrical design of the Project.

**2.2. SCHEDULE OF PERFORMANCE.** Upon request of the **City**, the **Landscape Architect** shall submit for the **City's** approval a schedule for the performance of the **Landscape Architect's** services. The time limits established by the schedule approved by the **City** shall not be exceeded by the **Landscape Architect**, except as otherwise provided herein. Time periods established shall not be exceeded by the

**Landscape Architect** except for delays due to causes outside the **Landscape Architect's** control (which term shall not include staffing problems, insufficient financial resources, consultant's default, or negligent errors or omissions on the part of either the **Landscape Architect** or any of its consultants). If and to the extent that delays due to causes outside the Landscape Architect's control materially increase the cost of expense to the Landscape Architect of performing its Basic Services, the Landscape Architect's compensation shall be equitably adjusted.

**2.3. TIMELINESS OF INTERPRETATIONS, CLARIFICATIONS, AND DECISIONS.** With regard to all phases of this Agreement, the **Landscape Architect** shall render interpretations, clarifications, and decisions in a timely manner pertaining to documents submitted by the **City** or the Contractor in order to avoid unreasonable delay in the orderly and sequential progress of the **Landscape Architect's** services.

**2.4. RELATIONSHIP WITH THE CITY.** For the purposes of this Agreement, the **Landscape Architect** shall be a representative of the **City** and shall advise and consult with the **City** until the termination of the Contractor's warranty and correction period.

### ARTICLE 3

#### SCOPE OF THE LANDSCAPE ARCHITECT'S BASIC SERVICES

##### 3.1. IN GENERAL.

**3.1.1.** The **Landscape Architect's** Basic Services shall consist of:

**3.1.1.1.** those services identified below within the different phases;

**3.1.1.2.** any other professional services which are reasonably necessary as determined by the **City** for the design and administration of construction of the Project, including, without limitation, the following:

**3.1.1.2.1.** all surveys, as described in the attached scope of services reasonably required by the Project, civil engineers; landscape Architect; lighting, electrical, and normal structural, engineering services necessary to produce a complete and accurate set of Construction Documents;

**3.1.1.3.** attending and providing testimony at any formal or informal hearings related to the Project, including, but not limited to, bid protest hearings and City Council meetings, if deemed necessary by the **City**. If the **Landscape Architect** is called as a witness in a court of competent jurisdiction in a matter in which the **Landscape Architect** is a named party, the **Landscape Architect** will not be additionally compensated. If the **Landscape Architect** is called by the **City** as a witness in a matter in a court of competent jurisdiction in which the **Landscape Architect** is not a named party, the **Landscape Architect** will be compensated hereto; hearings, presentations and meetings are as described in the attached scope of services.

**3.1.1.4.** preparing for and appearing on the **City's** behalf at all administrative or regulatory hearings, presentations, or conferences with respect to any zoning, building code, urban renewal, or other matters in connection with the Project, including, without limitation, any hearings, presentations, or conferences with any City, State, or Federal agencies or officials and any neighborhood groups. The **Landscape Architect's** obligations under this paragraph shall include preparing plans and other materials reasonably required in connection with any

such hearings, presentations, and conferences; hearings, presentations and meetings are as described in the attached scope of services.

**3.1.1.5.** assisting the **City** in connection with the **City's** responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The **Landscape Architect** shall prepare the Plans and Specifications required in order to obtain approval of, and in accordance with, all requirements of all governmental agencies having jurisdiction over the Project. Any Plans and Specifications furnished by the **Landscape Architect** which are discovered to be defective (i.e. not in accordance with generally accepted standards of professional practice) during any Phase will be promptly corrected by the **Landscape Architect** at no cost to the **City**, and the **Landscape Architect** will promptly reimburse the **City** for all damages, if any, resulting from the use of such defective Plans and Specifications. The **City's** approval, acceptance, use of or payment for all or any part of the **Landscape Architect's** services shall in no way alter the **Landscape Architect's** obligations or the **City's** rights hereunder; and

**3.1.1.6.** all design and redesign services required within or between the Design Development Phase and the Construction Documents Phase to keep the Construction Cost of the Project within the fixed limit of Construction Cost.

**3.1.2.** As part of the Basic Services, the **Landscape Architect** shall prepare record drawings in accordance with the following:

**3.1.2.1.** Review of Record Drawings at Substantial Completion.

**3.1.2.1.1.** Upon Substantial Completion of the Work or portions thereof, the **Landscape Architect** or Engineer of record shall review and approve the above permanent record drawings.

**3.1.2.2.** Submission to the **City**.

**3.1.2.3.** The following shall be submitted to the **City** no later than the date of Substantial Completion:

**3.1.2.4.1.1.** A complete set of original Construction Documents on Mylar and also on disk in AutoCAD format.

**3.1.2.4.1.2.** One set of blue line prints of the above.

## **3.2. SCHEMATIC DESIGN PHASE.**

**3.2.1. Commencement.** The Schematic Design Phase begins upon the full execution of this Agreement.

**3.2.2. Written Program.** The **Landscape Architect** in consultation with the **City** and any other persons designated by the **City** shall develop a written program for the Project to ascertain the **City's** needs and to establish the requirements of the Project.

**3.2.3. Preliminary Evaluation.** The **Landscape Architect** shall provide a preliminary evaluation of the **City's** program, schedule, and construction budget requirements, each in terms of the other.

**3.2.4. Alternative Approaches.** The **Landscape Architect** shall review with the **City** alternative approaches to the design and construction of the Project.

**3.2.5. Schematic Design Documents.** The **Landscape Architect** shall prepare, for approval by the **City**, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components. Based upon the program approved by the **City**, as well as schedule and construction budget requirements, the Schematic Design Documents shall comply with all applicable laws, statutes, ordinances, codes, orders, rules, and regulations.

**3.2.6. Statement of Probable Construction Costs.** The **Landscape Architect** shall submit to the **City** a Statement of Probable Construction Costs.

**3.2.7. Life-Cycle Cost Estimates.** If this Agreement includes Landscape Architectural services necessary for the preliminary design of a new building or for the modification or replacement of an energy system in an existing building, life-cycle cost estimates for the Project shall be obtained at an initial stage and as a Basic Service. (*Reference:* M.G.L. c. 149, §44M).

**3.3. DESIGN DEVELOPMENT PHASE.**

**3.3.1. Commencement.** The Design Development Phase begins upon the **City's** written approval of the **Landscape Architect's** Schematic Design Documents.

**3.3.2. Preparation of Design Development Documents.** Based on the approved Schematic Design Documents and any adjustments authorized by the **City** in the program, schedule, or construction budget, the **Landscape Architect** shall prepare, for approval by the **City**, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to Landscape Architectural, structural, mechanical, and electrical systems; materials; and such other elements as may be appropriate. The Design Development Documents shall be complete and unambiguous and shall comply with all applicable laws, statutes, ordinances, codes, orders, rules, and regulations.

**3.3.3. Adjustment to Statement of Probable Construction Cost.** The **Landscape Architect** shall advise the **City** in writing of any adjustments to the Statement of Probable Construction Cost prior to the commencement of the Construction Document Phase. The approved adjustment of the Statement of Probable Construction Cost or the Statement of Probable Construction Cost, if there is no adjustment, shall constitute a fixed limit of Construction Cost as that term is used herein. Such fixed limit, once established, shall be adjusted only by written agreement of the **City** and the **Landscape Architect**, or as otherwise provided herein.

**3.4. CONSTRUCTION DOCUMENT PHASE.**

**3.4.1. Commencement.** The **Landscape Architect's** responsibility to provide Basic Services for the Construction Document Phase under this Agreement commences with the **City's** acceptance and approval of the Design Development Documents and ends on the date the Bidding and Award Phase commences.

**3.4.2. Preparation of Plans and Specifications.** Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction

budget authorized by the **City**, the **Landscape Architect** shall prepare, for approval by the **City**, Plans and Specifications setting forth in detail the requirements for the construction of the Project.

**3.4.3. Preparation of Additional Bidding Information.** The **Landscape Architect** shall assist the **City** in preparing the bidding documents when requested by the **City**.

**3.4.4. City-Generated Forms and Documents.** The **City** shall provide the **Landscape Architect** with copies of all **City**-generated forms and documents intended to be included in the Project Manual. The **Landscape Architect** will include these forms and documents in its Project Manual. It is the responsibility of the **Landscape Architect** to ensure that all such documents are included in the final Project Manual. Any costs incurred as a result of the failure of the **Landscape Architect** to include any such documents will be borne by the **Landscape Architect** and not charged to the **City**, where such failure is the fault of the **Landscape Architect**. The **Landscape Architect** may propose changes to these **City**-generated forms and documents; however, implementation of such changes are subject to the unilateral approval of the **City**. No changes may be made to such documents without the prior written consent of the **City**. The **Landscape Architect** shall prepare and submit to the **City** for approval the entire Project Manual. The **Landscape Architect** is responsible for ensuring that the Construction Documents comply with all statutory requirements. The **Landscape Architect** will cause the printing of the Project Manuals unless the **City** instructs the **Landscape Architect** otherwise. The Project Manuals shall be printed on paper with a minimum of 30% post consumer content. The cost of producing such Project Manuals will be passed onto the **City** at cost. The **Landscape Architect** shall obtain such copies, and copies of other bid documents, on behalf of the **City**. The **City** shall provide the **Landscape Architect** with a tax exemption certificate, such that the cost of such copies will be free of sales or use tax in accordance with DOR polices and procedures.

**3.4.5. Addenda.** All addenda shall be issued by the Purchasing Agent; however, at the Purchasing Agent's sole discretion, the **Landscape Architect** may be called upon to prepare a draft of any such addenda. Any corrections to the Construction Documents which require an addendum will be made by the **Landscape Architect** at no charge to the **City**.

**3.4.6. Printing of Project Manual.** The **Landscape Architect** must provide the **City** with a final draft of the Project Manual and obtain approval from the **City** prior to printing. Any changes required to be made to the Construction Documents as a result of errors by the **Landscape Architect** or persons within its control will be promptly corrected at no cost to the **City**. The **Landscape Architect** shall make its best efforts to print Project Manuals on paper containing a minimum of twenty percent (30%) post consumer content.

**3.4.7. Packaging the Project Manual.** The **Landscape Architect** will require the printer of the Project Manual to wrap each set of Plans in a brown wrapper, or, if the Plans are small in number, fold each set of Plans and insert one set into each Project Manual.

**3.4.8. Delivery of Project Manual.** The **Landscape Architect** will use its best efforts to ensure that the Purchasing Department receives the number of Project Manuals requested by the Purchasing Department no later than 3:00 p.m. on the day prior to the first day of advertisement of the Invitation to Bid.

**3.4.9. Adjustment to Statement of Probable Construction Cost.** The **Landscape Architect** shall advise the **City** in writing of any adjustments to Statement of Probable Construction Cost indicated by changes in requirements or general market conditions.

**3.5. BIDDING AND AWARD PHASE.**

**3.5.1. Commencement.** The Bidding and Award Phase commences on the date the Invitation to Bid is first advertised pursuant to M.G.L. c. 30, §39M and ends on the date the Construction Phase begins.

**3.5.2. Additional Bidders.** The **Landscape Architect** shall assist the **City** in obtaining bids if, in the opinion of the Purchasing Agent, an insufficient number of persons requested the Project Manual. The **Landscape Architect** will notify "eligible" and "responsible" persons (as those terms are defined in the M.G.L. c. 30, 39M) of the Invitation to Bid.

**3.5.3. When Lowest Bid Exceeds Total Construction Cost.** If the lowest bona fide bid by a Contractor (after rejection of all add alternates and acceptance of all deduct alternates) exceeds the total construction cost of the Project as set forth in the approved Statement of Probable Construction Costs by more than ten percent (10%), then upon the request of the **City**, the **Landscape Architect** will revise the Plans and Specifications in consultation with the **City** to reduce or modify the quality or quantity, or both, of the Work so that the total construction cost of the Project will not exceed the total construction cost set forth in the Statement of Probable Construction Costs by more than ten percent (10%). All services pursuant to this paragraph shall be at the **Landscape Architect's** sole cost and expense which cost and expense.

**3.5.4. Pre-Bid Conferences.** The **Landscape Architect** shall attend all prebid conferences.

**3.5.5. Investigation of Bidders.** The **Landscape Architect** shall investigate, at minimum, the lowest Bidder. The investigation shall include, but is not limited to, reviewing the files maintained by the Department of Capital Planning and Operations, or any other governmental agency charged with maintaining such documents related to such Bidder, telephoning or writing owners of the Bidder's prior projects, telephoning or writing Landscape Architects from such prior projects, visiting the sites of such other projects and checking all other appropriate references. The **Landscape Architect** shall provide the **City** with a detailed letter of advice regarding such Bidder. The letter must include relevant language from the appropriate state laws regarding the eligibility and responsibility of Bidders (i.e., M.G.L. c.30, §39M (1), or, if appropriate, M.G.L. c. 29, §29F). If the **City** disapproves of the lowest Bidder, then the **Landscape Architect** must investigate the next lowest Bidder in the same manner described above, and continue to investigate each successive low Bidder until a Bidder is approved. For every Bidder investigated, the **Landscape Architect** must provide the **City** with a detailed letter as described above.

**3.5.6. Preparation of Contract.** To the extent required, the **Landscape Architect** shall assist the Purchasing Agent in the preparation of the construction contract.

**3.6. CONSTRUCTION PHASE-ADMINISTRATION OF THE CONSTRUCTION CONTRACT.**

**3.6.1. Commencement.** The Construction Phase commences with the full execution of the contract for construction and terminates on the date of expiration of all of the guarantees and warranties provided by the Contractor to the **City**.

**3.6.2. Change in Landscape Architect's Duties, Etc.** Construction Phase duties, responsibilities, and limitations of authority of the **Landscape Architect** shall not be extended without written agreement of the **City** and the **Landscape Architect**. Any restrictions or modifications to the **Landscape Architect's** duties and responsibilities can be imposed by the **City** without the consent of the **Landscape Architect**.

**3.6.3. Preconstruction Conferences.** The **Landscape Architect** shall attend all preconstruction conferences.

**3.6.4. Site Visits.** The **Landscape Architect** shall visit the Site at intervals appropriate to the stage of construction, but no less than once a week, or as otherwise agreed by the **City** and the **Landscape Architect**, to become familiar with the progress and quality of the Work and to determine with care if the Work is proceeding in accordance with the requirements of the Contract Documents. The **Landscape Architect** shall cause its engineering and other consultants to make similar Site visits, at such times as may be required for observation of portions of the Work designed and/or specified by them. The **Landscape Architect** shall not be required to make continuous on-site inspections to check the quality or quantity of the Work. The **Landscape Architect** shall promptly submit to the **City** a detailed written report subsequent to each on-site visit, which shall include any observation of material deviations by the Contractor or subcontractors from the requirements of the Contract Documents.

**3.6.5. Job Meetings.** There shall be no less than one job meeting per week. The **Landscape Architect** shall attend all job meetings. The number of meetings per week will depend on the complexity of the Project at a particular stage, the problems encountered on the Project, or the **City's** request that additional meetings be held. The **Landscape Architect** shall also be required to be present when governmental authorities having jurisdiction over the Project visit the Site to inspect the Work. The **Landscape Architect** will exercise good care and diligence in discovering and promptly reporting to the **City**, as well as to the Contractor, any defects or deficiencies in the Work.

**3.6.6. Construction Means, Methods, Etc.** The **Landscape Architect** shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work. However, the **Landscape Architect** shall promptly report to the **City** any perceived irregularities.

**3.6.7. Contractor's Schedule.** Except as otherwise provided in this Agreement, the **Landscape Architect** shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents, except to the extent that such failure is caused by the **Landscape Architect**. Except as otherwise provided in this Agreement, the **Landscape Architect** shall not have control over or charge of acts or omissions of the Contractor, its Subcontractors, or their agents or employees, or of any other persons performing portions of the Work. However, nothing in this paragraph shall relieve the **Landscape Architect** of its obligations to the **City** elsewhere in this Agreement. The **Landscape Architect** shall review all schedules presented by the Contractor and advise the **City** as to the appropriateness of same.

**3.6.8. Communications.** The **City** and the Contractor may communicate through the **Landscape Architect**. Communications by and with the **Landscape Architect's** consultants shall be through the **Landscape Architect**, unless the **City** deems it necessary or expedient to speak directly to the consultants.

**3.6.9. Applications and Certifications for Payment.** Based on the **Landscape Architect's** observations of the Work and evaluations of the Contractor's applications for payment, the **Landscape Architect** shall review and certify the appropriate amounts due the Contractor within five (5) business days after receipt of the Contractor's application for payment, and such certifications shall be in the form requested by the **City**. The **Landscape Architect's** certification for payment shall constitute a representation to the **City** based on the **Landscape Architect's** observations at the site, on information provided by the City's Clerk of the Works, if any, and on the data comprising the Contractor's application for payment that to the best of the Landscape Architect's knowledge, information and belief the Work has progressed to the point indicated and the quality of Work is in accordance with the Contract Documents. The foregoing representations are subject to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the **Landscape Architect**. The issuance of a certificate for payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. Timely payment of Contractor is required by M.G.L. c. 30, §39K; therefore, the **Landscape Architect** shall establish office procedures assuring either immediate mail or messenger delivery of the approved applications for payment to the **City**.

**3.6.10. Rejection of Work.** The **Landscape Architect** shall have the responsibility, obligation, and authority to reject Work which (1) does not conform to the Contract Documents; (2) which the **Landscape Architect** believes to be defective; and (3) the **Landscape Architect** believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents and shall promptly notify the **City** of such rejection. Whenever the **Landscape Architect** considers it necessary or advisable for implementation of the intent of the Contract Documents, the **Landscape Architect** will have the responsibility, obligation, and authority to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed, or completed; provided, however, the **Landscape Architect** must obtain the **City's** prior written approval of any such special inspection or testing. However, neither this authority of the **Landscape Architect** nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the **Landscape Architect** to the Contractor, Subcontractors, Suppliers, other persons performing portions of the Work.

**3.6.11. Submittals.** The **Landscape Architect** shall review and approve or take other appropriate action upon the Contractor's submittals such as Proposed Change Orders, Shop Drawings, Product Data, and Samples, for the purpose of: (a) determining compliance with applicable laws, statutes, ordinances, codes, orders, rules, and regulations; and (b) determining whether the Work, when completed, will be in compliance with the requirements of the Contract Documents. Such review shall be conducted in accordance with generally accepted standards of professional practice, taking into account the time constraints and other provisions set forth in this subparagraph. The **Landscape Architect's** action shall be taken with such reasonable promptness as to cause no delay in the Work taking into account the time periods set forth in the latest schedule prepared by the Contractor and approved by the **Landscape Architect** and, in any event, such action shall be taken within fourteen (14) days after submittal to the **Landscape Architect** unless the **Landscape Architect** informs the Contractor within such period that a longer time is reasonably required. The **Landscape Architect** shall indemnify the **City** for any monies paid by the **City** to the Contractor as a result of the **Landscape Architect's** delay in taking appropriate action, as described above, where such delay is not caused in any part by the **City**. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designated by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The **Landscape Architect's** review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the **Landscape Architect**, of construction means, methods, techniques, sequences, or procedures. The **Landscape Architect's** approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems, or equipment is required by the Contract Documents, the **Landscape Architect** shall be entitled to rely upon such certification to establish that the materials, systems, or equipment will meet the performance criteria required by the Contract Documents.

**3.6.12. Change Orders and Work Change Directives.** The **Landscape Architect** shall prepare Change Orders and Work Change Directives, with supporting documentation and data if deemed necessary by the **Landscape Architect** for the approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time (which is the time in which the Work reaches final completion) and which are not inconsistent with the intent of the Contract Documents.

**3.6.13. Interpretations, Clarifications, and Decisions of the Landscape Architect.**

**3.6.13.1.** The **Landscape Architect** will interpret, clarify, and decide matters concerning performance under and requirements of the Contract Documents on written request of either the **City** or

the Contractor. The **Landscape Architect's** response to such requests will be made with reasonable promptness and within the time set forth herein. Any such written interpretations, clarifications, or decisions shall be binding on the **City** and the Contractor. Interpretations, clarifications, and decisions of the **Landscape Architect** shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. The **Landscape Architect** may, as the **Landscape Architect** judges desirable, issue additional drawings or instructions indicating in greater detail the construction or design of the various parts of the Work; such drawings or instructions may be effected by a Field Order or other notice to the Contractor, provided such drawings or instructions are reasonably consistent with the previously existing Contract Documents. The **Landscape Architect** shall not be liable for results of interpretations, clarifications, and decisions so rendered in good faith and in the absence of negligence by the **Landscape Architect**.

**3.6.13.2. Time Limit for Rendering Decisions.** The **Landscape Architect** shall render written interpretations, clarifications, and decisions within a reasonable time, but in no event more than seven (7) days after receipt of same.

**3.6.14. Aesthetic Effect.** The **Landscape Architect's** decisions on matters relating to aesthetic effect must be consistent with the **City's**. The **Landscape Architect** shall advise the **City** in matters relating to aesthetic effect; however, the **City's** decision in these matters shall be final.

**3.6.15. Claims.**

**3.6.15.1. Initial Referral.** All Claims, the bases of which arise prior to final payment or the earlier termination of the Contract, shall be referred initially to the **Landscape Architect** for action as provided herein.

**3.6.15.2. Time Period and Action.** The **Landscape Architect** shall review Claims and shall do one of the following within seven (7) days of receipt of the Claim:

**3.6.15.2.1.** defer any action with respect to all or any part of a Claim for the purpose of requesting and receiving additional information from either party;

**3.6.15.2.2.** decline to render a decision for any reason which it deems appropriate (including, but not limited to, the fact that the Claim involves allegations of fault on the part of the **Landscape Architect**); or

**3.6.15.2.3.** render a decision on all or a part of the Claim.

If the **Landscape Architect** requests additional information, the **Landscape Architect** shall take action with respect to the Claim no later than seven (7) days after receipt of the additional information. The **Landscape Architect** shall notify the parties in writing of its disposition of such Claim. If the **Landscape Architect** decides that the Work relating to such Claim should proceed regardless of its disposition of such Claim, the **Landscape Architect** shall issue to the Contractor a written order to proceed.

**3.6.15.3. Decisions.**

**3.6.15.3.1. Decisions by the City or the Landscape Architect.** (*Reference: M.G.L. c. 30, §39P*). In every case in which this Contract requires the **City**, any official, or its **Landscape Architect** to make a decision on interpretation of the Specifications, approval of equipment, material or any other approval, or progress of the Work, the decision shall be made promptly and, in any event, no later than [seven (7)] days after the written submission for decision; but if such decision requires extended investigation and study, the **City**, the official, or the **Landscape Architect** shall, within [seven (7)] days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the seven-day period and the date by which the decision will be made.

**3.6.15.4. Resolved Claims.** If a Claim is resolved, the **Landscape Architect** shall obtain or prepare the appropriate documentation and provide the **City** and the Contractor with a copy of same.

**3.6.16. Determination of Substantial and Final Completion.** On behalf of the **City**, the **Landscape Architect** shall conduct inspections, determine the dates of Substantial Completion and final completion, and shall issue a certificate of Substantial Completion, with the prior written consent of the **City**. Such inspections shall include a reasonable number of Site visits by the **Landscape Architect** and the **Landscape Architect's** engineering consultants. The **Landscape Architect** shall provide to the **City** a written report of all findings with recommendations for appropriate action. The **Landscape Architect** will receive and review (and approve or disapprove, as the case may be) written guarantees, operating manuals, spare parts lists, value charts, and related documents required by the Contract Documents to be assembled by the Contractor. When the **Landscape Architect** is satisfied that all such documents are complete as required by the Contract Documents, the **Landscape Architect** shall issue a final certificate of payment.

**3.6.17. Inspection Prior to End of Guarantee Period.** Notwithstanding any other provision in this Agreement, at least thirty (30) days prior to the expiration of the Contractor's guarantee period, the **Landscape Architect** shall assist the **City** in inspecting the Project at the **City's** request and provide to the **City** a written report of all findings with recommendations for appropriate action. Such inspections shall include a reasonable number of Site visits by the **Landscape Architect** and the **Landscape Architect's** engineering consultants.

**3.6.18. Certificate of Occupancy.** The **Landscape Architect** shall be responsible for satisfying any and all requirements with respect to services of a Landscape Architect necessary to obtain a permanent certificate of occupancy under the Commonwealth of Massachusetts State Building Code.

**3.6.19. Limitation on the Landscape Architect's Responsibilities.**

**3.6.19.1.** Neither the **Landscape Architect's** authority to act under the provisions of the Contract Documents nor any decision made by the **Landscape Architect** in

good faith to exercise or not to exercise such authority shall give rise to any duty or responsibility of the **Landscape Architect** to the Contractor, any Subcontractor, any Supplier, any surety for any of them, or any other person.

**3.6.19.1.1.** The **Landscape Architect** will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Article 5 of the General Terms and Conditions. The **Landscape Architect** will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The **Landscape Architect** will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, Suppliers, or of any other persons performing portions of the Work.

#### ARTICLE 4

##### LANDSCAPE ARCHITECT'S ADDITIONAL SERVICES

**4.1. IN GENERAL.** The services described hereunder shall be paid for by the **City** in addition to the compensation for Basic Services. Prior to performing any service which the **Landscape Architect** claims to be an Additional Service, the **Landscape Architect** shall notify the **City** in writing that the service is an Additional Service, and shall provide with such notice an estimate of the additional compensation which will be payable to the **Landscape Architect** for performing such service. Such service shall not be performed, nor shall such estimate be exceeded, without the **City's** prior written approval. Failure to so notify the **City** and obtain the **City's** written approval shall constitute a waiver of the **Landscape Architect's** claim for additional compensation on account of such services. These services shall be provided only if authorized or confirmed in writing by the **City**. Notwithstanding anything to the contrary in this Agreement, the **City** shall not be responsible to pay and the **Landscape Architect** shall not be entitled to receive compensation for any additional service if such service was required due to the fault of the **Landscape Architect** or the **Landscape Architect's** failure to perform in accordance with the terms of this Agreement. Neither the **Landscape Architect** nor its consultants shall be compensated for any services involved in preparing changes that are required for additional Work that should have been anticipated by the **Landscape Architect** in the preparation of the Construction Documents, as reasonably determined by the **City**.

**4.2. LIST OF ADDITIONAL SERVICES.** The following list of Additional Services is intended to be illustrative and not considered all-inclusive:

**4.2.1.** Making major revisions in Plans, Specifications, or other documents when such major revisions are:

**4.2.1.1.** inconsistent with approvals or instructions previously given by the **City**, including revisions made necessary by adjustments in the **City's** program or project budget;

**4.2.1.2.** required by the enactment or revision of codes, laws, or regulations subsequent to the preparation of such documents; or

**4.2.1.3.** due to changes required as a result of the **City's** failure to render decisions in a timely manner and where such failure is in no way caused by the **Landscape Architect**.

**4.2.2.** Providing services required because of major changes in the Project instigated by the **City**;

4.2.3. Material design work requested by the **City** in connection with Change Orders, Construction Change Directives, and the Contractor's value engineering proposals, provided that evaluation and judgments of the proposed changes and value engineering substitutions shall be provided as a Basic Service;

4.2.4. Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work; provided, however, that such services are not required as a result of the negligence of the **Landscape Architect**; and

4.2.5. Providing any other services not otherwise included in this Agreement.

## ARTICLE 5

### OTHER CONDITIONS OR SERVICES

5.1. **OTHER SERVICES.** Any other services which are part of Basic Services.

5.2. **HAZARDOUS MATERIALS.** Unless otherwise provided in this Agreement, the **Landscape Architect** and the **Landscape 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, polychlorinated biphenyl, or other toxic substances, provided, however, the **Landscape Architect** shall report to the **City** the presence and location of any hazardous material observed by the **Landscape Architect** (or any material suspected to exist) or that an **Landscape Architect** of similar skill and expertise should have observed.

## ARTICLE 6

### THE CITY'S RESPONSIBILITIES

6.1. **REQUIREMENTS FOR THE PROJECT.** The **City** shall consult with the **Landscape Architect** regarding requirements for the Project, including the **City's** contemplated objectives, schedule, constraints, and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems, and site requirements.

6.2. **BUDGET.** The **City** shall consult with the **Landscape Architect** in order to establish and update an overall budget for the Project, including the Construction Cost, the **City's** other costs and reasonable contingencies related to all of these costs.

6.3. **AUTHORIZED REPRESENTATIVE** The **City** shall designate a representative authorized to act on the **City's** behalf with respect to the Project. The **City** or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the **Landscape Architect** in order to avoid unreasonable delay in the orderly and sequential progress of the **Landscape Architect's** services.

6.4. **CONSULTANTS.** The **City** shall furnish the services of consultants not listed in the advertisement for the Request for Proposals when the **City** deems such services to be necessary. The **Landscape Architect** shall be entitled to rely on the documents furnished by such consultants.

6.5. **FURNISHING INFORMATION OR SERVICES.** Notwithstanding anything to the contrary written herein, the **City** shall only furnish information or services described in herein to the extent that any such information or service is reasonably required by the **Landscape Architect** to perform its services under this Agreement.

6.6. **NOTICE OF FAULT OR DEFECT.** The City shall give prompt written notice to the Landscape Architect, if the City becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

## ARTICLE 7

### USE OF THE LANDSCAPE ARCHITECT'S PLANS, SPECIFICATIONS, AND OTHER DOCUMENTS

7.1. **IN GENERAL.** The Plans, Specifications, and other documents prepared by the Landscape Architect for this Project are instruments of the Landscape Architect's service for use solely with respect to this Project and, unless otherwise provided, the Landscape Architect shall be deemed the author of these documents and shall retain all common law, statutory, and other reserved rights, including the copyright. The City shall be permitted to retain copies, including reproducible copies, of the Landscape Architect's Plans, Specifications, and other documents for information and reference in connection with the City's use and occupancy of the Project. The Landscape Architect's Plans, Specifications, or other documents shall not be used by the City or others on other projects, except by agreement in writing. However, it is expressly understood and agreed that the City shall have the right to utilize the Plans, Specifications, and other documents in the event the City expands the Project, corrects any deficiencies, or makes any renovations or repairs to the Project. In the event of termination or purported termination of this Agreement by either party, the City may use the Plans, Specifications, and other documents in connection with the Project, notwithstanding any dispute between the City and the Landscape Architect as to the reason for validity of the termination, provided only that the Landscape Architect has been paid for its work through the date of the termination, unless the matter of such payment is subject to litigation or other dispute resolution procedure provided for herein.

7.2. **OFFICIAL REGULATORY REQUIREMENTS.** Submission or distribution of the Plans, Specifications, and other documents 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 Landscape Architect's reserved rights herein.

## ARTICLE 8

### BASIS OF COMPENSATION

8.1. **IN GENERAL.** For Basic Services, compensation.

8.2. **STIPULATED SUM.** Where the compensation is based on a stipulated sum, progress payments for Basic Services in each phase.

8.3. **MATERIAL CHANGE IN SCOPE OR SERVICES.** In the event of a material change in the scope or services of the Project or the Landscape Architect's services, the Landscape Architect shall continue to perform in accordance with the terms of this Agreement during the course of any renegotiation of the Landscape Architect's compensation hereunder. Equitable adjustments shall be made to the total dollar amount of this Agreement in the event of changes in scope or services herein. (*Reference: M.G.L. c. 7, §38G*).

8.4. **ADDITIONAL SERVICES OF THE LANDSCAPE ARCHITECT.** For Additional Services of the Landscape Architect, compensation.

8.5. **ADDITIONAL SERVICES OF THE CONSULTANTS.** For additional services of consultants, compensation shall be the actual cost billed to the Landscape Architect for such services.

**8.6. REIMBURSABLE EXPENSES.** For Reimbursable Expenses, compensation shall be the actual cost billed to the **Landscape Architect** for such services.

## ARTICLE 9

### PAYMENT TO THE LANDSCAPE ARCHITECT

**9.1.** The **City** shall make payments directly to the **Landscape Architect** within forty-five (45) days after the **City** receives and approves the **Landscape Architect's** detailed certified monthly statement. The detailed monthly statement must include, at minimum, itemized hours and work performed by the **Landscape Architect** (including, but not limited to, all employees of the **Landscape Architect** and its agents), and an itemized list of Reimbursable Expenses. Records of the **Landscape Architect's** expenses and hours pertaining to this Project shall be kept in accordance with generally accepted accounting principles, which principles shall be consistently applied. Said records shall be available to the **City** or its authorized representative upon reasonable notice for inspection and copying during regular business hours for six (6) years after the date of the final certificate of payment.

**9.2.** No payments will be made in advance of services rendered.

**9.3.** Deductions may be made from the **Landscape Architect's** compensation, if the **Landscape Architect** has not properly performed the services required in accordance with the terms of this Agreement.

## ARTICLE 10

### INSURANCE REQUIREMENTS

**10.1.** The **Landscape Architect** at its own expense must obtain and maintain a professional liability insurance policy covering negligent errors, omissions, and acts of the **Landscape Architect** or of any person for whose performance the **Landscape Architect** is legally liable arising out of the performance of such contracts for design services. The **City** may require a consultant employed by the **Landscape Architect** subject to this subparagraph to obtain and maintain a similar liability insurance policy. If the **Landscape Architect** is required by the **City** to obtain all or a portion of such insurance coverage, it shall at its own expense furnish a certificate or certificates of insurance coverage to the **City** prior to the award of the contract. Certificates of insurance are attached. Any amendments these insurance requirements are set forth.

**10.2.** Any insurance carrier utilized to fulfill the insurance requirements of this Contract shall have a minimum A.M. Best rating of A-X.

**10.3.** The **Landscape Architect** and its structural, mechanical, and electrical engineering consultants shall each maintain the following minimum insurance coverages:

**10.3.1.** Workers' Compensation insurance in compliance with Massachusetts law;

**10.3.2.** Employer's liability policy covering bodily injury by accident (\$100,000 each occurrence) and bodily injury by disease (\$100,000 each employee, \$500,000 policy limit);

**10.3.3.** Comprehensive automobile liability insurance including hired, non-owned, and leased vehicles, if any, in the amount of \$1,000,000 covering personal injury, bodily injury, and property damage;

**10.3.4.** Valuable Papers insurance in the amount of \$100,000 covering damage to plans, drawings, computations, filed notes, or other similar data relating to the Work covered by this Agreement;

**10.3.5.** Commercial general liability insurance with a primary limit of not less than \$1,000,000 combined single limit and naming the **City** as an additional insured; and

**10.3.6.** Professional Liability insurance in an amount not less than \$1,000,000, for the applicable period of limitations, including contractual liability coverage with all coverage retroactive to the earlier date of this Agreement or the commencement of the **Landscape Architect's** services in relation to the Project.

**10.4.** All insurance shall be provided by companies qualified and licensed to do business in the Commonwealth of Massachusetts and acceptable to the City, and shall be maintained for a period of six (6) years following the last performance of services under this Agreement. Certificates evidencing such insurance shall be furnished to the **City** upon the execution of this Agreement by the **Landscape Architect** and upon each renewal period thereafter. The policies shall provide that the policies shall not be cancelled, renewed, or amended without thirty (30) days' prior notice to the **City**. All requests by the **Landscape Architect** for approval of engineers or other consultants shall be accompanied by certificates setting forth the types and amounts of insurance carried by them. The **Landscape Architect** shall require each such engineer or other consultant approved by the **City** to maintain the insurance shown in such certificate in accordance with the provisions of this paragraph.

## ARTICLE 11

### STATUTORY RECORD-KEEPING AND RECORD-FILING REQUIREMENTS (M.G.L. C. 30, §39R)

**11.1.** The **Landscape Architect** shall make and keep for at least six years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the **Landscape Architect**.

**11.2.** Until the expiration of six (6) years after final payment, the office of inspector general, and the deputy commissioner of capital planning and operations shall have the right to examine any books, documents, papers or records of the **Landscape Architect** or of its subcontractors that directly pertain to and involve transactions relating to, the **Landscape Architect** or its subcontractors.

**11.3.** The **Landscape Architect** shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the **City**, including in its description the date of the change and reasons therefore, and shall accompany said description with a letter from the **Landscape Architect's** independent certified public accountant approving or otherwise commenting on the changes.

**11.4.** The **Landscape Architect** has filed a statement of management ("management," as used in these paragraphs is defined in M.G.L. c. 30, §39R(a)(7) as "the chief executive officers, partners, principals or other person or persons primarily responsible for the financial and operational policies and practices of the contractor" which is the **Landscape Architect** herein) on internal accounting controls as set forth in M.G.L. c. 30, §39R(c) prior to the execution of this Agreement.

**11.5.** The **Landscape Architect** must file with the **City** a statement of management as to whether the system of internal accounting controls of the **Landscape Architect** and its subsidiaries reasonably assures that:

**11.5.1.** transactions are executed in accordance with management's general and specific authorization;

11.5.2. transactions are recorded as necessary:

11.5.2.1. to permit preparation of financial statements in conformity with generally accepted accounting principles, and

11.5.2.2. to maintain accountability for assets;

11.5.3. access to assets is permitted only in accordance with management's general or specific authorization; and

11.5.4. the record accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.

11.6. The **Landscape Architect** has filed with DCAM prior to the execution of this Agreement and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in M.G.L. c. 30, §39R(d). The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report. Such statements shall be made available to the **City** upon request.

11.7. The **Landscape Architect** shall file with the **City** a statement prepared and signed by an independent certified public accountant, stating that s/he has examined the statement of management on internal accounting controls, and expressing an opinion as to:

11.7.1. whether the representations of management in response to this paragraph and the previous paragraph are consistent with the result of management's evaluation of the system of internal accounting controls; and

11.7.2. whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the **Landscape Architect's** financial statements.

**NOTE: RECORDS AND STATEMENTS REQUIRED TO BE MADE, KEPT OR FILED UNDER THE PROVISIONS OF M.G.L. c. 30, §39R ARE NOT PUBLIC RECORDS AS DEFINED IN M.G.L. c.4, §7 AND SHALL NOT BE OPEN TO PUBLIC INSPECTION, EXCEPT AS PROVIDED HEREIN.**

(Reference: M.G.L. c. 30, §39R)

## ARTICLE 12

### TERMINATION, SUSPENSION, OR ABANDONMENT

12.1. Except for reasons of nonpayment, this Agreement may be terminated by either party upon not less than seven (7) days' written notice should the other party fail to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination and may be terminated without cause by the **City** upon at least seven (7) days' written notice to the **Landscape Architect**. In the event this Agreement is terminated by the **City** pursuant to this paragraph, the **Landscape Architect** shall be entitled to receive compensation for Basic and Additional Services properly performed and for all substantiated Reimbursable Expenses incurred to the date of the notice of termination, but in no event shall compensation exceed the amount specified hereafter if the Project does not proceed and in no event shall any payment be due earlier than such payment would otherwise be due hereunder. Moreover, the **City** shall be entitled to retain from the monies alleged to be due to the **Landscape Architect** an amount that

reasonably reflects the cost and expense incurred or to be incurred by the **City** associated with the termination, if the termination is with cause.

**12.2.** The **City** reserves the right to stop or suspend the work upon seven (7) days' written notice to the **Landscape Architect**, with no resulting fee adjustment to the **Landscape Architect**, unless such suspension extends for more than twelve (12) months, in which case the **Landscape Architect's** compensation shall be equitably adjusted when the project is resumed to provide for expenses incurred in the interruption and resumption of the **Landscape Architect's** services. The **Landscape Architect** shall have no cause for termination of this Agreement based on suspension of the Project unless such suspension extends for more than twelve (12) months.

**12.3.** Persistent failure by the **City** to make payments to the **Landscape Architect** in accordance with this Agreement or persistent failure of the **City** to pay the **Landscape Architect** within forty-five (45) days of receipt of a statement for services properly performed shall be considered nonperformance and cause for termination. "Persistent" herein shall mean at least three occasions.

**12.4.** If the **City** fails to make payment when due for services and expenses properly performed, the **Landscape Architect** may, upon thirty (30) days' written notice to the **City**, suspend performance of services under this Agreement. Unless the **Landscape Architect** receives within thirty (30) days of the date of the notice payment in full for such services that have been properly performed, the suspension shall take effect without further notice. In the event of a suspension of services, the **Landscape Architect** shall have no liability to the **City** for delay or damage caused by the **City** because of such suspension of services.

### **ARTICLE 13**

#### **MISCELLANEOUS PROVISIONS**

**13.1. GOVERNING LAW.** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

**13.2. VENUE.** Venue for any court action or proceeding shall be Middlesex County in the Commonwealth of Massachusetts only. The **Contractor**, all Subcontractors, and Suppliers waive any and all jurisdictional and venue defenses.

**13.3. PARTNERS, SUCCESSORS, ASSIGNS, ETC.** The **City** and the **Landscape 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 representative of such other party with respect to all covenants of this Agreement.

**13.4. PROHIBITION AGAINST ASSIGNMENT.** The **Landscape Architect** shall not assign, in whole or in part, its rights and obligations under the Contract Documents without prior written consent of the **City**. An assignment without the prior written consent of the **City** shall not relieve the **Landscape Architect** of its obligations thereunder.

**13.5. ENTIRE AGREEMENT.** This Agreement represents the entire and integrated agreement between the **City** and the **Landscape Architect** and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement can be amended only by a written instrument signed by both the **City** and the **Landscape Architect**.

**13.6. THIRD-PARTY BENEFICIARIES.** 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 **City** or the **Landscape Architect**.

**13.7. NOTICES AND DEMANDS.** Notices and demands required by or permitted to be given hereunder shall be hand-delivered or given by registered or certified mail and shall be addressed to the parties at the addresses set forth. Such notices and demands may be sent by facsimile transmission if such transmission is followed by hand delivery or registered or certified mail on the same day or the following business day. Notice and demands shall be deemed to have been given when delivered, or when mailed, or when transmitted by facsimile, if followed by hand delivery or registered or certified mail as provided herein.

**13.8. WAIVER OF RIGHTS.** The **City's** review, approval, acceptance, or payment for services under this Agreement shall not operate as a waiver of any rights under this Agreement and the **Landscape Architect** shall be and shall remain liable to the **City** for all damages incurred by the **City** as the result of the **Landscape Architect's** failure to perform in conformance with the terms and conditions of this Agreement. The rights and remedies of the **City** provided for under this Agreement are in addition to any other rights or remedies provided or allowed by law.

**13.9. PERSONAL LIABILITY.** No member, officer, director, trustee, representative, consultant, volunteer participant, or employee of the **City** shall be personally liable to the **Landscape Architect** under any term or provision of this Agreement for the **City's** payment obligation or otherwise, or because of any breach hereof.

**13.10. INDEMNIFICATION.** The **Landscape Architect** shall indemnify and defend the **City** from and against all claims, costs, and liability arising out of the **Landscape Architect's** Services hereunder, to the extent that such claims, costs, and liability are the result of the negligent acts, errors, or omissions of the **Landscape Architect**, or breaches by the **Landscape Architect** of its obligations hereunder or (with respect to the **Landscape Architect's** duty to defend) are claimed to be the result thereof.

**13.11. LANDSCAPE ARCHITECT'S PRINCIPALS AND SENIOR PERSONNEL.** The **City** is relying on the continued participation in the Project of the principals and senior personnel whose names and time commitments and, where applicable, Massachusetts professional registration numbers are listed. The **Landscape Architect** shall not remove any such individual from the Project or reduce his or her time commitment to the Project without the **City's** written consent unless such individual dies, becomes disabled, or terminates his or her employment. The replacement of any individual listed shall be subject to the **City's** written approval.

**13.12 USE OF PROJECT-RELATED DOCUMENTS.** The **Landscape Architect** may, upon prior written consent of the **City**, include representations of the design of the Project, including photographs of the exterior and interior, among the **Landscape Architect's** promotional and professional materials. The **Landscape Architect's** materials shall not include the **City's** confidential or proprietary information if the **City** has previously advised the **Landscape Architect** in writing of the specific information considered by the **City** to be confidential or proprietary. The **City** shall provide professional credit for the **Landscape Architect** on the construction sign and in the promotional materials for the Project. The **City** considers all information concerning the Project to be confidential and proprietary unless otherwise expressly indicated in writing to the **Landscape Architect**.

## ARTICLE 14

### CERTIFICATIONS

**14.1.** The undersigned **Landscape Architect** certifies under the penalties of perjury that:

**14.1.1.** the **Landscape Architect** has not given, offered or agreed to give any gift contribution or offer of employment as an inducement for, or in connection with, the award of a contract for design services;

**14.1.2.** no consultant to, or subcontractor for the **Landscape Architect** has given, offered or agreed to give any gift, contribution, or offer of employment to the **Landscape Architect**, or to any other person, corporation, or entity as an inducement for or in connection with the award to the consultant or subcontractor of a contract by the **Landscape Architect**;

**14.1.3.** no person, corporation, or other entity, other than a bona fide, full-time employee of the **Landscape Architect** has been retained or hired to solicit for or in any way assist the **Landscape Architect** in obtaining the contract for design services upon an agreement or understanding that such person, corporation, or other entity be paid a fee or other consideration contingent upon the award of the contract to the designer;

**14.1.4.** the **Landscape Architect** has internal accounting controls as required by M.G.L. c. 30, §39R and the **Landscape Architect** shall:

**14.1.4.1.** for a six-year period after the final payment maintain accurate books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the **Landscape Architect**;

**14.1.4.2.** file regular statements of management concerning internal auditing controls; and

**14.1.4.3.** file an annual audited financial statement; and submit a statement from an independent certified public account that such C.P.A. or public accountant has examined management's internal auditing controls and expresses an opinion as to their consistency with management's statements and whether such statements are reasonable with respect to transactions and assets that are substantial in relation to the **Landscape Architect's** financial statements, as provided by M.G.L. c. 7, §38H(e) and

**14.1.5.** the **Landscape Architect** has filed a statement of management on internal accounting controls as set forth in M.G.L. c. 30, §39R(c) prior to the execution of this Agreement;

**14.1.6.** the **Landscape Architect** has filed with DCAM prior to the execution of this Agreement an audited financial statement for the most recent completed fiscal year as set forth in M.G.L. c. 30, §39R(d); and

**14.1.7.** the **Landscape Architect** has complied with all the laws of the Commonwealth pertaining to taxes (M.G.L. c. 62C, §49A).

**FILE NO.5476 – THURSDAY, JUNE 9, 2011 @ 11:00 am**

CITY OF CAMBRIDGE

LANDSCAPE ARCHITECT:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Signature

APPROVED AS TO FORM:

By:

\_\_\_\_\_  
City Solicitor

\_\_\_\_\_  
Print Name and Title

REVIEWED BY:

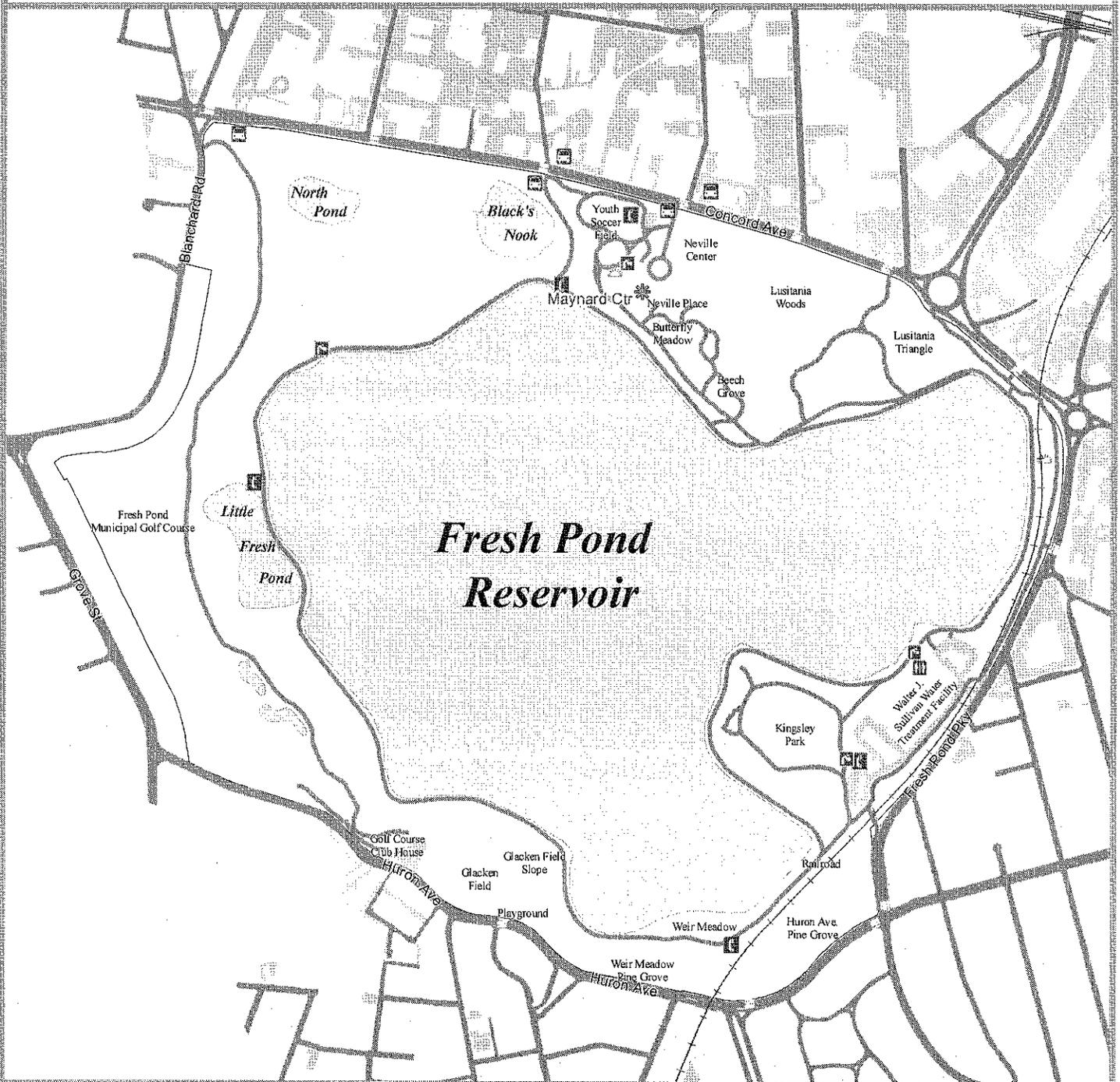
\_\_\_\_\_  
Cynthia H. Griffin  
Purchasing Agent

APPROVED AS TO THE AVAILABILITY  
OF FUNDS:

Budget Code: \_\_\_\_\_

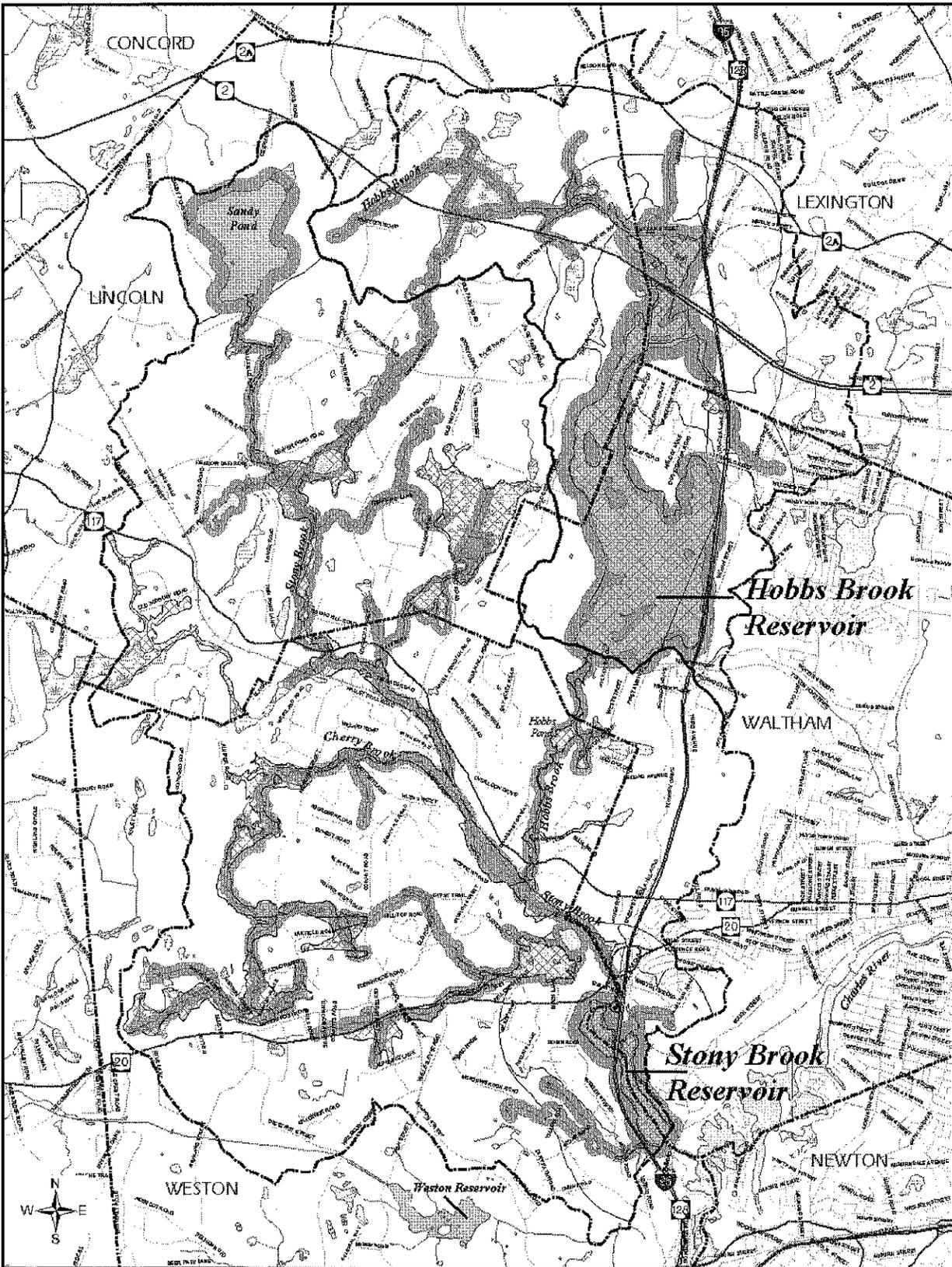
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City Auditor

# Fresh Pond Reservation



## Legend

- |                                                                                                            |                                                                                                          |                                                                                                       |                                                                                                       |
|------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
|  Maynard Ecology Center |  Emergency Call Phone |  Bus Stop          |  Crosswalk Lines |
|  Information            |  Water Fountain       |  Community Gardens |                                                                                                       |



**Legend**

- Town Lines
- Reservoir
- Zone A
- Wetland
- Zone B
- River
- Hobbs Brook Basin
- Pond
- Stony Brook Basin
- FEMA 100-Year Floodplain



City of Cambridge Water Department DEP Protection Zones Map. Map shows Water Supply Protection Zones 11/21/07.

**Source Water Protection Plan  
 Cambridge Watershed  
 DEP Protection Zones**



City of Cambridge Water Department  
 Source Water  
 February 4, 2007