FILE NO. 50608
REQUEST FOR PROPOSAL FOR DESIGN SERVICES
STREET LIGHTING LED CONVERSION
CAMBRIDGE, MASSACHUSETTS 02139

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 a.m., on **Thursday, November 15, 2012** for furnishing the following to the City of Cambridge:

The City of Cambridge, Massachusetts seeks proposals for a consultant to develop bid documents for a project to convert street lighting in the City to LED technology and install a wireless master control system in order to significantly reduce energy use. Services sought include lighting consulting to develop bid documents and for construction administration for the conversion project. The Designer must be familiar with construction methods, working drawings, public bid requirements, and electrical and fire safety codes, and must have demonstrable experience in LED street light technology. The contract will be for one-year with two one-year options to renew. It is anticipated that the Street Light LED conversion will take place over a three year period.

Copies of the Request for Proposal may be obtained at the Office of the Purchasing Agent on and after **Thursday, October 25, 2012**, between the hours of Monday 8:30 a.m. and 8:00 p.m., Tuesday thru Thursday, 8:30 a.m. to 5:00 p.m. and 12:00 Noon on Fridays. This RFP may be downloaded from the City's website, www.cambridgema.gov, Online Services, Current Bid List, Design RFP, File No.50608.

The successful offerors 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 APPLICANTS FEE IN THE PROPOSAL. ANY MENTION OF THE FEE WILL SUBJECT THE PROPOSAL TO REJECTION.

Questions concerning the Request for Design Services may be submitted in writing by 4:00 p.m., Wednesday, November 7, 2012 to the Purchasing Agent, Cynthia H. Griffin, at the address above or by fax (617-349-4008). Addenda will be posted to the Purchasing Department website notifying all vendors of questions and answers.

One original and Six (6) copies of the proposal **(no hard binders)** marked "RFP for Design Services Street Lighting LED Conversion" must be received by Cynthia H. Griffin, Purchasing Agent, City of Cambridge, 795 Massachusetts Avenue, Cambridge prior to 11:00 a.m., on **Thursday, November 15, 2012.** 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

REQUEST FOR PROPOSAL FOR DESIGN SERVICES
STREET LIGHTING LED CONVERSION
CAMBRIDGE, MASSACHUSETTS 02139

SECTION I: SCOPE OF SERVICES

Background

The City of Cambridge, Massachusetts seeks proposals from a qualified consultant to develop bid documents for a project to convert street lighting in the City to LED technology and install a wireless master control system, in order to significantly reduce energy use. The project builds upon the 2010 Cambridge Lighting Study Report, the 2012 City of Cambridge Street Light Manual and what was learned from test installations and analysis performed by the City Electrical Department.

Services sought include lighting consulting services to develop bid documents and for construction administration services for the conversion project. The main scope of work for these consulting services is the development of the specifications for the materials and installation work to be performed by the bidding contractor or Electrical Department Staff. It is expected that development of these specifications will be a collaborative effort involving the Electrical Department, the Departments of Public Works and Community Development and a Lighting Consultant, and will involve development of the technical specifications for the street lighting fixtures and the development of the rules for conversion – which fixture types are to be used in which locations. The Consultant shall work with the City on proper public bid documents.

The LED Conversion Project involves the conversion of all cobra head street lights in all neighborhoods, and the retrofit of all decorative street light and park fixtures over a three year period. The project also includes the acquisition of a wireless master control system which will report information on each street light including failing lights, and enable remote control of lighting levels.

The goal of this project is to convert approximately 6,400 street lights and 1,000 park lights to LED, to save significant energy use. It is estimated that the City will achieve over 40% energy savings from current street light usage.

Scope of Work

1. Review 2010 Cambridge Lighting Study report, and the 2012 City of Cambridge Street Lighting Fixture Manual. Review street lighting inventory data, cost analyses, and other information gathered during the street lighting study and the test installations.

2. Meet City staff to define the structure of the bid documents, review background materials, and review draft specifications and bid documents. It is expected that approximately four meetings will be required.

3. Develop complete and detailed specifications for two LED luminaires to replace "Cobra-head" type luminaries. It is assumed that these two luminaires will be two different "sizes" of the same luminaire and will be three-step adjustable drive current type. The specifications will be developed using the DOE Municipal Solid-State Street Lighting Consortium's Model Specification for LED Roadway Luminaires as a guideline. Include the specification of integral control electronics compatible with citywide wireless control system. The specifications will be non-proprietary performance specifications describing all relevant photometric, electrical, physical, and durability, characteristics of the luminaires.

4. Develop complete and detailed specifications for LED luminaires to replace specialty type luminaries.

    - 1907 pendant teardrop
    - Washington Acorn post-top
    - Shoebox (Kendall Square)
    - Shepherds crook

    The specifications will be developed using the DOE Municipal Solid-State Street Lighting Consortium's Model Specification for LED Roadway Luminaires as a guideline. Include the specification of integral control electronics compatible with citywide wireless control system. The specifications will be non-proprietary performance specifications describing all relevant photometric, electrical, physical, and durability, characteristics of the luminaires.

    The lighting consultant would provide these specifications but they may not be included in the bid documents, but may be used by the City Electrical Department in the procurement of the fixtures.

5. Develop a complete and detailed specification for a citywide wireless street lighting control system. This specification will be a performance specification but will be based on existing, available systems and technology.

    Development of this specification may involve working with the Electrical Department to pilot technologies or system types.

6. Prepare and submit NStar rebate applications on behalf of the City. Consultant to be responsible for taking City through approval process for utility incentives
    For the remote wireless system, develop energy savings estimates, if required, using acceptable methodology to facilitate approval of utility incentives.

7. Develop, in consultation with the City, additional specification language such as:

    - Description of Work
    - Reference Standards
    - Submittals
    - Quality Assurance
    - Warranty
    - Installation
    - Field Quality Control
    - Adjusting and Cleaning
    - Disposal

8. Develop a replacement plan for "cobra head" type luminaires that defines the new luminaire type to be used to replace an existing cobra head with a specific wattage. Review existing lighting to look for streets that are currently over or under-lighted where deviation from the replacement rules should occur. This will require review of inventory documentation and nighttime surveys. Produce a replacement matrix and a list of areas or streets where the matrix is to be deviated from, and the replacement rules for those streets. Produce an estimate of the quantities of each luminaire required. The bid documents will require the contractor to provide an add/deduct price per luminaire.

9. Construction Administration services may include:

    - Assist with routine questions from bidders during bidding.
    - Review luminaire submittals and provide submittal review comments.
    - Perform nighttime field observation of completed installations to verify that the correct luminaires are installed, that they are functioning and are installed correctly, and that controls are functioning. This is limited to what can be observed from the ground. Submit field reports.

10. Commissioning of control system

The Consultant wil work with the City to determine the most appropriate method to Commission the master control system.

11. Timeline for completion of the project:

Funds for the acquisition of the fixtures and conversion of the Street lights will be available beginning Fall 2012. Project will be funded and completed over a 3 year period.

The successful offerors will interface with the City Manager's Office, the Electrical Department, the Public Works Department, the Community Development Department, the Purchasing Department, and other consultants retained by the City, as needed.

The successful offerors shall be familiar working with municipalities. Familiarity with the City of Cambridge is particularly desirable. The successful offeror must be familiar with construction methods, working drawings, public bid procedures, and electrical and fire safety codes.

Prospective proposers must demonstrate the ability to provide the services described in this document, must meet all minimum criteria, and must submit a complete proposal.

A contract will be awarded within 90 days of the proposal submission date, unless the award date is extended by consent of all parties concerned.

CONSULTANT PROJECT TEAM

The City shall enter into a contract with a vendor, which may be a person, a corporation, a partnership, or a joint venture ("Project Team"). The contract will be managed by the Electrical Department. The proposal must demonstrate that Project Team members have the specific experience outlined in this request. A Team Leader for the Project Team must be designated.

Attachments: 2010 Cambridge Lighting Study Report
2012 City of Cambridge Street Lighting Manual
Park Lighting Inventory

+++++

Each member of the Team must have demonstrated successful experience within his or her discipline. Members of the Project Team who are registered with a professional organization should provide evidence of registration or licensing to practice professionally within the Commonwealth of Massachusetts.

REGULATIONS

The project design must comply with all applicable federal and state laws and City ordinances and regulations.

The Project Team's recommendations should be informed by requirements in the Americans with Disabilities Act of 1990 (42 U.S.C. § 1210 et seq), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §791 et seq), and the Massachusetts Architectural Access Board (M.G. L. c. 22 § 13A).

SECTION II: GENERAL TERMS AND CONDITIONS

1. The contracts awarded for this project will be between the City of Cambridge and the consultant, and will be administered by the Department of Public Works.

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.

SECTION III: INSTRUCTIONS TO OFFERORS

1. One original and Six (6) copies of the proposal **(no hard binders)** marked "RFP for Design Services Street Lighting LED Conversion" must be received by Cynthia H. Griffin, Purchasing Agent, City of Cambridge, 795 Massachusetts Avenue, Cambridge prior to 11:00 a.m., on Thursday, November 15, 2012. 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.

2. All requests for clarification or any questions about information contained in this RFP must be submitted in writing and addressed to Cynthia H. Griffin, Purchasing Agent, City of Cambridge, City Hall, 795 Massachusetts Avenue, Cambridge, MA 02139 **or submitted by fax (617-349-4008).** Requests for clarification or questions and responses will be posted to the Purchasing website in the form of an Addendum.

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(s). Note that the City intends to aggressively negotiate low overhead and mark-up costs for sub-consultants particularly when the work primarily involves only the sub-consultant.

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 affecting implementation, and the timeliness of the product.

4. Interviews: The Selection Committee may interview finalists to determine if the offerors are responsive and responsible, and meet the needs of the City. Offerors should therefore be prepared to travel to Cambridge for this interview, which should include the Team Leader and additional key personnel who will be working on projects on a day-to-day basis. The City will not assume any travel costs related to these interviews.

5. Award of Contract: The City may award a contract to a responsive and responsible offeror. 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 Form for Municipalities and Public Agencies not within DSB Jurisdiction attached.

2. Section VII- Quality Requirements and Addendum confirmation.

3. Anti- Collusion/ Tax Compliance Statement

4. Designer's Truth in Negotiations Certificate

5. Cori Compliance Form

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 by the proposed project team in designing similar projects as outlined in the scope of services.

2. Quality of work, as determined by information on other projects on which the firm and the personnel has worked. The offeror should provide detailed information about previous projects that are similar to work proposed in this scope of services.

3. Professional qualifications: The Project Team has the requisite knowledge and experience as outlined in Section I - Consultant Project Team. In addition, the relevant personnel on the team have the professional licenses required to execute this project.

4. Quality of references: The consultant should provide at least three references who should be able to comment substantively and positively on their experiences with the consultant.The City reserves the right to use itself as a reference.

5. Capacity and Timeliness: The project team appears to have the capacity to undertake this project in a timely manner.

6. Responsiveness to Scope of Services. The Project Team has demonstrated that it understands the requirements of the scope and has proposed a strategy for carrying out the work effectively.

SECTION VII QUALITY REQUIREMENTS

A "NO" response, a failure to respond, or a failure to meet any of the following Quality Requirements will result in a rejection of your proposal.

Please check YES or NO for each of the Quality Requirements listed below:

1. The offeror has three or more years of documented experience in LED Street light technology.

   YES _____ NO _____

2. The offeror has experience with public bid procedures including M.G.L. Chapter 30 39m, 30B, and procuring products via State contract.

   YES _____ NO _____

This proposal includes Addenda Numbered:_____

Addenda will be posted to the Purchasing Department website. Bidders will not be notified individually of Addendums. It is the responsibility of the bidder to check the website for Addendums. Please check the website for Addendums before submitting your proposal.

Vendor Registry
Please check the bidders list on the website. If your firm in not listed on the bidders list please click on "Registry" and notify us that you have downloaded the proposal.

RETURN THIS FORM WITH YOUR PROPOSAL

NAME OF BIDDER:_____

Commonwealth of Massachusetts **Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction (Updated February 2011)**	1. Project Name/Location For Which Firm Is Filing:	2. Project # This space for use by Awarding Authority only.

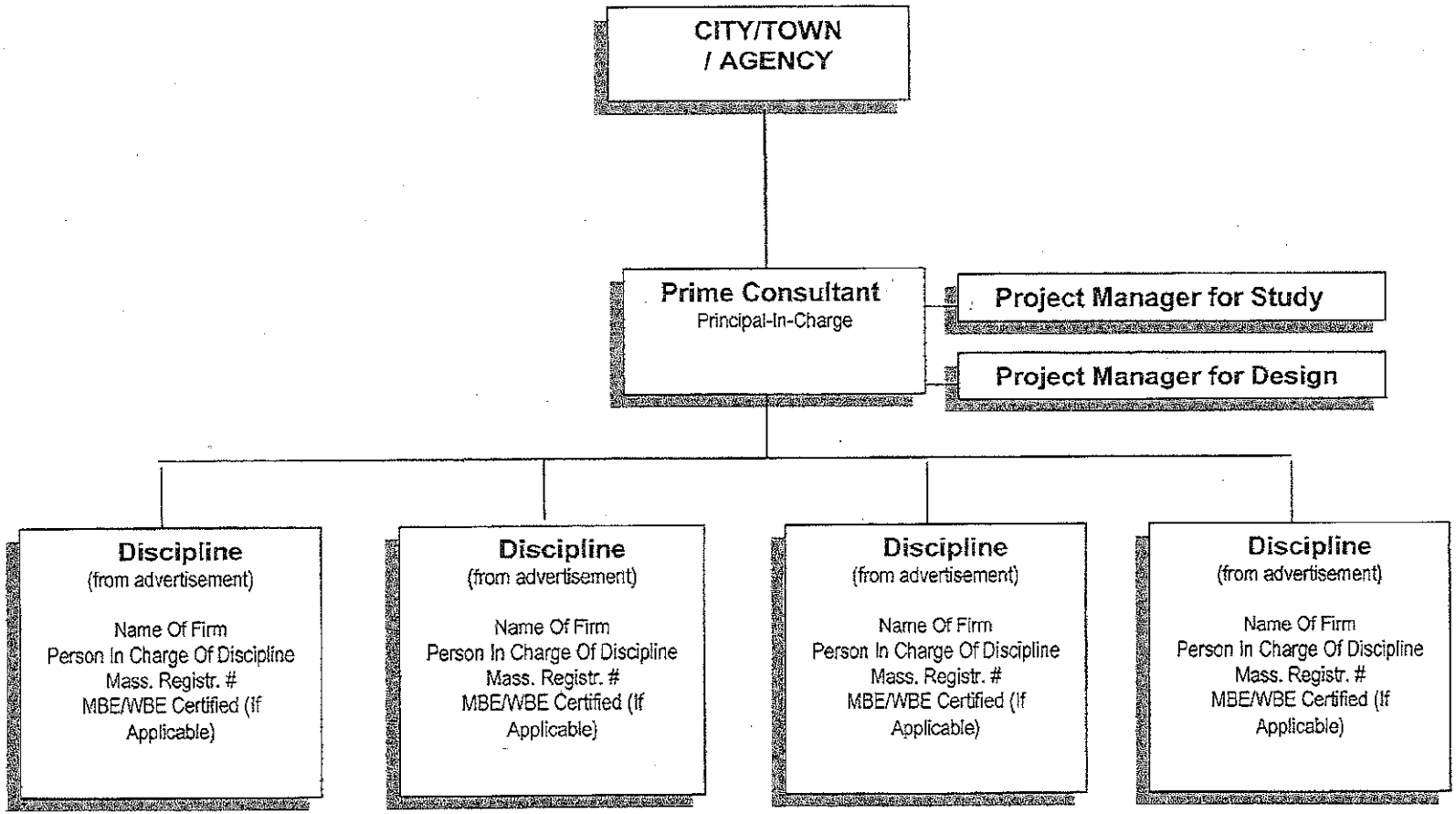
3a. **Firm (Or Joint-Venture) - Name and Address Of Primary Office To Perform The Work:**	3e. Name Of Proposed Project Manager: For Study: (if applicable) For Design: (if applicable)
3b. Date Present and Predecessor Firms Were Established:	3f. Name and Address Of Other Participating Offices Of The Prime Applicant, If Different From Item 3a Above:
3c. Federal ID #:	3g. Name and Address Of Parent Company, If Any:
3d. Name and Title Of Principal-In-Charge Of The Project (MA Registration Required): Email Address: Telephone No: Fax No.:	3h. Check Below If Your Firm Is Either: (1) SDO Certified Minority Business Enterprise (MBE) ☐ (2) SDO Certified Woman Business Enterprise (WBE) ☐ (3) SDO Certified Minority Woman Business Enterprise (M/WBE) ☐

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):

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	____	(____)

5. Has this Joint-Venture previously worked together? ☐ Yes ☐ No

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:



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.

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

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)	Construction Costs (In Thousands) (Actual, Or Estimated If Not	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; A.C. = Administration of Contract

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 ½" 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.

Be Specific – No Boiler Plate

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 5 Years and In Excess Of $50,000 Per Incident. Please Include Project, Client Names and Explanation. (Attach Separate Sheet If Necessary): **PLEASE ANSWER "YES" or "NO". IF "YES" PLEASE GIVE DETAILS.**

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 (Signature) _____ Printed Name and Title _____ Date _____

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 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.

Reference: M.G.L. c. 7, §38H(b)

_____
«NAME OF ARCHITECT»
BY:

_____
SIGNATURE TITLE

_____
PRINT NAME OF SIGNATORY

_____
DATE

PROJECT: «NAME OF PROJECT»

Return this form with your proposal

CITY OF CAMBRIDGE CORI POLICY

1. Where Criminal Offender Record Information (CORI) checks are part of a general background check for employment or volunteer work, the following practices and procedures will generally be followed.

2. CORI checks will only be conducted as authorized by Criminal History Systems Board (CHSB). All applicants will be notified that a CORI check will be conducted. If requested, the applicant will be provided with a copy of the CORI policy.

3. An informed review of a criminal record requires adequate training. Accordingly, all personnel authorized to review CORI in the decision-making process will be thoroughly familiar with the educational materials made available by the CHSB.

4. Prior to initiating a CORI check, the City will review the qualifications of the applicant to determine if the applicant is otherwise qualified for the relevant position. The City will not conduct a CORI check on an applicant that is not otherwise qualified for the relevant position.

5. Unless otherwise provided by law, a criminal record will not automatically disqualify an applicant. Rather, determination of suitability based on CORI checks will be made consistent with this policy and any applicable law or regulations.

6. If a criminal record is received from CHSB, the authorized individual will closely compare the record provided by CHSB with the information on the CORI request form and any other identifying information provided by the applicant, to ensure the record relates to the applicant.

7. If, in receiving a CORI report, the City receives information it is not authorized to receive (e.g. cases with dispositions such as not guilty or dismissal, in circumstances where the City is only authorized to receive convictions or case-pending information), the City will inform the applicant and provide the applicant with a copy of the report and a copy of CHSB's *Information Concerning the Process in Correcting a Criminal Record* so that the applicant may pursue correction with the CHSB.

8. If the City of Cambridge is planning to make an adverse decision based on the results of the CORI check, the applicant will be notified immediately. The applicant shall be provided with a copy of the criminal record and the City's CORI policy, advised of the part(s) of the record that make the individual unsuitable for the position and given an opportunity to dispute the accuracy and relevance of the CORI record.

9. Applicants challenging the accuracy of the criminal record shall be provided a copy of CHSB's *Information Concerning the Process in Correcting a Criminal Record.* If the CORI record provided does not exactly match the identification information provided by the applicant, the City of Cambridge will make a determination based on a comparison of the CORI record and documents provided by the applicant. The City of Cambridge may contact CHSB and request a detailed search consistent with CHSB policy.

10. If the City of Cambridge reasonably believes the record belongs to the applicant and is accurate, then the determination of suitability for the position will be made. Unless otherwise provided by law, factors considered in determining suitability may include, but not be limited to the following:

(a) Relevance of the crime to the position sought;
(b) The nature of the work to be performed;
(c) Time since the conviction;
(d) Age of the candidate at the time of offense;
(e) Seriousness and specific circumstances of the offense;
(f) The number of offenses;
(g) Whether the applicant has pending charges;
(h) Any relevant evidence of rehabilitation or lack thereof;
(i) Any other relevant information, including information submitted by the candidate or requested by the City.

11. The Personnel Department will assist affected departments, in assessing the suitability of candidates in accordance with paragraph 10 a through i above, to ensure consistency, fairness, and protection of employment opportunities and the public interest.

12. The City of Cambridge will notify the applicant of the decision and the basis of the decision in a timely manner.

13. CORI information shall not be disseminated or shared with any unauthorized employees or other, but shall be maintained in confidence consistent with the obligations of law.

Revised May 5, 2007

CORI COMPLIANCE FORM

Persons and businesses supplying goods and/or services to the City of Cambridge ("Vendors"), who are required by law to perform CORI checks, are further required by Section 2.112.060 of the Cambridge Municipal Code to employ fair policies, practices and standards relating to the screening and identification of persons with criminal backgrounds through the CORI system. Such Vendors, when entering into contracts with the City of Cambridge, must affirm that their policies, practices and standards regarding CORI information are consistent with the policies, practices and standards employed by the City of Cambridge as set forth in the City of Cambridge CORI Policy ("CORI Policy") attached hereto.

CERTIFICATION

The undersigned certifies under penalties of perjury that the Vendor employs CORI related policies, practices and standards that are consistent with the provisions of the attached CORI Policy. **All Vendors must check one of the three lines below**.

1. _____ CORI checks are not performed on any Applicants.

2. _____ CORI checks are performed on some or all Applicants. The Vendor, by affixing a signature below, affirms under penalties of perjury that its CORI policies, practices and standards are consistent with the policies, practices and standards set forth in the attached CORI Policy.

3. _____ CORI checks are performed on some or all Applicants. The Vendor's CORI policies, practices and standards are not consistent with the attached CORI Policy. Please explain on a separate sheet of paper.

_____ _____
(Typed or printed name of person signing quotation, bid or Proposal) Signature

_____
(Name of Business)

NOTE:
The City Manager, in his sole discretion may grant a waiver to any Vendor on a contract by contract basis.

Instructions for Completing CORI Compliance Form:
A Vendor should not check Line 1 unless it performs NO CORI checks on ANY applicant. A Vendor who checks Line 2 certifies that the Vendor's CORI policy conforms to the policies, practices and standards set forth in the City's CORI Policy. A Vendor with a CORI policy that does NOT conform to the City's CORI Policy must check Line 3 and explain the reasons for its nonconformance in writing. Vendors, who check Line 3, will not be permitted to enter into contracts with the City, absent a waiver by the City Manager.

This form must be submitted with your proposal

File no.

AGREEMENT FOR DESIGNER SERVICES
BETWEEN
THE CITY OF CAMBRIDGE
AND
THE ARCHITECT

This Agreement made on the _____ is between the City of Cambridge ("the **City**"), City Hall, 795 Massachusetts Avenue, Cambridge, MA 02139 and _____("the **Architect**") located at _____

for the services described herein and in the attached APPENDIX A, Request for Proposals ("RFP").

The **City** and the **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 venturers.

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 **Architect** which is titled: Agreement for Designer Services between the City Of Cambridge and the **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 **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 **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 **Architect** and the **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 **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. 149, §§44A-H, 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 **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 **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 **Architect** shall decide what constitutes "minor," "incomplete," "unsatisfactory," and "materially" and the **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 **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 ARCHITECT'S RESPONSIBILITIES

2.1. **STANDARD OF PERFORMANCE.** The 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 **Architect's** services under this Agreement shall be performed as expeditiously as is consistent with such standards. The **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 architectural, structural, mechanical, and electrical design of the Project.

As a requirement of contract with the City of Cambridge, the design team and all consultants must agree not to engage in any design services for the general contractor or filed sub-bidders including any tier subs-bidders of either relating to this project. It is a contract requirement that the Architect include this language with all of their consultant contracts and provide verification to the City of Cambridge Purchasing Department that all parties agree to these terms.

2.2. **SCHEDULE OF PERFORMANCE.** Upon request of the **City**, the **Architect** shall submit for the **City's** approval a schedule for the performance of the **Architect's** services, which schedule shall be attached hereto as APPENDIX B. The time limits established by the schedule approved by the **City** shall not be exceeded by the **Architect**, except as otherwise provided herein. Time is of the essence and time periods established by the attached APPENDIX B shall not be exceeded by the **Architect** except for delays due to causes outside the **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 **Architect** or any of its consultants).

2.3. **TIMELINESS OF INTERPRETATIONS, CLARIFICATIONS, AND DECISIONS.** With regard to all phases of this Agreement, the **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 **Architect's** services.

2.4. **RELATIONSHIP WITH THE CITY.** For the purposes of this Agreement, the **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 ARCHITECT'S BASIC SERVICES

3.1. **IN GENERAL.**

3.1.1. The **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, testing services, and related information and reports reasonably required by the Project, civil engineers; landscape architect; independent cost estimator; fire protection, life safety, lighting, interior design, asbestos assessment, and movable equipment consultants; and normal structural, mechanical, and any other engineering services necessary to produce a complete and accurate set of Construction Documents (the cost for any and all professional services is not subject to profit adjustments);

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 **Architect** is called as a witness in a court of competent jurisdiction in a matter in which the **Architect** is a named party, the **Architect** will not be additionally compensated. If the **Architect** is called by the **City** as a witness in a matter in a court of competent jurisdiction in which the **Architect** is not a named party, the **Architect** will be compensated according to APPENDIX C attached hereto;

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 **Architect's** obligations under this paragraph shall include preparing plans and other materials reasonably required in connection with any such hearings, presentations, and conferences;

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 **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 **Architect** which are discovered to be defective during any Phase will be promptly corrected by the **Architect** at no cost to the **City**, and the **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 **Architect's** services shall in no way alter the **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 **Architect** shall prepare record drawings incorporating all changes made to the construction documents during the construction administration phase. These record drawings will be prepared using all changes made by the Architect to the construction documents, including but not limited to sketches associated with responses to Requests for Information and Architect's Supplemental Instructions and annotated, marked-up drawings ("red-lines") or other changes to the construction documents made or provided by the Builder.

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 **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 **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 **Architect** shall review with the **City** alternative approaches to the design and construction of the Project.

3.2.5. Schematic Design Documents. The **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. Independent Cost Estimators. As part of the Basic Services and when

requested by the **City**, the **Architect** shall retain the services of an independent cost estimator whose responsibilities shall include without limitation all cost estimates described in this Agreement, estimates of the cost of Proposed Change Orders and assistance in establishing a Change Order budget, and review and confirmation of the Contractor's cost estimates.

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

3.2.8. Life-Cycle Cost Estimates. If this Agreement includes 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 **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 **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 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 **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 **Architect**, or as otherwise provided herein.

3.4. CONSTRUCTION DOCUMENT PHASE.

3.4.1. Commencement. The **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 **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 **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 **Architect** with copies of all **City**-generated forms and documents intended to be included in the Project Manual. The **Architect** will include these forms and documents in its Project Manual. It

is the responsibility of the **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 **Architect** to include any such documents will be borne by the **Architect** and not charged to the **City**, where such failure is the fault of the **Architect**. The **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 **Architect** shall prepare and submit to the **City** for approval the entire Project Manual. The **Architect** is responsible for ensuring that the Construction Documents comply with all statutory requirements. The **Architect** will cause the printing of the Project Manuals unless the **City** instructs the **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.

3.4.5. Addenda. All addenda shall be issued by the Purchasing Agent; however, at the Purchasing Agent's sole discretion, the **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 **Architect** at no charge to the **City**.

3.4.6. Printing of Project Manual. The **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 **Architect** or persons within its control will be promptly corrected at no cost to the **City**. The **Architect** shall make its best efforts to print Project Manuals on paper containing a minimum of thirty percent (30%) post consumer content.

3.4.7. Packaging the Project Manual.. The **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 **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 **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. 149, §44J and ends on the date the Construction Phase begins.

3.5.2. Additional Bidders. The **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 **Architect** will notify "eligible" and "responsible" persons (as those terms are defined in the M.G.L. c. 149, §44A) of the Invitation to Bid.

3.5.3. When Lowest Bid Exceeds Total Construction Cost. If the lowest bona fide bid by a Contractor 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 **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 revisions pursuant

to this paragraph shall be at the **Architect's** sole cost and expense (which cost and expense include, but are not limited to the **Architect's** time, the cost of reprinting the Project Manual, and the cost of re-advertisement of the Project).

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

3.5.5. Investigation of Bidders. The **Architect** shall investigate, at minimum, the lowest Bidder. The investigation shall include, but is not limited to, reviewing the files maintained by the Division of Capital Asset Management, 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 architects from such prior projects, visiting the sites of such other projects and checking all other appropriate references. The **Architect** shall provide the **City** with a detailed letter of recommendation of approval or disapproval of 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.149, §44A(1), or, if appropriate, M.G.L. c. 29, §29F). If the **Architect** recommends disapproval of the lowest Bidder, then the **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 **Architect** must provide the **City** with a detailed letter as described above.

3.5.6. Preparation of Contract. To the extent required, the **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 Architect's Duties, Etc. Construction Phase duties, responsibilities, and limitations of authority of the **Architect** shall not be extended without written agreement of the **City** and the **Architect.** Any restrictions or modifications to the **Architect's** duties and responsibilities can be imposed by the **City** without the consent of the **Architect**.

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

3.6.4. Site Visits. The **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 **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 **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 **Architect** shall not be required to make continuous on-site inspections to check the quality or quantity of the Work. The **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 **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 **Architect** shall also be required to be present when governmental authorities having jurisdiction over the Project visit the Site to inspect the Work. The **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 **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 **Architect** shall promptly report to the **City** any perceived irregularities.

3.6.7. Contractor's Schedule. Except as otherwise provided in this Agreement, the **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 **Architect**. Except as otherwise provided in this Agreement, the **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 **Architect** of its obligations to the **City** elsewhere in this Agreement. The **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 **Architect**. Communications by and with the **Architect's** consultants shall be through the **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 **Architect's** observations of the Work and evaluations of the Contractor's applications for payment, the **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 **Architect's** certification for payment shall constitute a representation to the **City** based on the **Architect's** observations at the site and on the data comprising the Contractor's application for payment that 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 **Architect**. Timely payment of Contractor is required by M.G.L. c. 30, §39K; therefore, the **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 **Architect** shall have the responsibility, obligation, and authority to reject Work which (1) does not conform to the Contract Documents; (2) which the **Architect** believes to be defective; and (3) the **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 **Architect** considers it necessary or advisable for implementation of the intent of the Contract Documents, the **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 **Architect** must obtain the **City's** prior written approval of any such special inspection or testing. However, neither this authority of the **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 **Architect** to the Contractor, Subcontractors, Suppliers, other persons performing portions of the Work.

3.6.11. Submittals. The **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. The **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 **Architect** and, in any event, such action shall be taken within fourteen (14) days after submittal to the **Architect**. The **Architect** shall indemnify the **City** for any monies paid by the **City** to the Contractor as a result of the **Architect's** unreasonable 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 **Architect's** review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the **Architect**, of construction means, methods, techniques, sequences, or procedures. The **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 **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 **Architect** shall prepare Change Orders and Work Change Directives, with supporting documentation and data if deemed necessary by the **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 Architect.

3.6.13.1. The **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 **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 **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 **Architect** may, as the **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 **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 **Architect**.

3.6.13.2. Time Limit for Rendering Decisions. The **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 **Architect's** decisions on matters relating to aesthetic effect must be consistent with the **City's**. The **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 **Architect** for action as provided herein.

3.6.15.2. Time Period and Action. The **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 **Architect**); or

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

If the **Architect** requests additional information, the **Architect** shall take action with respect to the Claim no later than seven (7) days after receipt of the additional information. The **Architect** shall notify the parties in writing of its disposition of such Claim. If the **Architect** decides that the Work relating to such Claim should proceed regardless of its disposition of such Claim, the **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 Architect. (*Reference:* M.G.L. c. 30, §39P). In every case in which this Contract requires the **City**, any official, or its **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 **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 **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 **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 **Architect** and the **Architect's** engineering consultants. The **Architect** shall provide to the **City** a written report of all findings with recommendations for appropriate action. The **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 **Architect** is satisfied that all such documents are complete as required by the Contract Documents, the **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 **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 **Architect** and the **Architect's** engineering consultants.

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

3.6.19. Limitation on the Architect's Responsibilities.

3.6.19.1. Neither the **Architect's** authority to act under the provisions of the Contract Documents nor any decision made by the **Architect** in good faith to exercise or not to exercise such authority shall give rise to any duty or responsibility of the **Architect** to the Contractor, any Subcontractor, any Supplier, any surety for any of them, or any other person.

3.6.19.1.1. The **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 **Architect** will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The **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

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 **Architect** claims to be an Additional Service, the **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 **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 **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 **Architect** shall not be entitled to receive compensation for any additional service if such service was required due to the fault of the **Architect** or the **Architect's** failure to perform in accordance with the terms of this Agreement. Neither the **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 **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 **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 **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 are set forth in APPENDIX D.

5.2. **HAZARDOUS MATERIALS.** Unless otherwise provided in this Agreement, the Architect and the Architect's consultants, other than the Architect's hazardous materials consultant, 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. The Architect shall hire a hazardous materials consultant who shall report to the Architect and

through the Architect, the City the presence and location of any hazardous material observed or discovered by the hazardous materials consultant (or any material suspected to exist) or that a hazardous materials consultant of similar skill and expertise should have observed, and shall design for the Architect the plan and specifications for removal of any such hazardous materials to the Architect's satisfaction.

ARTICLE 6

THE CITY'S RESPONSIBILITIES

6.1. **REQUIREMENTS FOR THE PROJECT**. The **City** shall consult with the **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 **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 **Architect** in order to avoid unreasonable delay in the orderly and sequential progress of the **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.

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 **Architect** to perform its services under this Agreement. The **Architect** shall review and confirm the sufficiency of any test and information furnished to the **Architect** by or on behalf of the **City** pursuant to this section.

6.6. **NOTICE OF FAULT OR DEFECT.** The **City** shall give prompt written notice to the **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 ARCHITECT'S PLANS, SPECIFICATIONS, AND OTHER DOCUMENTS

7.1. **IN GENERAL.** The Plans, Specifications, and other documents prepared by the **Architect** for this Project are instruments of the **Architect's** service for use solely with respect to this Project and, unless otherwise provided, the **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 **Architect's** Plans, Specifications, and other documents for information and reference in connection with the **City's** use and occupancy of the Project. The **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 **Architect** as to the reason for validity of the termination, provided only that the **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. In the event the City uses the Plans, Specifications, or other documents prepared by the Architect for any purpose other than in connection with this Project pursuant to the provisions of this Agreement without retaining the Architect in connection any such use of the Plans, Specifications or other documents prepared by the Architect, the City releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses.

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 **Architect's** reserved rights herein.

ARTICLE 8

BASIS OF COMPENSATION

8.1. **IN GENERAL.** For Basic Services, compensation shall be as provided in APPENDIX E.

8.2. **STIPULATED SUM.** Where the compensation is based on a stipulated sum, progress payments for Basic Services in each phase shall be as stated in APPENDIX F.

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 **Architect's** services, the **Architect** shall continue to perform in accordance with the terms of this Agreement during the course of any renegotiation of the **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 ARCHITECT.** For Additional Services of the **Architect**, compensation shall be as stated in APPENDIX C.

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

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

ARTICLE 9

PAYMENT TO THE ARCHITECT

9.1. The **City** shall make payments directly to the **Architect** within forty-five (45) days after the **City** receives and approves the **Architect's** detailed certified monthly statement. The detailed monthly statement must include, at minimum, itemized hours and work performed by the **Architect** (including, but not limited to, all employees of the **Architect** and its agents), and an itemized list of Reimbursable Expenses. Records of the **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 **Architect's** compensation, if the **Architect** has not properly performed the services required in accordance with the terms of this Agreement

ARTICLE 10

INSURANCE REQUIREMENTS

10.1. The **Architect** at its own expense must obtain and maintain a professional liability insurance policy covering negligent errors, omissions, and acts of the **Architect** or of any person for whose performance the **Architect** is legally liable arising out of the performance of such contracts for design services. The **City** may require a consultant employed by the **Architect** subject to this subparagraph to obtain and maintain a similar liability insurance policy. If the **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 hereto as APPENDIX H. Any amendments these insurance requirements are set forth in APPENDIX H.

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 **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 the amount of $5,000,000 or ten per cent (10%) of the Project's estimates cost of construction, 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 **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 **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 **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 **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 **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 **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 **Architect** or of its subcontractors that directly pertain to and involve transactions relating to, the **Architect** or its subcontractors.

11.3. The **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 therefor, and shall accompany said description with a letter from the **Architect's** independent certified public accountant approving or otherwise commenting on the changes.

11.4. The **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 **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 **Architect** must file with the **City** a statement of management as to whether the system of internal accounting controls of the **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 **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:

11.6.1. 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

11.6.2. 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 **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 **Architect**. In the event this Agreement is terminated by the **City** pursuant to this paragraph, the **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 **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 **Architect**, with no resulting fee adjustment to the **Architect**, unless such suspension extends for more than twelve (12) months, in which case the **Architect's** compensation shall be equitably adjusted when the project is resumed to provide for expenses incurred in the interruption and resumption of the **Architect's** services. The **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 **Architect** in accordance with this Agreement or persistent failure of the **City** to pay the **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 **Architect** may, upon thirty (30) days' written notice to the **City**, suspend performance of services under this Agreement. Unless the **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 **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 **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 **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 **Architect** of its obligations thereunder.

13.5. **ENTIRE AGREEMENT.** This Agreement represents the entire and integrated agreement between the **City** and the **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 **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 **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 in APPENDIX I. 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 **Architect** shall be and shall remain liable to the **City** for all damages incurred by the **City** as the result of the **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 **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 **Architect** shall indemnify and defend the **City** from and against all claims, costs, and liability arising out of the **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 **Architect**, or breaches by the **Architect** of its obligations hereunder or (with respect to the Architect's duty to defend) are claimed to be the result thereof.

13.11. **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 in the attached APPENDIX J. The **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 in APPENDIX J shall be subject to the **City's** written approval.

13.12 **USE OF PROJECT-RELATED DOCUMENTS.** The **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 **Architect's** promotional and professional materials. The **Architect's** materials shall not include the **City's** confidential or proprietary information if the **City** has previously advised the **Architect** in writing of the specific information considered by the **City** to be confidential or proprietary. The **City** shall provide professional credit for the **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 **Architect**.

ARTICLE 14

CERTIFICATIONS

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

14.1.1. the **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 **Architect** has given, offered or agreed to give any gift, contribution, or offer of employment to the **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 **Architect**;

14.1.3. no person, corporation, or other entity, other than a bona fide, full-time employee of the **Architect** has been retained or hired to solicit for or in any way assist the **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 **Architect** has internal accounting controls as required by M.G.L. c. 30, §39R and the **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 **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 **Architect's** financial statements, as provided by M.G.L. c. 7, §38H(e) and

14.1.5. the 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 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 Engineer has complied with all the laws of the Commonwealth pertaining to taxes, reporting of employees and contractors, and withholding and remitting child support (M.G.L. c. 62C, §49A).

CITY OF CAMBRIDGE	ARCHITECT
_____	_____
Robert W. Healy City Manager	Signature
APPROVED AS TO FORM:	By:
_____	_____
Nancy E. Glowa Acting City Solicitor	Print Name and Title
APPROVED AS TO THE AVAILABILITY OF FUNDS:	
_____	_____
City Auditor James Monagle	Purchasing Agent Cynthia H. Griffin

APPENDIX A

REQUEST FOR PROPOSALS
APPENDIX B

SCHEDULE OF PERFORMANCE OF THE ARCHITECT

APPENDIX C

COMPENSATION FOR ADDITIONAL SERVICES

	Out-of-Court	In Court
Witness Fee	$_____	$_____

APPENDIX
D

ADDITIONAL BASIC SERVICES

APPENDIX E

COMPENSATION FOR BASIC SERVICES

APPENDIX F

COMPENSATION BASED ON A STIPULATED SUM

APPENDIX G

COMPENSATION FOR ADDITIONAL SERVICES OF CONSULTANTS

APPENDIX H

CERTIFICATES OF INSURANCE
AND
ADDITIONAL INSURANCE REQUIREMENTS

APPENDIX I

NOTICES

Notice to the **City** shall be addressed to:

City Manager
City of Cambridge
795 Massachusetts Avenue
Cambridge, MA 02139
Facsimile: (617) 349-4007

Notice to the **Architect** shall be addressed to:

Name of Architect_____
Street Address_____
City/State/Zip Code_____
Phone Number_____
Fax Number_____

APPENDIX J

MASSACHUSETTS PROFESSIONAL REGISTRATION NUMBERS AND EXPIRATION DATES

NAME	REGISTRATION NUMBER	EXPIRATION DATES