FILE NO. 6733
REQUEST FOR QUALIFICATIONS ("RFQ")
FOR BROADBAND / INTERNET INFRASTRUCTURE DESIGN SERVICES

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, March 19, 2015** for furnishing the following to the City of Cambridge:

> The City of Cambridge "the City" seeks proposals for a consultant (or team of consultants) to provide technical analysis of the existing broadband / internet infrastructure, analyze alternatives for improving the internet infrastructure, and develop projects (plans, specifications and estimates) that the City can undertake to enhance the internet system. The Consultant must have extensive knowledge of broadband systems, municipal financing alternatives, and implementation of municipal networks and must have demonstrable experience in broadband infrastructure in a municipal environment.

This RFQ may be downloaded from the City's website. www.cambridgema.gov, Online Services, Purchasing Bid List, Design RFP, File No 6733.

Copies of this RFQ may be obtained at the Office of the Purchasing Agent on and after **THURSDAY, FEBRUARY 26, 2015** between the hours of 8:30 a.m. and 8:00 p.m. on Mondays, Tuesday thru Thursday, 8:30 a.m. to 5:00 p.m. and 12:00 Noon on Fridays.

The successful offeror must be an Equal Opportunity Employer.

The City of Cambridge reserves the right to reject any or all proposals, waive any minor informalities in the proposal process, and accept the proposal deemed to be in the best interest of the City.
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 this RFQ must be submitted in writing to **Amy L. Witts** at the address above or by fax (617-349-4008) by 11:00 a.m. **Monday, March 9, 2015.**

One original and seven (7) copies of the proposal marked "File No.6733, RFQ for Broadband/Internet Infrastructure Design Services" must be received by **Amy L. Witts**, Purchasing Agent, City of Cambridge, 795 Massachusetts Avenue, Cambridge prior to 11:00 a.m., on **Thursday, March 19, 2015.** 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.

Amy L. Witts
Purchasing Agent

CITY OF CAMBRIDGE
BROADBAND / INTERNET INFRASTRUCTURE DESIGN SERVICES
REQUEST FOR QUALIFICATIONS

SECTION I: SCOPE OF SERVICES

The City of Cambridge "the City" seeks proposals for a consultant (or team of consultants) to provide technical analysis of the existing broadband / internet infrastructure, analyze alternatives for improving the internet infrastructure, and develop projects (plans, specifications and estimates) that the City can undertake to enhance the internet system. The Consultant must have extensive knowledge of broadband systems, municipal financing alternatives, and implementation of municipal networks and must have demonstrable experience in broadband infrastructure in a municipal environment.

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.

The City will award a contract for Phase 1 within 90 days of the proposal submission date, unless the award date is extended by consent of all parties concerned. Contracts for Phases 2 and 3 of the Project will be awarded to the same offeror who receives the contract for Phase 1 based upon satisfactory performance on Phase 1 as determined solely by the City and based upon the City's sole determination to continue with Phases 2 and 3 and the availability of funds. The contract term for phase one is two years.

Background Information

City Manager Richard C. Rossi has appointed a Task Force to examine broadband service in Cambridge, evaluate the city's internet infrastructure, analyze alternatives for improving the internet infrastructure and develop projects (plans, specifications and estimates). The Task Force will examine options to increase competition, reduce pricing, and improve speed, reliability and customer service for both residents and businesses. Additionally, the Task Force will investigate scenarios for leveraging the City's current or future fiber assets to expand access to broadband services, such as service to Cambridge Housing Authority (CHA) properties.

The work of the Task Force will help to ensure that Cambridge remains a world-class City in which to live, work, innovate and learn. The final report of the committee will assist the City in planning for the future and setting realistic expectations with the public, as creating alternative solutions to single provider internet service can take years to fully implement.

The Task Force will meet every other month for 12 to 18 months and will be charged with:

- Engaging the broader community, including residents, business and university partners, in understanding their current and future broadband needs;
- Understanding and documenting existing broadband service in Cambridge – speed, reliability, cost and customer service;
- Understanding and documenting the existing broadband and fiber infrastructure – both private and public;
- Examining best practices and models used by other municipalities across the United States to improve access to broadband services;

- Developing a range of alternatives for improving access to broadband services, including: working with existing providers, increased private competition, a mesh network, a municipal fiber network connected to public housing properties, a municipal fiber backbone throughout the city and a complete municipal broadband network;
- Evaluating each alternative by conducting an analysis of the level of service provided, cost to customers and to the City, customer service, sustainability and flexibility of the system to adapt to improving technologies;
- Creating business models for providing internet service that include: funding, cost recovery, governance model, and subscription structure, including options for people with limited ability to pay; and
- Developing recommendations for leveraging public- private partnerships, including regional initiatives, in achieving alternative access to broadband services.

The Task Force is comprised of approximately 20 residents, industry professionals and business representatives. The Task Force will be staffed by city staff from the City Manager's Office, Information Technology Department, Electrical Department, and the Department of Public Works.

Demographic Information

- City demographic profile
  - http://www.cambridgema.gov/CDD/factsandmaps.aspx
- Number of parcels
  - http://www.cambridgema.gov/GIS/gisdatadictionary.aspx

Scope of Work

The Project is divided into 3 Phases. A contract will be awarded for Phase 1 with the potential for contracts for Phases 2 and 3 based upon satisfactory performance of the successful offeror on Phase 1 as determined solely by the City and based upon the City's sole determination to continue with the work for Phases 2 and 3 and the availability of funding.

Phase 1

1. Assist City staff managing the Task Force process by
   a. Facilitating meetings.
   b. Developing an outreach strategy to engage the larger public.
   c. Developing summaries and presentations for Task Force meetings to clearly convey technical information and form the basis of informed Task Force discussions.
   d. Developing agendas, packaging Task Force materials for distribution and preparing meeting notes.

2. Engage the broader community, including residents, business and university partners, in understanding their current and future broadband needs;

3. Determine and document existing broadband service and fiber infrastructure in Cambridge as it relates to speed, reliability, cost and customer service. This determination and documentation should include but is not limited to;
   a. Conducting a random, unbiased survey of residences and businesses to understand the existing service and establish likely market penetration rates of alternative service providers.

b. Providing an overview of the current internet providers (Comcast, Light Tower, etc.), their services, marketing bundles, pricing strategies and coverage in Cambridge.
c. Providing a capacity assessment of the City fiber network that services schools, libraries and other municipal buildings.

4. Examine best practices and models used by other municipalities across the United States to improve access to broadband services.

5. Develop a range of alternatives for improving access to broadband services.

6. Evaluate each alternative by conducting an analysis of the level of service provided, cost to customers and to the City, customer service, sustainability, constructability and flexibility of the system to adapt to improving technologies.

7. Create a number of business model options for providing internet service that include: funding, cost recovery, governance model, and subscription structure, including options for people with limited ability to pay.

8. Assess legal requirements, risk and regulations relevant to the various alternatives.

9. Develop recommendations for leveraging public- private partnerships, including regional initiatives, in achieving improved access to broadband services.

Phase 2 (at the discretion of the City)

1. Develop plans, specifications and estimates for recommended City projects based on the information attained in Phase 1. Projects may range from expanding the existing city fiber network, to providing additional fiber access to public housing, to building a full municipal fiber network.
2. Develop 25%, 75%, and 90% plans and cost estimates to the City for review and comment. Following the City's review and approval of the 90% Plans, develop and submit final bid documents (plans and specifications).
3. This phase of the project will be more fully scoped after Phase 1 is completed.

Phase 3 (at the discretion of the City)

1. Provide construction management services for the implementation of City infrastructure improvements.
2. Attend pre-bid conference, respond to bidder questions, prepare addenda, evaluate the bids, check references, provide daily inspections of work, and provide construction project management services, including daily inspections.
3. This phase of the project will be more fully scoped after Phases 1 and 2 are completed.

Consultant Project Team

The City shall enter into a contract with **one** vendor(s) for Phase 1 (and possibly Phases 2 and 3), which may be a person, a corporation, a partnership, or a joint venture ("Project Team"). The contract will be managed by the Department of Public Works. 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.

The selected firm or individual must have as part of the team the following disciplines: Municipal Engineering (Design and Construction); Electrical Engineering, Computer Science or Information Systems; Cost Estimator; Community Relations; and Economic Analysis. Other disciplines may be added as needed.

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, state and local laws, rules and regulations.

SECTION II. - INSTRUCTIONS TO APPLICANTS

Required Submissions

Each proposal must contain, at minimum, the following documents:

1. DSB2014-Form 1;
2. resumés of all persons participating in the RFQ, including, but not limited to, the principals and consultants with a brief description of their respective responsibility(ies) on this Project.;
3. A list of at least three (3) entities, of which two must be in the public sector, for which you have conducted similar design services. Please include the name and telephone number of the contact person at each, the year of the contract, and the nature of the project. These contacts shall serve as references. Also, include no less than three personal references of the key members assigned to the project, also from former clients. Such references will be used to determine an offeror's responsibility. The City reserves the right to use itself as a reference.
4. a signed Truth in Negotiations Certificate;
5. a completed CORI form and;
6. a signed Anti Collusion/Tax Compliance Form.

Submission of the Proposal

One (1) original proposal (marked "ORIGINAL") and seven (7) of copies of the proposal in a sealed package marked "*File No. 6733,RFQ for Broadband / Internet Infrastructure Design Services*" must be delivered to Amy L. Witts, Purchasing Agent, City of Cambridge Purchasing Department, 795 Massachusetts Avenue, Third Floor, Cambridge, MA 02139 no later than 11:00 AM, Thursday, March 19, 2015. It is the responsibility of the applicant to insure that delivery is made in a proper and timely fashion. Any proposals received after such time will not be accepted, unless this date and time have been changed by addendum. Delivery to any other office or department does not constitute compliance with this paragraph. **There should be no mention of a fee or price in the proposal. Any mention of a fee or price will result in rejection of the proposal.**

Questions and Clarifications
Any questions or requests for clarification must be either submitted in writing to **Amy L. Witts, Purchasing Agent,** Cambridge City Hall, 795 Massachusetts Avenue, Cambridge, Massachusetts or faxed to 617-349-4008, no later than 11:00 a.m. on **MONDAY, MARCH 9, 2015**.

An Addendum will be posted to the Purchasing website with clarifications or answers to the questions. It is the responsibility of the offeror to check the websites for Addenda.

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

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

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

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

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

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

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

Once successful negotiations have concluded, the City will prepare the contract and submit it to the successful applicant for signature. Upon receipt of three (3) original executed contracts and all other required documents, the City will have the contracts signed by City officials, returning one original to the successful applicant. **All offerors must be willing to sign the City's contract, a sample of which is attached hereto. The City will not accept an offeror's terms and conditions.**

Failure to answer any question, to complete any form or to provide the documentation required may cause a proposal to be deemed non-responsive and could result in an automatic rejection of the proposal unless the City determines that such failure constitutes a minor informality.

Living Wage Requirements

The City of Cambridge has a Living Wage Requirement that establishes minimum hourly rates for all Personnel that work on any City contract. The City of Cambridge's Living Wage as of March 1, 2014 is $14.71 per hour. The Living Wage Requirements are attached.

SECTION III: EVALUATION OF THE OFFEROR'S QUALIFICATIONS

1. **Proposals:** Each offeror must submit a written proposal in response to this RFQ, which includes full and clear descriptions of the evaluation criteria outlined in Section IV below as well as all required submissions as outlined in Section II. The Designer Selection Committee will evaluate each proposal based on the evaluation criteria.

2. **Price Proposal (Should not be included with proposal submitted in response to this RFQ):** Price will not be considered when evaluating proposals submitted in response to this RFQ. After the finalists have been ranked, the City will enter into price negotiations with the first ranked offeror(s).

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, and the timeliness of the work. The City reserves the right to use itself as a reference to determine the responsibility of a vendor.

4. **Interviews:** The Designer Selection Committee may interview a minimum of three (3) 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 for Phase 1 of this Project. Contracts for Phase 2 and Phase 3 of this Project may be awarded to the same offeror based on satisfactory performance in Phase 1 of this Project as determined solely by the City and based upon the City's need and availability of funds. 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. **The successful offeror must be willing the sign the City's contract, a sample of which is attached hereto. The**

City will not accept an offeror's terms and conditions.

SECTION IV: PROPOSAL EVALUATION CRITERIA

The Designer Selection Committee will evaluate the merits of each proposal in order to determine if interviews are necessary and if so to determine which offerors to interview. If interviews are conducted a minimum of three (3) offerors will be chosen to interview. Proposals will be evaluated on the following:

1. **Experience:** as 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 (3) three references who should be able to comment substantively and positively on their experiences with the Project Team. 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.

Commonwealth of Massachusetts **Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction (Updated May 2014)**	1. Project Name/Location For Which Firm Is Filing:	2. Project # This space for use by Awarding Authority only.

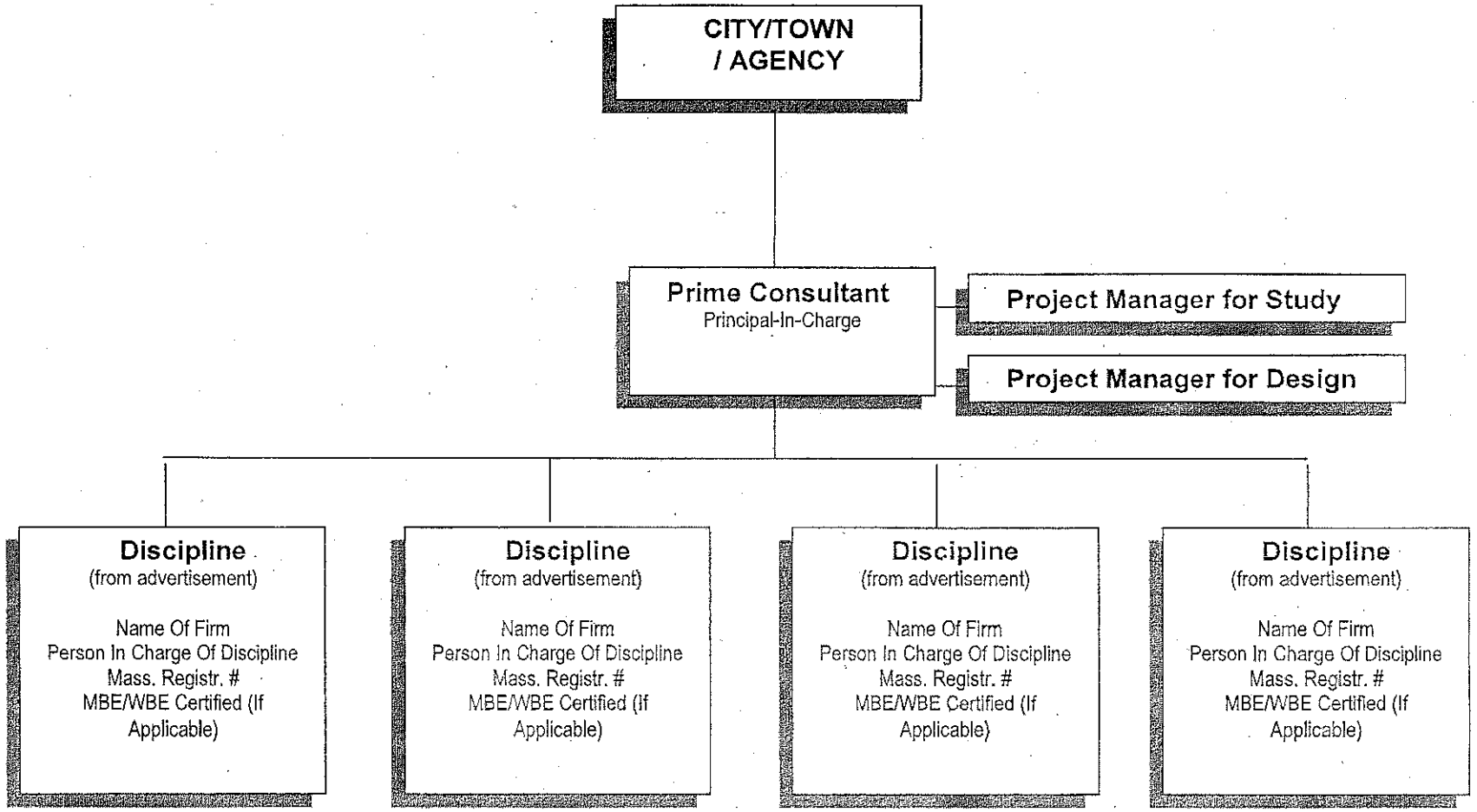
3a. **Firm (Or Joint-Venture) - Name and Address Of Primary Office To Perform The Work:**	3e. Name Of Proposed Project Manager: For Study: (if applicable) For Design: (if applicable)
3b. Date Present and Predecessor Firms Were Established:	3f. Name and Address Of Other Participating Offices Of The Prime 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. Include Resumes of Project Managers. 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.

# of Total Projects:	**# of Active Projects:**	**Total Construction Cost (In Thousands) of Active Projects (excluding studies):**

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 ENCOURAGED 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. Have monies been paid by you, or on your behalf, as a result of Professional Liability Claims (in any jurisdiction) occurring within the last 5 years and in excess of $50,000 per incident? Answer **YES** or **NO**. If YES, please include the name(s) of the Project(s) and Client(s), and an explanation (attach separate sheet if necessary).

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

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

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

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

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

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

16. I hereby certify that the undersigned is an Authorized Signatory of Firm and is a Principal or Officer of Firm. I further certify that this firm is a "Designer", as that term is defined in Chapter 7C, Section 44 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 _____

FILE NO. 6733- REQUEST FOR QUALIFICATIONS FOR BROADBAND / INTERNET INFRASTRUCTURE DESIGN SERVICES-THURSDAY, MARCH 19, 2015

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

FILE NO. 6733- REQUEST FOR QUALIFICATIONS FOR BROADBAND / INTERNET INFRASTRUCTURE DESIGN SERVICES-THURSDAY, MARCH 19, 2015

CITY OF CAMBRIDGE

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

For Negotiated Fees

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

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

BY: _____

Name and Title: _____

_____

Project: _____

Date: _____

Reference: M.G.L. c. 7, §38H(b)

RETURN THIS FORM WITH YOUR PROPOSAL

FILE NO. 6733- REQUEST FOR QUALIFICATIONS FOR BROADBAND / INTERNET INFRASTRUCTURE DESIGN SERVICES-THURSDAY, MARCH 19, 2015

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.

RETURN THIS FORM WITH YOUR PROPOSAL

FILE NO. 6733- REQUEST FOR QUALIFICATIONS FOR BROADBAND / INTERNET INFRASTRUCTURE DESIGN SERVICES-THURSDAY, MARCH 19, 2015

ORDINANCE NUMBER 1312

Final Publication Number 3155. First Publication in the Chronicle on December 13, 2007.

City of Cambridge

In the Year Two Thousand and Eight

AN ORDINANCE

In amendment to the Ordinance entitled "Municipal Code of the City of Cambridge"

Be it ordained that Cambridge Municipal Code Chapter 2.112 is hereby amended by adding a new Section 2.112.060 entitled "CORI Screening by Vendors of the City of Cambridge" as follows:

Adding after Section 2.112.050 the following new sections:

SECTION 2.112.060

CORI SCREENING BY VENDORS OF THE CITY OF CAMBRIDGE

Sections:

2.112.061 Purpose
2.112.062 Definitions
2.112.063 CORI-Related Standards of the City of Cambridge
2.112.064 Waiver
2.112.065 Applicability

2.112.061 Purpose

These sections are intended to ensure that the persons and businesses supplying goods and/or services to the City of Cambridge deploy fair policies relating to the screening and identification of persons with criminal backgrounds through the CORI system.

2.112.062 Definitions

Unless specifically indicated otherwise, these definitions shall apply and control.

Awarding Authority means the City of Cambridge Purchasing Agent or designee.

Vendor means any vendor, contractor, or supplier of goods and/or services to the City of Cambridge.

2.112.063 CORI-Related Standards of the City of Cambridge

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The City of Cambridge employs CORI-related policies, practices and standards that are fair to all persons involved and seeks to do business with vendors that have substantially similar policies, practices and standards. The City of Cambridge will do business only with vendors who, when required by law to perform CORI checks, employ CORI-related policies, practices, and standards that are consistent with policies, practices and standards employed by the City of Cambridge. The awarding authority shall consider any vendor's deviation from policies, practices and standards employed by the City of Cambridge as grounds for rejection, rescission, revocation, or any other termination of the contract.

2.112.064 Waiver

The City Manager may grant a waiver to anyone who or which has submitted a request for waiver if it is objectively reasonable; and the City Manager, or a delegate, shall report promptly in writing to the City Council all action taken with respect to every request for a waiver and the reasons for the decision.

2.112.065 Applicability

If any provision of these sections imposes greater restrictions or obligations than those imposed by any other general law, special law, regulation, rule, ordinance, order, or policy then the provisions of these sections shall control.

In City Council January 28, 2008.
Passed to be ordained by a yea and nay vote:-
Yeas 9; Nays 0; Absent 0.
Attest:- D. Margaret Drury, City Clerk.

A true copy;

ATTEST:-

D. Margaret Drury
City Clerk

FILE NO. 6733- REQUEST FOR QUALIFICATIONS FOR BROADBAND / INTERNET INFRASTRUCTURE DESIGN SERVICES-THURSDAY, MARCH 19, 2015

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

SAMPLE CITY CONTRACT

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

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

_____

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

The **City** and the **Designer**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 **Designer** which is titled: Agreement for Designer Services between the City Of Cambridge and the **Designer**, 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 **Designer**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 **Designer**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 **Designer**and the **Designers** 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 **Designer'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**Designer** 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 **Designer'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 **Designer**shall decide what constitutes "minor," "incomplete," "unsatisfactory," and "materially" and the **Designer'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 **Designer** 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 DESIGNER'S RESPONSIBILITIES

2.1. **STANDARD OF PERFORMANCE.** The Designer 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 **Designer's** services under this Agreement shall be performed as expeditiously as is consistent with such standards. The **Designer** 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.

2.2. **SCHEDULE OF PERFORMANCE.** Upon request of the **City**, the **Designer** shall submit for the **City's** approval a schedule for the performance of the **Designer'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 **Designer**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 **Designer** except for delays due to causes outside the **Designer'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 **Designer** or any of its consultants).

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

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

3.1. **IN GENERAL.**

3.1.1. The **Designer'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, geotechnical services, testing services, and related information and reports reasonably required by the Project, geotechnical and civil engineers; landscape architect; independent cost estimator; fire protection, life safety, lighting, interior design, asbestos removal, 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 **Designer** is called as a witness in a court of competent jurisdiction in a matter in which the **Designer** is a named party, the **Designer** will not be additionally compensated. If the **Designer** is called by the **City** as a witness in a matter in a court of competent jurisdiction in which the **Designer** is not a named party, the **Designer** 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 **Designer'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 **Designer** 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 **Designer** which are discovered to be defective during any Phase will be promptly corrected by the **Designer** at no cost to the **City**, and the **Designer** 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 **Designer's** services shall in no way alter the **Designer'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 **Designer** shall prepare record drawings in accordance with the following:

3.1.2.1. Record Keeping.

3.1.2.1.1. As the Construction Phase progresses, the **Designer** shall maintain four separate sets of in-progress record drawings (blueline or blackline) at the Site, one set each for mechanical, electrical, plumbing, and Designerural/structural disciplines. All deviations from the Construction Documents and the exact locations of the Work as installed and constructed shall be neatly and accurately indicated. Work completed to date shall be colored and highlighted.

3.1.2.2. Permanent Record Drawing Preparation.

3.1.2.2.1. The **Designer** shall transfer the information contained on the in-progress record drawings to wash-off mylar transparencies of the original contract drawings. All work shall be performed by experienced and knowledgeable draftspersons using the same standards and quality of drafting as used on the original drawings.

3.1.2.3. Review of Record Drawings at Substantial Completion.

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

3.1.2.4. Submission to the **City.**

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

3.1.2.4.1.1. A complete set of original Construction Documents on mylar and also on disk in AutoCad format.

3.1.2.4.1.2. Permanent record drawings as described above on mylar with the seal of the **Designer** or Engineer of record.

3.1.2.4.1.3. One set of blueline prints of the above.

3.1.2.4.1.4. Four sets of in-progress record drawings.

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

3.2.5. Schematic Design Documents. The **Designer** 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 **Designer** 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 **Designer** 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 **Designer'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 **Designer** 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 **Designer**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 **Designer**, or as otherwise provided herein.

3.4. CONSTRUCTION DOCUMENT PHASE.

3.4.1. Commencement. The **Designer'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 **Designer** 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 **Designer** 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 **Designer** with copies of all **City**-generated forms and documents intended to be included in the Project Manual. The **Designer** will include these forms and documents in its Project Manual. It is the responsibility of the **Designer** to ensure that all such documents are included in the final Project Manual. Any costs incurred as a result of the failure of the **Designer** to include any such documents will be borne by the **Designer** and not charged to the **City**, where such failure is the fault of the **Designer**. The **Designer** 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 **Designer** shall prepare and submit to the **City** for approval the entire Project Manual. The **Designer** is responsible for ensuring that the Construction Documents comply with all statutory requirements. The **Designer** will cause the printing of the Project Manuals unless the **City** instructs the **Designer** 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 **Designer** 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 **Designer** at no charge to the **City**.

3.4.6. Printing of Project Manual. The **Designer** 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 **Designer** or persons within its control will be promptly corrected at no cost to the **City**. The **Designer** 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 **Designer** 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 **Designer** 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 **Designer** 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 **Designer** 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 **Designer** 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 **Designer** 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 **Designer's** sole cost and expense (which cost and expense include, but are not limited to the **Designer's** time, the cost of reprinting the Project Manual, and the cost of readvertisement of the Project).

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

3.5.5. Investigation of Bidders. The **Designer** 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 **Designer** 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 **Designer** recommends disapproval of the lowest Bidder, then the **Designer** 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 **Designer** must provide the **City** with a detailed letter as described above.

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

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

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

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

3.6.11. Submittals. The **Designer** 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 **Designer'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 **Designer** and, in any event, such action shall be taken within fourteen (14) days after submittal to the **Designer**. The **Designer** shall indemnify the **City** for any monies paid by the **City** to the Contractor as a result of the **Designer's** delay in taking appropriate action, as described above, where such delay is not caused in any part by the **City**. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designated by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The **Designer's** review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the **Designer**, of construction means, methods, techniques, sequences, or procedures. The **Designer'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 **Designer** 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 **Designer** shall prepare Change Orders and Work Change Directives, with supporting documentation and data if deemed necessary by the **Designer** 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 Designer.

3.6.13.1. The **Designer** 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 **Designer'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 **Designer** 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 **Designer** may, as the **Designer** 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 **Designer** shall not be liable for results of interpretations, clarifications, and decisions so rendered in good faith and in the absence of negligence by the **Designer**.

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

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

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

If the **Designer** requests additional information, the **Designer** shall take action with respect to the Claim no later than seven (7) days after receipt of the additional information. The **Designer** shall notify the parties in writing of its disposition of such Claim. If the **Designer** decides that the Work relating to such

Claim should proceed regardless of its disposition of such Claim, the **Designer** 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 Designer. (*Reference:* M.G.L. c. 30, §39P). In every case in which this Contract requires the **City**, any official, or its **Designer** 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 **Designer** 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 **Designer** 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 **Designer** 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 **Designer** and the **Designer's** engineering consultants. The **rDesigner** shall provide to the **City** a written report of all findings with recommendations for appropriate action. The **Designer** 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 **Designer** is satisfied that all such documents are complete as required by the Contract Documents, the **Designer** 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 **Designer** 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 **Designer** and the **Designer's** engineering consultants.

3.6.18. Certificate of Occupancy. The **Designer** 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 Designer's Responsibilities.

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

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

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

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 **Designer**; 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 **Designer** and the **Designer's** consultants shall have no responsibility for the discovery, presence, handling, removal, or disposal of, or exposure of persons to hazardous materials in any form at the Project Site, including, but not limited to, asbestos, asbestos products, polychlorinated biphenyl, or other toxic substances, provided, however, the **Designer** shall report to the **City** the presence and location of any hazardous material observed by the **Designer** (or any material suspected to exist) or that an architect of similar skill and expertise should have observed.

ARTICLE 6

THE CITY'S RESPONSIBILITIES

6.1. **REQUIREMENTS FOR THE PROJECT**. The **City** shall consult with the **Designer** 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 **Designer** 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 **Designer** in order to avoid unreasonable delay in the orderly and sequential progress of the **Designer'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 **Designer** to perform its services under this Agreement. The **Designer** shall review and confirm the sufficiency of any test and information furnished to the **Designer** 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 **Designer**, if the **City** becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

ARTICLE 7

USE OF THE DESIGNER'S PLANS, SPECIFICATIONS, AND OTHER DOCUMENTS

7.1. **IN GENERAL.** The Plans, Specifications, and other documents prepared by the **Designer** for this Project are instruments of the **Designer's** service for use solely with respect to this Project and, unless otherwise provided, the **Designer** 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 **Designer's** Plans, Specifications, and other documents for information and reference in connection with the **City's** use and occupancy of the Project. The **Designer'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 **Designer** as to the reason for validity of the termination, provided only that the **Designer** has been paid for its work through the date of the termination, unless the matter of such payment is subject to litigation or other dispute

resolution procedure provided for herein.

7.2. **OFFICIAL REGULATORY REQUIREMENTS**. Submission or distribution of the Plans, Specifications, and other documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the **Designer'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 **Designer's** services, the **Designer** shall continue to perform in accordance with the terms of this Agreement during the course of any renegotiation of the **Designer'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 DESIGNER.** For Additional Services of the **Designer**, 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 **Designer** for such services stated in APPENDIX G.

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

ARTICLE 9

PAYMENT TO THE DESIGNER

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

ARTICLE 10

INSURANCE REQUIREMENTS

10.1. The **Designer** at its own expense must obtain and maintain a professional liability insurance policy covering negligent errors, omissions, and acts of the **Designer** or of any person for whose performance the **Designer** is legally liable arising out of the performance of such contracts for design services. The **City** may require a consultant employed by the **Designer** subject to this subparagraph to obtain and maintain a similar liability insurance policy. If the **Designer** 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 **Designer** and its structural, mechanical, and electrical engineering consultants shall each maintain the following minimum insurance coverages:

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

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

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

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

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

10.3.6. Professional Liability insurance in an amount not less than $1,000,000 or ten per cent (10%) of the Project's estimated cost of construction, or such larger amounts as the **City** may require, 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 **Designer'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 **Designer** 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 **Designer** for approval of engineers or other consultants shall be accompanied by certificates setting forth the types and amounts of insurance carried by them. The **Designer** 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 **Designer** 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 **Designer**.

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 **Designer** or of its subcontractors that directly pertain to and involve transactions relating to, the **Designer** or its subcontractors.

11.3. The **Designer** 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 **Designer's** independent certified public accountant approving or otherwise commenting on the changes.

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

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

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

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

13.5. ENTIRE AGREEMENT. This Agreement represents the entire and integrated agreement between the **City** and the **Designer** 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 **Designer**.

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 **Designer**.

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 **Designer** shall be and shall remain liable to the **City** for all damages incurred by the **City** as the result of the **Designer'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 **Designer** 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 **Designer** shall indemnify and defend the **City** from and against all claims, costs, and liability arising out of the **Designer's** Services hereunder, to the extent that such claims, costs, and liability are the result of the negligent acts, errors, or omissions of the **Designer**, or breaches by the **Designer** of its obligations hereunder or (with respect to the **Designer's** duty to defend) are claimed to be the result thereof.

13.11. DESIGNER'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 **Designer** 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 **Designer** 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 **Designer's** promotional and professional materials. The **Designer's** materials shall not include the **City's** confidential or proprietary information if the **City** has previously advised the **Designer** in writing of the specific information considered by the **City** to be confidential or proprietary. The **City** shall provide professional credit for the **Designer** 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 **Designer**.

ARTICLE 14

CERTIFICATIONS

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

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

14.1.3. no person, corporation, or other entity, other than a bona fide, full-time employee of the **Designer** has been retained or hired to solicit for or in any way assist the **Designer** 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 **Designer** has internal accounting controls as required by M.G.L. c. 30, §39R and the **Designer** 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 **Designer**;

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 **Designer's** financial statements, as provided by M.G.L. c. 7, §38H(e) and

14.1.5. the Designer 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 Designer 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

_____

Richard C. Rossi
City Manager

APPROVED AS TO FORM:

_____

Nancy E. GlowaCity Solicitor

DESIGNER

_____

Signature

By:

_____

Print Name and Title

_____

Amy L. Witts
Purchasing Agent

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APPENDIX A

REQUEST FOR PROPOSALS
APPENDIX B

SCHEDULE OF PERFORMANCE OF THE DESIGNER

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

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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 **Designer** shall be addressed to:

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

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APPENDIX J

MASSACHUSETTS PROFESSIONAL REGISTRATION NUMBERS AND EXPIRATION DATES

NAME	REGISTRATION NUMBER	EXPIRATION DATES

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Chapter 2.121

LIVING WAGE ORDINANCE

Sections:

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

2.121.010 Title and Purpose.

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

2.121.020 Definitions.

For the purposes of this ordinance, the term:

(a) "Applicable Department" means the Personnel Department for employees of the City of Cambridge, the Purchasing Department, with the advice and assistance of the appropriate department which receives the services, for Covered Employers who contract or subcontract with the City of Cambridge, the School Department for employees, contractors and subcontractors of the School Department, and the City Manager's Office for any other Person who is a Beneficiary of assistance other than a contract or subcontract.

(b) "Assistance" means:

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

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

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

(c) "Beneficiary" means:

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

(2) any company or person that is a tenant or sub-tenant, leaseholder or sub-leaseholder of a recipient

of Assistance, provided that said company or person employs at least 25 persons and occupies property or uses equipment or property that is improved or developed as a result of Assistance, after the effective date of this Chapter; and

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

(e) "Covered Employee" means:

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

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

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

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

(h) "Service Contract" means a contract let to a contractor by the City of Cambridge for the furnishing of services, to or for the City, except contracts where services are incidental to the delivery of products, equipment or commodities. A contract for the purchase or lease of goods, products, equipment, supplies or other property is not a "service contract" for the purposes of this definition.

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

2.121.030 Living Wage.

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

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

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

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

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2.121.040 Waivers and Exceptions.

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

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

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

(d) Chapter 30B contract waivers. Prior to issuing an invitation for bids for a procurement contract subject to the provisions of G.L. c. 30B, any Applicable Department may apply to the City Manager for a waiver of the application of the Living Wage to the contract where payment of the Living Wage by a Covered Employer would make it inordinately expensive for the City to contract for the services or would result in a significant loss of services, because the contracted work cannot be segregated from the other work of the Covered Employer.

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

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

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

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

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

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

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

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

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

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

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

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

(h) Community Advisory Board review and recommendation regarding waiver requests. The Community Advisory Board, as described in Section 2.121.070 of this ordinance, shall consider waiver requests along with their supporting documentation and analysis, and may hold a public hearing to consider the views of the public before making a recommendation to the City Manager regarding the waiver request. For a hardship waiver, the Community Advisory Board shall offer an opportunity to be heard to employees of the Covered Employer. After reviewing the recommendation of the Community Advisory Board, the City Manager may approve and grant or deny all or part of a request. The City Manager may in his or her

discretion grant a temporary hardship waiver pending the hearing before the Community Advisory Board. For Chapter 30B contract waivers, the Community Advisory Board shall make its recommendation to the City Manager no more than thirty days after it is notified of the request for a Chapter 30B contract waiver.

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

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

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

(2) work-study or cooperative educational programs;

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

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

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

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

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

2.121.050 Notification Requirements.

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

2.121.060 Duties of Covered Employers.

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

(1) notice of the Living Wage amount;

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

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

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

(b) Contract for Assistance. At the time of signing a contract for assistance with the City of Cambridge or

with a Beneficiary, the contract must include the following:

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

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

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

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

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

(c) Maintenance of payroll records. Each Covered Employer shall maintain payrolls for all Covered Employees and basic records relating thereto and shall preserve them for a period of three years. The records shall contain the name and address of each employee, the job title and classification, the number of hours worked each day, the gross wages, deductions made, actual wages paid, and copies of social security wage and withholding reports, and evidence of payment thereof and such other data as may be required by the Applicable Department from time to time.

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

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

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

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

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

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

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

2.121.070 Community Advisory Board.

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

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

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

Assistance generally, and on specific instances of Assistance or proposed Assistance as received or sought by individual enterprises.

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

2.121.080 Enforcement.

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

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

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

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

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

(2) Suspension of ongoing contract and subcontract payments;

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

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

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

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

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

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

2.121.090 Severability.

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

2.121.100 Effective Date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

For calendar year 2010 the CPI-U increased by 1.57%. Therefore the new living wage, as of March 1, 2011 is $13.90.
For calendar year 2011 the CPI-U increased by 2.71%. Therefore the new living wage, as of March 1, 2012 is $14.28.

For calendar year 2012 the CPI-U increased by 1.58%. Therefore the new living wage, as of March 1, 2013 is $14.51.

For calendar year 2013 the CPI-U increased by 1.37%.Therefore the new living wage, as of March 1, 2014 is $14.71.