

**SOLICITATION FOR:**  
**WAYFINDING PROGRAM DESIGN SERVICES**  
**REQUEST FOR PROPOSALS (RFP)**  
**#14-28CD**



**CITY OF SOMERVILLE, MASSACHUSETTS**

**POSTED:**  
**December 6, 2013**

**DUE BY:**  
**December 20, 2013 at 11:00 a.m. EST**

**DELIVER TO:**  
**City of Somerville**  
**Purchasing Department**  
**Attn: Angela M. Allen, Director of Purchasing**  
**93 Highland Avenue**  
**Somerville, MA 02143**

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## **SECTION 1.0 INSTRUCTORS TO OFFEROR**

### **1.1 General**

- The City of Somerville, Office of Strategic Planning and Community Development (OSPCD) acting through the Purchasing Department, seeks the services of a qualified firm to provide design services for a new wayfinding program. It is the City's intention to award a contract for a period of one (1) year commencing in the winter of 2014, with possible extensions of up to three (3) years in total.
- The City of Somerville reserves the right to reject any or all proposals, waive minor informalities, and accept the proposal deemed to be in the best interest of the City.
- The successful Offeror must be an Equal Opportunity Employer.
- The signature of the Offeror's authorized official(s) must be provided on all the proposal forms.
- All information in the Offeror's response should be organized and presented in a clear and concise format. Accuracy and completeness are essential. The successful response will be incorporated into a contract as an exhibit; therefore, Offerors should not make claims to which they are not prepared to commit themselves contractually.
- On and after **December 6, 2013** the solicitation may be downloaded from the City's Purchasing web page: <http://www.somervillema.gov/departments/finance/purchasing/bids>. Additional copies of the solicitation may be obtained from the Purchasing Department by emailing the point of contact and the cover page of this RFP, or by visiting in person to request a hard copy between the hours of 8:30 a.m. and 4:30 p.m. Monday – Wednesday, 8:30 a.m. to 7:30 p.m. on Thursdays and 8:30 a.m. to 12:30 p.m. on Fridays.
- The Price Summary Form in Section 5.0 must be completed. No substitute form will be accepted. Pricing must remain firm for the entire contract period.
- Failure to answer any questions, to complete any form, or to provide the documentation required will be deemed non-responsive and result in disqualification of the bid unless the City determines that such failure constitutes a minor informality, as defined in Massachusetts General Laws (MGL).

### **1.2 Submission Instructions**

Please submit two sealed envelopes: The first envelope includes one (1) original and one (1) disk (CD and/or DVD) of the non-price, technical proposal marked: "Non-Price Proposal—Wayfinding Program Design Services." The second envelope includes one (1) original and two (2) copies of the price proposal marked "Price Proposal— Wayfinding Program Design Services." Please send the complete sealed package to the attention of the Angela M. Allen, Purchasing Department, Somerville City Hall, 93 Highland Avenue, Somerville MA 02143 on or before **11:00 a.m., on Friday, December 20, 2013.**

(Note: Massachusetts General Laws, Chapter 30B requires that price proposals must be separate from technical proposals. Therefore, please make no reference to pricing in the non-price technical

proposal. Failure to adhere to this requirement will result in disqualification. It is the sole responsibility of the Offeror to insure that the proposal arrives on time at the designated place. Late proposals will not be considered, and will be returned.)

### **1.3 Questions**

Questions or concerns regarding any aspect of this solicitation shall be forwarded in writing to Angela M. Allen, Director of Purchasing at the address above; by fax number (617) 625-1344 or through e-mail to [amallen@somervillema.gov](mailto:amallen@somervillema.gov) so that they can be addressed prior to the solicitation deadline for offers. Answers will be sent via an addendum to all Offerors who received this solicitation through the Purchasing Department. It is the responsibility of the Offeror to also monitor the bid portal on the City's website for any updates, addendums, etc. regarding that specific solicitation. The web address is:

<http://www.somervillema.gov/departments/finance/purchasing/bids>

### **1.4 Key Dates for this Solicitation<sup>1</sup>**

ITEM	DATE
Solicitation issued	December 6, 2013
Deadline for submitting questions	December 12, 2013, 11:00 am
Responses due, screened and evaluation begins	December 20, 2013, 11:00 am
Anticipated award	January 2014
Estimated service commencement	Winter 2014

### **1.5 Evaluation and Award Processes**

All submissions will be evaluated by an in-house selection committee whose members will be designated by the Purchasing Agent ("the Committee"). The Committee will rank all candidates without regard to the fee, after which the fee proposal envelope shall be opened and the Committee will make a final ranking based on both qualifications and fee. The Committee may choose to select the three (3) highest ranked Applicants to be interviewed. If so, the short-listed Applicants will be notified by the Purchasing Agent, either by mail, fax, or telephone, of the date, time and place for their interviews and any other pertinent information related thereto. Each Applicant should therefore be prepared to travel to Somerville for an interview with its key personnel including the team leader and additional key personnel who will be working on the project on a day-to-day basis. The City will not assume any travel costs related to these interviews. Within a reasonable period of time after the last interview, the Committee shall select the successful Applicant based on qualifications, fee, and performance at the interview.

If the fee proposed by the selected applicant exceeds the City's budget, the City reserves the right to negotiate the fee downward. If such negotiations are unsuccessful, the City reserves the right to select the next highest ranked applicant and negotiate the fee, until a qualified applicant and a fee within budget have been achieved.

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<sup>1</sup> The actual bid schedule was revised from the advertised dates before this RFP was released to all prospective offerors.

### **1.5.1 Evaluation Methodology**

Responses that meet the minimum Quality Requirements will then be reviewed for responses to the Comparative Evaluation Criteria. The evaluation committee will assign a rating of Highly Advantageous, Advantageous, Not Advantageous or Unacceptable as outlined in the section below concerning Comparative Evaluation Criteria. In general, the selection of the finalists will be based on the following criteria:

- Understanding of the work required, and quality and responsiveness of the proposal.
- Professional qualifications necessary for satisfactory performance of the work required, including background and related experience of the specific individuals to be assigned to the project.
- Recent experience in successfully performing similar services, including working with similar municipalities, utilizing a public participation process, and working with state and local agencies regarding signage locations, restrictions, and requirements.
- Proposed methodology for completing the work.
- Design aesthetic
- References and work sample
- Demonstrated ability to complete the project in a timely manner, based on proposed timeline.

The City will award the contract to the most responsive and responsible Offeror who demonstrates best value to the city. As the technical responses approach equality, price will become more important in making the awarded determination. In the event that two or more responses are determined not to have any substantial technical differences (i.e. are technically equivalent), award may be made to the lower-priced proposal. It should be noted that award may be made to other than lowest-priced proposal if the City determines that a price premium is warranted due to technical merit. The city may also award other than the highest technically rated response, if the City determines that a price premium is not warranted.

Before awarding the contract(s), the City may request additional information from the Offeror to insure that the Offeror has the necessary resources to perform the required services. The City reserves the right to reject any and all responses if it determines that the criteria set forth have not been met.

### **1.6 Technical (Non-Price) Proposal Format**

Responses must be submitted in accordance with the requirements set forth in this solicitation. These requirements were developed to standardize the preparation of responses while helping to assure consistency in format and content. This process will reduce the time required to prepare a response and will simplify the review process by City staff. Results of the proposal review process will be utilized to establish a preliminary ranking of the proposers. At minimum, the City will rank the top three candidates into “competitive range” as part of the evaluation process. All information in the technical proposal should be organized and presented as directed below. Your technical volume should contain the following information in this particular order:

1. Cover Letter
2. Quality Requirements Form
3. Qualifications and Experience of the Firm
4. Personnel Qualifications
5. Past Performance
6. Completed Forms
  - Non Collusion & Tax Compliance Form
  - Certificate of Authority
  - Somerville Living Wage Ordinance
  - Vendor TIN Form
  - Addendum Acknowledgement(s) (if applicable)

Responses shall be prepared on standard 8.5 x 11 inch paper (charts may be landscaped but must be on 8.5 x 11 inch paper) and shall be in a legible font size (12). All pages of each response shall be appropriately numbered, and identified with the solicitation number. For ease of reference, consecutive page numbering is required.

Elaborate format and binding are neither necessary nor desirable. All binders will be capable of lying flat when opened. All binders will allow for easy removal and replacement of pages.

#### **1.6.1 Cover Letter**

Include a cover letter will summarize, in a brief and concise manner that the Offeror understands of the requested services. Please include the official name of the firm submitting the proposal, mailing address, e-mail address, telephone number, fax number and contact name. The letter must be signed by an official authorized to bind the proposer contractually and contain a statement that the proposal is firm for ninety (90) days. An unsigned letter or one signed by an individual not authorized to bind the Offeror will be disqualified.

#### **1.6.2 Quality Requirements Form**

The Quality Requirements Form, or set of basic business standards, must be addressed by each Offeror and presented within the technical proposal documentation.

#### **1.6.3 Qualifications and Experience of the Firm**

The proposer shall include qualifications and experience of the firm. The Offeror shall identify the year the firm was established, the total number of employees currently employed, and the number of employees focused on this engagement. This section should also generally describe work which is similar in scope and complexity which the Offeror has undertaken in the past. A discussion of the challenges faced, and solutions developed are highly recommended. The Offeror may include any additional literature and product brochures.

#### **1.6.4 Personnel Qualifications**

The qualifications of the proposed employee(s) who will work on this contract (sub-contractors / teaming partners included), including resumes, licensure documentation if applicable (with dates)

and any other items that demonstrate the required experience meeting the SOW. Additionally please discuss the responsibilities of all personnel by use of narrative and flow chart if needed.

#### **1.6.5 Past Performance**

The Offeror shall provide references for minimum of three contracts/orders, of which two must be with the Government customers, that demonstrate recent and relevant past performance of similar scope, size and complexity of services identified. Please include the Period of Performance, contract dollar value, name, telephone number and email of the contact person at each and a description of the nature of the work. The City reserves the right to use itself as a reference / past performance. Please utilize the below format for all three references:

<b>Past Performance / Reference Title:</b>	
<b>Period of Performance</b>	
<b>Contract \$ Value</b>	
<b>Technical &amp; Contractual POC Names &amp; Titles</b>	
<b>Telephone numbers</b>	
<b>Email addresses</b>	
<b>Detailed summary of services provided</b>	

#### **1.6.6 Forms**

All listed forms stated in Section 6.0 shall be filled out by the Offeror and submitted in the technical volume. Failure to do so may deem your proposal non-responsive

### **1.7 Price Proposal Format**

#### **1.7.1 Cover Letter**



Include a cover letter that will summarize, in a brief and concise manner that the Offeror understands that their offer will bid the firm to the price submitted with their response. Please include the official name of the firm submitting the proposal, mailing address, e-mail address, telephone number, fax number and contact name. The letter must be signed by an official authorized to bind the proposer contractually and contain a statement that the pricing is firm for ninety (90) days. An unsigned letter or one signed by an individual not authorized to bind the Offeror will be disqualified.

### **1.7.2 Price Summary Page**

Refer to Section 5.0 for the Price Proposal Form. Submit this completed and signed form in a separately sealed envelope, labeled "Price Proposal" for RFP 14-28CD Wayfinding Program Design Services.

### **1.8 Quality Requirements**

The following quality requirements, or basic business requirements, are the minimum set of standards that an entity must meet and certify to be considered responsible and responsive. The City of Somerville will disqualify any response that does not meet the minimum quality requirements. A "No Response" to items 1-4 or a failure to respond to any of the following minimum standards will result in disqualification of your bid.

QUALITY REQUIREMENTS		YES	NO
1.	Is the Offeror capable of providing the design services for a wayfinding program as described in the project summary?		
2.	Has the Offeror provided the names, resumes and licensure documentation for the team members assigned to this project?		
3.	Does the Offeror have experience providing similar services with at least five (5) other government entities?		
4.	Has the Offeror provided references for a minimum of three contracts, of which two are with public sector customers, that demonstrate recent and relevant past performance of similar scope, size and complexity of services identified?		
5.	Optional: Are you a Mass. Supplier Diversity Office MBE/WBE certified minority or woman owned business?		

In order to provide verification of affirmative responses to items 1-4 under the quality requirements listed above, proposers must submit written information that details the general background, experience, and qualifications of the organization. This information should be detailed throughout the various sections in the technical proposal response. Subcontractors, if applicable, must be also included.

### **1.9 Comparative Evaluation Criteria without Regard to Price**

The purpose of information requested in this section is to assist the City in evaluating the Offeror's overall qualifications, including its methodologies, technical abilities, financial stability, and

previous experience and qualifications of individual members of the Project Team and the proposed consultants. The Comparative Evaluation Criteria set forth in this section of the solicitation shall be used to evaluate responsible and responsive proposals.

Proposals will be evaluated by the Selection Committee using the following Comparative Evaluation Criteria. Scores will be translated into findings that a Proposal is either Highly Advantageous, Advantageous, or Not Advantageous.

<b>Highly Advantageous</b>	85 - 100
<b>Advantageous</b>	70 - 84
<b>Not Advantageous</b>	0 - 69

<b>A. Project Management</b>	<b>Maximum</b>	<b>Actual</b>
Record of wayfinding bids within 10% of project design estimate	10	
Record of completing design on schedule	10	
Demonstrates overall success preparing wayfinding designs of a high quality (provide examples of past work in response)	10	
<b>Sub total</b>	<b>30</b>	

<b>B. Experience</b>	<b>Maximum</b>	<b>Actual</b>
Experience in developing wayfinding for cities of similar density	5	
Experience in developing analysis of existing wayfinding conditions	5	
Demonstrates strong design captivity	5	
Experience in developing mobility analysis for existing conditions	5	
<b>Sub total</b>	<b>20</b>	

<b>D. Public Process</b>	<b>Maximum</b>	<b>Actual</b>
Experience in building community consensus and working collaboratively with community groups to address issues of concern	5	
Experience harnessing community input and incorporating ideas into design guidelines	5	
Experience in utilizing technology and other innovative methods for public outreach and participation, such as websites or blogs	5	
Demonstrates ability to convey policies/ideas to the public and city officials	5	
<b>Sub total</b>	<b>20</b>	

<b>E. Other Related Experience</b>	<b>Maximum</b>	<b>Actual</b>
Prime contractor has a minimum of 2 wayfinding designs implemented	30	
<b>Sub total</b>	<b>30</b>	

### **1.10 Price**

As the technical responses approach equality, price will become more important in making the award determination. In the event that two or more responses are determined not to have any substantial technical differences (i.e. are technically equivalent), award may be made to the lower-priced proposal. It should be noted that the award may be made to other than the lowest-priced proposal if the City determines that a price premium is warranted due to technical merit. The City may also award a contract to an Offeror other than the highest technically rated response, if the City determines that a price premium is not warranted.

### **1.11 Rule for Award**

Past performance and key personnel are not as significant as price. The contract shall be awarded to a responsible and responsive proposer submitting the most advantageous response, non-price factors and price considered.

## **SECTION 2.0 GENERAL TERMS & CONDITIONS**

### **2.1 Taxes**

Purchases incurred by the City are exempt from Federal Excise Taxes, Massachusetts Sales Tax, and solicitation prices must exclude any such taxes. Tax Exemption Certificates will be furnished upon request. City of Somerville's Massachusetts Tax Exempt Number is M046 001 414.

### **2.2 Freight on Board (FOB)**

All prices are to be firm F.O.B. delivered destination (Somerville, MA), to the address specified on the "Notice to Proposers" or any other department location doing business for the City of Somerville in need of such services.

### **2.3 Unit Price**

In case of error in extension of prices quoted herein, the unit price will govern.

### **2.4 Price Reduction**

It is understood and agreed that should any price reductions occur between the opening of this IFB and completion of this delivery. The benefits of all such reductions will be extended.

### **2.5 Guarantees**

The proposer, to whom a contract is awarded, guarantees to the City of Somerville all supplies, equipment, related services/maintenance, and labor for a period of at least one (1) year. Upon inspection, any defective or inferior equipment, supplies/materials shall be replaced without additional cost to the City. The contractor will assume any additional cost accrued by the City.

### **2.6 Indemnification**

The vendor agrees to take all necessary precautions to prevent injury to any persons or damage to property during the term of this agreement and shall indemnify and save the City of Somerville harmless against all loss and expense resulting in any way, from any negligent or willful act or omission on the part of the Vendor, it's agents, employees, or sub-contractors or resulting directly or indirectly from Vendor's performance under this Agreement.

### **2.7 Insurance**

Vendor's liability insurance shall be purchased and maintained by the Vendor to protect him from claims under Worker's Compensation Acts and other employee benefits acts, claims from damages because of bodily injury, including death, and from claims for damages, other than to the work itself, to property which may arise out of or result from the Vendor's operation under this agreement, whether such operation by himself or anyone employed by them. This insurance shall be written for not less than any limits of law, whichever is the greater and shall include contractual liability applicable to Vendor's obligations. The Vendor shall deposit with the City of Somerville standard certificates of insurance thereof for any insurance about to expire at least ten (10) days before such expiration. All such insurance policies shall contain an endorsement or provision requiring thirty (30) days written notice to the City of Somerville prior to cancellations or material

change in coverage, scope, or amount of any such policy or policies. Compliance by Vendor with the insurance requirement, however, shall not relieve Vendor from liability under the indemnity provisions. Vendor shall require subcontractors to provide and maintain the required insurance at subcontractors' expense. Subcontractors shall list the City of Somerville and Contractor as additional insured where applicable.

## **2.8 Independent Contractor**

Vendor is not an agent or employee of the City of Somerville and is not authorized to act on behalf of the City of Somerville.

## **2.9 Complete Agreement**

This agreement supersedes all prior agreements and understandings between the parties and may not be changed unless mutually agreed upon in writing by both parties.

## **2.10 Assignment**

Vendor shall not assign the Agreement or any interest therein, without prior written consent of the City of Somerville.

## **2.11 Subcontractors**

Vendor shall not engage any other company, sub-contractor or individual to perform any obligation hereunder, without the prior written consent of the City of Somerville.

## **2.12 Governing Law**

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

## **2.13 Enforceability**

In the event any provision of this Agreement is found to be legally unenforceable, such unenforceability shall not prevent enforcement of any other provision of the Agreement.

## **2.14 Conflict of Interest**

The Proposer certifies that no official or employee of the City of Somerville has a financial interest in this proposal or in the contract which the proposer offers to execute or in the expected profits to arise there from, unless there has been compliance with provisions of Massachusetts General Laws Chapter 43, sec. 27 (Interest in Public Contract by Public Employees), and Massachusetts General Laws, Chapter 268A, sec. 20 (Conflict of Interest), and that this proposal is made in good faith without fraud or collusion or connection with any other person submitting a proposal.

## **2.15 Termination**

### **2.15.1 For Cause and for Convenience**

Refer to attached Sample Contract for the City's termination clauses.

### **2.15.2 Return of Property**

Upon termination, Vendor shall immediately return to the City of Somerville, without limitation, all documents, plans, drawings, tools and items of any nature whatsoever, supplied to the Vendor by the City of Somerville or developed by the Vendor in accordance with this Agreement.

#### **2.16 Discrimination**

It is understood and agreed that it shall be a material breach of any contract resulting from this IFB for the contractor to engage in any practice which shall violate any provision of Massachusetts General Laws, Chapter 151B, relative to discrimination in hiring, discharge, compensation, or terms, conditions or privileges of employment because of race, color, religion, creed, national origin, sex, or ancestry.

#### **2.17 Interpretation of Specification / Terms**

All interpretations of the solicitation and supplemental instructions will be in the form of written addenda to the solicitation specifications. Requests for clarification or any questions about information contained in the solicitation should be addressed in writing to Angela M. Allen, Director, Purchasing Department, 93 Highland Avenue, Somerville, MA 02143, or emailed to: [amallen@somervillema.gov](mailto:amallen@somervillema.gov). Questions and answers will be compiled and sent to all Offerors who requested a copy of the solicitation, before the proposal deadline. No requests or questions will be accepted after **11:00 a.m. December 12, 2013**.

#### **2.18 Withdrawal or Modification of Bid Response**

To withdraw, cancel or modify a response at any time prior to the solicitation opening date, an Offeror must submit such request in writing to the Purchasing Director. Correction or modifications must be sealed when submitted and must indicate on the outside of the envelope whether the correction or modification pertains to the price proposal or the non-price proposal.

#### **2.19 Samples**

If applicable, all qualified offers may be requested to submit samples.

#### **2.20 Financial and Operational Information**

By submitting a proposal, the proposer authorized the City of Somerville to contact any and all parties referenced by the proposer regarding financial and operational information.

#### **2.21 Payment**

The City of Somerville shall make no payment for a supply or service rendered prior to the execution of the contract.

#### **2.22 Documentation**

Please find attached exhibit copies of contract forms which the successful Offeror will be required to sign.

#### **2.23 Extension of Contract**

The City reserves the right to extend the time of any contract resulting from the bid as needed

and/or to increase the value by 25% at the sole discretion of the Purchasing Director.

The Offeror's submission will remain in effect for a period of 90 days from the response deadline or until it is formally withdrawn, a contract is executed or this solicitation is canceled, whichever occurs first.

The Procurement Officer shall cancel the contract if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal year succeeding the first year.

### **SECTION 3.0 INVOICING REQUIREMENTS**

Each invoice shall be e-mailed to the designated billing office at the following address:

**Hayes Morrison, Director of Transportation & Infrastructure  
City of Somerville, Mayor's Office of Strategic Planning and Community  
Development (OSPCD)  
[hmorrison@somervillema.gov](mailto:hmorrison@somervillema.gov)**

To ensure a proper invoice, the invoice must include the following information and/or attached documentation:

- 1) Name of the business concern, invoice number and invoice date;
- 2) Contract number, or authorization for delivery of property of performance of services;
- 3) Description, price, and quantity and services actually delivered or rendered;
- 4) Shipping and payment terms;
- 5) Name (where practicable), title, phone number, and complete mailing address of responsible official to whom payment is to be sent; and
- 6) Other substantiating documentation or information as required by the contract.

The consultant may invoice the City of Somerville on a per-project basis as the City accepts each deliverable as conceptual design, construction docs and bid packages, and final reports. The City will pay the Consultant on a fixed price per deliverable as follows:

- Delivery of a Project Area Analysis Report as described in section 5.0
- Conceptual drawings, approved by OSPCD staff from which the Consultant shall submit final drawings.
- Delivery of a Prioritization and estimated cost memorandum as described in section 5.0.
- A prepared bid delivery document for advertisement.

There is **no** allowance for reimbursable expenses in addition to the contracted fee for architectural services. The Consultant should consider all reimbursable expenses as part of the bid price and included in the cost of each project.



## **SECTION 4.0 SCOPE OF WORK (SOW)**

### **4.1 Purpose and Objectives**

The City of Somerville is seeking proposals for the creation of a multi-modal wayfinding system that communicates our community brand and provides wayfinding for pedestrians, cyclists and vehicles.

#### **Objectives**

- 1) To improve visitor experience;
- 2) To improve traffic flow for all modes;
- 3) To create a sense of arrival and place;
- 4) To alert all to area attractions and points of interest.

### **4.2 Scope**

The successful respondent will design a comprehensive city-wide wayfinding system that addresses the needs of users of all modes of transportation. The focus of the first phase of this RFP is assessment of existing conditions, stakeholder engagement, design development, cost estimating, and tender preparation.

A second phase of work will include procurement, fabrication, installation, and impact assessment or the assistance in selection of a vendor for these services.

### **4.3 Specifications / Requirements**

Phase One consulting service requirements include, but are not limited to:

#### **4.3.1. Project Area Analysis**

- Stakeholder identification
- Assessment of existing wayfinding/signage infrastructure
- Survey of key civic, commercial, cultural and educational facilities

#### **4.3.2. Wayfinding System Design**

- Presentation of at least 3 themes to communicate the City of Somerville's brand via the wayfinding system
- Prepare detailed sign designs including sign types, sizes, text, poles, and hardware
- Develop installation locations by sign size and type
- Prepare sign mock-ups for review and comment by stakeholders
- Prepare sign location plans
- Develop cost estimates for fabrication and installation as well as staging plans to reflect expected budget availability

#### **4.3.3. Tender Document Preparation**

- Prepare detailed specifications and drawings to include sign dimensions, letter heights, color schemes, materials and mounting details
- Prepare a bid package

Phase One conclusion will be the acceptance by the City of Somerville the recommendations for wayfinding design recommended by the vendor and the completion of a bid package.

#### **4.4 Period of Performance**

The period of performance is approximately twelve months, however the bulk of the work shall be completed within the first six months for a target completion of Phase One in the spring of 2014.

#### **4.5 Place of Performance**

All services, delivery and other required support shall be conducted throughout the City of Somerville, at the OSPCD planning office, and other locations designated by the OSPCD. Meetings between the Vendor and City personnel shall be held at the City of Somerville, Massachusetts.

#### **4.6 Hours of Operation**

The awarded Vendor shall schedule his working hours to coincide with the working hours of the City. The normal working hours are 8:30 a.m. and 4:30 p.m. Monday – Wednesday, 8:30 a.m. to 7:30 p.m. on Thursdays and 8:30 a.m. to 12:30 p.m. on Fridays.

##### **4.6.1 Holidays**

The City observes the following holidays\* in 2014.

Wednesday January 1	New Year's Day
Monday January 20	Martin Luther King Day
Monday February 17	Presidents' Day
Monday April 21	Patriots' Day
Monday May 26	Memorial Day
Tuesday June 17	Bunker Hill Day
Friday July 4	Independence Day
Monday September 1	Labor Day
Monday October 13	Columbus Day
Tuesday November 11	Veterans' Day
Thursday November 27	Thanksgiving Day
Friday November 28	Thanksgiving Friday
Wednesday December 24	Christmas Eve (half day)
Thursday December 25	Christmas Day

\*Under State Law, all holidays falling on Sunday must be observed on Monday.

If the awarded Vendor for their convenience desires to perform work during other than normal working hours or on other than normal work days, or if the Vendor is required to perform work at such times, the Vendor shall reimburse the City for any additional expense occasioned the City, thereby, such as, but not limited to, overtime pay for City employees, utilities service, etc.

Unless otherwise specified in these provisions, services will be performed during normal work hours. When required services occur on holidays, work will be performed on either the previous or following work day, unless specified otherwise.

#### **4.6.2 Inclement Weather Days**

In the event of inclement weather, the Vendor is responsible for listening to the public media to determine if the City has been closed because of the weather. The Vendor is encouraged to coordinate work schedules with the OSPCD POC to accommodate support requirements, other personnel availability, meeting schedules and vacation schedules.

#### **4.7 Government Furnished Materials**

The City of Somerville will not be providing any furnished materials to the awarded vendor throughout this contract.

#### **4.8 Vendor Furnished Materials**

The awarded vendor will provide all personnel, equipment, tools, materials, supervision and all other items to perform tasks listed in Section 4.3.

#### **4.9 Vendor Conduct**

The Vendor's employees shall comply with all City regulations, policies and procedures. The vendor shall ensure that their employees present professional work attire at all times. The project manager may at his/her sole discretion, remove any vendor employee from City facilities for misconduct or safety reasons. Such rule does not relieve the vendor of their responsibility to provide sufficient and timely service. The City will provide the vendor with immediate written rationale notice for removal of employee through the Purchasing Department.

#### **4.10 Deliverables:**

The deliverables for the three major tasks described above are:

- Project Area Analysis Report
- Prioritization and estimated cost memorandum
- Bid document

## SECTION 5.0 PRICING

The undersigned proposes to supply and deliver the materials and/or services specified below in full accordance with the Contract Documents supplied by the City of Somerville entitled:

### WAYFINDING PROGRAM DESIGN SERVICES

**FEE STRUCTURE:** The services to be performed under this contract will be compensated on a total fixed fee basis allocated by tasks outlined in the Scope of Work. The fee is inclusive of all expenses including subconsultant services, site photos, copying, printing, postage, messenger services and telephone. The failure to name a consultant in the Proposal for Design Services shall not result in additional cost to the City.

**1. Project Area Analysis** \$ \_\_\_\_\_

Includes minimum of 2 working group sessions with OSPCD staff and alternatives and costs for remediation (see phase one, section one for more information).

*Deliverable: Project Area Analysis Report*

**2. Wayfinding System Design** \$ \_\_\_\_\_

Includes minimum of 3 working group sessions with OSPCD staff, 2 Public meetings and presentation to the Mayor's Office/Staff (see phase one, section two for more information).

*Deliverable: Prioritization and estimated cost memo, provide hard copy and electronically*

**3. Tender Document Preparation** \$ \_\_\_\_\_

Includes attendance and power point or board presentations of findings and recommendations at a minimum of two (2) community meetings (see phase one, section three for more information).

*Deliverable: Bid Document*

**TOTAL FEE** \$ \_\_\_\_\_

HOURLY FEE FOR ADDITIONAL SERVICES: Please attach a separate schedule of hourly fees for Additional Work, if any, which will be compensated based on the hourly rates.

Company Name: \_\_\_\_\_

Print Name of Person Submitting Price Proposal: \_\_\_\_\_

Signature of Person Submitting Price Proposal: \_\_\_\_\_

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

Tel #: \_\_\_\_\_ Fax #: \_\_\_\_\_ E-Mail: \_\_\_\_\_

ADDENDA #1\_\_\_\_\_ #2\_\_\_\_\_ #3\_\_\_\_\_ #4\_\_\_\_\_ ACKNOWLEDGED  
Failure to acknowledge receipt of addenda may result in your bid being rejected.

## **SECTION 6.0 FORMS**

### **Required Form Submissions by Offeror**

1. Non collusion & tax compliance form
2. Certificate of authority
3. Somerville living wage ordinance
4. Vendor TIN form
5. Addendum acknowledgement(s) (if applicable)

### **Post Award**

1. Insurance Certificate
2. Certificate of Good Standing
3. W-9 Form (If new vendor)

Form:\_\_\_\_\_  
Contract Number:\_\_\_\_\_

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## **Non-Collusion Form and Tax Compliance Certification**

**Instructions:** Complete each part of this two-part form and sign and date where indicated below.

### **A. NON-COLLUSION FORM**

I, the undersigned, hereby certify under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person.

As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

**Signature:** \_\_\_\_\_  
(Individual Submitted Bid or Proposal)  
Duly Authorized

**Name of Business or Entity:** \_\_\_\_\_

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

### **B. TAX COMPLIANCE CERTIFICATION**

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support, as well as paid all contributions and payments in lieu of contributions pursuant to MGL 151A, §19A(b).

**Signature:** \_\_\_\_\_  
(Duly Authorized Representative of Vendor)

**Name of Business or Entity:** \_\_\_\_\_

**Social Security Number or Federal Tax ID#:** \_\_\_\_\_

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



## **Certificate of Authority (Corporations Only)**

**Instructions:** Complete this form and sign and date where indicated below.

1. I hereby certify that I, the undersigned, am the duly elected Clerk/Secretary of

\_\_\_\_\_  
**(Insert Full Name of Corporation)**

2. I hereby certify that the following individual \_\_\_\_\_  
**(Insert the Name of Officer who Signed the Contract and Bonds)**

is the duly elected \_\_\_\_\_ of said Corporation.  
**(Insert the Title of the Officer in Line 2)**

3. I hereby certify that on \_\_\_\_\_  
**(Insert Date: Must be on or before Date Officer Signed Contract/Bonds)**

at a duly authorized meeting of the Board of Directors of said corporation, at which a quorum was present, it was voted that

\_\_\_\_\_  
**(Insert Name of Officer from Line 2) (Insert Title of Officer from Line 2)**

of this corporation be and hereby is authorized to make, enter into, execute, and deliver contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

4. **ATTEST:**

**Signature:** \_\_\_\_\_  
**(Clerk or Secretary)**

**AFFIX CORPORATE SEAL HERE**

**Printed Name:** \_\_\_\_\_

**Printed Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_  
**(Date Must Be on or after Date Officer Signed Contract/Bonds)**



**Certificate of Authority  
(Limited Liability Companies Only)**

**Instructions:** Complete this form and sign and date where indicated below.

1. I, the undersigned, being a member or manager of

\_\_\_\_\_,  
(Complete Name of Limited Liability Company)

a limited liability company (LLC) hereby certify as to the contents of this form for the purpose of contracting with the City of Somerville.

2. The LLC is organized under the laws of the state of: \_\_\_\_\_.

3. The LLC is managed by (**check one**) a     Manager or by its     Members.

4. I hereby certify that each of the following individual(s) is:

- a member/manager of the LLC;
- duly authorized to execute and deliver this contract, agreement, and/or other legally binding documents relating to any contract and/or agreement on behalf of the LLC;
- duly authorized to do and perform all acts and things necessary or appropriate to carry out the terms of this contract or agreement on behalf of the LLC; and
- that no resolution, vote, or other document or action is necessary to establish such authority.

<u>Name</u>	<u>Title</u>

5. **Signature:**\_\_\_\_\_

**Printed Name:** \_\_\_\_\_

**Printed Title:**\_\_\_\_\_

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





**SOMERVILLE LIVING WAGE ORDINANCE CERTIFICATION FORM**  
**CITY OF SOMERVILLE CODE OF ORDINANCES SECTION 2-397 et seq.\***

**Instructions:** This form shall be included in all Invitations for Bids and Requests for Proposals which involve the furnishing of labor, time or effort (with no end product other than reports) by vendors contracting or subcontracting with the City of Somerville, where the contract price meets or exceeds the following dollar threshold: \$10,000. If the undersigned is selected, this form will be attached to the contract or subcontract and the certifications made herein shall be incorporated as part of such contract or subcontract. **Complete this form and sign and date where indicated below on page 2.**

**Purpose:** The purpose of this form is to ensure that such vendors pay a "Living Wage" (defined below) to all covered employees (i.e., all employees except individuals in a city, state or federally funded youth program). In the case of bids, the City will award the contract to the lowest responsive and responsible bidder paying a Living Wage. In the case of RFP's, the City will select the most advantageous proposal from a responsive and responsible offeror paying a Living Wage. In neither case, however, shall the City be under any obligation to select a bid or proposal that exceeds the funds available for the contract.

**Definition of "Living Wage":** For this contract or subcontract, as of 7/1/2013 "Living Wage" shall be deemed to be an hourly wage of no less than \$11.89 per hour. From time to time, the Living Wage may be upwardly adjusted and amendments, if any, to the contract or subcontract may require the payment of a higher hourly rate if a higher rate is then in effect.

**CERTIFICATIONS**

1. The undersigned shall pay no less than the Living Wage to all covered employees who directly expend their time on the contract or subcontract with the City of Somerville.
2. The undersigned shall post a notice, (copy enclosed), to be furnished by the contracting City Department, informing covered employees of the protections and obligations provided for in the Somerville Living Wage Ordinance, and that for assistance and information, including copies of the Ordinance, employees should contact the contracting City Department. Such notice shall be posted in each location where services are performed by covered employees, in a conspicuous place where notices to employees are customarily posted.
3. The undersigned shall maintain payrolls for all covered employees and basic records relating hereto and shall preserve them for a period of three years. The records shall contain the name and address of each employee, the number of hours worked, the gross wages, a copy of the social

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\* Copies of the Ordinance are available upon request to the Purchasing Department.

Form:\_\_\_\_\_  
Contract Number:\_\_\_\_\_

CITY OF SOMERVILLE

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security returns, and evidence of payment thereof and such other data as may be required by the contracting City Department from time to time.

4. The undersigned shall submit payroll records to the City upon request and, if the City receives information of possible noncompliance with the provisions the Somerville Living Wage Ordinance, the undersigned shall permit City representatives to observe work being performed at the work site, to interview employees, and to examine the books and records relating to the payrolls being investigated to determine payment of wages.

5. The undersigned shall not fund wage increases required by the Somerville Living Wage Ordinance by reducing the health insurance benefits of any of its employees.

6. The undersigned agrees that the penalties and relief set forth in the Somerville Living Wage Ordinance shall be in addition to the rights and remedies set forth in the contract and/or subcontract.

**CERTIFIED BY:**

**Signature:** \_\_\_\_\_  
(Duly Authorized Representative of Vendor)

**Title:** \_\_\_\_\_

**Name of Vendor:** \_\_\_\_\_

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

**INSTRUCTIONS: PLEASE POST**

**NOTICE TO ALL EMPLOYEES  
REGARDING PAYMENT OF LIVING WAGE**

Under the Somerville, Massachusetts' Living Wage Ordinance (Ordinance No. 1999-1), any person or entity who has entered into a contract with the City of Somerville is required to pay its employees who are involved in providing services to the City of Somerville no less than a "Living Wage".

The Living Wage as of 7/1/2013 is **\$11.89** per hour. The only employees who are not covered by the Living Wage Ordinance are individuals in a Youth Program. "Youth Program" as defined in the Ordinance, "means any 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 any other related seasonal or part-time program."

For assistance and information regarding the protections and obligations provided for in the Living Wage Ordinance and/or a copy of the Living Wage Ordinance, all employees should contact the City of Somerville's Purchasing Department directly.



## CITY OF SOMERVILLE, MASSACHUSETTS

**JOSEPH A. CURTATONE**  
**MAYOR**

### Vendor Certification

The vendor certifies that it has provided the City of Somerville with an accurate tax identification number (TIN). In the event that the City is fined by the IRS for an incorrect TIN provided by the vendor, the vendor agrees to reimburse the City for the amount of the fine.

---

TIN

---

Signature

---

Printed Name of Person signing

---

Company

---

Date



Somerville City Hall • 93 Highland Avenue • Somerville, Massachusetts 02143  
(617) 625-6600, Ext. 3400 • TTY: (617) 666-0001 • Fax: (617) 625-1344  
[www.somervillema.gov](http://www.somervillema.gov)



## INSURANCE SPECIFICATIONS

### INSURANCE REQUIREMENTS FOR AWARDED VENDOR ONLY:

Prior to commencing performance of any work or supplying materials or equipment covered by these specifications, the contractor shall furnish to the Office of the Purchasing Director a Certificate of Insurance evidencing the following:

A. GENERAL LIABILITY - Comprehensive Form

Bodily Injury Liability.....\$ One Million

Property Damage Liability.....\$ One Million

B. COVERAGE FOR PAYMENT OF WORKER'S COMPENSATION BENEFIT  
PURSUANT TO CHAPTER 152 OF THE MASSACHUSETTS GENERAL LAWS IN  
THE AMOUNT AS LISTED BELOW:

WORKER'S COMPENSATION.....\$ Statutory

EMPLOYERS' LIABILITY.....\$ Statutory

C. AUTOMOBILE LIABILITY INSURANCE AS LISTED BELOW:

BODILY INJURY LIABILITY.....\$ STATUTORY

1. A contract will not be executed unless a certificate (s) of insurance evidencing above-described coverage is attached.

2. Failure to have the above-described coverage in effect during the entire period of the contract shall be deemed to be a breach of the contract.

3. All applicable insurance policies shall read:

**"CITY OF SOMERVILLE" as a certificate holder and as an additional insured** for general liability only along with a description of operation in the space provided on the certificate.

**Certificate Should Be Made Out To:**

**City Of Somerville  
Purchasing Department  
93 Highland Avenue  
Somerville, Ma. 02143**

**Note: If your insurance expires during the life of this contract, you shall be responsible to submit a new certificate(s) covering the period of the contract. No payment will be made on a contract with an expired insurance certificate.**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:		
	PHONE (A/C, No. Ext):	FAX (A/C, No):	
	E-MAIL ADDRESS:		
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED	INSURER A:		
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>GENERAL LIABILITY</b>						EACH OCCURRENCE \$
	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
							GENERAL AGGREGATE \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						\$
	<b>AUTOMOBILE LIABILITY</b>						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
							\$
	<b>UMBRELLA LIAB</b>						EACH OCCURRENCE \$
	<input type="checkbox"/> EXCESS LIAB						AGGREGATE \$
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>						WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N <input type="checkbox"/> N/A						E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

DESCRIPTION OF PROJECT, SOLICITATION NUMBER AND THAT THE CITY OF SOMERVILLE IS A CERTIFICATE HOLDER AND ADDITIONAL INSURED

**CERTIFICATE HOLDER****CANCELLATION**

CERTIFICATES SHOULD BE MADE OUT TO:

CITY OF SOMERVILLE  
PURCHASING DEPARTMENT  
93 HIGHLAND AVE  
SOMERVILLE, MA 02143

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

## **CERTIFICATE OF GOOD STANDING**

TO: Vendor

FROM: Purchasing Department

RE: **CERTIFICATE OF GOOD STANDING**

The **Awarded Vendor** must comply with our request for a **CURRENT “Certificate of Good Standing”**.

If you require information on how to obtain the “Certificate of Good Standing” or Certificate of Registration (Foreign Corporations) from the Commonwealth of Massachusetts, please call the Secretary of State’s Office at (617) 727-2850 (Press #1) located at One (1) Ashburton Place, 17<sup>th</sup> Floor, Boston, MA 02133 or you may access their web site at: [www.sec.state.ma.us/corp/certificates/certificate\\_request.asp](http://www.sec.state.ma.us/corp/certificates/certificate_request.asp)

If your company is incorporated outside of Massachusetts and therefore is a “foreign corporation”, but is registered to do business in Massachusetts, please comply with our request for the Certificate of Registration from the Commonwealth of Massachusetts. If your company is a foreign corporation, but is not registered to do business in Massachusetts, please provide the Certificate of Good Standing from your state of incorporation.

Please note that without the above certificate (s), the City of Somerville cannot execute your contract.

### **IMPORTANT NOTICE**

Requests for Certificates of Good Standing by mail may take a substantial amount of time. A certificate may be obtained immediately in person at the Secretary’s Office at the address above. Also, at this time, the Secretary of State’s Office may not have your current annual report recorded. If this is the case, and you are therefore unable to obtain the Certificate of Good Standing, please forward a copy of your annual report filing fee check with your signed contracts. Please forward your original Certificate of Good Standing to the Purchasing Department upon receipt.

Thank You,

Purchasing Director

**APPENDIX A**  
**SAMPLE CONTRACT**



**Agreement for Designer Services  
By And Between  
The City Of Somerville  
Acting through its Purchasing Department  
for the \_\_\_\_\_  
and  
\_\_\_\_\_**

**Contract #:** \_\_\_\_\_

**Contract Amount:** \$ \_\_\_\_\_

**PO #:** \_\_\_\_\_

**P.O. Amount:** \_\_\_\_\_

**Contract Period:**

**Contract For:**

**Vendor:**

**ACCORDING TO SCOPE OF WORK (SOW) CONTAINED HEREIN**

**AGREEMENT FOR DESIGNER SERVICES  
BETWEEN  
THE CITY OF SOMERVILLE  
AND  
THE DESIGN PROFESSIONAL**

This Agreement made on the \_\_\_\_\_ is between the City of Somerville ("the **City**"), City Hall, 93 Highland Avenue, Somerville, MA 02143 and \_\_\_\_\_ ("the **Design Professional**") located at \_\_\_\_\_

for the services described herein and in the attached APPENDIX A, Request for Proposals ("RFP"). The Design Professional's principal design discipline is *(insert architecture, landscape architecture, or engineering)* \_\_\_\_\_.

The **City** and the **Design Professional** 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 **Design Professional** which is titled: Agreement for Designer Services between the City of Somerville and the **Design Professional**, 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 **Design Professional**. The Construction Cost shall include the cost of labor at current prevailing wage rates established by the Commonwealth and furnished by the **City** (or, if applicable, current Davis Bacon wage rates established by the federal government and furnished by the **City**), materials and equipment designed, specified, selected, or specially provided for by the **Design Professional**, plus a reasonable allowance for 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 **Design Professional** and the **Design Professional's** consultants, the costs of the land, rights-of-way, financing, or other costs which are the responsibility of the **City** as provided herein.

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

**1.2.5. Contract Documents** - The Contract Documents consist of the Agreement between the City and the Contractor; the notice of award of the Contract; the Notice to Proceed; the entire Project Manual; Change Orders; Work Change Directives; the Contractor's Bid and all accompanying documents; and the **Design Professional'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, or M.G.L. c. 30, §39M, 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 **Design Professional** 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 **Design Professional'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. Sales tax is not a reimbursable expense. The **City's** tax exempt number is E04-600-1414.

**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 **Design Professional** shall decide what constitutes "minor," "incomplete," "unsatisfactory," and "materially" and the **Design Professional'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 **Design Professional** 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 DESIGN PROFESSIONAL'S RESPONSIBILITIES

**2.1. STANDARD OF PERFORMANCE.** The Design Professional 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 **Design Professional's** services under this Agreement shall be performed as expeditiously as is consistent

with such standards. The **Design Professional** 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 Design architectural or landscape architectural (or both if applicable), structural, mechanical, and electrical design of the Project.

**2.2. SCHEDULE OF PERFORMANCE.** The approved schedule for the performance of the **Design Professional's** services is attached hereto as APPENDIX B. Time is of the essence and time periods established by the attached APPENDIX B shall not be exceeded by the **Design Professional** except for delays due to causes outside the **Design Professional'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 **Design Professional** or any of its consultants).

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

**2.4. RELATIONSHIP WITH THE CITY.** For the purposes of this Agreement, the **Design Professional** 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 DESIGN PROFESSIONAL'S BASIC SERVICES**

##### **3.1. IN GENERAL.**

**3.1.1.** The **Design Professional'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.** for public building projects, all surveys (unless provided by the **City**), 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, electrical, 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);

**3.1.1.2.2** for park/playground projects, all surveys (unless provided by the **City**), lighting consultants, independent cost estimators (if specified in the RFP) and normal structural, mechanical, electrical, 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);

**3.1.1.2.3** for roadway, bridge, and other public works projects other than park/playground projects, all surveys (unless provided by the **City**), geotechnical services, testing services, and related information and reports reasonably required by the Project, geotechnical and civil engineers; independent cost estimators; fire protection, life safety, and lighting consultants; and normal structural, mechanical, electrical, 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 Board of Aldermen meetings, if deemed necessary by the **City**. If the **Design Professional** is called as a witness in a court of competent jurisdiction in a matter in which the **Design Professional** is a named party, the **Design Professional** will not be additionally compensated. If the **Design Professional** is called by the **City** as a witness in a matter in a court of competent jurisdiction in which the **Design Professional** is not a named party, the **Design Professional** 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 **Design Professional'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 **Design Professional** 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 **Design Professional** which are discovered to be defective during any Phase will be promptly corrected by the **Design Professional** at no cost to the **City**, and the **Design Professional** 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 **Design Professional's** services shall in no way alter the **Design Professional'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 **Design Professional** shall assist the General Contractor in preparing record drawings in accordance with the following:

**3.1.2.1.** Record Keeping.

As the Construction Phase progresses, the **Design Professional** shall work with the Contractor to maintain four separate sets of in-progress record drawings (blueline or blackline) at the Site, one set each for architectural, mechanical,

electrical, plumbing, and 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.**

The **Design Professional** shall assist the General Contractor in transferring the information contained on the in-progress record drawings to CAD compatible discs 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.**

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

**3.1.2.4. Submission to the City.**

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

**3.1.2.4.1** A complete set of original Construction Documents on disk in AutoCad format.

**3.1.2.4.2** Permanent record drawings as described above on mylar with the seal of the **Design Professional** of record.

**3.1.2.4.3** One set of blueline prints of the above.

**3.1.2.4.4** 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 **Design Professional** 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 **Design Professional** 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 **Design Professional** shall review with the **City** alternative approaches to the design and construction of the Project.

**3.2.5. Schematic Design Documents.** The **Design Professional** 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 **Design Professional** 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 **Design Professional** shall submit to the **City** a Statement of Probable Construction Costs.

**3.2.8. Life-Cycle Cost Estimates.** If this Agreement includes Design Professional 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*).

**3.2.8 SUSTAINABLE DESIGN CRITERIA. INSERT REQUIREMENTS AS TO SUSTAINABLE DESIGN.**

### **3.3. DESIGN DEVELOPMENT PHASE.**

**3.3.1. Commencement.** The Design Development Phase begins upon the **City's** written approval of the **Design Professional'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 **Design Professional** 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 appropriate architectural, landscape architectural, structural, mechanical, and electrical systems; materials; and such other elements as may be appropriate. The Design Development Documents shall be complete and unambiguous and shall comply with all applicable laws, statutes, ordinances, codes, orders, rules, and regulations.

**3.3.3. Adjustment to Statement of Probable Construction Cost.** The **Design Professional** 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 **Design Professional**, or as otherwise provided herein.

### **3.4. CONSTRUCTION DOCUMENT PHASE.**

**3.4.1. Commencement.** The **Design Professional'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 **Design Professional** 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 **Design Professional** 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 **Design Professional** with copies of all **City**-generated forms and documents intended to be included in the Project Manual. The **Design Professional** will include these forms and documents in its Project Manual. It is the responsibility of the **Design Professional** to ensure that all such documents are included in the final Project Manual. Any costs incurred as a result of the failure of the **Design Professional** to include any such documents will be borne by the **Design Professional** and not charged to the **City**, where such failure is the fault of the **Design Professional**. The **Design Professional** 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 **Design Professional** shall prepare and submit to the **City** for approval the entire Project Manual. The **Design Professional** shall, to the best of his/her ability, immediately inform the **City** if any documents are missing or deficient.

**3.4.5. Addenda.** All addenda shall be issued by the Contracting Department; however, at the Contracting Department's sole discretion, the **Design Professional** 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 **Design Professional** at no charge to the **City**.

**3.4.6. Printing of Project Manual.** The **Design Professional** must provide the **City** with a final draft of the Project Manual and obtain approval from the **City** prior to printing. The **Design Professional** will be responsible for the printing of the Project Manuals unless the **City** instructs the **Design Professional** otherwise. The cost of producing such Project Manuals will be passed onto the **City** at cost. Any changes required to be made to the Construction Documents as a result of errors by the **Design Professional** or persons within its control will be promptly corrected at no cost to the **City**. The **Design Professional** shall make its best efforts to print Project Manuals on paper containing a minimum of twenty percent (20%) post consumer content.

**3.4.7. Packaging the Project Manual..** The **Design Professional** 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 **Design Professional** will use its best efforts to ensure that the Contracting Department receives the number of Project Manuals requested by the Contracting 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 **Design Professional** 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, or M.G.L. c. 30, §39M, and ends on the date the Construction Phase begins.

**3.5.2. Additional Bidders.** The **Design Professional** shall assist the **City** in obtaining bids if, in the opinion of the Contracting Department, an insufficient number of persons requested the Project Manual. The **Design Professional** will notify “eligible” and “responsible” persons (as those terms are defined in the M.G.L. c. 149, §44A and referred to in M.G.L. c. 30, §39M) of the Invitation to Bid.

**3.5.3. When Lowest Bid Exceeds Total Construction Cost.** If the lowest bona fide bid by a Contractor 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 **Design Professional** 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 **Design Professional’s** sole cost and expense (which cost and expense include, but are not limited to the **Design Professional’s** time, the cost of reprinting the Project Manual, and the cost of re-advertisement of the Project).

**3.5.4. Pre-Bid Conferences.** The **Design Professional** shall attend all pre-bid conferences.

**3.5.5. Investigation of Bidders.** The **Design Professional** 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 Design Professionals from such prior projects, visiting the sites of such other projects and checking all other appropriate references. The **Design Professional** shall provide the **City** with a detailed letter 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), M.G.L. c. 30, §39M(c), or, if appropriate, M.G.L. c. 29, §29F). If the **Design Professional** disapproves of the lowest Bidder, then the **Design Professional** 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 **Design Professional** must provide the **City** with a detailed letter as described above.

**3.5.6. Preparation of Contract.** To the extent required, the **Design Professional** shall assist the Contracting Department 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 Design Professional’s Duties, Etc.** Construction Phase duties, responsibilities, and limitations of authority of the **Design Professional** shall not be extended without written agreement of the **City** and the **Design Professional**. Any restrictions or modifications to the

**Design Professional's** duties and responsibilities can be imposed by the **City** without the consent of the **Design Professional**.

**3.6.3. Pre-construction Conferences.** The **Design Professional** shall attend all pre-construction conferences.

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

**3.6.7. Contractor's Schedule.** Except as otherwise provided in this Agreement, the **Design Professional** 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 **Design Professional**. Except as otherwise provided in this Agreement, the **Design Professional** 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 **Design Professional** of its obligations to the **City** elsewhere in this Agreement. The **Design Professional** 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 **Design Professional**. Communications by and with the **Design Professional's** consultants shall be through the **Design Professional**, 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 **Design Professional's** observations of the Work and evaluations of the Contractor's applications for payment, the **Design Professional** 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 **Design Professional's** certification for payment shall

constitute a representation to the **City** based on the **Design Professional'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 **Design Professional**. The **Design Professional** is required to review and validate the certified payrolls. The **Design Professional** 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 **Design Professional** shall establish office procedures assuring either immediate mail or messenger delivery of the approved applications for payment to the **City**. Notwithstanding the foregoing, the Mayor's Office of Strategic Planning and Community Development (SPCD) shall be responsible for monitoring and certifying construction payrolls for compliance with prevailing wage requirements (a) if the Contract is a federally funded contract subject to federal Davis Bacon and Related Acts; and/or (b) if SPCD is the Contracting Department.

**3.6.10. Rejection of Work.** The **Design Professional** shall have the responsibility, obligation, and authority to reject Work which (1) does not conform to the Contract Documents; or (2) the **Design Professional** believes to be defective; or (3) the **Design Professional** 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. The **Design Professional** shall promptly notify the **City** of such rejection. Whenever the **Design Professional** considers it necessary or advisable for implementation of the intent of the Contract Documents, the **Design Professional** 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 **Design Professional** must obtain the **City's** prior written approval of any such special inspection or testing. However, neither this authority of the **Design Professional** 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 **Design Professional** to the Contractor, Subcontractors, Suppliers, other persons performing portions of the Work.

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

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

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

**3.6.15.2. Time Period and Action.** The **Design Professional** 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 **Design Professional**); or

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

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

**3.6.18. Certificate of Occupancy.** The **Design Professional** shall be responsible for satisfying any and all requirements with respect to services of an Design Professional necessary to obtain a

permanent certificate of occupancy under the Commonwealth of Massachusetts State Building Code.

### **3.6.19. Limitation on the Design Professional's Responsibilities.**

**3.6.19.1.** Neither the **Design Professional's** authority to act under the provisions of the Contract Documents nor any decision made by the **Design Professional** in good faith to exercise or not to exercise such authority shall give rise to any duty or responsibility of the **Design Professional** to the Contractor, any Subcontractor, any Supplier, any surety for any of them, or any other person. The **Design Professional** 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 **Design Professional** will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The **Design Professional** 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**

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

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

**4.2.3.** Undertaking 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 **Design Professional**.

**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 **Design Professional** and the **Design Professional'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 **Design Professional** shall report to the **City** the presence and location of any hazardous material observed by the **Design Professional** (or any material suspected to exist) or that an design professional 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 **Design Professional** 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 **Design Professional** 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 **Design Professional** in order to avoid unreasonable delay in the orderly and sequential progress of the **Design Professional'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 **Design Professional** to perform its services under this Agreement. The **Design Professional** shall review and confirm the sufficiency of any test and information furnished to the **Design Professional** 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 **Design Professional**, if the **City** becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

## **ARTICLE 7**

### **USE OF THE DESIGN PROFESSIONAL'S PLANS, SPECIFICATIONS, AND OTHER DOCUMENTS**

**7.1. IN GENERAL.** The Plans, Specifications, and other documents prepared by the **Design Professional** for this Project are instruments of the **Design Professional's** service for use solely with respect to this Project and, unless otherwise provided, the **Design Professional** shall be deemed the author of these documents and shall retain all common law, statutory, and other reserved rights, including the copyright (Note: if this contract is federally funded, see Appendix L Federal Requirements regarding royalties and copyrights). The **City** shall be permitted to retain copies, including reproducible copies, of the **Design Professional's** Plans, Specifications, and other documents for information and reference in connection with the **City's** use and occupancy of the Project. The **Design Professional'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 **Design Professional** as to the reason for validity of the termination, provided only that the **Design Professional** 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 **Design Professional'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 **Design Professional's** services, the **Design Professional** shall continue to perform in accordance with the terms of this Agreement during the course of any renegotiation of the **Design Professional'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 for designer contracts subject to the Designer Selection Statute, but this section applies also to contracts not subject to M.G.L. c. 7, §38G*).

**8.4. ADDITIONAL SERVICES OF THE DESIGN PROFESSIONAL.** For Additional Services of the **Design Professional**, 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 **Design Professional** for such services stated in APPENDIX G.

**8.6. REIMBURSABLE EXPENSES.** For Reimbursable Expenses, compensation shall be the actual cost billed to the **Design Professional**, not including any tax. The City will provide its tax-exempt number upon request..

## ARTICLE 9

### PAYMENT TO THE DESIGN PROFESSIONAL

**9.1. PAYMENT TO DESIGN PROFESSIONAL.** The **City** shall make payments directly to the **Design Professional** within forty-five (45) days after the **City** receives and approves the **Design Professional's** detailed certified monthly statement. The detailed monthly statement must include, at minimum, itemized hours and work performed by the **Design Professional** (including, but not limited to, all employees of the **Design Professional** and its agents), and an itemized list of Reimbursable Expenses. Records of the **Design Professional'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 ADVANCE PAYMENTS.** No payments will be made in advance of services rendered.

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

## ARTICLE 10

### INSURANCE REQUIREMENTS

**10.1. LIABILITY INSURANCE.** The **Design Professional** at its own expense must obtain and maintain a professional liability insurance policy covering negligent errors, omissions, and acts of the **Design Professional** or of any person for whose performance the **Design Professional** is legally liable arising out of the performance of such contracts for design services. The **City** may require a consultant employed by the **Design Professional** subject to this subparagraph to obtain and maintain a similar liability

insurance policy. If the **Design Professional** 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. INSURANCE RATING.** 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. MINIMUM COVERAGES.** The **Design Professional** and its structural, mechanical, and electrical engineering consultants shall each maintain the following minimum insurance coverages:

**10.3.1.** Workers' Compensation insurance- co-called "statutory coverage" 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 **Design Professional's** services in relation to the Project.

**10.4. INSURANCE TERMS.** 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 **Design Professional** 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 **Design Professional** for approval of engineers or other consultants shall be accompanied by certificates setting forth the types and amounts of insurance carried by them. The **Design Professional** 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)**

(If this contract is federally funded, see also Federal Requirements attached hereto as Appendix L.)

**11.1.** The **Design Professional** 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 **Design Professional**.

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

*If this contract is subject to the Massachusetts Designer Selection Statute, M.G.L., c. 7, §38A-1/2 et seq., and if the Contract Amount exceeds \$100,000, the provisions of M.G.L. c. 30, §39R contained in sections 11.3–11.7 below shall be applicable.*

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

**11.4.** The **Design Professional** 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 **Design Professional** 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 **Design Professional** must file with the **City** a statement of management as to whether the system of internal accounting controls of the **Design Professional** 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: to permit preparation of financial statements in conformity with generally accepted accounting principles, and 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 **Design Professional** 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 **Design Professional** 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 **Design Professional'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 **Design Professional**. In the event this Agreement is terminated by the **City** pursuant to this paragraph, the **Design Professional** 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 **Design Professional** 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 **Design Professional**, with no resulting fee adjustment to the **Design Professional**, unless such suspension extends for more than twelve (12) months, in which case the **Design Professional's** compensation shall be equitably adjusted when the project is resumed to provide for expenses incurred in the interruption and resumption of the **Design Professional's** services. The **Design Professional** 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 **Design Professional** in accordance with this Agreement or persistent failure of the **City** to pay the **Design Professional** 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 **Design Professional** may, upon thirty (30) days' written notice to the **City**, suspend performance of services under this Agreement. Unless the **Design Professional** 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 **Design Professional** 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 and, if federally funded, applicable provisions of the Federal Requirements attached hereto as Appendix L.

**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 **Design Professional**, 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 **Design Professional** 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 **Design Professional** of its obligations thereunder.

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

**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 **Design Professional**.

**13.7. NOTICES AND DEMANDS.** Notices and demands required by or permitted to be given hereunder shall be hand-delivered or given by registered mail, certified mail, express mail with a tracking receipt, or FedEx 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, certified, or express mail, or FedEx 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 **Design Professional** shall be and shall remain liable to the **City** for all damages incurred by the **City** as the result of the **Design Professional'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 **Design Professional** 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 **Design Professional** shall indemnify and defend the **City** from and against all claims, costs, and liability arising out of the **Design Professional's** Services hereunder, to the

extent that such claims, costs, and liability are the result of the negligent acts, errors, or omissions of the **Design Professional**, or breaches by the **Design Professional** of its obligations hereunder or (with respect to the **Design Professional's** duty to defend) are claimed to be the result thereof.

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

## ARTICLE 14

### CERTIFICATIONS

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

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

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

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

**14.1.4.2.** file an annual audited financial statement; and submit a statement from an independent certified public accountant that s/he 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 **Design Professional's** financial statements, as provided by M.G.L. c. 7, §38H(e) and

**14.1.4.3.** the Design Professional 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;

**14.1.4.4**the Design Professional 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

**14.1.5.** the **Design Professional** 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).

**14.1.6.** the **Design Professional** will, for a seven-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 **Design Professional**;

#### APPENDICES:

APPENDIX A The RFP  
APPENDIX B Schedule of Performance of the Vendor  
APPENDIX C Compensation for Additional Services  
APPENDIX D Additional Basic Services  
APPENDIX E Compensation for Basic Services  
APPENDIX F Compensation Based Upon a Stipulated Sum  
APPENDIX G Compensation for Additional Services of Consultants  
APPENDIX H Certificates of Insurance and Additional Insurance Requirements  
APPENDIX I Notices  
APPENDIX J Mass. Professional Registration Numbers (if applicable)  
APPENDIX K Truth-In-Negotiations Certificate  
APPENDIX L Federal Requirements  
APPENDIX M Statement of Management

SIGNATURE PAGE FOLLOWS:



**IN WITNESS WHEREOF**, the City and the Vendor have executed this Contract as a sealed instrument as of the date first written above.

**CITY OF SOMERVILLE**

I hereby certify that the total contract amount is \$\_\_\_\_\_, and that an unencumbered balance of \$\_\_\_\_\_ is available for the first fiscal year of this contract. I further certify that a sum of \$\_\_\_\_\_ is hereby encumbered against the appropriate account for the purposes of this contract. Further, I certify that as funds become available, I will encumber additional sums as are required under this contract.

\_\_\_\_\_  
Edward Bean  
City Auditor

\_\_\_\_\_  
Joseph A. Curtatone  
Mayor

\_\_\_\_\_  
Angela M. Allen  
Purchasing Director

\_\_\_\_\_  
(Dept Head Name)  
(Dept Head Title)

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Francis X. Wright, Jr.  
City Solicitor

**VENDOR**

X\_\_\_\_\_  
Signature of Authorized Agent of Vendor

\_\_\_\_\_  
Printed Name of Authorized Agent of Vendor

\_\_\_\_\_  
Title of Authorized Agent of Vendor

\_\_\_\_\_  
Street Address of Vendor

\_\_\_\_\_  
City, State and Zip

\_\_\_\_\_  
TIN or FID #

**FOR CORPORATIONS ONLY:**

I certify that the individual signing on behalf of the corporation has the authority to bind the corporation.

\_\_\_\_\_  
Clerk's Signature

\_\_\_\_\_  
Print or Type Clerk's Name