

**SOLICITATION FOR:**

**Public Art in Davis Square  
RFP 15-55**



**CITY OF SOMERVILLE, MASSACHUSETTS**

**RELEASED:**

**Friday, December 12, 2014**

**DUE BY:**

**January 30, 2015 at 11am EST**

**DELIVER TO:**

**City of Somerville  
Purchasing Department  
Attn: Alex Nosnik  
93 Highland Avenue  
Somerville, MA 02143**

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NOTICE TO PROPOSERS  
**RFP #15-55**

All bids must be in accordance with terms and conditions set forth herein as stated.

- SECTION A.                Sealed proposals for: Public Art in Davis Square.
- The bids will be received at the office of the Purchasing  
Director, Somerville City Hall, 93 Highland Avenue, Somerville, MA. 02143 no later than  
Friday January 30, 2015 **at 11:00 AM.**
- SECTION B.                Forms of price bid, specifications and terms of contract can be obtained at the above office  
on or after **12/12/2014.**
- SECTION C.                Bid envelopes shall be clearly marked as follows: "**Bid No: RFP 15-55  
Public Art in Davis Square**"
- SECTION D.                If **awarded** vendor is a Corporation, vendor must comply with request for "Certificate of  
Good Standing". See attached instructions.
- SECTION E.                **INSURANCE: Awarded Vendor** must comply with insurance requirements as stated in  
the bid package.
- SECTION F.                Living Wage        - see specifications
- SECTION G.                The requirements in Section **E or F** will be waived if the words "Non-Applicable" (N/A)  
are inserted in the space designated.
- SECTION H.                The Purchasing Director reserves the right to accept or reject any or all bids, to waive any  
informalities, to divide the award, to amend any specifications or to accept any portion of a  
bid, if in her sole judgment, the best interest of the City of Somerville would be served by  
so doing.
- SECTION I.                The City reserves the right to cancel a contract, if awarded bidder does not respond to all  
necessary documents and required signature forms within ten (10) working days of receipt  
of contract.

Signature: \_\_\_\_\_

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

By: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Tel. No: \_\_\_\_\_ Fax: \_\_\_\_\_

**Public Art in Davis Square  
RFP 15-55**

**PROPOSERS CHECKLIST**

**Please ensure all documents listed on this checklist are included with your bid. Failure to do so may subject the proposer to disqualification.**

- \_\_\_\_\_ Cover Letter
- \_\_\_\_\_ Bidder's Checklist

**Non-Price Proposal**

- \_\_\_\_\_ Quality Requirements/Minimum Selection Criteria
- \_\_\_\_\_ Somerville Living Wage Form
- \_\_\_\_\_ Certificate of Non-Collusion and Tax Compliance
- \_\_\_\_\_ Certificate of Signature Authority
- \_\_\_\_\_ Insurance Specifications (bidders to review)
- \_\_\_\_\_ Reference Form (or equivalent may be attached)
- \_\_\_\_\_ Notice to Proposers (from introductory pages of this RFP – to be signed by authorized signatory of bidder and submitted with sealed bid)

**Price Proposal**

- \_\_\_\_\_ Price Summary Page
- \_\_\_\_\_ Acknowledgement of Addenda

**CITY OF SOMERVILLE MASSACHUSETTS  
SOMERVILLE CITY HALL  
93 HIGHLAND AVENUE  
SOMERVILLE, MA 02143**

**BIDDING INSTRUCTIONS FOR  
Public Art in Davis Square  
Bid No. RFP 15-55**

**Enclosed you will find a request for proposal for:** The City of Somerville is seeking to procure a Consultant for a full range of landscape architectural design services for the renovation of Draw Seven Park.

**SECTION 1.0  
GENERAL INFORMATION ON BID PROCESS**

**1.1 General**

- When submitting proposal, please identify the solicitation title and number clearly on the submitted envelope. All responses must be sealed and delivered to:

**Purchasing Department  
City of Somerville  
93 Highland Avenue  
Somerville, MA 02143.**

- Bids submitted must be an original
- **A complete bid consists of all documents listed in Sections 2.0, 4.0, 5.0 and all related appendices. Bids will be considered non-compliant and will be rejected if all required documents are not present.**
- A complete BID must also include a cover letter 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.**
- 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 / 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.
- Additional copies of the solicitation may be obtained from the Purchasing Department on and after **Friday, December 12, 2014** 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 4 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 Chapter 30B.
- Please review and return your sealed bids as sent. Also, ensure that all forms are completed and your bid response is submitted as requested. Use the attached Proposers Checklist to ensure bid documents are complete.

## 1.2 Submission Instructions

Please submit two sealed envelopes: The first envelope includes one (1) original, two (2) copies, and one (1) CD/DVD (or thumb drive) with an electronic copy of the entire non-price technical proposal (including portfolio) marked: “Non-Price Proposal— Public Art in Davis Square”. The second envelope includes one (1) original and one (1) copies of the price proposal marked “Price Proposal— Public Art in Davis Square”. Please send the complete sealed package to the attention of the Alex Nosnik, Assistant Director, Purchasing Department, Somerville City Hall, 93 Highland Avenue, Somerville MA 02143 on or before **11:00AM, on January 30, 2015**. The total package should not exceed 20 pages (excluding required forms).

The proposal package must include:

- One page contact sheet (include name, address, phone, email);
- Letter of intent;
- Rough sketches of the proposed objects and details on the materials to be used; and,
- Resume/Curriculum Vitae and portfolio, including visuals representing your work.

Electronic copies are to be submitted on CD/DVD (or thumb drive) saved in Adobe Acrobat format. (“Read only” files are acceptable). All disks shall be virus checked prior to submission.

(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 concerning this solicitation must be submitted in writing to: Alex Nosnik, Assistant Director, City of Somerville, Purchasing Department, 93 Highland Avenue, Somerville, MA 02143 **before 1/07/2015 @ 12:30PM EST**. Questions may be delivered, mailed, faxed to 617-625-1344, or e-mailed to [anosnik@somervillema.gov](mailto:anosnik@somervillema.gov). Answers will be sent via an addendum to all Offerors who received this solicitation through the Purchasing Department. Bidders are encouraged to contact the Purchasing Department to register as a bid document holder to automatically receive addenda as they are issued. 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.>

**If any bidders or proposers contact anyone outside of the Purchasing Department regarding this bid/proposal, that bidder/proposer will be disqualified immediately.**

### **1.5 Bidding Schedule**

**Key dates for this Invitation for Bid:**

RFP Issued	12/12/2014
Deadline for Submitting Questions to RFP	1/07/15 by 12:30 PM EST
Proposals Due	1/30/15– 11AM EST
Anticipated Contract Award	2/15/2015
Services Commence	3/01/2015
Contract Completion Date	1/21/2017

Responses must be delivered by 1/30/15 **at 11AM EST** to City of Somerville, Purchasing Department, Attn: Alex Nosnik, 93 Highland Avenue, Somerville, MA 02143.

## **SECTION 2.0**

### **SPECIFICATIONS/SCOPE OF SERVICES**

#### **1.0 Summary**

#### **1.1 Background**

##### ***1.1.1 Introduction***

The City of Somerville, acting by and through the Somerville Arts Council and the Mayor's Office of Strategic Planning and Community Development (OSPCD), is seeking the services of a designer/fabricator to provide design, fabrication, and installation oversight services for custom seating area and public art on a new plaza to be constructed near Davis Square in Somerville, MA. The City intends to include creatively designed and fabricated benches and sculptural elements to build on Davis Square's creative aesthetic and connection to the arts community. The work produced from this process is intended to be functional and to distinguish Somerville for its inclusion of artists and the arts in everyday life.

##### ***1.1.2 Site***

The Site is a new "Gateway Plaza" to be constructed in Davis Square at the intersection of Cutter, Summer, and Elm Streets. Today this area is a parking lot and is fenced off. This new design is intended to transform the area into an active, green, and flexible space to better serve the Davis Square community. A temporary plaza was installed at this location for a period of three days in 2013 and was an enormously popular and actively enjoyed.

The plaza is part of the Davis Square Streetscape Improvement Project run by OSPCD and a team of designers and engineers, which is slated to begin construction in 2015. The project includes a series of improvements to both the aesthetics and function of Davis Square for all modes. In order to organize traffic flow and simplify intersections for all modes, new plaza space will be created by reallocating extra lane space, relocating parking, and making accessible previously underutilized public space. The plaza at Cutter and Elm has been dubbed "Gateway Plaza" and is approximately 5000 square feet in size. In response to the public's request, designers have created a green, open environment for movable furniture, dining, and small events. Several large planters mark the entrance to plaza at the western end, while the rest of the plaza will feature small groups of moveable furniture amongst the trees. A preliminary plan of the plaza is attached (Attachment 1).

#### ***2.2 Scope of Work***

The selected artist will be required to conceptualize, design in detail, construct, and provide oversight for the installation of two large custom benches and a standalone art piece. The project team is in the process of finalizing the design documents for the plaza. They have designed specific areas in the plaza that are indicated on the attached plan (Attachment 1) for the installation of creative seating and public art.

The custom benches are to be placed along the planters at the western side of the plaza. It is envisioned that free-form, mosaic, tiled, wrought or otherwise constructed benches can populate this space. One bench should be designed to complement the smaller planter and measure 35 linear

feet while the other will accompany the larger planter and measure 53 linear feet. Benches must also conform to the attached Bench Design Guidelines to ensure that seating support and accessibility standards are met (Attachment 1). At the eastern side of the plaza, complementary artwork is to be located in an open area near Cutter Avenue of approximately 305 square feet or roughly a 15'x20' polygon. The piece may be three dimensional or may be flush with the pavement in a mosaic, tile, or relief format. The two pieces should be linked together via similar materials, motifs, or other means. The artist will work with the project manager and team to ensure that the art can be constructed as indicated in the space provided and that pedestrian access and comfort/maintenance concerns are resolved.

#### **Required Tasks:**

- Detailed sketches of proposed objects with dimensions;
- Cost estimates for design and fabrication, not to exceed the amount specified under budget above;
- Materials listing;
- Specification for how the objects will be fabricated and secured to the plaza (wire-cut brick over concrete base); and,
- Meetings to kick off design, coordinate the project, and install and finalize the work.

#### **Budget and Payment**

The budget for this entire scope is expected to be around \$25,000. A contract will be lump sum with payments phased as follows:

- 50% of the total fee will be pay at receipt of final design package;
- 25% of the total fee will be paid upon substantial completion of the work.
- 25% of the total fee will be paid upon installation and punch list closeout of the work.

The scope of work will be finalized upon signing of the contract.

#### **2.3 Specifications / Requirements**

The following items are considered specific requirements for the successful completion of this contract. Artwork will be evaluated based on the ability to provide striking public art while also coordinating with the design of the plaza. Proposals should address fabrication specifications and how the pieces relate to the rest of the site. Proposers should consider the following in developing their design:

- Relation of design to the physical character of the plaza and Davis Square;
- Strong demonstration of how the creative form and required specifications are interconnected;
- The designs may also--but are not required to--incorporate some elements that reflect the modern context and/or history of Davis Square;
- The designs should help cultivate and promote the community and its artistic, creative presence; and,
- Use of materials that meet maintenance requirements.

The evaluation committee may contact the respondent in order to gather additional information.

## 2.4 Basic Requirements and Proposal Review

Proposals will be reviewed by staff from OSCPD (including the Davis Square Streetscape project manager), designers from the project team, and staff from the Arts Council.

Proposals will be considered based on:

- Meeting the submission requirements of this RFP;
- Artistic and aesthetic integrity: Ingenuity, quality of design, and aesthetic consideration towards integrating with the site; and,
- Constructability and consideration towards installation and materials integration.

The following basic requirements comprise the minimum set of standards that an applicant 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, 2 or 3, or a failure to respond to any of the following minimum standards will result in disqualification of your bid.

QUALITY REQUIREMENTS		YES	NO
1.	A portfolio, attached to the proposal and meeting the requirements listed herein, of work comprising five (5) or more years of sculptural, fabrication, and/or design work.		
2.	The services provided by the Contractor shall be in accordance with all applicable standards, codes, regulations and laws.		
3.	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, 2 and 3 under the quality requirements listed above, respondents must submit written information that details the general background, experience, and qualifications of the organization. This information should be detailed throughout the various Tabs in the technical proposal response. Subcontractors, if applicable, must be also included.

## 2.5 Comparative Evaluation Criteria

The Comparative Evaluation Criteria set forth in this section of the RFP shall be used to evaluate responsible and responsive proposals. The Comparative Evaluation Criteria are:

Factor 1: Artistic Vision	
<b>Highly Advantageous</b>	The respondent demonstrates strong and original artistic vision through his or her portfolio.
<b>Advantageous</b>	The respondent demonstrates artistic vision and originality through his or her portfolio.
<b>Not Advantageous</b>	The respondent's portfolio does not show artistic vision.

Factor 2: Management of Public Art Projects	
<b>Highly Advantageous</b>	The respondent has extensive experience implementing public art projects.
<b>Advantageous</b>	The respondent has some experience implementing public art projects.
<b>Not Advantageous</b>	The respondent has no experience implementing public art projects.

Factor 3: Conceptual Design	
<b>Highly Advantageous</b>	The respondent has supplied an inspiring initial concept of the proposed pieces and their installation
<b>Advantageous</b>	The respondent has supplied an initial concept of the proposed pieces.
<b>Not Advantageous</b>	The respondent has supplied a vague or insufficiently illustrated concept of the proposed pieces.

In order to provide verification of affirmative responses to items 1, 2 and 3 under the quality requirements listed above, respondents must submit written information that details the general background, experience, and qualifications of the organization. Subcontractors, if applicable, must be also included.

## **2.6 Period of Performance**

The period of performance for this contract will be from March 1, 2015 through January 21, 2017.

## **2.7 Place of Performance**

Meetings between the Respondent and City personnel shall be held at the City of Somerville, Massachusetts. The Respondent may be required to appear on site to assist with art placement and installation proceedings.

## **2.8 Respondent Conduct**

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

## **2.9 Respondent Personnel**

Respondents to this RFP should include qualifications of any and all personnel involved in completion of the tasks described herein.

## **2.10 Confidentiality**

The Respondent agrees that it will ensure that its employees and others performing services under this contract will not use or disclose any non-public information unless authorized by the Purchasing Department. That includes confidential reports, information, discussions, procedures, and any other data that are collected, generated or results from the performance of this SOW.

All documents, photocopies, computer data and any other information of any kind collected or received by the Respondent in connection with the contract work shall be provided to the Purchasing Department upon request at the termination of the contract (i.e., the date on which final payment is made on the contract or at such other time as may be requested by the Purchasing Director or as otherwise agreed by Purchasing Director and the Respondent).

The Contractor may not discuss the contract work in progress with any outside party, including responding to media and press inquiries, without the prior written permission of the Purchasing Department. In addition, the Respondent may not issue news releases or similar items regarding contract award, any subsequent contract modifications, or any other contract-related matter without the prior written approval of the Purchasing Director. Requests to make such disclosure should be addressed in writing to the Purchasing Director.

## **2.11 Contractor Furnished Materials**

The respondent is required to furnish all materials required for the

## **2.13 Deliverables:**

The Offeror shall consider the below items as deliverables according to the SOW. All items noted

within the table will be reviewed by the project manager (OSPCD). The Respondent shall provide for all day-to-day supervision, inspection and monitoring of all work performed to ensure compliance with the contract requirements. The contractor shall follow through to assure that all City and Contractor identified defects or omissions in the contract requirements are corrected.

The scope of work will be detailed and agreed to via confirmation between the artist and the review panel. It will at a minimum include the following tasks:

- Detailed sketches of proposed objects with dimensions;
- Cost estimates for design and fabrication, not to exceed the amount specified under budget above;
- Materials listing;
- Specification for how the objects will be fabricated and secured to the plaza (wire-cut brick over concrete base); and
- Site visits to confirm conditions, prepare, and oversee installation..

For a timeline, please see the following page.

<i>Objective</i>	<i>Required Service</i>	<i>Timeline</i>
<b>Design Development and Coordination</b>	<ul style="list-style-type: none"> <li>• Introductory meeting with City team to confirm tasks, review existing plans, and kick off project</li> <li>• Detailed sketches of proposed objects with dimensions</li> <li>• Materials listing and identification of maintenance procedure</li> <li>• Spec for how the objects will be fabricated and secured to the plaza (wire-cut brick over concrete base)</li> </ul>	<p>Intro meeting February 2015</p> <p>Design Development February – August 2015</p> <p>Preliminary Design due May 2015</p> <p>Final Design due August 2015</p>
<b>Cost Breakdown</b>	<ul style="list-style-type: none"> <li>• Cost estimates for design and fabrication, not to exceed the amount specified under budget above</li> </ul>	<p>Preliminary: May 2015</p> <p>Final: August 2015</p>
<b>Construction Coordination</b>	<ul style="list-style-type: none"> <li>• Site visits to confirm conditions, prepare, and oversee installation.</li> </ul>	<p>Meeting at substantial completion of plaza construction(~March 2015) and again at project closeout (Fall 2015)</p>
<b>Closeout</b>	It is anticipated that the respondent will be invited to participate in any opening ceremony.	Approximately Fall 2015.

**SECTION 3.0**  
**RULE FOR AWARD**

The contract shall be awarded to the responsible and responsive proposer submitting the most advantageous proposal response, taking into consideration all evaluation criteria as well as price. The contract will be awarded within ninety (90) days after the bid opening. The time for award may be extended for up to 45 additional days by mutual agreement between the City and the apparent lowest responsive and responsible bidder (or, for a contract requiring payment to the City, the apparent highest responsive and responsible bidder).

**SECTION 4.0  
PRICING**

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

**Public Art in Davis Square RFP 15-55**

The Offeror proposes to furnish and deliver the services specified at the following prices that include delivery, the cost of fuel, the cost of labor and all other charges related to successful completion of trips. Prices are to remain the same for the entire contract period.

<u><b>2015-2016 Total Fixed Fee</b></u>	
<u><b>Design and Related Services - Total Fixed Fee</b></u>	\$
<u><b>2015-2016 Hourly Fee Schedule</b></u>	
Project Manager	\$
Other:	\$
Other:	\$

**NAME OF COMPANY / INDIVIDUAL:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CITY/STATE/ZIP:** \_\_\_\_\_

**TELEPHONE/FAX/EMAIL:** \_\_\_\_\_

**SIGNATURE OF AUTHORIZED INDIVIDUAL:**

\_\_\_\_\_

**ACKNOWLEDGEMENT OF ADDENDUMS:**

**Addendum #1** \_\_\_\_\_ **#2** \_\_\_\_\_ **#3** \_\_\_\_\_ **#4** \_\_\_\_\_

## **SECTION 5.0 FORMS**

### **5.1 Required Submissions (included with response)**

**5.1.1** Proposers Checklist

**5.1.2** Quality Requirements Form

**5.1.3** Reference Sheet

**5.1.4** Non-Collusion & Tax Compliance Form

**5.1.5** Certificate of Signature Authority

**5.1.6** Somerville Living Wage Ordinance Form

**5.1.7** Vendor TIN Certification Form

### **5.2 Required Submissions (to be provided post award)**

**5.2.1** Insurance Certificate: As outlined on attached form included in this solicitation, must be provided by the **awarded vendor** within

The City requires that the Contractor demonstrate experience providing similar services for a minimum of three (3) projects similar in Scope. Three (3) references shall be provided for past performance.

Please use the below format for all references submitted and provide as much detail as possible in the Summary section.

<b>Past Performance / Reference Title:</b>	
<b>Period of Performance</b>	
<b>POC Name &amp; Title</b>	
<b>Telephone</b>	
<b>Fax</b>	
<b>Email</b>	
<b>Summary of supplies or services provided</b>	

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

CITY OF SOMERVILLE

Rev. 08/01/12



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

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

CITY OF SOMERVILLE

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## **Sole Proprietor Declaration as to Workers' Compensation Insurance**

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

### **1. Please Print Legibly**

**Business/Organization Name:**\_\_\_\_\_

**Address:**\_\_\_\_\_

**City/State/Zip:**\_\_\_\_\_

2. I hereby certify that I am a sole proprietor doing business under the name written above, and have no employees working for me in any capacity, and am not required by law to obtain workers compensation insurance. I am the sole proprietor of the firm and am solely responsible for liabilities thereof. I am the sole owner and proprietor of said business. I further confirm that I am and shall continue to be personally and fully responsible for all business conducted under my name.

3. I certify that I am an independent contractor and I understand that under the terms of this contract I am not an agent, servant or employee of the City of Somerville and am not eligible for, and shall not participate in, any City of Somerville employee benefits, including but not limited to pension, deferred compensation plans, health, life and accidental death and dismemberment insurance or other fringe benefits.

4. I hereby certify that all work required will be performed personally and solely by me or persons who perform voluntary service without pay.

5. I hereby certify that I am hereby authorized to make, enter into, execute, and deliver contracts and bonds in the name and on behalf of said sole proprietorship, and such execution of any contract of obligation in this sole proprietorship's name and on its behalf shall be valid and binding upon this sole proprietorship.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Signature



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



## **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)**



**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 7/1/2014 "Living Wage" shall be deemed to be an hourly wage of no less than \$12.05 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 **7/1/2014** is **\$12.05** 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)



## **SECTION 6.0 INSTRUCTIONS TO OFFEROR**

### **6.1 General Information & Submission Instructions**

#### **6.1.1 Bid Delivery**

Responses must be delivered by **1/30/15 at 11AM EST** to City of Somerville, Purchasing Department, Attn: Alex Nosnik, 93 Highland Avenue, Somerville, MA 02143. One (1) copy of the response should be submitted. Responses must be sealed and marked with the solicitation title and number. All proposals must include all the forms listed in the Proposers Checklist

#### **6.1.2 Evaluation Methodology**

All responses will be reviewed by an evaluation committee composed of employees of the City. However, the City reserves the right to involve an outside consultant in the selection process. Final selection will be based upon the evaluators' analysis of the information and materials provided by the proposing vendors in their technical submissions compared to both the Quality Requirements & Comparative Evaluation Criteria of the solicitation. 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 to the Comparative Evaluation Criteria.

The City will award the contract to the most responsive and responsible Offeror who demonstrates best value to the city, technical and price considered. 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 proposals if it determines that the criteria set forth have not been met.

### **6.2 Non-Price (Technical) 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. The City may interview the top ranked candidates as part of the evaluation process. All information in the technical proposal should be organized and presented as directed below. Your Non-Price Proposal response should contain all forms outlined in the Proposers Checklist in the order that they appear.

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 with tabs is required. Technical proposal (excluding all required forms) should not be more than 20 pages.

Elaborate format and binding are neither necessary nor desirable. All binders will be capable of lying flat when opened. The cover and spine of each binder will clearly identify the Offeror's name, solicitation number, formal solicitation title and copy number, (e.g. copy 2 of 3). The

original for each volume will be clearly identified on the cover and the spine. All binders will allow for easy removal and replacement of pages.

### **6.2.1 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.

### **6.2.2 Qualifications & Experience**

The proposer shall include qualifications and experience of the firm (or sole proprietor). The proposer 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 proposer may include any additional literature and product brochures.

### **6.2.3 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.

## **6.3 Price Proposal Format**

### **6.3.1 Cover Letter**

Include a cover letter to 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.

### **6.3.2 Price Summary Page**

### **6.3.3 Bid Prices to Remain Firm**

All bid prices submitted in response to this solicitation must remain firm for 90 days following the bid opening.

### **6.3.4 Price Submission**

All prices must contain the unit rate as requested on the bid price form in this solicitation. All prices are to include delivery, the cost of fuel, the cost of labor and all other charges related to the products or services listed. Prices are to remain fixed for the contract period of performance.

### **6.3.5 Estimated Quantities**

The City of Somerville has provided estimated quantities for services over the course of the contract period. These estimates are estimates only and not guaranteed.

### **6.4 Bid Signature**

A response must be signed as follows: 1) if the Offeror is an individual, by her/him personally; 2) if the Offeror is a partnership, by the name of the partnership, followed by the signature of each general partner; and 3) if the Offeror is a corporation, by the authorized officer, whose signature must be attested to by the clerk/secretary of the corporation, and with the corporate seal affixed.

### **6.5 Time for Bid Acceptance**

The contract will be awarded within 60 days after the bid opening. The time for award may be extended for up to 45 additional days by mutual agreement between the City of Somerville and the apparent lowest responsive and responsible bidder (or, for a contract requiring payment, the apparent highest responsive and responsible bidder.)

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.

### **6.6 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.

#### **6.6.1 Holidays**

Holidays are as followed:

New Year's Day	Memorial Day	Columbus Day
Martin Luther King Day	Bunker Hill Day	Veterans' Day
Presidents' Day	Independence Day	Thanksgiving Day
Patriots' Day	Labor Day	Thanksgiving Friday
	Christmas Eve (half day)	Christmas Day

Please visit <http://www.somervillema.gov/> for the City's most recent calendar.

\*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.

### **6.6.2 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 City POC to accommodate support requirements, other personnel availability, meeting schedules and vacation schedules.

### **6.6.3 Unforeseen Office Closure**

If, at the time of the scheduled bid opening, Purchasing Department is closed due to uncontrolled events such as fire, snow, ice, wind, or building evacuation, the bid opening will be postponed until 2:00 p.m. on the next normal business day. Bids will be accepted until that date and time.

### **6.7 Changes & Addenda**

If any changes are made to this solicitation, an addendum will be issued. Addenda will be emailed or faxed to all bidders on record as having picked up the solicitation. The City will also post addendums on its website (<http://www.somervillema.gov/departments/finance/purchasing/bids>). No changes may be made to the solicitation documents by the Offerors without written authorization and/or an addendum from the Purchasing Department.

### **6.8 Modification or Withdrawal of Bids, Mistakes, and Minor Informalities**

An Offeror may correct, modify, or withdraw a bid by written notice received by the City of Somerville prior to the time and date set for the bid opening. Bid modifications must be submitted in a sealed envelope clearly labeled "Modification No.\_\_\_\_" to the address listed in part one of this section. Each modification must be numbered in sequence, and must reference the original solicitation.

After the bid opening, an Offeror may not change any provision of the bid in a manner prejudicial to the interests of the City or fair competition. Minor informalities will be waived or the bidder will be allowed to correct them. If a mistake and the intended bid are clearly evident on the face of the bid document, the mistake will be corrected to reflect the intended correct bid, and the bidder will be notified in writing; the bidder may not withdraw the bid. A bidder may withdraw a bid if a mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident.

### **6.9 Right to Cancel/Reject Bids**

The City of Somerville may cancel this solicitation, or reject in whole or in part any and all bids, if the City determines that cancellation or rejection serves the best interests of the City.

### **6.10 Unbalanced Bids**

The City reserves the right to reject unbalanced, front-loaded and conditional bids.

### **6.11 Brand Name "or Equal"**

Any references to any brand name or proprietary product in the specifications shall require the acceptance of an equal or better brand. The City has the right to make the final determination as to whether an alternate brand is equal to the brand specified.

### **6.12 Warranty**

The Offeror warrants that (1) the Supplies sold are merchantable, (2) that they are fit for the purpose for which they are being purchased, (3) that they are absent any latent defects and (4) that they are in conformity with any sample which may have been presented to the City. The bidder guarantees that upon inspection, any defective or inferior Supplies shall be replaced without additional cost to the City. The Vendor will assume any additional cost accrued by the City due to the defective or inferior Supplies. The bidder guarantees all Supplies for a period of one (1) year, or as otherwise specified herein.

### **6.13 Contract Term Length**

The contract will remain in effect from approximately 2/01/2015 to on/ about 1/21/2017.

### **6.14 Invoicing**

The Vendor will mail an invoice to the ordering Department after completion of the service and be authorized by a work order. All invoice submissions must include a Vendor Work Order which was signed by the Department Head, or his/her designee authorizing the work to be performed on a City Building. Any Invoices that are presented for payment, that do not have a signed work order backup, by a City designee, will not be paid by the City.

### **6.15 Electronic Funds Transfer (EFT)**

For Electronic Funds Transfer payment, the following information shall be submitted with invoices to the office / individuals address listed in Section III:

- Contract/Order number.
- Contractor's name & address as stated in the contract/order number.
- The signature (manual or electronic, as appropriate) title, and telephone number of the Vendor's representative authorized to provide sensitive information.
- Name of financial institution.
- Financial institution nine (9) digit routing transit number.
- Vendor's account number.
- Type of account, i.e., checking or saving.

### **6.16 Cancellation**

The City reserves the right to cancel this contract at any time on any grounds, including the vendor's failure to comply with the Scope of Work (SOW) provided herein.

### **6.17 Questions About the Solicitation**

Questions concerning this solicitation must be submitted in writing to: Alex Nosnik, Assistant Director, City of Somerville, Purchasing Department, 93 Highland Avenue, Somerville, MA 02143 **before 1/07/2015 @ 12:30PM EST**. Questions may be delivered, mailed, faxed to 617-625-1344, or e-mailed to [toanosnik@somervillema.gov](mailto:toanosnik@somervillema.gov). Written responses will be mailed or faxed to all bidders on record as having picked up the RFP. **If any bidders or proposers contact anyone outside of the Purchasing Department regarding this bid/proposal, that bidder/proposer will be disqualified immediately.**

## **SECTION 7.0 GENERAL TERMS & CONDITIONS**

### **7.1 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.

### **7.2 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.

### **7.3 Unit Price**

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

### **7.4 Price Reduction**

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

### **7.5 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.

### **7.6 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, its agents, employees, or sub-contractors or resulting directly or indirectly from Vendor's performance under this Agreement.

### **7.7 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.

#### **7.8 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.

#### **7.9 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.

#### **7.10 Assignment**

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

#### **7.11 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.

#### **7.12 Governing Law**

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

#### **7.13 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.

#### **7.14 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.

#### **7.15 Termination**

##### **7.15.1 For Cause**

The City of Somerville shall have the right to terminate this agreement if (i) Vendor neglects or fails to perform or observe any of these obligations hereunder and a cure is not affected by Vendor within fifteen (15) days next following its receipt of a termination notice issued by the City of Somerville, or (ii) if a judgment or decree is entered against Vendor approving a petition for any arrangement, liquidations, dissolution or similar relief relating to bankruptcy or insolvency and such judgment or decree remains unvacated for thirty (30) days; or (iii) immediately if Vendor shall file a voluntary petition in bankruptcy or any petition or answer

seeking any arrangement, liquidation or dissolution relating to bankruptcy, insolvency or other relief or debtors shall seek or consent or acquiesce an appointment of any trustee, receiver of liquidation of any of Vendor's property; or (iv) funds are not appropriated or otherwise made available to support continuation of performance in any fiscal year succeeding the first year of this Agreement. The City of Somerville shall pay all reasonable and supportable costs incurred prior to termination, which payment shall not exceed the value of service provided.

#### **7.15.2 Termination for Convenience**

The City may terminate this Contract without cause, at any time, effective upon the date of termination specified by written notice to the Contractor, in which case, the Contractor shall be compensated for: (1) sums due under this Contract incurred up to the date of termination for all Work performed and accepted by the City up to the termination date, calculated on a percentage completion basis covering the period of time between the last approved application for payment and the date of termination using the progress schedule and schedule of values. The Contractor shall use its best efforts to mitigate any expenses and shall in no event incur any new obligations after the date of termination.

#### **7.15.3 Payment by the City**

Payment by the City as provided in this section shall be deemed to fully compensate the Contractor for all expenses and those of any consultants, subcontractors and suppliers, directly or indirectly attributable to the termination. Lost profits shall not be payable. Any such termination shall not give rise to any cause of action for damages against the City.

#### **7.15.4 Contractor's Duties Upon Termination For Convenience**

Upon termination of this Contract without cause, the Contractor shall: (1) immediately stop the Work; (2) stop placing orders and Subcontracts in connection with this Contract; (3) cancel all existing orders and Subcontracts; (4) surrender the site to City in a safe condition; and (5) promptly transfer to City all materials, supplies, work in process, appliances, facilities, equipment and machinery of this Contract, and all work product, plans, drawings, specifications and other information and documents used in connection with Services performed under this Contract. Failure by the Contractor to comply with said duties shall relieve the City of its obligation to compensate the Contractor, as provided for under this section.

#### **7.16 Discrimination**

It is understood and agreed that it shall be a material breach of any contract resulting from this RFP 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.

#### **7.17 Interpretation of Specification / Terms**

All interpretations of the RFP and supplemental instructions will be in the form of written addenda to the RFP specifications. Requests for clarification or any questions about information contained in the RFP should be addressed in writing to Alex Nosnik, Assistant Director, Purchasing Department, 93 Highland Avenue, Somerville, MA 02143, or emailed to:

anosnik@somervillema.gov. Questions and answers will be compiled and sent to all proposers who requested a copy of the RFP, before the proposal deadline. No requests or questions will be accepted after **12:30 PM EST on 1/07/2015**.

#### **7.18 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.

#### **7.19 Samples**

All qualified proposers may be requested to submit samples.

#### **7.20 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.

#### **7.21 Payment**

The City of Somerville shall make no payment for a supply or service rendered prior to the execution of the contract. Any necessary travel expenses (excluding meals and beverages) shall be documented with itemized receipts to accompany invoices or requests for reimbursement.

#### **7.22 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.

- a. 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.
- b. The City will have the option to cancel the contract provided that written notice is given 90 days prior to the effective termination date.

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.

#### **7.23 Laws and Regulations**

The Bidding procedures shall be in accordance with M.G.L. c. 30B, as most recently amended and all other applicable laws. The contractor shall comply with all Federal, State and Local laws regulations and ordinances governing this type of work.

#### **7.24 Sales Tax Exemption**

Materials, equipment, and supplies for this project are exempt from sales tax in accordance with M.G.L. Chapter 64H, Section 6 (d). The City will furnish the successful bidder with its sales tax exemption number.

## **Attachment 1**

Intent	Material and Finish	Accessibility and Codes	Installation/Maintenance
--------	---------------------	-------------------------	--------------------------

The benches are to provide outdoor public seating and contribute to creating an active, people-friendly gathering place.

Heavy use is anticipated and the benches will be exposed to the elements. They must be built to last. **Designs must consider safety, security, vandalism and long-term maintenance.**

The benches **must provide universal access to all users** by allowing physically handicapped, visually impaired and visually challenged people the ability to use the benches comfortably and to be able to relate to others in an unchallenged manner.

Backed, backless and divider (arm rest) options - or some combination - will be considered.

Materials that are used must be **durable, easy to maintain, able to withstand the changing weather conditions and vandal-proof.**

Whether of stone, metal, plastic or other material, it **must have a smooth surface** so someone sliding onto and off the bench is not harmed.

Consideration of **recycled content and issues of sustainability are encouraged.**

Consideration must be made for **universal access needs, regulatory and public safety requirements** (Americans with Disabilities Act & ADAAG, Massachusetts Architectural Access Board - 521 CMR, and Massachusetts Building Code) including

- size,
- back support,
- height,
- structural strength,
- and other features.

Dimensional Criteria to be considered includes:

Where fixed benches are provided at a single location, at least 50 percent, but no less than one, shall have a back and armrests.

Seat depth from front to back shall be 20 inches min. to 24 inches max. and a min. of 42 inches in length. A seat with a back shall provide a seat back a min. of 42 inches in length and shall extend from a point 2 inches max. above the seat surface to a point 18 inches min. above the seat surface and the back support shall be 2½ inches max. from the rear edge of the seat measured horizontally.

Benches are to be free standing and surface mounted or embedded.

No long term care shall be required.

Location Plan:

1. **A turning space shall be provided at one end** of at least one bench at each location where a single fixed bench or cluster of benches are provided.
2. A clear ground space shall be positioned to **allow a wheelchair** user to be seated shoulder-to-shoulder with an individual seated on the bench.

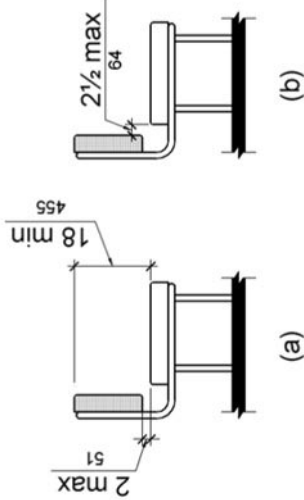


Figure 903.4  
Bench Back Support



**APPENDIX A**  
**Existing Conditions Maps and Photos and Related Materials**

**APPENDIX B**  
**Sample Contract**

**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 (blueprint 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 blueprint 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 Architect  
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  
APPENDIX K Truth-In-Negotiations Certificate  
APPENDIX L Federal Requirements  
APPENDIX M Statement of Management

SIGNATURE PAGE FOLLOWS: