



City of Cambridge

PURCHASING DEPARTMENT

795 Massachusetts Ave. • Cambridge, Massachusetts 02139-3219

Amy L. Witts
Purchasing Agent

To: All bidders
From: City of Cambridge
Date: June 16, 2015
Re: File No 6848, Request for Qualifications, Citywide Comprehensive Planning Services, Addendum No.4

Attached Please find the sample contract that must be signed by the successful proposer. The City will not accept a proposer's terms and conditions.

All other details remain the same.

A handwritten signature in cursive script that reads "Amy L. Witts".

AMY L. WITTS
PURCHASING AGENT

ADDENDUM NO. 4

**AGREEMENT FOR SERVICES
BETWEEN
THE CITY OF CAMBRIDGE
AND
THE ARCHITECT
FOR CITY MASTER PLAN**

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

for the services described herein and in the attached APPENDIX A, Request for Qualifications including the Scope of Services ("RFQ").

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

ARTICLE 1

DEFINITIONS

1.1. In General.

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

1.1.2. Capitalization. The words and terms defined in this Article are capitalized in this Agreement. Other capitalized words may refer to definitions in a specific document found in the RFQ.

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

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

1.2. Definitions.

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

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

1.2.18. Work - The Work means the services required by this Agreement, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Architect to fulfill its obligations.

ARTICLE 2

THE ARCHITECT'S RESPONSIBILITIES

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

As a requirement of contract with the City of Cambridge, the design team and all consultants must agree not to engage in any design services for anyone other than the City relating to this Work. It is a contract requirement that the Architect include this language with all of their consultant contracts and provide verification to the City of Cambridge Purchasing Department that all parties agree to these terms.

2.2. SCHEDULE OF PERFORMANCE. Upon request of the **City**, the **Architect** shall submit for the **City's** approval a schedule for the performance of the **Architect's** services, which schedule shall be attached hereto as APPENDIX B. The time limits established by the schedule approved by the **City** shall not be exceeded by the **Architect**, except as otherwise provided herein. Time is of the essence and time periods established by the attached APPENDIX B shall not be exceeded by the **Architect** except for delays due to causes outside the **Architect's** control (which term shall not include staffing problems, insufficient financial resources, consultant's default, or negligent errors or omissions on the part of either the **Architect** or any of its consultants).

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

2.4. RELATIONSHIP WITH THE CITY. For the purposes of this Agreement, the **Architect** shall be a representative of the **City** to the extent directed by the City, and shall advise and consult with the **City** until the termination of the Agreement's term.

ARTICLE 3

SCOPE OF THE ARCHITECT'S BASIC SERVICES

3.1. IN GENERAL.

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

3.1.1.1. those services identified below within the different phases;

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

3.1.1.2.1. all surveys, geotechnical services, testing services, and related information and reports reasonably required by the Work, geotechnical and civil engineers; landscape architect; independent cost estimator; fire protection, life safety, lighting, interior design, asbestos removal, and movable equipment consultants; and normal structural, mechanical, and any other engineering services necessary to produce a complete and accurate Master Plan (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 Work, including, but not limited to, bid protest hearings and City Council meetings, if deemed necessary by the **City**. If the **Architect** is called as a witness in a court of competent jurisdiction in a matter in which the **Architect** is a named party, the **Architect** will not be additionally compensated. If the **Architect** is called by the **City** as a witness in a matter in a court of competent jurisdiction in which the **Architect** is not a named party, the **Architect** will be compensated according to APPENDIX C attached hereto;

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

3.1.1.5. assisting the **City** in connection with the **City's** responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Work. The **Architect** shall prepare the documents required in order to obtain approval of, and in accordance with, all requirements of all governmental agencies having jurisdiction over the Work. Any documents furnished by the **Architect** which are discovered to be defective during any Phase will be promptly corrected by the **Architect** at no cost to the **City**, and the **Architect** will promptly reimburse the **City** for all damages, if any, resulting from the use of such defective documents. The **City's** approval, acceptance, use of or payment for all or any part of the **Architect's** services shall in no way alter the **Architect's** obligations or the **City's** rights hereunder; and

3.1.1.6. all design and redesign services required to keep the cost of the Work within the fixed limit of the cost of this Agreement.

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

3.1.2.1. Record Keeping.

3.1.2.1.1. As the Work progresses, the **Architect** shall maintain four separate sets of in-progress record drawings (blueline or blackline)

3.1.2.2. Permanent Record Drawing Preparation.

3.1.2.2.1. The **Architect** shall transfer the information contained on the in-progress record drawings to wash-off mylar transparencies of the original contract drawings. All work shall be performed by experienced and

knowledgeable draftspersons using the same standards and quality of drafting as used on the original drawings.

3.1.2.3. Review of Record Drawings at Substantial Completion.

3.1.2.3.1. Upon substantial completion of the Work or portions thereof, the **Architect** shall submit to the City for review and approval the above permanent record drawings.

3.1.2.4. Submission to the City.

3.1.2.4.1. The following shall be submitted to the **City** no later than _____:

3.1.2.4.1.1. A complete set of original design drawings on mylar and also on disk in AutoCad format.

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

3.1.2.4.1.3. One set of blueline prints of the above.

3.1.2.4.1.4. Four sets of in-progress record drawings.

3.2. SCHEMATIC DESIGN PHASE.

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

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

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

3.2.4. Alternative Approaches. The **Architect** shall review with the **City** alternative approaches to the design and execution of the Work.

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

3.2.6. Independent Cost Estimators. As part of the Basic Services and when requested by the **City**, the **Architect** shall retain the services of an independent cost estimator whose responsibilities shall include without limitation all cost estimates described in this Agreement for all or portions of the Master Plan.

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

3.2.8. Life-Cycle Cost Estimates. If this Agreement includes architectural services necessary for the preliminary design of a new building or for the modification or replacement of an energy system in an existing building, life-cycle cost estimates for the Project shall be obtained at

an initial stage and as a Basic Service.

3.3. DESIGN DEVELOPMENT PHASE.

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

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

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

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

3.6.19. Limitation on the Architect's Responsibilities.

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

3.6.19.1.1. The **Architect** will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work. The **Architect** will not have control over or charge of and will not be responsible for acts or omissions of any Contractor, Subcontractors, Suppliers, or of any other persons performing portions of the Work.

ARTICLE 4

ARCHITECT'S ADDITIONAL SERVICES

4.1. IN GENERAL. The services described hereunder shall be paid for by the **City** in addition to the compensation for Basic Services. Prior to performing any service which the **Architect** claims to be an Additional Service, the **Architect** shall notify the **City** in writing that the service is an Additional Service, and shall provide with such notice an estimate of the additional compensation which will be payable to the **Architect** for performing such service. Such service shall not be performed, nor shall such estimate be exceeded, without the **City's** prior written approval. Failure to so notify the **City** and obtain the **City's** written approval shall constitute a waiver of the **Architect's** claim for additional compensation on account of such services. These services shall be provided only if authorized or confirmed in writing by the **City**.

Notwithstanding anything to the contrary in this Agreement, the **City** shall not be responsible to pay and the **Architect** shall not be entitled to receive compensation for any additional service if such service was required due to the fault of the **Architect** or the **Architect's** failure to perform in accordance with the terms of this Agreement. Neither the **Architect** nor its consultants shall be compensated for any services involved in preparing changes that are required for additional Work that should have been anticipated by the **Architect** in the preparation of the Master Plan, 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 documents when such major revisions are:

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

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

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

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

4.2.3. Material design work requested by the **City** in connection with the Work, provided that evaluation and judgments of the proposed changes shall be provided as a Basic Service;

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

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

ARTICLE 5

OTHER CONDITIONS OR SERVICES

5.1. **OTHER SERVICES.** Any other services which are part of Basic Services are set forth in APPENDIX D.

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

ARTICLE 6

THE CITY'S RESPONSIBILITIES

6.1. **REQUIREMENTS FOR THE PROJECT.** The **City** shall consult with the **Architect** regarding requirements for the Work, 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** may consult with the **Architect** in order to establish and update an overall budget for the Work, at the City's sole discretion.

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

6.4. **CONSULTANTS.** The **City** shall furnish the services of consultants not listed in the advertisement for the Request for Qualifications when the **City** deems such services to be necessary.

6.5. **FURNISHING INFORMATION OR SERVICES.** Notwithstanding anything to the contrary written herein, the **City** shall only furnish information or services described in herein to the extent that any such information or service is reasonably required by the **Architect** to perform its services under this Agreement. The **Architect** shall review and confirm the sufficiency of any test and information furnished to the **Architect** by or on behalf of the **City** pursuant to this section.

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

ARTICLE 7

USE OF THE ARCHITECT'S DOCUMENTS

7.1. **IN GENERAL.** In the event of termination or purported termination of this Agreement by either party, the **City** may use the documents in connection with the Work, notwithstanding any dispute between the **City** and the **Architect** as to the reason for validity of the termination, provided only that the **Architect** has been paid for its work through the date of the termination.

7.2. **OFFICIAL REGULATORY REQUIREMENTS.** Submission or distribution of the documents to meet official regulatory requirements or for similar purposes in connection with the Work is not to be construed as publication in derogation of the **Architect's** reserved rights therein, if any.

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 Work or the **Architect's** services, the **Architect** shall continue to perform in accordance with the terms of this Agreement during the course of any renegotiation of the **Architect's** compensation hereunder. Equitable adjustments shall be made to the total dollar amount of this Agreement in the event of changes in scope or services herein. (*Reference: M.G.L. c. 7, §38G*).

8.4. **ADDITIONAL SERVICES OF THE ARCHITECT.** For Additional Services of the **Architect**, compensation shall be as stated in APPENDIX C.

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

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

ARTICLE 9

PAYMENT TO THE ARCHITECT

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

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

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

ARTICLE 10

INSURANCE REQUIREMENTS

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

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

10.3. The **Architect** and its consultants shall each maintain the following minimum insurance coverages:

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

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

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

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

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

10.3.6. Professional Liability insurance in an amount not less than \$1,000,000 or ten per cent (10%) of the Work's estimated cost, 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 **Architect's** services in relation to the Work.

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

ARTICLE 11

STATUTORY RECORD-KEEPING AND RECORD-FILING REQUIREMENTS

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

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

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

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

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

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

11.5.2. transactions are recorded as necessary:

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

11.5.2.2. to maintain accountability for assets;

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

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

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

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

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

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

(Reference: M.G.L. c. 30, §39R)

ARTICLE 12

TERMINATION, SUSPENSION, OR ABANDONMENT

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

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

12.3. Persistent failure by the **City** to make payments to the **Architect** in accordance with this

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

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

ARTICLE 13

MISCELLANEOUS PROVISIONS

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

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

13.3. PARTNERS, SUCCESSORS, ASSIGNS, ETC. The **City** and the **Architect**, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representative of such other party with respect to all covenants of this Agreement.

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

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

13.6. THIRD-PARTY BENEFICIARIES. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the **City** or the **Architect**.

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

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

13.9. PERSONAL LIABILITY. No member, officer, director, trustee, representative, consultant, volunteer participant, or employee of the **City** shall be personally liable to the **Architect** under any term or

provision of this Agreement for the **City's** payment obligation or otherwise, or because of any breach hereof.

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

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

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

ARTICLE 14

CERTIFICATIONS

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

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

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

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

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

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

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

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

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

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

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

CITY OF CAMBRIDGE

ARCHITECT

City Manager

Signature

APPROVED AS TO FORM:

By:

City Solicitor

Print Name and Title

APPROVED AS TO THE AVAILABILITY
OF FUNDS:

Budget Code: _____

City Auditor

Purchasing Agent

APPENDIX A

**REQUEST FOR QUALIFICATIONS
APPENDIX B**

SCHEDULE OF PERFORMANCE OF THE ARCHITECT

APPENDIX C

COMPENSATION FOR ADDITIONAL SERVICES

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

APPENDIX D
ADDITIONAL BASIC SERVICES

APPENDIX E

COMPENSATION FOR BASIC SERVICES

APPENDIX F

COMPENSATION BASED ON A STIPULATED SUM

APPENDIX G

COMPENSATION FOR ADDITIONAL SERVICES OF CONSULTANTS

APPENDIX H
CERTIFICATES OF INSURANCE
AND
ADDITIONAL INSURANCE REQUIREMENTS

APPENDIX I

NOTICES

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

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

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

Name of Architect _____
Street Address _____
City/State/Zip Code _____
Phone Number _____
Fax Number _____

APPENDIX J

MASSACHUSETTS PROFESSIONAL REGISTRATION NUMBERS
AND
EXPIRATION DATES

NAME

REGISTRATION NUMBER

EXPIRATION DATES