

SOLICITATION FOR:

RFQ # 24-61

Owner's Representative for Pedestrian Bridge Construction between Inner Belt and Brickbottom



CITY OF SOMERVILLE, MASSACHUSETTS

RELEASE DATE: 3/28/2024

QUESTIONS DUE: 4/5/2024 by 12PM EST

DUE DATE AND TIME: 4/25/2024 by 2PM EST

| | |
|---------------------------------|-----------|
| Anticipated Contract Award | 5/31/2024 |
| Est. Contract Commencement Date | 6/1/2024 |
| Est. Contract Completion Date | 5/31/2027 |

DELIVER TO:

City of Somerville

Procurement & Contracting Services Department

Attn: Thupten Chukhatsang
Senior Procurement Manager
tchukhatsang@somervillema.gov

**93 Highland Avenue
Somerville, MA 02143**

CITY OF SOMERVILLE, MASSACHUSETTS

Enclosed You Will Find a Request for Qualifications For:

RFQ # 24-61 Owner's Representative for Pedestrian Bridge Construction between Inner Belt and Brickbottom

SECTION 1.0

GENERAL INFORMATION ON APPLICATION PROCESS

1.1 General Instructions

Copies of the solicitation may be obtained on and after 3/28/2024 **on the City's Procurement & Contracting Services Department web page:**

<https://www.somervillema.gov/departments/finance/procurement-and-contracting-services>

Inquiries **about this RFQ 23-53** can be made directly to the PCS Department via e-mail to amallen@somervillema.gov.

This procurement for an Owner's Representative via this RFQ is not subject to M.G.L. c. 30B, M.G.L. c. 30, § 39M½, M.G.L. c. 149, §§ 44A ½, or M.G.L. c. 7C, §§ 44-58. The City will be following the process specified in this RFQ package and reserves the right to negotiate the terms and services offered at its discretion.

City Hall Hours of Operation:

| | |
|--------------------|--------------------------------|
| Monday – Wednesday | 8:30 a.m. and 4:30 p.m. |
| Thursday | 8:30 a.m. to 7:30 p.m. |
| Friday | 8:30 a.m. to 12:30 p.m. |

All Responses Must be Sealed and Delivered To:

Procurement & Contracting Services (PCS) Department
City of Somerville
93 Highland Avenue
Somerville, MA 02143

Methods of Application Submission:

Applicants may submit bids in any of the following ways. All bids will be time-stamped and must be received no later than the bid deadline date and time.

- 1) Sealed applications can be sent to City Hall through the US Postal Service or other delivery service (e.g. FedEx, UPS).
- 2) Submit sealed application via BidExpress.com, which is an online bidding platform. The fee to use this service is approximately \$40.00 unless your company has a subscription with BidExpress. You can access the bid package and forms via the City of Somerville BidExpress page at: <https://www.bidexpress.com/businesses/33100/home>

A user guide for BidExpress is attached for your reference.

- 3) For any technical assistance while submitting the online application, please contact the BidExpress Customer support team at www.bidexpress.com.

It is the sole responsibility of the Offeror to ensure that the Application arrives on time at the designated place. Late Applications will not be considered and will be rejected and returned.

Application Format (if not using BidExpress for online submission):

Submit one (1) sealed qualifications package; it must be marked with the solicitation title and number and must be original. The package shall contain one printed original of the qualifications and all required forms and one flash drive with the full submission package in digital form.

In an effort to reduce waste, **please do not use 3-ring binders.**

Responses must be sealed and marked with the solicitation title and number.

All Applications must include all forms listed in the Proposers' Checklist (and all documents included or referenced in **Sections 2.0 - 3.0**). **If all required documents are not present, the Application may be deemed non-responsive and may result in disqualification of the Application unless the City determines that such failure(s) constitute(s) a minor informality, as defined and referenced in Massachusetts General Laws.**

A complete Application must also include a cover letter signed by an official authorized to bind the Offeror contractually and contain a statement that the Application is firm for ninety (90) days. **An unsigned letter, or one signed by an individual not authorized to bind the Offeror, may be disqualified.**

The Offeror's authorized official(s) must sign all required Application forms.

All information in the Offeror's response should be clear and concise. 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.

The successful Offeror must be an Equal Opportunity Employer.

The City of Somerville values a diverse workforce and believes it contributes to a work product that best reflects the community in our city. Applicants are highly encouraged to include any certifications and documents that recognize the diversity of the Offeror's work force, including ownership of the offering firm/organization, executive leadership, management, and employees proposed for the work in Somerville, including diversity of sub-consultants. **Please use the supplier diversity form (see Section 3.0) with supporting documentation to share your diversity data with the City.**

1.2 Application Schedule

| Key dates for this Request for Qualifications: | |
|--|----------------------|
| RFQ Issued | 3/28/2024 |
| Deadline for Submitting Questions to RFQ | 4/5/2024 by 12PM EST |
| Applications Due | 4/25/2024 by 2PM EST |
| Anticipated Contract Award | 5/31/2024 |
| Est. Contract Commencement Date | 6/1/2024 |
| Est. Contract Completion Date | 5/31/2027 |

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|--|--|
| Responses must be delivered by 4/25/2024 by 2PM EST to: | City of Somerville Procurement & Contracting Services Department 93 Highland Avenue Somerville, MA 02143 |
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1.3 Submission Instructions

If using BidExpress for online submission, follow the instructions on BidExpress. Otherwise, please submit ***one sealed envelope***, with the following contents and marked in the following manner:

| Contents of Sealed Application Package | Marked As |
|---|---|
| Envelope to be labeled: Qualifications and Technical Application: Shall Include (1) original and one (1) electronic copy. [Electronic copies are to be submitted on thumb drives and are to be saved in Adobe Acrobat format. ("Read only" files are acceptable.)] | To Be Marked: Application RFQ # 24-61 Owner's Representative for Pedestrian Bridge Construction between Inner Belt and Brickbottom |
| Please send the complete sealed package to the attention of : | Thupten Chukhatsang Senior Procurement Manager PCS Department Somerville City Hall 93 Highland Avenue Somerville, MA 02143 |

Application Format

Responses must be submitted in accordance with the requirements set forth in this solicitation. Results of the Application 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 Application should be organized and presented as directed below. Your application should contain all forms outlined in the Proposers Checklist (Section 3.0). 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 with consecutive page numbering across tabs).

Elaborate format and binding are neither necessary nor desirable. Each Application shall clearly identify the Offeror's name, solicitation number, formal solicitation title and, if applicable, copy number, (e.g., "Original", "Copy"). All submissions will allow for easy removal and replacement of pages.

Applications shall be organized as follows:

1. Cover Letter
2. Summary of Qualifications & Experience
 - a. Project Team
 - b. Project Management Approach
 - c. Review of Design Documents and Cost Estimates
 - d. Bidding/Construction Administration Services
 - e. Project Closeout Services

1. Cover Letter

Submit a cover letter that includes the official name of the firm submitting the Application, mailing address, e-mail address, telephone number, and contact name. The letter must be signed by an official authorized to bind the proposer contractually and contain a statement that the Application is firm for ninety (90) days. An unsigned letter, or one signed by an individual not authorized to bind the Offeror, may be disqualified. The signature shall be of an individual authorized to negotiate and execute the Contract for Project Management Services, in the form that is attached to the RFQ, on behalf of the Respondent. The name, title, address, e-mail and telephone number of the contact person who can respond to requests for additional information.

- a) A specific statement regarding compliance with the minimum requirements identified in the "Selection Criteria" below. Include identification of registration, number of years of experience (if necessary) and where obtained (as supported by the resumes that are to be attached), experience as Project Director, as well as the date of the MCCPO certification. (A copy of the MCCPO certification should be attached to the cover letter).
- b) An acknowledgement that the Respondent has read the Request for Qualifications. Respondent shall note any exceptions to the RFQ in its cover letter.
- c) An acknowledgement that the Respondent has read the Standard Contract. Respondent shall note any exceptions to the Standard Contract in its cover letter.
- d) In the event that the City receives financial assistance for this project from the Commonwealth of Massachusetts, the Applicant must be prepared to comply with all the necessary requirements pursuant to M.G.L. Chapter 7C, Section 6.
- e) A brief description of the Respondent's organization and its history.

2. Summary of Qualifications & Experience

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

Applicants are highly encouraged to organize this section as follows:

- a. Project Team
- b. Project Management Approach
- c. Review of Design Documents and Cost Estimates
- d. Bidding/Construction Administration Services
- e. Project Closeout Services

References

The Offeror shall list at least three relevant references, which the City can contact. The City of Somerville reserves the right to use ourselves as a reference. References shall include the following information:

| | |
|--|------------------------------------|
| ●The name, address, telephone number, and email address of each client listed above. | |
| ●A description of the work performed under each contract. | ●The amount of the contract. |
| ●A description of the nature of the relationship between Offeror and the customer. | |
| ●The dates of performance. | ●The volume of the work performed. |

1.4 Questions

Questions are due: 4/5/2024 by 12PM EST

Questions concerning this solicitation must be delivered in writing to:

Thupten Chukhatsang
Senior Procurement Manager
Somerville City Hall
Procurement & Contracting Services (PCS) Department
93 Highland Avenue
Somerville, MA 02143

Or emailed to:
tchukhatsang@somervillema.gov

Answers will be sent via an addendum to all Offerors who have registered with the City of Somerville PCS Department as interested applicants. Applicants are encouraged to contact the PCS Department to register as an RFQ document holder to automatically be alerted as to addenda as they are issued. It is the responsibility of the Offeror to also monitor the bids and opportunities portal on the City's website for any updates, addenda, etc. regarding that specific solicitation. The web address is:

<https://www.somervillema.gov/departments/finance/procurement-and-contracting-services>

1.5 General Terms

Application 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 (& with corporate seal).

Time for Application Acceptance and City Contract Requirements

The contract will be awarded within 90 days after the Application opening. The time for award may be extended for up to 45 additional days by mutual agreement between the City of Somerville and the Offeror that is most advantageous and responsible. The Offeror's submission will remain in effect for a period of 90 days from the response deadline or until it is formally withdrawn, a contract is executed, or this solicitation is canceled, whichever occurs first. The Offeror will be required to sign the City of Somerville's Owner's Project Management Services Contract, included herein as Appendix B.

Holidays are as follows:

| | | | |
|--------------------------|------------------------|------------------|---------------------|
| New Year's Day | Martin Luther King Day | Presidents' Day | Patriots' Day |
| Memorial Day | Juneteenth | Independence Day | Labor Day |
| Indigenous Peoples' Day | Veterans' Day | Thanksgiving 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 Offeror for their convenience desires to perform work during other than normal working hours or on other than normal work days, or if the Offeror is required to perform work at such times, the Offeror 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.

Unforeseen Office Closure

If, at the time of the scheduled deadline for this RFQ, the PCS Department is closed due to uncontrolled events such as fire, snow, ice, wind, or building evacuation, the Application due date will be postponed until 2:00 p.m. on the next normal business day. Applications will be accepted until that date and time. In the event of inclement weather, the Offeror is responsible for listening to the media to determine if the City has been closed due to weather.

Changes & Addenda

If any changes are made to this solicitation, an addendum will be issued. All proposers on record as having contacted the PCS Department to be registered for the solicitation will be alerted via email as to the posting of all addenda. The City will also post addenda on its website (<https://www.somervillema.gov/departments/finance/procurement-and-contracting-services>). No changes may be made to the solicitation documents by the Offerors without written authorization and/or an addendum from the PCS Department.

Modification or Withdrawal of Applications, Mistakes, and Minor Informalities

An Offeror may correct, modify, or withdraw an Application by written notice received by the City of Somerville prior to the time and date set for the Application deadline. Application modifications must be submitted in a sealed envelope clearly labeled "Modification No.___" to the address listed in Section 1. Each modification must be numbered in sequence and must reference the original solicitation. After the Application deadline, an Offeror may not change any provision of the Application in a manner prejudicial to the interests of the City or fair competition. Minor informalities will be waived or the proposer will be allowed to correct them. If a mistake on the intended Application is clearly evident on the face of the submitted document, the mistake will be corrected to reflect the intended correct Application, and the proposer will be notified in writing; the

proposer may not withdraw the Application. A proposer may withdraw an Application if a mistake is clearly evident on the face of the Application document, but the intended correct Application is not similarly evident.

Right to Cancel/Reject Applications

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

Unbalanced Applications

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

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.

Electronic Funds Transfer (EFT)

For EFT payment, the following shall be included with invoices to the point of contact:

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

1.6 Evaluation Methodology

Comparative Evaluation Criteria

The Comparative Evaluation Criteria set forth in Section 2 of this RFQ shall be used to evaluate responsible and responsive applicants.

All Applications will be reviewed by an evaluation committee composed of employees of the City. Final selection will be based upon the evaluators’ analysis of the information and materials required under the RFQ and provided by the proposing vendors in their submissions. The City reserves the right to involve an outside consultant in the selection process. Applications that meet the minimum quality requirements will 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 only award a contract to a responsive and responsible Proposer. Before awarding the contract(s), the City may request additional information from the Proposer to ensure that the Proposer has the resources necessary to perform the required services. The City reserves the right to reject any and all Applications if it determines that the criteria set forth have not been met.

Selection Process

Qualified Applications will be reviewed and rated by the Evaluation Committee ("the Committee") on the basis of the comparative evaluation criteria and minimum quality requirements included in Section 2.0.

The City may request additional information from the Offerors to ensure that the Offeror has the necessary resources to perform the required services. The Committee may choose to select a set of finalists to be interviewed ("the short list") if it deems necessary to do so. The short-listed applicants will be notified, either by

e-mail or telephone, of the date, time, and place for their interviews and any other pertinent information related thereto. The Mayor may, at the Mayor's sole discretion, interview the applicants on the short list. The Committee will rank all candidates and make a recommendation to the Mayor to enter into a contract with the most highly advantageous Offeror once all negotiations are complete.

The City will award the contract to the most responsive and responsible Offeror whose entire Application is deemed to be the most highly advantageous. The City reserves the right to reject any and all Applications if it determines that the criteria set forth have not been met.

This Request for Services, any addenda issued by the Owner, and the selected Respondent's response, will become part of the executed contract. The key personnel that the Respondent identifies in its response must be contractually committed for the Project. No substitution or replacement of key personnel or change in the Sub-consultants identified in the response shall take place without the prior written approval of the Owner.

Selection Schedule

The Selection Committee reserves the right to re-advertise if there are fewer than four Respondents that meet the minimum requirements. After submission of qualifications, a Selection Committee will review all applications to determine which ones meet the minimum requirements. The Selection Committee will rate every Respondent that meets the minimum qualifications using the weighted evaluation criteria in this RFQ. The weighted evaluation criteria will be assigned by all committee members with a brief written explanation for their assigned score. After individual evaluations, the Procurement Officer will collect all committee members' evaluation sheets for each Respondent and will compile a master list ranking the Respondents from most advantageous (the highest cumulative score) to least advantageous (the lowest cumulative score).

Following the ranking of Respondents, the committee will short-list and conduct interviews with selected applicants. The Chief Procurement Officer will notify all applicants of the names of the applicants selected for the short list. The short-listed applicants will be notified, either by e-mail or telephone, of the date, time and place for their interviews and any other pertinent information related thereto.

Each short-listed Respondent will be required to make a presentation of their qualifications to the Selection Committee. Each interview will consist of a question and answer period and time allotted for Respondents to present past experience with projects of similar scope and size. All three (or more) finalists will be asked the same questions and given the same opportunities to present. The interview process will also have a ranking system and committee members will be required to rank each of the finalists. Based on the interview process, Respondents will be ranked and references will be checked for the highest ranking Respondent.

Fee Negotiations

The Owner will commence fee negotiations with the first-ranked Applicant. If the Owner is unable to negotiate a contract with the first-ranked Applicant, the Owner will then commence negotiations with its second-ranked Applicant and so on, until a contract is successfully negotiated and approved by the Owner.

The Owner will negotiate the fee for services dependent upon an evaluation of the level of effort required, job complexity, specialized knowledge required, estimated construction cost, comparison with past project fees, and other considerations. As construction cost is but one of several factors, a final construction figure in excess of

the initial construction estimate will not, in and of itself, constitute a justification for an increase in the Owner's Representative's fee.

If the Owner is unable to negotiate a satisfactory fee with any of the finalists, the Mayor shall recommend that the Committee select additional finalists from the original pool of applicants or re-advertise the RFQ.

Once successful negotiations have concluded (for a not-to-exceed fee), the City will prepare the contract and submit it to the successful applicant for signature. Upon receipt of the executed contract and all other required documents from the designer, PCS will have the contract signed by the appropriate City officials. This award will result in the issuance of a purchase order to be delivered with a fully executed contract to the designer. Unless otherwise stated, the issuance of the purchase order and fully executed contract is tantamount to a Notice to Proceed, at which time the successful applicant will be expected to begin work under the contract.

RFQ # 24-61
SECTION 2.0
RULE FOR AWARD /
SPECIFICATIONS/SCOPE OF SERVICES

Rule for Award

The City may award a contract to a responsive and responsible Applicant deemed to be the most highly qualified based on the evaluation procedures and fee negotiations described herein. The City reserves the right to reject any and all responses if it determines that it is in the best interest of the City to do so. The contract will be awarded within ninety (90) days after the Application deadline. The time for award may be extended for up to 45 additional days by mutual agreement between the City and the most highly advantageous and responsible offeror.

Project Background:

The project site spans two neighborhoods in Somerville – Brickbottom and Inner Belt. Both are auto-oriented industrial/post-industrial neighborhoods bounded by Interstate 93 to the east, Route 28 to the west, Washington Street to the north, and MBTA tracks and rail facilities to the south. The neighborhoods are separated by the Green Line and MBTA commuter rail tracks. There is no physical connection between these two neighborhoods even though they are separated by 50' of rail right-of-way. The only way to move between the two neighborhoods is to walk on the periphery and use Washington Street.

A bridge is planned to link these two neighborhoods and provide access from the East Somerville Green Line station that includes access for pedestrians and bicyclists. Both neighborhoods will have updated comprehensive plans and zoning changes to reflect the shift from post-industrial to mixed use and high-tech research and development. The eventual culmination of both neighborhood plans will create over 4,000 jobs and over 1,000 new dwelling units. The draft plan can be found online on [SomerVoice](#).

The impetus for this project is private development that supports the visions for these neighborhoods and increased connectivity called for in the draft neighborhood plan. There is a unique blend of stakeholders – the State Economic Development Office, MBTA, the City of Somerville, private landowners, developers, and residents. The ability to interact with these groups will be critical to the project's success. The City has actively participated in design concepts (included herein at [this link](#)) and is analyzing concepts that include stairs, ramps, and elevators. Furthermore, we have design requirements from the MBTA since this project goes over state right-of-way and an active rail corridor. It is important that the connection works for pedestrians, cyclists, and people of all abilities. The final design must make all users feel comfortable using the bridge 24/7 for the project to be successful.

The current construction estimate is \$30,000,000. This project is expected to utilize State and non-state funding sources. A \$3.6 million-dollar MassWorks grant was awarded to fund the 100% design and cover \$205,000 for OR and design administration costs. Preliminary site analysis and basic concept designs have been developed by the site owner (North River) and their engineer (VHB). They are included herein.

The primary goal of this procurement is to assist the City in complying with Chapter 30;39M of the General Laws of Massachusetts. This solicitation calls for submittals that present a comprehensive scope of work to satisfy the requirements. Interested firms will outline an approach for the Owner's Representative for the IBBB Ped Bridge.

Scope

1. Project Management (For All Phases):

- The scope of services for the Owners Representative will include, but not be limited to, working closely with the City of Somerville's Department of Infrastructure & Asset Management (IAM), and the City's engineer, consultants and contractor on project permitting, final design and construction. The OR will represent the City's interests in overseeing and coordinating with the engineer's work. Other services will include, but not be limited to, budgeting, liaising with the state and MBTA, etc. Construction phase services will be all-inclusive, including but not limited to observing and documenting progress, tracking changes, coordination and oversight of construction meetings, and representing the best interests of the City throughout the completion of the construction project.
- The Owner's Representative shall prepare a communication and document control procedure during the Design Phase and continue to update it as specified for the duration of the Project. This procedure shall detail the responsibilities and lines of communication among all Project participants (Owner, Owner's Representative, Designer, Contractor, Subcontractors, peer review consultants and other consultants, vendors or suppliers) and establish the procedure for correspondence, document control, designer and contractor submittal logs, change order reporting logs and other tracking logs, as needed. The Owner's Representative shall include the Designer in its distribution of the Project Budget, Schedule, Monthly Reports and other reports as appropriate and as outlined in the Communications Plan.
- The Owner's Representative shall prepare agendas for and attend meetings with other representatives of the Owner, as well as any neighborhood meetings relating to the Project. The Owner's Representative shall take minutes of all of the above referenced meetings and promptly distribute minutes of these meetings to the Owner.
- The Owner's Representative shall review all applications for payments, requisitions and invoices relating to the Project as submitted by the Designer, equipment vendors and all other contractors and suppliers and make recommendations to the Owner relative to amounts due.

2. Project Control:

- **Project Budget.** Over the course of the Project, the Owner's Representative shall work with the Owner to prepare a detailed baseline Project Budget in a form acceptable to the Owner. The Owner's Representative shall monitor contractor bids, and other cost information to this Project Budget and identify and report all variances to the Owner. The Owner's Representative shall maintain and update the baseline Project Budget throughout the term of this Agreement. The Owner's Representative shall report any variances to the baseline Project Budget as part of the Monthly Progress Report. The Owner's Representative shall prepare revisions to the baseline Project Budget, as needed, and submit them to the Owner for approval.
- **Cost Estimating.** The Owner's Representative shall engage a professional cost estimator to perform construction cost estimates of the design at 60% design and construction documents 100% design stages as part of Basic Services. The Owner's Representative shall review the accuracy and completeness of cost estimates prepared by its subconsultant professional cost estimator. The Owner's Representative shall consult with the Designer and recommend to the Owner appropriate revisions to the scope of work, when directed by the Owner based on the Owner's Representative's cost estimates. The Owner's Representative shall provide cost estimating services, as may be required, to develop cash flows as part of Basic Services.
- **Project Schedule.** The Owner's Representative shall prepare a Project Schedule in a form acceptable to the Owner, which will be reviewed and agreed upon by the Owner. The Owner's Representative shall prepare revisions to the Project Schedule, as needed, and submit them to the Owner for approval. The Owner's Representative shall assess

the actual progress of the Project relative to the baseline Project Schedule and report any variances from the baseline Project Schedule as part of the Monthly Progress Report.

- **Construction Schedule.** The Contractor shall be responsible for preparing and updating its construction schedule on a monthly basis. The Owner's Representative shall meet once each month with the Contractor and Designer to review and update its schedule, develop the monthly progress information to support the Contractor's payment estimate, and monitor the Contractor's performance for compliance with its contract. The Owner's Representative shall notify the Owner of and include in its Monthly Progress Report any significant changes or delays to the construction schedule. The Owner's Representative shall make appropriate recommendations to the Owner relative to the actions that should be taken by the Contractor and/or advise the Owner when liquidated damages are anticipated to be incurred.
- **Monthly Progress Report.** The Owner's Representative shall submit to the Owner no later than the fifteenth day of each calendar month during construction a written Monthly Progress Report summarizing construction activity during the preceding calendar month. The Monthly Progress Report shall be submitted in a format acceptable to the Owner and shall describe work performed by all project participants (OR, Designer, Contractor or subcontractors) during the reporting period and work planned for the next reporting period. The report shall also address matters of schedule adherence (Project Schedule as well as individual completion percentages for design and construction), costs to date (updated Project Budget and actual expenses incurred), change orders and potential change orders, cash flow projections, Contractor's safety performance, Designer's QA/QC, Contractor's environmental compliance, community issues, Designer and Contractor MBE/WBE data, any issues that could result in additional time and/or additional costs and any anticipated problems/concerns together with recommended solutions.
- **Site Investigations and Environmental Testing.** The Owner's Representative shall assist the Owner in determining the need for and the implementation of site evaluation and testing including, but not necessarily limited to, site surveys, environmental evaluations, hazardous materials evaluation, subsurface testing (percolation tests, test pits, borings, etc.), destructive testing and other investigative work in the case of renovation projects. The determination that any additional services or testing need to be performed shall rest with the Owner or Designer.
- **Project Records and Reports (All Phases).** The Owner's Representative shall maintain a complete Project file including, but not necessarily limited to, a copy of the executed agreements of the Owner-Owner's Representative, Owner-Architect/Engineer and the Owner-Contractor, including copies of performance and payment bonds, a master list of permits, certificates of insurance, licenses and approvals for the Project, correspondence, daily reports, payment records, shop drawings, submittals, project schedules, requests for information, change orders/amendments, change directives and meeting minutes. The Owner's Representative will oversee the use of a web based system for collaboration and document sharing during the design and construction phase. The Owner's Representative shall assist the Owner in responding to any public records request received by the Owner.

3. Schematic Design Phase

- **Schematic Design.** The Owner's Representative shall monitor the activities and responsibilities of the Designer during this phase and assist the Owner in the review of the proposed scope, schedule and budget, developed by the Designer, including the review of the Designer's preliminary drawings. The Owner's Representative shall: (a) prepare construction cost estimates; and (b) work with the Owner and Designer to prepare the Project Schedule. Owner's Representative shall participate in the engineer's and IAM-Capital Projects Department's presentation of the project to any City permitting agency.

- The Owner's Representative shall review the schematic design to recommend Value Engineering Changes (VEC) to the Owner. A VEC shall include an analysis of the constructability, cost, quality and schedule impact. The Designer will be responsible for a thorough review and recommendation on the technical merit of any VEC.
 - The Owner's Representative shall lead design coordination meetings every two weeks or as needed, between the Designer and the Owner to provide for review and discussion of design/engineering related issues. The Owner's Representative shall provide technical assistance to the Owner. The Owner's Representative shall review input from peer review consultants hired by the Owner (if applicable) and make recommendations regarding potential incorporation into the design. The Owner's Representative shall take and distribute minutes of these meetings to the Owner.
 - The Owner's Representative shall assist in the implementation of additional site evaluation and testing as required by the Designer, including, but not necessarily limited to, site surveys, environmental evaluations, hazardous materials evaluation, subsurface testing (percolation tests, test pits, borings, etc.), destructive testing and other investigative work in the case of renovation projects.
 - The Owner's Representative shall monitor the status of the Designer contract including monitoring the schedule of the Designer, provide review and comment of Designer's work product and make recommendations to the Owner when, in the opinion of the Owner's Representative, requirements of the Designer's contract with the Owner are not being fulfilled.
 - The Owner's Representative shall meet with the Owner, Designer and other project participants as necessary.
- 4. Design Development/60%** Upon receipt of Notice to Proceed with the Design Development Phase, the Owner's Representative shall perform the following Basic Services:
- The Owner's Representative shall oversee the activities and responsibilities of the Designer in the development of the scope, schedule and budget including a general review of the Designer's detailed scaled plans, elevations and sections of all aspects of the design. The Owner's Representative shall work with the Owner and Designer to update the Project Budget and Schedule.
 - The Owner's Representative shall monitor and coordinate the schedule, technical accuracy, efficiency, coordination, and constructability of the Project and cost effectiveness of all designs, drawings, reports, estimates and other work furnished by the Designer, and make recommendations to the Owner when, in the opinion of the Owner's Representative, requirements of the Designer's contract with the Owner are not being fulfilled. The Owner's Representative shall review input from peer review consultants hired by the Owner and make recommendations regarding potential incorporation into the design. The Owner's Representative shall prepare construction cost estimates for comparison with the Project Budget.
 - The Owner's Representative shall promptly review all Designer submissions, document review comments in writing and shall meet with the Designer to discuss those submissions. Upon completion of its review, the Owner's Representative shall recommend that the Owner: (1) approve the submission as made; (2) approve that part of the submission that is acceptable and reject the remainder; (3) reject the submission; or (4) require the Designer to submit additional information or details in support of its submission.

5. Construction Documents/100%: Upon receipt of Notice to Proceed with the Construction Documents Phase, the Owner's Representative shall perform the following Basic Services:

- Review the construction documents for quality, cost, and schedule improvements, conciseness and clarity.
- Provide advice, consultation and guidance to the Owner relative to value engineering recommendations.
- Work with the Owner and Designer to update the construction budget and schedule.
- Prepare construction cost estimates.
- Provide advice, consultation and guidance to the Owner and the Designer relative to general contractor and subcontractor prequalification requirements pursuant to M.G.L. c. 149 § 44D½ and §44D¾ as applicable, including participation as a member of the Owner's Prequalification Committee.
- Review the construction documents and provide review comments in writing. The review shall include constructability, operability and bid-ability as well as document clarity and coordination between drawings and to identify conflicts between drawings and specification. The constructability review will identify potential conflicts, make recommendations specific to any phasing issues, recommend appropriate milestones, constraints and liquidated damages and a review of the project specific requirements.
- The Owner's Representative's review of the construction documents shall also include, but not be limited to, any concerns of the Owner's Representative and/or the Owner relative to access, usable area, parking, utilities, anticipated noise and dust sources during construction that may impact building occupants and identification of potential locations for field offices, facilities, supplies and equipment.
- Monitor the schedule of the Designer, provide review and comment of Designer's work product and make recommendations to the Owner when, in the opinion of the Owner's Representative, requirements of the Designer's contract with the Owner are not being fulfilled.

6. Bidding Phase. The Owner's Representative shall perform the following Basic Services:

- The Owner's Representative shall monitor the activities and responsibilities of the Designer in the advertisement for web based document distribution and bidding procurement process and solicitation of public bids in accordance with M.G.L. c. 149 § 44A through §44J and other public construction related statutes.
- Administer general contractor and subcontractor prequalification requirements pursuant to M.G.L. c. 149 § 44D½ and § 44D¾ as applicable, including participation as a member of the Owner's Prequalification Committee.
- Attend, and assist the Owner with, all pre-bid conferences and meetings and assist, if directed by the Owner.
- Review all sub-bids and general bids in conjunction with Designer's determination of responsiveness, bidder eligibility, completeness, accuracy and price including investigation at DCAMM. Provide technical guidance to the Owner relative to its acceptance of bids and determination of bidder responsibility. Review alternates and make written recommendations as to their acceptance.
- If the bid of the lowest eligible and responsible general bidder exceeds the construction budget, the Owner's

Representative shall consult with the Designer and make recommendations to the Owner in regard to maintaining the Project Budget which may include, consistent with Massachusetts public construction laws, reviewing and recommending acceptance of alternates, re-bidding or seeking additional funding from the City.

- The Owner's Representative shall make recommendations to the Owner relative to the award of a construction contract.
- The Owner's Representative shall assist the Owner in the preparation and execution of the Notice of Award and Owner-Contractor Agreement and shall obtain from the Contractor performance and payment bonds, insurance certificates, and all other documents and certificates required for contract execution.
- The Owner's Representative shall assist the Owner and the Designer in preparing and sending the Notice to Proceed to the Contractor.

The Owner's Representative shall provide the Contractor, Designer and Owner with required copies of executed construction contract documents.

7. Construction Phase. Upon receipt of Notice to Proceed with the Construction Phase, the Owner's Representative shall perform the Basic Services as described in this Section.

- The Owner's Representative shall provide supervisory staff for each of the following activities, from Notice to Proceed of the construction contract to end of the one-year warranty period.
- The Owner's Representative shall monitor the Designer's administration of the Owner- Contractor Agreement including the processing of submittals, issuance of timely decisions and directives and consultants' or subconsultants' visits to the Project as necessary during the time that construction is occurring on the portions of the work to which the consultant's services relate. Owner's Representative will be responsible for coordination of the weekly construction meeting and preparation of comprehensive weekly meeting minutes. Owner's Representative shall coordinate the services of independent peer reviewer/commissioning agent hired by the Owner.
- The Owner's Representative shall provide an experienced full-time (40 hours per week minimum) on-site Project Representative, who shall be dedicated exclusively to the Project, either as an employee of the Owner's Representative or as a subconsultant to the Owner's Representative. The Owner reserves the right to engage its own Project Representative to work with the Owner's Representative.
- The Project Representative shall be subject to the approval of the Owner and the Owner reserves the right to require the Owner's Representative to replace the Project Representative at any time during the course of the Project.
- The Project Representative shall have at least five years' experience in on-site supervision of projects similar in scope, size and complexity to the Project.

- Unless otherwise directed, the on-site Project Representative shall be present at all times when the Contractor is conducting operations at the site starting from issuance by the Owner of a Notice to Proceed to the Contractor and continuing until issuance to the Contractor of a Certificate of Substantial Completion by the Owner and thereafter on an, as needed basis, until issuance to the Contractor of a Certificate of Final Completion by the Owner.
- The Owner's Representative shall review the Contractor's schedule of values to determine if it represents a reasonably balanced payment schedule for work to be performed with no items front-end loaded or artificially inflated. The schedule of values shall include line items for all deliverables, testing requirements and specified operations and maintenance materials. The Owner's Representative shall submit recommendations for the Contractor's schedule of values to the Owner within forty-five days of the Owner's Notice to Proceed to the Contractor.
- The Owner's Representative shall review the Contractor's submitted baseline schedule. The Owner's Representative shall be responsible for monitoring the timeliness of these submittals and enforcing compliance with schedule submittal requirements of the construction documents. The Owner's Representative shall evaluate the Contractor's planning for the execution of the work, evaluate the reasonableness of the proposed schedule and determine if the submitted schedule meets the requirements of the construction documents.
- The Project Representative hired by the Owner's Representative or the Owner shall provide daily observation and monitoring of construction activities such that all shifts and work activities are observed and documented. Responsibilities of the Project Representative shall include:
 - Keeping a daily log containing a record of weather, the Contractor's work on site, number of workers, visitors to the site, safety status of the Project, equipment and equipment utilization, material and equipment deliveries, non-compliance with safety procedures and issuance of any safety violation notifications, accidents, general description of work performed and quality of work, visits of code enforcement officials and any resulting reports or orders, verbal instruction to interpretations given to the Contractor, pay items, and any observed delays, deficiencies and field problems.
 - Preparing weekly progress reports for submittal to the Designer and the Owner that summarize the progress achieved, provide a concise description of problems and include a copy of the daily log.
 - Assisting the Designer in determining if construction and construction related activities are performed in accordance with plans and specifications and the approved shop drawings and are consistent with Massachusetts public construction laws.
 - Monitoring on a daily basis Time and Materials work on all change orders including work installed, volume measurements, time sheets, crew sizes and mixes, and equipment utilized.
 - Evaluating actual quantities and classification of Unit Price work performed by Contractors.
 - Evaluating field problems, using the proper channels for solution and communication of the information to the Designer and the Owner.

- Shoot and maintain Project progress photographs showing construction progress at a frequency sufficient to document major activities or to document safety incidents, differing site conditions and quality issues. The Project Representative shall maintain a descriptive log and captioning of the photographs on CD or store on web based system for document storage.
- The Owner's Representative shall coordinate and track requests for clarification on drawings/specifications, design changes and proposed change orders.
- The Owner's Representative shall prepare responses to Contractor correspondence for the Owner.
- The Owner's Representative shall monitor and coordinate the scheduling and activities of independent materials testing functions at the site, including distribution of reports and any necessary actions resulting.
- The Owner's Representative shall maintain at the Project site, on a current basis, record copy of Construction Contract Documents, including, but not necessarily limited to, drawings, specifications, addenda, change orders, and directives as well as all approved shop drawings, product data, samples, submittals, operations and maintenance manuals and all other relevant documents relating to the construction of the Project.
- The Owner's Representative shall review the Contractor's submissions for Massachusetts prevailing wage requirements pursuant to M.G.L. c. 149 §§ 26 to 27H inclusive including assisting the Owner in cataloging and filing payroll affidavits.
- The Owner's Representative shall monitor the Contractor's compliance with the construction schedule, identify potential problems, include problem identification on the Monthly Progress Report and make recommendations to the Owner when, in the opinion of the Owner's Representative, requirements of the Contractor in the Owner-Contractor Agreement are not being fulfilled.
- The Owner's Representative shall monitor, review and analyze proposed change orders, and claims recommending appropriate action and resolution to the Owner.
- The Owner's Representative shall review and coordinate its review with the Designer to recommend approval of the General Contractor's monthly payment requisitions. The Owner's Representative shall review the Designer's certification that the percentage of work included in the requisition is accurate and the work performed conforms to the construction contract.
- The Owner's Representative shall verify substantial completion of work; assist the Designer in the Designer's final inspection and receipt of documents, manuals, receipts, certifications, and all other materials required for final closeout as described in the construction contract. The Owner's Representative shall coordinate the detailed punch list with the Designer, including a subsequent walkthrough with the Designer. The Owner's Representative and the Designer shall then coordinate a walk-through with the Owner to finalize the punch list. The Owner's Representative shall then be responsible for tracking and confirming the completion of the punch list items.

8. Completion Phase. The Owner's Representative shall perform the following Basic Services:

- The Owner's Representative shall monitor the activities and responsibilities of the Designer and the Contractor in the close-out and commissioning of the Project.
- The Owner's Representative shall assist in securing and reviewing and recommending approval of all project completion forms and documentation necessary for occupancy and full operation of the facility including, but not necessarily limited to, inspection certificates of local building authorities, Certificate of Substantial Completion, Certificate of Final Completion, Occupancy Permit, shop drawings, as-built drawings, operations and maintenance manuals, warranties, guarantees and any and all documentation as required by the contract documents.
- .
- The Owner's Representative shall assist in securing and compiling with Contractor milestone dates and project warranties.
- The Owner's Representative shall assist the Owner in completing the written evaluation of the Designer(s) pursuant to M.G. L. c. 7C § 48 and prepare, sign and provide to the Owner for its signature the written evaluation of the Contractor(s) and Trade Subcontractors pursuant to M.G.L. c. 149 § 44D.

9. Warranty Phase: The Owner's Representative shall perform the following Basic Services:

- Owner's Representative shall coordinate an inspection by the Architect and commissioning agent two months prior to the end of the one-year warranty period, and assist in resolving all warranty items identified.
- Owner's Representative shall manage the warranty punch list work to be performed approximately two months prior to the end of warranty and assist the Owner in resolving all warranty issues identified.
- Any other work requested of the Owner's Representative during the warranty phase will be paid for on an hourly basis as Extra Services.

10. Change Order and Claims Administration: Throughout the Project, the Owner's Representative shall review and coordinate its review with the Designer and make specific document and processing recommendations to the Owner, consistent with the General Laws and the construction contract documents, which minimize change order and claims processing costs and time. Services provided by the Owner's Representative shall include:

- Review all Contractor proposals for change orders and supporting schedules for time extension requests. For change orders in excess of \$100,000, prepare cost estimate analysis with associated schedule impact.
- Initiate, conduct, and document negotiations through a memorandum of negotiations with the Contractor.
- For all change order requests by the Contractor, make recommendations to the Owner for their acceptance or rejection.
- Prepare and finalize any documentation required for processing change orders including a summary of the Owner's Representative's review of the reasonableness of the costs and documentation to support or reject the change.

Maintain a status report system for logging and tracking change orders, claims, and disputes to resolution. At a minimum, monthly reports shall include contract number, description of change order or claim, reason for change, date initiated, magnitude of estimated cost, actions required (identification of action parties and response dates) and status. This report shall be included in the Monthly Progress Report.

a. Claims and Disputes Management

- Implement a claims management procedure consistent with the construction contract documents.
- Analyze Contractor claims and make recommendations to the Owner in support of the Owner's obligations under the claims provisions of the construction contract documents. Prepare responsive positions in coordination with the Owner, and obtain appropriate input from the Designer and/or Contractor.
- In the event that a dispute arises between the Contractor, and/or any Subcontractors, and/or the Designer, including, but not necessarily limited to, disputes regarding the performance, quality, acceptability, fitness and rate of progress of the Project or the requirements of the Designer's contract or the Contractors' construction contract(s), the Owner's Representative shall report any such claims, disputes or other matters in question relating to the performance by the Contractor, Subcontractor, Designer or vendor to the Owner in writing as soon as reasonably possible.
- The Owner's Representative shall take all reasonable efforts designed to resolve any such claims, disputes, or other matters in question.

The Authority requests that the Owner's Representative team possess the expertise in key disciplines anticipated for the project, including but not limited to the following:

Minimum Requirements:

In order to be eligible for selection, each Respondent must certify that it meets the following minimum requirements. Any Response that fails to include such certification in its response, demonstrating that these criteria have been met, may be rejected without further consideration.

Each Respondent must designate an individual who will serve as the Project Director. The Project Director shall be certified in the Massachusetts Certified Public Purchasing Officer Program (the "MCPPO") as administered by the Inspector General of the Commonwealth of Massachusetts and must also meet the following minimum requirements:

- The Project Director shall be a person who is registered by the Commonwealth of Massachusetts as an architect or professional engineer. The Project Director must have at least two comparable projects to the stated scope in which they also served as the Project Director.

or,

- if not registered as an architect or professional engineer, the Project Director must be a person who has at least ten years' experience in the construction and supervision of construction and two comparable projects to the stated scope.

Comparative Evaluation Criteria:

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

All Applications will be reviewed by an evaluation committee composed of employees of the City. Final selection will be based upon the evaluators' analysis of the information and materials required under the RFQ and provided by the proposing vendors in their submissions. The City reserves the right to involve an outside consultant in the selection process. Applications that meet the minimum quality requirements will 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 only award a contract to a responsive and responsible Proposer. Before awarding the contract(s), the City may request additional information from the Proposer to ensure that the Proposer has the resources necessary to perform the required services. The City reserves the right to reject any and all Applications if it determines that the criteria set forth have not been met.

Factor 1: Technical and Management Approach

| | |
|----------------------------|--|
| Highly Advantageous | The proposer's Plan demonstrates a comprehensive understanding of the SOW and a thorough attention to detail. The Plan is both cost effective and relevant to Somerville's specific needs. |
| Advantageous | The proposer's Plan demonstrates a moderate understanding of the SOW and modest attention to detail. The Plan is not optimally cost effective and lacks certain aspects of relevance to Somerville's specific needs. |
| Not Advantageous | The proposer's Plan lacks a comprehensive understanding of the SOW and a thorough attention to detail, and is not cost effective nor relevant to Somerville. |

Factor 2: Key Personnel

| | |
|----------------------------|--|
| Highly Advantageous | <u>All</u> of the personnel identified by the proposer are proven to possess a <u>very high level</u> of engineering design and construction administration experience and performance. Resumes are included in the proposal for all proposed personnel. All proposed personnel are currently performing functions similar to those proposed clearly show an adequate level of relevant experience to successfully perform the scope outlined herein. Experience with MBTA systems, procedures, and inter-departmental coordination with a working knowledge of appropriate design codes and MBTA standards, |
| Advantageous | <u>All</u> of the personnel identified by the proposer are proven to possess a <u>high level</u> of engineering design and construction administration experience and performance. Resumes are included in the proposal for most of the proposed personnel. Some of these proposed personnel show an adequate level of relevant experience to successfully perform the scope outlined herein. |
| Not Advantageous | <u>Most</u> but not all of the personnel identified by the proposer are proven to possess an <u>adequate level</u> of engineering design and construction administration experience. Resumes are not included not any of the proposed staff. |

| Factor 3: Past Performance | |
|----------------------------|--|
| Highly Advantageous | The proposal demonstrates the proposer's efficient and effective design and management of five or more major infrastructure projects of similar size and scope in the last ten years in settings similar to Somerville. |
| Advantageous | The proposal demonstrates the proposer's efficient and effective design and management of less than five major infrastructure projects of similar size and scope in the last ten years in settings similar to Somerville. |
| Not Advantageous | The proposal demonstrates the proposer's efficient and effective design and management of less than three major infrastructure projects of similar size and scope in the last ten years in settings similar to Somerville. |

Period of Performance

The period of performance for this contract begins on or about 6/1/2024 and ends on or about 5/31/2027. If applicable, optional renewal years may be exercised by the sole discretion of the City (see cover page for anticipated contract term).

Place of Performance

All services, delivery, and other required support shall be conducted in Somerville and other locations designated by the Department point of contact. Meetings between the Vendor and City personnel shall be held at the City of Somerville, Massachusetts, unless otherwise specified.

Vendor Conduct

The Vendor's employees shall comply with all City regulations, policies, and procedures. The Vendor shall ensure that their employees present professional work attire at all times. The authorized contracting body of the City may, at his/her sole discretion, direct the Vendor to remove any Vendor employee from City facilities for misconduct or safety reasons. Such rule does not relieve the Vendor of their responsibility to provide sufficient and timely service. The City will provide the Vendor with immediate written notice for the removal of the employee. Vendors must be knowledgeable of the conflict of interest law found on the Commonwealth's website <http://www.mass.gov/ethics/laws-and-regulations-/conflict-of-interest-information/conflict-of-interest-law.html>. Vendors may be required to take the Conflict of Interest exam.

Vendor Personnel

The Vendor shall clearly state the name of the proposed project manager. All proposed staff must demonstrate the ability to carry out the specified requirements.

Confidentiality

The Vendor 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 City. That includes confidential reports, information, discussions, procedures, and any other data that are collected, generated or resulting from the performance of this scope of work. All documents, photocopies, computer data, and any other information of any kind collected or received by the Vendor in connection with the contract work shall be provided to the City 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 City or as otherwise agreed by City and the Vendor). The Vendor 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 City. In addition, the Vendor 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 City. Requests to make such disclosures should be addressed in writing to the Vendor's point of contact.

Deliverables

Vendor shall provide for all day-to-day supervision, inspection, and monitoring of all work performed to ensure compliance with the contract requirements. The contractor is responsible for remedying all defects and or omissions to the supplies or services provided to ensure that said deliverables meet the requirements as detailed in the contract specifications.

SECTION 3.0

Owner's Representative for Pedestrian Bridge Construction between Inner Belt and Brickbottom

PROPOSERS' CHECKLIST

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

Required with Application

- _____ Acknowledgement of Addenda (if applicable)
- _____ Application with the following headings:
 - 1. Cover Letter
 - 2. Summary of Qualifications & Experience
 - a. Project Team
 - b. Project Management Approach
 - c. Review of Design Documents and Cost Estimates
 - d. Bidding/Construction Administration Services
 - e. Project Closeout Services
- _____ Somerville Living Wage Form
- _____ Certificate of Non-Collusion and Tax Compliance
- _____ Certificate of Signature Authority
- _____ Reference Form (or equivalent may be attached)
- _____ W9
- _____ Supplier Diversity Certification Form
- _____ Truth in Negotiations Certificate
- _____ Wage Theft Ordinance Form

Required with Contract, *Post Award*

- _____ Certificate of Good Standing (will be required of awarded Vendor; please furnish with Application if available)
- _____ Insurance Specifications (will be required of awarded Vendor; furnish sample certificate with bid, if possible)



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 7/1/2023 “Living Wage” shall be deemed to be an hourly wage of no less than \$17.09 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

* Copies of the Ordinance are available upon request to the Procurement & Contracting Services Department.

Form: _____
Contract Number: _____

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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 7/1/2023 is **\$17.09** per hour.

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 Procurement & Contracting Services Department directly.

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: _____



Certificate of Authority (Corporations Only)

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

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

(Insert Full Name of Corporation)

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

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

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

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

(Insert Name of Officer from Line 2) (Insert Title of Officer from Line 2)

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

4. **ATTEST:**

Signature: _____
(Clerk or Secretary)

AFFIX CORPORATE SEAL HERE

Printed Name: _____

Printed Title: _____

Date: _____
(Date Must Be on or after Date Officer Signed Contract/Bonds)



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

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

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

_____,
(Complete Name of Limited Liability Company)

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

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

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

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

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

| <u>Name</u> | <u>Title</u> |
|-------------|--------------|
| | |
| | |
| | |

5. **Signature:**_____

Printed Name: _____

Printed Title:_____

Date: _____

REFERENCE FORM

Bidder: _____

BID#/ Title: _____

Reference:_____ Contact:_____

Address:_____ Phone:_____

_____ Email:_____

Description and date(s) of supplies or services provided:_____

Reference:_____ Contact:_____

Address:_____ Phone:_____

_____ Email:_____

Description and date(s) of supplies or services provided:_____

Reference:_____ Contact:_____

Address:_____ Phone:_____

_____ Email:_____

Description and date(s) of supplies or services provided:_____



SOMERVILLE SUPPLIER DIVERSITY CERTIFICATION FORM

Background

The City of Somerville is an equal opportunity employer and encourages businesses to apply to work with the City that are representative of the City's diverse community. In an effort to increase the opportunities for disadvantaged and small businesses within Somerville and surrounding communities, the City recognizes Massachusetts' Operational Services Division's Supplier Diversity Office certification program.

Application Process

Applicable parties may learn more about the Commonwealth's supplier diversity certification process and apply here <https://www.mass.gov/supplier-diversity-office>. During the certification process, which takes approximately 30 days, the SDO investigates applicant companies to make sure they meet applicable legal requirements. Under SDO regulations, the applicant firm must prove it is at least 51% owned and dominantly controlled by adult minority, women, Portuguese, or veteran principals who are U.S. citizens or lawful permanent residents. Firms also must be ongoing and independent.

Certifications

Check all those that apply:

- ☐ **Minority Business Enterprises (MBE)**
- ☐ **Women Business Enterprises (WBE)**
- ☐ **Veteran Business Enterprises (VBE)**
- ☐ **Portuguese Business Enterprises (PBE)**
- ☐ **Other** _____

The undersigned certifies that the applicant has received certification from the Massachusetts Supplier Diversity Office for the SDO category/categories listed above and has provided the City of Somerville with a copy of the SDO certification letter.

CERTIFIED BY:

Signature: _____
(Duly Authorized Representative of Vendor)

Title: _____

Name of Vendor: _____

Date: _____

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

► Go to www.irs.gov/FormW9 for instructions and the latest information.

| | | |
|--|---|---|
| Print or type. See Specific Instructions on page 3. | 1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. | |
| | 2 Business name/disregarded entity name, if different from above | |
| | 3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. <input type="checkbox"/> Other (see instructions) ► _____ | 4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i> |
| | 5 Address (number, street, and apt. or suite no.) See instructions. | Requester's name and address (optional) |
| | 6 City, state, and ZIP code | |
| | 7 List account number(s) here (optional) | |

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

| | | | | | | | | | |
|--------------------------------|--|--|--|---|--|--|--|---|--|
| Social security number | | | | | | | | | |
| | | | | - | | | | - | |
| or | | | | | | | | | |
| Employer identification number | | | | | | | | | |
| | | | | - | | | | | |

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

| | | |
|-----------|----------------------------|--------|
| Sign Here | Signature of U.S. person ► | Date ► |
|-----------|----------------------------|--------|

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

| IF the entity/person on line 1 is a(n) . . . | THEN check the box for . . . |
|--|---|
| • Corporation | Corporation |
| • Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes. | Individual/sole proprietor or single-member LLC |
| • LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes. | Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation) |
| • Partnership | Partnership |
| • Trust/estate | Trust/estate |

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

| IF the payment is for . . . | THEN the payment is exempt for . . . |
|--|---|
| Interest and dividend payments | All exempt payees except for 7 |
| Broker transactions | Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012. |
| Barter exchange transactions and patronage dividends | Exempt payees 1 through 4 |
| Payments over \$600 required to be reported and direct sales over \$5,000 ¹ | Generally, exempt payees 1 through 5 ² |
| Payments made in settlement of payment card or third party network transactions | Exempt payees 1 through 4 |

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.SSA.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/Businesses and clicking on Employer Identification Number (EIN) under Starting a Business. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.

You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

| For this type of account: | Give name and SSN of: |
|--|---|
| 1. Individual | The individual |
| 2. Two or more individuals (joint account) other than an account maintained by an FFI | The actual owner of the account or, if combined funds, the first individual on the account ¹ |
| 3. Two or more U.S. persons (joint account maintained by an FFI) | Each holder of the account |
| 4. Custodial account of a minor (Uniform Gift to Minors Act) | The minor ² |
| 5. a. The usual revocable savings trust (grantor is also trustee) | The grantor-trustee ¹ |
| b. So-called trust account that is not a legal or valid trust under state law | The actual owner ¹ |
| 6. Sole proprietorship or disregarded entity owned by an individual | The owner ³ |
| 7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A)) | The grantor* |
| For this type of account: | Give name and EIN of: |
| 8. Disregarded entity not owned by an individual | The owner |
| 9. A valid trust, estate, or pension trust | Legal entity ⁴ |
| 10. Corporation or LLC electing corporate status on Form 8832 or Form 2553 | The corporation |
| 11. Association, club, religious, charitable, educational, or other tax-exempt organization | The organization |
| 12. Partnership or multi-member LLC | The partnership |
| 13. A broker or registered nominee | The broker or nominee |

| For this type of account: | Give name and EIN of: |
|---|-----------------------|
| 14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments | The public entity |
| 15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B)) | The trust |

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

***Note:** The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Visit www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

Form: _____
Contract Number: _____

CITY OF SOMERVILLE

Rev. 04/15/15



DESIGNER'S TRUTH-IN-NEGOTIATIONS CERTIFICATE
MASSACHUSETTS GENERAL LAWS, CH. 7C, S.51

CERTIFICATIONS

The Designer hereby certifies and agrees to the following:

1. The Designer certifies that the wage rates and other costs, if any, used to support the Designer's compensation are accurate, complete, and current at the time of contracting; and
2. The Designer agrees that the Basic Fee, fees for Additional Services, and reimbursements for costs and expenses specified in this Contract as it may be modified from time to time may be adjusted within one year of completion of the Contract to exclude any significant amounts if the City of Somerville determines that the fee was increased by such amounts due to inaccurate, incomplete, or noncurrent wage rates or other costs.

CERTIFIED BY:

Signature: _____
(Duly Authorized Representative of Designer)

Name: _____

Title: _____

Name of Vendor: _____

Project: _____

Date: _____



WAGE THEFT ORDINANCE CERTIFICATION FORM
CITY OF SOMERVILLE CODE OF ORDINANCES / 2019 / ORDINANCE NO. 2019-24 et seq.*.

Instructions: Contractors shall complete this form and sign and date where indicated below. 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.

Purpose: The purpose of this form is to ensure that such vendors comply with applicable federal and state wage laws, treat their employees fairly and ensure that wage theft does not occur on their projects.

Definition of “Wage Theft”: an action by an Employer, their officers, agents or employees causing an Employer not to make a timely and/or complete payment of Wages, not to pay the Minimum Wage or Prevailing Wage, or not to pay Overtime earned and owing to an Employee.

CERTIFICATIONS

Whenever the City of Somerville is procuring construction services subject to the provisions of M.G.L. c. 149, c. 149A or c. 30, §39M, the terms of the Somerville Wage Theft Ordinance shall be incorporated into the procurement documents and made part of the specifications and contract. Any person, company or corporation shall acknowledge, in writing, receipt of said requirements with their bid or proposal and/or contract.

The undersigned bidder, proposer, contractor, subcontractor and/or trade contractor hereby acknowledges receipt of the below referenced requirements and verifies under oath that they will comply with the conditions set forth in the Somerville Wage Theft Ordinance 2019-24, which shall be incorporated into any contract entered into between the City and contractor.

The contractor shall not have been found within the past five years by a court or governmental agency in violation of any law relating to providing workers compensation insurance coverage, misclassification of employees as independent contractors, payment of employer payroll taxes, employee income tax withholding, earned sick time, wage and hour laws, prompt payment laws, or prevailing wage laws.

The contractor shall maintain appropriate industrial accident insurance sufficient to provide coverage for all the employees on the project in accordance with M.G.L. c. 152 and provide documentary proof of such coverage included with the contractor's submitted bid to the inspectional services department to be maintained as a public record.

*Read entire ordinance online at:

https://library.municode.com/ma/somerville/ordinances/code_of_ordinances?nodeId=1001376 or request from the Procurement & Contracting Services Department.

Bid ref.:

Contract Number:

The contractor shall properly classify employees as employees rather than independent contractors and treat them accordingly for purposes of prevailing wages and overtime, workers compensation insurance coverage, social security taxes and state and federal income tax withholding. (M.G.L. c. 149, § 148B on employee classification).

The contractor shall comply with M.G.L. c. 151, § 1A and M.G.L. c. 149, § 148 with respect to the payment of wages.

The city contractor must make arrangements to ensure that each employee of every contractor and subcontractor of any tier entering or leaving the project individually completes the appropriate entries in a daily sign-in/out log. The sign in/out log shall include: the location of the project; current date; printed employee name; signed employee name; name of employee's employer and the time of each entry or exiting. The log shall contain a prominent notice that employees are entitled under state law to receive the prevailing wage rate for their work on the project. Such sign-in/out logs shall be provided to the city on a weekly basis with the certified payrolls and shall be a public record.

Each contractor of any tier, prior to performing any work on the project, shall sign under oath and provide to the city contractor a certification that they are not debarred or otherwise prevented from bidding for or performing work on a public project in the Commonwealth of Massachusetts or in the city.

The contractor must comply with state and, where applicable, federal prevailing wage laws. Contractor shall submit weekly certified payrolls to the City for all employees working on the contract including subcontracted workers at all tiers. Contractor shall use the current standard Massachusetts weekly certified payroll report form. Each contractor shall provide a copy of the OSHA 10 card for every employee attached to the first certified payroll they submit on which the employee appears.

Each payment requisition shall include the following certification:

I certify under oath that each payment requisition is in full compliance with all obligations forth in the Wage Theft Ordinance.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY,

Signature: _____
(Duly Authorized Representative of Contractor)

Title: _____

Name of Contractor: _____

Date: _____

Online at: <https://www.somervillema.gov/procurement>



SECRETARY OF THE COMMONWEALTH'S

CERTIFICATE OF GOOD STANDING

CERTIFICATE OF GOOD STANDING as provided by the Secretary of the Commonwealth

The **Awarded Vendor** must comply with our request for a **CURRENT "Certificate of Good Standing" provided by the Secretary of the Commonwealth's Office**

NOTE: A Certificate of Good Standing provided by the Department of Revenue will NOT be accepted. The Certificate *must* be provided by the Secretary of the Commonwealth's Office.

If you require information on how to obtain the "Certificate of Good Standing" or Certificate of Registration (Foreign Corporations) from the Commonwealth of Massachusetts, please call the

Secretary of The Commonwealth's Office at (617) 727-2850 (Press #1) located at One (1) Ashburton Place, 17 Floor, Boston, MA 02133 or you may access their web site at:
<http://corp.sec.state.ma.us/CorpWeb/Certificates/CertificateOrderForm.aspx>

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

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

IMPORTANT NOTICE

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

INSURANCE SPECIFICATIONS

INSURANCE REQUIREMENTS FOR DESIGN CONTRACTS:

Prior to commencing performance of any work or supplying materials or equipment covered by these specifications, the Contractor/ Design Professional and its structural, mechanical, and electrical engineering consultants shall furnish to the Office of the Chief Procurement Officer a Certificate of Insurance evidencing the following:

- A. Commercial General Liability Insurance (including Premises/Operations; Products/ Completed Operations; Contractual; Independent Contractors; Broad Form Property Damage; and Personal Injury) with a minimum limit of \$1,000,000 per occurrence, \$2,000,000 aggregate. The Owner's Representative shall maintain such insurance in full force and effect for a minimum period of one year after final payment and shall continue to provide evidence of such coverage to the City. The City shall be added as an **additional insured** on this policy; The policy shall be endorsed to waive the insurer's rights of subrogation against the City.
- B. Valuable Papers insurance in the amount of \$100,000 or a sufficient amount to assure the restoration of any plans, drawings, computations, filed notes, or other similar data relating to the Work covered by this Agreement;
- C. 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 **Contractor/Design Professional's** services in relation to the Project.
- D. Workers' Compensation insurance in accordance with MGL c152. The policy shall be endorsed to waive the insurer's rights of subrogation against the City;
- E. 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);
- F. Comprehensive automobile liability insurance including hired, non-owned, and leased vehicles, if any, in the amount of no less than \$1,000,000 covering each person or accident for personal injury, bodily injury, and property damage;

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

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

3. All applicable insurance policies shall read:

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

Certificate Should Be Made Out To:
City Of Somerville
c/o Procurement and Contracting Services
93 Highland Avenue
Somerville, MA 02143

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



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

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

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

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

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

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

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

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

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

CERTIFICATE HOLDER**CANCELLATION**

CERTIFICATES SHOULD BE MADE OUT TO:

CITY OF SOMERVILLE
c/o PURCHASING DEPARTMENT
93 HIGHLAND AVE
SOMERVILLE, MA 02143

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

AUTHORIZED REPRESENTATIVE

APPENDIX A
City of Somerville's Sample Owner's Representative Services
Contract for Public Construction Projects

**OWNER'S PROJECT MANAGEMENT SERVICES GENERAL CONDITIONS
CITY OF SOMERVILLE, MA**

The City and the Owner's Project Manager 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. APPROVAL – a written communication from the City approving either the work of the current Phase, as identified on Attachment A, or authorizing the Owner's Project Manager to proceed to the next Phase or approving the scope and compensation for either Extra Services or Reimbursable Expenses.

1.2.2. ARCHITECT/ENGINEER – herein also referred to as the **DESIGNER** -- the person or firm with whom the City has contracted to perform the professional designer services for this Project.

1.2.3. BASIC SERVICES – the minimum scope of services to be provided by the Owner's Project Manager under this Contract, unless the Contract is otherwise terminated pursuant to Article 12.

1.2.4. CERTIFICATE OF FINAL COMPLETION – the form which contains the certification of the Designer, OPM and the City that the Project has reached Final Completion.

1.2.5. COMMISSIONING CONSULTANT – a person or firm which may be engaged by the City to provide building commissioning services, including advisory services during design and construction.

1.2.6. CONTRACT – this Contract, inclusive of all Attachments, between the City and the Owner's Project Manager; all written amendments to this Contract; and all Approvals issued pursuant to this Contract.

1.2.7. CONTRACTOR or GENERAL CONTRACTOR – the person or firm with whom the City has contracted to perform the construction for this Project pursuant to the provisions of G.L. c. 149, §§44A-44J.

1.2.8. EXTRA SERVICES – services requested by the City to be performed by the Owner's Project Manager but which are additional (or "extra") to the services performed as Basic Services.

1.2.9. FEE FOR BASIC SERVICES – the fee to be paid to the Owner's Project Manager for satisfactorily performing, in the City's sole discretion, the Basic Services required under this Contract, exclusive of the compensation to which the Owner's Project Manager is entitled pursuant to Articles 9 and 10.

1.2.10. FINAL COMPLETION – The work has been completed in accordance with the Construction Contract Documents.

1.2.11. GENERAL LAWS – the Massachusetts General Laws as amended, including any rules, regulations and administrative procedures implementing said laws.

1.2.12. NOTICE to PROCEED – the written communication issued by the City to the Contractor authorizing the Contractor to proceed with the services specified in the construction contract and establishing the date for commencement of the contract time.

1.2.13. OWNER'S PROJECT MANAGER – the individual, corporation, partnership, sole proprietorship, joint stock company, joint venture or other legal entity identified as such on page one of this Contract performing the professional Project Management Services under this Contract.

1.2.14. PHASE – a distinct portion of the work of this Contract and its associated duration, as identified on Attachment A. Prior Approval to proceed for each Phase is required from the Owner.

1.2.15. PRINCIPALS – the owners and/or officers of the Owner's Project Manager who are actively involved in the management of the Project.

1.2.16. PROJECT – all work that pertains to the study, planning, design, construction, reconstruction, installation, demolition, maintenance or repair, if any, as defined in the Project Scope and Budget Agreement or Project Funding Agreement .

1.2.17. PROJECT BUDGET – a complete and full enumeration of all costs of the Project.

1.2.18. PROJECT DIRECTOR – the employee of the Owner's Project Manager who has been designated in writing by the Owner's Project Manager as its authorized representative, as approved by the Owner, pursuant to the requirements of M.G.L. c.149 §44A½ or G.L. c. 149A, § 2, as the case may be, for an "owner's project manager" and 963 CMR 2.00 et seq., and shall be the person who shall oversee and be responsible for all Project Management Services provided under this Contract. The Project Director shall be certified in the Massachusetts Certified Public Purchasing Official Program as administered by the Inspector General of the Commonwealth of Massachusetts.

1.2.19. PROJECT REPRESENTATIVE – the employee or a Sub-consultant of the Owner's Project Manager, who shall be dedicated exclusively to the Project, on-site full-time during the Construction Phase in accordance with the requirements of Article 8.6.2.

1.2.20. PROJECT SCHEDULE – a complete list of all activities, time and sequence required to complete the Project.

1.2.21. REIMBURSABLE SERVICES OR REIMBURSABLE EXPENSES – the cost of services requested by the Owner to be performed by the Owner's Project Manager or the cost of expenses paid by the Owner's Project Manager that are reimbursable pursuant to the provisions of Article 10.

1.2.22. SUBCONTRACTOR – for purposes of a project utilizing the design-bid-build construction delivery method pursuant to G.L. c. 149, a person or entity having a direct contractual relationship with the Contractor, who has the contract to perform the construction of the Project, except as otherwise specifically provided herein or as required by Law.

1.2.23. SUBCONSULTANT – any individual, company, firm, or business having a direct contractual relationship with the Owner's Project Manager, who provides services on the Project.

ARTICLE 2

RELATIONSHIP OF THE PARTIES

2.1 The Owner's Project Manager shall act as an independent contractor of the City in providing the services required under this Contract.

2.2 The Owner's Project Manager warrants and represents to the City that it has fully, completely and truthfully represented the qualifications and skills of the Owner's Project Manager, its Sub-consultants, agents, servants and employees in the proposal submitted by the Owner's Project Manager, the Contract documents and in all communications with the Owner relative to this Contract and the services to be performed hereunder by the Owner's Project Manager, its Sub-consultants, agents, servants and employees.

2.3 The Owner's Project Manager shall perform its services under this Contract with no less than that degree of skill and care ordinarily exercised by similarly situated members of the Owner's Project Manager's profession on projects of similar size, scope and complexity as is involved on the Project. The Owner's Project Manager's services shall be rendered in accordance with this Contract.

2.4 The Parties hereto agree that the Designer is solely responsible for the design requirements and design

criteria for the Project (except to the extent specifically delegated to others) and for performing in accordance with the contract between the Owner and Designer.

2.5 The Parties hereto agree that the Contractor shall be solely responsible for construction means, methods, techniques, sequences and procedures, the Contractor's schedules, and for safety precautions and programs in connection with the Project and for performing in accordance with the Owner-Contractor Agreement. The Owner's Project Manager shall be responsible for the Owner's Project Manager's acts or omissions but shall not have control over or charge over acts or omissions of the Contractors, Subcontractors, or the agents or employees of the Contractor, CM at Risk, Subcontractors, the Designer, the City or the Commissioning Consultant.

2.6 Nothing in this Contract shall be construed as an assumption by the Owner's Project Manager of the responsibilities or duties of the Contractor or the Designer. The Owner's Project Manager's services shall be rendered compatibly and in coordination with the services provided by the Designer. It is not intended that the services of the Owner's Project Manager and Designer be competitive or duplicative, but rather complementary. The Owner's Project Manager shall be entitled to rely upon the Designer and Contractor for the proper performance of their obligations pursuant to their respective contracts with the City.

ARTICLE 3 RESPONSIBILITIES OF THE OWNER

3.1 The City shall designate an individual or individuals who shall have the authority to act on behalf of the City under this Contract and who shall be responsible for day-to-day communication between the City and the Owner's Project Manager.

3.2 To the extent such data is available, the City shall furnish to the Owner's Project Manager existing surveys of the Project site, building plans, borings, test pits, structural, mechanical, chemical or other test data, tests for air and water pollution and for hazardous materials, photographs and utility information. The Owner's Project Manager shall be entitled to reasonably rely upon the sufficiency and accuracy of the information furnished under this Article 3.6, provided that the Owner's Project Manager shall notify the City in writing of any deficiencies in such data that the Owner's Project Manager becomes aware of.

ARTICLE 4 RESPONSIBILITIES OF THE OWNER'S PROJECT MANAGER

4.1 The Owner's Project Manager shall provide project management services to monitor procurement procedures, design, construction and other related activities and to facilitate, coordinate and manage the Project with respect to timely performance in accordance with the Project Schedule and monitor the quality of services and workmanship and shall recommend courses of action to the C i t y when respective contractual requirements are not being fulfilled.

4.2 The Owner's Project Manager shall perform the services required under this A g r e e m e n t in conformance with applicable federal, state, and local laws, by-laws and regulations.

4.3 The Owner's Project Manager shall report to the City any act or inaction in connection with the Project which the Owner's Project Manager believes creates a substantial health or safety risk. Notwithstanding the immediately preceding sentence, the Owner's Project Manager shall not assume responsibility for safety precautions and programs in connection with the Project, which shall remain the sole responsibility of the Contractor.

4.4 The Owner's Project Manager acknowledges the importance that the Owner attributes to the abilities and qualifications of the key members of the Owner's Project Manager's team, including Sub-consultants,

and the continuity of key members' participation in the services to be provided under this Contract. This Contract has been entered into on the representation of the Owner's Project Manager that the individuals, consultants, assignments and responsibilities will be maintained throughout the duration of this engagement. No substitution or replacement of individuals or change in the Sub-consultants, listed in Attachment B, shall take place without the prior written approval of the City, except when necessitated by causes beyond the Owner's Project Manager's control. If the Owner's Project Manager proposes to replace one of the key members of the Owner's Project Manager's team, the Owner's Project Manager shall propose a person or consultant with qualifications at least equal to the person or firm the Owner's Project Manager proposes to replace. The City shall have the right to approve any substitution or replacement or change in status for the persons or Sub-consultants listed in Attachment B and such approval shall not be unreasonably withheld. At the request of the City, the Owner's Project Manager shall consult with the City to resolve any situation in which the City determines that a member of the Owner's Project Manager's team is failing to perform services in an acceptable manner to the Owner. The City shall have the right to direct the removal of any such person or consultant. No act or omission of the City made or permitted under this Section shall relieve the Owner's Project Manager of its responsibility for the performance of the services specified in this Contract.

4.5 The Owner's Project Manager shall employ at all times professional and support personnel with requisite expertise and adequate numbers to assure the complete, timely and high quality performance of the obligations of the Owner's Project Manager.

4.6 The Owner's Project Manager shall be and shall remain liable to the City for all damages incurred by the City as a result of the failure of the Owner's Project Manager to perform in conformance with the terms and conditions of this Contract.

ARTICLE 5 SUBCONSULTANTS

5.1 The Owner's Project Manager shall not employ consultants, sub-consultants, sublet, assign or transfer any part of its services or obligations under this Agreement without the prior approval of and written consent of the City. The employment of Sub-consultants shall not in any way relieve the Owner's Project Manager from its responsibilities under this Contract. Nor shall the City's approval of a Sub-consultant in any way relieve the Owner's Project Manager from its responsibilities under this Contract.

5.2 Upon request, the Owner's Project Manager shall provide the City copies of its agreements with Sub-consultants, including amendments thereto, and shall consult with the City with respect to the inclusion therein of appropriate terms and conditions to assure timely, efficient and competent performance of the Sub-consultants.

5.3 The OPM shall be responsible for all compensation to be paid to a sub-consultant. No Sub-consultant shall have recourse against the City for payment of monies alleged to be owed to the Sub-consultant by the Owner's Project Manager, and the Owner's Project Manager shall include in all contracts with its Sub-consultants language so providing.

5.4 All contracts between the Owner's Project Manager and its Sub-consultants shall include a provision in which the City's rights to initiate corrective action shall be stipulated

ARTICLE 6 TERM AND TIMELY PERFORMANCE

6.1 The Owner's Project Manager acknowledges that expeditious completion of the Owner's Project Manager's services and the Project is of the utmost importance to the City. The term of this Agreement shall commence on the date stipulated in an Approval to proceed from the City. The Owner's Project

Manager shall complete the services required under this Contract in a prompt and continuous manner. The Owner's Project Manager shall perform its services in a timely manner and shall not delay the work of the Designer or Contractor. The Owner's Project Manager shall monitor the performance of the Designer and the Contractor in accordance with schedules of performance that are established under their contracts with the City. The Owner's Project Manager shall immediately advise the City, as well as the Designer or the Contractor, in writing, any time the Owner's Project Manager determines that either the Designer or the Contractor's performance is jeopardizing the Project Schedule or the Project Budget.

6.2 Time is of the essence in the performance of the Owner's Project Manager's obligations under this Agreement and under any amendment. The Owner's Project Manager agrees that no other work in its organization will be permitted to interfere with its timely performance of the work required under this Agreement or any amendment.

6.3 The Owner's Project Manager's services are to be provided in accordance with the time schedule set forth in this Agreement. If the schedule changes causing the need for revisions to the Owner's Project Manager's services, the Owner's Project Manager shall notify the City of the revisions to its services. The City shall have the right to extend the term of this Contract by amendment. All the rights and obligations of the parties for such extended periods shall be as set forth in this Contract or in the amendment.

ARTICLE 7 COMPENSATION

7.1 For the satisfactory performance of all services required pursuant to this Contract, excluding those services specified under Articles 9 and 10, the Owner's Project Manager shall be compensated by the City in an amount up to the Not-to-Exceed Fee for Basic Services, identified on Attachment A. The Owner's Project Manager shall submit invoices on a monthly basis in accordance with the Payment Schedule included as Attachment A. The City shall make payments to the Owner's Project Manager within 30 days of the City's approval of the invoice, which approval shall not be unreasonably withheld or delayed.

7.2 The Fee for Basic Services shall include, but not necessarily be limited to, all labor, overhead, profit, insurance, legal services, transportation, communication expenses, reasonable printing and copying necessary for completion of the Project. The fee for Basic Services also shall include (a) the costs of rebidding and re-solicitation of proposals, bids, or qualifications if due to the fault of the Owner's Project Manager, and (b) assisting the City as provided by section 8.1.4.2 in litigation or resolution of claims or other administrative proceedings associated with a bid protest arising out of the Designer contract or the construction contract and for assistance beyond the requirements of 8.1.4.2 if such litigation or claims are due to the fault of the Owner's Project Manager. The OPM shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the OPM in the preparation of the bid documents as reasonably determined by the City.

7.3 When the Owner's Project Manager receives payment from the City, the Owner's Project Manager shall promptly make payment to each Sub-consultant whose work was included in the work for which such payment was received. The City shall have the contractual right to investigate any breach of performance of a Sub-consultant and to initiate corrective measures it determines are necessary and in the best interest of the City. All contracts between the Owner's Project Manager and its Sub-consultants shall include a provision in which the City's rights to initiate corrective action shall be stipulated.

7.4 The Owner's Project Manager shall be paid the remainder of the Fee for Basic Services, less previous payments, upon acceptance by the City of the Certificate of Final Completion and submission of

evaluations.

ARTICLE 8 BASIC SERVICES

The Owner's Project Manager shall perform the following Basic Services:

8.1 PROJECT MANAGEMENT (For All Phases)

8.1.1 The Owner's Project Manager shall prepare a communication and document control procedure during the Feasibility Study/Schematic Design Phase and continue to update it as specified for the duration of the Project. This procedure shall detail the responsibilities and lines of communication among all Project participants (City, Owner's Project Manager, Designer, Contractor, Subcontractors, and other consultants, vendors or suppliers) and establish the procedure for correspondence, document control, designer and contractor submittal logs, change order reporting logs and other tracking logs, as needed. A draft of the communication plan shall be submitted to the City for approval within 30 days of the Approval to proceed with the Contract and be further updated (a) as needed to include the award of Construction Contract(s) and no later than 30 days after approval to proceed to the Construction Phase of the Project. The Owner's Project Manager shall include the Designer in its distribution of the Project Budget, Schedule, Monthly Progress Report and other reports as appropriate and as outlined in the Communications Plan.

8.1.2 The Owner's Project Manager shall attend meetings with representatives of the City, and attend neighborhood meetings relating to the Project. The Owner's Project Manager shall take minutes of all of the above-referenced meetings and promptly distribute minutes of these meetings to the City.

8.1.3 The Owner's Project Manager shall review all applications for payments, requisitions and invoices relating to the Project as submitted by the Designer, equipment vendors and all other contractors and supplier and make recommendations to the City relative to amounts due.

8.1.4 Project Control. This section of the standard agreement is not used for this project.

8.1.5 Project Budget The Owner's Project Manager shall prepare a detailed baseline Project Budget in a form acceptable to the City, which will be submitted to the City for approval. The Owner's Project Manager shall monitor and compare all Designer estimates, contractor bids, and other cost information to this Project Budget and identify and report all variances to the City. The Owner's Project Manager shall maintain and update the baseline Project Budget throughout the term of this Contract. The Owner's Project Manager shall report any variances to the baseline Project Budget as part of the Monthly Progress Report. The Owner's Project Manager shall prepare revisions to the baseline Project Budget, as needed, and submit them to the City for approval.

8.1.6 Cost Estimating The Owner's Project Manager shall prepare detailed independent cost estimates at each Design phase, when required by the City, or, at the request of the City, shall review the Designer's cost estimates at each Design Phase (schematic and construction). If the City requires the Owner's Project Manager to prepare an independent cost estimate, the Owner's Project Manager shall compare its cost estimate to that prepared by the Designer to identify and notify the City of any variances.

In the event that the cost as estimated by the Designer exceeds the construction cost in the Project Budget at any of the Design phases, the Owner's Project Manager shall consult with the Designer and recommend to the City appropriate revisions to the scope of work.

8.1.7 Project Schedule The Owner's Project Manager shall prepare a Project Schedule in a form acceptable to the City, which shall be submitted to the City for approval. The Owner's Project Manager shall prepare revisions to the Project Schedule, as needed, and submit them to the City for approval.

8.1.8 Construction Schedule The Contractor shall be responsible for preparing and updating its construction schedule on a monthly basis. The Owner's Project Manager shall meet once each month with the Contractor and Designer to review and update its schedule, develop the monthly progress information to support the Contractor's payment estimate, and monitor the Contractor's performance for compliance

with its contract.

8.1.8.1 The Owner's Project Manager shall notify the City of and include in its Monthly Progress Report any significant changes or delays to the construction schedule. The Owner's Project Manager shall make appropriate recommendations to the City relative to the actions that should be taken by the Contractor and/or advise the City when liquidated damages, if included in the construction contract, are anticipated to be incurred.

8.1.9 Monthly Progress Report The Owner's Project Manager shall submit to the City a written Monthly Progress Report summarizing activity during the preceding calendar month. The Monthly Progress Report shall be submitted in a format acceptable to the City and shall describe work performed by all project participants (OPM, Designer, and Contractor) during the reporting period and work planned for the next reporting period. The report shall also address matters of schedule adherence (Project Schedule as well as individual completion percentages for design and construction), costs to date (updated Project Budget and actual expenses incurred), change orders and potential change orders, cash flow projections, Contractor's safety performance, Designer's QA/QC, Contractor's compliance, community issues, Designer and Contractor's MBE/WBE activities, any issues that could result in additional time and/or additional costs and any anticipated problems/concerns together with recommended solutions.

8.1.10 MBE/WBE Compliance Monitoring (All Phases) The Owner's Project Manager shall monitor and report on the Designer's and Contractor's compliance with MBE/WBE requirements.

8.1.11 Site Investigations and Environmental Testing Prior to Designer Selection, the Owner's Project Manager shall assist the City in determining the need for and the implementation of site evaluation and testing including, but not necessarily limited to, site surveys, wetlands evaluation, environmental evaluations, hazardous materials evaluation, subsurface testing (percolation tests, test pits, borings, etc.), destructive testing and other investigative work in the case of renovation projects. The determination whether or not any additional services or testing need to be performed shall rest with the City or Designer.

8.1.12 Project Records and Reports (All Phases) The Owner's Project Manager shall maintain a complete Project file including, but not necessarily limited to, a copy of the executed agreements of the City-Owner's Project Manager, City-Architect/Engineer and the City-Contractor including copies of performance and payment bonds, a master list of permits, certificates of insurance, licenses and approvals for the Project, correspondence, daily reports, payment records, shop drawings, submittals, project schedules, requests for information, change orders/amendments, change directives and meeting minutes. The Owner's Project Manager shall assist the City in responding to any public records request received by the City.

8.2

FEASIBILITY STUDY/SCHEMATIC DESIGN PHASE

8.2.1 Feasibility Study This section of the standard agreement does not apply to this project.

8.2.2 Design Monitoring The Owner's Project Manager shall monitor the activities and responsibilities of the Designer and assist the City in the review of the proposed scope, schedule and budget, developed by the Designer, including the review of the Designer's drawings. The Owner's Project Manager shall:

- a. Review Designer's cost estimates and, if required by the City, prepare independent construction cost estimates as provided in Section 8.1.6 of this Contract for comparison with the Designer's cost estimates.
- b. Work with the City and Designer to prepare the Project Schedule.

8.2.2.1 The Owner's Project Manager shall review the schematic design to recommend Value Engineering Changes (VEC) to the City. A Value Engineering Change shall include an analysis of the constructability, cost, quality and schedule impact. The Designer will be responsible for a thorough review and recommendation on the technical merit of any VEC.

8.2.2.2 The Owner's Project Manager shall lead design coordination meeting between the Designer and the City to provide for review and discussion of design/engineering related issues. The Owner's Project Manager shall provide technical assistance to the City.

8.2.2.3 The Owner's Project Manager shall assist in the implementation of additional site evaluation and testing as required by the Designer, including, but not necessarily limited to, site surveys, wetlands evaluation, environmental evaluations, hazardous materials evaluation, subsurface testing (percolation tests, test pits, borings, etc.), destructive testing and other investigative work in the case of renovation projects.

8.2.2.4 The Owner's Project Manager shall monitor the status of the Designer contract including monitoring the schedule of the Designer, provide review and comment of Designer's work product and make recommendations to the City when, in the opinion of the Owner's Project Manager, requirements of the Designer's contract with the City are not being fulfilled.

8.2.2.5 The Owner's Project Manager shall meet with the City, Designer and other project participants as necessary.

8.2.2.6 The Owner's Project Manager shall assist the City with the completion of grant applications for funding for the study of green design strategies and assist by identifying green strategies, as appropriate, for study during this phase.

8.3 Change Order and Claims Administration

The Owner's Project Manager shall review and coordinate its review with the Designer and make specific document and processing recommendations to the City, consistent with the General Laws and the construction contract documents, which minimize change order and claims processing costs and time. Services provided by the Owner's Project Manager shall include:

8.3.1 Change Order Administration

8.3.1.1 Review all Contractor proposals for change orders and supporting schedules for time extension requests. For change orders in excess of \$100,000, prepare independent cost estimate analysis with associated schedule impact.

8.3.1.2 Initiate, conduct, and document negotiations through a memorandum of negotiations with the Contractor.

8.3.1.3 For all change order requests by the Contractor, make recommendations to the City for acceptance or rejection.

8.3.1.4 Prepare and finalize any documentation required for processing change orders including documentation to support or reject the change.

8.3.1.5 Maintain a status report system for logging and tracking change orders, claims, and disputes to resolution. At a minimum, monthly reports shall include contract number, description of change order or claim, reason for change, date initiated, magnitude of estimated cost, actions required (identification of action parties and response dates) and status. This report shall be included in the Monthly Progress Report.

8.3.2 Claims and Disputes Management

8.3.2.1 Implement a claims management procedure consistent with the construction contract documents.

8.3.2.2 Analyze Contractor claims and propose recommendations to the Owner in support of the City's obligations under the claims article of the construction contract documents. Prepare responsive positions in coordination with the City, and obtain appropriate input from the Designer and/or Contractor.

8.3.2.3 In the event that a dispute arises between the Contractor, and/or any Subcontractors, and/or the Designer, including, but not necessarily limited to, disputes regarding the performance, quality, acceptability, fitness and rate of progress of the Project or the requirements of the Designer's contract or the Contractors' construction contract(s), the Owner's Project Manager shall report any such claims, disputes or other matters in question relating to the performance by the Contractor, Subcontractor, Designer or vendor to the City in writing as soon as reasonably possible.

8.3.2.4 The Owner's Project Manager shall take all reasonable efforts designed to resolve any such claims, disputes, or other matters in question.

8.4

Construction Documents

8.4.1 The Owner's Project Manager shall review the construction documents for quality, cost, and schedule improvements, conciseness and clarity. The Owner's Project Manager shall:

- a. Review Designer's cost estimate pursuant to Section 8.1.6 of this Contract, (One estimate during Task 8.4)
- b. Provide advice, consultation and guidance to the City relative to value engineering recommendations.
- c. Work with the City and Designer to update the construction budget and schedule.

8.4.2 The Owner's Project Manager shall provide advice, consultation and guidance to the City and the Designer relative to general contractor and subcontractor prequalification requirements pursuant to M.G.L. c. 149 § 44D½ and § 44D¾ as applicable, including participation as a member of the Owner's Prequalification Committee.

8.4.3 The Owner's Project Manager shall monitor and coordinate the schedule, technical accuracy, efficiency, coordination, and constructability of the Project and cost- effectiveness of all designs, drawings, reports, estimates and other work furnished by the Designer. The review of the construction documents shall include constructability, operability and bid-ability as well as document clarity and coordination between drawings and to identify conflicts between drawings and specification.

8.4.4 The Owner's Project Manager's review of the construction documents shall also include, but not be limited to, any concerns of the Owner's Project Manager and/or the City relative to access, usable area, parking, utilities, anticipated noise sources during construction and identification of field offices, facilities, supplies and equipment.

8.4.5 The Owner's Project Manager shall coordinate the timely review of the construction documents by the Commissioning Consultant, if any, to determine that plans and specifications include the recommendations made in regard to materials selection, installation and testing criteria in regard to commissioning and start-up and provide adequate information and allow sufficient time for functional and system testing.

8.4.6 The Owner's Project Manager shall monitor the schedule of the Designer, provide review and comment of Designer's work product and make recommendations to the City when, in the opinion of the Owner's Project Manager, requirements of the Designer's contract with the City are not being fulfilled.

8.5

Bidding Phase

8.5.1 The Owner's Project Manager shall monitor the activities and responsibilities of the Designer in the advertisement, distribution of bidding documents and solicitation of public bids in accordance with M.G.L. c. 149 §§44A through 44J and other public construction-related statutes. The Owner's Project Manager shall:

- a. Administer general contractor and subcontractor prequalification requirements pursuant to M.G.L. c. 149 § 44D½ and § 44D¾ as applicable, including participation as a member of the Owner's Prequalification Committee.
- b. Attend, and assist the City with, all pre-bid conferences and meetings and, assist, if directed by the City.
- c. Attend, and assist the City with, all sub-bid and general bid openings and, assist, if directed by the City.
- d. Review all sub-bids and general bids in conjunction with Designer's determination of responsiveness, bidder eligibility, completeness, accuracy and price. Provide technical guidance to the City relative to its acceptance of bids and determination of bidder responsibility.
- e. Review alternates and make written recommendations as to their acceptance.
- f. If the bid of the lowest eligible and responsible general bidder exceeds the construction budget, the Owner's Project Manager shall consult with the Designer and make recommendations to the City in regard to maintaining the Project Budget which may include, consistent with Massachusetts public construction laws, reviewing and recommending acceptance of alternates, re- bidding or seeking additional funding from the City.

8.5.2 The Owner's Project Manager shall make recommendations to the City relative to the award of a construction contract.

8.5.3 The Owner's Project Manager shall assist the City in the preparation and execution of the Owner-Contractor Agreement and shall obtain from the Contractor performance and payment bonds, insurance certificates, and all other documents and certificates required for contract execution.

8.5.4 The Owner's Project Manager shall assist the City and the Designer in preparing and sending the Notice to Proceed to the Contractor.

8.5.5 The Owner's Project Manager shall provide the Contractor, Designer, and City with required copies of executed construction contract documents.

8.6 Construction Phase

The Owner's Project Manager shall provide for each of the following activities, from Notice to Proceed of the construction contract to contract close-out for each Project.

8.6.1 The Owner's Project Manager shall monitor the Designer's administration of the Owner-Contractor Agreement including the processing of submittals, issuance of timely decisions and directives and consultant's or sub-consultants' visits to the Project as necessary during the time that construction is occurring on the portions of the work to which the consultant's services relate.

8.6.2 The Owner's Project Manager shall provide an on-site Project Representative.

8.6.2.1 The Project Representative shall be subject to the approval of the City and the City reserves the right to require the Owner's Project Manager to replace the Project Representative at any time during the course of the Project.

8.6.2.2 The Project Representative shall have at least five years' experience in on-site supervision of projects similar in size and complexity to the Project.

8.6.2.3 Unless otherwise directed, the Project Representative shall be present at all times when the Contractor is conducting operations at the site starting from issuance by the Owner of a Notice to Proceed to the Contractor and continuing until substantial use or substantial completion as determined by the City and thereafter on an, as needed basis, until issuance to the Contractor of a Certificate of Final Completion by the City.

8.6.3 The Owner's Project Manager shall review the Contractor's schedule of values to determine if it represents a reasonably balanced payment schedule for work. The schedule of values shall include line items for all deliverables, testing requirements and specified operations and maintenance materials. The Owner's Project Manager shall submit recommendations for the Contractor's schedule of values to the Owner within forty-five days of the Owner's Notice to Proceed to the Contractor.

8.6.4 The Owner's Project Manager shall review the Contractor's submitted baseline schedule. The Owner's Project Manager shall be responsible for monitoring the timeliness of these submittals and enforcing compliance with schedule submittal requirements of the construction documents. The Owner's Project Manager shall evaluate the Contractor's planning for the execution of the work, evaluate the reasonableness of the proposed schedule and determine if the submitted schedule meets the requirements of the construction documents.

8.6.5 The Owner's Project Manager shall provide daily observation and monitoring of construction activities such that all shifts and work activities are observed and documented. Responsibilities shall include:

8.6.5.1 The Owner's Project Manager shall keep a daily log containing a record of weather, the Contractor's work on site, number of workers, visitors to the site, safety status of the Project, equipment and equipment utilization, material and equipment deliveries, non-compliance with safety procedures and issuance of any safety violation notifications, accidents, general description of work performed and quality of work, visits of code enforcement officials and any resulting reports or orders, verbal instruction to interpretations given to the Contractor, pay items, and any observed delays, deficiencies and field problems.

8.6.5.2 The Owner's Project Manager shall prepare weekly progress reports for submittal to the Designer and the City that summarize the progress achieved, provide a concise description of

problems and include a copy of the daily log.

8.6.5.3 The Owner's Project Manager shall assist the Designer in determining if construction and construction related activities are performed in accordance with plans and specifications and the approved shop drawings and are consistent with Massachusetts public construction laws.

8.6.5.4 The Owner's Project Manager shall monitor on a daily basis Time and Materials work on change orders for less than \$50,000, including work installed, volume measurements, time sheets, crew sizes and mixes, and equipment utilized.

8.6.5.5 The Owner's Project Manager shall evaluate actual quantities and classification of Unit Price work performed by Contractors.

8.6.5.6 The Owner's Project Manager shall evaluate field problems, using the proper channels for solution and communication of the information to the Designer and the City.

8.6.5.7 The Owner's Project Manager shall coordinate and track requests for clarification on drawings/specifications design changes and proposed change orders.

8.6.5.8 The Owner's Project Manager shall prepare responses to Contractor correspondence for the City.

8.6.5.9 The Owner's Project Manager shall monitor and coordinate the scheduling and activities of independent materials testing functions at the site, including distribution of reports and any necessary actions resulting.

8.6.5.10 The Owner's Project Manager shall maintain at the Project site, on a current basis, a record copy of Construction Contract Documents, including, but not necessarily limited to, drawings, specifications, addenda, change orders, and directives as well as all approved shop drawings, product data, samples, submittals, operations and maintenance manuals and all other relevant documents relating to the construction of the Project.

8.6.5.11 The Owner's Project Manager shall monitor the Contractor's compliance with federal Davis Bacon prevailing wage requirements and Massachusetts prevailing wage requirements pursuant to M.G.L. c. 149 §§26 to 27H, inclusive including assisting the City in cataloging and filing payroll affidavits.

8.6.5.12 The Owner's Project Manager shall shoot and maintain Project progress photographs showing construction progress at a frequency sufficient to document major activities or to document safety incidents, differing site conditions and quality issues. The Owner's Project Manager shall maintain a descriptive log and captioning of the photographs on CD.

8.6.6 The Owner's Project Manager shall monitor the Contractor's compliance with the construction schedule, identify potential problems, include problem identification on the Monthly Progress Report and make recommendations to the City when, in the opinion of the Owner's Project Manager, requirements of the Contractor in the Owner-Contractor Agreement are not being fulfilled.

8.6.7 The Owner's Project Manager shall schedule, conduct and prepare minutes of weekly job meetings on progress, coordination and problem resolution and negotiations. The Owner's Project Manager shall prepare and submit minutes to the City within three business days of the meeting.

8.6.8 Intentionally omitted.

8.6.9 The Owner's Project Manager shall monitor, review and analyze proposed change orders, and claims recommending appropriate action and resolution to the City in accordance with Article 8.1.4.

8.6.10 The Owner's Project Manager shall review and coordinate its review with the Designer to recommend approval of the General Contractor's monthly payment requisitions. The Owner's Project Manager shall review the Designer's certification that the percentage of work included in the requisition is accurate and the work performed conforms to the construction contract.

8.6.11 Intentionally omitted.

8.6.12 The Owner's Project Manager shall verify substantial completion of work; assist the Designer in the Designer's final inspection and receipt of documents, manuals, receipts, certifications, and all other materials required for final closeout as described in the construction contract. The Owner's Project Manager shall coordinate the detailed punch list with the Designer, including a subsequent walk-through with the Designer and the Authority's Commissioning Consultant. The Owner's Project Manager

and the Designer shall then coordinate a walk-through with the City to finalize the punch list. The Owner's Project Manager shall then be responsible for tracking and confirming the completion of the punch list items.

8.7 Completion Phase

8.7.1 The Owner's Project Manager shall monitor the activities and responsibilities of the Designer and the Contractor in the close-out and commissioning of the Project.

8.7.2 The Owner's Project Manager shall assist in securing and reviewing and recommending approval of all project completion forms and documentation necessary for occupancy and full operation of the facility including, but not necessarily limited to, inspection certificates of local building authorities, Certificate of Substantial Completion, Certificate of Final Completion, Occupancy Permit, shop drawings, as-built drawings, operations and maintenance manuals, warranties, guarantees and any and all documentation as required by the contract documents.

8.7.3 The Owner's Project Manager shall assist the City in completing the written evaluation of the Designer(s) pursuant to M.G. L. c. 7 § 38E and prepare, sign and provide to the City for its signature the written evaluation of the Contractor(s) and Trade Subcontractors pursuant to M.G.L. c. 149 § 44D.

ARTICLE 9 EXTRA SERVICES

9.1 General

9.1.1 Extra Services are those services requested by the City to be performed by the Owner's Project Manager but which are additional (or "extra") to the services performed as Basic Services. Such services are not included in the Fee for Basic Services and shall be invoiced and paid for separately. Extra services shall not be deemed authorized until a written Approval is received from the City.

9.1.2 The proposed cost, scope and schedule of all Extra Services shall be presented to and approved by the City in writing prior to the performance of any Extra Services.

9.1.3 Cost proposals for Extra Services shall be computed in accordance with the Hourly Rate Schedule established in Attachment A.

9.2 Unless specifically prohibited elsewhere and with the prior written Approval of the City, the Owner's Project Manager shall perform any of the following services as Extra Services:

9.2.1 Preparing special studies, reports, or applications at the written direction of the City, other than those specifically required herein as part of Basic Services;

9.2.2 Assisting in the appeals process of permitting boards or commissions;

9.2.3 Rebidding, re-solicitation, or re-advertising for bids, proposals, or qualifications unless made necessary by the fault of the Owner's Project Manager, in which events such rebidding shall be deemed part of Basic Services, and subject to the limitation in Article 7.2;

9.2.4 Furnishing services in connection with a bid protest filed in court or with the Office of the Attorney General, provided such activities did not arise due to the fault of the Owner's Project Manager;

9.2.5 Furnishing services in excess of Basic Services made necessary by the termination of the General Contractor;

9.2.6 Providing consultation with respect to replacement of work damaged by fire or other casualty during construction;

9.2.7 Assisting the City in litigation, claims resolution or non-binding mediation arising out of the Designer contract or the construction contract, provided such litigation or claims did not arise due to the fault of the Owner's Project Manager; and

9.2.8 Providing other services requested by the City that are not included as Basic Services pursuant to this Contract.

9.3 Invoices for Extra Services shall be accompanied by a complete breakdown listing the name, payroll title, date, number of hours by day, hourly rate and extended amount, per specified task of Extra Services performed. Hourly rates shall be in accordance with the Hourly Rate Schedule in Attachment A.

ARTICLE 10
REIMBURSABLE EXPENSES

- 10.1** For coordination and responsibility for the work described in the following paragraphs 10.1.1 and 10.1.2, the Owner's Project Manager shall be reimbursed its actual costs and those of its Sub-consultants, supported by invoices or receipts, plus 10%. The following are reimbursable expenses:
10.1.1 Certain out of pocket expenses paid by the Owner's Project Manager such as filing fees, and permit fees that are normally paid by the City; travel to fabrication or manufacturing locations to identify completed, identified, and stored materials or equipment specifically for the Project; field office furnishings.
10.1.2 Any other specially authorized reimbursement deemed essential by the City, in the City's sole discretion, in writing.
- 10.2** Non-Reimbursable Items: The City shall not reimburse the Owner's Project Manager or its Sub-consultants for travel expenses, sustenance, telephone, facsimiles, electronic mails, postage and delivery expenses, unless specifically required elsewhere in this Contract.
- 10.3** The Owner's Project Manager shall not be entitled to compensation under this Article for the services of Sub-consultants hired to perform Basic Services under this Contract. If a Sub-consultant hired to perform Basic Services performs Extra Services approved by the City, compensation for such Extra Services shall be made under Article 9.

ARTICLE 11
RELEASE AND DISCHARGE

- 11.1** The acceptance by the Owner's Project Manager of the last payment under the provisions of Article 7 or Article 12 in the event of termination of the Contract, shall in each instance, operate as and be a release to the City and their employees and agents, from all claims of the Owner's Project Manager and its Sub-consultants for payment for services performed and/or furnished, except for those written claims submitted by the Owner's Project Manager to the City with, or prior to, the last invoice.

ARTICLE 12
ASSIGNMENT, SUSPENSION, TERMINATION

- 12.1** **Assignment** The Owner's Project Manager shall not assign or transfer any part of its services or obligations under this Contract (other than as specified in Article 5), without the prior written approval of the City. Likewise, any successor to the Owner's Project Manager must first be approved by the City before performing any services under this Contract. Such written consent shall not in any way relieve the Owner's Project Manager or its assignee from its responsibilities under this Contract.
- 12.2** **Suspension** The City may, at any time, upon seven (7) days written notice to the Owner's Project Manager, suspend this Contract. If the City provides such written notice, the Owner's Project Manager shall be compensated for work satisfactorily performed in accordance with the Contract terms prior to the effective date of such suspension for which invoices have been properly submitted.
- 12.3** **Termination** By written notice to the Owner's Project Manager, the City may terminate this Contract at any time with or without cause. If such termination shall occur through no fault of the Owner's Project Manager, all compensation and reimbursement due to the Owner's Project Manager in accordance with the Contract terms, for work satisfactorily performed up to the date of termination, including proportionate payment for portions of the work started but incomplete at the time of termination, shall be paid to the Owner's Project Manager, provided no payment shall be made for work not yet performed or for anticipated profit on unperformed work. If such termination is for cause then no further payment shall be due to the Owner's Project Manager beyond the date of termination.

ARTICLE 13

NOTICES

- 13.1** Any notice required to be given by the City to the Owner's Project Manager, or by the Owner's Project Manager to the City, shall be deemed to have been so given, whether or not received, if mailed by certified or registered mail to the Owner's Project Manager or the City at the addresses indicated on page one.

ARTICLE 14

INDEMNIFICATION OF OWNER AND AUTHORITY

- 14.1** With respect to professional services rendered by Owner's Project Manager, to the fullest extent permitted by law, Owner's Project Manager shall defend, indemnify and hold harmless the City, and its officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the City to the extent caused by the negligence of or the breach of any of the provisions of this Contract by the Owner's Project Manager, a person employed by the Owner's Project Manager, or any of its Sub-consultants.
- 14.2** For all other claims, to the fullest extent permitted by law, Owner's Project Manager shall defend, indemnify and hold harmless the City, and its officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the City arising out of or resulting from the performance of its services provided that such claims, damages, liabilities, injuries, costs, fees, expenses, or losses are attributable to bodily injury or death or injury to or destruction of tangible property caused by an act or omission of the Owner's Project Manager, a person employed by the Owner's Project Manager, or any person or Sub-consultants for whom the Owner's Property Manager is responsible under this Contract.
- 14.3** The indemnification obligation in this Article shall be in addition to, and not a limitation of, any other rights and remedies available to the City under this Contract or at law.

ARTICLE 15

INSURANCE

- 15.1** The Owner's Project Manager shall obtain and maintain at its sole expense all insurance required by law and as may be required by the City under the terms of this Contract. The insurance required hereunder shall be provided at the sole expense of the Owner's Project Manager or its Sub-consultant, as the case may be, and shall be in full force and effect for the full term of this Contract between the City and the Owner's Project Manager or for such longer period as otherwise required under this Contract.
- 15.2** All policies shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts with a financial strength rating of "A" or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the City.
- 15.3** The Owner's Project Manager and its sub-consultants, shall submit to the City original certificates of insurance evidencing the coverage required hereunder, together with evidence that all premiums for such insurance have been fully paid simultaneously with the execution of this Contract. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, and policy effective and expiration dates. The Owner's Project Manager shall submit updated certificates to the City prior to the expiration of any of the policies referenced in the certificates so that the City shall at all times possess certificates indicating current coverage. Failure by the Owner's Project Manager to obtain and maintain the insurance required by this Section, to obtain all policy renewals, or to provide the respective insurance certificates as required shall constitute a material breach of the Contract and shall be just cause for termination of the services of the Owner's Project Manager under this Contract.

- 15.4** Termination, cancellation, or material modification of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the City at least thirty days prior to the effective date thereof, which shall be expressed in said notice.
- 15.5** The Owner's Project Manager shall require by contractual obligation, and shall ensure by the exercise of due diligence, that any Sub-consultant hired in connection with the services to be provided under this Contract shall obtain and maintain all insurance required by law and as may be required by the City under the terms of this Contract.
- 15.6** The Owner's Project Manager or its Sub-consultant, as the case may be, is responsible for the payment of any and all deductibles under all of the insurance required by this Contract. The City shall not be responsible for the payment of deductibles, self-insured retentions or any portion thereof.
- 15.7** **Workers' Compensation, Commercial General Liability, Automobile Liability, and Valuable Papers** The Owner's Project Manager shall purchase and maintain at its own expense during the life of this Contract, or such other time period as provided herein, the following types and amounts of insurance, at a minimum:
- 15.7.1** Workers' Compensation Insurance in accordance with MGL c152. The policy shall be endorsed to waive the insurer's rights of subrogation against the City.
 - 15.7.2** Commercial General Liability Insurance (including Premises/Operations; Products/Completed Operations; Contractual; Independent Contractors; Broad Form Property Damage; and Personal Injury) with a minimum limit of \$1,000,000 per occurrence, \$2,000,000 aggregate. The Owner's Project Manager shall maintain such insurance in full force and effect for a minimum period of one year after final payment and shall continue to provide evidence of such coverage to the City. The City shall be added as an additional insured on this policy. The policy shall be endorsed to waive the insurer's rights of subrogation against the City.
 - 15.7.3** Comprehensive Automobile Liability Insurance (including owned, non-owned and hired vehicles) at limits of not less than:
 - \$1,000,000 Each Person for Bodily Injury;
 - \$1,000,000 Each Accident for Bodily Injury; and
 - \$1,000,000 Each Accident for Property Damage.
 - 15.7.4** Valuable Papers insurance in an amount sufficient to assure the restoration of any plans, drawings, computations, field notes, or other similar data relating to the work covered by this Contract or by the Agreement between the City and the Designer in the event of loss or destruction while in the custody of the Owner's Project Manager until the final fee payment is made or all data is turned over to the City, and this coverage shall include coverage for relevant electronic media, including, but not limited to, documents stored in computer-aided design drafting (CADD) systems.
- 15.8** **Professional Liability** The Owner's Project Manager shall maintain professional liability insurance covering errors and omissions and negligent acts of the Owner's Project Manager and of any person or entity for whose performance the Owner's Project Manager is legally liable at all times while services are being performed under this Contract. Certificates of professional liability insurance evidencing such coverage shall be provided to the City on or before the effective date of this Contract and for a period of at least six years after the earlier of: (1) the date of official acceptance of the completed Project by the City; (2) the date of the opening of the Project to public use; (3) the date of the acceptance by the general contractor of a final pay estimate prepared by the City pursuant to M.G.L. chapter 30; or (4) the date of substantial completion of the Construction Contract and the taking of possession of the Project for occupancy by the City. The certificates shall indicate a retroactive date that is no later than the effective date of this Contract and a limit of not less than \$1,000,000.

In the event that the City terminates this Contract at or before the completion of the Feasibility

Study/Schematic Design Phase “without cause” as provided in Article 12.3.1; or the Contract term ends pursuant to its own provisions at the completion of the Feasibility Study/Schematic Design Phase and the Contract is not amended to authorize the Owner’s Project Manager to perform services for subsequent design phases, Construction Phases and/or Completion Phase; or the City otherwise elects not to proceed with the Project beyond the Feasibility Study/Schematic Design Phase, either because the City lacks sufficient funding for the Project or for any other reason, the City may, amend this Article 15.8.

- 15.9** **Liability of the Owner’s Project Manager** Insufficient insurance shall not release the Owner’s Project Manager from any liability for breach of its obligations under this Contract. Without limitation, the Owner’s Project Manager shall bear the risk of any loss if its’ valuable papers insurance coverage is insufficient to cover the loss of any work product covered by this Contract.

ARTICLE 16

OWNERSHIP OF DOCUMENTS

- 16.1** Unless provided otherwise by law, ownership and possession of all information, data, reports, studies, designs, drawings, specifications, materials, documents, models, and any other documentation, product or tangible materials authored or prepared, in whole or in part, or purchased, obtained, created by the Owner’s Project Manager pursuant to this Contract (collectively, the “Materials”), other than the Owner’s Project Manager’s administrative communications, records, and files relating to this Contract, shall be the sole property of, and shall vest in, the City as “works made for hire” or otherwise. The City will own the exclusive rights, worldwide and royalty-free, to and in all Materials prepared and produced by the Owner’s Project Manager pursuant to this Contract, including, but not limited to, United States and International patents, copyrights, trade secrets, know-how and any other intellectual property rights, and the City shall have the exclusive, unlimited and unrestricted right, worldwide and royalty-free, to publish, reproduce, distribute, transmit and publicly display all Materials prepared by the Owner’s Project Manager. At the completion or termination of the Owner’s Project Manager’s services, all original Materials shall be promptly turned over to the City.

ARTICLE 17

REGULATORY AND STATUTORY REQUIREMENTS

- 17.1** **Truth-in-Negotiations Certificate:** If the Owner’s Project Manager’s fee is negotiated, by signing this Contract, the Owner’s Project Manager hereby certifies to the following:
- 17.1.1** Wage rates and other costs used to support the Owner’s Project Manager’s compensation are accurate, complete, and current at the time of contracting; and
 - 17.1.2** The Contract price and any additions to the Contract may be adjusted within one year of completion of the Contract to exclude any significant amounts if the City determines that the fee was increased by such amounts due to inaccurate, incomplete or non-current wage rates or other costs.
- 17.2** The person signing this Contract certifies, as a principal or director of the Owner’s Project Manager, that the Owner’s Project Manager has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Contract; no consultant to or Sub-consultant for the Owner’s Project Manager has given, offered or agreed to give any gift, contribution or offer of employment to the Owner’s Project Manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the Owner’s Project Manager or Sub-consultant of a contract by the Owner’s Project Manager; and no person, corporation or other entity, other than a bona fide full-time employee of the Owner’s Project Manager, has been retained or hired by the Owner’s Project Manager to solicit for or in any way assist the Owner’s Project Manager in obtaining this Contract upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Contract.

- 17.3 Revenue Enforcement and Protection Program (REAP):** Pursuant to Massachusetts General Laws, Chapter 62C, §49A, the undersigned certifies under the penalties of perjury that to the best of his/her knowledge and belief that the Owner's Project Manager and the principals thereof are in compliance with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.
- 17.4 Interest of Owner's Project Manager:** The Owner's Project Manager hereby certifies that it is in compliance with the provisions of General Laws Chapter 268A whenever applicable. The Owner's Project Manager covenants that 1) he/she presently has no financial interest and shall not acquire any such interest direct or indirect, which would conflict in any manner or degree with the services required to be performed under this Contract or which would violate M.G.L. Chapter 268A, as amended from time-to-time; 2) in the performance of this Contract, no person having any such interest shall be employed by the Owner's Project Manager; and 3) no partner or employee of the firm is related by blood or marriage to any officer, official, or employee of the City, unless approved by the State Ethics Commission.
- 17.5 Equal Opportunity:** The Owner's Project Manager shall not discriminate in employment against any person on the basis of race, color, religion, national origin, sex, sexual orientation, age, ancestry, disability, marital status, veteran status, membership in the armed forces, presence of children, or political beliefs. The Owner's Project Manager shall comply with all provisions of Title VI of the Civil Rights Act of 1964 and M.G.L c.151B.
- 17.6 Certification of Non-Collusion:** The Owner's Project Manager certifies under penalties of perjury that its proposal has been made in 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.
- 17.7 Governing Law:** This Contract shall be governed by the laws of the Commonwealth of Massachusetts.
- 17.8 Venue:** Any suit by either party arising under this Contract shall be brought only in a court of competent jurisdiction in the county where the Project is located. The parties hereto waive any argument that this venue is improper or that the forum is inconvenient.

ATTACHMENT A

PAYMENT SCHEDULE

In consideration of Owner's Project Manager's delivery of Basic Services, the City shall pay the Owner's Project Manager on an hourly basis, up to a total fee that shall not exceed \$[insert total fee amount]. The \$[insert total fee amount] fee is a cap for Basic Services related to this Contract, and the actual amount paid by the City for Basic Services required during the duration of this Contract may be an amount less than \$[insert total fee amount]. The Owner's Project Manager shall invoice the City based on hours worked pursuant to this Contract, according to the hourly rates below and the schedule set forth below. During the course of this Contract, the rates in effect shall not be increased above those delineated in the following table:

Hourly Rate Schedule

| <u>Title</u> | <u>Rate/Hour</u> |
|---------------------|-------------------------|
|---------------------|-------------------------|

The Owner's Project Manager shall perform the Services in accordance with the following Schedule:

| <u>Project Phase/Item of Work</u> | <u>Not-to-Exceed Fee</u> | <u>Completion Date</u> |
|--|---------------------------------|-------------------------------|
|--|---------------------------------|-------------------------------|

Feasibility Study/Schematic Design Phase

Design Development/Construction

Document/Bidding Phase

Construction Phase/Final Completion

Extra Services
(Identify by Category)

Reimbursable Services (Identify by
Category)

Independent Cost Estimates (included in base fee)

| | | |
|------------|------------------|-----|
| Task 8.2.2 | \$X/per estimate | N/A |
| Task 8.4.2 | \$X/per estimate | N/A |