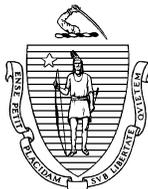


Document ID: \_\_\_\_\_

Contractor's DCAM Certification Number: \_\_\_\_\_ -- \_\_\_\_\_

Contractor's Vendor Code Number: \_\_\_\_\_



**COMMONWEALTH OF MASSACHUSETTS  
CONSTRUCTION CONTRACT FOR CONSTRUCTION  
MANAGER AT RISK SERVICES**

**OWNER - CONSTRUCTION MANAGER AGREEMENT**

Awarding Authority: \_\_\_\_\_

Department Code: \_ \_ \_

This agreement ("Contract") is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Commonwealth of Massachusetts acting by and through the Awarding Authority identified above with a principal place of business at

\_\_\_\_\_ ,

and \_\_\_\_\_ ,

a \_\_\_\_\_ with a principal place of business at

\_\_\_\_\_ ,

\_\_\_\_\_ , hereinafter called the "Construction Manager or CM".

The terms used in this Owner - Construction Manager Agreement, which are defined in the General Conditions of the Contract shall have the meanings designated therein.

Preliminary Statement

- A. Pursuant to M.G.L. c. 149A the Commonwealth of Massachusetts by and through its Division of Capital Asset Management (DCAM) is undertaking the construction of [Project Name] (“the Project”).
- B. The Construction Manager shall be liable to DCAM for all of the obligations, responsibilities and liabilities of the Construction Manager under this Contract.
- C. DCAM has engaged [Name of Designer] (the “Designer”) under a separate agreement to provide design services for the Project.

NOW, THEREFORE, in consideration of the mutual agreements and obligations of the parties set forth below, DCAM and the Construction Manager do hereby agree as follows:

**Article 1. The Work.**

- 1.1 The Construction Manager’s Responsibilities. The CM shall perform the Work as required by the Contract Documents to construct Mass. State Project No. \_\_\_\_\_, [Project Name].
- 1.2 Site. The Site is defined in Article I of the General Conditions.
  - 1.2.1 Site Inspection. By executing this Agreement, the CM acknowledges that it has visited the Site and has learned as much about the Site as may reasonably learned from such an inspection. No information which would reasonably have been obtained by such a site inspection may serve as the basis for any change order proposal or claim for additional costs and/or additional time.
  - 1.2.2 Site Conditions. Information about soil and other subsurface conditions at the Site are provided in Specifications of the Request for Proposals of this Agreement. Neither DCAM nor the Designer represents that such information is complete, accurate, or an approximate indication of subsurface conditions. No change order proposal or claim for additional costs and/or additional time resulting from the CM’s reliance on such information shall be allowed except as expressly provided in the Contract Documents.
  - 1.2.3 Site Testing By CM. Prior to the commencement of the deep and/or shallow foundation portions of the Work, the CM, if directed by DCAM, or if it elects at its own discretion, shall conduct further testing of the subsurface conditions at the Site. If such testing is performed at the direction of DCAM, or to the extent that the CM demonstrates to DCAM that further testing as proposed by the CM is likely to significantly reduce differing site condition and other costs for which DCAM may be responsible under the Contract, and DCAM approves such testing, the costs of such testing shall be paid by DCAM.

## Article 2. The Contract Documents.

2.1 Contract Documents. The following documents form the Contract, are incorporated by reference herein, and are referred to as the "Contract Documents:"

- The Request for Proposals for Construction Management Services for the [Project Name and Location] as modified by Addenda Nos. \_\_\_\_\_ Dated \_\_\_\_\_, 20\_\_\_\_\_.
- The Construction Manager's Proposal
- The Owner – Construction Manager Agreement including amendments and negotiated terms
- The General Conditions of the Contract
- The Supplemental General Conditions of the Contract (Division 1)
- The Plans and Specifications prepared by the Designer, including Addenda
- All Approved Change Orders/Contract Modifications issued after execution of this Owner - Construction Manager Agreement

## Article 3. Relationship of the Parties.

3.1 CM's Obligation. The CM accepts the relationship of trust and confidence between DCAM and the CM established by this Agreement and covenants with DCAM to cooperate at all times with DCAM, the Designer and any other consultants or project representatives engaged or employed by DCAM, and to utilize the CM's best skill, efforts and judgment in furthering the interests of DCAM; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and, consistent with the requirements of the Contract Documents, to perform the Work in the best way and most expeditious and economical manner consistent with the interests of DCAM and to make every effort to achieve time savings and construction efficiencies with respect to the Work. The CM, in performing its services under this Agreement, is an independent contractor and is not an agent or employee of, or a joint venturer with, DCAM. The CM shall endeavor to promote harmony and cooperation among DCAM, the Designer, the CM, Subcontractors, separate contractors and other persons or entities engaged by DCAM or otherwise employed in connection with the Project, as well as other public agencies having jurisdiction with respect to the Project. DCAM agrees to use its best efforts to enable the CM to perform the Work in an expeditious manner by furnishing on a timely basis information required by the CM and making payments to the CM in accordance with the requirements of the Contract Documents.

3.2 Standard of Performance. The CM represents that it is experienced and skilled in construction of projects of the type, magnitude and complexity described in the Contract Documents, that it is familiar with the special problems and requirements of construction of the type required for the Project and in the location of the Site, and that it will furnish a complete and fully operable Project as indicated by and reasonably inferable from the Contract Documents.

## Article 4. Contract Time.

4.1 Commencement Date. The CM shall begin preconstruction and construction phase services pursuant to the terms and conditions included in written Notices to Proceed ("NTP") issued by DCAM.

4.1.1 Preconstruction Services. The NTP for preconstruction services shall be issued within a reasonable time following execution of the Contract. It may, in DCAM's discretion, instruct the CM to begin only certain portions of the preconstruction services.

4.1.2 Construction Services. The NTP for construction services shall be issued within a reasonable time following the execution of the GMP Amendment as defined in Paragraph 6.7.2, provided that, in DCAM's discretion, it may elect to issue such NTP prior to the execution of the GMP Amendment. If the NTP is issued prior to the execution of the GMP Amendment, DCAM may, in its discretion, limit the scope of the NTP in whatever manner it deems appropriate until the execution of the GMP Amendment or a reasonable period following such execution, at which time, such limitations, if any, shall be rescinded.

4.2 Substantial and Final Completion. The CM shall achieve Substantial Completion of the entire Work, no later than [redacted] calendar days after the Notice to Proceed for Construction, subject to any adjustments in the Contract Time approved by DCAM in accordance with the Contract Documents (the "Substantial Completion Date"). The CM shall achieve Final Completion of the Work, no later than 45 days after substantial completion of the entire work, subject to adjustments of the Contract Time approved by DCAM in accordance with the Contract Documents (the "Final Completion Date"). The CM will determine with DCAM's approval, the optimal timing of the Notice to Proceed for Construction, the duration in calendar days, and the Substantial Completion Date.

4.3 Time is of the Essence. The CM acknowledges that the times of Substantial Completion of the Work, Final Completion of the Work, any other milestones for completion of portions of construction, times for submitting proposals for contract modifications, and other times set forth in the Contract Documents are essential conditions of this Agreement.

4.4 Liquidated Damages.

4.4.1 If the CM shall neglect, fail or refuse to achieve Substantial Completion of the Work within the Contract Time, as adjusted in accordance with the provisions of the Contract Documents, the CM and the CM's surety agree, as a part of the consideration for the execution of this Contract by DCAM, to pay DCAM the amounts set forth in this Subsection 4.4.1 below, not as a penalty, but as liquidated damages to cover certain losses, expenses and damages of DCAM for such breach of contract as herein set forth. The CM acknowledges that delay in Substantial Completion of the Project will cause disruption of DCAM's operations and those of the [Identify User Agency], the agency of the Commonwealth that will use the Project. Such disruptions include without limitation, loss of productivity and efficiency and duplication of effort of the [User Agency] and of employees and contractors engaged by the [User Agency] and DCAM for operation of the completed facility. DCAM and the [User Agency] will incur other direct administrative, professional, rental, storage, moving, transportation and other costs in the event of such delay. Delay in Substantial Completion will also require DCAM to incur additional costs for compensation to the Designer and other consultants or contractors for extended or additional work on the Project. In light of the costs, damages, losses, risks and

liabilities described above, the parties have agreed upon the liquidated damages stated below. Such damages have been fixed and agreed upon because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages DCAM and the Commonwealth would in such event sustain, and said amounts may be retained by DCAM on or after the scheduled date of Substantial Completion from current progress payments or any other amounts owing to the CM. The agreed liquidated damages amounts are \$5,000 per day for each calendar day of delay in achieving Substantial Completion.

4.4.2 Except as otherwise expressly provided, none of the following shall constitute a waiver of the CM's or its surety's obligations to pay liquidated damages or any portion thereof:

- (a) Acceptance of any portion of the Work or payment to the CM or its surety therefore;
- (b) Completion of a portion of the Work or the use or occupancy thereof by DCAM or others;
- (c) DCAM's requiring or allowing the CM or its surety to complete the Work.

4.4.3 Substantial Completion. As used in this Article, the term Substantial Completion shall mean Substantial Completion as defined in the General Conditions of the Contract.

## **Article 5. Construction Manager's Services.**

5.1 Preconstruction Services. Commencing upon the date of this Agreement, unless otherwise directed in a notice to proceed issued by DCAM, the CM shall perform preconstruction services as provided in this Article and elsewhere in the Contract Documents.

5.1.1 Construction Planning. The CM shall attend regular Project meetings with DCAM and the Designer. If requested by DCAM, the CM shall schedule and lead such meetings and keep minutes of such meetings. The CM shall consult with DCAM and the Designer concerning planning for construction of the Project. The CM shall make recommendations as to the purchase and assist in expediting the procurement of long lead items, which are required for the Project to ensure their delivery by the required dates. The CM shall review and, if appropriate, make recommendations with respect to the phasing of the Work, and shall otherwise advise and assist DCAM and the Designer with respect to the division of the Work to facilitate the development of bid and proposal packages, bidding and awarding of subcontracts, allowing for scheduled sequential bid and proposal packages and taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

5.2 Preconstruction and Construction Services. The CM shall perform its preconstruction and construction services, responsibilities and obligations concurrently as necessary during the term of this Agreement as directed by DCAM.

5.2.1 Design Review. The CM shall review, on a continuous basis, development of the Drawings, Specifications and other design documents produced by the Designer. The design reviews shall be performed with a group of Architects and Engineers, who are either employees

of the CM or independent consultants under contract with the CM. Review of the documents is to discover inconsistencies, errors and omissions between and within design disciplines. The CM shall consult with DCAM and the Designer regarding the selection of materials, building systems and equipment, and shall recommend alternative solutions whenever design details affect construction feasibility, schedules, cost or quality (without, however, assuming the Designer's responsibility for design) and shall provide other value engineering services to DCAM. Without limitation, the CM shall review the design documents for clarity, consistency, constructability, maintainability/operability and coordination among the trades, coordination between the specifications and drawings, compliance with M.G.L. c.149A for procurement, installation and construction, and sequence of construction, including recommendations designed to minimize adverse affects of labor or material shortages. The CM reviews shall be performed by the project team members as approved by DCAM. The reviews shall be provided in writing with detailed notations on the drawings and specifications and coordinated with a detailed spreadsheet of the notations and recommended solutions in order to track the issues to final resolution. The CM shall attend meetings as necessary with the Designer and DCAM in order to discuss and resolve all issues.

5.2.2 Master Development Schedule. The CM shall assist DCAM to meet any scheduling responsibilities assigned by DCAM. The CM shall also coordinate and integrate its Project schedules with the services and activities of DCAM and other parties. The requirements provided herein are in addition to and not in limitation of the CM's obligation to prepare and maintain the Baseline Critical Path Method (CPM) Schedule and other schedules as provided in the Contract Documents.

5.2.3 Cost Estimates.

- (a.) [This paragraph should be tailored to meet your Project requirements]. The study for the Project is expected to be certified in [put a date here]. It is anticipated that the schematic drawings will be % complete in \_\_\_\_\_ of 20 \_\_\_\_; these documents will be the basis for the first CM detailed estimate. The CM shall prepare for the review of the Designer and approval of DCAM, three [decide how many are appropriate for your Project] different fully detailed estimates of the Construction Cost of the Project: one each during the schematic phase, the design development phase and the construction documents phase. Each detailed estimate must be submitted with supporting data including but not limited to unit costs of all materials, equipment and labor hours required to complete the work of all sections of the specification. The CM shall prepare for the review of the Designer and approval of DCAM, one update estimate for each design phase following the detailed estimate of the Construction Cost of the Project. The update estimates will be provided at the completion of the schematic phase, the design development phase and the construction documents phase. As used herein "Construction Cost" shall mean the total cost or, to the extent the Project is not completed, the total estimated cost of constructing the Project, including the Hard Cost of the Work, the General Conditions Payment, and the CM Fee. The Construction Cost does not include costs of land acquisition, existing building demolition costs, financing costs, or design fees. The CM shall provide value engineering analysis and recommendations during

design and construction as directed and in order to meet the requirements of the project budget.

- (b.) DCAM may, but shall not be required to, arrange for periodic estimates of Construction Cost to be performed by other consultants or staff of DCAM. The CM shall work in good faith and in cooperation and coordination with the Designer, and any other consultants or staff of DCAM involved in preparing estimates of Construction Cost, in order to reconcile any differences between cost estimates prepared by the CM and such parties, to clarify assumptions upon which cost estimates are based, and otherwise to address any concerns or questions with respect to such cost estimates raised by the Designer, DCAM or such other consultants. If in any case the agreed-upon, reconciled estimate of Construction Cost exceeds the Construction Budget established by DCAM, the CM shall advise and cooperate with DCAM and the Designer in identifying, specifying and recommending changes in, or additional specification of materials, equipment, component systems and types of construction, or other adjustments in the scope or quality of the Project (collectively, “Cost Reduction Alternatives”), including contingencies or alternative bid items, so as to facilitate revision of the design of the Project to reduce the Construction Cost so as to comply with the Construction Budget. Implementation of any Cost Reduction Alternative shall be subject to the approval of DCAM, and DCAM shall have the right, in its sole discretion, to choose which of the Cost Reduction Alternatives developed by the parties shall be implemented, provided, however, that the Designer shall not be required to incorporate Cost Reduction Alternatives into the design of the Project if doing so would result in a violation of Applicable Laws.
- (c.) The process and responsibilities of the CM described in this Section 5 shall also apply to any separate cost limits within the Construction Budget that have been established by DCAM for certain phases, components or elements of the Work.

5.2.4 Permits and Approvals. Consistent with the General Conditions, the CM shall assist DCAM and the Designer in identifying all governmental permits, user fees, approvals and licenses of any kind which must be obtained and be met in connection with the construction, use and occupancy of the Project (“Permits and Approvals”). The CM shall be responsible for obtaining all Permits, user fees and Approvals. The CM shall perform the Work in accordance with all conditions, mitigation measures and other requirements of all Permits and Approvals. The CM shall obtain and pay for all permits, inspections and certificates of occupancy for the Project. All applications, requests, appeals, filings and other documents, materials and information prepared by the CM to be submitted to governmental authorities in connection with the Permits and Approvals shall be subject to the prior approval of DCAM, and shall be delivered to DCAM sufficiently in advance of the time of their proposed filing or submission so as to permit a reasonable period for the review and comment of DCAM and its consultants. If requested by DCAM at any time, any such documents or materials to be used in connection with the Permits and Approvals may be prepared by DCAM or other persons designated by DCAM, and DCAM or other persons designated by DCAM may appear on behalf of DCAM at any hearing, presentation or conference. In addition, the CM shall promptly complete and provide such other documentation as may be required by DCAM, other agencies of the Commonwealth

of Massachusetts or such other parties as DCAM may indicate, provided that if the CM believes in any instance that compliance with such requirement materially modifies, enlarges or abridges the CM's duties, obligations or rights under the Contract Documents, the CM may submit a proposal for an increase in the Contract Price and/or the Contract Time in accordance with the applicable provisions of the Contract Documents.

**5.2.5 Monthly Progress Reports.** On the fifth (5<sup>th</sup>) day of each month, or on such other day established by DCAM, the CM shall submit to DCAM the documents listed in this paragraph for the preceding month, in form and substance acceptable to DCAM, containing, without limitation, the following information:

- (a) Project status overview including, without limitation, the following:
  - (i) Progress report by division of work or area;
  - (ii) Quality control/quality assurance report;
  - (iii) Safety and loss control report;
  - (iv) MBE/WBE and workforce participation status;
- (b) Procurement status report, including, without limitation, a status of MBE/WBE participation;
- (c) Project schedule update including, without limitation, a Summary Schedule (progress bar chart) from the CPM;
- (d) Project cost update, including, without limitation, the following:
  - (i) Cost summary;
  - (ii) Cash flow update;
  - (iii) List of outstanding Change Orders and Change Directives;
  - (iv) List of potential changes and outstanding Change Proposal requests and CM Change Requests; and
- (e) Such other reports, logs or documents as DCAM may reasonably require for the management of the Project.

**5.2.6 Executive Summary Progress Report.** On the fifteenth (15<sup>th</sup>) day of each month, or such other day established by DCAM, the CM shall submit to DCAM an Executive Summary Progress Report in form and content satisfactory to DCAM. Such Report shall include but not be limited to a summary of the important information from the submittals listed in Paragraph 5.2.5 and a discussion of the important issues facing the Project as of the date of the Report's submittal.

**5.2.7 Subcontracts.** Unless otherwise specifically approved by DCAM, all Work shall be performed by the CM pursuant to Subcontracts awarded by the CM in accordance with the General Conditions of the Contract, Appendix C: Procedures for Award of Subcontracts.

- (a) The CM shall consult with DCAM with respect to proposed bidding and proposal forms and procedures for all subcontracts. The CM understands and agrees that DCAM may participate in negotiations with Subcontractors and that DCAM and its representatives shall have access to any documents submitted by all Trade Contractors and Other Subcontractors to the CM, for review as to compliance with bidding and proposal procedures and other requirements of the Contract

Documents. No Subcontract or other agreement between the CM and any third party for the furnishing or supply of any labor, materials or equipment in the performance of the Work shall be entered into without DCAM's prior written approval. DCAM shall respond promptly to any request for approval of a Subcontract. Standard forms of subcontract agreement for all Trade Contractors and Other Subcontractors are attached as Appendix D to the General Conditions of the Contract. No material revisions shall be made to any such Subcontract or other agreement approved by DCAM without the prior approval of DCAM. Copies of all executed Subcontracts shall be provided to DCAM promptly.

- (b) Purchases from Affiliated Entities. Except in the event of an emergency as provided herein, neither the CM nor any Subcontractor shall enter into any subcontract, contract, agreement, purchase order, or other arrangement (collectively, an "Arrangement") for the performance of any portion of the Work or the furnishing of any materials, services or equipment in connection therewith with any party or entity if such party or entity is an Affiliated Entity (as defined below), unless such Arrangement has been approved by DCAM, after full disclosure in writing by the CM and Subcontractor, if applicable, to DCAM of such affiliation and all details relating to the proposed Arrangement. The term "Affiliated Entity" means any entity related to or affiliated with the CM and/or any Subcontractor, as applicable, or with respect to which the CM and/or any Subcontractor, as applicable, has direct or indirect ownership or control, including, without limitation, any entity owned in whole or in part by the CM and/or any Subcontractor, as applicable; any holder of the issued and outstanding shares of, or the holder of any interest in, the CM and/or Subcontractor, as applicable; any entity in which any officer, director, employee, partner or shareholder (or member of the family of any of the foregoing persons) of the CM and/or any Subcontractor, as applicable, has a direct or indirect interest which interest includes, but is not limited to, that of a partner, employee, agent or shareholder.

5.3 Construction Services. Commencing upon the date of the Notice to Proceed with Construction, unless otherwise directed by DCAM, the CM shall perform Construction Services as provided in these paragraphs and elsewhere in the Contract Documents.

5.3.1 Construction Cost Monitoring. The CM shall provide a system of Project cost monitoring and reporting, and shall develop cash flow reports and forecasts in such format as approved by DCAM to coordinate with the cost loaded CPM. The CM shall identify variances between actual costs and its estimated costs and shall immediately advise DCAM whenever projected costs exceed previous reports. Such reports and other information shall be included in the Monthly Progress Reports to be submitted to DCAM.

5.3.2 Quality Assurance/Quality Control. The CM shall prepare and submit to DCAM for its approval a Quality Assurance/Quality Control program. Such program shall provide that the CM shall be responsible for insuring that adequate quality assurance and quality control programs are developed, implemented and enforced by the CM's staff and all Subcontractors, including an

experienced full-time quality manager, employed by the CM, whose sole responsibility shall be quality assurance and quality control and shall be stationed at the Project Site and who shall be responsible for reviewing and coordinating the quality control activities of all Subcontractors and monitoring the implementation and enforcement thereof in connection with all aspects of the Work. The quality manager shall report to DCAM and its representatives on a weekly basis the status of the program for each trade, and any deficiencies, and a recommended plan for corrective action.

5.3.3 Prevailing Wage. Work under this project is subject to the prevailing wage laws M.G.L.c. 149, s.26-27 H. The Schedule for prevailing wages is included in the RFP and must be completed and signed by each Offeror.

5.3.4 Criminal Offender Record Information Check. All employees and/or prospective employee's of the CM, Trade Contractors and Subcontractors working on this project may be subject to a CORI (Criminal Offender Record Information) check pursuant to chapter 6 of the Massachusetts General Laws.

5.3.5 CM Responsibility for Managing Construction. The CM shall be responsible for managing, coordinating, and supervising all aspects of the Work as described in this Agreement, the General Conditions, and all other Contract Documents.

5.3.6 Conditions Where CM May Perform Work. The CM may submit its qualifications to bid on trade contract or subcontract work in accordance with the provisions of the Trade Contractor Section Process set forth in the General Condition; provided that the CM firm customarily performs the work for which it submits qualifications; provided further, that the CM firm must perform the work with employees on its own payroll; and provided further, that the CM firm meets all the requirements of the selection process. The CM firm may also self perform work included in the Supplementary General Conditions (also known as "Division 1") made necessary by an emergency to protect life or to prevent serious property damage pursuant to an advance written approval by DCAM where possible. Where advance written approval is not possible due to an extreme emergency, written approval must be obtained from DCAM as soon as possible after work begins to alleviate the emergency.

#### 5.4 General Requirements for Preconstruction and Construction Services

5.4.1 Design Related. The recommendations and advice of the CM concerning design modifications or alternatives shall be subject to the review and approval of DCAM. If the CM recognizes or discovers that any portion of the Drawings and Specifications is at variance with Applicable Laws, the CM shall promptly notify the Designer and DCAM in writing, and if the CM fails to promptly so notify the Designer and DCAM, having recognized or discovered such variance, the CM shall be liable for an equitable portion of any loss, cost or damage sustained by DCAM on account of such variance.

5.4.2 CM's Organization and Staff. The CM shall establish an organization and lines of communication required to carry out the requirements of this Agreement in order to organize and direct the complete construction of the Project. A listing of the CM's key staff is set forth as

**Exhibit GC** attached hereto and incorporated herein. All key staff shall be available for and actively participate in the performance of the services provided under the Contract Documents unless such failure is for good cause beyond the control of the CM. No substitution of any assigned and approved key staff shall be made by the CM without the prior written consent of DCAM in its sole discretion. Before any such substitution is made, the CM shall submit to DCAM the qualifications of any proposed replacement. The removal or replacement, without DCAM's consent, of any of the key staff listed in **Exhibit GC**, other than as a result of retirement, disability, death or bona fide termination of employment, shall constitute a material breach of this Agreement and DCAM reserves the right to terminate the contract and assess damages. Within thirty (30) days after execution of this Agreement, the CM shall furnish to DCAM a detailed organizational chart (the "Organizational Chart") for approval by DCAM. Such chart shall reflect the same persons as set forth in the Proposal unless otherwise approved by DCAM. The Organization Chart shall expand upon and update the General Conditions Cost Administrative Breakdown set forth in **Exhibit GC**, and shall identify each staff position, the anticipated start date and end date for each identified staff person and the estimated personnel cost on account of each such staff person. Upon approval by DCAM, which approval shall not be unreasonably withheld, the Organizational Chart shall supersede and replace the General Conditions Cost Administrative Breakdown set forth on **Exhibit GC**. The CM's management and field supervisory staffing shall be in accordance with the approved Organizational Chart. All modifications to the Organizational Chart after initial approval by DCAM must be approved by DCAM, such approval not to be unreasonably withheld. DCAM may require replacement of any member of the CM's staff with or without cause, and may require increased levels of staffing by the CM, at no increase in the Contract Price, if necessary to achieve proper production, management, administration or superintendence, or if otherwise necessary to maintain progress in accordance with the Project Schedule. By executing this Agreement, the CM certifies that the CM and each member of its key staff comply with all licensing, registration and other requirements applicable to the CM and the performance of its services hereunder pursuant to Applicable Laws. Furthermore, DCAM shall have the right to require the CM and any Subcontractor to replace any on-site personnel who it reasonably finds objectionable, with other personnel approved by DCAM.

## **Article 6. Contract Price**

### 6.1 Contract Price.

6.1.1 DCAM shall pay to the CM in current funds for the CM's proper performance of the Contract and completion of the Work, the "Contract Price" consisting of the General Conditions Payment, as defined in Section 6.2, the Hard Cost of the Work, as defined in Article 7, and the CM Fee as defined in Section 6.3. The total payments to the CM (the Contract Price) shall not exceed the Guaranteed Maximum Price agreed to by the Parties, subject to authorized additions and deductions as provided in the Contract Documents.

6.1.2 For Change Orders or Contract Modifications authorized by DCAM pursuant to the Contract Documents, the Contract Price shall be adjusted as provided in Section 6.4 below and Article VII of the General Conditions and not otherwise. After agreement by DCAM and the

CM on a guaranteed maximum price for construction of the Work (the “GMP”) and execution of the GMP Amendment, as provided in Section 6.7, any increase or decrease in the Contract Price approved by DCAM by execution of a Change Order shall increase or decrease the GMP, accordingly.

## 6.2 General Conditions Payment.

6.2.1 In consideration of the performance by the CM of the work described in the Contract Documents DCAM shall pay to the Construction Manager, as full and complete compensation, except for allowances, to the Construction Manager for all General Conditions costs incurred in the performance of such work an amount equal to the payment specified in Section A of **Exhibit GC** (“General Conditions Costs”), subject to Subsection, 6.2.5 below. For purposes of payment the General Conditions Costs shall be divided into Preconstruction General Conditions Costs and Construction General Conditions Costs as specified in Section A of **Exhibit GC**. The total dollar values for Preconstruction and Construction General Conditions Costs set forth in Section A of **Exhibit GC** represents the maximum amount to be paid to the CM for all Preconstruction and Construction General Conditions Costs. The provisions in the Contract Documents concerning the anticipated schedule for the Project and the durations of the Preconstruction Period, and Construction Period, are not for the purpose of describing the compensation for General Conditions Costs and do not extend or authorize any extension of the Contract Substantial Completion date and/or the Final Completion date. The CM may make a claim for extension of the Contract Substantial Completion date and/or the Final Completion date only as provided in, and subject to the limitations specified in, the Contract Documents.

6.2.2 Preconstruction. From the commencement of the Preconstruction Period through the end of the Preconstruction Period, monthly payments on account of the General Conditions Costs shall be made. The amount of the monthly payments shall be determined by applying the percentage of completion of the Preconstruction General Conditions work set forth in Exhibit GC as approved by DCAM on the Schedule of Values, and deducting from such value any amounts previously paid to the CM on account of Preconstruction General Conditions Costs. For each month or partial month during the period from the commencement of the Preconstruction Period, through the period when Preconstruction services end, the CM shall submit a monthly invoice to DCAM requesting payment of the Preconstruction General Conditions Costs. Payment shall be processed in accordance with Article VIII of the General Conditions of the Contract.

6.2.3 Construction. During the Construction Period monthly payments to the CM on account of General Conditions Costs shall be made. The amount of the monthly payments shall be determined by applying the percentage of the Hard Cost of the Work approved for payment by DCAM to the total amount of the Construction Period General Conditions Costs set forth in Exhibit GC, and deducting from such value any amounts previously paid to the CM on account of Construction Period General Conditions Costs. For each month or partial month during the period from the commencement of the Construction Period, through Final Completion, the CM shall submit a monthly invoice to DCAM requesting payment of the Construction Period General Conditions Costs. Payment shall be processed in accordance with the provisions of Article VIII of the General Conditions of the Contract.

6.2.4 Either DCAM, or the Construction Manager, subject to the approval of DCAM, may request that one or more specific items included in General Conditions Costs be included in a Subcontract bid or proposal package or otherwise separately procured. Whether included in a Trade Contractor bid package or Subcontractor proposal or otherwise separately procured, each such item shall be bid as an alternate and, if accepted by DCAM, the cost of such item shall be considered part of the Hard Cost of the Work, and the amount of the General Conditions Payment due hereunder shall be reduced by the total cost of such item.

6.2.5 If the Construction Manager performs additional work of the type described in Exhibit GC under a Change Order approved by DCAM, compensation, if any, due to the Construction Manager shall be computed in accordance with Section 6.4, below, and Article VII of the General Conditions of the Contract; otherwise, DCAM shall have no obligation to compensate the Construction Manager on account of the cost of the work for any amounts exceeding the total payments as set forth in Section A in **Exhibit GC**.

6.2.6 The General Conditions Costs for payment bond, performance bond and builders risk Insurance that appear in Section C.4 of Exhibit GC shall be adjusted up or down by change order, based on the difference between the GMP and the estimated Project amount carried in Exhibit GC. There will be no CM Fee attributable to any such adjustment.

### 6.3 Construction Manager's Fee.

6.3.1 Preconstruction. In further consideration of the performance of the Contract by the CM, DCAM shall pay to the CM a fee associated with preconstruction services as identified in Section A of Exhibit GC (the "CM Preconstruction Fee") in monthly payments. The amount of the monthly payments shall be determined by applying the percentage of completion of the Preconstruction General Conditions work as approved by DCAM on the Schedule of Values, and deducting from such value any amounts previously paid to the CM on account of the CM Preconstruction Fee. For each month or partial month during the period from the commencement of the Preconstruction Period, through the end of the period when preconstruction services end, the CM shall submit a monthly invoice to DCAM requesting payment of the CM Preconstruction Fee. Payment shall be processed in accordance with Article VIII of the General Conditions of the Contract.

6.3.2 Construction. In further consideration of the performance of the Contract by the CM, DCAM shall pay to the CM a fee associated with construction services as identified in Section A of Exhibit GC (the "CM Construction Fee") in monthly payments. The amount of the monthly payments shall be determined by applying the percentage of the Hard Cost of the Work approved for payment by DCAM, to the total amount of the CM Construction Fee set forth in Exhibit GC and deducting from such value any amounts previously paid to the CM on account of the CM Construction Fee.

6.4 Changes in the Work. DCAM may make changes in the Work when DCAM considers it to be necessary or desirable, as further provided in Article VII of the General Conditions of the Contract.

6.5 Intentionally Omitted.

6.6 Retainage. DCAM shall retain five percent (5%) from the amount approved for payment in the monthly Applications for Payment, as provided in the General Conditions of the Contract. Such retainage shall be applied with respect to all amounts payable under the Application for Payment, including the Hard Cost of the Work, the CM Fee and the General Conditions Payment. Retainage shall be paid as provided in the General Conditions.

6.7 Guaranteed Maximum Price.

6.7.1 On the date agreed upon by DCAM and the CM, or, if no such date is agreed upon, on the date established by DCAM by written notice to the CM, which date shall be at least 20 days after the date of such written notice, the CM shall submit to DCAM a proposed GMP, which shall be the sum of the estimated total Hard Cost of the Work, the Construction Contingency (hereafter defined), total payment for General Conditions Costs, and the CM Fee. The CM shall include with the GMP proposal a written statement of its basis in form and substance satisfactory to DCAM, which shall include at least:

- (a) a list of the Project design documents upon which the GMP proposal is based;
- (b) a list of allowances and a statement of their basis;
- (c) a list of any assumptions, qualifications and clarifications made by the CM in the preparation of the GMP proposal to supplement the information contained in the Project design documents;
- (d) a statement that the proposed GMP is based on the Baseline CPM Schedule and the Substantial Completion Date specified in this Agreement;
- (e) the proposed GMP, including a detailed statement of the actual and estimated Hard Cost of the Work organized by CSI (Construction Specification Institute) format with quantities, units, and unit rates, Preconstruction and Construction General Conditions Costs, allowances, Construction Contingency, Preconstruction and Construction CM Fee and other items that comprise the GMP;
- (f) a schedule of applicable alternate prices;
- (g) a schedule of applicable unit prices; and
- (h) the time limit for acceptance of the GMP proposal (which shall not be less than 90 days).

6.7.2 The CM shall meet with DCAM and the Designer to review the GMP proposal and the written statement of its basis. In the event that DCAM or the Designer discover any inconsistencies or inaccuracies in the GMP proposal and accompanying information, they

shall promptly notify the CM, which shall make appropriate revisions thereto. DCAM may elect in its sole discretion to accept or not to accept the CM's GMP proposal. The CM understands that any agreement on a GMP shall be subject to approval of DCAM. Prior to DCAM's acceptance of the CM's GMP proposal, the CM shall not incur any cost to be compensated by DCAM except as provided in this Contract or as DCAM may specifically authorize in writing. If DCAM accepts the CM's GMP proposal, DCAM and CM shall execute and deliver within fifteen (15) days after such acceptance an amendment to this Agreement, in form acceptable to DCAM and the CM, incorporating the items listed in Subparagraph 6.7.1, above, subject to any modifications agreed upon by the parties (the "GMP Amendment"). The CM shall execute and deliver together with the GMP Amendment, performance and payment (labor and materials) bonds in the form provided by DCAM, executed by a surety licensed by the Commonwealth of Massachusetts Division of Insurance. Each such bond shall be in the amount of the GMP. These bonds shall be substituted for the bonds obtained from the CM at the time of signing the contract, which said bonds shall be returned to the CM by DCAM. If DCAM does not accept the CM's GMP proposal, DCAM may elect to solicit bids or proposals for the construction of the Project from other contractors, using any solicitation method or methods chosen by DCAM, consistent with Applicable Laws and procedures, or, if DCAM determines that it is in its best interest to do so, DCAM may enter into negotiations for a contract with one or more of the offerors that submitted proposals in response to the Request for Proposals for this Contract. If DCAM does not accept the CM's GMP proposal within the time limit for acceptance specified in the GMP proposal, as it may be extended by agreement of the parties, then this Contract shall terminate upon the completion of the CM's performance of the Work then in progress or upon notice from DCAM as provided in the General Conditions.

## **Article 7. Hard Cost of the Work.**

7.1 Hard Cost of the Work. The "Hard Cost of the Work" shall mean those costs listed in this Section. Hard Cost of the Work shall not include any item included in the General Conditions Costs.

7.1.1 Subcontract Costs. Payments made by the Construction Manager to any Subcontractor in accordance with the requirements of an approved Subcontract.

7.1.2 Costs of Materials and Equipment Incorporated in the Completed Construction

- (a) Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction, less all discounts and rebates.
- (b) Costs of materials described herein which are in excess of those actually installed, but which are required to provide reasonable allowance for waste and spoilage. Unused excess materials, if any, shall be delivered to DCAM at the completion of the Work or, at DCAM's option, shall be sold by the Construction Manager. Amounts realized, if any, from such sales shall be credited to DCAM as a deduction from the Hard Cost of the Work.

### 7.1.3 Intentionally Omitted

### 7.1.4 Emergencies and Repairs to Damaged or Nonconforming Work.

The following costs, incurred by the Construction Manager shall become a part of the Hard Cost of the Work:

- (a) in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in the General Conditions.
- (b) in repairing damaged Work, provided that such damage did not result from the fault or negligence of the Construction Manager or the Construction Manager's personnel or any Subcontractor, and only to the extent that the cost of such repairs is not recoverable by the Construction Manager from others or the Construction Manager is not compensated therefore by insurance or otherwise.
- (c) in correcting defective or nonconforming Work, provided that such defective or nonconforming Work did not result from the fault or negligence of the Construction Manager or the Construction Manager's personnel or any Subcontractor or material supplier, and only to the extent that the cost of correcting the defective or nonconforming Work is not recoverable by the construction Manager from third parties or the Construction Manager is not compensated by insurance or otherwise.

Any costs incurred by the CM which would otherwise be within the scope of this Subsection but are excluded because such costs result from the fault or negligence of the CM, the CM's personnel, any Subcontractor or any other party for whom the CM is responsible may be charged against the Construction Contingency to the extent permitted by and in accordance with the provisions of Paragraph 7.2.1, and any such costs incurred after the Construction Contingency has been exhausted shall not be reimbursable as a Hard Cost of the Work.

### 7.1.5 Miscellaneous Hard Costs

The following costs shall be included in the Hard Cost of the Work:

- (a) Subcontractor Bond premiums.
- (b) Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents in accordance with the General Conditions.
- (c) Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by DCAM as Hard Costs of the Work.

## 7.2 Construction Contingency.

7.2.1 The term “Construction Contingency” shall mean the line item included by the CM in the GMP and the Schedule of Values that is available to cover the net amount of any additional costs resulting from unforeseen conditions and events not evidenced at the time that the CM awards a Subcontract or the parties execute the GMP Amendment, as applicable, to the extent that such conditions or events do not result in or constitute a change in the Work. Any claim against the construction contingency shall be submitted in accordance with Article VII of the General Conditions. Examples of such unforeseen conditions and events include, but are not limited to, the following:

- (a) unanticipated cost overruns on the CM’s procurement of Subcontracts or other purchases of materials or labor costs, provided that the same are not caused by the fault, negligence, or breach of contract of the CM or any Subcontractor;
- (b) expediting or acceleration costs required to meet the Baseline CPM Schedule, as long as the same are not made necessary by the fault or negligence of the CM or any Subcontractor; and
- (c) such other unforeseen events and conditions as may be specified in the Contract Documents as chargeable to the Construction Contingency.

After execution of the GMP Amendment, if the contract price of any subcontract as awarded is less than the amount carried for such subcontract in the GMP breakdown, the Construction Contingency referenced in this section shall be increased by the amount of such savings.

7.2.2 Costs authorized to be paid from the Construction Contingency by Paragraph 7.2.1 shall be paid to the CM as Hard Cost of the Work only if and to the extent reasonably approved by DCAM. The Construction Contingency shall be reduced by the net amount of the additional Hard Cost of the Work resulting from the use of the Construction Contingency as authorized by Paragraph 7.2.1. The CM shall not receive any CM Fee in connection with any use of the Construction Contingency.

7.2.3 Contingency Balance. If, at the time DCAM issues the Certificate of Agency Use & Occupancy to the CM pursuant to Article VI of the General Conditions of the Contract, there is a balance in the Construction Contingency, it shall be retained by DCAM.

7.3 Non-Compensable Costs. Neither the Hard Cost of the Work nor the General Conditions Costs shall include any of the items set forth below:

- (a) Salaries, bonuses and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal offices, or other offices, except the site office for this project.
- (b) Expenses of the Construction Manager's principal offices, site office or other offices, except the site office for this project (including, without limitation, in-house computer costs, and other costs of doing business, services, and related expenses to maintain such offices).

- (c) Overhead and general expenses of any kind, including but not limited to office or fabrication shop overhead and drafting and printing costs, except as specifically provided in **Exhibit GC**.
- (d) The CM's capital expenses, including interest on the CM's capital employed for the Work.
- (e) Costs of machinery and equipment owned or rented by the CM, except as specifically provided in **Exhibit GC**.
- (f) Costs incurred due to the fault, negligence or breach of contract of the CM, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, death or injury to person or damage to property, the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, unanticipated cost overruns incurred by the CM in the procurement of Subcontracts, materials or labor, and making good damage to property not forming part of the Work, except: (i) to the extent reimbursement is received through the recovery of insurance proceeds, or (ii) to the extent such items may be charged to the Construction Contingency pursuant to Paragraph 7.2.1.
- (g) Cost for purchase and maintenance of tools, materials, supplies and facilities not consumed during construction or incorporated into the Work, except as specifically provided in **Exhibit GC**.
- (h) Penalties, fines or costs imposed by governmental authorities in connection with, or resulting from any violation of, or noncompliance with Applicable Laws by the Construction Manager or any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.
- (i) Any legal fees incurred by the Construction Manager, unless the same are incurred at the written direction, or with the prior written approval, of DCAM.
- (j) Travel or meal expenses and personnel relocation expenses, except as specifically provided in **Exhibit GC**.
- (k) General Conditions Costs in excess of the total of all General Conditions costs as set forth in Section A in **Exhibit GC**.
- (l) Any cost incurred by the CM as a result of knowing violation of or failure to comply with this Agreement or the other Contract Documents by the CM.
- (m) Costs which would cause the GMP to be exceeded.
- (n) Costs incurred by the CM after final payment; provided, however, that to the extent there is Contingency remaining at final payment, such Contingency shall be available to pay costs incurred during the one year period after final payment, but only if Contingency would be available, subject to reasonable approval by DCAM, to pay such costs had such costs been incurred prior to final payment.

7.4 Discounts, Rebates, Refunds and Expenses. Cash discounts obtained on payments made by the CM shall accrue to DCAM if (a) before making the payments the CM included them in an Application for Payment and received payment therefore from DCAM, or (b) DCAM has deposited funds with the CM with which to make payments; otherwise, cash discounts shall accrue to the CM. The CM shall notify DCAM of the availability of any cash discounts so that

DCAM may elect to pay or deposit such funds with the CM in order to obtain such cash discount. Such cash discounts and any other trade discounts, rebates, refunds and other amounts received from sales of surplus materials and equipment shall be credited to the Hard Cost of the Work, and the CM shall make provisions so that they can be secured and credited accordingly. DCAM anticipates an energy rebate for this Project. CM shall apply for the rebate, however, the full amount of the rebate shall be paid to DCAM.

## 7.5 Accounting Records

7.5.1 The Construction Manager shall check all materials, equipment and labor entering into the Work, and shall keep such full and detailed accounts and exercise such controls as may be necessary for proper accounting and financial management under this Agreement. All books and records shall be maintained in accordance with generally accepted accounting principles, consistently applied. Without limitation, the CM shall comply with the requirements set forth in Article XI of the General Conditions. DCAM and its authorized representatives shall, upon request by DCAM, be afforded copies of, and at all times shall be afforded access to, all of the Construction Manager's records, books, correspondence, instructions, drawings, receipts, invoices, vouchers, memoranda, estimates, budgets, breakdowns, accounting data, bid proposals, cost control information and any other documents and data relating to this Agreement, including data in electronic media or any other media (collectively, "records") and the Construction Manager shall preserve all such records for a period of six years, or for such longer period as may be required by law, after Final Payment. With respect to work performed by the CM's own forces on a lump sum basis, the CM shall only be required to maintain certified payrolls, documentation required by the Supplementary Conditions for Equal Employment Opportunity, Non-Discrimination and Affirmative Action, and such other records as are required by Applicable Laws or the terms of the Contract Documents.

7.5.2 Without limitation of the foregoing, DCAM shall have the right, at any time and from time to time, upon notice to the Construction Manager, to audit the Construction Manager's records in connection with the Work at the Construction Manager's offices. The Construction Manager shall facilitate any such audit by making necessary facilities available to DCAM and its accountants or other representatives.

7.5.3 Subcontractors shall have the same obligations to maintain books and records and to permit audits by the Construction Manager or DCAM as are applicable to the Construction Manager under the Contract Documents.

7.5.4 If any inspection of the Construction Manager's or any Subcontractor's books, records or other documents reveals an overcharge, the Construction Manager shall pay DCAM or, at DCAM's election, DCAM may reimburse itself by taking as a credit against future payments due the Construction Manager, an amount equal to the overcharge. If one or more overcharges is equal to or greater than two hundred thousand dollars (\$200,000) in the aggregate, the CM shall also pay all administrative and auditing expenses up to an aggregate of forty thousand dollars (\$40,000) incurred by DCAM in determining the existence and amount of the overcharge. Nothing contained in this provision is intended as a limitation of any other rights or remedies which may be available to DCAM and/or the Commonwealth, be they civil or criminal.

## **Article 8. Payments to Construction Manager**

8.1 Based upon Applications for Payment submitted by the CM, DCAM shall make payments to the CM on account of the Contract Price as provided in Article VIII of the General Conditions of the Contract, and elsewhere in the Contract Documents.

## **Article 9. Equal Employment Opportunity, Nondiscrimination and Affirmative Action**

9.1 The CM and all of its Subcontractors shall comply at all times and in all respects with Applicable Laws affecting or regulating employment of persons in connection with the Work, and with the Supplementary Conditions and all other provisions in the Contract Documents relating to Equal Employment Opportunity, Nondiscrimination and Affirmative Action.

## **Article 10. Miscellaneous Provisions**

10.1 Successors and Assigns. DCAM and the CM bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants, agreements and obligations contained in the Contract Documents. Neither the CM nor any partner of the CM shall assign or transfer the Contract or sublet or subcontract it (other than subcontracting portions of the Work as expressly permitted by and in accordance with the Contract Documents), or otherwise transfer or assign any of its or their rights or obligations under all or any portion of the Contract Documents without the prior written consent of DCAM, which consent may be withheld by DCAM in its sole discretion, nor shall the CM or any partner of the CM assign any moneys due or to become due to it hereunder, without such prior written consent of DCAM. Any assignment of the Contract or any interest therein by the CM or any partner of the CM shall be void, and the assignee in such case shall acquire no rights in the Contract or in such moneys. DCAM may assign the Contract to any successor or assignee of DCAM's interests, provided that DCAM demonstrates to the reasonable satisfaction of the CM that such successor or assignee has the capability of fulfilling DCAM's obligations under the Contract.

10.2 Additional Information. Recognizing that DCAM may find it necessary during the progress of the Work to establish the current status of performance under the Contract Documents, the CM shall, without limitation of any other requirements of the Contract Documents, promptly provide upon request statements, documents or information to DCAM or others regarding the status of the Work, compliance of the Work with the Contract Documents, compliance by the CM or any Subcontractor with the Contract Documents, the names of Subcontractors or suppliers, amounts due or to become due or amounts previously paid to Subcontractors or suppliers, estimates of the portion of the Work completed and the cost of completing the Work, and such other matters within the scope of the CM's performance under the Contract Documents as DCAM may reasonably require.

10.3 Information Confidential. The CM shall treat as confidential any information relating to the Project that is specifically designated or identified by DCAM as confidential or proprietary, and shall not permit release of such information to other parties without DCAM's prior express written authorization.

10.4 Governing Law. The Contract shall be governed by the laws of the Commonwealth of Massachusetts.

10.5 No Personal Liability; Consequential Damages.

10.5.1 No member, officer, consultant, volunteer participant, employee, agent or representative of DCAM or the Designer shall be personally liable to the CM under any term or provision of this Contract for DCAM's payment obligations or otherwise, or because of any breach hereof, the CM agreeing to look solely to the assets of DCAM or the Designer entities for the satisfaction of any liability hereunder.

10.5.2 In no event shall DCAM or the Designer be liable to the CM except for obligations expressly assumed by DCAM or the Designer under the Contract Documents, nor shall DCAM or the Designer ever be liable to the CM for indirect, special or consequential damages.

10.6 Conflict of Interest. The CM shall familiarize its employees assigned to perform services under this Agreement with the provisions of Chapter 268A of the Massachusetts General Laws (the Massachusetts conflict-of-interest statute). The CM acknowledges that DCAM is a "state agency" for purposes of the aforementioned statute and that the CM is an "interested party" for purposes of the aforementioned manual. Accordingly, the CM, its employees and agents shall not offer or provide any employee of DCAM any gift, gratuity, favor, meal, entertainment, loan or other item of monetary value. The CM warrants and represents that it currently has no interest and shall not acquire any interest, direct or indirect, which would be adverse to or conflict in any manner with the performance of its services under this Agreement or with the interest of DCAM or the Project. The CM further agrees that in the performance of this Agreement no person or entity having any such adverse or conflicting interest shall be employed or granted a subcontract. Except with DCAM's knowledge and express consent, the CM shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to be adverse to the interests of DCAM or to compromise the CM's professional judgment with respect to the Project. The CM has a continuing obligation to divulge to DCAM all circumstances of its relationships with third parties, as well as any other interests that may have an effect on DCAM or the Project at the time of execution of this Agreement or during its effectiveness. If DCAM believes that there is or has been a conflict of interest, or the appearance of a conflict of interest, it will so notify the CM. The CM shall make full disclosure of all material facts, and shall have a period of thirty (30) days after receipt of such notice to cure the conflict of interest or the appearance of conflict of interest, including the right to request a meeting with the Commissioner of DCAM to explain its position. If the conflict of interest or appearance of conflict of interest is not cured to the satisfaction of DCAM or the controversy otherwise resolved prior to expiration of such thirty (30) days period, the CM shall be deemed to be in default of this Agreement and DCAM may exercise any remedies available to it under this Agreement or applicable law.

10.7 Termination of Contract. The Contract may be terminated as provided in Article XVII of the General Conditions.

10.8 Exhibits. The following Exhibits are attached to and incorporated in this Agreement:

Exhibit GC	Payment for Construction Management Services
Exhibit A	Additional Insurance Provisions
Exhibit B	Forms Used During Contract Award and Execution
Exhibit C	Prevailing Wage Rates

**Article 11. Approved Subcontractors.** No Trade Contractors or other Subcontractors shall be used for any portions of the Work without the prior written approval of DCAM.

**Article 12. Certifications.** Pursuant to M.G.L. c. 62(c), s.49 (a), the individual signing this Contract on behalf of the Construction Manager hereby certifies, under the penalties of perjury, that to the best of his or her knowledge and belief the Construction Manager has complied with any and all applicable state and federal tax laws. The individual signing this Contract on behalf of the Construction Manager further certifies under penalties of perjury that the Construction Manager is not presently suspended or debarred from doing public construction work in the Commonwealth under the provisions of M.G.L. c. 29, s. 29F, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder and is not presently suspended or debarred from doing public construction work by any agency of the United States.

**Article 13. Minority Business Enterprise and Women Business Enterprise Participation Goals and Minority/Women Workforce Utilization Percentages.** The applicable goals, if any, for minority business enterprise and woman business enterprise participation established for this Contract are as follows:

MBE: 7.4 % of the GMP. WBE: 4 % of the GMP.

The applicable minority workforce utilization percentage is 15.3%.

The women workforce utilization percentage is 6.9%.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in triplicate under seal as of the date set forth above.

**CONSTRUCTION MANAGER**

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

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

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

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

**DIVISION OF CAPITAL ASSET MANAGEMENT**

By executing this Agreement, the undersigned authorized signatory of DCAM, who incurs no personal liability by reason of the execution hereof or anything herein contained, hereby certifies under penalties of perjury that this Contract is executed in accordance with a prior approval of the Division of Capital Asset Management and Maintenance.

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

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

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

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

**Approved as to Form:**

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

Name \_\_\_\_\_

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

Date \_\_\_\_\_

**Attach Exhibits GC, A, B, and C**