



**COMMONWEALTH OF MASSACHUSETTS  
CONTRACT FOR FINAL DESIGN AND  
CONSTRUCTION ADMINISTRATION SERVICES**

**Awarding Authority:**

**Mass. State Project No./Contract No.:**

**Project Title/Project Location:**

**User Agency:**

**Authorized Representative of Awarding Authority:**

\_\_\_\_\_, or such other individual(s) as he or she shall designate in writing.

This Contract ("Contract") is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the \_\_\_\_\_ 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 "Designer."

[Designer's Telephone Number: \_\_\_\_\_ Designer's Fax Number: \_\_\_\_\_]

**TABLE OF CONTENTS**

**ARTICLE 1: DEFINITIONS .....6**

**ARTICLE 2: RESPONSIBILITIES OF THE AWARDING AUTHORITY .....8**

    2.1 Approvals.....8

    2.2 Payment .....8

    2.3 Surveys and Data .....8

    2.4 Construction Contract Procurement .....8

    2.5 No Waiver .....9

    2.6 Right to Rescind Approval of Consultant.....9

**ARTICLE 3: DESIGNER'S BASIC SERVICES—GENERAL .....9**

    3.1 General.....9

    3.2 Staffing; Time of Essence .....9

    3.3 Standard of Care .....10

    3.4 Compliance with Executive Order 484. ....10

    3.5 Quality Assurance .....10

    3.6 Fixed Limit Construction Cost .....10

    3.7 Designer to Evaluate Surveys and Data.....11

    3.8 Corrections by the Awarding Authority.....11

    3.9 Employment of Consultants .....11

    3.10 Approval of Consultants .....11

    3.11 Consultants Barred from Construction Work.....12

    3.12 Prompt Payment to Consultants .....12

    3.13 Proprietary Items.....12

    3.14 ADA, Handicap Access and Nondiscrimination Laws .....13

    3.15 Permits Generally .....13

    3.16 Permits Related to Change Orders .....13

    3.17 Special Consultants .....14

    3.18 Copyrights, Patents, Intellectual Property Rights .....14

    3.19 Security and Confidentiality .....15

    3.20 Confidentiality; Personal Data [M.G.L. c. 66A, Executive Order 504 .....15

    3.21 Compliance With Laws .....15

**ARTICLE 4: PROSECUTION AND PROGRESS OF BASIC SERVICES .....16**

    4.1 Schematic Design Phase Services .....16

    4.2 Design Development Phase Services.....18

    4.3 Construction Documents Phase Services .....19

    4.4 Construction Administration Phase Services .....21

**ARTICLE 5: DESIGNER'S BASIC FEE .....24**

    5.1 Basic Fee .....24

    5.2 Equitable Adjustments to Basic Fee.....24

    5.3 Manner of Payment .....24

<b>ARTICLE 6: ADDITIONAL SERVICES.....</b>	<b>24</b>
<b>6.1 Additional Services .....</b>	<b>24</b>
<b>6.2 Additional Site Visits .....</b>	<b>25</b>
<b>6.3 Compensation for Additional Services.....</b>	<b>26</b>
<b>6.4 Limitations on Additional Services .....</b>	<b>27</b>
<b>6.5 Change Orders and Modifications .....</b>	<b>27</b>
<b>ARTICLE 7: REIMBURSABLE COSTS AND EXPENSES.....</b>	<b>27</b>
<b>7.1 General.....</b>	<b>27</b>
<b>7.2 Travel .....</b>	<b>28</b>
<b>7.3 Overhead Mark-Up .....</b>	<b>28</b>
<b>ARTICLE 8: PAYMENTS TO THE DESIGNER .....</b>	<b>28</b>
<b>8.1 Change Orders .....</b>	<b>28</b>
<b>8.2 Schedule for Payment of Basic Fee.....</b>	<b>28</b>
<b>8.3 Applications for Payment .....</b>	<b>29</b>
<b>8.4 Right of Offset .....</b>	<b>29</b>
<b>ARTICLE 9: TERMINATION.....</b>	<b>29</b>
<b>9.1 Awarding Authority's Right to Terminate .....</b>	<b>29</b>
<b>9.2 Termination by Awarding Authority for Convenience.....</b>	<b>30</b>
<b>9.3 Termination by Awarding Authority for Cause .....</b>	<b>30</b>
<b>9.4 Termination by Designer.....</b>	<b>30</b>
<b>9.5 Designer's Duties Upon Termination.....</b>	<b>30</b>
<b>ARTICLE 10: RECORDS, DISCLOSURE STATEMENTS, ACCOUNTING CONTROLS, AUDITS .....</b>	<b>30</b>
<b>10.1 Records to be Kept for Six Years .....</b>	<b>30</b>
<b>10.2 Records Open to Inspection .....</b>	<b>31</b>
<b>10.3 Changes in Methods of Accounting.....</b>	<b>31</b>
<b>10.4 Warranty By Designer.....</b>	<b>31</b>
<b>10.5 Filing of Statement of Management on Internal Accounting Controls .....</b>	<b>31</b>
<b>10.6 Representation Regarding Audited Financial Statement .....</b>	<b>32</b>
<b>10.7 Filing of Annual Statement Required .....</b>	<b>32</b>
<b>10.8 Records Not Public .....</b>	<b>32</b>
<b>ARTICLE 11: RELEASE AND DISCHARGE .....</b>	<b>32</b>
<b>ARTICLE 12: INSURANCE .....</b>	<b>32</b>
<b>12.1 General Requirements.....</b>	<b>32</b>
<b>12.2 Workers' Compensation, Commercial General Liability, Automobile         Liability, and Valuable Papers .....</b>	<b>33</b>
<b>12.3 Professional Liability .....</b>	<b>34</b>
<b>12.4 Liability of Designer .....</b>	<b>34</b>

<b>ARTICLE 13: INDEMNIFICATION .....</b>	<b>34</b>
<b>ARTICLE 14: MISCELLANEOUS LEGAL REQUIREMENTS .....</b>	<b>35</b>
14.1 Nonresident Processing; Signatures.....	35
14.2 Anti-Boycott Covenant.....	35
14.3 Truth-In Negotiations Certificate.....	35
14.4 Employment Eligibility Verification Requirements .....	35
14.5 Northern Ireland [M.G.L. Chapter 7, Sec. 22C] .....	35
14.6 Service-Disabled Veteran-Owned Business Program .....	36
<b>ARTICLE 15: PARTICIPATION BY MINORITY BUSINESS ENTERPRISES/ WOMEN BUSINESS ENTERPRISES .....</b>	<b>36</b>
<b>ARTICLE 16: NON-DISCRIMINATION IN EMPLOYMENT AND AFFIRMATIVE ACTION .....</b>	<b>36</b>
16.1 Compliance .....	36
16.2 Affirmative Action, Non-Discrimination in Hiring and Employment .....	37
16.3 Affirmative Action Plan .....	37
16.4 Minority and Women Workforce Reporting.....	37
16.5 Material Breach .....	37
<b>ARTICLE 17: CHOICE OF LAW.....</b>	<b>37</b>
<b>ARTICLE 18: AMENDMENTS, SEVERABILITY, WAIVERS .....</b>	<b>38</b>
<b>ARTICLE 19: NON-APPROPRIATION .....</b>	<b>38</b>
<b>ARTICLE 20: NOTICES, APPROVALS, INVOICES.....</b>	<b>38</b>
<b>ARTICLE 21: MANDATORY MEDIATION .....</b>	<b>38</b>
<b>ARTICLE 22: CERTIFICATIONS OF DESIGNER MADE UNDER PAINS AND PENALTIES OF PERJURY .....</b>	<b>39</b>
22.1 Designer’s Beneficial Owners .....	39
22.2 Persons Having an Interest in this Contract .....	39
22.3 Professional Registrations.....	41
22.4 Resume on File with Designer Selection Board.....	41
22.5 No Inducements.....	41
22.6 Tax Returns .....	42
22.7 Existing Government Contracts .....	42
22.8 Annual Reports; Corporate Filings.....	42
22.9 Dependent Care Assistance Program.....	43
22.10 Debarment; Suspension.....	43
22.11 Hiring of State Employees By State Contractors [E.O. 346] .....	43
<b>SIGNATURE PAGE.....</b>	<b>44</b>

**ATTACHMENT A: SCOPE OF SERVICES .....45**  
**ATTACHMENT B: AWARDING AUTHORITY'S DESIGN PROCEDURES (FOR USE BY AGENCIES OTHER THAN DCAMM) .....46**  
**ATTACHMENT C: DESIGNER'S PERSONNEL ASSIGNED TO THE PROJECT .....47**  
**ATTACHMENT D: CERTIFIED AVERAGE HOURLY RATES OF DESIGNER'S AND DESIGNER'S CONSULTANTS' PERSONNEL .....48**  
**ATTACHMENT E: AGENCY SPECIFIC PROVISIONS REGARDING PARTICIPATION BY MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES .....50**  
**ATTACHMENT F: TRUTH IN NEGOTIATIONS CERTIFICATE.....56**  
**ATTACHMENT G: AFFIRMATIVE ACTION PLAN .....57**  
**ATTACHMENT H: CORPORATE VOTE OR OTHER EVIDENCE OF AUTHORITY ....58**  
**ATTACHMENT I: EXECUTIVE ORDER 504 CONTRACTOR CERTIFICATION FORM .....59**

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## ARTICLE 1: DEFINITIONS

**Approval; Approved:** A signed written communication from the Authorized Representative of the Awarding Authority to the Designer expressing the Awarding Authority's acceptance of services or documents prepared by the Designer, which acceptance shall not relieve the Designer from any of its professional responsibilities under this Contract item with respect to which such written approval has been given.

**As-Built Drawings:** All Drawings, Specifications, Approved shop drawings, catalogue cuts and other items bearing markings or containing information provided by the general contractor to indicate construction details and changes made during the construction period.

**Attachment A:** Attachment A, attached hereto and incorporated herein by reference, is the Scope of Services for this Contract.

**Authorized Representative:** The Authorized Representative of the Awarding Authority is the person named as such on page 1 of this Contract or such other person or persons as the chief executive officer of the Awarding Authority may designate in writing.

**Awarding Authority:** The Awarding Authority named on page 1 of this Contract.

**Basic Fee:** The Basic Fee is the Designer's fee specified in Article 5 of this Contract.

**Basic Services:** All services required to be performed by the Designer under this Contract except those for which reimbursement is made or provision for additional compensation provided for under Articles 6 and 7.

**CM At-Risk Delivery Method:** A construction method wherein a construction management at risk firm provides a range of preconstruction services and construction management services which may include cost estimation and consultation regarding the design of the Project, the preparation and coordination of bid packages, scheduling, cost control, and value engineering, acting as the general contractor during the construction, detailing the trade contractor scope of work, holding the trade contracts and other subcontracts, prequalifying and evaluating trade contractors and subcontractors, and providing management and construction services, all at a guaranteed maximum price in accordance with the provisions of M.G.L. c. 149A.

**Commissioner:** The Commissioner of the Division of Capital Asset Management and Maintenance.

**Construction Contract:** One or more contracts between the Awarding Authority and a general contractor for the construction of the Project.

**Construction Cost:** The cost of constructing the Project inclusive of all designed construction, demolition, and renovation work, all supportive and preparatory construction work required for the Project, all general contractors, subcontractors, suppliers, materials, equipment, general conditions, insurance, overhead and profit and all other allowances. The Construction Cost includes change orders during the construction administration phase of the Project.

**Construction Cost Estimate:** The written estimate of the Construction Cost of the Project prepared by the Designer at various phases of the Project on the basis of the *Uniformat II Elemental Classification for Building Specifications, Cost Estimating and Cost Analysis* dated October 1999 published by the U.S. Department of Commerce NIST to the level of detail specified in this Contract. The following contingencies are included in the Construction Cost Estimate: estimating, phasing and temporary work, and escalation. The term also includes the final cost estimate that the Designer is required by this Contract to prepare in *MasterFormat* (2004 edition, as updated 2010 and 2012) published by the Construction Specifications Institute.

**Consultant:** A subcontractor of the Designer.

**Contract:** This Contract for Designer's Services.

**Contract Schedule:** A critical path management or Gantt schedule for the activities of the Designer and its Consultants required by this Contract.

**DCAMM:** The Division of Capital Asset Management and Maintenance of the Commonwealth of Massachusetts.

**Designers Procedures Manual:** The document published by DCAMM that supplements the contractual tasks of designers contracting with DCAMM.

**Estimated Construction Cost:** The Construction Cost as estimated in the Construction Cost Estimate prepared by the Designer at various phases of the Project to the level of detail and in the format specified in this Contract.

**Fixed Limit Construction Cost:** The maximum Construction Cost established by the Awarding Authority as set forth in the Scope of Services.

**Gross Floor Area:** The total floor area of the Project buildings measured using the perimeter dimensions of the building shells and calculated in accordance with the *ASTM International Standard Classification for Building Floor Area Measurements for Facility Management – E-1236M-09e1*.

**Laws:** Applicable statutes, acts, rules, regulations, requirements, orders, directions, ordinances, judgments, decrees, and injunctions of or by the United States of America, the Commonwealth of Massachusetts, and any political subdivisions of either of them; and any agency, department, commission, board, bureau, or instrumentality of any of them.

**Neutral:** An impartial third party not having an interest in the Public Entity, Awarding Authority, User Agency, Designer, any construction contractor on the Project, or the Project.

**Notice to Proceed:** A written communication from the Authorized Representative of the Awarding Authority directing the Designer to perform services for the particular phase of the Project as set forth in such communication. The Designer may not proceed with any services pursuant to this Contract absent receipt of a Notice to Proceed.

**Owner's Project Manager:** A professional consultant or professional construction manager hired by the Awarding Authority pursuant to M.G.L. c. 149, s. 44A1/2 or otherwise to work with the Designer as the owner's representative on the project to ensure an optimum project including construction quality, cost control, and schedule control.

**Permits:** Governmental, quasi-governmental and other necessary permits and approvals, including the filing of notices or information with governmental or quasi-governmental entities and authorities, that are necessary for the implementation of the Project at the site. The term "Permits" shall include permits and approvals from utility companies and also include permissions, approvals and consents by private parties necessary for the design and construction of the Project, such as an approval by a landlord or other holder of an interest in the Project site.

**Program:** The program prepared for the Project in accordance with the provisions of M.G.L. c. 29, § 7k or any other pre-design document prepared for the Project in accordance with any other statute, appropriation, authorization or administrative directive consistent therewith.

**Project:** The Project identified on Page 1 of this Contract.

**Public Entity:** The Commonwealth of Massachusetts or the political subdivision or subdivisions thereof of which the Awarding Authority is an agency or instrumentality.

**Qualified Testing Laboratory:** A testing laboratory licensed by the Commonwealth or otherwise qualified to perform specific analyses of samples.

**Record Drawings:** The Drawings prepared by the Designer and its Consultants pursuant to this Contract which incorporate the changes made during the construction period and which

incorporate information from the marked-up prints, As-Built Drawings and other data furnished by the general contractor and subcontractors.

**Resident Engineer:** The on-site representative of the Awarding Authority for the Project.

**Schedule of Values:** A schedule prepared by the Designer and Approved by the Awarding Authority that allocates the payments of the Basic Fee to various milestones in the performance of the Designer's Basic Services, which schedule shall be consistent with the percentages specified in Section 8.2.

**Standard Specification:** The standard specification promulgated by DCAMM to be used by Designers contracting with DCAMM. If the Awarding Authority is other than DCAMM, then the

Awarding Authority at its election may require the Designer to use the Standard Specification but is not required to do so.

**Study:** A feasibility or other study to identify and evaluate alternative solutions to and recommend a solution to the needs and requirements defined by the User Agency with respect to the facility that is the subject of the Project. If the User Agency is a state agency, the term "Study" refers to the study certified pursuant to M.G.L. c. 29, s. 7k.

**User Agency:** The department, county, commission, board or agency that will occupy the Project or for which the Project shall be undertaken.

## **ARTICLE 2: RESPONSIBILITIES OF THE AWARDING AUTHORITY**

**2.1 Approvals.** The Awarding Authority shall without unreasonable delay either i) render to the Designer any Approval required by this Contract, or ii) notify the Designer in writing why such Approval is being withheld. The Awarding Authority shall not unreasonably withhold any Approval, acceptance, or consent required under this Contract.

**2.2 Payment.** For performance of the Designer's obligations under this Contract, the Awarding Authority shall compensate the Designer in accordance with the provisions of Articles 5, 6, 7, 8, and 9 of this Contract.

**2.3 Surveys and Data.** The Awarding Authority shall furnish to the Designer existing and available surveys of the Project's building site or sites, showing the grades and lines of streets, pavements and adjoining properties; the rights, restrictions, easements, boundaries and contours of the site or sites; reports from any borings, test pits; chemical, mechanical or other tests; photographs and information as to water, sewer, electricity, steam, gas, telephone and other services; and data and drawings regarding existing buildings. All items and data provided to the Designer by the Awarding Authority shall remain the property of the Awarding Authority or the Public Entity. The Designer may use items and data provided by the Awarding Authority only for the purposes of this Contract, unless the Awarding Authority shall give the Designer specific written permission for some other use. The Awarding Authority does not guarantee nor does it make any express or implied warranties concerning the accuracy of any such information furnished to the Designer.

**2.4 Construction Contract Procurement.** The Awarding Authority shall reproduce, advertise and distribute the bid documents necessary for the competitive procurement of

the Construction Contract and shall conduct the procurement process with the assistance of the Designer as provided in Section 4.3 of this Contract.

- 2.5 No Waiver.** The Awarding Authority's review, Approval, acceptance of, or payment for, any of the services furnished by the Designer shall not be construed as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract. The Awarding Authority's Approval shall not in any way relieve the Designer from performing all work required under this Contract in accordance with the standard of care set forth in Section 3.3 of this Contract.
- 2.6 Right to Rescind Approval of Consultant.** The Awarding Authority may rescind the Awarding Authority's prior consent to a Consultant if a Consultant or subcontractor is incompetent, irresponsible or otherwise unsatisfactory, and the Designer shall remove such Consultant or subcontractor from the work. If a Consultant is so removed, the Designer shall provide another Consultant with similar credentials and qualifications (including but not limited to MBE/WBE) that meets with the Approval of the Awarding Authority. The removal of such Consultant or subconsultant shall not relieve the Designer from its responsibilities for services of its Consultants and subconsultants under this Contract.

### **ARTICLE 3: DESIGNER'S BASIC SERVICES -- GENERAL**

- 3.1 General.** The Designer shall perform professional services in accordance with the terms of this Contract, the Study for the Project which is incorporated herein by reference, the Scope of Services set forth in Attachment A, the provisions of M.G.L. c. 7C, § 15, DCAMM's Designers Procedures Manual if the Awarding Authority is DCAMM, and in accordance with the procedures set forth in Attachment B if the Awarding Authority is other than DCAMM. If the Designer did not perform the Study for the Project, then the Designer Selection Board advertisement is also incorporated herein by reference and the Designer shall perform its services in accordance with such advertisement. In the case of conflict between the terms of this Contract and any of the provisions incorporated herein by reference, the provisions of this Contract shall control. The Designer shall be responsible for the professional accuracy and coordination of all designs, drawings, specifications, cost estimates, and other services and submittals furnished by Designer and by its Consultants in accordance with the standard of care set forth below in paragraph 3.3. The Basic Fee shall compensate Designer for all of Designer's obligations specified in this Contract except as otherwise specifically provided herein. Unless otherwise specified in the Scope of Services the Designer's Basic Services do not include prequalification services required for a Construction Manager At-Risk Project in accordance with M.G.L. c. 149A or prequalification services required or elected upon by the Awarding Authority under M.G.L. c. 149 §§44D1/2 or 44D3/4.
- 3.2 Staffing; Time of Essence.** The Designer's personnel who shall provide services under this Contract are those listed in Attachment C. The Designer shall provide sufficient personnel to complete the services required by this Contract in a continuous and timely

manner, and shall meet the Approved Contract Schedule agreed upon in accordance with Section 4.1 of this Contract. Time is of the essence of this Contract.

- 3.3 Standard of Care.** The Designer agrees that the services provided hereunder shall conform to the standard of care and practice exercised by design professionals or consultants engaged in performing comparable services; that the personnel furnishing said services shall be qualified and competent to perform adequately the services assigned to them; and that the recommendations, guidance and performance of such personnel shall reflect such standards of care and practice.
- 3.4 Compliance With Executive Order 484 – [Leading By Example – Clean Energy and Efficient Buildings].** As part of the Basic Services of the Contract, Designer is required to provide professional services necessary to meet the requirements of Executive Order 484 as specified in Attachment A. Provided, however, that the submission of documentation necessary to demonstrate compliance with Executive Order 484 shall be considered a reimbursable expense in accordance with Section 7 herein.
- 3.5 Quality Assurance.** Upon execution of the Contract, the Designer shall submit to the Awarding Authority a written description of the quality assurance procedures the Designer will implement in the performance of all services required under this Agreement. The Designer shall identify individual(s) responsible for bid document review and cost estimating, as well as methods utilized to determine the completeness, accuracy, and coordination of drawings, specifications, cost estimates, and other data and documentation.
- 3.6 Fixed Limit Construction Cost.** The Designer shall determine the materials, equipment, component systems and types of construction included in the design of the Project so that it may be awarded within the Fixed Limit Construction Cost without alternates (unless Approved by the Awarding Authority) and without allowances of any nature. Such determination shall be subject to the Approval of the Awarding Authority which shall not be unreasonably withheld. If the Awarding Authority has appointed a construction manager or an independent cost estimator for the Project, the Designer shall validate its Construction Cost Estimates with such person. Construction Cost Estimates shall be subject to the Approval of the Authorized Representative. The decision of the Awarding Authority shall be final in matters pertaining to this section but the Designer shall not be responsible for any decision by the Awarding Authority that is inconsistent with generally accepted standards of professional practice provided that the Designer shall have advised the Awarding Authority in writing of the inconsistency at the time of the Approval. If within three (3) months after approval of Construction Documents, in final form, the bids of the lowest responsible and eligible bidders exceed the Fixed Limit Construction Cost, the Designer shall, if so instructed in writing by the Awarding Authority, provide such revised construction drawings and specifications and Construction Cost Estimates as the Awarding Authority shall require for the purpose of bringing the cost within the Fixed Limit Construction Cost; provided that Designer may in connection with such revision make reasonable adjustments in the scope of the project subject to the written approval of the Awarding Authority, which approval shall not be

unreasonably withheld. The Designer shall not be paid additional compensation for such services.

- 3.7 Designer to Evaluate Surveys and Data.** The Designer shall analyze and evaluate the information furnished by the Awarding Authority pursuant to Section 2.3 above. If items or data of the type identified in Section 2.3 are not available or are, in the reasonable opinion of the Designer, insufficient to permit the Designer properly to perform its services hereunder, the Designer shall submit a written request to the Awarding Authority for permission to obtain the services of one or more Consultants to perform the necessary services, in which case unless the services are included in the Scope of the Contract, the Designer shall be reimbursed in accordance with Article 7 (Reimbursable Costs and Expenses), or to perform the services with the Designer's own employees, in which case the Designer shall be compensated in accordance with Article 6 (Additional Services; Additional Compensation). In no case shall the Designer commence or authorize a Consultant to commence such services without the prior Approval of the Awarding Authority.
- 3.8 Corrections by Awarding Authority.** The Designer shall furnish appropriate competent professional services for each of the phases of the Project to the point where detail checking or reviewing by the Awarding Authority is not necessary. Any changes, corrections, additions, or deletions made by the Awarding Authority shall be incorporated into the design of the Project unless specific written objections thereto are made by the Designer and Approved by the Awarding Authority. The decision of the Awarding Authority shall be final in matters pertaining to this section, but the Designer shall not be responsible for any such decision by the Awarding Authority that is inconsistent with generally accepted standards of professional practice provided that the Designer advised the Awarding Authority in writing of the inconsistency at the time the decision was made.
- 3.9 Employment of Consultants.** Subject to the provisions of this Contract and the Approval of the Awarding Authority, whenever the services of the Consultants listed in Attachment A or in the Designer Selection Board's advertisement for the Project, or otherwise provided herein, are required, the Designer shall employ them and be responsible for their work and the coordination and supervision thereof. Consultants shall be registered in Massachusetts in their respective disciplines if registration is required by the applicable Laws. If the Awarding Authority directly employs an independent cost estimator, Owner's Project Manager, and/or other consultant(s), the Designer and its Consultants shall work directly with the Awarding Authority's consultant(s) to ensure that optimum cost, scheduling, and ease of construction objectives are met.
- 3.10 Approval of Consultants.** Except as specifically provided in this Contract, the Designer shall not employ Consultants, or sublet, assign or transfer any part of its services or obligations under this Contract without the prior Approval of the Awarding Authority subject to the provisions of M.G.L. c. 7C, §51. To obtain such Approval, the Designer must submit the items required by M.G.L. c. 7C, §51. The Designer shall

provide the Awarding Authority with complete copies of its contracts with each of its Consultants within 14 calendar days of the execution of such contracts.

- 3.11 Consultants Barred from Construction Work.** The Designer shall not employ in any element of design, specification, estimating, evaluation or other work under this Contract any person or firm that expects to be a bidder, subcontractor or supplier for the construction of the Project or any part thereof. The Designer shall obtain from every Consultant a written representation that such Consultant is aware that it is prohibited from serving as a bidder, subcontractor, or supplier for the construction of the Project or any part thereof.
- 3.12 Prompt Payments to Consultants.** The Designer shall, within 14 calendar days after receiving payment from the Awarding Authority, either make payment to each Consultant whose work was included in the work for which such payment was received or notify the Awarding Authority in writing of the reason why such payment is not being made within such time period.
- 3.13 Proprietary Items.** Without limitation, the Designer, Designer's employees and Consultants shall adhere to the provisions of M.G.L. c. 30, § 39M, which provides in part:

*"Specifications for such contracts, and specifications for contracts awarded pursuant to the provisions of said sections forty-four A to forty-four L of said chapter one hundred and forty-nine, shall be written to provide for full competition for each item of material to be furnished under the contract; except, however, that said specifications may be otherwise written for sound reasons in the public interest stated in writing in the public records of the awarding authority or promptly given in writing by the awarding authority to anyone making a written request therefor, in either instance such writing to be prepared after reasonable investigation. Every such contract shall provide that an item equal to that named or described in the said specifications may be furnished; and an item shall be considered equal to the item so named or described if, in the opinion of the awarding authority: (1) it is at least equal in quality, durability, appearance, strength and design, (2) it will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased, and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the said specifications. For each item of material the specifications shall provide for either a minimum of three named brands of material or a description of material which can be met by a minimum of three manufacturers or producers, and for the equal of any one of said name or described materials."*

The Designer shall refer to the law and consult with the Awarding Authority for procedures regarding proprietary items. The Awarding Authority may waive the provisions of this law for "sound reasons in the public interest." No such waiver shall bind the Awarding Authority unless made in writing and executed by the Awarding Authority.

**3.14 ADA, Handicap Access and Nondiscrimination Laws.** Consistent with the standard of care and practice stipulated in Section 3.3 above, the Designer shall perform its design services under this Agreement in strict compliance with all Laws relating to architectural accessibility, including without limitation, the applicable sections of the Americans with Disabilities Act of 1990 (“ADA”, 42 U.S.C. sections 12101 *et. seq.*), the ADA Accessibility Guidelines for Buildings and Facilities (“ADAAG”), and the regulations of the Massachusetts Architectural Access Board (“MAAB”, 521 CMR). The Designer recognizes that the Public Entity, the Awarding Authority and the User Agency are Public Entities subject to Title II of the Americans with Disabilities Act, may be recipients of federal funds under the Rehabilitation Act of 1973, and are subject to the MAAB regulations referenced above. The Designer hereby assumes the Public Entities’ design obligations, including those that exist under the MAAB, ADAAG and/or the Rehabilitation Act of 1973 to design a facility accessible to and usable by people with disabilities. The Designer shall provide the Awarding Authority with designs that provide access to all programs, activities and services to be conducted within the facilities to be designed in accordance with the scope of work of the Contract and to document compliance with the above referenced standards, as well as any variance or waivers of the above requirement the Designer may have obtained on behalf of the public entities. The Designer shall not seek any such variance or waiver of the above requirements without the express, written authorization of the Awarding Authority.

**3.15 Permits Generally.** Unless otherwise agreed to in writing, with the exception of the standard building permits customarily obtained by the general contractor, the Designer shall obtain all other permits required to implement Designer's design. The Designer shall obtain the prior Approval of the Awarding Authority of all permit applications, notices, and accompanying documentation before filing them with the appropriate governmental entity or other party. The Designer shall provide the Awarding Authority with a list of all Permits required to implement the design at the site as soon as possible during design development, shall schedule target dates for the procurement of such Permits, and shall regularly update such list and schedule during the term of this Contract. The Designer shall certify in writing at the time that construction documents (or changes thereto) are submitted to the Awarding Authority that the Designer has identified all Permits required to implement the Project and that those not identified in writing as being the responsibility of the Awarding Authority have been identified in the specifications as being the general contractor’s responsibility. Notwithstanding the foregoing, any required attendance by the Designer at any public hearing in connection with any Permit shall be considered an Additional Service to be compensated in accordance with Article 6 of this Contract, and any Permit application fee shall be considered a Reimbursable Expense to be reimbursed in accordance with the provisions of Article 7.

**3.16 Permits Related to Change Orders.** The Designer shall also provide to the Awarding Authority a written certification of all Permits required to implement change order work at the site when the Designer submits for approval any change order request to the Awarding Authority during the construction phase of the Project, whether the change

order request was made by the Designer, the Awarding Authority, or the general contractor.

- 3.17 Special Consultants.** The Designer shall retain the services of a Qualified Testing Laboratory, special field inspectors, and other special Consultants not referenced pursuant to Section 3.9 when required for the Designer's services for the Project. To the extent applicable, Designer shall comply with the requirements of the Massachusetts Prevailing Wage Law, M.G.L. c. 149, §§26-27D, in the employment of and such special Consultants. The identity of such Consultants shall be Approved in advance by the Awarding Authority, which Approval shall not be withheld unreasonably. When such a special Consultant's services are required, including the services of a Qualified Testing Laboratory functioning under the jurisdiction of both a Massachusetts registered engineer and licensed inspectors, a detailed description of the proposed services shall be prepared by the Designer and shall be subject to the Approval of the Awarding Authority. Consultant fee proposals shall be obtained by the Designer from at least three such consultants and submitted to the Awarding Authority together with the Designer's recommendation for selection before any work shall be Approved. The Awarding Authority may waive the requirement for three proposals for good cause. Each such Consultant whose fee for such services exceeds \$25,000 shall demonstrate coverage by liability insurance in an amount not less than its fee. The cost for services of any Approved special Consultant not listed pursuant to Section 3.9, Attachment A or the Designer Selection Board advertisement for the Project shall be reimbursed as provided in Article 7. For solicitation, inspection, analysis, coordination, and evaluation of such Consultants' services, and for assuming liability therefore, the Designer shall be compensated as provided in Article 7.
- 3.18 Copyrights, Patents, Intellectual Property Rights.** The Designer hereby grants to the Awarding Authority an irrevocable royalty-free license to use for any purpose the following items developed or made part of the work or services performed under this Contract: all drawings, designs, specifications, photographs, images, notes, materials and other work and ideas of the Designer and its Consultants and subcontractors related to the performance of this Contract which are or may be covered by copyright, patent, or other intellectual property Laws or as to which Designer and its Consultants and subcontractors may assert any rights or establish any claim under any such Laws. The Designer agrees on behalf of itself and its Consultants and subcontractors that the Awarding Authority and the Public Entity shall have unlimited royalty-free rights, for the benefit of the Awarding Authority and the Public Entity and any public entity to which the Awarding Authority or the Public Entity may grant the right to share such rights, in any and all drawings, designs, specifications, photographs, images, notes, materials and other work and ideas developed in the performance of this Contract, including the right to use the same on any Public Entity or other public entity projects. The Designer shall incorporate by reference this provision into all contracts with its Consultants and subcontractors on this Project including, but not limited to, architects, engineers, estimators, designers and photographers. The Designer and its Consultants and subcontractors shall not be responsible for changes made in the documents without the Designer's authorization, nor for the Awarding Authority's or other public entity's use of the documents on projects

other than the Project, unless this is a contract for design services for a master plan or prototype. The Awarding Authority assumes the risk resulting from any such changes made in the documents without the Designer's authorization, or for the Awarding Authority's or other public entity's use of the documents on projects other than the Project.

- 3.19 Security and Confidentiality.** The Designer and its Consultants and subcontractors shall maintain the confidentiality of Project records, including, but not limited to, all prints, plans, policies, procedures, studies, specifications and drawings, which relate to internal layout and structural elements, electrical and mechanical systems, security measures, emergency preparedness, threat or vulnerability assessments, and any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the Commonwealth, the disclosure of which, in the reasonable judgment of the Awarding Authority, is likely to jeopardize the safety of persons or property. Without limiting the foregoing, if the Project is a designated "Security Sensitive Information" project, the Designer shall execute a separate Security Sensitive Information Procedures and Confidentiality Agreement and shall comply with such document protection requirements as may be referenced in said agreement. This section shall not restrict the Designer from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the Designer to defend itself from any suit or claim.
- 3.20 Confidentiality; Personal Data [M.G.L. c. 66A, Executive Order 504]** Designer shall comply with M.G.L. c. 66A if the Designer becomes a "holder" of "personal data" as defined therein. The Contractor shall comply with the provisions of Executive Order 504 and shall execute the Executive Order 504 Contractor Certification Form attached hereto as Exhibit I.
- 3.21 Compliance With Laws.** The Designer agrees that the work and services performed hereunder shall be in accordance with and conform to all applicable Laws.

## **ARTICLE 4: PROSECUTION AND PROGRESS OF BASIC SERVICES**

The Designer shall perform the following specific tasks in the following phases:

### **4.1 Schematic Design Phase Services.**

- i. Upon receipt of a Notice to Proceed with Schematic Design Phase from the Awarding Authority, the Designer and its appropriate Consultants shall meet with agents of the Awarding Authority and the User Agency to arrive at a mutual understanding of the requirements of the Study or Program furnished by the Awarding Authority.
- ii. The Designer shall submit a proposed design work plan for the Designer's Services pursuant to this Contract including anticipated tasks and submittals. The Designer shall submit a proposed Contract Schedule consistent with any project schedule included in the Study or Scope of Services referenced in Attachment A. The schedule shall contain dates for submittals, deliverables, actions, milestones, design workshops, meetings and the critical path through all design service activities. It shall include allowances of time for the User Agency's and the Awarding Authority's review and approval of submittals and for necessary submissions for Permits in connection with the Project. When Approved by the Awarding Authority the work plan and the Contract Schedule shall govern the Designer's duties hereunder. The work plan shall also include a work plan schedule of values consistent with the payment schedule for the Basic Fee specified in Section 8.2 which shall be the basis of which payments of the Basic Fee within each phase shall be made. The work plan schedule of values shall identify deliverables within each phase and percentages of the phase fee payable upon completion of such deliverable. When Approved by the Awarding Authority the work plan schedule of values shall govern the timing of payments of the Basic Fee upon completion of deliverables within each phase and as each phase progresses.
- iii. The Designer shall prepare a preliminary evaluation of the Awarding Authority's Program, Study and construction budget requirements subject to the limitations described in subparagraph iv below. If the Designer is the Designer that performed the Study, the Awarding Authority may at its option permit the Designer to develop the preferred Study alternative. Otherwise the Designer shall develop at least three alternative designs to a pre-schematic level. For the purposes of the preceding sentence "pre-schematic" means a general design concept level including program space and building envelope, footprint, massing, volume, orientation, and site context. Each pre-schematic alternative shall include a Construction Cost Estimate in Unifomat II Level 1 format. The Designer shall review with the Awarding Authority the alternative designs and shall make a recommendation as to the preferred alternative. Upon selection by the Awarding Authority of the preferred alternative, the Designer shall develop the preferred alternative to a full schematic design level. Designer shall provide

the following schematic design level documentation which shall include and incorporate Awarding Authority and User Agency comments:

- (a) drawings, concept sketches, three dimensional representations, and specifications;
  - (b) a building code analysis;
  - (c) an environmental assessment;
  - (d) a preliminary life cycle cost analysis to determine which design decisions related to all energy and water consuming devices and overall building operation and maintenance are the most cost effective [M.G.L. c. 149, § 44M and c. 7C, §29],
  - (e) a summary of applicable public utility incentive programs as determined by the Awarding Authority and a plan for implementation or inclusion of incentives;
  - (f) an analysis of the design's compliance with the Americans with Disabilities Act/Massachusetts Architectural Access Board requirements;
  - (g) a space measurement analysis for the design which shall verify that the sum of all program floor areas in the Project plus all other floor areas in the Project equal the Gross Floor Area of the Project;
  - (h) a Construction Cost Estimate for the design in Uniformat II Level 2 format with aggregated unit rates and quantities supporting each item and verified as accurate and complete by the cost estimator and/or Owner's Project Manager , if any, employed by the Awarding Authority;
- iv. Schematic design level documentation shall also include a summary comparing the schematic plans, specifications and Estimated Construction Cost of the design to the Program and Study requirements and shall explain any deviation therefrom. The Designer shall be aware of the following provisions of M.G.L. c. 29, § 26A and shall cause its services to comply therewith:

*“No state agency . . . administering a capital facility project shall enter into any contracts for that project . . . or cause to be performed design services for that project . . . if such would result in the completion of a project which cannot be accomplished (a) within the appropriation or authorization for the project or within the project cost limits specified by the appropriation or authorization and (b) without substantial deviation from (i) any study or program which must be prepared in accordance with the provisions of section 7K of this chapter or (ii) any other pre-design planning document which must be prepared in accordance with any other statute, appropriation or authorization or administrative directive consistent therewith. In no event shall the design work be such as would result in a change in the number of gross square feet to be constructed in the project of more than ten per cent from the number specified in the study, program or other pre-design document referred to [above].”*

- v. Schematic Design Phase drawings, specifications, Construction Cost Estimates and other submittals shall be subject to the written Approval of the User Agency and the Awarding Authority. Unless a lesser number is requested by the Awarding Authority, the Designer shall submit to the Awarding Authority for approval six (6) copies of schematic design drawings, specifications, cost estimates, and other submittals.

#### **4.2 Design Development Phase Services.**

- i. Upon receipt of a Notice to Proceed with the Design Development Phase, the Designer and its Consultants shall meet regularly and as necessary with agents of the Awarding Authority and the User Agency, shall update and refine items submitted during the Schematic Design Phase, and shall submit, on or before the date specified in the Contract Schedule, and on the basis of the Approved Schematic Design Phase documents:
  - (a) an updated work plan and Project Schedule;
  - (b) a list of all Permits required to implement the design and a schedule of target dates for the procurement of such Permits, in which the list and schedule shall be regularly updated during the term of this Contract;
  - (c) information and documentation within the technical expertise of the Designer and its Consultants that is necessary for the Awarding Authority to file Environmental Notification Forms, Environmental Impact Reports, and any other filings for Permits that must be filed during the design development phase;
  - (d) complete design development drawings, draft specifications indicating any filed sub-bid sections based on the cost of the work and other documents necessary to specify the size and character of the Project as to siting, landscape, architectural, structural, fire protection, plumbing, HVAC, electrical, ADA/MAAB, product requirements, and other features;
  - (e) quality control documentation demonstrating without limitation coordination of: ceiling clearances, mechanical room size, and shaft sizes; specifications and drawings; filed sub-bid work or sections; scheduling; equipment and power; existing and new construction; and phasing;
  - (f) design development drawings for which the Designer shall submit for a "tentative approval" review to the public agency having jurisdiction over enforcement of the State Building Code with respect to the Project (the Department of Public Safety of the Commonwealth for state-owned Projects or the building commissioner of the city or town in which the Project is located for other projects);
  - (g) an updated life cycle cost analysis to determine which design decisions related to all energy and water consuming devices and overall building operation and maintenance are the most cost effective [M.G.L. c. 149, §. 44M and c. 164, §331];
  - (h) a Construction Cost Estimate for the design in Unifomat II Level 3

format, with unit rates and quantities supporting each item, which shall have been reviewed and approved as accurate and complete by any cost estimator or Owner's Project Manager employed by the Awarding Authority with respect to the Project;

(i) a space measurement analysis for the design verifying that the sum of all program areas in the Project plus all other floor areas in the Project equals the Gross Floor Area of the Project;

(j) a summary or summaries comparing the design development drawings, specifications and cost estimates with the Program requirements, and explaining any deviations in writing.

- ii. Such drawings, specifications, cost estimate and other design development submittals shall be subject to the written Approval of the User Agency and the Awarding Authority. Unless a lesser number is requested by the Awarding Authority, the Designer shall submit to the Awarding Authority for approval six (6) copies of design development drawings, specifications, cost estimates, and other submittals.

#### **4.3 Construction Documents Phase Services.**

- i. Upon receipt of a Notice to Proceed with the Construction Documents Phase of the Project from the Awarding Authority, the Designer and its Consultants shall meet regularly as necessary with agents of the Awarding Authority and the User Agency, and based on the submittals Approved in the design development phase of the Project, shall update and refine the items previously submitted and shall submit on or before the date and time specified in the Approved Project Schedule:
  - (a) an updated work plan and Project Schedule;
  - (b) complete construction drawings and specifications, certified by the Designer as having satisfied the applicable quality control review, approved as required by subsection ii below, in sufficient detail to permit fixed-price bids in open competition for construction of the Project;
  - (c) an updated environmental assessment, building code analysis, ADA/MAAB analysis, and a certified list of all required testing and all required Permits as well as a certification that all applicable local, state and utility officials have been contacted by the Designer regarding each utility connection and that the persons responsible for permits or connection approval has agreed to the systems' use;
  - (d) structural and energy calculations, building code analysis, ADA/MAAB analysis;
  - (e) at the 60% stage of completion of the final drawings and specifications, a Construction Cost Estimate prepared using the Uniformat II Classification to Level 3, including quantities of all materials and unit prices of labor, equipment, and materials as well as a cost estimate for each item of work, for review by the Awarding Authority;

- ii. For State Projects: Two sets of the final drawings and specifications must be stamped "Approved" and signed by the appropriate state building inspector from the Department of Public Safety. Two sets of Plumbing drawings and specifications shall be signed and stamped "Approved" by the Board of State Examiners of Plumbers and Gas Regulations Board. Two sets of the fire protection, HVAC, and electrical constructions documents shall be approved, stamped and signed by the local fire chief. Two sets of the electrical construction documents shall be approved, stamped and signed by the local electrical inspector. For other projects: Two sets of the foregoing documents shall be approved, stamped and signed by the local building official, the local plumbing inspector, the local electrical inspector, and the local fire chief respectively.
- iii. The Designer shall furnish a revised and final Construction Cost Estimate, current as of the date of the final bid document submission, including cost estimates for general conditions, overhead and profit, insurance, bonds, and all other items; provisional allowances for work not sufficiently designed at this phase; and allowances expressed as percentage rates for construction contingencies and escalation to the bid date. The final Construction Cost Estimate shall be prepared in Uniformalt II Elemental Classification to Level 3 (Sections A-G inclusive) and shall be complete with a single line outline specification description for each item with the detailed unit rate or item cost buildup provided as a backup in each case.
- iv. The Designer shall furnish a final Construction Cost Estimate, current to the date of the final bid document submission, in Construction Standards Institute Masterformat cross-referenced to the final Uniformalt II Construction Cost Estimate. This estimate shall contain the same total and percentage allowances as the final Uniformalt II Construction Cost Estimate for overhead and profit and for any further allowances for escalation and other contingencies.
- v. The Designer shall also submit a summary comparing the final construction drawings and specifications and final Estimated Construction Cost with the Program requirements and submittals made during the design development phase, explaining any significant deviations.
- vi. All submittals shall be subject to the written approval of the User Agency and the Awarding Authority. Unless a lesser number is requested by the Awarding Authority or is provided below in subsection vii, the Designer shall furnish to the Awarding Authority for approval six (6) sets of the drawings, specifications Construction Cost Estimates and other submittals. The Designer shall also furnish electronic media copies of the foregoing drawings and documents in such form as is required by the Designers Procedures Manual if the Awarding Authority is DCAMM or otherwise in such other format as the Awarding Authority may require.
- vii. From the Approved construction drawings and specifications, with such changes as the Awarding Authority requires, the Designer shall prepare and transmit to the

Awarding Authority a set of reproducible black and white drawings and original specifications both in electronic format and on high quality white bond paper, single-sided, properly packaged, suitable for reproduction, stamped and signed by all disciplines, which documents shall become the property of the Awarding Authority. Other suitable methods may be used with the prior Approval of the Awarding Authority. One copy of the drawings and specifications shall be submitted with the reproducible drawings and specifications.

- viii. The Awarding Authority will copy the construction bid documents, including advertisements, for receipt of proposals from construction contractors, and for execution of a Construction Contract or contracts. The Designer shall prepare all addenda (to include bidders' questions and Designer's responses), subject to the Approval of the Awarding Authority. The Designer and its Consultants shall attend and chair the pre-bid conference if one is scheduled, taking note of all questions asked. Relevant questions submitted in writing shall be answered by means of written addenda to the bid documents as required. The Designer shall attend the bid opening and conduct a review of the qualifications of the low filed sub-bidders and general bidder (and of other bidders if necessary) and shall, within three (3) working days of the respective bid opening dates, advise the Awarding Authority in writing of the Designer's opinions as to the sub-bidders' bids and as to which general bidder is the responsible and eligible bidder that has submitted the lowest bid.
- ix. If required by law or requested by the Awarding Authority, the Designer shall, as an Additional Service, assist the Awarding Authority in the prequalification of prime contractors and sub-contractors in the filed sub-bidder or trade contractor scopes of work pursuant to M.G.L. c. 149, §§44D1/2 and 44D3/4 or M.G.L. c. 149A.
- x. If within three (3) months after approval of Construction Documents, in final form, the bids of the lowest responsible and eligible bidders exceed the Fixed Limit Construction Cost, the Designer shall, if so instructed in writing by the Awarding Authority, provide such revised construction drawings and specifications and construction cost estimates as the Awarding Authority shall require for the purpose of bringing the cost within the Fixed Limit Construction Cost; provided the Designer may in connection with such revision make reasonable adjustments in the scope of the project subject to the written approval of the Director, which approval shall not be unreasonably withheld. The Designer shall not be paid additional compensation for such services.

#### **4.4 Construction Administration Phase Services.**

- i. Consistent with the standard of care and practice stipulated in Section 3.3 above, upon the award of the Construction Contract the Designer and its Consultants shall:

- (a) be charged with general administration of the Construction Contract to the extent set forth herein;
- (b) furnish the general contractor with information for establishing lines and grades and shall prepare a set of plans and specifications that incorporate all addenda and SK drawings issued during the bidding process;
- (c) promptly and in accordance with the requirements of the Construction Contract check, obtain testing where necessary, and approve samples, schedules, shop drawings and other submissions by the general contractor;
- (d) prepare, maintain and update logs for all submittals and changes to the Construction Contract;
- (e) visit the site at intervals appropriate to the stage of construction but not less than weekly, and observe the progress of the work, issue written progress reports, and conduct job meetings, and prepare and distribute meeting minutes to assure that the work is being built in conformance with Approved construction documents;
- (f) report to the Awarding Authority weekly in writing on the progress of the work including whether or not the general contractor is keeping as-built drawings updated;
- (g) on a weekly basis (or more often as may be necessarily), make specific recommendations on rejection of all Project work observed by the Designer that fails to conform to the Construction Contract documents, and review and inspect corrected work;
- (h) require each Consultant employed in accordance with Article 3 to make visits weekly during the progress of any work to which that Consultant's services relate and to report upon it in writing to the Designer;
- (i) conduct semi-final and final inspections of the Project and report the results of such inspections in writing to the Awarding Authority;
- (j) observe the balancing of air and water circulation systems and report the results thereof;
- (k) observe the setting and adjustment of automatic controls and report thereon;
- (l) in a timely manner, decide all questions regarding interpretation of, or compliance with, the Construction Contract documents, except as the Awarding Authority may in writing otherwise determine;
- (m) furnish electronic versions of the Record Drawings, a final cost report, and other required documents; and
- (n) assist the Awarding Authority in any bid protest hearings, change order appeal hearings requested under M.G.L. c. 30, § 39Q, and any other litigation, except as provided in Article 6.
- (o) Except as otherwise specifically set forth in the Construction Contract documents, the Designer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in

connection with the Work, since these are solely the Contractor's rights and responsibilities under the Construction Contract documents.

- ii. The Designer shall submit to the Awarding Authority in a timely manner all requisitions for payment submitted by the general contractor in the form required by the Awarding Authority. With respect to each such requisition, the Designer shall certify to the best of its knowledge that the percentage of work included in the requisition is accurate and that the work performed conforms to the Construction Contract documents. In the event the Designer does not approve the requisition exactly as submitted by the general contractor, the Designer shall forward it for payment to the Awarding Authority dated and signed with corrections with an accompanying letter of explanation setting forth the Designer's objections and recommended changes. The Designer shall coordinate the required visits to the construction site so as to enable it to submit to the Awarding Authority the general contractor's monthly requisition for payment bearing the Resident Engineer's approval or accompanied by the Resident Engineer's letter of exceptions. Timely payments to the contractor are required by M.G.L. c. 30, § 39K; therefore, the Designer shall establish procedures assuring either immediate mail or messenger delivery of the requisition for payment to the Awarding Authority, and shall process requisitions for payment within two working days after receipt of the same.
- iii. Before examining the requisition for final payment submitted to the Awarding Authority by the general contractor and making any certification in response thereto, the Designer shall obtain from the general contractor As-Built Drawings, including drawings showing the actual installation of the site utilities, plumbing, heating, ventilating and electrical work under the Construction Contract, and recording all changes. The Designer shall ascertain that changes authorized by change orders are shown on the general contractor's As-Built Drawings. The Designer shall revise the applicable original reproducible drawings and electronic media drawings on the basis of the As Built Drawings and shall submit them as Record Drawings electronically along with two sets of prints to the Awarding Authority; which Record Drawings shall become the property of the Awarding Authority, all as part of its Basic Fee.
- iv. At the conclusion of the Construction Contract the Designer shall assist the Awarding Authority's Authorized Representative or Owner's Representative in the evaluation of the performance of the general contractor as required by M.G.L. c. 149, § 44D or any other law.
- v. Two suitably bound legible copies of all original design and quantity calculations including those pertinent to change orders and shop drawings if applicable shall be furnished by the Designer to the Awarding Authority at the conclusion of the Construction Contract.

## ARTICLE 5: DESIGNER'S BASIC FEE

- 5.1 **Basic Fee.** For the performance of all services required in this contract and excluding those services specified under Articles 6 and 7, the Designer shall be paid the lump sum Basic Fee of \_\_\_\_\_.
- 5.2 **Equitable Adjustments to Basic Fee.** If there is a substantial change in the services provided in this Contract as determined by the Awarding Authority, the Designer and the Awarding Authority will agree to an equitable adjustment in the Designer's Basic Fee. For the purposes of this Contract, a "substantial change" in services shall include:
- i. a substantial change in the scope of Designer's services that is not the fault of the Designer; or
  - ii. a significant increase in the duration of the Project as provided in the Study, or as otherwise agreed upon, that is not the fault of the Designer.
- 5.3 **Manner of Payment.** Payment of the Designer's Basic Fee shall be made in accordance with Article 8.

## ARTICLE 6: ADDITIONAL SERVICES

- 6.1 **Additional Services.** With the prior Approval of the Awarding Authority, the Designer shall perform all or any of the following services in addition to the Basic Services:
- i. revise previously Approved drawings, specifications or other documents to accomplish changes authorized by the Awarding Authority or required by changes in applicable Laws, and revisions not occasioned by the Designer's errors or omissions;
  - ii. attend permit or public hearings and preparing presentation renderings and presentation models in connection therewith that are authorized by the Awarding Authority;
  - iii. prepare documents for alternate bids requested by the Awarding Authority except for alternates required to be prepared by the Designer to adjust the Estimated Construction Cost to within the Fixed Limit Construction Cost;
  - iv. assist the Awarding Authority with the prequalification of bidders in accordance with M.G.L. c. 149, §§ 44E1/2 and 44D3/4 or M.G.L. c. 149A
  - iv. to the extent not specified in the Scope of Services, provide prequalification services required in accordance with M.G.L. c. 149A for the Construction Manager At-Risk Delivery Method;

- v. provide consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing professional services of the type set forth in Article 3 as may be required in connection with the replacement of such work;
- vi. provide professional services necessary to evaluate substitutions proposed by the general contractor and prepare subsequent revisions to drawings and other documents resulting therefrom or furnish professional services made necessary by the default of the general contractor;
- vii. provide services after final payment to the general contractor, except for services occasioned by the Designer's errors or omissions;
- viii. prepare special documents for or appearing as a witness in change order appeal hearings under M.G.L. c. 30, s. 39Q or in judicial litigation arising out of the Construction Contract, except for litigation arising from the Designer's negligent acts, errors or omissions;
- ix. prepare change orders and supporting data, except as set forth in Section 6.4;
- x. revise construction drawings and specifications submitted in their final and complete form for which bids were not received within six months after submission;
- xi. make studies other than those normally required and preparing applications and reports to assist the Awarding Authority in obtaining federal aid;
- xii. additional site visits requested by the Awarding Authority for which additional payment is provided in Section 6.2.

Prior to performing any Additional Services the Designer shall agree with the Awarding Authority upon the fee for such services in accordance with Section 6.3 of this Contract. No authorization by the Awarding Authority for the performance of any Additional Services shall be valid unless it contains a "not to exceed" amount.

**6.2 Additional Site Visits.** Additional services shall also include additional site visits by the Designer or its Consultants at the request of the Awarding Authority during the construction administration phase provided that both of the following conditions are met with respect to each such visit: 1) the visit is made at the request of the Awarding Authority and is in addition to the site visits required under this Contract; and 2) the time spent meeting on the site at the request of the Awarding Authority plus the time spent on the required visits for that week exceeds the sum of seven hours. Compensation for additional site visits shall be paid as provided in Section 6.3.

**6.3 Compensation for Additional Services.** Except as otherwise authorized in writing by the Awarding Authority, for the services provided pursuant to sections 6.1 and 6.2 of this Article, the Designer shall be compensated as determined by the Awarding Authority as follows:

- i. by a lump sum fee agreed upon in advance in writing by the Designer and the Awarding Authority; or
- ii. on an hourly basis (based on pro-rated hourly wages exclusive of benefits) and computed as follows:
  - (a) for Principals of Designer and Principals of Consultants to the Designer (“Principal” defined as Principal-in-Charge or Prime Consultant) and for Technical Staff of the Designer and Technical Staff of Consultants to the Designer (“Technical Staff” defined as management, design and production personnel) at the lesser of \$150 per hour or three times (3x) the actual pro-rated hourly wages of such individual as set forth in Attachment D, subject to verification by the Awarding Authority. In no event shall the Designer or its consultants be paid in excess of \$150 per hour without the express written approval of the Awarding Authority. ***The mere inclusion of hourly rates in excess of \$50 in Attachment D (where 3x such rate would exceed the cap of \$150 per hour stated herein) shall NOT be deemed sufficient to satisfy the requirement for express written approval for hourly rates in excess of \$150 per hour.***
  - (b) Note that if a unique or specialized consultant particular to the Project is required, a higher amount will require separate approval in writing by the Awarding Authority.
  - (c) Clerical/support staff of the Designer and Consultants to the Designer shall not be compensated and is considered as part of office overhead.

Attachments C and D are incorporated by reference into this agreement and may be changed only with the express written Approval of the Awarding Authority. The Designer shall not be compensated for any salary not set forth on Attachment D at the time of the execution of this Contract unless otherwise expressly approved in writing by the Awarding Authority. The Awarding Authority shall have the right to require the Designer and its consultants to provide the Awarding Authority with certified payroll records or other requested documentation from business records and/or other current design contracts in order to verify the pro-rated hourly wage rates set forth in Attachment D.

In the case of “salaried” employees, the pro-rated hourly wage rates set forth in Attachment D shall be calculated as follows: annual wage (exclusive of benefits) divided by 52 weeks per year, divided by 40 hours per week. When applicable the Designer may request compensation for annual staff wage rate increases, providing, however, that such

wage rate adjustments shall not exceed two and one-half percent (2½%) of an employee's hourly wage rate as of the date of execution of this Contract unless otherwise expressly approved in writing by the Awarding Authority. The annual period for consideration of such rate increases shall commence with the date of execution of the Contract and Approval for such wage rate increases shall be subject to verification by Awarding Authority and not unreasonably withheld.

No authorization by the Awarding Authority for the performance by the Designer of Additional Services shall be valid unless it is made in writing and contains a "not to exceed" amount which may not be exceeded without further written Approval by the Awarding Authority. Cost proposals for Additional Services shall also include a similar "not to exceed amount" for any associated reimbursables.

**6.4 Limitations of Additional Services.** Notwithstanding the forgoing, without limitations, the correction of errors and omissions of the Designer, its Consultants or subconsultants under this Contract or the Study Contract (if the Designer was also the Designer under the Study Contract) shall in no event form the basis for any claims by the Designer for payments for Additional Services under this Contract.

**6.5 Change Orders and Modifications.** The Designer shall be compensated in accordance with the rates specified in section 6.3 for the services of its employees and any Consultant listed in Article 3 or in Attachment C for the preparation of modifications, change orders and supporting data. Neither the Designer nor its consultants shall be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Designer in the preparation of the bid documents, or that were occasioned by the Designer's errors or omissions, as reasonably determined by the executive head of the Awarding Authority. [M.G.L. c. 7C, §51 The Designer shall not be compensated for any services involved in preparing changes required to make unit price adjustments due to existing conditions, nor for services involved in change orders for time extensions only other than the time required for the review and approval of said change. Changes for which the Designer receives no compensation under this Article shall be called "no fee modifications" or "no fee change orders." The fact that the Designer receives no fee shall not waive the Awarding Authority's legal remedies regarding such changes.

## **ARTICLE 7: REIMBURSABLE COSTS AND EXPENSES**

**7.1 General.** The Designer shall be reimbursed by the Awarding Authority for:

- i. The actual cost to the Designer of special consultants Approved by the Awarding Authority but not specified in Article 3 or in the Designer Selection Board's advertisement for the Project. No reimbursement for such expense shall be made unless the rates of compensation for said consultant services shall have been previously approved by the Awarding Authority. The Awarding Authority may approve a lump sum fee.

- ii. Permit filing fees and other actual costs for items not included in the Basic Fee, including special printing, but only when specifically authorized in writing in advance by the Awarding Authority.
- iii. For document copies in excess of numbers specified in the Contract if requested by the Awarding Authority.

The Awarding Authority shall not reimburse the Designer for any telephone or other out-of-pocket expenses unless specifically authorized in advance as provided above.

**7.2. Travel.** The Awarding Authority shall not reimburse the Designer for travel expenses under this Contract, provided, however, that in special circumstances and with prior written Approval of the Awarding Authority, the Designer may be reimbursed for out-of-state travel expenses consistent with applicable statutes, rules, and regulations.

**7.3 Overhead Mark-Up.** For solicitation, coordination, inspection, analysis, and evaluation of, and for the assumption of responsibility for, services authorized under Sections 7.1(i) and 7.1(ii) of this Article 7, the Designer shall be paid 10% of the actual expense where the cost of the specific services is estimated not-to-exceed \$100,000. The aforementioned percentage may be reduced to a lesser equitable percentage to be agreed upon between the parties where the not-to-exceed cost is projected to exceed \$100,000.

## **ARTICLE 8: PAYMENTS TO THE DESIGNER**

**8.1 Change Orders.** Unless otherwise Approved by the Awarding Authority, payments to the Designer for a modification or a change order shall be made when the modification or change order has been Approved by the Awarding Authority and the Designer's services with respect to the same, other than construction administration services, have been completed.

**8.2 Schedule for Payment of Basic Fee.** The lump sum Basic fee under Article 5 above shall be paid in accordance with the Approved work plan schedule of values prepared in accordance with Section 4.1, for performance of all services specified in Articles 3 and 4. The Schedule of Values shall be consistent with the following schedule so that the total installments of the Basic Fee in each phase of the schedule equals the percentage of the Basic Fee allocated to each such phase of the schedule below. Actual payments can be requisitioned by the Designer upon completion of deliverables within each phase as set forth in the Approved work plan schedule of values:

- i. Fifteen percent (15%) for the schematics design phase services;
- ii. Twenty-five percent (25%) for the design development phase services;
- iii. Thirty percent (30%) for the construction documents phase services;

- iv. Thirty percent (30%) for the construction administration phase services.

The Designer shall submit requisitions on a monthly basis for any deliverables completed within that month. Awarding Authority shall not be obliged to pay any claims received more than forty-five days after notification to the Designer of final acceptance of the contractor's work under the Construction Contract.

- 8.3 Applications for Payment.** All invoices except for those made under the provisions of Section 8.1 above may be submitted monthly and will be promptly processed by the Awarding Authority if they are in conformity with this Contract and properly documented; if not they will be returned to the Designer. No invoice (other than an invoice for the final payment to Designer under this Contract) shall be required to be so submitted or processed when the net amount due is less than \$200. Amounts of less than \$200 shall be added to the subsequent month's invoice. All invoices from the Designer shall be submitted to the Awarding Authority accompanied by a completed Commonwealth of Massachusetts Payment Voucher Input Form PV if this is a Commonwealth project, otherwise accompanied by such forms as the Awarding Authority may require.
- 8.4 Right of Offset.** If the Awarding Authority finds that services previously paid for by the Awarding Authority contained deficiencies, errors or omissions then the Awarding Authority may withhold from any future payment an amount reasonably calculated by the Awarding Authority to cover the cost of correcting the deficiency, error or omission until the services have been corrected. The Awarding Authority may also offset against any payment due to the Designer the amount of any costs incurred by the Awarding Authority arising from the Designer's failure to provide required services, deficiencies, errors or omissions. If the Awarding Authority shall discover that the charge for any previously paid-for services was calculated based upon incorrect salary rates or other incorrect information, the Awarding Authority may offset any overcharges against any future payment. Any disputes related to offsets taken by the Awarding Authority shall be subject to resolution pursuant to Article 21 of this Contract. Nothing in this paragraph shall limit any legal remedies of the Awarding Authority against the Designer for default, errors, omissions, erroneous claims, false claims, tort claims, or any breach by the Designer of the terms of this Contract or applicable Laws.

## **ARTICLE 9: TERMINATION**

- 9.1 Awarding Authority's Right to Terminate.** By written notice to the Designer, the Awarding Authority may terminate this Contract, in whole or in part, at any time for either the Awarding Authority's convenience or for the failure of the Designer to fulfill its obligations under this Contract. In the event that the Awarding Authority terminates the Contract for cause, Awarding Authority shall provide Designer with seven (7) days written notice of such termination and the basis for such cause. Notwithstanding the foregoing, the Designer shall be allowed to cure any such breach within the seven (7) day notice period.

- 9.2 Termination by Awarding Authority for Convenience.** If any such termination shall occur without the fault of the Designer, all compensation and reimbursable expenses due to the Designer up to the date of termination, in accordance with all Contract terms, including proportionate payment for partially completed work, shall be paid to the Designer by the Awarding Authority. The payments to the Designer shall not exceed the fair value of the Designer's work, as the Awarding Authority shall determine. No amount shall be allowed for anticipated profit on unperformed services.
- 9.3 Termination by Awarding Authority for Cause.** If this Contract is terminated due to the failure of the Designer to fulfill the Designer's obligations under this Contract, the Awarding Authority may assume the design work and replace it and/or prosecute the same to completion by contract or otherwise. In such case, the Designer shall be liable to the Awarding Authority for any damages incurred by the Awarding Authority thereby to the extent resulting from Designer's breach. These rights and remedies of the Awarding Authority are in addition to any rights and remedies provided by law or under this Contract.
- 9.4 Termination by Designer.** By written notice to the Awarding Authority, the Designer may terminate this Contract (i) if the Awarding Authority, within sixty (60) days following written notice to the Awarding Authority from the Designer of any default by the Awarding Authority hereunder, shall have failed to remove such default, or (ii) if, after the Designer shall have performed all services required of the Designer in the Schematic Design Phase, the design development phase, or the construction documents phase of the Project as described in this Contract, at least six months shall have elapsed without receipt by the Designer of a Notice to Proceed with the next phase of the Designer's services. Upon any such termination by the Designer all compensation and reimbursement payable to the Designer in accordance with this Contract up to and including the date of termination shall be paid to the Designer by the Awarding Authority. The payments to the Designer shall not exceed the fair value of the Designer's work, as the Awarding Authority shall determine. No amount shall be allowed for anticipated profit on unperformed services.
- 9.5 Designer's Duties upon Termination.** Upon any termination of this Contract the Designer shall deliver to the Awarding Authority all data, drawings, specifications, reports, estimates, summaries, and such other information and materials, whether completed or in process, as may have been accumulated by the Designer in performing this Contract.

## **ARTICLE 10: RECORDS, DISCLOSURE STATEMENTS, ACCOUNTING CONTROLS, AUDITS**

- 10.1 Records to be Kept for Six Years.** The Designer shall make, and keep for at least six (6) years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Designer. [M.G.L. c. 30, §39R(b)(1)-(2)]

- 10.2 Records Open to Inspection.** Until the expiration of six (6) years after final payment, the Governor or his designee, the Secretary of Administration and Finance, the State Auditor, the Office of the Inspector General, the Commissioner of DCAMM, the Awarding Authority and any other public official authorized by law, shall have the right to examine any books, documents, papers or records of the Designer or of its Consultants and subcontractors that directly pertain to, and involve transactions relating to, the Designer or its Consultants and subcontractors. [M.G.L. c. 30, §39R(b)(1)-(2); Executive Order 195]
- 10.3 Changes in Method of Accounting.** If this Contract is a contract for an amount exceeding \$10,000 or is a contract for the design of a Project with an Estimated Construction Cost exceeding \$100,000, and if the Designer shall make any change in its method of maintaining records that would materially affect any statements filed by the Designer with the Awarding Authority, the Designer shall forthwith deliver to the Awarding Authority a written description of such change, the effective date thereof, and the reasons therefor. The Designer shall submit with such description a letter from the Designer's independent certified public accountant approving or otherwise commenting on the change. [M.G.L. c. 30, §39R(b)(3)] The Designer hereby represents that there have been no such changes to date that have not been so reported to the Awarding Authority.
- 10.4 Warranty by Designer.** If this Contract is for an amount exceeding \$10,000 or is for the design of a Project with an Estimated Construction Cost exceeding \$100,000, the Designer warrants and represents that Designer has filed a statement of management on internal accounting controls as set forth in section 10.5 below prior to the execution hereof. [M.G.L. c. 7C, §51]
- 10.5 Filing of Statement of Management on Internal Accounting Controls.** If this is a Contract for an amount exceeding \$10,000 or is for the design of a Project with an Estimated Construction Cost exceeding \$100,000, the Designer shall file with the Awarding Authority a statement of management as to whether the system of internal accounting controls of the Designer and its subsidiaries reasonably assures that: (1) transactions are executed in accordance with management's general and specific authorization; (2) transactions are recorded as necessary i) to permit preparation of financial statements in conformity with generally accepted accounting principles, and ii) to maintain accountability for assets; (3) access to assets is permitted only in accordance with management's general or specific authorization; and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference. The Designer shall also file with the Awarding Authority a statement prepared and signed by an independent certified public accountant, stating that the accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to (1) whether the representations of management in response to this section and sections 1 and 2 above are consistent with the result of management's evaluation of the system of internal accounting controls; and (2) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be

material when measured in relation to the applicant's financial statements. [M.G.L. c. 7C, §51 M.G.L. c. 30, §39R(c)]

**10.6 Representation Regarding Audited Financial Statement.** If this is a contract for an amount exceeding \$10,000 or is for the design of a Project having an Estimated Construction Cost exceeding \$100,000, the Designer represents that it has filed prior to the execution hereof and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in section 7 below. [M.G.L. c. 7C, §51M.G.L. c. 30, §39R(d)]

**10.7 Filing of Annual Statement Required.** The Designer shall annually file with the Commissioner of DCAMM during the term of this Contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report. Such statements shall be made available to the Awarding Authority upon request. [M.G.L. c. 7C, §51 M.G.L. c. 30, §39R(d)]

**10.8 Records Not Public.** Records and statements required to be made, kept or filed under the provisions of this Article shall not be public records as defined in M.G.L. c. 4, s. 7 and shall not be open to public inspection; provided, however, that such records and statements shall be made available pursuant to the provisions of section 10.2 above.

## **ARTICLE 11: RELEASE AND DISCHARGE**

The acceptance by the Designer of the last payment for services paid under the provisions of either Article 8 or Article 9 in the event of termination of this Contract, shall in each instance operate as a release of the Public Entity, the User Agency, the Awarding Authority, and every employee and agent thereof, from all claims of the Designer arising from this Contract, and from liability for any act or omission relating to or affecting the Designer's services hereunder, except for those written claims submitted by the Designer to the Awarding Authority with the last payment requisition; and except that such acceptance shall not operate as a release of claims not known to Designer, which Designer could not reasonably have known about at the time of such acceptance.

## **ARTICLE 12: INSURANCE**

**12.1 General Requirements [M.G.L. c.7, §51].** The Designer shall purchase and maintain insurance of the type and limits listed in this Article with respect to the services to be performed under this Contract. This insurance shall be provided at the Designer's expense and shall be in force and effect for the full term of the Contract or for such longer period as this Article requires. Should the Designer's insurance limits be higher or have broader coverage than the minimum required insurance limits as set forth in this section, such limits and coverages shall not be limited by this Contract.

All policies shall be issued by companies lawfully authorized to write that type of insurance under the Laws of the Commonwealth 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 Awarding Authority, or otherwise acceptable to the Awarding Authority.

The Designer shall submit three originals of each certificate of insurance acceptable to the Awarding Authority 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 Designer shall submit updated certificates prior to the expiration of any of the policies referenced in the certificates so that the Awarding Authority shall at all times possess certificates indicating current coverage. Failure by the Designer to obtain all policy renewals and to provide the respective insurance certificates as required shall constitute just cause for termination of Designer's services under this Contract.

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 Awarding Authority at least thirty days prior to the effective date thereof, which shall be expressed in said notice.

The Designer is responsible for the payment of any and all deductibles under all of the insurance required below. The Awarding Authority shall not be responsible for the payment of deductibles, self-insured retentions or any portion thereof.

The Designer or any Consultant or subconsultant may elect to carry any other type of insurance coverage or higher limits over the required insurance coverage. Any excess coverage(s) shall be at the sole expense of the Design, Consultant or subconsultant obtaining such coverage.

**12.2 Workers' Compensation, Commercial General Liability, Automobile Liability, and Valuable Papers** The Designer shall purchase and maintain at its own expense during the life of this Contract the following insurance:

- i. Workers' Compensation Insurance in accordance with M.G.L. chapter 152.
- ii. Commercial General Liability Insurance, with a minimum limit of \$1,000,000 each occurrence. The Public Entity and the Awarding Authority shall each be listed as an additional insured.
- iii. Automobile Liability Insurance at a limit of not less than \$1,000,000 each accident.
- iv. 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 in the event of loss or destruction while in the custody of the Designer until the final fee payment is made or all data is turned over to the Awarding Authority, and this coverage shall include coverage for

relevant electronic media including, but not limited to, documents stored in computer aided design drafting (CADD) systems.

**12.3 Professional Liability.** The Designer shall maintain professional liability insurance covering errors and omissions and negligent acts of the Designer, and of any person or entity for whose performance the Designer is legally liable. Unless an alternate amount is otherwise specified in the documents incorporated by reference into Section 3.1 of this Contract, the minimum amount of such insurance shall equal the lesser of \$5,000,000 or 10% of the Project's Fixed Limit Construction Cost but in no event less than \$250,000 per claim. Unless the Designer is specifically required to provide project specific insurance in the documents incorporated by reference into Section 3.1, the policy may be in a "claims made" format. If the policy is a "claims made" policy, it shall include a retroactive date that is no later than the effective date of this Contract, and Designer shall continue to provide such coverage for a period of at least six (6) years after the earlier of: (1) the date of official acceptance of the completed Project by the Awarding Authority; (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 Awarding Authority 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 Awarding Authority or the User Agency, which requirement can be met by providing renewal certificates of professional liability insurance to the Awarding Authority as evidence that this coverage is being maintained. [M.G.L. c. 7, §51].

**12.4 Liability of Designer.** Insufficient insurance shall not release the Designer from any liability for breach of its obligations under this Contract. Without limitation, the Designer shall bear the risk of any loss if its valuable papers insurance coverage is insufficient to cover the loss of any work covered by this Contract.

## **ARTICLE 13: INDEMNIFICATION**

To the fullest extent permitted by law, the Designer shall indemnify, defend and hold harmless the Public Entity, the User Agency, the Awarding Authority and all of their agents and employees from and against all claims, damages, losses and expenses, including but not limited to court costs, reasonable attorneys' fees, interest and costs to the extent caused by or resulting, in whole or in part, from the willful misconduct and/or negligent acts, errors or omissions of the Designer in performance of the services covered by this Contract, whether by Designer or its employees, Consultants or subcontractors, provided that the Awarding Authority shall notify the Designer of such suits and claims within a reasonable time after the Awarding Authority becomes aware of them. The Designer shall be afforded an opportunity to participate in the defense and/or settlement of all such suits and claims. The Designer shall not be bound by the amount of damages suffered in any litigation or settlement unless the Designer is given the opportunity to participate in negotiations for settlement and/or defense of such litigation or claim. As used in this paragraph, the term "agent" shall specifically exclude any construction-related personnel.

## **ARTICLE 14: MISCELLANEOUS LEGAL REQUIREMENTS**

- 14.1. Non-Resident Processing; Signatures.** Every Designer that is a nonresident of the Commonwealth of Massachusetts, or a nonresident partner of a Designer, hereby appoints the Secretary of the Commonwealth of Massachusetts to be his true and lawful attorney in and for Massachusetts, upon whom all lawful processes in any action or proceeding arising out of this Contract may be served. When legal process against any such person is served upon the Secretary of State, a copy of such process shall forthwith be sent by registered mail with a return receipt requested by the Awarding Authority or its lawful attorney to said Designer or partner at the address set forth in this Contract. Said Designer or said partner hereby stipulates and agrees that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served on said Designer or said partner. Such authority shall continue in force so long as any liability remains outstanding against said Designer or said partner.
- 14.2. Anti-Boycott Covenant [Executive Order 130].** The Designer warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, will participate in or cooperate with an international boycott, as defined in section 999 (b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by General Laws Chapter 151E, §§2 and 3. If there shall be a breach in the warranty, representation and Contract contained in this section, then without limiting such other rights as it may have the Commonwealth shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the contractor, or which directly or indirectly owns at least 51% of the ownership interests of the contractor.
- 14.3 Truth-In-Negotiations Certificate [M.G.L. Chapter 7, Sec. 51].** To the extent that the Designer's fee has been negotiated, the Designer certifies that it has filed a truth-in negotiations certificate in accordance with M.G.L. c. 7, s. 38H (b) prior to being awarded this Contract. Said certificate is attached hereto as Attachment incorporated herein by reference.
- 14.4 Employment Eligibility Verification Requirements [8 U.S.C., §§. 1324a, 1324b; M.G.L. c. 149, § 19C; Executive Order No. 481].** The Designer certifies under the pains and penalties of perjury they shall not knowingly use undocumented workers in connection with the performance of the Contract; that, pursuant to federal requirements, they shall verify the immigration status of all workers assigned to Contract without engaging in unlawful discrimination; and that they shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker. The Designer understands and agrees that breach of any of these terms during the period of a Contract may be regarded as a material breach, subjecting Designer to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination.
- 14.5 Northern Ireland [M.G.L. Chapter 7, Sec. 22C].** Pursuant to G.L. c. 7 s. 22C, the Designer certifies that it does not employ ten or more employees in an office or other

facility in Northern Ireland and if the Designer employs ten or more employees in an office or other facility located in Northern Ireland the Designer certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Designer is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

- 14.6 Service-Disabled Veteran-Owned Business Program [Chapter 108 of the Acts of 2012; Executive Order 546]** The Awarding Authority encourages the participation of Service-Disabled Veteran- Owned Business Enterprises (“SDVOBE”) in its construction and design projects pursuant to Chapter 108 of the Acts of 2012 and Executive Order 546. The benchmark for SDVOBE participation on the Project is 3% of the Contract Price. A SDVOBE for purposes of the Commonwealth’s program, is a Service-Disabled Veteran-Owned Small Business (“SDVOSB”) as designated by the federal government pursuant to 15 USC §632, whose status can be verified on the U.S. VetBiz Vendor Information Page located at [www.vip.VetBiz.gov](http://www.vip.VetBiz.gov) . SDVOBE’s shall be provided opportunities to participate in the Project and Designer shall within 30 days of contract execution submit its Anticipated Service-Disabled Veteran-Owned Business Enterprise Participation plan to the Awarding Authority’s Compliance Office. Contractor shall report on the amount of SDVOBE participation on the Project on a regular basis, in the form, format and frequency requested by the Awarding Authority, including, but not limited to, by electronic reporting.

**ARTICLE 15: PARTICIPATION BY MINORITY BUSINESS ENTERPRISES/  
WOMEN BUSINESS ENTERPRISES – AWARDING AUTHORITY  
PROVISIONS**

The provisions of Attachment E attached hereto are incorporated herein by reference.

**ARTICLE 16: NON-DISCRIMINATION, DIVERSITY, EQUAL OPPORTUNITY,  
AFFIRMATIVE ACTION**

- 16.1 Compliance.** The Designer shall comply with all Laws promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age sex, religion, physical or mental handicap, or sexual orientation or for exercising any right afforded by Law. The Designer shall comply with all applicable Laws prohibiting discrimination in employment including but not limited to: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973; M.G.L. c. 151B, s. 4(1); and all relevant administrative orders and executive orders, including Executive Orders 478. If a complaint or claim alleging violation of such statutes, rules or regulations is presented to the Massachusetts Commission Against Discrimination (MCAD), the Designer and its agents agree to cooperate fully with MCAD in the

investigation and disposition of such complaint or claim. In the event of the Designer's noncompliance with the provisions of this section, the Awarding Authority shall impose such sanctions as it deems appropriate, including, but not limited to, withholding of payments due the Designer under this Contract until the Designer complies, and termination or suspension of this Contract.

- 16.2** Non-discrimination, Diversity, Equal Opportunity and Affirmative Action [Executive Orders 524 and 526]. The Designer shall not engage in any discriminatory employment practices. By signing this Contract the Designer hereby certifies under the pains and penalties of perjury that the Designer currently complies with and will continue to comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Designer commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.
- 16.3** **Affirmative Action Plan.** If the Awarding Authority is a state agency then pursuant to Executive Orders 524 and 526, any Contract with a maximum obligation of fifty thousand dollars (\$50,000) or more must include an Affirmative Action Plan. If this Contract has a maximum obligation of \$50,000 or more then the Affirmative Action Plan attached hereto as Attachment G is incorporated herein by reference.
- 16.4** **Minority and Women Workforce Reporting.** If the Awarding Authority is a state agency then pursuant to G.L.c.7C, §6 and G.l.c.149, §44A(2)(G) the Designer shall be required to provide regular reports of the gender and race/ethnicity of employees engaged in work under this contract in the form and format required by DCAMM, including but not limited to, by electronic reporting and with the frequency required by DCAMM.
- 16.5** **Material Breach.** Any breach of this Article shall be regarded as a material breach and shall be subject to all other sections of this Contract. The Awarding Authority shall have access to all records which are necessary to document compliance with this Article.

## **ARTICLE 17: CHOICE OF LAW**

This Contract shall be construed under and governed by the laws of the Commonwealth of Massachusetts. The Designer, and the agents thereof, agree to bring any federal or state legal proceedings arising under this Contract, in which either the Commonwealth or the Awarding Authority is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts. This section shall not be construed to limit any rights a party may have to intervene in any action, in any court or wherever, pending, in which the other is a party.

## **ARTICLE 18: AMENDMENTS, SEVERABILITY, WAIVERS**

No amendment to this Contract shall be effective unless it is in writing and is executed by authorized representatives of both parties. If any provision of this Contract is declared or found illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. The remainder of the Contract shall be enforced to the fullest extent permitted by law. The Awarding Authority reserves the right to waive any provision or requirement of this Contract if the Awarding Authority determines that such waiver is justified and in the public interest. No such waiver shall be effective unless in writing and signed by the Authorized Representative of the Awarding Authority. No other action or inaction by the Awarding Authority shall be construed as a waiver of any provision of this Article.

## **ARTICLE 19: NON-APPROPRIATION**

The Commonwealth certifies that at the time of the execution of this Contract, sufficient appropriations exist and shall be encumbered to fund the Contract Price. Payments are subject to appropriation and shall be made only for work performed in accordance with the terms of this Contract. The Designer shall not be obligated to perform, and may not perform, services outside the duration and scope of this Contract without an appropriate amendment to this Contract, and a sufficient appropriation(s) to support such additional services. The Commonwealth may immediately terminate or suspend this Contract in the event that the appropriation(s) funding this Contract is eliminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Contract.

## **ARTICLE 20: NOTICES, APPROVALS, INVOICES**

Notices to the Designer shall be deemed given when hand-delivered to the Designer at the Project site, or when deposited in the U.S. mail addressed to the Designer at the Designer's address specified in this Contract, when delivered by courier to said address, or when delivered via e-mail or facsimile transmission. Unless otherwise specified in writing by the Awarding Authority, notices and deliveries to the Awarding Authority shall be effective only when delivered to the Awarding Authority at the address specified in this Contract and date-stamped at the reception desk or for which a receipt has been signed by the agent or employee designated by the Awarding Authority to receive official notices.

## **ARTICLE 21: MANDATORY MEDIATION**

In the case of a dispute where the dollar amount in dispute is \$50,000 or more the Awarding Authority and the Designer shall engage in good faith in a non-binding mediation process using the services of a Neutral mediator, which process shall be concluded within sixty (60) days from the date that the either party submits to the other a written request therefor. The parties shall make good faith efforts to agree on the selection of a Neutral mediator experienced in mediating building design and construction disputes. The cost of the services of any mediator selected jointly by the parties to this Contract shall be borne equally by the Designer and the Awarding Authority.

**ARTICLE 22: CERTIFICATIONS OF DESIGNER MADE UNDER PAINS AND PENALTIES OF PERJURY**

No changes shall be made in the matters represented in this Article at any time during the life of this Contract without written notification to the Awarding Authority and when required, receipt of written Approval from the Awarding Authority. (Attach additional sheets if necessary for each section.)

**22.1 Designer's Beneficial Owners.** By signing this Contract, the Designer certifies under the penalties of perjury that the following named entities and individuals are the legal and beneficial owners of the Designer as of the date of the execution hereof [M.G.L. c. 7C, §48](attach additional sheets if necessary):

CORPORATION: (Names of Officers and Shareholders of Corporation, including their titles,

_____	_____
_____	_____
_____	_____

PARTNERSHIP: (Names of all Partners):

_____	_____
_____	_____
_____	_____

INDIVIDUAL (Name of Owner):

_____
-------

**22.2 Persons Having an Interest in this Contract.** M.G.L. c. 7A, §6 provides as follows: *"No contract to provide consultant services shall be awarded by the Commonwealth, or by any department, board, commission, or other agency acting in its behalf, unless the person signing such contract on behalf of the party contracting to provide such services files with the Comptroller a statement under the penalties of perjury setting forth the names and addresses of all persons having a financial interest therein, not including, however, any person whose only financial interest therein consists of the holding of one percent or less of the capital stock of a corporation contracting to provide such services."*

NOTE: Individuals who sign this Contract in their individual capacity must also complete the certification below as well as sign this Contract. For the purpose of this directive, the term "person having a financial interest" will generally refer to any person who, in some direct manner, will benefit financially from a given contractual relationship with the

Commonwealth. However, this may not, in every case, preclude the possibility of an existing financial interest within the meaning of the statute where a financial benefit is to be realized in some indirect manner. Where doubts arise in a specific case, it is advisable that names and addresses be included.

By signing this Contract, the individual executing this Contract on behalf of the Designer hereby certifies under the penalties of perjury that the following sets forth the names and addresses of all persons having a financial interest in this Contract, not including any person whose only financial interest herein consists of the holding of one percent or less of the capital stock of Designer if Designer is a corporation, in addition to the persons listed in section 22.1 above:

Name

Address

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*[THIS SPACE IS INTENTIONALLY BLANK]*

**22.3 Professional Registrations.** By signing this Contract, the individual executing this Contract on behalf of the Designer certifies under the penalties of perjury that the following named individuals are registered by the Commonwealth as architects, landscape architects, or engineers pursuant to the provisions of General Laws Chapter 112, §§ 60A - 60O and further that i) if the Designer is an individual the Designer is the individual named below, ii) if the Designer is a partnership, the majority of all the partners are persons who are registered architects, landscape architects, or engineers, iii) if the Designer is a corporation, sole proprietorship or joint stock company or other entity, the majority of the directors or a majority of the stock ownership and the chief executive officer, are persons who are registered architects, landscape architects, or engineers and the person to have the Project in his or her charge is registered in the discipline required for the Project, or iv) if the Designer is a joint venture, each joint venturer satisfies the requirements of the preceding clauses i – iii as the case may be [M.G.L. c. 7C, §48]

<u>Name</u>	<u>Title</u>	<u>Mass. Registration</u>

NOTE: The above information must be completed to comply with the provisions of General Laws Chapter 7C, §44. Programmers and construction managers are not required to be registered under §44.]

Designer warrants that the Massachusetts registered principal of the Designer responsible for the project is:

Name  
 \_\_\_\_\_

**22.4 Resume on File with Designer Selection Board.** By signing this Contract, the Designer certifies under the penalties of perjury that in accordance with the provisions of General Laws Chapter 29, section 29A (4) a resume of the Designer has been filed with the Designer Selection Board.

**22.5 No Inducements.** By signing this Contract, the Designer certifies under the penalties of perjury that the Designer 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



- 22.9 Dependent Care Assistance Program.** By signing this Contract, the Designer certifies under the penalties of perjury that, at the time of execution, Designer is in compliance with the provisions of section 7 of Chapter 521 of the Acts of 1990 as amended by Chapter 329 of the Acts of 1991, and 102 CMR 12.00 and the Contractor is either a "qualified employer" because it has fifty (50) or more full time employees and has established a dependent care assistance program, child care tuition assistance, or on-site or near-site child care placements, or is an "exempt employer."
- 22.10 Debarment; Suspension.** By signing this Contract, the Designer certifies under the penalties of perjury that the Designer is not currently debarred or suspended by the Commonwealth of Massachusetts, or any of its entities or subdivisions under any Commonwealth law or regulation, including but not limited to M.G.L. c. 29, § 29F and M.G.L. c. 152, § 25C and that it is not currently debarred or suspended by the Federal Government under any federal law or regulation.
- 22.11 Hiring of State Employees By State Contractors [Executive Order 346].** Designer certifies compliance with both the conflict of interest law [G.L. c. 268A specifically s. 5 \(f\)](#) and Executive Order 346; and includes limitations regarding the hiring of state employees by private companies contracting with the Commonwealth. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Designer's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

*[THIS SPACE IS INTENTIONALLY BLANK.  
SIGNATURES TO FOLLOW ON NEXT PAGE]*

**SIGNATURES**

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date of its execution by the Commonwealth of Massachusetts below, first written above and the individual executing this Contract on behalf of the Designer makes the representations and certifications set forth in this Design Contract under the pains and penalties of perjury.

---

**DESIGNER:**

\_\_\_\_\_

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

Title: \_\_\_\_\_  
hereunto duly authorized

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

**AWARDING AUTHORITY:**

\_\_\_\_\_

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

Title: \_\_\_\_\_  
hereunto duly authorized

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

\*\* If this Contract is executed by the Authorized Representative, then the Authorized Representative hereby certifies that this Contract award has received the prior Approval of the chief executive officer of the Awarding Authority.

**ATTACHMENT A - SCOPE-OF-SERVICES**

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

**PROJECT NAME:** \_\_\_\_\_

DESIGNER's Scope of Services is set forth herein and includes the following:

*[TO BE COMPLETED WITH SPECIFIC PROJECT REQUIREMENTS]*

**ATTACHMENT B - AWARDING AUTHORITY'S DESIGN PROCEDURES**

**(FOR USE BY AGENCIES OTHER THAN DCAMM)**

**1. Indicate whether Designer is required to use the DCAMM Standard Specification:**

\_\_\_\_\_

**2. Indicate whether Designer is required to follow the DCAMM Designers Procedures Manual \_\_\_\_\_.**

**3. Indicate any other procedures or standards applicable to this Contract:**

**ATTACHMENT C - DESIGNER'S PERSONNEL ASSIGNED TO THE PROJECT**

**(Provide Name, Title and Project Role for Each Individual Listed)**

ATTACHMENT D-CERTIFIED AVERAGE HOURLY WAGE RATES

(FOR DESIGNER'S AND DESIGNER'S CONSULTANTS' PERSONNEL)  
(Use additional sheets if necessary. Do not list any support staff.)

**NOTE:** Pursuant to Article 6.3(ii) of the contract, if additional services shall be compensated at the lesser of \$150 per hour or three times (3x) the actual pro-rated hourly wages of such individual as set forth herein. All wage rates included herein **MUST be CERTIFIED ACTUAL PRO-RATED HOURLY WAGE RATES and NOT BILLING RATES. ALL RATES ARE SUBJECT TO VERIFICATION BY AWARDING AUTHORITY**

**Design Firm Principal:**

**Design Firm Associate:**

**Design Firm Project Manager:**

**Design Firm Project Architect:**

**Design Firm CAD Operator:**

---

[The following categories are to be completed for each Consultant Firm. Use additional sheets if necessary.]

**Name of Consultant Firm:**

**Consultant Principal:**

**Consultant Associate:**

**Consultant Project Manager:**

**Consultant Project Engineer:**

**Consultant CAD Operator:**

---

**Name of Consultant Firm:**

**Consultant Principal:**

**Consultant Associate:**

**Consultant Project Manager:**

**Consultant Project Engineer:**

**Consultant CAD Operator:**

---

**Name of Consultant Firm:**

**Consultant Principal:**

**Consultant Associate:**

**Consultant Project Manager:**

**Consultant Project Engineer:**

**Consultant CAD Operator:**

---

**Name of Consultant Firm:**

**Consultant Principal:**

**Consultant Associate:**

**Consultant Project Manager:**

**Consultant Project Engineer:**

**Consultant CAD Operator:**

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## ATTACHMENT E-MBE/WBE PARTICIPATION

### **AGENCY SPECIFIC PROVISIONS REGARDING PARTICIPATION BY MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES**

#### **THE FOLLOWING PROVISIONS APPLY TO DESIGNERS CONTRACTING WITH DCAMM:**

The following provisions establishing goals and procedures to ensure full participation by minority business enterprises (“MBEs”) and women businesses enterprises (“WBEs”) (collectively “MBE/WBE’s”) on this Contract are included pursuant to M.G.L.c.7C, §6; Executive Order 524 and Executive Order 526.

#### **1. Goals.**

- a. The Minority Business Enterprise/Women Business Enterprise (MBE/WBE) participation goal for this Contract is a combined goal of 17.9% of the Contract Price.
- b. The Designer shall comply with all of the terms and conditions of this Contract, which include the provisions pertaining to MBE/WBE participation set forth in the Designer Selection Board’s request for applications, incorporated herein by reference, in order to meet the MBE/WBE participation goal established for this Contract.
- c. Designer must use a mix of both MBE and WBE firms whose participation, when added together, meets the overall combined goal set forth above. The combined goal requires a reasonable representation of both MBE and WBE firm participation. If the Designer is itself a Supplier Diversity Office (SDO) certified firm it is required to bring a reasonable amount of participation by firm(s) that hold certification(s) that is/are not held by Designer. MBE/WBE participation credit will be given for the value of the work under the Contract by Designer (if Designer is an MBE or WBE) and each MBE and WBE Consultant or subcontractor (hereafter “subcontractors”) to the Designer.

#### **2. MBE/WBE Status.**

- a. A minority owned business shall be considered an MBE only if it has been certified as a minority business enterprise by the Supplier Diversity Office (SDO) (formerly known as the Massachusetts State Office of Minority and Women Business Assistance “SOMWBA”).
- b. A woman owned business shall be considered a WBE only if it has been certified as a woman business enterprise by SDO.

- c. Certification as a disadvantaged business enterprise (“DBE”), certification as an M/WBE by any agency other than SDO, or submission of an application to SDO for certification as an M/WBE shall not confer M/WBE status on a firm for the purposes of this Contract.

**3. Subcontracts With MBE/WBEs.**

- a. The parties acknowledge that the Designer has submitted to the Division of Capital Asset Management for approval and that the Division of Capital Asset Management has approved a Schedule of MBE/WBE Participation and Letters of Intent for each of the MBE/WBEs who will perform work under this Contract for MBE/WBE participation credit.
- b. Within seven (7) days after the notice to proceed (A-11 Letter) is received by the Designer, the Designer shall (i) execute a subcontract with each MBE/WBE who has executed a Letter of Intent approved by the Division of Capital Asset Management, and (ii) furnish the Division of Capital Asset Management with a signed copy of each such subcontract.

**4. Performance of Contract Work by MBE/WBEs.**

- a. The Designer shall not perform with its own organization or subcontract or assign to any other firm work designated to be performed by any MBE/WBE in the Letters of Intent or Schedule of MBE/WBE Participation (“MBE/WBE Work”) without the prior written approval of the Division of Capital Asset Management, nor shall any MBE/WBE assign or subcontract to any other firm, or permit any other firm to perform any of its MBE/WBE Work without the prior written approval of Division of Capital Asset Management. Any such unapproved assignment, subcontracting, sub-subcontracting, or performances of MBE/WBE Work by others shall be a change in the MBE/WBE Work for the purposes of this Contract. The Division of Capital Asset Management shall not apply to the MBE/WBE participation goal(s) any sums attributable to such unapproved assignments, sub-contracts, sub-subcontracts, or performance of MBE/WBE work by others.
- b. The Designer shall be responsible for monitoring the performance of MBE/WBE Work to ensure that each scheduled MBE/WBE performs its own MBE/WBE Work.
- c. The Designer shall periodically submit to the Division of Capital Asset Management a completed and executed Designer’s Certification of Payment to Minority and Women Business Enterprises in the form and by the method required by the Division of Capital Asset Management. The Division of Capital Asset Management shall establish the schedule for submitting such certifications.

- d. The Designer and each MBE/WBE shall provide the Division of Capital Asset Management with all other information and documentation that the Division of Capital Asset Management determines is necessary to ascertain whether or not an MBE/WBE has performed its own MBE/WBE Work as set forth in its Letter of Intent.
- e. At the discretion of the Division of Capital Asset Management, the failure of the Designer to submit a required Designer's Certification of Payment to Minority and Women Business Enterprises or any other documentation that the Division of Capital Asset Management has determined is necessary to ascertain whether or not an MBE/WBE has performed its own MBE/WBE Work as set forth in its Letter of Intent shall establish conclusively for the purpose of giving MBE/WBE participation credit under this Contract that such MBE/WBE did not perform such work.

**5. Notification of Changes in M/WBE Work.**

- a. If at any time during the performance of the Contract the Designer determines or has reason to believe that (i) a scheduled MBE/WBE is unable or unwilling to perform its MBE/WBE Work, or (ii) there has been or will be a change in the value or scope of any MBE/WBE Work, or that a party different from the scheduled MBE/WBE will perform all or part of such work, or (iii) the Designer will be unable to meet the MBE/WBE participation goal(s) for this Contract for any reason, the Designer shall immediately notify the Division of Capital Asset Management Contract Compliance Office in writing of such circumstances.
- b. Any notice that there will be a change in the value or scope of MBE/WBE Work or that a party different from the scheduled MBE/WBE will be performing such work, that is given to the Division of Capital Asset Management pursuant to subparagraph (a) above shall include a revised Schedule of MBE/WBE Participation and additional or amended Letters of Intent and subcontracts, as the case may be, all of which shall be subject to the approval of the Division of Capital Asset Management.

**6. Actions Required if there is a Reduction in M/WBE Participation.**

- a. In the event there is a change or reduction in any MBE/WBE Work which will result in the Designer failing to meet the MBE/WBE participation goal(s) for this Contract, other than a reduction in MBE/WBE Work resulting from a change in the Contract work ordered by the Division of Capital Asset Management, then the Designer shall make a diligent, good faith effort to make up the shortfall in MBE/WBE participation as follows:
  - i. The Designer shall identify all items of work remaining to be performed under the Contract that may be made available for subcontracting to MBE/WBEs and shall send a list of such items of work

to the Division of Capital Asset Management for its approval. The Designer shall also send the Division of Capital Asset Management a list of the remaining contract work that may not be made available to MBE/WBEs in the Designer's opinion, and a statement of the reason why each such item of work may not be made available for subcontracting to MBE/WBEs.

- ii. The Designer shall send written notices soliciting proposals to perform the items of work that may be made available for subcontracting to MBE/WBEs to all MBE/WBEs qualified to perform such work. The Designer shall advise the Division of Capital Asset Management of (I) each MBE/WBE solicited, and (II) each MBE/WBE listed in the SDO directory under the applicable professional category who was not solicited and the reasons therefor. The Designer shall also advise the Division of Capital Asset Management of the dates that notices were mailed and provide a copy of the written notice(s) sent.
- iii. The Designer shall make reasonable efforts to follow up the written notices sent to MBE/WBEs with telephone calls or personal visits in order to determine with certainty whether the MBE/WBEs were interested in performing the work. Phone logs or other documentation must be submitted to the Division of Capital Asset Management evidencing this effort.
- iv. The Designer shall make reasonable efforts to assist MBE/WBEs that need assistance in obtaining insurance or lines of credit in order to perform work under the Contract, and shall provide the Division of Capital Asset Management with evidence that such efforts were made.
- v. The Designer shall provide the Division of Capital Asset Management with a statement of the response received from each MBE/WBE solicited, including the reason for rejecting any MBE/WBE who submitted a proposal.
- vi. The Designer shall take any additional measures reasonably requested by the Division of Capital Asset Management to meet the MBE/WBE participation goal(s) established for this Contract.
- vii. The Designer shall submit to the Division of Capital Asset Management all information or documentation that is necessary in the judgment of the Division of Capital Asset Management to ascertain whether or not the Designer has complied with any of the provisions of this Article.

**7. Suspension of Payment and/or Performance for Noncompliance.**

- a. If at any time during the performance of the Contract, the Division of Capital Asset Management determines or has reason to believe that (i) there has been a change or reduction in any MBE/WBE Work which will result in the Designer failing to meet the MBE/ WBE participation goal(s) for this Contract, other than a reduction in MBE/WBE Work resulting from a change in the Contract work ordered by the Division of Capital Asset Management, and (ii) the Designer has failed to comply with all of the terms and conditions of paragraphs 1 through 6 above, the Division of Capital Asset Management may:
  - i. suspend payment to the Designer of an amount equal to the value of the work which was to have been performed by a MBE/WBE pursuant to the Designer's Schedule of MBE/WBE Participation but which was not so performed, in order to ensure that sufficient contract funds will be available if liquidated damages are assessed pursuant to paragraph 8, and/or
  - ii. suspend the Designer's performance of this Contract in whole or in part.
- b. The Division of Capital Asset Management shall give the Designer prompt written notice of any action taken pursuant to paragraph (a) above and shall give the Designer and any other interested party, including any MBE/WBEs, an opportunity to present evidence to the Division of Capital Asset Management that the Designer is in compliance with the requirements of this Article or that there is some justifiable reason for waiving the requirements of this Article in whole or in part. The Division of Capital Asset Management may invite SDO and the Massachusetts Commission Against Discrimination to participate in any proceedings undertaken pursuant to this paragraph.
- c. Upon a showing that the Designer is in full compliance with the requirements of this Article, or that the Designer has met or will meet the MBE/WBE participation goals for this Contract, the Division of Capital Asset Management shall release any funds withheld pursuant to clause (i) and lift any suspension of the Designer's performance under clause (ii).

**8. Liquidated Damages; Termination.**

- a. If payment by the Division of Capital Asset Management or performance by the Designer is suspended by the Division of Capital Asset Management as provided in paragraph 7 above, the Division of Capital Asset Management shall have the following rights and remedies if the Designer thereafter fails to take all action necessary to bring the Designer into full compliance with the requirements of this Article, or if full compliance is no longer possible because the default of the Designer is no longer susceptible to cure, or if the Designer fails to take such other action as may be required to meet the MBE/WBE participation goals set forth in Paragraph 1:

- i. The Division of Capital Asset Management may terminate this Contract, and/or
  - ii. The Division of Capital Asset Management may retain from final payment to the Designer, as liquidated damages, an amount not to exceed the difference between the total of the MBE/WBE participation goals set forth in paragraph 1 of this Article, and any amounts paid or owing to MBE/WBE's for MBE/WBE Work actually performed by them under this Contract, the parties agreeing that the damages for failure to meet the MBE/WBE participation goals are difficult to determine and that the foregoing amount to be retained by the Division of Capital Asset Management represents the parties' best estimate of such damages.
- b. Before exercising its rights and remedies hereunder, the Division of Capital Asset Management may, but the Division of Capital Asset Management shall not be obligated to, give the Designer and any other interested party another opportunity to present evidence to the Division of Capital Asset Management that the Designer is in compliance with the requirements of this Article or that there is some justifiable reason for waiving the requirements of this Article in whole or in part. The Division of Capital Asset Management may invite SDO and the Massachusetts Commission Against Discrimination to participate in any proceedings undertaken hereunder.

**9. Division of Capital Asset Management Right to Waive Provisions of this Article in Whole or In Part.**

- a. The Division of Capital Asset Management reserves the right to waive any provision or requirement of this Article if the Division of Capital Asset Management determines that such waiver is justified and in the public interest.
- b. No such waiver shall be effective unless in writing and signed by a representative of the Division of Capital Asset Management Compliance Office or Office of the General Counsel. No other action or inaction by the Division of Capital Asset Management shall be construed as a waiver of any provision of this Article.

**ATTACHMENT F - DESIGNER'S TRUTH-IN-NEGOTIATIONS CERTIFICATE**

The Designer for design services for

\_\_\_\_\_,  
hereby certifies and agrees to the following:

- a) The Designer certifies that the wage rates and other costs used to support the Designer's compensation are accurate, complete, and current at the time of contracting; and
- b) The Designer agrees that the original contract price and any additions to the contract may be adjusted within six years of completion of the contract to exclude any significant amounts if the Awarding Authority determines that the fee was increased by such amounts due to inaccurate, incomplete, or noncurrent wage rates or other costs.

Designer Firm:

\_\_\_\_\_

Printed Name: \_\_\_\_\_  
duly authorized

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

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

**ATTACHMENT G - AFFIRMATIVE ACTION PLAN**

**ATTACHMENT H – CORPORATE VOTE**  
(or other evidence of authority)

\_\_\_\_\_ 20 \_\_\_\_\_

I hereby certify that I am the \_\_\_\_\_ clerk, \_\_\_\_\_, assistant clerk, \_\_\_\_\_ managing partner of  
\_\_\_\_\_ (the “Corporation”) and that at a  
\_\_\_\_\_ (Name of Corporation/Partnership)  
duly authorized meeting of the Board of Directors of the Corporation/Partners held on  
\_\_\_\_\_ in \_\_\_\_\_ at which a quorum was  
(Date) (Location)  
present and voting it was voted to authorize \_\_\_\_\_  
(Name)

\_\_\_\_\_ of the Corporation/Partnership to  
(Officer Title)  
execute and deliver on behalf of the Corporation/Partnership the following contract and to act as  
principal to execute the contract and make Certifications in connection therewith, which contract  
and certifications were presented to and made a part of the records of said meeting:

**Mass State Project No.** \_\_\_\_\_  
Project Title: \_\_\_\_\_

**I further certify that** \_\_\_\_\_ **is the duly qualified and acting**  
(Name of Corporate Officer/Partner)

\_\_\_\_\_ of the Corporation/Partnership and that said vote  
(Officer Title)  
has not been repealed, rescinded or amended.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

(CORPORATE SEAL)

SUBSCRIBED AND SWORN TO THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_ BEFORE ME

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

## **ATTACHMENT I – EXECUTIVE ORDER 504**

### **(SECURITY AND CONFIDENTIALITY OF PERSONAL INFORMATION)**

#### **CONTRACTOR CERTIFICATION FORM - INSTRUCTIONS**

Effective January 1, 2009, [Executive Order 504](#) establishes new requirements designed to adopt and implement the maximum feasible measures reasonably needed to ensure the security, confidentiality and integrity of personal information, as defined in [M.G.L. c. 93H](#) and personal data, as defined in [M.G.L. c. 66A](#), maintained by state agencies (herein collectively “personal information”). This requirement only pertains to contracts that require the Contractor’s access to personal information owned or controlled by the contracting agency and systems that contain such data. The Executive Order applies to all state agencies in the Executive Department, including all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established.

In order to comply with the contractor certification requirements of Executive Order 504, agencies must require that all vendors executing contracts on or after January 1, 2009 certify compliance with applicable security measures. The Commonwealth’s Standard Contract Form and Instructions will be amended to include certification of compliance; however, until such time as the Standard Contract Form has been amended, agencies that are subject to Executive Order 504 can comply with this obligation by having vendors entering into any new agreements execute the separate certification form attached. The instructions below provide guidance concerning how to comply with the certification requirements of Executive Order 504.

1. For procurements that use the Standard Contract Form:

a. Until the revised Standard Contract form is issued, if the RFQ or RFR was posted on or before January 1, 2009, but the contract will not have been executed as of January 1, 2009, then vendors contracting with agencies must execute the separate Executive Order 504 Contractor Certification Form attached hereto as Exhibit A for all new contracts.

b. Once the Commonwealth’s Standard Contract Form has been amended, agencies will be in compliance with the certification requirements of Executive Order 504 by having vendors execute the Standard Contract Form as part of the bidder’s response to an RFR or RFQ.

2. After January 1, 2009, in any instances where the agency is not using the Commonwealth’s Standard Contract Form, the agency must have all vendors execute a separate Executive Order 504 Certification Form, which will be available on OSD’s website under “[OSD Forms](#)”

3. After January 1, 2009, Departments executing contract amendments or renewals with existing vendors are encouraged to request execution of a separate Executive Order 504 Contractor Certification Form by those vendors if the vendor has not executed the new version of the Standard Contract Form containing the Executive Order 504 certifications.

## EXECUTIVE ORDER 504 - CONTRACTOR CERTIFICATION FORM

### BIDDER/CONTRACTOR LEGAL NAME:

### BIDDER/CONTRACTOR VENDOR/CUSTOMER CODE:

**Executive Order 504:** For all Contracts involving the Contractor's access to personal information, as defined in M.G.L. c. 93H, and personal data, as defined in M.G.L. c. 66A, owned or controlled by Executive Department agencies, or access to agency systems containing such information or data (herein collectively "personal information"), Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read Commonwealth of Massachusetts [Executive Order 504](#) and agrees to protect any and all personal information; and (2) has reviewed all of the Commonwealth of Massachusetts Information Technology Division's Security Policies available at [www.mass.gov/ITD](http://www.mass.gov/ITD) under Policies and Standards.

Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all state agencies in the Executive Department, including all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall:

(1) obtain a copy, review, and comply with the contracting agency's Information Security Program (ISP) and any pertinent security guidelines, standards and policies; (2) comply with all of the Commonwealth of Massachusetts Information Technology Division's Security Policies ("Security Policies") available at [www.mass.gov/ITD](http://www.mass.gov/ITD) under Policies and Standards;

(2) communicate and enforce the contracting agency's ISP and such Security Policies against all employees (whether such employees are direct or contracted) and subcontractors;

(3) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information to which the Contractor is given access by the contracting agency from the unauthorized access, destruction, use, modification, disclosure or loss;

(4) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract;

(5) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information (collectively referred to as the "unauthorized use"): (a) immediately notify the contracting agency if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the contracting agency to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the contracting agency and the Contractor to fulfill any notification requirements.

Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 11 of the Commonwealth's Terms and Conditions, withholding of payments, contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to M.G.L. c. 93H and under M.G.L. c. 214, § 3B for violations under M.G.L. c. 66A.

Bidder/Contractor Name: \_\_\_\_\_.

Bidder/Contractor Authorized Signature: \_\_\_\_\_.

Print Name and Title of Authorized Signatory: \_\_\_\_\_.

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

*This Certification may be signed once and photocopied to be attached to any Commonwealth Contract that does not already contain this Certification Language and shall be interpreted to be incorporated by reference into any applicable contract subject to Executive Order 504 for this Contractor.*