



*Commonwealth of Massachusetts*  
*Executive Office for Administration and Finance*  
*Division of Capital Asset Management*  
*and Maintenance*



**CONSTRUCTION CONTRACT FOR CONSTRUCTION  
MANAGER AT RISK SERVICES**

**OWNER - CONSTRUCTION MANAGER AGREEMENT**

Awarding Authority: Division of Capital Asset Management and Maintenance  
Department Code: \_\_\_\_\_

This Owner – Construction Manager agreement ("Contract") is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (the "Effective Date") by and between the Commonwealth of Massachusetts acting by and through the Awarding Authority identified above with a principal place of business at One Ashburton Place, 15<sup>th</sup> Floor, Boston MA 02108,

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

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

\_\_\_\_\_

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

The terms used in this Contract that are defined in the Construction Manager at Risk General Conditions of the Contract ("General Conditions") attached hereto, shall have the meanings designated therein.

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### Preliminary Statement

- A. Pursuant to M.G.L. c. 149 A, which is incorporated herein by reference, the Commonwealth of Massachusetts by and through its Division of Capital Asset Management and Maintenance (“DCAMM”) is undertaking the construction of the Project with Mass. State Project No. [Project Name and number], on behalf of the [User Agency Name] as the User Agency.
- B. DCAMM issued a Request for Proposals for Construction Management Services for the Project, dated [RFP Date] (together with all attachments thereto, the “RFP”), as modified by Addenda Nos. \_\_\_\_\_, Dated \_\_\_\_\_, 20\_\_\_\_ (collectively, “Addenda”), in response to which the CM submitted its Proposal dated [CM Proposal Date] (“Proposal”).
- C. DCAMM has engaged [Name of Designer] (the “Designer”) under a separate agreement to provide design services for the Project.
- D. The CM shall be liable to DCAMM for all of the obligations, responsibilities and liabilities of the CM under this Contract. The form of this Contract shall be a cost-plus not-to-exceed a Guaranteed Maximum Price. DCAMM has the right to monitor and audit all Project costs to verify that the costs incurred by the CM for work on the Project align with the invoices it submits to DCAMM under the Contract.

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

#### Article 1. The Work.

##### 1.1. The Construction Manager’s Responsibilities.

The CM shall perform the Work as required by the Contract Documents to construct the Project. At the Effective Date, the scope of work shall consist only of the CM [remove if N/A Early] Preconstruction Services (as defined below). A Notice to Proceed (NTP) with the CM [remove if N/A Early] Preconstruction Services will be issued by DCAMM at or around the Effective Date of the Contract. Separate NTPs will be issued at DCAMM’s sole discretion for CM Preconstruction Services (as defined below) and CM Construction Services (as defined below), respectively, in accordance with the Contract.

##### 1.2. Site.

1.2.1. Site Inspection. By executing this Contract, the CM acknowledges that it visited the Site and learned as much about the Site as may reasonably be learned from such an inspection. No information which could reasonably have been obtained by such a Site inspection may serve as the basis for any Change Order Request or claim for additional costs and/or additional time.

1.2.2. Site Conditions. Information about soil and other subsurface conditions at the Site are provided in the RFP. Neither DCAMM nor the Designer represent that such information is complete, accurate, or an approximate indication of subsurface conditions. No Change

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Order Request or claim for additional costs and/or additional time resulting from the CM's reliance on such information shall be allowed except as expressly provided in the Contract Documents.

- 1.2.3. Site Testing By CM. Prior to the commencement of the deep and/or shallow foundation portions of the Work, the CM, if directed by DCAMM, or if the CM elects at its own discretion, shall conduct further testing of the subsurface conditions at the Site. If such testing is performed at the direction of DCAMM or requested by CM and Approved by DCAMM in advance, the costs of such testing shall be paid by DCAMM.

**Article 2. The Contract Documents.**

2.1. Contract Documents.

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

- The RFP, including all attachments, and all Addenda
- The Proposal
- This Contract, including amendments and negotiated terms
- The General Conditions
- The Drawings and Specifications prepared by the Designer, including addenda thereto
- All Approved Change Orders/Contract Modifications issued after the Effective Date of the Contract

**Article 3. Relationship of the Parties.**

3.1. CM's Obligation.

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

3.2. Standard of Performance.

CM represents that the CM: is experienced and skilled in the construction of projects of the type, magnitude, and complexity as described in the Contract Documents; is familiar with the special obligations and requirements of a construction-manager-at-risk in the construction industry generally and pursuant to M.G.L. c. 149A specifically; is familiar and experienced in construction of the type required for the Project and in the location of the Site; and that it will furnish a complete and fully operable Project as indicated by and reasonably inferable from the Contract Documents.

**Article 4. Contract Time.**

4.1. Commencement Date.

This Contract shall take effect as of the Effective Date and remain in full force and effect until completion of the CM's services authorized hereunder, unless extended or terminated by DCAMM in accordance with this Contract.

4.2. Notices to Proceed.

The CM shall commence **[REMOVE if not Applicable CM Early Preconstruction Services,]** CM Preconstruction Services, and CM Construction Services (all as defined in Article 5 of this Contract), only upon receipt of a Notice to Proceed from DCAMM for the applicable services. DCAMM may, in its sole discretion, instruct the CM to begin only portions of any phase of services in the applicable NTP. The NTP for CM Construction Services shall be issued within a reasonable time following the execution of the GMP Amendment, as defined in Article 6.3.3, provided that DCAMM, in its sole discretion, may elect to issue an NTP for CM Construction Services prior to the execution of the GMP Amendment, and limit the scope of the NTP for a particular phase of early construction or in whatever manner DCAMM deems appropriate until the execution of the GMP Amendment or a reasonable period following such execution, at which time, such limitations, if any, shall be rescinded.

4.3. Substantial Completion and Final Acceptance.

The CM shall achieve Substantial Completion of the entire Work, no later than [REDACTED] calendar days after the Notice to Proceed for CM Construction Services, subject to any adjustments in the Contract Time (as defined hereinafter) Approved by DCAMM in accordance with the Contract Documents (the "Substantial Completion Date"). The CM shall achieve Final Acceptance of the Work no later than 90 calendar days after the Substantial Completion Date, subject to adjustments of the Contract Time Approved by DCAMM in accordance with the Contract Documents (the "Final Acceptance Date"). The period of time from the date of the issuance of the first NTP with CM Construction Services to the Final Acceptance Date constitutes the "Contract Time". The Contract Time and the milestone requirements stated above are based on the preliminary Project schedule provided in the RFP and the schedule proposed by the CM in its Proposal, as accepted by DCAMM. The provisions in the Contract Documents concerning the anticipated schedule for the Project and the durations of the **[Remove if N/A CM Early Preconstruction Services,]** CM Preconstruction Services, and CM Construction Services are not

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for the purpose of describing the compensation for any General Construction Costs (as defined below) and do not extend or authorize any extension of the Substantial Completion Date and/or the Final Acceptance Date. The CM may make a claim for extension of the Contract Substantial Completion date and/or the Final Completion date only as provided in, and subject to the limitations specified in, the Contract Documents.

4.4. Time is of the Essence.

The CM acknowledges that the times for Substantial Completion, Final Acceptance, any other milestones for completion of portions of construction, times for submitting proposals for Contract Modifications, and other times set forth in the Contract Documents are essential conditions of this Contract.

4.5. Liquidated Damages

Liquidated damages for this Project shall be assessed as set forth in Article VI of the General Conditions. The agreed liquidated damages amounts are \$ \_\_\_\_\_ per day for each calendar day of delay in achieving Substantial Completion and, following achievement of Substantial Completion, \$ \_\_\_\_\_ per day for calendar day of delay in achieving Final Acceptance.

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

5.1. **Remove if N/A: Early Preconstruction Services.**

Commencing upon the date directed in an NTP issued by DCAMM for CM Early Preconstruction Services, the CM shall work closely with DCAMM and the Designer to perform all tasks required under the Contract Documents, including without limitation, those set forth in **Exhibit C** to this Contract, prior to and up to completion of schematic design and certification of the Project study in accordance with M.G.L. c. 7C as provided in this Article and elsewhere in the Contract Documents (the "CM Early Preconstruction Services"). CM Early Preconstruction Services shall include, without limitation: attend meetings; provide advice and recommendations to DCAMM, the Designer, and consultants during the study and schematic design phase of the Project up through completion of schematic design and certification of the Project study pursuant to M.G.L. c. 7C, by reviewing study and schematic design documents; provide advice and recommendations to DCAMM, the Designer, and consultants relating to value engineering, cost estimating, budgeting, constructability, suitability of materials and equipment, critical path method (CPM) scheduling, phasing, time, methods and sequence of construction, life cycle cost analyses, and the clarity, consistency and coordination of the contents of all documentation; assist in the identification of utility incentives or other rebates for which the Project may qualify and provide information and/or documentation necessary to complete applications for the same; all other services required for projects of the type and scope of this Project and customarily provided by a construction manager and/or required by the CM in the Contract Documents during the early preconstruction phase (i.e. study and schematic design) of such a project.

5.2. CM Preconstruction Services.

Commencing upon the date directed in an NTP issued by DCAMM for CM Preconstruction Services **remove if no Early Precon** (which shall not be issued prior to the completion of

certification of a study concerning the particular Work in accordance with M.G.L. c. 7C), the CM shall work closely with DCAMM and the Designer to perform all tasks set forth in this Article 5.2 and as required under the Contract, including, without limitation, those set forth in **Exhibit C** (“CM Preconstruction Services”). CM Preconstruction Services shall include, without limitation: attend meetings; provide advice and recommendations to DCAMM, the Designer, and consultants during the design development phase of the Project and thereafter as required by reviewing design development and other construction documents as they are developed; provide advice and recommendations to DCAMM, the Designer, and their respective consultants relating to value engineering, estimating, budgeting, constructability, suitability of materials and equipment, critical path method scheduling, phasing, time, methods and sequence of construction, life cycle cost analyses, and the clarity, consistency and coordination of the contents of all documentation during the design development and construction documents phases; assist in the identification of utility incentives or other rebates for which the Project may qualify and provide information and/or documentation necessary to complete applications for the same; participate in the development of the Project master schedule, phasing, and relocation schedule and develop a detailed critical path method schedule that identifies all design activities, permits, and all other activities required to be completed before construction activities can begin and a preliminary construction schedule showing all phasing; develop the scope of work and prepare bid packages in concert with the Designer (DCAMM will provide a template for the Trade Contractor bid packages) for each category of Trade Contractor work to be bid and participate in the prequalification and selection of each Trade Contractor; develop the scope and prepare bid packages in concert with the Designer for each remaining category of contracted work, that is not Trade Contractor work, to be bid and prequalify and select each Subcontractor as defined by Law; all other services required for projects of the type and scope of the Project and customarily provided by a construction manager and/or required by the CM in the Contract Documents during the preconstruction phase of such a project.

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

5.2.2. *Design Review.* The CM shall review, on a continuous basis, development of the Drawings, Specifications, and other design documents produced by the Designer. Unless otherwise Approved, these services shall include preconstruction Building Information Modeling (BIM) Services, which are described more fully in **Exhibit BIM** attached hereto, which is entitled “Building Information Modeling (BIM) List of Design,

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Preconstruction and Construction Services”. The design reviews shall be performed with a group of architects and engineers, who are either employees of the CM or independent consultants under contract with the CM and are identified in CM’s Key Personnel or otherwise Approved. Review of the documents is to discover inconsistencies, errors, and omissions between and within design disciplines. The CM shall consult with DCAMM and the Designer regarding the selection of materials, building systems and equipment, and shall recommend alternative solutions whenever design details affect construction feasibility, schedules, cost, or quality (without, however, assuming the Designer’s responsibility for design), and shall provide other value engineering services to DCAMM. Without limitation, the CM shall review the design documents for clarity, consistency, constructability, maintainability, operability, coordination among trades, coordination between the Specifications and Drawings, compliance with M.G.L. c.149A for procurement, installation and construction, and sequence of construction, including recommendations designed to minimize adverse effects of labor or material shortages. Upon request by DCAMM, the CM shall also provide feedback and review any life cycle cost analyses prepared by the Designer. All reviews required hereunder shall be provided in writing with detailed notations on the Drawings and Specifications and coordinated with a detailed spreadsheet of the notations and recommended solutions in order to track the issues to final resolution, unless another form is requested by DCAMM. DCAMM may require the CM to provide design review comments in electronic format compatible with DCAMM’s current or other form of internal project management software. The CM shall attend meetings as necessary with the Designer and DCAMM in order to discuss and resolve all issues.

5.2.3. *Master Development Schedule.* The CM shall be responsible for developing and maintaining the master development schedule to ensure the timely performance and delivery of the Project in accordance with the Contract. The CM shall coordinate and integrate its Project schedules with the services and activities of DCAMM, the User Agency, and other parties. The requirements provided herein are in addition to and not in limitation of the CM’s obligation to prepare and maintain the baseline critical path method schedule and other schedules as provided in the Contract Documents.

5.2.4. *Cost Estimates.*

(a) [This paragraph should be tailored to meet each Project requirements]. The study for the Project is expected to be certified on or about [put date (month or season) here]. The Project’s schematic drawings, [REMOVE if no Early Preconstruction reflecting the CM’s review as part of CM Early Preconstruction Services,] will be the basis for the first CM detailed estimate. The CM shall prepare for the review of the Designer and approval of DCAMM, [insert number ODC requested] different fully detailed estimates of the Construction Cost of the Project: one each during the [remove if no Early Precon schematic phase,] design development phase and the construction documents phase. Each detailed estimate must be submitted with supporting data including but not limited to unit costs of all materials, equipment and labor hours required to complete the work of all sections of the specification. The CM shall prepare for the review of the Designer and approval of DCAMM, one update estimate

for each design phase following the detailed estimate of the Construction Cost of the Project. The update estimates will be provided at the completion of the schematic phase, design development phase and the construction documents phase. The CM shall provide value engineering analysis and recommendations during design and construction as directed and in order to meet the requirements of the estimated cost of construction set forth in the RFP, as may be updated in writing by an authorized representative of DCAMM during the Project.

- (b) DCAMM may, but shall not be required to, arrange for periodic estimates of Construction Cost to be performed by other consultants or staff of DCAMM. The CM shall work in good faith and in cooperation and coordination with the Designer and any other consultants or staff of DCAMM involved in preparing estimates of Construction Cost to reconcile any differences between cost estimates prepared by the CM and such parties, to clarify assumptions upon which cost estimates are based, and otherwise to address any concerns or questions with respect to such cost estimates raised by the Designer, DCAMM, or such other consultants. If in any case the agreed-upon reconciled estimate of Construction Cost exceeds the construction budget established by DCAMM (which shall be the estimated cost of construction set forth in the RFP unless otherwise communicated in writing by an authorized representative of DCAMM) the CM shall advise and cooperate with DCAMM and the Designer in identifying, specifying, and recommending cost reduction alternatives. Such cost reduction alternatives may include changes in or additional specification of materials, equipment, component systems, types of construction, or other adjustments in the scope or quality of the Project, including contingencies or alternative bid items, so as to facilitate revision of the design of the Project to reduce the Construction Cost so as to comply with the construction budget established by DCAMM as set forth above. Implementation of any of the aforementioned cost reduction alternative shall be subject to Approval, and DCAMM shall have the right, in its sole discretion, to choose which of the cost reduction alternatives developed by the parties shall be implemented, provided, however, that the Designer shall not be required to incorporate any cost reduction alternatives into the design of the Project if doing so would result in a violation of applicable Laws.
- (c) The process and responsibilities of the CM described in this Article shall also apply to any separate cost limits within the construction budget that have been established in writing by an authorized representative of DCAMM for certain phases, components, or elements of the Work.

5.2.5. *Permits and Approvals.* Consistent with the General Conditions, the CM shall assist DCAMM and the Designer in identifying all Permits and Approvals. The CM shall be responsible for obtaining all Permits and Approvals and paying for all such Permits and Approvals and/or user fees. The CM shall perform the Work in accordance with all conditions, mitigation measures, and other requirements of all Permits and Approvals. All applications, requests, appeals, filings, and other documents, materials, and information prepared by the CM to be submitted to governmental authorities in connection with the Permits and Approvals shall be subject to the prior Approval of DCAMM, and shall be delivered to DCAMM sufficiently in advance of the time of their proposed filing or

submission so as to permit a reasonable period for the review and comment of DCAMM and its consultants. If requested by DCAMM at any time, any such documents or materials to be used in connection with the Permits and Approvals may be prepared by DCAMM or other persons designated by DCAMM, and DCAMM or other persons designated by DCAMM may appear on behalf of DCAMM at any hearing, presentation or conference. In addition, the CM shall promptly complete and provide such other documentation as may be required by DCAMM, other agencies of the Commonwealth of Massachusetts, or such other parties as DCAMM may indicate, provided that if the CM believes in any instance that compliance with such requirement materially modifies, enlarges or abridges the CM's duties, obligations, or rights under the Contract Documents, the CM may submit a Change Order Request.

5.2.6. *Risk Management.* The CM shall prepare and maintain a plan for identifying, assessing, and mitigating risks that may impact the Project budget, schedule, or otherwise impede the ability of the CM to perform its obligations hereunder, throughout the life cycle of the Project. Within 30 days of the Effective Date of the Contract (unless a different period is Approved by DCAMM), the CM shall prepare a risk matrix in a form acceptable to DCAMM that sets forth a quantitative and qualitative analysis of Project risks, including but not limited to, the probability and impact of occurrence. If applicable, the CM shall incorporate any comments provided by DCAMM. Upon Approval of the form of risk matrix, the CM shall submit updates to the risk matrix to DCAMM on a quarterly basis throughout the Project.

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

(a) Project status overview including, without limitation, the following:

- (i) Progress report by division of work or area;
- (ii) Quality control/quality assurance report;
- (iii) Safety and loss control report;
- (iv) MBE/WBE businesses and minority and women workforce participation status;

(b) Procurement status report, including, without limitation, a status of MBE/WBE participation;

(c) Project schedule update including, without limitation, a summary schedule (progress bar chart) from the critical path method schedule;

(d) Project cost update, including, without limitation, the following:

- (i) Cost summary;
- (ii) Cash flow update;
- (iii) List of Approved Change Orders;
- (iv) List of outstanding Change Order Requests;

- (e) List of outstanding and Approved CM requests for Construction Contingency use authorization; and
  - (f) Such other reports, logs or documents as DCAMM may reasonably require for the management of the Project.
- 5.2.8. *Executive Summary Progress Report.* On the fifteenth (15<sup>th</sup>) day of each month, or such other day established by DCAMM in writing, the CM shall submit to DCAMM an executive summary progress report in form and content satisfactory to DCAMM. Such report shall include, but not be limited to, a summary of the important information from the submittals listed in Article 5.2.7 and a discussion of the important issues facing the Project as of the date of the report's submittal.
- 5.2.9. *Subcontracts.* Unless otherwise specifically Approved by DCAMM, all Work shall be performed by the CM pursuant to Subcontracts awarded by the CM in accordance with the General Conditions, including, but not limited to, Appendix C: Procedures for Award of Subcontracts.
- 5.2.10. *Preconstruction and Construction Services.* The CM shall perform the CM Preconstruction Services and CM Construction Services, responsibilities and obligations concurrently as necessary during the term of this Contract as directed by DCAMM.

5.3. CM Construction Services.

Commencing upon the date of the Notice to Proceed with CM Construction Services, unless otherwise directed by DCAMM, the CM shall perform all services required under the Contract, including, without limitation, those set forth in this Article 5.3 and **Exhibit C** to this Contract, for the construction and completion of the Project (“CM Construction Services”) as provided in these paragraphs and elsewhere in the Contract Documents. The CM Construction Services shall include, without limitation, the performance of the services, responsibilities, and obligations set forth below in addition to the continued performance of those stated above in Article 5.2.

- 5.3.1. *Construction Cost Monitoring.* The CM shall provide a system of Project cost monitoring and reporting and shall develop cash flow reports and forecasts in such format as Approved by DCAMM to coordinate with the critical path method schedule. The CM shall identify variances between actual costs and its estimated costs and shall immediately advise DCAMM whenever projected costs exceed previous reports. Such reports and other information shall be included in the monthly progress reports to be submitted to DCAMM in accordance with Article 5.2.7 of this Contract.
- 5.3.2. *Quality Assurance/Quality Control.* The CM shall prepare and submit to DCAMM for its approval a quality assurance/quality control program. Such program shall provide that the CM shall be responsible for insuring that adequate quality assurance and quality control programs are developed, implemented and enforced by the CM's staff and all Subcontractors, including an experienced quality manager, employed by the CM, whose sole responsibility shall be quality assurance and quality control and shall be stationed at the Site and who shall be responsible for reviewing and coordinating the quality control

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activities of all Subcontractors and monitoring the implementation and enforcement thereof in connection with all aspects of the Work. The quality manager shall report to DCAMM and its representatives on a weekly basis the status of the program for each trade, and any deficiencies, and a recommended plan for corrective action. Refer to Section 014000 of the Specifications for further requirements of the quality manager.

- 5.3.3. *Prevailing Wage.* Work under this project is subject to the prevailing wage laws, M.G.L. c. 149, §§ 26 - 27H.
- 5.3.4. *Criminal Offender Record Information Check.* All employees and/or prospective employees of the CM, Trade Contractors and other Subcontractors working on this Project may be subject to a CORI (Criminal Offender Record Information) check pursuant to M.G.L. c. 6.
- 5.3.5. *CM Responsibility for Managing Construction.* The CM shall be responsible for managing, coordinating, and supervising all aspects of the Work as described in this Contract, the General Conditions, and all other Contract Documents.
- 5.3.6. *Conditions Where CM May Perform Work.* The CM must notify DCAMM if it intends to self-perform or submit bids to perform any of the Work rather than bidding such work to a Subcontractor (including Trade Contractors). The CM may submit its qualifications to bid on trade contract or subcontract work in accordance with the Subcontractor procurement process set forth in the General Conditions; provided that the CM: has provided advance written notification to DCAMM of its intent to so submit; customarily performs the work for which it submits qualifications; must perform the work with employees on its own payroll; and meets all the requirements of the selection process. The CM may also self-perform work included in Division 1 of the Specifications made necessary by an emergency to protect life or to prevent serious property damage pursuant to an advance written Approval where possible. Where advance written Approval is not possible due to an extreme emergency, written Approval must be obtained from DCAMM as soon as possible after work begins to alleviate the emergency.
- 5.3.7. *Building Information Modeling (BIM) Coordination.* The CM firm's responsibility regarding construction related BIM services are set forth in Section 013129 of the Specifications and in **Exhibit BIM** attached hereto.

5.4. General Requirements for **REMOVE if no Early Preconstruction** CM Early Preconstruction, / Preconstruction and Construction Services.

In addition to all other requirements of the Contract Documents, the following requirements shall apply to the CM's performance of the **REMOVE if no Early Preconstruction** CM Early Preconstruction Services, / CM Preconstruction Services, and the CM Construction Services.

- 5.4.1. *Design Related.* The recommendations and advice of the CM concerning design modifications or alternatives shall be subject to the review and approval of DCAMM. If the CM recognizes or discovers that any portion of the Drawings and Specifications is at variance with applicable Laws, the CM shall promptly notify the Designer and DCAMM

in writing, and if the CM fails to promptly so notify the Designer and DCAMM, having recognized or discovered such variance, the CM shall be liable for an equitable portion of any loss, cost or damage sustained by DCAMM on account of such variance.

- 5.4.2. *CM's Organization and Staff.* The CM shall establish an organization and lines of communication required to carry out the requirements of this Contract in order to organize and direct the complete construction of the Project. A listing of the CM's Key Personnel is set forth in **Exhibit C** attached hereto and incorporated herein.
- (a) Within thirty (30) days after the Effective Date, the CM shall furnish to DCAMM a detailed organizational chart for Approval. Such organizational chart shall reflect CM's Key Personnel unless otherwise Approved. The organization chart shall expand upon and update the personnel information and breakdown set forth in **Exhibit C**, and shall identify each staff position, the anticipated start date and end date for each identified staff person and the estimated personnel cost on account of each such staff person. Upon Approval by DCAMM, which approval shall not be unreasonably withheld, the organizational chart shall supersede and replace the personnel information and breakdown set forth on **Exhibit C**. The CM's management and field supervisory staffing shall be in accordance with the Approved organizational chart. All modifications to the Approved organizational chart must be Approved, such Approval not to be unreasonably withheld.
  - (b) All of CM's Key Personnel shall be available for and actively participate in the performance of the services provided under the Contract Documents unless such failure is for good cause beyond the control of the CM. The CM project executive identified in CM's Key Personnel shall be the CM's senior person on Site and shall have full authority to accept communications to, make decisions for, and otherwise fully represent the CM in connection with all matters relevant to the Project. The CM's project manager(s) identified in CM's Key Personnel shall be responsible for one or more portions of the Work as assigned by the CM project executive. A CM project manager may be the designee of the CM project executive to exercise the CM project executive's responsibilities in the CM project executive's absence.
  - (c) No substitution of any assigned and Approved members of CM's Key Personnel shall be made by the CM without the prior written consent of DCAMM in its sole discretion. Before any such substitution is made, the CM shall submit to DCAMM the qualifications of any proposed replacement. The removal or replacement without DCAMM's consent of any of CM's Key Personnel, other than as a result of retirement, disability, death or bona fide termination of employment, shall constitute a material breach of this Contract and DCAMM reserves the right to terminate the Contract and assess damages or take other appropriate action if deemed necessary.
  - (d) DCAMM may require replacement of any member of the CM's staff (including CM's Key Personnel) with or without cause, and may require increased levels of staffing by the CM, at no increase in the Contract Price, if necessary to achieve proper production, management, administration, or superintendence, or if otherwise necessary to maintain progress in accordance with the Progress Schedule. The CM

certifies that the CM and each of CM's Key Personnel comply with all licensing, registration, and other requirements applicable to the CM and the performance of its services hereunder pursuant to applicable Laws. Furthermore, DCAMM shall have the right to require the CM and any Subcontractor to replace any on-site personnel who DCAMM reasonably finds objectionable with other personnel Approved by DCAMM.

**Article 6. Contract Price; Guaranteed Maximum Price**

6.1. Contract Price.

6.1.1. DCAMM shall pay to the CM in current funds for the CM's proper performance of the Contract and completion of the Work, the Contract Price. The total payments to the CM shall not exceed the Guaranteed Maximum Price agreed to by the Parties, subject to authorized additions and deductions as provided in the Contract Documents. The amount of monthly payments shall be based solely on the services actually performed and costs actually incurred by the CM, as set forth below, and DCAMM shall be entitled to monitor and audit all Project costs. Payments shall be requested by the CM and processed by DCAMM in accordance with Article VIII of the General Conditions.

6.1.2. For Change Orders or Contract Modifications authorized by DCAMM pursuant to the Contract Documents, the Contract Price shall only be adjusted as provided in Article 6.4.7 below and Article VII of the General Conditions. After agreement by DCAMM and the CM on a GMP and execution of the GMP Amendment, as provided in Article 6.3, any increase or decrease in the Contract Price Approved by DCAMM by execution of a Change Order shall increase or decrease the GMP, accordingly.

6.2. Payment for ~~REMOVE references to Early Preconstruction if not applicable~~ CM Early Preconstruction Services and CM Preconstruction Services.

6.2.1. ~~REMOVE if not applicable:~~ *Early Preconstruction General Conditions Costs.* In consideration of the performance by the CM of the CM Early Preconstruction Services, DCAMM shall pay, as full and complete compensation, general conditions costs incurred in the performance of such CM Early Preconstruction Services a total amount not to exceed the "Early Preconstruction General Conditions Costs" specified in Section A of **Exhibit B** of this Contract ("Early Preconstruction General Conditions Costs"). From the commencement of the CM Early Preconstruction Services through the completion of CM Early Preconstruction Services, the CM shall submit a monthly invoice to DCAMM requesting payment of the Early Preconstruction General Conditions Costs for the preceding month (or, if applicable, partial month). The amount of such monthly payments shall be based solely on the number of hours worked by the CM's personnel and rates for CM early preconstruction personnel set forth in Section B of **Exhibit B** of this Contract for the time as Approved by DCAMM and actual expenses incurred for "Additional

Categories of CM Early Preconstruction General Conditions Costs” up to the not-to-exceed amount set forth in **Exhibit B** of this Contract.

- 6.2.2. **REMOVE if not applicable:** *CM Early Preconstruction Fee.* In further consideration of the performance by the CM of the CM Early Preconstruction Services, DCAMM shall pay to the CM a fee associated with CM Early Preconstruction Services as identified in Section A of **Exhibit B** of this Contract (the “CM Early Preconstruction Fee”) in monthly payments. The CM shall include the CM Early Preconstruction Fee percentage as applied to the Early Preconstruction General Conditions Costs on the monthly invoices for the Early Preconstruction General Conditions Costs for the preceding month or, if applicable, partial month.
- 6.2.3. *Preconstruction General Conditions Costs.* In consideration of the performance by the CM of the CM Preconstruction Services, DCAMM shall pay, as full and complete compensation, general conditions costs incurred in the performance of such CM Preconstruction Services an amount not to exceed the “Preconstruction General Conditions Costs” specified in Section A of **Exhibit B** of this Contract (“Preconstruction General Conditions Costs”). From the commencement of the CM Preconstruction Services through the completion of CM Preconstruction Services, the CM shall submit a monthly invoice requesting payment for the Preconstruction General Conditions Costs. The amount of such monthly payments shall be based solely on the number of hours worked by the CM’s personnel and rates for CM preconstruction personnel set forth in Section B of **Exhibit B** of this Contract for the time as Approved by DCAMM and actual expenses incurred for “Additional Categories of CM Preconstruction General Conditions Costs” up to the not-to-exceed amount set forth in Section B of **Exhibit B** of this Contract.
- 6.2.4. *CM Preconstruction Fee.* In further consideration of the performance by the CM of the CM Preconstruction Services, DCAMM shall pay to the CM a fee associated with CM Preconstruction Services as identified in Section A of **Exhibit B** of this Contract (the “CM Preconstruction Fee”) in monthly payments. The CM shall include the CM Preconstruction Fee percentage as applied to the Preconstruction General Conditions Costs on the monthly invoices for the Preconstruction General Conditions Costs for the preceding month or, if applicable, partial month.
- 6.3. Guaranteed Maximum Price Negotiations and GMP Amendment.
- 6.3.1. *GMP Components.* The GMP shall be established in accordance with the process described below in Articles 6.3.2 and 6.3.3 and shall specifically include the following:
- (a) All costs associated with the Work (including, without limitation, CM’s actual costs for bonds and insurance) indicated as “General Conditions” in the “Cost Classification Guide” included in **Exhibit B** to this Contract (“Construction General Conditions Costs”), which shall have a dollar value equal to the “Construction General Conditions Costs” percentage stated in Section A of **Exhibit B** to this

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Contract (unless modified in accordance with this Article below) multiplied by the Hard Costs of the Work (as defined below); plus

- (b) All costs associated with the Work that are not General Conditions Costs or DCAMM supplied, which shall include, without limitation, all costs indicated as “Hard Costs” in the “Cost Classification Guide” included in **Exhibit B** to this Contract and costs set forth below in Article 6.4.3 (“Hard Cost of the Work”); plus
- (c) A fee to the CM, which shall be calculated as the “CM Fee” percentage stated in Section A of **Exhibit B** to this Contract (“CM Fee”) multiplied by the sum of the Hard Cost of the Work and the Construction General Conditions Costs; plus
- (d) A construction contingency, which shall have a dollar value equal to the “GMP Construction Contingency” percentage stated in Section A of **Exhibit B** to this Contract multiplied by the Hard Cost of the Work (“Construction Contingency”).

The parties may agree to reduce the percentage used to calculate the Construction General Conditions Costs as part of GMP negotiations if the Hard Cost of the Work, as estimated at the time of GMP negotiations, has increased by at least 20 percent over the estimated hard cost of the work stated in the RFP. In no event shall the Construction General Conditions Costs amount to a higher percentage of the Hard Cost of the Work than the percentage stated in Section A of **Exhibit B** to this Contract.

6.3.2. *CM’s GMP Proposal.* The GMP may be established by DCAMM and the CM once the Drawings and Specifications are at least sixty (60) percent complete, as determined by the Designer. On the date agreed upon by DCAMM and the CM, or, if no such date is agreed upon, on the date established by DCAMM by written notice to the CM, which date shall be at least 20 days after the date of such written notice, the CM shall submit to DCAMM a proposed GMP in the format set forth in **Exhibit GMP** to this Contract or otherwise acceptable to DCAMM, which shall be the sum of the estimated total Hard Cost of the Work, Construction General Conditions Costs, CM Fee, and Construction Contingency. The CM shall include with the GMP proposal a written statement of its basis in form and substance satisfactory to DCAMM, which shall include at least:

- (a) a list of the Project design documents upon which the GMP proposal is based;
- (b) a list of allowances and a statement of their basis;
- (c) a list of any assumptions, qualifications and clarifications made by the CM in the preparation of the GMP proposal to supplement the information contained in the Project design documents;
- (d) a statement that the proposed GMP is based on the latest Approved baseline critical path method schedule and the Substantial Completion Date specified in this Contract;
- (e) the proposed GMP, including: a detailed statement of the actual and estimated Hard Cost of the Work organized by CSI (Construction Specification Institute) format with quantities, units, and unit rates; all Construction General Conditions Costs; allowances; CM Fee; Construction Contingency; **REMOVE references to Early Precon if not applicable** Early Preconstruction General Conditions Costs; CM Early

**Preconstruction Services Fee;** / Preconstruction General Conditions Costs; CM Preconstruction Fee; and other items that comprise the GMP;

- (f) a schedule of applicable alternate prices;
- (g) a schedule of applicable unit prices; and
- (h) The time limit for acceptance of the GMP proposal (which shall not be less than 90 days).

- 6.3.3. *GMP Negotiations.* The CM shall meet with DCAMM and the Designer to review the GMP proposal and the written statement of its basis. In the event that DCAMM or the Designer discover any inconsistencies or inaccuracies in the GMP proposal and accompanying information, they shall promptly notify the CM, which shall make appropriate revisions thereto. DCAMM may elect in its sole discretion to accept or not to accept the CM's GMP proposal. The CM understands that any agreement on a GMP shall be subject to Approval of DCAMM. Prior to DCAMM's acceptance of the CM's GMP proposal, the CM shall not incur any cost to be compensated by DCAMM except as provided in this Contract or as DCAMM may specifically authorize in writing. If DCAMM accepts the CM's GMP proposal, DCAMM and CM shall execute and deliver within fifteen (15) days after such acceptance an amendment to this Agreement, in form attached to this Contract as Exhibit GMP or otherwise acceptable to DCAMM and the CM, incorporating the items listed in Article 6.3.2 above, subject to any modifications agreed upon by the parties (the "GMP Amendment"). The CM shall execute and deliver together with the GMP Amendment performance and payment (labor and materials) bonds in the form provided by DCAMM, executed by a surety licensed by the Commonwealth of Massachusetts Division of Insurance. Each such bond shall be in the amount of the GMP Amendment.
- 6.3.4. *Failure to Negotiate GMP.* If DCAMM does not accept the CM's GMP proposal, DCAMM may elect to solicit bids or proposals for the construction of the Project from other contractors, using any solicitation method or methods chosen by DCAMM, consistent with applicable Laws and procedures, or, if DCAMM determines that it is in its best interest to do so, DCAMM may: 1) enter into negotiations for a contract with one or more of the offerors that submitted proposals in response to the RFP for this Contract; or 2) if the Project is substantially complete, DCAMM may unilaterally issue a GMP, which the CM may dispute in accordance with Article VII, Paragraph 5.D. If DCAMM does not accept the CM's GMP proposal within the time limit for acceptance specified in the GMP proposal, as it may be extended by agreement of the parties, then this Contract may terminate upon the completion of the CM's performance of the Work then in progress or upon notice from DCAMM as provided in the General Conditions.
- 6.3.5. *Early Packages.* The GMP Amendment shall be executed prior to the commencement of CM Construction Services. If, in the sole discretion of DCAMM, the implementation of one or more early construction packages is desirable, DCAMM and the CM shall execute a separate amendment ("Early Package Amendment") setting forth an agreed upon not-to-exceed maximum price (inclusive of Hard Cost of the Work, Construction General Conditions Costs, CM Fee, and Construction Contingency included in such package) for

each respective early construction package (an “Early Package Maximum Price”), which shall be established in accordance with the process set forth in Articles 6.3.1 and 6.3.2 above and which costs shall be administered in accordance with Article 6.4 below. The amount of any such Early Package Maximum Price shall be accounted for in the subsequent CM GMP proposal and the GMP Amendment. The CM, and each Trade Contractor and Subcontractor, shall comply with all provisions of this Agreement in performing any early construction package(s).

6.4. Payments for CM Construction Services.

6.4.1. *Total Not-to-exceed Amount.* In consideration of the performance by the CM of the CM Construction Services, DCAMM shall pay, as full and complete compensation, costs incurred by the CM in the completion of the Work an amount not-to-exceed the GMP less the costs attributable to **REMOVE if not applicable CM Early Preconstruction Services and** CM Preconstruction Services pursuant to Article 6.2 above. Starting from the commencement of the CM Construction Services the CM shall submit a monthly invoice to DCAMM requesting payment for the CM Construction Services for the preceding month (or, if applicable, partial month).

6.4.2. *Construction General Conditions Costs.*

(a) Construction General Conditions Costs shall be reimbursed as they are incurred by the CM and only to the extent that such costs are itemized in the CM’s monthly invoice submitted by the CM for the preceding month in accordance with the Contract Documents. The CM shall submit to DCAMM with each invoice complete backup documentation in sufficient detail acceptable to DCAMM for all invoiced Construction General Conditions Costs. Personnel costs included in the Construction General Conditions Costs shall be based solely on the number of hours worked by the CM’s personnel and rates as set forth in the GMP Amendment (or, if applicable, an Early Package Amendment) for the time and rates shown as Approved by DCAMM. Throughout the duration of the Project, the total amount paid to the CM for Construction General Conditions Costs shall not exceed the amount for Construction General Conditions Costs shown in the GMP Amendment (or, if applicable, an Early Package Amendment) or the actual costs incurred by CM for such items, whichever is less. When submitting the final application for payment, in the event that the total costs for Construction General Conditions Costs incurred by the CM is less than the amount shown in the GMP Amendment (or, if applicable, an Early Package Amendment) for Construction General Conditions Costs, the GMP (or, if applicable Early Package Maximum Price) shall be reduced by an amount equal to the sum of the savings realized in the total Construction General Conditions Costs plus the CM Fee on such amount. If the total amount of actual Construction General Conditions Costs incurred by the CM exceeds the amount shown in the GMP Amendment (or, if applicable, an Early Package Amendment) for Construction General Conditions

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Costs, the excess costs shall be borne by the CM and shall not be reimbursed by DCAMM.

- (b) Either DCAMM or the CM, subject to the Approval of DCAMM, may request that one or more specific items included in Construction General Conditions Costs be included in a Subcontractor bid or proposal package or otherwise separately procured. Whether included in a Trade Contractor bid package or other Subcontractor proposal or otherwise separately procured, each such item shall be bid as an alternate and, if accepted by DCAMM, the cost of such item shall be considered part of the Hard Cost of the Work, and the amount of the Construction General Conditions Payment due hereunder shall be reduced by the total cost of such item.
- (c) The costs for payment bond, performance bond and builder's risk insurance that appear in **Exhibit B** to this Contract shall be adjusted to be based upon the agreed upon GMP amount (or, if applicable, Early Package Maximum Price amount). Such adjustment will be accounted for in the GMP Amendment (or, if applicable, Early Package Amendment). There will be no CM Fee attributable to any such adjustment.

6.4.3. *Hard Cost of the Work.* The Hard Cost of the Work shall include, without limitation, the items set forth below in this Article 6.4.3. This Article and the "Cost Classification Guide" included in **Exhibit B** to this Contract are intended to complement each other and any cost item listed or described in either this Article 6.4.3 or **Exhibit B** to this Contract as a Hard Cost of the Work shall be deemed to be included in the other. When submitting the final application for payment, in the event that the total actual cost for the Hard Cost of the Work incurred by the CM is less than the amount shown in the GMP Amendment (or, if applicable, an Early Package Amendment) for the Hard Cost of the Work, the GMP (or, if applicable Early Package Maximum Price) shall be reduced by an amount equal to the sum of the savings realized in the total Hard Cost of the Work plus the CM Fee on such amount. If the total amount of actual Hard Cost of the Work incurred by the CM exceeds the amount shown in the GMP Amendment (or, if applicable, an Early Package Amendment) for the Hard Cost of the Work, the excess costs shall be borne by the CM and shall not be reimbursed by DCAMM.

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

- (a) *Subcontract costs.* Payments made by the CM to any Subcontractor in accordance with the requirements of an Approved Subcontract.
- (b) *Costs of materials and equipment incorporated in the completed construction.* Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction, less all discounts and rebates. Costs of materials described herein which are in excess of those actually installed, but which are required to provide reasonable allowance for waste and spoilage. Unused excess materials, if any, shall be delivered to DCAMM at the completion of the Work or, at

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DCAMM's option, shall be sold by the CM. Amounts realized, if any, from such sales shall be credited to DCAMM as a deduction from the Hard Cost of the Work.

- (c) *Emergencies and repairs to damaged or nonconforming Work.* Costs incurred by the CM: in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in the General Conditions; in repairing damaged Work, provided that such damage did not result from the fault or negligence of the CM or the CM's personnel or any Subcontractor, and only to the extent that the cost of such repairs is not recoverable by the CM from others or the CM is not compensated therefore by insurance or otherwise; in correcting defective or nonconforming Work, provided that such defective or nonconforming Work did not result from the fault or negligence of the CM or the CM's personnel or any Subcontractor or material supplier, and only to the extent that the cost of correcting the defective or nonconforming Work is not recoverable by the CM from third parties or the CM is not compensated by insurance or otherwise.
- (d) *Miscellaneous hard costs.* Subcontractor bond premiums; royalties and license fees paid for the use of a particular design, process, or product required by the Contract Documents in accordance with the General Conditions; other costs incurred in the performance of the Work if and to the extent Approved in advance as Hard Costs of the Work.

6.4.4. *CM Fee.* The CM Fee shall include and shall represent full compensation to the CM on account of the CM's profit and all overhead and other costs, expenses, and liabilities incurred by the CM in connection with the Work or otherwise in the performance of the Contract, for which the CM is not otherwise compensated through the Construction General Conditions Costs or otherwise included in the GMP (or, if applicable, Early Package Maximum Price). The CM shall include the CM Fee percentage multiplied to the Hard Cost of the Work and Construction General Conditions Costs on the monthly invoices for the CM Construction Services.

6.4.5. *Construction Contingency.* The Construction Contingency shall be available only upon Approval by DCAMM to cover the net amount of any additional costs resulting from unforeseen conditions and events not evidenced at the time that the CM awards a Subcontract, or the parties execute the GMP Amendment or Early Package Amendment, as applicable, to the extent that such conditions or events do not result in or constitute a change in the Work. Any claim against the Construction Contingency shall be submitted in accordance with Article VII of the General Conditions. Examples of such unforeseen conditions and events include, but are not limited to, the following:

- (a) unanticipated cost overruns on the CM's procurement of Subcontracts or other purchases of materials or labor costs, provided that the same are not caused by the fault, negligence, or breach of contract of the CM or any Subcontractor;
- (b) expediting or acceleration costs required to meet the latest Approved baseline critical path method schedule, as long as the same are not made necessary by the fault or negligence of the CM or any Subcontractor; and

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- (c) such other unforeseen events and conditions as may be specified in the Contract Documents as chargeable to the Construction Contingency.

After execution of the GMP Amendment, if the contract price of any non-Trade Contractor Subcontract as awarded is less than or greater than the amount carried for such Subcontract in the GMP breakdown, the Construction Contingency shall be adjusted by the amount of such savings or overage, respectively. If, after the execution of the GMP Amendment, the contract price of any Trade Contractor contract as awarded is less than or greater than the amount carried for such Trade Contractor contract in the GMP breakdown, the GMP shall be adjusted by the amount of such savings or overage, respectively. No CM Fee shall be applied to the amount of any GMP adjustment on account of reconciliation with the actual contract price of Trade Contractor contracts as awarded. However, DCAMM, in its discretion, may direct such GMP reconciliation to be otherwise processed in accordance with Article VII of the General Conditions.

The CM shall list the Construction Contingency as a line item on its Schedule of Values and shall track its use on the Schedules of Values submitted with its periodic applications for payment. The CM recognizes and agrees that the CM shall be entitled to collect only those portions of the Construction Contingency that DCAMM Approves. The CM further recognizes and agrees that the unused portion of the Construction Contingency at the time DCAMM issues a Certificate of Agency Use and Occupancy to the CM pursuant to Article VI of the General Conditions, if any, shall be and shall remain the property of the DCAMM, and any costs incurred by the CM in excess of the Construction Contingency, due to conflicts, ambiguities, overlaps, omissions, or lack of coordination in the Subcontractors' bid packages shall be borne solely by the CM and shall not be the basis of any claim by the CM against DCAMM.

Costs authorized to be paid from the Construction Contingency by this Article shall be paid to the CM as Hard Cost of the Work only if and to the extent reasonably Approved by DCAMM. The Construction Contingency shall be reduced by the net amount of the additional Hard Cost of the Work resulting from the use of the Construction Contingency as authorized by this Article.

The CM shall not receive any CM Fee in connection with any use of the Construction Contingency.

- 6.4.6. *Allowances.* For cost items identified in the GMP Amendment (or, if applicable, Early Package Amendment) as allowances, costs shall be reimbursed as they are incurred by the CM and only to the extent that such costs are itemized in the CM's monthly invoice submitted by the CM for the preceding month in accordance with the Contract Documents. The CM shall submit to DCAMM with each invoice complete backup documentation in sufficient detail acceptable to DCAMM for all invoiced allowances. Overruns in the actual costs incurred by the CM (as evidenced by backup acceptable to DCAMM) for allowances shall be compensated from the Construction Contingency, provided that the CM shall properly submits a request for Approval of such use of Construction Contingency funds in accordance with Article VII of the General

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Conditions. If actual costs incurred by the CM for any allowance item are less than the amount carried for such item in the GMP (or, if applicable, Early Package GMP), such savings shall be transferred to the Construction Contingency and only made available for disbursement for other costs upon Approval by DCAMM in accordance with the Contract Documents. General allowances for unidentified expenses, including, but not limited to additional contingency amounts in Subcontracts, shall not be permitted except as specifically Approved by DCAMM.

6.4.7. *Changes in the Work.* If the CM performs additional work of the type described in **Exhibit B** of this Contract under a Change Order Approved by DCAMM, compensation, if any, due to the CM shall be computed in accordance with Article VII of the General Conditions; otherwise, DCAMM shall have no obligation to compensate the CM on account of the cost of the Work for any amounts exceeding the total payments as set forth in the GMP Amendment (or, if applicable, Early Package Amendment). DCAMM may make changes in the Work when DCAMM considers it to be necessary or desirable, as further provided in Article VII of the General Conditions.

6.5. Retainage.

DCAMM shall retain five percent (5%) from the amount approved for payment in the monthly applications for payment, as provided in the General Conditions. Such retainage shall be applied with respect to all amounts payable under the application for payment submitted in accordance with Article VIII of the General Conditions, including the Hard Cost of the Work, the CM Fee and the applicable Construction General Conditions Costs. Retainage shall be paid as provided in the General Conditions.

6.6. Non-Compensable Costs.

The Contract Price shall not include any of the items set forth below:

- (a) Salaries, bonuses and other compensation of the CM's personnel stationed at the CM's principal offices, or other offices, except the Site office for this Project or as included in Approved personnel performing work on the Project.
- (b) Expenses of the CM's principal offices or other offices, except the Site office for this Project (including, without limitation, in-house computer costs, and other costs of doing business, services, and related expenses to maintain such offices).
- (c) Overhead, profit, and general expenses of any kind, including but not limited to office or fabrication shop overhead and drafting and printing costs, beyond the **REMOVE if not applicable** CM Early Preconstruction Fee, / CM Preconstruction Fee, and CM Fee, except as specifically provided in Section B of **Exhibit B** of this Contract and the GMP Amendment (or, if applicable, Early Package Amendment).
- (d) The CM's capital expenses, including interest on the CM's capital employed for the Work.

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- (e) Costs of machinery and equipment owned or rented by the CM, except as specifically provided in Section B of **Exhibit B** of this Contract and the GMP Amendment (or, if applicable, Early Package Amendment).
- (f) Costs incurred due to the fault, negligence or breach of contract of the CM, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, death or injury to person or damage to property, the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, unanticipated cost overruns incurred by the CM in the procurement of Subcontracts, materials or labor, and making good damage to property not forming part of the Work, except: (i) to the extent reimbursement is received through the recovery of insurance proceeds, or (ii) to the extent such items may be charged to the Construction Contingency pursuant to Article 6.4.5.
- (g) Cost for purchase and maintenance of tools, materials, supplies and facilities not consumed during construction or incorporated into the Work, except as specifically provided in Section B of **Exhibit B** of this Contract and the GMP Amendment (or, if applicable, Early Package Amendment).
- (h) Penalties, fines or costs imposed by governmental authorities in connection with, or resulting from any violation of or noncompliance with applicable Laws by the CM or any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.
- (i) Any legal fees incurred by the CM, unless the same are incurred at the written direction, or with the prior written approval, of DCAMM.
- (j) Travel or meal expenses and personnel relocation expenses, except as specifically provided in Section B of **Exhibit B** of this Contract and the GMP Amendment (or, if applicable, Early Package Amendment).
- (k) **REMOVE if not applicable** Early Preconstruction General Conditions Costs, / Preconstruction General Conditions Costs and Construction General Conditions Costs in excess of the total of all **REMOVE if not applicable** Early Preconstruction General Conditions Costs, / Preconstruction General Conditions Costs and Construction General Conditions costs, respectively as set forth in Section A in **Exhibit B** of this Contract and the GMP Amendment (or, if applicable, Early Package GMP Amendment).
- (l) Any cost incurred by the CM as a result of knowing violation of or failure to comply with this Contract or the other Contract Documents by the CM.
- (m) Costs which would cause the GMP (or, if applicable, Early Package Maximum Price) to be exceeded.
- (n) Costs incurred by the CM after final payment; provided, however, that to the extent there is Construction Contingency remaining at final payment, such Construction Contingency shall be available to pay costs incurred during the one year period after final payment, but only if Construction Contingency would be available, subject to

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reasonable Approval by DCAMM, to pay such costs had such costs been incurred prior to final payment.

6.7. Discounts, Rebates, Refunds and Expenses.

Cash discounts obtained on payments made by the CM shall accrue to DCAMM if (a) before making the payments the CM included them in an application for payment and received payment therefore from DCAMM, or (b) DCAMM has deposited funds with the CM with which to make payments; otherwise, cash discounts shall accrue to the CM. The CM shall notify DCAMM of the availability of any cash discounts so that DCAMM may elect to pay or deposit such funds with the CM in order to obtain such cash discount. Such cash discounts and any other trade discounts, rebates, refunds and other amounts received from sales of surplus materials and equipment shall be credited to the Hard Cost of the Work, and the CM shall make provisions so that they can be secured and credited accordingly. DCAMM anticipates an energy rebate for this Project. CM shall apply for the rebate; however, the full amount of the rebate shall be paid to DCAMM.

**Article 7. Accounting Records**

7.1. CM Records Retention.

The CM shall check all materials, equipment and labor entering into the Work, and shall keep such full and detailed accounts and exercise such controls as may be necessary for proper accounting and financial management under this Contract. All books and records shall be maintained in accordance with generally accepted accounting principles, consistently applied. Without limitation, the CM shall comply with the requirements set forth in Article XI of the General Conditions. DCAMM and its authorized representatives shall, upon request by DCAMM, be afforded copies of, and at all times shall be afforded access to, all of the CM's records, books, correspondence, instructions, drawings, receipts, invoices, vouchers, memoranda, estimates, budgets, breakdowns, accounting data, bid proposals, cost control information and any other documents and data relating to this Contract, including data in electronic media or any other media (collectively, "records") and the CM shall preserve all such records for a period of six (6) years, or for such longer period as may be required by Law, after final payment is made to the CM in accordance with the Contract Documents. With respect to work performed by the CM's own forces on a lump sum basis, the CM shall only be required to maintain certified payrolls, documentation required by the Appendix A to the General Conditions: Equal Employment Opportunity, Non-Discrimination and Affirmative Action Program, and such other records as are required by applicable Laws or the terms of the Contract Documents.

7.2. DCAMM Right to Inspect Records.

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

7.3. Subcontractor Records Retention.

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Subcontractors shall have the same obligations to maintain books and records and to permit audits by the CM or DCAMM as are applicable to the CM under the Contract Documents.

7.4. Overcharge.

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

**Article 8. Equal Employment Opportunity, Nondiscrimination and Affirmative Action**

The CM and all of its Subcontractors shall comply at all times and in all respects with applicable Laws affecting or regulating employment of persons in connection with the Work, and with the General Conditions, including but not limited to Appendix A: Equal Employment Opportunity, Non-Discrimination and Affirmative Action Program, and all other provisions in the Contract Documents relating to equal employment opportunity, nondiscrimination and affirmative action.

**Article 9. Miscellaneous Provisions**

9.1. Successors and Assigns.

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

9.2. Additional Information.

Recognizing that DCAMM may find it necessary during the progress of the Work to establish the current status of performance under the Contract Documents, the CM shall, without

limitation of any other requirements of the Contract Documents, promptly provide upon request statements, documents, or information to DCAMM or others regarding the status of the Work, compliance of the Work with the Contract Documents, compliance by the CM or any Subcontractor with the Contract Documents, the names of Subcontractors or suppliers, amounts due or to become due, amounts previously paid to Subcontractors or suppliers, estimates of the portion of the Work completed and the cost of completing the Work, and such other matters within the scope of the CM's performance under the Contract Documents as DCAMM may reasonably require.

9.3. Information Confidential.

Except as required for the discharge of its duties to DCAMM under this Contract, or required by subpoena or court order, the CM and any of its Subcontractors agree to hold all information, documents, and materials obtained or developed in connection with its performance under this Contract (including, without limitation, 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) that the CM and any of its Subcontractors should reasonably know to be of a confidential or sensitive nature ("Confidential Information") in the strictest confidence, and shall not communicate, release, or disclose Confidential Information in any to any third party without the prior written Approval by DCAMM. The CM shall not use any Confidential Information other than for the performance of the Work under this Contract. The CM shall inform all persons to whom any such Confidential Information has been or will be communicated, released, or disclosed of the privileged and confidential nature of Confidential Information, and shall ensure that all necessary steps are taken so that such Confidential Information is treated confidentially. Without limiting the foregoing, if the Project is a designated "Security Sensitive Information" project, the CM shall execute separate "Security Sensitive Information Procedures" and confidentiality agreements and shall comply with such document protection requirements as may be referenced in said agreement.

9.4. Governing Law.

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

9.5. No Personal Liability.

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

9.6. Consequential Damages.

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

9.7. Conflict of Interest.

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

9.8. Sexual Harassment and Workplace Violence Prevention.

The CM shall promote a workplace that is free from sexual harassment and workplace violence, and to require all of its subcontractors to agree to the same. The Commonwealth does not tolerate sexual harassment, workplace violence, or a hostile work environment. It is the goal of the Commonwealth of Massachusetts to promote a workplace where people treat each other with dignity and respect. This applies to all Commonwealth employees, consultants, contractors and subcontractors regardless of tier, and covers actions within, by, among, and across these groups as they interact with each other. Without limiting its other rights and remedies of removal and/or termination, DCAMM reserves the right to remove or terminate individuals and/or contractors whose conduct violates any of the provisions of this paragraph.

9.9. Termination of Contract.

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

9.10. Exhibits.

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

Exhibit A	Additional Insurance Provisions
Exhibit B	Price Detail
Exhibit C	Additional Scope Information
Exhibit D	Prevailing Wage Rates
Exhibit E	Forms Used During Contract Award and Execution
Exhibit BIM	Building Information Modeling (BIM) List of Design and Preconstruction Services
Exhibit GMP	GMP Template

**Article 10. Certifications.**

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

**Article 11. Minority Business Enterprise and Women Business Enterprise Participation Goals and Minority/Women Workforce Utilization Percentages.**

The applicable goals, if any, for minority business enterprise and woman business enterprise participation established for this Contract are as follows:

The separate Minority Business Enterprise and Women Business Enterprise (MBE & WBE) participation goals for this Contract are: \_\_\_\_\_ % MBE and \_\_\_\_\_ % WBE of the GMP. Please note that only firms SDO certified as MBE or WBE can be credited toward meeting project MBE or WBE goals.

The applicable minority workforce utilization percentage is 15.3%.

The women workforce utilization percentage is 6.9%.

**Article 12. Veteran-Owned Business Enterprises Benchmark and Other Participation.**

The Commonwealth encourages and monitors the participation of Service-Disabled Veteran-Owned Business Enterprises (“SDVOBE”) and Veteran Business Enterprises (“VBE”) on its construction projects. The benchmark for SDVOBE and VBE participation on the project is 3%. The Commonwealth also encourages the participation of Portuguese Business Enterprises (PBE),

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Lesbian, Gay, Bisexual, and Transgender Business Enterprises (LGBTBE); and Disability-Owned Business Enterprises (DOBE) on its contracts.

*Remainder of page intentionally blank. Signatures on following page.*

**SIGNATURES**

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

**CONSTRUCTION MANAGER**

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

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

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

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

**DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE**

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

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

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

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

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

**Attach Exhibits A, B, C, D, E, BIM, and GMP**

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**EXHIBIT A TO THE OWNER-CONSTRUCTION MANAGER AGREEMENT**

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**Additional Insurance Provisions**

**(Insert any additions or modifications to the Insurance Requirements contained in Article XIV of the General Conditions of the Contract here or indicate “none”)**

**END OF EXHIBIT A**

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**EXHIBIT B TO THE OWNER-CONSTRUCTION MANAGER AGREEMENT**

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*Form of Exhibit B appears on the following pages. A final Exhibit B will be completed with amounts negotiated during the CM's selection in accordance with M.G.L. c. 149A and as set forth in the RFP will be inserted in the Contract prior to execution.*

**EXHIBIT C TO OWNER-CONSTRUCTION MANAGER AGREEMENT**

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**Additional Scope Information**

*Note: Additional information from the selected Proposal pertaining to the general description of scope of services may be inserted by DCAMM in Part I of this Exhibit C prior to Contract signing.*

**PART I: GENERAL DESCRIPTION OF SCOPE OF SERVICES**

**A. CM Early Preconstruction Services**

1. Review study and schematic design documents, and other construction documents, and recommend changes to DCAMM as to value engineering, constructability, suitability of materials and equipment, scheduling, phasing, time, methods and sequence of construction, and the clarity, consistency and coordination of the contents of all documentation.
2. Participate in Project meetings.
3. Participate in the development of the Project master schedule, phasing and relocation schedule and develop a critical path method (CPM) schedule that identifies all design activities, permits and all other activities required to be completed before construction activities can begin.
4. Review and recommend revisions to DCAMM, if appropriate, to the Project master schedule, construction budget and permitting plan and advise on the constructability and sequencing of the Project.
5. Review and comment on cost estimates prepared by the Designer's cost estimator.
6. Prepare detailed cost estimates and value engineering analyses during the schematic design phase of the Project. The CM shall work with the Designer to reconcile any differences.
7. DCAMM may require additional cost estimates to confirm budget due to modifications made via design and scheduling workshops. The CM shall work with the Designer and DCAMM to reconcile any differences.
8. Attend periodic project meetings and special meetings for the exchange of information concerning the progress of the project including schedule, budget and constructability. The CM shall maintain and share with the project team current and complete records of correspondence, meeting minutes, memorandum, cost estimates, schedules and other project related materials at the project's PMAS website created for it by DCAMM.

**B. Preconstruction Services**

1. Schedule

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- 1.1 Participate in the development of the Project master schedule, phasing, and relocation schedule and develop a detailed critical path method (CPM) schedule that identifies all design activities, permits and all other activities required to be completed before construction activities can begin and a preliminary construction schedule showing all phasing.
  - 1.2 Review and recommend revisions, if appropriate, to the Project master schedule, phasing and relocation schedule, construction budget and permitting plan and advise on the constructability and sequencing of the Project.
  - 1.3 The CM shall assign a professional project scheduler possessing building and site design and construction experience. If deemed qualified by DCAMM, the CM can assign an in-house scheduler. Develop a CPM schedule that identifies all design activities, permits and all other activities required to be completed before construction activities can begin and a preliminary construction schedule. The CPM project schedule shall be developed using scheduling software found acceptable to and approved by the DCAMM Project Manager.
2. Document Review
    - 2.1 Review the study documents, design and construction documents and other related documents as they are being developed and make recommendations to DCAMM as to value engineering, constructability, suitability of materials and equipment, scheduling, phasing, time, methods and sequence of construction, and the clarity, consistency and coordination of the contents of all documentation.
    - 2.2 Develop the scope of work and prepare bid packages in concert with the Designer (DCAMM will provide a template for the Trade Contractor bid packages) for each category of Trade Contractor work to be bid and participate in the prequalification and selection of each Trade Contractor as defined by law and in Appendix C of the General Conditions.
    - 2.3 Develop the scope of work and prepare bid packages in concert with the Designer for each remaining category of contracted work, that is not Trade Contractor work, to be bid and prequalify and select each subcontractor as defined by law and in Appendix C of the General Conditions.
    - 2.4 Conduct activities relating to the procurement and award of Trade Contracts and all other contracts for the furnishing of labor, materials, equipment, or other services in connection with the construction of this Project in a manner that will meet Minority Business Enterprise and Women Business Enterprise participation goals set by DCAMM for the Project.
  3. Budget
    - 3.1 Review and comment on cost estimates prepared by the Designer's cost estimator.

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- 3.2 Perform detailed cost estimates and value engineering analyses during the design development and construction document phases. The CM shall work with the Designer to reconcile any differences.
- 3.3 DCAMM may require additional cost estimates to confirm budget due to modifications made via design and scheduling workshops. The CM shall work with the Designer and DCAMM to reconcile any differences.
- 3.4 Develop, in coordination with DCAMM, a system for tracking Project costs and cash flow.
- 3.5 Perform periodic detailed cost estimates for the entire construction and for phases or portions of the Work as directed by DCAMM, and work with the project Designer to reconcile any differences.

4. Meetings and Communications

- 4.1 Attend periodic project meetings and special meetings for the exchange of information concerning the progress of the project including schedule, budget, constructability, document review, and Trade Contractor and subcontractor prequalification. The CM shall maintain and share with the Project team current and complete records of correspondence, meeting minutes, memorandum, cost estimates, schedules and other project related materials at the project's PMAS website created for it by DCAMM.
- 4.2 Attend and, if requested by DCAMM, schedule and lead periodic Project meetings and special meetings for the exchange of information concerning the project, and review of design progress and scheduling, budget, Permits, and Approvals and other related matters. All meetings shall be held at a location and time convenient to the DCAMM Project Manager.

5. Testing, Exploratory Services, and Abatement

Upon request by DCAMM, the CM may be asked to perform exploratory demolition activities, abatement of hazardous materials, and any other testing that is advantageous to the Project.

C. CM Construction Services

1. Obtain and pay for all required construction related Permits and Approvals.
2. Furnish bonds and insurance as required by the Contract Documents.
3. Provide and maintain a construction Site office and provide all Site management and administration.
4. Manage and coordinate all Trade Contractors, Subcontractors and others engaged in the performance of the Work.

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5. Implement a comprehensive diversity and inclusion program and meet (or exceed) the Minority Business Enterprise and Women Business Enterprise participation goals, the women and minority workforce benchmarks and the Veteran Business Participation benchmark for the Project.
6. Implement procedures following DCAMM's standards for reviewing and processing requests for information or clarifications and interpretations of the Contract Documents, Shop Drawings, Samples, and all other submittals, contract schedule adjustments, Change Order proposals, proposals for substitutions, payment applications, as-built drawings, maintenance of logs using the internet-based PMAS/Prolog system software and certified payroll and workforce reports using the internet-based DCMS system.
7. Continuously supervise and observe all Work in progress so as to ensure that the Work is proceeding in accordance with the construction Contract Documents.
8. Attend and, if requested by DCAMM, schedule and lead regular Project and construction progress meetings and conduct regular meetings at the Site with each Subcontractor. All meetings shall be held at a location and time convenient to the DCAMM Project Manager.
9. Develop and implement a Change Order control system using the internet based PMAS/Prolog system software.
10. Establish and implement a Quality Assurance/Quality Control program including monitoring the quality programs of all Subcontractors.
11. Develop and implement a Project wide safety program, including monitoring and enforcement of the program for Trade Contractors and Subcontractors.
12. Monitor closely the progress of construction of each Subcontractor, prepare a construction schedule report at least monthly and, if and as necessary, prepare and submit recovery schedules.
13. Continue to provide an independent Project-dedicated scheduler to develop, maintain and update the detailed CPM schedule.
14. Furnish monthly reports concerning the progress of the Work which address: (a) compliance with the construction schedule, (b) status of testing and inspection activities performed by the CM and Subcontractors, (c) status of Shop Drawings and submittals, (d) status of Change Orders, (e) status of MBE/WBE participation, (f) The CM shall provide monthly updated cash flow projections for each month of construction, and (g) other matters relating to the progress of Work as directed by DCAMM.
15. Determine when each Subcontractor's work is substantially complete and prepare a list of incomplete work and work which does not conform to the requirements of the Contract Documents.
16. Maintain complete and accurate records, including: (a) correspondence; (b) meeting notes and minutes; (c) Shop Drawings and submittals; (d) construction documents including, but

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not limited to, Change Orders; (e) clarifications and interpretations of the construction documents issued by the Designer; (f) progress reports including observations of testing performed; (g) as-built drawings; and (h) all other Project related documents, including, but not limited to, those utilizing the PMAS/Prolog system.

17. In collaboration with the Designer, develop and implement procedures for orderly completion of Punch List items, checkout of utilities, operational systems and equipment and initial start-up and testing, and commissioning. Preparation of and delivery to DCAMM of warranties, as built drawings, maintenance manuals, and the like, and generally administer closeout of the Project. Ensure performance of all warranty obligations, resolution of all claims, and other post-construction requirements.
18. Upon request by DCAMM, the CM may be asked to perform exploratory demolition activities to determine the locations or suitability of hidden construction components such as pipes and utilities. Costs for these activities will be included as cost in the GMP.

PART II: ADDITIONAL PROPOSAL INFORMATION

***Note: Additional information from the selected Proposal may be inserted by DCAMM in Part II of this Exhibit C prior to Contract signing.***

**END OF EXHIBIT C**

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**EXHIBIT D TO THE OWNER-CONSTRUCTION MANAGER AGREEMENT**

**Prevailing Wage Rates**

These rates will be provided at a later date closer to commencement of CM Construction Services.

*Remainder of page intentionally blank.*

**END OF EXHIBIT D**

**EXHIBIT E TO THE OWNER-CONSTRUCTION MANAGER AGREEMENT**

**Forms Used during Contract Award and Execution**

- Payment Bond (Not required until first GMP for Construction unless requested earlier by DCAMM)
- Performance Bond (Not required until first GMP for Construction unless requested earlier by DCAMM)
- Certificate of Corporate Vote
- Certificate of Compliance with State Tax Law
- Workforce Certification: Certificate of Compliance with Workforce Related Legal Requirements Including I-9 Employment Eligibility
- DCAMM Trench Application and Permit
- DCAMM Trench Permit Supplement

*Remainder of page intentionally blank.*

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**PAYMENT BOND**

Know all men by these presents, that

\_\_\_\_\_ as principal, and \_\_\_\_\_ as surety, are held and firmly bound unto the Commonwealth of Massachusetts in the sum of

\_\_\_\_\_ in lawful money of the United States of America, to be paid to the Commonwealth of Massachusetts, for which payments, well and truly to be made, we bind ourselves, our respective heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Whereas, the said principal has made a Contract with the Commonwealth acting through its \_\_\_\_\_ (“Awarding Authority”) bearing date of \_\_\_\_\_, 20\_\_\_\_, for the construction of Project No. \_\_\_\_\_ Contract No. \_\_\_\_\_ Project Name \_\_\_\_\_

\_\_\_\_\_ Said Contract and Contract Documents are incorporated herein by reference.

Now the condition of this obligation is such that if the principal shall pay for all labor performed or furnished and for all materials used or employed in said Contract and in any and all duly authorized modifications, alterations, extensions of time, changes or additions to said Contract that may hereafter be made, notice to the surety of such modifications, alterations, extensions of time, changes or additions being hereby waived, the foregoing to include any other purpose or items set out in, and to be subject to, provisions of Massachusetts General Laws Chapter 30, section 39A, and Chapter 149, section 29, as amended, then this obligation shall become null and void; otherwise it shall remain in full force and virtue.

In witness whereof we hereunto set our hand and seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_ (Seal)  
(Print Name of General Contractor)

\_\_\_\_\_ (Seal)  
(Print Name of Surety)

By \_\_\_\_\_  
(Signature - Title)

\_\_\_\_\_  
(Signature - Title)

Surety Address \_\_\_\_\_

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**PERFORMANCE BOND**

Know all men by these presents, that

\_\_\_\_\_

as principal, and \_\_\_\_\_  
as surety, are held and firmly bound unto the Commonwealth of Massachusetts in the  
sum of \_\_\_\_\_

\_\_\_\_\_

in lawful money of the United States of America, to be paid to the Commonwealth of  
Massachusetts, for which payments, well and truly to be made, we bind ourselves, our  
respective heirs, executors, administrators, successors and assigns, jointly and severally,  
firmly by these presents.

Whereas, the said principal has made a Contract with the Commonwealth, acting  
through its \_\_\_\_\_ (“Awarding Authority”),  
bearing date of \_\_\_\_\_, 20\_\_\_\_, for the construction of  
Project No. \_\_\_\_\_ Contract No. \_\_\_\_\_  
Project Name \_\_\_\_\_  
Said Contract and Contract Documents are incorporated herein by reference.

Now the condition of this obligation is such that if the principal shall well and  
truly keep and perform all the undertakings, covenants, agreements, terms and conditions  
of said Contract and any extensions thereof that may be granted by the Commonwealth,  
with or without notice to the surety, and during the life of any guarantee required under  
the Contract, and shall also well and truly keep and perform all the undertakings,  
covenants, agreements, terms and conditions of any and all duly authorized  
modifications, alterations, changes or additions to said Contract that may hereafter be  
made, notice to the surety of such modifications, alterations, changes or additions being  
hereby waived, then this obligation shall become null and void; otherwise it shall remain  
in full force and virtue.

In the event that the Contract is abandoned by the Contractor, or is terminated by  
the Commonwealth under the provisions of said Contract, said surety shall, if requested  
in writing by the Commonwealth, take such action as is necessary to complete the  
Contract.

In witness whereof we hereunto set our hand and seals this \_\_\_\_\_ day of  
\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
(Print Name of General Contractor) (Seal)

\_\_\_\_\_  
(Print Name of Surety) (Seal)

BY \_\_\_\_\_  
(Signature - Title)

BY \_\_\_\_\_  
(Signature - Title)

Surety Address \_\_\_\_\_  
\_\_\_\_\_

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**CERTIFICATE OF CORPORATE VOTE**

I hereby certify that I am the \_\_\_\_\_ clerk, \_\_\_\_\_, assistant clerk, of  
\_\_\_\_\_ (the "Corporation") and that at a  
(Name of Corporation)

duly authorized meeting of the Board of Directors of the Corporation held on  
\_\_\_\_\_ in \_\_\_\_\_ at which a quorum was  
(Date) (Location)

present and voting it was voted to authorize

\_\_\_\_\_, \_\_\_\_\_  
(Name) (Officer Title)

of the Corporation to execute and deliver on behalf of the Corporation the following contract and to act as principal to execute bonds in connection therewith, which contract and bonds 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)

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Date

CORPORATE SEAL)

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

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

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**CERTIFICATE OF COMPLIANCE WITH STATE TAX LAWS AND WITH  
UNEMPLOYMENT COMPENSATION CONTRIBUTION  
REQUIREMENTS**

Pursuant to M.G.L., Ch. 62C, s. 49A and M.G.L., Ch. 151A, s. 19A, I,

\_\_\_\_\_ authorized signatory for

\_\_\_\_\_ whose principal place of business is at

\_\_\_\_\_ do hereby certify

under penalties of perjury that \_\_\_\_\_ has filed all  
state tax returns and paid all taxes as required by law and has complied with all state laws  
pertaining to contributions to the unemployment compensation fund and to payments in  
lieu of contributions.

The Business Organization Social Security Number or Federal Identification Number is

\_\_\_\_\_.

Signed under the penalties of perjury the \_\_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_\_, 20\_\_\_\_.

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

Name and Title: \_\_\_\_\_

**WORKFORCE CERTIFICATION**

**CERTIFICATE OF COMPLIANCE WITH CERTAIN WORKFORCE RELATED  
LEGAL REQUIRMENTS: I-9 EMPLOYMENT ELIGIBILITY VERIFICATION,  
WORKER CLASSIFICATION, WORKERS' COMPENSATION INSURANCE,  
UNEMPLOYMENT INSURANCE, SOCIAL SECURITY AND INCOME TAXES,  
HOSPITALIZATION AND MEDICAL BENEFITS**

Applicable to All DCAMM Construction Projects

To Be Executed by General Contractors/Construction Managers/All Subcontractors

**Company Name:** \_\_\_\_\_ (“Company”)

**Project Title:** \_\_\_\_\_ (“Project”)

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

I, \_\_\_\_\_ authorized signatory for  
Print Name

Company whose principal place of business is at \_\_\_\_\_  
Address

do hereby certify under penalties of perjury that Company shall comply with the following legal requirements for any and all employees to be employed in the Project who are required to be listed in the certified payroll reports for the Project: 1) Federal Department of Homeland Security Requirements in hiring such employees including, but not limited, to the faithful completion of the Federal Department of Homeland Security Form I-9 process by Company; 2) proper classification of individuals employed on the project; 3) all laws concerning workers' compensation insurance coverage, unemployment insurance, social security taxes, and income taxes; and 4) all laws concerning hospitalization and medical benefits that meet the minimum requirements of the connector board established in chapter 176Q of the General Laws. Company acknowledges that with the weekly workforce reports that must be submitted on a weekly basis, Company and all of its subcontractors will be required to certify that the Form I-9 process was faithfully completed and that all other legal requirements related to its

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workforce referenced above were followed for all employees listed on each certified payroll report when submitted. By the signature of the Company's Authorized Signatory below, the Company certifies under the pains and penalties of perjury that the Company shall comply with all requirements of applicable law and the this Workforce Certification; that the Company will not knowingly use undocumented workers in connection with the performance of this contract; that pursuant to federal requirements, the Company shall verify the immigration status of all workers assigned to the contract without engaging in unlawful discrimination; and that the Company shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker. The Company understands and agrees that breach of any of the terms of this Workforce Certification during the period of a contract may be regarded as a material breach, subjecting the Company to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination. Company shall require each of its subcontractors to execute and provide to Company a Workforce Certification with the execution of each subcontract, and Company shall forward a copy of each such Workforce Certification to the General Contractor or Construction Manager for filing with DCAMM.

Company Social Security No. or Federal Identification No. is: \_\_\_\_\_

Signed under the pains and penalties of perjury the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

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

Name and Title: \_\_\_\_\_  
Duly Authorized



**General Contractor or CM at Risk Contractor must provide:**

**Name of Competent Person \*(as defined by 520 CMR 14.02)**

\*Capable (i.e., trained and knowledgeable) in identifying existing and predictable hazards in the trench, and other working conditions which may pose a hazard to workers, and Authorized by management to take necessary corrective action to eliminate the hazards. Employees must be removed from hazardous areas until the hazard has been corrected.

**Name:**

**Work Phone:**

**Title:**

**Cell Phone:**

**BY SIGNING THIS FORM, THE APPLICANT ACKNOWLEDGES AND CERTIFIES THAT APPLICANT IS FAMILIAR WITH, OR, BEFORE COMMENCEMENT OF THE WORK, WILL BECOME FAMILIAR WITH, ALL LAWS AND REGULATIONS APPLICABLE TO WORK PROPOSED, INCLUDING OSHA REGULATIONS, G.L. c. 82A, 520 CMR 14.00 et seq., AND ANY APPLICABLE MUNICIPAL ORDINANCES, BY-LAWS AND REGULATIONS AND THEY COVENANT AND AGREE THAT ALL WORK DONE UNDER THE PERMIT ISSUED FOR SUCH WORK WILL COMPLY THEREWITH IN ALL RESPECTS AND WITH THE CONDITIONS SET FORTH BELOW.**

**THE UNDERSIGNED OWNER AUTHORIZES THE APPLICANT AND ANY DULY AUTHORIZED EXCAVATOR OPERATOR TO UNDERTAKE SUCH WORK ON THE PROPERTY OF THE OWNER PURSUANT TO THE APPROVED PERMIT. WITHOUT RELIEVING THE APPLICANT AND OPERATOR FROM THEIR OBLIGATIONS, OWNER ALSO, FOR THE DURATION OF CONSTRUCTION, AUTHORIZES PERSONS DULY APPOINTED BY DCAMM TO ENTER UPON THE PROPERTY TO MONITOR AND INSPECT THE WORK FOR CONFORMITY WITH THE CONDITIONS ATTACHED HERETO AND THE LAWS AND REGULATIONS GOVERNING SUCH WORK.**

**THE UNDERSIGNED APPLICANT AGREES TO REIMBURSE DCAMM FOR ANY AND ALL COSTS AND EXPENSES INCURRED BY DCAMM IN CONNECTION WITH THIS PERMIT WHERE THE APPLICANT HAS FAILED TO COMPLY WITH THE TRENCHING REGULATIONS THUS REQUIRING DCAMM TO TAKE MEASURES TO PROTECT THE PUBLIC, INCLUDING BUT NOT LIMITED TO INSPECTIONS MADE TO ASSURE COMPLIANCE.**

**THE UNDERSIGNED APPLICANT AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS DCAMM AND ALL OF ITS AGENTS AND EMPLOYEES FROM ANY AND ALL LIABILITY, CAUSES OR ACTION, COSTS, AND EXPENSES RESULTING FROM OR ARISING OUT OF ANY INJURY, DEATH, LOSS, OR DAMAGE TO ANY PERSON OR PROPERTY DURING THE WORK CONDUCTED UNDER THIS PERMIT.**

**The undersigned General Contractor/CM will post this Permit in a prominent location at the Project site and will cause to be posted each Permit Supplement form in the same prominent location.**

**APPLICANT'S SIGNATURE**

\_\_\_\_\_ **DATE** \_\_\_\_\_

**Duly Authorized**

**Print Name and Title:** \_\_\_\_\_

<b>For DCAMM use -- Do not write in this section</b>	
<b>PERMIT APPROVED BY (signature)</b>	<b>Date</b>
<b>PRINT OR TYPE NAME AND TITLE</b>	
<b>PERMITTING AUTHORITY - DIVISION OF CAPITAL ASSET MANAGEMENT</b>	
<b>CONDITIONS OF APPROVAL (IF ANY)</b>	

## **CONDITIONS AND REQUIREMENTS PURSUANT TO G.L.C.82A AND 520 CMR 7.00 et seq. (as amended)**

By signing the application, the applicant understands and agrees to comply with the following:

- i. No trench may be excavated unless the requirements of sections 40 through 40D of chapter 82, and any accompanying regulations, have been met and this permit is invalid unless and until said requirements have been complied with by the excavator applying for the permit including, but not limited to, the establishment of a valid excavation number with the underground plant damage prevention system as said system is defined in section 76D of chapter 164 (DIG SAFE).
- ii. Trenches may pose a significant health and safety hazard. Pursuant to Section 1 of Chapter 82 of the General Laws, an excavator shall not leave any open trench unattended without first making every reasonable effort to eliminate any recognized safety hazard that may exist as a result of leaving said open trench unattended. Excavators should consult regulations promulgated by the Department of Public Safety in order to familiarize themselves with the recognized safety hazards associated with excavations and open trenches and the procedures required or recommended by said department in order to make every reasonable effort to eliminate said safety hazards which may include covering, barricading or otherwise protecting open trenches from accidental entry.
- iii. Persons engaging in any trenching operation shall familiarize themselves with the federal safety standards promulgated by the Occupational Safety and Health Administration on excavations: 29 CFR 1926.650 et.seq., entitled Subpart P "Excavations".
- iv. Excavators engaging in any trenching operation who utilize hoisting or other mechanical equipment subject to chapter 146 shall only employ individuals licensed to operate said equipment by the Department of Public Safety pursuant to said chapter and this permit must be presented to said licensed operator before any excavation is commenced.
- v. By applying for, accepting and signing this permit, the applicant hereby attests to the following: (1) that applicant has read and understands the regulations promulgated by the Department of Public Safety with regard to construction related excavations and trench safety; (2) that applicant has read and understands the federal safety standards promulgated by the Occupational Safety and Health Administration on excavations: 29 CMR 1926.650 et.seq., entitled Subpart P "Excavations" as well as any other excavation requirements established by this municipality; and (3) that applicant is aware of and has, with regard to the proposed trench excavation on private property or proposed excavation of a city or town public way that forms the basis of the permit application, complied with the requirements of sections 40-40D of chapter 82A.
- vi. This permit shall be posted in plain view on the site of the trench.

For additional information please visit the Department of Public Safety's website at [www.mass.gov/dps](http://www.mass.gov/dps)

### **SUMMARY OF EXCAVATION AND TRENCH SAFETY REGULATION (520 CMR 14.00 ET SEQ.)**

This summary was prepared by the Massachusetts Department of Public Safety pursuant to G.L.c.82A and does not include all requirements of the 520 CMR 14.00. To view the full regulation and G.L.c.82A, go to [www.mass.gov/dps](http://www.mass.gov/dps). Pursuant to M.G.L. c. 82, § 1, the Department of Public Safety, jointly with the Division of Occupational Safety, drafted regulations relative to trench safety. The regulation is codified in section 14.00 of title 520 of the Code of Massachusetts Regulations. The regulation requires all excavators to obtain a permit prior to the excavation of a trench made for a construction-related purpose on public or private land or rights-of-way. All municipalities must establish a local permitting authority for the purpose of issuing permits for trenches within their municipality. Trenches on land owned or controlled by a public (state) agency requires a permit to be issued by that public agency unless otherwise designated.

In addition to the permitting requirements mandated by statute, the trench safety regulations require that all excavators, whether public or private, take specific precautions to protect the general public and prevent unauthorized access to unattended trenches. Accordingly, unattended trenches must be covered, barricaded or backfilled. Covers must be road plates at least ¾" thick or equivalent; barricades must be fences at least 6' high with no openings greater than 4" between vertical supports; backfilling must be sufficient to eliminate the trench. Alternatively, excavators may choose to attend trenches at all times, for instance by hiring a police detail, security guard or other attendant who will be present during times when the trench will be unattended by the excavator.

The regulations further provide that local permitting authorities, the Department of Public Safety, or the Division of Occupational Safety may order an immediate shutdown of a trench in the event of a death or serious injury; the failure to obtain a permit; or the failure to implement or effectively use adequate protections for the general public. The trench shall remain shut down until re-inspected and authorized to re-open provided, however, that excavators shall have the right to appeal an immediate shutdown. Permitting authorities are further authorized to suspend or revoke a permit following a hearing. Excavators may also be subject to administrative fines issued by the Department of Public Safety for identified violations.

## SUMMARY OF 1926 CFR SUBPART P -OSHA EXCAVATION STANDARD

This is a worker protection standard, and is designed to protect employees who are working inside a trench. This summary was prepared by the Massachusetts Division of Occupational Safety and not OSHA for informational purposes only and does not constitute an official interpretation by OSHA of their regulations, and may not include all aspects of the standard.

For further information or a full copy of the standard go to [www.osha.gov](http://www.osha.gov).

- **Trench Definition per the OSHA standard:**
  - An excavation made below the surface of the ground, narrow in relation to its length.
  - In general, the depth is greater than the width, but the width of the trench is not greater than fifteen feet.
- **Protective Systems** to prevent soil wall collapse are always required in trenches deeper than 5', and are also required in trenches less than 5' deep when the competent person determines that a hazard exists. Protection options include:
  - Shoring. Shoring must be used in accordance with the OSHA Excavation standard appendices, the equipment manufacturer's tabulated data, or designed by a registered professional engineer.
  - Shielding (Trench Boxes). Trench boxes must be used in accordance with the equipment manufacturer's tabulated data, or a registered professional engineer.
  - Sloping or Benching. In Type C soils (what is most typically encountered) the excavation must extend horizontally 1 ½ feet for every foot of trench depth on both sides, 1 foot for Type B soils, and ¾ foot for Type A soils.
  - A registered professional engineer must design protective systems for all excavations greater than 20' in depth.
- **Ladders** must be used in trenches deeper than 4'.
  - Ladders must be inside the trench with workers at all times, and located within 25' of unobstructed lateral travel for every worker in the trench.
  - Ladders must extend 3' above the top of the trench so workers can safely get onto and off of the ladder.
- **Inspections** of every trench worksite are required:
  - Prior to the start of each shift, and again when there is a change in conditions such as a rainstorm.
  - Inspections must be conducted by the competent person (see below).
- **Competent Person(s) is:**
  - Capable (i.e., trained and knowledgeable) in identifying existing and predictable hazards in the trench, and other working conditions which may pose a hazard to workers, and
  - Authorized by management to take necessary corrective action to eliminate the hazards. Employees must be removed from hazardous areas until the hazard has been corrected.
- **Underground Utilities** must be:
  - Identified prior to opening the excavation (e.g., contact Digsafe).
  - Located by safe and acceptable means while excavating.
  - Protected, supported, or removed once exposed.
- **Spoils** must be kept back a minimum of 2' from the edge of the trench.
- **Surface Encumbrances** creating a hazard must be removed or supported to safeguard employees. Keep heavy equipment and heavy material as far back from the edge of the trench as possible.
- **Stability of Adjacent Structures:**
  - Where the stability of adjacent structures is endangered by creation of the trench, they must be underpinned, braced, or otherwise supported.
  - Sidewalks, pavements, etc. shall not be undermined unless a support system or other method of protection is provided.
- **Protection from water accumulation hazards:**
  - It is not allowable for employees to work in trenches with accumulated water. If water control such as pumping is used to prevent water accumulation, this must be monitored by the competent person.
  - If the trench interrupts natural drainage of surface water, ditches, dikes or other means must be used to prevent this water from entering the excavation.
- **Additional Requirements:**
  - For mobile equipment operated near the edge of the trench, a warning system such as barricades or stop logs must be used.
  - Employees are not permitted to work underneath loads. Operators may not remain in vehicles being loaded unless vehicles are equipped with adequate protection as per 1926.601(b)(6).
  - Employees must wear high-visibility clothing in traffic work zones.
  - Air monitoring must be conducted in trenches deeper than 4' if the potential for a hazardous atmosphere exists. If a hazardous atmosphere is found to exist (e.g., O<sub>2</sub> <19.5% or >23.5%, 20% LEL, specific chemical hazard), adequate protections shall be taken such as ventilation of the space.
  - Walkways are required where employees must cross over the trench. Walkways with guardrails must be provided for crossing over trenches > 6' deep.
  - Employees must be protected from loose rock or soil through protections such as scaling or protective barricades.



**BY SIGNING THIS FORM, THE EXCAVATOR FIRM:**

**1) ACKNOWLEDGES AND CERTIFIES THAT OPERATOR IS FAMILIAR WITH, OR, BEFORE COMMENCEMENT OF THE WORK, WILL BECOME FAMILIAR WITH, ALL LAWS AND REGULATIONS APPLICABLE TO WORK PROPOSED, INCLUDING OSHA REGULATIONS, G.L. c. 82A, 520 CMR 14.00 et seq., AND ANY APPLICABLE MUNICIPAL ORDINANCES, BY-LAWS AND REGULATIONS AND THEY COVENANT AND AGREE THAT ALL WORK DONE UNDER THE PERMIT ISSUED FOR SUCH WORK WILL COMPLY THEREWITH IN ALL RESPECTS AND WITH THE CONDITIONS SET FORTH HERIN;**

**2) AGREES TO REIMBURSE DCAMM FOR ANY AND ALL COSTS AND EXPENSES INCURRED BY DCAMM IN CONNECTION WITH THIS PERMIT WHERE THE EXCAVATOR FIRM HAS FAILED TO COMPLY WITH THE TRENCHING REGULATIONS THUS REQUIRING DCAMM TO TAKE MEASURES TO PROTECT THE PUBLIC, INCLUDING BUT NOT LIMITED TO INSPECTIONS MADE TO ASSURE COMPLIANCE; AND**

**3) AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS DCAMM AND ALL OF ITS AGENTS AND EMPLOYEES FROM ANY AND ALL LIABILITY, CAUSES OR ACTION, COSTS, AND EXPENSES RESULTING FROM OR ARISING OUT OF ANY INJURY, DEATH, LOSS, OR DAMAGE TO ANY PERSON OR PROPERTY DURING THE WORK CONDUCTED UNDER THIS PERMIT.**

**EXCAVATOR FIRM SIGNATURE**

\_\_\_\_\_ **DATE** \_\_\_\_\_  
**Duly Authorized Signature**

\_\_\_\_\_  
**Print/Type Name & Title**

**CONDITIONS AND REQUIREMENTS PURSUANT TO G.L.C.82A AND 520 CMR 7.00 et seq. (as amended)**

By undertaking the work and signing this Certification, the excavator understands and agrees to comply with the following:

- i. No trench may be excavated unless the requirements of sections 40 through 40D of chapter 82, and any accompanying regulations, have been met and this permit is invalid unless and until said requirements have been complied with by the excavator applying for the permit including, but not limited to, the establishment of a valid excavation number with the underground plant damage prevention system as said system is defined in section 76D of chapter 164 (DIG SAFE). Trenches may pose a significant health and safety hazard. Pursuant to Section 1 of Chapter 82 of the General Laws, an excavator shall not leave any open trench unattended without first making every reasonable effort to eliminate any recognized safety hazard that may exist as a result of leaving said open trench unattended. Excavators should consult regulations promulgated by the Department of Public Safety in order to familiarize themselves with the recognized safety hazards associated with excavations and open trenches and the procedures required or recommended by said department in order to make every reasonable effort to eliminate said safety hazards which may include covering, barricading or otherwise protecting open trenches from accidental entry.
- ii. Persons engaging in any in any trenching operation shall familiarize themselves with the federal safety standards promulgated by the Occupational Safety and Health Administration on excavations: 29 CFR 1926.650 et.seq., entitled Subpart P "Excavations".
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any excavation is commenced.

- iv. By undertaking the work, accepting and signing this Certification, the excavator hereby attests to the following: (1) that excavator has read and understands the regulations promulgated by the Department of Public Safety with regard to construction related excavations and trench safety; (2) that excavator has read and understands the federal safety standards promulgated by the Occupational Safety and Health Administration on excavations: 29 CFR 1926.650 et seq., entitled Subpart P "Excavations" as well as any other excavation requirements established by this municipality; and (3) that Excavator is aware of and has, with regard to the proposed trench excavation on private property or proposed excavation of a city or town public way that forms the basis of the Certification, complied with the requirements of sections 40-40D of chapter 82A.
- v. This Certification shall be posted in plain view on the site of the trench.

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**COMMONWEALTH OF MASSACHUSETTS**  
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**MAURA T. HEALEY**  
GOVERNOR

**KIMBERLEY DRISCOLL**  
LIEUTENANT GOVERNOR

**MATTHEW J. GORZKOWICZ**  
SECRETARY

**ADAM BAACKE**  
COMMISSIONER

**EXHIBIT BIM**

**Revised August 15, 2019**

**BUILDING INFORMATION MODELING (BIM)**  
**LIST OF DESIGN, PRECONSTRUCTION AND CONSTRUCTION SERVICES**

**I. SOFTWARE**

The project shall be designed and implemented using Building Information Modeling software (BIM). This includes all subsidiary (discipline) models as may be necessary for design, analysis, fabrication and construction. The Architect or CM, or a subcontractor through the Architect or the CM, may request from the DCAMM project manager an exception to the standard requirement of designing and implementing BIM for all subsidiary (discipline) models. The DCAMM project manager's decision shall be final.

**II. MODELING GOALS**

- A) Throughout the design and construction phases, BIM will be utilized to develop a parametric model, derived data, and the coordinated discipline models for the project.
1. Throughout the Designer pre-construction phases, the Architect's ("Designer") project design software and discipline specific tools will be utilized to develop and model the design of the project, to tag material components, systems and/or assemblies, generate schedule and derived data, create data bases, perform required analysis, clash avoidance, and develop 2-D and 3-D presentations and reviews. During construction, the Architect will develop, model and incorporate relevant approved change order sketches (SK's). Prior to achieving Final Completion of construction, the Architect will incorporate all recorded (as-built) conditions into the model. (NOTE: Approved shop drawings and submittals will not be included into the model).
  2. During the pre-construction phases on a CM at Risk project, the Construction Manager (CM) will use the Architect's model to generate quantity takeoffs for estimating purposes, develop periodic clash reports and facilitate clash resolution reviews. During construction, the CM will provide virtual scheduling with updates, and utilize the upgraded models during coordination meetings to inform tradesmen of affected phases of construction. The model shall be used in the field to support

reviews, site logistics, and ongoing construction.

3. On some renovation projects, the Study may indicate that Building Information Modeling software and processes may be inappropriate for the design and construction phases of the project. In such instances, the Study team will advise DCAMM of the possible reason(s) why utilizing BIM may be inappropriate. The DCAMM Project Manager will make the final determination regarding the use of BIM. Irrespective of the decision, data appropriate for entry into the New CAMIS Tririga data base will be captured during the design and construction phases of the project.

### III. GENERAL REQUIREMENTS

- A) A description of how the modeling goals will be met (i.e., a BIM Execution Plan (BIMxP)) is required by the Architect and, subsequently, by the Construction Manager (CM) or General Contractor (GC) as applicable. Note: The terms “CM” and “GC” are sometimes used interchangeably herein and the intent is for the appropriate reference to apply depending on the type of project under construction.

DCAMM will provide a template of its standard BIM Execution Plan (the “BIM Execution Plan Template”) to the Architect to create the “Architect’s BIM Execution Plan”. The Architect’s BIMxP shall identify how the Architect and the engineering disciplines (i.e., the design team) will develop, be responsible for, and incorporate their information into the coordination model, and provide decision support and model reviews. The BIM model will be developed, managed and coordinated by the Architect. The Architect’s BIMxP will identify their proposed in-house or outsourcing plan, and all software programs that will be used to satisfy the design modeling goals, analysis, decision support and reviews. The BIMxP must be consistent with the format and principles of the BIM Execution Plan Template (the “BIMxP Template”). See also the Building Information Modeling Guide (BIM Guide) for further guidance. The BIM Guide explains the requirements and procedures for the delivery of BIM services, and the development of BIM submissions supporting DCAMM study, design, and construction product delivery. The BIM Guide complements *The Designers Procedures Manual*, the *Designer’s Contract with DCAMM* and the *Owner-CM and the Owner-GC Agreements*. The *BIMxP Template* and the *BIM Guide* are incorporated herein by reference and copies are available on DCAMM’s website. In the event of any conflict between the BIMxP Template or BIM Guide, and this Exhibit BIM or the contract documents between DCAMM and the Designer, Construction Manager or General Contractor, then the provisions of this Exhibit BIM and the respective contract documents will take precedence.

For CM at Risk projects, it is recognized that the Construction Manager (CM) may be named before the Architect has completed the Design Intent Model. The primary activity of the CM in this situation will be the provision of pre-construction services per the CM’s contract. It is expected the CM will be proficient in Building Information Modeling technology. Where such services may impact the development of the Building Information Model, the Architect will collaborate with the CM to ensure the BIM reflects the input of the CM. Furthermore, the CM will advise the Architect in matters where the expertise of the CM can complement and/or supplement that of the Architect.

For Design-Bid-Build projects and Design-Build (including MGL c. 25A energy) projects, the Architect will provide a copy of the Design Intent BIM Model to the General Contractor (GC). The GC will augment the BIM Model reflecting the input of discipline sub-contractors, trades, and others who will ultimately affect the content and data of the as-built model. In all instances, the Architect bears ultimate responsibility for the content and accuracy of the model, and for the data contained in the model and/or associated therewith. The terms “CM” and “GC” are sometimes used interchangeably herein, and the intent is for the appropriate reference to apply depending on the type of project under construction.

- B) All model deliverables shall be saved and delivered in their native format (i.e., .rvt for Revit, .pln for ArchiCAD, etc.) and in IFC format, .dwg and .dwf format, .nwd, .nwf, .nwc as required and placed on the required FTP or project website (with appropriate securities and versioning controls) site for the entire project team to review.
- C) The project team will have access to the current model on the project site throughout the design, pre- construction and construction phases. "Project team" is defined as: Architect, Engineering Consultants to the Architect, relevant third parties, DCAMM and CM.
- D) A team approach is required for the BIM process. To this end, the Architect and/or the CM will make available to all parties appropriate access to the model via collaboration software such as BIM 360. The model will be used simultaneously with different parties for different tasks. For example, as part the integration and virtual coordination scope of work, the Architect will make design files available to the CM who will integrate all 3D content into the appropriate Navisworks program to satisfy the CM modeling goals. The Architect and CM will work collaboratively to resolve all detected clashes and develop an end product model that represents a fully workable, constructible project; with phasing projected and linked to the virtual schedule. If early packages are bid, it is understood that the model may not be fully developed for those work elements (i.e., substructure, superstructure and under-slab utilities); however, the end product model that will be used for final bids must be complete and approved by the DCAMM Project Manager prior to receiving final bids.
  1. Physical conflicts exceeding the specified tolerance of 0.5 inch (to be adjusted in consultation with the project design team and DCAMM) will be documented and provided to the Architect for review.
  2. All adjustments to resolve conflicts, as determined by the design team, will be incorporated in the 3D model before a new integration and clash detection iteration is performed.
  3. Attendance at specific coordination meetings with the design team, the CM and DCAMM, is required. These milestones will be identified in the BIMxP. At the discretion of the DCAMM Project Manager, collaboration tools such as Autodesk 360 may be used.
  4. The Architect, and the CM or GC as appropriate will be responsible to update the DCAMM Project Manager on the status of the model coordination, analysis, virtual scheduling and quantity takeoffs in a bi-monthly BIM report submitted to DCAMM.

#### **IV. COMMUNICATION AND MANAGEMENT**

- A) The Architect, and the CM or GC as appropriate, shall each appoint a "BIM Manager". The BIM Manager(s) will be responsible for receiving modeling information from their related team and to ensure the model information is correct, being communicated, updated and incorporated into a master building information model. Each party is responsible for maintaining any individual design or analysis models and providing their modeling information, at appropriate intervals.
- B) An FTP or project website or other appropriate collaboration/communications tools will be provided by the Architect throughout the design and construction phases. The project site will be used by the project team. The FTP site will be password protected and is required to be accessible for only one project.

- C) Data management and standards is a primary role of the Architect's BIM Manager, with oversight of BIM activities of the CM or GC. Unifomat and Omniclass for model element identification and classification is to be used. Adherence to appropriate DCAMM CAD standards, functional space naming, and room numbering will be documented in the BIMxP. COBie data documentation may be a required project goal.

## V. BIM MODEL ELEMENTS

### A) Site/Civil Elements

1. Existing Conditions Modeling
  - a. Existing site grading surface modeling of the entire property. The surface model shall extend 50' beyond the property line in all directions to provide site context to the information model.
  - b. Existing manhole locations shall be modeled with appropriate depth and size of existing structures. Pipe inverts and pipe sizes should be modeled and extended 10' minimum in direction of pipe location from the existing manholes.
  - c. Elements to include in the basic site plan model are:
    - Surface model contours;
    - Architectural massing model of surrounding buildings;
    - Driveways;
    - Parking areas;
    - Walkways;
    - Landscaping beds;
    - Trees;
    - Utility Poles;
    - Other Street Furniture;
    - Major underground utilities (primary electrical feed, water mains, sewer connection, etc.).
2. Proposed Site Modeling
  - a. Proposed site grading surface model should extend to the property line.
  - b. Proposed manholes and piping elevations should be modeled with sloping or horizontal gradients as designed.
  - c. All underground piping should be modeled to within 10' of the proposed building footprint.
  - d. All proposed vehicular paving and pedestrian walkway paths should be modeled with appropriate slopes and elevations.

### B) Architectural Elements

1. The architectural model is to include, without limitation, partition walls, ceilings, chases, door and window openings, exterior envelope, roof, stairs and railings.
  - a. Interior partitions at correct thickness and height.
    - Tag material types (masonry, drywall, shaft wall, glass block, etc.)
  - b. MEP chases (vertical).
  - c. Elevator shafts.
  - d. Stairwells.
  - e. Finish floor at correct elevation and thickness.
  - f. Ceilings at correct elevation and thickness.

- Tag material types (drywall, acoustical, etc.)
- g. Exterior envelope at correct thickness with proposed exterior material facing to the outside.
  - Tag material types (masonry, curtain wall, metal panel, rain screen, etc.)
- h. Interior and exterior door sizes and locations.
- i. Reflected ceiling plans of all levels with recessed light locations modeled with approximate dimensions and elevations of lighting fixtures, speakers, etc.
- j. Furniture layouts corresponding to the Furnishings and Equipment (F&E) requirements of the client agencies.
  - Furniture and equipment simulations to be similar in dimensions to actual proposed (use manufacturers blocks if available).
- k. All interior storage units, cabinetry, racks, shelving, etc.

#### C) Structural Elements

1. Structural modeling will be developed first to correspond with the early bid package document preparation. It will include, but not be limited to, all substructure elements (i.e., spread footings, piles, foundations, grade beams, etc.), all superstructure elements (i.e., beams, columns, girders, framing and bracing sans connection details, shear elements, etc.), structural floor and roof decks, elevator shafts and stairwells.
2. Most steel fabricators use 3D modeling to plan their work. If this is done their model should be procured and infused into the design model, via Navisworks, in order to have a more accurate model prior to soliciting final bids. If a fabricator's structural model is unavailable prior to completion of the final bid package, the design model should be updated to the Designer's (Structural Engineer) final structural design.
3. All openings.

#### D) Mechanical, Electrical, Plumbing and Fire Protection (MEPFP) Elements

1. MEPFP modeling will include, but not be limited to, all horizontal and vertical solid and flexible duct runs, modeled at correct sizes, slopes and shapes. All mechanical equipment elements should be designed and modeled based on largest case manufacturers equipment (i.e., RTU's, VAV boxes, boilers, generators, chillers, etc.), in order to assure adequate physical space to accommodate "worst case" scenarios.
  - a. Mechanical / sheet metal
    - Ducts.
    - Air handling equipment.
    - Boilers.
    - Pumps.
    - Associated piping.
    - Supply and return louvers, grilles and diffusers.
  - b. Plumbing
    - Piping (piping to be modeled to its outside diameter, including insulation).
    - Risers.
    - Pitched drains (i.e., roof drain mains, etc.).
    - Pumps and equipment.
    - Fixtures will be located with penetration stub into walls, floors and ceilings.

- Sleeved objects will be located in all exterior and load bearing wall penetrations to the correct outside diameter.
- c. Electrical
- All major equipment and conduit.
  - Switchgear.
  - Transformers.
  - Panel boards.
  - Generators.
  - Conduit.
  - Locate and model all lighting fixtures as the overall required embed volume.
  - Fire Protection.
  - Equipment (i.e., fire pumps, hose racks, standpipes, etc.).
  - Risers.
  - All piping.

## **VI. 4D CONSTRUCTION PHASING MODEL**

### **A) General Information Modeling Requirements**

1. The CM shall review the coordinated design model at various stages of design for constructability, costing and scheduling purposes.
2. The Architect shall incorporate reasonable changes requested by the CM. If, for quantification purposes, the CM needs component information rather than assembly information (i.e., components of a cavity or veneer exterior wall assembly), the Architect will accommodate the CM and update the model accordingly. If the CM plans to construct the project in phases for scheduling purposes, the CM will inform the Architect of planned construction phasing and the CM will update the model accordingly.

### **B) Preparation of the 4D Construction Phasing Model**

1. The CM shall integrate its approved, electronic CPM schedule with the coordinated design model using Navisworks module (or approved equal). This will occur at approximately 50% DD's (with emphasis on early package elements), 50% CD's, and 100% CD's, or more frequently if required by the DCAMM Project Manager. At completion of CD's a two-week minimum time period will be used to provide a final clash detection review and report with work points, accommodate any last-minute changes or modifications by the Architect, and allow the Architect to correct any clashes prior to soliciting final package bids. The intent is to provide bidders with bid documents, based on a coordinated model that can be constructed within the scheduled timeframe barring unforeseen conditions and/or Owner-initiated changes.
2. The CM is responsible for model object / schedule activity resolution and correlation. The CM will provide the Architect with any revised phasing logic information so appropriate model edits that may be required can be accommodated.
3. The CM will use "Task Types" and "Appearance Definitions" within Navisworks (or approved equal) to communicate the following:
  - a. (trades by color)
  - b. (critical path by color)
  - c. (other)
4. The CM or GC shall use the Navisworks or other approved scheduling software to communicate design intent, means and methods (where possible) and sequencing of work to

subcontractors in pre-bid meetings.

5. Updated or “status” 4D schedules will be prepared for monthly construction coordination meetings. There is the need to have 4D Virtual Construction Model meetings (beginning of each month), chaired by the CM, at which all subcontractors field supervisors whose tradesmen will work that month will need to address the projected following month of work. In the event that one or more subcontractors may prepare 3D models for their own execution of work the CM shall review for acceptability and, if deemed acceptable and consistent with the CM's control of the work and the DCAMM Project Manager, the CM shall incorporate this 3D content into the coordinated design (Navisworks, or equal) model.

## **VII. OWNERSHIP**

In addition to the record documents required by the specifications, the master building information model, and the subsidiary models provided for design and construction of the project will, upon completion of the project, be property of DCAMM and the parties agree to provide DCAMM, as deliverables prior to Final Completion, the most recent version of all files. Upon DCAMM request, the parties will provide the most updated BIM models.

For any questions, please feel free to contact:

Fabrizo Caruso at [fabrizio.caruso@mass.gov](mailto:fabrizio.caruso@mass.gov) 857-204-1221

FOR DCAMM USE ONLY

# EXHIBIT GMP

Form of GMP Amendment and exhibits, to be used in the creation and negotiation of the GMP in accordance with the Contract, appears on the following pages

**AMENDMENT NO. [ ] TO  
OWNER CONSTRUCTION MANAGER AGREEMENT  
FOR GMP**

This GMP Amendment dated \_\_\_\_\_ is entered into by and between the Owner, Commonwealth of Massachusetts Division of Capital Asset Management and Maintenance (hereinafter "DCAMM") and \_\_\_\_\_, the Construction Manager (hereinafter "CM").

WHEREAS, the CM entered into a contract with DCAMM to perform construction management at risk services for the \_\_\_\_\_, Project No. \_\_\_\_\_, by contract dated \_\_\_\_\_ (hereinafter the "Contract"); and

WHEREAS, by Notice to Proceed dated \_\_\_\_\_, 20\_\_, DCAMM authorized ~~to~~ **Early Preconstruction** CM to proceed with Early Preconstruction Services and by Notice to Proceed dated \_\_\_\_\_, 20\_\_, DCAMM further authorized the CM to proceed with CM Preconstruction Services under the Contract;

~~WHEREAS, by Contract Amendment No. 1 for Early Work, dated \_\_\_\_\_, and Notice to Proceed dated \_\_\_\_\_, DCAMM authorized the CM to proceed with CM Construction Services solely with respect to specified Early Work (as defined in such Amendment);~~

WHEREAS, Section 6.3 of Article 6 of the Contract provides for the negotiation of the Guaranteed Maximum Price (GMP) and the execution of a GMP Amendment; and

WHEREAS, DCAMM and the CM have negotiated a GMP for the Project and intend hereby to amend the Contract Price accordingly;

THEREFORE, DCAMM and the CM agree as follows:

1. Project GMP.

- a) The Guaranteed Maximum Price for the Work, which includes the cost of all CM Services previously authorized, the Hard Cost of the Work, all Approved Change Orders as of \_\_\_\_\_, 20\_\_, the Construction Contingency, the Construction General Conditions and the CM Fee is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).
- b) The Contract Price is hereby amended to the above-stated GMP amount.

2. Scope and Project GMP Detail.

The Contract Price as amended by this GMP Amendment is for the performance of the Work in accordance with the original Contract Documents and those as identified in Exhibits A through H listed below, and attached to this GMP Amendment:

Exhibit A Identification of the Drawings and Specifications in list form as follows: Current Document Log list of Drawing and Specification, as of \_\_\_\_\_.

FOR DCAMM USE ONLY

- Exhibit B Identification of amendments to the Drawings and Specifications in list form as follows: Addendum and Bulletin List, as of \_\_\_\_\_.
- Exhibit C Identification of accepted alternates, unit prices, and allowances with statement of basis in list form, as of \_\_\_\_\_.
- Exhibit D Identification of the Approved Change Orders included within the GMP in list form, as of \_\_\_\_\_.
- Exhibit E Guaranteed Maximum Price summary overview including Construction General Conditions, CM Fee, detailed line item costs by trade, Construction Contingency, and allowances, identified as of \_\_\_\_\_.
- Exhibit F Assumptions and clarifications as of \_\_\_\_\_.
- Exhibit G Baseline construction schedule identifying the Substantial Completion Date and Final Acceptance Date for the Work, Data Date \_\_\_\_\_.
- Exhibit H Early release, trade and non-trade package letters in list form, as of as of \_\_\_\_\_.

3. Bonds and Insurance. In accordance with the Contract, the CM has provided the following required documents in compliance with the Contract requirements, which are attached hereto and incorporated by reference: (a) payment and performance bond forms in the amount of the GMP; and (b) updated certificates of insurance evidence coverage satisfactory to DCAMM and as otherwise set forth in the Contract Documents.
4. ***if GMP Amendment executed prior to Subcontractor approval:*** Reconciliation. DCAMM and CM acknowledge that this GMP Amendment is executed prior to Approval of Subcontract packages in accordance with the Contract. DCAMM and CM agree that the GMP will be reconciled based upon final Approved Subcontract amounts and an amendment reflecting such reconciled GMP amount shall be executed in conjunction with DCAMM's Approval of Subcontractor packages in accordance with the Contract. CM shall timely provide updated bonds, evidence of insurance, and any other documents necessary for the execution of such GMP reconciliation amendment.
5. MBE/WBE Participation. The applicable goals for Minority Business Enterprise (MBE) and Women Business Enterprise (WBE) participation established for this Project remain as follows: \_\_\_\_\_% MBE and \_\_\_\_\_% WBE of the GMP.
6. Miscellaneous. To the extent any other provision(s) of the Contract and/or Contract Documents are inconsistent with the terms of this GMP Amendment, this GMP Amendment shall take precedence. Any capitalized terms not defined in this GMP Amendment shall have the meaning set forth in the Contract. All other provisions of the Contract and/or Contract Documents shall remain in full force and effect.
7. Counterparts. This GMP Amendment may be executed by DCAMM and the CM in separate counterparts each of which when so executed shall constitute an original, but all of which together shall constitute one and the same instrument

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IN WITNESS WHEREOF, the parties to these present have hereunto set their hands and seals, the Commonwealth (Owner) by the Deputy Commissioner of the Division of Capital Asset Management and Maintenance, who incurs no personal liability by reason of the execution hereof or anything herein contained, on the day and year hereinbefore first written.

OWNER

CONSTRUCTION MANAGER

By \_\_\_\_\_

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

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

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

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

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

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

FOR DCAMM USE ONLY

**ATTACHMENTS**

Updated payment and performance bonds in the amount of GMP and certificate(s) of insurance appear on the following pages.

FOR DCAMM USE ONLY

## Exhibit A

Identification of the Drawings and Specifications in list form as follows: Current Document Log list of Drawing and Specification, as of \_\_\_\_\_ appears on the following page(s).

*Remainder of page intentionally blank.*

**GMP AMENDMENT**  
**EXHIBIT A**  
**Identification of Plans and Specifications in List Form**  
**As of [effective date of GMP]**

Section or Drawing #	Description or Drawing Title	Date
<b><u>Specifications:</u></b>		
T1	Title Sheet	9/13/2011
C1.001	Site Plans	9/13/2011
C1.002	Site Details	9/13/2011
A1.001	Lower Level Partial Plan East	9/13/2011
A1.002	Lower Level Partial Plan West	9/13/2011
A1.003	Upper Level Partial Plan East	9/13/2011
A1.004	Upper Level Partial Plan West	9/13/2011
A1.005	Typical Details	9/13/2011
A1.006	Typical Details	9/13/2011
A1.007	Typical Details	9/13/2011
011000	Summary	9/10/2011
012200	Unit Prices	9/10/2011
013200	Construction Progress Documentation	9/10/2011
013300	Submittal Requirements	9/10/2011
013543	Environmental Protection Procedures	9/10/2011
014200	References	9/10/2011
015000	Temporary Facilities and Controls	9/10/2011
017418	Demolition Waste Management and Disposal	9/10/2011
017700	Contract Closeout	9/10/2011
023000	Summary of Existing Conditions	9/10/2011
024100	Support Staging Demolition	9/10/2011
024200	Selective Demolition	9/10/2011
025100	Alternative A Masonry Demolition Management	9/10/2011
025110	Alternative B Masonry Demolition Management	9/10/2011
025120	Alternative C Masonry Demolition Management	9/10/2011
028100	Management and Disposal of Waste Streams	9/10/2011
028433	removal of PCB Containing Caulk Materials	9/10/2011
133419	Temporary Closure Wall	9/10/2011

**Drawings:**

FOR DCAMM USE ONLY

**Exhibit B**

Identification of amendments to the Drawings and Specifications in list form as follows:  
Addendum and Bulletin List, as of \_\_\_\_\_ appears on following pag(s).

*Remainder of page intentionally blank.*

GMP AMENDMENT  
**EXHIBIT B**  
**Amendments to the Plans and Specifications**  
**As of [effective date of GMP]**

<b>Number</b>	<b>Title</b>	<b>Issue Date</b>
Addendum #1	Plans and Specs Changes	3/9/2011
Addendum #2	Plans and Specs Changes	3/17/2011

<b>Number</b>	<b>Bulletin Description</b>	<b>Issue Date</b>
Bulletin #1	Detention Systems Revisions	1/11/2011
Bulletin #2	West Wing 4th Floor Cantilever	1/17/2011

FOR DCAMM USE ONLY

**Exhibit C**

Identification of accepted alternates, unit prices, and allowances with statement of basis in list form, as of \_\_\_\_\_ appears on the following page(s).

*Remainder of page intentionally blank.*

Enter Project Name Here  
 Enter Project Number Here

**ALLOWANCES**  
*To be included in Exhibit C*

No.	Description	Price
	Total	<b>\$0.00</b>

**Instructions:** Enter information in green cells ONLY. All other cells auto-calculate.  
 Include only allowances applicable to the scope being authorized by this Amendment. Add / remove rows as necessary.



**Project Name**  
**Project Number**

**ALTERNATES**  
*To be included in Exhibit C*

Description	Relevant Bid Package	Accepted?

**Instructions:** Enter information in green cells ONLY. Include alternates only applicable to the scope being authorized by this Amendment. Add / remove rows as necessary.

FOR DCAMM USE ONLY

**Exhibit D**

Identification of the Approved Change Orders included within the GMP in list form, as of \_\_\_\_\_ appears on the following page.

*Remainder of page intentionally blank.*

Enter Project Name Here  
 Enter Project Number Here

EXHIBIT D

PREVIOUSLY APPROVED CHANGE ORDERS AND/OR CONTRACT MODIFICATIONS ON THE PROJECT  
 AS OF Enter Date

Number	Amount	Description	Included in prior package/amendment? (Y/N)
<b>Early Preconstruction</b>			
	\$650.00		Yes
	\$800.00		No
<b>Preconstruction</b>			
			No
			No
			No
<b>Early Package Construction</b>			
			No

Total approved and included in prior amendments:	\$650.00
Total approved since last amendment:	\$800.00
Total approved on project:	\$1,450.00

Instructions: Enter information in green cells ONLY. All other cells auto-calculate. Include any additional early preconstruction and/or preconstruction services authorized beyond total stated in Contract Ex. B on this page. Add / remove rows as necessary for number of contract modifications and change orders on project.

FOR DCAMM USE ONLY

**Exhibit E**

Guaranteed Maximum Price summary overview including Construction General Conditions, CM Fee, detailed line item costs by trade, Construction Contingency, and allowances, identified as of \_\_\_\_\_ appear on the following pages.

*Remainder of page intentionally blank.*

**Project Name** Enter Project Name Here  
**Project Number** Enter Project Number Here  
**CM** CM At Risk Firm Name Here

Instructions: Enter information in green cells ONLY. All other cells auto-calculate.

**GUARANTEED MAXIMUM PRICE SUMMARY**

To be included in Exhibit E

No.	Bid Package Description	Price	%of total	MBE/WBE	Total % MBE/WBE
Sample	Painting	\$750,300.00	#N/A	WBE	0.00% MBE #N/A WBE
Sample	Sitework	\$2,500,000.00	#N/A	NA	
0		#N/A	#N/A	#N/A	
0		#N/A	#N/A	#N/A	
0		#N/A	#N/A	#N/A	
0		#N/A	#N/A	#N/A	
0		#N/A	#N/A	#N/A	
0		#N/A	#N/A	#N/A	
0		#N/A	#N/A	#N/A	
0		#N/A	#N/A	#N/A	
0		#N/A	#N/A	#N/A	
0		#N/A	#N/A	#N/A	
0		#N/A	#N/A	#N/A	
0		#N/A	#N/A	#N/A	
<b>Hard Cost of the Work (Subcontractor Costs)</b>					
<b>Subtotal</b>		#N/A			
	Item	Price	% of Hard Cost of the Work	Notes	
	CM bonds and insurance total <sup>1</sup>	\$0.00	#N/A	Amount is auto-entry from 'GC Roll-up'	
	Construction General Conditions <sup>1</sup>	\$59,428.00	#N/A	Amount is auto-entry from 'GC Roll-up' excl. bonds and insurance	
	Allowances <sup>2</sup>	\$0.00	#N/A	Amount is auto-entry from allowances total	
	Unit Prices not included in bid packages <sup>3</sup>	\$3,060.00			
	CM Fee <sup>4</sup>	#N/A	2.25%	Enter Percentage from Ex. B of Contract	
	Construction Contingency <sup>5</sup>	#N/A	2.20%	Enter Percentage from Ex. B of Contract	
	Previously authorized <sup>6</sup>	\$800.00	N/A	Amount is auto-entry from 'Previously Authorized' total	
<b>TOTAL GMP AMOUNT</b>		#N/A			

**NOTES**

- Direct cost in dollars for all bonds and all insurance costs (**including** builders risk) anticipated for this amendment.
- Construction General Conditions as defined in the Contract, as a percentage of the Hard Cost of the Work less bonds and insurance. This amount takes into account the Cost Classification Guide included in Ex. B of the Contract for all Construction General Conditions, including personnel listed herein **and** any other direct costs incurred by CM to be charged as Construction General Conditions Costs (including but not limited to items defined in the Cost Classification Guide as "General Conditions" or items identified as CM's responsibility in the Division 01 Specifications/General Requirements provided in the RFP are included unless they are listed as allowances. Note that allowance items are set forth **separately** below and are **not** included in this total.  
The total percentage of Construction General Conditions Costs shall be the percentage set forth in Ex. B of the Contract, subject to renegotiation as set forth in Section 6.3.1. Any change in percentage must be agreed to and explained in Exhibit F to the amendment.
- Unit prices are to be included in bid packages/Hard Cost of the Work unless specifically approved by DCAMM
- Allowances only applicable to the scope authorized by this Amendment are included.
- CM Fee (as defined in the Contract) shall include all profit and overhead on the Project as classified within the Cost Classification Guide included in Exhibit B of the Contract. **This percentage shall be as set forth in Ex. B of the Contract and shall NOT be adjusted as part of the GMP negotiations.**  
A not-to-exceed dollar amount for the CM Fee percentage applied to the sum of the Hard Cost of the Work less bonds and insurance, the Construction General Conditions Costs, and allowances is automatically calculated.
- Construction Contingency (as defined in the Contract) to be included in the GMP as a percentage applied to the sum of Hard Cost of the Work less bonds and insurance, Construction General Conditions Costs, and allowances total. This percentage shall be no less than 1% and no more than 2.5% of such costs. A dollar amount for Construction Contingency is automatically calculated.
- Previously authorized includes total for (if applicable) early preconstruction services, preconstruction services, previously approved change orders, and (if applicable) early package maximum price(s). Detailed breakdown is enclosed

Enter Project Name Here  
Enter Project Number Here

**PREVIOUSLY AUTHORIZED PROJECT COSTS**  
*To be included in Exhibit E*

Items	Price	Notes
Total Early Preconstruction Services	\$0.00	Enter total amount CM Early Preconstruction Services (line A.3 from Contract Ex. B). If no early preconstruction services on project, enter 0.
Total Preconstruction Services	\$0.00	Enter total amount CM Preconstruction Services (line A.3 (for projects without early precon) or A.6 (for projects with early precon) from Contract Ex. B).
Approved Change Orders and/or Contract Modifications NOT included in prior	\$800.00	Automatically entered from "Approved Change Orders" information.
Early Package No. 1	\$0.00	Enter the early package maximum price stated in Amendment <b>including</b> the Construction Contingency amount <b>and excluding any amounts for</b> early preconstruction, preconstruction and/or Approved Change Orders.
Early Package No. 2	\$0.00	Enter the early package maximum price stated in Amendment <b>including</b> the Construction Contingency amount <b>and excluding any amounts for</b> early preconstruction, preconstruction and/or Approved Change Orders.
Early Package No. 3	\$0.00	Enter the early package maximum price stated in Amendment <b>including</b> the Construction Contingency amount <b>and excluding any amounts for</b> early preconstruction, preconstruction and/or Approved Change Orders.
Early Package No. 4	\$0.00	Enter the early package maximum price stated in Amendment <b>including</b> the Construction Contingency amount <b>and excluding any amounts for</b> early preconstruction, preconstruction and/or Approved Change Orders.
<b>TOTAL:</b>	<b>\$800.00</b>	

<p>Enter information in green cells ONLY. All other cells auto-calculate. Add / remove rows as necessary for number of early packages on project.</p>
---



**Enter Project Name Here**

**Enter Project Number Here**

**CONSTRUCTION GENERAL CONDITIONS PROJECT SUMMARY**

*To be included in Exhibit E*

<b>Construction General Conditions</b>	<b>Cost</b>
Personnel Cost	\$59,128.00
Other General Conditions	\$300.00
Permits	
Insurance (including builder's risk)	
Bonds (CM)	
<b><i>Previously Authorized Construction General Conditions</i></b>	
Early Package No. 1 Construction General Conditions	
Early Package No. 2 Construction General Conditions	
Early Package No. 3 Construction General Conditions	
Early Package No. 4 Construction General Conditions	
<i>Subtotal Construction General Conditions this Package</i>	<i>\$59,428.00</i>
<i>Subtotal Construction General Conditions this Package, excluding bonds and insurance</i>	<i>\$59,428.00</i>
<i>Subtotal previously authorized Construction General Conditions</i>	<i>\$0.00</i>
<b><i>Total Construction General Conditions on Project:</i></b>	<b><i>\$59,428.00</i></b>

Instructions: Enter information in green cells ONLY. All other cells auto-calculate. Totals from the detailed 'Personnel' and 'Other General Conditions' tabs auto populate. For previously authorized construction general conditions, include the total amount for Construction General Conditions shown in Exhibit E of the Early Package Amendment. Add / remove rows as necessary for number of executed early package admendment(s) on the project.





FOR DCAMM USE ONLY

**Exhibit F**

Assumptions and clarifications as of \_\_\_\_\_ appear on the following page(s).

*Remainder of page intentionally blank.*

GMP AMENDMENT  
**EXHIBIT F**  
**Assumptions and Clarifications**  
As of [effective date of GMP]

Number	Description	Amount
--------	-------------	--------

**Assumptions and Qualifications**

The following Bulletins have been issued prior to the date of the GMP, however the cost associated with these changes are not included in the GMP. Refer to EXHIBIT B for description of Bulletins.

- Bulletin xx

**Clarifications**

All work outlined in the Plans and Specifications listed in Exhibit A are included with the following exceptions and clarifications:

- 1.

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## Exhibit G

Baseline construction schedule identifying the Substantial Completion Date and Final Acceptance Date for the Work, Data Date \_\_\_\_\_ appears on the following pages.

Substantial Completion Date:

Final Completion Date:

*Remainder of page intentionally blank.*

*[Note: approved project schedule to be enclosed]*

FOR DCAMM USE ONLY

## Exhibit H

Early release, trade and non-trade package letters in list form, as of as of \_\_\_\_\_  
appear on the following pages.

*Remainder of page intentionally blank.*

*[Note: Subcontractor recommendation packages provided by CM for work included in this  
Amendment and approved by DCAMM to be enclosed]*



*Commonwealth of Massachusetts*  
*Executive Office for Administration and Finance*  
***Division of Capital Asset Management  
and Maintenance***



**CONSTRUCTION MANAGER AT RISK  
GENERAL CONDITIONS OF THE CONTRACT**

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## **ARTICLE I**

### **DEFINITION OF TERMS**

Other terms, abbreviations and references are defined as they appear herein. Words and abbreviations that are not defined in the Contract Documents but which have recognized technical or trade meanings are used in accordance with those meanings.

The following words shall have the following meanings as used in this Contract:

**Approval (or Approved):**

An approval in writing signed by the authorized signatory of DCAMM.

**Building Code:**

All applicable rules and regulations to which DCAMM is subject and which are contained or referenced in the code authorized by M.G.L. c. 143, § 93 et seq., including all amendments thereto.

**Certificate of Substantial Completion:**

A certificate signed by the Designer and DCAMM pursuant to the requirements of Article VI of these General Conditions, indicating that DCAMM has determined that (1) the Work has been completed in accordance with the Contract Documents, except for Punch List items, (2) certificates of inspection, testing and/or approval (including a certificate of occupancy under the Building Code), operating permits for any mechanical apparatus which may be required to permit full use and occupancy of the Work by its intended users (which in a Subcontractor's case may include the CM) have been delivered to DCAMM, (3) any applicable written warranties, operating instructions and related materials have been delivered to DCAMM, and (4) the Work may be used for its intended purpose without substantial inconvenience or interference.

**Change Order:**

(1) A written order not requiring the consent of the CM, signed by an authorized representative of DCAMM, and designated as a Change Order, directing the CM to make changes in the Work within the general scope of the Contract, or (2) any written order from an authorized representative of DCAMM that causes any change in the Work, provided that the CM has given DCAMM written notice stating the date, circumstances, and source of the order and that the CM regards the order as a Change Order.

**Change Order Request:**

CM's written request for a Change Order submitted in accordance with the requirements of Article VII of these General Conditions.

**Construction Contingency:**

The line item included by the CM in the GMP and the Schedule of Values that is available to cover the net amount of any additional costs resulting from unforeseen conditions and events not evidenced at the time that the CM awards a Subcontract or the parties execute the GMP Amendment, as applicable, to the extent that such conditions or events do not result in or constitute a change in the Work, as set forth in Article 6.4 of the Contract.

**Construction Cost:**

The total cost or, to the extent the Project is not completed, the total estimated cost of constructing the Project, including the Hard Cost of the Work, the Construction General Conditions Costs, and the CM Fee. The Construction Cost does not include costs of land acquisition, existing building demolition costs, financing costs, or design fees.

**Construction Manager or CM:**

The person, corporation or other entity identified on page 1 of the Contract as the “Construction Manager” or “CM”.

**CM’s Key Personnel:**

The personnel listed in the CM’s Proposal and Exhibit C of the Contract, as updated and further detailed in the organizational chart provided by the CM and accepted by DCAMM pursuant to Article 5.3.10 of this Contract, all of whom shall be dedicated to the Project on a full time basis, and which personnel shall include at a minimum the CM’s project executive, project manager, Superintendent, and project scheduler. Unless otherwise designated by the CM, the CM project executive shall have complete authority to act for the CM.

**Contract:**

The Owner-Construction Manager Agreement executed between DCAMM and the CM.

**Contract Documents:**

The documents listed in Article 2 of the Contract.

**Contract Modification:**

Any alteration of the Contract Documents accomplished by a written agreement properly executed by the parties to this Contract.

**Contract Price:**

The Contract Price constitutes full compensation to the CM for everything to be performed and furnished in connection with the Work and for all damages arising out of the performance of the Work for which CM is responsible, and constitutes the maximum compensation regardless of any difficulty incurred by the CM in connection with the Work or in consequence of any suspension or discontinuance of the Work. See also definition of Guaranteed Maximum Price.

**Contract Time:**

The period from the date of the issuance of the first NTP with CM Construction Services to the Final Acceptance Date, as set forth in Article 4 of the Contract.

**DCAMM:**

The Division of Capital Asset Management and Maintenance of the Commonwealth of Massachusetts. The public agency awarding and administering this Contract identified as the Owner in the Owner-CM Agreement. Where DCAMM is an agency of the Commonwealth, references to DCAMM shall also include the Commonwealth and its agencies. This term may also be used interchangeably with the term “Owner”.

**Designer:**

The architect or engineer identified as the Designer in the Preliminary Statement of the Contract.

**Drawings:**

The Drawings are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including elevations, sections, details, schedules, and diagrams.

**Effective Date:**

The date written on page 1 of the Contract, which shall be the date of the last signature on the Contract.

**Final Acceptance:**

The written determination by the Designer and DCAMM that the Work has been 100% completed, except for the CM's indemnification obligations, warranty obligations, obligations to continue to maintain insurance coverage for the time periods provided in the Contract Documents, and any other obligations which are intended to survive Final Acceptance and/or the termination of the Contract.

**Final Acceptance Date:**

The date ninety (90) days after the Substantial Completion Date, by which the CM shall achieve Final Acceptance of the Work, subject to adjustments of the Contract Time Approved by DCAMM in accordance with the Contract Documents, as set forth in Article 4 of the Contract.

**Guaranteed Maximum Price (GMP):**

The agreed total not-to-exceed dollar amount for the construction management at risk services, including the cost of the Work, the general conditions and the fee charged by the CM. Upon execution of the GMP Amendment (as defined in the Contract), the GMP is the Contract Price.

**Laws:**

All applicable statutes, regulations, ordinances, codes, laws, orders, decrees, approvals, certificates and requirements of governmental and quasi-governmental authorities.

**Notice to Proceed (NTP):**

The written notice provided by DCAMM to the CM which authorizes the CM to commence the Work or a portion thereof as of a date specified therein. DCAMM may issue more than one NTP, including but not limited to separate NTPs for (if applicable) CM Early Preconstruction Services, CM Preconstruction Services, and CM Construction Services (all as defined in the Contract), in which case the date from which the time for completion of the authorized services and, if applicable, completion of the Work is measured shall be as stated in the appropriate NTP.

**Or equal (or words of like import):**

Equal in the opinion of DCAMM determined pursuant to the provisions of M.G.L. c.30, § 39M, and the provisions of these General Conditions of the Contract.

**Owner:**

The Commonwealth of Massachusetts or political subdivision thereof, authority, or other instrumentality that will own the Work. This term may also be used interchangeably with the term "DCAMM."

**Permits and Approvals:**

All governmental permits, user fees, approvals, certificates, and licenses of any kind which must be obtained and be met in connection with the construction, use, and occupancy of the Project.

**Product Data:**

Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CM or its Subcontractors and suppliers to illustrate materials or equipment for some portion of the Work. Product data shall also include any such information or instructions produced by the manufacturer or distributor of such materials or equipment and made readily available by said manufacturer or distributor.

**Progress Schedule:**

The progress schedule submitted by the CM Approved by the Designer and DCAMM in accordance with the Contract Documents.

**Project:**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by separate contractors.

**Punch List:**

A list of items determined by DCAMM to be minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the Work for its intended purpose.

**Resident Engineer:**

The on-Site representative of DCAMM.

**RFP:**

The Request for Proposals issued by DCAMM identified in the Preliminary Statement to the Contract.

**Samples:**

Physical examples that illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

**Schedule of Values:**

The schedule Approved by DCAMM pursuant to Article VIII of these General Conditions which allocates the Contract Price to the various portions of the Work and is used as a basis for payments to the CM.

**Shop Drawings:**

Drawings, diagrams, details, schedules, and other data specially prepared for the Work by the CM or a Subcontractor, sub-Subcontractor, manufacturer, supplier, or distributor to illustrate a portion of the Work.

**Site:**

The land and, if any, building(s) or space within any such building(s) on which or in which the CM is to perform the Work.

**Specifications:**

The portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work and performance of related services including, without limitation, supplementary general conditions.

**Subcontractor:**

Person or entity with whom the CM or a Subcontractor contracts in accordance with this Contract in order to perform the Work, except as otherwise specifically provided or required herein or by Law. "Subcontractor" when used also means "Trade Contractor" except when otherwise specified.

**Subcontracts:**

A contract awarded by the CM in accordance with the Contract Documents for the furnishing of labor, materials, and equipment in the performance of the Work.

**Substantial Completion:**

"Substantial completion" means that the value of the Work remaining to be done is, in the estimate of DCAMM, less than one percent of the adjusted contract price and shall occur when (1) the CM fully completes the Work or substantially completes the Work, or (2) the CM substantially completes the work and DCAMM takes possession for occupancy, whichever occurs first.

**Substantial Completion Date:**

The date on which the CM achieves Substantial Completion of the entire scope of Work, subject to any adjustments in the Contract Time Approved by DCAMM in accordance with the Contract Documents, as set forth in Article 4 of the Contract.

**Superintendent:**

The licensed construction supervisor who is an employee of the CM designated to be in full time attendance at the Site throughout the prosecution and progress of the Work and who shall have complete authority to act for the CM.

**Trade Contractor:**

Subcontractors under contract with the CM to perform the work of the trades listed in paragraph I.A. of the "Procedures for Award of Subcontracts" at Appendix C, and selected under the process authorized in M.G.L. c. 149A and Section I of the aforementioned procedures by the CM.

**User Agency:**

The department, county, commission, board, agency or other instrumentality of the Commonwealth of Massachusetts or political subdivision thereof which operates, or which will operate, the facility at which the Work is undertaken or which comprises the completed Work, as identified in the Contract.

**Work:**

The Work consists of all the work identified in the Contract Documents. The Work comprises the completed construction required by the Contract Documents and includes all labor, tools, materials, supplies, equipment, Permits and Approvals, paperwork, calculations, submittals, and certificates necessary to develop, construct, and complete the Work in accordance with all Laws, and all early preconstruction (if applicable), preconstruction, construction, and other services

required to be supervised, overseen, performed, or furnished by CM or that the Contract Documents require the CM to cause to be supervised, overseen, performed, or furnished.

## **ARTICLE II**

### **EXECUTION OF THE CONTRACT, SCOPE OF WORK, INTERPRETATION OF CONTRACT DOCUMENTS, DISTRIBUTION OF WORK, SUBCONTRACTS**

#### **1. Execution**

The execution of this Contract by the CM is a representation that the CM has visited the Site, has become familiar with local conditions under which the Work is to be performed and has correlated observations at the Site with requirements of the Contract Documents.

#### **2. Scope of Work**

The Work comprises the completed construction required by the Contract Documents and includes all labor, tools, materials, supplies, equipment, Permits and Approvals, paperwork, calculations, submittals, and certificates necessary to develop, construct and complete the Work in accordance with all Laws, and all preconstruction, construction, and other services required to be supervised, overseen, performed or furnished by CM or that the Contract Documents require the CM to cause to be supervised, overseen, performed or furnished. The CM shall provide and perform for the Contract Price all of the duties and obligations set forth in the Contract Documents.

#### **3. Interpretation**

- A. The Drawings, Specifications, and other Contract Documents are to be considered together and are intended to be mutually complementary, so that any work shown on the Drawings though not specified in the Specifications, and any work specified in the Specifications though not shown on the Drawings, is to be executed by the CM as a part of this Contract. Should a conflict occur in or between or among any parts of the Contract Documents that are entitled to equal preference, the better quality or greater quantity shall govern, unless DCAMM directs otherwise. Figured dimensions shall take precedence over scaled dimensions.
- B. All things that in the opinion of the Designer may be reasonably inferred from the Drawings, Specifications, and other Contract Documents are to be executed by the CM, except as may be otherwise determined by DCAMM. The Designer shall determine whether the detail Drawings conform to the general Drawings and Contract Documents, except as may be otherwise determined by DCAMM.
- C. The tables of contents, titles, headings and marginal notes or sub-scripts contained herein are solely to facilitate references, are not intended to be construed as provisions of the Contract, and in no way affect the interpretation of the provisions to which they refer.
- D. Where reference is made in the Contract Documents to publications, standards, or codes issued by associations or societies, such reference shall be interpreted to mean the current edition of such publications, standards, or codes, including revisions in effect on the date of the issuance of the RFP for the Contract notwithstanding any reference to a particular

date. The foregoing sentence shall not apply to the dates, if any, specified with respect to insurance policy endorsement forms.

- E. In case of any conflict among the Contract Documents, unless the context clearly otherwise requires, the Contract Documents shall be construed according to the following priorities:

First Priority:	Contract Modifications and Change Orders
Second Priority:	Contract, as amended
Third Priority:	General Conditions of the Contract, as amended
Fourth Priority:	Drawings as amended -- schedules take precedence over enlarged detail Drawings, and enlarged detail Drawings take precedence over reduced scale Drawings; figured dimensions shall prevail over scale
Fifth Priority:	Specifications, as amended
Sixth Priority:	RFP, as amended
Seventh Priority:	CM's Proposal, as amended

- F. The CM shall refer to all of the Drawings, and to all of the sections of the Specifications, and shall perform all work reasonably inferable therefrom as being necessary to produce the indicated results. Neither DCAMM nor the Designer assumes any liability arising out of jurisdictional issues raised or claims advanced by Subcontractors, trade organizations or other interested parties based on the arrangement or manner of subdivision of the content of the Specifications and Drawings. In the event of any claim arising out of any duplication, conflict, inconsistency or discrepancy within the Specifications or on the Drawings as to the allocation of the Work among the Subcontractors, the CM shall be solely responsible for resolving the claim and shall be responsible for ensuring that all of the Work is completed, regardless of where it appears in the Specifications or on the Drawings.

#### **4. Distribution of Work**

Other than as required by M.G.L. c. 149A, any other applicable Laws, and these Contract Documents, the CM shall be responsible for distributing the Work in the best interests of the Project.

#### **5. Subcontracts**

- A. Unless otherwise specifically Approved, all Work shall be performed by the CM pursuant to Subcontracts awarded by the CM in accordance with the General Conditions, including but not limited to Appendix C: Procedures for Award of Subcontracts. The CM shall consult with DCAMM with respect to proposed bidding and proposal forms and procedures for all Subcontracts and shall adhere to the procedures for the award of Subcontracts specified in the procedures attached hereto as Appendix C. The CM understands and agrees that DCAMM may participate in negotiations with Subcontractors and that DCAMM and its representatives shall have access to any documents submitted by all Subcontractors (including Trade Contractors) to the CM, for review as to compliance with bidding and proposal procedures and other requirements of the Contract Documents. No Subcontract or other agreement between the CM and any third party for the furnishing or supply of any labor, materials, or equipment in the

performance of the Work shall be awarded or entered into by the CM without DCAMM's prior Approval. DCAMM shall respond promptly to any request for Approval of a Subcontract, including, without limitation, requests for modification to the required form of Subcontract agreement.

- B. The CM shall use the standard forms of Subcontract agreement for all Subcontractors (separate forms provided for Trade Contractors and other Subcontractors) attached as Appendix D to the General Conditions without material revisions unless Approved. All Subcontracts shall require the Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the CM by the terms of the Contract Documents, and to assume toward the CM all the obligations and responsibilities which the CM, by the Contract Documents, assumes toward DCAMM. Each Subcontract shall preserve and protect the rights of DCAMM under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights. The CM shall require each Subcontractor to enter into similar agreements with its Subcontractors. The CM shall provide to each proposed Subcontractor, prior to the execution of a Subcontract with such Subcontractor, copies of the Contract Documents to which the Subcontractor will be bound by this Article II.5. Each Subcontractor shall provide copies of such Contract Documents to its Subcontractors. Copies of all executed Subcontracts shall be provided to DCAMM promptly.
- C. Except in the event of an emergency as provided herein, neither the CM nor any Subcontractor shall enter into any subcontract, contract, agreement, purchase order, or other arrangement (collectively, an "Arrangement") for the performance of any portion of the Work of the furnishing of any materials, services or equipment in connection therewith with any party or entity if such party or entity is an "Affiliated Entity" (as defined below), unless such Arrangement has been Approved, after full disclosure in writing by the CM and Subcontractor, if applicable, to DCAMM of such affiliation and all details relating to the proposed Arrangement. The term "Affiliated Entity" means any entity related to or affiliated with the CM and/or any Subcontractor, as applicable, or with respect to which the CM and/or any Subcontractor, as applicable, has direct or indirect ownership or control, including, without limitation, any entity owned in whole or in part by the CM and/or any Subcontractor, as applicable; any holder of the issued and outstanding shares of, or the holder of any interest in, the CM and/or Subcontractor, as applicable; any entity in which any officer, director, employee, partner or shareholder (or member of the family of any of the foregoing persons) of the CM and/or any Subcontractor, as applicable, has a direct or indirect interest which interest includes, but is not limited to, that of a partner, employee, agent, or shareholder.
- D. The CM shall make no substitution for any Subcontractor previously selected without the prior written Approval of DCAMM. The CM shall maintain and periodically update and distribute to the DCAMM, project manager and the Designer a Project directory listing the names, addresses and telephone numbers of the principal members of the staff of each Subcontractor. The principal contact and a back-up for each Subcontractor and each of their home telephone numbers, mobile telephone numbers and pager numbers, if available, shall be indicated in the Project directory so that such persons can be reached in emergency situations occurring beyond regular business hours.

- E. Each Subcontract shall provide that in the event of termination of the Contract for any reason, DCAMM shall have the right (but shall have no obligation) to assume, and/or accept assignment of and further assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the CM under the Subcontract with such Subcontractor. In the event of such assumption or assignment by DCAMM, the Subcontractor shall have no claim against DCAMM or such third party for work performed by such Subcontractor or other matters arising prior to termination of the Contract, and DCAMM or such third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after such assumption or assignment. No Subcontract and nothing contained herein or in any Subcontract, shall be construed to create any contractual relationship between any Subcontractor and DCAMM.

### **ARTICLE III**

#### **CONTROL OF WORK/ADMINISTRATION OF THE CONTRACT**

##### **1. Designer**

Notwithstanding anything to the contrary expressed or implied in this Contract, any of the powers, rights, and duties of the Designer may be exercised by DCAMM, provided that DCAMM shall be under no obligation to do so. DCAMM may rely on the Designer for the performance and exercise of its rights and obligations hereunder and shall be presumed to so rely on the Designer in the absence of an explicit written assumption by DCAMM of any such rights and obligations, except that any Approval required to be obtained from DCAMM hereunder shall not be valid without the signature of DCAMM. DCAMM may explicitly overrule in writing any action, determination or decision of the Designer should DCAMM choose to do so, except to the extent that the same would violate applicable Law. Subject to the foregoing, the Designer shall be responsible for the general administration of the Contract and shall perform the duties and exercise the rights herein conferred on the Designer. Except as otherwise specifically provided herein, the Designer shall decide all questions which may arise as to the conduct, quantity, quality, equality, acceptability, fitness, and rate of progress of the several kinds of work and materials to be performed and furnished under this Contract, and shall decide all questions which may arise as to the interpretation of the Drawings and Specifications and as to the fulfillment of this Contract on the part of the CM. In the case of the death, resignation, inability, or refusal of the Designer to act or the termination of the Designer's employment, DCAMM may appoint another person to act as Designer for the purposes of this Contract. DCAMM shall give written notice to the CM of any such appointment.

##### **2. Right of Access to Work**

DCAMM, the User Agency, and the Designer (and persons designated by them) may for any purpose enter upon the Work, the Site, and premises used by the CM, and the CM shall provide safe facilities therefor. Other contractors of DCAMM may also enter upon the same for the purposes which may be required by their contracts or work. Any differences or conflicts which may arise between the CM and other contractors of DCAMM with respect to their work shall be initially resolved by the Designer.

### **3. Inspection No Waiver**

No inspection by DCAMM or the Designer or employees or agents of either of them, and no order, measurement, certificate, approval, payment order, payment, acceptance or any other action or inaction of any of them, shall operate as a waiver by DCAMM of any provision of this Contract.

## **ARTICLE IV** **GENERAL PERFORMANCE OBLIGATIONS OF THE CM**

The CM shall complete for the Contract Price all Work in a proper, thorough, and workmanlike manner in accordance with the Contract Documents. Without limiting the foregoing and without limiting the CM's obligations under any other provision of the Contract Documents, the CM shall for the Contract Price perform the following general obligations:

### **1. Review of Contract Documents and Field Conditions**

- A. Before commencing the Work, the CM shall carefully study all available Contract Documents and carefully compare all Specifications, Drawings, figures, dimensions, lines, marks, scales, directions of the Designer and DCAMM, and any other information provided by DCAMM and shall at once report to the Designer and DCAMM any questions, errors, inconsistencies, or omissions.
- B. Before commencing the Work, the CM shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CM with the Contract Documents and shall at once report to the Designer and DCAMM any questions, errors, inconsistencies, or omissions.

### **2. Supervision and Construction Procedures; Coordination; Cutting and Patching**

- A. The CM shall supervise and direct the Work, using the CM's best skill and attention. The CM shall be solely responsible for, and shall have control over, construction means, methods, techniques, sequences and procedures, and shall be responsible for coordinating all portions of the Work under the Contract.
- B. The CM shall be responsible for the proper fitting of all Work and the coordination of the operations of all trades, Subcontractors, and materialmen engaged in the Work. The CM shall guarantee to each of its Subcontractors all dimensions which they may require for the fitting of their Work to all surrounding Work.
- C. All necessary cutting, coring, drilling, grouting, and patching required to fit together the several parts of the Work shall be coordinated by the CM.
- D. The CM shall be responsible to DCAMM for the acts and omissions of the CM's employees, agents and Subcontractors of all tiers, and their agents and respective contractors' employees, and other persons performing portions of the Work or supplying materials therefor.

- E. The CM shall be responsible for the inspection of portions of the Work already performed under this Contract to determine that such portions are completed in accordance with industry standards of good workmanship and the Contract Documents, and in proper condition to receive subsequent Work.
- F. The CM shall employ a registered land surveyor to perform any engineering required for establishing grades, lines, levels, dimensions, layouts, and reference points for the trades. The CM shall be responsible for maintaining benchmarks and other survey marks and shall replace any benchmarks or survey marks that may have become disturbed or destroyed. The CM shall verify the materials shown on the Drawings before laying out the Work and shall be responsible for any error resulting from its failure to exercise this precaution.
- G. Unless otherwise required by the Contract Documents, or directed in writing by the Designer or DCAMM, Work shall be performed during regular working hours which, unless prescribed otherwise by applicable Law, shall be 7:00 a.m. to 5:00 p.m. If the CM desires to carry on the Work outside of the working hours or on Saturdays, Sundays, or Massachusetts or federal holidays, then the CM shall provide at least forty-eight (48) hour notice to DCAMM and Designer to allow satisfactory arrangements to be made for inspecting Work in progress and the CM shall bear the costs of such inspection. DCAMM at its election shall be entitled either to issue a credit Change Order to cover such cost or to withhold such cost from any further payments due the CM and/or to receive a payment from the CM of the amount of such cost.
- H. Work performed outside of regular working hours set forth above without the consent or knowledge of the Designer and/or DCAMM shall be subject to additional inspection and testing as directed by the Designer. The cost of this inspection and testing shall be borne by the CM whether the Work is found to be acceptable or not. DCAMM at its election shall be entitled either to issue a credit Change Order to cover such cost or to withhold such cost from any further payments due the CM and/or to receive a payment from the CM of the amount of such cost.

### **3. Electronic Project Management System**

The CM and Subcontractors shall be required to use DCAMM's electronic web-based project management information system as a repository for Project correspondence, documentation, budgeting, and scheduling, and all submittals and processes under this Contract, as directed by DCAMM.

### **4. Labor**

- A. The CM shall employ only competent workers on the Project. The CM shall enforce strict discipline and good order among the CM's employees and other persons carrying out the Work. The CM shall certify and ensure that all employees to be employed at the Site will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least ten (10) hours in duration at the time the employee begins work and the Contractor and each of its Subcontractors and others working on the Project shall furnish documentation of successful completion of said course by employees working with the first certified payroll report for each employee. The Contractor shall not permit employment of unfit persons or persons

not skilled in tasks assigned to them. Whenever the Designer shall notify the CM in writing that any worker is, in the Designer's opinion, incompetent, unfaithful, disorderly, or otherwise unsatisfactory, such employee shall be discharged from the Work and shall not again be employed on the Project except with written the consent of the Designer.

- B. The CM shall employ a sufficient number of workers and shall ensure that all its Subcontractors employ a sufficient number of workers to carry on the Work with all proper speed in accordance with Laws, the requirements of the Contract Documents, and the Progress Schedule.
- C. The CM shall procure materials from such sources and shall manage its own forces and the forces of its Subcontractors and any sub-Subcontractors in such a manner as will result in harmonious labor relations on the Site. If union and nonunion workers are employed to perform any part of the Work, the CM shall establish and maintain separate entrances to the Site for the use of union and nonunion workers. The CM shall cause persons to be employed in the Work who will work in harmony with others so employed. Should the Work be stopped or materially delayed in DCAMM's reasonable judgment due to a labor dispute, DCAMM shall have the right to require the CM to employ substitutes acceptable to DCAMM.

## **5. Notices and Permits**

- A. The CM at its sole cost shall take out and pay for all Permits and Approvals required by Laws, pay all charges and fees, and pay for (or cause the appropriate Subcontractor to pay for) all utilities required for the proper execution of the Work.
- B. The CM shall comply with all Laws and shall give all notices required thereby.
- C. Except as otherwise specified in this Contract, it is not the CM's responsibility to ascertain that the Contract Documents are in accordance with applicable Laws. However, if the CM observes that portions of the Contract Documents are at variance with the requirements of Laws, the CM shall promptly notify the Designer and DCAMM in writing, and necessary changes shall be accomplished by an appropriate Contract Modification.
- D. If the CM performs Work knowing it to be contrary to Laws without giving such notice to the Designer and DCAMM, the CM shall bear full responsibility for such Work and all costs attributable thereto, including, without limitation, corrections to the Work.

## **6. Lines, Marks, etc.**

The CM shall furnish batter boards and stakes and shall cause to be placed and maintained thereon so as to be easily read, such lines, marks and directions relating to the Work as the Designer shall from time to time direct. The Designer shall establish base lines and benchmarks on the Drawings for the locations of the Work but all other lines and grades shall be determined by the CM.

## **7. Excavation**

The CM shall prevent by sheeting and shoring or bracing, if necessary, any caving or bulging of the sides of any excavation made by the CM, leaving sheeting and shoring in place, or if any is removed, filling solid the spaces left thereby.

## **8. Corrections to the Work; Inspection No Bar to Subsequent Corrections**

The inspection of the Work by the Designer, DCAMM, or their respective consultants shall not relieve the CM of its responsibilities to fulfill the Contract obligations. Defective work may be rejected by the Designer, DCAMM, or their respective designated consultants whether or not such work and/or materials have been previously overlooked or misjudged by the Designer, DCAMM, or their respective consultants and accepted for payment. If the Work or any part thereof shall be found defective at any time before the Final Acceptance of the whole Work, the CM shall forthwith correct such defect in a manner satisfactory to the Designer, DCAMM, or their respective designated consultants. If any material brought upon the Site for use in the Work, or selected for the same, is rejected by the Designer, DCAMM, or their respective designated consultants as unsuitable or not in conformity with the Contract Documents, or as damaged by casualty or deteriorated due to improper storage at the Site or to any other factor, the CM shall forthwith remove such materials from the Site. The CM shall pay for the cost of making good all work or property of other contractors or of the Owner destroyed or damaged by such removal or replacement; repair, finish and immediately make good any injury, defect, omission, or mistake in the Work as soon as it is discovered; and complete and leave the Work in perfect condition.

## **9. Drugs/Alcohol**

The CM shall direct that all persons coming onto the Site are free of drugs and alcohol. The CM shall dismiss from the Project any individual employed by the CM or any Subcontractor or suppliers who is found by the CM, DCAMM, or the User Agency to be in violation of this provision or in any other way incompetent, guilty of misconduct, or detrimental to the Project.

## **10. Sanitary Facilities**

The CM shall provide and maintain sanitary facilities for all persons employed on the Work, beginning with the first worker at the Site. Said facilities shall meet the following requirements unless otherwise specified in the Specifications:

- A. There shall be no fewer facilities than the number required by applicable Laws.
- B. Facilities shall always be in clean and sanitary conditions and shall be adequately screened to be inaccessible to flies.

## **11. Temporary Offices**

- A. Except as otherwise specified in the Contract Documents, the CM shall erect the following temporary offices near the Site as directed by the Designer and adequately furnish and maintain them in a clean, orderly condition a CM's field office at which CM's authorized representative shall always be present while work is in progress. Instructions, notices, and other communications delivered there by the Designer or DCAMM shall be

deemed delivered to the CM. The CM shall provide a separate conference room space with a conference table and chairs sufficient to accommodate 12 persons at one time.

- B. The CM shall relocate the Resident Engineer's trailer, as well as all services connected with said trailer, at no additional cost to the Owner if the need for relocation arises as determined by the Designer.

## **12. Contract Documents and Samples at the Site**

A reasonable number of sets of Contract Documents will be furnished to the CM by DCAMM immediately after the Effective Date, one of which shall be maintained at the Site for reference by authorized representatives of DCAMM. The CM shall maintain at the Site for the use and information of DCAMM one record copy of the Drawings, Specifications, addenda, Change Orders, Approved Shop Drawings, Product Data, Samples, updated Progress Schedule, and all other submittals, all in good order and marked currently to record changes and selections made during construction. These shall be available to the Designer and DCAMM and shall be delivered to the Designer for submittal to DCAMM upon completion of the Work. The Drawings, Specifications, and other documents prepared by the Designer and copies thereof furnished to the CM are for use solely with respect to this Project. The CM shall not permit their release to other parties except as may be necessary in dealing with governmental authorities in the ordinary course of permitting and constructing the Project. Further, they are not to be used by the CM or any Subcontractor or supplier on other projects without the specific written consent of DCAMM and the Designer.

## **13. Telephones, Data, and Wi-Fi**

The CM shall provide and maintain separate individual telephone, data service and wi-fi and pay for all calls, data service, and wi-fi service relating to the Work. Service and equipment shall meet the requirements, if any, of the Contract Documents and shall include provisions for incoming and outgoing calls and continually available wi-fi: (1) in the CM's field office for the use of its authorized agents and (2) in the Resident Engineer's office for the use of the Designer and authorized agents of DCAMM.

## **14. Health, Safety, and Accident Prevention**

A. In performing the Work, the CM shall:

- (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his/her health and/or safety as determined under construction safety and health standards promulgated by the U.S. Secretary of Labor by regulation;
- (2) Protect the lives, health, and safety of other persons; and
- (3) Prevent damage to property, materials, supplies, and equipment.

B. For these purposes, the CM shall:

- (1) Comply with 84 Stat. 1590, the "Occupational Safety and Health Act of 1970" (OSHA) and with regulations and standards issued by the U.S. Secretary of Labor at 29 CFR Part 1926; and

- (2) Comply with the trench safety law set forth in M.G.L. c. 82A and regulations promulgated by the Departments of Public Safety and Occupational Safety in 520 CMR 14.00 et. seq., which require at a minimum that: 1) all excavators obtain a permit for all trenches as defined; 2) all excavators must provide protections when trenches are unattended; and 3) authorizes fines for violations; the CM shall execute a "Trench Application and Permit" form included in Appendix B with the execution of this Contract.
  - (3) Include the terms of this Article IV.14 in every Subcontract so that such terms will be binding on each Subcontractor; and
  - (4) Designate by written notice to DCAMM a responsible member of its organization at the Site whose duties shall include ensuring safety, implementation of CM's safety plan referenced below and preventing accidents.
- C. The CM shall maintain an accurate record of exposure data on all accidents incident to the Work resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 CFR Part 1904. Without limiting the foregoing, the Contractor shall submit to DCAMM without delay verbal and written reports of all accidents involving bodily injury or property damage arising in connection with the Work.
- D. In any emergency affecting the safety of persons or property the CM shall immediately act in the exercise of reasonable judgment to prevent threatened damage, injury, or loss. The CM shall immediately notify DCAMM of such emergency.
- E. The CM shall be responsible for its Subcontractors' compliance with the provisions of this Article IV.14.
- F. Before commencing any portion of the Work on Site, the CM shall submit a written Project-specific plan for implementing this Article VI.14. The plan shall include an analysis of the significant hazards to life, limb and property inherent in the performance of the Work and a plan for controlling these hazards.
- G. Without limiting the foregoing provisions of this Article IV.14, the Contractor shall comply with all health and safety Laws applicable to the Work. Without limitation,
- (1) If the Contractor uses, stores or encounters toxic or hazardous substances it shall comply with M.G.L. c. 111F, § 2, the "Right to Know" law and regulations promulgated by the Department of Public Health, 105 CMR 670, the Department of Environmental Protection, 310 CMR 33, and the Department of Labor and Workforce Development, 441 CMR 21; and shall post a "workplace notice" obtainable from the Department of Labor and Workforce Development.
  - (2) The CM shall comply with the Federal Resource Conservation and Recovery Act, the Federal Comprehensive Environmental Response, Compensation and Liability Act, M.G.L. c. 21C, M.G. L. c. 21E, and any other Laws affecting toxic or hazardous materials, solid, special or hazardous waste. Should the CM discover unforeseen materials subject to the aforementioned hazardous materials laws at the Site, the Contractor shall immediately comply with any and all requirements for dealing with such materials and notify all required governmental authorities and DCAMM of such discovery.

- (3) The CM shall be responsible for the location of all utilities in connection with the Work. Without limiting the foregoing, the CM shall comply with Dig-Safe Laws. Dig-Safe is the Utility Underground Plant Damage Prevention System, 331 Montvale Road, Woburn, MA, 01801, 1-888-344-7233. The CM shall notify Dig-Safe of contemplated excavation, demolition, or explosive work in public or private ways and in any utility company right of way or easement, by certified mail, with a copy to Department of Environmental Protection. This notice shall be given at least 72 hours prior to the work, but not more than sixty days before the work is to be done. Such notice shall state the name of the street or the route number of the way and shall include an accurate description of the location and nature of the proposed work. Dig-Safe is required to respond to the notice within 72 hours of receipt by designating the location of pipes, mains, wires or conduits at the Site. The CM shall not commence work until Dig-Safe has responded. The work shall be performed in such manner and with reasonable precautions taken to avoid damage to utilities under the surface at the work location. The CM shall provide the Superintendent with current Dig-Safe regulations, and a copy of M.G.L. c. 82, § 40. Any costs related to the services performed by Dig-Safe shall be borne by the Contractor.
- (4) The CM shall comply with M.G.L. c. 149, § 129A, relative to shoring and bracing of trenches.

H. Without limiting the CM's responsibilities described above, the CM shall take all reasonable precautions for the safety of and the prevention of injury or damage to (1) all agents and employees and contractors on the Work and all other persons who may be affected thereby including the general public, (2) all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care custody or control of the CM or any of its Subcontractors or any contractors directly or indirectly contracting through any of them, and (3) other property at the Site or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Work. The CM shall promptly remedy all damage or loss to any such property caused in whole or in part by the CM, any Subcontractor, or anyone directly or indirectly contracted or employed by any of them or by anyone for whose acts any of them may be liable. Without limiting the foregoing, the CM shall:

- (1) post and maintain adequate danger signs and other warnings against hazards;
- (2) promulgate safety regulations and give appropriate notices to DCAMM and users of adjacent utilities and property;
- (3) ensure the adequate strength and safety of all scaffolding, staging and hoisting equipment, temporary shoring, bracing and tying;
- (4) protect adjoining private or public property;
- (5) provide barricades, temporary fences, and covered walkways required by prudent construction practices, Laws and/or the Contract Documents;
- (6) furnish approved hard hats and other personal protective equipment, furnish approved first aid supplies, furnish the name of the first aid attendant, and maintain a posted list of emergency facilities;
- (7) provide proper means of access to property where the existing access is cut off by the CM;

- (8) maintain from the beginning of any darkness or twilight through the whole of every night sufficient lights on or near any obstruction so as to guard and protect travelers from injury from such obstruction;
  - (9) maintain adequate security at the Site so as not to expose the Work and surrounding property to vandalism or malicious mischief;
  - (10) provide adequate fire protection procedures during the use of cutting torches, welding equipment, plumbers' torches and other flame and spark producing apparatus;
  - (11) take prompt action to correct any dangerous or hazardous conditions.
- I. The CM shall not use or store explosives in the performance of the Work unless the CM first obtains DCAMM's prior written specific Approval. If DCAMM Approves the use or storage of explosives during the performance of the Work, the CM shall first comply with all Laws and obtain all Permits and Approvals, and certificates required in connection with the same and shall exercise best efforts, including but not limited to the employment and supervision of properly qualified personnel, to prevent damage, injuries, and accidents involving said explosives.
  - J. The CM shall not permit cutting or welding in or immediately adjacent to existing property of the Owner, DCAMM or of anyone else without DCAMM's prior Approval in each instance.
  - K. Notwithstanding any other provisions this Article IV.14, the CM shall, for itself only, ensure compliance with all requirements of 540 CMR 4.10: Special Safety Requirements for Commonwealth Heavy Vehicles and Contractor Heavy Vehicles, and shall coordinate with DCAMM to the extent necessary to obtain certifications as required by 540 CMR 4.11: Special Requirements for Commonwealth and Commonwealth Contractor Vehicles - Certification and Compliance.

## **15. Debris and Chemical Waste**

- A. The CM shall not permit the accumulation of interior or exterior debris. The CM shall always keep the Work area clean. Without limitation, garbage shall be removed daily.
- B. The CM shall properly classify and remove debris and waste from the Site and transport and dispose of it, all in accordance with Laws, employing a qualified and properly licensed transporter, at any landfill, disposal or recycling facility licensed under applicable Laws, including without limitation, hazardous materials Laws. The CM shall make all arrangements and give and obtain all notices, communications, documentation, Permits and Approvals necessary for said disposal from the owner or officials in charge of such landfills, disposal or recycling facilities. The CM shall bear all fees and costs in connection with such classification, removal, transportation, disposal and storage. The CM shall not permit any storage of debris or waste except in accordance with Laws.
- C. The CM shall not permit any open fire on the Site.
- D. Chemical waste shall be stored in corrosion resistant containers, removed from the Site, and disposed of not less frequently than monthly unless more frequently required by Laws,

including without limitation hazardous materials laws, or by the Contract Documents. Disposal of chemical waste shall be performed in accordance with requirements of the U.S. Environmental Protection Agency and the Massachusetts Department of Environmental Protection. Fueling and lubricating of vehicles and equipment shall be conducted in a manner that affords the maximum protection against spills and evaporation. Lubricants shall be disposed of in accordance with procedures meeting all applicable Laws. The CM shall immediately notify the Designer and DCAMM of any hazardous materials release large enough to require reporting under applicable Laws. The CM shall be responsible for immediately cleaning up in accordance with Laws any oil or hazardous materials releases resulting from its operations. Any costs incurred in cleaning up any such releases shall be borne by the CM.

#### **16. Weather Protection (M.G.L. c. 149, § 44G and 44F(1))**

The CM shall provide "weather protection," which means temporary protection of that Work adversely affected by moisture, wind and cold. Weather protection shall be achieved in accordance with the Specifications, and at a minimum shall include covering, enclosing and/or heating working areas such that a minimum temperature of 40 degrees Fahrenheit (or higher temperature, if so stated in the Specifications) is maintained at the working surface during the months of November through March in order to permit construction to be carried on during such period in accordance with the Progress Schedule. After the building or portion thereof is completely enclosed by either permanent construction or substantial temporary materials having a resistance comparable to the specified permanent construction, the CM shall provide heat in accordance with the Specifications; if the Specifications do not specify a temperature range for this phase, the CM shall provide heat of not less than 55 degrees F. nor more than 75 degrees F. The foregoing provisions do not supersede any specific requirements for methods of construction, curing of materials, and the like. Such weather protection shall be consistent with the Progress Schedule, shall permit the continuous progress of the Work necessary to maintain an orderly and efficient sequence of construction operations, shall include one thermometer for every two-thousand (2,000) square feet of floor space or fraction thereof (or as otherwise stated in the Specifications), shall be subject to the Approval of DCAMM, and shall meet such additional requirements as may be specified by DCAMM and by the Contract Documents.

#### **17. Furnishings and Equipment**

When, in the opinion of the Designer, any portion of the Work is in a reasonable condition to receive fittings, furniture, or other property of the Owner not covered by this Contract, the CM shall allow DCAMM to bring such fittings, furniture, and/or other property into such portions of the Work and shall provide all reasonable facilities and protection thereof. No such occupancy shall be construed as interfering with the provisions relating to time of completion, or as constituting an acceptance of the whole or any part of the Work. Any furniture or fittings so installed shall be placed in the Work at the risk of DCAMM except that the CM shall be liable for damages or losses to such furniture or fittings to the extent such damages or losses arise in whole or in part from the negligence or intentional misconduct of CM, Subcontractors, their agents and/or employees, or anyone for whose acts CM is responsible.

#### **18. Sales Tax Exemption and Other Taxes**

All building materials and supplies as well as the rental charges for construction vehicles, equipment and machinery rented exclusively for use on the Site, or while being used exclusively

for the transportation of materials for the Work are entitled to an exemption from sales taxes under M.G.L. c. 64H, § 6(f). The CM shall take all action required to obtain the benefit of such sales tax exemption. The CM shall bear the cost of any sales taxes that CM incurs in connection with the Work and DCAMM shall not reimburse the CM for any such taxes. The exemption number assigned to the CM as an exempt purchaser shall be provided to the CM by DCAMM upon the written request of the CM.

## **19. Final Cleaning**

At the completion of the Work, the CM shall remove all waste materials, rubbish, tools, equipment, machinery and surplus materials, and professionally clean all sight-exposed surfaces so that the Work is clean and ready for occupancy. Subsequent to installation of User Agency furniture, telephones, and equipment, the CM shall provide such additional cleaning as may be necessary to remove any soil resulting from installation of such furniture, telephones and equipment. The CM shall comply with the detailed final cleaning requirements of the Specification; in the event of any conflict between the Specifications and this Article specifically with respect to cleaning at or after the completion of the Work, the Specifications shall apply.

## **20. Maintenance Data**

Subject to such additional requirements as may be provided in the Contract Documents, the CM shall compile four complete and identical binders of operating and maintenance data or the entire Work, which shall include, at a minimum for all equipment and systems installed, complete operation and maintenance programs, including but not limited to operations and maintenance (O&M) manuals, and records of any and all maintenance performed (whether by the CM or Subcontractors) between equipment installation and Final Acceptance, all as may be further detailed in the Specifications. The CM shall submit record maintenance data to the Designer for approval, shall submit approved maintenance data to DCAMM, and shall instruct and train the User Agency's personnel in proper inspection and maintenance procedures in accordance with the training plan developed and Approved in accordance with the Specifications. The CM shall also submit information on equipment and systems installed as the Work is performed in a format acceptable to DCAMM, which shall be compatible for entry in the Capital Asset Management Information System (CAMIS), as may be further detailed in the Specifications.

## **21. Closeout Procedures**

The CM shall take all actions and submit all items required for the issuance of the Certificate of Substantial Completion and Final Acceptance as specified in the Contract Documents.

## **22. Risk of Loss**

The CM shall bear all risk of loss to the Work during the term of the Contract except for any portion of the Work as to which the Certificate of Substantial Completion has been issued pursuant to Article VI of these General Conditions. Nothing herein shall limit the CM's responsibilities under Article IX or XV of these General Conditions.

**ARTICLE V**  
**MATERIALS AND EQUIPMENT**

**1. Materials Generally**

- A. Unless otherwise specifically provided in the Contract Documents, the CM shall provide and pay for materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- B. The CM shall obtain prior written Approval for permission to store materials or equipment to be incorporated in the Work for which progress payments will be requested at off-Site locations. Any and all charges for storage, inspection, and verification by the Designer and DCAMM, including insurance, shall be borne solely by the CM. Before Approval, DCAMM may require, without limitation:
- (1) evidence that the off-Site location is properly secure;
  - (2) proper proof of insurance and proof of satisfactory contractual arrangements for transportation to the Site; and
  - (3) a certificate from the CM stating:
    - (a) The name of the member of the CM or Subcontractor that leases or owns the warehouse or other storage facility;
    - (b) The location of such storage facility, including the storage space; *i.e.*, the entire premises or certain areas of a warehouse giving the number of floors or portions thereof, and a certification that the CM has visited such location, verified the storage of such material or equipment therein or thereon (including confirmation that the materials or equipment are marked and segregated as provided below), and verified payment of all current storage charges;
    - (c) The date(s) on which the material or equipment is first stored at such facility; and
    - (d) A description of the materials or equipment stored, including quantities, types, manufacturers and other identification information, such as serial numbers.

The CM shall furnish to DCAMM, not less often than once per month, a current inventory of all materials or equipment being stored at any off-Site location. The CM shall mark each sealed carton or other item with the name of the Project and DCAMM, and all materials or equipment stored off-Site shall be segregated to the extent required by DCAMM or the Designer. Payment for materials or equipment stored off-Site shall be at the reasonable discretion of DCAMM, taking into account the schedule requirements of the Work. Title to materials or equipment stored off-Site shall be transferred at the time at which DCAMM pays for them, free of any lien or other interest of the supplier or any other lien or encumbrance. Notwithstanding such transfer of title, the CM shall retain sole care, custody and control of, and shall have complete responsibility for the security and protection of, all materials or equipment included in any application for payment which are stored at locations other than the Site, and the CM assumes all risk of loss or damage to such materials or equipment, and the CM shall hold harmless DCAMM from and against all liabilities arising out of or resulting from loss or damage, from any cause, to such materials or equipment for which payment is requested, including liens, security

interests or other claims of any kind by suppliers or other third parties relating to such materials or equipment.

- C. Materials and equipment to be installed as part of the Work (both or either of which are hereinafter referred to as "materials") shall be new, unused, of recent manufacture, assembled, and used in accordance with the best construction practices. The CM shall inform itself as to, and shall comply with, the provisions of M.G.L. c. 7, § 23A, as amended, and shall abide by the same and all applicable rules, regulations and orders made thereunder in relation to the purchase of supplies and materials in the execution of the Work, including the provisions of M.G.L. c.7, § 22, paragraph 17 which provides that there be "*a preference in the purchase of supplies and materials, other considerations being equal, in favor, first, of supplies and materials manufactured and sold within the Commonwealth, and, second, of supplies and materials manufactured and sold elsewhere within the United States.*"

## **2. Shop Drawings, Product Data, and Samples**

- A. The CM shall furnish to the Designer all Samples of the materials to be used in the execution of the Work as required by the Contract Documents. The CM shall furnish to the Designer in a timely manner all coordination Drawings, shop details, Shop Drawings, and setting diagrams which may be necessary for acquiring and installing materials. These shall be reviewed as required by the Designer. Unless otherwise specified by DCAMM, the CM shall provide a minimum of four (4) copies when submitting for final approval by the Designer, one of which shall be returned to the CM, one to the Resident Engineer, one to DCAMM and one filed with the Designer. The inspection and approval by the Designer of coordination Drawings, shop details, Shop Drawings, and setting diagrams shall be general and shall in no way relieve the CM from responsibility for proper fitting, coordinating, construction, and construction sequencing. The CM shall furnish to DCAMM and the Designer such information and vouchers relative to the Work, the materials therefor, and the persons employed thereon, as the Designer shall from time to time request.
- B. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. The purpose of their submission is to demonstrate for those portions of the Work for which submittals are required the way the CM proposes to conform to the information given and the design concept expressed in the Contract Documents.
- C. The CM shall review, approve, and submit to the Designer, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of DCAMM or of separate contractors. Submittals made by the CM which are not required by the Contract Documents or which do not comply with the Contract Documents may be returned without action. The CM's attention is directed to the provisions of this Article V.2 and to the Specifications.
- D. The CM shall prepare and keep current for the Designer's approval a schedule of submittals which is coordinated with the Progress Schedule and allows the Designer reasonable time to review submittals.

- E. The CM shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples, or similar submittals until the respective submittal has been approved by the Designer. Such Work shall be in accordance with approved submittals.
- F. By submitting Shop Drawings, Product Data, Samples and similar submittals, the CM represents that the CM has determined and verified materials, field measurements, and field construction criteria related thereto and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- G. The CM shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Designer's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the CM has specifically informed the Designer in writing of such deviation at the time of submittal and DCAMM has given explicit Approval to the specific deviation. The CM shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the Designer's or DCAMM's actions.
- H. The CM shall direct specific attention in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals to revisions other than those requested by the Designer on previous submittals.
- I. Informational submittals upon which the Designer is not expected to take responsive action may be so identified in the Contract Documents.
- J. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, such certification must be stamped by a registered Massachusetts professional in the discipline required. The Designer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.
- K. Materials furnished or used or employed under the Contract must be equal in quality to the Samples furnished and be satisfactory to the Designer.

### **3. Tests**

- A. Any material to be used in the Work may be tested or inspected at any time by the Designer with an independent testing company with the prior Approval of DCAMM and may be rejected if it fails to comply with specified tests. DCAMM shall pay for all testing of specified material, except as provided herein. If the CM requests permission to use a material that was not specified, then the CM shall pay for such testing. The cost of testing of any materials that fail the testing criteria shall be borne by the CM.
- B. The CM shall notify the Designer and DCAMM of the proposed sources of materials in time to permit all required testing and inspection before the material is needed for incorporation into the Work. The CM shall have no claim arising from CM's failure to designate the proposed source or to order the material in time for adequate testing and inspection. Necessary arrangements shall be made to permit the Designer to make factory, shop, or other inspection of materials or equipment ordered for the Work in process of manufacture or fabrication, or in storage elsewhere than the Site.

#### **4. "Or Equal" Submissions**

- A. Where products or materials are prescribed by manufacturer name, trade name, or catalog reference, the words "or Approved equal" shall be understood to follow. An item shall be considered equal to the item so named or described if in the opinion of the Designer and DCAMM (1) it is at least equal in quality, durability, appearance, strength and design, (2) it performs at least equally the function imposed in the general design for the Work, and (3) it conforms substantially, even with deviations, to the detailed requirements for the items as indicated by the Specifications. Any changes in the Work made necessary to accommodate products or materials substituted as an "or equal" shall be at the expense of the CM. "Approved equal" shall mean an item with respect to which DCAMM shall have issued a written statement to the CM to the effect that the item is, in DCAMM's opinion, equal within the meaning of this paragraph to that prescribed in the Contract Documents.
- B. The CM shall be responsible for providing the Designer with any information and test results that the Designer reasonably requires to determine whether or not a material is equal to a material named or described in the Contract Documents.
- C. Whenever the CM submits a material for Approval as a substitute for a material named or described in the Contract Documents, such submission shall be made at least one hundred twenty (120) days prior to the date the materials will be used in the Work. In no event shall the CM maintain a claim for delays based upon the Designer's review of such substituted materials if the CM has failed to comply with the one hundred twenty (120) day submission requirement.

#### **5. Delivery and Storage of Materials; Inspection**

- A. Materials and equipment shall be progressively delivered to the Site so that there will be neither delay in the progress of the Work nor an undue accumulation of materials that are not to be used within a reasonable time and so that their security, quality, and fitness of the materials for the Work is preserved.
- B. Materials stored off Site shall be insured and stored at the expense of the CM so as to guarantee the preservation of their security, quality and fitness for the Work. Without derogating from the CM's responsibilities in the previous sentence, when necessary to avoid deterioration or damage, material (on or off Site) shall be placed on wooden platforms or other hard clean surfaces and not on the ground and shall be properly protected.
- C. Expenses for inspection of material by the Designer and/or DCAMM personnel including travel, quarters, and subsistence shall be borne by the contractor requesting the inspection of material stored outside the Commonwealth of Massachusetts as part of the Contract Price. The policy of DCAMM precludes the payment for material stored outside the boundaries of Massachusetts except in extremely limited circumstances with the express written consent of DCAMM. If the CM requests an inspection of material stored outside the Commonwealth of Massachusetts, DCAMM will initially pay for all expenses of inspecting the material incurred by the Designer and/or DCAMM's personnel including

travel, quarters, and subsistence. DCAMM will then give CM an invoice for those costs and the CM shall submit a credit Change Order in the amount of those expenses.

- D. Stored materials either at the Site or at some other location agreed upon in writing shall be so located as to facilitate prompt inspection and even though approved before storage, may again be inspected prior to their use in the Work.
- E. All storage sites shall be restored to their original condition by the CM at the CM's expense.
- F. The CM shall take charge of and be liable for any loss of or injury to the materials for its use delivered to or in the vicinity of the place where the Work is being done, whether furnished by the Owner or otherwise; the CM shall notify the Designer as soon as any such materials are so delivered, allow them to be examined by the Designer, and furnish workers to assist therewith.

## **6. Defective, Damaged, or Deteriorated Materials and Rejection Thereof**

The Designer may reject materials if the Designer reasonably determines that such materials do not conform to the Contract Documents in any manner, including but not limited to materials that have become damaged or deteriorated from improper storage whether or not such materials have previously been accepted. The CM at its own expense shall remove rejected materials from the Work. No rejected material, the defects of which have been subsequently corrected, shall be used except with the written permission of the Designer. Should the CM fail to remove rejected material within a reasonable time, DCAMM may, in addition to any other available remedies, remove and/or replace the rejected material, and deduct the cost of such removal and/or replacement from any moneys due or to become due the CM. No extra time shall be allowed for completion of Work by reason of such rejection. The inspection of the Work shall not relieve the CM of any of its obligations herein prescribed, and any defective Work shall be corrected. Work not conforming to the Contract Documents may be rejected notwithstanding that such Work and materials have been previously overlooked or misjudged by the Designer and accepted for payment. If the Work or any part thereof shall be found defective at any time before Final Acceptance of the whole Work, the CM shall forthwith make good such defect in a manner satisfactory to the Designer. Nothing in the Contract shall be construed as vesting in the CM any property rights in the materials used after they have been attached or affixed to the Work or the Site; but all such materials shall upon being so attached or affixed become a property of the Owner.

## **ARTICLE VI** **PROSECUTION AND PROGRESS**

### **1. Beginning, Progress Schedule, and Completion of Work**

- A. The Contract time shall commence upon the date specified and in accordance with any conditions in the Notice to Proceed.
- B. Prior to the submission of the first progress payment, CM shall submit and DCAMM shall approve a progress schedule which complies with the requirements of Specification

section 013200. Upon Approval by DCAMM, said schedule shall constitute the Progress Schedule. The CM shall comply with all requirements of said section 013200.

- C. Time is of the essence of this Contract. The Work shall be completed within the time specified in the Contract. Should the CM require additional time to complete the Work, the CM shall document the reasons therefor and submit a written request for an extension of time within 20 days of the occurrence of the event alleged to be the cause of the delay, as provided in this Article and in Article VII of these General Conditions. Failure to submit said written request within the time required by the preceding sentence shall preclude the CM from subsequently claiming any time extension due to said delay.
- D. If, in the opinion of the Designer or DCAMM, the CM fails to comply with the Progress Schedule, DCAMM may give the CM a written notice to that effect, whereupon (1) the CM shall, if the notice requires, discontinue all or any portion of the Work (which discontinuance shall neither terminate the Contract nor give the CM any claim for an increase in the Contract Price, damages, or an extension of any completion deadlines); or (2) at CM's sole cost increase the work force, equipment and plant, or any of them, employed on the whole or any part of the Work, to the extent required by such notice, and employ the same from day to day until the completion of the Work or such part thereof, or until the failure regarding the rate of progress, in the opinion of the Designer or DCAMM, shall have been sufficiently corrected.
- E. If, in the opinion of DCAMM, the CM fails to comply with the Progress Schedule, and whether or not DCAMM shall have given the CM a notice described in D above, DCAMM may (but shall not be required to) give the CM written notice of such failure and five days to cure the same. Unless the CM shall within that five days take all necessary steps to do so (including, if DCAMM requires, increasing its forces, equipment, and plant) and continue to do so until in the opinion of DCAMM the failure is corrected, DCAMM may at the CM's expense and without terminating this Contract take exclusive or joint possession of all or a portion of the Site and employ and direct the labors of existing or such additional forces, equipment and plant as may in the Designer's or DCAMM's opinion be necessary to ensure the completion of the Work or such part thereof within the time specified in the Contract Documents or at the earliest possible date thereafter. DCAMM may exercise its rights under this Article at any time and from time to time without waiving any of its rights under this Contract, at law or in equity, including, without limitation, the right to deem this Contract terminated or to order the CM to discontinue the Work at any time thereafter. The CM shall continue to perform the remaining Work under this Contract even if DCAMM elects to have another contractor perform a portion of the Work under this Article.
- F. DCAMM shall deduct the cost of any actions DCAMM takes under this Article from any amount then due or which might have become due to the CM under this Contract had the CM performed as required. On demand, the CM shall pay DCAMM any amount by which the cost of completing all or any portion of the Work exceeds the amount attributable to that Work under the Contract Documents. DCAMM's sole goal will be to complete the Work that it elects to complete within the time limits stated in the Contract or at the earliest possible date thereafter. Consequently, DCAMM shall have no obligation to obtain competitive bids or the lowest cost for completing the Work or any part thereof, except when it is required by Law. DCAMM's election to complete all or

part of the Work shall not release the CM from any liability for failure to complete the Work as the Contract Documents require, and shall not entitle the CM to a claim for an increase in the Contract Price or an extension of the time for completing the Work. If the cost that DCAMM incurs in completing all or any portion of the Work is less than the amount that the Contract Documents attribute to that Work, DCAMM will pay or credit the difference to the CM, less any other costs and expenses that DCAMM incurs, including the cost of supervision, and the Designer's and attorneys' fees and costs.

## **2. Failure to Complete Work on Time- Liquidated Damages**

- A. If the CM shall neglect, fail or refuse to achieve the Substantial Completion Date and/or the Final Acceptance Date, the CM and the CM's surety agree, as a part of the consideration for the execution of this Contract by DCAMM, to pay DCAMM the amounts set forth in Article 4.5 of the Contract, not as a penalty, but as liquidated damages to cover certain losses, expenses, and damages of DCAMM for such breach of this Contract as herein set forth. The CM acknowledges that delay of the Substantial Completion Date will cause disruption of DCAMM's operations and those of the User Agency. Such disruptions include without limitation, loss of productivity and efficiency and duplication of effort of the User Agency and of employees and contractors engaged by the User Agency and DCAMM for operation of the completed facility. DCAMM and the User Agency will incur other direct administrative, professional, rental, storage, moving, transportation, and other costs in the event of such delay. Delay of the Substantial Completion Date and/or Final Acceptance Date will also require DCAMM to incur additional costs for compensation to the Designer and other consultants or contractors for extended or additional services on the Project. In light of the costs, damages, losses, risks and liabilities described above, the parties agree upon the liquidated damages stated below. Such damages have been fixed and agreed upon because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages DCAMM and the Commonwealth would, in such event, sustain. Said amounts may be retained by DCAMM on or after the scheduled Substantial Completion Date and/or Final Acceptance Date from current progress payments or any other amounts owing to the CM.
- B. Similarly, if the Contract states that by a specified date a designated portion of the Work shall be prosecuted to the point at which it qualifies for the issuance of a Certificate of Substantial Completion, and if such portion has not been prosecuted to such point by said date, the CM shall pay to DCAMM the sum designated in the Contract for each calendar day that the CM is in default in completing such portion of the Work to such point. Such moneys shall also be paid as liquidated damages not as a penalty, to cover losses and expenses to the Owner resulting solely from the fact that the Work is not completed on time.
- C. DCAMM may recover such liquidated damages by deducting the amount thereof from any moneys due or that might become due the CM, and if such moneys shall be insufficient to cover the liquidated damages, then the CM or the Surety shall pay to DCAMM the amount due.
- D. Except as otherwise expressly provided, none of the following shall constitute a waiver of the CM's or its surety's obligations to pay liquidated damages or any portion thereof or of any of the Owner's rights hereunder at law or in equity:

- (1) Acceptance of any portion of the Work or payment to the CM or its surety therefore;
  - (2) Completion of a portion of the Work or the use or occupancy thereof by DCAMM or others; or
  - (3) DCAMM's requiring or allowing the CM or its surety to complete the Work.
- E. Liquidated damages or a portion thereof may be waived by DCAMM if the CM submits evidence satisfactory to DCAMM that the delay was caused solely by conditions beyond the control of the CM and that DCAMM has not suffered any damages as a result of said delay.
- F. Failure by DCAMM to specify a sum as liquidated damages in the Contract, or the insertion of "N/A" or "none" in the space provided therein for liquidated damages, shall not be deemed a waiver of DCAMM's right to recover actual damages arising from the CM's failure to complete the Work on time.

### **3. Delays; Statutory Provisions (M.G.L. c. 30, § 39O)**

- A. Notwithstanding any provision of this Contract to the contrary, except as otherwise provided by Law as set forth in Article VI.3.B below, the CM shall not be entitled to increase the Contract Price or to receive damages on account of any hindrances or delays, avoidable or unavoidable, including damages for compression or acceleration of Work, or loss of productivity; but if any such delay is caused, in the opinion of DCAMM, by DCAMM, the CM shall be entitled to an extension of time. The length of the extension shall be sufficient in the opinion of DCAMM for the CM to complete the Work. Although no delay shall increase the Contract Price, DCAMM may require that any change in the date by which the CM must complete all or any part of the Work be processed on a standard Change Order form.
- B. If a suspension, delay, interruption or failure to act of DCAMM increases the cost of performance to any Subcontractor, that Subcontractor shall have the same rights against the CM with respect to such increase as the CM shall have against DCAMM by virtue of (a) and (b) of M.G.L. c. 30, § 39O set forth below, but nothing in provisions (a) and (b) shall alter any other rights which the CM or the Subcontractor may have against each other. As used in the statutory language of (a) and (b) below, "contract" means this Contract, "general contractor" means the CM and "Awarding Authority" means DCAMM:

*“(a) The Awarding Authority may order the general contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the Awarding Authority; provided, however, that if there is a suspension, delay or interruption for fifteen days or more or due to a failure of the Awarding Authority to act within the time specified in this contract, the Awarding Authority shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the general contractor on such increase; and provided further, that the Awarding Authority shall not make any adjustment in the contract price under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provisions.*

*(b) The general contractor must submit the amount of a claim under provision (a) to the Awarding Authority in writing as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of final payment under this contract and except for costs due to a suspension order, the Awarding Authority shall not approve any costs in the claim incurred more than twenty days before the general contractor notified the Awarding Authority in writing of the act or failure to act involved in the claim."*

#### **4. Use and Occupancy Prior to Final Acceptance**

- A. The CM agrees to the use and occupancy of the Project or any portion thereof before Final Acceptance of the Work by DCAMM.
- B. DCAMM and the User Agency will cooperate with the CM with respect to the completion of the Work by taking such reasonable steps as may be possible to avoid interference with the CM's Work provided that they do not interfere with the proper functioning of the facility.
- C. The CM shall not be responsible for wear and tear or damage resulting solely from temporary occupancy.
- D. Use and occupancy of any part of the Work prior to Final Acceptance by DCAMM shall not relieve the CM from maintaining the required payment and performance bonds and insurance (to the extent that insurance is required to be maintained after Substantial Completion) required by this Contract.

#### **5. Certificate of Substantial Completion**

- A. When the Work, or portion thereof which DCAMM agrees to accept separately has reached the state of Substantial Completion as shown on an Approved payment request, the CM shall develop, with the participation of the Designer and DCAMM, the Punch List identifying those items of unfinished or unacceptable Work that remain to be performed or corrected under the Contract.
- B. Before the Work shall be deemed completed to the point where it is ready for the issuance of a Certificate of Substantial Completion, the CM shall:
  - (1) Provide CM's proposed Punch List containing a statement of the reason for each item listed thereon;
  - (2) Advise DCAMM of proposed changes in insurance in accordance with the provisions of this Contract, and provide to DCAMM evidence of CM's completed operations insurance coverage to the extent required by the Contract Documents;
  - (3) Execute and submit a notarized warranty on a form provided by DCAMM meeting the requirements of Article IX of these General Conditions, to commence upon the date of the issuance of the Certificate of Substantial Completion for the Work or the designated portion thereof, unless otherwise provided in the Certificate of Substantial Completion;

- (4) Submit signed special warranties and warranties of longer than one year as required by the Contract Documents;
- (5) Submit signed maintenance agreements for all portions of the Work specified to receive maintenance after the issuance of the Certificate of Substantial Completion;
- (6) Submit all preliminary record Drawings and documents and framed data in the forms required by the Contract Documents;
- (7) Complete all items required to be completed by the Department of Public Safety and obtain a Certificate of Occupancy from the Department of Public Safety and similar releases which permit the User Agency and DCAMM full and unrestricted use of the areas claimed to be ready for occupancy;
- (8) Deliver specified maintenance stocks of materials, required spare parts, and all special tools furnished by manufacturers to persons designated by DCAMM and obtain written receipts for same;
- (9) Make final changes of lock cylinders or cores and advise DCAMM of the change of project security responsibility;
- (10) Complete start-up of systems and instruct User Agency personnel on proper operation and routine maintenance of all systems and equipment; obtain and submit to User Agency personnel that start-up and instruction have been completed;
- (11) Remove all remaining temporary facilities that are no longer needed, surplus materials, and debris (provided, however, that the CM shall not remove construction offices and trailers without the prior Approval of DCAMM);
- (12) Submit final utility meter readings and similar information and advise the User Agency and DCAMM of the change of responsibility for utility charges and payments upon the issuance of the Certificate of Substantial Completion;
- (13) Complete final clean-up of all Work, restoration of damaged finishes, and replacement of all damaged and broken glass not listed on the CM's Punch List.
- (14) Complete such other items as may be called for in the Contract Documents, if any, or in the Specifications.

C. After completing the items specified in Article VI.5.B above, the CM shall make a written request for the Designer's inspection for a Certificate of Substantial Completion in accordance with the Contract Documents. The Designer shall review the submittals and the Work and shall either 1) sign a Certificate of Substantial Completion or 2) notify the CM of incomplete and/or incorrect Work that must be completed and corrected prior to the issuance of the Certificate of Substantial Completion. The Designer shall notify the CM of any additions to the Punch List. In connection with the execution of the Certificate of Substantial Completion the Designer shall assign dollar values to each item on the Punch List. Failure to include any incomplete or defective item on the Punch List shall not relieve the CM of the obligation to complete all Work in accordance with the Contract Documents.

## **6. Final Acceptance of the Work**

**A. Prerequisites for Final Acceptance.** After the issuance of a Certificate of Substantial Completion for the entire Work and after the CM has completed all of the Work required by this Contract, including Change Orders and Punch List items, the CM shall submit the following completed items to DCAMM together with such additional items as may be specified in the Contract Documents:

- (1) A completed final application for payment showing a final accounting of all changes in the Work, on the form provided by DCAMM;
- (2) Certification and satisfactory evidence that all taxes, fees, and similar obligations have been paid;
- (3) Consent of the CM's surety to final payment executed by applicable bonding companies.
- (4) Certified copy of the Punch List stating that the CM has completed or corrected every item listed.
- (5) Evidence of CM's continuing completed operations insurance coverage to the extent required by the Contract Documents.
- (6) All final record Drawings and documents in the forms specified by the Contract Documents.
- (7) A notarized certification that all purchases made under the tax exemption certificate were legitimate and entitled to exemption.
- (8) Written certifications from the Department of Public Safety and the Designer to the effect that: a) the Work has been inspected for compliance with the Contract Documents and has satisfied the Department of Public Safety; b) all equipment and systems included in the Work have been tested in the presence of the Designer and are operational and satisfactory; c) the Work is completed and ready for final inspection.
- (9) Such other items as may be required by the Contract Documents.

**B. Re-inspection; Final Acceptance.** After notification from the CM that all remaining Contract exceptions, omissions and incompletions have been completed (with the exception of CM's continuing warranty, insurance, indemnification, and such other obligations as are intended by the terms of the Contract Documents to extend beyond the Final Acceptance Date), DCAMM and the Designer shall inspect the Work to verify the completion of the same. If the Work is satisfactory, DCAMM shall prepare a Certificate of Final Acceptance or shall notify CM in writing of items which remain to be completed prior to Final Acceptance.

## **7. One-Year Warranty Repair List and Inspection**

Approximately 30 days prior to the expiration of the comprehensive one-year warranty period, the CM shall schedule an appointment with DCAMM for a re-inspection of the Work with DCAMM and shall thereafter inspect the work at the time scheduled. Based on this inspection and on prior inspections, DCAMM shall issue a "Warranty Repair List" of items to be corrected by the CM. The CM shall make the repairs and/or replacements listed within 30 days of the issuance of the "Warranty Repair List" unless otherwise agreed by DCAMM in writing.

## **ARTICLE VII** **CHANGES IN THE WORK**

### **1. Change Orders Generally**

- A. No changes in the Work, the Contract Price, the Substantial Completion Date, Final Acceptance Date, or any other provision of an Approval by DCAMM of the Contract Documents shall be made in absence of a Change Order as defined in Article I of these General Conditions, directing the CM to perform such changes. Any request for a change in the provisions of this Contract submitted by the CM must be made in writing and in accordance with the provisions of this Contract, including the procedures of DCAMM.
- B. A request for a change in the provisions of this Contract may be submitted to DCAMM by the CM, Designer, Resident Engineer or User Agency. The request must be made in writing and in accordance with the provisions of this Contract, Laws, and the procedures of DCAMM. When the CM believes that an event or circumstance gives rise to an adjustment in the Contract Price and/or the Contract Time it shall submit a Change Order Request in accordance with the forms and procedures required by DCAMM.
- C. A written directive may be issued by DCAMM instructing the CM to make changes in the Work within the general scope of the Contract, including but not limited to, changes in: (1) the Drawings and Specifications; (2) the method or manner of performance of the Work; (3) the Owner-furnished facilities, equipment, materials, services, or Site; (4) the schedule for performance of the Work.
- D. Whenever a Change Order or written directive will cause a change in the CM's cost, the CM or DCAMM may request an adjustment in the Contract Price. Such request shall be in writing and shall be submitted by the party making such claim to the other party before commencement of the pertinent work.
- E. DCAMM and the CM shall negotiate in good faith an agreement on an equitable adjustment in the Contract Price, and/or Contract Time if appropriate, before commencement of the pertinent Work. In the absence of an agreement for an equitable adjustment, DCAMM shall unilaterally determine the costs attributable to the change and provide the CM with a written notice to that effect. The CM may appeal the decision of DCAMM within thirty days of receipt of said notice, to the Commissioner of DCAMM or the Commissioner's designee, and the CM shall have the right to such further appeal as is provided in M.G.L. c.30, § 39Q set forth in of this Article VII.4.D. However, if the CM

shall exercise its rights to appeal the decision of DCAMM as aforesaid, the CM shall be required to engage in the mandatory mediation procedures set forth in Article VII.5.

- F. During the negotiation of an equitable adjustment in the Contract Price, the CM shall provide DCAMM with all cost, pricing data and any other information or documentation used by the CM in computing the amount of the equitable adjustment, and the CM shall certify that the pricing data used was accurate, complete, and current. If DCAMM subsequently determines that the data submitted by the CM was inaccurate, incomplete, or not current, DCAMM may exclude such data from consideration under the equitable adjustment request.
- G. Whenever the CM is entitled or believes it is entitled to a Change Order adjusting the Contract Price, the CM shall maintain separate accounts (by job order or other suitable accounting procedure) of all costs incurred and attributable to such Work and schedule. The CM shall maintain a computerized accounting system, acceptable to DCAMM, in which current information as to the status of all such work and schedule is maintained. The CM shall maintain such contemporaneous records as are necessary to provide a clear distinction between the costs of all Change Order Work and proposed Change Order Work, and the costs of other Work and schedule.
- H. Notwithstanding any provisions in the Contract Documents to the contrary, no additional Construction General Conditions Cost shall be due for any Change Order or portion of a Change Order resulting from or attributable to:
  - (1) Increases in the cost of allowance items;
  - (2) Substitutions of equipment or materials which are functionally similar to equipment or materials specified in the Contract Documents; or
  - (3) Sales and use taxes.
- I. The CM shall reasonably investigate the validity of Subcontractor and supplier change order requests before agreeing to pass them through to DCAMM. For all Change Order Requests submitted, the CM shall certify that: the Change Order Request is made in good faith; the validity of the CM's and any Subcontractor and supplier Change Order Requests have been verified; the supporting data is accurate and complete to the best of the CM's knowledge and belief; and the CM believes DCAMM to be liable for the add amount, or entitled to the deduct amount of the Change Order Request, whichever is applicable.
- J. No Change Order shall be allowed related to alleged defects in the Specifications or Drawings that the CM contends are attributable to the Designer unless the CM demonstrates that (1) the CM relied upon such Specifications and Drawings in good faith and (2) the CM acted reasonably in light of the CM's own design-related responsibilities including, without limitation, the CM's Preconstruction Services (as defined in the Contract). The CM shall include in any such Change Order Request asserting alleged defects in the Specifications or Drawings attributable to the Designer a statement and detailed explanation of the CM's fulfillment of these conditions, specifically including whether and how the alleged defects in the Specifications relate to the CM's design-related responsibilities.

## **2. Methods of Computing Equitable Adjustments**

- A. Equitable adjustments in the Contract Price shall be determined according to one of the following methods, or a combination thereof, as determined by DCAMM:
- (1) fixed price basis, provided that the fixed price shall be inclusive of items (a) through (g) below and shall be computed in accordance with those provisions and as detailed in DCAMM's Instructions and Procedures Regarding Change Orders, Contract Modifications and Equitable Adjustments (Form 13) included in Appendix E to these General Conditions;
  - (2) estimated lump sum basis to be adjusted in accordance with Contract unit prices or other agreed upon unit prices provided that the unit prices shall be inclusive of all costs related to such equitable adjustment;
  - (3) time and materials basis to be subsequently adjusted based upon actual costs (but subject to a predetermined "not to exceed limit") calculated as follows:
    - (a) the direct cost (or credit) for labor at the minimum wage rates established for this Contract pursuant to M.G.L. c. 149, § 26-27H;
    - (b) plus (or minus) the cost of workmen's compensation insurance, liability insurance, federal social security and Massachusetts unemployment compensation, which are to be calculated using an allowance equal to 40% applied to said rate. The rate of 40 percent is inclusive of all insurances, taxes, general conditions, overhead, superintendence, fee, and profit. No other expenses are allowed; for example, sick time, vacation time, etc. are included in the all-inclusive rate. Documentation must be provided if a higher percentage is requested and will only be accepted for workmen's compensation over 12.5%.
    - (c) Plus (or minus) the actual direct additional premium costs and expenses incurred as a result of collective bargaining agreements or other agreements between organized labor. No allowance for markups is allowed on these costs.
    - (d) Plus the direct cost of materials and use of equipment; an allowance equal to 15% of the amount of materials and equipment for general conditions, overhead, superintendence, fee, and profit can be applied.
    - (e) Plus certain miscellaneous services Approved in advance by DCAMM (e.g. police details, utilities, etc.) and provided, which may be subject to a 5% markup.
    - (f) Plus (or minus) the actual direct premium cost of payment and performance bonds required of the CM and certain Subcontractors for this Contract.
    - (g) The CM shall receive an allowance equal to the CM Fee multiplied by the sum of items (a) through (e) above for overhead, superintendence, fee, and profit when the work is performed by Subcontractors. Subcontractors can also apply an allowance equal to 5% of the sum of items (a) through (e) above for overhead, superintendence, fee, and profit when the work is performed by sub-Subcontractors.
  - (4) The CM and its Subcontractors are required to anticipate annual updated minimum wage schedules in accordance with M.G.L. c. 149, § 27 and shall not be entitled to claim additional compensation for base bid contract Work due to updated minimum wage schedules.

- B. If the net change is an increase to the Contract Price, it shall include the value of the CM Fee percentage multiplied by the agreed upon value of the additional work. On any change that involves a net credit, the amount of the credit shall include the Hard Cost of the Work being credited and the CM Fee percentage applicable thereto (calculated as the CM Fee percentage multiplied by such Hard Cost of the Work). Charges for small tools known as “tools of the trade” are not to be computed in the amount of any charge in the Contract Price.
- C. Adjustments in Subcontractors made under the provisions of the “Procedure for Award of Subcontracts” contained in Exhibit C to these General Conditions shall not be considered Change Orders and shall not entitle the CM to any adjustments for overhead, profit, and superintendence, although DCAMM may require that such Contract adjustments be processed on standard Change Order and equitable adjustment forms.
- D. Refer to Appendix E (Commonly Used Forms) to these General Conditions for instructions regarding Change Orders and Contract Modifications (DCAMM Form 13) and request for Approval of wages and rates for Change Order pricing (DCAMM Form 14) and format for submission of Change Order (DCAMM Form 15). Section 2 (Directions for Computing Costs for Changes in the Work) of DCAMM Form 13 contains specific information for computing the cost of changes. DCAMM Form 14 and DCAMM Form 15 are available electronically and will be provided to the Prime Contractor prior to the start of construction.
- E. The CM, all Subcontractors, and sub-Subcontractors shall utilize DCAMM Form 15 when submitting Change Orders.

### **3. Contingency Approval Requests**

Construction Contingency funds shall only be available for payment upon Approval by DCAMM for certain costs pursuant to Article 6.4.5 of the Contract. If the CM believes that any costs are eligible for payment from the Construction Contingency, prior to incurring such costs the CM shall (a) promptly submit a request in writing to DCAMM and (b) obtain DCAMM Approval for such use of Construction Contingency. Such request shall be in a form acceptable to DCAMM and set forth the amount and an explanation of the basis for such claim. DCAMM, in its sole discretion, may require a claim for Construction Contingency Approval to be submitted using the DCAMM Change Order forms and procedures set forth in the Contract Documents (as may be reasonably modified for use in connection with Construction Contingency claims) and the use of such forms for processing Construction Contingency requests shall not be deemed consent by DCAMM to a Change Order or to otherwise modify the GMP. The CM shall track Construction Contingency claims separately from Change Order Requests and Change Orders as part of Project reporting, in accordance with the Contract. The amount of any payment from Construction Contingency shall be based upon actual costs incurred by the CM, as verified by sufficient backup documentation. The CM shall not receive any CM Fee in connection with any use of the Construction Contingency and no markup shall be applied to any work self-performed by the CM being paid for by Construction Contingency funds.

#### **4. Work Performed under Protest**

The CM agrees to perform all Work as directed by DCAMM, and if DCAMM determines that certain Work that the CM believes to be or to warrant a Change Order under this Article does not represent a change in the Work, the CM shall perform said Work. The CM shall be deemed to have concurred with DCAMM's determination as aforesaid unless the CM shall perform Work under protest in compliance with the following sub-paragraphs A. and B. below. Any disputed order, decision, or action by DCAMM or its authorized representative shall be fully performed or complied with pending resolution of the dispute.

- A. If the CM claims compensation for a change in the Work that is not deemed by DCAMM to be a change or to warrant additional compensation as claimed by the CM, the CM shall on or before the first working day following the commencement of any such Work or the sustaining of any such damage submit to DCAMM a written statement of the nature of such Work or claim. The CM shall not be entitled to additional compensation for any Work performed or damage sustained for which written notice is not given within the time limit specified in the preceding sentence, even though similar in character to work or damage with respect to which notice is timely given.
- B. On or before the second working day after the commencement of such Work or the sustaining of such damage, for each day upon which work occurs or damage is sustained, the CM shall file to the extent possible with the Resident Engineer, the Designer, and DCAMM, itemized statements of the details and costs of such Work performed or damage sustained. The CM shall use "DCAMM Daily Time and Materials Report" form found in DCAMM Form 13 to record all labor and material used. If the CM shall fail to make such statements, then the CM shall not be entitled to additional compensation for any such work or damages.

#### **5. False Claims, Statutory Provisions Regarding Changes**

- A. Criminal Penalties: The CM's attention is directed to M.G.L. c. 30, § 39I which provides criminal penalties for unauthorized deviations from the Drawings and Specifications, and to M.G.L. c. 30, § 39J and M.G.L. c. 7C, §§ 17-21. The CM's attention is also directed to M.G.L. 266, § 67B which provides criminal penalties for false claims by CM under this Contract:

*"Whoever makes or presents to any employee, department, agency or public instrumentality of the commonwealth, or of any political subdivision thereof, any claim upon or against any department, agency, or public instrumentality of the commonwealth, or any political subdivision thereof, knowing such claim to be false, fictitious, or fraudulent, shall be punished by a fine of not more than ten thousand dollars or by imprisonment in the state prison for not more than five years, or in the house of correction for not more than two and one-half years, or both."*

- B. Differing Site Conditions (M.G.L. c. 30, § 39N):

*"If, during the progress of the work, the contractor or the Awarding Authority discovers that the actual subsurface or latent physical conditions encountered at the Site differ substantially or materially from those shown on the plans or indicated in the contract documents either the contractor or the contracting authority may request*

*an equitable adjustment in the contract price of the contract applying to work affected by the differing Site conditions. A request for such an adjustment shall be in writing and shall be delivered by the party making such claim to the other party as soon as possible after such conditions are discovered. Upon receipt of such a claim from a contractor, or upon its own initiative, the contracting authority shall make an investigation of such physical conditions, and, if they differ substantially or materially from those shown on the plans or indicated in the contract documents or from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the plans and contract documents and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work which results in an increase or decrease in the cost of the work, the contracting authority shall make an equitable adjustment in the contract price and the contract shall be modified in writing accordingly."*

C. Timely Decision By DCAMM (M.G.L. c. 30, § 39P):

*"Every contract subject to section thirty-nine M of this chapter or section forty-four A of chapter one hundred forty-nine which requires the Awarding Authority, any official, its architect or engineer to make a decision on interpretation of the specifications, approval of equipment, material or any other approval, or progress of the work, shall require that the decision be made promptly and, in any event, no later than thirty days after the written submission for decision; but if such decision requires extended investigation and study, the Awarding Authority, the official, architect or engineer shall, within thirty days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty day period and the date by which the decision will be made."*

D. Change Order / Contract Interpretation Appeal Procedure (M.G.L. c. 30, § 39Q): The following provisions apply to every contract awarded by any state agency as defined by M.G.L. c. 7C, § 1 for the construction, reconstruction, alteration, remodeling, repair or demolition of any capital facility as defined by the aforesaid section 39A:

*"(a) Disputes regarding changes in and interpretations of the terms or scope of the contract and denials of or failures to act upon claims for payment for extra work or materials shall be resolved according to the following procedures, which shall constitute the exclusive method for resolving such disputes. Written notice of the matter in dispute shall be submitted promptly by the claimant to the chief executive official of the state agency which awarded the contract or his designee. No person or business entity having a contract with a state agency shall delay, suspend, or curtail performance under that contract as a result of any dispute subject to this section. Any disputed order, decision or action by the agency or its authorized representative shall be fully performed or complied with pending resolution of the dispute.*

*"(b) Within thirty days of submission of the dispute to the chief executive official of the state agency or his designee, he shall issue a written decision stating the reasons therefore, and shall notify the parties of their right of appeal under this section. If the official or his designee is unable to issue a decision within thirty days, he shall notify the parties to the dispute in writing of the reasons why a decision cannot be issued within thirty days and of the date by which the decision shall issue. Failure to issue a*

*decision within the thirty-day period or within the additional time period specified in such written notice shall be deemed to constitute a denial of the claim and shall authorize resort to the appeal procedure described below. The decision of the chief executive official or his/her designee shall be final and conclusive unless an appeal is taken as provided below.*

*"(c) Within twenty-one calendar days of the receipt of a written decision or of the failure to issue a decision as stated in the preceding subparagraph, any aggrieved party may file a notice of claim for an adjudicatory hearing with the division of hearing officers or the aggrieved party may file an action directly in a court of competent jurisdiction and shall serve copies thereof upon all other parties in the form and manner prescribed by the rules governing the conduct of adjudicatory proceedings of the division of hearing officers. In the event an aggrieved party exercises his option to file an action directly in court as provided in the previous sentence, the twenty-one day period shall not apply to such filing and the period of filing such action shall be the same period otherwise applicable for filing a civil action in superior court. The appeal shall be referred to a hearing officer experienced in construction law and shall be prosecuted in accordance with the formal rules of procedure for the conduct of adjudicatory hearings of the division of hearing officers, except as provided below. The hearing officer shall issue a final decision as expeditiously as possible, but in no event more than one hundred and twenty calendar days after conclusion of the adjudicatory hearing, unless the decision is delayed by a request for extension of time for filing post-hearing briefs or other submissions assented to by all parties. Whenever, because an extension of time has been granted, the hearing officer is unable to issue a decision within one hundred and twenty days, s/he shall notify all parties of the reasons for the delay and the date when the decision will issue. Failure to issue a decision within the one hundred and twenty-day period or within the additional period specified in such written notice shall give the petitioner the right to pursue any legal remedies available to him without further delay.*

*"(d) When the amount in dispute is less than ten thousand dollars, a contractor who is party to the dispute may elect to submit the appeal to a hearing officer experienced in construction law for expedited hearing in accordance with the informal rules of practice and procedure of the division of hearing officers. An expedited hearing under this subparagraph shall be available at the sole option of the contractor. The hearing officer shall issue a decision no later than sixty days following the conclusion of any hearing conducted pursuant to this subparagraph. The hearing officer's decision shall be final and conclusive, and shall not be set aside except in cases of fraud."*

## **6. Mandatory Mediation**

In the case of every dispute where the dollar amount in dispute (or the estimated dollar value of the extension of time in dispute) is \$50,000 or more and the CM appeals the decision of the chief executive official of DCAMM or his/her designee as required by M.G.L. c.30, § 39Q, quoted in Article VII.4.D.(b) above, DCAMM and the CM shall engage in good faith in a non-binding mediation process, which process shall be concluded within sixty days from the date that the CM files an appeal from said decision as provided in M.G.L. c.30, § 39Q. In the case of such disputes where the dollar amount in dispute (or the estimated dollar value of the extension of time in

dispute) is \$500,000 or more, if the mediation process fails, DCAMM may, in its sole discretion, elect to submit the dispute to an impartial third party, not having an interest in the Owner, the Designer, the Program Manager, the CM, or the Project which shall within sixty (60) days render a non-binding advisory opinion. Unless the parties have previously agreed in writing to a process for submitting disputes to mediation, DCAMM shall determine in its reasonable discretion the procedures to be followed and shall give the CM notice of the same in writing within seven (7) days of the date that DCAMM receives notice of the CM's appeal from the decision of the chief executive officer of DCAMM or his/her designee. The cost of the services of any mediator selected by one party to this Contract shall be borne by the party making the selection. The cost of the services of any mediator selected jointly by the parties to this Contract or jointly by mediators selected by the parties to this Contract shall be borne equally by the CM and DCAMM.

## **ARTICLE VIII** **PAYMENT PROVISIONS**

### **1. Schedule of Values**

Before submission of the first request for payment under this Contract, the CM shall submit to DCAMM a Schedule of Values for its Approval, in form acceptable to DCAMM, which shall include all preconstruction activities as well as all construction activities and shall be in sufficient detail to reflect the various preconstruction activities and the major components of each construction trade (with relevant Subcontractors as well as MBE/WBEs noted), including quantities when requested, aggregating the GMP with detail for the Construction Contingency (or, if construction is authorized prior to establishing a GMP in accordance with the Contract, aggregating the total Contract Price) and divided so as to facilitate payments for work under each section of the Specifications. The schedule shall be prepared in such form and supported by such data to substantiate its accuracy as DCAMM may require. When Approved by DCAMM, it shall constitute the Schedule of Values and shall be used only as a basis for the CM's requests for payments and credits, the first of which payments shall not be made until such Schedule of Values is Approved by DCAMM. In its sole discretion, DCAMM may, from time to time, require updates to the Schedule of Values from the CM. All updates to the Schedule of Values must be submitted to DCAMM and Approved prior to the submission of any applications for payment.

### **2. Payment Liabilities of CM**

- A. The CM shall pay to DCAMM all expenses, losses and damages, as determined by DCAMM, incurred in consequence of any default, defect, omission or mistake of the CM or the CM's employees or Subcontractors or the making good thereof.
- B. If the Work (or a portion thereof) is not completed to Substantial Completion and the CM has not satisfied the requirements for the issuance of a Certificate of Substantial Completion in accordance with Article VI.5 of these General Conditions, by the date specified in the Contract, the CM shall pay to the Owner liquidated damages as provided in Article VI. 2 of these General Conditions.

### **3. Retention of Moneys by DCAMM**

- A. DCAMM may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to (1) DCAMM

's expenditures for the CM's account, (2) to secure DCAMM's remedies against the CM for the CM's breach of its obligations under this Contract or the breach of any person performing any part of the Work and (3) the payment of any expenses, losses or damages incurred by DCAMM or any agency of the Commonwealth as a result of the failure of the CM to perform its obligations hereunder. DCAMM may retain, until all claims are settled, such moneys as DCAMM estimates to be the fair value of DCAMM's claims against the CM, and of all claims for labor performed or furnished and for materials used or employed in or in connection with the Work and for the rental of vehicles, appliances and equipment employed and for the employment of substitute contractors and labor in connection with the Work filed in accordance with M.G.L. c. 30, § 39A and § 39F. DCAMM may make such settlements and apply thereto any moneys retained under this Contract.

- B. The CM shall each week examine all claims so filed, and if the same are in any respect incorrect or do not correctly show the amount due from the CM to the claimant for such labor and materials, the CM shall forthwith file with DCAMM a separate written statement of all inaccuracies in each claim and of the correct amount due from the CM to each claimant therefor, and shall immediately file a statement of all payments thereafter made to such claimants. Each such statement shall be sworn to and contain a detailed breakdown required by M.G.L. c. 30, § 39F(d) and (e). Unless such statements are so filed by the CM, the amount shown by the claims filed shall, at the option of DCAMM, be conclusively deemed to be the accurate amount due from the CM therefor in all accounting with DCAMM. If the moneys retained under this Contract are insufficient to pay the sums found by DCAMM to be due under the claims for labor and materials filed as aforesaid, DCAMM may, at its discretion, pay the same, and the CM shall repay to DCAMM all sums paid out. DCAMM may also at its discretion use any moneys retained, due, or to become due under this Contract for the purpose of paying for both labor and materials used or employed in the Work for which claims have not been filed with DCAMM.
- C. No moneys retained under the provisions of this Article shall be held to be statutory security for the payment of claims filed in accordance with the provisions of M.G.L. c. 149, § 29, as amended, for which security is provided by bond.

#### **4. Applications for Payment**

- A. The CM shall, once in each month on the day of the month corresponding to the day of the month specified in the Notice to Proceed referenced in Article 4.1.1 of the Contract, on forms provided and in the manner prescribed by DCAMM, submit to DCAMM a statement showing the total amount of Work done to the time of such estimate and the value thereof as evidenced by sufficient backup documentation to verify the costs incurred by the CM in connection with such completed work as approved by the Resident Engineer and the Designer. It shall be the sole responsibility of the CM to deliver or cause to be delivered to DCAMM's Office of Finance Payment Unit (the "designee" as provided by M.G.L. c. 30, § 39K) in accordance with the "DCAMM Instruction and Procedures for Payment and Construction Contracts" included in Appendix E, said periodic estimate in proper form, Approved as provided above and arithmetically correct. All periodic estimates shall contain such certifications and other evidence supporting the CM's right to payment as DCAMM may require, including, without limitation, lien waivers and other evidence, on such forms as DCAMM may require, establishing that

title to the equipment or materials is unencumbered and has been transferred to the Owner. The CM shall include in such periodic estimate only such materials as are incorporated in the Work, except as provided in Article VIII.4.C below. DCAMM shall retain five (5) percent of such estimated value as security for the completion of the Work and, while the CM continues to carry on the Work, will pay to the CM the Approved balance, net of the five (5) percent, all previous payments, and all sums which may be otherwise retained under the provisions of this Contract.

- B. Each periodic estimate shall constitute the CM's representation that (1) the payment then requested to be disbursed has been incurred by the CM on account of the Work and is justly due to Subcontractors or to the CM in the case of other Work performed by the CM on account thereof (if the CM's self-performance has been previously Approved in accordance with the Contract), (2) the materials, supplies and equipment for which application for payment is being submitted have been installed or incorporated into the Work or have been stored at the Site or at such off Site storage locations as DCAMM shall have Approved, (3) the materials, supplies and equipment are insured in accordance with the provisions of this Contract, (4) the materials, supplies and equipment are owned by the Owner and are not subject to any liens or encumbrances, (5) the Work which is the subject of such periodic estimate has been performed in accordance with the Contract Documents and (6) that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of such periodic estimate. The CM's attention is directed to the criminal penalties for false claims referenced in Article VII above.
- C. The CM may include in a periodic estimate the value of materials or equipment delivered at the Site (or at some location agreed to in writing by DCAMM) only upon delivery to DCAMM of:
- (1) an acceptable transfer of title on the form provided by DCAMM;
  - (2) written certification by the CM (or applicable Subcontractor) on the form provided by DCAMM that the CM (or the Subcontractor which executed the transfer of title) is the lawful owner and that the materials or equipment are free from all encumbrances, accompanied by receipted invoices or other acceptable proof of prior payment for such materials;
  - (3) a stored materials insurance binder that covers the materials for which payment is requested, that names the Owner as an insured party should the stored materials be subjected to any casualty, loss, or theft prior to their inclusion in the Work. The material(s) or equipment must, in the judgment of the Designer, (1) meet the requirements of the Contract, including prior Shop Drawing, Product Data, and Sample Approval, (2) be ready for use, and (3) be properly stored by the CM and be adequately protected until incorporated into the Work. See also Article V.5.C of these General Conditions concerning the cost of inspections.
- D. DCAMM may make changes in any periodic estimate submitted by the CM in accordance with M.G.L. c.30, § 39K (see below) and the payment due shall be computed in accordance with the changes so made. The provisions of said section 39K shall govern payments on which DCAMM has made changes.
- E. No certificate for payment and no progress payment shall constitute acceptance of Work that is not in accordance with the Contract Documents.

## **5. Periodic Payments (M.G.L. c. 30, § 39K)**

DCAMM shall make payment to the CM in accordance with M.G.L. c. 30, § 39K, which provides as follows (for the purposes of the below language, DCAMM shall be considered the “awarding authority”, the Designer shall be considered the “architect” or “engineer”, the CM shall be considered the “contractor”, and Subcontractors shall be considered “subcontractors”):

*"Within fifteen days (30 days in the case of the commonwealth, including local housing authorities) after receipt from the contractor, at the place designated by the awarding authority if such a place is so designated, of a periodic estimate requesting payment of the amount due for the preceding month, the awarding authority will make a periodic payment to the contractor for the work performed during the preceding month and for the materials not incorporated in the work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the contractor has title or to which a subcontractor has title and has authorized the contractor to transfer title to the awarding authority upon certification by the contractor that he is the lawful owner and that the materials are free from all encumbrances, but less (1) a retention based on its estimate of the fair value of its claims against the contractor and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, and less (3) a retention not exceeding five percent of the approved amount of the periodic payment. After the receipt of a periodic estimate requesting final payment and within sixty-five days after (a) the contractor fully completes the work or substantially completes the work so that the value of the work remaining to be done is, in the estimate of the awarding authority, less than one percent of the original contract price, or (b) the contractor substantially completes the work and the awarding authority takes possession for occupancy, whichever occurs first, the awarding authority shall pay the contractor the entire balance due on the Contract less (1) a retention based on its estimate of the fair value of its claims against the contractor and of the cost of completing the incomplete and unsatisfactory items of work and less (2) a retention for direct payments to subcontractors based on demands for same in accordance with the provisions of section thirty-nine F, or based on the record of payments by the contractor to the subcontractors under this contract if such record of payment indicates that the contractor has not paid subcontractors as provided in section thirty-nine F. If the awarding authority fails to make payment as herein provided, there shall be added to each such payment daily interest at the rate of three percentage points above the rediscount rate then charged by the Federal Reserve Bank of Boston commencing on the first day after said payment is due and continuing until the payment is delivered or mailed to the contractor; provided, that no interest shall be due, in any event, on the amount due on a periodic estimate for final payment until fifteen days (twenty-four days in the case of the commonwealth) after receipt of such period estimate from the contractor, at the place designated by the awarding authority if such a place is so designated. The contractor agrees to pay to each subcontractor a portion of any such interest paid in accordance with the amount due each subcontractor.*

*The awarding authority may make changes in any periodic estimate submitted by the contractor and the payment due on said periodic estimate shall be computed in accordance with the change so made, but such changes or any requirement for a corrected periodic estimate shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment*

*computed in accordance with the changes made, as provided herein; provided, that the awarding authority may, within seven days after receipt, return to the contractor for correction, any periodic estimate which is not in the required form or which contains computations not arithmetically correct and, in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter. The provisions of section thirty-nine G shall not apply to any contract for the construction, reconstruction, alteration, remodeling, repair or demolition of any public building to which this section applies.*

*All periodic estimates shall be submitted to the awarding authority, or to its designee as set forth in writing to the contractor, and the date of receipt by the awarding authority or its designee shall be marked on the estimate. All periodic estimates shall contain a separate item for each filed subtrade and each sub-subtrade listed in sub-bid form as required by specifications and column listing the amount paid to each filed subcontractor as of the date of the periodic estimate is filed. The person making payment for the awarding authority shall add the daily interest provided for herein to each payment for each day beyond the due date of receipt marked on the estimate.*

*A certificate of the architect to the effect that the contractor has fully or substantially completed the work shall, subject to the provisions of section thirty-nine J, be conclusive for the purposes of this section.*

*Notwithstanding the provisions of this section, at any time after the value of the work remaining to be done is, in the estimation of the awarding authority, less than 1 per cent of the adjusted contract price, or the awarding authority has determined that the contractor has substantially completed the work and the awarding authority has taken possession for occupancy, the awarding authority may send to the general contractor by certified mail, return receipt requested, a complete and final list of all incomplete and unsatisfactory work items, including, for each item on the list, a good faith estimate of the fair and reasonable cost of completing such item. The general contractor shall then complete all such work items within 30 days of receipt of such list or before the contract completion date, whichever is later. If the general contractor fails to complete all incomplete and unsatisfactory work items within 45 days after receipt of such items furnished by the awarding authority or before the contract completion date, whichever is later, subsequent to an additional 14 days' written notice to the general contractor by certified mail, return receipt requested, the awarding authority may terminate the contract and complete the incomplete and unsatisfactory work items and charge the cost of same to the general contractor and such termination shall be without prejudice to any other rights or remedies the awarding authority may have under the contract. The awarding authority shall note any such termination in the evaluation form to be filed by the awarding authority pursuant to the provisions of section 44D of chapter 149."*

## **6. Payment of Subcontractors (M.G.L. c. 30, § 39F)**

The CM shall make payments to Subcontractors in accordance with M.G.L c.30, § 39F which is quoted in this section below. For the purposes of this Contract, the word "forthwith" appearing in paragraph (1)(a) of the quoted provision shall be deemed to mean "within five (5) business days."

“(1)

*(a) Forthwith after the general contractor receives payment on account of a periodic estimate, the general Contractor shall pay to each subcontractor the amount paid for the labor performed and the materials furnished by that subcontractor, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.*

*(b) Not later than the sixty-fifth day after each subcontractor substantially completes his work in accordance with the Plans and Specifications, the entire balance due under the subcontract less amounts retained by DCAMM as the estimated cost of completing the incomplete and unsatisfactory items of work, shall be due the subcontractor; and the Awarding Authority shall pay that amount to the general contractor. The general contractor shall forthwith pay to the subcontractor the full amount received from the Awarding Authority less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the subcontractor by the general contractor.*

*(c) Each payment made by the Awarding Authority to the general contractor pursuant to subparagraphs (a) and (b) of this paragraph for the labor performed and the materials furnished by a subcontractor shall be made to the general contractor for the account of that subcontractor; and the Awarding Authority shall take reasonable steps to compel the general contractor to make each such payment to each such subcontractor. If the Awarding Authority has received a demand for direct payment from a subcontractor for any amount which has already been included in a payment to the general contractor or which is to be included in a payment to the general contractor for payment to the subcontractor as provided in subparagraphs (1) and (2) the Awarding Authority shall act upon the demand as provided in this section.*

*(d) If, within seventy days after the subcontractor has substantially completed the subcontract work, the subcontractor has not received from the general contractor the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount retained by the Awarding Authority as the estimated cost of completing the incomplete and unsatisfactory items of work, the subcontractor may demand direct payment of that balance from the Awarding Authority. The demand shall be by a sworn statement delivered to or sent by certified mail to the Awarding Authority, and a copy shall be delivered to or sent by certified mail to the general contractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract and also a statement of the status of completion of the subcontract work. Any demand made after substantial completion of the subcontract work shall be valid even if delivered or mailed prior to the seventieth day after the subcontractor has substantially completed the subcontract work. Within ten days after the subcontractor has delivered or so mailed the demand to the Awarding Authority and delivered or so mailed a copy to the general contractor, the general contractor may reply to the demand. The reply shall be by a sworn statement to or sent by certified mail to the Awarding Authority and a copy shall be delivered to or sent by certified mail to the subcontractor at the same time. The reply shall contain a detailed breakdown of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor and of the amount due for each claim made by the general contractor against the subcontractor.*

*(e) Within fifteen days after receipt of the demand by the Awarding Authority, but in no event prior to the seventieth day after substantial completion of the subcontract work, the Awarding Authority shall make direct payment to the subcontractor of the balance due under the subcontract including any amount due for extra labor and materials furnished to the general contractor, less any amount (i) retained by the Awarding Authority as the estimated cost of completing the incomplete or unsatisfactory items of work, (ii) specified in any court proceedings barring such payment, or (iii) disputed by the general contractor in the sworn reply; provided that the Awarding Authority shall not deduct from a direct payment any amount as provided in part (iii) if the reply is not sworn to, or for which the sworn reply does not contain the detailed breakdown required by subparagraph (d). The Awarding Authority shall make further direct payments to the subcontractor forthwith after the removal of the basis for deduction from direct payments made as provided in parts (i) and (ii) of this subparagraph.*

*(f) The Awarding Authority shall forthwith deposit the amount deducted from a direct payment as provided in part (iii) of subparagraph (5) in an interest-bearing joint account in the names of the general contractor and the subcontractor in a bank in Massachusetts selected by the Awarding Authority or agreed upon by the general contractor and the subcontractor and shall notify the general contractor and the subcontractor of the date of the deposit and the bank receiving the deposit. The bank shall pay the amount in the account, including accrued interest, as provided in an agreement between the general contractor and the subcontractor or as determined by decree of a court of competent jurisdiction.*

*(g) All direct payments and all deductions from demands for direct payments deposited in an interest bearing account or accounts in a bank pursuant to subparagraph (6) shall be made out of amounts payable to the general contractor at the time of receipt of a demand for direct payment from a subcontractor and out of amounts which later become payable to the General contractor and in the order of receipt of such demands from subcontractors. All direct payments shall discharge the obligation of the Awarding Authority to the general contractor to the extent of such payment.*

*(h) The Awarding Authority shall deduct from payments to a General contractor amounts which, together with the deposits in interest bearing accounts pursuant to subparagraph (6) are sufficient to satisfy all unpaid balances of demands for direct payment received from subcontractors. All such amounts shall be earmarked for such direct payments, and the subcontractors shall have a right in such deductions prior to any claims against such amounts by creditors of the general contractor.*

*(i) If the subcontractor does not receive payment as provided in subparagraph (1) or if the general contractor does not submit a periodic estimate for the value of the labor or materials performed or furnished by the subcontractor and the subcontractor does not receive payment for same when due less the deductions provided for in subparagraph (1), the subcontractor may demand direct payment by following the procedure in subparagraph (4) and the general contractor may file a sworn reply as provided in that same subparagraph. A demand made after the first day of the month following that for which the subcontractor performed or furnished the labor and materials for which the subcontractor seeks payment shall be valid even if delivered or mailed prior to the time payment was due on a periodic estimate from the general*

*contractor. Thereafter the Awarding Authority shall proceed as provided in subparagraph (e), (f), (g) and (h)."*

*(2) Any assignment by a subcontractor of the rights under this section to a surety company furnishing a bond under the provisions of section twenty-nine of chapter one hundred forty-nine shall be invalid. The assignment and subrogation rights of the surety to amounts included in a demand for direct payment which are in the possession of the Awarding Authority or which are on deposit pursuant to subparagraph (6) shall be subordinate to the rights of all subcontractors who are entitled to be paid under this section and who have not been paid in full.*

*(3) "subcontractor" as used in this section (I) for contracts awarded as provided in sections forty-four A to forty-four L, inclusive, of chapter one hundred forty-nine shall mean a person who files a sub-bid and received a subcontract as a result of that filed sub-bid or who is approved by the Awarding Authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the general contractor, (ii) for contracts awarded as provided in paragraph (1) of section thirty-nine M of chapter thirty shall mean a person approved by the Awarding Authority in writing as a person performing labor or both performing labor and furnishing materials pursuant to a contract with the general contractor, and (iii) for contracts with the commonwealth not awarded as provided in sections forty-four A to forty-four L, inclusive, of chapter one hundred forty-nine shall also mean a person contracting with the general contractor to supply materials used or employed in a public works project for a price in excess of five thousand dollars.*

*(4) A general contractor or a subcontractor shall enforce a claim to any portion of the amount of a demand for direct payment deposit as provided in subparagraph (6) by a petition in equity in the superior court against the other and the bank shall not be a necessary party. A subcontractor shall enforce a claim for direct payment or a right to require a deposit as provided in subparagraph (6) by a petition in equity in the superior court against the Awarding Authority and the general contractor shall not be a necessary party. Upon motion of any party the court shall advance for speedy trial any petition filed as provided in this paragraph. Sections fifty-nine and fifty-nine B of chapter two hundred thirty-one shall apply to such petitions. The court shall enter an interlocutory decree upon which execution shall issue for any part of a claim found due pursuant to sections fifty-nine and fifty-nine B and, upon motion of any party, shall advance for speedy trial the petition to collect the remainder of the claim. Any party aggrieved by such interlocutory decree shall have the right to appeal therefrom as from a final decree. The court shall not consolidate for trial the petition of any subcontractor with the petition of one or more subcontractors or the same general Contract unless the court finds that a substantial portion of the evidence of the same events during the course of construction (other than the fact that the claims sought to be consolidated arise under the same general contract) is applicable to the petitions sought to be consolidated and that such consolidation will prevent unnecessary duplication of evidence. A decree in any such proceeding shall not include interest on the disputed amount deposited in excess of the interest earned for the period of any such deposit. No person except a subcontractor filing a demand for direct payment for which no funds due the general contractor are available for direct payment shall have a right to file a petition in court of equity against the Awarding Authority claiming a demand for direct payment is premature and such subcontractor must file the petition before the Awarding Authority has made a direct*

*payment to the subcontractor and has made a deposit of the disputed portion as provided in part (iii) of subparagraph (5) and in subparagraph (6).*

*(5) In any petition to collect any claim for which a subcontractor has filed a demand for direct payment the court shall, upon motion of the general contractor, reduce by the amount of any deposit of a disputed amount by the Awarding Authority as provided in part (iii) of subparagraph (5) and in subparagraph (6) any amount held under a trustee writ or pursuant to a restraining order or injunction.”*

## **7. Final Payment; Release of Claims by CM**

Upon Final Acceptance of the Work the CM shall be entitled to payment of the balance of the Contract Price. Final payment shall be as provided in this Article above and in accordance with any process set forth in the Contract Documents. The CM agrees to execute a Certificate of Final Inspection, Release in the form provided in Appendix E to these General Conditions (with CM’s own exceptions listed thereon) and acceptance as a condition precedent to final payment. The acceptance by the CM of the final payment made as aforesaid, or the execution of the “Certificate of Final Inspection, Release and Acceptance” (included in Appendix E to these General Conditions) by the CM, shall constitute a release of the Owner, DCAMM, the Designer, and every member, officer, employee, and agent of any of them, from all claims of and liability to the CM for anything done or furnished for or relating to the Work, or for any act or neglect of the Owner, the Designer, or of any person relating to or affecting the Work, except the claim against the Owner or the Designer for the remainder, if any, of the amounts set forth by the CM in the “Certificate of Final Inspection, Release and Acceptance”. Final Acceptance shall not relieve CM of the requirements of Articles IX, XIV, and XV of these General Conditions or of other provisions of this Contract, to the extent that the same are intended to survive Final Acceptance.

## **ARTICLE IX** **GUARANTEES AND WARRANTIES**

### **1. General Warranty**

If at any time during the period of one (1) year from the date of the issuance of the Certificate of Substantial Completion by DCAMM or the Final Acceptance Date, whichever occurs first, any part of such Work shall in the reasonable opinion of DCAMM be defective or require replacing or repairing, or damage to other property of the Owner is caused by any defect in the Work, DCAMM shall notify the CM in writing to make the required repairs or replacements and repair such damage. If the CM shall neglect to commence such repairs or replacements to the satisfaction to DCAMM within ten (10) days from the date of the giving of such notice, then DCAMM may employ other persons to make the same. The CM agrees, upon demand, to pay to DCAMM all amounts which DCAMM expends for such repairs, replacements, and/or damages. During this one-year guarantee period any corrective work shall be performed under all the applicable terms of this Contract. This one-year guarantee shall not limit any express guaranty or warranty provided elsewhere in the Contract.

### **2. Special Guarantees and Warranties**

- A. The CM's obligation to correct Work as set forth in Article IX.1 above is in addition to, and not in substitution of, such guarantees or warranties as may be required in the various sections of the Specifications.

- B. Guarantees and warranties required in the various sections of the Specifications must be delivered to the Designer or, if directed by DCAMM, to DCAMM before final payment to the CM may be made, or in the case of guarantees and warranties which originate with a Subcontractor's section of the Work, before final payment for the amount of that subtrade or for the phase of Work to which the guarantee or warranty relates.
- C. The failure to deliver a required guarantee or warranty shall constitute a failure to fully complete the Work in accordance with the Contract Documents.

**ARTICLE X**  
**MISCELLANEOUS LEGAL REQUIREMENTS**

**1. CM to be Informed**

The CM shall inform itself of all existing and future Laws in any manner affecting those engaged or employed in the Work, or the materials used or employed in the Work, or in any way affecting the conduct of the Work, and of all orders and decrees of bodies or tribunals having any applicable jurisdiction or authority over the Work.

**2. Compliance with all Laws**

The CM shall cause all persons employed in the performance of the Work to comply with all existing and future Laws, including but not limited to those set forth below:

- A. **Corporate Disclosures.** The CM, if a foreign corporation, shall comply with M.G.L. c. 181, § 3 and § 5, and M.G.L. c. 30, § 39L.
- B. **Workforce Certification: Certification of Compliance with Workforce Related Legal Requirements.** The CM shall comply with the following legal requirements for any and all employees to be employed in the Project who are required to be listed in the certified payroll reports for the Project: 1) Federal Department of Homeland Security Requirements in hiring such employees including, but not limited, to the faithful completion of the Federal Department of Homeland Security Form I-9 process by CM; 2) proper classification of individuals employed on the project; 3) all Laws concerning workers' compensation insurance coverage, unemployment insurance, social security taxes, and income taxes; and 4) all Laws concerning hospitalization and medical benefits that meet the minimum requirements of the connector board established in M.G.L. c. 176Q. The CM shall execute a "Workforce Certification" form, provided in Exhibit E to the Contract, with the execution of this Contract. The CM shall require each of its Subcontractors and sub-Subcontractors to execute and provide to CM such "Workforce Certification" form in the form provided in Exhibit E to the Contract with the execution of each subcontract, and CM shall immediately provide a copy to DCAMM. Contractor acknowledges that with the weekly workforce reports it must submit on a weekly basis, in the form and format required by DCAMM, including but not limited to, by electronic reporting through requested means. CM and all Subcontractors must also report on gender, race/ethnicity of its workforce through the requested means, including DCAMM's online workforce reporting system. CM and all of its Subcontractors are required to certify that the Form I-9 process was faithfully completed and that all other

legal requirements related to its workforce referenced above were followed for all employees listed on each certified payroll report when submitted. The CM and all of its Subcontractors must: comply with the legal requirements of this section; must not knowingly use undocumented workers in connection with the performance of this contract; pursuant to federal requirements must verify the immigration status of all workers assigned to the contract without engaging in unlawful discrimination; and must not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker. Breach of any of the terms of the workforce certification legal requirements during the period of the Contract may be regarded as a material breach, subjecting the CM and its Subcontractors to sanctions, including but not limited to monetary penalties, withholding of payments, Contract suspension, or termination.

- C. **Veterans and Other Preference.** In the employment of mechanics and apprentices, teamsters, chauffeurs, and laborers in the performance of Work in the Commonwealth, preference shall first be given to citizens of the Commonwealth who have been residents of the Commonwealth for at least six (6) months at the commencement of their employment and who are veterans as defined M.G.L. c.4, § 7(34), and who are qualified to perform the work to which the employment relates and, within such preference, preference shall be given to service-disabled veterans; and secondly, to citizens of the Commonwealth generally who have been residents of the Commonwealth for at least six (6) months at the commencement of their employment, and if they cannot be obtained in sufficient numbers, then to citizens of the United States.

DCAMM promotes and monitors the participation of Service-Disabled Veteran-Owned Business Enterprises and Veteran-Owned Businesses (collectively "VBE") in its construction and design projects pursuant to M.G.L. Chapter 7, Section 61(k) and Executive Order 599. The goal for VBE participation on the Project is 3% of the GMP. Within 90 days of commencing Work, the Contractor shall submit its "Anticipated Veteran Owned Business and Service-Disabled Veteran-Owned Business Enterprise Participation" plan to DCAMM's Compliance Office. For the Commonwealth's VBE program purposes, a VBE is a firm so certified directly by the Massachusetts Supplier Diversity Office ("SDO") shall report on the amount of VBE participation on the Project on a regular basis, in the form, format, and frequency requested by DCAMM, including, but not limited to, by DCAMM's online compliance reporting system. The Commonwealth also encourages the participation of Portuguese Business Enterprises (PBE), Lesbian, Gay, Bisexual, and Transgender Business Enterprises (LGBTBE); and Disability-Owned Business Enterprises (DOBE) on its contracts.

- D. **Prevailing Wages.** The CM shall comply with M.G.L. c. 149, § 26-27H. The prevailing wage schedule is found in Exhibit D to the Contract, listing the prevailing minimum wage rates that must be paid to all workers employed in the Work. DCAMM is not responsible for any errors, omissions, or misprints in said schedule. Such prevailing wage schedule shall continue to be the minimum rate wages payable to workers employed in the Work throughout the term of this Contract, subject to the exceptions provided in M.G.L. c.149, § 26-27H. The CM shall not have any claim for extra compensation from the Owner if the actual wages paid to workers employed in the Work exceeds the rates listed on the schedule or as otherwise provided by Law. The CM shall cause a copy of said schedule to be kept in a conspicuous place at the Site during the term of the Contract. If reserve police officers are employed by the CM, they shall be paid the prevailing wage of regular police officers. (See M.G.L. c.149, § 34B) In accordance with M. G. L. c. 149, §27, the CM shall obtain from DCAMM annual updates to prevailing wage schedules and

pay no less than those rates to covered workers. The CM and all Subcontractors are required to anticipate such annual updated prevailing wage schedules and neither the CM nor any Subcontractors shall be entitled to claim additional compensation for base contract work due to updated prevailing wage schedules.

- E. **Payroll Records and Statement of Compliance.** The CM shall comply and shall cause its Subcontractors to comply with M.G.L. c. 149, § 27B, which requires that a true and accurate record be kept of all persons employed on the Project for which the prevailing wage rates have been provided and include the person's race, ethnicity and gender. The CM and all Subcontractors shall keep these records and preserve them for a period of three years from the date of completion of the Contract. Such records shall be open to inspection by any authorized representative of the Owner at any reasonable time, and as often as may be necessary. The CM shall, and shall cause its Subcontractors to, submit weekly certified copies of their weekly payroll records to DCAMM at no additional expense to DCAMM. DCAMM may at all reasonable times audit such reports. In addition, the CM and each Subcontractor shall furnish to the Executive Department of Labor within fifteen days after completion of its portion of the Work a signed statement in the form required by DCAMM.
- F. **Vehicle Operators.** If the Director of the Department of Labor and Workforce Development has established a schedule of wage rates to be paid to the operators of trucks, vehicles or equipment for the Work, the CM shall be obligated to pay such operators at least the minimum wage rate contained on such schedule. (See M.G.L. c.149, § 26-27H).
- G. **Eight Hour Day.** The CM shall comply with M.G.L. c. 149, §§ 30, 34, and 34A, which provide that no laborer, workman, mechanic, foreman or inspector working within the Commonwealth in the employ of the CM, Subcontractor, or other person doing or contracting to do the whole or part of the Work shall be required or permitted to work more than eight (8) hours in any one day or more than forty-eight (48) hours in any one week, or more than six (6) days in any one week, except in cases of extraordinary emergency.
- H. **Timely Payment of Wages.** The CM shall comply with, and shall cause its Subcontractors to comply with, M.G.L. c. 149, § 148, which requires the weekly or biweekly payment of employees within six (6) days of the end of the pay period during which wages were earned if employed for five (5) or six (6) days of a calendar week, and within other periods of time under certain circumstances as set forth therein.
- I. **Lodging, etc.** The CM shall comply with, and shall cause its Subcontractors to comply with, M.G.L. c. 149, § 25, which provides that every employee under this Contract shall lodge, board and trade where and with whom he elects, and neither the CM nor its agents or employees shall, either directly or indirectly, require as a condition of the employment of any person that the employee shall lodge, board or trade at a particular place or with a particular person.
- J. **Truck Rates.** The use by the CM of trucks or other motor vehicles hired from either common or contract motor carriers in the course of performance of this Contract is subject to such minimum rates and charges, and rules and regulations as may from time to time be promulgated by the Department of Public Utilities of the Commonwealth of

Massachusetts or other agency of the State of Federal government which may be authorized by Law to set rates or otherwise regulate the use of such vehicles. The CM expressly assumes the risk of any additional expense that may arise by reason of any change in such minimum rates and charges, and rules and regulations, and shall be entitled to no additional compensation or reimbursement by reason thereof.

- K. Anti-Boycott Covenant (Executive Order #130).** The CM warrants, represents, and agrees that during the time this Contract is in effect, neither it or any affiliated company, as hereafter defined, participates in or cooperates with an international boycott, as defined in Section 999(b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or engages in conduct declared to be unlawful by M.G.L. c. 151E, §2. If there shall be a breach in the warranty, representation, or agreement contained in this Article, then without limiting such other rights as it may have, DCAMM 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 CM or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the CM; or which directly or indirectly owns at least 51% of the Ownership interests of the CM.
- L. CM's Agreements with Suppliers--Anti-Boycott Provisions.** The CM shall not purchase or rent any materials, equipment, machinery, vehicles, or supplies for or in connection with the Work from any person or entity who does not sign, under pains and penalties of perjury, a certificate that recites: "The undersigned warrants, represents and agrees that during the time its agreement with {insert CM's name} is in effect for materials, supplies or equipment to be used in connection with the {insert the name of the awarding authority} Project No. {insert project number}, neither the undersigned or any affiliated company, as hereafter defined, participates in or cooperates with an international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engages in conduct declared to be unlawful by M.G.L. c. 151E, § 2. 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 undersigned or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the undersigned; or which directly or indirectly owns at least 51% of the ownership interests of the undersigned."
- (1) DCAMM shall not be obligated to pay the CM for the cost of any materials, supplies, or equipment purchased or rented from any individual or entity from whom the CM has not previously obtained and delivered to DCAMM the certificate that the previous paragraph requires. The CM will immediately terminate its contract with any supplier who breaches the warranty, representation, and agreement contained in the previous paragraph.
  - (2) The CM shall include in the CM's agreement with any person or entity from whom the CM intends to purchase or rent any materials, equipment, machinery, vehicles or supplies for or in connection with the Work: (a) a notice that this Contract obligates the CM to terminate the supply contract upon discovery of such breach of the sworn certificate delivered under the first subparagraph above and such termination shall be without liability to the CM or DCAMM; and (b) a provision which states: "The Governor or his designee, the secretary of administration and finance, and the state auditor or his designee shall have the right at reasonable times

and upon reasonable notice to examine the books, records and other compilations of the undersigned vendor which pertain to the performance and requirements of this agreement to provide materials of any nature to the undersigned CM] {insert CM's name} in connection with State Project No. (Insert project number)."

- M. Access to CM's Records (Executive Order #195).** The Commonwealth's governor or his/her designee, the secretary of administration and finance, and the state auditor or his/her designee shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of data of the CM which pertain to the performance and requirements of this Contract.
- N. Executive Order 594 (Apr. 22, 2021) - Clean Energy & Efficient Buildings.** The CM understands that, pursuant to Executive Order No. 594, all new construction and renovation projects over 20,000 square feet must meet a Massachusetts LEED Plus building standard, and that smaller projects must meet the minimum energy performance standards established by the Commonwealth of Massachusetts Sustainable Design Roundtable. Furthermore, the CM understands that the Massachusetts LEED Plus standard applies to all projects overseen by DCAMM, as well as all projects built on state land for use by state agencies.
- O. Northern Ireland - M.G.L. c. 7 § 22C.** Pursuant to M.G.L. c. 7, § 22C for state agencies, state authorities, the House of Representatives or the state Senate, the CM certifies that it does not employ ten (10) or more employees in an office or other facility in Northern Ireland and, if the CM employs ten (10) or more employees in an office or other facility located in Northern Ireland, the CM 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 CM 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.
- P. Data Security Certifications.** For all contracts involving the CM's access to personal information, as defined in M.G.L. c. 93H, and personal data, as defined in M.G.L. c. 66A, or access to agency systems containing such information or data, the CM certifies under the pains and penalties of perjury that the CM (1) has read M.G.L. c. 93H and c. 66A and agrees to protect any and all personal information and personal data; and (2) has reviewed all of the Enterprise Information Security Policies and Standards published by the Executive Office for Technology, Services and Security (TSS), or stricter standards prescribed by Owner. Notwithstanding any contractual provision to the contrary, in connection with the CM's performance under this Contract, for all state agencies in the Executive Department, including all offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the CM shall:
- (1) obtain a copy, review, and comply with the pertinent security guidelines, standards and policies;
  - (2) comply with the Enterprise Information Security Policies and Standards published by the Executive Office for Technology, Services and Security (TSS), or a comparable

set of policies and standards (“Information Security Policy”) as prescribed by the Owner;

- (3) communicate and enforce such security guidelines, standards, policies and the applicable Information Security Policy among all employees (whether such employees are direct or contracted) and Subcontractors;
- (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information and data to which the CM is given access by DCAMM from the unauthorized access, destruction, use, modification, disclosure or loss;
- (5) 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;
- (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information or personal data (collectively referred to as the “unauthorized use”): (a) immediately notify DCAMM if the CM becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for DCAMM to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for DCAMM and the CM 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, withholding of payments, Contract suspension, or termination. In addition, the CM 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.

## ARTICLE XI

### CM'S ACCOUNTING METHOD REQUIREMENTS (M.G.L. c. 30, § 39R)

#### **1. Definitions**

The words defined herein shall have the meaning stated below whenever they appear in this Article XI:

***Independent Certified Public Accountant*** means a person duly registered in good standing and entitled to practice as a certified public accountant under the laws of the place of his/her residence or principal office and who is in fact independent. In determining whether an accountant is independent with respect to a particular person, appropriate consideration should be given to all relationships between the accountant and that person or any affiliate thereof. Determination of an accountant's independence shall not be confined to the relationships existing in connection with the filing of reports with DCAMM.

***Records*** means books of original entry, accounts, checks, bank statements and all other banking documents, correspondence, memoranda, invoices, computer printouts, tapes, discs, papers and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

***Audit***, when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting

principles and auditing standards for the purpose of expressing a certified opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons, or other person or persons primarily responsible for the financial and operational policies and practices of the Contractor.

Accounting terms, unless otherwise defined herein, shall have a meaning in accordance with generally accepted accounting principles and auditing standards.

## **2. Record Keeping**

- A. The CM shall make, and keep for at least six years after final payment, books, records, and accounts that in reasonable detail accurately and fairly reflect the transactions and dispositions of the Contractor.
- B. Until the expiration of six (6) years after final payment, the Inspector General, and DCAMM shall have the right to examine any books, documents, papers or records of the Contractor and Subcontractors that directly pertain to, and involve transactions relating to the Contractor and Subcontractors. Any request for a change in the provisions of this Contract submitted by the CM must be made in writing and in accordance with the provisions of this Contract, including the procedures of DCAMM.
- C. The CM shall describe any change in the method of maintaining records or recording transactions which materially affects any statements filed with DCAMM including the date of the change and reasons therefor, and shall accompany said description with a letter from the CM's independent certified public accountant approving or otherwise commenting on the changes.
- D. The CM represents that it has, prior to the execution of the Contract, filed a statement of management on internal accounting controls as set forth in Article XI.3 below.
- E. The CM represents that it has, prior to the execution of the Contract, filed an audited financial statement for the most recent completed fiscal year as set forth in Article XI.4 below and will continue to file such statement annually during the term of the Contract.

## **3. Statement of Management Controls**

- A. The CM shall file with DCAMM a statement of management as to whether the system of internal accounting controls of the Contractor and its subsidiaries reasonably assures that: transactions are executed in accordance with management's general and specific authorization; transactions are recorded as necessary to: (1) to permit preparation of financial statements in conformity with generally accepted accounting principles, and (2) to maintain accountability for assets; access to assets is permitted only in accordance with management's general or specific authorization; and the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.
- B. The CM shall file with DCAMM 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: whether the representations of management in response to Article XI.3 above are consistent with the

results of management's evaluation of the system of internal accounting controls; and whether such representations of management are reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statement.

#### **4. Annual Financial Statement**

- A. The CM shall annually file with DCAMM during the term of the Contract a financial statement prepared by an independent certified public accountant based on 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.
- B. The office of Inspector General and DCAMM shall have the right to enforce the provisions of this Article. A CM's failure to satisfy any of the requirements of this Article may be grounds for debarment pursuant to M.G.L. c. 149, § 44C.

#### **5. Bid Pricing Materials**

The CM shall save the written calculations, pricing information, and other data that the Contractor used to calculate the bid that induced DCAMM to enter into this Contract for at least six (6) years after DCAMM makes final payment under this Contract.

### **ARTICLE XII** **EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM** [EXECUTIVE ORDERS 599 & 592] (See Appendix A)

This Contract includes all provisions of DCAMM's "Equal Employment Opportunity, Non-Discrimination, and Affirmative Action Program" appearing in Appendix A to these General Conditions attached hereto and incorporated herein by reference.

### **ARTICLE XIII** **GOALS FOR PARTICIPATION BY MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES** [M.G.L. c. 7C, § 6 & EXECUTIVE ORDERS 599 & 592]

This Contract includes all provisions of DCAMM's program relating to "Goals for Participation by Minority Business Enterprises and Women Business Enterprises" attached appearing in Appendix B to these General Conditions attached hereto and incorporated herein by reference.

### **ARTICLE XIV** **INSURANCE REQUIREMENTS**

#### **1. Insurance Generally**

- A. The CM shall purchase and maintain the insurance of the type and limits listed in this Article with respect to the operations as well as the completed operations of this Contract. This insurance shall be provided at the CM's expense and shall be in full force and effect for the full term of the Contract or for such longer period as this Article requires.

- B. All policies shall be written on an occurrence basis and 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 assigned by AM Best Company, or equivalent rating assigned by a similar rating agency acceptable to DCAMM or otherwise acceptable to DCAMM.
- C. CM shall submit three originals of each certificate of insurance, acceptable to DCAMM, simultaneously with the execution of this Contract. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles and/or self-insured retentions, and policy effective and expiration dates. Certificates shall show DCAMM and the Owner and anyone else that DCAMM requests as an additional insured as to all policies of liability insurance. Certificates shall specifically note the following:
- (1) that the general liability policy includes contractual liability.
  - (2) that the general liability policy includes the Owner and DCAMM as additional insureds for ongoing operations (CG 20 10) and for completed operations (CG 37 10) or equivalent endorsements.
  - (3) that the automobile liability, umbrella liability and pollution liability policies include the Owner and DCAMM as additional insureds.
  - (4) that the general liability policy includes endorsement CG 24 04 or equivalent, a waiver of subrogation in favor of the Owner and DCAMM.
  - (5) that the builders' risk or installation floater is on an all risk basis including earthquake and flood, and includes the Owner and DCAMM, CM, Subcontractors and suppliers of any tier as named insureds or loss payees as their interests may appear.
  - (6) that none of the coverages shall be cancelled, terminated, or materially modified unless and until thirty (30) days prior notice is given in writing to DCAMM.

CM shall submit updated certificates prior to the expiration of any of the policies referenced in the certificates so that DCAMM shall at all times possess certificates indicating current coverage.

- D. The CM shall file one certified complete copy of all policies with endorsements with DCAMM within sixty (60) days after Contract award. If DCAMM or the Owner is damaged by the CM's failure to maintain such insurance and to comply with the terms of this Article, then the CM shall be responsible for all costs and damages to the Owner attributable thereto.
- E. 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 DCAMM at least thirty (30) days prior to the effective date thereof, which shall be expressed in said notice.
- F. The CM is responsible for the payment of any and all deductibles under all of the insurance required below unless DCAMM specifically provides a written waiver to the CM.

## **2. CM's Commercial General Liability**

- A. The CM shall purchase and maintain general liability coverage on the ISO form CG 00 01 or equivalent, including products and completed operations, on an occurrence basis. The form must be amended to state that the aggregate limit applies on a per location/per project basis. The policy shall provide the following minimum coverage to protect the CM from claims with respect to the operations performed by CM and any employee, Subcontractor, or supplier, unless a higher coverage is specified in Exhibit A to the Contract, in which case the CM shall provide the additional coverage:

Bodily Injury	\$1,000,000 each occurrence
Property Damage	\$2,000,000 general aggregate, per project
Products & Completed Operations	\$1,000,000 annual aggregate
Personal & Advertising Injury	\$1,000,000 each occurrence
Medical Expenses	\$10,000

- B. This policy shall include coverage relating to explosion, collapse, and underground property damage.
- C. This policy shall include contractual liability coverage.
- D. The completed operations coverage shall be maintained for a period of three (3) years after Substantial Completion and acceptance by DCAMM. The CM shall provide renewal certificates of insurance to DCAMM as evidence that this coverage is being maintained.
- E. If the Work includes work to be performed within 50 feet of a railroad, any exclusion for liability assumed under contract for work within 50 feet of a railroad shall be deleted.
- F. This policy shall include the Owner and DCAMM and anyone else requested by DCAMM as additional insureds via endorsements CG 20 10 for ongoing operations and CG 20 37 for completed operations. This policy shall be primary and non-contributory with respect to any other insurance available to additional insureds.
- G. The policy shall include endorsement CG 24 04, a waiver of subrogation in favor of DCAMM and the Owner.

## **3. Vehicle Liability**

- A. The CM shall purchase and maintain the following minimum coverage with respect to the operations of any owned, non-owned, and hired vehicles including trailers used in the performance of the work, unless a higher coverage is specified in Exhibit A to the Contract, in which case the CM shall provide the additional coverage:

Bodily Injury & Property Damage \$1,000,000 combined single limit

- B. The policy shall include a CA 99 48 Broadened Pollution Endorsement. If specified in Exhibit A to the Contract, the CM, if hauling contaminants and/or pollutants, must adhere

to Sections 29 and 30 of the Motor Carrier Act of 1980, which shall contain coverage Form MCS-90.

C. The policy shall name the Owner and DCAMM as additional insureds.

D. The policy shall contain a waiver of subrogation in favor of DCAMM and the Owner.

#### **4. Contractor's Pollution Liability**

The CM shall purchase and maintain coverage for bodily injury and property damage resulting from liability arising out of pollution related exposures such as asbestos abatement, lead paint abatement, tank removal, removal of contaminated soil, etc. The insurance policy shall cover the liability of the CM during the process of removal, storage, transport and disposal of hazardous waste and contaminated soil and/or asbestos abatement. The policy shall include coverage for on-Site and off-Site bodily injury and loss of, damage to, or loss of use of property, directly or indirectly arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gas, waste materials or other irritants, contaminants or pollutants into or upon the land, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental. The policy shall also include defense and clean-up costs. DCAMM and the Owner shall be named as an additional insured and coverage must be on an occurrence basis. The amount of coverage shall be as follows unless a higher amount is specified in Exhibit A to the Contract, in which case the CM shall provide the additional coverage:

Limit of liability	\$1,000,000 per occurrence \$3,000,000 aggregate
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#### **5. Worker's Compensation**

A. The CM shall provide the following coverage in accordance with M.G.L. c.149 §34A and c.152 as amended, unless a higher coverage is specified in Exhibit A to Contract, in which case the CM shall provide the higher coverage:

Workers' Compensation	Statutory limits
Employer's Liability	\$ 500,000 each accident \$ 500,000 disease per employee \$ 500,000 disease policy aggregate

B. If specified in Exhibit A to the Contract the policy must be endorsed to cover United States Longshoremen & Harborworkers Act (USLHW), Maritime Liability for \$1,000,000/\$1,000,000, or Federal Employer's Liability Act liability.

C. The policy shall contain a waiver of subrogation in favor of the Owner and DCAMM.

#### **6. Builder's Risk/Installation Floater/Stored Materials**

A. The CM shall purchase and maintain coverage against loss or damage on all Work included in this Contract in an amount equal to the GMP. Such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, terrorism ("certified" and "non-

certified”), collapse, earthquake, flood (if the project is not in an "A" or a "V" flood Zone), windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Designer’s and CM's services and expenses required as a result of such insured loss. This policy and/or installation floater shall include transportation and stored materials coverage in an amount equal to the value of the stored materials as required in Article XIV.6.C. below.

- B. When Work will be completed on existing buildings owned by the Owner, the CM shall provide an installation floater in the full amount of the Contract Price. Such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood (if the Project is not in an "A" or a "V" flood zone), windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Designer’s and CM's services and expenses required as a result of such insured loss. This policy and/or installation floater shall include transportation and stored materials coverage in an amount equal to the value of the stored materials as required in Article XIV.6.C. below.
- C. The CM shall maintain insurance on delivered and/or stored material designated to be incorporated in the Work against fire, theft or other hazards. Any loss or damage of whatever nature to such material while stored at some approved off-Site location shall be forthwith replaced by the CM at no expense to DCAMM.
- D. The policy or policies shall specifically state they are for the benefit of and payable to DCAMM, the CM, Subcontractors and all persons furnishing labor or labor and materials for the Work, as their interests may appear. The policy or policies shall list DCAMM, the CM, and Subcontractors of any tier as named insureds.
- E. Coverage shall include any costs for work performed by the Designer or any consultant as the result of a loss experienced during the term of this Contract.
- F. Coverage shall include permission for temporary occupancy and a waiver of subrogation in favor of the Owner and DCAMM.
- G. Coverage shall be maintained until Final Acceptance by DCAMM of the Contract and final payment has been made.
- H. A loss under the property insurance shall be adjusted by CM as fiduciary and made payable to the CM as fiduciary for the insureds. CM shall pay the Subcontractors their just shares of insurance proceeds received by the CM and shall require Subcontractors to make payments to their sub-Subcontractors in similar manner.

## **7. Umbrella Coverage**

The CM shall provide umbrella coverage in form at least as broad as primary coverages required by subparagraphs 2, 3 and 5 of this Article in the following amount unless a higher amount is specified in Exhibit A to the Contract, in which case the CM shall provide the higher amount:

Contract Price:	Limit of Liability:
Under \$1,000,000	\$ 2,000,000 per occurrence
\$1,000,000 -- \$5,000,000	\$ 5,000,000 per occurrence
\$5,000,001-- \$10,000,000	\$ 10,000,000 per occurrence
\$10,000,001 and over	\$ 25,000,000 per occurrence

## **8. Contractor's Professional Liability**

The CM shall purchase and maintain insurance errors and omissions liability insurance appropriate to the contractor's profession, including without limitation "CM at Risk" services performed under M.G.L. c. 149A whether performed by a design professional that the insured is legally responsible for, or by the insured in their capacity as a design professional, or other professional services that the insured performs for others in their capacity as a construction manager. Coverage as required in this Article XIV.8 shall apply to liability for a professional error, act, or omission arising out of the scope of the CM's services as defined in this Contract. Coverage shall be written subject to limits of not less than \$1,000,000 per loss. If coverage as required above is written on a claims-made basis, the CM warrants that any retroactive date is no later than the effective date of this Contract; and that continuous coverage will be maintained or an extended coverage period will be exercised for a period of six (6) years beginning from the time of Substantial Completion of the Work.

## **9. Additional Types of Insurance and Deductibles**

The CM shall provide such other types of insurance as may be required by Exhibit A to the Contract.

# **ARTICLE XV** **INDEMNIFICATION**

## **1. Generally**

To the fullest extent permitted by Law, the CM shall indemnify, defend (with counsel appointed as a Special Assistant Attorney General and subject to the supervision of the Attorney General of the Commonwealth of Massachusetts as required by M.G.L. c. 12, § 3) and hold harmless DCAMM and their officers, agents, divisions, agencies, employees, representatives, successors and assigns from and against all claims, damages, losses and expenses, including but not limited to court costs and attorneys' fees, arising out of or resulting from the performance of the Work, including but not limited to those arising or resulting from: labor performed or furnished and/or materials used or employed in the performance of the Work; violations by CM, any Subcontractor, or by any person directly or indirectly employed or used by any of them in the performance of the Work or anyone for whose acts any of them may be liable (CM, Subcontractor, and all such persons herein collectively called "CM's Personnel") of any Laws; violations of any provision of this Contract by CM or its Subcontractors, suppliers, or any other

person or firm providing labor and/or materials for the Work.; injuries to any persons or damage to any property in connection with the Work; or any act, omission, or neglect of CM's Personnel.

The CM shall be obligated as provided above, regardless of whether or not such claims, damages, losses and/or expenses, are caused in whole or in part by the actions or inactions of a party indemnified hereunder. In any and all claims by CM's Personnel against parties indemnified hereunder, the CM's indemnification obligation set forth above shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CM or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Article XV.

## **2. Designer's Actions**

The obligations of the CM under Article XV.1 above shall not extend to the liability of the Designer, its agents or employees, arising out of (1) the preparation or approval of maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications, or (2) the giving of or the failure to give directions or instructions by the Designer, its agents to employees provided such giving or failure to give is the primary cause of the injury or damage.

## **3. Survival**

The provisions of this Article XV are intended to survive Final Acceptance and/or any termination of this Contract.

# **ARTICLE XVI** **PERFORMANCE AND PAYMENT BONDS**

## **1. CM Bonds**

- A. Prior to the issuance of any NTP for Construction Services or execution of a GMP Amendment, the CM shall execute and deliver performance and payment (labor and materials) bonds in the form provided by DCAMM, executed by a surety licensed by the Commonwealth of Massachusetts Division of Insurance and whose name appears on United States Treasury Department Circular 570. Each such bond shall be in the amount of all such Construction Services authorized to date.
- B. If at any time prior to final payment to the CM, the CM's surety:  
is adjudged bankrupt or has made a general assignment for the benefit of its creditors; has liquidated all assets and/or has made a general assignment for the benefit of its creditors; is placed in receivership; otherwise petitions a state or federal court for protection from its creditors; or allows its license to do business in Massachusetts to lapse or be revoked; then the CM shall, within twenty-one (21) days of any such action listed above, provide DCAMM with new performance and payment bonds as described in this Article XVI.1.A. Such bonds shall be provided solely at the CM's expense.

## **2. Subcontractor Bonds**

- A. If the CM provided in its Guaranteed Maximum Price or other proposal that any or all Subcontractors shall provide the CM with payment and performance bonds for the full amount of their respective subcontracts, then the costs for said bonds shall be the

responsibility of the CM. Irrespective of whether the CM requests payment and performance bonds from their respective Subcontractors, the CM understands that if the Subcontractor defaults or is terminated, the CM shall have full responsibility for all costs and expenses related to said default or termination.

- B. If the CM provided in its GMP or other proposal that Subcontractors shall provide bonds, and subsequently waives the requirement, the CM shall give DCAMM a written certification that the CM understands that if the Subcontractor defaults or is terminated, the CM shall have full responsibility for all costs and expenses related to said default or termination and DCAMM shall be entitled to a reduction in the Contract Price (or, if applicable, GMP) in the amount of the Subcontractor bond costs in such GMP or other proposal. DCAMM may, at its election, either issue a credit Change Order, withhold such amount from any payments due the CM and/or receive a payment from the CM for such amount.

## **ARTICLE XVII** **TERMINATION OF CONTRACT**

### **1. Termination for Cause**

- A. DCAMM may without prejudice to any other right or remedy deem this Contract terminated for cause if any one of the following defaults shall occur and not be cured within three (3) days after the giving of written notice thereof by DCAMM to the CM and any surety that has given bonds in connection with this Contract:
- (1) The CM has filed a petition, or a petition has been filed against the CM with its consent, under any federal or state Law concerning bankruptcy, reorganization, insolvency or relief from creditors, or if such a petition is filed against the CM without its consent and is not dismissed within sixty (60) days; or if the CM is generally not paying its debts as they become due; or if the CM becomes insolvent; or if the CM consents to the appointment of a receiver, trustee, liquidate, custodian or the like of the CM or of all or any substantial portion of its assets and such appointment or possession is not terminated within sixty (60) days; or if the CM makes an assignment for the benefit of creditors;
  - (2) The CM refuses or fails, except in cases for which extension of time is provided under this Contract's express terms, to supply enough properly skilled workers or proper materials to perform its obligations under this Contract, or DCAMM has determined that the rate of progress required for the timely completion of the Work is not being met;

- (3) The CM fails to make prompt payment to Subcontractors or for materials, equipment, or labor;
- (4) All or a part of the Work has been abandoned;
- (5) The CM has sublet or assigned all or any portion of the Work, the Contract, or claims thereunder, without the prior written consent of the Owner, except as expressly permitted in this Contract;
- (6) The CM has failed to comply with Laws;
- (7) The CM fails to maintain or provide to DCAMM evidence of the insurance or bonds required by this Contract; or
- (8) The CM has failed to perform the Work or any portion thereof as required by this Contract or has otherwise breached any material provision of this Contract.

B. DCAMM shall give the CM and any surety notice of such termination for cause, but the giving of notice of such termination shall not be a condition precedent or subsequent to the termination's effectiveness. In the event of such termination, and without limiting any other available remedies, DCAMM may, at its option:

- (1) Hold the CM and its sureties liable in damages for a breach of Contract;
- (2) Notify the CM to discontinue all work, or any part thereof, and the CM shall discontinue all work, or any part thereof, as the Owner may designate;
- (3) Complete the Work, or any part thereof, and charge the expense of completing the Work or part thereof, to the CM;
- (4) Require the surety or sureties to complete the Work and perform all of the CM's obligations under this Contract;
- (5) Take such other lawful action as is deemed by DCAMM to be in the best interest of the Commonwealth.

If DCAMM elects to complete all or any portion of the Work as specified in Article XVII.1.B(3) above, DCAMM may take possession of all materials, equipment, tools, machinery, implements at or near the Site owned by the CM and finish the Work at the CM's expense by whatever means DCAMM may deem expedient; and the CM shall cooperate at its expense in the orderly transfer of the same to a new contractor or to DCAMM as directed by DCAMM. In such case, DCAMM shall not make any further payments to the CM until the Work is completely finished. The Owner shall not be liable for any depreciation, loss or damage to said materials, machinery, implements or tools during said use and the CM shall be solely responsible for their removal from the Site after the Owner has no further use for them. Unless so removed within fifteen days after notice to the CM to do so, they may be sold at public auction, after publication of notice thereof at least twice in any newspaper published in the county where the Work is being performed, and the proceeds credited to the CM's account; or they may, at the option of DCAMM, be stored at the CM's expense subject to a lien for the storage charges.

C. Damages and expenses incurred under Article XVII.1.B above shall include, but not be limited to, costs for the Designer's extra services required, in the opinion of DCAMM, to successfully inspect and administer the construction contract through Final Acceptance of the Work.

- D. Expenses charged under Article XVII.1.B above may be deducted and paid by DCAMM out of any moneys then due or to become due the CM under this Contract.
- E. All sums damages, and expenses incurred by the Owner to complete the Work shall be charged to the CM. In case the damages and expenses charged are less than the sum that would have been payable under this Contract if the same had been completed by the CM, the CM shall be entitled to receive the difference. In case such expenses shall exceed the said sum, the CM shall pay the amount of the excess to the Owner.

## **2. Termination for Convenience**

- A. DCAMM may terminate this Contract for convenience even though the CM is not in default by giving notice to the CM specifying in said notice the date of termination.
- B. In case of such termination without cause, the CM shall be paid:
  - (1) all sums due and owing under this Contract through the date of termination, including any retainage withheld to the date of termination, less any amount which DCAMM determines is necessary to correct or complete the Work performed to the date of termination; plus
  - (2) a reasonable sum to cover the expenses which CM would not have incurred but for the early termination of the Contract, such as demobilization of the work force, restocking charges, termination fees payable to Subcontractors.
- C. Lost profits shall not be payable. The payment provided in Article XVII.2.B above shall be considered to fully compensate the CM for all claims and expenses and those of any consultants, Subcontractors, and suppliers, directly or indirectly attributable to the termination.

## **3. CM's Duties upon Termination for Convenience**

Upon termination of this Contract for convenience as provided above in Article XVII.2, the CM shall: (1) stop the Work; (2) stop placing orders and subcontracts in connection with this Contract; (3) cancel all existing orders and subcontracts; (4) surrender the Site to DCAMM in a safe condition; (5) transfer to DCAMM all materials, supplies, work in process, appliances, facilities, equipment and machinery of this Contract, and all Drawings, Specifications and other information and documents used in connection with this Contract.

# **ARTICLE XVIII** **MISCELLANEOUS PROVISIONS**

## **1. No Assignment by CM**

The CM shall not assign by power of attorney or otherwise, or sublet or subcontract, the Work or any part thereof, without the previous written consent of DCAMM and shall not, either legally or equitably, assign any of the moneys payable under this Contract, or CM's claims hereunder, unless with the like consent of DCAMM, whether said assignment is made before, at the time of, or after the execution of the Contract. The CM shall remain responsible for satisfactory performance of all Work sublet or assigned complying with all applicable requirements of the Contract. Consent of DCAMM shall not be deemed to constitute a representation or waiver of

any right hereunder by DCAMM as to the qualifications or the responsibility of the CM or Subcontractor(s).

## **2. 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 CM shall not be obligated to perform, and shall not perform, work outside the scope of this Contract without an appropriate amendment to this Contract, and a sufficient appropriation(s) to support such additional work. 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. Such termination shall be deemed a termination for convenience subject to the provisions of Article XVII.2 of these General Conditions.

## **3. Claims by Others Not Valid**

No person other than the CM and the surety on any bond given pursuant to the terms of this Contract shall acquire any interest in this Contract or any claim against DCAMM hereunder, and no claim by any other person shall be valid except as provided in M.G.L. c. 30, § 39F.

## **4. No Personal Liability of Public Officials**

No public official, employee, or agent of DCAMM shall have any personal liability for the obligations of DCAMM set forth in this Contract.

## **5. Severability**

The provisions of this Contract are severable, and if any of these provisions shall be held unconstitutional or unenforceable by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other provisions of this Contract.

## **6. Choice of Laws**

This Contract shall be governed by the Laws of the Commonwealth of Massachusetts for all purposes, without regard to its Laws on choice of law. All proceedings under this Contract or related to the Project shall be brought in the courts of the Commonwealth of Massachusetts.

## **7. Standard Forms**

Unless directed otherwise in writing by DCAMM, CM shall use the standard forms in use by DCAMM appearing in Appendix E to these General Conditions.

## **8. No Waiver of Subsequent Breach**

No waiver of any breach or obligation of this Contract shall constitute a waiver of any other or subsequent breach or obligation.

## **9. Remedies Cumulative**

All remedies of DCAMM provided in this Contract shall be construed as cumulative and may be exercised simultaneously or in any order as determined by DCAMM in its sole discretion. DCAMM shall also be entitled as of right to specific performance and equitable relief including the right to an injunction against any breach of any of the provisions of this Contract.

## **10. Notices**

Notices to the CM shall be deemed given when hand delivered to the CM's temporary field office at or near the Site, or when deposited in the U.S. mail addressed to the CM at the CM's address specified in the Contract, or when delivered by courier to either location. Unless otherwise specified in writing by DCAMM, notices and deliveries to DCAMM shall be effective only when delivered to DCAMM at the address specified in the Owner-CM Agreement and date-stamped at the reception desk or for which a receipt has been signed by the agent or employee designated by DCAMM to receive official notices.

**END OF GENERAL CONDITIONS ARTICLES.  
APPENDICES APPEAR ON FOLLOWING PAGES.**

## APPENDIX A

The following provisions form Article XII of the General Conditions of the Contract between DCAMM and the Construction Manager.

### **EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM**

#### **1. Compliance Generally**

For purpose of this Article, "minority" refers to Asians, Blacks, Western Hemisphere Hispanics, Native Americans, and Cape Verdeans; "Commission" refers to the Massachusetts Commission Against Discrimination. During the performance of this Contract, the Construction Manager and all of its Subcontractors (hereinafter collectively referred to as the Contractor) shall comply with all applicable equal employment opportunity, non-discrimination and affirmative action requirements, including but not limited to the following:

#### **2. Non-Discrimination and Affirmative Action**

**A.** The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religious creed, national origin, age, handicap, sexual orientation, or sex. The aforesaid provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising; recruitment layoff; termination; rates of pay or other forms of compensation; conditions or privileges of employment; and selection for apprenticeship. The Contractor shall comply with the provisions of M.G.L. c. 151B and all other applicable anti-discrimination and equal opportunity laws.

**B.** The Contractor shall comply with the provisions of Executive Order 478, entitled Order Regarding Nondiscrimination, Diversity, Equal Opportunity and Affirmative Action, which prohibits unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. Executive Order 478 is herein incorporated by reference and made a part of this Contract.

Pursuant to E.O. 478 the Contractor and any subcontractors may not engage in discriminatory employment practices; and the Contractor certifies that they are in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and 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. These provisions shall be enforced through the contracting agency, the Operational Services Division, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of Contract that may subject Contractor to appropriate sanctions. The Contractor shall comply with the provisions of Executive Order No. 246 entitled Revoking and Superseding Executive Orders Numbers 143 and 150, with respect to affirmative action programs for handicapped individuals, which is herein incorporated by reference and made a part of this Contract.

**C.** In connection with the performance of the Work, the Contractor shall undertake in good faith affirmative action measures designed to eliminate any discriminatory barriers in the terms and conditions of employment on the grounds of race, color, religious creed, national origin, age, sexual orientation, or sex, and to eliminate and remedy any effects of such discrimination in the past. Such affirmative action shall entail positive and aggressive measures to ensure equal opportunity in the areas of hiring, upgrading, demotion or transfer, recruitment, layoff or termination, rate of compensation, and in-service or apprenticeship

training programs. This affirmative action shall include all action required to guarantee equal employment opportunity for all persons, regardless of race, color, religious creed, national origin, age, sexual orientation, or sex. A purpose of this provision is to ensure to the fullest extent possible an adequate supply of skilled tradesmen for future public construction projects.

**D.** If the Contractor shall use any subcontractor on any work performed under this Contract, the Contractor shall take affirmative steps to negotiate with qualified minority and women subcontractors. These affirmative steps shall cover both pre-bid and post-bid periods. It shall include notification to the State Office of Supplier Diversity or its designee, while bids are in preparation, of all products, work or services for which the Contractor intends to negotiate bids. In all solicitations either by competitive bidding or negotiation made by the Contractor either for work to be performed under a subcontract or for the procurement of materials or equipment, each potential subcontractor or supplier shall be notified in writing by the Contractor of the Contractor's obligations under this Contract relative to non-discrimination and affirmative action.

**E.** As part of its obligation of remedial action under this Article, the Contractor shall maintain on this project not less than the percent ratio set forth in the Owner – Construction Manager Agreement of minority employee worker hours to total worker hours in each job category including but not limited to bricklayers, carpenters, cement masons, electricians, ironworkers, operating engineers, and those "classes of work" enumerated in M.G. L. c. 149, § 44F.

**F.** In the hiring of minority journeypersons, apprentices, trainees and advanced trainees, the Contractor shall rely on referrals from a multi-employer affirmative action program approved by the Commission, traditional referral methods utilized by the construction industry, and referrals from agencies, not more than three in number at any one time, designated by the Liaison Committee or DCAMM.

### **3. Liaison Committee, Reports and Records**

**A.** At the option of DCAMM there may be established for the term of this Contract a body to be known as the Liaison Committee. The Liaison Committee shall be composed of one representative each from the Awarding Authority, the Commission and such other representatives as may be designated by the Commission in conjunction with the Awarding Authority. The Contractor (or his agent, if any, designated by him as the on-Site equal employment opportunity officer) shall recognize the Liaison Committee as an affirmative action body, and shall establish a continuing working relationship with the Liaison Committee, consulting with the Liaison Committee on all matters related to minority recruitment, referral, employment and training.

**B.** The Contractor shall prepare projected staffing tables on a quarterly basis. These shall be broken down into projections, by week, of workers required in each trade. Copies shall be furnished one week in advance of the commencement of the period covered, and also when updated, to the Awarding Authority and Liaison Committee. The Contractor shall prepare weekly reports in a form approved by the Awarding Authority of hours worked in each trade by each employee, identified as minority or non-minority. Copies of these shall be provided at the end of each such week to the Awarding Authority and to the Liaison Committee.

**C.** Records of employment referral orders, prepared by the Contractor, shall be made available to the Awarding Authority and to the Liaison Committee on request.

**D.** A designee of the Awarding Authority and a designee of the Liaison Committee shall each have right to access to the Site.

**E.** The Contractor shall comply with the provisions of M.G.L. c. 151B as amended, of the Massachusetts General Laws, both of which are herein incorporated by reference and made a part of this Contract.

**F.** The Contractor shall provide all information and reports required by the Awarding Authority or the Commission on forms and in accordance with instructions issued by either of them and will permit access to its facilities and any books, records, accounts and other sources of information which may be determined by the Awarding Authority or the Commission to affect the employment of personnel. This provision shall apply only to information pertinent to the Owner's supplementary affirmative action Contract requirements. Where information required is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the Awarding Authority or the Commission as appropriate and shall set forth what efforts he has made to obtain the information.

#### **4. Sanctions**

**A.** Whenever the Awarding Authority, the Commission, or the Liaison Committee believes the Contractor or any Subcontractor may not be operating in compliance with the terms of this Article, the Commission shall directly, or through its designated agent, conduct an appropriate investigation, and may confer with the parties, to determine if such Contractor is operating in compliance with the terms of this Article. If the Commission or its agent finds the Contractor or any Subcontractor not in compliance, it may make a preliminary report on non-compliance, and notify such Contractor in writing of such steps as will in the judgment of the Commission or its agent bring such Contractor into compliance. In the event that such Contractor fails or refuses to fully perform such steps, the Commission **may** make a final report of non-compliance, and recommend to the Awarding Authority the imposition of one or more of the sanctions listed below. If, however, the Commission believes the Contractor or any Subcontractor has taken or is taking every possible measure to achieve compliance, it shall not make a final report of non-compliance. Within fourteen days of the receipt of the recommendations of the Commission, the Awarding Authority shall move to impose one or more of the following sanctions, as it may deem appropriate to attain full and effective enforcement:

- (1) The recovery by the Awarding Authority from the Contractor of 1/100 of 1% of the Contract award price or \$1,000 whichever sum is greater, in the nature of liquidated damages or, if a Subcontractor is in non-compliance, the recovery by the Awarding Authority from the Contractor, to be assessed by the Contractor as a back charge against the subcontractor, of 1/10 of 1% of the sub-Contract Price, or \$400 whichever sum is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply;
- (2) The suspension of any payment or part thereof due under the Contract until such time as the Contractor or any subcontractor is able to demonstrate his compliance with the terms of the Contract;
- (3) The termination, or cancellation, of the Contract, in whole or in part, unless the Contractor or any Subcontractor is able to demonstrate within a specified time his compliance with the terms of the contract;
- (4) The denial to the Contractor or any subcontractor of the right to participate in any future contracts awarded by the Awarding Authority for a period of up to three years.

**B.** If at any time after the imposition of one or more of the above sanctions a Contractor is able to demonstrate that it is in compliance with this Article, the Contractor may request the Awarding Authority, in consultation with the Commission, to suspend the sanctions conditionally, pending a final determination

by the Commission as to whether the Contractor is in compliance. Upon final determination of the Commission, the Awarding Authority, based on the recommendation of the Commission, shall either lift the sanctions or reimpose them.

**C.** Sanctions recommended by the Commission and enumerated under Section A above shall not be imposed by the Awarding Authority except after an adjudicatory proceeding, as that term is used in M.G.L. c. 30A, has been conducted. No investigation by the Commission or its agent shall be initiated without prior notice to the Contractor.

**D.** Notwithstanding the provisions of 4A-4C above, if the Awarding Authority determines after investigation that the Contractor or any Subcontractor is not in compliance with the terms of this Article, it may suspend any payment or portion thereof due under the Contract until the contractor demonstrates to the satisfaction of the Awarding Authority compliance with the terms of this Article. This temporary suspension of payments by the Awarding Authority is separate from the sanctions set forth in Section 4A-4C of this Article above, which are determined by MCAD and recommend to the Awarding Authority. Payment may be suspended only after the Contractor and any other interested party shall have been given the opportunity to present evidence in support of its position at an informal hearing held by the Awarding Authority, and the Awarding Authority has concluded upon review of all the evidence that such penalty is justified. Payment shall not be suspended if the Awarding Authority finds that the Contractor made its best efforts to comply with this Article, or that some other justifiable reason exists for waiving the provisions of this Article in whole or in part.

**END OF APPENDIX A**

## **APPENDIX B to General Conditions of the Contract**

The following provisions form Article XIII of the General Conditions of the Contract between DCAMM and the Construction Manager.

### **GOALS FOR PARTICIPATION BY MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES (EXECUTIVE ORDERS 526 & 565, M.G.L. c. 7C, § 6)**

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

**A.** The goals for minority business enterprise and woman business enterprise participation established for this Contract are as set forth in the Owner - Contractor Agreement. These goals may be adjusted by DCAMM prior to construction based upon the then-current project cost estimate.

**B.** The CM and all Subcontractors, sub-subcontractors, and materials suppliers shall comply with all of the terms and conditions of this Article, which include the provisions pertaining to MBE/WBE participation set forth in the Owner - Contractor Agreement in order to meet the MBE/WBE participation goals established for this Contract.

#### **2. MBE/WBE Participation Credit.**

**A.** If the CM is itself an MBE or WBE, MBE or WBE participation credit shall be given in an amount equal to the entire Contract Price less the value of the work actually performed by other MBE or WBE firms on the Contract. If the CM is not an MBE or WBE, then MBE/WBE participation credit will be given for the value of the Work that is actually performed by each MBE or WBE subcontractor or sub-subcontractor.

**B.** If the CM is a joint venture with one or more MBE/WBE joint venturers, MBE/WBE participation credit shall be given to the joint venture as follows:

(1) If the joint venture is certified by the Supplier Diversity Office (SDO) as an MBE or WBE, MBE/WBE participation credit shall be given in an amount equal to the entire Contract Price.

(2) If the joint venture is not certified as an MBE or WBE by SDO, MBE/WBE participation credit shall be given to the joint venture for the value of the Work that is performed by the MBE/WBE joint venturer(s), and for the value of the Work that is actually performed by each MBE or WBE subcontractor or sub-subcontractor.

**C.** If an MBE/WBE supplies but does not install equipment or materials, MBE/WBE participation credit shall be given only if the MBE/WBE supplier is regularly engaged in sales of equipment or supplies to the construction industry from an established place of business. MBE/WBE participation credit shall be given the full amount of the purchase order only if the MBE/WBE supplier manufactures the goods or substantially alters them before resale. In all other cases, M/WBE participation credit shall be given for 15% of the purchase order.

**D.** MBE participation credit shall be given for the work performed by MBEs only, and WBE participation credit shall be given for the work performed by WBEs

only. MBE participation may not be substituted for WBE participation, nor may WBE participation be substituted for MBE participation.

**3. Establishing 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 Massachusetts Supplier Diversity Office (“SDO”).

**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 MBE/WBE by any agency other than SDO, or submission of an application to SDO for certification as an MBE/WBE shall not confer MBE/WBE status on a firm for the purposes of this Contract. Please note that only firms SDO certified as MBE or WBEs can be credited toward meeting project MBE or WBE goals.

**4. Subcontracts With MBE/WBEs.**

Within thirty (30) days after Subcontractor Approval in accordance with this Contract, the CM shall (i) execute a subcontract with each MBE/WBE Subcontractor which has executed a Letter of Intent Approved by DCAMM, (ii) cause its Subcontractors to execute a sub-subcontract with each MBE/WBE sub-subcontractor, and (iii) furnish DCAMM with a signed copy of each such subcontract and sub-subcontract through DCAMM’s Online Compliance Reporting System.

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

**A.** The CM 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 for MBE/WBE Participation without the prior Approval of DCAMM, 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 Approval of DCAMM. 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. DCAMM WILL 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 CM shall be responsible for monitoring the performance of MBE/WBE Work to ensure that each scheduled MBE/WBE performs its own MBE/WBE Work with its own workforce.

**C.** The CM and each MBE/WBE shall provide DCAMM with all information and documentation that DCAMM determines is necessary to ascertain whether or not an MBE/WBE has performed its own MBE/WBE Work. At the discretion of DCAMM, failure to submit such documentation to DCAMM shall establish conclusively for the purpose of giving MBE/WBE participation credit under this Contract that such MBE/WBE did not perform such work.

## **6. Notification of Changes in MBE/WBE Work.**

**A.** If at any time during the performance of the Contract the CM determines or has reason to believe that a scheduled MBE/WBE is unable or unwilling to perform its MBE/WBE Work, or that there has been or will be a change in any MBE/WBE Work, or that the CM will be unable to meet the MBE/WBE participation goal(s) for this Contract for any reason, the CM shall immediately notify DCAMM Contract Compliance Office in writing of such circumstances.

**B.** Any notice of a change in MBE/WBE Work pursuant to subparagraph "A" above shall include a revised Schedule for MBE/WBE Participation, and additional or amended Letters of Intent and subcontracts, as the case may be.

## **7. Actions Required If There is a Reduction in MBE/WBE Participation.**

**A.** In the event there is a change or reduction in any MBE/WBE Work which will result in the CM failing to meet the MBE/WBE participation goal(s) for this Contract, other than a reduction in MBE/WBE Work resulting from a Change Order initiated by DCAMM, then the CM shall immediately undertake a diligent, good faith effort to make up the shortfall in MBE/WBE participation as follows:

(1) The CM shall identify all items of the Work remaining to be performed under the Contract that may be made available for subcontracting to MBE/MBEs. The CM shall send a list of such items of work to DCAMM, together with a list of the remaining items of the Work that was not made available to MBE/WBEs and the reason for not making such work available for subcontracting to MBE/WBEs.

(2) The CM shall send written notices soliciting proposals to perform the items of the Work that may be made available for subcontracting to MBE/WBEs to all MBE/WBEs qualified to perform such work. The CM shall advise DCAMM of (i) each MBE/WBE solicited, and (ii) each MBE/WBE listed in the SDO directory under the applicable trade category who was not solicited and the reasons therefor. The CM shall also advise DCAMM of the dates notices were mailed and provide a copy of the written notice(s) sent.

(3) The CM 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 DCAMM evidencing this effort.

(4) The CM shall make reasonable efforts to assist MBE/WBEs that need assistance in obtaining insurance, bonds, or lines of credit in order to perform work under the Contract, and shall provide DCAMM with evidence that such efforts were made.

(5) The CM shall provide DCAMM with a statement of the response received from each MBE/WBE solicited, including the reason for rejecting any MBE/WBE who submitted a proposal, if applicable.

(6) The CM shall take any additional measures reasonably requested by DCAMM to meet the MBE/WBE participation goal(s) established for this Contract, including, without limitation, placing advertisements in appropriate media and trade association publications announcing the CM's interest in obtaining proposals from MBE/WBEs, and/or sending written notification to MBE/WBE economic development assistance agencies, trade groups and other organizations notifying them of the project and of the work available to be subcontracted by the CM to MBE/WBEs.

**B.** If the CM is unable to meet the MBE or WBE participation goals for this Contract after complying fully with the requirements of paragraph “A” above, and the CM is otherwise in full compliance with the terms of this Article, DCAMM, at its sole discretion, may for good cause waive the amount of the shortfall or reduce the MBE or WBE participation goals for this Contract to the extent that such goals were not able to be achieved.

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

**A.** If at any time during the performance of this Contract, DCAMM determines or has reason to believe that (1) there has been a change or reduction in any MBE/WBE Work which will result in the CM 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 DCAMM, and (2) the CM has failed to comply fully with all of the terms and conditions of paragraphs 1 through 7 above, DCAMM may:

(1) suspend payment to the CM of an amount up to or equal to the value of the work which was to have been performed by an MBE/WBE pursuant to the CM’s Schedule for 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 9, and/or

(2) suspend the CM's performance of this Contract in whole or in part.

**B.** DCAMM shall give the CM prompt written notice of any action taken pursuant to paragraph A above and shall give the CM and any other interested party, including any MBE/WBEs, an opportunity to present evidence to DCAMM that the CM 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. DCAMM may invite Supplier Diversity Office and the Massachusetts Commission Against Discrimination to participate in any proceedings undertaken pursuant to this paragraph.

**C.** Upon a showing that the CM is in full compliance with the requirements of this Article, or that the CM has met or will meet the MBE/WBE participation goals for this Contract, DCAMM shall release any funds withheld pursuant to clause A(1) above, and lift any suspension of the CM’s performance under clause A(2) above.

**9. Liquidated Damages; Termination.**

**A.** If payment by DCAMM or performance by the CM is suspended by DCAMM as provided in paragraph 8 above, DCAMM shall have the following rights and remedies if the CM thereafter fails to take all action necessary to bring the CM into full compliance with the requirements of this Article, or if full compliance is no longer possible because the default of the CM is no longer susceptible to cure, if the CM fails to take such other action as may be required by DCAMM to meet the MBE/WBE participation goals set forth in this Contract:

(1) DCAMM may terminate this Contract, and/or

(2) DCAMM may retain from final payment to the CM, as liquidated damages, an amount up to or equal to the difference between (x) the total of the MBE/WBE participation goals set forth in this Contract, and (y) the amount of MBE/WBE participation credit earned by the CM for MBE/WBE Work performed under this Contract as determined by DCAMM, 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 DCAMM represents the parties' best estimate of such damages. Any liquidated damages will be assessed separately for MBE and WBE participation.

**B.** Before exercising its rights and remedies hereunder, DCAMM may, but DCAMM shall not be obligated to, give the CM and any other interested party another opportunity to present evidence to DCAMM that the CM 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. DCAMM may invite SDO and the Massachusetts Commission Against Discrimination to participate in any proceedings undertaken hereunder.

**10. Reporting Requirements.**

The CM shall submit to DCAMM all information or documentation that is necessary in the judgment of DCAMM to ascertain whether or not the CM has complied with any of the provisions of this Article.

**11. Awarding Authority's Right to Waive Provisions of this Article in Whole or In Part.**

DCAMM reserves the right to waive any provision or requirement of this Article if DCAMM determines that such waiver is justified and in the public interest. No such waiver shall be effective unless in writing and signed by a representative of DCAMM's Compliance Office or the office of its General Counsel. No other action or inaction by DCAMM shall be construed as a waiver of any provision of this Article.

**END OF APPENDIX B**

## APPENDIX C to General Conditions of the Contract

### PROCEDURES FOR AWARD OF SUBCONTRACTS

Pursuant to M.G.L. c.149A, DCAMM is required to develop a process consistent with legal requirements for the selection of Subcontractors for construction manager at risk projects. This process is described in these Procedures for Award of Subcontracts (the “Procedures”). Capitalized terms not defined herein shall have the meaning set forth in the Construction Manager at Risk General Conditions of the Contract to which these Procedures are attached.

The Procedures are divided into three parts. The first part describes the prequalification and procurement of Trade Contractors. The second part describes the prequalification and procurement of all Subcontractors that are not Trade Contractors. The third part addresses additional procurement matters.

For the purposes of the Procedures, the term “Applicant” shall mean any firm that submits a response pursuant to the Procedures.

#### I. TRADE CONTRACTORS

##### A. Applicability of Procedures

The procedures set forth in Sections I.B and I.C below shall govern the award of Subcontracts by the CM for the furnishing of labor, materials, and equipment in the performance of the categories of work covered by M.G.L. c. 149, § 44F (also listed below for reference) whenever the estimated construction cost of such category of work exceeds \$25,000:

Roofing and Flashing	Glass and Glazing
Metal windows	Painting
Waterproofing, Damp-proofing and Caulking	Plumbing
Miscellaneous and Ornamental Iron	Heating, Ventilating, and Air Conditioning
Lathing and Plastering;	Electrical
Acoustical Tile	Elevators
Marble	Masonry
Tile	Fire Protection Sprinkler System
Terrazzo	Any other categories of work selected by
Resilient Floors	DCAMM for designation as Trade Contract work.

The subcontractors performing these trades are referred to throughout the Contract Documents as “Trade Contractor(s).” Contracts for work in these categories of work where the estimated cost of such work exceeds \$25,000 are referred to as “Trade Contracts.”

##### B. Qualification of Trade Contractors

1. Prequalification Committee. DCAMM shall establish a prequalification committee (“Prequalification Committee”) consisting of four members. The members shall include two employees of DCAMM with management roles in

the construction of large buildings, a representative of the Designer, and a representative of the CM. The DCAMM Commissioner shall designate the chairperson of the Prequalification Committee. An alternate may be appointed for each member of the Prequalification Committee to serve on occasions when the regular member cannot be available. Both the representative of the Designer and CM serving on the Prequalification Committee, and the alternates representing the Designer and CM, shall be subject to DCAMM written approval. The Prequalification Committee shall conduct the prequalification of Trade Contractors as set forth in Sections I.B and I.C. of the Procedures. The CM will provide assistance to the Prequalification Committee in the exercise of its responsibilities under the Procedures, including assistance from CM staff. Three members of the Prequalification Committee shall constitute a quorum for the purposes of conducting the Prequalification Committee's official business. The DCAMM commissioner or his/her designee may join any meeting of the Prequalification Committee as a voting member in order to achieve a quorum, if in the Commissioner's judgment the action scheduled for such meeting cannot be postponed without adverse consequences to the Project.

2. Request for Qualifications. DCAMM shall issue a request for qualifications ("RFQ") for each category of work listed in Section I.A. if such work is required on the Project. The RFQ shall be placed on the COMMBUYS web site; advertised in a newspaper of general circulation in the area of the Project and in the *Central Register* established under M.G. L. c. 9, § 20A, and in such additional media as DCAMM and the Prequalification Committee may deem appropriate at least fourteen (14) calendar days before the deadline for Applicants to submit a response to the RFQ by submission of an SOQ (as defined below). All interested Trade Contractors shall be eligible to respond to the RFQ and participate in the prequalification process. The CM firm may submit its qualifications to bid on Trade Contract Work provided that the CM customarily performs the work for which it submits its qualifications and does so with employees on its own payroll, and provided that the CM meets all the requirements of the selection process. Utilizing standard DCAMM forms that are consistent with the requirements of M.G.L. c. 149A and in consultation with the Prequalification Committee and the CM, DCAMM shall prepare the RFQ. The RFQ shall contain a form or forms (individually or collectively, the DCAMM "SOQ") requiring the information necessary for the Prequalification Committee to determine if the Applicant is qualified to perform the category of work for which it seeks prequalification on the Project. The RFQ shall include, at a minimum:
  - a. the date, time, and place for submission;
  - b. relevant information about the Project and the bidding process;
  - c. the specific criteria for Trade Contractor prequalification and selection;
  - d. a statement indicating that the RFQ will be used to prequalify Trade Contractors that will be invited to submit a bid; and
  - e. that the responders' names are to be posted, but that there shall be no public opening of responses.

3. Prequalification Criteria. The Prequalification Committee shall evaluate the information submitted by each Applicant on its SOQ, the results of reference checks performed by DCAMM and/or the CM, and any other information required or obtained by the Prequalification Committee. The following subparagraphs enumerate the legally required categories to be used by the Prequalification Committee in evaluating the Applicants, the subcategories of information within each category, and the specific point allocation required for prequalification within each category. Applicants must achieve an overall score of 70 or greater and must also achieve the minimum required points within each category in order to be deemed prequalified. Applicants that do not achieve both the minimum scores within each category and do not achieve an overall score of 70 or above shall not be deemed prequalified.
  - a. Management Experience (50 points, minimum of 25 required for approval)
    - i) *Business owners* - The name, title, years with firm of the owner(s) of the business
    - ii) *Management personnel* - The names, title, education and construction experience, years with firm, and list of projects completed by all management personnel.
    - iii) *Similar project experience* - The project name(s), description, description of scope, original trade contract sum, final trade contract sum with explanation, and date completed of similar projects.
    - iv) *Terminations* – A list of any projects on which the trade contractor was terminated or failed to complete the work.
    - v) *Lawsuits* – A list of commercial lawsuits in which the trade contractor is a defendant or defendant-in-counterclaim with regard to construction contracts within the last 3 years. The lawsuits shall not include any actions that primarily involve personal injury or workers’ compensation claims, or where the sole cause of action involves the trade contractor’s exercise of its rights for direct payment under M.G.L. c. 30, § 39F.
    - vi) *Safety record* – The three-year history of the trade contractor’s workers’ compensation experience modifier.
  - b. References (30 points; minimum of 15 required for approval)
    - i) *Client references* - for all projects listed in clause (iii) of Management Experience above, including the project name, client’s name, address, telephone and fax number, and contact person.
    - ii) *Credit references* - A minimum of five credit references, including telephone and fax number of contact person from key suppliers, vendors and banks.
    - iii) *Public project record* – A list of all completed public building construction projects as defined in M.G.L. c. 149 § 44A during the past three years with client’s name, address, telephone and fax number and contact person.
  - c. Capacity to Complete Projects – (20 points; minimum of 10 required for approval)
    - i) Annual revenue for prior three fiscal years. There shall be no requirement for submission of financial statements.

- ii) Revenue under contract for next three fiscal years.
- d. Commitment Letter – (mandatory; no points assigned)  
Mandatory commitment letter from surety companies or authorized agents stating that payment and performance bonds at 110% of the estimated trade contract value will be provided to the applicant if it is the successful bidder. The surety company providing the commitment letter must be licensed to do business in the Commonwealth and appear on the United States Treasury Department Circular 570.
- e. Certificate of Eligibility – (mandatory, no points assigned)  
A DCAMM issued certificate of eligibility listing the Applicant as currently certified as a subcontractor in the scope of work for which the Applicant is submitting its SOQ.
- f. Update Statement – (mandatory, no points assigned)  
A fully completed and current update statement on the standard DCAMM form.

Applicants that are certified by the Massachusetts Supplier Diversity Office (“SDO”) as either a Minority Business Enterprise, a Women Business Enterprise or a Minority/Women Business Enterprise and provide documentation of current SDO certification with their SOQ will have an additional 5 points added to their overall score.

- 4. Joint Ventures. If the Applicant is a joint venture, the Applicant must submit a copy of the joint venture agreement, signed by each member, and the joint venture agreement must clearly identify, for each member of the joint venture, such member’s proportionate share or interest in the financial or other benefits, risks or liabilities of the venture (“joint venture interest”). One member of the joint venture must have a joint venture interest greater than fifty (50) percent (“Lead Venturer”). The requirements for prequalification in I.B.3. above shall be met by each member of the joint venture; and the bonding requirements of I.B.3.d. above shall be met by the lead venturer or by the joint venture as an entity. A joint venture prequalified by the Prequalification Committee must obtain a certificate of eligibility from DCAMM prior to the time bids are filed and must submit the joint venture’s certificate of eligibility with its bid.

Joint ventures must be submitted for consideration by the Prequalification Committee. Following the deadline for submission of SOQs for a specific category of work, joint ventures for that category of work which were not submitted to the Prequalification Committee may not bid on that category of work, except that two firms both of whom were independently prequalified by the Prequalification Committee for that category of work, may form a joint venture to bid that category of work without further consideration by the Prequalification Committee provided the joint venture has been DCAMM certified prior to submitting its bid and submits the joint venture’s certificate of eligibility with its bid.

- 5. Deliberations of the Prequalification Committee. The Prequalification Committee shall consider each SOQ submitted based on the criteria set forth in

Section I.B.3 above. The Prequalification Committee shall require that all mandatory submissions are submitted by the Applicant and apply a numerical scoring system, with both the minimum point scores for each category and a score of 70 out of a possible 100 overall points required to be prequalified. The Prequalification Committee shall prepare a written record of the evaluation of each Applicant.

The scoring system shall provide for the assigning of scores as follows. The Prequalification Committee shall first consider whether the Applicant has met the requirements of Subparagraphs I.B.3.d (bonding commitment letter), e (certificate of eligibility) and f (update statement). If the Applicant has satisfied the criterion, it shall be awarded up to 100 points using the criteria listed above. Applicants that do not meet the requirements of Subparagraphs I.B.3.d, e and f shall not be presented to the Prequalification Committee for consideration.

Any Applicant that fails to achieve either an overall score of at least 70 or that fails to achieve the minimum required points within each category shall be deemed not to be prequalified for the category of work for which the Applicant sought prequalification. If it is determined at any time during the evaluation process, that an Applicant has willfully supplied materially false or misleading information in its application or otherwise, the Applicant may be eliminated from further consideration for prequalification for the Project and, in the discretion of the DCAMM commissioner, for any other projects requiring prequalification under these Procedures.

The decision of the Prequalification Committee shall be final and not subject to appeal except on the grounds of fraud or collusion. An Applicant's prequalification score shall be made available to that Applicant firm only and only upon request. An Applicant's score shall not be a public record as defined in M.G.L. c. 4, § 7 and shall not be open to public inspection to the fullest extent possible under the law.

A list of the Applicants that have been determined by the Prequalification Committee to be prequalified and therefore eligible to bid shall be posted at the offices of DCAMM listing the firms by trade categories. Applicants shall also be notified of the Prequalification Committee's determination on prequalification by mail and/or e-mail at the address furnished by each Applicant.

The Prequalification Committee reserves the right to reopen the prequalification process for any category of work before it has completed its evaluation of firms that previously submitted SOQs and/or to hold multiple rounds of prequalification for any given category of work. In either case, any Applicant that has submitted a complete SOQ shall not be required to submit another one, although any Applicant not prequalified may elect to amend its SOQ prior to the latest deadline for submitting information for the Trade Contract for which the Applicant seeks to be prequalified.

No person or firm suspended or debarred pursuant to M.G.L. c. 29, § 29F or c.149, § 44C, or disqualified pursuant to c. 7C, § 51, or which has been

debarred by the federal government shall be determined to be qualified to compete for a Trade Contract or any other contract or Subcontract to be issued on the Project. If any Applicant determined to be qualified to perform one or more Trade Contracts is subsequently suspended or debarred pursuant to such laws, the qualification of such Applicant shall be rescinded and such Applicant shall be notified of such action and eliminated from the list of prequalified bidders.

6. Determinations to Remain in Effect. The Prequalification Committee's determinations as to which Applicants are prequalified shall remain in effect, subject to the following provisions of this Section I.B.6, for the duration of the Project. Upon receipt at any time of additional information deemed material and significant by the Prequalification Committee regarding a previously prequalified Applicant's qualifications or responsibility, including, but not limited to, compliance with any minimum prequalification requirements, the Prequalification Committee may determine, in consultation with DCAMM and the CM, that the Applicant is not qualified to perform the applicable Trade Contract(s) for the Project. In such event, the Prequalification Committee shall notify the Applicant of its determination, and inform the Applicant of any information on which the Prequalification Committee's determination is based that was not furnished by the Applicant.

## **C. Bidding**

1. Requests for Bids. A request for bids ("RFB") will be issued for each Trade Contract in accordance with these Procedures. The RFB will only be issued to the Trade Contractors appearing on the list of prequalified Applicants for the applicable Trade Contract determined pursuant to Section I.B. above. The RFB shall include at least the following:
  - a. the date, time and place for submission of responses to the request for bids. All Trade Contractor bids for DCAMM projects will be submitted and opened at DCAMM's E-Bid Room;
  - b. fully detailed drawings and specifications by class of work in accordance with paragraph (a) of Subsection 1 of M.G.L. c. 149, §44F (i.e., separate specification sections for the trades listed in Paragraph I.A. above) which shall provide for full competition for each item of material to be furnished under the contract as set forth under subsection (b) of M.G.L. c. 30, §39M;
  - c. a detailed definition of the Trade Contractor's scope of work, including alternates and unit price items, if any, within that scope of work;
  - d. a project schedule indicating the planned sequence and duration of each Trade Contractor's work;
  - e. list of the Trade Contractors prequalified for the work covered by the RFB;
  - f. a Trade Contractor bid form, in a format provided by DCAMM, that shall require, without limitation, a listing of price, addenda, alternates and unit price items, if any, for the trade work; certification that the Trade Contractor

will perform the complete trade work with employees on its own payroll, except for work customarily performed by sub-trade subcontractors within the trade; and the names of all sub-trade subcontractors to be used if awarded the trade contract and each sub-trade contract sum; to the extent applicable, an identification by the Trade Contractor that it is a MBE or WBE or a list of the MBEs and/or WBEs proposed to be used by the Trade Contractor;

- g. an executed affidavit confirming that all sub-trade subcontractors named on the bid form have been prequalified by the Trade Contractor using criteria similar to the criteria for the prequalification of Trade Contractors;
- h. an executed affidavit of tax compliance;
- i. an executed affidavit of prevailing wage compliance pursuant to M.G.L. c. 149, §§ 26 and 27;
- j. an executed non-collusion affidavit;
- k. a requirement that a bidder post a 5% bid bond from a surety company licensed to do business in the Commonwealth and whose names appears on U.S. Treasury Department Circular 570, but the bid bond shall be returned to the bidder if the bidder is not selected as the Trade Contractor;
- l. a budget for the Project, and the budget amount for the Trade Contract scope of work as provided in the Project Guaranteed Maximum Price, if available, or as provided in the most recent budget for the Project;
- m. a requirement that a bidder submit a current certificate of eligibility issued by DCAMM to the Trade Contractor showing that the Trade Contractor is certified for the trade category for which the bid is submitted.
- n. a requirement that a bidder submit a completed update statement in the standard DCAMM form with its bid; and
- o. a Trade Contractor agreement form as set forth in M.G.L. c. 149A, §8(k).

The prequalified Trade Contractors shall submit bids in compliance with the requirements of the RFB package.

2. Bid Opening, Award, Rejection and Negotiation of Bids. Bids shall be opened publicly by DCAMM. Bids for each trade shall be: a) accepted only from firms appearing on the list of prequalified firms described in Section I.B.5. for such trade; b) submitted as set forth in the RFB, and c) opened publicly. Any bid which does not include the bid bond or affidavits required pursuant to law or any response in which the information requested is incomplete, conditional, or obscure or which contains any additions not required in the RFB package shall be rejected. The Trade Contract for each trade shall be awarded to the lowest prequalified bidder except that DCAMM reserves the right to reject the bids of any and all Trade Contractors if: a Trade Contractor is not eligible to submit a bid or if the bid does not represent the bid of a person competent to perform the work specified. In addition if fewer than three responsive bids are received for any trade category and the lowest bid exceeds the estimated cost for the work, the CM shall attempt to negotiate an acceptable price with the lowest

prequalified bidder. If the negotiations are unsuccessful, the CM shall terminate negotiations with the lowest prequalified bidder and shall initiate negotiations with the Trade Contractor who was the second lowest prequalified bidder. If the CM is unsuccessful in negotiating an acceptable price with the lowest prequalified bidder and second lowest prequalified bidder, the CM, on behalf of and with the consent of DCAMM, shall solicit additional bids utilizing the procedures for selection of Subcontractors who are not Trade Contractors, set out below and in M.G.L. c. 149A, § 8(j).

3. Trade Contract Execution. Each Trade Contractor selected to perform work on the Project shall return an executed Trade Contract including the required performance and payment bonds and insurance certificate to the CM within 10 business days of receipt of the Trade Contract from the CM. The Trade Contract shall be the trade contract agreement required by Law and in a form provided by DCAMM.

## **II. OTHER SUBCONTRACTS**

### **A. Applicability of Procedures**

1. Subcontracts Subject to Procedures For Other Subcontracts. The process set forth in Section II.B. of the Procedures shall apply to the procurement of Subcontracts and subcontractors that are not subject to the provisions of Sections I above, specifically subcontractors that are not Trade Contractors, and where the subcontract scope of work has an estimated value that is equal to or exceeds \$25,000 (hereinafter referred in this Section II. as “subcontract” or “subcontracts”).

### **B. Prequalification and Procurement**

1. Subcontracts in With an Estimate Cost equal to or greater than \$25,000. For Subcontracts with an estimated cost equal to or greater than \$25,000, the CM shall submit to DCAMM for its Approval the qualifications which it believes a subcontractor must have to perform the work of the subcontract and a list of a minimum of three (3) subcontracting firms, and preferably at least five (5) subcontracting firms, which the CM believes meet the qualifications. The CM shall submit information in a form and content satisfactory to DCAMM concerning the qualifications and responsibility of the proposed subcontractors and, when relevant, how the selection will further the CM’s compliance with its Project MBE and WBE participation goals. The CM firm may submit its qualifications to bid on subcontract work provided that the CM customarily performs the work for which it submits its qualifications and does so with employees on its own payroll, and provided that the CM meets all the requirements of the selection process. DCAMM may eliminate firms from the list of firms submitted by the CM, and DCAMM may add firms to the list submitted by the CM. The CM must add the firms requested by DCAMM to the list if the firms are acceptable to the CM. If the firms DCAMM requested be added are not acceptable to the CM based upon qualifications, ability or for

any other reason the CM must advise DCAMM of its objections and the basis for the objections in writing. If DCAMM determines that the CM's objections to the DCAMM requested firm(s) are valid then the requested firms will not be added to the list otherwise the firm(s) requested by DCAMM will be added.

The CM will invite all subcontractors on the approved list to submit bids for the subcontract work, using forms and procedures approved by DCAMM; provided that if the CM or one of its affiliates or subsidiaries is on the approved list to submit bids for any categories of subcontract work, if any, then DCAMM shall invite the bids for each such category and provide the results to the CM. The bids shall be based on detailed bidding information developed by the CM for all the subcontract categories of work. The CM will submit to DCAMM a list of bids submitted for each subcontract, including any list of bids provided to the CM through DCAMM, and with the list will indicate the bidder it recommends be selected to be awarded a subcontract. The CM shall along with its submission provide a written explanation as to the reasons for its selection and recommendation. The CM's recommendation will be based on relevant factors including, but not limited to, price, quality of work, and MBE and/or WBE participation. DCAMM Approval is required before a subcontract can be awarded by the CM to a subcontractor, which Approval shall not be unreasonably withheld provided the selection will not have an adverse effect on meeting project goals including, but not limited to, price, quality of work and/or MBE/WBE participation. In no event will the selection of a subcontractor affect the GMP agreed to by the CM.

The CM may, with the Approval of DCAMM, reject the proposals for a subcontract and either resolicit that scope of work or negotiate with one or more of the firms that submitted the rejected proposals. Such rejection may be based on the proposal being too high compared to the amount carried in the GMP for that scope of work or upon any other basis approved by DCAMM.

2. Subcontracts With An Estimated Cost Less Than \$25,000. Subcontracts with an estimated cost less than \$25,000, and subcontracts for the supply of materials or equipment not including performance of labor in construction at the Project Site, regardless of the estimated cost, may be awarded by the CM using any method selected by the CM with the Approval of DCAMM.

### **III. OTHER PROCUREMENT PROVISIONS**

#### **A. Emergencies**

In case of an emergency, DCAMM or the CM, with the prior approval of DCAMM, may award a contract for such work as is necessary to preserve or protect the health or safety of persons or property on the basis of such competitive bids or proposals as it can reasonably obtain in time to respond to the emergency and without public advertisement or opening of bids or proposals; or the CM may perform such work with its own forces.

## **B. Termination of Contracts**

If a Trade Contract, or other Subcontract, is terminated in whole or in part by the CM **after** the Subcontractor commences work but prior to completion of the work covered by such Trade Contract or other Subcontract on account of breach or default by the Trade Contractor or other Subcontractor, or for other reasons in the public interest approved by DCAMM, the CM may engage a replacement Subcontractor using any method selected by the CM and Approved by DCAMM, or may perform the affected work with its own forces, as necessary to preserve, protect, or complete the work without following these procedures and without public advertisement or opening of bids or proposals. The termination of a Trade Contractor or other Subcontractor prior to completion of its work shall not be the basis for an increase in the GMP.

## **C. Miscellaneous Provisions**

1. Procurement Records. The Prequalification Committee and the CM shall ensure that DCAMM has a complete set of the following records:
  - a. All RFQs issued pursuant to Section I.B. of these Procedures, including all addenda.
  - b. All SOQs and other information furnished to or otherwise obtained by the Prequalification Committee and the CM concerning qualification of each Applicant responding to an RFQ including any references or scoring obtained or generated in connection with the SOQs.
  - c. All RFBs issued by the CM to prequalified Trade Contractors pursuant to Section I.C. of these Procedures.
  - d. All bids received from such Trade Contractors in response to such RFBs.
  - e. All solicitations for bids or proposals issued by the CM to firms other than Trade Contractors.
  - f. All bids and proposals received by the CM from such firms in response to such solicitations.
  - g. All contracts awarded pursuant to these Procedures.
  - h. All other written documents required pursuant to the terms of these Procedures.
  - i. All other documents referring or relating to the evaluation of qualifications, proposals or bids, including but not limited to, all notes (to the extent included in Project files), memoranda, correspondence and meeting minutes, whether formal or informal, in either electronic media or hard copy. DCAMM shall retain copies of such records for a period of six (6) years from the date of final payment under the contract to which such records relate. The Secretary of Administration and Finance and the Inspector General of the Commonwealth shall have access to all such records at any time upon reasonable notice.

2. Severability. If any provision of these Procedures shall be determined to be invalid or unenforceable, the remaining provisions of the Procedures shall remain in full force and effect.
3. Time. The periods of time within which any party is required to act under the terms of these procedures when described in terms of “days” shall, unless otherwise specified, mean calendar days (and not business days), except that if the last day of any such time period falls on a Saturday, Sunday, or legal holiday in Massachusetts, the period of time during which the required action must be taken will be extended to the next following business day.

**END OF APPENDIX C**

## **APPENDIX D**

- Form for Subcontract between Construction Manager and Trade Contractor
- Form for Subcontract between Construction Manager and Subcontractor (other than Trade Contractor as set forth in the Contract Documents)



**COMMONWEALTH OF MASSACHUSETTS  
FORM FOR SUBCONTRACT BETWEEN CONSTRUCTION MANAGER  
AND TRADE CONTRACTOR AS SET FORTH IN THE CONTRACT  
DOCUMENTS**

THIS AGREEMENT MADE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ a corporation organized and existing under the laws of \_\_\_\_\_ a partnership consisting of \_\_\_\_\_ an individual doing business as \_\_\_\_\_ hereinafter called the "Construction Management At Risk Firm" and \_\_\_\_\_ a corporation organized and existing under the laws of \_\_\_\_\_ an individual doing business as \_\_\_\_\_ hereinafter called the "Trade Contractor".

WITNESSETH that the Construction Management at Risk Firm and the Trade Contractor for the considerations hereafter named, agree as follows:

(1) The Trade Contractor agrees to furnish all labor and materials required for the completion of all work specified in Section No(s). \_\_\_\_\_ of the specifications for \_\_\_\_\_ (name of Sub-trade(s)) and the plans referred to therein and addenda No. \_\_\_\_\_ for the \_\_\_\_\_ (project) all as prepared by \_\_\_\_\_ designer. All work shall be in accordance with the contract documents listed on Exhibit A; and the detailed Scope of Work listed on Exhibit B. The Construction Management at Risk Firm agrees to pay the Trade Contractor as full payment for all the work in Exhibit B the sum of \$ \_\_\_\_\_. This price includes the following alternates: Nos. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

(A) The Trade Contractor agrees to be bound to the Construction Management At Risk Firm by the terms of the hereinbefore described plans; specifications (including the Owner-Construction Manager Agreement and all General Conditions) dated \_\_\_\_\_ (date of Owner-CM Agreement) and addenda No. \_\_\_\_\_, and \_\_\_\_\_, and \_\_\_\_\_, and to assume to the Construction Management At Risk Firm all the obligations and responsibilities that the Construction Management At Risk Firm by those documents assumes to the \_\_\_\_\_ (Public Agency) hereinafter called the "Public Agency," except to the extent that provisions contained therein are by their terms or by law applicable only to the Construction Management At Risk Firm. As it pertains to subcontractors, the Indemnification in Article XV of the Owner Construction Manager Agreement, which is incorporated by reference into this Subcontract, is intended to and shall be interpreted to be consistent with M.G.L. c. 149, Section 29C, and nothing contained herein is intended to require a subcontractor to indemnify any party for

personal injuries or property damage not caused by the subcontractor, its agents, employees or subcontractors.

MGL c 149 § 29C provides:

Section 29C. Any provision for or in connection with a contract for construction, reconstruction, installation, alteration, remodeling, repair, demolition or maintenance work, including without limitation, excavation, backfilling or grading, on any building or structure, whether underground or above ground, or on any real property, including without limitation any road, bridge, tunnel, sewer, water or other utility line, which requires a subcontractor to indemnify any party for injury to persons or damage to property not caused by the subcontractor or its employees, agents or subcontractors, shall be void.

(B) The Construction Management At Risk Firm agrees to be bound to the Trade Contractor by the terms of the hereinbefore described documents and to assume to the Trade Contractor all the obligations and responsibilities that the Public Agency by the terms of the hereinbefore described documents assumes to the Construction Management At Risk Firm, except to the extent that provisions contained therein are by their terms or by law applicable only to the Public Agency.

(2) The Construction Management At Risk Firm agrees to begin, prosecute and complete the entire work specified by the Public Agency in an orderly manner so that the Trade Contractor will be able to begin, prosecute, and complete the work described in this Trade Contract; and, in consideration thereof, upon notice from the Construction Management At Risk Firm, either oral or in writing, the Trade Contractor agrees to begin, prosecute and complete the work described in this Trade Contract in an orderly manner and in accordance with the Project Schedule attached as Exhibit C as it may be reasonably modified from time to time by agreement of the Construction Management At Risk Firm and the Trade Contractor.

(3) The Trade Contractor agrees to furnish to the Construction Management At Risk Firm, on execution of this Trade Contractor Agreement and prior to commencing the work, evidence of workers' compensation insurance as required by law and evidence of public liability and property damage insurance of the type and in limits required to be furnished to the Public Agency by the Construction Management At Risk Firm.

(4) The Construction Management At Risk Firm agrees that no claim for services rendered or materials furnished by the Construction Management At Risk Firm to the Trade Contractor shall be valid unless written notice thereof is given by the Construction Management At Risk Firm to the Trade Contractor during the first ten (10) days of the calendar month following that in which the claim originated.

(5) This Trade Contractor Agreement is contingent upon the execution of an amendment to the contract between the Construction Management at Risk Firm and the Public Agency for the work of the Trade Contractor.

(6) If the trade contractor should be adjudged a bankrupt, or if he should make a general assignment for the benefit of his creditors, or if a receiver should be

appointed on account of his insolvency, or if he should persistently or repeatedly refuse or should fail, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, or if he should fail to make prompt payment to sub-trade subcontractors or for material or labor, or persistently disregard laws, ordinances or the instructions of the Construction Management At Risk Firm, or otherwise be guilty of a substantial violation of any provision of the contract, then the Construction Management At Risk Firm may, without prejudice to any other right or remedy and after giving the Trade Contractor and his surety seven days' written notice, terminate the employment of the Trade Contractor and take possession of the premises and of all materials, tools, and appliances thereon and finish the work by whatever method he may deem expedient. In such case the Trade Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the trade contract price shall exceed the expense of finishing the work including compensation for additional architectural, managerial and administrative services, such excess shall be paid to the Trade Contractor. If such expense shall exceed such unpaid balance, the Trade Contractor shall pay the difference to the Construction Management At Risk Firm. The Construction Management at Risk Firm and Trade Contractor shall have the right to seek damages for breach of this Trade Contract without terminating this Trade Contract or ceasing performance hereunder.

(7) Trade Contractor is directed to the following executive orders, which are incorporated herein from the general conditions of the Construction Manager At Risk Contract: Order 481, regarding undocumented workers; Order 478, regarding nondiscrimination and affirmative action; Order 130, regarding anti-boycott agreement; Order 484, regarding clean energy and efficient buildings; Order 390, regarding affirmative market programs; and Order 195, regarding access to records. Trade Contractor is further directed to M.G.L. c. 7 § 22C, which restricts the investment of state funds in companies doing business in Northern Ireland.

(8) The following exhibits are incorporated into their subcontract:

Exhibit A: Contract Documents

Exhibit B: Detailed Scope of Work

Exhibit C: Project Schedule

IN WITNESS WHEREOF, the parties hereto have executed this agreement the date and year first above-written.

SEAL ATTEST \_\_\_\_\_

\_\_\_\_\_  
Trade Contractor

SEAL ATTEST \_\_\_\_\_

\_\_\_\_\_  
Construction Management At Risk Firm

**THIS FORM MAY BE REPRODUCED**



**COMMONWEALTH OF MASSACHUSETTS  
FORM FOR SUBCONTRACT BETWEEN CONSTRUCTION MANAGER AND  
SUBCONTRACTOR OTHER THAN TRADE CONTRACTOR AS SET FORTH  
IN THE CONTRACT DOCUMENTS**

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between

\_\_\_\_\_ a corporation organized and existing under the law of \_\_\_\_\_  
a partnership consisting of \_\_\_\_\_  
an individual doing business as \_\_\_\_\_  
hereinafter called the "Construction Manager or CM" and

\_\_\_\_\_ a corporation organized and existing under the laws of \_\_\_\_\_  
a partnership consisting of \_\_\_\_\_  
an individual doing business \_\_\_\_\_  
hereinafter called the "Subcontractor",

WITNESSETH that the CM and the Subcontractor for the considerations hereafter named, agree as follows:

1. The Subcontractor agrees to furnish all labor and materials required for the completion of all work as follows: \_\_\_\_\_

\_\_\_\_\_ (attach additional sheets as necessary)  
according to the Specifications and Plans referred to therein and addenda No. \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ for the

\_\_\_\_\_ (complete title of project and project no. taken from the title page of the Specifications)  
all as prepared by \_\_\_\_\_

(Name of Designer or Engineer)

for the sum of \_\_\_\_\_ (\$ \_\_\_\_\_)  
and the CM agrees to pay the Subcontractor said sum for said work. This price includes the following alternates (and other items set forth in the sub-bid):

Alternate No(s) \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

(a) The Subcontractor agrees to be bound to the CM by the terms of the hereinbefore described Plans, Specifications (including all general conditions stated herein) and addenda No. \_\_\_\_\_, and \_\_\_\_\_, and \_\_\_\_\_, and to assume to the CM all the obligations and responsibilities that the CM by those documents assumes to the \_\_\_\_\_ hereinafter

(Awarding Authority)

called the "Awarding Authority", except to the extent that provisions contained herein are

by their terms or by law applicable only to the CM.

(b) The CM agrees to be bound to the Subcontractor by the terms of the hereinbefore described documents and to assume to the Subcontractor all the obligations and responsibilities that the Awarding Authority by the terms of the hereinbefore described documents assumes to the CM, except to the extent that provisions contained therein are by their terms or by law applicable only to the Awarding Authority. The Subcontractor shall preserve and protect the rights of the DCAMM under the Contract Documents with respect to the Work to be performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights, and shall be subject to the Record Retention requirements as set forth in the Contract Documents.

2. The CM agrees to begin, prosecute and complete the entire work specified by the Awarding Authority in an orderly manner so that the Subcontractor will be able to begin, prosecute and complete the work described in this subcontract; and, in consideration thereof, upon notice from the CM, either oral or in writing, the Subcontractor agrees to begin, prosecute and complete the work described in this Subcontract in an orderly manner and with due consideration to the date or time specified by the Awarding Authority for the completion of the entire work.

3. The Subcontractor agrees to furnish to the CM within a reasonable time after the execution of this subcontract, evidence of workmen's compensation insurance as required by law and evidence of public liability and property damage insurance of the type and in limits required to be furnished to the Awarding Authority by the CM.

4. The CM agrees that no claim for services rendered or materials furnished by the CM to the Subcontractor shall be valid unless written notice thereof is given by the CM to the Subcontractor during the first ten (10) days of the calendar month following that in which the claim originated.

5. The Subcontractor agrees that it shall enter into similar agreements, as this, with its Subcontractors, except to the extent that provisions contained herein are by their terms or by law applicable only to the CM and/or Contractor.

6. The CM agrees that it has provided to the Subcontractor, prior to the execution of this Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Subcontract. The Subcontractor agrees that it shall similarly make copies of such Contract Documents available to its Subcontractors.

7. In the event of termination of the Contract due to the default of the CM or for any other reason, the DCAMM shall have the right (but shall have no obligation) to assume, and/or accept assignment of and further assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the CM under the Subcontract with such Subcontractor. In the event of such assumption or assignment by the DCAMM, the Subcontractor shall have no claim against the DCAMM or such third party for work performed by such Subcontractor or other matters arising prior to termination of the Contract, and the DCAMM or such third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after such assumption or assignment.

8. Subcontractor is directed to the following executive orders, which are incorporated in the general conditions of the Construction Manager At Risk Contract: Order 481, regarding undocumented workers; Order 478, regarding nondiscrimination and affirmative action; Order 130, regarding anti-boycott agreement; Order 484, regarding clean energy and efficient buildings; Order 390, regarding affirmative market programs; and Order 195, regarding access to records. Subcontractor is further directed to M.G.L. c. 7 § 22C, which restricts the investment of state funds in companies doing business in Northern Ireland.

9. Nothing contained herein, shall be construed to create any contractual relationship between the Subcontractor and the DCAMM.

10. This agreement is contingent upon the execution of a Contract for Construction Management Services between the CM and the Awarding Authority for the complete work.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above-written.

SEAL ATTEST

\_\_\_\_\_  
(Name of Subcontractor)

\_\_\_\_\_

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

SEAL ATTEST

\_\_\_\_\_  
(Name of CM)

\_\_\_\_\_

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

\_\_\_\_\_  
(City and State)

**THIS FORM MAY BE REPRODUCED**

## **APPENDIX E**

### **COMMONLY USED FORMS**

- **Schedule for Participation by Minority/Women Business Enterprises**
  - for Use by Construction Manager
  - for Use by Subcontractors to CM
- **Letter of Intent**
- **Service-Disabled Veteran-Owned Business Enterprises (SDVOBE) and Veteran Owned Business Enterprises (VBE) Participation Form**
- **Procedure for Payment to Contractors (CM), including sample Schedule of Values and Payment Voucher (PV) Input Form**
- **Instructions Regarding Change Orders and Contract Modifications (DCAMM Form 13)**
- **Request for Approval of Wages and Rates for Change Order Pricing or Construction Contingency (CH149A) (DCAMM Form 14)**
- **Request and Agreement for a Change in the Plans, Specifications and/or Contract (DCAMM Form 5)**
- **Format for Submission of Change Order (DCAMM Form 15-1 and 15-2)**
- **Daily Time and Material Report**
- **Request and Agreement for Authorization of Construction Contingency (DCAMM Form CMCCR)**
- **Construction Contingency Summary Sheet (Form CMCCR-1)**
- **Format for Submission of Construction Contingency Request – Work of Subcontractor and/or Self-Performed by CM (Form CMCCR-2)**
- **Form for Transfer of Title (Work Not Incorporated, DCAMM Form 16)**
- **Weekly Payroll Report Form and Statement of Compliance (Sample)**
- **Quarterly Projected Workforce Table (Sample)**
- **Certificate of Substantial Completion -E-1**
- **Certificate of Final Inspection, Release and Acceptance - E-2**