



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

<b>Awarding Authority:</b>	<b>XXX</b>
<b>Mass. State Project No. / Contract No.:</b>	<b>XXX</b>
<b>Project Title / Project Location:</b>	<b>XXX XXX</b>
<b>User Agency:</b>	<b>XXX</b>
<b>Designer:</b>	<b>XXX</b>
<b>Not-to-Exceed Maximum Study Contract Amount:</b> <i>Draft Study Fee:</i> [insert from DSB Ad] <i>Schematic Design/Certifiable Study Fee:</i> [TBD or insert from DSB Ad]	
<b>Design Contract Fee:</b> TBD, XX % of Estimated Construction Cost (if applicable, subject to a credit for the amount of the Schematic Design/Certifiable Study fee above)	

**Authorized Representative of Awarding Authority:**  
 \_\_\_\_\_, or such other individual(s) as he or she shall designate in writing.

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

\_\_\_\_\_ and \_\_\_\_\_, a \_\_\_\_\_ with a principal place of business at \_\_\_\_\_, hereinafter called the "**Designer.**"

Designer's Telephone Number: \_\_\_\_\_ Designer's Fax Number: \_\_\_\_\_  
 Designer's Email: \_\_\_\_\_

## TABLE OF CONTENTS

### **ARTICLE 1: INTRODUCTION 1**

- 1.1 Multi-Phase Contract Generally 1
- 1.2 Subsequent Services and/or Phases Not Guaranteed 1

### **ARTICLE 2: DEFINITIONS 1**

### **ARTICLE 3: GENERAL PROVISIONS 6**

- 3.1 Approvals 6
- 3.2 Materials Provided to the Designer 6
- 3.3 Standard of Care 7
- 3.4 Sequential Order 7
- 3.5 Time of Essence. 7
- 3.6 Staffing 7
- 3.7 BIM Manager 8
- 3.8 Designer Duties Generally 8
- 3.9 Quality Assurance 8
- 3.10 Calculations 8
- 3.11 Designer to Evaluate Information and Conditions 9
- 3.12 Cost Estimates 9
- 3.13 Corrections by Awarding Authority 9
- 3.14 Employment of Consultants. 10
- 3.15 Requests for Payment. 11
- 3.16 Method of Payment. 11
- 3.17 Right to Offset. 11
- 3.18 Equitable Adjustments to Basic Fee 12
- 3.19 Termination. 12
- 3.20 Release and Discharge 13

### **ARTICLE 4: STUDY PHASE 13**

- 4.1 Study Phase Term. 13
- 4.2 Purposes of the Study Phase. 13
- 4.3 Study Phase Governing Documents. 14
- 4.4 Permits during Study Phase. 14
- 4.5 Draft Study Phase Services. 14
- 4.6 Schematic Design/Certifiable Study Services 15
- 4.7 Evaluation of Designer [M.G.L. c. 7C, s. 48]. 17
- 4.8 Payment for Study Phase Basic Services 18
- 4.9 Study Phase Additional Services. 18
- 4.10 Compensation for Study Phase Additional Services 19

### **ARTICLE 5: TRANSITION FROM STUDY PHASE TO DESIGN PHASE 19**

- 5.1 Transition from Study Phase to Design Phase 19
- 5.2 No Guarantee of Selection for Design Phase 20
- 5.3 Termination if Design Phase Prerequisites Not Satisfied. 20
- 5.4 Selection for Design Phase 20
- 5.5 Scope of Design Phase Services and (if applicable) Fee Negotiation 20
- 5.6 Contract Amended for Design Phase. 20

## **ARTICLE 6: DESIGN PHASE 21**

- 6.1 Design Phase Term. 21
- 6.2 Design Phase Governing Documents. 21
- 6.3 Permits during Design Phase. 21
- 6.4 Design Development Phase Services 21
- 6.5 Construction Documents Phase Services. 24
- 6.6 Construction Administration Phase Services. 27
- 6.7 Facility Performance Evaluation Phase Services. 29
- 6.8 Payment for Design Phase Basic Services 29
- 6.9 Design Phase Additional Services 30
- 6.10 Compensation for Design Phase Additional Services 31

## **ARTICLE 7: LEGAL PROVISIONS 32**

- 7.1 No Waiver 32
- 7.2 Compliance with Executive Order 484 [Leading By Example – Clean Energy and Efficient Buildings] 32
- 7.3 Compliance with Life-Cycle Cost Estimate Requirements [M.G.L. c. 7C s. 29 and 149 s. 44M]. 33
- 7.4 Conflicts of Interest 33
- 7.5 Proprietary Items 33
- 7.6 Accessibility and Non-Discrimination Laws 34
- 7.7 Copyrights, Patents, and Intellectual Property Rights 34
- 7.8 Security and Confidentiality; Publication 34
- 7.9 Confidentiality; Personal Data [M.G.L. c. 66A, Executive Order 504] 35
- 7.10 Records, Disclosure Statements, Accounting Controls, Audits 36
- 7.11 Insurance 37
- 7.12 Indemnification 40
- 7.13 Non-Resident Processing; Signatures 40
- 7.14 Anti-Boycott Covenant [Executive Order 130] 40
- 7.15 Truth-In-Negotiation Certificate [M.G.L. c. 7C, s. 51] 40
- 7.16 Employment Eligibility Verification Requirements [8 U.S.C., ss. 1324a, 1324b; M.G.L. c. 149, s. 19C; Executive Order No. 481] 41
- 7.17 Northern Ireland [M.G.L. c. 7, s. 22C] 41
- 7.18 Service-Disabled Veteran-Owned Business Program [Chapter 108 of the Acts of 2012; Executive Order 565]. 41
- 7.19 Minority Business Enterprise & Women Business Enterprise (MBE/WBE) Participation 42
- 7.20 Non-Discrimination in Employment and Affirmative Action 42
- 7.21 Sexual Harassment and Workplace Violence Prevention. 43
- 7.22 Choice of Law 43
- 7.23 Amendments, Severability, Waivers 43
- 7.24 Non-Appropriation 43
- 7.25 Notices, Approvals, Invoices 43
- 7.26 Mandatory Mediation 44
- 7.27 Independent Contractor. 44
- 7.28 Certifications of Designer Made Under Pains and Penalties of Perjury 44

## **SIGNATURES 47**

## **ATTACHMENTS**

- Attachment A: Designer Selection Board Advertisement and Designer Application**
- Attachment B: Affirmative Action Plan**
- Attachment C: MBE/WBE Participation Provisions**
- Attachment D: Intentionally Omitted**
- Attachment E-1: Corporate Vote or Other Evidence of Authority (Study Phase)**
- Attachment E-2: Corporate Vote or Other Evidence of Authority (Study Phase Amendment, if applicable)**
- Attachment E-3: Corporate Vote or Other Evidence of Authority (Design Phase)**
- Attachment F-1: Truth in Negotiations Certificate (Study Phase)**
- Attachment F-2: Truth in Negotiations Certificate (Study Phase Amendment, if applicable)**
- Attachment F-3: Truth in Negotiations Certificate (Design Phase)**
- Attachment G: Design Phase Scope of Services**
- Attachment H: Awarding Authority's Design Procedures (For use by Agencies Other than DCAMM)**
- Attachment I: Designer's Personnel Assigned to Project**
- Attachment J: Certified Billing Rates of Designer's and Designer's Consultant's Personnel**
- Attachment K: Certifications of Designer Made Under Pains and Penalties of Perjury**
- Attachment L: DCAMM Payment Voucher Form (PV) and Instructions**
- Attachment M: Prompt Payment Discount Form**

## ARTICLE 1: INTRODUCTION

- 1.1 Multi-Phase Contract Generally.** This Contract addresses the services required for both the performance of Study Phase Services and the Design Phase Services of the Project. However, the Designer understands that the execution of this Contract authorizes the Designer to perform only the authorized Study Phase Services, as indicated in the Notice to Proceed. The Designer further understands that the Project shall not enter into subsequent Study Phase, if applicable, or the Design Phase unless and until all of the prerequisites for such Study Phase and/or Design Phase specified in this Contract are satisfied and an amendment is executed in accordance with this Contract.
- 1.2 Subsequent Services and/or Phases Not Guaranteed.** The Awarding Authority makes no guarantee that the Project will extend beyond the immediately authorized Study Phase or that if the Project proceeds to the Design Phase that the Designer will be selected to perform the Design Phase Services.

## ARTICLE 2: DEFINITIONS

**Additional Services:** Any services in addition to the Basic Services Approved to be performed by the Designer for the Project in accordance Section 4.9 (Study Phase Additional Services) and/or Section 6.9 (Design Phase Additional Services), for which Designer shall be compensated in accordance with Section 4.10 (Compensation for Study Phase Additional Services) and Section 6.10 (Compensation for Design Phase Additional Services), as applicable.

**Approval:** A signed written communication from the Authorized Representative of the Awarding Authority to the Designer expressing the Awarding Authority's acceptance of services or documents prepared by the Designer, which acceptance shall not relieve the Designer from any of its professional responsibilities under this Contract for such services or documents.

**Approved:** An item for which Approval has been given.

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

**Authorized Representative:** The person named as such on the cover page of this Contract (or such other person or persons as the Awarding Authority may designate in writing), and who has the authority to grant Approval on behalf of the Awarding Authority as required under this Contract.

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

**Basic Fee:** The amount owed to the Designer for Basic Services performed during the Study Phase and (if applicable) Design Phase, as specified in Section 4.8 (Payment for Study Phase Basic Services) and Section 6.8 (Payment for Design Phase Basic Services) of this Contract, respectively.

**Basic Services:** All services required to be performed by the Designer under this Contract during the Study Phase, and, if applicable, the Design Phase, except those services specified in Section 4.9 (Study Phase Additional Services), and Section 6.9 (Design Phase Additional Services).

**Building Information Model (“BIM”)**: A digital representation of the physical and functional characteristics of a facility, which provides a reliable source of information upon which the Awarding Authority may rely upon to make decisions regarding the facility during and after the Project, to be developed and delivered by the Designer as specified in this Contract and in accordance with model requirements, including but not limited to derived documentation, data standards, model set-up, and other prescriptive information and model requirements provided herein.

**BIM Execution Plan**: A strategic and tactical tool to plan the interactions of the BIM team from the initiation of the Study Phase until the completion of construction and delivery by the Designer of the As – Built Drawings and associated BIM Deliverables, including, without limitation, integration of data, records, models, and commissioning information into CAMIS if requested by Awarding Authority, and which meets the requirements set forth in Section 4.5.3 (Preparation of Work Plan).

**BIM Manager**: Designer’s representative responsible for coordinating the performance and execution of BIM related services and deliverables on the Project in accordance with the BIM Execution Plan among the Designer, Consultants, general contractor, Owner’s Project Manager (if any), and appropriate personnel participating in the Project from the Awarding Authority and, if appropriate, User Agency.

**Capital Asset Management Information System (CAMIS)**: a statewide application that includes several modules related to DCAMM functions, including, but not limited to, land/building portfolio management, real estate transactions, capital projects, and facility maintenance operations and services.

**Certified**: A Project for which an adequate appropriation of funds is available and all certifications required by M.G.L. c. 7C, ss. 59 - 60 have been duly made.

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

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

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

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

**Construction Cost Estimate**: A submittal consisting of a written calculation of the Estimated Construction Cost prepared by the Designer, (if applicable) Designer’s professional cost estimator, and (if applicable) the independent cost estimator appointed by the Awarding Authority, at various points during the Study Phase and Design Phase on the basis of the *Uniformat II Elemental Classification for Building Specifications, Cost Estimating, and Cost Analysis* dated October 1999 published by the U.S. Department of Commerce NIST to the level of detail specified in this Contract, as well as the final cost estimate that

the Designer is required by this Contract to prepare in *MasterFormat* (2004 edition, as updated 2010 and 2012) published by the Construction Specifications Institute. The Construction Cost Estimate includes contingencies for: estimating, phasing and temporary work, and escalation.

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

**Consultants Estimating Manual:** The document published by DCAMM that details the methods, accuracy level, and Deliverables for estimate tasks of designers contracting with DCAMM.

**Contract:** This Contract for Study, Final Design, and Contract Administration Services.

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

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

**Deliverable:** Work product of the Designer that is required to be delivered or submitted to the Awarding Authority pursuant to the terms of this Contract.

**Design Phase:** The portion of this Project that commences after both an amendment to this Contract is executed and a Notice to Proceed is issued to authorize Design Phase Services, during which the final design of the Project and the administration of the Construction Contract will occur. The Design Phase includes the design development phase, construction documents phase, construction administration phase, and the facility performance evaluation phase once each is authorized by a Notice to Proceed in accordance with this Contract.

**Design Phase Services:** All authorized services required to be performed by the Designer and its Consultants under this Contract in accordance with ARTICLE 6.

**Design Phase Scope of Services:** A written plan of the services to be provided by Designer during the Design Phase, which will be attached hereto as Attachment G – Design Phase Scope of Services and incorporated by reference upon execution of an amendment to this Contract as set forth in Section 5.6 (Contract Amended for Design Phase).

**Designer:** The Designer named on the cover page of this Contract.

**Designer Selection Board Advertisement:** The advertisement published by the Designer Selection Board in accordance with M.G.L. c. 7C to solicit proposals for the performance of Study Phase Services and/or Design Phase Services for the Project, attached to this Contract as Attachment A.

**Draft Study:** A document that meets the requirements of M.G.L. c. 7C, s. 1 and the requirements of this Contract, including the Approved Work Plan to be incorporated into this Contract, that defines and quantifies a User Agency's space needs, develops alternative architectural and/or engineering solutions to meet those needs, and contains a) a space program statement including spatial and relationship requirements; b) a recommended physical solution selected from several alternatives based on a determination of existing conditions and the feasibility of construction; and c) a Construction Cost Estimate. The Draft Study includes a Program as defined herein and shall include completion of required Deliverables through consensus solution in accordance as the *DCAMM Designers Procedures Manual*. This definition may be modified if the Approved Work Plan clearly indicates that aspects of this definition are not intended to be included.

**Estimated Construction Cost:** The Construction Cost as estimated in the Construction Cost Estimate prepared collectively by the Designer, (if applicable) Designer's professional cost estimator, and (if applicable) the independent cost estimator appointed by the Awarding Authority, at various points in the Study Phase and Design Phase of the Project to the level of detail and in the format specified in this Contract.

**Fixed Limit Construction Cost:** The maximum allowable Construction Cost established by the Awarding Authority; unless otherwise communicated in writing by an Authorized Representative of Awarding Authority, during the Study Phase, this amount shall be the ECC stated in the Designer Selection Board Advertisement for the Project and during the Design Phase, this amount shall be the Estimated Construction Cost forth in the Certified Study.

**Global Workshop:** A working meeting led by the Designer pursuant to an Approved agenda at which attendance by the Designer and all Consultant team members is required. The meeting includes representatives of the User Agency, representatives of the Awarding Authority, appropriate DCAMM staff, and may include other outside consultants of DCAMM and/or the Awarding Authority. The purpose of a Global Workshop is to broadly review the Project, thus ensuring that an analysis of the Project is comprehensive.

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

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

**Milestone:** An Approval of a completed Deliverable or group of Deliverables, which Approval entitles the Designer to a payment of a portion of its fee for Basic Services as specified in the Approved Work Plan or the Design Phase Schedule of Values, as applicable.

**Notice to Proceed:** A written communication from the Authorized Representative of the Awarding Authority directing the Designer to perform services for the particular phase of the Project as set forth in such communication. The Designer may not proceed with any services pursuant to this Contract and Awarding Authority shall have no liability for any such services performed absent receipt of a Notice to Proceed.

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

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



**Program:** A document prepared in accordance with the provisions of M.G.L. c. 7C, ss. 1 and 59, which defines a capital facility project in terms of its content, time, and cost so that it provides a clear and detailed frame of reference for the design and implementation process.

**Project:** The Project identified on the cover page of this Contract.

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

**Record Drawings:** The drawings prepared by the Designer and its Consultants pursuant to this Contract which incorporate the changes made during the construction period and which incorporate information from the marked-up prints, As-Built Drawings, and other data furnished by the general contractor and subcontractors.

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

**Schedule of Values:** A schedule prepared by the Designer that allocates the payments of the Design Phase Basic Fee to various Milestones in the performance of the Designer's Design Phase Basic Services in accordance with the percentages specified in Section 6.8 (Payment for Design Phase Basic Services). Once Approved, the Schedule of Values shall be incorporated by reference into this Contract.

**Schematic Design/Certifiable Study:** A document that meets the requirements of M.G.L. c. 7C, s. 1 and the requirements of this Contract, including the Approved Work Plan to be incorporated into this Contract, necessary to support Project certification in accordance with M.G.L. c. 7C, ss. 59 – 60, including, without limitation, schematic design in accordance with M.G.L. c. 7C, s. 59. The term "Schematic Design/Certifiable Study" as used in this Contract contains and includes a Draft Study and Program as defined herein. A Schematic Design/Certifiable Study may reveal that the Project is not warranted, or that the need can be satisfied without the construction of new, or the renovation of existing, facilities. This definition may be modified if the Approved Work Plan clearly indicates that aspects of this definition are not intended to be included.

**Study Guidelines:** Guidelines for Studies of Building Projects, Publication No. 14890-65-250-6-86-C.R. originally published March 1, 1983; revised October 2000, or any reasonable updates thereto. This document provides guidelines for the preparation of studies and programs for building projects by state agencies, counties, and building authorities. M.G.L. c. 7C requires DCAMM to establish these guidelines and to supervise the preparation of studies and programs.

**Study Manager:** The person appointed by the Awarding Authority to provide administration of the Study Phase of this Contract.

**Study Phase:** The portion of this Project that commences upon execution of this Contract, during which the Draft Study and, if authorized by a Notice to Proceed, Schematic Design/Certifiable Study are completed.

**Study Phase Services:** All authorized services required to be performed by the Designer and its Consultants under this Contract in accordance with ARTICLE 4.

**Substantial Completion:** "Substantial Completion" occurs when the Awarding Authority takes possession of the Project for occupancy.

**Surveys and Data:** Any existing and available surveys of the Project's building site or sites, showing the grades and lines of streets, pavements and adjoining properties; the rights, restrictions, easements, boundaries and contours of the site or sites; reports from any borings, test pits; chemical, mechanical or other tests; photographs and information as to water, sewer, electricity, steam, gas, telephone and other services; and data and drawings regarding existing buildings.

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

**Work Plan:** A written plan of services for the completion of the Draft Study Phase and (if applicable) Schematic Design/Certiifiable Study. The Work Plan must be consistent with the “General Scope of Work” included in the Designer Selection Board Advertisement for this Contract and meet the requirements of Section 4.5.3 (Preparation of Work Plan) of this Contract and the Designer Selection Board’s project criteria for the Project as stated in the Designer Selection Board Advertisement. In the case of any conflict between the terms of the Work Plan and the Designer Selection Board project criteria for the Project, the terms of the Approved Work Plan shall be controlling. Once Approved, the Work Plan shall be incorporated by reference into this Contract.

### ARTICLE 3: GENERAL PROVISIONS

#### 3.1 **Approvals.**

***3.1.1 Awarding Authority’s Approval Responsibilities.*** The Awarding Authority, through the Authorized Representative, shall without unreasonable delay either grant any Approval required by this Contract or notify the Designer in writing why such Approval is being withheld, provided that the Awarding Authority shall not unreasonably withhold any Approval. If necessary, the Awarding Authority and the User Agency shall attend meetings with the Designer to achieve Approval of a Deliverable. Approval by the Awarding Authority shall not in any way relieve the Designer from its professional responsibility for all services and documents furnished by the Designer and its Consultants hereunder.

***3.1.2 Designer’s Approval Responsibilities.*** The Designer shall not work on any task or Deliverable without first receiving all required Approvals. The Designer shall make all changes in Deliverables required by comments made by the Awarding Authority before the Deliverable will be Approved, unless such changes are in Designer’s professional opinion not suitable, in which case the Designer shall communicate in writing the reasons why they are not suitable. When necessary, the Designer shall meet with the Awarding Authority, the User Agency, the Owner’s Project Manager (if appropriate) and any appropriate Consultants to develop a mutually satisfactory Deliverable. Within 30 days after the Approval of Deliverables, the Designer shall provide the Awarding Authority with clearly identified hard or electronic copies, as specified by the Awarding Authority, of the Approved Deliverables.

#### 3.2 **Materials Provided to the Designer.**

***3.2.1 User Agency cooperation.*** The Awarding Authority shall cause the User Agency to designate staff to represent the User Agency and to work with the Awarding Authority to provide relevant information to the Designer for the performance of the Designer’s obligations under this Contract.

***3.2.2 Study Phase materials.*** At the commencement of the Study Phase, the Awarding Authority shall deliver to the Designer.

- (a) a copy on compact disc or electronic format of the current versions of the following documents: Guidelines for the Preparation of Studies for Building Projects (Publication No. 1381-66-250-4-83-CR, Interim Revision October 1998, Current Revision October 2000), Designers Procedures Manual, DCAMM Standard Specification, Consultants Estimating Manual, and, for use on DCAMM Projects, Cost Estimate Input Form, and Building Information Modeling (BIM) List of Design and Preconstruction Services (Revised April 30, 2015), BIM Guidelines for Design and Construction (dated April 30, 2015), and Template BIM Execution Plan;
- (b) a draft of the Work Plan in accordance with Section 4.5.3 (Preparation of Work Plan), if not previously provided;
- (c) Surveys and Data; and
- (d) if the Awarding Authority is DCAMM, a current accessibility audit of existing building(s), unless otherwise indicated by the Study Manager.

**3.2.3 Design Phase materials** If applicable, at the commencement of the Design Phase and at any other time upon request of the Designer, the Awarding Authority shall provide any additional or updated copies of Surveys and Data.

**3.2.4 Ownership of materials provided to Designer.** All items provided to the Designer by the Awarding Authority hereunder shall remain the property of the Awarding Authority or the Public Entity. The Designer may use items provided by the Awarding Authority only for the purposes of this Contract and in accordance with Section 7.8 (Security and Confidentiality; Publication), unless otherwise agreed to in writing by the Awarding Authority. The Awarding Authority does not guarantee nor does it make any express or implied warranties concerning the accuracy of any such information furnished to the Designer.

**3.3 Standard of Care.** The Designer agrees: that the services provided hereunder shall conform to the standard of care and practice exercised by design professionals or consultants engaged in performing comparable services; that the personnel furnishing said services shall be qualified and competent to perform adequately the services assigned to them; and that the recommendations, guidance and performance of such personnel shall reflect such standards of care and practice.

**3.4 Sequential Order.** The sequential order of the Designer's services as set forth in this Contract and all documents incorporated by reference is of the essence. The Awarding Authority shall have no obligation to Approve or pay the Designer for Deliverables prepared during the Study Phase or the Design Phase other than in the order required by the Approved Work Plan or Design Phase Scope of Services, as applicable.

**3.5 Time of Essence.** The parties agree that time is of the essence for the completion of all Study Phase Services and Design Phase Services required by the Contract. The parties further confirm and agree that any and all Contract Schedules Approved during the Project shall reflect a reasonable period of time for completing the required services, obtaining required Approvals, obtaining all necessary Permits, addressing any and all design issues, and performing the Basic Services in accordance with this Contract.

**3.6 Staffing.** The Designer agrees that Designer's personnel who shall provide services under this Contract during the Study Phase are those listed in its application to the Designer Selection Board and, during the Design Phase, are those listed in Attachment I – Designer's Personnel Assigned to Project. No changes or additions may be made to Designer's personnel during the Study Phase or the Design Phase without Approval by the Awarding Authority. The Designer shall provide

sufficient personnel to complete the services required by this Contract in a continuous and timely manner in accordance with the Approved Work Plan and, during the Design Phase, in accordance with the Approved Contract Schedule agreed upon in accordance with Section 6.4 (Design Development Phase Services).

- 3.7 BIM Manager.** Designer shall appoint a BIM Manager for the Study Phase and, if applicable, the Design Phase, who shall be Approved by the Awarding Authority.
- 3.8 Designer Duties Generally.** The Designer shall be responsible for the professional accuracy and coordination of all Deliverables, including without limitation, designs, drawings, specifications, digital files, cost estimates, and other services and submittals furnished by Designer and by its Consultants in accordance with the standard of care set forth in Section 3.3 (Standard of Care). The Basic Fee shall compensate Designer for all of Designer's obligations specified in this Contract except as otherwise specifically provided herein.
- 3.9 Quality Assurance.** The Designer is responsible for quality assurance/quality control (QA/QC) in performance of all services required by the Designer under this Contract. As specified in Section 4.5.3 (Preparation of the Work Plan), the Designer shall submit to the Awarding Authority as part of its proposed Work Plan a written description of the QA/QC procedures the Designer will implement in the performance of all services required under this Contract, which shall (1) include all requirements for QA/QC set forth in the Designer Procedures Manual , (2) identify the individual(s) responsible for bid document review and cost estimating, and (3) identify methods utilized to determine the completeness, accuracy, and coordination of drawings, specifications, cost estimates, digital files, and other data and documentation. If Schematic Design/Certifiable Study Services and/or Design Phase Services are authorized under this Contract, the Designer shall continue to adhere to the QA/QC procedures set forth in the Approved Work Plan during the performance of the such services. The Designer shall be responsible for the completeness, accuracy and coordination of all data and information relating to all services performed under this Contract.
- 3.10 Calculations.** Whenever calculating the building gross area, departmental gross area, or net assignable area, as hereinafter defined, the Designer shall rigorously and exclusively adhere to the following specific methods of area calculation:
- 3.10.1. Building Gross Area:** The floor area of a building for all levels that are totally enclosed within the building envelope, including basements, mezzanines, or penthouses. To compute building gross area, measure to the outside face of exterior walls, disregarding cornices, pilasters, and buttresses, that extend beyond the wall face. The building gross area of basement space includes the area measured to the outside face of basement foundation walls.
- 3.10.2. Departmental Gross Area:** The net assignable areas and required secondary circulation assigned to an occupant group or department. To compute the departmental gross area, measure to the inside finished surface of the exterior building walls, to the finished surface of the walls surrounding major vertical penetrations and building core and service areas, and to the center of the walls dividing the space from adjoining departmental gross areas.
- 3.10.3. Net Assignable Area:** The area required to accommodate a function, equipment, occupant, or occupant group. Net assignable area includes interior walls, building columns, and projections. Net assignable area excludes exterior walls, major vertical penetrations, building core and service areas, primary circulation, and secondary circulation. To compute the Net Assignable Area, measure to the inside surface of the exterior building walls, to the finished surface of walls surrounding major vertical penetrations, building core areas, and service areas, and to the center

of partitions separating the net assignable area from adjoining net assignable areas and from secondary circulation space.

**3.11 Designer to Evaluate Information and Conditions.**

**3.11.1. Surveys and Data.** The Designer shall analyze and evaluate the Surveys and Data furnished by the Awarding Authority. If the Surveys and Data to be provided by the Awarding Authority are not available or are, in the reasonable opinion of the Designer, insufficient to permit the Designer to properly perform its services hereunder, the Designer shall submit a written request to the Awarding Authority for permission to obtain the services of one or more Consultants to perform the necessary services. If such services are not included in the Approved Work Plan or Design Phase Scope of Services, as applicable, the Designer shall be reimbursed in accordance with Section 3.14.1 (Retention of Special Consultants), or if the services are performed by the Designer's own employees, the Designer shall be compensated in accordance with Section 4.10 (Compensation for Study Phase Additional Services) or Section 6.10 (Compensation for Design Phase Additional Services), as applicable. In no case shall the Designer commence or authorize a Consultant to commence such services without the prior Approval of the Awarding Authority. In the event that any Surveys and Data are updated, corrected, supplemented, or otherwise modified in accordance with this Section, Designer shall provide such information and documents to Awarding Authority and, if requested by Awarding Authority, shall provide such information and documents in a form compatible with CAMIS integration.

**3.11.2. Existing Conditions.** If the Awarding Authority is DCAMM, if an Approved Work Plan or Design Phase Scope of Services calls for an analysis of existing conditions of a site or facility by Designer, DCAMM shall provide Designer with the information related to such facility or site contained within CAMIS. Designer shall compare the information contained in its existing conditions analysis with such CAMIS information, and if necessary shall provide to DCAMM any necessary updates to the CAMIS information in a form compatible with CAMIS integration as indicated by DCAMM.

**3.12 Cost Estimates.** If the Awarding Authority has appointed a construction manager or an independent cost estimator for the Project during the Study Phase or the Design Phase or both, the Designer shall validate its Construction Cost Estimates with such person prior to submitting its Construction Cost Estimates to the Awarding Authority for Approval. The decision of the Awarding Authority shall be final in matters pertaining to the Construction Cost Estimates and changes thereto but the Designer shall not be responsible for any decision by the Awarding Authority that is inconsistent with generally accepted standards of professional practice provided that the Designer shall have advised the Awarding Authority in writing of the inconsistency at the time of the Approval.

**3.13 Corrections by Awarding Authority.** The Designer shall furnish appropriate competent professional services for each of the Study Phase and Design Phase of the Project to the point where detail checking or reviewing by the Awarding Authority is not necessary. Any changes, corrections, additions, or deletions made by the Awarding Authority shall be incorporated into the design of the Project unless specific written objections thereto are made by the Designer and such objections are agreed to by the Awarding Authority. The decision of the Awarding Authority shall be final in matters pertaining to this Section, but the Designer shall not be responsible for any such decision by the Awarding Authority that is inconsistent with generally accepted standards of professional practice provided that the Designer advised the Awarding Authority in writing of the inconsistency at the time the decision was made.

### **3.14 Employment of Consultants.**

**3.14.1. Generally.** Subject to the provisions of this Contract, the Designer shall employ the services of Consultants as needed and be responsible for their work, compensation, and the coordination and supervision thereof. Consultants so employed shall be Approved and registered in Massachusetts in their respective disciplines if registration is required by the applicable Laws. The Designer shall provide the Awarding Authority with complete copies of its contracts with each of its Consultants within fourteen (14) calendar days of the execution of such contracts.

#### **3.14.2. Retention of Special Consultants.**

- (a) If the services of a Consultant not included in the Approved Work Plan or Attachment G – Design Phase Scope of Services are required, the Designer shall submit a written request with a detailed description of the proposed services to the Awarding Authority for the Approval of the solicitation of such a Consultant. Upon Approval of such request to solicit, the Designer shall obtain fee proposals from at least three such consultants (including at least one MBE or WBE if available) and shall submit them to the Awarding Authority together with the Designer's recommendation for selection before any work may be Approved. The Awarding Authority may waive the requirement for three proposals for good cause provided that such waiver shall be in writing. To the extent applicable, Designer shall comply with the requirements of the Massachusetts Prevailing Wage Law, M.G.L. c. 149, ss. 26-27D, in the employment of such special Consultants. Each such Consultant whose fee for such services exceeds \$25,000 shall demonstrate professional liability insurance coverage in an amount not less than its fee.
- (b) The actual cost to the Designer for services of any Approved special Consultant shall be reimbursed by the Awarding Authority, provided that the Awarding Authority previously Approved such costs. The compensation for an Approved special Consultant may be a lump sum fee. For solicitation, inspection, analysis, coordination, and evaluation of such special Consultants' services, and for assuming liability therefore, the Designer shall be paid by the Awarding Authority (i) 10% of the actual expense, if the cost of the specific services is estimated not to exceed \$100,000 or (ii) a lesser equitable percentage to be agreed upon by the Designer and the Awarding Authority, if the not-to-exceed cost is projected to exceed \$100,000.

**3.14.3. Approval of Consultants.** To obtain Approval of Consultants, the Designer must submit the items required by M.G.L. c. 7C, s. 51 and a statement of the proposed Consultant's qualifications, accompanied by resumes and experience of relevant Consultant personnel, and any other documentation reasonably requested by Awarding Authority. The Designer may not request Approval for the hiring of a substitute for any Consultant that was part of the team presented to the Designer Selection Board unless such Consultant has, in the Designer's opinion, become unable or unwilling to perform its services in a satisfactory manner or unless the Consultant has voluntarily requested in writing to be relieved of its duties as a team member. The Designer shall make the request for substitution in writing and the request shall state with specificity the reasons why the Designer believes that the Consultant has become unable or unwilling to perform its services in a satisfactory manner, or if the Consultant has voluntarily requested to be relieved of its duties as a team member, the Designer shall include with the request a copy of the Consultant's written request for such relief.

**3.14.4. Consultants Barred from Work on Project.** The Designer shall not employ in any element of design, specification, estimating, evaluation or other work under this Contract any person or firm that expects to be a bidder, subcontractor or supplier for the construction of the Project or any part thereof. The Designer shall obtain from every Consultant a written representation that such Consultant is aware that it is prohibited from serving as a bidder,

subcontractor, or supplier for the construction of the Project or any part thereof. In addition, the Designer acknowledges that the services provided under this Contract require trustworthiness, confidentiality, and an absence of conflicts of interest. The Designer shall not perform planning, study, or similar services for any agency or officer of the Commonwealth other than the Awarding Authority, for any other federal, local or state public agency, or for any for-profit or nonprofit entity if those services are in any way related to the Project.

**3.14.5. Right to Rescind Approval of Designer's Employees and Consultants.** The Awarding Authority may at any time rescind the Approval of an employee of Designer, the designated BIM Manager, or a Consultant if, in the Awarding Authority's sole reasonable discretion, such employee, BIM Manager, or Consultant is incompetent, irresponsible or otherwise unsatisfactory, and the Designer shall remove such Consultant, BIM Manager, or employee from work on this Contract. If an employee, BIM Manager, or Consultant is so removed, the Designer shall provide another employee, BIM Manager, or Consultant with similar credentials and qualifications (including but not limited to MBE/WBE) and that is Approved by the Awarding Authority. The removal of such employee, BIM Manager, or Consultant shall not relieve the Designer from its responsibilities for the services to be provided by such employee or Consultant under this Contract.3.15

**3.14.6. Prompt Payment of Consultants.** The Designer shall, within fourteen (14) calendar days after receiving payment from the Awarding Authority, pay to each Consultant the amount due for work performed by the Consultant, less any amount specified in any court proceedings barring such payment and also less any amount claimed due from the Consultant by the Designer. In the event any payment is withheld from a Consultant, the Designer shall notify the Awarding Authority in writing of the reason why such payment is not being made within such time period.

**3.15 Requests for Payment.** All invoices from the Designer shall be submitted to the Awarding Authority accompanied by a completed Commonwealth of Massachusetts Payment Voucher Input Form PV attached hereto as Attachment L – DCAMM Payment Voucher Form (PV) and Instructions if this is a Commonwealth project, and otherwise accompanied by such forms as the Awarding Authority may require. All invoices will be promptly processed by the Awarding Authority if they are in conformity with this Contract and properly documented; if not they will be returned to the Designer. Designer shall submit an invoice for final payment in accordance with this Contract within 45 days of completion of Study Phase Services, and, (if applicable), Design Phase Services. Awarding Authority shall not be obligated to pay any claims received after such 45-day period.

**3.16 Method of Payment.**

**3.16.1 Electronic Funds Transfer.** Awarding Authority may require that Designer receive payments via electronic funds transfer (EFT).

**3.16.2 Prompt Payment Discount.** If Awarding Authority is a Commonwealth agency, Designer may elect to participate in prompt payment discounts as evidenced by execution of Attachment M – Prompt Payment Discount Form, in which case Awarding Authority may deduct prompt payment discounts as set forth in Attachment M – Prompt Payment Discount Form.

**3.17 Right to Offset.** If the Awarding Authority finds that any Study Phase Services or Design Phase Services previously paid for by the Awarding Authority contained deficiencies, errors or omissions then the Awarding Authority may withhold from any future payment due to the Designer under this Contract an amount reasonably calculated by the Awarding Authority to cover the cost of correcting the deficiency, error or omission until the services have been corrected. The Awarding Authority may also offset against any payment due to the Designer the

amount of any costs incurred by the Awarding Authority arising from the Designer's failure to provide required services, deficiencies, errors or omissions. If the Awarding Authority shall discover that the charge for any previously paid-for services was calculated based upon incorrect information, the Awarding Authority may offset any overcharges against any future payment due to the Designer under this Contract. Any disputes related to offsets taken by the Awarding Authority shall be subject to resolution pursuant to Section 7.26 (Mandatory Mediation) of this Contract. Nothing in this paragraph shall limit any legal remedies of the Awarding Authority against the Designer for default, errors, omissions, erroneous claims, false claims, tort claims, or any breach by the Designer of the terms of this Contract or applicable Laws.

**3.18 Equitable Adjustments to Basic Fee.** If there is a substantial change in the services provided in this Contract during the Study Phase or the Design Phase as determined by the Awarding Authority, the Designer and the Awarding Authority will agree to an equitable adjustment in the Designer's Basic Fee for the affected Phase. For the purposes of this Contract, a "substantial change" in services shall include:

- (a) a substantial change in the scope of Designer's services that is not the fault of the Designer; or
- (b) a significant increase in the duration of the Project as provided in the Certified Study, or as otherwise agreed upon, that is not the fault of the Designer.

**3.19 Termination.**

**3.19.1 Termination by Awarding Authority for Convenience.** The Awarding Authority may terminate this Contract in whole or in part without regard to any fault or failure to perform by the Designer and solely for the Awarding Authority's convenience at any time by written notice to the Designer. In the event of such termination, the Awarding Authority shall incur no liability, except for the obligation to make payments to Designer in accordance with this Contract up to and including the date of termination, including progress payments due under this Contract, proportionate payment for partially completed work, and (if applicable) reimbursable expenses plus reasonable costs incurred in connection with the termination as approved by the Awarding Authority. The payments to the Designer shall not exceed the limits established for the services when Approved or the fair value of the Designer's work, as the Awarding Authority shall determine. No amount shall be allowed for anticipated profit on unperformed services. Termination of this Contract for convenience shall not impair the right of the Awarding Authority to recover damages occasioned by the fault or default of the Designer in the performance of its duties under this Contract.

**3.19.2 Termination by Awarding Authority for Cause.** If this Contract is terminated due to the failure of the Designer to fulfill its obligations under this Contract, the Awarding Authority may assume those obligations and/or enter into a contract with a replacement designer to complete the Project. In such case, the Designer shall be liable to the Awarding Authority for any damages, including without limitation the administrative costs and attorneys' fees and costs, incurred by the Awarding Authority thereby to the extent resulting from Designer's breach. These rights and remedies of the Awarding Authority are in addition to any rights and remedies provided by law or under this Contract and shall not impair the right of the Awarding Authority to recover damages occasioned by fault or default of the Designer in the performance of its duties under this Contract.

**3.19.3 Termination by Designer.** By written notice to the Awarding Authority, the Designer may terminate this Contract (a) if, sixty (60) days following written notice to the Awarding Authority from the Designer of any default by the Awarding Authority hereunder, the Awarding Authority shall have failed to remove such default, or (b) if, the Awarding Authority shall have



failed to issue a Notice to Proceed for of the next phase of the Design Phase at least six (6) months after the Designer shall have performed all services required of the Designer in the design development phase or the construction documents phase of the Project as described in this Contract. Upon any such termination by the Designer, the Awarding Authority shall pay to the Designer all compensation and reimbursement payable to the Designer in accordance with this Contract up to and including the date of termination, plus reasonable costs incurred in connection with the termination as approved by the Awarding Authority. The payments to the Designer shall not exceed the limits established for the services when Approved or the fair value of the Designer's work, as the Awarding Authority shall determine. No amount shall be allowed for anticipated profit on unperformed services.

**3.19.4 Designer's Duties upon Termination.** Within thirty (30) days of any termination of this Contract the Designer shall deliver to the Awarding Authority all data, drawings, specifications, digital files, reports, estimates, summaries, and such other information and materials, whether completed or in process, as may have been accumulated by the Designer in performing this Contract, all such documents, information, and materials being the property of the Awarding Authority as set forth in Section 7.7 (Copyrights, Patents, and Intellectual Property Rights).

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

## ARTICLE 4: STUDY PHASE

**4.1 Study Phase Term.** The Study Phase shall commence upon the execution of the Contract and shall continue through the completion of the Study Phase Services authorized and required hereunder, unless this Contract is terminated earlier.

**4.2 Purposes of the Study Phase.** The purpose of the Study Phase is to ensure that the Commonwealth does not waste money on final design services for projects that are not necessary, not technically feasible, or for which sufficient funds are not available for construction. At a minimum, the Study Phase shall allow the User Agency to:

- (a) determine the space needs of the User Agency and the relevant design criteria for the User Agency's anticipated types of use;
- (b) evaluate how the User Agency's space needs can be satisfied in the most cost-effective manner;
- (c) analyze the efficiency, cost and operational implications of existing conditions;
- (d) review site selection;
- (e) determine the technical feasibility of a proposed project;
- (f) utilize the Draft Study and/or Schematic Design/Certifiable Study (as applicable) as a prospectus in the planning and budgeting process for the User Agency, the Awarding

Authority, DCAMM, the Executive Office of Administration and Finance, and the legislature;

- (g) assure compliance with Laws including but not limited to M.G.L. c. 7C, ss. 12, 18 69, 59, 60, 61, ADA Title II, and 521 CMR;
- (h) prepare the Design Phase Scope of Services, if the Project proceeds to the Design Phase;
- (i) control programmatic changes made during construction; and
- (j) evaluate post-occupancy use.

**4.3 Study Phase Governing Documents.** During the Study Phase, the Designer shall perform its duties in accordance with all applicable Laws, the provisions of this Contract and the Approved Work Plan, which shall be incorporated herein by reference upon its Approval. In addition, the Designer shall comply with Designer Selection Board project criteria stated in the Designer Selection Board Advertisement for the Project, the *Guidelines for the Preparation of Studies for Building Projects (Publication No. 1381-66-250-4-83-CR, Interim Revision October 1998, Current Revision October 2000)*, DCAMM's *Designers Procedures Manual, DCAMM Standard Specifications, Consultants Estimating Manual, DCAMM CAD Standards (revision 2: February 2013)*, the *Building Information Modeling (BIM) List of Design and Preconstruction Services (Revised February 27, 2016)*, and the *BIM Guidelines for Design and Construction*. In the case of conflict between the terms of this Contract and any of the provisions incorporated herein by reference, the Designer shall make a written request for clarification to the Awarding Authority and the Awarding Authority's written response shall be conclusive.

**4.4 Permits during Study Phase.** During the Study Phase, the Designer shall identify and review all of the Permits required for the construction, use and occupancy of the Project and shall provide a list of all of the Permits required and an indication of when they must be applied for in the Design Phase of the Project. For each such Permit the Designer shall estimate in detail the cost of obtaining the Permit and the likely duration of the Permit issuing process. These costs and time requirements shall be accurately reflected in any cost estimates that the Designer is required to submit under this Contract and in any proposed construction schedules included in the Draft Study and/or Schematic Design/Certifiable Study.

**4.5 Draft Study Phase Services.**

**4.5.1 Notice to Proceed.** Upon execution of this Contract and receipt of a Notice to Proceed, the Designer shall commence and diligently perform to completion the Study Phase Services necessary to complete the Draft Study in accordance with this Contract, including, without limitation, once finalized, the Approved Work Plan.

**4.5.2 Initial Meeting.** After executing this Contract and upon receipt of a Notice to Proceed, the Designer, its key personnel, and such key Consultants as may be designated by the Awarding Authority shall attend an administrative conference with the Study Manager at the offices of the Awarding Authority for the purpose of making introductions, exchanging contact information, clarifying relationships, and reviewing billing procedures.

**4.5.3 Preparation of Work Plan.** Upon execution of this Contract and upon receipt of a Notice to Proceed, the Designer, working with the Study Manager, shall revise the draft Work Plan previously provided by the Awarding Authority and shall submit a proposed Work Plan to the Awarding Authority for Approval within two (2) weeks of the date of the Notice to Proceed. The proposed Work Plan shall:

- (a) comply with the Designer Selection Board project criteria for this Project stated in the Designer Selection Board Advertisement;
- (b) define and identify the tasks and Deliverables required to be provided by the Designer as part of Study Phase Basic Services, including, without limitation, delivery of a Program;
- (c) specify the sequences in which these tasks and Deliverables must be performed, prepared and submitted;
- (d) contain a Contract Schedule that includes: dates for submittals, Deliverables, actions, Milestones, design workshops, meetings, and the critical path through all Study Phase Services;
- (e) include allowances of time for the User Agency's and the Awarding Authority's review of Deliverables and for Awarding Authority's Approval of Deliverables;
- (f) specify the Milestones at which Approvals are required before any succeeding work is permitted to be performed by the Designer;
- (g) specify the lump sum payments of portions of the Study Phase Basic Fee that are due upon the Approval of Deliverables or Milestones;
- (h) include a description of the Designer's quality assurance procedures described in Section 3.9 (Quality Assurance) of this Contract; and
- (i) unless otherwise indicated by the Awarding Authority, include preparation of a BIM Execution Plan for the Project, which shall (i) organize the seamless transfer of BIM information for the Project, (ii) document the responsibilities and expected Deliverables of each group member on the Project, (iii) list the naming convention standards for models, (iv) state due dates for BIM-related Deliverables and Milestones, (v) specify the manner in which all BIM-related information will be transferred to the Awarding Authority and (vi) for DCAMM Projects, be prepared in accordance with DCAMM's template BIM Execution Plan.

In the event of any conflict between the "General Scope of Work" included in the Designer Selection Board Advertisement for this Contract and the Approved Work Plan, the terms of the Approved Work Plan shall be controlling.

**4.5.4 *Global Workshop.*** If requested by the Awarding Authority, the Designer shall prepare and attend a Global Workshop, which shall include presentations of alternative solutions.

## **4.6 Schematic Design/Certifiable Study Services.**

### **4.6.1 Notice to Proceed Required.**

- (a) Following the completion and Approval of the Draft Study, the commencement of the Schematic Design/Certifiable Study Phase must be authorized by Awarding Authority via issuance of a Notice to Proceed.
- (b) If the Schematic Design/Certifiable Study Phase Basic Fee amount is to be negotiated (as indicated on the Designer Selection Board Advertisement), the Awarding Authority and Designer shall work in good faith to develop the scope of Schematic Design/Certifiable Study Phase Basic Services and to establish the Basic Fee for the Schematic Design/Certifiable Study in accordance with M.G.L. c. 7C s. 50. If such negotiation is successfully completed, the Awarding Authority and Designer shall execute an amendment to the Contract to incorporate the following:

- (i) Updated Work Plan or other agreed upon documentation of the Basic Services for Schematic Design/Certifiable Study;
  - (ii) Schematic Design/Certifiable Study Basic Fee;
  - (iii) Truth-in-Negotiations Certificate; and
  - (iv) Any other documents as may agreed by the Parties.
- (c) If this Contract has a Schematic Design/Certifiable Study Phase Basic Fee that must be negotiated, and the Contract is not amended as set forth above, this Contract will conclude automatically without liability to the Awarding Authority or the Public Entity upon written notice by the Awarding Authority to the Designer that negotiations have concluded unsuccessfully.
- (d) Upon receipt of a Notice to Proceed, the Designer shall commence and diligently perform to completion the Study Phase Services necessary to complete the Schematic Design/Certifiable Study in accordance with this Contract, including, without limitation, the Approved Work Plan.

**4.6.2 Schematic Design/Certifiable Study documentation.** Upon receipt of a Notice to Proceed with Schematic Design/Certifiable Study services, Designer shall meet regularly and as necessary with agents of the Awarding Authority and the User Agency, shall update and refine items submitted previously during the Study Phase, shall provide a schematic design in compliance with M.G.L. c. 7C , ss. 59 and 60 of the consensus solution (unless otherwise directed by the Awarding Authority) and shall provide the following schematic design level documentation which shall include and incorporate Awarding Authority and User Agency comments:

- (a) Building Information Model with the Level of Development specified in the BIM Guidelines for Design and Construction, drawings, concept sketches, three dimensional representations, and specifications;
- (b) an analysis of the design's compliance with building code;
- (c) an environmental assessment;
- (d) a preliminary life cycle cost analysis evaluating the short-term and long-term costs and technical feasibility of using alternate technologies to provide, lighting, heat, water heating, air conditioning, refrigeration, gas or electricity. The Designer shall calculate the life-cycle costs in accordance with assumptions and requirements set forth in M.G.L. c. 7C s. 29 and c. 149 s. 44M and the current DCAMM Designers Procedures Manual and, if requested by the Awarding Authority, shall coordinate with the Department of Energy Resources regarding the life cycle cost analysis;
- (e) a summary of applicable public utility incentive programs as determined by the Awarding Authority and a plan for implementation or inclusion of incentives;
- (f) an analysis of the design's compliance with Massachusetts Architectural Access Board requirements and how it meets the User Agency's ADA Title II obligations;
- (g) a space measurement analysis for the design which shall verify that the sum of all program floor areas in the Project plus all other floor areas in the Project equal the Gross Floor Area of the Project;
- (h) at least two Construction Cost Estimates for the design in Unifomat II Level 2 format with aggregated unit rates and quantities supporting each item and verified as accurate and complete by the cost estimator and/or Owner's Project Manager, if any, employed by the Awarding Authority; and

- (i) a summary comparing the schematic plans, specifications and Estimated Construction Cost of the design to the Program and Certified Study requirements and an explanation for any deviation therefrom.

**4.6.3 Cost Estimate.** At the end of the Schematic Design/Certifiable Study phase, the Designer shall provide a Construction Cost Estimate in Unifomat II Level 2 and CSI format. If the Construction Cost Estimate (as may be updated as part of any reconciliation with estimates provided by Awarding Authority and/or Awarding Authority's consultant(s), contractor(s), and/or construction manager) exceeds the Fixed Limit Construction Cost, the Designer shall advise and cooperate with the Awarding Authority and Awarding Authority's consultant(s), contractor(s), and/or construction manager in identifying, specifying and recommending cost reduction alternatives. Implementation of any of the recommended cost reduction alternatives shall be subject to Approval and Awarding Authority shall have the right, in its sole discretion, to choose which of the cost reduction alternatives developed by the parties shall be implemented, provided 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. The processes and responsibilities of the Designer described in this Section shall also apply to any separate cost limits within the Estimated Construction Cost that have been established in writing by an Authorized Representative of Awarding Authority for certain phases, components, or elements of the Project. The Designer shall not be paid additional compensation for such services.

**4.6.4 Approval of Building Information Model and documents.** Schematic Design/Certifiable Study phase drawings, specifications, Building Information Model (with the Level of Development specified in the BIM Guidelines for Design and Construction), Construction Cost Estimates and other Deliverables shall be subject to the written Approval of the Awarding Authority. Unless a lesser number is requested by the Awarding Authority, the Designer shall submit to the Awarding Authority for Approval two (2) paper and one (1) electronic copy of schematic design drawings, specifications, cost estimates, and other Deliverables.

**4.6.5 Global Workshop.** If requested by the Awarding Authority, the Designer shall prepare and attend a Global Workshop during the Schematic Design/Certifiable Study phase.

**4.6.6 Coordination of Preconstruction Services.** Designer shall coordinate with Awarding Authority's consultant(s), contractor(s), and/or construction manager, as required throughout the Schematic Design/Certifiable Study Phase. This coordination includes, but is not limited to, working in good faith and in cooperation and coordination with the Awarding Authority and Awarding Authority's consultant(s), contractor(s), and/or construction manager to reconcile any differences between cost estimates prepared by the various 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 Awarding Authority or its consultant(s), contractor(s), and/or construction manager.

**4.7 Evaluation of Designer [M.G.L. c. 7C, s. 48].** The Awarding Authority shall provide the Designer with a written preliminary evaluation at the completion of the analysis stage of the Study Phase for informational purposes. The Awarding Authority will also evaluate the Designer after the Designer has completed its Schematic Design/Certifiable Study phase duties under this Contract in accordance with the Approved Work Plan. A copy of this evaluation will be sent to the Designer Selection Board and may be viewed by state agencies, authorities, and cities and towns for future work. If the Designer disagrees with the evaluation given by the Awarding Authority, the Designer may respond with a letter to the Study Manager and send a copy to the Designer Selection Board.

## **4.8 Payment for Study Phase Basic Services.**

### **4.8.1 Study Phase Basic Fee.**

- (a) For the satisfactory performance of all Study Phase Basic Services, the Designer's Study Phase Basic Fee shall not exceed the "Not-to-Exceed Maximum Study Contract Amount" stated on the cover page of this Contract, payable in accordance with Section 4.8.2 (Schedule for Payment of Study Phase Basic Fee) and the Approved Work Plan. Designer acknowledges and agrees that, if the Schematic Design/Certifiable Study Basic Fee is to be negotiated (as indicated on the Designer Selection Board Advertisement), following successful negotiations, the "Not-to-Exceed Maximum Study Contract Amount" will be amended to include the agreed upon amount for the Schematic Design/Certifiable Study Basic Fee in accordance with Section 4.6. Designer further acknowledges and agrees that, unless the Design Phase Basic Fee is to be established through negotiation (as indicated on the Designer Selection Board Advertisement), if Designer is selected for the performance of Design Phase Services and the Contract is amended to incorporate Design Phase Services in accordance with ARTICLE 5 the Design Phase Basic Fee shall be reduced by the amount paid for Schematic Design/Certifiable Study included in the Study Phase Services.
- (b) If Approved in advance, the Awarding Authority shall reimburse the Designer for the actual costs for specific items not included in the Study Phase Basic Fee, such as Permit filing fees and document copies in excess of numbers specified in the Contract if requested by the Awarding Authority. The Awarding Authority shall not reimburse the Designer for any out-of-pocket expenses, including without limitation telephone or travel expenses, unless Approved by the Authorized Representative in advance; provided, however, that if such reimbursement is pre-Approved, Awarding Authority shall reimburse such travel at the current travel reimbursement rates established for Commonwealth employees.

### **4.8.2 Schedule for Payment of Study Phase Basic Fee.**

- (a) The Approved Work Plan shall provide a schedule for payments of the Study Phase Basic Fee with a certain percentage of the Study Phase Basic Fee to be paid upon certain Milestones as agreed by the Awarding Authority and the Designer.
- (b) No payment shall be made for Basic Services during the Study Phase except for Milestones for which payments are specified in the Approved Work Plan.
- (c) The Awarding Authority shall not be obliged to pay any claims received more than 45 days after the Approval by the Awarding Authority of the final required submittal.

## **4.9 Study Phase Additional Services.**

**4.9.1 Generally.** With the prior Approval by the Awarding Authority, during the Study Phase the Designer shall perform as Additional Services any work that is not included in or inferred by the Approved Work Plan as being part of Study Phase Basic Services, such as:

- (a) energy modeling;
- (b) preparation of measured drawings, site surveys, wetlands delineations;
- (c) preparation of structural analyses, environmental analyses, geotechnical analyses, and soil borings;
- (d) conducting HVAC testing, hydrant flow testing, hazardous materials testing, other specialized testing; and

- (e) undertaking additional tasks identified subsequent to the Approval of the Work Plan.

Prior to performing any Study Phase Additional Services the Designer shall agree with the Awarding Authority upon the fee for such services in accordance with Section 4.10 (Compensation for Study Phase Additional Services) of this Contract. In the event that Designer includes in a proposed scope for any Additional Services Approved by Awarding Authority any terms that conflict with any portion of Articles 1 through 7 of this Contract, the terms of this Contract shall prevail unless specifically agreed to by an Authorized Representative of Awarding Authority in writing.

**4.9.2 Limitations on Study Phase Additional Services.** Notwithstanding the foregoing, without limitations, the Designer, its Consultants or subconsultants shall not be entitled to compensation and shall not claim as Study Phase Additional Services:

- (a) work required to correct errors and omissions of the Designer, its Consultants or subconsultants during the Study Phase; or
- (b) necessary additional work that, in the Awarding Authority's reasonable opinion, should have been anticipated by the Designer in the preparation of Study Phase Deliverables.

#### **4.10 Compensation for Study Phase Additional Services.**

**4.10.1 Lump Sum.** For the services provided pursuant to Section 4.9 (Study Phase Additional Services), the Designer shall be compensated by a lump sum fee agreed upon in advance in writing by the Designer and the Awarding Authority. In connection with the negotiation of any such lump sum fee, the Designer shall submit a truth in negotiations certificate in accordance with M.G.L. c. 7C, s. 51. The Designer agrees that the lump sum fee for Study Phase Additional Services may be adjusted within one year of the completion of this Contract if the Awarding Authority determines that the lump sum fee was increased due to inaccurate information provided to the Awarding Authority in the negotiation of the lump sum fee.

**4.10.2 "Not to Exceed" Limit.** No authorization by the Awarding Authority for the performance by the Designer of Study Phase Additional Services shall be valid unless it is made in writing and contains a "not to exceed" limit that may not be exceeded without further Approval by the Awarding Authority. Cost proposals for Study Phase Additional Services shall include a similar "not to exceed" limits for any associated reimbursables. Designer acknowledges that such "not to exceed" limits are required by state finance laws.

### **ARTICLE 5: TRANSITION FROM STUDY PHASE TO DESIGN PHASE**

- 5.1 Transition from Study Phase to Design Phase.** Following the conclusion of the Study Phase, the Schematic Design/Certifiable Study must be Certified and an appropriation of sufficient funds must be secured in order for the Project to proceed to the Design Phase. If and only if these requirements are satisfied, the Awarding Authority may, in its sole discretion, elect to proceed with the Design Phase of the Project, in which case the Awarding Authority shall select a designer to perform the Design Phase Services. If and only if the Awarding Authority selects the Designer to perform the Design Phase Services, the Awarding Authority and the Designer shall execute an amendment incorporating the Attachment G – Design Phase Scope of Services and, if applicable, a negotiated Design Phase Basic Fee, and shall execute all other necessary documents to this Contract in order to commence the Design Phase.

- 5.2 No Guarantee of Selection for Design Phase.** The Awarding Authority’s acceptance of and/or payment for Designer’s work under the Study Phase in no way obligates the Awarding Authority to select the Designer to perform the Design Phase Services.
- 5.3 Termination if Design Phase Prerequisites Not Satisfied.** If the Approved Schematic Design/Certifiable Study is not Certified or sufficient funds are not appropriated for the Design Phase of this Project or the Awarding Authority otherwise elects not to proceed with the Project into Design Phase, this Contract will conclude automatically without liability to the Awarding Authority or the Public Entity upon written notice from the Awarding Authority to the Designer.
- 5.4 Selection for Design Phase.** If the Approved Schematic Design/Certifiable Study is Certified, the Designer may be selected in accordance with applicable Laws to perform the Design Phase Services. The selection of the Designer to perform the Study Phase and the execution of this Contract does not guarantee that the Designer will be selected to perform the Design Phase and nothing herein shall require the Awarding Authority to select the Designer for the performance of the Design Phase Services. If the Awarding Authority selects an entity other than the Designer to perform the Design Phase Services, this Contract shall conclude upon Designer’s receipt of notice of such selection by the Awarding Authority and upon payment to the Designer for Study Phase Basic Services and, if applicable, Study Phase Additional Services. Regardless of whether the Designer is selected to perform the Design Phase Services, the Designer shall remain responsible for of any of its continuing obligations arising during the Study Phase.
- 5.5 Scope of Design Phase Services and (if applicable) Fee Negotiation.** If the Designer is selected to perform the Design Phase Services, the Designer and the Awarding Authority shall work in good faith to develop a Design Phase Scope of Services, to be attached hereto and incorporated by reference as Attachment G – Design Phase Scope of Services. If the Design Phase Basic Fee amount is to be negotiated (as indicated in the Designer Selection Board Advertisement), the Awarding Authority and Designer shall work in good faith to establish such Design Phase Basic Fee in accordance with M.G.L. c. 7C, s. 50. If the Designer is selected to perform the Design Phase Services and a Contract amendment is not successfully negotiated and executed for any reason, this Contract shall conclude upon the Awarding Authority’s written notification to Designer that Contract amendment negotiations have concluded unsuccessfully. The Designer shall not incur any costs associated with the Design Phase Scope of Services prior to the receipt of applicable Notices to Proceed.
- 5.6 Contract Amended for Design Phase.** If the Approved Schematic Design/Certifiable Study is Certified, the Designer is selected to proceed with Design Phase Services pursuant to this ARTICLE 5 of the Contract, and, if applicable, the Design Phase Basic Fee has been successfully negotiated, the Awarding Authority and Designer shall execute an amendment to the Contract to include the following, which shall be incorporated by reference:
- (a) Certified Study;
  - (b) Attachment G – Design Phase Scope of Services;
  - (c) Design Phase Basic Fee;
  - (d) Attachment E-3 – Corporate Vote or Other Evidence of Authority (Design Phase);
  - (e) Attachment F-3 – Truth in Negotiations Certificate (Design Phase);
  - (f) Attachment I – Designer’s Personnel Assigned to Project; and



- (g) Attachment J – Certified Billing Rates of Designer’s and Designer’s Consultant’s Personnel
- (h) Any other documents as may be agreed by the Parties.

## **ARTICLE 6: DESIGN PHASE**

- 6.1 Design Phase Term.** The Design Phase shall commence upon the execution of an amendment to the Contract in accordance with Section 5.6 (Contract Amended for Design Phase), and shall continue through the completion of the Design Phase Services required hereunder, unless terminated earlier. Design Phase Services shall commence upon the issuance of a Notice to Proceed by the Awarding Authority, as more fully described below in Section 6.4 (Design Development Phase Services).
- 6.2 Design Phase Governing Documents.** During the Design Phase, the Designer shall perform its duties in accordance with all applicable Laws, the provisions of this Contract, the Certified Study which is incorporated herein by reference, the Attachment G – Design Phase Scope of Services, the provisions of M.G.L. c. 7C, s. 15, DCAMM’s *Designers Procedures Manual* if the Awarding Authority is DCAMM, and the procedures set forth in Attachment H – Awarding Authority’s Design Procedures (For use by Agencies Other than DCAMM) if the Awarding Authority is other than DCAMM, *DCAMM Standard Specifications, Consultants Estimating Manual, DCAMM CAD Standards (revision 2: February 2013)*, the *Building Information Modeling (BIM) List of Design and Preconstruction Services (Revised February 27, 2016)*, *BIM Guidelines for Design and Construction*, and the Approved BIM Execution Plan. In the case of conflict between the terms of this Contract and any of the provisions incorporated herein by reference, the Designer shall make a written request for clarification to the Awarding Authority and the Awarding Authority’s written response shall be conclusive.
- 6.3 Permits during Design Phase.** During the Design Phase, unless otherwise agreed to in writing, with the exception of the standard building Permits customarily obtained by the general contractor, the Designer shall obtain all other Permits required to implement Designer's design. The Designer shall obtain the prior Approval of the Awarding Authority of all Permit applications, notices, and accompanying documentation before filing them with the appropriate governmental entity or other party. The Designer shall certify in writing at the time that construction documents (or changes thereto) are submitted to the Awarding Authority that the Designer has identified all Permits required to implement the Project and that those not identified in writing as being the responsibility of the Awarding Authority have been identified in the specifications as being the general contractor’s responsibility. Notwithstanding the foregoing, any required attendance by the Designer at any public hearing in connection with any Permit shall be considered an Additional Service to be compensated in accordance with Section 6.10 (Compensation for Design Phase Additional Services) of this Contract, and any Permit application fee shall be considered a reimbursable expense to be reimbursed in accordance with the provisions of Section 6.8 (Payment for the Design Phase Basic Services).
- 6.4 Design Development Phase Services.**
- 6.4.1 Initial Meeting.** Upon receipt of a Notice to Proceed with the design development phase from the Awarding Authority, the Designer and its appropriate Consultants shall meet with agents of the Awarding Authority and the User Agency to arrive at a mutual understanding of the requirements of the Certified Study or Program furnished by the Awarding Authority.

**6.4.2 *Work plan and Contract Schedule.*** The Designer shall submit a proposed work plan, an updated BIM Execution Plan, and a proposed Contract Schedule consistent with any project schedule included in the Certified Study or Attachment G – Design Phase Scope of Services for the Design Phase Services. The Contract Schedule shall contain (a) dates for submittals, Deliverables, actions, Milestones, design workshops, meetings and the critical path through all Design Phase Services; (b) allowances of time for the User Agency's and the Awarding Authority's review and the Awarding Authority's Approval of Deliverables; and (c) allowances for necessary submissions for Permits in connection with the Project. The work plan shall also include a Schedule of Values. When Approved by the Awarding Authority, the work plan, updated BIM Execution Plan, and the Contract Schedule shall govern the Design Phase Services.

**6.4.3 *Design Development Phase documentation.*** Designer and its Consultants shall meet regularly and as necessary with agents of the Awarding Authority and the User Agency, shall update and refine items submitted during the Schematic Design/Certifiable Study Phase, and shall submit, on or before the date specified in the Contract Schedule, and on the basis of the Approved Schematic Design Phase documents and digital files:

- (a) an updated work plan, BIM Execution Plan, a current Building Information Model and associated data base(s), from which the drawings required below shall be generated, and Contract Schedule; a list of all Permits required to implement the design and a schedule of target dates for the procurement of such Permits, both of which shall be regularly updated during the remainder of the Design Phase;
- (b) information and documentation within the technical expertise of the Designer and its Consultants that is necessary for the Awarding Authority to file environmental notification forms, environmental impact reports, and any other filings for Permits that must be filed during the design development phase;
- (c) complete design development drawings, draft specifications indicating any filed sub-bid sections based on the cost of the work and other documents necessary to specify the size and character of the Project as to siting, landscape, architectural, structural, fire protection, plumbing, HVAC, electrical, ADA and MAAB compliance, product requirements, and other features;
- (d) quality control documentation demonstrating without limitation coordination of: ceiling clearances, mechanical room size, and shaft sizes; specifications and drawings; filed sub-bid work or sections; scheduling; equipment and power; existing and new construction; and phasing;
- (e) design development drawings for which the Designer shall submit for a "tentative approval" review to the public agency having jurisdiction over enforcement of the State Building Code with respect to the Project (the Department of Public Safety of the Commonwealth for state-owned projects or the building commissioner of the city or town in which the Project is located for other projects);
- (f) an updated life cycle cost analysis to evaluating the short-term and long-term costs and technical feasibility of using alternate technologies to provide, lighting, heat, water heating, air conditioning, refrigeration, gas or electricity. The Designer shall calculate the life-cycle costs in accordance with assumptions and requirements set forth in M.G.L. c. 7C s. 29 and c. 149 s. 44M and the current DCAMM Designers Procedures Manual and, if requested by the Awarding Authority, shall coordinate with the Department of Energy Resources regarding the life cycle cost analysis.;
- (g) a Construction Cost Estimate for the design in Unifomat II Level 3 format, with unit rates and quantities supporting each item, which shall have been reviewed and approved

as accurate and complete by any cost estimator or Owner's Project Manager employed by the Awarding Authority with respect to the Project;

- (h) a Construction Cost Estimate, in Construction Standards Institute Masterformat or UniFormat 2010, as specified by the Awarding Authority, cross-referenced to the Unifomat II Construction Cost Estimate. This estimate shall contain the same total and percentage allowances as the Unifomat II Construction Cost Estimate for overhead and profit and for any further allowances for escalation and other contingencies;
- (i) a space measurement analysis for the design verifying that the sum of all program areas in the Project plus all other floor areas in the Project equals the Gross Floor Area of the Project;
- (j) site and building signage graphically coordinated with the User Agency and the general building requirements and in compliance with the 2010 ADA Guidelines and MAAB, including, without limitation,
  - (i) parking signs, including van-designated parking signs;
  - (ii) room designation signs;
  - (iii) directories;
  - (iv) directions signs, including exterior signs at inaccessible entrances to orient people to the nearest accessible entrance, exterior "you-are-here" maps, interior direction signs, etc.;
  - (v) informational signs, including cautionary signs, hours of operations, rules of conduct, etc.;
  - (vi) signage related to loading and building areas; and
  - (vii) signage required by applicable building codes.
- (k) a summary or summaries comparing the design development drawings, specifications and cost estimates with the Program requirements, and explaining any deviations in writing.

**6.4.4 Cost Reconciliation and Value Engineering.** If the Construction Cost Estimate (as may be updated as part of any reconciliation with estimates provided by Awarding Authority and/or Awarding Authority's consultant(s), contractor(s), and/or construction manager) exceeds the Fixed Limit Construction Cost, the Designer shall advise and cooperate with the Awarding Authority and Awarding Authority's consultant(s), contractor(s), and/or construction manager in identifying, specifying and recommending cost reduction alternatives. Implementation of any of the recommended cost reduction alternatives shall be subject to Approval and Awarding Authority shall have the right, in its sole discretion, to choose which of the cost reduction alternatives developed by the parties shall be implemented, provided 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. The processes and responsibilities of the Designer described in this Section shall also apply to any separate cost limits within the Estimated Construction Cost that have been established in writing by an Authorized Representative of Awarding Authority for certain phases, components, or elements of the Project. The Designer shall not be paid additional compensation for such services.

**6.4.5 Approval of Design Development Phase Building Information Model and documents.** Such digital files, drawings, specifications, cost estimate and other design development submittals shall be subject to the written Approval of the Awarding Authority. Unless a lesser number is requested by the Awarding Authority, the Designer shall submit to the Awarding Authority for

approval two (2) paper and one (1) electronic copy of design development drawings, specifications, cost estimates, and other submittals.

**6.4.6 Global Workshop.** *If requested by the Awarding Authority, the Designer shall* prepare and attend a Global Workshop during the design development phase.

## **6.5 Construction Documents Phase Services.**

**6.5.1. Document Updates and Revisions.** Upon receipt of a Notice to Proceed with the construction documents phase from the Awarding Authority, the Designer and its Consultants shall meet regularly as necessary with agents of the Awarding Authority and the User Agency, and based on the submittals Approved in the design development phase of the Project, shall update and refine the items previously submitted and shall submit on or before the date and time specified in the Approved Contract Schedule:

- (a) an updated work plan and Contract Schedule;
- (b) a Building Information Model with Level of Development required by the BIM Guidelines for Design and Construction, unless otherwise specified in the most recent Approved BIM Execution Plan, and associated data base(s) from which the drawings required below shall be generated;
- (c) summaries of the completed life-cycle cost estimates, which shall be filed with the building code commission and the director of the office of consumer affairs and business regulation prior to the advertising for bids for the Construction Contract, as required by M.G.L. c. 149 s. 44M;
- (d) complete construction drawings and specifications, certified by the Designer as having satisfied the applicable quality control review, Approved as required, in sufficient detail to permit fixed-price bids in open competition for construction of the Project;
- (e) an updated environmental assessment, building code analysis, ADA and MAAB compliance analysis, and structural and energy calculations;
- (f) a certified list of all required testing and all Permits required to implement the Project (including a certification that all Permits not identified in writing as being the responsibility of the Awarding Authority have been identified in the specifications as being the general contractor's responsibility) as well as a certification that all applicable local, state and utility officials have been contacted by the Designer regarding each utility connection and that the persons responsible for Permits or connection approval has agreed to the systems' use;
- (g) site and building signage graphically coordinated with the User Agency and in compliance with the general building requirements and the 2010 ADA Guidelines and MAAB, including, without limitation
  - (i) parking signs, including van-designated parking signs;
  - (ii) room designation signs;
  - (iii) directories
  - (iv) directions signs, including exterior signs at inaccessible entrances to orient people to the nearest accessible entrance, exterior "you are here" maps, interior direction signs, etc.;
  - (v) informational signs, including cautionary signs, hours of operations, rules of conduct, etc.;

- (vi) signage related to loading and building areas; and
  - (vii) signage required by applicable building codes.
- (h) at the approximate mid-point of completion of the final drawings and specifications as determined by the Awarding Authority, a Construction Cost Estimate prepared using the Uniformat II Classification to Level 3 and a Construction Cost Estimate in Construction Standards Institute Masterformat or UniFormat 2010, as specified by the Awarding Authority, cross-referenced to the Uniformat II Construction Cost Estimate for review by the Awarding Authority; both Construction Cost Estimates shall include quantities of all materials and unit prices of labor, equipment, and materials as well as a cost estimate for each item of work.

**6.5.2. Approval of drawings and other construction documents.**

- (a) For state projects: Two sets of the final drawings and specifications must be stamped "approved" and signed by the appropriate state building inspector from the Department of Public Safety. Two sets of plumbing drawings and specifications shall be signed and stamped "approved" by the Board of State Examiners of Plumbers and Gas Regulations Board. Two sets of the fire protection, HVAC, and electrical constructions documents shall be approved, stamped and signed by the local fire chief. Two sets of the electrical construction documents shall be approved, stamped and signed by the local electrical inspector.
- (b) For other projects: Two sets of the foregoing documents shall be approved, stamped and signed by the local building official, the local plumbing inspector, the local electrical inspector, and the local fire chief respectively.

**6.5.3. Cost Reconciliation; Value Engineering.** . If the Construction Cost Estimate (as may be updated as part of any reconciliation with estimates provided by Awarding Authority and/or Awarding Authority's consultant(s), contractor(s), and/or construction manager) exceeds the Fixed Limit Construction Cost, the Designer shall advise and cooperate with the Awarding Authority and Awarding Authority's consultant(s), contractor(s), and/or construction manager in identifying, specifying and recommending cost reduction alternatives. Implementation of any of the recommended cost reduction alternatives shall be subject to Approval and Awarding Authority shall have the right, in its sole discretion, to choose which of the cost reduction alternatives developed by the parties shall be implemented, provided 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. The processes and responsibilities of the Designer described in this Section shall also apply to any separate cost limits within the Estimated Construction Cost that have been established in writing by an Authorized Representative of Awarding Authority for certain phases, components, or elements of the Project. The Designer shall not be paid additional compensation for such services.

**6.5.4. Final Construction Cost Estimate.**

- (a) The Designer shall furnish a final Construction Cost Estimate, current to the date of the final bid document submission, in Construction Standards Institute Masterformat or UniFormat 2010, as specified by the Awarding Authority, cross-referenced to the final Uniformat II Construction Cost Estimate. This estimate shall contain the same total and percentage allowances as the final Uniformat II Construction Cost Estimate for overhead and profit and for any further allowances for escalation and other contingencies.
- (b) The Designer shall also submit a summary comparing the final construction drawings and specifications and final Estimated Construction Cost with the Program requirements and

submittals made during the design development phase, explaining any significant deviations.

**6.5.5. Approval of Construction Documents Phase documents.** All submittals shall be subject to the Approval of the Awarding Authority. Unless a lesser number is requested by the Awarding Authority or is provided below in Section 6.5.6 (Copies of Approved drawings and specifications), the Designer shall furnish to the Awarding Authority for Approval two (2) paper and one (1) electronic set of the drawings, specifications Construction Cost Estimates and other submittals. The Designer shall also furnish electronic media copies of the foregoing drawings and documents in such form as is required by the Designers Procedures Manual if the Awarding Authority is DCAMM or otherwise in such other format as the Awarding Authority may require. All drawings and associated data bases shall be generated from the latest Approved BIM(s).

**6.5.6. Copies of Approved drawings and specifications.** From the Approved construction drawings and specifications, with such changes as the Awarding Authority requires, the Designer shall prepare and transmit to the Awarding Authority a set of reproducible black and white drawings and original specifications both in electronic format and on high quality white bond paper, single-sided, properly packaged, suitable for reproduction, stamped and signed by all disciplines, which documents shall become the property of the Awarding Authority. Other suitable methods may be used with the prior Approval of the Awarding Authority. One copy of the drawings and specifications shall be submitted with the reproducible drawings and specifications.

**6.5.7. Preparation of construction bid documents.** The Awarding Authority shall copy the construction bid documents, including advertisements, for receipt of proposals from construction contractors, and for execution of a Construction Contract(s). The Designer shall prepare all addenda (to include bidders' questions and Designer's responses), subject to the Approval of the Awarding Authority. The Designer and its Consultants shall attend and chair the pre-bid conference if one is scheduled, taking note of all questions asked. Relevant questions submitted in writing shall be answered by means of written addenda to the bid documents as required. The Designer shall attend the bid opening and conduct a review of the qualifications of the low filed sub-bidders and general bidder (and of other bidders if necessary) and shall, within three (3) working days of the respective bid opening dates, advise the Awarding Authority in writing of the Designer's opinions as to the sub-bidders' bids and as to which general bidder is the responsible and eligible bidder that has submitted the lowest bid.

**6.5.8. Prequalification Assistance.** If required by law or requested by the Awarding Authority, the Designer shall assist the Awarding Authority in the prequalification of prime contractors and sub-contractors in the filed sub-bidder or trade contractor scopes of work pursuant to M.G.L. c. 149, ss. 44D1/2 and 44D3/4 or M.G.L. c. 149A. Designer shall be compensated for such prequalification assistance services as set forth in the Attachment G – Design Phase Scope of Services and in accordance with Sections 6.8 (Payment for Design Phase Basic Services) and 6.10 (Compensation for Design Phase Additional Services), as applicable.

**6.5.9. Fixed Limit Construction Cost adjustments.** If within three (3) months after Approval of construction documents, in final form, the bids of the lowest responsible and eligible bidders exceed the Fixed Limit Construction Cost, the Designer shall, if so instructed in writing by the Awarding Authority, provide such revised construction drawings and specifications and construction cost estimates as the Awarding Authority shall require for the purpose of bringing the cost within the Fixed Limit Construction Cost; provided the Designer may in connection with such revision make reasonable adjustments in the scope of the project subject to the written approval of the Director, which approval shall not be unreasonably withheld. The Designer shall not be paid additional compensation for such services.

## **6.6 Construction Administration Phase Services.**

**6.6.1. Generally.** Upon the award of the Construction Contract, the Designer and its Consultants shall:

- (a) be charged with general administration of the Construction Contract to the extent set forth herein;
- (b) furnish the general contractor with information for establishing lines and grades and shall prepare a set of plans and specifications that incorporate all addenda and SK drawings issued during the bidding process;
- (c) promptly and in accordance with the requirements of the Construction Contract check, obtain testing where necessary, and approve samples, schedules, shop drawings and other submissions by the general contractor;
- (d) prepare, maintain and update logs for all submittals and changes to the Construction Contract;
- (e) provide to the Awarding Authority a written certification of all Permits required to implement change order work at the Project site when the Designer submits for Approval any change order request to the Awarding Authority during the construction phase of the Project, whether the change order request was made by the Designer, the Awarding Authority, or the general contractor;
- (f) visit the site at intervals appropriate to the stage of construction but not less than weekly, and observe the progress of the work, issue written progress reports, and conduct job meetings, and prepare and distribute meeting minutes to assure that the work is being built in conformance with Approved construction documents;
- (g) report to the Awarding Authority weekly in writing on the progress of the work including whether or not the general contractor is keeping As-Built Drawings and BIM(s) updated;
- (h) on a weekly basis (or more often as may be necessary), make specific recommendations on rejection of all Project work observed by the Designer that fails to conform to the Construction Contract documents, and review and inspect corrected work;
- (i) require each Consultant employed in accordance with Section 3.14 (Employment of Consultants) to make visits weekly during the progress of any work to which that Consultant's services relate and to report upon it in writing to the Designer;
- (j) conduct semi-final and final inspections of the Project and report the results of such inspections in writing to the Awarding Authority;
- (k) observe the balancing of air and water circulation systems and report the results thereof;
- (l) observe the setting and adjustment of automatic controls and report thereon;
- (m) observe compliance with accessibility regulations and Project requirements and report discrepancies;
- (n) in a timely manner, decide all questions regarding interpretation of, or compliance with, the Construction Contract documents, except as the Awarding Authority may in writing otherwise determine;
- (o) furnish electronic versions of the Record Drawings, a final cost report, and other required documents; and

- (p) assist the Awarding Authority in any bid protest hearings, change order appeal hearings requested under M.G.L. c. 30, s. 39Q, and any other litigation, except as provided in Section 6.9 (Design Phase Additional Services).

Except as otherwise specifically set forth in the Construction Contract documents, the Designer shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the general contractor's work, since these are solely the general contractor's rights and responsibilities under the Construction Contract documents.

**6.6.2. General contractor's requisitions for payment.** The Designer shall submit to the Awarding Authority in a timely manner all requisitions for payment submitted by the general contractor in the form required by the Awarding Authority. With respect to each such requisition, the Designer shall certify to the best of its knowledge that the percentage of work included in the requisition is accurate and that the work performed conforms to the Construction Contract documents. In the event the Designer does not approve the requisition exactly as submitted by the general contractor, the Designer shall forward it for payment to the Awarding Authority dated and signed with corrections with an accompanying letter of explanation setting forth the Designer's objections and recommended changes. The Designer shall coordinate the required visits to the construction site so as to enable it to submit to the Awarding Authority the general contractor's monthly requisition for payment bearing the Resident Engineer's approval or accompanied by the Resident Engineer's letter of exceptions. Timely payments to the contractor are required by M.G.L. c. 30, s. 39K; therefore, the Designer shall establish procedures assuring either immediate mail or messenger delivery of the requisition for payment to the Awarding Authority, and shall process requisitions for payment within two working days after receipt of the same.

**6.6.3. Project Close Out Obligations [M.G.L. c. 30 s. 39K].** Within 10 days of general contractor's request for Substantial Completion, Designer shall submit to Awarding Authority 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. Awarding Authority may assign a specific portion of the Design Phase Basic Fee to the performance of these obligations.

**6.6.4. Review of Close Out Documents.**

- (a) Before examining the requisition for final payment submitted to the Awarding Authority by the general contractor and making any certification in response thereto, the Designer shall obtain from the general contractor:
  - (i) An As-Built Model File, as set forth in the BIM Guidelines for Design and Construction and consisting of a federated BIM showing the actual installation of the site utilities, plumbing, heating, ventilating, and electrical work as outlined in the Construction Contract, recording all changes, and containing descriptive or tabular data as required by the Awarding Authority and associated with the BIM;
  - (ii) As-Built Drawings, including drawings showing the actual installation of the site utilities, plumbing, heating, ventilating and electrical work as outlined in the Construction Contract, and recording all changes; and
  - (iii) All other documents required as part of the closeout process under the Construction Contract documents, including, without limitation, operation and maintenance (O&M) manuals and manufacturer's warranties for the Project.



- (b) The Designer shall ascertain that changes authorized by change orders are shown on the general contractor's As-Built Drawings and the As-Built Model File required above. The Designer shall revise the original BIM, the applicable original reproducible drawings and electronic media drawings on the basis of the As-Built Drawings and the federated BIM and shall submit them as Record Drawings and a Record Model, respectively. The Designer shall provide the Awarding Authority two sets of prints along with an electronic copy of Record Drawings. Record Drawings and the Record Model shall become the property of the Awarding Authority, all as part of the Design Phase Basic Fee.

**6.6.5. Evaluation of general contractor.** At the conclusion of the Construction Contract the Designer shall assist the Awarding Authority's Authorized Representative or Owner's Representative in the evaluation of the performance of the general contractor as required by M.G.L. c. 149, s. 44D or any other law.

**6.6.6. Copies of original design and calculations.** Two suitably bound legible copies of all original design and quantity calculations including those pertinent to change orders and shop drawings if applicable shall be furnished by the Designer to the Awarding Authority at the conclusion of the Construction Contract.

## **6.7 Facility Performance Evaluation Phase Services.**

The Awarding Authority, in consultation with the Designer, and its Consultants, may conduct a facility performance evaluation on all new buildings, major renovations and energy projects.

## **6.8 Payment for Design Phase Basic Services.**

### **6.8.1. Design Phase Basic Fee.**

- (a) For the satisfactory performance of all services required for the Design Phase of this Contract, excluding those services specified under Section 6.9 (Design Phase Additional Services), the Designer's Design Phase Basic Fee shall not exceed the "Design Contract Fee" stated on the cover page of this Contract, less a credit taken for the payment of schematic design services during the Schematic Design/Certifiable Study phase payable as provided in Section 6.8.2 (Schedule for Payment of Design Phase Basic Fee) as the same may be modified by the Design Phase Scope of Services.
- (b) If Approved by the Authorized Representative in advance, the Awarding Authority shall reimburse the Designer for the actual costs for specific items not included in the Design Phase Basic Fee, such as Permit filing fees and document copies in excess of numbers specified in the Contract if requested by the Awarding Authority. The Awarding Authority shall not reimburse the Designer for any out-of-pocket expenses, including without limitation telephone or travel expenses, unless Approved by the Authorized Representative in advance; provided, however, that if such reimbursement is pre-Approved, Awarding Authority shall reimburse such travel at the current travel reimbursement rates established for Commonwealth employees.

### **6.8.2. Schedule for Payment of Design Phase Basic Fee.**

- (a) Designer acknowledges and agrees that the Design Phase Basic Fee shall be reduced by the amount paid to Designer for Schematic Design Services during the Study Phase; if the Design Phase Basic Fee is negotiated, this will be taken into account during the negotiations. The remainder of the lump sum Design Phase Basic Fee shall be paid in accordance with the Schedule of Values for performance of Design Phase Services in accordance with this Contract. The Schedule of Values shall be consistent with the

following schedule so that the total amount paid equals the percentage of the Design Phase Basic Fee allocated to each of the Design Phases below, unless otherwise Approved by the Awarding Authority in writing. Actual payments can be requisitioned by the Designer upon completion of Milestones within each phase as set forth in the Schedule of Values.

*Fifteen percent (15%) for Schematic Design Services – paid during Study Phase*  
Thirty percent (30%) for the Design Development Phase services;  
Twenty-five (25%) for the Construction Documents Phase services;  
Twenty-five percent (25%) for the Construction Administration Phase services  
Five percent (5%) for the performance of closeout services set forth in Sections 6.6.3 and 6.6.4.

- (b) The Designer shall submit requisitions on a monthly basis for any Milestones completed within that month. The Awarding Authority shall not be obliged to pay any claims received more than forty-five days after notification to the Designer of final acceptance of the contractor's work under the Construction Contract.
- (c) During the Design Phase, no invoice (other than an invoice for the final payment to Designer under this Contract) shall be required to be so submitted or processed when the net amount due is less than \$200. Amounts of less than \$200 shall be added to the subsequent month's invoice.

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

## **6.9 Design Phase Additional Services.**

**6.9.1. Generally.** With the prior Approval of the Awarding Authority, during the Design Phase the Designer shall perform all or any of the following services in addition to the Basic Services:

- (a) revise previously Approved drawings, specifications or other documents to accomplish changes authorized by the Awarding Authority or required by changes in applicable Laws, and revisions not occasioned by the Designer's errors or omissions;
- (b) attend Permit or public hearings and preparing presentation renderings and presentation models in connection therewith that are authorized by the Awarding Authority;
- (c) prepare documents for alternate bids requested by the Awarding Authority except for alternates required to be prepared by the Designer to adjust the Estimated Construction Cost to within the Fixed Limit Construction Cost;
- (d) assist the Awarding Authority with the prequalification of bidders in accordance with M.G.L. c. 149, ss. 44E1/2 and 44D3/4 or M.G.L. c. 149A;
- (e) to the extent not specified in the Attachment G – Design Phase Scope of Services, provide prequalification services required in accordance with M.G.L. c. 149A for the Construction Manager At-Risk Delivery Method;
- (f) provide consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing professional services of the type set forth in ARTICLE 6 as may be required in connection with the replacement of such work;
- (g) provide professional services necessary to evaluate substitutions proposed by the general contractor and prepare subsequent revisions to drawings and other documents resulting

therefrom or furnish professional services made necessary by the default of the general contractor, including, without limitation, an analysis of maintenance and life cycle cost implications of the proposed substitutions;

- (h) provide services after final payment to the general contractor, except for services occasioned by the Designer's errors or omissions;
- (i) prepare special documents for or appearing as a witness in change order appeal hearings under M.G.L. c. 30, s. 39Q or in judicial litigation arising out of the Construction Contract, except for litigation arising from the Designer's negligent acts, errors or omissions;
- (j) prepare change orders and supporting data, except as set forth in Section 6.9 (Design Phase Additional Services);
- (k) revise construction drawings and specifications submitted in their final and complete form for which bids were not received within six months after submission;
- (l) make studies other than those normally required and preparing applications and reports to assist the Awarding Authority in obtaining federal aid;
- (m) additional site visits requested by the Awarding Authority in excess of the site visits required under this Contract, if the time spent by Designer at the site for the required site visits and for such additional site visits requested by the Awarding Authority collectively exceed seven (7) hours in any given calendar week.

Prior to performing any Design Phase Additional Services, the Designer shall agree with the Awarding Authority upon the fee for such services in accordance with Section 6.10 (Compensation for Design Phase Additional Services) of this Contract. No authorization by the Awarding Authority for the performance of any Additional Services shall be valid unless it contains a "not to exceed" amount. In the event that Designer includes in a proposed scope for any Additional Services Approved by Awarding Authority any terms that conflict with any portion of Articles 1 through 7 of this Contract, the terms of this Contract shall prevail unless specifically agreed to by an Authorized Representative of Awarding Authority in writing.

**6.9.2. Limitations on Design Phase Additional Services.** Notwithstanding the foregoing, without limitations, the Designer, its Consultants, and subconsultants shall not be entitled to compensation and shall not claim as Additional Services:

- (a) Work required to correct errors and omissions of the Designer, its Consultants or subconsultants during the Study Phase or Design Phase;
- (b) Necessary additional work that, in the Awarding Authority's reasonable opinion, should have been anticipated by the Designer in the preparation of the Study Phase or Design Phase Deliverables;
- (c) Preparing changes required to make unit price adjustments due to existing conditions; or
- (d) Services involved in charge orders for time extension only, provided that the time required for the review and approval of said change may be included as an Additional Service upon the Awarding Authority's Approval.

**6.10 Compensation for Design Phase Additional Services.** Except as otherwise authorized in writing by the Awarding Authority, for the Design Phase Additional Services, including additional site visits, performed by the Designer, the Designer shall be compensated as determined by the Awarding Authority as follows:

- (a) by a lump sum fee agreed upon in advance in writing by the Designer and the Awarding Authority, provided that the Designer shall submit a Truth in Negotiations certificate in accordance with M.G.L. c. 7C, s. 51 in connection with the negotiation of such lump fee and Designer agrees that the lump sum fee may be adjusted within one year of the completion of this Contract if the Awarding Authority determines that the lump sum fee was increased due to inaccurate information provided to the Awarding Authority in the negotiation of the lump sum fee; or
- (b) on an hourly basis at the rates set forth in Attachment J – Certified Billing Rates of Designer’s and Designer’s Consultant’s Personnel, for the Additional Services performed by the principal(s)-in-charge, prime consultant, management, design and production personnel employed by the Designer and, if applicable, by the Consultant(s); provided, however, that such personnel must be included in Attachment I – Designer’s Personnel Assigned to Project in order to be compensated hereunder for Additional Services. Clerical/support staff of the Designer and Consultants shall not be compensated and is considered part of office overhead.

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

## **ARTICLE 7: LEGAL PROVISIONS**

**7.1 No Waiver.** The Awarding Authority's review, Approval, acceptance of, or payment for, any of the services furnished by the Designer hereunder shall not be construed as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract. The Awarding Authority's Approval shall not in any way relieve the Designer from performing all work required under this Contract in accordance with the standard of care set forth in Section 3.3 (Standard of Care) of this Contract.

**7.2 Compliance with Executive Order 594 [Leading By Example: Decarbonizing and Minimizing Environmental Impacts of State Government].** As part of the Basic Services of the Contract, Designer is required to provide professional services necessary to meet the requirements of Executive Order 594, provided, however, that the fees for the submission of documentation necessary to documentation to the U.S. Green Building Council or other certifying entity to demonstrate compliance with Executive Order 594 shall be considered a reimbursable expense. The Designer understands that, pursuant to Executive Order No. 484, all new construction and renovation projects over 20,000 s.f. 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, Designer 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. The Study Phase Services shall reflect the fact that the Design Phase will require a design in accordance with the above referenced standards. Without limiting the foregoing, the Study and all Construction Cost Estimates, and other cost estimates and Deliverables required by this Contract shall reflect any particular work necessary for the Project to meet the requirements of such standards.

**7.3 Compliance with Life-Cycle Cost Estimate Requirements [M.G.L. c. 7C s. 29 and 149 s. 44M].** The Designer shall comply with all of the life-cycle cost estimate and analysis requirements set forth in M.G.L. c. 7C s. 29 and c. 149 s. 44M and this Contract. The Designer acknowledges that failure to obtain life-cycle cost estimates as required hereunder may result in the director of the office of consumer affairs and business regulation prohibiting the Designer from contracting, directly or indirectly, with the Commonwealth or any political subdivision thereof for similar Services for a period of one year, pursuant to M.G.L. c. 149 s. 44M.

**7.4 Conflicts of Interest.**

**7.4.1 Compliance with M.G.L. c. 268A and 231 CMR 4.00.** The Designer shall familiarize itself with and at all times comply with the conflict of interest law, M.G.L. c. 268A and with the Rules of Professional Conduct, 231 CMR 4.00. The Designer certifies compliance with both the conflict of interest law M.G.L. c. 268A, specifically s. 5(f), and Executive Order 346 which includes limitations regarding the hiring of state employees. If this is a privatization contract then the Designer shall be prohibited from hiring at any time during the term of Contract, and for any position in the Designer's company, any state management employee who is, was, or will be involved in the preparation of the solicitation for this contract, the negotiations leading to the awarding of the Contract, the decision to award this Contract, and/or the supervision or oversight of performance under this Contract.

**7.4.2 Prompt Disclosure of Conflicts of Interest.** The Designer shall promptly disclose to DCAMM any matters which, although they may not violate M.G.L. c. 268A, may give rise to a potential conflict of interest on the part of the Designer or its personnel in its performance of its duties hereunder.

**7.5 Proprietary Items.** Without limitation, the Designer, Designer's employees and Consultants shall adhere to the provisions of M.G.L. c. 30, s. 39M, which provides in part:

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

The Designer shall refer to the law and consult with the Awarding Authority for procedures regarding proprietary items. The Awarding Authority may waive the provisions of this law for "sound reasons in the public interest." No such waiver shall bind the Awarding Authority unless made in writing and executed by the Awarding Authority. Awarding Authority may require that Designer provide documentation that any proprietary item can be maintained by at least two firms prior to waiving the provisions of this law.

**7.6 Accessibility and Non-Discrimination Laws.** The Designer shall perform its services under this Contract in strict compliance with all Laws relating to architectural and program accessibility for persons with disabilities, including without limitation, the applicable sections of the Americans with Disabilities Act of 1990 amended by ADA Amendments Act of 2008 (“ADA”, 42 U.S.C. sections 12101 *et. seq.*; 47 U.S.C. sections 225, 611), the 2010 ADA Standards for Accessible Design (“2010 ADA Standards”), and the Rules and Regulations of the Massachusetts Architectural Access Board (“MAAB”), codified at Section 521 of the Code of Massachusetts Regulations (521 CMR 1.00 *et. seq.*, latest edition). To the extent related to its services under this Contract, the Designer hereby assumes the Public Entities’ obligations, including those that exist under the MAAB’s Rules, and/or the 2010 ADA Standards to design a facility accessible to and usable by persons with disabilities. The Schematic Design/Certifiable Study and all designs provided by the Designer shall reflect the requirements for a design in accordance with the above referenced standards without waivers unless the seeking of such waivers is Approved by the Awarding Authority. Without limiting the foregoing, the Schematic Design/Certifiable Study and all Construction Cost Estimates, and other cost estimates and Deliverables required by this Contract shall reflect specific ADA or MAAB work determined necessary for the Project and any additional accessibility identified by the Awarding Authority. If the Awarding Authority is DCAMM, the Schematic Design/Certifiable Study shall include a copy of the accessibility audit and Designer shall complete the DCAMM Scoping Form for MAAB Compliance for Building Repairs, Alterations, and Renovations (available on the DCAMM website).

**7.7 Copyrights, Patents, and Intellectual Property Rights.** The Designer hereby grants to the Awarding Authority and the Public Entity an irrevocable royalty-free license to use for any lawful public purpose, including without limitation the right to share with other public agencies for their use on projects, the following items developed or made part of the work or services performed under this Contract: all Deliverables, drawings, designs, specifications, photographs, images, notes, materials and other work and ideas of the Designer and its Consultants related to the performance of this Contract which are or may be covered by copyright, patent, or other intellectual property Laws or as to which Designer and its Consultants may assert any rights or establish any claim under any such Laws. The Designer shall incorporate by reference this provision into all contracts with its Consultants and subcontractors on this Project including, but not limited to, architects, engineers, estimators, designers and photographers. The Designer and its Consultants and subcontractors shall not be responsible for changes made in the documents without the Designer's authorization, nor for the Awarding Authority's or other public entity's use of the documents on projects other than the Project, unless this is a contract for design services for a master plan or prototype. The Awarding Authority assumes the risk resulting from any such changes made in the documents without the Designer's authorization, or for the Awarding Authority's or other public entity's use of the documents on projects other than the Project. The Designer shall provide (or, if applicable, shall obtain from Consultants) in a form acceptable to the Awarding Authority any specific waivers necessary to transfer to the Awarding Authority ownership and the right to modify any product generated in the performance of this Contract and protected by intellectual property rights under Law, including, without limitation, the Visual Artists Rights Act 17 U.S.C. § 106A *et seq* and M.G.L. c. 231 § 85S.

**7.8 Security and Confidentiality; Publication.** Except as required for the discharge of its duties to the Awarding Authority under this Contract, or required by subpoena or court order, the Designer agrees to hold all information, documents, and materials obtained or developed in connection with its services 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 Designer 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 the Awarding Authority. The Designer shall not use any Confidential Information other than for the performance of services under this Contract. The Designer 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 Designer 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.

## **7.9 Confidentiality; Personal Data [M.G.L. c. 66A].**

**7.9.1 *Certifications.*** For all contracts involving Designer’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, Designer certifies under the pains and penalties of perjury that Designer:

- (a) has read M.G.L. c. 93H and c. 66A and agrees to protect any and all personal information and personal data; and
- (b) 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 Awarding Authority.

**7.9.2 *Obligations.*** Notwithstanding any contractual provision to the contrary, in connection with Designer’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 Designer shall:

- (a) obtain a copy, review, and comply with the pertinent security guidelines, standards and policies;
- (b) comply with the “Enterprise Information Security Policies and Standards” published by TSS, or a comparable set of policies and standards (“Information Security Policy”) as prescribed by the Commonwealth;
- (c) 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 Consultants;
- (d) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information and data to which Designer is given access by Awarding Authority from the unauthorized access, destruction, use, modification, disclosure or loss;
- (e) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or Consultants during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract;

- (f) 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”): (i) immediately notify Awarding Authority if the Designer becomes aware of the unauthorized use; (ii) provide full cooperation and access to information necessary for Awarding Authority to determine the scope of the unauthorized use; and (iii) provide full cooperation and access to information necessary for Awarding Authority and Designer to fulfill any notification requirements.

**7.9.3 Breach.** 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 Designer 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.

## **7.10 Records, Disclosure Statements, Accounting Controls, Audits.**

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

**7.10.2 Records Open to Inspection.** Until the expiration of six (6) years after final payment has been made, the Governor or his designee, the Secretary of Administration and Finance, the State Auditor, the Office of the Inspector General, the Commissioner of DCAMM, the Awarding Authority and any other public official authorized by law, shall have the right to examine any books, documents, papers or records of the Designer or of its Consultants and subcontractors that directly pertain to, and involve transactions relating to, the Designer or its Consultants and subcontractors. [M.G.L. c. 30, s. 39R(b)(1)-(2); Executive Order 195]

**7.10.3 Changes in Method of Accounting.** If this Contract is a contract for an amount exceeding \$10,000 or is a contract for the design of a Project with an Estimated Construction Cost exceeding \$100,000, and if the Designer shall make any change in its method of maintaining records that would materially affect any statements filed by the Designer with the Awarding Authority, the Designer shall forthwith deliver to the Awarding Authority a written description of such change, the effective date thereof, and the reasons therefor. The Designer shall submit with such description a letter from the Designer’s independent certified public accountant approving or otherwise commenting on the change. [M.G.L. c. 30, s. 39R(b)(3)] The Designer hereby represents that there have been no such changes to date that have not been so reported to the Awarding Authority.

**7.10.4 Warranty by Designer.** If this Contract is for an amount exceeding \$30,000 or is for the design of a Project with an Estimated Construction Cost exceeding \$300,000, the Designer warrants and represents that Designer has filed a statement of management on internal accounting controls as set forth in Section 7.10.5 (Filing of Statement of Management on Internal Accounting Controls) below prior to the execution hereof. [M.G.L. c. 7C, s. 51]

**7.10.5 Filing of Statement of Management on Internal Accounting Controls.** If this is a Contract for an amount exceeding \$10,000 or is for the design of a Project with an Estimated Construction Cost exceeding \$100,000, the Designer shall file with the Awarding Authority a statement of management as to whether the system of internal accounting controls of the Designer



and its subsidiaries reasonably assures that: (1) transactions are executed in accordance with management's general and specific authorization; (2) transactions are recorded in a standard accounting format i) to permit preparation of financial statements in conformity with generally accepted accounting principles, and ii) to maintain accountability for assets; (3) access to assets is permitted only in accordance with management's general or specific authorization; and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference. The Designer shall also file with the Awarding Authority a statement prepared and signed by an independent certified public accountant, stating that the accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to (1) whether the representations of management in response to this section and sections 1 and 2 above are consistent with the result of management's evaluation of the system of internal accounting controls; and (2) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statements. [M.G.L. c. 7C, s. 51 M.G.L. c. 30, s. 39R(c)]

**7.10.6 Representation Regarding Audited Financial Statement.** If this is a contract for an amount exceeding \$30,000 or is for the design of a Project having an Estimated Construction Cost exceeding \$300,000, the Designer represents that it has filed prior to the execution hereof and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in Section 7.10.7 (Filing of Annual Statement Required) below. [M.G.L. c. 7C, s. 51 M.G.L. c. 30, s. 39R(d)]

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

**7.10.8 Records Not Public.** Records and statements required to be made, kept or filed under the provisions of this Section 7.10 shall not be public records as defined in M.G.L. c. 4, s. 7 and shall not be open to public inspection; provided, however, that such records and statements shall be made available pursuant to the provisions of Section 7.10.2 (Records Open to Inspection) above.

## **7.11 Insurance.**

### **7.11.1 General Requirements [M.G.L. c.7C, s. 51].**

- (a) Generally. The Designer shall purchase and maintain insurance of the type and limits listed in this Section with respect to the services to be performed under this Contract. This insurance shall be provided at the Designer's expense and shall be in force and effect for the full term of the Contract or for such longer period as this Section requires. The limits and coverage required by this Section shall in no way limit the liability of the Designer under this Contract.
- (b) Insurance company rating. All policies shall be issued by companies lawfully authorized to write that type of insurance under the Laws of the Commonwealth with a financial strength rating of "A-" or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the Awarding Authority, or otherwise acceptable to the Awarding Authority.

- (c) Certificates of insurance. The Designer shall submit three originals of each certificate of insurance acceptable to the Awarding Authority simultaneously with the execution of this Contract. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, additional insured status, and policy effective and expiration dates. The Designer shall submit updated certificates prior to the expiration of any of the policies referenced in the certificates so that the Awarding Authority shall at all times possess certificates indicating current coverage. Failure by the Designer to obtain all policy renewals and to provide the respective insurance certificates as required shall constitute just cause for termination of Designer's services under this Contract.
- (d) Termination, cancellation, or modification to policy. Termination, cancellation, or material modification of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the Awarding Authority at least thirty days prior to the effective date thereof, which shall be expressed in said notice.
- (e) Deductible. The Designer is responsible for the payment of any and all deductibles under all of the insurance required below. The Awarding Authority shall not be responsible for the payment of deductibles, self-insured retentions or any portion thereof.
- (f) Excess coverage. The Designer or any Consultant or subconsultant may elect to carry any other type of insurance coverage or higher limits over the required insurance coverage. Any excess coverage(s) shall be at the sole expense of the Design, Consultant or subconsultant obtaining such coverage.

**7.11.2 Worker's Compensation, Commercial General Liability, Automobile Liability, Valuable Papers, and Hazardous Materials.** The Designer shall purchase and maintain at its own expense during the life of this Contract the following insurance:

- (a) Workers' Compensation Insurance in accordance with M.G.L. c.152. Employers Liability shall be carried in limits not less than:
  - \$500,000 each accident
  - \$500,000 by disease-policy limit
  - \$500,000 by disease-each employee
- (b) Commercial General Liability Insurance, with a minimum limit written on an occurrence basis with coverage no less broad than the most recent version of ISO CG 00 01. No amending or exclusionary endorsements material to obligations in this Contract may be attached. Limits shall be not less than \$1,000,000 each occurrence. The Public Entity and the Awarding Authority shall each be listed as an additional insured on a form no less broad than CG 20 38.
- (c) Automobile Liability Insurance covering all owned, non-owned and hired automobiles at a limit of not less than \$1,000,000 each accident or loss. Limits may be provided through a combination of primary and umbrella policies.
- (d) Valuable Papers insurance in an amount sufficient to assure the restoration of any plans, drawings, computations, field notes, or other similar data relating to the work covered by this Contract in the event of loss or destruction while in the custody of the Designer until the final fee payment is made or all data is turned over to the Awarding Authority, and this coverage shall include coverage for relevant electronic media including, but not limited to, documents stored in computer aided design drafting (CADD) systems.

- (e) To the extent the Contract requires hazardous material consulting services, the Designer, its Consultant, and/or subconsultant shall purchase and maintain, or cause to be purchased and maintained, pollution liability coverage for bodily injury and property damage, including loss of use of owned and non-owned damaged or stigmatized property, 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 Designer, its Consultant, or subconsultant, as applicable, during the process of removal, storage, transport and disposal of hazardous waste and contaminated solid 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 eland, the atmosphere or any water course or body of water, whether it be gradual or sudden and accidental. The policy shall also include legal defense, investigation and on and off-site clean-up costs. If coverage is written on a claims-made basis, any retroactive date shall be no later than the effective date of this Contract; and continuous coverage will be maintained or an extended discovery period exercised to ensure that coverage is maintained for six (6) years beginning from the time that work under the Contract is complete. Designer shall submit either (i) renewal insurance certificates to evidence coverage is being maintained throughout the six (6) year period; or (ii) a six (6) year extended reporting period endorsement. The amount of coverage shall be not less than the following unless a higher amount is specified in writing by Awarding Authority, in which case Designer shall provide the additional coverage:

Limit of Liability:           \$1,000,000 per occurrence  
  \$3,000,000 aggregate

**7.11.3 Professional Liability.** The Designer shall maintain professional liability insurance covering errors and omissions and negligent acts of the Designer, and of any person or entity for whose performance the Designer is legally liable. Unless an alternate amount is otherwise specified in the documents incorporated by reference into Sections 4.1 (Study Design Phase Governing Documents) or 6.2 (Design Phase Governing Documents) of this Contract, the minimum amount of such insurance shall equal the lesser of \$5,000,000 or 10% of the Project's Fixed Limit Construction Cost / Estimated Construction Cost but in no event less than \$250,000 per claim. Unless the Designer is specifically required to provide project specific insurance in the documents incorporated by reference into Sections 4.1 (Study Design Phase Governing Documents) or 6.2 (Design Phase Governing Documents), the policy may be in a "claims made" format. If the policy is a "claims made" policy, it shall include a retroactive date that is no later than the effective date of this Contract, and Designer shall continue to provide such coverage for a period of at least six (6) years after the earlier of (1) the date of official acceptance of the completed Project by the Awarding Authority; (2) the date of the opening of the Project to public use; (3) the date of the acceptance by the general contractor of a final pay estimate prepared by the Awarding Authority pursuant to M.G.L. chapter 30; or (4) the date of substantial completion of the Construction Contract and the taking of possession of the Project for occupancy by the Awarding Authority or the User Agency, which requirement can be met by providing renewal certificates of professional liability insurance to the Awarding Authority as evidence that this coverage is being maintained; provided, however, that if the Designer is not selected to perform the Design Phase or this Contract is terminated prior to the Design Phase, such extended coverage for "claim made" professional liability policy shall extend for at least six (6) years after the earlier of Approval of the Study or the termination of this Contract.

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

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

**7.13 Non-Resident Processing; Signatures.** Every Designer that is a nonresident of the Commonwealth of Massachusetts, or a nonresident partner of a Designer, hereby appoints the Secretary of the Commonwealth of Massachusetts to be his true and lawful attorney in and for Massachusetts, upon whom all lawful processes in any action or proceeding arising out of this Contract may be served. When legal process against any such person is served upon the Secretary of State, a copy of such process shall forthwith be sent by registered mail with a return receipt requested by the Awarding Authority or its lawful attorney to said Designer or partner at the address set forth in this Contract. Said Designer or said partner hereby stipulates and agrees that any lawful process against it which is served on said attorney shall be of the same legal force and validity as if served on said Designer or said partner. Such authority shall continue in force so long as any liability remains outstanding against said Designer or said partner.

**7.14 Anti-Boycott Covenant [Executive Order 130].** The Designer warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, will participate in or cooperate with an international boycott, as defined in section 999 (b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by General Laws Chapter 151E, ss. 2 and 3. If there shall be a breach in the warranty, representation and Contract contained in this section, then without limiting such other rights as it may have the Commonwealth shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the contractor, or which directly or indirectly owns at least 51% of the ownership interests of the contractor.

**7.15 Truth-In-Negotiation Certificate [M.G.L. c. 7C, s. 51].** To the extent that the Designer's fee has been negotiated, the Designer certifies that it has filed a truth-in negotiations certificate in accordance with M.G.L. c. 7C, s. 51 prior to being awarded this Contract. Said certificate is attached hereto as Attachment F-1 – Truth in Negotiations Certificate (Study Phase) and, if

applicable, Attachment F-2 – Truth in Negotiations Certificate (Study Phase Amendment, if applicable) and Attachment F-3 – Truth in Negotiations (Design Phase), and incorporated herein by reference.

- 7.16 Employment Eligibility Verification Requirements [8 U.S.C., ss. 1324a, 1324b; M.G.L. c. 149, s. 19C; Executive Order No. 481].** The Designer certifies under the pains and penalties of perjury they shall not knowingly use undocumented workers in connection with the performance of the Contract; that, pursuant to federal requirements, they shall verify the immigration status of all workers assigned to Contract without engaging in unlawful discrimination; and that they shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker. The Designer understands and agrees that breach of any of these terms during the period of a Contract may be regarded as a material breach, subjecting Designer to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination.
- 7.17 Northern Ireland [M.G.L. c. 7, s. 22C].** Pursuant to M.G.L. c. 7 s. 22C, the Designer certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Designer employs ten or more employees in an office or other facility located in Northern Ireland the Designer certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Designer is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles, or military aircraft for use or deployment in any activity in Northern Ireland.
- 7.18 Veteran and Other Preference [Chapter 108 of the Acts of 2012].** The Awarding Authority encourages the participation of Service-Disabled Veteran- Owned Business Enterprises (“SDVOBE”) and Veteran-Owned Business Enterprises (“VBE”) in its construction and design projects pursuant to Chapter 108 of the Acts of 2012 and Executive Order 565. The benchmark for SDVOBE and VBE participation on the Project is 3% of the lump sum established set fee for Study Phase, Schematic Design Phase and Final Design as shown on the Designer Selection Board Advertisement attached hereto as Attachment A – Designer Selection Board Advertisement. For the Commonwealth’s VBE and SDVOBE program purposes, a VBE or SDVOBE is a firm so certified directly by the Massachusetts Supplier Diversity Office (“SDO”) [www.mass.gov/sdo](http://www.mass.gov/sdo) or is: 1) certified by a certifying agency that’s certification is accepted by the SDO; 2) the firm has submitted its existing certification credentials directly to the SDO by submitting an application for verification of certification to the SDO; 3) the SDO has reviewed and granted the application for verification; and 4) the SDO has certified the firm as a VBE or SDVOBE for purposes of the Commonwealth’s program as evidenced by a letter issued by the SDO to the firm. VBEs and SDVOBEs shall be provided opportunities to participate in the Project and Designer shall within 30 days of Contract execution submit its “Anticipated Veteran Owned Business and Service-Disabled Veteran-Owned Business Enterprise Participation” plan to the Awarding Authority’s Compliance Office. Designer shall report on the amount of SDVOBE and VBE participation on the Project on a regular basis, in the form, format and frequency requested by the Awarding Authority, including, but not limited to, by electronic reporting through the means requested and, for DCAMM projects, through 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.

**7.19 Minority Business Enterprise & Women Business Enterprise (MBE/WBE) Participation.**

Designer shall comply with the MBE and WBE participation provisions attached hereto as Attachment C – MBE/WBE Participation Provisions and incorporated herein by reference.

**7.20 Non-Discrimination in Employment and Affirmative Action.**

**7.20.1. Compliance.** The Designer shall comply with all Laws promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age sex, religion, disability, or sexual orientation or for exercising any right afforded by Law. The Designer shall comply with all applicable Laws prohibiting discrimination in employment including but not limited to: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; American With Disabilities Act Title I: Employment, 42 U.S.C. s. 12111 et seq.; M.G.L. c. 151B, s. 4(1); and all relevant administrative orders and executive orders, including Executive Orders 478. If a complaint or claim alleging violation of such statutes, rules or regulations is presented to the Massachusetts Commission Against Discrimination (MCAD), the Designer and its agents agree to cooperate fully with MCAD in the investigation and disposition of such complaint or claim. In the event of the Designer's noncompliance with the provisions of this section, the Awarding Authority shall impose such sanctions as it deems appropriate, including, but not limited to, withholding of payments due the Designer under this Contract until the Designer complies, and termination or suspension of this Contract.

**7.20.2. Nondiscrimination, Diversity, Equal Opportunity and Affirmative Action [Executive Order 526].** The Designer shall not engage in any discriminatory employment practices. By signing this Contract the Designer hereby certifies under the pains and penalties of perjury that the Designer currently complies with and will continue to comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, sexual orientation or for exercising any rights afforded by law. The Designer commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

**7.20.3. Affirmative Action Plan [Executive Order 526].** If the Awarding Authority is a state agency then pursuant to Executive Orders 524 and 526, any Contract with a maximum obligation of fifty thousand dollars (\$50,000) or more must include an Affirmative Action Plan. If this Contract has a maximum obligation of \$50,000 or more then the Affirmative Action Plan attached hereto as Attachment B – Affirmative Action Plan is incorporated herein by reference

**7.20.4. Minority and Women Workforce Participation and Reporting.** If the Awarding Authority is a state agency, then pursuant to M.G.L. c. 7C, s. 6 and M.G.L. c. 149, s. 44A(1)(G) the Designer shall make every effort with a goal of increasing opportunities for minority and women design professionals to provide services under this contract. The Designer shall provide monthly reports of the gender and race/ethnicity of employees engaged in work under this contract in the form and format required by DCAMM, including, but not limited to electronic reporting.

**7.20.5. Material Breach.** Any breach of this Section shall be regarded as a material breach and shall be subject to all other sections of this Contract. The Awarding Authority shall have access to all records which are necessary to document compliance with this section.

- 7.21 Sexual Harassment and Workplace Violence Prevention.** 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. As part of this contract, the Designer agrees to promote a workplace that is free from sexual harassment and workplace violence, and to require all of its subcontractors to agree to the same. Without limiting its other rights and remedies of removal and/or termination, the Awarding Authority reserves the right to remove or terminate individuals and/or contractors whose conduct violates any of the provisions of this paragraph.
- 7.22 Choice of Law.** This Contract shall be construed under and governed by the laws of the Commonwealth of Massachusetts. The Designer, and the agents thereof, agree to bring any federal or state legal proceedings arising under this Contract, in which either the Commonwealth or the Awarding Authority is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts. This section shall not be construed to limit any rights a party may have to intervene in any action, in any court or wherever, pending, in which the other is a party.
- 7.23 Amendments, Severability, Waivers.** No amendment to this Contract shall be effective unless it is in writing and is executed by authorized representatives of both parties. If any provision of this Contract is declared or found illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. The remainder of the Contract shall be enforced to the fullest extent permitted by law. The Awarding Authority reserves the right to waive any provision or requirement of this Contract if the Awarding Authority determines that such waiver is justified and in the public interest. No such waiver shall be effective unless in writing and signed by the Authorized Representative of the Awarding Authority. No other action or inaction by the Awarding Authority shall be construed as a waiver of any provision of this section.
- 7.24 Non-Appropriation.** Payments are subject to appropriation and shall be made only for work performed in accordance with the terms of this Contract. The Designer shall not be obligated to perform, and may not perform, services outside the duration and scope of this Contract without an appropriate amendment to this Contract, and a sufficient appropriation(s) to support such additional services. The Commonwealth may immediately terminate or suspend this Contract in the event that the appropriation(s) funding this Contract is eliminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Contract.
- 7.25 Notices, Approvals, Invoices.** Notices to the Designer shall be deemed given when hand-delivered to the Designer at the Project site, or when deposited in the U.S. mail addressed to the Designer at the Designer's address specified in this Contract, when delivered by courier to said address, or when delivered via e-mail or facsimile transmission. Unless otherwise specified in writing by the Awarding Authority, notices and deliveries to the Awarding Authority shall be effective only when delivered to the Awarding Authority at the address specified in this Contract and date-stamped at the reception desk or for which a receipt has been signed by the agent or employee designated by the Awarding Authority to receive official notices.

**7.26 Mandatory Mediation.** In the case of a dispute where the dollar amount in dispute is \$50,000 or more the Awarding Authority and the Designer shall engage in good faith in a non-binding mediation process using the services of a mediator, who shall be an impartial third party not having an interest in the Public Entity, Awarding Authority, User Agency, Designer, any construction contractor on the Project, or the Project. Such mediation process shall be conducted within ninety (90) days from the date that either party submits to the other a written request therefor. The parties shall make good faith efforts to agree on the selection of a mediator experienced in mediating building design and construction disputes. The cost of the services of any mediator selected jointly by the parties to this Contract shall be borne equally by the Designer and the Awarding Authority.

**7.27 Independent Contractor.** The Designer is an independent contractor with respect to its duties under this Contract. No act or direction of Awarding Authority shall be deemed to be the exercise of supervision or control of the Designer's performance hereunder. Under no circumstances shall the Designer be deemed a "state employee" or a "special state employee" for the purposes of receiving protection from liability under the provisions of M.G.L. c. 258.

**7.28 Certifications of Designer Made Under Pains and Penalties of Perjury.** No changes shall be made in the matters represented in this Section at any time during the life of this Contract without written notification to the Awarding Authority and when required, receipt of written Approval from the Awarding Authority. (Attach additional sheets if necessary for each section.)

**7.28.1. Designer's Beneficial Owners.** By signing this Contract, the Designer certifies under the penalties of perjury that entities and individuals named in Attachment K – Certifications of Designer Made Under Pains and Penalties of Perjury are the legal and beneficial owners of the Designer as of the date of the execution hereof.

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

**7.28.3. Resume on File with Designer Selection Board.** By signing this Contract, the Designer certifies under the penalties of perjury that in accordance with the provisions of M.G.L. c. 29, s. 29A (4) a resume of the Designer has been filed with the Designer Selection Board.

**7.28.4. No Inducements.** By signing this Contract, the Designer certifies under the penalties of perjury that the Designer has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the Contract for design services; no consultant to or subcontractor for the Designer has given, offered or agreed to give any gift, contribution or offer of employment to the Designer, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the Designer; and no person,



corporation or other entity, other than a bona fide full-time employee of the Designer has been retained or hired by the Designer to solicit for or in any way assist the Designer in obtaining the Contract for design services upon an Contract or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the Contract to the Designer. [M.G.L. c. 7C, s. 51]

**7.28.5. Tax Returns.** By signing this Contract, the Designer certifies under the penalties of perjury that pursuant to General Laws Chapter 62C, s. 49A, the Designer has filed all state tax returns, paid all taxes and complied with all Laws of the Commonwealth relating to taxes; and that pursuant to General Laws Chapter 151A, s. 19A, the Designer has complied with all Laws of the Commonwealth relating to contributions and payments in lieu of contributions to the Employment Security System.

**7.28.6. Existing Government Contracts.** By signing this Contract, the Designer certifies under the penalties of perjury that the list in Attachment K – Certifications of Designer Made Under Pains and Penalties of Perjury is a listing of all other existing contracts or income derived by Designer from the Commonwealth or any political subdivision thereof or public authority therein, from the Federal Government or any agency thereof, and from the Awarding Authority or any governmental source for services rendered. [M.G.L. c. 7C, s. 48]:

**7.28.7. Annual Reports; Corporate Filings.** By signing this Contract, the Designer certifies under the penalties of perjury that, if the Designer is a corporation, the Corporation has filed with the Secretary of State all certificates and annual reports required by Chapter 156B, s. 109 (Business Corporation), by Chapter 156D (Foreign Corporation), or by Chapter 180, s. 26A (Non-Profit Corporation) of the Massachusetts General Laws.

**7.28.8. Dependent Care Assistance Program.** By signing this Contract, the Designer certifies under the penalties of perjury that, at the time of execution, Designer is in compliance with the provisions of section 7 of Chapter 521 of the Acts of 1990 as amended by Chapter 329 of the Acts of 1991, and 102 CMR 12.00 and the Contractor is either a "qualified employer" because it has fifty (50) or more full time employees and has established a dependent care assistance program, child care tuition assistance, or on-site or near-site child care placements, or is an "exempt employer."

**7.28.9. Debarment; Suspension.** By signing this Contract, the Designer certifies under the penalties of perjury that the Designer is not currently debarred or suspended by the Commonwealth of Massachusetts, or any if its entities or subdivisions under any Commonwealth law or regulation, including but not limited to M.G.L. c. 29, s. 29F and M.G.L. c. 152, s. 25C, or any other state, and that it is not currently debarred or suspended by the Federal Government under any federal law or regulation.

#### **ADDENDUM REGARDING DESIGNER PROCEDURES MANUAL:**

**DCAMM's Designers Procedures Manual is under revision to reflect the fact that schematic design is now included in what formerly was referred to as the Study. The Draft Study of this Contract incorporates the services of the "Study Phase" of the Designers Procedures Manual, except for "Final Performance Evaluation" and "Study Certification". The Schematic Design/Certifiable Study of this Contract incorporates the services of the "Schematic Design Phase", the "Final Performance Evaluation", and "Study Certification" of the Designers Procedures Manual. In case of any conflict between the terms of this Contract and the current Designers Procedures Manual, the terms of this Contract and the Approved Work Plan shall control. If updates are completed**

**during the term of this Contract, DCAMM shall provide Designer with the revised Designers Procedures Manual when it has been completed and, provided that it is consistent with the terms of this Contract and the Approved Work Plan, the Designer shall conform its work to the revised version of the Designers Procedures Manual.**

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

**SIGNATURES**

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

---

**DESIGNER:**

\_\_\_\_\_

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

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

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

**AWARDING AUTHORITY:**

\_\_\_\_\_

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

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

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

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

**Attachment A – Designer Selection Board Advertisement and Designer Application**

**Attachment B – Affirmative Action Plan**

## **Attachment C – MBE/WBE Participation Provisions**

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

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

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

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

- a. The separate Minority Business Enterprise and Women Business Enterprise (MBE &WBE) participation goals for this Contract are the following percentages of fee for Study Phase, Schematic Design Phase and Final Design (also set forth in the Designer Selection Board Advertisement attached to this Contract in Attachment A – Designer Selection Board Advertisement and Designer Application): \_\_\_\_\_% MBE and \_\_\_\_\_ % WBE.
- b. The Designer shall comply with all of the terms and conditions of this Contract, which include the provisions pertaining to MBE/WBE participation set forth in the Designer Selection Board’s request for applications, incorporated herein by reference, in order to meet the MBE/WBE participation goal established for this Contract.
- c. MBE or WBE participation credit will be given for the value of the work under the Contract by Designer (only if Designer is itself a Supplier Diversity Office (SDO) certified MBE or WBE firm) and each MBE and WBE Consultant or subcontractor (hereafter “subcontractors”) to the Designer.

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

- a. A minority owned business shall be considered an MBE only if it has been certified as a minority business enterprise by the Supplier Diversity Office (SDO).
- 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.

#### **3. Subcontracts with MBE/WBEs.**

- a. The parties acknowledge that the Designer has submitted to d DCAMM for approval and that DCAMM has approved a Schedule of MBE/WBE Participation and Letters of Intent

for each of the MBE/WBEs who will perform work under this Contract for MBE/WBE participation credit.

- b. Within seven (7) days after the Notice to Proceed is received by the Designer, the Designer shall (i) execute a subcontract with each MBE/WBE who has executed a Letter of Intent approved by DCAMM, and (ii) furnish DCAMM with a signed copy of each such subcontract.

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

- a. The Designer shall not perform with its own organization or subcontract or assign to any other firm work designated to be performed by any MBE/WBE in the Letters of Intent or Schedule of MBE/WBE Participation (“MBE/WBE Work”) without the prior written approval of 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 written 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 shall not apply to the MBE/WBE participation goal(s) any sums attributable to such unapproved assignments, sub-contracts, sub-subcontracts, or performance of MBE/WBE work by others.
- b. The Designer shall be responsible for monitoring the performance of MBE/WBE Work to ensure that each scheduled MBE/WBE performs its own MBE/WBE Work.
- c. The Designer shall periodically submit to DCAMM a completed and executed Designer’s Certification of Payment to Minority and Women Business Enterprises in the form and by the method required by DCAMM. DCAMM shall establish the schedule for submitting such certifications.
- d. The Designer and each MBE/WBE shall provide DCAMM with all other information and documentation that DCAMM determines is necessary to ascertain whether or not an MBE/WBE has performed its own MBE/WBE Work as set forth in its Letter of Intent.
- e. At the discretion of DCAMM, the failure of the Designer to submit a required Designer’s Certification of Payment to Minority and Women Business Enterprises or any other documentation that DCAMM has determined is necessary to ascertain whether or not an MBE/WBE has performed its own MBE/WBE Work as set forth in its Letter of Intent shall establish conclusively for the purpose of giving MBE/WBE participation credit under this Contract that such MBE/WBE did not perform such work.

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

- a. If at any time during the performance of the Contract the Designer determines or has reason to believe that (i) a scheduled MBE/WBE is unable or unwilling to perform its MBE/WBE Work, or (ii) there has been or will be a change in the value or scope of any MBE/WBE Work, or that a party different from the scheduled MBE/WBE will perform all or part of such work, or (iii) the Designer will be unable to meet the MBE/WBE participation goal(s) for this Contract for any reason, the Designer shall immediately notify DCAMM Compliance Office in writing of such circumstances.

- b. Any notice that there will be a change in the value or scope of MBE/WBE Work or that a party different from the scheduled MBE/WBE will be performing such work, that is given to DCAMM pursuant to subparagraph (a) above shall include a revised Schedule of MBE/WBE Participation and additional or amended Letters of Intent and subcontracts, as the case may be, all of which shall be subject to the approval of DCAMM.

**6. 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 Designer failing to meet the MBE/WBE participation goal(s) for this Contract, other than a reduction in MBE/WBE Work resulting from a change in the Contract work ordered by DCAMM, then the Designer shall make a diligent, good faith effort to make up the shortfall in MBE/WBE participation as follows:
  - i. The Designer shall identify all items of work remaining to be performed under the Contract that may be made available for subcontracting to MBE/WBEs and shall send a list of such items of work to DCAMM for its approval. The Designer shall also send DCAMM a list of the remaining contract work that may not be made available to MBE/WBEs in the Designer's opinion, and a statement of the reason why each such item of work may not be made available for subcontracting to MBE/WBEs.
  - ii. The Designer shall send written notices soliciting proposals to perform the items of work that may be made available for subcontracting to MBE/WBEs to all MBE/WBEs qualified to perform such work. The Designer shall advise DCAMM of (I) each MBE/WBE solicited, and (II) each MBE/WBE listed in the SDO directory under the applicable professional category who was not solicited and the reasons therefor. The Designer shall also advise DCAMM of the dates that notices were mailed and provide a copy of the written notice(s) sent.
  - iii. The Designer shall make reasonable efforts to follow up the written notices sent to MBE/WBEs with telephone calls or personal visits in order to determine with certainty whether the MBE/WBEs were interested in performing the work. Phone logs or other documentation must be submitted to DCAMM evidencing this effort.
  - iv. The Designer shall make reasonable efforts to assist MBE/WBEs that need assistance in obtaining insurance or lines of credit in order to perform work under the Contract, and shall provide DCAMM with evidence that such efforts were made.
  - v. The Designer 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.
  - vi. The Designer shall take any additional measures reasonably requested by DCAMM to meet the MBE/WBE participation goal(s) established for this Contract.



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

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

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

**8. Liquidated Damages; Termination.**

- a. If payment by DCAMM or performance by the Designer is suspended by DCAMM as provided in paragraph 7 above, DCAMM shall have the following rights and remedies if the Designer thereafter fails to take all action necessary to bring the Designer into full compliance with the requirements of this Article, or if full compliance is no longer possible because the default of the Designer is no longer susceptible to cure, or if the Designer fails to take such other action as may be required to meet the MBE/WBE participation goals set forth in Paragraph 1:
  - i. DCAMM may terminate this Contract, and/or
  - ii. DCAMM may retain from final payment to the Designer, as liquidated damages, an amount not to exceed the difference between the total of the MBE/WBE participation goals set forth in paragraph 1 of this Article, and any amounts paid or owing to MBE/WBE's for MBE/WBE Work actually performed by them under this Contract, the parties agreeing that the damages for failure to meet the

MBE/WBE participation goals are difficult to determine and that the foregoing amount to be retained by DCAMM represents the parties' best estimate of such damages.

- b. Before exercising its rights and remedies hereunder, DCAMM may, but DCAMM shall not be obligated to, give the Designer and any other interested party another opportunity to present evidence to DCAMM that the Designer is in compliance with the requirements of this Article or that there is some justifiable reason for waiving the requirements of this Article in whole or in part. DCAMM may invite SDO and the Massachusetts Commission Against Discrimination to participate in any proceedings undertaken hereunder.

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

- a. 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.
- b. No such waiver shall be effective unless in writing and signed by a representative of DCAMM Compliance Office or Office of the General Counsel. No other action or inaction by DCAMM shall be construed as a waiver of any provision of this Article.

**Attachment D – Intentionally Omitted**

**Attachment E-1 – Corporate Vote or Other Evidence of Authority (Study Phase)**

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

I hereby certify that I am the \_\_\_\_ clerk, \_\_\_\_\_, assistant clerk, \_\_\_\_ managing partner of \_\_\_\_\_.

(Name of Corporation/Partnership)

duly authorized meeting of the Board of Directors of the Corporation/Partners held on

\_\_\_\_\_ in \_\_\_\_\_ at which a quorum was

(Date)

(Location)

present and voting it was voted to authorize \_\_\_\_\_

(Name)

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

**Mass State Project No.**

Project Title:

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

\_\_\_\_\_ of the Corporation/Partnership and that said vote

(Officer Title)

has not been repealed, rescinded or amended.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

(CORPORATE SEAL)

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

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

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

**Attachment E-2 – Corporate Vote or Other Evidence of Authority (Study Phase Amendment, if applicable)**

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

I hereby certify that I am the \_\_\_\_ clerk, \_\_\_\_\_, assistant clerk, \_\_\_\_ managing partner of \_\_\_\_\_.

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

present and voting it was voted to authorize \_\_\_\_\_  
(Name)

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

Mass State Project No.  
Project Title:

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

\_\_\_\_\_ of the Corporation/Partnership and that said vote  
(Officer Title)

has not been repealed, rescinded or amended.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

(CORPORATE SEAL)

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

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

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

**Attachment E-3 – Corporate Vote or Other Evidence of Authority (Design Phase)**

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

I hereby certify that I am the \_\_\_\_ Secretary, \_\_\_\_\_, assistant Secretary, \_\_\_\_ managing partner of \_\_\_\_\_ (the “Corporation”) and that at a

\_\_\_\_\_  
(Name of Corporation/Partnership)

duly authorized meeting of the Board of Directors of the Corporation/Partners held on

\_\_\_\_\_ in \_\_\_\_\_ at which a quorum was  
(Date) (Location)

present and voting it was voted to authorize \_\_\_\_\_

(Name)

\_\_\_\_\_ of the Corporation/Partnership to

(Officer Title)

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

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

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

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

\_\_\_\_\_ of the Corporation/Partnership and that said vote

(Officer Title)

has not been repealed, rescinded or amended.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

(CORPORATE SEAL)

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

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

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

**Attachment F-1 – Truth in Negotiations Certificate (Study Phase)**

The Designer hereby certifies and agrees to the following:

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

Designer : \_\_\_\_\_

By: \_\_\_\_\_  
duly authorized

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

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

**Attachment F-2 – Truth in Negotiations Certificate (Study Phase Amendment, if applicable)**

The Designer hereby certifies and agrees to the following:

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

Designer : \_\_\_\_\_

By: \_\_\_\_\_  
duly authorized

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

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



**Attachment F-3 – Truth in Negotiations Certificate (Design Phase)**

The Designer for design services for

\_\_\_\_\_ ,

hereby certifies and agrees to the following:

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

Designer Firm:

\_\_\_\_\_

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

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

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

**Attachment G – Design Phase Scope of Services**

*[TO BE COMPLETED WITH SPECIFIC PROJECT REQUIREMENTS IF CONTRACT IS AMENDED TO AUTHORIZE DESIGN PHASE.]*

**Attachment H – Awarding Authority’s Design Procedures (For use by Agencies Other than DCAMM)**

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

\_\_\_\_\_

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

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

**Attachment I – Designer’s Personnel Assigned to Project**

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

**Attachment J – Certified Billing Rates of Designer’s and Designer’s Consultant’s Personnel**

**(Use additional sheets if necessary. Do not list any support staff.)**

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

**Design Firm Principal:**

**Design Firm Associate:**

**Design Firm Project Manager:**

**Design Firm Project Architect:**

**Design Firm CAD Operator:**

---

**Name of Consultant Firm:**

**Consultant Principal:**

**Consultant Associate:**

**Consultant Project Manager:**

**Consultant Project Engineer:**

**Consultant CAD Operator:**

---

**Name of Consultant Firm:**

**Consultant Principal:**

**Consultant Associate:**

**Consultant Project Manager:**

**Consultant Project Engineer:**

**Consultant CAD Operator:**

---

**Name of Consultant Firm:**

**Consultant Principal:**

**Consultant Associate:**

**Consultant Project Manager:**

**Consultant Project Engineer:**

**Consultant CAD Operator:**

---

**Name of Consultant Firm:**

**Consultant Principal:**

**Consultant Associate:**

**Consultant Project Manager:**

**Consultant Project Engineer:**

**Consultant CAD Operator:**

**Attachment K – Certifications of Designer Made Under Pains and Penalties of Perjury**

*Attach additional sheets if necessary to complete any of the following information.*

**1) Designer’s Beneficial Owners**

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

_____	_____
_____	_____
_____	_____

PARTNERSHIP: (Names of all Partners):

_____	_____
_____	_____
_____	_____

INDIVIDUAL (Name of Owner):

_____
-------

**2) Professional Registrants**

Name                      Title                      Mass. Registration

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

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

Name

_____
-------

**3) Existing Government Contracts**

Contract Description & Awarding Authority	Present Status % Design/Construction	Fee Received	Total Fee Anticipated

*REMAINDER OF PAGE INTENTIONALLY BLANK.*



## **Attachment L – DCAMM Payment Voucher Form (PV) and Instructions**

**ALL DESIGNERS MUST SUBMIT ORIGINAL PAYMENT VOUCHER FORMS OR BILLINGS WILL BE RETURNED FOR CORRECTION**

- Designer fills in shaded areas.
- A duplicate vendor invoice number cannot be used.
- All back-up must be submitted in triplicate.

Note: Please notify DCAMM if the Designer's company name or address change from where the checks are normally mailed to. All changes must be done in writing and on original company letterhead and sent to the following address:

Division of Capital Asset Management and Maintenance  
One Ashburton Place, 15th Floor  
Boston, MA 02108  
Attention: Contract Section

Mail all PVs to: The above address  
Attention: Payment Unit

All questions and payment status inquiries should be directed to your DCAMM project engineer or project manager.

The PV Form (shown below) may be downloaded at <http://www.mass.gov/anf/property-mgmt-and-construction/design-and-construction-of-public-bldgs/general-contractors-billing-instructions.html>.

Designer may call the Payment Unit Vendor Telephone Line at (617) 727 – 4006, Ext. 31335 for additional PV forms.

**THE COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE  
PAYMENT VOUCHER INPUT FORM**

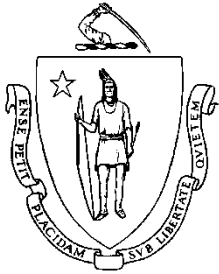


DOCUMENT ID							VENDOR NAME AND ADDRESS		
FY	PAYMENT TYPE (CIRCLE ONE)	DEPT	UNIT	ID NUMBER	DATE	ACTION:			
	PRC GAX INP	DCP				E			
HEADER INFORMATION									
BUDGET FY	FISCAL YEAR	PERIOD	VENDOR CUSTOMER CODE NO:		VENDOR ADDRESS CODE				
			VC						
DOCUMENT TOTAL	MASS STATE PROJECT NO.:						VENDOR CERTIFICATION <small>I certify that the goods were shipped or the services rendered as set forth below.</small>		
\$	-								
SCHEDULE PAY DATE	PROJECT DESCRIPTION: LOCATION:								
	INVOICE TOTAL:								
(Please Sign In Ink)									
REFERENCE ENCUMBRANCE DOCUMENT INFORMATION									
Encumbrance Type CT / PC / GAE	ENCUMBRANCE DOCUMENT NUMBER			Reference Type P or F	Vendor Invoice No:	Vendor Inv. Line	Vendor Inv. Date		
				P					
COMMODITY INFORMATION									
Commodity Line #	Commodity Code			Quantity	Unit Price	Contract Line Amount	Rec'd Service From Date	Rec'd Service To Date	
						\$ -			
ACCOUNTING INFORMATION									
Accounting Line #	Event Type	Line Amount	Unit	Appropriation	Object	Function	Location	Program Code	Budget Code
		\$ -							
TO THE COMPTROLLER OF THE COMMONWEALTH OF MASSACHUSETTS:									
<small>I hereby certify under the penalties of perjury that all laws of the Commonwealth governing disbursements of public funds and the regulations thereof have been complied with and observed.</small>									
Prepared By: _____			Title: _____			Date: _____			
Entered By: _____			Title: _____			Date: _____ Page # _____ Of _____			
The undersigned authorized signatory approving this document certifies that this document and any attachments are accurate and complete and comply with all applicable general and special laws and regulations.							<b>INSTRUCTIONS TO VENDOR</b> * Fill in shaded areas. * Direct inquiries to state organization.		
Approved By: _____			Title: _____			Date: _____			

*REMAINDER OF PAGE INTENTIONALLY BLANK.*

Attachment M – Prompt Payment Discount Form

**COMMONWEALTH OF MASSACHUSETTS**



**Prompt Pay Discount Form**  
**(Invoice discounts for receiving fast payments)**

Revised 3/9/07

**Bidder Name:** \_\_\_\_\_.

**Vendor Code (VCUST):** \_\_\_\_\_.

**Contract/RFR Number(s):** \_\_\_\_\_.

Prompt Payment Discounts (PPD). All contractors/vendors doing business with the Commonwealth must provide a Prompt Payment Discount (PPD) for receiving early payments unless the Contractor/vendor can provide compelling proof that providing a prompt pay discount would be unduly burdensome. Contractors benefit from PPD by increased, usable cash flow as a result of fast and efficient payments for commodities or services rendered. Contractors who agree to accept Electronic Funds Transfer (EFT) increase the prompt pay benefit by ensuring that funds are paid directly to their designated bank accounts, thus eliminating the delay of check clearance policies and traditional mail lead time. Payments processed through the state accounting system (MMARS) can be tracked and verified through the Comptroller's [Vendor Web](#) system using the Vendor/Customer Code assigned to you by a Commonwealth department.

The Commonwealth benefits because contractors reduce the cost of products and services through the applied discount. While Bidders/Contractors have flexibility in determining the actual % discount(s) offered to the Commonwealth, the discount(s) must be identified for 10, 15, 20 and/or 30 days for payment issuance in the column entitled "% Discount Off Proposed Price" below. The Commonwealth may use the prompt pay discounts submitted as a basis for selection and may negotiate discounts as deemed in the best interest of the Commonwealth. The requirement to offer PPD discounts may be waived by the Commonwealth on a case-by-case basis if participation in the program would be unduly burdensome, provided the specific reason for the hardship is outlined below.

All discounts offered will be taken in cases where the payment issue date is within the specified number of days listed below and in accordance with the Commonwealth's Bill Paying Policy. Payment days will be measured **from** the date goods are received and accepted / performance was completed OR the date an invoice is received by the Commonwealth, whichever is later to the date the payment is issued as an EFT (preferred method) or mailed by the State Treasurer. The date of payment "issue" is the date a payment is considered "paid" not the date a payment is "received" by a Contractor.

If internal Bidder/Contractor systems require an alternate method of measuring payment issue dates, the Bidder/Contractor must note the issues below or on an attached page if necessary to be considered by the PMT. In cases where the Bidder/Contractor considers that offering a Prompt Payment Discount would be a hardship, the Bidder must clearly define the issues and reasons for said hardship. *Providing volume discounts or other discounts on prices is not considered a hardship, since the PPD provides the additional benefit of early cash flow for the Contractor.*

Enter the Prompt Payment Discount percentage (%) off the invoice payment, for each of the payment issue dates listed, if the payment is issued within the specified Payment Issue days. For example:

**5% - 10 Days**  
**4% - 15 Days**  
**3% - 20 Days**  
**2% - 30 Days**

If no discount is offered enter 0%

<b>Prompt Payment Discount %</b>	<b>Payment Issue Date w/in</b>
<b>%</b>	<b>10 Days</b>
<b>%</b>	<b>15 Days</b>
<b>%</b>	<b>20 Days</b>
<b>%</b>	<b>30 Days</b>

The Contractor is unable to provide a prompt payment discount due to the following hardship:

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

Contractor/ Bidder Authorized Signatory Print Name and Title: \_\_\_\_\_

*REMAINDER OF PAGE INTENTIONALLY BLANK.*