



**COMMONWEALTH OF MASSACHUSETTS  
DIVISION OF CAPITAL ASSET MANAGEMENT AND  
MAINTENANCE**



**ENERGY SERVICES AGREEMENT**

for hybrid energy projects  
subject to M.G.L. c. 25A, § 11C

<b>AWARDING AUTHORITY</b>	<b>Division of Capital Asset Management and Maintenance</b>
<b>PROJECT NUMBER:</b>	
<b>PROJECT TITLE:</b>	
<b>PROJECT ADDRESS:</b>	

<b>DESIGN-BUILDER NAME:</b>	
<b>DESIGN- BUILDER ADDRESS:</b>	
<b>DESIGN- BUILDER TELEPHONE:</b>	
<b>DESIGN-BUILDER FEDERAL EMPLOYERS IDENTIFICATION NUMBER:</b>	

**Effective Date:** \_\_\_\_\_

**Total Contract Value:** \$ \_\_\_\_\_

**Preconstruction and Design Services fee:** \$ \_\_\_\_\_

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**OWNER-DESIGN-BUILDER  
ENERGY SERVICES AGREEMENT**

This Owner-Design- Builder Energy Services Agreement (the Contract) is entered into as of the date of last execution hereof (Effective Date) by and between: \_\_\_\_\_, a *[foreign / domestic ] [insert form of business entity, i.e. corporation, LLC, LLP]* licensed to conduct business in the Commonwealth of Massachusetts whose principal place of business is located at \_\_\_\_\_ (DESIGN-BUILDER) and the Commonwealth of Massachusetts through its Division of Capital Asset Management and Maintenance (DCAMM) located in Boston, Massachusetts (DCAMM)(DESIGN-BUILDER and DCAMM are each a Party, and collectively, the Parties). The purpose of the Contract is to provide for the design, and, if subsequently authorized, construction, installation, and commissioning by DESIGN-BUILDER of New Equipment/Systems (as hereinafter defined) and the rendering of other services by DESIGN-BUILDER designed to reduce utility consumption and cost at one or more Commonwealth facilities (Premises) which is more precisely described in a Notice to Proceed (as defined below) attached hereto and incorporated herein by reference.

**RECITALS**

WHEREAS, the Commonwealth owns and operates the Premises and desires to install New Equipment/Systems and Services (each as defined below), to save energy and water and associated costs and/or to mitigate adjustments and increase resiliency to moderate potential damages or benefit from opportunities associated with climate change at said Premises;

WHEREAS, DESIGN-BUILDER provides a service for reducing energy and water consumption and costs and/or mitigating adjustments and increasing resiliency to moderate potential damages or benefitting from opportunities associated with climate change through the Construction Services (as defined below) on the Premises;

WHEREAS, in accordance with the provisions of M.G.L. c. 25A, §11C, DCAMM solicited proposals from qualified firms through the issuance of a request for proposals dated \_\_\_\_\_ (as modified by all addenda, the RFP);

WHEREAS, DESIGN-BUILDER submitted a proposal dated \_\_\_\_\_ (the Proposal) in response to the RFP;

WHEREAS, DCAMM is authorized pursuant to M.G.L. c. 25A, §11C, to retain DESIGN-BUILDER to design, acquire, construct, install, and commission the New Equipment/Systems and perform the Services as set forth in this Contract, all as more fully set forth herein, subject to all the terms and conditions of this Contract; and

WHEREAS, DCAMM shall compensate DESIGN-BUILDER for all Services pursuant to the terms of this Contract.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, it is agreed as follows:

**Section 1 Definition of Terms**

Capitalized terms as used in this Contract shall have the meanings set forth below:

<u>As-Built Drawings</u>	All drawings, specifications, approved shop drawings, catalogue cuts and other items bearing markings or containing information to indicate construction details and changes made during the construction.
<u>Builder's Warranty</u>	Shall have the meaning set forth in Section 51: Warranties of the Contract.
<u>Certificate of Final Acceptance</u>	Written notice from DCAMM to DESIGN-BUILDER indicating that DCAMM accepts the Construction Services as 100% complete in accordance with Section 49: Substantial Completion/Final Acceptance.
<u>CA Costs</u>	Shall have the meaning set forth in Section 30: Project GMP; Project GMP Amendment.
<u>Certificate of Substantial Completion</u>	A certificate signed by the DCAMM pursuant to the requirements of Section 49: Substantial Completion/Final Acceptance, indicating that DCAMM has determined that (1) the Construction Services have been completed in accordance with the Contract requirements, except for Punch List items, (2) certificates of inspection, testing and/or approval (including a certificate of occupancy under the building code), operating permits for any mechanical apparatus which may be required to permit full use and occupancy of the Construction Services by its intended users have been delivered to DCAMM, (3) any applicable written warranties, operating instructions and related materials have been delivered to DCAMM, and (4) the Construction Services may be used for its intended purpose without substantial inconvenience or interference.
<u>Change Order</u>	Shall have the meaning set forth in Section 45: Changes in Scope of Services.
<u>Confidential Information</u>	Shall have the meaning set forth in Section 87: Security and Confidentiality; Publication.
<u>Construction Contingency</u>	Shall have the meaning set forth in Section 30: Project GMP; Project GMP Amendment.
<u>Construction General Conditions Costs</u>	Shall have the meaning set forth in Section 30: Project GMP; Project GMP Amendment.
<u>Construction Services</u>	All services required to be performed by the DESIGN-BUILDER related to the completion of the construction, installation and commissioning of New Equipment/Systems on a Project.

**Project # & Name**

<u>Contract Documents</u>	Shall have the meaning set forth in Section 2: The Contract and Contract Documents.
<u>Contract Term</u>	Shall have the meaning set forth in Section 2: The Contract and Contract Documents.
<u>Date of Completion</u>	The date upon which the DESIGN-BUILDER shall have completed the Services and the Contract Term shall end. The Date of Completion occurs on the date that is 30 days after the completion of the Construction Services for all Projects (or, if DCAMM elects not to authorize Construction Services, 30 days from notification by DCAMM to DESIGN-BUILDER of its intent not to proceed with a Project) to allow for payment of the final request for payment for the Construction Services in accordance with Section 5: Payments Generally.
<u>Design</u>	The 100% design documents for a Project provided by the DESIGN-BUILDER and accepted by DCAMM in accordance with <b>Part B – DESIGN AND PRECONSTRUCTION</b> .
<u>Design-Builder</u>	The entity responsible to perform all Design Services and Preconstruction Services, and, if authorized, Construction Services set forth in this Contract.
<u>Design-Builder Fee</u>	Shall have the meaning set forth in Section 30: Project GMP; Project GMP Amendment.
<u>Design and Preconstruction Payment Schedule</u>	Shall have the meaning set forth in Section 28: Payment during Design and Preconstruction Phase.
<u>Design Deliverable(s)</u>	Work product of the Design-Builder (and, if applicable, Designer) related to the completion of the Project Design that is required to be delivered or submitted to DCAMM in accordance with this Contract.
<u>Design Intent</u>	The primary purpose of a particular Project to reduce the cost of energy and water in operating buildings and/or to mitigate adjustments and increase resiliency to moderate potential damages or benefit from opportunities associated with climate change, as indicated in the approved scope of Services and to be further developed by DESIGN-BUILDER during the performance of Design Services.
<u>Design Services</u>	All services required to be performed by DESIGN-BUILDER and, if applicable, its Designer, related to the completion of the Design in accordance with this Contract.
<u>Design/Construction Schedule</u>	A critical path devised schedule of Services provided by DESIGN-BUILDER and accepted by DCAMM in accordance with this Contract.

**Project # & Name**

<u>Designer</u>	The architect(s) or professional engineer(s) (licensed and registered in the Commonwealth of Massachusetts) employed by or retained by DESIGN-BUILDER for the Project.
<u>Early Equipment Purchase Price</u>	Shall have the meaning set forth in Section 30: Project GMP; Project GMP Amendment.
<u>Early Package Amendment</u>	Shall have the meaning set forth in Section 30: Project GMP; Project GMP Amendment.
<u>Early Package Maximum Price</u>	Shall have the meaning set forth in Section 30: Project GMP; Project GMP Amendment.
<u>ECM</u>	Energy Conservation Measure.
<u>Effective Date</u>	Shall have the meaning set forth in the introductory paragraph to this Contract.
<u>Energy Savings</u>	The estimated energy and water savings (both cost and unit) to be achieved by the installation of New Equipment/Systems on a Project. These savings are not guaranteed savings.
<u>Equipment Purchase Amendment</u>	Shall have the meaning set forth in Section 30: Project GMP; Project GMP Amendment.
<u>Estimated Construction Cost</u>	The total estimated cost of constructing the Project, including the Hard Costs, the Construction General Conditions Costs, and the DESIGN-BUILDER Fee. The Estimated Construction Cost does not include costs of land acquisition, existing building demolition costs, financing costs, or design fees.
<u>Existing Equipment/Systems</u>	All equipment and related systems existing at the Premises at the time of the Effective Date, and prior to the commencement of the Construction Services.
<u>Final Acceptance</u>	The written determination by DCAMM that the Services have been 100% completed, except for the DESIGN-BUILDER's indemnification obligations, warranty obligations, obligations to continue to maintain insurance coverage for the time periods provided in the Contract, and any other obligations which are intended to survive Final Acceptance and/or the termination of the Contract.
<u>Hard Costs</u>	Shall have the meaning set forth in Section 30: Project GMP; Project GMP Amendment.
<u>Laws</u>	All applicable laws, including but not limited to applicable statutes, regulations, ordinances, codes, laws, orders, decrees, approvals, certificates and requirements of governmental and quasi-governmental authorities.



**Project # & Name**

<u>MBE/WBE</u>	Minority and/or Women Business Enterprises as defined by Executive Orders 592 and 599.
<u>New Equipment/Systems</u>	The ECM(s), new equipment and related systems to be furnished and installed by DESIGN-BUILDER in accordance with this Contract.
<u>Notice to Proceed</u>	A written communication from DCAMM directing DESIGN-BUILDER to perform Services for a particular phase of the Project as set forth in such communication. The DESIGN-BUILDER may not proceed with any Services pursuant to this Contract absent receipt of a Notice to Proceed.
<u>Owner Allowances</u>	Shall have the meaning set forth in Section 30: Project GMP; Project GMP Amendment.
<u>Preconstruction Services</u>	All Services required to be performed by DESIGN-BUILDER concurrent with Design Services on a Project as set forth in more detail in Section 26: Preconstruction Services, which may include, without limitation, design review, site inspection and testing, and cost estimating.
<u>Premise(s)</u>	The land and, if any, building(s) or space within any such building(s) on which or in which DESIGN-BUILDER is to perform the Services for a Project.
<u>Product Data</u>	Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by DESIGN-BUILDER or its Subcontractors and suppliers to illustrate materials or equipment for some portion of the New Equipment/Systems. Product data also include any such information or instructions produced by the manufacture or distributor of such materials or equipment and made readily available by said manufacturer or distributor.
<u>Project</u>	A discrete task and performance of Services for a particular Premise(s), as authorized under a Notice to Proceed.
<u>Project Change Request</u>	DESIGN-BUILDER's written request for a change order submitted in accordance with the requirements of Section 45: Changes in Scope of Services and <b>Schedule A-5: Contract Forms</b> .
<u>Project Cost</u>	The total amount to be paid by DCAMM to DESIGN-BUILDER as full and complete compensation in consideration for the performance of Services pursuant to a Notice to Proceed, as stated in the applicable Notice to Proceed. Upon execution of a Project GMP Amendment, the Project Cost is the Project GMP and (unless reflected in the Project GMP) the total fee for Design

**Project # & Name**

Services and Preconstruction Services (see Section 28: Payment during Design and Preconstruction Phase).

Project Guaranteed Maximum Price (Project GMP)

The agreed total not-to-exceed dollar amount for all Services on the Project including the cost of the Construction General Conditions Services, the Construction Contingency, CA Costs, and the Design-Builder Fee, as further detailed in Section 30: Project GMP; Project GMP Amendment.

Project GMP Amendment

Shall have the meaning set forth in Section 30: Project GMP; Project GMP Amendment.

Project Manager

DCAMM's representative responsible for overseeing the planning, design, and construction of the Project.

Project Term

Shall have the meaning set forth in Section 3: Project Services.

Punch List

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

Resident Engineer

DCAMM's on-site representative.

Schedule of Values

Shall have the meaning set forth in Section 32: Payment for Construction Services.

Services

All work to be performed by DESIGN-BUILDER on a Project, including, but not limited to, completion of Design Services, Preconstruction Services, and Construction Services.

Shop Drawings

Drawings, diagrams, details, schedules and other data specially prepared for the Services to illustrate a portion of the Services.

Subcontractor(s)

Any person or entity retained by DESIGN-BUILDER to provide any Services required by DESIGN-BUILDER under this Contract including but not limited to the provision of professional services (such as engineering or design services), labor and materials or labor only.

Substantial Completion Date

The date upon which a Certificate of Substantial Completion is issued in accordance with Section 49: Substantial Completion/Final Acceptance.

Total Contract Value

The total cost of the Contract for completion of Design and construction of all New Equipment/Systems and provision of all authorized Services, as set forth in Section 4: Total Contract Value.

Trade Allowances

Shall have the meaning set forth in Section 30: Project GMP; Project GMP Amendment.

## **PART A – GENERAL PROVISIONS**

### **Section 2 The Contract and Contract Documents**

Sections 1 through 89 of this document, together with the Schedules and Exhibits attached hereto, constitute the entire Contract. Other documents, when accepted by the Parties, shall be incorporated by reference and shall constitute “**Contract Documents**”. Such documents shall include:

- The Design and Preconstruction Payment Schedule (referenced at Section 28: Payment during Design and Preconstruction Phase) and Schedule of Values (referenced at Section 32: Payment for Construction Services)
- The Design/Construction Schedule
- Approved and Completed MBE/WBE Schedules of Participation and Letters of Intent (**Schedule A-2: Goals for Participation by M/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program**) (**Executive Orders No. 592 and No. 599**)
- Change Order forms (referenced at **Schedule A-5: Contract Forms**, included on CD or flash drive)
- Prevailing wage rate forms (referenced at **Schedule A-3: Prevailing Wage Rates**)
- The Proposal (**Schedule B** and **APPENDIX A: REFERENCE DOCUMENTS**)
- Reference documents (set forth at **APPENDIX A: REFERENCE DOCUMENTS**)

Failure to set forth a Schedule, Exhibit, or Appendix in the Table of Contents shall not exclude said Schedule, Exhibit, or Appendix from the Contract. The document shall speak for itself.

- 2.1 Entire Agreement.** The provisions of this Contract and any documents incorporated by reference herein, along with any agreed upon amendments hereto, shall constitute the entire agreement between the Parties.
- 2.2 Priority.** To the extent that there is a conflict or ambiguity and any documents attached hereto and/or incorporated by reference herein, the following order of precedence shall control: this Contract, the Design, the Proposal, the RFP, the reference documents contained in **Appendix A: REFERENCE DOCUMENTS**.
- 2.3 Days.** Unless otherwise indicated herein, all references to “days” shall mean calendar days.

**2.4 Contract Term.** The Contract Term shall commence on the Effective Date and run continuously until all Services are completed.

**2.5 Time is of the Essence.** The DESIGN-BUILDER acknowledges that the times of the Substantial Completion Date, issuance of Certificate of Final Acceptance, any other milestones for completion of portions of Services for a Project, times for submitting proposals for Contract modifications, and other times set forth in the Contract Documents are essential conditions of this Agreement.

### **Section 3 Project Services**

**3.1 General.** DCAMM may issue a Notice to Proceed for certain Services at an individual Premise or several Premises at a time under this Contract. Such authorized Services shall be binding upon the DESIGN-BUILDER for any applicable Premises for Design Services and/or Preconstruction Services and/or Construction Services, as set forth in the Notice to Proceed. DESIGN-BUILDER shall not commence the performance of any Services prior to issuance of a Notice to Proceed with such Services by DCAMM.

**3.2 Project Term.** DESIGN-BUILDER shall commence the performance of Services for a particular Project upon the issuance of a Notice to Proceed with such Project and perform such Services continuously through the completion of such authorized Services (such period, the Project Term). A Project Term may be broken into the following phases:

- a. *Design and Preconstruction Phase:* As directed in a Notice to Proceed, the design and preconstruction phase of a Project Term shall commence on the issuance of a Notice to Proceed for the Project and run continuously through the completion of Design Services and Preconstruction Services, as set forth in **PART B – DESIGN AND PRECONSTRUCTION**; and
- b. *Construction Phase:* As directed in a Notice to Proceed for Construction Services, the construction phase of a Project Term shall commence upon the date of the Notice to Proceed with Construction Services and run continuously through the issuance of a Certificate of Final Acceptance for a Project. If DCAMM does not issue a Notice to Proceed with Construction Services, the Project Term shall terminate upon the completion of the design and preconstruction phase for such Project.

### **Section 4 Total Contract Value**

The Total Contract Value is the total of all Project Costs paid by the DCAMM over the Contract Term to DESIGN-BUILDER for Services performed pursuant to Notice(s) to Proceed, provided DESIGN-BUILDER is not in default of its obligations under this Contract.

### **Section 5 Payments Generally**

#### **5.1 Requisitions.**

- a. DESIGN-BUILDER shall submit payment requisitions within 30 days after Services are performed.

- b. All payments made to the DESIGN-BUILDER are conditioned upon the satisfactory performance of its obligations under this CONTRACT. No certificate for payment and no progress payment shall constitute acceptance of Services and/or New Equipment/Systems that are not in accordance with the Contract Documents.
- c. All requests for payment shall be submitted by DESIGN-BUILDER to DCAMM in format acceptable to DCAMM, including, without limitation, any standard DCAMM forms provided. All invoices will be promptly processed by DCAMM if they are in conformity with this Contract and properly documented; if they are not in conformity with this Contract or properly documented, the invoice(s) will be returned to the DESIGN-BUILDER who will be given an opportunity to cure defects.
- d. Each request for payment submitted by DESIGN-BUILDER shall constitute DESIGN-BUILDER's representation that:
  - (i) the payment then requested to be disbursed has been incurred by DESIGN-BUILDER on account of the Services and is justly due to DESIGN-BUILDER (or in the case of Services performed by Subcontractors, to Subcontractors) on account thereof;
  - (ii) any materials, supplies, and equipment for which application for payment is being submitted have been installed and incorporated into the Services or have been stored at the Premises or at such off-Premises storage location(s) as DCAMM shall have approved in accordance with the Contract;
  - (iii) any materials, supplies, and equipment are insured in accordance with the provisions of this Contract;
  - (iv) any materials, supplies, and equipment are owned by DCAMM and are not subject to any liens or encumbrances;
  - (v) the Services that are the subject of such request for payment has been performed in accordance with the Contract Documents; and
  - (vi) all due and payable bills with respect to the Services have been paid to date or shall be paid from the proceeds of such request for payment.
  - (vii) DESIGN-BUILDER's attention is directed to the criminal penalties for false claims referenced in Section 45: Changes in Scope of Services

**5.2 Final Invoice.** DESIGN-BUILDER shall submit an invoice for final payment in accordance with this Contract within 45 days of completion of all Services authorized under a Notice to Proceed.

**5.3 EFT.** DCAMM may require that DESIGN-BUILDER receive payments via electronic funds transfer (EFT).

**5.4 Time for Payment.** Payment due either party hereunder shall be due and payable within forty-five (45) days of the invoice date. Interest shall accrue on any past due balance owed to either party hereunder at the rate established by the Comptroller in

accordance with M.G.L., c. 29, § 29C. This remedy shall be in addition to, and not exclusive of, any other remedy available under this Contract or applicable law.

- 5.5 Certification of Payment to Subcontractors.** If DCAMM so requests in writing, DESIGN-BUILDER shall certify to DCAMM on a monthly basis, that payments owed by DESIGN-BUILDER to Subcontractors and not under dispute have been paid in a timely fashion and that DESIGN-BUILDER has satisfied its current payment obligations regarding the Services.
- 5.6 Payment Liabilities of DESIGN-BUILDER.** DESIGN-BUILDER shall pay to DCAMM and/or the Commonwealth all expenses, losses and damages, as determined by DCAMM incurred in consequence of any default, defect, omission or mistake of DESIGN-BUILDER or DESIGN-BUILDER's employees or Subcontractors or the making good thereof.
- 5.7 Retention of Moneys by DCAMM.** DCAMM may keep any moneys which would otherwise be payable at any time hereunder and apply the same, or so much as may be necessary therefor, to (1) DCAMM's expenditures for DESIGN-BUILDER's account, (2) to secure DCAMM's remedies against DESIGN-BUILDER for DESIGN-BUILDER's breach of its obligations under this Contract or the breach of any person performing any part of the Services and (3) the payment of any expenses, losses, or damages incurred by DCAMM or any agency of the Commonwealth as a result of the failure of DESIGN-BUILDER to perform its obligations hereunder. DCAMM may retain, until all claims are settled, such moneys as DCAMM estimates to be the fair value of DCAMM's claims against DESIGN-BUILDER and of all claims for labor performed or furnished and for materials used or employed in or in connection with the Services and for the rental of vehicles, appliances and equipment employed. DCAMM may make such settlements and apply thereto any moneys retained under this Contract. No moneys retained under the provisions of this Section shall be held to be statutory security for the payment of claims filed in accordance with the provisions of M.G.L. c. 149, § 29, as amended, for which security is provided by bond

## **Section 6 Scope of Services Summary**

### **6.1 Standards of Service.**

- a. DESIGN-BUILDER shall perform all Services in such a manner that is in accordance with sound engineering and safety practices, achieves the Design Intent, and is in compliance with this Contract and any amendments hereto. Without limiting the foregoing, DESIGN-BUILDER shall perform all Services in such a manner so as not to harm the structural integrity of the buildings or their operating systems and so as to conform to the standards set forth in this Contract and standards in the industry.
- b. DESIGN-BUILDER shall be responsible to pay for all labor, materials, supplies, equipment, tools, construction equipment and machinery, permits, approvals, paperwork, calculations, submittals, certificates, transportation and other facilities and work necessary for the proper execution and completion of the Services in accordance with all Laws, and all engineering, design, and construction and other services required to be supervised, overseen, performed or furnished by DESIGN-BUILDER or that the Contract Documents

require the DESIGN-BUILDER to cause to be supervised, overseen, performed or furnished. DESIGN-BUILDER shall provide and perform for the Total Contract Value all of the duties and obligations set forth in the Contract Documents.

- c. All Services called for by this Contract shall be performed by properly qualified and licensed professionals employed by DESIGN-BUILDER and shall be performed in accordance with all Laws.
- d. If at any point during the Project, DESIGN-BUILDER ascertains that the Contract Documents or any aspect of the Services (including, without limitation, previously accepted Design Deliverables or (if authorized in accordance with the Contract) or portions thereof are at variance with the requirements of Laws, DESIGN-BUILDER shall promptly notify DCAMM in writing and necessary changes shall be accomplished in accordance with the Contract. If DESIGN-BUILDER performs Services knowing them to be contrary to Laws without giving such notice to DCAMM, DESIGN-BUILDER shall bear full responsibility for such Services and all costs attributable thereto, including, without limitation, corrections to the Services.
- e. DESIGN-BUILDER shall inform itself of all existing and future Laws in any manner affecting those engaged or employed in the Services, or the materials used or employed in the Services, or in any way affecting the conduct of the Services, and of all orders and decrees of bodies or tribunals having any applicable jurisdiction or authority over the Services.

**6.2 Phases of Services.** The Services for the Project shall consist of the following and shall be performed within the Contract Term and each applicable Project Term:

- a. Design Services and Preconstruction Services. DESIGN-BUILDER agrees to perform the design of the New Equipment/Systems and all required Preconstruction Services, as set forth in the Contract. The Design Services shall proceed in accordance with the Design/Construction Schedule for a Project, which shall be submitted by DESIGN-BUILDER no more than 5 days following the issuance of a Notice to Proceed for the Design Services and Preconstruction Services for a Project. Upon approval by DCAMM, the Design/Construction Schedule shall be incorporated by reference into this CONTRACT.
- b. *Construction Services.* Following receipt of a Notice to Proceed with Construction Services for a Project, DESIGN-BUILDER shall construct and install the New Equipment/Systems at the Premises pursuant to the specifications in the Contract Documents and the Design. The Construction Services shall proceed in accordance with the Design/Construction Schedule. The Design/Construction Schedule shall be submitted by the DESIGN-BUILDER no more than five (5) days following the date of a Notice to Proceed with Construction Services. Upon approval by DCAMM, the Design/Construction Schedule shall be incorporated by reference into this CONTRACT.

**6.3 DESIGN-BUILDER's Use of Subcontractors.**

- a. DESIGN-BUILDER may use Subcontractors in meeting its obligations hereunder provided that in each case DESIGN-BUILDER shall remain fully liable for all work under the Contract. DESIGN-BUILDER shall supervise and direct the Services and shall be solely responsible for all design, construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Services under this Contract.
- b. Unless otherwise specifically approved by DCAMM, all Services shall be performed by DESIGN-BUILDER pursuant to subcontracts to Subcontractors awarded by DESIGN-BUILDER in accordance with the Contract, including but not limited to, **Schedule A-4: Procedures for Subcontracts**.
- c. DESIGN-BUILDER shall coordinate the activities of DESIGN-BUILDER's employees, Subcontractors, agents or suppliers with those of the DCAMM, its employees, and agents. DESIGN-BUILDER shall not commit or permit any act which will interfere with the performance of the normal activities conducted by DCAMM or its employees, agents, visitors, licensees, and/or invitees on the Premises without prior written approval of DCAMM. DESIGN-BUILDER shall be responsible to DCAMM for the acts and omissions of DESIGN-BUILDER's employees, agents and Subcontractors of all tiers, and their agents and respective contractors' employees, and other persons performing portions of the Services or supplying materials therefor
- d. DESIGN-BUILDER shall pay or cause payments to be made for all labor performed or furnished and for all materials used or employed in carrying out this Contract.
- e. DESIGN-BUILDER shall use the personnel and Subcontractors identified in **Schedule B-2: DESIGN-BUILDER's Project Team** for the roles identified in **Schedule B-2: DESIGN-BUILDER's Project Team**. These personnel and Subcontractors may not be substituted without DCAMM's prior written approval. DESIGN-BUILDER shall make a request in writing to DCAMM to substitute any personnel or Subcontractor listed in **Schedule B-2: DESIGN-BUILDER's Project Team**; such request shall state with specificity the reasons for such substitution request and provide evidence reasonably satisfactory to DCAMM that the personnel or entity to be added as a Subcontractor is equally or better qualified to perform the required Services as the personnel or entity being substituted. Any substitution of personnel and/or Subcontractors listed on **Schedule B-2: DESIGN-BUILDER's Project Team** without prior DCAMM approval may be deemed a default by DESIGN-BUILDER under Section 59: Termination, at DCAMM's sole discretion.
- f. DCAMM reserves the right to reject any Subcontractors, such right not to be unreasonably exercised. In the event that DESIGN-BUILDER retains Subcontractors to perform any design, engineering, installation or other Services required under the Contract, DESIGN-BUILDER shall provide DCAMM with a written description of the qualifications of each Subcontractor for DCAMM's approval prior to proceeding with any Services, such approval not to be unreasonably withheld.



- g. DCAMM has the right to demand in writing that DESIGN-BUILDER remove an employee or Subcontractor from the Project for reasons stated in writing.
- h. DESIGN-BUILDER shall direct that all persons coming onto the Premises are free of drugs and alcohol. DESIGN-BUILDER shall dismiss from the Project any individual employed by DESIGN-BUILDER or any Subcontractor or suppliers who is found by the DESIGN-BUILDER, DCAMM, or the user agency of the Premises to be in violation of this provision or in any other way incompetent, guilty of misconduct, or detrimental to the Project.
- i. Each Subcontractor contract with DESIGN-BUILDER shall provide that in the event of termination of the Contract for any reason, DCAMM shall have the right (but shall have no obligation) to assume and/or accept assignment of and further assign to a general contractor, construction manager, design-builder, or other third party who is qualified and has sufficient resources to complete the Services, the right of DESIGN-BUILDER under the Subcontractor' contract with DESIGN-BUILDER. In the event of such assumption or assignment by DCAMM, the Subcontractor shall have no claim against DCAMM or such third part for work performed by such Subcontractor or other matters arising prior to termination of the Contract, and DCAMM or such third part, as the case may be, shall be liable only for obligations to the Subcontractor arising after such assumption or assignment. No Subcontractor's contract with DESIGN-BUILDER and nothing contained therein or in this Contract shall be construed to create any contractual relationship between any Subcontractor and DCAMM.

**6.4 Coordination during Project.** Where there is a potential for conflict between the demands or requirements of the ongoing Commonwealth operations at the Premises, including but not limited to other capital projects, and the performance of the Construction Services in accordance with the Design/Construction Schedule, DESIGN-BUILDER shall notify the Project Manager as soon as possible to determine the proper course of action. In the absence of specific direction by the Project Manager, DESIGN-BUILDER shall adjust Design/Construction Schedule as necessary to accommodate the demands or requirements of the ongoing Commonwealth operations at the Premises, and shall notify the Project Manager as soon as possible detailing the implications of such adjustments on the overall Design/Construction Schedule. DESIGN-BUILDER shall further endeavor to perform work simultaneously with other contractors performing work on other capital projects at the Premises to minimize disruptions to the Premise's operations.

Coordination with the Premises' operations shall be required throughout the Project. DESIGN-BUILDER shall be required to participate in ongoing communications with Premises personnel, including the facility manager, building occupant liaisons and security staff, at the direction of the Project Manager. Notwithstanding the foregoing, DESIGN-BUILDER may not communicate with building occupants unless specifically requested by the Project Manager.

**Section 7 Energy Savings.**

- a. Design-Builder shall confirm the baseline utility consumption data by building and in total for the Project during the performance of Design using the DCAMM site audit template to be provided by DCAMM.
- b. DESIGN-BUILDER shall calculate the Energy Savings for each ECM and in total for the Project during the performance of Design and shall update the Energy Savings throughout the Project as necessary. Energy Savings estimate updates for each ECM by building (if applicable) and for the entire Project shall be provided as part of each Design Deliverable using the DCAMM site audit template to be provided by DCAMM.
- c. If Construction Services are authorized in accordance with the Contract, all Construction Services shall be conducted to ensure that the Energy Savings are achieved.

**Section 8 Incentives**

DESIGN-BUILDER, in good faith, shall explore all available outside utility rebate programs, federal government programs related to tax incentives and tax credits, emissions offsets and credits, ISO New England (ISO-NE) Forward Capacity Market programs that may be gained as a result of the Construction Services. DESIGN-BUILDER shall provide DCAMM with immediate notification of the potential for such payments to be gained. All such payments shall accrue to DCAMM, if secured. In exchange, to the extent that such payments require additional labor, engineering, or other work by DESIGN-BUILDER, DCAMM shall, in good faith, review any request for an equitable adjustment to the Project Cost. If directed by DCAMM, such equitable adjustment shall be processed as set forth in Section 45: Changes in Scope of Services and **Schedule A-5: Contract Forms**. Notwithstanding the foregoing, DESIGN-BUILDER shall not be entitled to an equitable adjustment (as a Change Order or otherwise) for any labor, engineering, or other work necessary for calculation of anticipated Energy Savings in connection with utility incentive applications.

**Section 9 Project Meetings**

Throughout the Project Term, DESIGN-BUILDER shall schedule weekly project meetings of DESIGN-BUILDER and DCAMM to review progress on the Services, agree on any redirection, ensure that good workmanship is maintained, coordinate any DCAMM activity with the Design/Construction Schedule, and otherwise maintain quality control. Project meetings may be scheduled less frequently if approved by DCAMM. DESIGN-BUILDER shall take minutes of each meeting in a manner acceptable to DCAMM and shall distribute such minutes to DCAMM and all attendees and any other persons agreed upon by the parties no later than five (5) calendar days prior to the next scheduled meeting. DCAMM shall have at least five (5) calendar days to make corrections to minutes. Such corrections shall be deemed accepted by DESIGN-BUILDER unless objections are provided to DCAMM in writing within three (3) calendar days of DCAMM's distribution of corrections.

**Section 10 Notice of Deficiencies in Existing Equipment/Systems.**

If prior to or during the performance of the Services, either party is aware or becomes aware of any deficiencies in the Existing Equipment/Systems that were not previously noted in the Proposal or **APPENDIX A: REFERENCE DOCUMENTS**, that will cause a material change in the Design or Construction Services, that may: (1) prevent DESIGN-BUILDER from completing the Construction Services as set forth in the Contract Documents or Design; or (2) prevent the Project from achieving the Design Intent; and/or (3) may prevent DESIGN-BUILDER from meeting any other requirements under this Contract, then the party that became aware of such deficiencies shall provide immediate written notice to the other of such deficiencies.

**Section 11 Permits and Approvals.**

All required permits, approvals, user fees, certificates, and licenses of any kind required by Laws which must be obtained and be met in connection with the Services, including without limitation, all federal, state and local building, plumbing and electrical permits and utility interconnection agreements, shall be secured and paid for by DESIGN-BUILDER prior to commencement of Construction Services (for the particular portion of Construction Services for which the permit, approval or license is required) or issuance of the Certificate of Final Acceptance, as appropriate for the respective permits, approvals and licenses. DCAMM shall use reasonable efforts to assist DESIGN-BUILDER in obtaining such necessary permits and approvals for installation of the New Equipment/Systems. In no event shall DCAMM, however, be responsible for payment of any permit or license fees. Before commencing any Services requiring a permit or license, DESIGN-BUILDER shall furnish copies of each such required permit or license to DCAMM. DCAMM shall be responsible for obtaining any permits for operation of the New Equipment/Systems after the issuance of Certificate of Final Acceptance.

**Section 12 DCAMM Authorization/Approval.**

DCAMM shall retain ultimate approvals over the scope of Services, the qualifications of DESIGN-BUILDER's consultants and Subcontractors, New Equipment/Systems installed, and end use conditions. No Services shall proceed without written consent of DCAMM; however, such consent shall not be unreasonably withheld or delayed. For purposes of this Contract, the Commissioner of DCAMM or his/her designee, in consultation with the Commonwealth agency operating at the Premises, shall be authorized to provide approvals, consent, acceptance, or any other procedural authorization related to the installation of the New Equipment/Systems required to be provided to DESIGN-BUILDER hereunder.

**Section 13 CORI Checks for DESIGN-BUILDER's and Subcontractors' Employees.**

If requested by DCAMM, DESIGN-BUILDER shall submit information proving acceptable criminal background for all employees, agents and Subcontractors' employees and agents

**Section 14 Tool Inventory and Other Entry Procedures.**

If provided by DCAMM, DESIGN-BUILDER shall follow all tool inventory and other procedures for entry and/or exit of the Premises. Any delays due to application of such procedures shall not entitle the DESIGN-BUILDER to an equitable adjustment of the Project Cost and/or extension of time in accordance with the Contract.

**Section 15 DCAMM Access and Document Access.**

- a. DCAMM shall have access to inspect the work conducted on the Premises at all times during the Contract Term.
- b. DCAMM shall have reasonable access to the books, records, and other compilations of data which pertain to the performance of the Services. Records shall be kept in accordance with generally accepted accounting principles, and calculations kept on file in legible form. DCAMM shall provide DESIGN-BUILDER with reasonable notice prior to exercising its rights under this subparagraph and DESIGN-BUILDER shall be afforded a reasonable opportunity to make books, records and data available.
- c. Pursuant to Executive Order 195, the Governor or his designee, the Secretary of Administration and Finance, and the State Auditor or his designee shall have the right at reasonable times and upon reasonable notice to examine the books, records, and other compilations of data of DESIGN-BUILDER and all Subcontractors which pertain to the performance and requirements of this Contract.

**Section 16 Utility and Other Third Party Access.**

Upon request by any utility company providing the Premises with services and/or providing incentives, interconnection of renewable energy generators, or other funding or work for the Project, the Premises personnel shall agree to allow such utility company (or other approved agent or third parties) to interview DCAMM and Premises personnel and to enter the Premises at reasonable times throughout the life of the installed New Equipment/Systems to install metering equipment, perform energy and water audits or inspect the Premises and any New Equipment/Systems installed. DESIGN-BUILDER also agrees to cooperate with such utility company (or its agent or third party) upon request and with prior consent of DCAMM (such consent not to be unreasonably withheld), in conducting such activities and/or in analyzing energy and water savings. At all times, a representative of DCAMM (or its agent) shall be present during such inspections

**Section 17 Damages Caused by DESIGN-BUILDER.**

DESIGN-BUILDER shall repair and restore to its original condition any area of damage caused by DESIGN-BUILDER's performance under this Contract. DCAMM reserves the right to review the work performed by DESIGN-BUILDER and to direct DESIGN-BUILDER to take certain corrective action if, in the opinion of DCAMM, the structural integrity of the Premises or its operating system is or will be harmed. All costs associated with such corrective action caused by DESIGN-BUILDER's breach of its obligations under this Contract shall be borne by DESIGN-BUILDER. All construction and installation by DESIGN-BUILDER shall be in compliance with applicable building, fire and other codes in existence as of the date of this Contract.

**Section 18 Equal Employment Opportunity, Non-Discrimination in Hiring and Employment and Affirmative Action Program [Executive Order Nos. 592 and 599]**

DESIGN-BUILDER and its Subcontractors may not engage in discriminatory employment practices; and DESIGN-BUILDER certifies that they are in compliance with all applicable federal and state Laws, rules, and regulations governing fair labor and employment practices. These provisions shall be enforced by DCAMM and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of this Contract and may subject DESIGN-BUILDER to appropriate sanctions.

During the performance of this Contract, DESIGN-BUILDER and all of its Subcontractor shall comply with all applicable equal employment opportunity, non-discrimination and affirmative action requirements, including but not limited to the requirements set forth in **Schedule A-2: Goals for Participation by M/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program (Executive Orders No. 592 and No. 599)**. In addition, DESIGN-BUILDER shall commit 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, including but not limited to the requirements set forth in **Schedule A-2: Goals for Participation by M/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program (Executive Orders No. 592 and No. 599)**.

For purpose of the Contract, "minority" refers to Asians, Blacks, Western Hemisphere Hispanics, Native Americans, and Cape Verdeans; "Commission" refers to the Massachusetts Commission Against Discrimination.

#### **Section 19 Minority/Women Participation Goals and Anti-Discrimination Programs**

DESIGN-BUILDER shall comply with the goals as set forth in **Schedule A-2: Goals for Participation by M/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program (Executive Orders No. 592 and No. 599)**. The MBE/WBE participation goals shall be applied to the Project Cost for Design Services and Preconstruction Services and the Project Cost for Construction Services.

#### **Section 20 Veteran Owned Business Participation and Other Preference [Chapter 108 of the Acts of 2012]**

DCAMM promotes and monitors the participation of Service-Disabled Veteran-Owned and Veteran-Owned Business Enterprises (collectively "VBE") in its construction and design projects. The goal for VBE participation on the Project is 3% of the Total Contract Value. For the Commonwealth's VBE program purposes, a VBE is a firm so certified directly by the Massachusetts Supplier Diversity Office. VBEs shall be provided opportunities to participate in the Project. DESIGN-BUILDER shall submit its "Anticipated Veteran Owned Business and Service-Disabled Veteran-Owned Business Enterprise Participation" plan to DCAMM's Compliance Office prior to submission of the 90% Design Deliverable (or if no 90% Design Deliverable is required for a particular ECM, the final or 100% Design Deliverable). DESIGN-BUILDER shall report on the amount of VBE participation on the Project on a regular basis, in the form, format, and frequency requested by DCAMM, including, but not limited to, by electronic reporting.

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.

## **Section 21 Prevailing Wages.**

The DESIGN-BUILDER shall comply with M.G.L. c. 149 §§26 – 27H. All applicable workers employed under this Contract shall not be paid less than the minimum wage rate for the area as attached in **Schedule A-3: Prevailing Wage Rates**. Each DESIGN-BUILDER must issue a statement of compliance to be incorporated into this CONTRACT. This statement, as attached in **Schedule A-3: Prevailing Wage Rates**, must be submitted within fifteen (15) days after completion of the Construction Services, and shall be executed by DESIGN-BUILDER, Subcontractor, or public body or by any authorized officer or employee of DESIGN-BUILDER, Subcontractor or public body who supervises the payment of wages. DCAMM is not responsible for any errors, omissions, or misprints in the said **Schedule A-3: Prevailing Wage Rates**. **Schedule A-3: Prevailing Wage Rates** shall continue to be the minimum rate wages payable to workers employed in the Services throughout Contract Term, subject to the exceptions provided in M.G.L c.149, §§ 26-27H. DESIGN-BUILDER shall not have any claim for extra compensation from DCAMM if the actual wages paid to workers employed in the Construction Services exceeds the rates listed on **Schedule A-3: Prevailing Wage Rates** or as otherwise provided by Laws. DESIGN-BUILDER shall cause a copy of said **Schedule A-3: Prevailing Wage Rates** to be kept in a conspicuous place at the Premises during the Contract Term. If reserve police officers are employed by DESIGN-BUILDER, they shall be paid the prevailing wage of regular police officers. (See M.G.L c.149, s.34B). In accordance with M.G.L. c. 149, § 27, DESIGN-BUILDER shall obtain from DCAMM annual updates to prevailing wage schedules for all public construction projects lasting longer than one year. DESIGN-BUILDER is required to obtain the wage schedules from awarding authorities, and to pay no less than these rates to covered workers. DESIGN-BUILDER and all Subcontractors are required to anticipate such annual updated prevailing wage schedules and neither DESIGN-BUILDER nor any Subcontractors shall be entitled to claim additional compensation for Construction Services due to any increased rates shown on updated prevailing wage schedules.

## **Section 22 Materials Provided to DESIGN-BUILDER.**

All items made available to the DESIGN-BUILDER in the RFP, including, without limitation the documents referenced in **Appendix A: REFERENCE DOCUMENTS**, and otherwise provided by DCAMM to DESIGN-BUILDER may be used solely for the purpose of this Contract and shall be handled in accordance with the Contract terms, including, without limitation, Sections 85: Data Security Certification, 863: Copyrights, Patents, and Intellectual Property Rights, and 87: Security and Confidentiality; Publication. DCAMM does not guarantee, nor does it make any expressed or implied warranties concerning the accuracy of any such information. All such information is provided solely for the purpose of a setting forth the Project's design intent, performance specifications, and in certain cases a preliminary design of the Project and shall not serve as a substitute for DESIGN-BUILDER's Design Services obligations hereunder.

## **Section 23 Quality Assurance/Quality Control**

DESIGN-BUILDER shall prepare and submit to DCAMM for its approval a quality assurance/quality control (QA/QC) program. Such program shall be in accordance with the current version of the DCAMM standard specifications, including, without limitation, providing that DESIGN-BUILDER shall be responsible for insuring that adequate quality assurance and quality control programs are developed, implemented and enforced by DESIGN-BUILDER s staff and all Subcontractors, including an experienced quality manager, employed by

DESIGN-BUILDER whose sole responsibility shall be quality assurance and quality control and shall be stationed at the Premises and who shall be responsible for reviewing and coordinating the quality control activities of all Subcontractors and monitoring the implementation and enforcement thereof in connection with all aspects of the Services. The quality manager shall report to DCAMM and its representatives on a weekly basis the status of the program for each trade, and any deficiencies, and a recommended plan for corrective action. Unless otherwise directed by DCAMM in writing, the quality manager must be dedicated as “full-time” or not, for this project. Refer to Section 014000 of the DCAMM standard specifications for further requirements of the quality manager.

## **PART B – DESIGN AND PRECONSTRUCTION**

### **Section 24 Commencement and Schedule of Design and Preconstruction Services**

- 24.1 Start of Design Services and Preconstruction Services.** DESIGN-BUILDER shall promptly commence Design Services and Preconstruction Services upon issuance of a Notice to Proceed for such Services.
- 24.2 Initial Meeting.** Upon execution of this Contract and receipt of a Notice to Proceed with Design Services and Preconstruction Services, DESIGN-BUILDER, its key personnel, (if applicable) Designer, and key Subcontractors as may be designated by DCAMM shall attend an administrative conference with DCAMM at the Premises for the purpose of making introductions, exchanging contact information, clarifying relationships, reviewing billing procedures, and any other preliminary Project information.
- 24.3 Schedule.** Time is of the essence of this Contract. All Design Services and Preconstruction Services shall be completed within the time specified in **Schedule B-2: Project Schedule** and in accordance with the approved Design/Construction Schedule. Should DESIGN-BUILDER require additional time to complete the Design Services and Preconstruction Services, DESIGN-BUILDER shall document the reasons therefor and submit a written request for an extension of time within 20 days of the occurrence of the event alleged to be the cause of the delay, as provided in this Section and in Section 45: Changes in Scope of Services. Failure to submit said written request within the time required by the preceding sentence shall preclude DESIGN-BUILDER from subsequently claiming any time extension due to said delay

### **Section 25 Design Requirements and Approvals**

- 25.1 DESIGN-BUILDER’s Duty of Proper Design.** DESIGN-BUILDER is solely responsible for the design of a Project. All Design Services called for by this Contract shall be performed by properly qualified and licensed professionals employed by DESIGN-BUILDER and shall be performed in accordance with all Laws. DESIGN-BUILDER shall perform all Design Services in accordance with the standards set forth in the Contract and Contract Documents and in such a manner so as to achieve the Design Intent.
- 25.2 Design Deliverables and Submittals.**

- a. General Requirements.
- (i) Prior to the construction of any New Equipment/Systems, DESIGN-BUILDER shall submit all required Design Deliverables and submittals as directed by the DCAMM Project Manager and in accordance the Contract Documents.
  - (ii) Design Deliverables shall follow guidelines established in this Contract.
  - (iii) DESIGN-BUILDER must have all drawings, submittals, and design documents stamped by a Massachusetts registered professional engineer for each corresponding discipline, if applicable.
  - (iv) DESIGN-BUILDER shall prepare drawings based upon and in accordance with the following standards, as applicable: DCAMM's Design Procedures Manual (August 2008) and DCAMM Standard Specifications Rev. 8.0, which are available on the DCAMM website ([www.mass.gov/dcam](http://www.mass.gov/dcam)) or in electronic format as provided by DCAMM, and any reasonable and necessary updates incorporated therein after the Effective Date. DCAMM and the DESIGN-BUILDER shall cooperate in the coordination of BIM/Revit standards with DCAMM CAD standards and make reasonable efforts to avoid incompatibilities and conflicts where possible between the two documentation systems.
  - (v) DESIGN-BUILDER shall provide copies of all documentation for Design Deliverables and submittals as set forth in the DCAMM Standard Specifications Rev. 8.00.
  - (vi) DESIGN-BUILDER shall prepare and keep current a schedule of Design Deliverables and submittals which is coordinated with the progress schedule and allows DCAMM reasonable time to review submittals.
  - (vii) If Design Deliverables are being prepared by DESIGN-BUILDER's Designer, DESIGN-BUILDER shall review such Design Deliverables as part of Preconstruction Services as set forth in Section 26: Preconstruction Services. The time required for such DESIGN-BUILDER review shall be taken into account by DESIGN-BUILDER in the Design/Construction Schedule and the development of the Project progress schedule in accordance with the Contract.
- b. *Design Deliverables.* DESIGN-BUILDER shall provide the following documentation as part of the submission of Design Deliverables:
- (i) one electronic copy readily downloadable of the drawings and at least two (2) paper copies of the same; or, where applicable, two (2) CDs (in electronic spreadsheet format) containing a detailed inventory of repairs of, for example, lighting, steam traps, and/or water fixtures and a minimum of two (2) paper copies of the same;



- (ii) one electronic copy readily downloadable of the required specifications and two (2) paper copies of the same; and
  - (iii) if applicable, documentation of utility rebate and/or incentive application submittal and pre-approval, either as a PDF or at least two (2) paper copies, as requested by DCAMM
- c. Submittals.
- (i) In addition to Design Deliverables, DESIGN-BUILDER shall provide the following submittals prior to the start of any Construction Services: coordinated Shop Drawings, Product Data, shop details, setting diagrams, samples, and similar submittals required by the Design and/or Contract. DESIGN-BUILDER shall provide a minimum of one electronic copy readily downloadable and two (2) paper copies of all such submittals.
  - (ii) For the final submittal for any piece of New Equipment/System, DESIGN-BUILDER shall provide one electronic copy readily downloadable and two (2) paper copies of the following relating to the New Equipment/Systems, all in documentation and format as may be determined by DCAMM: descriptive literature, specifications, location key, manufacturer cut sheets, Shop Drawings, reflective ceiling plans, emergency lighting, lighting line-by-line, and, if requested, sample products, related warranties and maintenance agreements.
  - (iii) DESIGN-BUILDER shall prepare and keep current a schedule of submittals which is coordinated with the progress schedule and allows DCAMM reasonable time to review submittals
  - (iv) DESIGN-BUILDER shall review, approve, and submit to DCAMM and any consultant(s) designated by DCAMM in writing, Shop Drawings, Product Data, samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Construction Services or in the activities of DCAMM or of separate contractors. Submittals made by DESIGN-BUILDER which are not required by the Contract Documents or which do not comply with the Contract Documents may be returned without action.
  - (v) Shop Drawings, Product Data, samples, and similar submittals are not Contract Documents. The purpose of their submission is to demonstrate for those portions of the Construction Services for which submittals are required the way DESIGN-BUILDER proposes to conform to the information given and the design concept expressed in the Contract Documents
  - (vi) By submitting Shop Drawings, Product Data, samples and similar submittals, DESIGN-BUILDER represents that DESIGN-BUILDER has determined and verified materials, field measurements, and field construction criteria related thereto and has checked and coordinated the information contained within such submittals with the requirements of the Design and Contract.

- (vii) DESIGN-BUILDER shall direct specific attention in writing or on resubmitted Shop Drawings, Product Data, samples, or similar submittals to revisions other than those requested by the DCAMM and any consultant(s) designated by DCAMM in writing on previous submittals.
  - (viii) DESIGN-BUILDER shall perform no portion of the Construction Services requiring submittal and review of Shop Drawings, Product Data, samples, or similar submittals until the respective submittal has been approved by DCAMM and/or consultant(s) designated by DCAMM in writing.
  - (ix) DESIGN-BUILDER shall perform the Construction Services in accordance with all Shop Drawings, Product Data, samples and similar submittals. Materials furnished, used, or employed under the Contract must be equal in quality to the samples furnished.
  - (x) DESIGN-BUILDER shall not be relieved of responsibility for deviations from requirements of the Contract Documents by approval of Shop Drawings, Product Data, samples, or similar submittals unless DESIGN-BUILDER has specifically informed DCAMM in writing of such deviation at the time of submittal and DCAMM has given explicit approval to the specific deviation. DESIGN-BUILDER shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, samples, or similar submittals by the DCAMM's or DCAMM's consultant(s) actions.
  - (xi) DESIGN-BUILDER shall perform the Construction Services in accordance with all Shop Drawings, Product Data, samples and similar submittals. Materials furnished, used, or employed under the Contract must be equal in quality to the samples furnished.
- d. *Energy Baseline and Savings.* As part of the 50%, 90% and final Design Deliverable, Design-Builder shall provide DCAMM with an updated site audit template indicating the current understanding of baseline utility consumption and estimated utility and operational savings related to each ECM and in total for the Project.
- e. Commissioning and M&V Plan.
- (i) DCAMM's third party commissioning agent will create a commissioning plan and a measurement and verification (M&V) plan to be provided to DESIGN-BUILDER by DCAMM prior to the acceptance of the final Design Deliverable. DESIGN-BUILDER shall provide to DCAMM any comments on the commissioning plan and M&V plan within thirty (30) days of receipt of each respective plan the plan or as part of final Design Deliverable, whichever is earlier, provided that CONTRACTOR shall have at least ten (10) days to provide such comments. The commissioning plan will: describe how performance testing is to be conducted for each element and total system of the installed New Equipment/Systems; designate the commissioning team and their roles and responsibilities, the pre-functional and functional performance test forms, and commissioning schedule, as it relates to

the overall Design/Construction Schedule; and provide a description of how system deficiencies will be recorded and corrected before Project closeout. The M&V plan will: (if applicable) describe how the Energy Savings will be verified for the Project in a transparent manner; describe the pre-installation measurement or data logging of energy consumption for each piece of equipment being installed, the recommended permanent metering equipment to be installed, and the approach for post-installation measurement of energy consumption of New Equipment/Systems; and (if applicable) include the calculation methodology for Energy Savings based on measured and stipulated variables.

- (ii) Design Deliverables shall not be considered completed and DESIGN-BUILDER may not commence Construction Services for any New Equipment/Systems without DESIGN-BUILDER's response to the draft commissioning plan and M&V plan, unless otherwise specifically authorized by DCAMM in writing.
- (iii) DCAMM will provide DESIGN-BUILDER with a final commissioning plan and M&V plan following review of DESIGN-BUILDER's comments on the draft plans by DCAMM's third party agent. DESIGN-BUILDER shall comply with the requirements of the final commissioning plan and M&V plan provided by DCAMM, including, without limitation, performing any and all testing requirements indicated to be the responsibility of DESIGN-BUILDER or Subcontractors and coordinating schedules with DCAMM, DCAMM's third party agent, and Subcontractors as necessary for any required testing.

f. Training Plan.

- (i) DESIGN-BUILDER shall develop a training plan in a format acceptable to DCAMM as part of Design Services. The training plan shall: include an adoption and utilization plan necessary to allow the user agency that operates the Premises to operate the New Equipment/Systems and all associated Existing Equipment/Systems independently following the expiration of any service, maintenance, or warranty requirements of DESIGN-BUILDER and to allow such user agency to gain expertise in the New Equipment/Systems such to allow the user agency to gain the benefit of the Energy Savings for the expected useful life of the New Equipment/Systems; incorporate all applicable manufacturer training requirements and/or recommendations; set forth the specific training requirements for Subcontractors, including, but not limited to, the Designer; set forth the procedures for verification of utilization, including, but not limited to, sign-in sheets for all training sessions; require videotaping of training sessions to maximize usefulness to the user agency and DCAMM; for each training session, specify the equipment included, intended audience, location, objectives, subjects covered, duration, instructor and qualifications, and methods (i.e. classroom lecture, video, site walkthrough, actual operational demonstrations, written handouts, etc.). This section shall not impose any additional liability for failures of the New Equipment/Systems after the Contract Term and any related service

and/or warranty periods have expired that does not exist elsewhere in this Contract.

- (ii) DESIGN-BUILDER shall submit a draft training plan as part of the 50% Design Deliverable for each Project. DESIGN-BUILDER shall incorporate any comments or requested changes provided by DCAMM into the draft training plan, which shall be provided to DESIGN-BUILDER by DCAMM no later than thirty (30) days from submission of the draft training plan. DESIGN-BUILDER must have DCAMM acceptance of the training plan prior to submission of the final Design Deliverable for each Project. Design Deliverables shall not be considered complete and DESIGN-BUILDER may not commence Construction Services for any New Equipment/Systems without DCAMM's written acceptance of the training plan.
- g. *Statement of Design Intent.* As part of the final Design Deliverable, DESIGN-BUILDER shall provide DCAMM with a written statement of Design Intent. Such statement shall set forth in sufficient detail reasonably acceptable to DCAMM the Project's Design Intent and the manner in which the anticipated Construction Services will accomplish such Design Intent. Design Deliverables shall not be considered completed and DESIGN-BUILDER may not commence Construction Services for any New Equipment/Systems without an approved statement of Design Intent, unless otherwise specifically authorized by DCAMM in writing.
- h. *DCAMM Review.* DCAMM shall review all Design Deliverables and submittals for compliance with the Contract and, if applicable, DESIGN-BUILDER submittals and notify DESIGN-BUILDER within a maximum of thirty (30) days if the Design Deliverable or submittal is acceptable or respond with objections, changes, or requests for clarification. DESIGN-BUILDER shall make (or, if applicable, DESIGN-BUILDER shall cause DESIGN-BUILDER's Designer to make) all changes in Design Deliverables and/or submittals required by comments made by DCAMM before the Design Deliverable or submittal will be accepted, unless such changes are in DESIGN-BUILDER's or (if applicable) Designer's professional opinion not suitable, in which case DESIGN-BUILDER shall communicate in writing the reasons why they are not suitable. When necessary, CONTRACTOR and (if applicable) Designer shall meet with DCAMM and any appropriate agents of DCAMM or of the facility(ies), and any appropriate Subcontractors to develop a mutually satisfactory Design Deliverable or submittal. Along with revised Design Deliverables and/or submittals reflecting comments provided by DCAMM, DESIGN-BUILDER shall submit to DCAMM a written report indicating the action taken on all comments provided by DCAMM and indicate where they were incorporated into this phase

**25.3 Compliance with Life-Cycle Cost Estimate [M.G.L. c. 7C § 29 and M.G.L. c. 149 § 44M].** DESIGN-BUILDER shall comply with all of the life-cycle cost estimate and analysis requirements set forth in M.G.L. c. 7C § 29 and c. 149 § 44M and this Contract. The DESIGN-BUILDER 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 DESIGN-BUILDER 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 § 44M.

**25.4 Test Installations.** If requested by DCAMM, DESIGN-BUILDER and DCAMM shall cooperatively identify areas suitable for test installation. At a minimum of two (2) weeks prior to DESIGN-BUILDER's submittal of final Design Deliverable or submittal in accordance with this Section, as requested by DCAMM, or prior to acceptance of New Equipment/Systems submittals pursuant to Section 49: Substantial Completion/Final Acceptance DESIGN-BUILDER shall perform test installations of mutually agreed upon New Equipment/Systems in specified locations on the Premises. All test installations shall be performed in accordance with the requirements of Construction Services set forth in **Part C – CONSTRUCTION SERVICES** of the Contract. DCAMM shall inspect each test installation to determine the adequacy of the proposed New Equipment/Systems. Upon approval of test installations, if applicable, the final Design Deliverable and/or submittal shall be submitted for DCAMM review in accordance with this Section.

**25.5 Geotechnical Engineer Services.**

- a. *Included in Design Services.* If requested by DCAMM, DESIGN-BUILDER shall provide the following geotechnical services as part of Design Services:
- (i) Foundation design criteria to include engineering design parameters and settlement analyses for shallow spread footings, mat foundations, driven piles, drilled piers (caissons), auger cast piling, pressure injected footings (PIFs), and other foundation systems.
  - (ii) Settlement and subsidence analysis to include analyzing loose granular deposits for liquefaction potential, calculating consolidation settlement in soft clay and organic deposits under new earth embankment or area fill.
  - (iii) Earth retaining structures and reinforced earth (i.e., cantilever systems, tied-back walls, gravity retaining walls, and other earth retention systems).
  - (iv) Slope design to include soil and rock stability.
  - (v) Requisite construction administration services relating to foundation, underslab utilities within the building footprint, and retention systems work (i.e., field observations, review and approval of relevant submittals, preparation of responses to relevant RFIs (Requests for Information), review of substructure related tests, verification of design intent, and other similar activities).
- b. *Additional Services.* Unless otherwise stated in the RFP, the following are not included within the Design Services. If requested by DCAMM in writing, DESIGN-BUILDER shall perform the following as additional services in accordance with Section 28.4:
- (i) Subsurface explorations, including but not limited to: soil borings, test pits, percolation tests, observation wells, mapping of existing underground utilities and appurtenances (active, inactive and

abandoned), and detrimental conditions, including but not limited to: buried foundations, dump sites, hazardous materials, peat, ledge, and other elements that may impact proposed new construction;

- (ii) Where hazardous materials are suspected, discovered and/or known to exist, the procurement of the services of a Licensed Site Professional (LSP) to analyze such materials and recommend appropriate remediation. Analyses shall not be performed by a Geotechnical Engineer, unless she/he is also an LSP.
- (iii) Services related to on-site instrumentation and monitoring of the installation of deep foundations, including but not limited to: driven piles, drilled piles, and pressure-injected footings (PIFS), to the extent these are incorporated into the final design.

**25.6 No Construction Services prior to DCAMM Review.** DESIGN-BUILDER shall not commence Construction Services for any New Equipment/Systems until all required Design Deliverables and the final required submittal for such New Equipment/System have been reviewed by DCAMM in accordance with this Contract and this Contract has been amended to incorporate the Construction Services in the authorized scope of work. DCAMM's acceptance of the Design and/or amendment of the Contract to authorize Construction Services shall in no way relieve DESIGN-BUILDER from its professional responsibility for all Services and documents furnished by DESIGN-BUILDER and its Subcontractors (including, if applicable, DESIGN-BUILDER's Designer), including, without, limitation all Design Deliverables and submittals.

**25.7 Review of As-Built Drawings; Record Drawings.** DESIGN-BUILDER shall, or, if applicable, shall cause its Designer, to do the following:

- a. Review As-Built Drawings and incorporate changes made during the Construction Services, including but not limited to changes authorized by Change Orders and information from the marked-up prints and As-Built Drawings into a reproducible record drawings and electronic media drawings and, if applicable, BIM;
- b. Submit to DCAMM three (3) sets of printed record drawings with three (3) electronic copies.

## **Section 26 Preconstruction Services**

**26.1 Preconstruction Services Generally.** Commencing upon the date directed in an NTP issued by DCAMM, DESIGN-BUILDER shall work closely with DCAMM to perform all Preconstruction Services tasks as set forth in this Section and as required under the Contract. Preconstruction Services shall include, without limitation:

- a. attend meetings;
- b. provide advice and recommendations to DCAMM, (if applicable) the Designer, and consultants during the schematic design, design development phase of the Project, and thereafter as required by reviewing design development and other construction documents as they are developed;

- c. provide advice and recommendations to DCAMM, (if applicable) the Designer, and their respective consultants relating to value engineering, estimating, budgeting, constructability, suitability of materials and equipment, critical path method scheduling, phasing, time, methods and sequence of construction, utility cost savings, life cycle cost analyses, and the clarity, consistency and coordination of the contents of all documentation during the design development and construction documents phases;
- d. assist in the identification of utility incentives or other rebates for which the Project may qualify and provide information and/or documentation necessary to complete applications for the same;
- e. participate in the development of the Project master schedule, phasing, and relocation schedule and develop a detailed critical path method schedule that identifies all design activities, permits, and all other activities required to be completed before construction activities can begin and a preliminary construction schedule showing all phasing;
- f. develop the scope of work and prepare bid packages (if applicable, in concert with the Designer) for each category of contracted work to be bid and prequalify and select each Subcontractor in accordance with **Schedule A-5: Procedures for Subcontracts**;
- g. all other services required for projects of the type and scope of the Project and customarily provided by a design-build contractor and/or required by the DESIGN-BUILDER in the Contract Documents during the preconstruction phase of such a project.

## **26.2 Construction Planning and Scheduling.**

- a. DESIGN-BUILDER is responsible to prepare and maintain the Design/Construction Schedule to ensure the timely performance and delivery of the Projects in accordance with the Contract. Without limitation, DESIGN-BUILDER shall, if appropriate, make recommendations with respect to the phasing of the Construction Services and shall make recommendations as to the purchase and assist in expediting the procurement of long lead items required for the Project to ensure their delivery by the required dates. DESIGN-BUILDER shall be responsible for the development and division of the Construction Services in manner to complete all Project Services consistent with the Design/Construction Schedule, including, without limitation, completing bidding and awarding of necessary Subcontractor contracts. DESIGN-BUILDER shall take into consideration the factors of economies, time of performance, availability of labor and materials, and provision for temporary facilities in determining the proper division, phasing, and sequencing of Services.
- b. DESIGN-BUILDER shall assist DCAMM to meet any scheduling responsibilities assigned by DCAMM, including, without limitation, coordinating and integrating the Design/Construction Schedule and performance of Services with the activities of DCAMM and other parties.

**26.3 Design Review.** If the Designer is a Subcontractor, DESIGN-BUILDER shall review, on a continuous basis, development of the Design (including, without limitation, drawings, plans, and specifications) produced by the Designer. The design reviews shall be performed with a group of architects and engineers, who are either employees of DESIGN-BUILDER or independent consultants under contract with DESIGN-BUILDER, and are identified in DESIGN-BUILDER's key personnel and Subcontractors identified in **Schedule B-2: DESIGN-BUILDER's Project Team** or otherwise approved. Review of the documents is to discover inconsistencies, errors, and omissions between and within design disciplines. DESIGN-BUILDER shall consult with DCAMM and the Designer regarding the selection of materials, building systems and equipment, and shall recommend alternative solutions whenever design details affect construction feasibility, schedules, cost, or quality, and shall provide other value engineering services to DCAMM. Without limitation, DESIGN-BUILDER shall review the design documents for clarity, consistency, constructability, maintainability, operability, coordination among trades, coordination between the specifications and drawings, installation and construction, and sequence of construction, including recommendations designed to minimize adverse effects of labor or material shortages. Upon request by DCAMM, DESIGN-BUILDER shall also provide feedback and review any life cycle cost analyses prepared by the Designer. All reviews required hereunder shall be provided in writing with detailed notations on the drawings and specifications and coordinated with a detailed spreadsheet of the notations and recommended solutions in order to track the issues to final resolution, unless another form is requested by DCAMM. DCAMM may require DESIGN-BUILDER to provide design review comments in electronic format compatible with DCAMM's current or other form of internal project management software. DESIGN-BUILDER shall attend meetings as necessary with the Designer and DCAMM in order to discuss and resolve all issues.

**26.4 Cost Estimates.**

- a. Unless otherwise directed in writing by DCAMM, DESIGN-BUILDER shall prepare two different fully detailed cost estimates of the Estimated Construction Cost of the Project as follows:
  - (i) at fifty percent (50%) design documentation
  - (ii) at ninety percent (90%) design documentation.

Each detailed estimate must be submitted with supporting data, including, but not limited to, unit costs of all materials, equipment, and labor hours required to complete the work of all sections of the specifications. DESIGN-BUILDER shall provide value engineering analysis and recommendations during design and construction as directed and in order to meet the requirements of the Estimated Construction Cost set forth in the RFP, as may be updated in writing by an authorized representative of DCAMM during the Project.

- b. DCAMM may, but shall not be required to, arrange for periodic estimates of Estimated Construction Cost to be performed by other consultants or staff of DCAMM. DESIGN-BUILDER shall work (and, if applicable, shall cause the Designer to work) in good faith and in cooperation and coordination with any other consultants or staff of DCAMM involved in preparing estimates of Estimated Construction Cost to reconcile any differences between cost



estimates prepared by DESIGN-BUILDER and such parties, to clarify assumptions upon which cost estimates are based, and otherwise to address any concerns or questions with respect to such cost estimates raised by DCAMM or such other consultants. If in any case the agreed-upon, reconciled estimate of Estimated Construction Cost exceeds the construction budget established by DCAMM (which shall be the estimated cost of construction set forth in the RFP unless otherwise communicated in writing by an authorized representative of DCAMM) DESIGN-BUILDER (and, if applicable, the Designer) shall advise and cooperate with DCAMM and, if applicable, DCAMM consultants in identifying, specifying, and recommending cost reduction alternatives. Such cost reduction alternatives may include changes in or additional specification of materials, equipment, component systems, types of construction, or other adjustments in the scope or quality of the Project, including contingencies or alternative bid items, so as to facilitate revision of the Project design to reduce the Estimated Construction Cost to comply with the construction budget established by DCAMM as set forth above. Implementation of any of the aforementioned cost reduction alternative shall be subject to written approval by DCAMM, and DCAMM shall have the right, in its sole discretion, to choose which of the cost reduction alternatives developed by the parties shall be implemented; provided, however, that DESIGN-BUILDER 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 process and responsibilities of DESIGN-BUILDER and its Designer described in this Section shall also apply to any separate cost limits within the construction budget that have been established in writing by an authorized representative of DCAMM for certain phases, components, or elements of the Project.

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

**26.6 Monthly Reports.**

On the fifth (5<sup>th</sup>) day of each month, or on such other day established by DCAMM in writing, DESIGN-BUILDER shall submit to DCAMM the following for the preceding month, in form and substance acceptable to DCAMM, containing, without limitation, the following information:

- a. Project status overview including, without limitation: progress report by division of work or area; photographs demonstrating progress of the work, if

available; quality control/quality assurance report; safety and loss control report; and MBE/WBE and minority and women workforce participation status.

- b. Project schedule update, including, without limitation, a summary schedule (progress bar chart) from the critical path method schedule;
- c. Project cost update, including, without limitation: cost summary; cash flow update; list of approved Change Orders; list of outstanding Project Change Requests; list of outstanding and approved DESIGN-BUILDER request for Construction Contingency use authorization; and such other reports, logs, or documents as DCAMM may reasonably require for the management of the Project.

## **Section 27 Concurrent Performance of Services**

DESIGN-BUILDER shall perform the Design Services, Preconstruction Services, and Construction Services responsibilities and obligations concurrently as necessary during the term of this Contract as directed by DCAMM.

## **Section 28 Payment during Design and Preconstruction Phase**

- 28.1 Design and Preconstruction Phase Fee.** The Project Cost for Design Services and Preconstruction Services shall be comprised of the "Total Not-to-Exceed Amount for Design and Preconstruction Services" for the Project as set forth in **Schedule B: PROPOSAL**.
- 28.2 Design and Preconstruction Fee Schedule.** Upon receipt of a Notice to Proceed for Design Services and Preconstruction Services, the DESIGN-BUILDER shall submit to DCAMM for approval a proposed payment schedule setting forth the schedule for payment of the authorized fee for Design Services and Preconstruction Services. When approved, it shall constitute the Design and Preconstruction Payment Schedule for such Services, and shall be used as the basis for DESIGN-BUILDER's request for payment for Design Services and Preconstruction Services on a Project.
- 28.3 Requests for Payment.** The DESIGN-BUILDER shall submit monthly payment requisitions, in arrears, based upon the approved Design and Preconstruction Payment Schedule. The DESIGN-BUILDER and DCAMM may mutually agree, in writing, to revise a Design and Preconstruction Payment Schedule, if DCAMM determines that the Design and Preconstruction Payment Schedule does not adequately compensate the DESIGN-BUILDER for the level of services actually rendered for that particular period.
- 28.4 Additional Services during Design and Preconstruction Phase.** With prior written approval of DCAMM, the DESIGN-BUILDER shall perform Design Services and/or Preconstruction Services in addition to those required by the Contract. DESIGN-BUILDER and DCAMM shall negotiate in good faith an equitable adjustment to the Project Cost to compensate DESIGN-BUILDER for such additional Design Services and/or additional Preconstruction Services. If directed by DCAMM, such equitable adjustment shall be processed as set forth in Section 45: Changes in Scopes of Services and **Schedule A-5: Contract Forms**.

**PART C – TRANSITION TO CONSTRUCTION PHASE; GMP AMENDMENT**

**Section 29 Completion of Design and Preconstruction Services**

- a. Following DCAMM's acceptance of the Design in accordance with this Contract and completion of all Preconstruction Services, DCAMM may, in its sole discretion, elect to proceed with the Construction Services. DESIGN-BUILDER acknowledges that the execution of this Contract for the completion of Design Services and Preconstruction Services and DCAMM's acceptance of and/or payment for such work in no way obligates DCAMM to proceed with the Construction Services for any Project.
- b. If DCAMM does not elect to proceed with Construction Services, this Contract shall terminate upon DESIGN-BUILDER's receipt of notice of DCAMM's decision not to proceed with Construction Services and upon payment to DESIGN-BUILDER for Design Services and Preconstruction Services in accordance with the Contract. Regardless of whether a Notice to Proceed with Construction Services is issued, DESIGN-BUILDER shall remain responsible for any of its continuing obligations arising during the performance of Design Services and Preconstruction Services hereunder.
- c. If DCAMM elects to proceed with Construction Services, DESIGN-BUILDER and DCAMM shall work in good faith to establish a Project GMP as described below.

**Section 30 Project GMP; Project GMP Amendment**

**30.1 Project GMP components. The Project GMP shall be established in accordance with the process described below and shall specifically include the following:**

- a. all general conditions costs associated with the Construction Services (including, without limitation, DESIGN-BUILDER's actual costs for bonds and insurance and costs indicated as "General Conditions" in the "Cost Classification Guide" included in **Schedule B-1** to this Contract) (**Construction General Conditions Costs**), which shall have a dollar value equal to the "Construction General Conditions Costs" percentage shown in Section A of **Schedule B-1** to this Contract multiplied by the Hard Costs; plus
- b. Designer construction administration costs, which shall have a dollar value equal to the "Designer Construction Administration Costs" shown in Section A of **Schedule B-1** to this Contract, (**CA Costs**); plus
- c. total hard cost of the Construction Services, which shall not include any item included in the Construction General Conditions Costs and shall include, without limitation: all costs indicated as "Hard Costs" in the "Cost Classification Guide" included in **Schedule B-1** to this Contract; payments made by DESIGN-BUILDER to any Subcontractor performing Construction Services in accordance with this Contract, including, if applicable, identified allowance items (**Trade Allowances**); costs of materials and equipment incorporated or

to be incorporated into the Construction Services (less all discounts and rebates); if applicable, identified allowance items other than Trade Allowances (such items, **Owner Allowances**); costs incurred by DESIGN-BUILDER to prevent threatened damage, injury, or loss in case of an emergency affecting the safety of persons and property, provided that such damage did not result from the fault or negligence of DESIGN-BUILDER or Subcontractor and only to the extent that the cost of such repairs is not recoverable by DESIGN-BUILDER from others or DESIGN-BUILDER is not compensated therefore by insurance or otherwise; and other costs incurred in the performance of the Construction Services if and to the extent approved in advance in writing by DCAMM as hard costs of the Construction Services (collectively, **Hard Costs**); plus

- d. a fee to the DESIGN-BUILDER representing full compensation to DESIGN-BUILDER on account of DESIGN-BUILDER's profit and all overhead and other costs, expenses, and liabilities incurred by DESIGN-BUILDER in connection with the Project or otherwise in performance of the Contract for which DESIGN-BUILDER is not otherwise compensated through the Project GMP (including, without limitation, all costs indicated as "Design-Builder Fee" in the "Cost Classification Guide" included in **Schedule B-1** to this Contract) (**DESIGN-BUILDER Fee**), which shall be calculated as the "Design-Builder Fee" percentage stated in Section A of **Schedule B-1** to this Contract multiplied by the sum of the Hard Costs and Construction General Conditions Costs; plus
- e. a construction contingency, which shall have a dollar value equal to the "GMP Construction Contingency" percentage shown in Section A of **Schedule B-1** to this Contract multiplied by the sum of the Hard Costs and Construction General Conditions Costs (**Construction Contingency**).

### **30.2 Assignment of Certain Items to Hard Costs.**

- a. Costs of materials described herein which are in excess of those actually installed as part of Construction Services but which are required to provide reasonable allowance for waste and spoilage may be included in the Hard Costs stated above. Unused materials, if any, shall be delivered to DCAMM at the completion of the Construction Services or, at DCAMM's option, shall be sold by the DESIGN-BUILDER and amounts realized, if any, from such sales shall be credited to DCAMM as a deduction from such Hard Costs.
- b. Either DCAMM or DESIGN-BUILDER, subject to the prior written approval of DCAMM, may request that one or more specific items included in Construction General Conditions Costs be included in a Subcontract bid or proposal package or otherwise separately procured. Whether included in a Subcontractor bid or proposal or otherwise separately procured, each such item shall be bid as an alternate and, if accepted by DCAMM, the cost of such item shall be considered part of the Hard Costs, and the amount of the Construction General Conditions Costs due hereunder shall be reduced by the total cost of such item.

**30.3 DESIGN-BUILDER's Project GMP Proposal.** On a date agreed upon by DCAMM and DESIGN-BUILDER or, if no such date is agreed upon, on the date established by DCAMM by written notice to DESIGN-BUILDER, which date shall be at least 20 days after the date of such written notice, DESIGN-BUILDER shall submit to DCAMM a proposed Project GMP in the format set forth in **Schedule A-5: Contract Forms** to this Contract or otherwise acceptable to DCAMM, which shall be the sum of the estimated total Hard Cost of the Work, Construction General Conditions Costs, DESIGN-BUILDER Fee, and Construction Contingency. DESIGN-BUILDER shall include with the Project GMP proposal a written statement of its basis in form and substance satisfactory to DCAMM, which shall include at least:

- a. a list of the Project Design documents upon which the Project GMP proposal is based;
- b. a list of allowances and a statement of their basis;
- c. a list of any assumptions, qualifications, and clarifications made by DESIGN-BUILDER in the preparation of the Project GMP proposal to supplement the information contained in the Project Design documents;
- d. a statement that the proposed Project GMP is based on the attest approved baseline critical path method schedule and the agreed upon required Substantial Completion Date;
- e. the proposed Project GMP, including: a detailed statement of actual and estimated Hard Costs organized by CSI (Construction Specifications Institute) format with quantities, units, and unit rates; all Construction General Conditions Costs; construction Contingency; DESIGN-BUILDER Fee; Design and Preconstruction Services Fee; and other items that comprise the Project GMP;
- f. a schedule of applicable alternate prices;
- g. a schedule of applicable unit prices;
- h. if not previously reviewed by DCAMM, all required documentation in connection with recommended Subcontractor contracts in accordance with the procedures set forth in **Schedule A-5: Procedures for Subcontracts**; and
- i. the time limit for acceptance of the Project GMP proposal, which shall not be less than 90 days.

**30.4 Non-Compensable Costs.** The Project GMP shall not include any of the following:

- a. Salaries, bonuses and other compensation of DESIGN-BUILDER's personnel stationed at DESIGN-BUILDER's principal offices, or other offices, except the site office for a Project or as included in personnel approved by DCAMM for performing work on the Project.
- b. Expenses of the DESIGN-BUILDER's principal offices, site office or other offices, except the site office for a Project (including, without limitation, in-

house computer costs, and other costs of doing business, services, and related expenses to maintain such offices).

- c. Overhead and general expenses of any kind, including but not limited to office or fabrication shop overhead and drafting and printing costs, except as specifically provided in the Section B of **Schedule B-1** to this Contract and the GMP Amendment (or, if applicable, Early Package Amendment or Early Equipment Purchase Amendment).
- d. DESIGN-BUILDER's capital expenses, including interest on the DESIGN-BUILDER's capital employed for the Project.
- e. Costs of machinery and equipment owned or rented by DESIGN-BUILDER, except as specifically provided in Section B of **Schedule B-1** to this Contract and the GMP Amendment (or, if applicable, Early Package Amendment or Early Equipment Purchase Amendment).
- f. Costs incurred due to the fault, negligence or breach of contract of DESIGN-BUILDER, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including, but not limited to, death or injury to person or damage to property, the correction of damaged, defective or nonconforming Services, disposal and replacement of materials and equipment incorrectly ordered or supplied, unanticipated cost overruns incurred by DESIGN-BUILDER in the procurement of Subcontracts, materials or labor, and making good damage to property not forming part of the New Equipment/Systems, except to the extent reimbursement is received through the recovery of insurance proceeds.
- g. Cost for purchase and maintenance of tools, materials, supplies and facilities not consumed during construction or incorporated into the Services, except as specifically provided in Section B of **Schedule B-1** to this Contract and the GMP Amendment (or, if applicable, Early Package Amendment or Early Equipment Purchase Amendment).
- h. Penalties, fines or costs imposed by governmental authorities in connection with, or resulting from any violation of, or noncompliance with Laws by DESIGN-BUILDER or any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.
- i. Any legal fees incurred by DESIGN-BUILDER, unless the same are incurred at the written direction, or with the prior written approval, of DCAMM.
- j. Travel or meal expenses and personnel relocation expenses, except as specifically provided Section B of **Schedule B-1** to this Contract and the GMP Amendment (or, if applicable, Early Package Amendment or Early Equipment Purchase Amendment).
- k. Preconstruction General Conditions Costs and/or Construction General Conditions Costs in excess of the total of all Preconstruction General Conditions Costs and Construction General Conditions Costs, respectively, as

set forth in Section A of **Schedule B-1** to this Contract and the GMP Amendment (or, if applicable, Early Package Amendment or Early Equipment Purchase Amendment).

- l. Any cost incurred by DESIGN-BUILDER as a result of knowing violation of or failure to comply with this Contract or the other Contract Documents by DESIGN-BUILDER.
- m. Costs which would cause the Project GMP (or, if applicable, Early Package Maximum Price or Early Equipment Purchase Price) to be exceeded.
- n. Costs incurred by DESIGN-BUILDER after final payment.

**30.5 Project GMP Negotiations.** DESIGN-BUILDER shall meet with DCAMM and, if applicable, any DCAMM consultants requested by DCAMM, to review the Project GMP proposal and the written statement of its basis. In the event that DCAMM or DCAMM's consultant(s) discover any inconsistencies or inaccuracies in the Project GMP proposal and accompanying information, they shall promptly notify DESIGN-BUILDER, which shall make appropriate revisions thereto. DCAMM may elect in its sole discretion to accept or not to accept DESIGN-BUILDER's Project GMP proposal. DESIGN-BUILDER understands that any agreement on a Project GMP shall be subject to approval of DCAMM. If DCAMM accepts DESIGN-BUILDER's Project GMP proposal, DCAMM and DESIGN-BUILDER shall execute and deliver as soon as possible and no event more than fifteen (15) days after such acceptance an amendment to this Contract, in form attached hereto as **Schedule A-5: Contract Forms** or otherwise acceptable to DCAMM and DESIGN-BUILDER, incorporating the items listed in Section 30.3 above, subject to any modifications agreed upon by the parties (the **Project GMP Amendment**).

**30.6 GMP Amendment Documents.** Together with the Project GMP amendment in the form attached hereto in **Schedule A-5 (Project GMP Amendment)** (or other form acceptable to DCAMM), DESIGN-BUILDER shall:

- a. execute and deliver performance and payment (labor and materials) bonds in the form provided by DCAMM, executed by a surety licensed by the Commonwealth of Massachusetts Division of Insurance. Each such bond shall be in the amount of the Project GMP. These bonds shall be substituted for the bonds obtained from the DESIGN-BUILDER at the time of signing this Contract (as may have been updated to account for the value of any services authorized by NTP prior to execution of the GMP Amendment), which said bonds shall be returned to DESIGN-BUILDER by DCAMM;
- b. provide updated certificates of insurance evidencing insurance coverage in compliance with this Contract;
- c. submit and obtain approval from DCAMM for all required documentation in accordance with Schedule A-2: Goals for Participation by M/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program (Executive Orders No. 592 and No. 599); and

- d. obtain, execute, and/or provide any additional documentation indicated in the form of Project GMP Amendment attached hereto as **Attachment A-5: Contract Forms** or otherwise reasonably required by DCAMM.

**30.7 No Construction Services without NTP.** In no event shall DESIGN-BUILDER incur any costs associated with the Construction Services prior to receipt of a Notice to Proceed for such Construction Services.

**30.8 Early Package or Equipment Purchase Authorization.**

- a. The Project GMP Amendment shall be executed prior to the commencement of Construction Services for a Project. If, in the sole discretion of DCAMM, the implementation of one or more early construction packages is desirable, DCAMM and DESIGN-BUILDER shall execute a separate amendment (**Early Package Amendment**) setting forth an agreed upon not-to-exceed maximum price (inclusive of Hard Costs, Construction General Conditions Costs, DESIGN-BUILDER Fee, CA Costs, and Construction Contingency included in such package) for each respective early construction package (**Early Package Maximum Price**), which shall be established in accordance with the process set forth in Sections 30.1 through 30.5, inclusive, above and which costs shall be administered in accordance with Section 32: Payment for Construction Services below. The amount of any such Early Package Maximum Price shall be accounted for in the subsequent Project GMP proposal and Project GMP Amendment. DESIGN-BUILDER and each Subcontractor shall comply with all provisions of this Contract in performing any early construction package(s).
- b. If, in the sole discretion of DCAMM, the authorization for the purchase of certain New Equipment/Systems prior to the authorization of all Construction Services on a Project is desirable, DCAMM and DESIGN-BUILDER shall execute a separate amendment (**Equipment Purchase Amendment**) setting forth an agreed upon not-to-exceed maximum price for such New Equipment/Systems, inclusive of Hard Costs, (if applicable) any Construction General Conditions Costs, (if applicable) CA Costs, and (if applicable) any DESIGN-BUILDER Fee (**Early Equipment Purchase Price**). At a date agreed upon by DCAMM and DESIGN-BUILDER or, if no such date is agreed upon, on the date established by DCAMM by written notice to DESIGN-BUILDER, which date shall be at least 20 days after the date of such written notice, DESIGN-BUILDER shall submit to DCAMM a proposed Early Equipment Purchase Price, in a format acceptable to DCAMM, which shall at least:
  - (i) State with specificity the New Equipment/Systems to be purchased and reference to the Design Deliverable and/or submittals approved by DCAMM relevant to the New Equipment/Systems;
  - (ii) Include a breakdown of costs; and
  - (iii) State the date by which the New Equipment/Systems shall be delivered site and certify that such delivery time is in accordance with the latest Design/Construction Schedule.



- c. Together with any Equipment Purchase Amendment, DESIGN-BUILDER shall:
  - (i) Execute and deliver performance and payment (labor and materials) bonds in the form provided by DCAMM, executed by a surety licensed in the Commonwealth of Massachusetts Division of Insurance, in the amount of the Early Equipment Purchase Price. These bonds shall be substituted for the bonds obtained from the DESIGN-BUILDER at the time of signing this Contract (as may have been updated to account for the value of any services authorized by NTP prior to execution of the GMP Amendment), which said bonds shall be returned to DESIGN-BUILDER by DCAMM;
  - (ii) Provide updated Certificates of Insurance evidencing insurance coverage in compliance with this Contract; and
  - (iii) Obtain, execute, and/or provide any additional documentation indicated in the Early Equipment Purchase Amendment or otherwise reasonably required by DCAMM.

The amount of any such Early Equipment Purchase Price shall be accounted for in the subsequent Project GMP proposal and Project GMP Amendment. DESIGN-BUILDER and each Subcontractor shall comply with all provisions of this Contract in the performance of any early equipment purchase(s).

## **PART D – CONSTRUCTION SERVICES**

### **Section 31 Construction Commencement and Progress**

**31.1 Commencement of the Construction Services.** If a Notice to Proceed with Construction Services is issued, DESIGN-BUILDER shall commence Construction Services in accordance with the Design/Construction Schedule submitted by DESIGN-BUILDER and approved by DCAMM.

**31.2 Duration; Design/Construction Schedule.**

- a. Time is of the essence of this Contract. DESIGN-BUILDER shall perform all Construction Services within the time specified in any amendment and/or Notice to Proceed authorizing Construction Services and in accordance with the Design/Construction Schedule submitted by DESIGN-BUILDER and approved by DCAMM. Should DESIGN-BUILDER require additional time to complete the Construction Services, DESIGN-BUILDER shall document the reasons therefor and submit a written request for an extension of time within 20 days of the occurrence of the event alleged to be the cause of the delay, as provided in this Section and with Section 45: Changes in Scope of Services. Failure to submit said written request within the time required by the preceding sentence shall preclude DESIGN-BUILDER from subsequently claiming any time extension due to said delay. Such submission may set forth a change to time only with no change to the Project Cost.

- b. If, in the opinion of DCAMM, DESIGN-BUILDER fails to comply with the Design/Construction Schedule, DCAMM may give DESIGN-BUILDER a written notice to that effect, whereupon (1) DESIGN-BUILDER shall, if the notice requires, discontinue all or any portion of the Construction Services (which discontinuance shall neither terminate the Contract nor give DESIGN-BUILDER any claim for an increase in the Project Costs, damages, or an extension of any completion deadlines); or (2) at DESIGN-BUILDER's sole cost increase the work force, equipment and plant, or any of them, employed on the whole or any part of the Construction Services, to the extent required by such notice, and employ the same from day to day until the completion of the Construction Services or such part thereof, or until the failure regarding the rate of progress, in the opinion of DCAMM, shall have been sufficiently corrected.
  
- c. If, in the opinion of DCAMM, DESIGN-BUILDER fails to comply with the Design/Construction Schedule, and whether or not DCAMM shall have given DESIGN-BUILDER a notice described in subsection b above, DCAMM may (but shall not be required to) give DESIGN-BUILDER written notice of such failure and five days to cure the same. Unless DESIGN-BUILDER shall within that five days take all necessary steps to do so (including, if DCAMM requires, increasing its forces, equipment, and plant) and continue to do so until in the opinion of DCAMM the failure is corrected, DCAMM may at the DESIGN-BUILDER's expense and without terminating this Contract take exclusive or joint possession of all or a portion of the Premises and employ and direct the labors of existing or such additional forces, equipment and plant as may in DCAMM's opinion be necessary to ensure the completion of the Construction Services or such part thereof within the time specified in the Contract Documents or at the earliest possible date thereafter. DCAMM may exercise its rights under this Section at any time and from time to time without waiving any of its rights under this Contract, at law or in equity, including, without limitation, the right to deem this Contract terminated or to order DESIGN-BUILDER to discontinue the Construction Services at any time thereafter. DESIGN-BUILDER shall continue to perform the remaining Construction Services under this Contract even if DCAMM elects to have another contractor perform a portion of the Construction Services under this Section.
  
- d. DCAMM shall deduct the cost of any actions DCAMM takes under this Section from any amount then due or which might have become due to DESIGN-BUILDER under this Contract had DESIGN-BUILDER performed as required. On demand, DESIGN-BUILDER shall pay DCAMM any amount by which the cost of completing all or any portion of the Construction Services exceeds the amount attributable to those services under the Contract Documents. DCAMM's sole goal will be to complete the Construction Services that it elects to complete within the time limits stated in the Contract or at the earliest possible date thereafter. Consequently, DCAMM shall have no obligation to obtain competitive bids or the lowest cost for completing the Construction Services or any part thereof, except when it is required by Law. DCAMM's election to complete all or part of the Construction Services shall not release DESIGN-BUILDER from any liability for failure to complete the Construction Services as the Contract Documents require and shall not entitle DESIGN-BUILDER to a claim for an increase in the Construction Costs or an extension

of the time for completing the Construction Services. If the cost that DCAMM incurs in completing all or any portion of the Construction Services is less than the amount that the Contract Documents attribute to those Construction Services, DCAMM will pay or credit the difference to DESIGN-BUILDER, less any other costs and expenses that DCAMM incurs, including the cost of supervision, and attorneys' fees and costs

**31.3 Schedule in accordance with Work Hour Restrictions.** DESIGN-BUILDER's approved Design/Construction Schedule shall be submitted with any and all entry/inventory requirements and work hour restrictions provided by DCAMM considered. No Change Order or extension of the Contract Term or Project Term shall be granted due to delays caused by DESIGN-BUILDER's failure to adhere to entry/inventory requirements or work hour restrictions. If second or third shift or other off-hour work is required, such work shall be included in the Project Cost for Construction Services and DESIGN-BUILDER shall not be granted an equitable adjustment to the Project Cost for Construction Services due to off-hour work unless not contemplated by work hour restrictions or entry/inventory procedures.

**31.4 Sequence and Scheduling.** The sequence and scheduling of the Services is subject at all times to DCAMM approval, such approval not to be unreasonably withheld. DCAMM may interrupt or postpone work whenever concerns for safety or operations require it. Otherwise, the Services shall proceed in accordance with the Design/Construction Schedule. Security shall be provided by DCAMM as needed at DCAMM's cost if shifts requiring security are upon the request of DCAMM. Additional security costs required by DESIGN-BUILDER's schedule shall be borne by DESIGN-BUILDER.

**31.5 Reporting Progress of the Construction Services.**

- a. Periodic Estimates/Schedule Updates.
  - (i) DESIGN-BUILDER shall, based on the weekly or bi-weekly project meetings (as specified above) with 2-3 week look ahead basis, submit to DCAMM (on forms and in the manner prescribed by DCAMM) an estimate showing the total amount of New Equipment/Systems installed to the time of such estimate and the value thereof as approved by DCAMM. It shall be the sole responsibility of DESIGN-BUILDER to deliver or cause to be delivered to DCAMM said periodic estimate in proper form, approved as provided above and mathematically correct. All periodic estimates shall contain such certifications and other evidence supporting DESIGN-BUILDER's progress with the Construction Services. DCAMM's review of the periodic estimate is intended to be for verification of the status of the Construction Services and does not constitute acceptance of the Construction Services or any payment or other obligations of DCAMM.
  - (ii) Each periodic estimate shall constitute DESIGN-BUILDER's representation that the materials, supplies and New Equipment/Systems have been installed and are insured in accordance with the provisions of this Contract.

- (iii) DCAMM may make reasonable changes in any required periodic estimate submitted by DESIGN-BUILDER.
  - (iv) DCAMM shall not be obligated to make progress payments for the amount of Services included in the periodic estimates.
  - (v) DESIGN-BUILDER's failure to provide the periodic estimates required in this Section may constitute a default by DESIGN-BUILDER under Section 59: Termination.
- b. *Certified Payroll.* DESIGN-BUILDER shall furnish weekly certified payroll reports to DCAMM electronically via DCAMM's electronic workforce reporting system at no additional expense to DCAMM. DESIGN-BUILDER further agrees to include a provision in all of its subcontracts for the Services that require all Subcontractors furnishing labor during the Contract Term to also electronically provide certified payroll reports at DCAMM's request at no additional expense to DCAMM. DCAMM may at all reasonable times audit such reports.

## **Section 32 Payment for Construction Services**

**32.1 Schedule of Values.** Before the first application for payment pursuant to a Notice to Proceed for Construction Services, the DESIGN-BUILDER shall submit to DCAMM a Schedule of Values setting forth the Project Cost for the Construction Services, aggregating the Project Cost for Construction Services and divided so as to facilitate progress of work and evaluation of Project changes. The Schedule of Values shall detail the Services performed by either Minority-Owned Business Enterprises (MBE), Women-Owned Business Enterprises (WBE), or Service-Disabled Veteran-Owned Business Enterprises (SDVOBE's), as set forth in **Schedule A-2 Goals for Participation by M/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program) (Executive Orders No. 592 and No. 599.** The Schedule of Values shall be prepared using the form provided by DCAMM. When approved by DCAMM, it shall constitute the Schedule of Values and shall be used as the basis for DESIGN-BUILDER's request for payment for Construction Services on a Project.

## **32.2 Project GMP Price Guarantee.**

- a. DESIGN-BUILDER shall ensure that all Services required for the Project are completed at a total cost to DCAMM that is no greater than the Project GMP. Any costs, fees, or expenses associated with the Services that would cause the Project GMP to be exceeded, as same may be adjusted by Change Orders in accordance with the Contract, shall be borne by DESIGN-BUILDER without reimbursement by DCAMM. All work required or reasonably inferable by the Contract Documents is considered to be part of the Services and shall be covered by the Project GMP. In the event that actual costs incurred by DESIGN-BUILDER for the total amount of General Conditions Costs, Construction Contingency, and/or Hard Costs, respectively, are less than the amounts for such items carried in the Project GMP, such balance shall accrue to DCAMM, subject, however, to any applicable incentive payment DESIGN-BUILDER may qualify for pursuant to Section 33: DESIGN-BUILDER Incentive below.

- b. If the Design-Builder performs additional work of the type described in the Project GMP Amendment under a Change Order approved by DCAMM in accordance with the Contract, compensation, if any, due to the DESIGN-BUILDER shall be computed in accordance with Section 45: Changes in Scope of Services of the Contract; otherwise, DCAMM shall have no obligation to compensate DESIGN-BUILDER on account of the cost of the work for any amounts exceeding the total amounts respectively for Construction General Conditions Costs, CA Costs, Hard Costs and, to the extent approved in advance by DCAMM in accordance with the Contract, Construction Contingency costs.
- c. DCAMM shall be entitled to monitor and audit all Project costs and expenses. When submitting a request for payment, DESIGN-BUILDER shall submit to DCAMM complete backup documentation in sufficient detail acceptable to DCAMM for all Construction General Conditions Costs, Hard Costs, and properly approved Construction Contingency costs (if any) that are included in such request for payment.

**32.3 Payment to DESIGN-BUILDER.** DESIGN-BUILDER shall submit monthly payment requisitions to DCAMM in accordance with the Contract and payment shall be processed in accordance with the Contract. The amount of monthly payments shall be based solely on the Construction Services actually performed and costs actually incurred by DESIGN-BUILDER in the immediately preceding month, plus the applicable Design-Builder Fee, all as follows:

- a. *Construction General Conditions Payments.* The amount of payment for Construction General Conditions Costs shall be based solely on the number of hours worked by the Design-Builder's personnel and fixed rates as set forth in the Project GMP Amendment for the time and rates shown as approved by DCAMM and for the actual non-personnel costs incurred by DESIGN-BUILDER for the immediately preceding month and deducting from such value any amounts previously paid to DESIGN-BUILDER on account of Construction General Conditions Costs. DESIGN-BUILDER shall submit to DCAMM with each invoice complete backup documentation in sufficient detail acceptable to DCAMM for all invoiced Construction General Conditions Costs. Throughout the duration of a Project, the total amount paid to DESIGN-BUILDER for Construction General Conditions Costs (other than those identified as allowance items, which shall be administered in accordance with Section 32.6 below) shall not exceed the total amount for Construction General Conditions Costs shown in the **Schedule B-1: Price Submission** or the actual costs incurred by DESIGN-BUILDER for General Conditions Costs, whichever is less. Subject to Section 33: DESIGN-BUILDER Incentive below, if the total amount of Construction General Conditions Costs incurred by the DESIGN-BUILDER is less than the amount shown in the Project GMP Amendment for Construction General Conditions Costs, the Project GMP shall be reduced by an amount equal to the sum of the difference plus the DESIGN-BUILDER Fee applied to such amount.

- b. *CA Costs Payments.* The amount of the monthly payment for CA Costs shall be the percentage of the Construction Services completed applied to the value of the CA Costs.
- c. *Hard Costs Payments.* The amount of payment for Hard Costs shall be based solely on the actual costs incurred by DESIGN-BUILDER for the immediately preceding month, as evidenced by backup documentation in sufficient detail acceptable to DCAMM. Subject to Section 33: DESIGN-BUILDER Incentive below, if the total amount of Construction General Conditions Costs incurred by the DESIGN-BUILDER is less than the amount shown in the Project GMP Amendment for Construction General Conditions Costs, the Project GMP shall be reduced by an amount equal to the sum of the difference plus the DESIGN-BUILDER Fee applied to such amount.
- d. *DESIGN-BUILDER Fee Payments.* The amount of the monthly payment for DESIGN-BUILDER Fee shall be the DESIGN-BUILDER Fee percentage (as shown in Section A of **Schedule B-1** to this Contract) multiplied by the sum of the Hard Costs and Construction General Conditions Costs included in the monthly invoice.

#### **32.4 Construction Contingency.**

- a. The Construction Contingency shall be available only upon approval by DCAMM to cover the net amount of any additional costs resulting from unforeseen conditions and events not evidenced at the time that the DESIGN-BUILDER awards a Subcontract or the parties execute the Project GMP Amendment, as applicable, to the extent that such conditions or events do not result in or constitute a change in the scope of Construction Services. Any claim against the Construction Contingency shall be submitted in accordance with Section 45: Changes in Scope of Services. Examples of such unforeseen conditions and events include, but are not limited to, the following:
  - (i) unanticipated cost overruns on DESIGN-BUILDER's procurement of Subcontracts or other purchases of materials or labor costs, provided that the same are not caused by the fault, negligence, or breach of contract of the DESIGN-BUILDER or any Subcontractor;
  - (ii) expediting or acceleration costs required to meet the latest approved baseline critical path method schedule, as long as the same are not made necessary by the fault or negligence of DESIGN-BUILDER or any Subcontractor; and
  - (iii) such other unforeseen events and conditions as may be specified in the Contract Documents as chargeable to the Construction Contingency.
- b. DESIGN-BUILDER shall list the Construction Contingency as a line item on its Schedule of Values and shall track its use on the Schedules of Values submitted with its periodic applications for payment. DESIGN-BUILDER recognizes and agrees that DESIGN-BUILDER shall be entitled to collect only those portions of the Construction Contingency that DCAMM approves. DESIGN-BUILDER further recognizes and agrees that the unused portion of

the Construction Contingency at the time DCAMM issues a Certificate of Final Acceptance to DESIGN-BUILDER pursuant to the Contract, if any, shall be and shall remain the property of the DCAMM, and any costs incurred by DESIGN-BUILDER in excess of the Construction Contingency, due to conflicts, ambiguities, overlaps, omissions, or lack of coordination in the Subcontractors' bid packages shall be borne solely by DESIGN-BUILDER and shall not be the basis of any claim by DESIGN-BUILDER against DCAMM.

- c. Costs authorized to be paid from the Construction Contingency by this Section shall be paid to DESIGN-BUILDER as Hard Cost only if and to the extent reasonably approved by DCAMM. The Construction Contingency shall be reduced by the net amount of the additional Hard Cost resulting from the use of the Construction Contingency as authorized by this Section.
- d. DESIGN-BUILDER shall not receive any DESIGN-BUILDER Fee in connection with any use of the Construction Contingency.
- e. If, at the time DCAMM issues the Certificate of Final Acceptance to DESIGN-BUILDER in accordance with the Contract, there is a balance in the Construction Contingency, such balance shall be retained by DCAMM, subject to Section 33: DESIGN-BUILDER Incentive below.

**32.5 Subcontractor Reconciliation.** After execution of the Project GMP Amendment, if the contract price of any Subcontractor contract as awarded is less than or greater than the amount carried for such subcontract in the Project GMP breakdown the Project GMP shall be adjusted by the amount of such savings or overage, respectively. No DESIGN-BUILDER Fee shall be applied to the amount of any Project GMP adjustment on account of reconciliation with the actual contract price as awarded. However, DCAMM, in its discretion, may direct such Project GMP reconciliation to be otherwise processed in accordance with Section 45: Changes in Scope of Services.

**32.6 Allowances.** In every monthly invoice, DESIGN-BUILDER shall show a total amount for all allowance items (both Trade Allowances and Owner Allowances) identified within the Project GMP included in the invoice, with sufficient back-up documentation showing the costs associated with the individual allowance items. For all allowance items, costs shall be reimbursed as they are incurred by the DESIGN-BUILDER and only to the extent that such costs are itemized properly in the DESIGN-BUILDER's monthly invoice submitted for the preceding month in accordance with the Contract. DESIGN-BUILDER shall submit to DCAMM with each invoice complete backup documentation in sufficient detail acceptable to DCAMM for all invoiced allowances.

- a. *Trade Allowances.* For any item listed as a Trade Allowance in the Project GMP Amendment, whenever the actual costs incurred by DESIGN-BUILDER attributable to such Trade Allowance item is more or less than the allowance amount stated in the Project GMP Amendment, the Construction Contingency shall be adjusted accordingly. If the total actual costs incurred by DESIGN-BUILDER in the aggregate for all Trade Allowance items is less than the total amount carried for Trade Allowances in the Project GMP, such balance shall accrue to the Construction Contingency and only made available for disbursement for other costs upon approval by DCAMM in accordance with

the Contract. Any costs for Trade Allowances in excess of the total amount of Trade Allowances in the Project GMP shall be compensated from Construction Contingency or, if no Construction Contingency funds are remaining, shall be borne by DESIGN-BUILDER.

- b. *Owner Allowances.* In the event the actual costs incurred by DESIGN-BUILDER for all Owner Allowance items in the aggregate is less than the total amount carried for Owner Allowances in the Project GMP, such balance shall accrue to DCAMM. Any costs for Owner Allowance items in excess of the total amount of all Owner Allowance items carried in the Project GMP shall be compensated pursuant to a Change Order processed in accordance with the Contract.

**32.7 Payment of Liabilities of DESIGN-BUILDER.** The DESIGN-BUILDER shall pay to DCAMM all expenses, losses and damages, as determined by DCAMM, incurred in consequence of any default, defect, omission or mistake of the DESIGN-BUILDER or its employees or Subcontractors or the making good thereof.

**32.8 Liquidated Damages.** If the Construction Services is not completed to Substantial Completion and the DESIGN-BUILDER has not satisfied the requirements for the issuance of a Certificate of Substantial Completion as set forth in Section 49: Substantial Completion/Final Acceptance by the date specified in the Project GMP Amendment and/or Notice to Proceed for Construction Services, the DESIGN-BUILDER shall pay DCAMM liquidated damages as provided in Section 40: Delays in the Services) of this Contract.

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

**32.10 Construction Services Retainage by DCAMM.** DCAMM shall retain five percent (5%) of total Project GMP properly invoiced by DESIGN-BUILDER in accordance with the Contract at the Substantial Completion Date. One hundred percent (100%) of such Project GMP due in accordance with the Contract shall be paid at issuance of the Certificate of Final Acceptance. If requested by DCAMM, performance testing pursuant to confirm Energy Savings will be required prior to payment for issuance of Certificate of Final Acceptance.

**32.11 Final Payment.** Upon issuance of the Certificate of Final Acceptance, DESIGN-BUILDER shall be entitled to payment of the balance of the Project Cost. Final



payment shall be as provided in the Contract and in accordance with any process set forth in the Contract Documents. DESIGN-BUILDER agrees to execute the required documentation, including, without limitation, a certificate of final release, in form acceptable to DCAMM as a condition precedent to final payment. Acceptance by DESIGN-BUILDER of the final payment made as aforesaid or the execution of any final release documentation in form provided by DCAMM, shall constitute a release of DCAMM, the Commonwealth and every member, officer, employee, and agent of any of them, from all claims of and liability to DESIGN-BUILDER for anything done or furnished for or relating to the Services or Project, or for any act or neglect of the Commonwealth, DCAMM, or of any person relating to or affecting the Services or Project, except the claim against DCAMM for the remainder, if any, of the amounts set forth by DESIGN-BUILDER on such certificate of final release. Final Acceptance shall not relieve DESIGN-BUILDER of the requirements of any provision of the Contract intended to survive Final Acceptance

### **Section 33 DESIGN-BUILDER Incentive.**

In the event that the final actual Project Cost owed to DESIGN-BUILDER (including DESIGN-BUILDER Fee, all approved disbursements of Construction Contingency funds, and all approved Change Orders) is less than the Project GMP, as adjusted pursuant to Change Orders in accordance with the Contract (such amount, Project GMP Savings), DCAMM agrees to pay DESIGN-BUILDER as additional compensation under the Contract an amount not-to-exceed one percent of the Estimated Construction Cost stated in the Project GMP Amendment, provided that:

- a. DESIGN-BUILDER completes the Construction Services to Substantial Completion and has satisfied the requirements for the issuance of a Certificate of Substantial Completion in accordance with Section 49: Substantial Completion/Final Acceptance on or before the "Required Substantial Completion Date" stated on the first page of the Project GMP Amendment as the same may be adjusted in accordance with this Contract; and
- b. The Project GMP Savings are at least two (2) percent of the Project GMP.

Unless otherwise directed by DCAMM, to request such incentive payment, DESIGN-BUILDER must include a request for such payment in its final Project invoice and include a written statement of the achievement of the performance objectives stated above.

Any provisions in the Contract Documents concerning the anticipated schedule for the Project and the durations of the Construction Services are not for the purpose of describing the compensation for Construction General Conditions Costs and do not extend or authorize any extension of the required Substantial Completion Date and/or the required date for issuance of a Certificate of Final Acceptance. The DESIGN-BUILDER may make a claim for extension of the Substantial Completion Date required hereunder only as provided in, and subject to the limitations specified in, the Contract Documents.

### **Section 34 Accounting Records**

- 34.1** DESIGN-BUILDER shall check all materials, equipment and labor entering into the Construction Services, and shall keep such full and detailed accounts and exercise such controls as may be necessary for proper accounting and financial management

under this Contract. All books and records shall be maintained in accordance with generally accepted accounting principles, consistently applied. Without limitation, DESIGN-BUILDER shall comply with the requirements set forth in Section 74: DESIGN-BUILDER's Accounting Method Requirements of the Contract. DCAMM and its authorized representatives shall, upon request by DCAMM, be afforded copies of, and at all times shall be afforded access to, all of DESIGN-BUILDER's records, books, correspondence, instructions, drawings, receipts, invoices, vouchers, memoranda, estimates, budgets, breakdowns, accounting data, bid proposals, cost control information and any other documents and data relating to this Agreement, including data in electronic media or any other media (collectively, "records") and DESIGN-BUILDER shall preserve all such records for a period of six (6) years, or for such longer period as may be required by law, after final payment. With respect to work performed by DESIGN-BUILDER's own forces on a lump sum basis, DESIGN-BUILDER shall only be required to maintain certified payrolls, documentation required by the Contract with respect to equal employment opportunity, non-discrimination and affirmative action, and such other records as are required by applicable Laws or the terms of the Contract Documents.

- 34.2** Without limitation of the foregoing, DCAMM shall have the right, at any time and from time to time, upon notice to DESIGN-BUILDER, to audit DESIGN-BUILDER's records in connection with the Project at DESIGN-BUILDER's offices. DESIGN-BUILDER shall facilitate any such audit by making necessary facilities available to DCAMM and its accountants or other representatives.
- 34.3** Subcontractors shall have the same obligations to maintain books and records and to permit audits by DESIGN-BUILDER or DCAMM as are applicable to DESIGN-BUILDER under the Contract Documents.
- 34.4** If any inspection of DESIGN-BUILDER's or any Subcontractor's books, records or other documents reveals an overcharge, DESIGN-BUILDER shall pay DCAMM or, at DCAMM's election, DCAMM may reimburse itself by taking as a credit against future payments due DESIGN-BUILDER, an amount equal to the overcharge. If one or more overcharges is equal to or greater than two hundred thousand dollars (\$200,000) in the aggregate, DESIGN-BUILDER shall also pay all administrative and auditing expenses up to an aggregate of forty thousand dollars (\$40,000) incurred by DCAMM in determining the existence and amount of the overcharge. Nothing contained in this provision is intended as a limitation of any other rights or remedies which may be available to DCAMM and/or the Commonwealth, be they civil or criminal.
- 34.5** Notwithstanding the foregoing, actual amounts incurred by Subcontractors under lump sum contracts and agreed upon fixed rates under the Contract shall not be subject to audit hereunder.

### **Section 35 CONTRACTOR's Superintendent and Supervision**

If Construction Services are authorized in accordance with this Contract, DESIGN-BUILDER shall provide, during the progress of the Construction Services, a competent Massachusetts-licensed construction superintendent in accordance with applicable Laws and a project manager with experience managing a similar construction project of size and scope and any necessary assistants. Appointment, removal and substitution of the Contractor's project manager and superintendent shall be subject to the written approval of DCAMM. The

superintendent shall represent DESIGN-BUILDER and all directions or notices given to the superintendent shall be deemed received by and binding on DESIGN-BUILDER.

The superintendent shall give efficient supervision to the work, using his or her best skill and attention. The superintendent shall see that the work is of high quality and is carried out in accordance with this Contract. The superintendent shall establish all lines, level, and marks, if any, necessary to facilitate the operations of all concerned in such installation.

DESIGN-BUILDER shall establish an emergency telephone number by which DCAMM or respective agents may contact the superintendent during non-working hours. DCAMM shall have the right to halt the Construction Services without liability for any delays incurred while the required superintendent is not present on the Premises, while work is being performed by DESIGN-BUILDER or its Subcontractors.

### **Section 36 Location and Access; Signage**

- 36.1 DESIGN-BUILDER Access.** By submitting its Design, DESIGN-BUILDER acknowledges that there exists sufficient space on the Premises for the installation and operation of the New Equipment/Systems. DCAMM shall take reasonable steps to protect such New Equipment/Systems from harm, theft and misuse during the Project Term. With reasonable notice, DCAMM shall provide access to the Premises for DESIGN-BUILDER to perform any Services related to this Contract during regular business hours, or such other reasonable hours as may be requested by DESIGN-BUILDER and acceptable to DCAMM. DESIGN-BUILDER shall be granted immediate access to make emergency repairs or corrections pursuant to Section 42: Health, Safety and Accident Prevention.
- 36.2 DESIGN-BUILDER Site Office.** DCAMM shall provide adequate space on the Premises for DESIGN-BUILDER's office or trailer as detailed in the DCAMM Standard Specifications Rev. 8.00. DESIGN-BUILDER shall be responsible for any connections and payment of temporary utilities, including but not limited to telephone, internet, and electric. Upon completion of construction, the Premises shall be restored by DESIGN-BUILDER to its original condition.
- 36.3 DCAMM Field Office.** An office shall be provided for DCAMM as detailed in the DCAMM Standard Specifications Rev. 8.00. DESIGN-BUILDER shall be responsible for any connections and payment of temporary utilities including, but not limited to, telephone and electric. Upon completion of construction, the Premises shall be restored by DESIGN-BUILDER to its original condition.
- 36.4 Project Signage.** DESIGN-BUILDER shall provide Project identification signage that complies with DCAMM standard sketches and specifications set forth below.
- a. The DESIGN-BUILDER shall request the AutoCAD or other electronic file of the project signage sketches (Electronic Files) from DCAMM in sufficient time for the sign to be fabricated and erected by the DESIGN-BUILDER prior to the start of construction.
  - b. The DESIGN-BUILDER shall provide one 6 foot high by 8 foot wide or, if requested by DCAMM, a smaller Project sign as shown on the Electronic Files conforming to all DCAMM requirements. The material of the Project signage

and manner in which it is displayed must be approved in advance in writing by DCAMM.

- c. The DESIGN-BUILDER shall submit a shop drawing indicating sign construction and lettering for approval by the DCAMM.
- d. The CONTRACTOR shall locate and install the sign at a location directed by the DCAMM. At the completion of the Project, CONTRACTOR shall remove the sign and supports completely and restore surface to original condition

### **Section 37 Salvage Value**

DCAMM reserves the right to salvage any Existing Equipment/Systems or materials replaced by DESIGN-BUILDER, provided that no utility incentive program prohibits said salvage. If DCAMM does not notify DESIGN-BUILDER in writing five (5) days prior to the commencement of Construction Services of its intent to salvage such Existing Equipment/Systems, then DESIGN-BUILDER shall have the rights to salvage.

### **Section 38 Temporary Utilities**

DESIGN-BUILDER must maintain standards of comfort set forth in the DCAMM Standard Specifications Rev. 8.00 at the Premises at all times, unless otherwise approved by DCAMM. DESIGN-BUILDER shall provide for proper notification, temporary utilities, and other measures to ensure that the standards of comfort outlined in the DCAMM Standard Specifications Rev. 8.00 are maintained at the Premises.

### **Section 39 Commonwealth Asset Management Information System (CAMIS).**

As the project progresses, DESIGN-BUILDER shall submit information for installed or removed equipment, including, but not limited to, equipment data and preventive maintenance schedules, for each building system, and any updates thereto, in a format acceptable to DCAMM for entry into CAMIS in a form to be provided by DCAMM.

### **Section 40 Delays in the Services**

**40.1** Notwithstanding any provision of this Contract to the contrary, except as otherwise provided by law, DESIGN-BUILDER shall not be entitled to additional compensation hereunder or to receive damages on account of any hindrances or delays, avoidable or unavoidable; but if any delay is excusable in the reasonable opinion of DCAMM, DESIGN-BUILDER shall be entitled to an extension of time for the Contract Term, Project Term, and the Design/Construction Schedule. The length of the extension shall be sufficient in the opinion of DCAMM, for DESIGN-BUILDER to complete the Services. Although no delay shall increase the Project Cost for Construction Services, DCAMM may require that any change in the date by which DESIGN-BUILDER must complete all or any part of the Services be processed on a DCAMM standard Change Order form as set forth in Section 45: Changes in Scope of Services and in **Schedule A-5: Contract Forms**.

**40.2** DCAMM may order DESIGN-BUILDER in writing to suspend, delay, or interrupt all or any part of the Services for such period of time as it may determine to be appropriate for the convenience of DCAMM, provided, however, that if there is a suspension,

delay or interruption for fifteen (15) calendar days or more or due to a failure of DCAMM to act within the time specified in the Contract, DCAMM shall make an adjustment in the Project Cost for Construction Services for any increase in the cost of performance of this Contract and for any documented “open-book” increase in the financing costs incurred by DESIGN-BUILDER in the performance of this Contract, but said adjustment shall not include any profit to DESIGN-BUILDER on such increase; and provided further, that DCAMM shall not make any adjustment in the Project Cost for Construction Services under this provision for any suspension, delay, interruption or failure to act to the extent that such is due to any cause for which this Contract provides for an equitable adjustment of the Project Cost for Construction Services under any other provisions hereof. DCAMM may require that any agreed upon adjustment in compensation due to DESIGN-BUILDER under the terms of this Contract be processed in accordance with the DCAMM standard Change Order forms as set forth in Section 45: Changes in Scope of Services and in **Schedule A-5: Contract Forms**.

**40.3** For any compensation sought by DESIGN-BUILDER pursuant to this Section, DESIGN-BUILDER shall submit the amount of a claim under Section 45: Changes in Scope of Services to DCAMM, in writing, as soon as practicable after the end of the suspension, delay, interruption or failure to act and, in any event, not later than the date of DESIGN-BUILDER’s request for Final Project Notification Approval and, except for costs due to a suspension order, DCAMM shall not approve any costs in the claim incurred more than thirty (30) calendar days before DESIGN-BUILDER notified DCAMM in writing of the act or failure to act involved in the claim.

**40.4 Liquidated Damages.**

a. If Construction Services are authorized in accordance with the Contract, and DESIGN-BUILDER shall fail or refuse to achieve the specified Project milestones such as Substantial Completion Date and/or Final Acceptance, DESIGN-BUILDER and DESIGN-BUILDER’s surety agree, as part of the consideration for execution of this Contract and any amendments thereto by DCAMM, to pay DCAMM the amounts set forth in any amendment or Notice to Proceed authorizing Construction Services, not as a penalty but as liquidated damages to cover certain losses, expenses, and damages of the Commonwealth for such breach of this Contract as set forth herein. DESIGN-BUILDER acknowledges that Project delays will cause disruption of DCAMM’s and the Commonwealth user agency’s of the Premises operations that will result in additional costs to DCAMM and such user agency, all related to (without limitation): the personnel coordination necessary for the timely installation of the New Equipment/Systems at the Premises (including direct administrative, professional, rental, storage, moving, transportation and other costs); loss of productivity and efficiency and duplication of effort of user agency and of employees and contractors engaged by user agency and DCAMM; additional compensation to DCAMM consultants and/or contractors for extended or additional services on the Project; and loss of Energy Savings and/or utility incentive and/or rebate funds. Accordingly, DESIGN-BUILDER and DCAMM shall agree upon the assessment of liquidated damages per Project in the event that Substantial Completion and/or Final Acceptance for all or certain identified portions of the Construction Services are not achieved on or before the agreed upon date(s); such dates and liquidated damages

amounts will be set forth in the Project GMP Amendment and/or Notice to Proceed for Construction Services. Such liquidated damages will be fixed and agreed upon because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages DCAMM and the Commonwealth would in such event sustain.

- b. Similarly, if the Contract or any amendment thereto states that by a specified date a designated portion of the Construction Services shall be prosecuted to the point at which it qualifies for Substantial Completion and if such portion has not been prosecuted to such point by said date, DESIGN-BUILDER shall pay to DCAMM the sum designated in the Contract (or amendment) for each calendar day that DESIGN-BUILDER is in default in completing such portion of the Services to such point. Such moneys shall also be paid as liquidated damages not as a penalty, to cover losses and expenses to the Commonwealth resulting solely from the fact that the Construction Services is not completed on time.
- c. DCAMM may recover such liquidated damages by deducting the amount thereof from any moneys due or that might become due to DESIGN-BUILDER, and if such moneys shall be insufficient to cover the liquidated damages, then DESIGN-BUILDER or its surety shall pay to DCAMM the amount due.
- d. Except as otherwise expressly provided, none of the following shall constitute a waiver of DESIGN-BUILDER's or its surety's obligations to pay liquidated damages or any portion thereof or of any of DCAMM's rights hereunder at law or in equity:
  - (i) Acceptance of any portion of the Construction Services or New Equipment/Systems or payment to DESIGN-BUILDER or its surety therefore;
  - (ii) Completion of a portion of the Construction Services for the use or occupancy thereof by DCAMM or others; or
  - (iii) DCAMM's requiring or allowing DESIGN-BUILDER or its surety to complete the Construction Services.
- e. Such liquidated damages may be suspended or waived in writing by DCAMM, if DESIGN-BUILDER submits evidence satisfactory to DCAMM that the delay was caused solely by conditions beyond the control of DESIGN-BUILDER and DCAMM has not suffered any damages as a result of said delay.
- f. Failure by DCAMM to specify a sum as liquidated damages in the Contract, or the insertion of "N/A" or "none" in the space provided therein for liquidated damages, shall not be deemed a waiver of DCAMM's right to recover actual damages arising from DESIGN-BUILDER's failure to complete the Construction Services on time.

**Section 41 Modification/Alteration of New Equipment/Systems and Interference with Existing Equipment/Systems**

**41.1 Accessory New Equipment/Systems.** During the Project Term, DCAMM shall not, without the prior written consent of DESIGN-BUILDER, which shall not be unreasonably withheld, affix or install any accessory equipment or device on any of the New Equipment/Systems installed by DESIGN-BUILDER if such addition will change or impair the originally intended functions, value, warranty, or use of the New Equipment/Systems.

**41.2 New Equipment/Systems Installed By DESIGN-BUILDER.**

- a. During the Project Term, DCAMM shall not significantly move, remove, modify, alter, or change in any way the New Equipment/Systems or any part thereof, without the prior written approval of DESIGN-BUILDER. Notwithstanding the foregoing, DCAMM may take reasonable steps to protect the New Equipment/Systems if, due to an emergency, it is not possible or reasonable to notify DESIGN-BUILDER before taking any such actions. In the event of such an emergency, DCAMM shall take reasonable steps to protect the New Equipment/Systems from damage or injury.
- b. DESIGN-BUILDER may, subject to DCAMM's prior written approval, which approval shall not be unreasonably withheld, change the New Equipment/Systems, revise any procedures for the operation of the New Equipment/Systems or implement changes in the Design, provided that:
  - (i) DESIGN-BUILDER properly submits such requested modification, addition, or replacement for approval in accordance with the Contract at least one hundred twenty (120) days prior to the date the applicable New Equipment/System or component thereof will be used in the Construction Services;
  - (ii) DESIGN-BUILDER provides DCAMM and any third-party consultant identified by DCAMM in writing with any information and test results that DCAMM and its designated consultant(s) reasonably requires to determine whether or not a proposed modification is equal to the requirements of the Contract Documents (including, without limitation, the Design) as set forth herein;
  - (iii) DESIGN-BUILDER complies with the standards of comfort and services set forth in the DCAMM Standard Specifications Rev. 8.00;
  - (iv) such modifications or additions to, or replacement of the New Equipment/Systems, and any operational changes, or new procedures shall not adversely affect the ability of the Project to achieve the Design Intent, increase the cost of operations or be considered of

- lesser quality or compromise any Existing Equipment/Systems associated with this Project or the Premises;
- (v) such modifications or additions to, or replacement of the New Equipment/Systems and operation changes or new procedures do not adversely affect the warranties on such New Equipment/Systems;
  - (vi) such modifications or additions to, or replacement of the New Equipment/Systems and operation changes or new procedures, in the opinion of DCAMM: are at least equal in quality, durability, appearance, strength and design; perform at least equally the function imposed in the Design and any other applicable Contract Documents; and conform substantially, even with deviations, to the detailed requirements for the items as indicated by the Design and any other applicable Contract Documents; and
  - (vii) any cost incurred relative to such modifications, additions or replacement of the New Equipment/Systems, or operational changes or new procedures and any changes necessary to accommodate such approved modification, addition, or replacement shall be the responsibility of DESIGN-BUILDER.

All modifications, additions or replacements of the New Equipment/Systems or revisions to operating or other procedures shall be described in a supplemental schedule(s) to be provided to DCAMM for approval, which shall not be unreasonably withheld, provided that any replacement of the New Equipment/Systems shall be new and have equal or better potential to achieve the Design Intent at the Premises than the New Equipment/Systems being replaced. DESIGN-BUILDER shall update any and all software to be used in connection with the New Equipment/Systems in accordance with the Contract and the Design. All replacements of and alterations or additions to the New Equipment/Systems shall become part the New Equipment/Systems described in the Design and shall be covered by the provisions and terms of this Contract. In no event shall DESIGN-BUILDER maintain a claim for delays based upon DCAMM and DCAMM's consultant's review of requests for modification, addition, or replacement of New Equipment/System and/or operating procedures therefore if DESIGN-BUILDER has failed to comply with the one hundred twenty (120) day submission requirement above.

**41.3 Existing Equipment/Systems Not Installed By DESIGN-BUILDER.** Any modification to, or any damage, destruction, failure or replacement of, any energy or water related Existing Equipment/Systems owned by DCAMM, exclusive of New Equipment/Systems installed under this Contract and used at the Premises, shall be

the sole responsibility of DCAMM, except that where such damage, destruction, modification, failure or replacement is the result of an act or acts of DESIGN-BUILDER, its contractors, Subcontractors or suppliers. DESIGN-BUILDER shall correct such damage, destruction, modification, failure or replacement at DESIGN-BUILDER's expense.

**41.4 Inspections; Corrections to Services**



- a. DESIGN-BUILDER shall be responsible for the inspection of portions of the Services already performed under this Contract to determine that such portions are completed in accordance with industry standards of good workmanship and the Contract Documents, and in proper condition to receive subsequent Services.
- b. The inspection of the Services by DCAMM or its consultants shall not relieve DESIGN-BUILDER of its responsibilities to fulfill the Contract obligations. Defective work may be rejected by DCAMM or its designated consultants whether or not such work and/or materials have been previously overlooked or misjudged by DCAMM or its designated consultants and accepted for payment. If the Services or any part thereof shall be found defective at any time before the Final Acceptance, DESIGN-BUILDER shall forthwith correct such defect in a manner satisfactory to DCAMM or its designated consultants. If any material brought upon the Premises for use in the Services, or selected for the same, is rejected by DCAMM or its designated consultants as unsuitable or not in conformity with the Contract Documents, or as damaged by casualty or deteriorated due to improper storage at the Premises or to any other factor, CONTRACTOR shall forthwith remove such materials from the Premises. CONTRACTOR shall pay for the cost of making good all work or property of other contractors or of the Commonwealth destroyed or damaged by such removal or replacement; repair, finish and immediately make good any injury, defect, omission, or mistake in the Services as soon as it is discovered; and complete and leave the Services in perfect condition.

## **Section 42 Health, Safety and Accident Prevention**

**42.1 Performance of Services.** In the performance of the Services, DESIGN-BUILDER shall:

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

## **42.2 OSHA.**

- a. *Compliance.* For the purposes of the Contract, DESIGN-BUILDER shall:

- (i) Comply with 84 Stat. 1590, the "Occupational Safety and Health Act of 1970" (OSHA) and with regulations and standards issued by the U.S. Secretary of Labor at 29 CFR Part 1926;
  - (ii) Include the terms of this Section in every subcontract so that such terms shall be binding on each Subcontractor;
  - (iii) Designate by notice to DCAMM a responsible member of its organization at the Premises whose duties shall include ensuring safety, implementation of DESIGN-BUILDER's Safety Plan referenced below in Section 42.6 and preventing accidents.
- b. *OSHA 10 Hour Training Requirement.* Pursuant to M.G.L. c. 30 § 39S, DESIGN-BUILDER shall certify and ensure that all employees of DESIGN-BUILDER to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health administration that is at least 10 hours in duration at the time the employee begins work and shall furnish this documentation to the DCAMM prior to the start of any Construction Services. Subcontractors and others working at the Premises on behalf of DESIGN-BUILDER shall furnish documentation of successful completion of said course to the DESIGN-BUILDER for submittal to DCAMM prior to the start of any Construction Services.

**42.3 Records.** DESIGN-BUILDER shall maintain an accurate record of exposure data on all accidents incident to the Services resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or New Equipment/Systems, and shall report this data in the manner prescribed by 29 CFR Part 1904. Without limiting the foregoing, DESIGN-BUILDER shall submit to DCAMM without delay verbal and written reports of all accidents involving bodily injury or property damage arising in connection with the Services.

**42.4 Emergency.** In any emergency affecting the health and/or safety of persons or property DESIGN-BUILDER shall immediately act in the exercise of reasonable judgment to prevent threatened damage, injury, or loss. DESIGN-BUILDER shall immediately notify DCAMM of such emergency. DESIGN-BUILDER shall provide a written record of all service work performed. This record shall indicate the reason for the service, description of the problem and the corrective action performed.

**42.5 Subcontractor Compliance.** DESIGN-BUILDER shall be responsible for its Subcontractors' compliance with the provisions of this Section.

**42.6 Safety Plan.** Before commencing any portion of the Services, DESIGN-BUILDER shall submit a written Project-specific plan for implementing this Section. The plan shall include an analysis of the significant hazards to life, limb and property inherent in the performance of the Services and a plan for controlling these hazards.

**42.7 Health and Safety Laws.** Without limiting the foregoing provisions of this Section, DESIGN-BUILDER shall comply with all health and safety Laws applicable to the Services. Without limitation:

- a. If DESIGN-BUILDER uses, stores or encounters toxic or hazardous substances it shall comply with M.G.L. c. 111F, § 2, the "Right to Know" law and regulations promulgated by the Department of Public Health, 105 CMR 670, the Department of Environmental Protection, 310 CMR 33, and the Department of Labor and Workforce Development, 441 CMR 21; and shall post a Workplace Notice obtainable from the Department of Labor and Workforce Development.
- b. DESIGN-BUILDER shall comply with the Federal Resource Conservation and Recovery Act, the Federal Comprehensive Environmental Response, Compensation and Liability Act, M.G.L. c. 21C, M.G. L. c. 21E, and any other Laws affecting toxic or hazardous materials, solid, special or hazardous waste (collectively "Hazardous Materials Laws"). Should DESIGN-BUILDER discover unforeseen materials subject to Hazardous Materials Laws at the Premises, DESIGN-BUILDER shall immediately comply with any and all requirements for dealing with such materials and shall notify all required governmental authorities and DCAMM of such discovery.
- c. DESIGN-BUILDER shall be responsible for the location of all utilities in connection with the Services. Without limiting the foregoing, DESIGN-BUILDER shall comply with Dig-Safe Laws. Dig-Safe System Inc., may be contacted at 331 Montvale Road, Woburn, MA, 01801, 1-888-344-7233. DESIGN-BUILDER shall notify Dig-Safe of contemplated excavation, demolition, or explosive work in public or private ways, and in any utility company right of way or easement, by certified mail, with a copy to DCAMM and the Department of Environmental Protection (DEP). This notice shall be given at least seventy-two (72) hours prior to the work, but not more than sixty (60) calendar days before the work is to be done. Such notice shall state the name of the street or the route number of the way and shall include an accurate description of the location and nature of the proposed work. Dig-Safe is required to respond to the notice within seventy-two (72) hours of receipt by designating the location of pipes, mains, wires or conduits at the Premises. DESIGN-BUILDER shall not commence work until Dig-Safe has responded.

The Services shall be performed in such manner and with reasonable precautions taken to avoid damage to utilities under the surface at the work location. DESIGN-BUILDER shall provide the Resident Engineer a copy of the DigSafe permit including the applicable permit number. Any costs related to the services performed by Dig-Safe shall be borne by DESIGN-BUILDER.

- d. DESIGN-BUILDER shall comply with M.G.L. c. 149, §129A, relative to shoring and bracing of trenches.

**42.8 Prevention of Accident or Injury.** Without limiting DESIGN-BUILDER's responsibilities described above, DESIGN-BUILDER shall take all reasonable precautions for the safety of, and the prevention of injury or damage to: (1) all Subcontractors, agents and employees of DESIGN-BUILDER performing work on the Premises or related to the Services and all other persons who may be affected thereby, including the general public, (2) all the Services and all materials and equipment to be incorporated therein, whether in storage on or off the Premises, under the care custody or control of DESIGN-BUILDER or any of its Subcontractors

or any contractors directly or indirectly contracting through any of them, and (3) other property at the Premises or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the Services. DESIGN-BUILDER shall promptly remedy all damage or loss to any such property caused in whole or in part by DESIGN-BUILDER, any Subcontractors, or anyone directly or indirectly contracted or employed by any of them or by anyone for whose acts any of them may be liable. Without limiting the foregoing, DESIGN-BUILDER shall:

- a. post and maintain adequate danger signs and other warnings against hazards;
- b. promulgate safety regulations and give appropriate notices to DCAMM and users of adjacent utilities and property;
- c. insure the adequate strength and safety of all scaffolding, staging and hoisting equipment, temporary shoring, bracing and tying;
- d. protect adjoining private or public property;
- e. provide barricades, temporary fences, and covered walkways required by prudent construction practices, Laws and/or the Contract Documents
- f. furnish approved hard hats and other personal protective equipment furnish approved first aid supplies, furnish the name of the first aid attendant, and maintain a posted list of emergency facilities;
- g. provide proper means of access to property where the existing access is cut off by DESIGN-BUILDER;
- h. maintain from the beginning of any darkness or twilight through the whole of every night sufficient lights on or near any obstruction so as to guard and protect travelers from injury from such obstruction;
- i. maintain adequate security at the Premises so as not to expose the Services and surrounding property to vandalism or malicious mischief;
- j. provide adequate fire protection procedures during the use of cutting torches, welding equipment, plumbers' torches and other flame and spark producing apparatus;
- k. take prompt action to correct any dangerous or hazardous conditions.

**42.9 Explosives.** DESIGN-BUILDER shall not use or store explosives in the performance of the Services unless DESIGN-BUILDER first obtains DCAMM's prior written specific approval. If DCAMM approves the use or storage of explosives during the performance of the Services, DESIGN-BUILDER shall first comply with all Laws and obtain all permits, approvals, and certificates required in connection with the same and shall exercise best efforts, including but not limited to the employment and supervision of properly qualified personnel, to prevent damage, injuries, and accidents involving said explosives.

**42.10 Cutting and Welding.** DESIGN-BUILDER shall not permit cutting or welding in or immediately adjacent to existing property of DCAMM or property owned by anyone else without DCAMM's prior approval in each instance.

**42.11 Heavy Vehicles.** Notwithstanding any other provisions this Section 42, DESIGN-BUILDER shall, for itself only, ensure compliance with all requirements of 540 CMR 4.10: Special Safety Requirements for Commonwealth Heavy Vehicles and Contractor Heavy Vehicles, and shall coordinate with DCAMM to the extent necessary to obtain certifications as required by 540 CMR 4.11: Special Requirements for Commonwealth and Commonwealth Contractor Vehicles - Certification and Compliance.

### **Section 43 Waste Management**

#### **43.1 Construction and Demolition Waste Management.**

- a. DESIGN-BUILDER shall be responsible for proper and legal disposal of construction demolition debris in connection with the Services provided under this Contract. These wastes are all uncontaminated waste building materials and rubble resulting from the demolition of buildings, pavements, roads or other structures. Construction and demolition wastes (C&D Waste) include, but are not limited to, concrete, bricks, lumber masonry, rebar, and plaster. DCAMM shall make reasonable provisions at the Premises to accommodate the placement of DESIGN-BUILDER's construction demolition debris container(s).
- b. DESIGN-BUILDER is encouraged to salvage or recycle at least 50% by weight of C&D Waste including brick, concrete, masonry, wood and scrap metal which are free from asbestos and/or hazardous materials. DESIGN-BUILDER shall transport salvaged items from the Premises as they are removed. Under no circumstances shall salvaged items be stored or sold on-site.
- c. If requested by DCAMM, DESIGN-BUILDER shall submit to DCAMM a C&D Waste management plan within twenty-one (21) calendar days of such request.

**43.2 Hazardous Waste Management.** Unless specifically excluded by DCAMM in writing, DESIGN-BUILDER shall be responsible for proper disposal or storage of all known hazardous wastes which were either documented in the RFP or Proposal. Such services shall include all necessary air quality monitoring, testing, specification writing and other requirements per all applicable Laws. DESIGN-BUILDER shall provide appropriate documentation relating to the disposal and/or storage, and transportation in compliance with all Laws. If extensive testing and removal is required for hazardous materials other than those listed in the RFP, Proposal or Design, DESIGN-BUILDER shall submit a Change Order request in accordance with Section 45: Changes in Scope of Services.

- a. *Hazardous Waste Removal.* Hazardous waste can only be disposed of at a DEP/EPA licensed hazardous waste treatment, storage and disposal facility.

- b. *Special Waste Removal.* "Special Waste," as defined by DEP, such as asbestos, shall only be disposed of at a DEP and City/Town Board of Health licensed landfill or DEP/EPA licensed recycling facility which is permitted to receive the particular type of special waste involved. The license should reflect the types of wastes which can be received for disposal at the landfill.

## **Section 44 Materials and Equipment**

### **44.1 Materials Generally.**

- a. DESIGN-BUILDER shall provide and pay for materials, equipment, tools construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Construction Services, whether temporary or permanent and whether or not incorporated or to be incorporated in the Construction Services.
- b. Materials and equipment to be installed as part of the Construction Services (both or either of which are hereinafter referred to as "materials") shall be new, unused, of recent manufacture, assembled, and used in accordance with the best construction practices.
- c. DESIGN-BUILDER shall inform itself as to, and shall comply with, the provisions of M.G.L. c. 7, § 23A, as amended, and shall abide by the same and all applicable rules, regulations and orders made thereunder in relation to the purchase of supplies and materials in the execution of the Construction Services, including the provisions of M.G.L. c.7, § 22, paragraph 17 which provides that there be "*a preference in the purchase of supplies and materials, other considerations being equal, in favor, first, of supplies and materials manufactured and sold within the Commonwealth, and, second, of supplies and materials manufactured and sold elsewhere within the United States.*"

### **44.2 Tests.**

- a. Any material to be used in the Construction Services may be tested or inspected at any time by the DCAMM with an independent testing company and may be rejected if it fails to comply with specified tests. DCAMM shall pay for all testing of specified material, except as provided herein. If DESIGN-BUILDER requests permission to use a material that was not specified, then DESIGN-BUILDER shall pay for such testing. The cost of testing of any materials that fail the testing criteria shall be borne by DESIGN-BUILDER.
- b. DESIGN-BUILDER shall notify DCAMM and any consultant designated by DCAMM in writing of the proposed sources of materials in time to permit all required testing and inspection before the material is needed for incorporation into the Construction Services. DESIGN-BUILDER shall have no claim arising from DESIGN-BUILDER's failure to designate the proposed source or to order the material in time for adequate testing and inspection. Necessary arrangements shall be made to permit the DCAMM and its consultant(s) to make factory, shop, or other inspection of materials or equipment ordered for

the Construction Services in process of manufacture or fabrication, or in storage elsewhere than the Premises.

**44.3 Storage of Materials and Equipment at Premises.** DCAMM shall make reasonable provisions at the Premises to accommodate the placement of DESIGN-BUILDER's storage container(s).

**44.4 Off-Site Storage of Materials and Equipment.**

- a. DESIGN-BUILDER shall obtain prior written approval from DCAMM for permission to store materials or equipment to be incorporated in the Construction Services at off-site locations, for which progress payments will be requested (where authorized under Section 5: Payments Generally).
- b. Any and all charges for storage, inspection and verification by DESIGN-BUILDER and DCAMM, including insurance, shall be borne solely by DESIGN-BUILDER. Before approval, DCAMM may require, without limitation
  - (i) evidence that the off-site location is properly secure, (ii) proper proof of insurance that identifies the material and shows DCAMM as an additional insured against fire and theft in an amount sufficient to provide full replacement cost and proof of satisfactory contractual arrangements for transportation to the storage location, (iv) a dated signed, receipted paid invoice for the materials made out to DESIGN-BUILDER or, if the invoice is in the name of DESIGN-BUILDER or Subcontractor's supplier, then a certification of payment (signed by an authorized company officer and notarized) from DESIGN-BUILDER or the appropriate Subcontractor, and (iii) a notarized certificate from the DESIGN-BUILDER stating:
    - (i) The name of the signatory of DESIGN-BUILDER or Subcontractor that owns the materials and/or equipment to be stored;
    - (ii) The location of such storage facility, including the storage space (i.e. the entire premises or certain areas of a warehouse giving the number of floors or portions thereof), and a certification that DESIGN-BUILDER has visited such location, verified the storage of such material or equipment therein or thereon (including confirmation that the materials verified payment of all current storage charges);
    - (iii) The date(s) on which the material or equipment is first stored at such facility; and
    - (iv) A description of the materials or equipment stored, including quantities, types, manufacturers and other identification information, such as serial numbers, and a certification that the materials and/or equipment meet the requirements of the Contract Documents.
- c. DESIGN-BUILDER shall furnish to DCAMM, at least once per month, a current inventory of all materials or equipment being stored at any off-site location. DESIGN-BUILDER shall mark each sealed carton or other item with the name of the Project and DCAMM, and all materials or equipment stored off-site shall be segregated to the extent required by DCAMM or DESIGN-BUILDER.

- d. Payment for materials or equipment stored off-site shall be at the reasonable discretion of DCAMM, taking into account the schedule requirements of the Construction Services.
- e. Title to materials or equipment stored off-site shall be transferred at the time at which DCAMM pays for them, free of any lien or other interest of the supplier or any other lien or encumbrance. Notwithstanding such transfer of title, the DESIGN-BUILDER shall retain sole care, custody and control of, and shall have complete responsibility for the security and protection of, all materials or equipment included in any requisition for payment which are stored at locations other than the Premises. Should any damage be incurred to any such materials or equipment:
  - (i) DESIGN-BUILDER assumes all risk of loss or damage; and
  - (ii) DESIGN-BUILDER shall hold harmless DCAMM from and against all liabilities arising out of or resulting from loss or damage, from any cause, including liens, security interests or other claims of any kind by suppliers or other third parties relating to such materials or equipment.

**44.5 Delivery and Storage of Materials; Inspection.**

- a. Materials and equipment shall be progressively delivered to the Site so that there will be neither delay in the progress of the Construction Services nor an undue accumulation of materials that are not to be used within a reasonable time and so that their security, quality, and fitness of the materials for the Construction Services is preserved.
- b. Materials stored off-site shall be insured and stored in accordance with this Section so as to guarantee the preservation of their security, quality and fitness for the Construction Services. Without derogating from DESIGN-BUILDER's responsibilities in the previous sentence, when necessary to avoid deterioration or damage, material (on or off Premises) shall be placed on wooden platforms or other hard clean surfaces and not on the ground and shall be properly protected. DCAMM will not make payment for material stored outside of Massachusetts, unless DESIGN-BUILDER receives written approval from DCAMM.
- c. Stored materials either at the Premises or at some other location agreed upon in writing shall be so located as to facilitate prompt inspection and even though approved before storage, may again be inspected prior to their use in the Project.
- d. All storage areas at the Premises shall be restored to their original condition by DESIGN-BUILDER at DESIGN-BUILDER's expense.
- e. DESIGN-BUILDER shall take charge of and be liable for any loss of or injury to the materials for its use delivered to or in the vicinity of the place where the Construction Services are being performed, whether furnished by the DCAMM or otherwise; DESIGN-BUILDER shall notify DCAMM as soon as any such



materials are so delivered, allow them to be examined by DCAMM, and furnish workers to assist therewith.

- f. Expenses for inspection of material by DESIGN-BUILDER and/or DCAMM personnel including travel, quarters, and subsistence shall be borne by DESIGN-BUILDER requesting the inspection of material stored outside the Commonwealth of Massachusetts as part of the Total Contract Value. If DESIGN-BUILDER requests an inspection of material stored outside of Massachusetts, DCAMM will initially pay for all expenses of inspecting the material incurred by DESIGN-BUILDER and/or DCAMM's personnel including travel, quarters, and subsistence. DCAMM will then invoice DESIGN-BUILDER for such costs and the DESIGN-BUILDER shall submit a credit Change Order for the amount of those expenses in accordance with Section 45: Changes in Scope of Services.

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

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

#### **Section 45 Changes in Scope of Services**

Either DCAMM or DESIGN-BUILDER may propose changes to the Services, provided that such changes must be submitted to DCAMM in writing and in accordance with this Section. All requests for Change Orders must be submitted during the Contract Term and prior to the issuance of the Certificate of Final Acceptance, whichever is earlier.

##### **45.1 Changes by Contract Amendment.**

- a. DESIGN-BUILDER may propose a list of any additional New Equipment/Systems or, if applicable, energy conservation measures which it recommends (based on an engineering survey and information from

DCAMM's staff), which provide energy or water savings or otherwise furthers the Design Intent of the Project. Additional energy conservation measures (if applicable) or New Equipment/Systems must be incorporated into the Services as an amendment to the Contract unless otherwise agreed by DCAMM.

- b. DCAMM may, in its sole discretion, chose to treat any request for a change to the Services as a Change Order or amendment, depending on the nature of the requested change and its overall impact on the Total Contract Value or this scope of Services.

#### **45.2 Change Orders Generally.**

- a. The term "Change Order" shall mean (1) a written order not requiring the consent of DESIGN-BUILDER, signed by an authorized representative of DCAMM, and designated as a Change Order, directing DESIGN-BUILDER to make changes in the Services within the general scope of the Contract, or (2) any written order from an authorized representative of DCAMM that causes any change in the Services, provided that DESIGN-BUILDER has given DCAMM written notice stating the date, circumstances, and source of the order and that DESIGN-BUILDER regards the order as a Change Order.
- b. No changes in the Services, Project Costs, the Total Contract Value, Substantial Completion Date, required date for Final Acceptance, or any other provision of an approval by DCAMM of the Contract Documents (including, without limitation, the Design) shall be made in the absence of a Change Order as defined above, directing DESIGN-BUILDER to perform such changes. Any request for a change in the provisions of this Contract submitted by DESIGN-BUILDER must be made in writing and in accordance with the provisions of this Contract including the instructions and forms set forth in **Schedule A-5: Instructions/Model Forms** and **APPENDIX A: REFERENCE DOCUMENTS**. DESIGN-BUILDER shall perform any Change Order work that is ordered by DCAMM. DESIGN-BUILDER shall consult with DCAMM prior to the submission of any proposed Change Order to ensure proper submission.
- c. A request for a change in the provisions of this Contract may be submitted to DCAMM by DESIGN-BUILDER, Resident Engineer or user agency. The request must be made in writing and in accordance with the provisions of this Contract, Laws, and the procedures of DCAMM. When DESIGN-BUILDER believes that an event or circumstance gives rise to an adjustment in the Total Contract Value and/or Design/Construction Schedule it shall submit a Project Change Request in accordance with the forms and procedures required by DCAMM.
- d. A Change Order or written directive may be issued by DCAMM for changes in Services, including but not limited to, changes in: (i) the Design; (ii) New Equipment/Systems, materials, services, or Premises; (iii) DCAMM-furnished facilities, equipment, materials, services or Premises; (iv) the schedule for performance of the Services; or (v) any other changes to this Contract.

- e. Whenever a Change Order is issued and said Change Order will cause a change in Project Cost or the Energy Savings required under the Contract, DESIGN-BUILDER or DCAMM may request an equitable adjustment in Project Cost. Such request shall be submitted in writing by the party making such claim to the other party before commencement of the pertinent work.
- f. DCAMM and DESIGN-BUILDER shall negotiate in good faith an agreement on an equitable adjustment in the Project Cost, and/or time if appropriate. In the absence of an agreement for an equitable adjustment, DCAMM shall unilaterally determine the costs attributable to the requested Change Order and provide DESIGN-BUILDER with a written notice to that effect. DESIGN-BUILDER may dispute such cost determination in accordance with Section 60: Mandatory Mediation and have the right to such further appeal as is provided in M.G.L. c.30, § 39Q. However, if the DESIGN-BUILDER shall exercise its rights to appeal the decision of DCAMM as aforesaid, the DESIGN-BUILDER shall be required to engage in the mandatory mediation procedures set forth in Section 60: Mandatory Mediation.
- g. During the negotiation of an equitable adjustment in the Total Contract Value, the DESIGN-BUILDER shall provide DCAMM with all cost, pricing data and any other information or documentation used by it in computing the amount of the equitable adjustment, and the DESIGN-BUILDER shall certify that the pricing data used was accurate, complete, and current. If DCAMM subsequently determines that the data submitted by the DESIGN-BUILDER was inaccurate, incomplete, or not current, DCAMM may exclude such data from consideration under the equitable adjustment request.
- h. Whenever the DESIGN-BUILDER is entitled or believes it is entitled to a Change Order adjusting the Project Cost or Design/Construction Schedule, the DESIGN-BUILDER shall maintain separate accounts (by job order or other suitable accounting procedure) of all costs and schedule impacts incurred and attributable to such work. The DESIGN-BUILDER shall maintain a computerized accounting system, acceptable to DCAMM, in which current information as to the status of all such work is maintained. The DESIGN-BUILDER shall maintain such contemporaneous records as are necessary to provide a clear distinction between the costs of all Change Order Work and proposed Change Order Work, and the costs of other work and any schedule impacts.
- i. Notwithstanding any provisions in the Contract to the contrary, no additional general conditions cost shall be due for any Change Order or portion of a Change Order resulting from or attributable to:
  - (i) increases in the cost of allowance items;
  - (ii) substitutions of equipment or materials which are functionally similar to equipment or materials specified in the Contract Documents; or
  - (iii) sales and use taxes.

- j. The DESIGN-BUILDER shall investigate the validity of subcontractor and supplier change order requests before agreeing to pass them through to DCAMM. For all change order requests submitted, the DESIGN-BUILDER shall certify that: the change request is made in good faith; the validity of the DESIGN-BUILDER's and any subcontractor and supplier change requests have been verified; the supporting data is accurate and complete to the best of the DESIGN-BUILDER's knowledge and belief; and the DESIGN-BUILDER actually believes DCAMM to be liable for the add amount, or entitled to the deduct amount of the change request, whichever is applicable.
- k. If applicable to the Project and requested by DCAMM, DESIGN-BUILDER shall be required to calculate and submit revised Energy Savings data prior to the approval of any Change Order or amendment to the Contract by DCAMM. This includes any updates to the baseline established as part of Design Services. The DESIGN-BUILDER shall also convey any anticipated adjustment in the value of incentives to be received as required by Section 8: Incentives prior to the approval of any Change Order or amendment to the Contract. If the Change Order or amendment does not result in any change to the Energy Savings or anticipated utility incentives, DESIGN-BUILDER shall submit a written representation.

**45.3 Change Orders Due to Differing Site Conditions.** Upon receipt of such a request for a Change Order due to a differing site condition from DESIGN-BUILDER, or upon DCAMM's own initiative, DCAMM shall make an investigation of such conditions. If latent or actual subsurface conditions differ substantially or materially from those which were documented in **APPENDIX A: REFERENCE DOCUMENTS**, could not have been discovered during the preparation of the Proposal, and are of such a nature as to cause an increase or decrease in the cost of performance of the work or a change in the construction methods required for the performance of the work, which results in an increase or decrease in the cost of the work, DCAMM shall make an equitable adjustment in Project Cost for Construction Services and this Contract shall be modified in writing accordingly.

**45.4 Methods of Computing Equitable Adjustments.**

- a. Equitable adjustments in the Total Contract Value shall be determined according to one of the following methods, or a combination thereof, as determined by DCAMM:
  - (i) fixed price basis, provided that the fixed price shall be inclusive of items (a) through (g) below and shall be computed in accordance with those provisions and as detailed in **Schedule A-5: Contract Forms**;
  - (ii) estimated lump sum basis to be adjusted in accordance with Contract unit prices or other agreed upon unit prices provided that the unit prices shall be inclusive of all costs related to such equitable adjustment;
  - (iii) time and materials basis to be subsequently adjusted on the basis of actual costs (but subject to a predetermined "not to exceed limit") calculated as follows:

- (a) the direct cost (or credit) for labor at the minimum wage rates established for this Contract pursuant to M.G.L. c. 149, §§ 26-27H;
  - (b) plus (or minus) the cost of Workmen's Compensation Insurance, Liability Insurance, Federal Social Security and Massachusetts Unemployment Compensation are to be calculated using an allowance equal to 40% applied to said rate. The rate of (40) percent is inclusive of all insurances, taxes, general conditions, overhead, superintendence, fee, and profit. No other expenses are allowed, for example, sick time, vacation time, etc. are included in the all-inclusive rate. Documentation must be provided if a higher percentage is requested and will only be accepted for Workmen's Compensation over 12.5%.
  - (c) plus (or minus) the actual direct additional premium costs and expenses incurred as a result of collective bargaining agreements or other agreements between organized labor. No allowance for markups is allowed on these costs;
  - (d) plus the direct cost of materials and use of equipment; an allowance equal to 15% of the amount of materials and equipment for general conditions, overhead, superintendence, fee, and profit can be applied;
  - (e) plus certain miscellaneous services provided and approved by DCAMM (e.g. police details, utilities, etc.) may be included and are subject to a 5% markup;
  - (f) plus (or minus), if applicable and approved by the DCAMM, costs associated with engineering, training, and warranty. No allowance for markups is allowed on these costs;
  - (g) plus (or minus) the actual direct premium cost of payment and performance bonds required of the DESIGN-BUILDER and (if applicable) certain Subcontractors for this Contract.
  - (h) The DESIGN-BUILDER shall receive an allowance equal to the percentage of the DESIGN-BUILDER Fee applied to the sum of items (a) through (e) above for overhead, superintendence, fee, and profit when the work is performed by subcontractors. Subcontractors can also apply an allowance equal to 5% of the sum of the items (a) through (e) above for overhead, superintendence, fee, and profit when the work is performed by sub-tier Subcontractors.
- (iv) DESIGN-BUILDER and its Subcontractors are required to anticipate annual updated prevailing wage schedules in accordance with M.G.L. c. 149, § 27 and shall not be entitled to claim additional compensation for base bid contract work due to updated prevailing wage schedules.
- b. If the net change is an addition to Project Cost for Construction Services it shall include the DESIGN-BUILDER's overhead, superintendence, fee and profit. On any change that involves a net credit, the amount of the credit shall include the Hard Cost being credited and the DESIGN-BUILDER Fee percentage applicable thereto (calculated as the DESIGN-BUILDER Fee percentage multiplied by such Hard Costs). Charges for small tools known as "tools of the trade" are not to be computed in the amount of any change in Project Cost for Construction Services.

- c. Refer to **Schedule A-5: Instructions/Model Forms** for instructions regarding Project Change Request and request for approval of wages and rates for Change Order pricing and format for submission of Change Order. The forms are available electronically and will be provided to DESIGN-BUILDER prior to start of construction. The DESIGN-BUILDER and all Subcontractors shall utilize DCAMM Form 15 when submitting Project Change Requests.

**45.5 Contingency Approval Requests.** Construction Contingency funds shall only be available for payment upon prior written approval by DCAMM for certain costs pursuant to Section 30: Project GMP; Project GMP Amendment. If DESIGN-BUILDER believes that any costs incurred by DESIGN-BUILDER are eligible for payment from the Construction Contingency, prior to incurring such costs the DESIGN-BUILDER shall (a) promptly submit a request in writing to DCAMM and (b) obtain written DCAMM approval for such use of Construction Contingency. Such request shall be in a form acceptable to DCAMM and set forth the amount and an explanation of the basis for such claim. DCAMM, in its sole discretion, may require a claim for Construction Contingency approval to be submitted using the DCAMM Change Order forms and procedures set forth in the Contract Documents (as may be reasonably modified for use in connection with Construction Contingency claims) and the use of such forms for processing Construction Contingency requests shall not be deemed consent by DCAMM to a Change Order or to otherwise modify the Project GMP. DESIGN-BUILDER shall track Construction Contingency claims separately from Change Order Requests and Change Orders as part of Project reporting, in accordance with the Contract. The amount of any payment from Construction Contingency shall be based upon actual costs incurred by DESIGN-BUILDER, as verified by sufficient backup documentation. DESIGN-BUILDER shall not receive any DESIGN-BUILDER Fee in connection with any use of the Construction Contingency.

**45.6 Work Performed Under Protest.** DESIGN-BUILDER agrees to perform all Change Order work as directed by DCAMM in accordance with the terms of this Contract. If DCAMM determines that certain work that DESIGN-BUILDER believes to warrant a Change Order does not represent a change in the Services, DESIGN-BUILDER shall perform said work and DESIGN-BUILDER shall be deemed to have concurred with DCAMM's aforesaid determination unless DESIGN-BUILDER performs such work under protest in compliance with the following sub-paragraphs a and b. Any disputed order, decision, or action by DCAMM or its authorized representative shall be fully performed or complied with pending resolution of the dispute.

- a. If DESIGN-BUILDER claims compensation for a change in the work that is not deemed by DCAMM to be a change or to warrant additional compensation as claimed by DESIGN-BUILDER, DESIGN-BUILDER shall on or before the first working day following the commencement of any such work or the sustaining of any such alleged damage submit to DCAMM a written statement of the nature of such work or claim. DESIGN-BUILDER shall not be entitled to additional compensation for any work performed or damage sustained for which written notice is not given within the time limit specified in the preceding sentence, even if similar in character to work or damage with respect to which notice is timely given.

- b. On or before the second business day after the commencement of such work or the sustaining of such damage, for each day upon which work occurs or damage is sustained, DESIGN-BUILDER shall file to the extent possible with the Resident Engineer and DCAMM, itemized statements of the details and costs of such work performed or damage sustained. DESIGN-BUILDER shall use the DCAMM Daily Time and Materials Report found in **APPENDIX A: REFERENCE DOCUMENTS** to record all labor and material used. If DESIGN-BUILDER shall fail to make such statements to the extent possible, then DESIGN-BUILDER shall not be entitled to additional compensation for any such work or damages.

**45.7 Open-Book Pricing.** Open-book pricing may be required, such that DESIGN-BUILDER shall fully disclose all costs. DESIGN-BUILDER shall maintain cost accounting records on authorized work performed documenting actual costs for labor and material, or other basis agreed to by DCAMM. DESIGN-BUILDER shall afford DCAMM access to these records and preserve them for a period of three (3) years after the date of the Certificate of Final Acceptance. Costs shall be evaluated through price analysis to compare costs with reasonable criteria such as established catalog and market prices or historical prices. The pricing methodology and individual cost mark-ups shall be as provided for in **Schedule A-5: Contract Forms**.

**45.8 False Claims, Statutory Provisions Regarding Changes.** The following statutory requirements are included in this Contract by operation of law and repeated here. In the case of any conflicts by change to the statutes or otherwise, the statute in operation on the Effective Date shall control. For the purpose of this Contract, the Commissioner of DCAMM shall be considered to be the "Chief Executive Official of the State Agency", and "Awarding Authority" shall mean "DCAMM" as those terms are used in the statutory references below and more specifically in M.G.L. c. 30, §39Q.

- a. *Criminal Penalties.* DESIGN-BUILDER's attention is directed to M.G.L. c. 30, § 39I which provides criminal penalties for unauthorized deviations from the plans and specifications, and to M.G.L. c. 30, § 39J, and M.G.L. c. 7C, §§ 17-21. CONTRACTOR's attention is also directed to M.G.L. c. 266, §67B which provides criminal penalties for false claims by DESIGN-BUILDER and states, in part, as follows:

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

- b. *Statutory Provisions Regarding Appeal of Change Orders.* Pursuant to M.G.L. c. 30, §39Q, every contract awarded by any state agency as defined by M.G.L. c. 7C, §1 (which includes "energy conservation projects"), requires the inclusion of the following statutory provisions from M.G.L. c. 30, §39Q(a) through (d) as follows:

- (i) *Disputes regarding changes in and interpretations of the terms or scope of the contract and denials of or failures to act upon claims for payment for extra work or materials shall be resolved according to the following procedures, which shall constitute the exclusive method for resolving such disputes. Written notice of the matter in dispute shall be submitted promptly by the claimant to the chief executive official of the state agency which awarded the contract or his designee. No person or business entity having a contract with a state agency shall delay, suspend, or curtail performance under that contract as a result of any dispute subject to this section. Any disputed order, decision or action by the agency or its authorized representative shall be fully performed or complied with pending resolution of the dispute. [See M.G.L. c. 30, §39Q(a)].*
- (ii) *Within thirty (30) days of submission of the dispute to the chief executive official of the state agency or his designee, he shall issue a written decision stating the reasons therefore, and shall notify the parties of their right of appeal under this section. If the official or his designee is unable to issue a decision within thirty days, he shall notify the parties to the dispute in writing of the reasons why a decision cannot be issued within thirty days and of the date by which the decision shall issue. Failure to issue a decision within the thirty-day period or within the additional time period specified in such written notice shall be deemed to constitute a denial of the claim and shall authorize resort to the appeal procedure described below. The decision of the chief executive official or his/her designee shall be final and conclusive unless an appeal is taken as provided below. [See M.G.L. c. 30, §39Q(b)].*
- (iii) *Within twenty-one (21) calendar days of the receipt of a written decision or of the failure to issue a decision as stated in the preceding subparagraph, any aggrieved party may file a notice of claim for an adjudicatory hearing with the division of hearing officers or the aggrieved party may file an action directly in a court of competent jurisdiction and shall serve copies thereof upon all other parties in the form and manner prescribed by the rules governing the conduct of adjudicatory proceedings of the division of hearing officers. In the event an aggrieved party exercises his option to file an action directly in court as provided in the previous sentence, the twenty-one day period shall not apply to such filing and the period of filing such action shall be the same period otherwise applicable for filing a civil action in superior court. The appeal shall be referred to a hearing officer experienced in construction law and shall be prosecuted in accordance with the formal rules of procedure for the conduct of adjudicatory hearings of the division of hearing officers, except as provided below. The hearing officer shall issue a final decision as expeditiously as possible, but in no event more than one hundred and twenty calendar days after conclusion of the adjudicatory hearing, unless the decision is delayed by a request for extension of time for filing post-hearing briefs or other submissions assented to by all parties. Whenever, because an extension of time has been granted, the hearing officer is unable to issue a decision within one hundred and twenty days, s/he*



*shall notify all parties of the reasons for the delay and the date when the decision will issue. Failure to issue a decision within the one hundred and twenty-day period or within the additional period specified in such written notice shall give the petitioner the right to pursue any legal remedies available to him without further delay. [See M.G.L. c. 30, §39Q(b)].*

- (iv) *When the amount in dispute is less than ten thousand dollars (\$10,000), a contractor who is party to the dispute may elect to submit the appeal to a hearing officer experienced in construction law for expedited hearing in accordance with the informal rules of practice and procedure of the division of hearing officers. An expedited hearing under this subparagraph shall be available at the sole option of the contractor. The hearing officer shall issue a decision no later than sixty days following the conclusion of any hearing conducted pursuant to this subparagraph. The hearing officer's decision shall be final and conclusive, and shall not be set aside except in cases of fraud. [See M.G.L. c. 30, §39Q(d)].*

#### **Section 46 As-Built Drawings.**

- 46.1** DESIGN-BUILDER shall provide DCAMM with duplicate paper copies of all As-Built Drawings of all modified conditions, excluding repair of Existing Equipment/Systems and installation of lighting and plumbing fixtures, associated with the Project conforming to typical engineering standards. All As-Built Drawings shall be stamped by a Massachusetts registered professional engineer for each corresponding trade if applicable, and shall be on bond paper, full size (30" x 42").
- 46.2** DESIGN-BUILDER shall provide DCAMM with one electronic copy readily downloadable or, if so requested by DCAMM, with a CD, of the following documents: the As-Built Drawings in both "TIFF" and AutoCAD format; PDF files of specifications; and a detailed inventory of repairs and lighting, steam traps, and/or water fixtures in electronic spreadsheet format.

#### **Section 47 Commissioning and Performance Testing**

- 47.1 Systems Startup and New Equipment/Systems Commissioning.** In support of DCAMM's commissioning agent, the DESIGN-BUILDER shall conduct performance testing of each element and total system of the installed New Equipment/Systems in accordance with the procedures specified in the commissioning plan prior to issuance of a Certificate of Final Acceptance. Testing shall be designed to determine if the New Equipment/Systems are functioning in accordance with both its published specifications and the requirements of the Contract.
- 47.2 Correction of Deficiencies.** DESIGN-BUILDER shall be responsible for correcting and/or adjusting all deficiencies in New Equipment/Systems that may be observed by any party to the Contract during system commissioning, measurement and verification, and testing procedures. Prior to issuance of a Certificate of Final Acceptance, DESIGN-BUILDER shall also provide DCAMM with satisfactory documentary evidence that the New Equipment/Systems installed are the New Equipment/Systems specified in the Design.

## **Section 48 Training**

- 48.1** If Construction Services are authorized in accordance with the Contract, DESIGN-BUILDER shall conduct the training program described in, the Contract Documents and Design which shall include the appropriate training required for issuance of a Certificate of Substantial Completion and issuance of the Certificate of Final Acceptance. Throughout the Project Term, DESIGN-BUILDER shall provide ongoing training as provided for in the Design with respect to updated or altered New Equipment/Systems, including upgraded software. Such training is included in Project Cost for Construction Services. Training shall always include videotaping or otherwise live audio and visual recordings of such training in order to maximize its usefulness to DCAMM.
- 48.2** The training provided by DESIGN-BUILDER shall include training necessary to allow the DCAMM to operate the New Equipment/Systems and associated Existing Equipment/Systems independently following the expiration of any service, maintenance, or warranty requirements of DESIGN-BUILDER and to allow DCAMM to gain expertise in the New Equipment/Systems such to allow the DCAMM to gain the benefit of the Energy Savings for the expected useful life of the New Equipment/Systems. This section shall not impose any additional liability for failures of the New Equipment/Systems after the Project Term and any related service and/or warranty periods have expired that does not exist elsewhere in this Contract.
- 48.3** DESIGN-BUILDER shall provide notice to DCAMM of any scheduled test(s) and training(s) and DCAMM and/or its designees shall have the right to be present at any or all such tests and trainings conducted by DESIGN-BUILDER and/or manufacturers of the New Equipment/Systems.

## **Section 49 Substantial Completion/Final Acceptance**

- 49.1 Use and Occupancy Prior to Final Acceptance.**
- a. DESIGN-BUILDER shall not be responsible for wear and tear or damage resulting solely from temporary occupancy.
  - b. Use and occupancy of any part of the Construction Services prior to issuance of a Certificate of Final Acceptance by DCAMM shall not relieve the DESIGN-BUILDER from maintaining the required payment and performance bonds and insurance (to the extent that insurance is required to be maintained after Substantial Completion Date) required by this Contract.
- 49.2 Certificate of Substantial Completion.**
- a. When the Construction Services, or portion thereof which DCAMM agrees to accept separately, has reached the state of completion to the point where it is ready for and has satisfied all requirements for a Certificate of Substantial Completion as shown on a payment request approved in accordance with the Contract, the DESIGN-BUILDER shall develop, with the participation of the Designer and DCAMM, the Punch List identifying those items of unfinished or

unacceptable Construction Services that remain to be performed or corrected under the Contract.

- b. Before the Construction Services shall be deemed completed to the point where it is ready for the issuance of a Certificate of Substantial Completion, the DESIGN-BUILDER shall:
- (i) Certify that the Construction Services, including all New Equipment/Systems, have operated successfully for thirty (30) consecutive calendar days;
  - (ii) Provide a proposed Punch List containing a statement of the reason for each item listed thereon;
  - (iii) Advise DCAMM of proposed changes in insurance in accordance with the provisions of this Contract, and provide to DCAMM evidence of DESIGN-BUILDER's Completed Operations insurance coverage to the extent required by the Contract;
  - (iv) Execute and submit a notarized warranty on a form provided by DCAMM meeting the requirements of the Contract, to commence upon the date of the issuance of the Certificate of Substantial Completion for the Construction Services or the designated portion thereof, unless otherwise provided in the Certificate of Substantial Completion;
  - (v) Submit signed special warranties and warranties of longer than one year as required by the Contract;
  - (vi) If applicable, submit signed maintenance agreements for all portions of the Construction Services specified to receive maintenance after the issuance of the Certificate of Substantial Completion;
  - (vii) Submit all preliminary record drawings and documents and framed data in the forms required by the Contract;
  - (viii) Complete all items required to be completed by the Department of Public Safety and obtain a Certificate of Occupancy from the Department of Public Safety and similar releases which permit the DCAMM full and unrestricted use of the areas claimed to be ready for occupancy;
  - (ix) Deliver specified maintenance stocks of materials, required spare parts, and all special tools furnished by manufacturers to persons designated by DCAMM and obtain written receipts for same;
  - (x) Make final changes of lock cylinders or cores and advise DCAMM of the change of project security responsibility;
  - (xi) Complete start-up of systems and instruct Premises personnel on proper operation and routine maintenance of all systems and equipment; obtain and submit to DCAMM personnel that start-up and instruction have been completed;
  - (xii) Remove all remaining temporary facilities that are no longer needed, surplus materials, and debris; (the DESIGN-BUILDER shall not remove construction offices and trailers without the prior approval of DCAMM);

- (xiii) Submit final utility meter readings and similar information and advise DCAMM of the change of responsibility for utility charges and payments upon the issuance of the Certificate of Substantial Completion;
  - (xiv) Complete final clean-up of all Construction Services, restoration of damaged finishes, and replacement of all damaged and broken glass not listed on the Punch List; and
  - (xv) Complete such other items as may be called for in the Contract, if any, or in the Design.
- c. After completing the items specified in subsection b above, DESIGN-BUILDER shall make a written request to DCAMM for a Certificate of Substantial Completion in accordance with the Contract and on the form prescribed by DCAMM. DCAMM shall review the submittals and the Construction Services and shall either 1) sign a Certificate of Substantial Completion or 2) notify the DESIGN-BUILDER of incomplete and/or incorrect Construction Services that must be completed and corrected prior to the issuance of the Certificate of Substantial Completion. DCAMM shall notify the DESIGN-BUILDER of any additions to the Punch List. In connection with the execution of the Certificate of Substantial Completion, DCAMM shall assign dollar values to each item on the Punch List. Failure to include any incomplete or defective item on the Punch List shall not relieve the DESIGN-BUILDER of the obligation to complete all Work in accordance with the Contract.

### **49.3 Final Acceptance of Construction Services.**

- a. *Prerequisites for Final Acceptance of Construction Services.* After issuance of a Certificate of Substantial Completion for all Construction Services and after DESIGN-BUILDER has completed all of the Services required by this Contract, including, without limitation, Change Orders and Punch List items, DESIGN-BUILDER shall submit the following completed items to DCAMM together with such additional items as may be specified in the Contract Documents:
- (i) If applicable to the Project (as directed by DCAMM), final updated Energy Savings calculations in the form prescribed by DCAMM;
  - (ii) CAMIS Equipment Information Verification and Collection Form;
  - (iii) Commissioning agent data collection sheet for state buildings;
  - (iv) A completed final request for payment showing a final accounting of all changes in the Construction Services, on the form provided by DCAMM;
  - (v) Certification and satisfactory evidence that all taxes, fees, and similar obligations have been paid;
  - (vi) Consent of DESIGN-BUILDER's surety on the payment and performance bonds for the Project to final payment executed by applicable bonding companies;

- (vii) Certified copy of the Punch List stating that DESIGN-BUILDER has completed or corrected every item listed;
  - (viii) Evidence of DESIGN-BUILDER's continuing completed operations insurance coverage to the extent required by the Contract;
  - (ix) All final record drawings, As-Built Drawings, and documents in the forms specified by the Contract;
  - (x) A notarized certification that all purchased made under the tax exemption certificate were legitimate and entitled to exemption;
  - (xi) Written certifications from the Department of Public Safety and the Designer to the effect that (a) the Construction Services have been inspected for compliance with the Contract (including the Design) and has satisfied the Department of Public Safety; (b) all equipment and systems included in the Construction Services have been tested in the presence of the Designer and are operational and satisfactory; (c) the Construction Services are complete and ready for final inspection;
  - (xii) Such other items as may be required by the Contract Documents.
- b. *Re-inspection; Final Acceptance.* After notification from DESIGN-BUILDER that all remaining Contract exceptions, omissions and incompletions have been completed (with the exception of DESIGN-BUILDER's continuing warranty, insurance, indemnification, and such other obligations as are intended by the terms of the Contract to extend beyond the date of Final Acceptance), DCAMM shall inspect the Construction Services to verify the completion of the same. If the Construction Services are satisfactory, DCAMM shall prepare a Certificate of Final Acceptance or shall notify DESIGN-BUILDER of items which remain to be completed prior to Final Acceptance.

## **Section 50 Ownership of Property**

**50.1 Ownership of Certain Proprietary Property Rights.** DCAMM shall not, by virtue of this Contract, acquire any ownership rights in any formulas, patterns, devices, secret inventions or processes, copyrights, patents or other intellectual property rights, or similar items of property which may be used in connection with the New Equipment/Systems. DCAMM shall, however, have a nonexclusive license to utilize all such intellectual or proprietary rights in connection with the use of the New Equipment/Systems under this Contract. DESIGN-BUILDER hereby grants to DCAMM a perpetual, irrevocable, royalty-free license to any and all software or other intellectual property or proprietary rights necessary for DCAMM to continue to operate, maintain, and repair the New Equipment/Systems in a manner that shall yield maximal energy and water consumption reductions. This license shall continue subsequent to any termination or expiration of this Contract other than termination due to breach by DCAMM.

**50.2 Ownership of Documents.** All drawings, reports and materials prepared by DESIGN-BUILDER specifically for this Project or in performance of this Contract, including but not limited to the Design, As-Built Drawings, and record drawings, shall become the property of DCAMM.

**50.3 Ownership of Existing Equipment/Systems.** Ownership of the Existing Equipment/Systems and materials existing at the Premises at the time of the Effective Date shall remain the property of DCAMM.

**50.4 Title to Installed New Equipment/Systems.** Upon issuance of the Certificate of Final Acceptance, title to all New Equipment/Systems installed by Contractor pursuant to this Contract shall vest in DCAMM, or its designee, upon payment in full to DESIGN-BUILDER in accordance with Section 5: Payments Generally, free and clear of any liens, encumbrances or claims as is, where is without any warranties either express or implied, except as provided in Section 51: Warranties, and at no additional cost or charge to DCAMM.

## **Section 51 Warranties**

### **51.1 Builder's Warranty.**

- a. DESIGN-BUILDER warrants that all New Equipment/Systems sold and installed as part of this Contract is new, shall be free from defects in materials or workmanship, conform to applicable Laws, shall be installed properly in a good and workmanlike manner, and shall function properly for its stated purpose for a period of one (1) year from the Substantial Completion Date, unless otherwise agreed to by DCAMM and the DESIGN-BUILDER (Builder's Warranty). If at any time during such one-year period, any part of such New Equipment/Systems or other portion of the Construction Services shall in the reasonable opinion of DCAMM be defective or require replacing or repairing, or damage to other property of the Commonwealth is caused by any defect in the Construction Services, DCAMM shall notify DESIGN-BUILDER in writing to make the required repairs or replacements and repair such damage. If DESIGN-BUILDER shall neglect to commence such repairs or replacements to the satisfaction to DCAMM within ten (10) days from the date of the giving of such notice, then DCAMM may employ other persons to make the same. DESIGN-BUILDER agrees, upon demand, to pay to DCAMM all amounts which DCAMM expends for such repairs, replacements, and/or damages. During this one-year guarantee period any corrective work shall be performed under all the applicable terms of this Contract. This one-year guarantee shall not limit any express guaranty or warranty provided elsewhere in the Contract. DESIGN-BUILDER obligation to correct New Equipment/Systems set forth in this Section is in addition to, and not in substitution of, such guarantees or warranties as may be required in the various sections of the Design.
- b. No later than thirty (30) calendar days prior to the expiration of the Builder's Warranty, DESIGN-BUILDER shall schedule an appointment with DCAMM for a re-inspection of the work with DCAMM, and shall thereafter inspect the work at the time scheduled. Based on this inspection and on prior inspections, DCAMM shall issue a "Warranty Repair List" of items to be corrected by DESIGN-BUILDER. DESIGN-BUILDER shall make the repairs and/or replacements listed within thirty (30) calendar days of the issuance of the Warranty Repair List unless otherwise agreed by DCAMM in writing.

- c. After the conclusion of the Builder's Warranty, DESIGN-BUILDER shall have no responsibility under this Contract for performing repairs, or making manufacturer warranty claims relating to the New Equipment/Systems.

**51.2 Manufacturers' Warranties.**

- a. All manufacturers' warranties shall be transferable and extended to DCAMM. The warranties shall specify that only new, not reconditioned, parts may be used and installed when repair is necessitated by malfunction.
- b. DESIGN-BUILDER further agrees to assign and deliver to DCAMM all manufacturers' warranties relating to the New Equipment/Systems and to deliver such written warranties. From the Substantial Completion Date through the expiration of Builder's Warranty or the transfer of the manufacturers' warranties to DCAMM, whichever is later, DESIGN-BUILDER shall pursue rights and remedies against the manufacturer of the New Equipment/Systems under the applicable warranties.
- c. DESIGN-BUILDER shall notify DCAMM regarding any rights and/or remedies DESIGN-BUILDER pursues on DCAMM's behalf pursuant to this section.
- d. The cost of any risk of damage or damage to the New Equipment/Systems and its performance, including damage to property and New Equipment/Systems of DCAMM or the Premises, due to DESIGN-BUILDER's failure to exercise its warranty rights shall be borne solely by DESIGN-BUILDER.

**Section 52 O&M Manuals.**

If Construction Services are authorized in accordance with the Contract, prior to the Substantial Completion Date DESIGN-BUILDER shall provide DCAMM with the Operation and Maintenance (O&M) manuals, including but not limited to preventative maintenance schedules for all New Equipment/Systems installed for the Project. Once so provided, the O&M manuals shall become the property of the DCAMM. The O&M manuals shall detail the maintenance requirements for the New Equipment/Systems. Four (4) copies each of the O&M manuals shall be provided, two (2) printed copies and two (2) in electronic spreadsheet format. DESIGN-BUILDER shall, where reasonably practicable, coordinate its efforts in this area with DCAMM's staff involved with administering any state-wide preventive maintenance programs.

**Section 53 New Equipment/Systems Inventory.**

If Construction Services are authorized in accordance with the Contract, DESIGN-BUILDER shall provide for each building a list of all major New Equipment/Systems installed, including the manufacturer, brand name, model (if applicable), New Equipment/Systems components, and recommended maintenance procedures for each piece of New Equipment/Systems. Two (2) printed copies and two (2) CDs in electronic spreadsheet format shall be provided to DCAMM.

**Section 54 Replenishable Stock.**

If Construction Services are authorized in accordance with the Contract, DESIGN-BUILDER shall provide replenishable stock of all New Equipment/Systems as set forth in the Contract Documents, including, without limitation, the Design.

**PART E – LEGAL/SPECIAL PROVISIONS**

**Section 55 Indemnification**

To the fullest extent permitted by law, DESIGN-BUILDER shall indemnify, defend (with counsel subject to the supervision of the Attorney General of the Commonwealth of Massachusetts as required by M.G.L. c. 12, § 3) and hold harmless DCAMM and the Commonwealth and all of its officers, agents, divisions, agencies, employees, representatives, successors and assigns from and against all claims, damages, losses and expenses, including but not limited to court costs, reasonable attorneys' fees, interest and costs arising out of or resulting from the performance of the Services, including but not limited to those arising or resulting from: labor performed or furnished and/or material used or employed in the performance of the Services; violations by DESIGN-BUILDER, any Subcontractor, or by any person directly or indirectly employed or used by them in the performance of the Services (including, without limitation, suppliers) or anyone for whose acts any of them may be liable (DESIGN-BUILDER, Subcontractor, and all such persons herein collectively called "DESIGN-BUILDER's Personnel") of any Laws; violations of any provision of this Contract by any of DESIGN-BUILDER's Personnel; injuries to any persons or damage to any property in connection with the Services and/or Project; or any act, omission or neglect of DESIGN-BUILDER's Personnel.

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

The provisions of this Section are intended to survive issuance of the Final Acceptance and/or any termination of this Contract

**Section 56 Insurance Requirements**

Certificates substantiating that required insurance coverage is in effect shall be filed with DCAMM. Any cancellation of insurance whether by the insurers or by the insured shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to DCAMM at least thirty (30) calendar days prior to the intended effective date thereof, which date shall be expressed in said notice.



**56.1 Insurance Generally.**

- a. DESIGN-BUILDER shall purchase and maintain the insurance of the type and limits listed in this Section with respect to the operations as well as the completed operations of the DESIGN-BUILDER. This insurance shall be provided at DESIGN-BUILDER's expense and shall be in full force and effect through the Contract Term or for such longer period as this Section requires. DESIGN-BUILDER may offer insurance coverages that are structurally different than those outlined in this Section but that are acceptable to DCAMM at its sole discretion.
- b. All policies, except for Professional Liability insurance, shall be written on an occurrence basis. All policies shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts with a financial strength rating of A- or better as assigned by A.M. Best Company, or otherwise acceptable to the DCAMM.
- c. DESIGN-BUILDER shall submit an original of each certificate of insurance, acceptable to DCAMM, in advance of the execution of this Contract and prior to the issuance of a Notice to Proceed. Certificates shall show each type of insurance, insurance company, policy number, any endorsements, amount of insurance, deductibles and /or self-insured retentions, and policy effective and expiration dates. Certificates shall specifically note the following:
  - that the automobile liability, umbrella liability and pollution liability policies include the "Commonwealth of Massachusetts" as additional insured.
  - that all policies include the coverage and endorsements in accordance with the terms and conditions as required by this Contract.
  - that the Builders' Risk or Installation Floater is on an "all risk" basis including earthquake and flood, and includes the "Commonwealth of Massachusetts" and DESIGN-BUILDER as named insureds or joint loss payees as their interests may appear.
  - that none of the coverages shall be cancelled, terminated, or materially modified unless and until 30 days prior notice is given in writing to the DCAMM.

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

- d. DCAMM reserves the right to request certified complete copies of all policies and endorsements at any time during this Contract Term. If DCAMM is damaged by DESIGN-BUILDER's failure to maintain such insurance and to comply with the terms of this Section, then DESIGN-BUILDER shall be responsible for all costs and damages to the DCAMM attributable thereto.
- e. DESIGN-BUILDER is responsible for the payment of any and all deductibles under all of the insurance required below. DCAMM shall not in any instance be responsible for the payment of deductibles, self-insured retentions, or any portion thereof.

**56.2 DESIGN-BUILDER's Commercial General Liability.**

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

Bodily Injury & Property Damage	\$1,000,000 each occurrence, \$2,000,000 general aggregate per project
Products & Completed Operations	\$1,000,000 annual aggregate
Personal & Advertising Injury	\$1,000,000 each occurrence
Medical Expenses	\$5,000 any one person

- b. This policy shall include coverage relating to explosion, collapse, and underground property damage.
- c. This policy shall include contractual liability coverage.
- d. The completed operations coverage shall be maintained for a period of three (3) years after the termination of the Contract. DESIGN-BUILDER shall provide renewal certificates of insurance to the DCAMM as evidence that this coverage is being maintained.
- e. If the New Equipment/Services installed includes work to be performed within 50 feet of a railroad, any exclusion for liability assumed under contract for work within 50 feet of a railroad shall be deleted.
- f. This policy shall include the "Commonwealth of Massachusetts" as additional insureds via endorsements CG 20 10 (or its equivalent) for ongoing operations and CG 20 37 (or its equivalent) for completed operations. This policy shall be primary and non-contributory with respect to any other insurance available to additional insureds.
- g. To the extent that a loss is covered by insurance in force, and recovery is made for such loss, DCAMM and DESIGN-BUILDER, including their respective agents and employees, mutually waive their rights of subrogation under the Commercial General Liability insurance coverage set forth herein.

**56.3 Automobile Liability.**

- a. DESIGN-BUILDER shall purchase and maintain the following minimum coverage with respect to the operations of any owned, non-owned, and hired vehicles including trailers used in the performance of the work, unless a higher amount is specified in writing by DCAMM, in which case DESIGN-BUILDER shall provide the additional coverage:

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

- b. The policy shall include a CA 99 48 Broadened Pollution Endorsement. If specified in writing by DCAMM, DESIGN-BUILDER, if hauling contaminants and/or pollutants, must adhere to Sections 32 and 33 of the Motor Carrier Act of 1980, which shall include coverage Form MCS-90.
- c. The policy shall contain a Waiver of Subrogation in favor of the DCAMM.

**56.4 Pollution Liability.**

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

Limit of liability	\$1,000,000 per occurrence
	\$3,000,000 aggregate

**56.5 Worker's Compensation.**

- a. DESIGN-BUILDER shall provide the following coverage in accordance with M.G.L. c.149 §34A and c.152 as amended, unless a higher amount is specified in writing by DCAMM, in which case DESIGN-BUILDER shall provide the higher coverage:

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

- b. To the extent that a loss is covered by Workers' Compensation insurance in force and recovery is made for such loss, DCAMM and DESIGN-BUILDER, including their respective agents and employees, mutually waive their rights of subrogation under the Workers' Compensation insurance coverage set forth herein.

**56.6 Builder's Risk/ Installation Floater/Stored Materials.**

- a. If Construction Services are authorized in accordance with this Contract, DESIGN-BUILDER shall purchase and maintain coverage against loss or damage to the Project in an amount equal to the Project GMP (or, if any Construction Services are authorized prior to execution of a Project GMP Amendment, the Project Cost for Construction Services so authorized). Such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, terrorism ("certified" and "non-certified"), collapse, earthquake, flood (if the project is not in an "A" or a "V" flood zone), windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for DESIGN-BUILDER's services and expenses required as a result of such insured loss. This policy and/or installation floater shall include transportation and Stored Materials coverage in an amount equal to the value of the stored materials as required in Section 56.6(c) below.
- b. When Construction Services required by this Contract are to be performed on existing buildings owned by DCAMM, DESIGN-BUILDER shall provide an installation floater, in the full amount of the Installation Costs. Such coverage shall be written on an all risks basis or equivalent form and shall include, without limitation, insurance against perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood (if the project is not in an "A" or a "V" flood Zone), windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for DESIGN-BUILDER's services and expenses required as a result of such insured loss. This policy and/or installation floater shall include transportation and Stored Materials coverage in an amount equal to the value of the stored materials as required in Section 56.6(c) below.
- c. DESIGN-BUILDER shall maintain insurance on delivered and/or stored material designated to be incorporated in the Project against fire, theft or other hazards. Any loss or damage of whatever nature to such material while stored at an off-site location shall be forthwith replaced by DESIGN-BUILDER at no expense to the DCAMM.
- d. The policy or policies shall specifically state that they are for the benefit of and payable to DCAMM, DESIGN-BUILDER, and all persons furnishing labor or labor and materials for the installation of New Equipment/Services, as their interests may appear. The policy or policies shall list the "Commonwealth of Massachusetts and DESIGN-BUILDER as named insureds.
- e. Coverage shall include any costs for work performed by DESIGN-BUILDER's Designer or any consultant as the result of a loss experienced during the Contract Term.

- f. Coverage shall include permission for temporary occupancy and a Waiver of Subrogation in favor of the DCAMM.
- g. Coverage shall be maintained throughout the Contract Term until such time as the Certificate of Final Acceptance has been issued.

A loss under the property insurance shall be adjusted by DESIGN-BUILDER as fiduciary and made payable to DESIGN-BUILDER as fiduciary for the insureds. DESIGN-BUILDER shall pay the Subcontractors their just shares of insurance proceeds received by DESIGN-BUILDER and shall require Subcontractors to make payments to their sub-Subcontractors in similar manner.

**56.7 Umbrella Coverage.**

DESIGN-BUILDER shall provide Umbrella Coverage in form at least as broad as primary coverages required by Sections 56.2, 56.3, and 56.5 in the following amount unless a higher amount is specified in the Contract, in which case DESIGN-BUILDER shall provide the higher amount:

<u>Total Contract Value</u>	<u>Limit of liability:</u>
Under \$1,000,000	\$2,000,000 per occurrence
\$1,000,000 -- \$5,000,000	\$5,000,000 per occurrence
\$5,000,001-- \$10,000,000	\$10,000,000 per occurrence
\$10,000,001 and over	\$25,000,000 per occurrence

**56.8 Professional Liability Insurance.**

DESIGN-BUILDER and its Designer shall maintain Professional Liability Insurance (PLI) covering negligent acts, errors, or omissions in professional services of DESIGN-BUILDER, its Designer, and of any person or entity for whose performance DESIGN-BUILDER or its Designer is legally liable in the following amount unless an alternate amount is specified in writing by DCAMM:

Liability limit	\$1,000,000 per claim
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If the policy is claims-made, it shall include a retroactive date which is no later than the effective date of this Contract, and be renewed or have an extended reporting period totaling at least six (6) years which requirement can be met by providing renewal certificates of insurance to DCAMM as evidence that the PLI coverage is being maintained.

If the installation of New Equipment/Services work involves the removal or remediation of Hazardous Materials and/or the DCAMM requires DESIGN-BUILDER to provide services in connection with Hazardous Materials conditions, the PLI policy, and the PLI policy of any subconsultants employed on such Hazardous Material services, shall provide coverage for any and all claims and liability arising out of any negligent act, error or omission in the performance of any such Hazardous Material services.

**56.9 Contractor's Professional Liability.**

The DESIGN-BUILDER shall purchase and maintain insurance errors and omissions liability insurance appropriate to the contractor's profession, including without limitation construction

management services whether performed by a Designer that the insured is legally responsible for, or by the insured in their capacity as a design professional, or other professional services that the insured performs for others in their capacity as a construction manager. Coverage as required in this paragraph shall apply to liability for a professional error, act, or omission arising out of the scope of the DESIGN-BUILDER's Services as defined in this Contract. Coverage shall be written subject to limits of not less than \$1,000,000 per loss. If coverage as required above is written on a claims-made basis, the DESIGN-BUILDER warrants that any retroactive date is no later than the effective date of this contract; and that continuous coverage will be maintained or an extended coverage period will be exercised for a period of 6 (six) years beginning from the time of the final Certificate of Substantial Completion is issued pursuant to this Contract.

**56.10 Additional Types of Insurance.**

DESIGN-BUILDER shall provide such other types of insurance as may be required in writing by DCAMM in the performance of Services under this Contract.

**Section 57 Bonding Requirements/Performance and Payment Bonds**

DESIGN-BUILDER shall furnish both a Performance Bond and a Labor and Material Payment Bond in the amount of the Project Cost. Such bonds shall be in the form provided by the DCAMM and executed by a corporate surety licensed by the Commonwealth of Massachusetts Division of Insurance and whose name appears on United States Treasury Department Circular 570. The expense of these bonds shall be borne by DESIGN-BUILDER and the bonds shall be submitted to DCAMM at the time of Contract execution. Such executed bonds shall be incorporated herein by reference. If, at any time, a surety on such a bond:

- a. is adjudged bankrupt or has made a general assignment for the benefit of its creditors;
- b. has liquidated all assets and/or has made a general assignment for the benefit of its creditors;
- c. is placed in receivership;
- d. otherwise petitions a state or federal court for protection from its creditors; or
- e. otherwise becomes irresponsible or loses its right to do business in the Commonwealth of Massachusetts (including, without limitation, allowing its license to do business in Massachusetts to lapse or be revoked); then DESIGN-BUILDER shall, within twenty-one (21) calendar days of any such action listed above, provide DCAMM new executed performance and payment bonds as described in this Section above. Such bonds shall be provided solely at DESIGN-BUILDER's expense.

**Section 58 Intentionally Omitted.**

**Section 59 Termination**

**59.1 Termination for Cause by DCAMM.**

- a. DCAMM may, without prejudice to any other right or remedy, deem the Contract “terminated for cause” if any on of the following defaults shall occur and not be cured within three (3) days after giving of written notice thereof by DCAMM to DESIGN-BUILDER and any surety that has given bonds in connection with this Contract:
  - (i) DESIGN-BUILDER has filed a petition, or a petition has been filed against DESIGN-BUILDER with its consent, under any federal or state law concerning bankruptcy, reorganization, insolvency or relief from creditors, or if such a petition is filed against DESIGN-BUILDER without its consent and is not dismissed within sixty (60) calendar days; or if DESIGN-BUILDER is generally not paying its debts as they become due; or if DESIGN-BUILDER becomes insolvent; or if DESIGN-BUILDER consents to the appointment of a receiver, trustee, liquidate, custodian or the like of DESIGN-BUILDER or of all or any substantial portion of its assets and such appointment or possession is not terminated within sixty (60) calendar days; or if DESIGN-BUILDER makes an assignment for the benefit of creditors;
  - (ii) DESIGN-BUILDER refuses or fails, except in cases for which extension of time is provided under this Contract’s express terms, to supply enough properly skilled workers or proper materials to perform its obligations under this Contract, or DCAMM has determined that the rate of progress required for the timely completion of the Services is not being met;
  - (iii) DESIGN-BUILDER fails to make prompt payment to Subcontractors for materials, equipment, or labor;
  - (iv) All or a part of the Project or Services are abandoned;
  - (v) DESIGN-BUILDER has sublet or assigned all or any portion of the Services, the Project, the Contract, or claims thereunder, without the prior written consent of DCAMM, except as expressly permitted under this Contract;
  - (vi) DESIGN-BUILDER has failed to comply with Laws;
  - (vii) DESIGN-BUILDER fails to maintain, or provide to DCAMM evidence of the insurance or bonds required hereby;
  - (viii) Any other failure by DESIGN-BUILDER to maintain DCAMM’S legal protections against failure or nonperformance contained in Sections 55: Indemnification, 56: Insurance Requirements, and 57: Bonding Requirements/Performance and Payment Bonds;
  - (ix) DESIGN-BUILDER has failed to perform the Services or any portion thereof as required by this Contract or has otherwise breached any material provision of this Contract.

- b. DCAMM shall give DESIGN-BUILDER (and any surety) notice of such termination for cause, but the giving of notice of such termination shall not be a condition precedent or subsequent to the termination's effectiveness. Such notice may be provided via electronic mail delivery, read receipt requested. In the event of such termination, and without limiting any other available remedies, DCAMM may, at its option:
  - (i) hold DESIGN-BUILDER and its sureties liable in damages for breach of the Contract Documents;
  - (ii) notify DESIGN-BUILDER to discontinue all Services, or any part thereof, and DESIGN-BUILDER shall discontinue all Services, or any part thereof, as DCAMM may designate;
  - (iii) complete the Services, or any part thereof, and charge the expense of completing the Services or part thereof, to DESIGN-BUILDER;
  - (iv) require the surety or sureties to complete the Services and perform all of DESIGN-BUILDER's obligations under the Contract Documents.
- c. If DCAMM elects to complete all or any portion of the Services as specified in subparagraph (b) (iii) above, it may take possession of all materials, New Equipment/Systems, tools, machinery, implements at or near the Premises owned by DESIGN-BUILDER and finish the Services at DESIGN-BUILDER's expense by whatever means the DCAMM may deem expedient; and DESIGN-BUILDER shall cooperate at its expense in the orderly transfer of the same to a new contractor or to DCAMM as directed by DCAMM. In such case DCAMM shall not be obligated to make any further payments to DESIGN-BUILDER until the Services are completely finished. DCAMM shall not be liable for any depreciation, loss or damage to said materials, machinery, implements or tools during said use and DESIGN-BUILDER shall be solely responsible for their removal from the Premises after DCAMM has no further use for them. Unless so removed within fifteen (15) calendar days after notice to DESIGN-BUILDER to do so, they may be sold at public auction, after publication of notice thereof at least twice in any newspaper published in the county where the Services are being performed, and the proceeds credited to DESIGN-BUILDER's account; or they may, at the option of DCAMM, be stored at DESIGN-BUILDER's expense subject to a lien for the storage charges.
- d. Damages and expenses incurred under subparagraph (b) above shall include, but not be limited to, costs for any extra services required by the DCAMM or its consultants, in the opinion of the DCAMM, to successfully inspect and administer the Contract through final completion of the Services.
- e. Expenses charged under subparagraph (b) above may be deducted and paid by DCAMM out of any moneys then due or to become due DESIGN-BUILDER hereunder.
- f. All sums, damages, and expenses incurred by DCAMM to complete the Services shall be charged to DESIGN-BUILDER. In case the damages and expenses charged are less than the sum that would have been payable under this Contract if the same had been completed by DESIGN-BUILDER, DESIGN-BUILDER shall be entitled to receive the difference. In case such



expenses shall exceed the said sum, DESIGN-BUILDER shall pay the amount of the excess to DCAMM.

**59.2 Termination for Convenience by DCAMM.**

- a. DCAMM may terminate this Contract for convenience even where DESIGN-BUILDER is not in default by giving written notice to DESIGN-BUILDER specifying the effective date of termination.
- b. In the event of a termination for convenience, DESIGN-BUILDER shall only be entitled to be paid:
  - (i) all sums due and owing under this Contract through the effective date of the termination, including any retainage withheld to the date of termination, less any amount which DCAMM determines is necessary to correct or complete the Work performed to the date of termination; and
  - (ii) a reasonable sum to cover the expenses which DESIGN-BUILDER would not have incurred but for the early termination of the Contract, such as demobilization of the work force, restocking charges, termination fees payable to Subcontractors.
- c. Lost profits shall not be payable. Any payment to DESIGN-BUILDER provided for herein shall be considered to fully compensate DESIGN-BUILDER for all claims and expenses and those of any consultants, Subcontractors, and suppliers, directly or indirectly attributable to the termination, including any claims for lost profits.
- d. Upon DCAMM's termination of this Contract for convenience as provided herein, DESIGN-BUILDER shall:
  - (i) Stop the Services;
  - (ii) Stop placing orders and Subcontracts in connection with this Contract;
  - (iii) Cancel all existing orders and subcontracts;
  - (iv) Surrender the Premises to DCAMM in a safe condition;
  - (v) Transfer to DCAMM all materials, supplies, work in process, appliances, New Equipment/Systems and machinery of the Contract, and all plans, Drawings, specifications and other information and documents used in connection with this Contract.

**59.3 Repair and Replacements after Termination.** In the event of termination under this Section, DESIGN-BUILDER shall assign to DCAMM any and all warranties provided for in the Contract. If such termination occurs prior to the issuance of a Certificate of Final Acceptance then, if requested by DCAMM, for a period of one year after termination, DESIGN-BUILDER guarantees that it shall provide DCAMM with materials, equipment and skilled workers to repair or replace any of the New Equipment/Systems installed pursuant to this Contract, provided that DESIGN-BUILDER and DCAMM shall mutually negotiate a reasonable cost for such materials, equipment, and labor required during such one year period. If termination occurs

after the issuance of a Certificate of Final Acceptance then, DESIGN-BUILDER shall still be required to honor all warranty obligations provided for in Section 51: Warranties.

**59.4 Survival of Rights.** In the event that either party terminates the Contract pursuant to this Section any claims arising out of the performance of the Contract prior to the effective date of the termination, shall survive termination.

**59.5 Reservation of Rights upon Termination.** In the event of termination, DESIGN-BUILDER and DCAMM reserve the right to exercise all remedies available at law or at equity or other appropriate proceedings subject to the requirements of Section 60: Mandatory Mediation.

## **Section 60 Mandatory Mediation**

**60.1 Mandatory Mediation.** Any and all disputes arising under this Contract, including but not limited to disputes arising under Section 45: Changes in Scope of Services and Section 59: Termination, shall be subject to resolution pursuant to M.G.L. c.30, § 39Q. For the purpose of this Contract, the Commissioner of DCAMM shall be considered to be the "Chief Executive Official of the State Agency"; DCAMM shall be considered to be the "Awarding Authority" and DESIGN-BUILDER shall be considered to be the "Contractor" as those terms are used in said Section 39Q. In the case of every dispute where the dollar amount in dispute (or the estimated dollar value of the extension of time in dispute) is \$50,000 or more and DESIGN-BUILDER appeals the decision of the Commissioner of DCAMM (or his or her designee) as provided for in M.G.L. c. 30, §39Q, DCAMM and DESIGN-BUILDER shall engage in good faith in a non-binding mandatory mediation process, which process shall be concluded within sixty (60) calendar days from the date that DESIGN-BUILDER files an appeal from said decision as provided in M.G.L. c. 30, §39Q. In the case of such disputes where the dollar amount in dispute (or the estimated dollar value of the extension of time in dispute) is \$500,000 or more, if the mediation process fails, DCAMM may, in its sole discretion, elect to submit the dispute to an impartial third-party neutral or dispute review board not having any interest in DCAMM, DESIGN-BUILDER, or the Project, which shall within sixty (60) calendar days render a non-binding advisory opinion. Unless the parties have previously agreed in writing to a process for submitting disputes to mediation, DCAMM shall determine in its reasonable discretion the procedures to be followed and shall give DESIGN-BUILDER notice of the same in writing within thirty (30) calendar days of the date that DCAMM receives notice of DESIGN-BUILDER's appeal from the decision of the Commissioner of DCAMM (or his or her designee). The cost of the services of any mediator selected by one party to this Contract shall be borne by the party making the selection. The cost of the services of any mediator selected jointly by the Parties or jointly by mediators selected by the Parties shall be borne equally by the Parties.

## **Section 61 Assignment**

DESIGN-BUILDER may not assign, pledge or encumber by power of attorney or otherwise, or sublet or subcontract the Services and/or Project or any part thereof without the prior written consent of DCAMM and shall not, either legally or equitably, assign any of the moneys payable under this Contract, or DESIGN-BUILDER's claims hereunder, except with the like consent of DCAMM, whether said assignment is made before, at the time of, or after

the execution of the Contract. DESIGN-BUILDER shall remain responsible for satisfactory performance of all Services sublet or assigned. Consent of DCAMM shall not be deemed to constitute a representation or waiver of any right hereunder by DCAMM as to the qualifications or responsibility of the DESIGN-BUILDER or Subcontractors..

**Section 62 Representations and Warranties**

DESIGN-BUILDER represents and warrants represents that as of the Effective Date and for the Contract Term:

- a. it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;
- b. its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organizational instruments, and this Contract has been duly executed and delivered by the signatories so authorized and it constitutes its legal, valid, and binding obligation;
- c. its execution, delivery, and performance of this Contract does not, and shall not, result in a breach or violation of, or constitute a default under any agreement, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or
- d. it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable Laws which would materially and adversely affect its ability to perform hereunder.
- e. before commencing performance of the Contract:
  - (i) DESIGN-BUILDER shall have become licensed or otherwise permitted to do business in the Commonwealth of Massachusetts;
  - (ii) DESIGN-BUILDER shall have provided proof and documentation of all required insurance and bonds pursuant to this Contract.
  - (iii) DESIGN-BUILDER shall warrant the accuracy of, and representations in, the Proposal except the agreed upon stipulated variables.
- f. DESIGN-BUILDER shall make available, upon reasonable request, documents relating to its performance under this Contract, including contracts and subcontracts it shall enter into;
- g. DESIGN-BUILDER shall use Subcontractors who are qualified, licensed and bonded in the Commonwealth of Massachusetts to perform the work so subcontracted pursuant to the terms hereof;
- h. DESIGN-BUILDER has all requisite authority to license the use of proprietary property, both tangible and intangible, contemplated hereby;

- i. The New Equipment/Systems shall meet or exceed the systems start-up and commissioning requirements in the commissioning plan developed in accordance with this Contract.
- j. The New Equipment/Systems is or shall be compatible with all other mechanical and electrical systems, subsystems, or components with which the New Equipment/Systems interacts at the Premises, and, as installed, neither the New Equipment/Systems nor such other systems, subsystems, or components shall materially adversely affect each other as a direct or indirect result of New Equipment/Systems installation or operation;
- k. That DESIGN-BUILDER is financially solvent, able to pay its debts as they mature and is possessed of sufficient working capital to complete the Construction Services and perform its obligations under this Contract.

**Section 63 Headings**

Headings and subtitles used throughout this Contract are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section, hereof.

**Section 64 No Waiver**

The failure of DESIGN-BUILDER or DCAMM to insist upon the strict performance of this terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either party's right to thereafter enforce the same in accordance with the Contract in the event of a continuing or subsequent default on the part of DESIGN-BUILDER or DCAMM.

**Section 65 Complete Agreement/Severability**

This Contract, when executed, together with all documents attached hereto or incorporated herein as provided for in Section 2: The Contract and Contract Documents shall constitute the entire agreement between the parties and this Contract may not be amended, modified, or terminated except by a writing signed by the Parties.

In the event that any clause or provision of this Contract or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Contract unless the result would be manifestly inequitable, unconscionable or unlawful.

**Section 66 Amendments**

No amendment hereto shall be effective unless evidenced in writing and signed by all Parties.

**Section 67 Further Acts/Documents**

The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

**Section 68 Notice and Consent**

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

Division of Capital Asset Management and Maintenance  
One Ashburton Place, 15<sup>th</sup> Floor  
Boston, MA 02108  
Attention: Jayson D. Mitchell, Deputy Commissioner

With copies to:

Division of Capital Asset Management and Maintenance  
One Ashburton Place, 15<sup>th</sup> Floor  
Boston, MA 02108  
Attention: Elizabeth Isenstein, Director

This Section shall not apply to reports, bills, or payments sent by one party to the other which may be sent by ordinary mail.

**Section 69 Non-Appropriation**

DCAMM certifies that at the time of the execution of this Contract, sufficient appropriations exist and shall be encumbered to fund the Total Contract Value. Payments are subject to appropriation and shall be made only for work performed in accordance with the terms of this Contract, provided that DCAMM shall make payment to DESIGN-BUILDER for obligations incurred during the period for which funding was included in an annual or supplemental appropriation. DESIGN-BUILDER shall not be obligated to perform, and shall not perform, work outside the scope of this Contract without an appropriate amendment to this Contract, and a sufficient appropriation(s) to support such additional work. DCAMM may immediately terminate or suspend this Contract in the event that the appropriation(s) funding this Contract is eliminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Contract. Such termination shall be deemed a termination for convenience subject to the provisions of Section 59: Termination. Delay by the General Court in enacting an annual or supplemental appropriation bill shall not be grounds for termination of the Contract pursuant to this Section, unless such annual or supplemental appropriation bill as enacted and signed by the Governor contains insufficient funding for obligations pursuant to this Contract.

**Section 70 Legal or Equitable Remedies; Remedies Cumulative**

No right or remedy conferred upon or reserved to the Parties by this Contract excludes any other rights or remedies provided by law or equity, nor restricts the Parties' rights to exercise any other such right or remedy. All remedies of DCAMM provided in this Contract shall be construed as cumulative and may be exercised simultaneously or in any order as determined by DCAMM in its sole discretion. DCAMM shall also be entitled as of right to specific

performance and equitable relief including the right to an injunction against any breach of any of the provisions of this Contract.

**Section 71 Application of Massachusetts Law/Compliance with Applicable Laws**

All Services provided under this Contract shall comply with all Laws. This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflict of laws provisions.

**Section 72 Force Majeure**

If a Party shall be unable to reasonably perform any of its obligations under this Contract due to acts of God, insurrections or riots, materials or labor shortages, or similar events, this Contract shall at the other Party's option remain in effect but the obligations of both Parties shall be suspended until said events shall have ended.

**Section 73 Independent Contractor**

Except as specifically provided elsewhere in this Contract, nothing shall be construed as reserving to DCAMM any right to exercise any control over or to direct in any respect the conduct or management of business or operations of DESIGN-BUILDER on the Premises. The entire control or direction of such business and operations shall be in and shall remain in DESIGN-BUILDER, subject only to DESIGN-BUILDER's performance of its obligations under this Contract. Neither DESIGN-BUILDER nor any person performing any duties or engaged in any work on the Premises on behalf of DESIGN-BUILDER shall be deemed an employee or agent of DCAMM.

**Section 74 DESIGN-BUILDER's Accounting Method Requirements (M.G.L. c. 30, § 39R)**

**74.1** The words defined herein shall have the meaning stated below whenever they appear in this Section:

- a. "Records" means books or original entries, accounts, checks, bank statements and all other banking documents, correspondence, memoranda, invoices, computer printouts, tapes, discs, papers and other documents or transcribed information of any type, whether expressed in ordinary or machine language.
- b. "Independent Certified Public Accountant" means a person duly registered in good standing and entitled to practice as a certified public accountant under the laws of the place of his/her residence or principal office and who is in fact independent. In determining whether an accountant is independent with respect to a particular person, appropriate consideration should be given to all relationships between the accountant and that person or any affiliate thereof. Determination of an accountant's independence shall not be confined to the relationships existing in connection with the filing of reports with DCAMM.
- c. "Audit", when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards for the

purpose of expressing a CERTIFIED opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons.

- d. "Accountant's Report", when used in regard to financial statements, means a document in which an independent certified public accountant indicates the scope of the audit which s/he has made and sets forth his/her opinion regarding the financial statement for the most recent completed fiscal year as set forth in Paragraph (d) of M.G.L. c. 30, §39R.
- e. "Management," when used herein, means the chief executive officers, partners, principals or other person or persons primarily responsible for the financial and operational policies and practices of DESIGN-BUILDER.
- f. Accounting terms, unless otherwise defined herein, shall have a meaning in accordance with generally accepted accounting principles and auditing standards.

**74.2** DESIGN-BUILDER shall file with DCAMM, a statement of management as to whether the system of internal accounting controls of DESIGN-BUILDER and its subsidiaries reasonably assures that:

- a. transactions are executed in accordance with management's general and specific authorization;
- b. transactions are recorded as necessary:
  - (i) To permit preparation of financial statements in conformity with generally accepted accounting principles, and
  - (ii) To maintain accountability for assets;
- c. access to assets is permitted only in accordance with management's general or specific authorization; and
- d. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.

**74.3** DESIGN-BUILDER shall also file with DCAMM a statement prepared and signed by an independent certified public accountant, stating that s/he has examined the statement of management on internal accounting controls, and is expressing an opinion as to:

- a. whether the representations of management in response to this paragraph are consistent with the result of management's evaluation of the system of internal accounting controls; and
- b. 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 DESIGN-BUILDER's financial statements.

- 74.4** DESIGN-BUILDER shall annually file with DCAMM during the Contract Term 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.
- 74.5** The office of Inspector General and DCAMM shall have the right to enforce the provisions of this Section. DESIGN-BUILDER's failure to satisfy any of the requirements of this section may be grounds for debarment pursuant to M.G.L. c. 149, § 44C.
- 74.6** DESIGN-BUILDER shall save the written calculations, pricing information, and other data that the DESIGN-BUILDER used to calculate the proposal that induced DCAMM to enter into this Contract for at least six (6) years after DCAMM makes final payment under this Contract.

**Section 75 Massachusetts and United States Manufacturers**

Pursuant to M.G.L. c. 7, § 22, paragraph 17, DESIGN-BUILDER is encouraged to give preference in the purchase of supplies and materials, other considerations being equal, in favor, first, of supplies and materials manufactured and sold within the Commonwealth, and second, of supplies and materials manufactured and sold elsewhere within the United States in performing the work under this Contract.

**Section 76 Anti-Boycott Covenant (Executive Order No. 130)**

DESIGN-BUILDER warrants, represents and agrees that during the Contract Term, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott, as defined in Section 999 (b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or engages in conduct declared to be unlawful by M.G.L. C. 151E, § 2. If there shall be a breach in the warranty, representation and agreement contained in this paragraph, then without limiting such other rights as it may have, DCAMM shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by DESIGN-BUILDER or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of DESIGN-BUILDER.

DESIGN-BUILDER shall not purchase or rent any materials, equipment, machinery, vehicles, or supplies for or in connection with the Services from any person or entity who does not sign, under pains and penalties of perjury, a certificate that recites: "The undersigned warrants, represents and agrees that during the time its agreement with DESIGN-BUILDER is in effect for materials, supplies or equipment to be used in connection with the Services, neither the undersigned or any affiliated company, as hereafter defined, participates in or cooperates with an international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engages in conduct declared to be unlawful by M.G.L. C. 151E, § 2. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the undersigned or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the undersigned; or which directly or indirectly owns at least 51% of the ownership interests of the undersigned."



DCAMM shall not be obligated to pay DESIGN-BUILDER for the cost of any materials, supplies, or equipment purchased or rented from any individual or entity from whom DESIGN-BUILDER has not previously obtained and delivered to the DCAMM the certificate that the previous paragraph requires. DESIGN-BUILDER will immediately terminate its contract with any supplier who breaches the warranty, representation and agreement contained in the previous paragraph.

DESIGN-BUILDER shall include in DESIGN-BUILDER's subcontracts or agreements with any person or entity from whom DESIGN-BUILDER intends to purchase or rent any materials, equipment, machinery, vehicles or supplies for or in connection with the Work, (a) a notice that this Contract obligates DESIGN-BUILDER to terminate the supply contract upon discovery of such breach of the sworn certificate delivered under subparagraph (1) and such termination shall be without liability to DESIGN-BUILDER or DCAMM and (b) a provision which states: "The Governor or his designee, the secretary of administration and finance, and the state auditor or his designee shall have the right at reasonable times and upon reasonable notice to examine the books, records and other compilations of the undersigned vendor which pertain to the performance and requirements of this CONTRACT to provide materials of any nature to DESIGN-BUILDER in connection with the Services."

#### **Section 77 Corporate Disclosures**

DESIGN-BUILDER, if a foreign corporation, shall comply with M.G.L. c. 181, § 3 and § 5, and M.G.L. c. 30, § 39L.

#### **Section 78 Workforce Certification: Certification of Compliance with Workforce Related Legal Requirements [Executive Order 481]**

**78.1 Workforce Certification.** DESIGN-BUILDER shall comply with the following legal requirements for any and all employees to be employed in the Project who are required to be listed in the certified payroll reports for the Project: 1) Federal Department of Homeland Security Requirements in hiring such employees including, but not limited, to the faithful completion of the Federal Department of Homeland Security Form I-9 process by DESIGN-BUILDER; 2) proper classification of individuals employed on the Project; 3) all Laws concerning Workers' Compensation insurance coverage, unemployment insurance, Social Security taxes, and Income Taxes; and 4) all Laws concerning hospitalization and medical benefits that meet the minimum requirements of the connector board established in M.G.L. c. 176Q. DESIGN-BUILDER shall execute a "Workforce Certification" form with the execution of this Contract. DESIGN-BUILDER shall require each of its Subcontractors and sub-Subcontractors to execute and provide to DESIGN-BUILDER such "Workforce Certification" form in the form provided by this Contract with the execution of each subcontract, and DESIGN-BUILDER shall immediately provide a copy to DCAMM. DESIGN-BUILDER acknowledges that with the weekly workforce reports that must be submitted electronically on a weekly basis, in the form and format required by DCAMM, including, but not limited to, electronic means, DESIGN-BUILDER and all of its Subcontractors must also report on gender, race/ethnicity of its workforce through the requested means, including DCAMM's online workforce reporting system. DESIGN-BUILDER and all of its Subcontractors are required to certify that the Form I-9 process was faithfully completed and that all other legal requirements related to its workforce referenced above were followed for all employees listed on each certified payroll report when submitted. DESIGN-BUILDER and all of its Subcontractors must:

comply with the legal requirements of this section; must not knowingly use undocumented workers in connection with the performance of this Contract; pursuant to federal requirements must verify the immigration status of all workers assigned to the contract without engaging in unlawful discrimination; and must not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker. Breach of any of the terms of the Workforce Certification legal requirements during the period of this Contract may be regarded as a material breach, subjecting DESIGN-BUILDER and its Subcontractors to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination. DESIGN-BUILDER must require each of its Subcontractors to execute and provide to DESIGN-BUILDER a Workforce Certification form with the execution of each subcontract, and DESIGN-BUILDER must require each Subcontractor to forward a copy of each such Workforce Certification to the DESIGN-BUILDER for filing with DCAMM.

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

**78.3 Payroll Records and Statement of Compliance.** DESIGN-BUILDER shall comply and shall cause its Subcontractors to comply with Massachusetts General Law c. 149, s. 27B, which requires that a true and accurate record be kept of all persons employed on the Project for which the prevailing wage rates have been provided. DESIGN-BUILDER and all Subcontractors shall keep these records and preserve them for a period of three years from the date of completion of this Contract. Such records shall be open to inspection by any authorized representative of DCAMM at any reasonable time, and as often as may be necessary. DESIGN-BUILDER shall, and shall cause its Subcontractors to, submit weekly copies of their weekly payroll records to DCAMM at no additional expense to DCAMM. DCAMM may at all reasonable times audit such reports. In addition, DESIGN-BUILDER and each Subcontractor shall furnish to the Executive Department of Labor within fifteen (15) calendar days after completion of its portion of the Services a signed statement in the form required by DCAMM. DCAMM, at its sole election, may require DESIGN-BUILDER and all Subcontractors to submit such reports and documentation in electronic format.

**78.4 Vehicle operators.** If the Director of the Department of Labor and Workforce Development has established a schedule of wage rates to be paid to the operators of trucks, vehicles or equipment for the Services, DESIGN-BUILDER shall be obligated to pay such operators at least the minimum wage rate contained on such schedule. (See M.G.L. c.149, §§26-27H).

- 78.5 Eight Hour Day.** DESIGN-BUILDER shall comply with M.G.L. c. 149, §§ 30, 34 and 34A which provide that no laborer, workers, mechanic, foreman or inspector working within the Commonwealth in the employ of DESIGN-BUILDER, Subcontractors or other person doing or contracting to do the whole or part of the Services shall be required or permitted to work more than eight (8) hours in any one day or more than forty-eight hours (48) in any one week, or more than six (6) calendar days in any one week, except in cases of extraordinary emergency.
- 78.6 Timely Payment of Wages.** DESIGN-BUILDER shall comply with, and shall cause its Subcontractors to comply with M.G.L. c. 149, § 148 which requires the weekly or biweekly payment of employees within six (6) calendar days of the end of the pay period during which wages were earned if employed for five (5) or six (6) calendar days of a week, and within other periods of time under certain circumstances as set forth therein.
- 78.7 Lodging.** DESIGN-BUILDER shall comply with, and shall cause its Subcontractors to comply with, M.G.L. c. 149, § 25 which provides that every employee under this Contract shall lodge, board and trade where and with whom s/he elects, and neither DESIGN-BUILDER nor its agents or employees shall, either directly or indirectly, require as a condition of the employment of any person that the employee shall lodge, board or trade at a particular place or with a particular person.
- 78.8 Truck Rates.** The use by DESIGN-BUILDER of trucks or other motor vehicles hired from either common or contract motor carriers in the course of performance of this Contract is subject to such minimum rates and charges, and rules and regulations as may from time to time be promulgated by the Department of Public Utilities of the Commonwealth of Massachusetts or other agency of the state or federal government which may be authorized by law to set rates or otherwise regulate the use of such vehicles. DESIGN-BUILDER expressly assumes the risk of any additional expense that may arise by reason of any change in such minimum rates and charges, and rules and regulations, and shall be entitled to no additional compensation or reimbursement by reason thereof.

**Section 79 Hiring of State Employees By State Contractors [Executive Order No. 346]**

DESIGN-BUILDER certifies compliance with both the conflict of interest law set forth in chapter 268A of the General Laws, specifically M.G.L. c. 268A, § 5(f), and Executive Order 346; and includes limitations regarding the hiring of state employees by private companies contracting with the Commonwealth of Massachusetts. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the Contract Term, and for any position in DESIGN-BUILDER's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under this Contract.

**Section 80 Certification Regarding Northern Ireland [M.G.L. c. 7, §22C]**

DESIGN-BUILDER certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if DESIGN-BUILDER employs ten or more employees in an office or other facility located in Northern Ireland DESIGN-BUILDER 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 DESIGN-BUILDER 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.

**Section 81 Sales Tax Exemption**

DCAMM is exempt from the assessment of Massachusetts sales and use taxes for purchases of New Equipment/Systems or related purchases. DCAMM shall issue DESIGN-BUILDER a tax exemption certificate to use for the purchases of New Equipment/Systems for DCAMM's benefit to complete the Services under this Contract. DESIGN-BUILDER shall not pay any sales or use taxes on any item exempt from Massachusetts sales and use taxes unless authorized by DCAMM, required by the Rules published by the Commissioner of Revenue or is ordered by an appropriate taxing authority to remit sales and use taxes. To the extent DESIGN-BUILDER pays sales or use tax consistent with the requirement of this paragraph, To the extent DESIGN-BUILDER pays sales or use tax consistent with the requirements of this paragraph, such cost shall be borne by DESIGN-BUILDER.

**Section 82 Claims by Others Not Valid**

No person other than DESIGN-BUILDER and the surety on any bond given pursuant to the terms of this Contract shall acquire any interest in this Contract or any claim against DCAMM hereunder.

**Section 83 No Personal Liability of Public Officials**

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

**Section 84 Leading By Example – Decarbonizing and Minimizing Environmental Impacts of State Government [Executive Order 594]**

DESIGN-BUILDER understands that, pursuant to Executive Order No. 594 (EO 594), all new construction and “substantial” renovation building projects over 20,000 square feet must meet Massachusetts LEED Plus 2.0 building standards set forth in Section 3 of EO 594. Building projects under 20,000 square feet shall meet all said standards, excluding Paragraph 1 LEED or Passive House certification requirements, but shall strive to meet all certification standards set forth in Paragraph 1 of EO 594 whenever possible. Furthermore, DESIGN-BUILDER understands that the Massachusetts LEED Plus 2.0 standard applies to all projects overseen by the Massachusetts Division of Capital Asset Management and Maintenance, as well as all projects built on land owned by the Commonwealth of Massachusetts for use by state agencies.

**Section 85 Data Security Certifications**

For all contracts involving the CM's access to personal information, as defined in M.G.L. c. 93H, and personal data, as defined in M.G.L. c. 66A, or access to agency systems

containing such information or data, the CM certifies under the pains and penalties of perjury that the CM (1) has read M.G.L. c. 93H and c. 66A and agrees to protect any and all personal information and personal data; and (2) has reviewed all of the Enterprise Information Security Policies and Standards published by the Executive Office for Technology, Services and Security (TSS), or stricter standards prescribed by Owner. Notwithstanding any contractual provision to the contrary, in connection with the CM's performance under this Contract, for all state agencies in the Executive Department, including all offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the CM shall:

- 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 the Executive Office for Technology, Services and Security (TSS), or a comparable set of policies and standards ("Information Security Policy") as prescribed by the Owner;
- 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 Subcontractors;
- d. implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information and data to which the CM is given access by DCAMM from the unauthorized access, destruction, use, modification, disclosure or loss;
- 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 Subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract;
- 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"): (a) immediately notify DCAMM if the CM becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for DCAMM to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for DCAMM and the CM to fulfill any notification requirements.

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

## **Section 86 Copyrights, Patents, and Intellectual Property Rights**

DESIGN-BUILDER and its Subcontractor hereby grants to DCAMM 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 DESIGN-BUILDER and its Subcontractor 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 the House Doctor and its Consultants may assert any rights or establish any claims under any such Laws. The House Doctor shall incorporate by reference this provision into all contracts with its Consultants on this Project including, without limitation, architects, engineers, estimators, designers, and photographers. The House Doctor and its Consultants, if any, shall not be responsible for changes made in the documents without the House Doctor's authorization, nor for Awarding Authority's or other public entities' use of the documents on projects other than the Project. Awarding Authority assumes the risk resulting from any such changes made in the documents without the House Doctor's authorization, or for Awarding Authority's or other public entities' use of the documents on projects other than the Project.

### **Section 87 Security and Confidentiality; Publication**

Except as required for the discharge of its duties to DCAMM under this Contract, or required by subpoena or court order, the DESIGN-BUILDER and any of its Subcontractors agree 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 the DESIGN-BUILDER and any of its Subcontractors should reasonably know to be of a confidential or sensitive nature ("Confidential Information") in the strictest confidence, and shall not communicate, release, or disclose Confidential Information in any to any third party without the prior written Approval by DCAMM. The DESIGN-BUILDER shall not use any Confidential Information other than for the performance of Services under this Contract. The DESIGN-BUILDER 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 DESIGN-BUILDER 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.

### **Section 88 Accessibility and Non-Discrimination Laws**

The DESIGN-BUILDER 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 DESIGN-BUILDER 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.

**Section 89 Sexual Harassment and Workplace Violence Prevention**

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

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SIGNATURES ON FOLLOWING PAGE.***

**Signatures**

This Contract may be executed by the parties hereto in separate counterparts, each of which when so executed shall constitute an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have each caused the Contract to be executed on the dates set forth below (the last of which shall be considered the date of execution hereof) by their duly authorized representatives.

**[DESIGN-BUILDER]**

**COMMONWEALTH OF  
MASSACHUSETTS  
DIVISION OF CAPITAL ASSET  
MANAGEMENT AND MAINTENANCE**

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

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

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

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

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

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

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

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



## **SCHEDULE A: PROJECT INFORMATION**

### **A-1: Design/Build Services User Guide for DCAMM Standard Specifications and Designers Procedures Manual**

#### **DESIGN/BUILD SERVICES USER GUIDE**

For a DCAMM Design/Build project procured under MGL Chapter 25A, the entity with which DCAMM sign the contract for Design/Build services (the Design-Builder) shall (or, if applicable, shall cause its Designer to) prepare 100% specifications and design and construction documents (collectively, Design) consistent with the Project's Design Intent and the Contract for Design/Build Services (Contract). The Design and all associated services performed by the Design-Builder shall be based upon and in compliance with the DCAMM Standard Specifications and Designers Procedures Manual, as applicable.

The Design Intent will be indicated by the DCAMM Project Manager for each Project or may be agreed upon by DCAMM and DESIGN-BUILDER based on recommendations by the Designer and any additional DCAMM consultants. The Design Intent may be the performance of MGL Chapter 25A energy management services (i.e. to reduce the cost of energy and water in operating buildings) and/or the completion of an MGL Chapter 25A adaptation project (i.e. to mitigate adjustments and increase resiliency to moderate potential damages or benefit from opportunities associated with climate change). See MGL Chapter 25A, § 3 for statutory definitions of "energy management services" and "adaptation project".

#### **PART I: DCAMM STANDARD SPECIFICATIONS**

The DCAMM Standard Specifications are intended for use by designers, contractors and construction managers as the basis of construction specifications for designing and constructing projects of the Division of Capital Asset Management and Maintenance (DCAMM) of the Commonwealth of Massachusetts.

There are four Chapters in the Massachusetts General Laws (MGL) where the DCAMM Standard Specifications are used for construction specifications:

- 1) MGL Chapter 149A- CM-At-Risk with Trade Bids (CMR);
- 2) MGL Chapter 149 - Design-Bid-Build (DBB);
- 3) MGL Chapter 30, 39M - Public Works (horizontal construction and building projects estimated under \$150,000); and
- 4) MGL Chapter 25A - Energy Management Services (Design-Build)

There are two versions of the DCAMM Standard Specifications depending on the applicable MGL. For design/build services procured under MGL Chapter 25A, use the Rev 8 DBB version.

The DCAMM Standard Specifications are organized according to CSI MasterFormat 2016 and issued in Microsoft Word format in Times New Roman 11 font. Specifications use the term 'Designer' for the architect-of-record and their engineers, and the term 'DCAMM Project Manager' for the owner's representative. For Design/Build projects procured under MGL

## **Project # & Name**

Chapter 25A, the Design-Builder is responsible for meeting the requirements of the Designer and the Contractor as described in the DCAMM Standard Specifications.

The Design-Builder is required to edit DCAMM's standard specifications with project specific information and develop major content reflecting project requirements, adding sections when necessary before issuance. Refer also to the 'Notes to the Designer' at the end of some of the DCAMM Standard Specifications for additional requirements. The use of a manufacturer's product or name is provided for convenience and not to be considered as an endorsement of that product or manufacturer.

Below are some guidelines related to the Design-Builder's responsibilities for creating specifications as part of the project design.

- The DBB standard specifications must be customized to account for a design-build project delivery versus a design-bid-build project delivery. For example, procurements under MGL Chapter 25A do not require filed sub-bids or trade bidders. All subcontractors are procured directly by the Design-Build contractor.
- All products are to be determined by the Design-Builder, unless a proprietary item is required for the specific project, and is approved in writing by DCAMM and the User Agency.
- The customized performance specifications should not conflict with any requirements of the Design-Build Request for Proposals or the Contract.
- The customized performance specifications should include specifications for commissioning, measurement and verification (M&V), and training

The sections in the DCAMM Standard Specifications follow the numbering system of CSI MasterFormat and the 3-part CSI Section Format.

Division 00 - Procurement and Contracting Requirements: Issued by DCAMM  
Division 01-33 - Specifications: Base text issued by DCAMM for editing by the Designer.  
Appendices: Project specific as applicable.

Note that specifications in Divisions 01-14 and 31-33 are complete with Part 1 - General, Part 2 - Products, and Part 3 - Execution in each section. There are 'Notes to the Designer' at the end of some specifications where additional information may be provided. The Designer is responsible for editing the DCAMM Standard Specifications for the review by the DCAMM Project Manager. Refer to the 'Specification Submittals by Project Phase' paragraph in this User's Guide for submittal requirements.

Note that Specifications issued in the following Divisions contain only Part 1 specifications and require the Designer's engineers to provide project specification specifications:

Division 21 - Fire Suppression  
Division 22 - Plumbing  
Division 23 - Heating Ventilating and Air Conditioning  
Division 26 - Electrical  
Division 27 - Communications  
Division 28 - Electronic Safety and Security

Part 1 of a section in the DCAMM Standard Specifications includes the procedural and submittal requirements of these divisions. Because of the large number of types of mechanical and electrical systems used in DCAMM projects, it is not practical to issue full standard specifications for Divisions 21 through 28. The Designer and their engineers are responsible for developing Part 2 and Part 3 of specification sections in these divisions. Such Part 2 and Part 3 text can be added to the individual DCAMM Standard Specifications, or issued in multiple sections. When separate sections are added in Division 21-28, they are to be listed in the appropriate section in Par. 1.2A1 as part of the work of that trade bid or sub-bid as applicable. Refer to the individual sections in Divisions 21-28 for sample language. Follow the example in Section 070001 - Waterproofing, Dampproofing and Caulking, Par. 1.2A which includes the Work of seven break-out sections.

The DCAMM Standard Specifications include language for projects seeking sustainable design certification in accordance with USGBC LEED Version 4 as confirmed with the DCAMM Project Manager.

The Designer shall not use office master specifications from alternative sources for sections included in the DCAMM Standard Specifications without the written approval of DCAMM. Sections sourced from other sources would not reflect the DCAMM Contract and Division 1 requirements. The Designer shall provide specifications from alternative sources for sections not included in the DCAMM Standard Specifications, using the same format as the DCAMM Standard Specifications.

The DCAMM Project Manager will review the DESIGN-BUILDER's editing of the DCAMM Standard Specifications and return comments for the DESIGN-BUILDER's review, action and further editing of the specifications.

## **SPECIFICATION SUBMITTALS BY PROJECT PHASE FOR DCAMM PROJECTS**

Note that these requirements may be modified by the DCAMM Project Manager depending on the complexity of the individual project.

Schematic Design Submittal for Specifications: Outline specifications are required for the Schematic Design submittal, which are to be based on the DCAMM Standard Specifications Table of Contents, with the addition of a brief description for the content of each section. Submit the DCAMM Standard Specifications Table of Contents, identifying additions and deletions using 'track changes' or redline/strikeout to identify revisions. Identify new sections which are not currently in the DCAMM Standard Specifications. Do not submit full-length specifications.

Design Development Submittals for Specifications: Submit full-length specifications using the DCAMM Standard Specifications as base text. Edit to project requirements and identify additions and deletions using the 'track changes' feature. Incorporate DCAMM comments from the Schematic Design submittal. Provide new specification sections in DCAMM format for materials or systems required for the project, which are not currently included in the DCAMM Standard Specifications.

Progress Construction Documents Submittals for Specifications: Submit revisions to the design development specifications, continuing to use the 'track changes' feature on a cumulative basis. Incorporate DCAMM comments from the previous submittal.

Final Construction Documents for Specifications: Accept all changes' to remove the tracked changes, delete all notes, incorporate any remaining DCAMM comments from the previous submittal, and prepare a high-quality single-sided original suitable for reproduction, and a file in electronic format.

## **TERMS AND CONDITIONS OF USE**

Permission to use the DCAMM Standard Specifications is granted by DCAMM only for the limited purpose of preparing construction specification documents for DCAMM projects in the Commonwealth of Massachusetts for a lawful public purpose. Permission is not given to use the DCAMM Standard Specifications to create content for non-public projects or agencies using documents which differ from the DCAMM Division 00 - Procurement and Contracting Requirements.

Neither DCAMM, nor its consultants warrant that the DCAMM Standard Specifications are without error. No endorsement or warranty of suitability for use of any product named in the DCAMM Standard Specifications is intended. The Designer is responsible for editing each section before issue and using their professional judgment to verify suitability of individual products and systems for project requirements.

Users of the DCAMM Standard Specifications agree that they have read, understood and agree to be bound by these terms and conditions of use.

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## **PART II: DESIGNER PROCEDURES MANUAL**

The Designers Procedures Manual is intended for use by programmers, interior designers, and designers for the completion of programs, master plans, studies, and design documents on DCAMM projects. The Designers Procedures Manual sets forth the study and design requirements in accordance with M.G.L. Chapter 7C. The Designers Procedures Manual uses the term "Study Designer" and "Designer" for the designer that performs all study and design requirements for a project, including serving as the architect of record. For Design/Build projects procured under MGL Chapter 25A, the Design-Builder is responsible for meeting the requirements of the Study Designer and Designer as described in the Designers Procedures Manual.

The current version of the Designer Procedures Manual became effective in June 2005 and was last updated March 2023 and is available on the DCAMM website.

For Design-Build projects procured under MGL Chapter 25A, there are various study and design requirements set forth in the Designers Procedures Manual that will not apply. For example, projects procured under MGL Chapter 25A s. 11C are not subject to the jurisdiction of the Designer Selection Board and do not require study certification. All design services will be provided continuously.

***Project # & Name***

The Design-Builder must consult with the DCAMM Project Manager at the start of design services to determine which deliverables and requirements of the Designers Procedures Manual apply.

**END**

**A-2: Goals for Participation by MBE/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program (M.G.L. c. 7C, § 6, Executive Orders No. 592 and No. 599)**

DESIGN-BUILDER shall comply with the goals set forth in this **Schedule A-2**. If Construction Services are authorized in accordance with the Contract, the MBE/WBE participation goals shall be applied to the Total Contract Value (i.e. the sum of all Project GMP amounts).

DESIGN-BUILDER shall submit with the 90% Design Deliverable (or, if no 90% Design Deliverable is required for a particular Project, the final or 100% Design Deliverable) a finalized Schedule for Participation for the Project together with Letters of Intent and a summary showing the MBE/WBE participation for all Project(s) for which Construction Services have been authorized under the Contract for DCAMM approval. The Schedule for Participation, Letters of Intent, participation summary for all Projects, and any other documentation required to demonstrate compliance with the requirements of this **Schedule A-2** shall be provided by DESIGN-BUILDER in the form provided in **APPENDIX A: REFERENCE DOCUMENTS** or otherwise acceptable to DCAMM. DCAMM approval of a Schedule for Participation and Letters of Intent shall be required prior to execution of a Project GMP and/or issuance of a Notice to Proceed with Construction Services.

Any MBE/WBE participation performed as part of Design Services and Preconstruction Services may be credited towards the total MBE/WBE participation goals for the entire Project.

DESIGN-BUILDER shall adhere to and carry out the diversity plan actions detailed in the Proposal's MBE/WBE Participation Plan Commitment and Diversity Focus Statement, which is attached as Part III in this **Schedule A-3**.

**PART I: GOALS FOR PARTICIPATION BY MINORITY AND WOMEN BUSINESSES (EXECUTIVE ORDER 599)**

**1. Goals.**

**A.** The separate goals for minority business enterprise and woman business enterprise (MBE & WBE) participation established for this Contract are as follows:

MBE: [DCAMM to insert percentage from RFP here]% participation of the Total Contract Value

WBE: [DCAMM to insert percentage from RFP here]% participation of the Total Contract Value.

Note these goals may be accomplished in the aggregate for all Projects awarded to the DESIGN-BUILDER.

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

**2. M/WBE Participation Credit.**

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

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

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

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

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

**D.** MBE participation credit shall be given for the work performed by MBEs only, and WBE participation credit shall be given for the work performed by WBEs only. MBE participation may not be substituted for WBE participation, nor may WBE participation be substituted for MBE participation.

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

**4. Subcontracts With M/WBEs.**

Within thirty (30) days after execution of Project GMP Amendment, CONTRACTOR shall (i) execute a subcontract with each M/WBE Subcontractor which has executed a Letter of Intent Approved by DCAMM, (ii) cause its Subcontractors to execute a sub-subcontract with each M/WBE sub-subcontractor, and (iii) furnish DCAMM with a signed copy of each such subcontract and sub-subcontract through DCAMM’s online compliance reporting system.

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

**A.** CONTRACTOR shall not perform with its own organization or subcontract or assign to any other firm work designated to be performed by any M/WBE in the Letters of Intent or Schedule of M/WBE Participation without the prior Approval of DCAMM, nor shall any M/WBE assign or subcontract to any other firm, or permit any other firm to perform any of its M/WBE Work without the prior Approval of DCAMM. Any such unapproved assignment, subcontracting, sub-subcontracting, or performances of M/WBE Services by others shall be a

change in the M/WBE Services for the purposes of this Contract. DCAMM WILL NOT APPLY TO THE M/WBE PARTICIPATION GOAL(S) ANY SUMS ATTRIBUTABLE TO SUCH UNAPPROVED ASSIGNMENTS, SUB-CONTRACTS, SUB-SUBCONTRACTS, OR PERFORMANCE OF M/WBE SERVICES BY OTHERS.

**B.** CONTRACTOR shall be responsible for monitoring the performance of M/WBE Services to ensure that each scheduled M/WBE performs its own M/WBE Services with its own workforce.

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

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

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

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

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

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

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

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

(3) CONTRACTOR shall make reasonable efforts to follow up the written notices sent to M/WBEs with telephone calls or personal visits in order to determine with certainty whether the M/WBEs were interested in performing the work. Phone logs or other documentation must be submitted to DCAMM evidencing this effort.

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

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



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

**B.** If CONTRACTOR is unable to meet the M/WBE participation goals for this Contract after complying fully with each of the requirements of paragraph "A" above, and CONTRACTOR is otherwise in full compliance with the terms of this Article, DCAMM may reduce the M/WBE participation goals for this Contract to the extent that such goals cannot be achieved.

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

**A.** If at any time during the performance of this Contract, DCAMM determines or has reason to believe that (1) there has been a change or reduction in any M/WBE Services which will result in CONTRACTOR failing to meet the M/ WBE participation goal(s) for this Contract, other than a reduction in M/WBE Services resulting from a change in the Contract work ordered by DCAMM, and (2) CONTRACTOR has failed to comply fully with all of the terms and conditions of paragraphs 1 through 7 above, DCAMM may:

(1) suspend payment to CONTRACTOR of an amount equal to the value of the work which was to have been performed by an M/WBE pursuant to CONTRACTOR's Schedule of M/WBE Participation but which was not so performed, in order to ensure that sufficient Contract funds will be available if liquidated damages are assessed pursuant to paragraph 9, and/or

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

**B.** DCAMM shall give CONTRACTOR prompt written notice of any action taken pursuant to paragraph A above and shall give CONTRACTOR and any other interested party, including any M/WBEs, an opportunity to present evidence to DCAMM that CONTRACTOR 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 CONTRACTOR is in full compliance with the requirements of this Article, or that CONTRACTOR has met or will meet the M/WBE participation goals for this Contract, DCAMM shall release any funds withheld pursuant to clause A(1) above, and lift any suspension of CONTRACTOR's performance under clause A(2) above.

#### **9. Liquidated Damages; Termination.**

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

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

(2) DCAMM may retain from final payment to CONTRACTOR, as liquidated damages, an amount equal to the difference between (x) the total of the M/WBE participation goals set forth in this Contract, and (y) the amount of M/WBE participation credit earned by CONTRACTOR for M/WBE Services performed under this Contract as determined by DCAMM, the parties agreeing that the damages for failure to meet the M/WBE participation

goals are difficult to determine and that the foregoing amount to be retained by DCAMM represents the parties' best estimate of such damages. Any liquidated damages will be assessed separately for MBE and WBE participation.

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

**10. Reporting Requirements.**

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

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

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

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**PART II: WORKFORCE EQUAL EMPLOYMENT OPPORTUNITY ANTI-DISCRIMINATION AND AFFIRMATIVE ACTION PROGRAM**

The applicable minority workforce utilization percentage for the Contract is 15.3%.

The women workforce utilization percentage for the Contract is 6.9%.

**1. Compliance Generally**

For purpose of this Article, "minority" refers to Asians, Blacks, Western Hemisphere Hispanics, Native Americans, and Cape Verdeans; "Commission" refers to the Massachusetts Commission Against Discrimination. During the performance of this Contract, CONTRACTOR and all of its Subcontractors (hereinafter collectively referred to in this **Schedule A-2: Goals for Participation by MBE/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program (M.G.L. c. 7C, § 6, Executive Orders No. 592 and No. 599)** as "CONTRACTOR") shall comply with all applicable equal employment opportunity, non-discrimination and affirmative action requirements, including but not limited to the following:

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

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

**B.** CONTRACTOR shall comply with the provisions of Executive Order 592, entitled Advancing Workforce Diversity, Inclusion, Equal Opportunity, Non-Discrimination, and Affirmative Action (EO 592), which prohibits unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. EO 592 is herein incorporated by reference and made a part of this Contract. Pursuant to EO 592 CONTRACTOR and any subcontractors may not engage in discriminatory employment practices; and CONTRACTOR certifies that they are in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. These provisions shall be enforced through the contracting agency, the Operational Services Division, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of Contract that may subject Contractor to appropriate sanctions. CONTRACTOR shall comply with the provisions of EO 592, with respect to affirmative action programs for persons with disabilities, which is herein incorporated by reference and made a part of this Contract.

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

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

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

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

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

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

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

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

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

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

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

**F.** CONTRACTOR shall provide all information and reports required by the Awarding Authority or the Commission on forms and in accordance with instructions issued by either of

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

#### **4. Sanctions**

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

The recovery by the Awarding Authority from CONTRACTOR of 1/100 of 1% of the Contract award price or \$1,000 whichever sum is greater, in the nature of liquidated damages or, if a Subcontractor is in non-compliance, the recovery by the Awarding Authority from CONTRACTOR, to be assessed by CONTRACTOR as a back charge against the subcontractor, of 1/10 of 1% of the sub-Contract Price, or \$400 whichever sum is greater, in the nature of liquidated damages, for each week that such party fails or refuses to comply;

The suspension of any payment or part thereof due under the Contract until such time as CONTRACTOR or any subcontractor is able to demonstrate his compliance with the terms of the Contract;

The termination, or cancellation, of the Contract, in whole or in part, unless CONTRACTOR or any Subcontractor is able to demonstrate within a specified time his compliance with the terms of the Contract;

The denial to CONTRACTOR or any subcontractor of the right to participate in any future contracts awarded by the Awarding Authority for a period of up to three years.

**B.** If at any time after the imposition of one or more of the above sanctions a Contractor is able to demonstrate that it is in compliance with this Article, CONTRACTOR may request the Awarding Authority, in consultation with the Commission, to suspend the sanctions conditionally, pending a final determination by the Commission as to whether CONTRACTOR is in compliance. Upon final determination of the Commission, the Awarding Authority, based on the recommendation of the Commission, shall either lift the sanctions or reimpose them.

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

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

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**Project # & Name**

***PART III: DESIGN-BUILDER'S MBE/WBE PARTICIPATION COMMITMENT AND DIVERSITY FOCUS STATEMENT***

DESIGN-BUILDER's MBE/WBE Participation Commitment and Diversity Focus Statement the Proposal appears on the following \_\_\_\_ pages.

***[MBE/WBE Participation Commitment and Diversity Focus Statement from Proposal to be inserted]***

**A-3: Prevailing Wage Rates**

The minimum wage rates established by the Division of Occupational Safety of the Massachusetts Department of Labor and Workforce Development shall be **obtained within 90 days of the earlier of:** (a) the execution date of the GMP Amendment in accordance with this Contract or (b) the bid for the first construction scope of work is received.

DCAMM is not responsible for errors or omissions in such wage rates.

M.G.L. c. 149, §§26 and 27 provide as follows:

*" . . . Payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans under collective bargaining agreements or understandings between organized labor and employers shall be included for the purpose of establishing minimum wage rates as herein provided.*

*. . . The aforesaid rates of wages in the schedule of wage rates shall include payments by employers to health and welfare plans, pension plans and supplementary unemployment benefit plans as provided in said section twenty-six, and such payments shall be considered as payments to persons under this section performing work as herein provided. Any employer engaged in the construction of such works who does not make payments to a health and welfare plan, a pension plan and a supplementary unemployment benefit plan, where such payments are included in said rates of wages, shall pay the amount of said payments directly to each employee engaged in said construction."*

*Mass General Laws c. 149, §27 requires annual updates to prevailing wage schedules for all public construction projects lasting longer than one year. The Contractor is required to obtain the wage schedules from awarding authorities, and to pay no less than these rates to covered workers. The Contractor and all subcontractors are required to anticipate such annual updated prevailing wage schedules and neither the Contractor nor any subcontractors shall be entitled to claim additional compensation for base contract work due to updated prevailing wage schedules.*

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**A-4: Procedures for Subcontracts**

At a documentation point agreed to by DCAMM and DESIGN-BUILDER, DESIGN-BUILDER shall procure Subcontractors in accordance with the procedures set forth herein, unless otherwise approved by DCAMM in advance in writing.

1. For all Subcontractors that will participate in the performance of Construction Services, DESIGN-BUILDER shall submit to DCAMM for its approval the qualifications which it believes a subcontractor must have to perform the work of the subcontract and a list of a minimum of three (3) subcontracting firms, and preferably at least five (5) subcontracting firms, which the DESIGN-BUILDER believes meet the qualifications. DESIGN-BUILDER shall submit information in a form and content satisfactory to DCAMM concerning the qualifications and responsibility of the proposed subcontractors and, when relevant, how the selection will further the DESIGN-BUILDER compliance with its Project MBE and WBE participation goals. DESIGN-BUILDER firm may submit its or an affiliate's qualifications to bid on subcontract work provided that the DESIGN-BUILDER customarily performs the work for which it submits its qualifications and does so with employees on its own payroll, and provided that DESIGN-BUILDER meets all the requirements of the selection process. DCAMM may eliminate firms from the list of firms submitted by DESIGN-BUILDER, and DCAMM may add firms to the list submitted by DESIGN-BUILDER. DESIGN-BUILDER must add the firms requested by DCAMM to the list if the firms are acceptable to DESIGN-BUILDER. If the firms DCAMM requested be added are not acceptable to DESIGN-BUILDER based upon qualifications, ability or for any other reason, DESIGN-BUILDER must advise DCAMM of its objections and the basis for the objections in writing. If DCAMM determines that DESIGN-BUILDER's objections to the DCAMM requested firm(s) are valid then the requested firms will not be added to the list otherwise the firm(s) requested by DCAMM will be added.
2. DESIGN-BUILDER will invite all subcontractors on the approved list to submit bids for the subcontract work, using forms and procedures approved by DCAMM. The bids shall be based on detailed bidding information developed by DESIGN-BUILDER for the subcontract work. DESIGN-BUILDER will submit to DCAMM its recommendation of which bidder to be selected and awarded a subcontract, along with:
  - a. Copies of all bids received;
  - b. Descoping documentation, including price levelling and any clarifying questions and answers with bidders; and
  - c. DESIGN-BUILDER'S written explanation as to the reasons for its selection and recommendation, which shall be based on relevant factors including, but not limited to, price, quality of work, and MBE and/or WBE participation

DCAMM written approval is required before a subcontract can be awarded by DESIGN-BUILDER to a subcontractor, which approval shall not be unreasonably withheld provided the selection will not have an adverse effect on meeting project goals including, but not limited to, price, quality of work and/or MBE/WBE participation. In no event will the selection of a subcontractor affect the GMP agreed to by DESIGN-BUILDER except (if applicable) as specifically set forth in the GMP Amendment.

3. DESIGN-BUILDER may, with the approval of DCAMM, reject the proposals for a subcontract and either resolicit that scope of work or negotiate with one or more of the firms that submitted the rejected proposals. Such rejection may be based on the proposal

being too high compared to the amount carried in the GMP for that scope of work or upon any other basis approved by DCAMM.

### **Part III: Emergencies**

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

### **Part IV: Subcontractor Termination**

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

### **Part V: Records Requirements**

DESIGN-BUILDER shall ensure that DCAMM has a complete set of the following records:

1. All solicitations for bids or proposals issued by the CM to firms other than Trade Contractors.
2. All bids and proposals received by DESIGN-BUILDER from such firms in response to such solicitations.
3. All contracts awarded pursuant to these procedures.
4. All other written documents required pursuant to the terms of these procedures.
5. All other documents referring or relating to the evaluation of qualifications, proposals or bids, including but not limited to, all notes (to the extent included in Project files), memoranda, correspondence and meeting minutes, whether formal or informal, in either electronic media or hard copy, DCAMM shall retain copies of such records for a period of six (6) years from the date of final payment under the contract to which such records relate. The Secretary of Administration and Finance and the Inspector General of the Commonwealth shall have access to all such records at any time upon reasonable notice

**A-5: Contract Forms**

In accordance with this Contract, DESIGN-BUILDER is required to adhere to the instructions and model forms (and any reasonable updates and/or modifications to such forms) listed below throughout the Project.

The following forms are included in **APPENDIX A: REFERENCE DOCUMENTS** and hereby incorporated into this Contract:

- A.** DCAMM Instructions and Procedures for Payment for Construction Contracts (including sample schedule of values)
- B.** Documents required as part of Project GMP Amendment and/or prior to issuance of Notice to Proceed with Construction Services:
  - a. Form of Project GMP
  - b. Form of Performance Bond
  - c. Form of Payment Bond (labor and material)
  - d. Trench Application and Permit Documents
- C.** For the submission of Project Change Requests:
  - a. **Form 14:** REQUEST FOR APPROVAL OF WAGES AND RATES FOR CHANGE ORDER PRICING
  - b. **Form 15-1:** CHANGE ORDER SUMMARY SHEET
  - c. **Form 15-2:** CHANGE ORDER SUBMISSION FORMAT FOR CONTRACTOR AND/OR SUBCONTRACTOR
  - d. **Form 5:** REQUEST AND AGREEMENT FOR CHANGE IN THE PLANS AND/OR SPECIFICATIONS AND/OR CONTRACT
  - e. Sample Change Order Request Log (sample provided for DESIGN-BUILDER's reference)
- D.** Daily Time and Materials Report
- E.** Form for Transfer of title (Work Not Incorporated, DCAMM Form 16)
- F.** Weekly Payroll Report Form and Statement of Compliance (sample)
- G.** Quarterly Projected Workforce Table (Sample)
- H.** CAMIS Data Sheet
- I.** Certificate Substantial Completion (E-1)
- J.** Certificate of Final Inspection, Release, and Acceptance (E-2)
- K.** DCAMM Site Audit Template for baseline and utility savings reporting

**SCHEDULE B: PROPOSAL**

**B-1: Price Form**

The Proposal's price form for each Project, an overall summary for all Projects, and the "Cost Classification Guide" are included in the following \_\_\_\_\_ pages as follows:

**Cost Classification Guide** (\_\_ pages)

**Summary price form** (\_\_ pages)

**Projects (as set forth in the RFP):**

*[DCAMM to insert list of Projects from RFP here]*

*[Price forms from the Proposal to be inserted in following pages]*

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**B-2: DESIGN-BUILDER's Project Team**

DESIGN-BUILDER's personnel and Subcontractors identified in the Proposal as members of DESIGN-BUILDER's Project team is included in the following \_\_\_\_ pages.

***[Project Team information from the Proposal to be inserted in the following pages]***

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**B-3: Schedule**

The Proposal's proposed schedule for each Project appear on the following \_\_\_\_ pages, in the following order:

*[DCAMM to insert list of Projects from RFP here]*

CONTRACTOR shall submit updated Design/Construction Schedule within five (5) business days of receipt of a Notice to Proceed.

*[Schedule information from Proposal to be inserted in the following pages]*

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

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

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

\_\_\_\_\_ whose

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

\_\_\_\_\_ do hereby certify under penalties of perjury

that \_\_\_\_\_

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

The Business Organization Social Security Number or Federal Identification Number is

\_\_\_\_\_.

Signed under the penalties of perjury the \_\_\_\_\_ day of

\_\_\_\_\_, 20 \_\_\_\_\_.

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

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

**EXHIBIT II: GOOD STANDING CERTIFICATE**

Form AF-4A 1/78

EXECUTIVE OFFICE FOR  
ADMINISTRATION AND FINANCE  
The Commonwealth of Massachusetts

\_\_\_\_\_ MASSACHUSETTS BUSINESS CORPORATION

\_\_\_\_\_ NON-PROFIT CORPORATION

\_\_\_\_\_ FOREIGN (Non-Massachusetts) CORPORATION

I, \_\_\_\_\_, \_\_\_\_\_ President \_\_\_\_\_ Clerk of  
(Typed Name)

\_\_\_\_\_ whose principal office is located at  
\_\_\_\_\_

do hereby certify that the above named Corporation has filed with  
the State Secretary all certificates and annual reports required by Chapter 156B, section 109  
(Business Corporation), by Chapter 156C, Section 12 (Limited Liability Company) or by  
Chapter 180, Section 26A (Non-Profit Corporation) of the Massachusetts General Laws.

SIGNED UNDER THE PENALTIES OF PERJURY THIS \_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_\_.

Signature of responsible corporate  
Officer \_\_\_\_\_.

Please refer entities which refuse or fail to complete and  
execute Form AF-4A, and also direct any questions you may have  
to:

Laurie Flynn, Director  
Office of the Secretary of the Commonwealth  
Corporate Division  
John W. McCormack Building, Room 1710  
Boston, MA 02108



**EXHIBIT III: EVIDENCE OF AUTHORITY**

Select proper form of Evidence of Authority based on Contractor's type of business organization.

**For Corporation:**

If a corporation, either: (1) complete the fields below or (2) attach to each signed copy of contract a notarized copy of vote of corporation authorizing the signatory to sign this contract. If the attesting clerk is same as individual executing contract, have signature notarized below.

At a duly authorized meeting of the Board of Directors of \_\_\_\_\_  
\_\_\_\_\_ held on \_\_\_\_\_  
(Name of the Corporation) (Date of voting meeting)

At which all the partners and investor were present or waived notice, it was voted

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

of this corporation be and hereby is authorized to execute contracts and bonds in the name and behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract

or obligation in this company's name on its behalf by such

\_\_\_\_\_ under seal of the corporation, shall be valid and binding upon this company,

A TRUE COPY,

ATTEST \_\_\_\_\_  
Clerk

Place of Business: \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, \_\_\_\_\_ (name of document signer) personally appeared, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose, as the duly elected clerk for \_\_\_\_\_, a corporation, as the voluntary act of the corporation, and that the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract.

\_\_\_\_\_ (official signature and seal of notary public)

DATE OF THIS AGREEMENT: \_\_\_\_\_

\_\_\_\_\_  
(Clerk) (Corporate Seal)

**For LLC:**

If a limited liability company, either: (1) complete the fields below or (2) attach to each signed copy of contract a notarized copy of vote of corporation authorizing the signatory to sign this contract. If the attesting manager is same as individual executing contract, have signature notarized below.

At a duly authorized meeting of the Members of \_\_\_\_\_

\_\_\_\_\_ held on \_\_\_\_\_  
(Name of the LLC) (Date of voting meeting)

At which all the members were present or waived notice, it was voted

\_\_\_\_\_, \_\_\_\_\_  
(Name) (Manager)

of this company be and hereby is authorized to execute contracts and bonds in the name and behalf of said company, and affix its Company Seal thereto, and such execution of any contract

or obligation in this company's name on its behalf by such

\_\_\_\_\_

\_\_\_\_\_ under seal of the company, shall be valid and binding upon this company,

A TRUE COPY,

ATTEST \_\_\_\_\_  
Clerk

Place of Business: \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, \_\_\_\_\_ (name of document signer) personally appeared, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose, as the duly elected manager for \_\_\_\_\_, a limited liability company, as the voluntary act of the company, and that the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract.

\_\_\_\_\_ (official signature and seal of notary public)

DATE OF THIS AGREEMENT: \_\_\_\_\_

\_\_\_\_\_  
(Clerk) (Corporate Seal)

**For LLP:**

If a limited liability partnership, either: (1) complete the fields below or (2) attach to each signed copy of contract a notarized copy of evidence of authority authorizing the signatory to sign this contract. If attesting is same as individual executing contract, have signature notarized below.

At a duly authorized meeting of the partners and investors of \_\_\_\_\_

\_\_\_\_\_ held on \_\_\_\_\_  
(Name of the partnership) (Date of voting meeting)

At which all the partners and investors were present or waived notice, it was voted

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

of this company be and hereby is authorized to execute contracts and bonds in the name and behalf of said partnership, and affix its Corporate Seal thereto, and such execution of any contract

or obligation in this company's name on its behalf by such

\_\_\_\_\_

\_\_\_\_\_ under seal of the company, shall be valid and binding upon this company,

A TRUE COPY,

ATTEST \_\_\_\_\_  
Partner or Investor

Place of Business: \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public, \_\_\_\_\_ (name of document signer) personally appeared, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose, as the duly elected \_\_\_\_\_ for \_\_\_\_\_, a partnership, as the voluntary act of the partnership, and that the above vote has not been amended or rescinded and remains in full force and effect as of the date of this contract.

\_\_\_\_\_ (official signature and seal of notary public)

DATE OF THIS AGREEMENT: \_\_\_\_\_

\_\_\_\_\_  
(Partner or Investor) (Corporate Seal)

**EXHIBIT IV: COMPLIANCE AND CERTIFICATION FORMS FOR CERTIFIED PAYROLL,  
MBE/WBE AND WORKFORCE REQUIREMENTS**

The following form(s), completed by DESIGN-BUILDER, appear in the following pages:

- *Certificate of Compliance with Certain Workforce Related Legal Requirements (1 – 9; worker classification, workers' compensation insurance; unemployment insurance; social security and income taxes; hospitalization and medical benefits)*

In accordance with **Attachment A-2**, this Exhibit IV shall be updated with Schedule for Participation of MBE/WBE and Letters of Intent and (if applicable) SDVOBE Participation Form in connection with execution of Project GMP Amendment and/or prior to issuance of a Notice to Proceed with Construction Services.

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**WORKFORCE CERTIFICATION FORM**

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

**Applicable to All DCAMM Construction Projects**

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

Company Name: \_\_\_\_\_ ("Company")

Project Title: \_\_\_\_\_ ("Project")

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

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

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

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

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

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

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

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

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

**EXHIBIT V: INSURANCE CERTIFICATES**

*Insurance certificates appear on the following page(s).*

*Updated certificates of insurance to be provided prior to issuance of a Notice to Proceed with Construction Services under this Contract.*



**APPENDIX A: REFERENCE DOCUMENTS**

The following documents are attached in electronic format:

Name of document	Date	Cross-reference to this section of the ESA
(1) RFP and Addenda (a) Print of Bid Express RFP (b) Q&A Summary (c) Addenda Documents (if any) (d) Addenda History		N/A
(2) Proposal		N/A
(3) Compliance Documents: (a) Schedule for Participation by MBE/WBE (b) Letter of Intent (c) Service-Disabled Veteran-Owned Business Enterprises (SDVOBE) Participation Form	N/A	Schedule A-2
(4) Commonly Used Documents (Sample Forms): (a) DCAMM Instructions and Procedures for Payment for Construction Contracts (including sample schedule of values) (b) Documents required as part of Project GMP Amendment and/or prior to Notice to Proceed with Construction Services (i) Form of Project GMP (ii) Form of Performance Bond (iii) Form of Payment Bond (labor and material) (iv) Trench Application and Permit Documents (c) Instruction/Model Forms for Submission of Project Change Request (d) Daily Time and Materials Report (e) Form for Transfer of Title (Work Not Incorporated, DCAMM Form 16) (f) Weekly Payroll Report Form and Statement of Compliance (Sample)	N/A	Schedule A-5