

Project #:



**COMMONWEALTH OF MASSACHUSETTS  
ENERGY SERVICES AGREEMENT  
For  
Design-Build Projects**  
(for 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>FACILITY:</b>	
<b>PROJECT ADDRESS:</b>	

<b>CONTRACTOR NAME:</b>	
<b>CONTRACTOR ADDRESS:</b>	
<b>CONTRACTOR TELEPHONE:</b>	
<b>CONTRACTOR FEDERAL EMPLOYERS IDENTIFICATION NUMBER:</b>	

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

**Design Date of Completion:** \_\_\_\_\_

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

**Design Fee: \$** \_\_\_\_\_

**Estimated Installation Costs\*:** \$ \_\_\_\_\_

\* Amount to be confirmed and updated as appropriate during Contract Term for Design; Installation Services must be authorized in accordance with Contract.

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## **ENERGY SERVICES AGREEMENT**

This Energy Services Agreement (ESA or the Contract) is entered into as of the date of last execution hereof (Effective Date) by and between:

\_\_\_\_\_, a \_\_\_\_\_ authorized to conduct business in the Commonwealth of Massachusetts whose principal place of business is located at \_\_\_\_\_ (CONTRACTOR) and the Commonwealth of Massachusetts through its Division of Capital Asset Management and Maintenance (DCAMM) and its client \_\_\_\_\_ (FACILITY) (CONTRACTOR 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 CONTRACTOR of New Equipment/Systems (as hereinafter defined) and the rendering of other services by CONTRACTOR designed to reduce utility consumption and cost at the Commonwealth facility located at \_\_\_\_\_ (Premises) which is more precisely described in **Schedule B-1: Facility Information (Including Permitted Work Hours and Entry Restrictions)** attached hereto and incorporated herein by reference.

### **RECITALS**

WHEREAS, the Commonwealth owns and operates the Premises and desires to install energy saving New Equipment/Systems and Services, each as hereafter defined, to save energy and/or water and associated costs at said Premises;

WHEREAS, CONTRACTOR provides a service for reducing energy and/or water consumption and costs through the Installation Services, as hereinafter defined, 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 (RFP) dated \_\_\_\_\_;

WHEREAS, CONTRACTOR 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 CONTRACTOR to design, acquire, install, and commission the New Equipment/Systems as set forth in this Contract, all as more fully set forth herein, subject to all the terms and conditions of this Contract (the Project); and

**[If applicable: WHEREAS, FACILITY and CONTRACTOR are entering into a separate agreement (the Post-Installation Services Agreement) for the provision of certain post-installation services related to all or a portion of the New Equipment/Systems following the installation and commissioning of the New Equipment/Systems by CONTRACTOR and acceptance of the New Equipment/Systems by DCAMM under this Contract;]** and

WHEREAS, DCAMM shall compensate CONTRACTOR for all Services pursuant to Section 4: Payment and **Schedule B-6: Payment Terms; Total Contract Value** 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 40: Warranties of the Contract.
<u>Change Order</u>	Shall have the meaning set forth in Section 34: Changes in Scope of Services of the Contract.
<u>Confidential Information</u>	Shall have the meaning set forth in Section 77: Confidentiality; Personal Data; M.G.L. c. 66A of the Contract.
<u>Contract Documents</u>	Shall have the meaning set forth in Section 2: Contract and Contract Documents of the Contract.
<u>Contract Term</u>	Shall have the meaning set forth in Section 2: Contract and Contract Documents of the Contract.
<u>Design</u>	The 100% design documents (including, without limitation, drawings and specifications) for the Project provided by CONTRACTOR and accepted by DCAMM in accordance with <b>Part B - DESIGN</b> .
<u>Design Date of Completion</u>	The date upon which the CONTRACTOR shall have completed the Services for Design and the Contract Term shall end unless Installation Services are authorized in accordance with Section 23: Transition from Design to Installation Services. The Design Date of Completion is identified on the cover page of the Contract and occurs on the date that is 45 days after the completion of the Design Services (as set forth in <b>Schedule B-2: Project Schedule</b> ) to allow for payment of the final Request for Payment for the Installation Services in accordance with Section 4 Payment.
<u>Design Deliverable(s)</u>	Work product of the CONTRACTOR (or, if applicable, CONTRACTOR's 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 Fee</u>	All costs associated with the performance of the Design Services as stated in <b>Schedule B-6: Payment Terms; Total Contract Value</b> .



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<u>Design Services</u>	All Services required to be performed by CONTRACTOR and, if applicable, CONTRACTOR's Designer related to the performance of any and all required energy auditing and completion of the Design in accordance with this Contract.
<u>Design/Construction Schedule</u>	A critical path devised schedule of Services provided by CONTRACTOR and accepted by DCAMM in accordance with Section 5.3: Phases of Services.
<u>Designer</u>	The architect(s) or professional engineers (licensed and registered in the Commonwealth of Massachusetts) employed by or retained by CONTRACTOR for the Project.
<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 developed by CONTRACTOR and accepted by DCAMM as part of Design Services in accordance with this Contract.
<u>Estimated Installation Costs</u>	The estimated costs of the Installation stated on the cover page of this Contract, which shall be confirmed by CONTRACTOR and updated as appropriate in accordance with the Contract as part of Design Services.
<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 Installation Services set forth in <b>SCHEDULE B: PROJECT INFORMATION</b> .
<u>Final ECM Acceptance Notice</u>	Written notice from DCAMM to CONTRACTOR indicating that DCAMM accepts the installation of a particular ECM(s) as 100% complete in accordance with Section 38: Substantial Completion/Final Acceptance of the Contract.
<u>Final ECM Completion Notice</u>	Written notice from CONTRACTOR to DCAMM requesting acceptance from DCAMM of a particular ECM(s) as 100% complete in accordance with Section 38: Substantial Completion/Final Acceptance.
<u>Final Project Notice</u>	Written notice from CONTRACTOR to DCAMM certifying that CONTRACTOR has met all of the requirements for the closeout of the Project and all New Equipment/Systems have been installed and the operations are 100% complete.

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Final Project  
Notification Approval

Written notice from DCAMM to CONTRACTOR indicating that DCAMM accepts all of the New Equipment/Systems installed by CONTRACTOR as 100% complete and that all other requirements of the Contract have been met to the satisfaction of DCAMM, in accordance with Section 38: Substantial Completion/Final Acceptance.

Final Project  
Notification Approval  
Date

The date of the Final Project Notification Approval issued by DCAMM in accordance with Section 38: Substantial Completion/Final Acceptance.

Hazardous Materials  
Laws

Shall have the meaning set forth in Section 31: Health, Safety, and Accident Prevention.

Installation Costs

All costs associated with the Installation Services as stated in a Notice to Proceed with Installation Services issued in accordance with this Contract.

Installation Services

The delivery, installation, and operation of the New Equipment/Systems to be performed by CONTRACTOR, as required hereunder, including, without limitation, those set forth in **SCHEDULE B: PROJECT INFORMATION**.

Laws

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.

MBE/WBE

Minority and/or Women Business Enterprises as defined by Executive Orders 526 and 565.

New  
Equipment/Systems

The New Equipment/Systems and related systems to be furnished and installed by CONTRACTOR as set forth in the Design.

Notice to Proceed

A written communication from DCAMM directing CONTRACTOR to perform certain Services for the Project as set forth in such communication. The CONTRACTOR may not proceed with any Services pursuant to this Contract absent receipt of a Notice to Proceed.

**If applicable:**  
**Post-Installation  
Services Agreement**

Shall have the meaning set forth in the Recitals on Page 1 of this Contract.

Premises

The land and, if any, building(s) or space within any such building(s) on which or in which CONTRACTOR is to perform the Services, as more specifically provided in the introductory paragraph and **Schedule B-1: Facility Information (Including Permitted Work Hours and Entry Restrictions)**.

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<u>Product Data</u>	Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by CONTRACTOR 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 manufacturer or distributor of such materials or equipment and made readily available by said manufacturer or distributor.
<u>Project Change Request</u>	CONTRACTOR's written request for a Change Order submitted in accordance with the requirements of Section 34: Changes in Scope of Services and <b>Schedule A-5: Instructions/Model Forms</b> .
<u>Project Engineer</u>	DCAMM's representative reporting to the Project Manager.
<u>Project Manager</u>	DCAMM's representative responsible for overseeing the planning, design and construction of the Project.
<u>Punch List</u>	A list of items determined by DCAMM to be minor incomplete or unsatisfactory work items that do not materially impair the usefulness of the Installation Services for its intended purpose.
<u>Resident Engineer</u>	DCAMM's on-site representative.
<u>Schedule of Values</u>	Shall have the meaning set forth in Section 4: Payment of the Contract.
<u>Services</u>	All work to be performed by CONTRACTOR on the Project, including but not limited to completion of Design and Installation Services.
<u>Shop Drawings</u>	Drawings, diagrams, details, schedules and other data specially prepared for the Services to illustrate a portion of the Services
<u>Subcontractor(s)</u>	Any person or entity retained by CONTRACTOR to provide any Services required by CONTRACTOR 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.
<u>Substantial Completion</u>	Occurs for each ECM only upon DCAMM's acceptance of CONTRACTOR's Substantial Completion Notice confirming the successful operation of each individual ECM for thirty (30) consecutive days and issuance of a Substantial Completion Approval Notice in compliance with Section 38: Substantial Completion/Final Acceptance.
<u>Substantial Completion Approval Notice</u>	DCAMM's written notice to CONTRACTOR that DCAMM accepts an ECM(s) as substantially complete as of the

Substantial Completion Date, in accordance with Section 38: Substantial Completion/Final Acceptance.

Substantial Completion  
Approval Request

Written notice from CONTRACTOR to DCAMM certifying that CONTRACTOR has completed all closeout procedures for a particular ECM(s) and requesting that DCAMM accept CONTRACTOR's proposed Substantial Completion Date in accordance with Section 38: Substantial Completion/Final Acceptance.

Substantial Completion  
Date

The date upon which DCAMM accepts an ECM(s) as substantially complete, in accordance with Section 38: Substantial Completion/Final Acceptance.

Total Contract Value

The total cost of the contract for completion of Design and delivery and installation of all New Equipment/Systems and provision of all Services as set forth in Section 3: Total Contract Value and **Schedule B-6: Payment Terms; Total Contract Value**.

**PART A – GENERAL PROVISIONS**

**Section 2      The Contract and Contract Documents**

Sections 1 through 81 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, without limitation:

- The Design/Construction Schedule (incorporated at **Schedule B-2: Project Schedule**)
- Prevailing Wage Rate Forms (referenced at **Schedule A-2: Prevailing Wage Rates**)
- Approved and Completed MBE/WBE Schedules of Participation and Letters of Intent (**Schedule A-1: Goals for Participation by MBE/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program**) (**Executive Orders No. 526 and No. 565**)
- Change Order Forms (referenced at **Schedule A-5: Instructions/Model Forms**)
- If Installation Services are authorized in accordance with the Contract, the Schedule of Values (incorporated at **Schedule B-6: Payment Terms; Total Contract Value**)
- 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 reference documents contained in **Appendix A: REFERENCE DOCUMENTS, [if applicable: DCAMM to insert any additional contract documents here as necessary for each Contract]**.
- 2.3 Days.** Unless otherwise indicated herein, all references to “days” shall mean calendar days.
- 2.4 Contract Term.** The Contract Term shall be broken into the following phases:
- a. *Contract Term for Design Services:* Unless otherwise directed in a Notice to Proceed, the Contract Term for Design Services shall commence on the Effective Date and run continuously through the Design Date of Completion; and
  - b. *Contract Term for Installation Services:* Unless otherwise directed in a Notice to Proceed for Installation Services, the Contract Term for Installation Services shall commence upon the date of the Notice to Proceed with Installation Services and run continuously through the issuance of a Final Project Notification Approval. If DCAMM does not issue a Notice to Proceed for Installation Services, the Contract shall conclude upon the Design Date of Completion.

### **Section 3 Total Contract Value**

The Total Contract Value is the total amount to be paid to CONTRACTOR by the DCAMM for the satisfactory performance of all Services in accordance with the Contract requirements over the Contract Term, as set forth in **Schedule B-6: Payment Terms; Total Contract Value**.

### **Section 4 Payment**

- 4.1 CONTRACTOR Compensation and Fees.** Provided CONTRACTOR is not in default of its obligations hereunder, DCAMM shall pay CONTRACTOR the Total Contract Value in accordance with the payment schedule set forth in **Schedule B-6: Payment Terms; Total Contract Value**, as the same may be amended in accordance with the terms hereof. 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.

- 4.2 Schedule of Values.** If Installation Services are authorized pursuant to Section 23: Transition from Design to Installation Services, within ten (10) days of the date of the Notice to Proceed for Installation Services, CONTRACTOR shall submit to DCAMM a Schedule of Values setting forth the costs for the various portions of the Installation Services, aggregating the Installation Costs 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), as set forth in **SCHEDULE A: DCAMM PROCEDURES AND REQUIREMENTS**. The Schedule of Values shall be prepared using the form included in **Appendix A** or in such format as DCAMM may approve, and shall include data to substantiate its accuracy. When approved by DCAMM, it shall constitute the Schedule of Values and be included in **Schedule B-6: Payment Terms; Total Contract Value** to this Contract.
- 4.3 Request for Payment.** All requests for payments shall be submitted by CONTRACTOR to DCAMM in a format acceptable to DCAMM and at the intervals set forth in **Schedule B-6: Payment Terms; Total Contract Value**. Each request for payment submitted by CONTRACTOR shall constitute CONTRACTOR's representation that:
- a. the payment then requested to be disbursed has been incurred by CONTRACTOR on account of the Services and is justly due to CONTRACTOR (or in the case of Services performed by Subcontractors, to Subcontractors) on account thereof;
  - b. 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;
  - c. any materials, supplies, and equipment are insured in accordance with the provisions of this Contract;
  - d. any materials, supplies, and equipment are owned by DCAMM and are not subject to any liens or encumbrances;
  - e. the Services that are the subject of such request for payment has been performed in accordance with the Contract Documents; and
  - f. 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.
  - g. CONTRACTOR's attention is directed to the criminal penalties for false claims referenced in Section 34: Changes in Scope of Services.
- 4.4 Late Payments.** 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.

- 4.5 Certification by CONTRACTOR.** If DCAMM so requests in writing, CONTRACTOR shall certify to DCAMM on a monthly basis, that payments owed by CONTRACTOR to Subcontractors and not under dispute have been paid in a timely fashion and that CONTRACTOR has satisfied its current payment obligations regarding the New Equipment/Systems.
- 4.6 Payment Liabilities of CONTRACTOR.** CONTRACTOR 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 CONTRACTOR or CONTRACTOR's employees or Subcontractors or the making good thereof.
- 4.7 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 CONTRACTOR's account, (2) to secure DCAMM's remedies against CONTRACTOR for CONTRACTOR'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 CONTRACTOR 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 CONTRACTOR 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 5 Scope of Services Summary**

- 5.1 Scope of Services Generally.** The Services comprises the completion of Design and, if authorized in accordance with this Contract, Installation Services required by the Contract Documents and includes all labor, tools, materials, supplies, equipment, permits, approvals, paperwork, calculations, submittals, and certificates necessary to develop, construct and complete 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 CONTRACTOR or that the Contract Documents require the CONTRACTOR to cause to be supervised, overseen, performed or furnished. CONTRACTOR shall provide and perform for the Total Contract Value all of the duties and obligations set forth in the Contract Documents.
- 5.2 Standards of Service.**
- a. CONTRACTOR shall perform all Services in such a manner that is in accordance with sound engineering and safety practices, achieves the Energy Savings, and is in compliance with this Contract and any amendments hereto. Without limiting the foregoing, CONTRACTOR 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. CONTRACTOR shall be responsible to pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation and other facilities and work necessary for the proper execution and completion of the Services.
- c. All Services called for by this Contract shall be performed by properly qualified and licensed professionals employed by CONTRACTOR and shall be performed in accordance with all Laws.
- d. If at any point during the Project, CONTRACTOR 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) Installation Services) or portions thereof are at variance with the requirements of Laws, CONTRACTOR shall promptly notify DCAMM in writing and necessary changes shall be accomplished in accordance with the Contract. If CONTRACTOR performs Services knowing them to be contrary to Laws without giving such notice to DCAMM, CONTRACTOR shall bear full responsibility for such Services and all costs attributable thereto, including, without limitation, corrections to the Services.
- e. CONTRACTOR 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.

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

- a. *Design Services.* CONTRACTOR agrees to perform the design of the New Equipment/Systems, as set forth in the Contract at **PART B – DESIGN, SCHEDULE A: DCAMM PROCEDURES AND REQUIREMENTS** and **SCHEDULE B: PROJECT INFORMATION**. The Design Services shall proceed in accordance with the Design/Construction Schedule, as may be updated and accepted by DCAMM during the performance of the Design Services in accordance with this Contract. CONTRACTOR shall submit a Design/Construction Schedule to DCAMM no more than 5 days following the Effective Date. Upon approval by DCAMM, the Design/Construction Schedule shall be incorporated by reference into this CONTRACT at **Schedule B-2: Project Schedule**.
- b. *Installation Services.* Following receipt of a Notice to Proceed with Installation Services (if any), CONTRACTOR shall construct and install the New Equipment/Systems into the Premises pursuant to the specifications in the Contract Documents, including, but not limited to, the Design. The Installation Services shall proceed in accordance with the Design/Construction Schedule, as may be updated and accepted by DCAMM during the performance of the Installation Services in accordance with this Contract. CONTRACTOR shall



submit an updated Design/Construction Schedule to DCAMM no more than five (5) days following the date of a Notice to Proceed with Installation Services. Upon approval by DCAMM, the Design/Construction Schedule shall be incorporated by reference into this CONTRACT.

#### **5.4 CONTRACTOR's Use of Subcontractors.**

- a. CONTRACTOR may use Subcontractors in meeting its obligations hereunder provided that in each case CONTRACTOR shall remain fully liable for all work under the Contract. CONTRACTOR 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. CONTRACTOR shall coordinate the activities of CONTRACTOR's employees, Subcontractors, agents or suppliers with those of the DCAMM, its employees, and agents. CONTRACTOR shall not commit or permit any act which will interfere with the performance of the normal activities conducted by DCAMM or FACILITY or the employees, agents, visitors, licensees, and/or invitees on the Premises without prior written approval of DCAMM. CONTRACTOR shall be responsible to DCAMM for the acts and omissions of CONTRACTOR'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.
- c. CONTRACTOR 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.
- d. CONTRACTOR shall use the personnel and Subcontractors identified in **Schedule B-3: Project Team** for the roles identified in **Schedule B-3: Project Team**. These personnel and Subcontractors may not be substituted without DCAMM's prior written approval. CONTRACTOR shall make a request in writing to DCAMM to substitute any personnel or Subcontractor listed in **Schedule B-3: 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 individual or entity being substituted. Any substitution of personnel and/or Subcontractors listed on **Schedule B-3: Project Team** without prior DCAMM approval may be deemed a default by CONTRACTOR under Section 51: Termination at DCAMM's sole discretion.
- e. DCAMM reserves the right to reject any Subcontractors, such right not to be unreasonably exercised. In the event that CONTRACTOR retains Subcontractors to perform any design, engineering, installation or other Services required under the Contract, CONTRACTOR shall provide DCAMM with a written description of the qualifications of each Subcontractor for CUSTOMER's approval prior to proceeding with any Services, such approval not to be unreasonably withheld.

- f. DCAMM has the right to demand in writing that CONTRACTOR remove an employee or Subcontractor from the Project for reasons stated in writing.
- g. CONTRACTOR shall direct that all persons coming onto the Premises are free of drugs and alcohol. CONTRACTOR shall dismiss from the Project any individual employed by CONTRACTOR or any Subcontractor or suppliers who is found by the CONTRACTOR, 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.
- h. Each Subcontractor contract with CONTRACTOR 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 Services, the right of CONTRACTOR under the Subcontractor's contract with CONTRACTOR. In the event of such assumption or assignment by DCAMM, the Subcontractor shall have no claim against DCAMM or such third party for work performed by such Subcontractor or other matters arising prior to termination of the Contract, and DCAMM or such third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after such assumption or assignment. No Subcontractor's contract with CONTRACTOR and nothing contained therein or in this Contract shall be construed to create any contractual relationship between any Subcontractor and DCAMM.

**5.5 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 work, and the performance of the Installation Services in accordance with the Design/Construction Schedule, CONTRACTOR shall notify the Project Manager as soon as possible to determine the proper course of action. CONTRACTOR shall comply with the Project Manager's direction to address the identified scheduling issue and shall incorporate any necessary adjustment in an updated Design/Construction Schedule to be submitted to DCAMM. CONTRACTOR shall further endeavor to perform work simultaneously with other contractors performing work at the FACILITY to minimize disruptions to the FACILITY's operations.

Coordination with the FACILITY shall be required throughout the Project. CONTRACTOR may not communicate with building occupants unless specifically requested by the Project Manager. When so authorized by the Project Manager, CONTRACTOR shall be required to participate in ongoing communications with FACILITY personnel, including the facility manager, building occupant liaisons and security staff, at the direction of the Project Manager.

## **Section 6      Energy Savings.**

- a. CONTRACTOR shall calculate the Energy Savings during the performance of Design Services in accordance with **PART B – DESIGN** and **Schedule A-6: Energy Savings**.

- b. The Energy Savings are a performance specification for this Contract. As such, CONTRACTOR represents to DCAMM the following:
  - (i) CONTRACTOR represents that the New Equipment/Systems provided in the Design will meet or exceed the published catalog ratings.
  - (ii) CONTRACTOR represent that the Design will allow each New Equipment/System to meet or exceed the associated Energy Savings developed in accordance with **Schedule A-6: Energy Savings**.
- c. If Installation Services are authorized in accordance with the Contract, all Installation Services shall be conducted to ensure that the Energy Savings are achieved.

## **Section 7 Project Meetings.**

CONTRACTOR shall schedule weekly Project meetings of CONTRACTOR and DCAMM to review progress on the authorized Services on each ECM, agree on any redirection, ensure that good workmanship is maintained, coordinate any DCAMM and/or FACILITY activity with the Design/Construction Schedule, and otherwise maintain quality control. Project meetings may be scheduled less frequently if approved by DCAMM. CONTRACTOR 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) days prior to the next scheduled meeting. DCAMM shall have at least five (5) days to make corrections to minutes. Such corrections shall be deemed accepted by CONTRACTOR unless objections are provided to DCAMM in writing within three (3) days of DCAMM's distribution of corrections.

## **Section 8 Notice of Deficiencies in Existing Equipment/Systems.**

If during the performance of the Design Services or Installation Services, either party is aware or becomes aware of any deficiencies in the Existing Equipment/Systems that were not previously noted the Contract Documents, that will cause a material change in the Design and/or Installation Services, that may: (1) prevent CONTRACTOR from completing the Installation Services as set forth in the Contract Documents, including, without limitation, the Design; (2) prevent the New Equipment/Systems from meeting the Standards of Comfort specified in Section 45: Standards of Comfort; (3) prevent the New Equipment/Systems from meeting the estimated Energy Savings; and/or (4) may prevent CONTRACTOR 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.

The notice of such deficiencies in the Existing Equipment/Systems shall include specific detail regarding the nature of the deficiencies and recommendations for the correction thereof in order to meet the contractual requirements. Upon receipt of notice of deficiencies, CONTRACTOR and DCAMM shall determine what, if any, deficiencies to the Existing Equipment/Systems are caused by the New Equipment/Systems installed by CONTRACTOR. To the extent that it is determined and agreed by the Parties that such deficiencies in the Existing Equipment/Systems are caused by New Equipment/Systems installed by CONTRACTOR under the Contract, then CONTRACTOR shall replace, modify, alter or repair such New Equipment/Systems to DCAMM's satisfaction at no additional cost to DCAMM, subject to Section 34: Changes in Scope of Services. To the extent that the

Parties cannot reach an agreement on the impact of any such deficiencies in accordance with Section 34: Changes in Scope of Services, then the dispute shall be resolved in accordance with Section 34: Changes in Scope of Services and Section 52: Dispute Resolution.

## **Section 9 Permits and Approvals.**

All required permits, approvals, user fees, certificates and licenses of any kind required by Laws which must be met and obtained 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 CONTRACTOR prior to commencement of Installation Services (for the particular portion of Installation Services for which the permit, approval or license is required) Substantial Completion Date, or Final ECM Acceptance Date, as appropriate for the respective permits, approvals and licenses. DCAMM shall use reasonable efforts to assist CONTRACTOR 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, CONTRACTOR shall furnish copies of each such required permit or license to DCAMM. DCAMM and/or the FACILITY shall be responsible for obtaining any permits for operation of the New Equipment/Systems after the Final ECM Acceptance date.

## **Section 10 DCAMM Authorization/Approval.**

DCAMM shall retain ultimate approvals over the scope of Services, the qualifications of CONTRACTOR'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 FACILITY, 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 CONTRACTOR hereunder.

## **Section 11 CORI Checks for Contractor's and Subcontractors' Employees.**

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

## **Section 12 Tool Inventory and Other Entry Procedures.**

If set forth in **SCHEDULE B: PROJECT INFORMATION**, CONTRACTOR 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 CONTRACTOR to an equitable adjustment of the Total Contract Value and/or extension of time in accordance with the Contract.

## **Section 13 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 CONTRACTOR with reasonable notice prior to exercising its rights under this subparagraph and CONTRACTOR 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 CONTRACTOR and all Subcontractors which pertain to the performance and requirements of this Contract.

#### **Section 14 Utility and Other Third Party Access.**

Upon request by any utility company providing FACILITY with services and/or providing incentives, interconnection of renewable energy generators, or other funding or work for the Premises, CONTRACTOR and DCAMM shall coordinate as necessary to allow such utility company (or other approved agent or third parties) to interview CONTRACTOR and DCAMM as requested by such utility provider and to schedule visits at the Premises at reasonable times throughout the Project to install metering equipment, perform energy and water audits or inspect the Premises and any New Equipment/Systems installed. CONTRACTOR also agrees to cooperate with such utility company (or its agent or third party) in analyzing energy and water savings. At all times, a representative of DCAMM (or its agent) shall be present during such inspections.

#### **Section 15 Damages Caused by CONTRACTOR.**

CONTRACTOR shall repair and restore to its original condition any area of damage caused by CONTRACTOR's performance under this Contract. DCAMM reserves the right to review the work performed by CONTRACTOR and to direct CONTRACTOR 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 CONTRACTOR's breach of its obligations under this Contract shall be borne by CONTRACTOR. All construction and installation by CONTRACTOR shall be in compliance with applicable building, fire and other codes in existence as of the date of this Contract.

#### **Section 16 Equal Employment Opportunity, Non-Discrimination in Hiring and Employment and Affirmative Action Program [Executive Order Nos. 526 and 565]**

CONTRACTOR and its 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. 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 CONTRACTOR to appropriate sanctions.

During the performance of this Contract, CONTRACTOR 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-1: Goals for Participation by MBE/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program (Executive Orders No. 526 and No. 565)**. In addition, CONTRACTOR 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-1: Goals for Participation by MBE/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program (Executive Orders No. 526 and No. 565)**.

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 17 Minority/Women Participation Goals and Anti-Discrimination Programs**

CONTRACTOR shall comply with the goals as set forth in **Schedule A-1: Goals for Participation by MBE/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program (Executive Orders No. 526 and No. 565)**. The MBE/WBE participation goals shall be applied to the Total Contract Value, as may be updated to include the final agreed upon Installation Costs.

#### **Section 18 Veteran Owned Business Participation and Other Preference [Chapter 108 of the Acts of 2012; Executive Order 565]**

DCAMM encourages the participation of Service-Disabled Veteran-Owned Business Enterprises ("SDVOBE") and Veteran-Owned Business ("VBE") in its construction and design projects pursuant to Chapter 108 of the Acts of 2012 and Executive Order 565. The benchmark for SDVOBE and VBE participation on the Project is 3% of the Total Contract Value, as may be updated to include the final agreed upon Installation Costs. For the Commonwealth's VBE and SDVOBE program purposes, a VBE or SDVOBE is a firm so certified directly by the Massachusetts Supplier Diversity Office ("SDO") [www.mass.gov/sdo](http://www.mass.gov/sdo) or is: 1) certified by a certifying agency that's certification is accepted by the SDO; 2) the firm has submitted its existing certification credentials directly to the SDO by submitting an application for verification of certification to the SDO; 3) the SDO has reviewed and granted the application for verification; and 4) the SDO has certified the firm as a VBE or SDVOBE for purposes of the Commonwealth's program as evidenced by a letter issued by the SDO to the firm. VBEs and SDVOBEs shall be provided opportunities to participate in the Project and Contractor 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). CONTRACTOR shall report on the amount of SDVOBE and VBE participation on the Project on a regular basis, in the form, format, and frequency requested by DCAMM through the requested means, including, but not limited to, DCAMM's online compliance reporting system.

The Commonwealth also encourages the participation of Portuguese Business Enterprises (PBE), Lesbian, Gay, Bisexual, and Transgender Business Enterprises (LGBTBE); and Disability-Owned Business Enterprises (DOBE) on its contracts.

## **Section 19 Prevailing Wages.**

All workers employed under this Contract shall not be paid less than the minimum wage rate for the area as attached in **Schedule A-2: Prevailing Wage Rates**. Each CONTRACTOR must issue a statement of compliance to be incorporated into this CONTRACT. This statement, as attached in **Schedule A-2: Prevailing Wage Rates**, must be submitted within fifteen (15) days after completion of the Installation Services, and shall be executed by CONTRACTOR, Subcontractor, or public body or by any authorized officer or employee of CONTRACTOR, 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-2: Prevailing Wage Rates**. **Schedule A-2: 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. CONTRACTOR shall not have any claim for extra compensation from DCAMM if the actual wages paid to workers employed in the Installation Services exceeds the rates listed on **Schedule A-2: Prevailing Wage Rates** or as otherwise provided by Laws. CONTRACTOR shall cause a copy of said **Schedule A-2: Prevailing Wage Rates** to be kept in a conspicuous place at the Premises during the Contract Term. If reserve police officers are employed by CONTRACTOR, 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 CONTRACTOR shall obtain from DCAMM annual

updates to prevailing wage schedules for all public construction projects lasting longer than one year. CONTRACTOR is required to obtain the wage schedules from awarding authorities, and to pay no less than these rates to covered workers. CONTRACTOR and all Subcontractors are required to anticipate such annual updated prevailing wage schedules and neither CONTRACTOR nor any Subcontractors shall be entitled to claim additional compensation for Installation Services due to any increased rates shown on updated prevailing wage schedules.

## **Section 20 Materials Provided to CONTRACTOR.**

All items made available to the CONTRACTOR in the RFP and/or in the Contract Documents, including, without limitation the documents referenced in **Appendix A**, and otherwise provided by DCAMM to CONTRACTOR may be used for the purpose of this Contract and shall be handled in accordance with Sections 77: Confidentiality; Personal Data [M.G.L. c. 66A] and 79: 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 CONTRACTOR's Design Services obligations hereunder.

## **PART B – DESIGN**

### **Section 21 Commencement of Design; Schedule for Design Services.**

**21.1 Start of Design Services.** CONTRACTOR shall promptly commence Services for Design upon issuance of a Notice to Proceed for such Services.

- 21.2 Initial Meeting.** Upon execution of this Contract and receipt of a Notice to Proceed with Design Services, CONTRACTOR, 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.
- 21.3 Schedule.** Time is of the essence of this Contract. All Services for the Design shall be completed within the time specified in **Schedule B-2: Project Schedule** and in accordance with the approved Design/Construction Schedule. Should CONTRACTOR require additional time to complete the Design, CONTRACTOR 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 34: Changes in Scope of Services. Failure to submit said written request within the time required by the preceding sentence shall preclude CONTRACTOR from subsequently claiming any time extension due to said delay.

## **Section 22 Design Requirements and Approvals**

- 22.1 CONTRACTOR's Duty of Proper Design.** CONTRACTOR is solely responsible for the design of Project. All Design Services called for by this Contract shall be performed by properly qualified and licensed professionals employed by CONTRACTOR and shall be performed in accordance with all Laws. CONTRACTOR shall perform all Design Services in accordance with the standards set forth herein, including with limitation, those set forth in Section 5.1: Standards of Service, Section 45: Standards of Comfort, and **SCHEDULE A: DCAMM PROCEDURES AND REQUIREMENTS**.

### **22.2 Design Deliverables and Submittals.**

- a. *General Requirements.*
- (i) Prior to the installation of each ECM, CONTRACTOR shall submit all required Design Deliverables as outlined in **Schedule B-5: Scope of Services**, the Contract Documents, and submittals along with all other required documents prior to the commencement of Installation Services, including, without limitation, submittal of MBE/WBE participation documentation in accordance with **Schedule A-1: Goals for Participation by MBE/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program (Executive Orders No. 526 and No. 565)**.
  - (ii) Design Deliverables shall follow guidelines established in **SCHEDULE A: DCAMM PROCEDURES AND REQUIREMENTS**.
  - (iii) CONTRACTOR must have all drawings, submittals and design documents stamped by a Massachusetts registered professional engineer for each corresponding discipline, if applicable.
  - (iv) CONTRACTOR shall prepare drawings based upon and in accordance with DCAMM's *CAD Standards Manual* revised February 2013 and



DCAMM's *Building Information Modeling (BIM) List of Design and Preconstruction Services*, dated April 13, 2015 which are available on the DCAMM website ([www.mass.gov/dcam](http://www.mass.gov/dcam)), and any reasonable and necessary updates incorporated therein after the Effective Date. DCAMM and the CONTRACTOR 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) Energy baseline and savings calculations (both cost and unit) in the format provided by DCAMM and in accordance with **Schedule A-6: Energy Savings** or as otherwise approved by DCAMM in writing shall be provided by CONTRACTOR with each Design Deliverable for each ECM.
  - (vi) If applicable, CONTRACTOR shall include with any Design Deliverable a clear explanation of any material deviations from the most recent Energy Savings accepted by DCAMM. CONTRACTOR shall provide any back-up documentation, including, without limitation, Energy Savings calculations, requested by DCAMM to facilitate review of any Design Deliverable.
- b. *Design Deliverables.* CONTRACTOR 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. *Submittal Requirements.*
- (i) In addition to Design Deliverables, CONTRACTOR shall provide the following submittals prior to the start of any Installation Services: coordinated Shop Drawings, Product Data, shop details, setting diagrams, samples, and similar submittals required by the Design and/or Contract. CONTRACTOR 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, CONTRACTOR 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) CONTRACTOR shall prepare and keep current a schedule of submittals which is coordinated with the progress schedule required under Section 24: Installation Commencement and Progress and allows DCAMM reasonable time to review submittals.
- (iv) CONTRACTOR shall review, approve, and submit to the 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 Installation Services or in the activities of DCAMM or of separate contractors. Submittals made by CONTRACTOR 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 Installation Services for which submittals are required the way CONTRACTOR 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, CONTRACTOR represents that CONTRACTOR 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) CONTRACTOR 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) CONTRACTOR shall perform no portion of the Installation 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. CONTRACTOR shall perform the Installation 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.
- (ix) CONTRACTOR 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 CONTRACTOR has specifically informed DCAMM in writing of such

deviation at the time of submittal and DCAMM has given explicit approval to the specific deviation. CONTRACTOR 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.

d. *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 CONTRACTOR by DCAMM prior to the acceptance of the final Design Deliverable. CONTRACTOR shall provide to DCAMM any comments on the commissioning plan and the M&V plan within thirty (30) days of receipt of each respective 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, include 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: 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 include the calculation methodology for Energy Savings based on measured and stipulated variables.
- (ii) Design Deliverables shall not be considered completed and CONTRACTOR may not commence Installation Services for any New Equipment/Systems without CONTRACTOR's response to the draft commissioning plan and M&V plan, unless otherwise specifically authorized by DCAMM in writing.
- (iii) DCAMM will provide CONTRACTOR with a final commissioning plan and M&V plan following review of CONTRACTOR's comments on the draft plans by DCAMM's third party agent. CONTRACTOR 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 CONTRACTOR or Subcontractors and coordinating schedules with DCAMM, DCAMM's third party agent, and Subcontractors as necessary for any required testing.

e. *Training Plan.*

- (i) CONTRACTOR 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 FACILITY to operate the New Equipment/Systems and all associated Existing Equipment/systems independently following the expiration of any service, maintenance, or warranty requirements of CONTRACTOR and to allow FACILITY to gain expertise in the New Equipment/Systems such to allow the FACILITY 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 FACILITY 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) CONTRACTOR shall submit a draft training plan prior as part of the 50% Design Deliverable for each ECM. CONTRACTOR shall incorporate any comments or requested changes provided by DCAMM into the draft training plan, which shall be provided to CONTRACTOR by DCAMM no later than thirty (30) days from submission of the draft training plan, and resubmit the training plan to DCAMM with the next Design Deliverable for the applicable ECM or at a time otherwise agreed by the Project Manager. CONTRACTOR must have DCAMM acceptance of the training plan prior to submission of the final Design Deliverable. Design Deliverables shall not be considered complete and CONTRACTOR may not commence Installation Services for any New Equipment/Systems without DCAMM's written acceptance of the training plan.

**22.3 Notification by CONTRACTOR of Impacts to Installation Costs.** Unless CONTRACTOR requests in writing a modification to the Estimated Installation Costs and/or any Energy Savings previously accepted as part of a Design Deliverable in accordance with **Schedule A-6: Energy Savings** at the time of the Design Deliverable and/or submittal submission, CONTRACTOR's submission of a Design Deliverable and/or submittal constitutes a representation by CONTRACTOR that (a) the costs of the Installation Services set forth in such Design Deliverable and/or submittal do not exceed the Estimated Installation Costs (subject to an adjustment for quantity variances of unit price work in accordance with Section 23: Transition to Installation Services, and the "Unit Pricing Terms" set forth in **Schedule B-6: Payment Terms; Total Contract Value**) and (b) the installation of the New Equipment/Systems as set forth in the Design Deliverable and/or submittal can achieve such Energy Savings. Any such modification request must include a narrative description explaining: the basis for such requested modification to the Estimated Installation Costs (if applicable), the benefit to the Project associated with

the request, and the net impact to any Energy Savings previously accepted as part of a Design Deliverable in accordance with **Schedule A-6: Energy Savings**. DCAMM shall consider such request as part of DCAMM's review of the Design Deliverable and/or submittal and CONTRACTOR shall provide any additional materials or documentation requested by DCAMM to facilitate such review. DCAMM will advise in writing to either:

- a. accept the modification to the Estimated Installation Costs and/or Energy Savings in connection with the acceptance of the Design Deliverable or submittal; or
- b. reject the proposed modification to the Estimated Installation Costs and/or Energy Savings and direct CONTRACTOR to submit a revised Design Deliverable or submittal that maintains the Estimated Installation Costs and/or Energy Savings, which CONTRACTOR shall provide at no additional cost to DCAMM within 15 days or other time period as may be agreed to by the Project Manager.

**22.4 DCAMM Review.** DCAMM shall review all Design Deliverables and CONTRACTOR submittals for compliance with the Contract Documents and notify CONTRACTOR within a maximum of thirty (30) days if the Design Deliverable or submittal is acceptable or respond with objections, changes, or requests for clarification. CONTRACTOR shall promptly respond to any requests for clarification from DCAMM. CONTRACTOR shall make (or, if applicable, CONTRACTOR shall cause CONTRACTOR'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 CONTRACTOR's or (if applicable) Designer's professional opinion not suitable, in which case CONTRACTOR shall communicate in writing the reasons why they are not suitable. When necessary, CONTRACTOR and (if applicable) Designer shall meet with DCAMM, FACILITY, any appropriate agents of DCAMM or FACILITY, 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, CONTRACTOR 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.

**22.5 No Installation Service prior to DCAMM Review.** CONTRACTOR shall not commence Installation 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 Installation Services in the authorized scope of Services. DCAMM's acceptance of the Design and/or amendment of the Contract to authorize Installation Services shall in no way relieve CONTRACTOR from its professional responsibility for all Services and documents furnished by CONTRACTOR and its Subcontractors (including, if applicable, CONTRACTOR's Designer), including, without, limitation all Design Deliverables and submittals.

**22.6 Compliance with Life-Cycle Cost Estimate [M.G.L. c. 7C § 29 and M.G.L. c. 149 § 44M].** CONTRACTOR 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

CONTRACTOR 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 CONTRACTOR 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.

**22.7 Test Installations.** If requested by DCAMM, CONTRACTOR and DCAMM shall cooperatively identify areas suitable for test installation. Authorization for any test installation(s) as part of Design Services shall not be construed as authorization for Installation Services for any ECM. At a minimum of two (2) weeks prior to CONTRACTOR's submittal of final Design Deliverable or submittal for an ECM in accordance with this Section, as requested by DCAMM, or prior to acceptance of New Equipment/Systems submittals pursuant to Section 38: Substantial Completion/Final Acceptance, CONTRACTOR 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 Installation Services set forth in **Part C: INSTALLATION 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.

**22.8 Review of As-Built Drawings; Record Drawings.** If Installation Services are authorized in accordance with this Contract, CONTRACTOR shall, or, if applicable, shall cause Designer to do the following:

- a. Review As-Built Drawings and incorporate changes made during the Installation 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 23 Transition from Design to Installation Services.**

- a. Following DCAMM'S acceptance of the Design in accordance with this Contract, DCAMM may, in its sole discretion, elect to proceed with the Installation Services. CONTRACTOR acknowledges that the execution of this Contract for the completion of Design and DCAMM'S acceptance of and/or payment for such Design Services in no way obligates DCAMM to proceed with the Installation Services.
- b. If DCAMM does not elect to proceed with Installation Services, this Contract shall conclude upon CONTRACTOR's receipt of notice of DCAMM's decision not to proceed with Installation Services and upon final payment to CONTRACTOR for the Design in accordance with the Contract. Regardless of whether a Notice to Proceed with Installation Services is issued, CONTRACTOR shall remain responsible for any of its continuing obligations arising during the performance of the Design Services hereunder.

- c. If DCAMM elects to proceed with Installation Services, CONTRACTOR and DCAMM shall work in good faith to develop and document the complete scope of Installation Services based upon the Proposal, and the Design and in accordance with all Contract requirements. CONTRACTOR shall provide an updated Design/Construction Schedule, complete the scope and pricing forms provided in **Appendix A** and provide any other documentation reasonably requested by DCAMM to document such scope.
- d. The Installation Costs shall be the Estimated Installation Costs, as may be updated during the performance of the Design Services in accordance with Section 22.3: Notification by CONTRACTOR of Impacts on Installation Costs, provided that the Estimated Installation Costs shall be adjusted to account for unit price adjustments based on the unit quantities of the final Design in accordance with the "Unit Pricing Terms" included in **Schedule B-6: Payment Terms; Total Contract Value**.
- e. CONTRACTOR shall provide updated certificates of insurance and payment and performance bonds in the form required by this Contract in the full Total Contract Value (as updated to include Installation Costs) prior to the issuance of the Notice to Proceed with Installation Services.
- f. CONTRACTOR shall submit and obtain approval from DCAMM for all required documentation in accordance with Schedule A-1: Goals for Participation by MBE/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program (Executive Orders No. 526 and No. 565) prior to the issuance of a Notice to Proceed with Installation Services.
- g. In no event shall Contractor incur any costs associated with the Installation Services prior to receipt of a Notice to Proceed for such Installation Services.

## **PART C – INSTALLATION SERVICES**

### **Section 24 Installation Commencement and Progress**

**24.1 Commencement of the Installation Services.** If a Notice to Proceed with Installation Services is issued, CONTRACTOR shall promptly commence Installation Services.

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

- a. Time is of the essence of this Contract. CONTRACTOR shall perform all Installation Services within the time specified in identified in any amendment and/or Notice to Proceed authorizing Installation Services and in accordance with the Design/Construction Schedule submitted by CONTRACTOR and approved by DCAMM. Should CONTRACTOR require additional time to complete the Installation Services, CONTRACTOR 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 34: Changes in Scope of Services. Failure to submit said written request within the time required by the preceding sentence shall preclude CONTRACTOR 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 Total Contract Value.

- b. If, in the opinion of DCAMM, CONTRACTOR fails to comply with the Design/Construction Schedule, DCAMM may give CONTRACTOR a written notice to that effect, whereupon (1) CONTRACTOR shall, if the notice requires, discontinue all or any portion of the Installation Services (which discontinuance shall neither terminate the Contract nor give CONTRACTOR any claim for an increase in the Installation Costs, damages, or an extension of any completion deadlines); or (2) at CONTRACTOR's sole cost increase the work force, equipment and plant, or any of them, employed on the whole or any part of the Installation Services, to the extent required by such notice, and employ the same from day to day until the completion of the Installation Services or such part thereof, or until the failure regarding the rate of progress, in the opinion of the Designer or DCAMM, shall have been sufficiently corrected.
- c. If, in the opinion of DCAMM, CONTRACTOR fails to comply with the Design/Construction Schedule, and whether or not DCAMM shall have given CONTRACTOR a notice described in subsection b above, DCAMM may (but shall not be required to) give CONTRACTOR written notice of such failure and five days to cure the same. Unless CONTRACTOR 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 CONTRACTOR'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 Installation 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 CONTRACTOR to discontinue the Installation Services at any time thereafter. CONTRACTOR shall continue to perform the remaining Installation Services under this Contract even if DCAMM elects to have another contractor perform a portion of the Installation 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 CONTRACTOR under this Contract had CONTRACTOR performed as required. On demand, CONTRACTOR shall pay DCAMM any amount by which the cost of completing all or any portion of the Installation Services exceeds the amount attributable to those Installation Services under the Contract Documents. DCAMM's sole goal will be to complete the Installation 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 Installation Services or any part thereof, except when it is required by Law. DCAMM's election to complete all or part of the Installation Services shall not release CONTRACTOR from any liability for failure to complete the Installation Services as the Contract Documents require, and shall not entitle CONTRACTOR to a claim for an increase in the Installation Costs or an extension of the time for completing the Installation Services. If the cost that DCAMM incurs in completing all or any portion of the Installation Services is less than the amount that the Contract Documents attribute to those Installation Services, DCAMM will pay or credit the difference to CONTRACTOR, less any other costs and expenses that DCAMM incurs, including the cost of supervision, and attorneys' fees and costs.

**24.3 Schedule in accordance with Work Hour Restrictions.** CONTRACTOR's approved Design/Construction Schedule shall be submitted with any and all entry/inventory requirements and work hour restrictions (**Schedule B-1: Facility Information (Including Permitted work Hours and Entry restrictions)**) considered. No Change Order or extension of the Contract Term shall be granted due to delays caused by CONTRACTOR'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 Total Contract Value and CONTRACTOR shall not be granted an equitable adjustment to the Total Contract Value due to off-hour work unless not contemplated by work hour restrictions or entry/inventory procedures.

**24.4 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 or FACILITY as needed at DCAMM's or the FACILITY's cost if shifts requiring security are upon the request of the Commonwealth. Additional security costs required by CONTRACTOR's schedule shall be borne by CONTRACTOR.

**24.5 Reporting Progress of the Installation Services.**

a. *Periodic Estimates/Schedule Updates.*

- (i) CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR's progress with the Installation Services. DCAMM's review of the periodic estimate is intended to be for verification of the status of the Installation Services and does not constitute acceptance of the Installation Services or any payment or other obligations of DCAMM,

unless otherwise provided for in **Schedule B-6: Payment Terms; Total Contract Value.**

- (ii) Each periodic estimate shall constitute CONTRACTOR'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 CONTRACTOR.
  - (iv) DCAMM shall not be obligated to make progress payments for the amount of Services included in the periodic estimates.
  - (v) CONTRACTOR's failure to provide the periodic estimates required in this Section may constitute a default by CONTRACTOR under Section 51: Termination.
- b. *Certified Payroll.* CONTRACTOR shall furnish weekly certified payroll reports to DCAMM electronically via DCAMM's electronic workforce reporting system at no additional expense to DCAMM. CONTRACTOR 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.
- c. *Commonwealth Asset Management Information System (CAMIS).* As the Project progresses, CONTRACTOR 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.

## **Section 25 CONTRACTOR's Supervisor and Supervision**

If Installation Services are authorized in accordance with this Contract, CONTRACTOR shall provide, during the progress of the Installation Services, a competent Massachusetts-licensed construction supervisor 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 supervisor shall be subject to the written approval of DCAMM. The supervisor shall represent CONTRACTOR and all directions or notices given to the supervisor shall be deemed received by and binding on CONTRACTOR.

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

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

## **Section 26 Location and Access**

- 26.1 CONTRACTOR Access.** CONTRACTOR 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 Contract Term. With reasonable notice, DCAMM, in consultation with the FACILITY, shall provide access to the Premises for CONTRACTOR to perform any Services related to this Contract during regular business hours, or such other reasonable hours as may be requested by CONTRACTOR and acceptable to DCAMM, in consultation with the FACILITY, and subject to permitted work hour restrictions stated in **Schedule B-1: FACILITY Information (Including Permitted Work Hours and Entry Restrictions)**. CONTRACTOR shall be granted immediate access to make emergency repairs or corrections pursuant to Section 31: Health, Safety, and Accident Prevention.
- 26.2 CONTRACTOR Site Office.** DCAMM, in consultation with the FACILITY, shall provide adequate space on the Premises for CONTRACTOR's office or trailer as detailed in **Schedule A-4: Requirements for Resident Engineer and Field Offices**. CONTRACTOR 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 CONTRACTOR to its original condition.
- 26.3 DCAMM Field Office.** An office shall be provided for DCAMM as detailed in **Schedule A-4: Requirements for Resident Engineer and Field Offices**. CONTRACTOR 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 CONTRACTOR to its original condition.

## **Section 27 Salvage Value**

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

## **Section 28 Temporary Utilities**

CONTRACTOR must maintain standards of comfort set forth in Section 45: Standards of Comfort at the Premises at all times, unless otherwise approved by DCAMM in writing. CONTRACTOR shall provide for proper notification, temporary utilities, and other measures to ensure that the Standards of Comfort outlined in Section 45: Standards of Comfort are maintained at the Premises.

## **Section 29 Delays in the Services**

- 29.1** Notwithstanding any provision of this Contract to the contrary, except as otherwise provided by Law, CONTRACTOR 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, CONTRACTOR shall be entitled to an extension of time for the Contract Term and the Design/Construction Schedule. The length of the extension shall be sufficient in the opinion of DCAMM, for CONTRACTOR to complete the Services. Although no delay shall increase the Total Contract Value, DCAMM may require that any change in the date by which CONTRACTOR must complete all or any part of the Services be processed on a DCAMM standard Change Order form as set forth in Section 34: Changes in Scope of Services and in **Schedule A-5: Instructions/Model Forms**.

**29.2** DCAMM may order CONTRACTOR 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 Total Contract Value for any increase in the cost of performance of this Contract and for any documented "open-book" increase in the financing costs (as provided in the Total Contract Value spreadsheet in **Schedule B-6: Payment Terms; Total Contract Value**) incurred by CONTRACTOR in the performance of this Contract, but said adjustment shall not include any profit to CONTRACTOR on such increase; and provided further, that DCAMM shall not make any adjustment in the Total Contract Value 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 Total Contract Value under any other provisions hereof. DCAMM may require that any agreed upon adjustment in compensation due to CONTRACTOR under the terms of this Contract be processed in accordance with the DCAMM standard Change Order forms as set forth in Section 34: Changes in Scope of Services and in **Schedule A-5: Instructions/Model Forms**.

**29.3** For any compensation sought by CONTRACTOR pursuant to this Section, CONTRACTOR shall submit the amount of a claim under Section 52: Dispute Resolution 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 CONTRACTOR'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 twenty (20) calendar days before CONTRACTOR notified DCAMM in writing of the act or failure to act involved in the claim.

**29.4 Liquidated Damages.**

- a. If Installation Services are authorized in accordance with the Contract, and CONTRACTOR shall fail or refuse to achieve the specified Project milestones such as Substantial Completion Date, Final ECM Acceptance, and/or Final Project Notification Approval, CONTRACTOR and CONTRACTOR's surety agree, as a 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 Installation 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. CONTRACTOR acknowledges that Project delays will cause disruption of DCAMM's and FACILITY's operations that will result in

additional costs to DCAMM and FACILITY, 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 FACILITY and of employees and contractors engaged by FACILITY 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, CONTRACTOR and DCAMM shall agree upon the assessment of liquidated damages in the event that Substantial Completion and/or Final ECM Acceptance for all or certain identified ECM's and/or Final Project Notification Approval is not achieved on or before the agreed upon date(s); the dates for Substantial Completion, Final ECM Acceptance, and/or Final Project Notification Approval and liquidated damages amounts will be set forth in an amendment to this Contract and/or Notice to Proceed authorizing Installation Services. Such liquidated damages will be fixed and agreed upon because of the impracticality 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 Installation 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, CONTRACTOR shall pay to DCAMM the sum designated in the Contract (or amendment) for each calendar day that CONTRACTOR is in default in completing such portion of the Installation 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 Installation 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 CONTRACTOR, and if such moneys shall be insufficient to cover the liquidated damages, then CONTRACTOR 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 CONTRACTOR'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 Installation Services, ECM's, or New Equipment/Systems or payment to CONTRACTOR or its surety therefore;
  - (ii) Completion of a portion of the Installation Services for the use or occupancy thereof by DCAMM or others; or
  - (iii) DCAMM's requiring or allowing CONTRACTOR or its surety to complete the Installation Services.

- e. Liquidated damages or a portion thereof may be suspended or waived in writing by DCAMM, if CONTRACTOR submits evidence satisfactory to DCAMM that the delay was caused solely by conditions beyond the control of CONTRACTOR 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 CONTRACTOR's failure to complete the Installation Services on time.

**Section 30    Modification/Alteration of New Equipment/Systems and Interference with Existing Equipment/Systems; Inspection; Corrections to Installation Services**

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

**30.2    New Equipment/Systems Installed By CONTRACTOR.**

- a. During the Contract 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 CONTRACTOR. 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 CONTRACTOR 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. CONTRACTOR shall may subject to DCAMM's prior written approval, which approval shall not be unreasonably withheld, to 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) CONTRACTOR 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 Installation Services.
  - (ii) CONTRACTOR 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) CONTRACTOR complies with the standards of comfort and Services set forth in Section 45: Standards of Comfort;
- (iv) such modifications or additions to, or replacement of the New Equipment/Systems, and any operational changes, or new procedures shall not reduce the Energy Savings, increase the cost of operations or be considered of lesser quality or compromise any Energy Savings or 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 CONTRACTOR.

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 reduce energy or water consumption at the Premises than the New Equipment/Systems being replaced. CONTRACTOR shall update any and all software to be used in connection with the New Equipment/Systems in accordance with the Contract and **Schedule A-3: DCAMM Design Procedures**. 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 CONTRACTOR 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 CONTRACTOR has failed to comply with the one hundred twenty (120) day submission requirement above.

**30.3 Existing Equipment/Systems Not Installed By CONTRACTOR.** Any modification to, or any damage, destruction, failure or replacement of, any energy or water related Existing Equipment/Systems owned by DCAMM or FACILITY, exclusive of New Equipment/Systems installed under this Contract and used at the Premises, shall be the sole responsibility of the Commonwealth, except that where such damage, destruction, modification, failure or replacement is the result of an act or acts of

CONTRACTOR, its contractors, Subcontractors or suppliers. CONTRACTOR shall correct such damage, destruction, modification, failure or replacement at CONTRACTOR's expense.

#### **30.4 Inspections; Corrections to Services.**

- a. CONTRACTOR 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 CONTRACTOR 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 ECM Acceptance Notice or Final Project Notification Approval, CONTRACTOR 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 31 Health, Safety and Accident Prevention**

**31.1 Performance of Services.** In the performance of the Services, CONTRACTOR 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.



## **31.2 OSHA.**

- a. **Compliance.** For the purposes of the Contract, CONTRACTOR 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 CONTRACTOR's safety plan referenced below in Section 31.6 and preventing accidents.
- b. **OSHA 10 Hour Training Requirement.** Pursuant to M.G.L. c. 30 § 39S, CONTRACTOR shall certify and ensure that all employees of CONTRACTOR 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 DCAMM prior to the start of any Installation Services. Subcontractors and others working at the Premises on behalf of CONTRACTOR shall furnish documentation of successful completion of said course to the CONTRACTOR for submittal to DCAMM prior to the start of any Installation Services.

**31.3 Records.** CONTRACTOR 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, CONTRACTOR shall submit to DCAMM without delay verbal and written reports of all accidents involving bodily injury or property damage arising in connection with the Services.

**31.4 Emergency.** In any emergency affecting the health and/or safety of persons or property CONTRACTOR shall immediately act in the exercise of reasonable judgment to prevent threatened damage, injury, or loss. CONTRACTOR shall immediately notify DCAMM of such emergency. CONTRACTOR 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.

**31.5 Subcontractor Compliance.** CONTRACTOR shall be responsible for its Subcontractors' compliance with the provisions of this Section.

**31.6 Safety Plan.** Before commencing any portion of the Installation Services, CONTRACTOR 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.

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

- a. If CONTRACTOR uses, stores or encounters toxic or hazardous substances it shall comply with M.G.L. c. 111F, § 2, the "Right to Know" law and regulations promulgated by the Department of Public Health, 105 CMR 670, the Department of Environmental Protection, 310 CMR 33, and the Department of Labor and Workforce Development, 441 CMR 21; and shall post a Workplace Notice obtainable from the Department of Labor and Workforce Development.
- b. CONTRACTOR 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 CONTRACTOR discover unforeseen materials subject to Hazardous Materials Laws at the Premises, CONTRACTOR 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. CONTRACTOR shall be responsible for the location of all utilities in connection with the Services. Without limiting the foregoing, CONTRACTOR shall comply with Dig-Safe Laws. Dig-Safe System Inc., may be contacted at 331 Montvale Road, Woburn, MA, 01801, 1-888-344-7233. CONTRACTOR 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. CONTRACTOR shall not commence work until Dig-Safe has responded.
- d. 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. CONTRACTOR 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 CONTRACTOR.
- e. CONTRACTOR shall comply with M.G.L. c. 149, §129A, relative to shoring and bracing of trenches.

**31.8 Prevention.** Without limiting CONTRACTOR's responsibilities described above, CONTRACTOR shall take all reasonable precautions for the safety of, and the prevention of injury or damage to: (1) all Subcontractors, agents and employees of CONTRACTOR 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 CONTRACTOR 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. CONTRACTOR shall promptly remedy all damage or loss to any such property caused in whole or in part by CONTRACTOR, 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, CONTRACTOR 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. ensure 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 CONTRACTOR;
- 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.

**31.9 Explosives.** CONTRACTOR shall not use or store explosives in the performance of the Services unless CONTRACTOR first obtains DCAMM's prior written specific approval. If DCAMM approves the use or storage of explosives during the performance of the Services, CONTRACTOR 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.

**31.10 Cutting and Welding.** CONTRACTOR 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.

## **Section 32 Waste Management**

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

- a. CONTRACTOR 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 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 CONTRACTOR's construction demolition debris container(s).
- b. CONTRACTOR is encouraged to salvage or recycle at least 50% by weight of construction and demolition wastes including brick, concrete, masonry, wood and scrap metal which are free from asbestos and/or hazardous materials. CONTRACTOR 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, CONTRACTOR shall submit to DCAMM a construction and demolition wastes management plan within twenty-one (21) calendar days of such request.

**32.2 Hazardous Waste Management.** Unless specifically excluded by DCAMM in writing, CONTRACTOR 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. CONTRACTOR 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, CONTRACTOR shall submit a Project Change Request in accordance with Section 34: 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.

c. *PCB Ballast and Lamp Removal.*

- (i) CONTRACTOR represents and warrants that, if applicable, CONTRACTOR shall enter into an agreement with an approved polychlorinated biphenyl (PCB) ballast disposal contractor who shall provide an informational packet, packing receptacles and instructions, labels and shipping materials, transportation, recycling, and incineration services for PCB ballasts. All PCB containing materials removed from DCAMM's PCB ballasts shall be disposed of in a federally approved facility. A certificate of destruction shall be provided to DCAMM. CONTRACTOR's responsibility shall be for the proper and legal management of any PCB ballasts generated as a result of the installation of the New Equipment/Systems only until they are loaded onto an approved PCB ballast disposal vehicle for transportation.
- (ii) CONTRACTOR warrants that, if applicable, CONTRACTOR shall enter into an agreement with an approved DEP lamp disposal contractor who shall provide approved containers, materials required to label, transportation, recycling in accordance with EPA requirements, and a copy of the manifest.
- (iii) DCAMM agrees to sign manifests of ownership for all PCB ballasts and mercury lamps removed from the Premises. CONTRACTOR shall deliver to DCAMM copies of all manifest, permits, and other documents pertaining to proper disposal of hazardous waste and compliance with all Laws.

**32.3 Mercury Containing Materials.** CONTRACTOR shall install only mercury-free thermostats. In addition, CONTRACTOR shall install mechanical and electrical New Equipment/Systems and appliances that have switches and/or gauges that do not contain mercury. If mercury free items are not available, CONTRACTOR must ensure that all mercury containing parts are clearly labeled with durable labels as to the mercury content.

## **Section 33 Materials and Equipment**

### **33.1 Materials Generally.**

- a. CONTRACTOR 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 Installation Services, whether temporary or permanent and whether or not incorporated or to be incorporated in the Installation Services.
- b. Materials and equipment to be installed as part of the Installation 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. CONTRACTOR 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 Installation 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.*"

### **33.2 Tests.**

- a. Any material to be used in the Installation 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 CONTRACTOR requests permission to use a material that was not specified, then CONTRACTOR shall pay for such testing. The cost of testing of any materials that fail the testing criteria shall be borne by CONTRACTOR.
- b. CONTRACTOR 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 Installation Services. CONTRACTOR shall have no claim arising from CONTRACTOR'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 Installation Services in process of manufacture or fabrication, or in storage elsewhere than the Premises.

### **33.3 Storage of Materials and Equipment at Premises.** DCAMM shall make reasonable provisions at the Premises to accommodate the placement of CONTRACTOR's storage container(s).

### **33.4 Off-Site Storage of Materials and Equipment.**

- a. CONTRACTOR shall obtain prior written approval from DCAMM for permission to store materials or equipment to be incorporated in the Installation Services at off-site locations, for which progress payments will be requested (where authorized under Section 4: Payment and **Schedule B-6: Payment Terms; Total Contract Value** of the Contract).
- b. Any and all charges for storage, inspection and verification by CONTRACTOR and DCAMM, including insurance, shall be borne solely by CONTRACTOR. 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 CONTRACTOR or, if the invoice is in the name of CONTRACTOR's or Subcontractor's supplier, then a certification of payment (signed by an authorized company officer and notarized) from CONTRACTOR or the appropriate Subcontractor, and (iii) a notarized certificate from the CONTRACTOR stating:

- (i) The name of the signatory of CONTRACTOR 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 CONTRACTOR 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. CONTRACTOR shall furnish to DCAMM, at least once per month, a current inventory of all materials or equipment being stored at any off-site location. CONTRACTOR 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 CONTRACTOR.
- 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 Installation 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 CONTRACTOR 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) CONTRACTOR assumes all risk of loss or damage; and
  - (ii) CONTRACTOR 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.

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

- a. Materials and equipment shall be progressively delivered to the Premises so that there will be neither delay in the progress of the Installation 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 Installation 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 Installation Services. Without derogating from CONTRACTOR'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 CONTRACTOR 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 CONTRACTOR at CONTRACTOR's expense.
- e. CONTRACTOR 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 Installation Services are being performed, whether furnished by the DCAMM or otherwise; CONTRACTOR 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 CONTRACTOR and/or DCAMM personnel including travel, quarters, and subsistence shall be borne by CONTRACTOR requesting the inspection of material stored outside the Commonwealth of Massachusetts as part of the Total Contract Value. If CONTRACTOR requests an inspection of material stored outside of Massachusetts, DCAMM will initially pay for all expenses of inspecting the material incurred by CONTRACTOR and/or DCAMM's personnel including travel, quarters, and subsistence. DCAMM will then invoice CONTRACTOR for such costs and the CONTRACTOR shall submit a credit Change Order for the amount of those expenses in accordance with Section 34: Changes in Scope of Services.

### **33.6 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. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR. No extra time shall be allowed for completion of Installation Services by reason of such rejection. The inspection of the Installation Services shall not relieve CONTRACTOR of any of its obligations herein prescribed, and any defective Installation Services shall be corrected. Installation Services not conforming to this Contract may be rejected notwithstanding that such Installation Services and materials have been previously overlooked or misjudged by DCAMM and accepted for payment. If the Installation Services or any part thereof shall be found defective at any time before Final Project Notification Approval, CONTRACTOR shall forthwith correct such defect in a manner satisfactory to DCAMM. Nothing in this Contract shall be construed as vesting in CONTRACTOR 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 the Commonwealth.

### **Section 34 Changes in Scope of Services.**

Either DCAMM or CONTRACTOR may propose changes to the Services, provided that such changes must be submitted to DCAMM in writing and in accordance with this Section. All Project Change Requests must be submitted during the Contract Term and prior to the issuance of the Final Project Notification Approval Date.

#### **34.1 Changes by Contract Amendment.**

DCAMM may, in its sole discretion, choose 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.

#### **34.2 Change Orders Generally.**

- a. The term "Change Order" shall mean (1) a written order not requiring the consent of CONTRACTOR, signed by an authorized representative of DCAMM, and designated as a Change Order, directing CONTRACTOR 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 CONTRACTOR has given DCAMM written notice stating the date, circumstances, and source of the order and that CONTRACTOR regards the order as a Change Order..
- b. No changes in the Services, the Total Contract Value, the Design Date of Completion, Substantial Completion Date, Final Project Notification Approval Date, 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 CONTRACTOR to perform such changes. Any request for a change in the provisions of this Contract submitted by CONTRACTOR 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**.

CONTRACTOR shall perform any Change Order work that is ordered by DCAMM. CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR 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 Installation 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 (iv) any other changes to this Contract.
- e. Whenever a Change Order is issued and said Change Order will cause a change in the Total Contract Value or the Energy Savings required under the Contract, CONTRACTOR or DCAMM may request an equitable adjustment in the Total Contract Value (as described in **Schedule B-6: Payment Terms; Total Contract Value**) and/or the Energy Savings (as described in **Schedule A-6: Energy Savings**). Such request shall be submitted in writing and shall be submitted by the party making such claim to the other party before commencement of the pertinent work.
- f. DCAMM and CONTRACTOR shall negotiate in good faith an agreement on an equitable adjustment in the Total Contract Value, 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 CONTRACTOR with a written notice to that effect. CONTRACTOR may dispute such cost determination in accordance with Section 52: Dispute Resolution and have the right to such further appeal as is provided in M.G.L. c.30, § 39Q. However, if the CONTRACTOR shall exercise its rights to appeal the decision of DCAMM as aforesaid, the CONTRACTOR shall be required to engage in the mandatory mediation procedures set forth in Section 52: Dispute Resolution.
- g. During the negotiation of an equitable adjustment in the Total Contract Value, the CONTRACTOR 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 CONTRACTOR shall certify that the pricing data used was accurate, complete, and current. If DCAMM subsequently determines that the data submitted by the CONTRACTOR was inaccurate, incomplete, or not current, DCAMM may exclude such data from consideration under the equitable adjustment request.

- h. Whenever the CONTRACTOR is entitled or believes it is entitled to a Change Order adjusting the Total Contract Value or Design/Construction Schedule, the CONTRACTOR 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 CONTRACTOR shall maintain a computerized accounting system, acceptable to DCAMM, in which current information as to the status of all such work is maintained. The CONTRACTOR 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 Documents 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 CONTRACTOR 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 CONTRACTOR shall certify that: the change request is made in good faith; the validity of the CONTRACTOR's and any subcontractor and supplier change requests have been verified; the supporting data is accurate and complete to the best of the CONTRACTOR's knowledge and belief; and the CONTRACTOR actually believes DCAMM to be liable for the add amount, or entitled to the deduct amount of the change request, whichever is applicable.
- k. The CONTRACTOR 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 schedule as established in accordance with **Schedule A-6: Energy Savings**. The CONTRACTOR shall also convey any anticipated adjustment in the value of incentives to be received as required by Section 46: 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, CONTRACTOR shall submit a written representation.

**34.3 Change Orders Due to Differing Site Conditions.** Upon receipt of such a request for a Change Order due to a differing site condition from CONTRACTOR, 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 or, if such Project Change Request is made during the performance of the Installation Services, could not have been discovered during the preparation of the Design, 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 the Total Contract Value and this Contract shall be modified in writing accordingly.

#### **34.4 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: Instructions/Model 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 forty (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 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 CONTRACTOR and (if applicable) certain Subcontractors for this Contract.
  - (h) The CONTRACTOR shall receive an allowance equal to 5% of the sum of items (a) through (e) above for overhead, superintendence, fee, and profit when the work is performed by 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) CONTRACTOR 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 the Total Contract Value it shall include the CONTRACTOR's overhead, superintendence, fee and profit. On any change that involves a net credit, the amount of the credit shall include the hard cost of the work being credited and the value of the overhead, superintendence, fee and profit applicable thereto (calculate as an agreed upon percentage multiplied by such hard cost of the work). Charges for small tools known as "tools of the trade" are not to be computed in the amount of any change in the Total Contract Value.
- 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 CONTRACTOR prior to start of construction. The CONTRACTOR and all Subcontractors shall utilize DCAMM Form 15 when submitting Project Change Requests.

**34.5 Work Performed Under Protest.** CONTRACTOR 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 CONTRACTOR believes to warrant a Change Order does not represent a change in the Services, CONTRACTOR shall perform said work and CONTRACTOR shall be deemed to have concurred with DCAMM's aforesaid determination unless CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR, CONTRACTOR 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. CONTRACTOR 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, CONTRACTOR 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. CONTRACTOR shall use the DCAMM "Daily Time and Materials Report" found in **Schedule A-5: Instructions/Model Forms** to record all labor and material used. If CONTRACTOR shall fail to make such statements, then CONTRACTOR shall not be entitled to additional compensation for any such work or damages.

**34.6 Open-Book Pricing.** Open-book pricing may be required, such that CONTRACTOR shall fully disclose all costs. CONTRACTOR shall maintain cost accounting records on authorized work performed documenting actual costs for labor and material, or other basis agreed to by DCAMM. CONTRACTOR shall afford DCAMM access to these records and preserve them for a period of three (3) years after the Final Project Notification Approval Date. 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: Instructions/Model Forms**.

**34.7 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.* CONTRACTOR'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 CONTRACTOR 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 35 As-Built Drawings.**

**35.1** CONTRACTOR 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").

**35.2** CONTRACTOR 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 36 Commissioning and Performance Testing**

**36.1 Systems Startup and New Equipment/Systems Commissioning.** In support of DCAMM's third-party commissioning agent, the CONTRACTOR 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 developed in accordance with Section 22.2 Design Deliverables and Submittals prior to issuance of a Final ECM Acceptance Notice. 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.



- 36.2 Correction of Deficiencies.** CONTRACTOR 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 Final ECM Acceptance Notice, CONTRACTOR shall also provide DCAMM with satisfactory documentary evidence that the New Equipment/Systems installed are the New Equipment/Systems specified in the Design.

## **Section 37 Training**

If Installation Services are authorized in accordance with the Contract, CONTRACTOR shall conduct the training program described in the training plan accepted in accordance with Section 22.2: Design Deliverables and Submittals. Such training is included in the Total Contract Value.

## **Section 38 Substantial Completion/Final Acceptance**

- 38.1 Substantial Completion of the Installation Services.** CONTRACTOR shall substantially complete all of the Services required by this Contract for all ECMs in accordance with the Contract Documents. Unless specifically provided for in **Schedule B-6: Payment Terms: Total Contract Value**, Substantial Completion shall not entitle CONTRACTOR to any payment under this Contract.
- a. During the regularly scheduled Project meeting (as set forth in Section 7: Project Meetings) immediately following completion of the required Installation Services for each individual ECM, CONTRACTOR shall inform DCAMM that the required Installation Services for such ECM are complete and request from DCAMM the date on which CONTRACTOR shall begin the required thirty (30) days of consecutive operation for all New Equipment/Systems installed or associated with such ECM. Upon receipt of DCAMM's approval as set forth in the relevant Project meeting minutes, CONTRACTOR shall commence the thirty (30) day period of continuous operation for all New Equipment/Systems installed or associated with such ECM.
  - b. Following the thirty (30) days of consecutive operation of each ECM, CONTRACTOR shall submit to DCAMM a Substantial Completion Approval Request in the form attached hereto in **Schedule A-5: Instructions/Model Forms** along with all necessary back-up documentation, certifying that that the ECM has operated successfully for thirty (30) consecutive days and that CONTRACTOR has completed all closeout procedures specified in such Substantial Completion Approval Request form, including any applicable technical specifications, and all testing (if required) and training has been completed. In the Substantial Completion Approval Request submitted by CONTRACTOR, CONTRACTOR shall indicate the Substantial Completion Date upon which it is seeking Substantial Completion to be effective.
  - c. Within fifteen (15) days of receipt of the Substantial Completion Approval Request, DCAMM shall either:
    - (i) Provide written approval of CONTRACTOR's Substantial Completion Approval Request by sending CONTRACTOR a Substantial

Completion Approval Notice, which shall state outstanding items required to achieve Final ECM/Equipment Acceptance, including, without limitation, a Punch List with dollar values assigned by DCAMM to each item listed (provided, however, that failure to include any incomplete or defective item on the Punch List shall not relieve the CONTRACTOR of the obligation to complete all Services in accordance with the Contract); or

- (ii) Notify CONTRACTOR in writing that it does not accept the Substantial Completion Approval Request and state the reasons for non-acceptance, which shall not be unreasonably withheld.
- d. The Substantial Completion Date shall be the date requested by CONTRACTOR, in the Substantial Completion Approval Request, unless otherwise stated on Substantial Completion Approval Notice. The Builder's Warranty obligations set forth in Section 40: Warranties and any extended warranty obligations set forth in the Design shall commence upon the Substantial Completion Date of each ECM.
- e. Notwithstanding the foregoing, the Parties agree that CONTRACTOR may request a partial Substantial Completion for work that has been completed with respect to a particular building, ECM, or New Equipment/System, provided that CONTRACTOR complies with all of the requirements for the issuance of a Substantial Completion Approval Notice with respect to that building, ECM, or New Equipment/System. If such request is approved, this partial approval shall have the effect of commencing the Builder's Warranty and any extended warranty obligations set forth in the Design, with respect to the New Equipment/System, ECM, or building covered by such partial Substantial Completion.

## **38.2 Final ECM Acceptance.**

- a. A Final ECM Acceptance Notice shall be issued for each individual ECM when all requirements in this Section, **Schedule A-5: Instructions/Model Forms** and any requirements noted by DCAMM in the Substantial Completion Approval Notice, including, without limitation, all Punch List items, have been completed to the satisfaction of DCAMM. Upon completion of all such requirements, CONTRACTOR shall send to DCAMM a Final ECM Completion Notice requesting Final ECM Acceptance by DCAMM. The Final ECM Acceptance Notice shall be in the form prescribed by DCAMM, as set forth in **Schedule A-5: Instructions/Model Forms**.
- b. Within fifteen (15) days of receipt of the Final ECM Completion Notice, DCAMM shall:
  - (i) Provide written approval of CONTRACTOR's Final ECM Completion Notice by sending CONTRACTOR a Final ECM Acceptance Notice, or
  - (ii) Notify CONTRACTOR in writing that it does not approve Final ECM Completion Notice and state the reasons for non-acceptance, which shall not be unreasonably withheld.

- c. The date on which DCAMM issues the Final ECM Acceptance Notice shall be the Final ECM Acceptance Date for each ECM and shall determine the date of the transfer of ownership pursuant to Section 39.4: Title to Installed New Equipment/Systems. Prior to the Final ECM Acceptance Date, all Energy Savings calculations set forth in **Schedule A-6: Energy Savings** shall be adjusted and resubmitted by CONTRACTOR according to as-built conditions.

### **38.3 Final Project Notice.**

- a. Prior to submission of a Final Project Notice as set forth below, CONTRACTOR shall provide to DCAMM a completed "Final Completion Log" in the form set forth in **Schedule A-5: Instructions/Model Forms**, for review at a regularly scheduled Project meeting (as set forth in Section 7: Project Meetings). CONTRACTOR shall incorporate any necessary corrections and/or updates to the "Final Completion Log" as agreed during the Project meeting. Upon receipt of DCAMM's approval as set forth in the relevant project meeting minutes, which shall include a copy of the final form of the "Final Completion Log", CONTRACTOR shall submit a Final Project Notice.
- b. CONTRACTOR shall send a Final Project Notice to DCAMM, in the form prescribed by DCAMM as set forth in **Schedule A-5: Instructions/Model Forms**, after CONTRACTOR meets all of the requirements set forth in this Section, **Schedule A-5: Instructions/ Model Forms** and after all the New Equipment/Systems have been installed and the operations are 100% complete.
- c. Within fifteen (15) days of receipt of the Final Project Notice, DCAMM shall either:
  - (i) Approve the Final Project Notice in writing by sending CONTRACTOR a Final Project Notification Approval in the form prescribed by DCAMM and set forth in **Schedule A-5: Instructions/Model Forms**; or
  - (ii) Notify CONTRACTOR in writing that it does not accept the Final Project Notice and state the reasons for such non-acceptance, which shall not be unreasonably withheld. To the extent that there are disputed items between the Parties subject to resolution under Section 52: Dispute Resolution, DCAMM may agree to issue a conditional Final Project Notification Approval subject to the final resolution of all such disputed items.
- d. The date on which DCAMM notifies CONTRACTOR in writing that it accepts all the Installation Services and their operation as 100% complete shall be the Final Project Notification Approval Date unless otherwise noted in the Final Project Notification Approval.
- e. DCAMM shall not be required to accept the Project as 100% complete until CONTRACTOR has complied with all of the closeout procedures in **Schedule A-5: Instructions/Model Forms**, for all Installation Services required under this Contract and CONTRACTOR has completed all other obligations under this Contract.

## **Section 39 Ownership of Property**

- 39.1 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. CONTRACTOR hereby grants to the Commonwealth a perpetual, irrevocable, royalty-free license to any and all software or other intellectual property or proprietary rights necessary for the Commonwealth 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.
- 39.2 Ownership of Documents.** All drawings, reports and materials prepared by CONTRACTOR 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.
- 39.3 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 the Commonwealth.
- 39.4 Title to Installed New Equipment/Systems.** Upon issuance of the Final Project Notification Approval, title to all New Equipment/Systems installed by Contractor pursuant to this Contract shall vest in the Commonwealth, or its designee, upon payment in full to CONTRACTOR in accordance with Section 4: Payment and **Schedule B-6: Payment Terms; Total Contract Value**, free and clear of any liens, encumbrances or claims as is, where is without any warranties either express or implied, except as provided in **SCHEDULE B: PROJECT INFORMATION**, the Proposal, and the Design, and at no additional cost or charge to DCAMM.

## **Section 40 Warranties**

### **40.1 Builder's Warranty.**

- a. CONTRACTOR 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 for each ECM, unless otherwise agreed to by DCAMM and the CONTRACTOR (Builder's Warranty). If at any time during such one-year period, any part of such New Equipment/Systems or ECMs 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 Installation Services, DCAMM shall notify CONTRACTOR in writing to make the required repairs or replacements and repair such damage. If CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR's 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) days prior to the expiration of the Builder's Warranty, CONTRACTOR 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 CONTRACTOR. CONTRACTOR shall make the repairs and/or replacements listed within thirty (30) 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, CONTRACTOR shall have no responsibility under this Contract for performing repairs, or making manufacturer warranty claims relating to the New Equipment/Systems, except for any extended warranty services to be provided by CONTRACTOR as set forth in the Design.

#### **40.2 Manufacturers' Warranties.**

- a. All manufacturers' warranties shall be transferable and extended to the Commonwealth. The warranties shall specify that only new, not reconditioned, parts may be used and installed when repair is necessitated by malfunction.
- b. CONTRACTOR further agrees to assign and deliver to DCAMM or, if so directed by DCAMM, to the FACILITY, all manufacturers' warranties relating to the New Equipment/Systems and to deliver such written warranties and which shall be attached and set forth in the Design and the scope of services in any amendment to this Contract to authorize Installation Services. From the Substantial Completion Date through the expiration of Builder's Warranty or the transfer of the manufacturers' warranties to DCAMM, whichever is later, CONTRACTOR shall pursue rights and remedies against the manufacturer of the New Equipment/Systems under the applicable warranties.
- c. CONTRACTOR shall notify DCAMM regarding any rights and/or remedies CONTRACTOR pursues on DCAMM or the Commonwealth'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 the Commonwealth or the Premises, due to

CONTRACTOR's failure to exercise its warranty rights shall be borne solely by CONTRACTOR.

**40.3 Extended Warranty Obligations.** CONTRACTOR shall provide all service, repairs, and adjustments to the New Equipment/Systems installed as set forth in the Design. If applicable, the Design shall incorporate any minimum extended warranty obligations stated in **SCHEDULE B: PROJECT INFORMATION** and/or the Proposal. CONTRACTOR is not required to perform any warranty related services beyond the Builder's Warranty and responsibilities stated above related to manufacturer's warranties unless extended warranty services are included in **SCHEDULE B: PROJECT INFORMATION**, the Proposal, or the Design.

#### **Section 41 O&M Manuals.**

Prior to the Substantial Completion Date CONTRACTOR shall provide DCAMM and, if so directed by DCAMM, the FACILITY with the operation and maintenance (O&M) manuals, including but not limited to preventative maintenance schedules for all New Equipment/Systems installed for this project. Once so provided, the O&M manuals shall become the property of the Commonwealth. 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. CONTRACTOR shall, where reasonably practicable, coordinate its efforts in this area with DCAMM's and, as directed by DCAMM, FACILITY's staff involved with administering any state-wide preventive maintenance programs.

#### **Section 42 New Equipment/Systems Inventory.**

CONTRACTOR 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 43 Replenishable Stock.**

CONTRACTOR shall provide replenishable stock of all New Equipment/Systems as set forth in the Design.

#### **Section 44 CONTRACTOR's Extended Maintenance Obligations.**

**[to be removed if not applicable:** The Parties acknowledge and agree that any obligations for CONTRACTOR to provide service, repairs, and adjustments to the New Equipment/Systems installed following the issuance of the Final ECM Acceptance Notice, if any, shall be addressed in the Post-Installation Services Agreement.] The Services under this Contract and the Total Contract Value of this Contract do not include extended maintenance services.

#### **Section 45 Standards of Comfort**

CONTRACTOR shall perform the Services in a manner that shall provide the standards of heating, cooling, hot water, lighting and other systems as set forth in the Design. If at any

time during the Contract Term such standards of comfort are not being met by the New Equipment/Systems, CONTRACTOR shall commence the correction of such deficiencies within seven (7) days of receipt of DCAMM's written request to do so and shall complete the correction work within thirty (30) days from the date of receipt of such notice, unless it is an emergency under Section 31.4: Emergency, in which case the terms of Section 31.4: Emergency shall control.

If changes in the operation of the New Equipment/Systems are warranted to achieve the required standards of comfort then adjustments shall be reflected in the M&V calculations set forth in the M&V plan developed in accordance with Section 22.2: Design Deliverables and Submittals. Failure to make the corrections required to achieve the standards of comfort or give written notice to DCAMM regarding the cause of the deficiencies in accordance with the time provided herein may constitute a default by CONTRACTOR under Section 51: Termination.

To the extent that CONTRACTOR claims that such change in the standards of comfort is the result of the acts or omissions of DCAMM or other third party beyond the CONTRACTOR's reasonable control, CONTRACTOR shall give written notice to DCAMM within the seven (7) days provided above. Disputes related to deviations from the required standards of comfort shall be resolved in accordance with Section 52: Dispute Resolution of the Contract.

## **Section 46 Incentives**

**46.1 Utility Incentives.** Any utility incentive payments expected to be achieved as set forth in the **Schedule B-6: Payment Terms: Total Contract Value** and/or in any amendment to this Contract or Notice to Proceed authorizing Installation Services shall, at the sole and absolute discretion of DCAMM, be subject to withholding of retainage until satisfactory evidence is produced to DCAMM evidencing all available incentive amounts have been properly applied for and CONTRACTOR has responded to and cooperated with any and all requests from the applicable utility company to ensure such utility incentives are approved and assigned to DCAMM. All such utility incentive amounts shall accrue to DCAMM. In the event that CONTRACTOR guarantees the utility incentive amounts and fails to obtain them, the Total Contract Value will be reduced by the difference between the amount guaranteed by CONTRACTOR and the amount actually obtained.

**46.2 Contractual energy payments from incentives and other programs.** During Design Services and, if applicable, Installation Services, CONTRACTOR, in good faith, shall explore all available outside utility rebate programs not set forth in **Schedule B-6: Payment Terms; Total Contract Value**, 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 Installation Services. CONTRACTOR 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 CONTRACTOR, DCAMM shall, in good faith, review any request for an equitable adjustment to the Total Contract Value as set forth in Section 34: Changes in Scope of Services and **Schedule A-5: Instructions/Model Forms**, including, but not limited to, a percentage of the amount actually obtained above and beyond the amounts set forth

in **Schedule B-6: Payment Terms: Total Contract Value** and/or in any amendment to this Contractor or Notice to Proceed authorizing Installation Services.

## **PART D – LEGAL/SPECIAL PROVISIONS**

### **Section 47 Indemnification**

To the fullest extent permitted by law, CONTRACTOR 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 CONTRACTOR, 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 (CONTRACTOR, Subcontractor, and all such persons herein collectively called "CONTRACTOR's Personnel") of any Laws; violations of any provision of this Contract by any of CONTRACTOR'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 CONTRACTOR's Personnel.

CONTRACTOR 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 CONTRACTOR's Personnel against parties indemnified hereunder, CONTRACTOR'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 CONTRACTOR 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 Project Notification Approval and/or any termination of this Contract.

### **Section 48 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) days prior to the intended effective date thereof, which date shall be expressed in said notice.

#### **48.1 Insurance Generally.**

- a. CONTRACTOR 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 CONTRACTOR. This insurance shall be provided at CONTRACTOR's expense and shall be in full force and effect through the Contract Term or for such longer period as this Section requires. CONTRACTOR 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. CONTRACTOR shall submit an original of each certificate of insurance, acceptable to DCAMM in advance of the execution of this Contract. 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:
  - (i) that the automobile liability, umbrella liability and pollution liability policies include the "Commonwealth of Massachusetts" as additional insureds.
  - (ii) that all policies include the coverage and endorsements in accordance with the terms and conditions as required by this Contract.
  - (iii) that the Builders' Risk or Installation Floater is on an "all risk" basis including earthquake and flood, and includes the "Commonwealth of Massachusetts and CONTRACTOR as named insureds or joint loss payees as their interests may appear.
  - (iv) 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.

CONTRACTOR 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 CONTRACTOR's failure to maintain such insurance and to comply with the terms of this Section, then CONTRACTOR shall be responsible for all costs and damages to the DCAMM attributable thereto.
- e. CONTRACTOR 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.

#### **48.2 CONTRACTOR's Commercial General Liability.**

- a. CONTRACTOR 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 CONTRACTOR from claims with respect to the operations performed by CONTRACTOR 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 CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR, including their respective agents and employees, mutually waive their rights of subrogation under the Commercial General Liability insurance coverage set forth herein.

#### **48.3 Automobile Liability.**

- a. CONTRACTOR 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 CONTRACTOR 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, CONTRACTOR, 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.

#### **48.4 Pollution Liability.**

CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall provide the additional coverage:

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

#### **48.5 Worker's Compensation.**

- a. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR, including their respective agents and employees, mutually waive their rights of subrogation under the Workers' Compensation insurance coverage set forth herein.

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

- a. CONTRACTOR shall purchase and maintain coverage against loss or damage to the Project in an amount equal to the Installation Costs as set forth in **Schedule B-6: Payment Terms; Total Contract Value**. 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 CONTRACTOR'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 48.6(c) below.

- b. When Services required by this Contract are to be performed on existing buildings owned by DCAMM, CONTRACTOR 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 CONTRACTOR'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 48.6(c) below.
- c. CONTRACTOR 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 CONTRACTOR at no expense to DCAMM.
- d. The policy or policies shall specifically state that they are for the benefit of and payable to DCAMM, CONTRACTOR, 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 CONTRACTOR as named insureds.
- e. Coverage shall include any costs for work performed by CONTRACTOR'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 Final Project Notification Approval has been issued.

**Project #:**

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

**48.7 Umbrella Coverage.**

CONTRACTOR shall provide umbrella coverage in form at least as broad as primary coverages required by Sections 48.2, 48.3, and 48.5 in the following amount unless a higher amount is specified in the Contract, in which case CONTRACTOR 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

**48.8 Professional Liability Insurance.**

CONTRACTOR and its Designer shall maintain professional liability insurance (PLI) covering negligent acts, errors, or omissions in professional services of CONTRACTOR, its Designer, and of any person or entity for whose performance CONTRACTOR 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 DCAMM requires CONTRACTOR 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.

**48.9 Additional Types of Insurance.**

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

**Section 49 Bonding Requirements/Performance and Payment Bonds**

If Installation Services are authorized in accordance with this Contract, CONTRACTOR shall furnish both a performance bond and a labor and material payment bond in the amount of the Total Contract Value (as updated to include the Installation Costs). 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 CONTRACTOR and the bonds shall be submitted to DCAMM at the time of issuance of a Notice to Proceed with Installation Services. Such executed bonds are incorporated herein by reference as Exhibit VII (Performance Bond) and Exhibit VIII (Labor and Material Payment Bond). 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;  
  
otherwise petitions a state or federal court for protection from its creditors; or
- d. 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);
- e. then CONTRACTOR shall, within twenty-one (21) 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 CONTRACTOR's expense.

**Section 50 Intentionally Omitted.**

**Section 51 Termination**

**51.1 Termination for Cause by DCAMM.**

- a. DCAMM may, without prejudice to any other right or remedy, deem the Contract terminated for cause if any one of the following shall occur and not be cured within three (3) days after giving of written notice thereof by DCAMM to CONTRACTOR and any surety that has given bonds in connection with this Contract:
  - (i) CONTRACTOR has filed a petition, or a petition has been filed against CONTRACTOR 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 CONTRACTOR without its consent and is not dismissed within sixty (60) calendar days; or if CONTRACTOR is generally not paying its debts as they become due; or if CONTRACTOR becomes insolvent; or if CONTRACTOR consents to the appointment of a receiver, trustee, liquidate, custodian or the like of CONTRACTOR 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 CONTRACTOR makes an assignment for the benefit of creditors;
  - (ii) CONTRACTOR 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) CONTRACTOR 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) CONTRACTOR 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) CONTRACTOR has failed to comply with Laws;
  - (vii) CONTRACTOR fails to maintain, or provide to DCAMM evidence of the insurance or bonds required hereby;
  - (viii) Any other failure by CONTRACTOR to maintain DCAMM'S legal protections against failure or nonperformance contained in Sections 47: Indemnification, 48: Insurance Requirements, and 49: Bonding Requirements/Performance and Payment Bonds;
  - (ix) CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR and its sureties liable in damages for breach of the Contract Documents;
  - (ii) notify CONTRACTOR to discontinue all Services, or any part thereof, and CONTRACTOR 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 CONTRACTOR;
  - (iv) require the surety or sureties to complete the Services and perform all of CONTRACTOR'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 CONTRACTOR and finish the Services at CONTRACTOR'S expense by whatever means DCAMM may deem expedient; and CONTRACTOR 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

CUSTOMER shall not be obligated to make any further payments to CONTRACTOR 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 CONTRACTOR shall be solely responsible for their removal from the Premises after DCAMM has no further use for them. Unless so removed within fifteen (15) days after notice to CONTRACTOR 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 CONTRACTOR's account; or they may, at the option of DCAMM, be stored at CONTRACTOR'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 DCAMM or its consultants, in the opinion of 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 CONTRACTOR hereunder.
- f. All sums, damages, and expenses incurred by DCAMM to complete the Services shall be charged to CONTRACTOR. 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 CONTRACTOR, CONTRACTOR shall be entitled to receive the difference. In case such expenses shall exceed the said sum, CONTRACTOR shall pay the amount of the excess to DCAMM.

#### **51.2 Termination for Convenience by DCAMM.**

- a. DCAMM may terminate this Contract for convenience even where CONTRACTOR is not in default by giving written notice to CONTRACTOR specifying the effective date of termination.
- b. In the event of a termination for convenience, CONTRACTOR shall 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 Services performed prior to the effective date of termination; plus
  - (ii) a reasonable sum to cover the expenses which CONTRACTOR would not have incurred but for the early termination of this 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 CONTRACTOR provided for herein shall be considered to fully compensate CONTRACTOR 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, CONTRACTOR 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.

**51.3 Repair and Replacements after Termination.** In the event of termination under this Section, CONTRACTOR shall assign to DCAMM any and all warranties provided for in the Contract. If such termination occurs prior to the issuance of a Final ECM Acceptance Notice then, if requested by DCAMM, for a period of one year after termination, CONTRACTOR 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 CONTRACTOR 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 Final ECM Acceptance Notice then, CONTRACTOR shall still be required to honor all warranty obligations provided for in Section 40: Warranties.

**51.4 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.

**51.5 Reservation of Rights upon Termination.** In the event of termination, CONTRACTOR 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 52: Dispute Resolution.

## **Section 52 Mandatory Mediation**

Any and all disputes arising under this Contract, including but not limited to disputes arising under Section 34: Changes in Scope of Services, and Section 51: 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR files an appeal from said decision as provided in M.G.L. c. 30, §39Q. In the case of such disputes where the dollar amount in dispute (or the estimated dollar value of the extension of time in dispute) is \$500,000 or more, if the mediation process fails, DCAMM may, in its sole discretion, elect to submit the dispute to an impartial third-party not having an interest in DCAMM, CONTRACTOR, 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 CONTRACTOR notice of the same in writing within thirty (30) calendar days of the date that DCAMM receives notice of CONTRACTOR'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 53 Assignment**

**53.1** CONTRACTOR 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 CONTRACTOR'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. CONTRACTOR 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 CONTRACTOR or Subcontractors.

### **Section 54 Representations and Warranties**

**54.1** CONTRACTOR represents and warrants 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) CONTRACTOR shall have become licensed or otherwise permitted to do business in the Commonwealth of Massachusetts;
  - (ii) CONTRACTOR shall have provided proof and documentation of all required insurance and bonds pursuant to this Contract.
  - (iii) CONTRACTOR shall warrant the accuracy of, and representations in, the Proposal except the agreed upon stipulated variables.
- f. CONTRACTOR shall make available, upon reasonable request, documents relating to its performance under this Contract, including contracts and subcontracts it shall enter into;
- g. CONTRACTOR 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. CONTRACTOR 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 Section 22.2: Design Deliverables and Submittals.
- 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 CONTRACTOR is financially solvent, able to pay its debts as they mature and is possessed of sufficient working capital to complete the Installation Services and perform its obligations under this Contract.

## **Section 55 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 56 No Waiver**

The failure of CONTRACTOR 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 CONTRACTOR or DCAMM.

## **Section 57 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 58 Amendments**

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

## **Section 59 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 60 Notice and Consent**

Notices to CONTRACTOR shall be deemed given when hand delivered to CONTRACTOR's temporary field office at or near the Premises or when deposited in the U.S. mail addressed to the CONTRACTOR'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.

In the case of a notice or other communication to DCAMM:

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 a copy 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 61 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 CONTRACTOR for obligations incurred during the period for which funding was included in an annual or supplemental appropriation. CONTRACTOR 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 51: 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 62 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 63 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 64 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 65 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 CONTRACTOR on the Premises. The entire control or direction of such business and operations shall be in and shall remain in CONTRACTOR, subject only to CONTRACTOR's performance of its obligations under this Contract. Neither CONTRACTOR nor any person performing any duties or engaged in any

work on the Premises on behalf of CONTRACTOR shall be deemed an employee or agent of DCAMM.

**Section 66 CONTRACTOR's Accounting Method Requirements (M.G.L. c. 30, § 39R)**

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

**66.2** CONTRACTOR shall file with DCAMM, a statement of management as to whether the system of internal accounting controls of CONTRACTOR 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.
- 66.3** CONTRACTOR 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 CONTRACTOR's financial statements.
- 66.4** CONTRACTOR 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.
- 66.5** The office of Inspector General and DCAMM shall have the right to enforce the provisions of this Section. CONTRACTOR's failure to satisfy any of the requirements of this section may be grounds for debarment pursuant to M.G.L. c. 149, § 44C.
- 66.6** CONTRACTOR shall save the written calculations, pricing information, and other data that the Contractor 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 67 Massachusetts and United States Manufacturers**

Pursuant to M.G.L. c. 7, § 22, ¶17, CONTRACTOR 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 68 Anti-Boycott Covenant (Executive Order No. 130)**

CONTRACTOR 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 §§999 (b)(3) and 999(b)(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 CONTRACTOR or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of CONTRACTOR.

CONTRACTOR 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 CONTRACTOR 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 §§999(b)(3) and 999(b)(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 CONTRACTOR for the cost of any materials, supplies, or equipment purchased or rented from any individual or entity from whom CONTRACTOR has not previously obtained and delivered to the DCAMM the certificate that the previous paragraph requires. CONTRACTOR will immediately terminate its contract with any supplier who breaches the warranty, representation and agreement contained in the previous paragraph.

CONTRACTOR shall include in CONTRACTOR's subcontracts or agreements with any person or entity from whom CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR in connection with the Services."

## **Section 69     Corporate Disclosures.**

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



**Section 70 Workforce Certification: Certification of Compliance with Workforce Related Legal Requirements [Executive Order 481]**

**70.1 Workforce Certification.** CONTRACTOR 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 CONTRACTOR; 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. CONTRACTOR shall execute a "Workforce Certification" form with the execution of this Contract. CONTRACTOR shall require each of its Subcontractors and sub-Subcontractors to execute and provide to CONTRACTOR such "Workforce Certification" form in the form provided by this Contract with the execution of each subcontract, and CONTRACTOR shall immediately provide a copy to DCAMM. CONTRACTOR acknowledges that with the weekly workforce reports it must submit on a weekly basis, in the form and format required by DCAMM, including, but not limited to, by electronic reporting through the requested means. Contractor and all Subcontractors must also report on gender, race/ethnicity of its workforce through the requested means, including DCAMM's online workforce reporting system. CONTRACTOR 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. CONTRACTOR 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 CONTRACTOR and its Subcontractors to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination.

**70.2 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.

- 70.3 Payroll Records and Statement of Compliance.** CONTRACTOR 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. CONTRACTOR 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. CONTRACTOR 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, CONTRACTOR and each Subcontractor shall furnish to the Executive Department of Labor within fifteen (15) 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 CONTRACTOR and all Subcontractors to submit such reports and documentation in electronic format.
- 70.4 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, CONTRACTOR 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).
- 70.5 Eight Hour Day.** CONTRACTOR 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 CONTRACTOR, 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.
- 70.6 Timely Payment of Wages.** CONTRACTOR 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.
- 70.7 Lodging.** CONTRACTOR 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 CONTRACTOR 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.
- 70.8 Truck Rates.** The use by CONTRACTOR 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. CONTRACTOR 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 71     Hiring of State Employees By State Contractors [Executive Order No. 346]**

CONTRACTOR 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 CONTRACTOR'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 72     Certification Regarding Northern Ireland [M.G.L. c. 7, §22C]**

CONTRACTOR certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if CONTRACTOR employs ten or more employees in an office or other facility located in Northern Ireland CONTRACTOR 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 CONTRACTOR 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 73     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 CONTRACTOR a tax exemption certificate to use for the purchases of New Equipment/Systems for DCAMM's benefit to complete the Services under this Contract. CONTRACTOR 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 CONTRACTOR pays sales or use tax consistent with the requirement of this paragraph, such cost shall be borne by CONTRACTOR.

**Section 74     Claims by Others Not Valid**

No person other than CONTRACTOR 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 75     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 76    Leading By Example – Clean Energy and Efficient Buildings [Executive Order 484]**

CONTRACTOR understands that, pursuant to Executive Order No. 484, all new construction and “Significant” renovation building projects over 20,000 square feet must meet a Massachusetts LEED Plus building standard (as defined by DCAMM), and that smaller projects must meet the minimum energy performance standards established by the Commonwealth of Massachusetts Sustainable Design Roundtable. Furthermore, CONTRACTOR understands that the Massachusetts LEED Plus 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 77    Confidentiality; Personal Data [M.G.L. c. 66A]**

**77.1** For all contracts involving CONTRACTOR’s access to personal information, as defined in M.G.L. c. 93H, and personal data, as defined in M.G.L. c. 66A or access to agency systems containing such information or data, CONTRACTOR certifies under the pains and penalties of perjury that CONTRACTOR:

- a. has read M.G.L. c. 93H and c. 66A and agrees to protect any and all personal information and personal data; and
- b. has reviewed all of the “Enterprise Information Security Policies and Standards” published by the Executive Office for Technology Services and Security (“TSS”) , or stricter standards prescribed by DCAMM.

**77.2** Notwithstanding any contractual provision to the contrary, in connection with CONTRACTOR’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 CONTRACTOR shall:

- a. obtain a copy, review, and comply with the pertinent security guidelines, standards and policies;
- b. comply with the “Enterprise Information Security Policies and Standards” published by TSS, or a comparable set of policies and standards (“Information Security Policy”) as prescribed by the Commonwealth;
- c. communicate and enforce such security guidelines, standards, policies and the applicable Information Security Policy among all employees (whether such employees are direct or contracted) and Subcontractors;
- d. implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information and data to which CONTRACTOR 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”):
  - (i) immediately notify DCAMM if the Contractor becomes aware of the unauthorized use;
  - (ii) provide full cooperation and access to information necessary for DCAMM to determine the scope of the unauthorized use; and
  - (iii) provide full cooperation and access to information necessary for DCAMM and CONTRACTOR to fulfill any notification requirements.

**77.3** 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 Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to M.G.L. c. 93H and under M.G.L. c. 214, § 3B for violations under M.G.L. c. 66A.

## **Section 78 Copyrights, Patents, and Intellectual Property Rights**

CONTRACTOR 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 CONTRACTOR 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 79 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR shall not use any Confidential Information other than for the performance of Services under this Contract. The CONTRACTOR 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 CONTRACTOR 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 80 Accessibility and Non-Discrimination Laws**

The CONTRACTOR 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 CONTRACTOR 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 81 Sexual Harassment and Workplace Violence Prevention**

The CONTRACTOR 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.

**REMAINDER OF PAGE INTENTIONALLY BLANK.  
SIGNATURES ON FOLLOWING PAGE.**

***Project #:***

***THIS PAGE INTENTIONALLY BLANK***

**Project #:**

## **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.

**[CONTRACTOR]**

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

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

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

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

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

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

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

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

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

Approved as to Form:

\_\_\_\_\_  
Office of General Counsel



## **SCHEDULE A: DCAMM PROCEDURES AND REQUIREMENTS**

### **A-1: 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. 526 and No. 565)**

CONTRACTOR shall comply with the goals as set forth in this **Schedule A-1**. If Installation Services are authorized in accordance with the Contract, the MBE/WBE participation goals shall be applied to the Total Contract Value for the Project, including Design Fee and Installation Costs. CONTRACTOR shall submit with the 90% Design Deliverable (or, if no 90% Design Deliverable is required for a particular ECM, the final or 100% Design Deliverable) a finalized Schedule of Participation for the Project together with Letters of Intent for DCAMM approval. The Schedule for Participation, Letters of Intent, and any other documentation required to demonstrate compliance with the requirements of this **Schedule A-1** shall be provided by CONTRACTOR in the form provided in Exhibit I or otherwise acceptable to DCAMM. DCAMM approval of a Schedule for Participation and Letters of Intent shall be required prior to issuance of a Notice to Proceed for Installation Services. Any MBE/WBE participation performed as part of Design Services may be credited towards the total MBE/WBE participation goals for the entire Project.

CONTRACTOR shall adhere to and carry out the diversity plan actions detailed in the Proposal's MBE/WBE Participation Commitment and Diversity Focus Statement, , which is attached as **Schedule B-4** of this Contract.

### **PART I: GOALS FOR PARTICIPATION BY MINORITY AND WOMEN BUSINESSES** **(M.G.L. c. 7C, § 6, EXECUTIVE ORDER 565)**

#### **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.

and

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

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

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

A. If CONTRACTOR is itself an MBE or WBE, MBE/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 MBE/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 MBE/WBE joint venturers, MBE/WBE participation credit shall be given to the joint venture as follows:

(1) If the joint venture is certified by Supplier Diversity Office (“SDO”) as an MBE or WBE, MBE/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, MBE/WBE participation credit shall be given to the joint venture for the value of the Services that are performed by the MBE/WBE joint venturer(s), and for the value of the Services that is actually performed by each MBE or WBE subcontractor or sub-subcontractor.

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

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

### **3. Establishing MBE/WBE Status.**

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

**B.** A woman owned business shall be considered a WBE only if it has been certified as a woman business enterprise by SDO.

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

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

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

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

**A.** CONTRACTOR shall not perform with its own organization or subcontract or assign to any other firm work designated to be performed by any MBE/WBE in the Letters of Intent or Schedule of MBE/WBE Participation without the prior Approval of DCAMM, nor shall any MBE/WBE assign or subcontract to any other firm, or permit any other firm to perform any of its MBE/WBE Services without the prior Approval of DCAMM. Any such unapproved assignment, subcontracting, sub-subcontracting, or performances of MBE/WBE Services by others shall be a change in the MBE/WBE Services for the purposes of this Contract. DCAMM WILL NOT APPLY TO THE MBE OR WBE PARTICIPATION GOAL(S) ANY SUMS

ATTRIBUTABLE TO SUCH UNAPPROVED ASSIGNMENTS, SUB-CONTRACTS, SUB-SUBCONTRACTS, OR PERFORMANCE OF MBE/WBE SERVICES BY OTHERS.

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

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

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

**A.** If at any time during the performance of the Contract CONTRACTOR determines or has reason to believe that a scheduled MBE/WMBE is unable or unwilling to perform its MBE/WBE Services, or that there has been or will be a change in any MBE/WMBE Services, or that CONTRACTOR will be unable to meet the MBE/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 MBE/WBE Services pursuant to subparagraph "A" above shall include a revised Schedule of MBE/WBE Participation, and additional or amended Letters of Intent and subcontracts, as the case may be.

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

**A.** In the event there is a change or reduction in any MBE/WBE Services which will result in CONTRACTOR failing to meet the MBE/WBE participation goal(s) for this Contract, other than a reduction in MBE/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 MBE/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 MBE/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 MBE/WBEs and the reason for not making such work available for subcontracting to MBE/WBEs.

(2) CONTRACTOR shall send written notices soliciting proposals to perform the items of the Work that may be made available for subcontracting to MBE/WBEs to all MBE/WBEs qualified to perform such work. CONTRACTOR shall advise DCAMM of (i) each MBE/WBE solicited, and (ii) each MBE/WBE listed in the SDO directory under the applicable trade category who was not solicited and the reasons therefor. 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 MBE/WBEs with telephone calls or personal visits in order to determine with certainty whether the MBE/WBEs were interested in performing the work. Phone logs or other documentation must be submitted to DCAMM evidencing this effort.

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

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

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

**B.** If CONTRACTOR is unable to meet the MBE/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 MBE/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 MBE/WBE Services which will result in CONTRACTOR failing to meet the MBE/WBE participation goal(s) for this Contract, other than a reduction in MBE/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 MBE/WBE pursuant to CONTRACTOR's Schedule of MBE/WBE Participation but which was not so performed, in order to ensure that sufficient Contract funds will be available if liquidated damages are assessed pursuant to paragraph 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 MBE/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 MBE/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 MBE/WBE participation goals set forth in this Contract:

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

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

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

**B.** Before exercising its rights and remedies hereunder, DCAMM may, but DCAMM shall not be obligated to, give 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-1** 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, handicap, 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 526, entitled Order Regarding Nondiscrimination, Diversity, Equal Opportunity and Affirmative Action, 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. Executive Order 526 is herein incorporated by reference and made a part of this Contract.

Pursuant to E.O. 526 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 Executive Order No. 246 entitled Revoking and Superseding Executive Orders Numbers 143 and 150, with respect to affirmative action programs for handicapped individuals, which is herein incorporated by reference and made a part of this Contract.

**C.** In connection with the performance of the Work, 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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**A-2: Prevailing Wage Rates**

CONTRACTOR shall request the minimum wage rates from DCAMM at a later date closer to the completion of Design, for use in Subcontracts for Installation Services, and DCAMM shall provide such minimum wage rates. The applicable wage rates will be attached to any Contract amendment authorizing Installation Services.

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### **A-3: DCAMM Design Procedures**

#### **I. 50% Design Deliverables**

Unless otherwise directed or approved in writing by DCAMM, for 50% Design Deliverables required herein, CONTRACTOR should provide 2 paper copies and 1 electronic copy readily downloadable of documents listed below.

##### **A. General Requirements:**

- 1) Reviewed energy code requirements.
- 2) Typical building elevations with window placement.
- 3) Roof layout.
- 4) Typical floor plans with identified area uses and resulting area square footage.
- 5) Identified all needed HVAC systems with one-line flow diagrams.
- 6) Conceptual plumbing and piping layout.
- 7) Electric one-line diagrams based on conceptual electric requirements.
- 8) Coordination drawings
- 9) Incentive amount
- 10) Update of model and savings

##### **B. General Drawing Requirements:**

- 1) All drawings shall be 1/4" scale unless approved by the DCAMM
  - a. Provide a graphic scale and north arrow.
- 2) Submit all drawings on a standard DCAMM 30" x 42" sheet with a standard DCAMM title block and provide a standard Title Sheet. (Per direction of DCAMM). All draft drawings should be also submitted in electronic copy, per Section 22.2: Design Deliverables and Submittals of the Contract.
- 3) A small-scale, legible key plan adjacent to the title box on all drawings showing section, detail or partial plan locations, when the floor plan to which the sections, detail or partial plans apply are on another sheet. The key plan shall indicate the drawing number of the sheet where the section was taken.
- 4) Show legends of materials, symbols, and abbreviations for each classification of drawings.
- 5) Insert, in the title box of all 50% Design Deliverable drawings, the date on which the drawings were submitted to the DCAMM.
- 6) Indicate general dimensions and notes.
- 7) A "Title" Sheet, with the list of drawings and consultant names.
- 8) All legends, symbols, abbreviations, and general notes.

##### **C. Site Plans:**

- 1) All legends, symbols, and general notes.
- 2) Existing conditions site plan.
- 3) Demolition plan.
- 4) Reflective ceiling plans of all floors. *(unlikely necessary, unless already provided by DCAMM).*

##### **D. HVAC:**

- 1) HVAC legends, symbols and general notes.

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- 2) Demolition plan/existing conditions.
- 3) HVAC floor plans.
- 4) HVAC roof plan.
- 5) HVAC piping plans.
- 6) HVAC sections.
- 7) HVAC controls.
- 8) HVAC schedules.

**E. Electrical:**

- 1) Electrical legends, symbols, and general notes.
- 2) Demolition plan/existing conditions.
- 3) Electrical site plan.
- 4) Electrical lighting floor plans (*unlikely necessary, consider removing*).

**F. Plumbing:**

- 1) Plumbing legends, symbols, and general notes.
- 2) Demolition plan/existing conditions.
- 3) Plumbing floor plans.
- 4) Plumbing roof plan.
- 5) Plumbing schedules.
- 6) Plumbing risers.

**G. Specifications:**

Provide a draft specification of all the sections required, based upon the current version of the DCAMM Standard Specification. The specifications should include:

- 1) *Basis of Design*: The specifications shall consist of a general description of the Project and shall include a basis of design to satisfy the needs of the program. This shall include all the design parameters that affect the design of the building systems. For example: the hours of occupancy; the design and temperature for heating and cooling; the floor loading; the number of occupants; and the foot-candle design in various spaces.
- 2) *Detailed Specifications*: The specifications shall be as comprehensive and complete as the 50% Design Deliverables permit. They shall address all relevant components/sections of the work and, where required by the scope of the Project, include equipment, capacities, and descriptions of structural, mechanical, and electrical and other special systems that impact the Project.
- 3) *Section Numbers and Titles*: The section numbers and titles established at the 50% Design Deliverables shall be the same as the section numbers and titles for the 90% and 100% Design Deliverables.
- 4) *For HVAC*: provide process flow diagram.

**G. Product Requirements:**

Provide 2 copies of catalogs sheets, brochures, diagrams, schedules, performance charts, illustrations of materials, assemblies, systems specified, MSDS sheets (where applicable),

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and other standard descriptive data. Assemble in a loose-leaf binder with tabs for each specification section, and update when a change occurs. Physical material samples of specified materials shall be furnished to the DCAMM upon request.

**H. 50% Design Quality Control Review**

The following areas of coordination shall be demonstrated:

- 1) Ceiling plenum clearances
- 2) Specification/drawing coordination
- 3) Schedule coordination
- 4) Equipment and power coordination
- 5) Existing vs. new construction
- 6) Phasing

**II. 90 % and 100% Design Deliverables**

Unless otherwise directed or approved in writing by DCAMM, for all 90% and 100% Design Deliverables required herein, CONTRACTOR should provide the number and format of copies as set forth in Section 22.2: Design Deliverables and Submittals.

**A. General Requirements**

- 1) 90% Design Deliverables:
  - a) All building elevations with window placement and wall sections .
  - b) Roof and drainage plan.
  - c) All floor plans with identified area uses and resulting area square footage.
  - d) Design criteria for each mechanical system.
  - e) Equipment schedules for major mechanical items.
  - f) Overall building airflow diagram.
  - g) Conceptual control diagrams for all mechanical and plumbing systems.
  - h) Preliminary calculations for HVAC systems.
  - i) Design criteria for each plumbing system, including set points, etc.
  - j) One-line diagrams for all plumbing systems.
  - k) Plumbing and piping plans.
  - l) Typical lighting plans.
- 2) 100% Design Deliverables:
  - a) Complete specification.
  - b) One-line diagrams for all mechanical systems.
  - c) Duct layout and air flow volumes for each space.
  - d) Detailed control drawings with sequences of operation.
  - e) All design calculations.
  - f) Lighting plans for all areas.
  - g) Electrical power load summary.
  - h) Electrical panel schedules.
  - i) Coordination Drawings
  - j) Replacement line-by-lines showing pre and proposed installation, consumption (kwh, therms, and \$).
  - k) Incentive amount
  - l) Update of model and Energy Savings

## **B. Drawings**

The 90% and 100% Design Deliverables phase submission for new construction, renovation, or demolition projects shall include the following:

- 1) A "Title" sheet with all architectural and professional engineering (Registered in Massachusetts) consultant stamps (for the 100% Design Deliverables only).
- 2) All legends, symbols, and general notes.
- 3) Prior to submitting the 100% Design Deliverables (the construction documents for the Installation Services) to the DCAMM, the following steps shall be completed, as applicable:
  - a) Two sets of the 100% Design Deliverables shall be approved and signed by the state building official, the state plumbing & gas inspector, the local electrical inspector, and the local fire chief in the same manner as indicated above.
  - b) All other approvals of local, state or federal agencies having jurisdiction shall also be obtained.
  - c) The sets containing the original approvals shall be retained by the DCAMM as the official approved sets.
  - d) All documents revised after being stamped shall be replaced and the procedure shall be repeated as described above.

## **C. Specifications:**

- 1) Indicate a complete description of the work in the "Scope of Work" section of the specification.
- 2) Indicate related work in other sections.
- 3) Indicate items supplied and installed by others.
- 4) Include test reports.
- 5) Indicate utility back charges if required.
- 6) Indicate the extent of demolition; the standard is that abatement work occurs first, then utility disconnects, and then CONTRACTOR demolition.
- 7) Indicate if either the Subcontractor or CONTRACTOR supplies the staging or lifts, and which one supplies the temporary enclosure.
- 8) Determine if the cutting and patching is Subcontractor or CONTRACTOR responsibility".
- 9) Type in the date on which the specifications were approved by the DCAMM in the lower right hand corner of the title sheet.
- 10) Describe the extent of the work, the materials and workmanship, and include the work under the proper section.
- 11) Use consistency throughout. Use the word "will" to designate what the CONTRACTOR can be expected to do and the word "shall" to designate what is mandatory for CONTRACTOR to do.
- 12) Use the same term throughout for the same subject, and the term shall be the same as that used on the drawings.
- 13) Specify that CONTRACTOR shall provide inventory information (in electronic spreadsheet format) for all major mechanical and HVAC, electrical, and special equipment, which includes the following: New Equipment/Systems type, New Equipment/Systems description, manufacturer, model number, serial number, building and location of the New Equipment/Systems (per this Contract).

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- 14) Specifications must be based upon the DCAMM Standard Specification and tailored to the specific project. Delete sections and references that do not apply.
- 15) Specifications shall be stamped by a registered Massachusetts architect or engineer.

**D. Heating, Ventilating & Air Conditioning Drawings**

Heating, ventilating and air conditioning drawings shall indicate the following:

- 1) Site utilities on the utility drawings.
- 2) HVAC work, other than site work, shall not be combined on the same sheets with plumbing, electrical or other drawings except with the prior approval of DCAMM.
- 3) The location and size of all piping and ductwork systems.
- 4) All systems sized at all reductions, as well as all riser diagrams of piping and duct systems.
- 5) All directions of flow, pitch on piping, and volumes for duct systems.
- 6) Sufficient servicing and/or replacement space of all large items of equipment.
- 7) All equipment, accessories, valves, and dampers with all necessary access panels identified as to type and size. Access panels, where required for access to valves and dampers, etc.
- 8) All cooling system pumps, chillers, cooling towers, air handling units, ductwork systems, dampers, fan details, temperature control system, air and hydronic balancing equipment, and schedules.
- 9) That all fire and smoke dampers, access panels, and doors are installed in accordance with the latest edition of NFPA Code 90.A.

**E. Electrical Drawings.**

Electrical drawings shall include the following:

- 1) Site utilities shall be indicated on utility drawings.
- 2) Electrical work, other than site work, shall not be combined on the same sheets with fire protection, plumbing, HVAC, or other drawings except with the prior approval of the DCAMM.
- 3) General arrangement: Outline layout of each floor. Typical sections through the structure, floor and ceiling heights and elevations, and type of construction, including concrete pads shall be indicated.
- 4) Power system: locations, types, and method of control for all motors, heaters, appliances, controllers, starters, branch circuits, feeder conductors, and conduits. Indicate riser diagrams. Show details and indicate method of supporting electrical conduit. For larger projects, thermostats and control wiring are normally covered under the HVAC contract.
- 5) Signal systems: locations and types of all outlets and equipment, service connections, wiring diagrams, and all other essential details.
- 6) Services: location and details of all services, whether overhead or underground, feeder sizes, plans and elevations of switchgear and transformers, metering and service switchboard arrangements, wiring and ground fault diagram, and bus ducts.
- 7) Riser diagrams for all systems.

**F. Plumbing Drawings.**

Plumbing drawings shall indicate the following:

- 1) All work done by CONTRACTOR shall include all water, gas, air, vacuum, and accessories. Site utilities shall be indicated on the utility drawings.

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- 2) Plumbing work, other than site work, shall not be combined on the same sheets with the fire protection, HVAC, electrical, or other drawings except with the prior approval of DCAMM.
- 3) Water and gas supply sources.
- 4) All piping shall be carefully sized, and all sizes shall be indicated on drawings and riser diagrams. Indicate all directions of flow and pitch on piping.
- 5) Plumbing legend and/or graphical symbols on the first sheet of the plumbing drawings in accordance with the National Standards Institute (ANSI).
- 6) Plumbing riser diagrams for structures two or more stories in height above ground level.
- 7) Piping material, hanger materials, and detail.
- 8) Back-flow preventers in accordance with requirements of Department of Environmental Protection (DEP).
- 9) Clean-outs in accordance with the Massachusetts State Plumbing Code.

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**A-4: Requirements for Resident Engineer and Field Offices**

- A. DCAMM shall provide a suitable location on site for use as CONTRACTOR's storage and/or office trailer(s).
- B. CONTRACTOR shall provide a suitable field office trailer on site for the use of the DCAMM Resident Engineer. CONTRACTOR shall be responsible for providing general cleaning services and trash/recycling pickup from the Resident Engineer's trailer at least once weekly.
- C. CONTRACTOR shall equip the DCAMM Resident Engineer's office with the following:
1. One (1) lockable steel desk.
  2. One (1) swivel arm chair.
  3. One (1) electronic Fahrenheit thermometer for exterior use.
  4. One (1) lockable four drawer metal file cabinet.
  5. One (1) battery operated electronic calculator.
  6. Two (2) highlighter color variety packs.
  7. Five (5) letter sized wide ruled writing pads.
  8. Fifty (50) letter size manila folders.
  9. Ten (10) blue pens.
  10. Ten (10) 0.9 mechanical pencils with 30 refill leads.
  11. One (1) desktop stapler with 10,000 refill staples.
  12. Sufficient quantity of electric lights and electrical outlets.
  13. Two (2) OSHA approved adjustable hard hats.
  14. Three (3) pairs of safety glasses.
  15. One (1) LED flashlight with (2) sets of replacement batteries.
  16. One (1) compact refrigerator (minimum 4.0 CF)
  17. One (1) hot and cold free standing bottled spring water cooler. CONTRACTOR shall supply bottled spring water for the duration of the Project.
  18. One (1) trash receptacle
  19. One (1) recycling receptacle.
- D. Computer: CONTRACTOR shall furnish (or lease) and install the office equipment listed below for the DCAMM Resident Engineer for the duration of the Project. CONTRACTOR shall install and render fully functional all computer system equipment and software meeting the requirements set forth below and shall be responsible to maintain and/or replace all such items as may become lost, inoperative or damaged in the course of normal use. For the duration of the Project, CONTRACTOR shall provide maintenance service for such computer system equipment and software to provide for full restoration of usability within two (2) business days of any reported malfunction. If found to be un-repairable within two (2) business working days, then immediately replace with new. At the completion of the Project, CONTRACTOR retains ownership of all equipment.

CONTRACTOR shall provide the DCAMM Resident Engineer with one (1) new laptop computer including, at a minimum, each of the following:

1. Intel Core i7, 2.4 GHz or higher processor
2. One (1) GB system memory (SDRAM) 8 GB DDR3 expandable to 16GB.
3. 750GB hard drive—SATA (7200 rpm).

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4. 15.4 inch LCD screen with LED backlight (1366 x 768).
  5. Intel Graphics Media Accelerator 4500M (minimum 2 GB video memory) or equal.
  6. Built-in 10/100 ethernet LAN (RJ-45 connector) compatible with operating system .
  7. Integrated sound card with internal speakers.
  8. Internal DVD  $\pm$  -read and rewritable/CD- read and rewritable; 16x8x16 DVD+RW; 16x6x16 DVD-RW; 48x4x48 CD-RW.
  9. Wireless networking B+G+N.
  10. Bluetooth enabled.
  11. One (1) high-speed USB 3.0 port.
  12. Two (2) high-speed USB 2.0 ports.
  13. Latest version of Windows 8 Professional.
  14. Latest version of Microsoft Office Suite.
  15. Latest version of Microsoft Projects.
  16. Latest version of Adobe Acrobat Professional.
  17. Latest version of Internet Explorer
  18. Latest version of antivirus software (Norton AntiVirus or equal, including subscription updates for the duration of the Project).
  19. One 4G wireless USB card. Provide card and unlimited service for the duration of the Project or a hot spot.
  20. One (1) color inkjet combination copier-scanner-printer
  21. Initially supply six (6) black and six (6) color ink cartridges and six (6) reams of 8 ½ x 11 copy paper. CONTRACTOR shall provide paper, additional printer toner and ink cartridges as needed by the DCAMM Resident Engineer throughout the duration of the Project.
  22. Two (2) USB thumb drives each with 32GB capacity.
  23. Supply of fifty (50) RW CDs with jewel cases.
  24. One (1) surge protector with (10) total outlets, all with surge protection.
  25. Hot spot internet access
  26. For all of the above equipment provide a Parts, Labor, and On-site Warranty Repair/Replacement for the duration of the Project.
- E. Documents: CONTRACTOR shall be required to provide the DCAMM Resident Engineer with one (1) complete set of Contract Documents including but not limited to drawings, specifications, detailed energy audits, submittals, and cut sheets.
- F. Camera: CONTRACTOR shall provide the DCAMM Resident Engineer with the following camera equipment:
1. One (1) new digital camera capable of recording images on an external memory card. Camera shall be of slim design, capable of minimum 15.0 Megapixels photos with a minimum 12X Optical Zoom, and capable of recording video with sound.
  2. One (1) carrying case for the digital camera.
  3. Two (2) compatible 8-Gigabyte memory cards.
  4. Two (2) sets of rechargeable lithium ion batteries with charger.
  5. Cables and software for direct transfer from camera to computer.
- G. Phone and Related Services: CONTRACTOR shall provide and maintain the tablet and cell phone equipment and services listed below for the duration of the Project. All devices and accessories shall be returned to CONTRACTOR at the completion of the Project. CONTRACTOR shall pay for all calls and fixed charges connected with the cell phone required below.

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1. CONTRACTOR shall provide the DCAMM Project Engineer with one (1) touchpad tablet with a 9 inch minimum screen size, Windows RT or Windows 8 based operating system with wi-fi, 32 GB of storage, 2.0 USB port and protective case, power supply, cables and software.
2. CONTRACTOR shall provide Resident Engineer with one (1) new Bluetooth enabled 4G Blackberry cell phone with belt clip, power supply, cables, and software. 4G services shall include unlimited email, data, messaging, caller ID, call waiting, 3-way conferencing, voicemail and all related services for the length of the Project. The Blackberry cell phone services shall also include unconditional replacement if lost, stolen or damaged.
3. CONTRACTOR shall provide communications' system maintenance and replacement service to insure operation throughout the Project, including minimum next day on-site service.
4. CONTRACTOR shall make every effort to incorporate the DCAMM Resident Engineer's current project cell phone number into the Blackberry cell phone service under this Contract.

**H. Sanitary Facilities:**

1. Unless the DCAMM stipulates in writing that CONTRACTOR is allowed access to the building bathroom facilities at the Premises, CONTRACTOR shall provide suitable toilet facilities for its staff, the DCAMM Resident Engineer, and additional facilities for the workers on the job, including personnel of Subcontractors. FACILITY may designate a specific toilet area to be used for CONTRACTOR and Subcontractors engaged in the Services. However, CONTRACTOR shall take responsibility for maintenance and cleaning of such areas and shall leave them in first class condition equal to the accepted conditions of toilet facilities not used for construction personnel.
2. CONTRACTOR shall provide chemical toilets at all work areas in a quantity as required by OSHA. Chemical toilets and their maintenance shall meet requirements of all state and local health regulations and ordinances and shall be subject to the approval of the CUSTOMER.

**I. Project Signage:** CONTRACTOR shall provide Project identification signage that complies with DCAMM standard sketches and specifications set forth below.

1. The CONTRACTOR 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 CONTRACTOR prior to the start of construction.
2. The CONTRACTOR shall provide one 36 inch high by 48 inch wide, or, if requested by DCAMM, a smaller project sign as shown on the AutoCAD Files conforming to all DCAMM requirements. The material of the project signage and manner in which it is displayed must be approved in advance by DCAMM.
3. The CONTRACTOR shall submit a shop drawing indicating sign construction and lettering for approval by the DCAMM.
4. 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.

**J. Hoisting Equipment and Machinery:**

1. All hoisting equipment and machinery required for the proper and expeditious prosecution and progress of the work shall be furnished, installed, operated and maintained in safe condition by the individual subcontractors as applicable to their

trade. All costs for hoisting operating services shall be borne by the subcontractors unless specifically excepted in the Contract Documents.

2. A licensed equipment manufacturer's representative shall be present at all times, to witness the erection and dismantling of all hoisting equipment and machinery, whenever such equipment is being erected or dismantled. No such work will be performed without the presence of such representative.
3. Hoisting equipment and machinery erection and dismantling shall be performed only by trained, certified, and experienced riggers qualified to perform such work. Copies of such licenses and/or certifications, clearly indicating qualifications, shall be provided to the DCAMM Resident Engineer prior to commencement of such erecting and dismantling work.
4. Review drawings for hoisting requirements and openness of traffic access routes to installed destinations of specified equipment and furnishings.
5. All hoisting and associated street closures to be scheduled to take place outside of business hours, and to be coordinated with DCAMM.

**K. Staging:**

1. All staging, planking and scaffolding, exterior and interior, required for the proper execution of the work and over eight feet in height, shall be furnished, installed, and maintained by the Contractor. Individual Subcontractors shall be responsible for notifying the Contractor for moving staging, planking and scaffolding with sufficient notice to allow the Project Manager's timely response. The Contractor will be responsible for all potential costs from Subcontractors if timely response is not provided.
2. Erection and dismantling of staging shall be performed only by trained, certified, and experienced staging personnel qualified to perform such work. Copies of such certifications, clearly indicating qualifications, shall be provided to the DCAMM Resident Engineer prior to commencement of such erecting and dismantling work.
3. All staging up to eight feet in height shall be provided by the individual Subcontractors as applicable to their work.

**L. Maintenance of Access:**

The Contractor shall provide and maintain for the duration of his contract, a means of access to, around and within the site, as indicated on the Shop Drawings, for authorized personnel. This means of access shall be construed to sustain the weight of equipment customarily engaged for use in construction projects of this type and magnitude. The Contractor shall, without additional compensation from the Commonwealth, furnish labor and materials as may be required from time to time to maintain this means of access in an acceptable condition as determined by DCAMM. Pedestrian access shall provide adequate protection against falling debris, slippage, adequate lighting, warning and directional signs, and protection against construction activities.

**M. Dust Control:**

The Contractor shall have all Subcontractors provide adequate means for the purpose of preventing dust caused by construction operations from creating a hazard, nuisance, and from entering adjacent occupied areas throughout the period of Contract. This provision does not supersede any specific requirements for methods of construction or applicable general conditions set forth in the Contract with added regard to performance obligations of the Contractor.

**N. Noise Control:**

1. Comply with requirements of authorities having jurisdiction. Develop and maintain a noise-abatement program and enforce strict discipline over all personnel to keep noise to a minimum.
2. Execute construction work by methods and by use of equipment which will reduce excess noise.
3. Equip air compressors with silencers, and power equipment with mufflers.
4. Manage vehicular traffic and scheduling to reduce noise.
5. All loud work must be scheduled to be executed outside of business hours

**O. Enclosures:**

1. Provide temporary, insulated, weather tight closures of openings in exterior surfaces for providing acceptable working conditions and protection for materials, allowing for heating during construction, and preventing entry of unauthorized persons. Provide doors with self-closing hardware and locks.
2. All utilities including electric ducts, conduits, telephone lines, sprinklers, and other utilities shall be protected against damage from construction activity. The Contractor shall be responsible for all damage to the utilities from construction and shall repair all such damage at no additional cost to DCAMM.

**P. Cleaning During Construction:**

1. Unless otherwise specified within the specifications, the Contractor shall perform clean-up operations during construction as herein specified.
  - a. Refer to Section 017419 - CONSTRUCTION WASTE MANAGEMENT of the DCAMM Standard Specifications for additional requirements.
2. Control accumulation of waste materials and rubbish; periodically dispose of off-site in a legal manner. The Contractor shall bear all costs, including fees resulting from such disposal.
3. Clean interior areas prior to start of finish work and maintain areas free of dust and other contaminants during finish operations.
4. Conduct cleaning and disposal operations to comply with local ordinances and anti-pollution laws.
5. Maintain project in accordance with all local, Commonwealth of Massachusetts, and Federal Regulatory Requirements.
  - a. Store volatile wastes in covered metal containers, and remove from Premises.
  - b. Prevent accumulation of wastes which create hazardous conditions.
  - c. Provide adequate ventilation during use of volatile or noxious substances.
6. Cleaning: Clean interior areas prior to start of finish work and maintain areas free of dust and other contaminants during finish operations.
  - a. Use only those materials which will not create hazards to health or property and which will not damage surfaces.
  - b. Use only those cleaning materials and methods recommended by manufacturer of surface materials to be cleaned.
  - c. Handle material in a controlled manner with as few handlings as possible. Do not drop or throw materials from heights.
  - d. Schedule cleaning operations so that dust and other contaminants resulting from cleaning process will not damage surrounding surfaces.
  - e. Execute cleaning to ensure that the buildings, the sites, and adjacent properties are maintained free from accumulations of waste materials and rubbish and windblown debris, resulting from construction operations.

**Project #:**

There is no space available for on-site containers for collection of waste materials, debris, and rubbish.

- Q. Construction Barriers: Proper construction barriers shall be provided around the Contract work areas as defined by the Shop Drawings, OSHA, building code, and/or as directed by the Resident Engineer.
- R. Parking: No parking is available during business hours (6:00 am – 6:00 pm), unless otherwise stipulated by DCAMM in writing. The Commonwealth shall not be responsible for cars, trucks, etc. or their contents and the Contractor and subcontractors and material suppliers.
- S. Safety Protection: At no time shall the work be left unattended without proper safety protection and shall not be left unprotected to the weather and accessible to the public. It is the responsibility of the Contractor to maintain proper safety protection for the public while work is in progress or unattended.
- T. Vehicle and Equipment Protection: All construction activities shall be performed in such a manner so as not to dust, stain or damage any building elements, equipment, vehicles, etc. within general vicinity of the construction work area. Any damage to these items shall be cleaned and repaired at the expense of the Contractor. All construction vehicles and equipment on site shall be effectively disabled and secured when not in use.
- U. Fire Safety During Construction:
1. Fire-Safety Program: Comply with requirements of authorities having jurisdiction and NFPA 241 Standard for Safeguarding Construction, Alteration, and Demolition Operations. Submit a copy of NFPA 241 Impairment Plan to local fire department. Indicate Contractor personnel responsible for management of fire-prevention program.
  2. Temporary Fire Protection: Install and maintain temporary fire-protection facilities of types needed to protect against reasonably predictable and controllable fire losses. Comply with NFPA 241; manage fire-prevention program:
    - a. Supervise welding operations, combustion-type temporary heating units, and similar sources of fire ignition according to requirements of authorities having jurisdiction.
    - b. Develop and supervise an overall fire-prevention and -protection program for personnel at Project site. Review needs with local fire department and establish procedures to be followed. Instruct personnel in methods and procedures. Post warnings and information.
  3. Contractor and all Subcontractors will follow all rules and regulations with regard to hot-work.
- V. Shoring: The Subcontractors shall provide all temporary shoring and bracing as required for the proposed work. Comply with all applicable codes and standards.

***Project #:***

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## **A-5: Instructions/Model Forms**

### **Part I: Instructions/Model Forms for Submission of Project Change Requests**

In accordance with Section 34: Changes in Scope of Services of this Contract, CONTRACTOR is required to adhere to the following instructions and model forms for the submission of Project Change Requests, and any reasonable updates to such forms:

- **Form 13E:** INSTRUCTIONS AND PROCEDURES REGARDING CHANGE ORDERS AND EQUITABLE ADJUSTMENTS-ENERGY
- **Form 14:** REQUEST FOR APPROVAL OF WAGES AND RATES FOR CHANGE ORDER PRICING
- **Form 15-1:** CHANGE ORDER SUMMARY SHEET
- **Form 15-2:** NET IMPACT TO ANNUAL SAVINGS AND PROJECT INCENTIVES
- **Form 15-3:** CHANGE ORDER SUBMISSION FORMAT FOR CONTRACTOR AND/OR SUBCONTRACTOR
- **Form 5:** REQUEST AND AGREEMENT FOR CHANGE IN THE PLANS AND/OR SPECIFICATIONS AND/OR CONTRACT

The instructions and model forms listed above are found in **APPENDIX A: REFERENCE DOCUMENTS** and hereby incorporated into this Contract. **APPENDIX A: REFERENCE DOCUMENTS** also includes the following DCAMM forms for CONTRACTOR's reference:

- Daily Time and Materials Report
- CH25A Sample Change Order Request Log

### **Part II: Closeout Procedures and Model Forms**

In accordance with Section 38: Substantial Completion/Final Acceptance of this Contract, CONTRACTOR is required to adhere to the following instructions and model forms (and any reasonable updates to such forms) for the submission of requests for Substantial Completion, Final ECM/Equipment Acceptance, and Final Project Approval:

- Substantial Completion and ECM/Equipment Acceptance Form
- Final Completion Approval Form
- Final Completion Log

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

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## **A-6: Energy Savings**

CONTRACTOR understands that DCAMM will authorize Installation Services pursuant to this Contract only if sufficient energy and/or water cost and unit savings are estimated to be achieved by the installation of the New Equipment/Systems in accordance with the Design. Energy Savings are to be calculated by CONTRACTOR and accepted by DCAMM as follows:

As part of each Design Deliverable (unless otherwise approved by DCAMM in writing) and prior to the commencement of Installation Services for each ECM, CONTRACTOR shall deliver the following, together with any back-up documentation (including, without limitations, calculations and/or further detail requested by DCAMM):

- 1) baseline energy calculations in a format required by DCAMM; and
- 2) energy unit and cost savings calculations in the format of attached hereto as the Energy Savings Calculation Form in **Appendix A** or other format required by DCAMM.

DCAMM shall review such calculations as part of its review of the Design Deliverable and notify CONTRACTOR if either the energy baseline and/or savings calculations is acceptable or respond with objections, changes, or requests for clarifications.

Upon acceptance by DCAMM, CONTRACTOR's energy baseline calculation shall be incorporated into this Contract by reference. The Energy Savings calculations and any updates thereto shall be based upon the energy baseline.

Upon acceptance by DCAMM, CONTRACTOR's energy unit and cost savings calculations will be incorporated into this contract by reference as the Project's Energy Savings.

The Energy Savings will be verified by CONTRACTOR prior to issuance of a Substantial Completion Approval Notice and Final ECM Acceptance Notice using the methodology established in the M&V procedures set forth in the M&V plan developed in accordance with Section 22.2: Design Deliverables and Submittals.

If Installation Services are authorized in accordance with this Contract, CONTRACTOR shall be required to submit revised Energy Savings data as part of any Project Change Request or amendment to the Contract.

### **Part II: Energy Savings Tracking**

CONTRACTOR shall provide as part of the final Design Deliverable, and as part of final Project closeout, the following documentation to enable the Commonwealth of Massachusetts to track savings associated with energy conservation projects:

- DCAMM site audit template to be provided by DCAMM

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## **SCHEDULE B: PROJECT INFORMATION**

### **B-1: FACILITY Information (Including Permitted Work Hours and Entry Restrictions)**

The Project is located at DCAMM to insert Premises address. The buildings to be addressed under this Contract are listed in **Table B-1** below.

#### **Table B-1: FACILITY Information**

DCAMM to insert "Building Information" from RFP Scope Form here

*\* Hours of Operation are provided above for information only.*

CONTRACTOR acknowledges and agrees that the Services shall be installed in accordance with the anticipated permitted work hours stated above.

CONTRACTOR shall confirm permitted work hours with DCAMM at the first Project meeting. Upon agreement of DCAMM and CONTRACTOR, these schedules may be modified based on two week look-ahead.

CONTRACTOR shall comply with any and all entry, tool inventory, and other restrictions communicated by DCAMM. CONTRACTOR may be working in and around secure facilities and any and all restrictions associated with the operation of the facilities shall be incorporated into the CONTRACTOR's Design/Construction Schedule and Total Contract Value.

Without limitation of the foregoing, CONTRACTOR shall comply with all restrictions stated above in **Table B-1** if applicable: and the following additional site requirements:

if applicable, DCAMM to insert Information from RFP here

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## **B-2: Project Schedule**

### **Part I: Design Services Schedule**

The Design Services shall commence on the Effective Date and continue for **[DCAMM to insert Design Schedule from Proposal schedule here]** calendar days in duration, or as may be extended pursuant to the terms of the CONTRACT.

CONTRACTOR shall submit a detailed Design/Construction Schedule to DCAMM within 5 days of the Effective Date. When approved by DCAMM, the Design/Construction Schedule shall be incorporated by reference into this Contract, including any updates thereto agreed upon by the CONTRACTOR and DCAMM.

### **Part II: Installation Services Schedule**

The duration of Installation Services shall be stated on the Notice to Proceed for Installation Services. CONTRACTOR shall submit an updated detailed Design/Construction Schedule to DCAMM within 5 days of the date of a Notice to Proceed for Installation Services. When approved by DCAMM, the Design/Construction Schedule shall be incorporated by reference into this Contract, including any updates thereto agreed upon by the CONTRACTOR and DCAMM

**NOTE:** DCAMM to insert any specific schedule requirements for Installation Services schedule (i.e. required Substantial Completion Dates for certain ECM(s)) included in the RFP here.

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**Project #:**

### **B-3: Project Team**

*Subcontractors identified in the Proposal as members of CONTRACTOR's Project team appear on the following [page count to be inserted by DCAMM] pages.*

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**B-4: MBE/WBE Participation Commitment and Diversity Focus Statement**

CONTRACTOR's MBE/WBE Participation Commitment and Diversity Focus Statement from the Proposal appears on the following [page count to be inserted by DCAMM] pages.

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**B-5: Scope of Services**

**Part I: Design Services**

CONTRACTOR's performance of the Design Services shall incorporate the following:

**[NOTE: DCAMM to insert scope requirements from RFP and Proposal here]**

**Part II: Installation Services**

If Installation Services are authorized in accordance with this Contract, CONTRACTOR shall diligently perform the Installation Services for the New Equipment/Systems as specified in the Contract Documents, including, without limitation, the Design. For clarity, certain scope items may be specifically set forth in a Contract amendment and/or the NTP for Installation Services, at the sole discretion of DCAMM.

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## **B-6: Payment Terms; Total Contract Value**

All payments to CONTRACTOR shall be made in accordance with Section 4: Payments and this **Schedule B-6**.

### **Part I: Design Services**

**A. Design Fee.** The Design Fee is set forth below:

*[DCAMM to insert audit and design fee from Proposal here]*

**B. Payment of Design Fee.** CONTRACTOR shall submit a payment requisition for the total payment of the Design Fee within 30 days of acceptance of the Design by DCAMM in accordance with this Contract. Unless Installation Services are authorized in accordance with this Contract no further payments will be owed to CONTRACTOR.

### **Part II: Installation Services**

**A. Installation Costs.**

1. Estimated Installation Costs. The Estimated Installation Costs as of the Effective Date, including any unit pricing contained in the Proposal, are as follows:

*[DCAMM to insert estimated installation costs, including unit costs and estimated totals from Proposal here]*

The Estimated Installation Costs will be confirmed as the scope is further detailed and quantities verified through the performance of the Design Services. If, following the completion and acceptance of Design and in DCAMM's sole discretion, DCAMM elects to authorize Installation Services under this Contract, the Total Contract Value shall be increased to include the agreed upon final Installation Costs. If applicable, calculation of such Installation Costs shall include any adjustments based upon the Proposal unit pricing (shown above) and in accordance with the "Unit Pricing Terms" set forth below.

2. Unit Pricing Terms. For the ECMs for which unit prices are shown, the following unit pricing terms shall apply:
  - (i) Unit pricing shall be performed by the CONTRACTOR or Subcontractor as applicable.
  - (ii) Unit price work shall be paid for in accordance with the unit prices listed in the Proposal, as accepted by DCAMM, based on estimated quantities as set forth above.
  - (iii) All unit prices shall include their pro-rata share of all costs, including but not limited to, overhead, profit, insurance, bond, labor, materials, disposal, equipment costs

and all other work incidental thereto to perform the work item to completion, as identified.

- (iv) Unit prices shall provide for a variance in quantities of plus or minus 100 percent of those listed on the Proposal shown below (the "Variance Percentage").
- (v) If quantities exceed the units established in the Contract, including the Variance Percentage, an equitable unit price adjustment will be determined by the DCAMM Project Manager.
- (vi) Adjustment of the Total Contract Value resulting from the final quantities of the unit price work shall be made at the completion of Design and prior to issuance of a Notice to Proceed with Installation Services. No further adjustments for quantity shall be permitted, by Change Order or otherwise, based upon actual quantities that were reasonably verifiable in the performance of Design Services.
- (vii) For each ECM, unit price work shall be calculated as follows:

An estimated quantity for the full scope of work involving these items is provided below. Should certain unanticipated additional work be required, or should the quantities of identified items of work exceed or be less than the quantity stated below (up to the amount of the Variance Percentage), by authorization of DCAMM, the below unit prices shall, at the option of DCAMM, be the basis of payment to the Construction Manager or credit to DCAMM for such increase or decrease in the work. The Unit prices shall represent the exact amount (including overhead, profit, insurance, bond, labor, materials, disposal, equipment costs and all other work incidental thereto) per unit to be paid to the Construction Manager (in the case of additions or increases) or to be credited DCAMM (in the case of decreases).

**B. Payment of Installation Costs.** Following issuance of a Notice to Proceed for Installation Services (if any), CONTRACTOR shall request monthly progress payments for all costs incurred during performance of Installation Services as follows:

- 1) up to 85% of approved and accepted Installation Services, based upon estimated progress submitted per Section 24.5. DCAMM shall retain 15% of total Installation Costs for such ECM (or, in the case of partial Substantial Completion in accordance with Section 28 of such New Equipment/System or building as set forth in the Schedule of Values) at the Substantial Completion Date.
- 2) 95% of the total Installation Costs of a particular ECM at Final ECM Acceptance. Performance testing pursuant to the M&V plan developed in accordance with Section 22.2: Design Deliverables and Submittals and updated Energy Savings calculations shall be required prior to Final ECM Acceptance. CUSTOMER shall retain 5% of total Installation Costs for such ECM at Final ECM Acceptance.
- 3) 100% of the Total Contract Value at issuance of the Final Project Notification Approval.

CONTRACTOR shall include in its monthly progress payment requisitions the costs for Services performed within the previously 30 days.

If Installation Services are authorized pursuant to this Contract, CONTRACTOR shall submit a schedule of values in accordance with Section 4: Payments. Upon submission by



**Project #:**

the CONTRACTOR and approval by DCAMM, the Parties agree that the schedule of values is hereby incorporated into this Contract by reference, including any accepted updates thereto.

Upon issuance of Final Project Notification Approval, CONTRACTOR shall be entitled to payment of the balance of the Total Contract Value. Final payment shall be as provided in the Contract and in accordance with any process set forth in the Contract Documents. CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR on such certificate of final release. Final Project Approval shall not relieve CONTRACTOR of the requirements of any provision of the Contract intended to survive Final Project Approval.

If DCAMM elects to accelerate any of its payment obligations for the Total Contract Value under the Contract, while retaining all other rights and obligations required hereunder, this **Schedule B-6: Payment Terms; Total Contract Value** shall be revised in accordance herewith.

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**Project #:**

**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: \_\_\_\_\_

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**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

**Project #:**

**EXHIBIT III-A: COMPLIANCE AND CERTIFICATION FORMS FOR CERTIFIED  
PAYROLL, MBE/WBE AND WORKFORCE REQUIREMENTS  
(Design Services)**

The following form(s), completed by CONTRACTOR appear in the following pages:

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

In accordance with **Schedule A-1: Goals for Participation by MBE/WBE Enterprises/Equal Employment Opportunity, Anti-Discrimination, and Affirmative Action Program (Executive Orders No. 526 and No. 565)**, CONTRACTOR shall use the following forms, as may be reasonably updated by DCAMM, for the submission of documentation demonstrating compliance with MBE/WBE participation requirements. These forms are provided in **Appendix A: REFERENCE DOCUMENTS** and hereby incorporated into this Contract.

- *Schedule For Participation (for Minority and Women Business Enterprises)*
- *Letter of Intent (for Minority and Women Business Enterprises)*
- *Anticipated Veteran and Service-Disabled Veteran-Owned Business Enterprise Participation*

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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

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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

**Project #:**

**EXHIBIT III-B: COMPLIANCE AND CERTIFICATION FORMS FOR CERTIFIED  
PAYROLL, MBE/WBE AND WORKFORCE REQUIREMENTS  
(Installation Services Amendment)**

The following form(s), completed by CONTRACTOR, and, if applicable, approved by DCAMM, appear in the following pages:

- *Schedule For Participation (for Minority and Women Business Enterprises)*
- *Letter of Intent (for Minority and Women Business Enterprises)*
- *Anticipated Veteran and Service-Disabled Veteran-Owned Business Enterprise Participation*

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**EXHIBIT IV-A: EVIDENCE OF AUTHORITY (Design Services)**

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: \_\_\_\_\_

\_\_\_\_\_



**Project #:**

(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 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 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)

**Project #:**

**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 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 \_\_\_\_\_ 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)

**Project #:**

**EXHIBIT IV-B: EVIDENCE OF AUTHORITY (Installation Services Amendment)**

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: \_\_\_\_\_

**Project #:**

\_\_\_\_\_  
(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 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 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: \_\_\_\_\_

**Project #:**

\_\_\_\_\_  
(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 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 \_\_\_\_\_ 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)

**Project #:**

**EXHIBIT V-A: INSURANCE CERTIFICATES (Design Services)**

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

**Project #:**

**EXHIBIT V-B: INSURANCE CERTIFICATES (Installation Services Amendment)**

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

**Project #:**

**EXHIBIT VI: PERFORMANCE BOND**

**(required only for Installation Services Amendment)**

Know all men by these presents, that

\_\_\_\_\_

as principal, and

\_\_\_\_\_

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

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

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

Whereas, Awarding Authority and said principal have amended said Contract to authorize construction of said Project. Such Contract and Contract Documents (as amended) are incorporated herein by reference.

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

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

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

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

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

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

Surety Address

\_\_\_\_\_  
\_\_\_\_\_



**Project #:**

**EXHIBIT VII: LABOR AND MATERIAL PAYMENT BOND**  
**(required only for Installation Services Amendment)**

**PAYMENT BOND**

Know all men by these presents, that \_\_\_\_\_ as  
principal, and \_\_\_\_\_  
as surety, are held and firmly bound unto the Commonwealth of Massachusetts in the sum  
of \_\_\_\_\_  
in lawful money of the United States of America, to be paid to the Commonwealth of  
Massachusetts, for which payments, well and truly to be made, we bind ourselves, our  
respective heirs, executors, administrators, successors and assigns, jointly and severally,  
firmly by these presents.

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

Whereas, Awarding Authority and said principal have amended said Contract to  
authorize construction of said Project. Such Contract and Contract Documents (as amended)  
are incorporated herein by reference.

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

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

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

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

Surety Address

\_\_\_\_\_  
\_\_\_\_\_

***Project #:***

**EXHIBIT VIII: TRENCH APPLICATION AND PERMIT DOCUMENTS**  
**(required only for Installation Services amendment)**

*Completed documents appear on the following pages.*

Project #:

**DCAMM TRENCH APPLICATION &  
PERMIT**  
**Permit issued by Division of Capital Asset  
Management & Maintenance**  
**One Ashburton Place**  
**Boston, Massachusetts 02108**  
**Phone (617) 727-4050**  
**FAX (617) 727-5363**

Permit Number: \_\_\_\_\_

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

Expiration Date: Upon Project Completion

Permit Fee Not Required

Project Name & No.: \_\_\_\_\_

**TRENCH PERMIT APPLICATION**

**Application To be Filed by General Contractor or CM at Risk Contractor**  
**Approved Permit To be Posted by General Contractor or CM at Risk Contractor**  
**Pursuant to G.L. c. 82A §1 and 520 CMR 7.00 et seq. (as amended)**

**THIS PERMIT MUST BE FULLY COMPLETED PRIOR TO CONSIDERATION**

<b>Applicant (General Contractor/CM)</b>  Name: Street Address: City/Town: State/Zip:	<b>Identify Applicant's Contract Executive</b> Name: Phone: Cell: <b>Identify Applicant's Project Manager:</b> Name: Phone: Cell:
<b>Excavator firm &amp; operator, if known (or indicate TBD &amp; provide Permit Supplement [form attached] when info. available):</b> Name of firm:  Firm Address: Phone: Cell:  Massachusetts Hoisting License (Operator) Name, if known: License Grade (Restrictions): Expiration Date:	
<b>Owner of Property:</b> Commonwealth of Massachusetts (DCAMM) One Ashburton Place – 15 <sup>th</sup> Floor Boston, MA 02108 Project Manager Name: _____ Phone: Cell:	<b>Location of Property</b> Street Address:  City/Town:  State/Zip:
<i>This permit is valid for the above mentioned Mass State Project Only and is applicable to the properly fenced boundaries described in the contract documents as well as the work indicated by the plans and specifications.</i> <b>Description, location and purpose of proposed trench:</b> Please describe the location of the proposed trench and its purpose (include a description of what is (or is intended) to be laid in proposed trench (eg; pipes/cable lines etc.) Please use reverse side or additional sheet if additional space is needed. (If this information not known when submitting the application then indicate "TBD". If TBD is indicated, then the undersigned must provide the above information (description, location and purpose) on the attached Permit Supplement form, to DCAMM's resident engineer or other authorized DCAMM representative, for each trench excavated.	
<b>Identify Applicant's Applicable Insurance Policy and Coverage:</b> _____	
<b>Provide Insurance Policy No.:</b> _____	
<b>Name and Address of Insurer:</b> _____	
<b>Insurer's Contact Name and Phone No.:</b> _____	
<b>Policy Expiration Date:</b> _____	

**Project #:**

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

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

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

**Name:**

**Work Phone:**

**Title:**

**Cell Phone:**

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

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

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

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

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

**APPLICANT'S SIGNATURE**

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

**Duly Authorized**

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

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

**Project #:**

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

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

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

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

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

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

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

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

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

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

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

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

Project #:

# EXCAVATOR PERMIT SUPPLEMENT

To be Signed by the Excavator Firm Prior to Excavation of Any and All Trenches at Project Site and  
Provided to the General Contractor/CM for Posting and a Copy to the Resident Engineer  
Reference The Permit for Project issued by Division of Capital Asset Management (DCAMM)

One Ashburton Place  
Boston, Massachusetts 02108  
Phone (617) 727-4050  
FAX (617) 727-5363

Permit Number: \_\_\_\_\_

Permit Holder: \_\_\_\_\_

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

Expiration Date: Upon Project Completion

Mass State Project Name & No. \_\_\_\_\_

## Pursuant to G.L. c. 82A §1 and 520 CMR 14.00 et seq.(as amended)

<b>Excavator (firm)</b> <b>Name:</b> <b>Street Address:</b> <b>City/Town:</b> _____ <b>State:</b> _____ <b>Zip:</b> _____	<b>Contact Person at Excavator (firm)</b> <b>Name:</b>  <b>Phone:</b> _____ <b>Cell:</b> _____
<b>Massachusetts Hoisting License (Operator) Name:</b> <b>License Grade (Restrictions):</b> <b>Expiration Date:</b>	
<b>Name of Owner(s) of Property</b> <b>Commonwealth of Massachusetts (DCAMM)</b> <b>Street Address</b> <b>One Ashburton Place – 15<sup>th</sup> Floor</b>	<b>Owner's Project Manager</b> <b>Name:</b> <b>Phone:</b> _____ <b>Cell:</b> _____
<b>Project Address:</b>	
<b>Description, location and purpose of proposed trench:</b> Please describe the location of the proposed trench and its purpose (include a description of what is (or is intended) to be laid in proposed trench (eg; pipes/cable lines etc.) Please use reverse side or additional sheet if additional space is needed. <i><b>This permit supplement is valid for the above mentioned Mass State Project Only and is applicable to the boundaries described in the contract documents as well as the work indicated by the plans and specifications.</b></i>	
<b>Identify Excavator Contractor's Applicable Insurance Policy and Coverage:</b> _____	
<b>Provide Insurance Policy No.:</b> _____	
<b>Name and Address of Excavator Contractor's Insurer:</b> _____	
<b>Insurer's Contact Name and Phone No.:</b> _____	
<b>Policy Expiration Date:</b>	<b>Dig Safe #</b>

**Project #:**

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

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

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

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

**EXCAVATOR FIRM SIGNATURE**

**DATE**

**Duly Authorized Signature**

**Print/Type Name & Title**

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

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

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

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



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

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

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

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

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

This is a worker protection standard, and is designed to protect employees who are working inside a trench. This summary was prepared by the Massachusetts Division of Occupational Safety and not OSHA for informational purposes only and does not constitute an official interpretation by OSHA of their regulations, and may not include all aspects of the standard. For further information or a full copy of the standard go to [www.osha.gov](http://www.osha.gov).

- **Trench Definition per the OSHA standard:**
  - An excavation made below the surface of the ground, narrow in relation to its length.
  - In general, the depth is greater than the width, but the width of the trench is not greater than fifteen feet.
- **Protective Systems** to prevent soil wall collapse are always required in trenches deeper than 5', and are also required in trenches less than 5' deep when the competent person determines that a hazard exists. Protection options include:
  - Shoring. Shoring must be used in accordance with the OSHA Excavation standard appendices, the equipment manufacturer's tabulated data, or designed by a registered professional engineer.
  - Shielding (Trench Boxes). Trench boxes must be used in accordance with the equipment manufacturer's tabulated data, or a registered professional engineer.
  - Sloping or Benching. In Type C soils (what is most typically encountered) the excavation must extend horizontally 1 ½ feet for every foot of trench depth on both sides, 1 foot for Type B soils, and ¾ foot for Type A soils.
  - A registered professional engineer must design protective systems for all excavations greater than 20' in depth.
- **Ladders** must be used in trenches deeper than 4'.
  - Ladders must be inside the trench with workers at all times, and located within 25' of unobstructed lateral travel for every worker in the trench.
  - Ladders must extend 3' above the top of the trench so workers can safely get onto and off of the ladder.
- **Inspections** of every trench worksite are required:
  - Prior to the start of each shift, and again when there is a change in conditions such as a rainstorm.
  - Inspections must be conducted by the competent person (see below).
- **Competent Person(s) is:**

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- Capable (i.e., trained and knowledgeable) in identifying existing and predictable hazards in the trench, and other working conditions which may pose a hazard to workers, and
- Authorized by management to take necessary corrective action to eliminate the hazards. Employees must be removed from hazardous areas until the hazard has been corrected.
  
- **Underground Utilities** must be:
  - Identified prior to opening the excavation (e.g., contact Digsafe).
  - Located by safe and acceptable means while excavating.
  - Protected, supported, or removed once exposed.
- **Spoils** must be kept back a minimum of 2' from the edge of the trench.
- **Surface Encumbrances** creating a hazard must be removed or supported to safeguard employees. Keep heavy equipment and heavy material as far back from the edge of the trench as possible.
- **Stability of Adjacent Structures:**
  - Where the stability of adjacent structures is endangered by creation of the trench, they must be underpinned, braced, or otherwise supported.
  - Sidewalks, pavements, etc. shall not be undermined unless a support system or other method of protection is provided.
- **Protection from water accumulation hazards:**
  - It is not allowable for employees to work in trenches with accumulated water. If water control such as pumping is used to prevent water accumulation, this must be monitored by the competent person.
  - If the trench interrupts natural drainage of surface water, ditches, dikes or other means must be used to prevent this water from entering the excavation.
- **Additional Requirements:**
  - For mobile equipment operated near the edge of the trench, a warning system such as barricades or stop logs must be used.
  - Employees are not permitted to work underneath loads. Operators may not remain in vehicles being loaded unless vehicles are equipped with adequate protection as per 1926.601(b)(6).
  - Employees must wear high-visibility clothing in traffic work zones.
  - Air monitoring must be conducted in trenches deeper than 4' if the potential for a hazardous atmosphere exists. If a hazardous atmosphere is found to exist (e.g., O<sub>2</sub> <19.5% or >23.5%, 20% LEL, specific chemical hazard), adequate protections shall be taken such as ventilation of the space.
  - Walkways are required where employees must cross over the trench. Walkways with guardrails must be provided for crossing over trenches > 6' deep.
  - Employees must be protected from loose rock or soil through protections such as scaling or protective barricades.

**APPENDIX A: REFERENCE DOCUMENTS**

**The following documents are attached in electronic format:**

<b>Name of document</b>	<b>Date</b>	<b>Cross-reference to this section of the ESA (where applicable)</b>
(1) Request for Proposals	TBD	N/A
(2) Proposal	TBD	N/A
(3) Q&A and Interview Minutes (if applicable): (a) CONTRACTOR's Response to First Set of Questions	TBD	N/A
(4) Instruction/Model Forms for Submission of Project Change Request including: (a) CH25A Sample COR Log (b) Daily Time and Materials Report	N/A	Schedule A-5
(5) Closeout Procedures and Model Forms (a) CAMIS Capital Project Information Template	N/A	Schedule A-5
(6) Energy Savings Calculation Form	N/A	Schedule A-6
(7) DCAMM Instructions and Procedures for Payment for Construction Contracts (including sample schedule of values)	N/A	Schedule B-6
(8) Compliance and Certification Forms for Certified Payroll, MBE/WBE and Workforce Requirements	N/A	Exhibit I
(9) Forms for Installation Services Amendment (a) Scope Form (b) Price and Savings Form	N/A	Section 23