



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

Awarding Authority:

Mass. State Project No. / Contract No.:

Project Title / Project Location:

User Agency:

Designer:

Not-to-Exceed Maximum Study Contract Amount:

(Study Contract Amount includes Schematic Design amount of: _____)

Design Contract Fee: TBD, XX % of Estimated Construction Cost
(subject to a credit for the amount of the Schematic Design fee above)

Authorized Representative of Awarding Authority:

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

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

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

Designer's Telephone Number: _____ Designer's Fax Number: _____
Designer's Email: _____

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ARTICLE 1: INTRODUCTION

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

ARTICLE 2: DEFINITIONS

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

Approved: An item for which Approval has been given.

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

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

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

Basic Fee: The amount owed to the Designer for Basic Services performed during the Study/Schematic Design Phase and Design Phase, as specified in Section 4.11 (Payment for Study/Schematic Design Phase Basic Services) and Section 6.8 (Payment for Design Phase Basic Services) of this Contract, respectively.

Basic Services: All services required to be performed by the Designer under this Contract during the Study/Schematic Design Phase and, if applicable, the Design Phase, except those services specified in Section 4.11 (Study/Schematic Design Phase Additional Services), and Section 6.9 (Design Phase Additional Services).

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

BIM Execution Plan: A strategic and tactical tool to plan the social interactions of the BIM team from the initiation of the Study/Schematic Design Phase until the completion of construction and delivery by the Designer of the As-Built Drawings and associated BIM Deliverables and which meets the requirements set forth in Section 4.5 (Preparation of Study Work Plan).

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

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

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

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

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

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

Construction Cost Estimate: A submittal consisting of a written calculation of the Estimated Construction Cost prepared by the Designer, (if applicable) Designer's professional cost estimator and (if applicable) the independent cost estimator appointed by the Awarding Authority, at various points during the Study/Schematic Design Phase and Design Phase on the basis of the *Uniformat II Elemental Classification for Building Specifications, Cost Estimating, and Cost Analysis* dated October 1999 published by the U.S. Department of Commerce NIST to the level of detail specified in this Contract, as well as the final cost estimate that the Designer is required by this Contract to prepare in *MasterFormat* (2004 edition, as updated 2010 and 2012) published by the Construction Specifications Institute. The Construction Cost Estimate includes contingencies for: estimating, phasing and temporary work, and escalation.

Consultant: A subcontractor of the Designer.

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

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

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

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

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

Design Phase: The portion of this Project that commences after the Study is Certified and the Awarding Authority selects a designer to perform the Design Phase Services, during which the final design of the Project and the administration of the Construction Contract will occur. The Design Phase includes the Design Development Phase, Construction Documents Phase, Construction Administration Phase, and the Facility Performance Evaluation Phase.

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

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

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

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

Fixed Limit Construction Cost: The maximum allowable Construction Cost established by the Awarding Authority as set forth in Attachment G ó Design Phase Scope of Services.

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

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

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

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

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

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

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

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

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

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

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

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

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

Study: A document that meets the requirements of M.G.L. c. 7C, s. 1 and the requirements of this Contract, including the Approved Study Work Plan to be incorporated into this Contract, that defines and quantifies a User Agency's space needs, develops alternative architectural and/or engineering solutions to meet those needs, and contains a) a space program statement including spatial and relationship requirements, b) a recommended physical solution selected from several alternatives based on a determination of existing conditions and the feasibility of construction, c) a Construction Cost Estimate, d) schematic design meeting the requirements of M.G.L. c. 7C, s. 59, and e) if applicable, a proposed construction schedule. The term "Study" as used in this Contract contains and includes a Program as defined herein. A Study may reveal that the Project is not warranted, or that the need can be satisfied without the construction of new, or the renovation of existing, facilities. This definition may be modified if the Approved Study Work Plan clearly indicates that aspects of this definition are not intended to be included.

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

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

Study/Schematic Design Phase: The portion of this Project that commences upon execution of this Contract and concludes upon the decision by the Awarding Authority regarding Certification of Study. This phase includes schematic design.

Study Work Plan: A written plan of services for the Study/Schematic Design Phase. The Study Work Plan must be consistent with the "General Scope of Work" included in the Designer Selection Board advertisement for this Contract and meet the requirements of Section 4.5 (Preparation of Study Work Plan) of this Contract and the Designer Selection Board's Project Criteria for the Project as advertised by the Designer Selection Board. In the case of any conflict between the terms of the Study Work Plan and the Designer Selection Board Project Criteria for the Project, the terms of the Approved Study Work Plan shall be controlling. Once Approved, the Study Work Plan shall be incorporated by reference into this Contract.

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

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

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

ARTICLE 3: GENERAL PROVISIONS

3.1 Approvals.

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

3.1.2 Designer's Approval Responsibilities. The Designer shall not work on any task or Deliverable without first receiving all required Approvals. The Designer shall make all changes in Deliverables required by comments made by the Awarding Authority before the Deliverable

will be Approved, unless such changes are in Designer's professional opinion not suitable, in which case the Designer shall communicate in writing the reasons why they are not suitable. When necessary, the Designer shall meet with the Awarding Authority, the User Agency, the Owner's Project Manager (if appropriate) and any appropriate Consultants to develop a mutually satisfactory Deliverable. Within 30 days after the Approval of Deliverables, the Designer shall provide the Awarding Authority with clearly identified hard or electronic copies, as specified by the Awarding Authority, of the Approved Deliverables.

3.2 Materials Provided to the Designer.

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

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

- (a) a copy on compact disc or electronic format of the current versions of the following documents: *Guidelines for the Preparation of Studies for Building Projects (Publication No. 1381-66-250-4-83-CR, Interim Revision October 1998, Current Revision October 2000)*, *Designers Procedures Manual*, *DCAMM Standard Specification*, *Consultants Estimating Manual*, and, for use on DCAMM Projects, *Cost Estimate Input Form*, and *Building Information Modeling (BIM) List of Design and Preconstruction Services (Revised April 30, 2015)*, *BIM Guidelines for Design and Construction (dated April 30, 2015)*, and *Template BIM Execution Plan*;
- (b) a draft of the Study Work Plan in accordance with Section 4.5 (Preparation of Study Work Plan), if not previously provided; and
- (c) Surveys and Data.

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

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

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

3.4 Sequential Order. The sequential order of the Designer's services as set forth in this Contract and all documents incorporated by reference is of the essence. The Awarding Authority shall have no obligation to Approve or pay the Designer for Deliverables prepared during the

Study/Schematic Design Phase or the Design Phase other than in the order required by the Approved Study Work Plan or Design Phase Scope of Services, as applicable.

- 3.5 Time of Essence.** The parties agree that time is of the essence for the completion of all Study/Schematic Design Phase and Design Phase Services required by the Contract. The parties further confirm and agree that any and all Contract Schedules Approved during the Project shall reflect a reasonable period of time for completing the required services, obtaining required Approvals, obtaining all necessary Permits, addressing any and all design issues, and performing the Basic Services in accordance with this Contract.
- 3.6 Staffing.** The Designer agrees that Designer's personnel who shall provide services under this Contract during the Study/Schematic Design Phase are those listed in its application to the Designer Selection Board and during the Design Phase are those listed in Attachment I ó Designer's Personnel Assigned to Project. No changes or additions may be made to Designer's personnel during the Study/Schematic Design Phase or the Design Phase without Approval by the Awarding Authority. The Designer shall provide sufficient personnel to complete the services required by this Contract in a continuous and timely manner in accordance with the Approved Study Work Plan and, during the Design Phase, in accordance with the Approved Contract Schedule agreed upon in accordance with Section **Error! Reference source not found.** (Design Development Phase Services).
- 3.7 BIM Manager.** Designer shall appoint a BIM Manager for the Study/Schematic Design Phase and, if applicable, the Design Phase, who shall be Approved by the Awarding Authority.
- 3.8 Designer Duties Generally.** The Designer shall be responsible for the professional accuracy and coordination of all Deliverables, including without limitation, designs, drawings, specifications, digital files, cost estimates, and other services and submittals furnished by Designer and by its Consultants in accordance with the standard of care set forth in Section 3.3 (Standard of Care). The Basic Fee shall compensate Designer for all of Designer's obligations specified in this Contract except as otherwise specifically provided herein.
- 3.9 Quality Assurance.** The Designer is responsible for Quality Assurance/Quality Control (QA/QC) in performance of all services required by the Designer under this Contract. As specified in Section 4.5 (Preparation of the Study Work Plan), the Designer shall submit to the Awarding Authority as part of its proposed Study Work Plan a written description of the QA/QC procedures the Designer will implement in the performance of all services required under this Contract, which shall (1) include all requirements for QA/QC set forth in the Designer Procedures Manual , (2) identify the individual(s) responsible for bid document review and cost estimating, and (3) identify methods utilized to determine the completeness, accuracy, and coordination of drawings, specifications, cost estimates, digital files, and other data and documentation. If the Project proceeds to the Design Phase and the Designer is selected to perform the Design Phase Services, the Designer shall continue to adhere to the QA/QC procedures set forth in the Approved Study Work Plan during the performance of the Design Phase Services. The Designer shall be responsible for the completeness, accuracy and coordination of all data and information relating to the Study/Schematic Design Phase and Design Phase, as the case may be.
- 3.10 Calculations.** Whenever calculating the Building Gross Area, Departmental Gross Area, or Net Assignable Area, as hereinafter defined, the Designer shall rigorously and exclusively adhere to the following specific methods of area calculation:

3.10.1. Building Gross Area: The floor area of a building for all levels that are totally enclosed within the building envelope, including basements, mezzanines, or penthouses. To compute Building Gross Area, measure to the outside face of exterior walls, disregarding cornices, pilasters, and buttresses, that extend beyond the wall face. The Building Gross Area of basement space includes the area measured to the outside face of basement foundation walls.

3.10.2. Departmental Gross Area: The net assignable areas and required secondary circulation assigned to an occupant group or department. To compute the Departmental Gross Area, measure to the inside finished surface of the exterior building walls, to the finished surface of the walls surrounding major vertical penetrations and building core and service areas, and to the center of the walls dividing the space from adjoining Departmental Gross Areas.

3.10.3. Net Assignable Area: The area required to accommodate a function, equipment, occupant, or occupant group. Net Assignable Area includes interior walls, building columns, and projections. Net Assignable Area excludes exterior walls, major vertical penetrations, building core and service areas, primary circulation, and secondary circulation. To compute the Net Assignable Area, measure to the inside surface of the exterior building walls, to the finished surface of walls surrounding major vertical penetrations, building core areas, and service areas, and to the center of partitions separating the Net Assignable Area from adjoining Net Assignable Areas and from secondary circulation space.

- 3.11 Designer to Evaluate Surveys and Data.** The Designer shall analyze and evaluate the Surveys and Data furnished by the Awarding Authority. If the Surveys and Data to be provided by the Awarding Authority are not available or are, in the reasonable opinion of the Designer, insufficient to permit the Designer to properly perform its services hereunder, the Designer shall submit a written request to the Awarding Authority for permission to obtain the services of one or more Consultants to perform the necessary services. If such services are not included in the Approved Study Work Plan or Design Phase Scope of Services, as applicable, the Designer shall be reimbursed in accordance with Section 3.14.1 (Retention of Special Consultants), or if the services are performed by the Designer's own employees, the Designer shall be compensated in accordance with Section 4.12 (Compensation for Study/Schematic Design Phase Additional Services) or Section 6.10 (Compensation for Design Phase Additional Services), as applicable. In no case shall the Designer commence or authorize a Consultant to commence such services without the prior Approval of the Awarding Authority.
- 3.12 Cost Estimates.** If the Awarding Authority has appointed a construction manager or an independent cost estimator for the Project during the Study/Schematic Design Phase or the Design Phase or both, the Designer shall validate its Construction Cost Estimates with such person prior to submitting its Construction Cost Estimates to the Awarding Authority for Approval. The decision of the Awarding Authority shall be final in matters pertaining to the Construction Cost Estimates and changes thereto but the Designer shall not be responsible for any decision by the Awarding Authority that is inconsistent with generally accepted standards of professional practice provided that the Designer shall have advised the Awarding Authority in writing of the inconsistency at the time of the Approval.
- 3.13 Corrections by Awarding Authority.** The Designer shall furnish appropriate competent professional services for each of the Study/Schematic Design Phase and Design Phase of the Project to the point where detail checking or reviewing by the Awarding Authority is not necessary. Any changes, corrections, additions, or deletions made by the Awarding Authority shall be incorporated into the design of the Project unless specific written objections thereto are made by the Designer and such objections are agreed to by the Awarding Authority. The decision of the Awarding Authority shall be final in matters pertaining to this section, but the

Designer shall not be responsible for any such decision by the Awarding Authority that is inconsistent with generally accepted standards of professional practice provided that the Designer advised the Awarding Authority in writing of the inconsistency at the time the decision was made.

3.14 Employment of Consultants.

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

3.14.2. Retention of Special Consultants.

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

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

3.14.4. Consultants Barred from Work on Project. The Designer shall not employ in any element of design, specification, estimating, evaluation or other work under this Contract any

person or firm that expects to be a bidder, subcontractor or supplier for the construction of the Project or any part thereof. The Designer shall obtain from every Consultant a written representation that such Consultant is aware that it is prohibited from serving as a bidder, subcontractor, or supplier for the construction of the Project or any part thereof. In addition, the Designer acknowledges that the services provided under this Contract require trustworthiness, confidentiality, and an absence of conflicts of interest. The Designer shall not perform planning, study, or similar services for any agency or officer of the Commonwealth other than the Awarding Authority, for any other federal, local or state public agency, or for any for-profit or nonprofit entity if those services are in any way related to the Project.

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

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

- 3.16 Requests for Payment.** All invoices from the Designer shall be submitted to the Awarding Authority accompanied by a completed Commonwealth of Massachusetts Payment Voucher Input Form PV if this is a Commonwealth project, otherwise accompanied by such forms as the Awarding Authority may require. All invoices will be promptly processed by the Awarding Authority if they are in conformity with this Contract and properly documented; if not they will be returned to the Designer.
- 3.17 Right to Offset.** If the Awarding Authority finds that any Study/Schematic Design Phase or Design Phase Services previously paid for by the Awarding Authority contained deficiencies, errors or omissions then the Awarding Authority may withhold from any future payment due to the Designer under this Contract an amount reasonably calculated by the Awarding Authority to cover the cost of correcting the deficiency, error or omission until the services have been corrected. The Awarding Authority may also offset against any payment due to the Designer the amount of any costs incurred by the Awarding Authority arising from the Designer's failure to provide required services, deficiencies, errors or omissions. If the Awarding Authority shall discover that the charge for any previously paid-for services was calculated based upon incorrect information, the Awarding Authority may offset any overcharges against any future payment due to the Designer under this Contract. Any disputes related to offsets taken by the Awarding Authority shall be subject to resolution pursuant to Section 7.25 (Mandatory Mediation) of this Contract. Nothing in this paragraph shall limit any legal remedies of the Awarding Authority against the Designer for default, errors, omissions, erroneous claims, false claims, tort claims, or any breach by the Designer of the terms of this Contract or applicable Laws.

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

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

3.19 Termination.

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

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

3.19.3 Termination by Designer. By written notice to the Awarding Authority, the Designer may terminate this Contract (a) if, sixty (60) days following written notice to the Awarding Authority from the Designer of any default by the Awarding Authority hereunder, the Awarding Authority shall have failed to remove such default, or (b) if, the Awarding Authority shall have failed to issue a Notice to Proceed for of the next Phase of the Design Phase at least six (6) months after the Designer shall have performed all services required of the Designer in the Schematic Design Phase, the Design Development Phase, or the Construction Documents Phase of the Project as described in this Contract. Upon any such termination by the Designer, the Awarding Authority shall pay to the Designer all compensation and reimbursement payable to the Designer in accordance with this Contract up to and including the date of termination, plus reasonable costs incurred in connection with the termination as approved by the Awarding Authority. The payments to the Designer shall not exceed the limits established for the services when Approved or the fair value of the Designer's work, as the Awarding Authority shall determine. No amount shall be allowed for anticipated profit on unperformed services.

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

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

ARTICLE 4: STUDY/SCHEMATIC DESIGN PHASE

- 4.1 Study/Schematic Design Phase Term.** The Study/Schematic Design Phase shall commence upon the execution of the Contract and shall terminate when the Study developed by Designer during the Study/Schematic Design Phase is submitted for Certification, unless this Contract is terminated earlier.
- 4.2 Purposes of the Study.** The purpose of this Study is to ensure that the Commonwealth does not waste money on final design services for projects that are not necessary, not technically feasible, or for which sufficient funds are not available for construction. At a minimum, the Study shall allow the User Agency to:
- (a) determine the space needs of the User Agency and the relevant design criteria for the User Agency's anticipated types of use;
 - (b) evaluate how the User Agency's space needs can be satisfied in the most cost-effective manner;
 - (c) analyze the efficiency, cost and operational implications of existing conditions;
 - (d) review site selection;
 - (e) determine the technical feasibility of a proposed project;
 - (f) utilize the Study as a prospectus in the planning and budgeting process for the User Agency, the Awarding Authority, DCAMM, the Executive Office of Administration and Finance, and the legislature;
 - (g) assure compliance with Laws including but not limited to M.G.L. c. 7C, ss. 12, 18 69, 59, 60, 61;
 - (h) prepare the Design Phase Scope of Services, if the Project proceeds to the Design Phase;
 - (i) control programmatic changes made during construction; and
 - (j) evaluate post-occupancy use.
- 4.3 Study/Schematic Design Phase Governing Documents.** During the Study/Schematic Design Phase, the Designer shall perform its duties in accordance with all applicable Laws, the

provisions of this Contract and the Approved Study Work Plan, which shall be incorporated herein by reference upon its Approval. In addition, the Designer shall comply with Designer Selection Board Project Criteria advertised by the Designer Selection Board for the Project, the *Guidelines for the Preparation of Studies for Building Projects (Publication No. 1381-66-250-4-83-CR, Interim Revision October 1998, Current Revision October 2000)*, DCAMM's *Designers Procedures Manual*, DCAMM *Standard Specifications*, *Consultants Estimating Manual*, DCAMM *CAD Standards (revision 2: February 2013)*, the *Building Information Modeling (BIM) List of Design and Preconstruction Services (Revised April 30, 2015)*, and the *BIM Guidelines for Design and Construction*. In the case of conflict between the terms of this Contract and any of the provisions incorporated herein by reference, the Designer shall make a written request for clarification to the Awarding Authority and the Awarding Authority's written response shall be conclusive.

- 4.4 Initial Meeting.** After executing this Contract, the Designer, its key personnel, and such key Consultants as may be designated by the Awarding Authority shall attend an administrative conference with the Study Manager at the offices of the Awarding Authority for the purpose of making introductions, exchanging contact information, clarifying relationships, and reviewing billing procedures.
- 4.5 Preparation of Study Work Plan.** Upon execution of this Contract, the Designer, working with the Study Manager, shall revise the draft Study Work Plan previously provided by the Awarding Authority and shall submit a proposed Study Work Plan to the Awarding Authority for Approval within two (2) weeks of the date of the execution of this Contract. The proposed Study Work Plan shall:
- (a) comply with the Designer Selection Board project criteria for this Project;
 - (b) define and identify the tasks and Deliverables required to be provided by the Designer as part of Study/Schematic Design Phase Basic Services, including, without limitation, delivery of a Program and Deliverables required for Schematic Design Services;
 - (c) specify the sequences in which these tasks and Deliverables must be performed, prepared and submitted;
 - (d) contain a Contract Schedule;
 - (e) include allowances of time for the User Agency's and the Awarding Authority's review of Deliverables and for Awarding Authority's Approval of Deliverables;
 - (f) specify the Milestones at which Approvals are required before any succeeding work is permitted to be performed by the Designer;
 - (g) specify the lump sum payments of portions of the Study/Schematic Design Phase Basic Fee that are due upon the Approval of Deliverables or Milestones;
 - (h) include a description of the Designer's quality assurance procedures described in Section 3.9 (Quality Assurance) of this Contract; and
 - (i) include preparation of a BIM Execution Plan for the Project, which shall (i) organize the seamless transfer of BIM information for the Project, (ii) document the responsibilities and expected Deliverables of each group member on the Project, (iii) list the naming convention standards for models, (iv) state due dates for BIM-related Deliverables and Milestones, (v) specify the manner in which all BIM-related information will be transferred to the Awarding Authority and (vi) for DCAMM Projects, be prepared in accordance with DCAMM's template BIM Execution Plan.

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

- 4.6 Global Workshop.** If requested by the Awarding Authority, the Designer shall prepare and attend a Global Workshop, which shall include presentations of alternative solutions.
- 4.7 Permits during the Study/Schematic Design Phase.** During the Study/Schematic Design Phase, the Designer shall identify and review all of the Permits required for the construction, use and occupancy of the Project and shall provide a list of all of the Permits required and an indication of when they must be applied for in the Design Phase of the Project. For each such Permit the Designer shall estimate in detail the cost of obtaining the Permit and the likely duration of the Permit issuing process. These costs and time requirements shall be accurately reflected in any cost estimates that the Designer is required to submit under this Contract and in any proposed construction schedules included in the Study.

4.8 Schematic Design Services.

4.8.1 Consensus design solution. Upon receipt of Approval from the Awarding Authority, the Designer shall develop a schematic design of the consensus solution unless otherwise directed by the Awarding Authority.

4.8.2 Schematic design documentation. Designer shall meet regularly and as necessary with agents of the Awarding Authority and the User Agency, shall update and refine items submitted previously during the Study/Schematic Design Phase, shall provide a schematic design in compliance with M.G.L. c. 7C, ss.59 and 60 and shall provide the following schematic design level documentation which shall include and incorporate Awarding Authority and User Agency comments:

- (a) Building Information Model with the Level of Development specified in the BIM Guidelines for Design and Construction, drawings, concept sketches, three dimensional representations, and specifications;
- (b) a building code analysis;
- (c) an environmental assessment;
- (d) a preliminary life cycle cost analysis evaluating the short-term and long-term costs and technical feasibility of using alternate technologies to provide, lighting, heat, water heating, air conditioning, refrigeration, gas or electricity. The Designer shall calculate the life-cycle costs in accordance with assumptions and requirements set forth in M.G.L. c. 7C s. 29 and c. 149 s. 44M and the current DCAMM Designers Procedures Manual and, if requested by the Awarding Authority, shall coordinate with the Department of Energy Resources regarding the life cycle cost analysis;
- (e) a summary of applicable public utility incentive programs as determined by the Awarding Authority and a plan for implementation or inclusion of incentives;
- (f) an analysis of the design's compliance with the Americans with Disabilities Act/Massachusetts Architectural Access Board requirements;

- (g) a space measurement analysis for the design which shall verify that the sum of all program floor areas in the Project plus all other floor areas in the Project equal the Gross Floor Area of the Project;
- (h) at least two Construction Cost Estimates for the design in Unifomat II Level 2 format with aggregated unit rates and quantities supporting each item and verified as accurate and complete by the cost estimator and/or Owner's Project Manager, if any, employed by the Awarding Authority;
- (i) signage and wayfinding graphically coordinated with the User Agency and the general building requirements, including, without limitation, all signage and wayfinding required by applicable building codes, cautionary signage, signage relative to exterior parking, loading and building areas, interior directories, department names, hours of operation, room names and numbers, and any signage required for American with Disabilities Act;
- (j) a summary comparing the schematic plans, specifications and Estimated Construction Cost of the design to the Program and Certified Study requirements and an explanation for any deviation therefrom.

4.8.3 Final Cost Estimate in Schematic Design Services. At the end of the Study/Schematic Design Phase, the Designer shall provide a cost estimate in Unifomat II Level 2 and CSI format.

4.8.4 Approval of Schematic Design Phase Building Information Model and documents. Schematic Design Phase drawings, specifications, Building Information Model (with the Level of Development specified in the *BIM Guidelines for Design and Construction*), Construction Cost Estimates and other Deliverables shall be subject to the written Approval of the Awarding Authority. Unless a lesser number is requested by the Awarding Authority, the Designer shall submit to the Awarding Authority for Approval six (6) copies of schematic design drawings, specifications, cost estimates, and other Deliverables.

4.9 Coordination of Preconstruction Services. Designer shall coordinate with Awarding Authority's consultant(s), contractor(s), and/ or construction manager, as required throughout the Study/Schematic Design Phase.

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

4.11 Payment for Study/Schematic Design Phase Basic Services.

4.10.1 Study/Schematic Design Phase Basic Fee.

- (a) For the satisfactory performance of all Study/Schematic Design Phase Basic Services, the Designer's Study/Schematic Design Phase Basic Fee shall not exceed the "Not-to-Exceed Maximum Study Contract Amount" stated on the cover page of this Contract, payable in accordance with Section 4.10.2 (Schedule for Payment of Study/Schematic Design Phase Basic Fee) and the Approved Study Work Plan.

- (b) If Approved in advance, the Awarding Authority shall reimburse the Designer for the actual costs for specific items not included in the Study/Schematic Design Phase Basic Fee, such as Permit filing fees and document copies in excess of numbers specified in the Contract if requested by the Awarding Authority. The Awarding Authority shall not reimburse the Designer for any out-of-pocket expenses, including without limitation telephone or travel expenses, unless Approved by the Authorized Representative in advance.

4.10.2 Schedule for Payment of Study/Schematic Design Phase Basic Fee.

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

4.11 Study/Schematic Design Phase Additional Services.

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

- (a) energy modeling;
- (b) preparation of measured drawings, site surveys, wetlands delineations;
- (c) preparation of structural analyses, environmental analyses, geotechnical analyses, and soil borings;
- (d) conducting HVAC testing, hydrant flow testing, hazardous materials testing, other specialized testing; and
- (e) undertaking additional tasks identified subsequent to the Approval of the Study Work Plan.

Prior to performing any Study/Schematic Design Phase Additional Services the Designer shall agree with the Awarding Authority upon the fee for such services in accordance with Section 4.12 (Compensation for Study/Schematic Design Phase Additional Services) of this Contract.

4.11.2 Limitations on Study/Schematic Design Phase Additional Services. Notwithstanding the foregoing, without limitations, the Designer, its Consultants or subconsultants shall not be entitled to compensation and shall not claim as Study/Schematic Design Phase Additional Services

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

4.12 Compensation for Study/Schematic Design Phase Additional Services.

4.12.1 Lump Sum. For the services provided pursuant to Section 4.11 (Study/Schematic Design Phase Additional Services), the Designer shall be compensated by a lump sum fee agreed upon in advance in writing by the Designer and the Awarding Authority. In connection with the negotiation of any such lump sum fee, the Designer shall submit a Truth in Negotiations certificate in accordance with M.G.L. c. 7C, s. 51. The Designer agrees that the lump sum fee for Study/Schematic Design Phase Additional Services may be adjusted within one year of the completion of this Contract if the Awarding Authority determines that the lump sum fee was increased due to inaccurate information provided to the Awarding Authority in the negotiation of the lump sum fee.

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

ARTICLE 5: TRANSITION FROM STUDY/SCHEMATIC DESIGN PHASE TO DESIGN PHASE

- 5.1 Transition from Study/Schematic Design Phase to Design Phase.** Following the conclusion of the Study/Schematic Design Phase, the Study must be Certified and an appropriation of sufficient funds must be secured in order for the Project to proceed to the Design Phase. If and only if these requirements are satisfied, the Awarding Authority may, in its sole discretion, elect to proceed with the Design Phase of the Project, in which case the Awarding Authority shall select a designer to perform the Design Phase Services. If and only if the Awarding Authority selects the Designer to perform the Design Phase Services, the Awarding Authority and the Designer shall execute an amendment incorporating the Attachment G ó Design Phase Scope of Services and all other necessary documents to this Contract in order to commence the Design Phase.
- 5.2 No Guarantee of Selection for Design Phase.** The Awarding Authority's acceptance of and/or payment for Designer's work under the Study/Schematic Design Phase in no way obligates the Awarding Authority to select the Designer to perform the Design Phase Services.
- 5.3 Termination if Design Phase Prerequisites Not Satisfied.** If the Approved Study is not Certified or sufficient funds are not appropriated for the Design Phase of this Project, this Contract will terminate without liability to the Awarding Authority or the Public Entity. Such termination shall be deemed a termination for convenience, in accordance with Section 3.19 (Termination).
- 5.4 Selection for Design Phase.** If the Approved Study is Certified, the Designer may be selected in accordance with applicable Laws to perform the Design Phase Services. The selection of the Designer to perform the Study/Schematic Design Phase and the execution of this Contract does not guarantee that the Designer will be selected to perform the Design Phase and nothing herein shall require the Awarding Authority to select the Designer for the performance of the Design Phase Services. If the Awarding Authority selects an entity other than the Designer to perform the

Design Phase Services, this Contract shall terminate upon Designer's receipt of notice of such selection by the Awarding Authority and upon payment to the Designer for Study/Schematic Design Phase Basic Services and, if applicable, Study/Schematic Design Phase Additional Services. Regardless of whether the Designer is selected to perform the Design Phase Services, the Designer shall remain responsible for any of its continuing obligations arising during the Study/Schematic Design Phase.

5.5 Scope of Design Phase Services. If the Designer is selected to perform the Design Phase Services, the Designer and the Awarding Authority shall work in good faith to develop a Design Phase Scope of Services, to be attached hereto and incorporated by reference as Attachment G of Design Phase Scope of Services. The Designer shall not incur any costs associated with the Design Phase Scope of Services prior to the receipt of applicable Notices to Proceed.

5.6 Contract Amended for Design Phase. If the Approved Study is Certified and the Designer is selected to proceed with Design Phase Services pursuant to this ARTICLE 5: of the Contract, the Awarding Authority and Designer shall execute an amendment to the Contract to include the following, which shall be incorporated by reference:

- (a) Certified Study;
- (b) Attachment G of Design Phase Scope of Services;
- (c) Design Phase Basic Fee; and
- (d) Any other documents as may be agreed by the Parties.

ARTICLE 6: DESIGN PHASE

6.1 Design Phase Term. The Design Phase shall commence upon the execution of an amendment to the Contract in accordance with Section 5.6 (Contract Amended for Design Phase), and shall continue through the completion of the Design Phase Services required hereunder, unless terminated earlier. Design Phase Services shall commence upon the issuance of a Notice to Proceed by the Awarding Authority, as more fully described below in Section **Error! Reference source not found.** (Design Development Phase Services).

6.2 Design Phase Governing Documents. During the Design Phase, the Designer shall perform its duties in accordance with all applicable Laws, the provisions of this Contract, the Certified Study which is incorporated herein by reference, the Attachment G of Design Phase Scope of Services, the provisions of M.G.L. c. 7C, § 15, DCAMM's *Designers Procedures Manual* if the Awarding Authority is DCAMM, and the procedures set forth in Attachment H of Awarding Authority's Design Procedures (For use by Agencies Other than DCAMM) if the Awarding Authority is other than DCAMM, *DCAMM Standard Specifications, Consultants Estimating Manual, DCAMM CAD Standards (revision 2: February 2013)*, the *Building Information Modeling (BIM) List of Design and Preconstruction Services (Revised April 30, 2015)*, *BIM Guidelines for Design and Construction*, and the Approved BIM Execution Plan. In the case of conflict between the terms of this Contract and any of the provisions incorporated herein by reference, the Designer shall make a written request for clarification to the Awarding Authority and the Awarding Authority's written response shall be conclusive.

6.3 Permits during Design Phase. During the Design Phase, unless otherwise agreed to in writing, with the exception of the standard building Permits customarily obtained by the general contractor, the Designer shall obtain all other Permits required to implement Designer's design. The Designer shall obtain the prior Approval of the Awarding Authority of all Permit

applications, notices, and accompanying documentation before filing them with the appropriate governmental entity or other party. The Designer shall certify in writing at the time that construction documents (or changes thereto) are submitted to the Awarding Authority that the Designer has identified all Permits required to implement the Project and that those not identified in writing as being the responsibility of the Awarding Authority have been identified in the specifications as being the general contractor's responsibility. Notwithstanding the foregoing, any required attendance by the Designer at any public hearing in connection with any Permit shall be considered an Additional Service to be compensated in accordance with Section 6.10 (Compensation for Design Phase Additional Services) of this Contract, and any Permit application fee shall be considered a reimbursable expense to be reimbursed in accordance with the provisions of Section 6.8 (Payment for the Design Phase Basic Services).

6.4 Design Development Phase Services.

6.4.1 Initial Meeting. Upon receipt of a Notice to Proceed with the Design Development Phase from the Awarding Authority, the Designer and its appropriate Consultants shall meet with agents of the Awarding Authority and the User Agency to arrive at a mutual understanding of the requirements of the Certified Study or Program furnished by the Awarding Authority.

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

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

- (a) an updated work plan, BIM Execution Plan, a current Building Information Model and associated data base(s), from which the drawings required below shall be generated, and Contract Schedule; a list of all Permits required to implement the design and a schedule of target dates for the procurement of such Permits, both of which shall be regularly updated during the remainder of the Design Phase;
- (b) information and documentation within the technical expertise of the Designer and its Consultants that is necessary for the Awarding Authority to file Environmental Notification Forms, Environmental Impact Reports, and any other filings for Permits that must be filed during the Design Development Phase;
- (c) complete design development drawings, draft specifications indicating any filed sub-bid sections based on the cost of the work and other documents necessary to specify the size and character of the Project as to siting, landscape, architectural, structural, fire protection, plumbing, HVAC, electrical, ADA/MAAB, product requirements, and other features;

- (d) quality control documentation demonstrating without limitation coordination of: ceiling clearances, mechanical room size, and shaft sizes; specifications and drawings; filed sub-bid work or sections; scheduling; equipment and power; existing and new construction; and phasing;
- (e) design development drawings for which the Designer shall submit for a "tentative approval" review to the public agency having jurisdiction over enforcement of the State Building Code with respect to the Project (the Department of Public Safety of the Commonwealth for state-owned projects or the building commissioner of the city or town in which the Project is located for other projects);
- (f) an updated life cycle cost analysis to evaluating the short-term and long-term costs and technical feasibility of using alternate technologies to provide, lighting, heat, water heating, air conditioning, refrigeration, gas or electricity. The Designer shall calculate the life-cycle costs in accordance with assumptions and requirements set forth in M.G.L. c. 7C s. 29 and c. 149 s. 44M and the current DCAMM Designers Procedures Manual and, if requested by the Awarding Authority, shall coordinate with the Department of Energy Resources regarding the life cycle cost analysis.;
- (g) a Construction Cost Estimate for the design in Uniformalt II Level 3 format, with unit rates and quantities supporting each item, which shall have been reviewed and approved as accurate and complete by any cost estimator or Owner's Project Manager employed by the Awarding Authority with respect to the Project;
- (h) a Construction Cost Estimate, in Construction Standards Institute Masterformat or UniFormat 2010, as specified by the Awarding Authority, cross-referenced to the Uniformalt II Construction Cost Estimate. This estimate shall contain the same total and percentage allowances as the Uniformalt II Construction Cost Estimate for overhead and profit and for any further allowances for escalation and other contingencies;
- (i) a space measurement analysis for the design verifying that the sum of all program areas in the Project plus all other floor areas in the Project equals the Gross Floor Area of the Project;
- (j) signage and wayfinding graphically coordinated with the User Agency and the general building requirements, including, without limitation, all signage and wayfinding required by applicable building codes, cautionary signage, signage relative to exterior parking, loading and building areas, interior directories, department names, hours of operation, room names and numbers, and any signage required for American with Disabilities Act;
- (k) a summary or summaries comparing the design development drawings, specifications and cost estimates with the Program requirements, and explaining any deviations in writing.

6.4.4 Approval of Design Development Phase Building Information Model and documents

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

6.4.5 Global Workshop. If requested by the Awarding Authority, the Designer shall prepare and attend a Global Workshop during the Design Development Phase.

6.5 Construction Documents Phase Services.

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

- (a) an updated work plan and Contract Schedule;
- (b) a Building Information Model with Level of Development required by the BIM Guidelines for Design and Construction, unless otherwise specified in the most recent Approved BIM Execution Plan, and associated data base(s) from which the drawings required below shall be generated;
- (c) summaries of the completed life-cycle cost estimates, which shall be filed with the building code commission and the director of the office of consumer affairs and business regulation prior to the advertising for bids for the Construction Contract, as required by M.G.L. c. 149 s. 44M;
- (d) complete construction drawings and specifications, certified by the Designer as having satisfied the applicable quality control review, Approved as required, in sufficient detail to permit fixed-price bids in open competition for construction of the Project;
- (e) an updated environmental assessment, building code analysis, ADA/MAAB analysis, and structural and energy calculations;
- (f) a certified list of all required testing and all Permits required to implement the Project (including a certification that all Permits not identified in writing as being the responsibility of the Awarding Authority have been identified in the specifications as being the general contractor's responsibility) as well as a certification that all applicable local, state and utility officials have been contacted by the Designer regarding each utility connection and that the persons responsible for Permits or connection approval has agreed to the systems' use;
- (g) signage and wayfinding graphically coordinated with the User Agency and the general building requirements, including, without limitation, all signage and wayfinding required by applicable building codes, cautionary signage, signage relative to exterior parking, loading and building areas, interior directories, department names, hours of operation, room names and numbers, and any signage required for American with Disabilities Act;
- (h) at the approximate mid-point of completion of the final drawings and specifications as determined by the Awarding Authority, a Construction Cost Estimate prepared using the Uniformat II Classification to Level 3 and a Construction Cost Estimate in Construction Standards Institute Masterformat or UniFormat 2010, as specified by the Awarding Authority, cross-referenced to the Uniformat II Construction Cost Estimate for review by the Awarding Authority; both Construction Cost Estimates shall include quantities of all materials and unit prices of labor, equipment, and materials as well as a cost estimate for each item of work,.

6.5.2. Approval of drawings and other construction documents.

- (a) For State Projects: Two sets of the final drawings and specifications must be stamped "Approved" and signed by the appropriate state building inspector from the Department of Public Safety. Two sets of Plumbing drawings and specifications shall be signed and

stamped "Approved" by the Board of State Examiners of Plumbers and Gas Regulations Board. Two sets of the fire protection, HVAC, and electrical constructions documents shall be approved, stamped and signed by the local fire chief. Two sets of the electrical construction documents shall be approved, stamped and signed by the local electrical inspector.

- (b) For other projects: Two sets of the foregoing documents shall be approved, stamped and signed by the local building official, the local plumbing inspector, the local electrical inspector, and the local fire chief respectively.

6.5.3. Final Construction Cost Estimate.

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

6.5.4. Approval of Construction Documents Phase documents. All submittals shall be subject to the Approval of the Awarding Authority. Unless a lesser number is requested by the Awarding Authority or is provided below in Section 6.5.5 (Copies of Approved drawings and specifications), the Designer shall furnish to the Awarding Authority for Approval six (6) sets of the drawings, specifications Construction Cost Estimates and other submittals. The Designer shall also furnish electronic media copies of the foregoing drawings and documents in such form as is required by the Designers Procedures Manual if the Awarding Authority is DCAMM or otherwise in such other format as the Awarding Authority may require. All drawings and associated data bases shall be generated from the latest Approved BIM(s).

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

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

Designer's opinions as to the sub-bidders' bids and as to which general bidder is the responsible and eligible bidder that has submitted the lowest bid.

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

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

6.6 Construction Administration Phase Services.

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

- (a) be charged with general administration of the Construction Contract to the extent set forth herein;
- (b) furnish the general contractor with information for establishing lines and grades and shall prepare a set of plans and specifications that incorporate all addenda and SK drawings issued during the bidding process;
- (c) promptly and in accordance with the requirements of the Construction Contract check, obtain testing where necessary, and approve samples, schedules, shop drawings and other submissions by the general contractor;
- (d) prepare, maintain and update logs for all submittals and changes to the Construction Contract;
- (e) provide to the Awarding Authority a written certification of all Permits required to implement change order work at the Project site when the Designer submits for Approval any change order request to the Awarding Authority during the construction phase of the Project, whether the change order request was made by the Designer, the Awarding Authority, or the general contractor;
- (f) visit the site at intervals appropriate to the stage of construction but not less than weekly, and observe the progress of the work, issue written progress reports, and conduct job meetings, and prepare and distribute meeting minutes to assure that the work is being built in conformance with Approved construction documents;
- (g) report to the Awarding Authority weekly in writing on the progress of the work including whether or not the general contractor is keeping As-Built Drawings and BIM(s) updated;

- (h) on a weekly basis (or more often as may be necessary), make specific recommendations on rejection of all Project work observed by the Designer that fails to conform to the Construction Contract documents, and review and inspect corrected work;
- (i) require each Consultant employed in accordance with Section 3.14 (Employment of Consultants) to make visits weekly during the progress of any work to which that Consultant's services relate and to report upon it in writing to the Designer;
- (j) conduct semi-final and final inspections of the Project and report the results of such inspections in writing to the Awarding Authority;
- (k) observe the balancing of air and water circulation systems and report the results thereof;
- (l) observe the setting and adjustment of automatic controls and report thereon;
- (m) in a timely manner, decide all questions regarding interpretation of, or compliance with, the Construction Contract documents, except as the Awarding Authority may in writing otherwise determine;
- (n) furnish electronic versions of the Record Drawings, a final cost report, and other required documents; and
- (o) assist the Awarding Authority in any bid protest hearings, change order appeal hearings requested under M.G.L. c. 30, s. 39Q, and any other litigation, except as provided in Section 6.9 (Design Phase Additional Services).

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

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

6.6.3. Review of As-Built Drawings.

- (a) Before examining the requisition for final payment submitted to the Awarding Authority by the general contractor and making any certification in response thereto, the Designer shall obtain from the general contractor:
 - (i) An As-Built Model File, as set forth in the BIM Guidelines for Design and Construction and consisting of a federated BIM showing the actual installation of the

site utilities, plumbing, heating, ventilating, and electrical work under the Construction Contract, recording all changes, and containing descriptive or tabular data as required by the Awarding Authority and associated with the BIM; and

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

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

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

6.7 Facility Performance Evaluation Phase Services.

6.7.1. Generally. The Awarding Authority, in consultation with the Designer, and its Consultants, shall conduct a Facility Performance Evaluation (FPE) on all new buildings, major renovations and energy projects, including an Indicative FPE (Walk-Through) within 6 -12 months of Substantial Completion and an Investigative FPE within 18 to 24 months of Substantial Completion. The Designer and its Consultants shall participate in the FPE in accordance with DCAMM's General FPE Guidelines and Walk-Through Guidelines, both dated 1/16/2014, and any reasonable and necessary updates incorporated therein.

6.7.2. Indicative FPE (Walk-Through). For the Indicative FPE (Walk-Through):

- (a) the Awarding Authority shall:
 - (i) update the walk-through checklist provided in the Walk-Through Guidelines as necessary for the Project, to be used by the FPE team;
 - (ii) assist in identifying any issues and develop recommendations based on the findings of the Designer and its Consultants during the walk-through, including but not limited to the creation of a work plan for correction and identifying any opportunities for immediate improvement.
- (b) The Designer and its Consultants shall:
 - (i) participate in a meeting prior to the walk-through with the FPE team to set forth guidelines and responsibilities for the walk-through;
 - (ii) participate in a walk-through for the Project to the extent as set forth herein;

- (iii) participate in a post walk-through meeting with the FPE team
- (iv) prepare a written report for the Awarding Authority setting forth the Designer's findings and recommendations following the walk-through.

6.7.3. Investigative FPE. For the Investigative FPE:

- (a) The Designer and its Consultants shall:
 - (i) be familiar with and understand conditions and concerns associated with the Project and the facility;
 - (ii) analyze performance metrics accrued and compare them with baseline projections and relevant benchmarks;
 - (iii) compare findings with the Indicative FPE.
- (b) The Awarding Authority shall:
 - (i) assist in identifying any issues and develop recommendations based on the findings of the Designer and its Consultants, including but not limited to any work plan for corrective action and identifying any opportunities for immediate improvement;
 - (ii) prepare a written report for the Awarding Authority setting forth the Designer's findings and recommendations following the Investigative FPE.

6.8 Payment for Design Phase Basic Services.

6.8.1. Design Phase Basic Fee.

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

6.8.2. Schedule for Payment of Design Phase Basic Fee.

- (a) The lump sum Design Phase Basic Fee shall be paid in accordance with the Schedule of Values for performance of Design Phase Services in accordance with this Contract. The Schedule of Values shall be consistent with the following schedule so that the total amount paid equals the percentage of the Design Phase Basic Fee allocated to each of the Design Phases below, unless otherwise Approved by the Awarding Authority in writing. Actual payments can be requisitioned by the Designer upon completion of Milestones within each phase as set forth in the Schedule of Values:

Thirty percent (30%) for the Design Development Phase services;

Thirty-five percent (35%) for the Construction Documents Phase services;
Thirty-five percent (35%) for the Construction Administration Phase services

Notwithstanding the foregoing, the parties shall agree upon a portion of the Design Phase Basic Fee that shall be allocated in the Schedule of Values for the completion of the Facility Performance Evaluation Phase services.

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

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

6.9 Design Phase Additional Services.

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

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

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

Prior to performing any Design Phase Additional Services, the Designer shall agree with the Awarding Authority upon the fee for such services in accordance with Section 6.10 (Compensation for Design Phase Additional Services) of this Contract. No authorization by the Awarding Authority for the performance of any Additional Services shall be valid unless it contains a "not to exceed" amount.

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

- (n) work required to correct errors and omission of the Designer, its Consultants or subconsultants during the Study/Schematic Design Phase or the Design Phase;
- (o) necessary additional work that, in the Awarding Authority's reasonable opinion, should have been anticipated by the Designer in the preparation of the Study/Schematic Design Phase or Design Phase Deliverables;
- (p) preparing changes required to make unit price adjustments due to existing conditions; or
- (q) services involved in change orders for time extension only, provided that the time required for the review and approval of said change may be included as an Additional Service upon the Awarding Authority's Approval.

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

- (a) by a lump sum fee agreed upon in advance in writing by the Designer and the Awarding Authority, provided that the Designer shall submit a Truth in Negotiations certificate in accordance with M.G.L. c. 7C, s. 51 in connection with the negotiation of such lump fee and Designer agrees that the lump sum fee may be adjusted within one year of the completion of this Contract if the Awarding Authority determines that the lump sum fee was increased due to inaccurate information provided to the Awarding Authority in the negotiation of the lump sum fee; or

- (b) on an hourly basis at the rates set forth in Attachment J ó Certified Billing Rates of Designerø and Designerø Consultantø Personnel, which shall not exceed \$150 per hour for the Additional Services performed by the principal(s)-in-charge, prime consultant, management, design and production personnel employed by the Designer and, if applicable, by the Consultant(s); provided, however, that such personnel must be included in Attachment I ó Designerø Personnel Assigned to Project in order to be compensated hereunder for Additional Services. Clerical/support staff of the Designer and Consultants shall not be compensated and is considered part of office overhead. The Awarding Authority may, in its sole discretion, waive the \$150 per hour limit if the Project requires the services of a unique or specialized Consultant.

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

ARTICLE 7: LEGAL PROVISIONS

- 7.1 **No Waiver.** The Awarding Authority's review, Approval, acceptance of, or payment for, any of the services furnished by the Designer hereunder shall not be construed as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract. The Awarding Authority's Approval shall not in any way relieve the Designer from performing all work required under this Contract in accordance with the standard of care set forth in Section 3.3 (Standard of Care) of this Contract.
- 7.2 **Compliance with Executive Order 484 [Leading By Example – Clean Energy and Efficient Buildings].** As part of the Basic Services of the Contract, Designer is required to provide professional services necessary to meet the requirements of Executive Order 484, provided, however, that the submission of documentation necessary to demonstrate compliance with Executive Order 484 shall be considered a reimbursable expense. The Designer understands that, pursuant to Executive Order No. 484, all new construction and renovation projects over 20,000 s.f. must meet a Massachusetts LEED Plus building standard, and that smaller projects must meet the minimum energy performance standards established by the Commonwealth of Massachusetts Sustainable Design Roundtable. Furthermore, Designer understands that the Massachusetts LEED Plus standard applies to all projects overseen by DCAMM as well as all projects built on state land for use by state agencies. The Study shall reflect the fact that the Design Phase will require a design in accordance with the above referenced standards. Without limiting the foregoing, the Study and all Construction Cost Estimates, and other cost estimates and Deliverables required by this Contract shall reflect any particular work necessary for the Project to meet the requirements of such standards.
- 7.3 **Compliance with Life-Cycle Cost Estimate Requirements [M.G.L. c. 7C s. 29 and 149 s. 44M].** The Designer shall comply with all of the life-cycle cost estimate and analysis requirements set forth in M.G.L. c. 7C s. 29 and c. 149 s. 44M and this Contract. The Designer acknowledges that failure to obtain life-cycle cost estimates as required hereunder may result in the director of the office of consumer affairs and business regulation prohibiting the Designer from contracting, directly or indirectly, with the Commonwealth or any political subdivision thereof for similar Services for a period of one year, pursuant to M.G.L. c. 149 s. 44M.

7.4 **Conflicts of Interest.**

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

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

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

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

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

7.6 **ADA, Handicap Accessibility, and Non-Discrimination Laws.** The Designer shall perform its services under this Contract in strict compliance with all Laws relating to architectural accessibility, 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 ADA Accessibility Guidelines for Buildings and Facilities (ADAAG), and the regulations of the Massachusetts Architectural Access Board (MAAB, 521 CMR 1.00 et. seq.). The Designer recognizes that the Public Entity, the Awarding Authority, and the User Agency are Public Entities subject to Title II of the Americans

with Disabilities Act, may be recipients of federal funds under the Rehabilitation Act of 1973, and are subject to the MAAB regulations referenced above. To the extent related to its services under this Contract, the Designer hereby assumes the Public Entity's obligations, including those that exist under the MAAB, ADAAG and/or the Rehabilitation Act of 1973 to design a facility accessible to and usable by people with disabilities. The Study and all designs provided by the Designer shall reflect the fact that the Design Phase will require a design with access to all programs, activities and services to be conducted within the facilities to be designed in accordance with the above referenced standards without waivers unless the seeking of such waivers is Approved by the Awarding Authority. Without limiting the foregoing, the Study and all Construction Cost Estimates, and other cost estimates and Deliverables required by this Contract shall reflect Universal Design and any particular ADA or MAAB work determined necessary for the Project.

7.7 Copyrights, Patents, and Intellectual Property Rights. The Designer hereby grants to the Awarding Authority and the Public Entity an irrevocable royalty-free license to use for any lawful public purpose, including without limitation the right to share with other public agencies for their use on projects, the following items developed or made part of the work or services performed under this Contract: all Deliverables, drawings, designs, specifications, photographs, images, notes, materials and other work and ideas of the Designer and its Consultants related to the performance of this Contract which are or may be covered by copyright, patent, or other intellectual property Laws or as to which Designer and its Consultants may assert any rights or establish any claim under any such Laws. The Designer shall incorporate by reference this provision into all contracts with its Consultants and subcontractors on this Project including, but not limited to, architects, engineers, estimators, designers and photographers. The Designer and its Consultants and subcontractors shall not be responsible for changes made in the documents without the Designer's authorization, nor for the Awarding Authority's or other public entity's use of the documents on projects other than the Project, unless this is a contract for design services for a master plan or prototype. The Awarding Authority assumes the risk resulting from any such changes made in the documents without the Designer's authorization, or for the Awarding Authority's or other public entity's use of the documents on projects other than the Project.

7.8 Security and Confidentiality; Publication. Except as required for the discharge of its duties to the Awarding Authority under this Contract, or required by subpoena or court order, the Designer agrees to hold all information, documents, and materials obtained or developed in connection with its services under this Contract (including without limitation all prints, plans, policies, procedures, studies, specifications and drawings, which relate to internal layout and structural elements, electrical and mechanical systems, security measures, emergency preparedness, threat or vulnerability assessments, and any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the Commonwealth) that Designer should reasonably know to be of a confidential or sensitive nature (Confidential Information) in the strictest confidence, and shall not communicate, release, or disclose Confidential Information in any to any third party without the prior written Approval by the Awarding Authority. The Designer shall not use any Confidential Information other than for the performance of services under this Contract. The Designer shall inform all persons to whom any such Confidential Information has been or will be communicated, released or disclosed of the privileged and confidential nature of Confidential Information, and shall ensure that all necessary steps are taken so that such Confidential Information is treated confidentially. Without limiting the foregoing, if the Project is a designated "Security Sensitive Information" project, the Designer shall execute separate Security Sensitive Information Procedures and Confidentiality Agreements and shall comply with such document protection requirements as may be referenced in said agreement.

7.9 Confidentiality; Personal Data [M.G.L. c. 66A, Executive Order 504]. Designer shall comply with M.G.L. c. 66A if the Designer becomes a "holder" of "personal data" as defined therein. The Contractor shall comply with the provisions of Executive Order 504 and shall execute the Executive Order 504 Contractor Certification Form attached hereto as Attachment D ó Executive Order 504: Contractor Certification Form.

7.10 Records, Disclosure Statements, Accounting Controls, Audits.

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

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

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

7.10.4 Warranty by Designer. If this Contract is for an amount exceeding \$10,000 or is for the design of a Project with an Estimated Construction Cost exceeding \$100,000, the Designer warrants and represents that Designer has filed a statement of management on internal accounting controls as set forth in Section 7.10.4 (Filing of Statement of Management on Internal Accounting Controls) below prior to the execution hereof. [M.G.L. c. 7C, s. 51]

7.10.5 Filing of Statement of Management on Internal Accounting Controls. If this is a Contract for an amount exceeding \$10,000 or is for the design of a Project with an Estimated Construction Cost exceeding \$100,000, the Designer shall file with the Awarding Authority a statement of management as to whether the system of internal accounting controls of the Designer and its subsidiaries reasonably assures that: (1) transactions are executed in accordance with management's general and specific authorization; (2) transactions are recorded as necessary i) to permit preparation of financial statements in conformity with generally accepted accounting principles, and ii) to maintain accountability for assets; (3) access to assets is permitted only in accordance with management's general or specific authorization; and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference. The Designer shall also file with the Awarding Authority a statement prepared and signed by an independent certified public accountant, stating that the accountant has examined the statement of management on internal

accounting controls, and expressing an opinion as to (1) whether the representations of management in response to this section and sections 1 and 2 above are consistent with the result of management's evaluation of the system of internal accounting controls; and (2) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statements. [M.G.L. c. 7C, s. 51 M.G.L. c. 30, s. 39R(c)]

7.10.6 Representation Regarding Audited Financial Statement. If this is a contract for an amount exceeding \$10,000 or is for the design of a Project having an Estimated Construction Cost exceeding \$100,000, the Designer represents that it has filed prior to the execution hereof and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in Section 7.10.6 (Filing of Annual Statement Required) below. [M.G.L. c. 7C, s. 51 M.G.L. c. 30, s. 39R(d)]

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

7.10.8 Records Not Public. Records and statements required to be made, kept or filed under the provisions of this Section 7.10 shall not be public records as defined in M.G.L. c. 4, s. 7 and shall not be open to public inspection; provided, however, that such records and statements shall be made available pursuant to the provisions of Section 7.10.1 (Records Open to Inspection) above.

7.11 Insurance.

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

- (a) **Generally.** The Designer shall purchase and maintain insurance of the type and limits listed in this Section ARTICLE 7: with respect to the services to be performed under this Contract. This insurance shall be provided at the Designer's expense and shall be in force and effect for the full term of the Contract or for such longer period as this section requires. Should the Designer's insurance limits be higher or have broader coverage than the minimum required insurance limits as set forth in this section, such limits and coverages shall not be limited by this Contract.
- (b) **Insurance company rating.** All policies shall be issued by companies lawfully authorized to write that type of insurance under the Laws of the Commonwealth with a financial strength rating of "A" or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the Awarding Authority, or otherwise acceptable to the Awarding Authority.
- (c) **Certificates of insurance.** The Designer shall submit three originals of each certificate of insurance acceptable to the Awarding Authority simultaneously with the execution of this Contract. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, and policy effective and expiration dates. The Designer shall submit updated certificates prior to the expiration of any of the policies referenced in the certificates so that the Awarding Authority shall at all times possess certificates indicating current coverage. Failure by

the Designer to obtain all policy renewals and to provide the respective insurance certificates as required shall constitute just cause for termination of Designer's services under this Contract.

- (d) Termination, cancellation, or modification to policy. Termination, cancellation, or material modification of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the Awarding Authority at least thirty days prior to the effective date thereof, which shall be expressed in said notice.
- (e) Deductible. The Designer is responsible for the payment of any and all deductibles under all of the insurance required below. The Awarding Authority shall not be responsible for the payment of deductibles, self-insured retentions or any portion thereof.
- (f) Excess coverage. The Designer or any Consultant or subconsultant may elect to carry any other type of insurance coverage or higher limits over the required insurance coverage. Any excess coverage(s) shall be at the sole expense of the Design, Consultant or subconsultant obtaining such coverage.

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

- (g) Workers' Compensation Insurance in accordance with M.G.L. c.152.
- (h) Commercial General Liability Insurance, with a minimum limit of \$1,000,000 each occurrence. The Public Entity and the Awarding Authority shall each be listed as an additional insured.
- (i) Automobile Liability Insurance at a limit of not less than \$1,000,000 each accident.
- (j) Valuable Papers insurance in an amount sufficient to assure the restoration of any plans, drawings, computations, field notes, or other similar data relating to the work covered by this Contract in the event of loss or destruction while in the custody of the Designer until the final fee payment is made or all data is turned over to the Awarding Authority, and this coverage shall include coverage for relevant electronic media including, but not limited to, documents stored in computer aided design drafting (CADD) systems.

7.11.3. Professional Liability. The Designer shall maintain professional liability insurance covering errors and omissions and negligent acts of the Designer, and of any person or entity for whose performance the Designer is legally liable. Unless an alternate amount is otherwise specified in the documents incorporated by reference into Sections 4.3 (Study/Schematic Design Phase Governing Documents) or 6.2 (Design Phase Governing Documents) of this Contract, the minimum amount of such insurance shall equal the lesser of \$5,000,000 or 10% of the Project's Fixed Limit Construction Cost / Estimated Construction Cost but in no event less than \$250,000 per claim. Unless the Designer is specifically required to provide project specific insurance in the documents incorporated by reference into Sections 4.3 (Study/Schematic Design Phase Governing Documents) or 6.2 (Design Phase Governing Documents), the policy may be in a "claims made" format. If the policy is a "claims made" policy, it shall include a retroactive date that is no later than the effective date of this Contract, and Designer shall continue to provide such coverage for a period of at least six (6) years after the earlier of (1) the date of official

acceptance of the completed Project by the Awarding Authority; (2) the date of the opening of the Project to public use; (3) the date of the acceptance by the general contractor of a final pay estimate prepared by the Awarding Authority pursuant to M.G.L. chapter 30; or (4) the date of substantial completion of the Construction Contract and the taking of possession of the Project for occupancy by the Awarding Authority or the User Agency, which requirement can be met by providing renewal certificates of professional liability insurance to the Awarding Authority as evidence that this coverage is being maintained; provided, however, that if the Designer is not selected to perform the Design Phase or this Contract is terminated prior to the Design Phase, such extended coverage for claim made professional liability policy shall extend for at least six (6) years after the earlier of Approval of the Study or the termination of this Contract.

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

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

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

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

interests are directly or indirectly owned by the contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the contractor, or which directly or indirectly owns at least 51% of the ownership interests of the contractor.

- 7.15 Truth-In-Negotiation Certificate [M.G.L. c. 7C, s. 51].** To the extent that the Designer's fee has been negotiated, the Designer certifies that it has filed a truth-in negotiations certificate in accordance with M.G.L. c. 7C, s. 51 prior to being awarded this Contract. Said certificate is attached hereto as Attachment F-1 ó Truth in Negotiations Certificate (Study/Schematic Design Phase) and, if applicable, Attachment F-2 ó Truth in Negotiations Certificate (Design Phase), and incorporated herein by reference.
- 7.16 Employment Eligibility Verification Requirements [8 U.S.C., ss. . 1324a, 1324b; M.G.L. c. 149, s. 19C; Executive Order No. 481].** The Designer certifies under the pains and penalties of perjury they shall not knowingly use undocumented workers in connection with the performance of the Contract; that, pursuant to federal requirements, they shall verify the immigration status of all workers assigned to Contract without engaging in unlawful discrimination; and that they shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker. The Designer understands and agrees that breach of any of these terms during the period of a Contract may be regarded as a material breach, subjecting Designer to sanctions, including but not limited to monetary penalties, withholding of payments, contract suspension or termination.
- 7.17 Northern Ireland [M.G.L. c. 7, s. 22C].** Pursuant to M.G.L. c. 7 s. 22C, the Designer certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Designer employs ten or more employees in an office or other facility located in Northern Ireland the Designer certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Designer is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles, or military aircraft for use or deployment in any activity in Northern Ireland.
- 7.18 Service-Disabled Veteran-Owned Business Program [Chapter 108 of the Acts of 2012; Executive Order 565].** The Awarding Authority encourages the participation of Service-Disabled Veteran- Owned Business Enterprises (õSDVOBEö) and Veteran-Owned Business Enterprises (öVBEö) 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 Contract Price. A SDVOBE and VBE for purposes of the Commonwealth's program, is a Service-Disabled Veteran-Owned Small Business (õSDVOSBö) and a Veteran-Owned Small Business (öVOSBö) as designated by the federal government pursuant to 15 USC s. 632, whose status can be verified on the U.S. VetBiz Vendor Information Page located at www.vip.VetBiz.gov . SDVOBE's and VOSB's shall be provided opportunities to participate in the Project and Designer shall within 30 days of contract execution submit its Anticipated Service-Disabled Veteran-Owned Business Enterprise Participation and Veteran-Owned Business Enterprise Participation plan to the Awarding Authority's Compliance Office. 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 the Awarding Authority, including, but not limited to, by electronic reporting.

7.19 Minority Business Enterprise & Women Business Enterprise (MBE/WBE) Participation.
The Attachment C ó MBE/WBE Participation Provisions are incorporated herein by reference.

The Awarding Authority may grant a written waiver of these requirements as they pertain to the Study/Schematic Design Phase of the Contract, in which case, the requirements shall be met for the aggregate Basic Fee of both the Study/Schematic Design Phase and the Design Phase if the Designer is selected to perform the Design Phase of this Contract.Study/Schematic Design Phase Study/Schematic Design Phase

7.20 Non-Discrimination in Employment and Affirmative Action.

7.20.1. Compliance. The Designer shall comply with all Laws promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age sex, religion, physical or mental handicap, or sexual orientation or for exercising any right afforded by Law. The Designer shall comply with all applicable Laws prohibiting discrimination in employment including but not limited to: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973; M.G.L. c. 151B, s. 4(1); and all relevant administrative orders and executive orders, including Executive Orders 478. If a complaint or claim alleging violation of such statutes, rules or regulations is presented to the Massachusetts Commission Against Discrimination (MCAD), the Designer and its agents agree to cooperate fully with MCAD in the investigation and disposition of such complaint or claim. In the event of the Designer's noncompliance with the provisions of this section, the Awarding Authority shall impose such sanctions as it deems appropriate, including, but not limited to, withholding of payments due the Designer under this Contract until the Designer complies, and termination or suspension of this Contract.

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

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

7.20.4. Minority and Women Workforce Reporting. If the Awarding Authority is a state agency then pursuant to G.L.c.7C, s. 6 and G.L. c.149, s. 44A(2)(G) the Designer shall be required to

provide regular reports of the gender and race/ethnicity of employees engaged in work under this contract in the form and format required by DCAMM, including but not limited to, by electronic reporting and with the frequency required by DCAMM.

7.20.5. Material Breach. Any breach of this Section 7.20 shall be regarded as a material breach and shall be subject to all other sections of this Contract. The Awarding Authority shall have access to all records which are necessary to document compliance with this section.

- 7.21 Choice of Law.** This Contract shall be construed under and governed by the laws of the Commonwealth of Massachusetts. The Designer, and the agents thereof, agree to bring any federal or state legal proceedings arising under this Contract, in which either the Commonwealth or the Awarding Authority is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts. This section shall not be construed to limit any rights a party may have to intervene in any action, in any court or wherever, pending, in which the other is a party.
- 7.22 Amendments, Severability, Waivers.** No amendment to this Contract shall be effective unless it is in writing and is executed by authorized representatives of both parties. If any provision of this Contract is declared or found illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. The remainder of the Contract shall be enforced to the fullest extent permitted by law. The Awarding Authority reserves the right to waive any provision or requirement of this Contract if the Awarding Authority determines that such waiver is justified and in the public interest. No such waiver shall be effective unless in writing and signed by the Authorized Representative of the Awarding Authority. No other action or inaction by the Awarding Authority shall be construed as a waiver of any provision of this section.
- 7.23 Non-Appropriation.** Payments are subject to appropriation and shall be made only for work performed in accordance with the terms of this Contract. The Designer shall not be obligated to perform, and may not perform, services outside the duration and scope of this Contract without an appropriate amendment to this Contract, and a sufficient appropriation(s) to support such additional services. The Commonwealth may immediately terminate or suspend this Contract in the event that the appropriation(s) funding this Contract is eliminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Contract.
- 7.24 Notices, Approvals, Invoices.** Notices to the Designer shall be deemed given when hand-delivered to the Designer at the Project site, or when deposited in the U.S. mail addressed to the Designer at the Designer's address specified in this Contract, when delivered by courier to said address, or when delivered via e-mail or facsimile transmission. Unless otherwise specified in writing by the Awarding Authority, notices and deliveries to the Awarding Authority shall be effective only when delivered to the Awarding Authority at the address specified in this Contract and date-stamped at the reception desk or for which a receipt has been signed by the agent or employee designated by the Awarding Authority to receive official notices.
- 7.25 Mandatory Mediation.** In the case of a dispute where the dollar amount in dispute is \$50,000 or more the Awarding Authority and the Designer shall engage in good faith in a non-binding mediation process using the services of a mediator, who shall be an impartial third party not having an interest in the Public Entity, Awarding Authority, User Agency, Designer, any construction contractor on the Project, or the Project. Such mediation process shall be conducted within ninety (90) days from the date that either party submits to the other a written request therefor. The parties shall make good faith efforts to agree on the selection of a mediator

experienced in mediating building design and construction disputes. The cost of the services of any mediator selected jointly by the parties to this Contract shall be borne equally by the Designer and the Awarding Authority.

7.26 **Certifications of Designer Made Under Pains and Penalties of Perjury.** No changes shall be made in the matters represented in this Section 7.26 at any time during the life of this Contract without written notification to the Awarding Authority and when required, receipt of written Approval from the Awarding Authority. (Attach additional sheets if necessary for each section.)

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

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

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

7.26.4. No Inducements. By signing this Contract, the Designer certifies under the penalties of perjury that the Designer has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the Contract for design services; no consultant to or subcontractor for the Designer has given, offered or agreed to give any gift, contribution or offer of employment to the Designer, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the Designer; and no person, corporation or other entity, other than a bona fide full-time employee of the Designer has been retained or hired by the Designer to solicit for or in any way assist the Designer in obtaining the Contract for design services upon an Contract or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the Contract to the Designer. [M.G.L. c. 7C s. 51]

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

the Commonwealth relating to contributions and payments in lieu of contributions to the Employment Security System.

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

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

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

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

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SIGNATURES TO FOLLOW ON NEXT PAGE]**

SIGNATURES

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

DESIGNER:

Printed Name: _____

Title: _____
hereunto duly authorized

Date: _____

AWARDING AUTHORITY:

Printed Name: _____

Title: _____
hereunto duly authorized

Date: _____

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

Attachment A – Designer Selection Board Advertisement

Attachment B – Affirmative Action Plan

Attachment C – MBE/WBE Participation Provisions

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

THE FOLLOWING PROVISIONS APPLY TO DESIGNERS CONTRACTING WITH DCAMM:

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

1. Goals.

- a. The Minority Business Enterprise/Women Business Enterprise (MBE/WBE) participation goal for this Contract is a combined goal of 17% of the Contract Price.
- b. The Designer shall comply with all of the terms and conditions of this Contract, which include the provisions pertaining to MBE/WBE participation set forth in the Designer Selection Board's request for applications, incorporated herein by reference, in order to meet the MBE/WBE participation goal established for this Contract.
- c. Designer must use a mix of both MBE and WBE firms whose participation, when added together, meets the overall combined goal set forth above. The combined goal requires a reasonable representation of both MBE and WBE firm participation. If the Designer is itself a Supplier Diversity Office (SDO) certified firm it is required to bring a reasonable amount of participation by firm(s) that hold certification(s) that is/are not held by Designer. MBE/WBE participation credit will be given for the value of the work under the Contract by Designer (if Designer is an MBE or WBE) and each MBE and WBE Consultant or subcontractor (hereafter subcontractors) to the Designer.

2. MBE/WBE Status.

- a. A minority owned business shall be considered an MBE only if it has been certified as a minority business enterprise by the Supplier Diversity Office (SDO) (formerly known as the Massachusetts State Office of Minority and Women Business Assistance (SOMWBA)).
- b. A woman owned business shall be considered a WBE only if it has been certified as a woman business enterprise by SDO.
- c. Certification as a disadvantaged business enterprise (DBE), certification as an M/WBE by any agency other than SDO, or submission of an application to SDO for certification as an M/WBE shall not confer M/WBE status on a firm for the purposes of this Contract.

3. Subcontracts With MBE/WBEs.

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

4. Performance of Contract Work by MBE/WBEs.

- a. The Designer shall not perform with its own organization or subcontract or assign to any other firm work designated to be performed by any MBE/WBE in the Letters of Intent or Schedule of MBE/WBE Participation (öMBE/WBE Workö) without the prior written approval of the Division of Capital Asset Management, nor shall any MBE/WBE assign or subcontract to any other firm, or permit any other firm to perform any of its MBE/WBE Work without the prior written approval of Division of Capital Asset Management. Any such unapproved assignment, subcontracting, sub-subcontracting, or performances of MBE/WBE Work by others shall be a change in the MBE/WBE Work for the purposes of this Contract. The Division of Capital Asset Management shall not apply to the MBE/WBE participation goal(s) any sums attributable to such unapproved assignments, sub-contracts, sub-subcontracts, or performance of MBE/WBE work by others.
- b. The Designer shall be responsible for monitoring the performance of MBE/WBE Work to ensure that each scheduled MBE/WBE performs its own MBE/WBE Work.
- c. The Designer shall periodically submit to the Division of Capital Asset Management a completed and executed Designerö Certification of Payment to Minority and Women Business Enterprises in the form and by the method required by the Division of Capital Asset Management. The Division of Capital Asset Management shall establish the schedule for submitting such certifications.
- d. The Designer and each MBE/WBE shall provide the Division of Capital Asset Management with all other information and documentation that the Division of Capital Asset Management determines is necessary to ascertain whether or not an MBE/WBE has performed its own MBE/WBE Work as set forth in its Letter of Intent.
- e. At the discretion of the Division of Capital Asset Management, the failure of the Designer to submit a required Designerö Certification of Payment to Minority and Women Business Enterprises or any other documentation that the Division of Capital Asset Management has determined is necessary to ascertain whether or not an MBE/WBE has performed its own MBE/WBE Work as set forth in its Letter of Intent shall establish conclusively for the purpose of giving MBE/WBE participation credit under this Contract that such MBE/WBE did not perform such work.

5. Notification of Changes in M/WBE Work.

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

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

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

- iv. The Designer shall make reasonable efforts to assist MBE/WBEs that need assistance in obtaining insurance or lines of credit in order to perform work under the Contract, and shall provide the Division of Capital Asset Management with evidence that such efforts were made.
- v. The Designer shall provide the Division of Capital Asset Management with a statement of the response received from each MBE/WBE solicited, including the reason for rejecting any MBE/WBE who submitted a proposal.
- vi. The Designer shall take any additional measures reasonably requested by the Division of Capital Asset Management to meet the MBE/WBE participation goal(s) established for this Contract.
- vii. The Designer shall submit to the Division of Capital Asset Management all information or documentation that is necessary in the judgment of the Division of Capital Asset Management to ascertain whether or not the Designer has complied with any of the provisions of this Article.

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

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

8. Liquidated Damages; Termination.

- a. If payment by the Division of Capital Asset Management or performance by the Designer is suspended by the Division of Capital Asset Management as provided in paragraph 7 above, the Division of Capital Asset Management shall have the following rights and remedies if the Designer thereafter fails to take all action necessary to bring the Designer into full compliance with the requirements of this Article, or if full compliance is no longer possible because the default of the Designer is no longer susceptible to cure, or if the Designer fails to take such other action as may be required to meet the MBE/WBE participation goals set forth in Paragraph 1:
 - i. The Division of Capital Asset Management may terminate this Contract, and/or
 - ii. The Division of Capital Asset Management may retain from final payment to the Designer, as liquidated damages, an amount not to exceed the difference between the total of the MBE/WBE participation goals set forth in paragraph 1 of this Article, and any amounts paid or owing to MBE/WBEs for MBE/WBE Work actually performed by them under this Contract, the parties agreeing that the damages for failure to meet the MBE/WBE participation goals are difficult to determine and that the foregoing amount to be retained by the Division of Capital Asset Management represents the parties' best estimate of such damages.
- b. Before exercising its rights and remedies hereunder, the Division of Capital Asset Management may, but the Division of Capital Asset Management shall not be obligated to, give the Designer and any other interested party another opportunity to present evidence to the Division of Capital Asset Management that the Designer is in compliance with the requirements of this Article or that there is some justifiable reason for waiving the requirements of this Article in whole or in part. The Division of Capital Asset Management may invite SDO and the Massachusetts Commission Against Discrimination to participate in any proceedings undertaken hereunder.

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

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

Attachment D – Executive Order 504: Contractor Certification Form

BIDDER/CONTRACTOR LEGAL NAME:

BIDDER/CONTRACTOR VENDOR/CUSTOMER CODE:

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

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

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

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

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

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

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

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

Bidder/Contractor Name: _____.

Bidder/Contractor Authorized Signature: _____.

Print Name and Title of Authorized Signatory: _____.

Date: _____.

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

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

_____ 20 ____

I hereby certify that I am the ____ clerk, _____, assistant clerk, ____ managing partner of

_____. (the "Corporation") and that at a
(Name of Corporation/Partnership)

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

_____ in _____ at which a quorum was
(Date) (Location)

present and voting it was voted to authorize _____
(Name)

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

Mass State Project No.

Project Title:

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

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

has not been repealed, rescinded or amended.

Name

Date

(CORPORATE SEAL)

SUBSCRIBED AND SWORN TO THIS ____ DAY OF _____, 20____ BEFORE ME

Notary Public

Attachment E-2 – Corporate Vote or Other Evidence of Authority (Design Phase)

_____ 20 ____

I hereby certify that I am the ____ clerk, _____, assistant clerk, ____ managing partner of

_____ (the "Corporation") and that at a
(Name of Corporation/Partnership)

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

_____ in _____ at which a quorum was
(Date) (Location)

present and voting it was voted to authorize _____

(Name)
_____ of the Corporation/Partnership to
(Officer Title)

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

Mass State Project No. _____

Project Title: _____

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

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

has not been repealed, rescinded or amended.

Name

Date

(CORPORATE SEAL)

SUBSCRIBED AND SWORN TO THIS ____ DAY OF _____, 20____ BEFORE ME

Notary Public

My Commission Expires: _____

Attachment F-1 – Truth in Negotiations Certificate (Study/Schematic Design Phase)

The Designer hereby certifies and agrees to the following:

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

Designer : _____

By: _____
duly authorized

Print Name _____

Date: _____

Attachment F-2 – Truth in Negotiations Certificate (Design Phase)

The Designer for design services for

_____,
hereby certifies and agrees to the following:

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

Designer Firm:

Printed Name: _____
duly authorized

Title: _____

Date: _____

Attachment G – Design Phase Scope of Services

PROJECT #: _____

PROJECT NAME: _____

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

[TO BE COMPLETED WITH SPECIFIC PROJECT REQUIREMENTS]

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

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

2. Indicate whether Designer is required to follow the DCAMM Designers Procedures Manual _____.

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

Attachment I – Designer’s Personnel Assigned to Project

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

Attachment J 6 Certified Billing Rates of Designerø and Designerø Consultantø Personnel

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

NOTE: *As set forth in Section 6.10 (Compensation for Design Phase Additional Services) of the Contract, if Design Phase Additional Services are to be compensated on an hourly basis, such compensation shall be at the rates set forth herein, which shall not exceed \$150 per hour.*

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

Design Firm Principal:

Design Firm Associate:

Design Firm Project Manager:

Design Firm Project Architect:

Design Firm CAD Operator:

Name of Consultant Firm:

Consultant Principal:

Consultant Associate:

Consultant Project Manager:

Consultant Project Engineer:

Consultant CAD Operator:

Name of Consultant Firm:

Consultant Principal:

Consultant Associate:

Consultant Project Manager:

Consultant Project Engineer:

Consultant CAD Operator:

Name of Consultant Firm:

Consultant Principal:

Consultant Associate:

Consultant Project Manager:

Consultant Project Engineer:

Consultant CAD Operator:

Name of Consultant Firm:

Consultant Principal:

Consultant Associate:

Consultant Project Manager:

Consultant Project Engineer:

Consultant CAD Operator:

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

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

1) Designer's Beneficial Owners

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

_____	_____
_____	_____
_____	_____

PARTNERSHIP: (Names of all Partners):

_____	_____
_____	_____
_____	_____

INDIVIDUAL (Name of Owner):

2) Professional Registrants

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

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

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

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

Name

3) Existing Government Contracts

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