



**COMMONWEALTH OF MASSACHUSETTS  
CONTRACT FOR STUDY SERVICES**

DCAMM: Division of Capital Asset Management and Maintenance

Director of Programming:

Mass. State Project No. /Contract No:

Project Title/Project Location:

User Agency:

Not-to-Exceed Maximum Study Contract Amount:

Designer:

Designer's Telephone No:                      Designer's Fax No:

Designer's Email:      Principal's Email:

This Contract ("Contract") is made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Commonwealth of Massachusetts acting by and through DCAMM with a principal place of business at One Ashburton Place, Boston, Massachusetts 02108 and \_\_\_\_\_, a [insert as applicable: Corporation/LLC/LLP etc] with a principal place of business at \_\_\_\_\_, hereinafter called the "Designer."

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**ADVERTISEMENT**

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## **ARTICLE 1: DEFINITIONS**

**Approval:** A signed written communication from DCAMM's Director of Programming to the Designer expressing DCAMM's approval of submittals, services or documents prepared by the Designer. An Approval shall not relieve the Designer from any of its professional responsibilities under this Contract.

**Approved:** An item for which an Approval has been issued.

**Basic Fee:** The Designer's Basic Fee specified in Article 5 of this Contract.

**Basic Services:** All services required to be performed by the Designer under this Contract except those for which reimbursement or additional compensation is specified in Articles 6 and 7.

**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.

**Certified:** The term "Certified" for the purposes of this Contract means that an adequate appropriation of funds for the Project is available and all certifications required by M.G.L. c. 29, s. 7K and s. 26A have been duly made.

**Commissioner:** The Commissioner of DCAMM.

**Construction Contract:** One or more contracts for the construction of the Project.

**Construction Cost Estimate:** A submittal consisting of a written calculation of the Estimated Construction Cost prepared by the Designer and Designer's professional cost estimator 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.

**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

**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 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.

**DCAMM Standard Specification:** The standard specification promulgated by DCAMM to be used by designers contracting with DCAMM.

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

**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.

**Designers Procedures Manual:** The document published by DCAMM that supplements the contractual tasks of designers contracting with DCAMM.

**Estimated Construction Cost (ECC):** The estimate of all constructions costs, as determined by a professional cost estimator during the pre-design and design phases of a project. The Estimated Construction Cost includes escalation to the projected mid-point of construction, an estimating contingency, the builder's general conditions, and overhead and profit. The Estimated Construction Cost will also include allowances for work necessary to be included in the Construction Contract for each particular portion of the Project such as temporary support works, utility diversions, temporary user facilities, and costs of phasing with partial works and remobilization.

**Final Design Contract:** A contract executed with a designer after a Study is Certified that provides for the final design of a project and the administration of the Construction Contract for the construction of the Project.

**Final Designer:** The designer that is appointed by the Commissioner of DCAMM to execute a Final Design Contract.

**Global Workshop:** A working meeting led by the Designer pursuant to an agenda approved by the Study Manager at which attendance by the Designer and all consultant team members is required. The meeting includes representatives of the User Agency, 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.

**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; and any agency, department, commission, board, bureau, or instrumentality of any 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 Article 8 as modified by the Study Work Plan.

**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.

**Neutral:** An impartial third party not having an interest in the Public Entity, DCAMM, the User Agency, the Designer, any construction contractor on the Project, or the Project.

**Notice to Proceed:** A written communication from the Director of Programming of DCAMM directing the Designer to perform services for the particular phase of the Study as set forth in such communication.

**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. Without limitation, the term "Permits" shall include permits and approvals from and notices to electrical, water, gas, communications and other utility providers and also permissions and consents from and notices to private parties necessary for the design and construction of the Project, such as an approval or consent of a landlord or other holder of an easement, restriction or other interest in the Project site.

**Program:** A "document 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, the preparation of such document involving the gathering of data and the analysis of cost necessary to (i) the production of content, time and cost plans based on criteria deriving from those originally defined by any study or similar report and as finally stated within the body of the program itself and (ii) the evaluation of those plans in terms of such criteria." [M.G.L. c. 7C, s. 1].

**Program Manager:** Study Manager as defined herein.

**Project:** The Project identified on Page 1 of this Contract.

**Public Entity:** The Commonwealth of Massachusetts or the political subdivision or subdivisions thereof for which DCAMM is acting as an agency or instrumentality.

**Scope of Services:** The services to be provided as described in the Approved Study Work Plan.

**Scope of Work:** The "General Scope of Work" in the advertisement of the Designer Selection Board for this Contract. The advertisement is attached as Attachment A to this Contract. The Scope of Work is the basis for the Study Work Plan.

**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, and d) 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 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 January 2000. This document provides guidelines for the preparation of studies and programs for building projects by State Agencies, Counties, and Building Authorities. Chapter Seven of the Massachusetts General Laws requires DCAMM to establish these guidelines and to supervise the preparation of studies and programs.

**Study Manager:** The person appointed by DCAMM to provide administration of this Contract subject to the supervision of the Director of Programming, but who does not have the authority to grant Approvals.

**Study Work Plan:** An Approved written plan of services that is consistent with the Scope of Work and that meets the requirements of Section 4.2 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 Study Work Plan shall be controlling. The Approved Study Work Plan shall become a part of this Contract.

**Total Project Cost (TPC):** The estimated sum of all costs required constructing the Project, and that comprise the Project budget. They include the Estimated Construction Cost (ECC), design contingencies, change order contingencies, professional fees, permitting fees, the estimated cost of furnishings and moveable equipment, and all administrative costs, including personnel, advertising and bidding.

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

## **ARTICLE 2: RESPONSIBILITIES OF DCAMM**

### **2.1 Director of Programming, Study Manager, and User Agency Representatives**

DCAMM's Director of Programming shall have the authority to grant Approvals on behalf of DCAMM. DCAMM shall also appoint a Study Manager to provide day to day administration of this Contract. The Study Manager shall not have the authority to grant Approvals. DCAMM shall cause the User Agency to designate staff to represent the User Agency and to work with DCAMM to provide relevant information to the Designer for the conduct of the Designer's obligations under this Contract.

### **2.2 Deliveries to the Designer**

DCAMM shall deliver to the Designer a copy on compact disc 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 the *Cost Estimate Input Form* for use on DCAMM projects. DCAMM shall deliver to Designer a draft of the study work plan in accordance with Section 4.2. DCAMM shall also deliver to the Designer 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. All items and data provided to the Designer by DCAMM shall remain the property of DCAMM or the Public Entity. The Designer may use items and data provided by DCAMM only for the purposes of this Contract, unless DCAMM shall give the Designer specific written permission for some other use. DCAMM does not guarantee nor does it make any express or implied warranties concerning the accuracy of any such information furnished to the Designer.

### **2.3 Review and Approval of Submittals**

DCAMM shall, and shall cause the User Agency to, review submittals required by this Contract at each milestone in accordance with the Approved Study Work Plan and standards for Deliverables for that milestone. DCAMM shall without unreasonable delay either (i) render to the Designer any Approval by DCAMM's Director of Programming required by this Contract, or (ii) notify the Designer in writing why such Approval by DCAMM's Director of Programming is being withheld. DCAMM shall not unreasonably withhold any Approval, acceptance, or consent required under this Contract. Where feasible, DCAMM shall combine all comments in response to a submittal into a single document and shall deliver it to the Designer. If necessary, DCAMM and the User Agency shall attend meetings with the Designer to achieve Approval of a submittal. Approval by DCAMM's Director of Programming shall not in any way relieve the Designer from its responsibility for all data, designs, drawings, specifications, area calculations, surveys, cost estimates and other work or materials furnished by the Designer and its Consultants.

### **2.4 Payments to Designer**

For satisfactory performance of all of the Designer's obligations under this Contract, DCAMM shall compensate the Designer in accordance with the provisions of the Approved Study Work Plan and of Articles 5, 6, 7, 8, and 9 of this Contract. DCAMM shall have no obligation to make payments to the Designer for any Basic Services other than upon the Approval of Deliverables or submittals specified in the Approved Study Work Plan. The sequential order of the Designer's services is of the essence of this Contract. DCAMM shall have no obligation to pay the Designer for Deliverables or submittals prepared other than in the order required by the Study Work Plan. DCAMM shall have no obligation to pay for any Deliverable or submittal prepared prior to the required preceding Approval. Any waiver of any of the provisions of the preceding three sentences must be made in writing and signed by DCAMM's Director of Programming.

### **2.5 Evaluation of Designer [M.G.L. c. 7C, s 48]**

DCAM shall provide the Designer with a written preliminary evaluation at the completion of the analysis (ST02) stage of the Study for informational purposes. DCAMM will also evaluate the Designer after the Designer has completed its 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 DCAMM, the Designer may respond with a letter to the Study Manager and send a copy to the Designer Selection Board.

## **ARTICLE 3: DESIGNER'S BASIC SERVICES -- GENERAL**

### **3.1 Purpose of Study**

This Contract is for the preparation by Designer of a Study that meets the requirements of the Approved Study Work Plan and that will serve as the basis for final design work if DCAMM determines that the Project should be undertaken. At a minimum, the purposes of a Study are: 1) to determine the space needs of the User Agency and the relevant design criteria for the User Agency's anticipated types of use; 2) to determine how the User Agency's space needs can be satisfied in the most cost-effective manner; 3) to determine the efficiency, cost and operational implications of existing conditions; 4) to determine site selection; 5) to determine the technical feasibility of a proposed project; 6) to insure that the Commonwealth does not waste money on final design services for projects that are not necessary or that are not technically feasible or for which sufficient funds are not available for construction. The Designer acknowledges that DCAMM may use the Study for many purposes, including but not limited to use: a) as the basis for determining that the Project is technically feasible; b) as a prospectus in the planning and budgeting process for the User Agency, DCAMM, the Executive Office of Administration and Finance, and the legislature; c) for compliance with state finance and other laws including but not limited to M.G.L. c. 29, ss. 7f, 7k, 26A, 26B, and M.G.L. c. 7C, ss. 12 and 18; d) as a detailed set of design directions and a scope of services for the Final Design Contract; e) as a control on programmatic changes made during construction; and f) as the basis for post-occupancy evaluations.

Without limiting the foregoing, the Designer acknowledges that Designer understands:

- (i) that DCAMM and other Commonwealth agencies will make important sequential decisions with financial consequences based on the Designer's submittals and Deliverables and based upon the contents of an Approved Study;
- (ii) that it is critical that the Designer's services be performed only in the sequence required by the Study Work Plan and that failure to adhere to the proper sequence of work may defeat the goals of the Study and may create conflicts of interest that impair the quality of the Designer's services under this Contract;
- (iii) that it is of the essence of this Contract that the Designer's Deliverables and submittals must be complete and accurate.

### **3.2 Designer Duties Generally**

The Designer shall perform its duties in accordance with this Contract including the Study Work Plan. The Designer shall not proceed to work on any task or submittal unless all Approvals that are required to be obtained prior to commencement of work on that task or submittal have been granted by DCAMM's Director of Programming. The Designer's services 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*), *Designers Procedures Manual*, *DCAMM Standard Specification*, and *Consultants Estimating Manual*. In case of conflicting provisions, the Designer shall make a written request for clarification to the Director of Programming and his written response if reasonable and made in good faith shall be conclusive. The Designer shall make all changes in Deliverables and submittals required by comments made by DCAMM 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 DCAMM, the User Agency and the Construction Manager (if appropriate) as well as any other additional consultants (such as but not limited to – commissioning agent, environmental or permitting consultant, etc) to develop a mutually satisfactory submittal. All changes requested by DCAMM must be accomplished before a submittal or deliverable will be Approved.

### **3.3 Standard of Care**

Designer shall exercise due professional care in the performance of its services hereunder in light of the potential magnitude of the adverse financial and other consequences that may be suffered by the Commonwealth as a result of the inaccuracy of the Study. Designer's Consultants and personnel furnishing services hereunder shall be qualified and competent to perform adequately the services assigned to them; and the recommendations, guidance, and performance of such personnel shall reflect the standard of due care and professional practice.

### **3.4 Compliance with Laws and Approved Study Work Plan**

Designer's recommendations and Deliverables shall meet the requirements of the Approved Study Work Plan. The implementation of the Designer's recommendations shall be feasible at the Estimated Construction Cost and within the framework of the Total Project Cost of the Project as determined by DCAMM. Without limiting the foregoing, the work and services performed hereunder shall conform to the standards set forth in this Contract and to all applicable Laws. Designer shall familiarize itself with the Laws governing the preparation and certification of a Study.

### **3.5 Prerequisites for Final Design Contract**

Designer understands that no Final Design Contract may be entered into for any project for which a state agency is the User Agency unless and until an appropriation of sufficient funds has been made and the Study has been Certified as provided in M.G.L. c. 29, s. 7K and s. 26A. The Approved Study may or may not be Certified. If the Approved Study is Certified, the Designer may be selected in accordance with applicable Laws to execute a Final Design Contract. The Designer represents that if selected to execute a Final Design Contract, it will execute such a contract in the form specified in Attachment B which is incorporated herein by reference. Nothing herein shall require DCAMM to execute a Final Design Contract with the Designer. The execution of a Final Design Contract shall not relieve the Designer of any of its remaining obligations under this Contract.

### **3.6 Staffing; Personnel Changes**

The Designer's personnel who shall provide services under this Contract are those listed in its application to the Designer Selection Board. No changes or additions may be made to Designer's personnel without Approval by the Director of Programming subject to the requirements of M.G.L. c. 7C, s. 51. The Designer shall provide sufficient personnel to complete the services required by this Contract in a continuous and timely manner in accordance with the Study Work Plan.

### **3.7 Quality Assurance/Quality Control Procedures**

The Designer is responsible for Quality Assurance/Quality Control (QA/QC) in performance of all services required by the Designer under this Contract. Accordingly, at the time of the submittal of the Study Work Plan, the Designer shall submit to DCAMM a written description of the QA/QC procedures that the Designer will use in the preparation of submittals and Deliverables and in the performance of services under this Contract. The QA/QC plan shall include all requirements for QA/QC set forth in the Designer Procedures Manual. The Designer shall also rigorously and exclusively adhere to the specific methods of area calculation set forth in this Contract for Building Gross Area, Departmental Gross Area and Net Assignable Area and shall be responsible for document review, area calculations, and cost estimating required by the Study Work Plan. The Designer shall be responsible for the completeness, accuracy and coordination of all data and information relating to the Study.

### **3.8 Reconciliation of Designer's and DCAMM's Cost Estimates**

If DCAMM has appointed a cost estimator for the Project that is independent of the Designer, the Designer shall cause its cost estimator to reconcile any of Designer's cost estimates required by the Study Work Plan with those of DCAMM's cost estimator before they are submitted to the Director of Programming for Approval. DCAMM's decision on changes required to Designer's cost estimates shall be final but the Designer shall not be liable for any decision by DCAMM that is inconsistent with generally accepted standards of professional practice provided that the Designer shall have advised DCAMM in writing of the inconsistency at the time Designer submits a cost estimate to DCAMM's Director of Programming.

### **3.9 Designer to Evaluate Surveys and Data**

The Designer shall analyze and evaluate the information furnished by DCAMM pursuant to this Contract. If items or data of the type identified in Section 2.2 above are not available or are, in the reasonable opinion of the Designer, insufficient to permit the Designer properly to perform its services hereunder, the Designer shall submit a written request to DCAMM for permission to obtain the services of one or more Consultants to perform the necessary services. If the services are not included in the Study Work Plan, the Designer shall be reimbursed in accordance with Article 7 (Reimbursable Costs and Expenses), or if the services are performed with the Designer's own employees, the Designer shall be compensated in accordance with Article 6 (Additional Services; Additional Compensation). In no case shall the Designer commence or authorize a Consultant to commence such services without the prior Approval by DCAMM's Director of Programming.

### **3.10 Employment of Consultants**

Subject to the provisions of this Contract and the prior written Approval by DCAMM's Director of Programming, whenever the services of Consultants listed in the Designer Selection Board's advertisement for this Contract and in the Study Work Plan are required, the Designer shall employ them and be responsible for their work and the coordination and supervision thereof. Consultants shall be registered in Massachusetts in their respective disciplines if registration is required by the applicable Laws. If DCAMM directly employs an independent cost estimator, Owner's Project Manager, and/or other consultant(s), the Designer and its Consultants shall work directly with DCAMM's consultant(s) to ensure that optimum cost, scheduling, and ease of construction objectives are met.

Consultants shall be registered in Massachusetts in their respective disciplines if registration is required by the applicable Laws. If DCAMM directly employs an independent cost estimator, Owner's Project Manager, and/or other consultant(s), the Designer and its Consultants shall work directly with DCAMM's consultant(s) to ensure that optimum cost, scheduling, and ease of construction objectives are met.

### **3.11 Assignment; Contracts with Consultants**

Except as specifically provided in this Contract, the Designer shall not employ Consultants, or sublet, assign or transfer any part of its services or obligations under this Contract without the prior Approval by DCAMM's Director of Programming subject to the provisions of 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. To obtain Approval by DCAMM's Director of Programming, the Designer must submit the items required by M.G.L. c. 7C, s. 51. If requested by DCAMM, the Designer shall promptly provide DCAMM with complete copies of any contracts with Consultants.

### **3.12 Retention of Special Consultants**

The Designer shall retain the services of a special Consultant not referenced in Section 3.10 above or in the Designer Selection Board's advertisement or in the Study Work Plan, when required for the Designer's services for the Project. To the extent applicable, Designer shall comply with the requirements of the Massachusetts Prevailing Wage Law, M.G.L. c. 149, §§26-27D, in the employment of and such special Consultants. The identity of such special Consultants must be Approved in advance by DCAMM's Director of Programming, which Approval shall not be withheld unreasonably. When such a special Consultant's services are required, the Designer shall submit to DCAMM's Director of Programming a written request for them containing a detailed description of

the proposed services. Upon Approval of the request, 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 DCAMM together with the Designer's recommendation for selection before any work may be Approved. DCAMM's Director of Programming may waive the requirement for three proposals for good cause provided that such waiver shall be in writing. 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. The cost for services of any Approved special Consultant not listed in Section 3.10, in the Study Work Plan, or in the Designer Selection Board advertisement for this Contract, shall be reimbursed as provided in Article 7. For solicitation, inspection, analysis, coordination, and evaluation of such Consultants' services, and for assuming liability therefore, the Designer shall be compensated as provided in Section 7.3.

### **3.13 DCAMM's Right to Rescind Approval of Designer's Employees and Consultants**

DCAMM may rescind the Approval of an employee of Designer or a Consultant if such employee or Consultant is incompetent, irresponsible or otherwise unsatisfactory, and the Designer shall remove such Consultant or employee from work on this Contract. If an employee or Consultant is so removed, the Designer shall provide another employee or Consultant with similar credentials and qualifications (including but not limited to MBE/WBE) that meets with the Approval by DCAMM's Director of Programming. The removal of such Consultant shall not relieve the Designer from its responsibilities for the services of its Consultants and subconsultants under this Contract.

### **3.14 Conflicts of Interest**

#### **3.14.1 Consultants Barred from Work on Project**

The Designer shall not employ in the preparation of any Deliverable or submittal or in any services performed under this Contract any person or firm that expects to be a bidder, subconsultant 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 will be prohibited from serving as a bidder, subconsultant, 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 DCAMM, 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.

#### **3.14.2 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.

#### **3.14.3 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.

### **3.15 Prompt Payments to Consultants**

The Designer shall, within 14 calendar days after receiving payment from DCAMM, either make payment to each Consultant whose work was included in the work for which such payment was received or notify DCAMM in writing of the reason why such payment is not being made within such time period.

### **3.16 ADA, Accessibility and Nondiscrimination 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 (“ADA”, 42 U.S.C. sections 12101 et. seq.), the ADA Accessibility Guidelines for Buildings and Facilities (“ADAAG”), and the regulations of the Massachusetts Architectural Access Board (“MAAB”, 521 CMR 1.1 et. seq.). The Designer recognizes that the Public Entity, DCAMM, 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 Entities’ 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 shall reflect the fact that the Final Design Contract 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 DCAMM’s Director of Programming. 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.

### **3.17 Clean Energy and Efficient Buildings [Executive Order No. 484]**

The Designer shall familiarize itself with Executive Order No. 484. 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 Final Design Contract 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.

### **3.18 Permits**

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 final design phases 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.

### **3.19 Ownership; Intellectual Property Rights**

All files, records, and documents prepared by Designer pursuant to this Contract, and all text, electronic, and graphic files shall be property owned by the Commonwealth and the Commonwealth shall own any copyrights thereon. Within 30 days after the Approval of Deliverables and submittals or the termination of this Contract the Designer shall cause them to be clearly marked, identified, in good order, and delivered to DCAMM's Study Manager. DCAMM may use all such files, records, and documents in any manner that it chooses to. The Designer shall incorporate by reference this provision into all contracts with its Consultants and subconsultants with respect to the services provided under this Contract including, but not limited to, architects, engineers, estimators, surveyors, designers, and photographers. The Designer and its Consultants and subconsultants shall not be responsible for changes made in the documents or other items without the Designer's authorization, nor for DCAMM'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.

### **3.20 Security and Confidentiality; Publication**

Except as required for the discharge of its duties to DCAMM under this Contract, or required by subpoena or court order, the Designer agrees to hold all information obtained in connection with its services under this Contract in the strictest confidence, and shall not communicate, release, or disclose any document, material, or information obtained or developed under this Contract in any form (including without limitation plans, sketches, drawings, and other renderings or documents) to any third party without the prior written Approval by DCAMM's Director of Programming. The Designer shall not use any such information other than for the performance of services under this Contract. The Designer shall inform all persons to whom any such document or information has been or will be communicated, released or disclosed of the privileged and confidential nature of such document or information, and shall ensure that all necessary steps are taken so that such document or 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.

### **3.21 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 Designer shall comply with the provisions of Executive Order 504 and shall execute the Executive Order 504 Contractor Certification Form attached hereto as Exhibit G.

## **ARTICLE 4: PROSECUTION AND PROGRESS OF BASIC SERVICES**

### **4.1 Initial Meeting**

After executing this Contract, the Designer, its key personnel, and such key Consultants as may be designated by DCAMM shall attend an administrative conference with the Study Manager at the offices of DCAMM for the purpose of making introductions, exchanging contact information, clarifying relationships, and reviewing billing procedures.

### **4.2 Preparation of Study Work Plan**

Upon execution of this Contract and receipt of a draft Study work plan to be provided by DCAMM, the Designer, working with the Study Manager, shall revise the draft Study work plan so as to prepare a detailed proposed Study work plan that is appropriate to meet the identified goals of the Study. The proposed Study work plan shall comply with the requirements of this Contract and the Designer Selection Board's Project Criteria for the Project as advertised by the Designer Selection Board. The Designer shall submit the proposed Study work plan to DCAMM within two (2) weeks of the date of the later of the date of the execution of this Contract or the receipt from DCAMM of DCAMM's draft Study work plan. The proposed Study work plan shall:

- (i) define and identify the tasks and Deliverables required to be provided by the Designer as part of Basic Services;
- (ii) specify the sequences in which these tasks and Deliverables must be performed, prepared and submitted;
- (iii) contain a Contract Schedule;
- (iv) include allowances of time for the User Agency's and DCAMM's review and for the review and Approval of Deliverables by DCAMM's Director of Programming;
- (v) specify the Milestones at which Approvals are required before any succeeding work is permitted to be performed by the Designer;
- (vi) specify the lump sum payments of portions of the Basic Fee that are due upon the Approval of Deliverables or Milestones; and
- (vii) include a description of the Designer's quality assurance procedures described in Section 3.7 of this Contract.

When Approved by the Director of Programming, the proposed Study work plan shall become the Study Work Plan and shall constitute a part of this Contract. In case of any conflict between the Scope of Work and the Study Work Plan, the terms of the Study Work Plan shall be controlling. Approval by DCAMM's Director of Programming of the Study Work Plan shall constitute the Notice to Proceed with Basic Services.

## **ARTICLE 5: DESIGNER'S BASIC FEE**

### **5.1 Basic Fee**

For the performance of all services required in this Contract excluding those services specified under Articles 6 and 7, the Designer's Basic Fee shall not exceed \$ \_\_\_\_\_, payable as provided in Section 8.1 as the same may be modified by the Study Work Plan. The Designer shall not be entitled to receive any portion of the Basic Fee that is specified as being "contingent" in the Study Work Plan unless the contingency actually occurs and the Study Work Plan is amended by agreement of the parties to provide for the Deliverables and for the payments to be paid for such Deliverables when they are Approved.

### **5.2 Equitable Adjustments to Basic Fee**

If there is a substantial change in the Scope of Services in the opinion of DCAMM's Director of Programming, the Designer and DCAMM will agree to an equitable adjustment in the Designer's Basic Fee. For the purposes of this Contract, a "substantial change" in services shall include:

- (i) a substantial change in the Scope of Services that is not the fault of the Designer;  
or
- (ii) a significant increase in the duration of the Study that is not the fault of the Designer.

### **5.3 Manner of Payment**

Payment of the Designer's Basic Fee shall be made in accordance with Article 8 as modified by any changes Approved by the Director of Programming and included in the Study Work Plan.

## **ARTICLE 6: ADDITIONAL SERVICES**

### **6.1 Additional Services**

With the prior Approval by DCAMM's Director of Programming, the Designer shall perform any work that is not included in or inferred by the Study Work Plan as being part of Basic Services, such as:

- (i) energy modeling;
- (ii) preparation of measured drawings, site surveys, wetlands delineations;
- (iii) preparation of structural analyses, environmental analyses, geotechnical analyses, soils borings;
- (iv) conducting HVAC testing, hydrant flow testing, hazardous materials testing, other specialized testing;
- (v) undertaking additional tasks identified subsequent to the Approval of the Study Work Plan.

Prior to performing any Additional Services the Designer shall agree with DCAMM's Director of Programming upon the fee for such services in accordance with Section 6.2 of this Contract.

## **6.2 Compensation for Additional Services**

For the services provided pursuant to sections 6.1 and 6.2 of this Article, the Designer shall be compensated as determined by DCAMM by a lump sum fee agreed upon in advance in writing by the Designer and DCAMM's Director of Programming. 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 Additional Services may be adjusted within one year of the completion of this Contract if DCAMM's Commissioner determines that the lump sum fee was increased due to inaccurate information provided to DCAMM's Director of Programming in the negotiation of the lump sum fee.

No authorization by DCAMM's Director of Programming for the performance by the Designer of 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 DCAMM's Director of Programming. Cost proposals for 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.

## **6.3 Services Not Compensable**

Neither the Designer nor its Consultants shall be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Designer in the preparation of the Study submittals and Deliverables, or that were occasioned by the Designer's errors or omissions, as reasonably determined by the executive head of DCAMM. [M.G.L. c. 7C, s. 51].

# **ARTICLE 7: REIMBURSABLE COSTS AND EXPENSES**

## **7.1 General**

The Designer shall be reimbursed by DCAMM for:

- (i) The actual cost to the Designer of special Consultants Approved by DCAMM but not specified in Article 3 or in the Designer Selection Board's advertisement for the Project. No reimbursement for such cost shall be made unless the cost of compensation for said Consultant services shall have been Approved by DCAMM's Director of Programming prior to the commencement of such services. DCAMM's Director of Programming may approve a lump sum fee.
- (ii) Permit filing fees and other actual costs for items not included in the Basic Fee, including special printing, but only when specifically authorized in writing in advance by DCAMM's Director of Programming.
- (iii) Document copies in excess of numbers specified in the Contract if requested by DCAMM.

DCAMM shall not reimburse the Designer for any telephone or other out-of-pocket expenses unless specifically Approved in advance as provided above.

**7.2 Travel**

DCAMM shall not reimburse the Designer for travel expenses under this Contract, provided, however, that in special circumstances and with prior written Approval by DCAMM’s Director of Programming, the Designer may be reimbursed for out-of-state travel expenses consistent with applicable statutes, rules, and regulations.

**7.3 Overhead Mark-Up**

For solicitation, coordination, inspection, analysis, and evaluation of, and for the assumption of responsibility for, services authorized under Sections 7.1(i) of this Article 7, the Designer shall be paid 10% of the actual expense where the cost of the specific services is estimated not-to-exceed \$100,000. The aforementioned percentage shall be reduced to a lesser equitable percentage to be agreed upon between the parties in writing where the not-to-exceed cost is projected to exceed \$100,000.

**ARTICLE 8: PAYMENTS TO THE DESIGNER**

**8.1 Schedule for Payment of Basic Fee**

The Study Work Plan shall provide for payments of the noncontingent portion of the Basic Fee in a manner that is consistent with the following schedule so that the total paid shall equal the percentage of the noncontingent portion of the Basic Fee set forth at each step unless a different schedule is Approved by the Director of Programming. Amounts reserved in the Study Work Plan for contingencies shall not be payable to the Designer unless the Study Work Plan is amended and Approved by the Director of Programming so as to specifically provide for payments to the Designer from any such contingency amounts for Deliverables to be provided under the amended Study Work Plan.

Approval of ST01 - Study Work Plan .....	3%
Approval of ST02 - Data Collection & Analysis .....	25%
Approval of ST01A - Project Specific Objectives.....	2%
Approval of ST03 - Alternate Solutions.....	25%
Approval of ST04 - Consensus Solution.....	25%
Approval of ST06 - Draft Report Submittal .....	10%
Approval of ST10 - Final Report Submittal.....	10%

**8.2 Applications for Payment**

No payment shall be made for Basic Services except for Approved Deliverables for which payments are specified in the Study Work Plan. All invoices from the Designer shall be submitted to DCAMM accompanied by a completed Commonwealth of Massachusetts Payment Voucher Input Form PV if this is a Commonwealth project, otherwise accompanied by such forms as DCAMM may require. No payment shall be made by DCAMM on any claim for payment submitted more than 45 days later than the Approval by DCAMM’s Director of Programming of the Final Report Submittal.

### **8.3 Right of Offset**

If DCAMM finds that Deliverables previously paid for by DCAMM contained deficiencies, errors, or omissions, or that Designer's quality control procedures were not complied with thus necessitating further checking or verification, then DCAMM may withhold from any future payment due to the Designer under this Contract or the Final Design Contract an amount reasonably calculated by DCAMM to cover the cost of correcting the deficiencies, errors, or omissions until the deficiencies, errors, or omissions have been corrected. DCAMM may also offset against any payment due to the Designer under this Contract or the Final Design Contract the amount of any costs incurred by DCAMM arising from the Designer's failure to provide required services, or the Designer's deficiencies, errors or omissions. Nothing in this paragraph shall limit any legal remedies of DCAMM 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.

## **ARTICLE 9: DEFAULT, TERMINATION**

### **9.1 DCAMM's Right to Terminate**

By written notice to the Designer, DCAMM may terminate this Contract, in whole or in part, at any time for either DCAMM's convenience or for the failure of the Designer to fulfill its obligations under this Contract.

### **9.2 Termination by DCAMM for Convenience**

DCAMM shall incur no liability by reason of a termination for convenience, except for the obligation to pay in accordance with this Contract progress payments including proportionate payment for partially completed work and (if applicable) reimbursable expenses accruing through and including the date of termination, which obligation shall not exceed the limits established for the services as to which DCAMM has expressly authorized the Designer to proceed, plus reasonable costs incurred in connection with the termination as approved by the Director of Programming. The payments to the Designer shall not exceed the fair value of the Designer's services, as determined by DCAMM. No amount shall be allowed for anticipated profit on unperformed services. Termination of this Contract for convenience shall not impair the right of DCAMM to recover damages occasioned by the fault or default of the Designer in the performance of its duties under this Contract.

### **9.3 Termination by DCAMM for Cause**

If this Contract is terminated due to the failure of the Designer to fulfill the Designer's obligations under this Contract, DCAMM may assume those obligations, replace them, or prosecute them to completion by contract or otherwise. In such case, the Designer shall be liable to DCAMM for any additional cost, including administrative costs, incurred by DCAMM, the Public Agency, and the User Agency thereby. These rights and remedies of DCAMM are in addition to any rights and remedies provided by law or under this Contract. Termination of this Contract for cause shall not impair the right of DCAMM to recover damages occasioned by the fault or default of the Designer.

#### **9.4 Cross Default**

If the Designer shall enter into a Final Design Contract for the Project then i) default by the Designer under this Contract shall constitute a default by the Designer under the Final Design Contract and ii) a default by the Designer under the Final Design Contract shall constitute a default by the Designer under this Contract. Without limitation, errors and omissions of the Designer in its duties under this Contract shall in no event i) excuse the Designer from its responsibilities under the Final Design Contract or ii) serve as the basis for any claims by the Designer for payments for Additional Services under the Final Design Contract.

#### **9.5 Termination by Designer**

By written notice to DCAMM, the Designer may terminate this Contract if DCAMM, within sixty (60) days following written notice to DCAMM from the Designer of any default by DCAMM hereunder, shall have failed to remove such default. The payments to the Designer shall not exceed the fair value of the Designer's work, as DCAMM shall determine. No amount shall be allowed for anticipated profit on unperformed services.

#### **9.6 Designer's Duties upon Termination**

Upon any termination of this Contract, the Designer shall deliver to DCAMM all data, drawings, specifications, reports, Consultants' work products, 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.

### **ARTICLE 10: RELEASE AND DISCHARGE**

The acceptance by the Designer of the last payment for services paid under the provisions of either Article 8 or Article 9 in the event of termination of this Contract, shall in each instance operate as a release of the Public Entity, the User Agency, DCAMM, 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 DCAMM with the last payment requisition; and except that such acceptance shall not release such parties from any liability they would otherwise have for injuries to third parties resulting from their negligent acts or omissions.

### **ARTICLE 11: RECORDS, DISCLOSURE STATEMENTS, ACCOUNTING CONTROLS, AUDITS**

#### **11.1 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)]

#### **11.2 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, DCAMM 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 subconsultants that directly pertain to, and involve transactions relating to, the Designer or its Consultants and subconsultants. [M.G.L. c. 30, ss. 39R (b)(1)-(2); Executive Order 195]

### **11.3 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 DCAMM, the Designer shall forthwith deliver to DCAMM 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)]

### **11.4 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 certifies that Designer has filed a statement of management on internal accounting controls as set forth in section 11.5 below prior to the execution hereof. [M.G.L. c. 7C, s. 51].

### **11.5 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 DCAMM 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 DCAMM a statement prepared and signed by an independent certified public accountant, stating that the accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to: (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)]

### **11.6 Representation Regarding Audited Financial Statement**

If this is a contract for an amount exceeding \$10,000 or is for the Study 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 11.7 below. [M.G.L. c. 7C, s. 51 M.G.L. c. 30, s. 39R (d)]

#### **11.7 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 DCAMM upon request. [M.G.L. c. 7C, s. 51; M.G.L. c. 30, s. 39R (d)]

#### **11.8 Records Not Public**

Records and statements required to be made, kept, or filed under the provisions of this Article 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 11.2 above.

### **ARTICLE 12: INSURANCE**

#### **12.1 General Requirements**

The Designer shall purchase and maintain insurance of the type and limits listed in this Article 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 Article requires.

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 DCAMM, or otherwise acceptable to DCAMM.

The Designer shall submit three originals of each certificate of insurance acceptable to DCAMM simultaneously with the execution of this Contract. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/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 DCAMM 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.

Termination, cancellation, or material modification of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to DCAMM at least thirty (30) days prior to the effective date thereof, which shall be expressed in said notice.

The Designer is responsible for the payment of any and all deductibles under all of the insurance required below. DCAMM shall not be responsible for the payment of deductibles, self-insured retentions or any portion thereof.

## **12.2 Workers' Compensation, Commercial General Liability, Automobile Liability, and Valuable Papers**

The Designer shall purchase and maintain at its own expense during the term of this Contract the following insurance:

- (i) Workers' Compensation Insurance in accordance with M.G.L. chapter 152.
- (ii) Commercial General Liability Insurance, with a minimum limit of \$1,000,000 each occurrence. The Commonwealth of Massachusetts shall each be listed as an additional insured.
- (iii) Automobile Liability Insurance at a limit of not less than \$1,000,000 each accident.
- (iv) 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 DCAMM, and this coverage shall include coverage for relevant electronic media including, but not limited to, documents stored in computer aided design drafting (CADD) systems.

## **12.3 Professional Liability**

Unless waived in writing by DCAMM's Director of Programming, 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 Designer Selection Board's advertisement for this Contract, the minimum amount of such insurance shall equal the lesser of \$5,000,000 or 10% of the Estimated Construction Cost as stated in the Designer Selection Board's advertisement for this Contract. Unless the Designer is specifically required to provide project specific insurance in the documents incorporated by reference into Section 3.2, 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 an extended reporting period of at least six years after the earlier of the Approval of the Study or the termination of this Contract. This requirement can be met by providing renewal certificates of professional liability insurance to DCAMM as evidence that this coverage is being maintained.

## **12.4 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.

## **ARTICLE 13: INDEMNIFICATION**

The Designer shall indemnify and hold harmless DCAMM, the User Agency, 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 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 DCAMM 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.

## **ARTICLE 14: MISCELLANEOUS LEGAL REQUIREMENTS**

### **14.1 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 DCAMM 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.

### **14.2 Anti-Boycott Covenant [Executive Order No. 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 M.G.L. c. 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.

### **14.3 Truth-In-Negotiations 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 E incorporated herein by reference.

### **14.4 Employment Eligibility Verification Requirements [8 U.S.C., §§. 1324a, 1324b; M.G.L. c. 149, § 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 this 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.

**14.5 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.

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

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.

**14.7 Service-Disabled Veteran-Owned Business Program [Chapter 108 of the Acts of 2012; Executive Order 546]**

The Awarding Authority encourages the participation of Service-Disabled Veteran-Owned Business Enterprises ("SDVOBE") in its construction and design projects pursuant to Chapter 108 of the Acts of 2012 and Executive Order 546. The benchmark for SDVOBE participation on the Project is 3% of the Contract Price. A SDVOBE for purposes of the Commonwealth's program, is a Service-Disabled Veteran-Owned Small Business ("SDVOSB") as designated by the federal government pursuant to 15 USC §632, whose status can be verified on the U.S. VetBiz Vendor Information Page located at [www.vip.VetBiz.gov](http://www.vip.VetBiz.gov). SDVOBE'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 plan to the Awarding Authority's Compliance Office. Contractor shall report on the amount of SDVOBE 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.

**ARTICLE 15: MINORITY BUSINESS ENTERPRISE & WOMEN BUSINESS ENTERPRISE (MBE/WBE) PARTICIPATION PROVISIONS**

The provisions of Attachment E attached hereto are incorporated herein by reference. The Director of Programming may grant a written waiver of these requirements as they pertain to this Contract. However, if the Designer is selected to execute the Final Design Contract, the requirements shall be met for the aggregate Basic Fee of this Contract and that of the Final Design Contract.

**ARTICLE 16: OTHER NON-DISCRIMINATION, DIVERSITY, EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION PROVISIONS**

The provisions of Attachment C attached hereto are incorporated herein by reference.

**16.1 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 Order 526. 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, DCAMM 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.

**16.2 Nondiscrimination, Diversity, Equal Opportunity and Affirmative Action [Executive Order 526]**

The Designer and any subconsultants shall not engage in discriminatory employment practices; and the Designer certifies that it is in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and commits to purchase 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.

**16.3 Affirmative Action Plan [Executive Order 526]**

If DCAMM is a state agency then pursuant to Executive Order 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 D is incorporated herein by reference.

**16.4 Minority and Women Workforce Reporting.** If the Awarding Authority is a state agency then pursuant to G.L.c.7C, §6 and G.l.c.149, §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.

**16.5 Material Breach**

Any breach of this Article shall be regarded as a material breach of Contract that may subject Designer to appropriate sanctions provided for both by law and in the Contract. DCAMM shall have access to all records which are necessary to document compliance with this Article.

**ARTICLE 17: 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 DCAMM 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.

**ARTICLE 18: AMENDMENTS, SEVERABILITY, WAIVERS**

No amendment to this Contract shall be effective unless it is in writing and is executed by Director of Programming 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. DCAMM reserves the right to waive any provision or requirement of this Contract if DCAMM determines that such waiver is justified and in the public interest. No such waiver shall be effective unless in writing and signed by the Director of Programming of DCAMM. No other action or inaction by DCAMM shall be construed as a waiver of any provision of this Article.

**ARTICLE 19: NON-APPROPRIATION**

Payments are subject to appropriation and shall be made only for deliverables and 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. DCAMM may immediately terminate or suspend this Contract in the event that the appropriation(s) funding this Contract is eliminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Contract.

## **ARTICLE 20: NOTICES, INVOICES**

Notices to the Designer shall be deemed given when hand-delivered to the Designer at the Designer's address specified on page 1 of this Contract, or when deposited in the U.S. mail addressed to the Designer at said address, when delivered by courier to said address, or when delivered via e-mail or facsimile transmission. Unless otherwise specified in writing by DCAMM, notices and deliveries to DCAMM shall be effective only when delivered to DCAMM at the address specified in this Contract and date-stamped at the reception desk or for which a receipt has been signed by the agent or employee designated by DCAMM to receive official notices.

## **ARTICLE 21: MANDATORY MEDIATION.**

In the case of a dispute where the dollar amount in dispute is \$50,000 or more, DCAMM and the Designer shall engage in good faith in a non-binding mediation process using the services of a Neutral mediator, which process shall be concluded within sixty (60) 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 Neutral mediator experienced in mediating planning, 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 DCAMM.

*[This space is intentionally blank]*

**ARTICLE 22: CERTIFICATIONS OF DESIGNER MADE UNDER PAINS AND PENALTIES OF PERJURY**

No changes shall be made in the matters represented in this Article at any time during the life of this Contract without written notification to DCAMM and when required, receipt of written Approval by DCAMM’s Director of Programming from DCAMM. (Attach additional sheets if necessary for each section.)

**22.1 Designer's Beneficial Owners**

By signing this Contract, the Designer certifies under penalties of perjury that the following named entities and individuals are the legal and beneficial owners of the Designer as of the date of the execution hereof [M.G.L. c. 7C, s. 51] (attach additional sheets if necessary):

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

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PARTNERSHIP: (Names of all Partners):

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INDIVIDUAL (Name of Owner):

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**22.2 Persons Having an Interest in this Contract**

M.G.L. c. 7A, s. 6 provides as follows: *"No contract to provide consultant services shall be awarded by the Commonwealth, or by any department, board, commission or other agency acting in its behalf, unless the person signing such contract on behalf of the party contracting to provide such services files with the Comptroller a statement under the penalties of perjury setting forth the names and addresses of all persons having a financial interest therein, not including, however, any person whose only financial interest therein consists of the holding of one percent or less of the capital stock of a corporation contracting to provide such services."*

NOTE: Individuals who sign this Contract in their individual capacity must also complete the certification below as well as sign this Contract. For the purpose of this directive, the term "person having a financial interest" will generally refer to any person who, in some direct manner, will benefit financially from a given contractual relationship with the Commonwealth. However, this may not, in every case, preclude the possibility of an existing financial interest within the meaning of the statute where a financial benefit is to be realized in some indirect manner. Where doubts arise in a specific case, it is advisable that names and addresses be included.

By signing this Contract, the individual executing this Contract on behalf of the Designer hereby certifies under the penalties of perjury that the following sets forth the names and addresses of all persons having a financial interest in this Contract, not including any person whose only financial interest herein consists of the holding of one percent or less of the capital stock of Designer if Designer is a corporation, in addition to the persons listed in section 21.1 above:

<u>Name</u>	<u>Address</u>
_____	_____
_____	_____
_____	_____

**22.3 Professional Registrations**

By signing this Contract, the individual executing this Contract on behalf of the Designer certifies under the penalties of perjury that the following named individuals are registered by the Commonwealth as architects, landscape architects, or engineers pursuant to the provisions of M.G.L. c. 112, ss. 60A - 60O and further that (i) if the Designer is an individual the Designer is the individual named below, (ii) if the Designer is a partnership, the majority of all the partners are persons who are registered architects, landscape architects, or engineers, (iii) 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 (iv) if the Designer is a joint venture, each joint venturer satisfies the requirements of the preceding clauses (i) – (iii) as the case may be [M.G.L. c. 7C, s. 48].

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

[NOTE: The above information must be completed to comply with the provisions of M.G.L. c. 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

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**22.4 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.

**22.5 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 subconsultant 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 subconsultant 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].

**22.6 Tax Returns**

By signing this Contract, the Designer certifies under the penalties of perjury that pursuant to M.G.L. c. 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 M.G.L. c. 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.

*[This space is intentionally blank]*

**22.7 Existing Government Contracts**

By signing this Contract, the Designer certifies under the penalties of perjury that the following 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 DCAMM or any governmental source for services rendered. [M.G.L. c. 7C, s. 51]:

CONTRACT	% COMPLETE	TOTAL FEE ANTICIPATED	FEE RECEIVED

**22.8 Annual Reports; Corporate Filings**

By signing this Contract, the Designer certifies under the penalties of perjury that, if the Designer is a corporation, limited liability company, or limited liability partnership, the Corporation has filed with the Secretary of State all certificates and annual reports required by Chapter 156, (Business Corporation), Chapter 156A (Professional Corporation), Chapter 156B (Business Corporation), Chapter 156C (Limited Liability Company), Chapter 156D (Foreign Corporation), Chapter 108A (Limited Liability Partnership), or by Chapter 180, s. 26A (Non-Profit Corporation) of the Massachusetts General Laws.

**22.9 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."

**22.10 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 of 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.

*[This space is intentionally blank. Signatures to follow on next page.]*

**SIGNATURES**

IN WITNESS WHEREOF, the parties hereto have executed this Contract under seal 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:** \_\_\_\_\_  
(Name of Designer)

By: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print name)

Its: \_\_\_\_\_,  
(Title)  
hereunto duly authorized

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Director of Programming

**ATTACHMENT A: DESIGNER SELECTION BOARD  
ADVERTISEMENT**

## **ATTACHMENT B: FORM OF CONTRACT FOR DESIGN SERVICES**

If selected for final design services the Designer agrees to execute the *Commonwealth of Massachusetts Contract for Final Design and Administration Services* revised as of 2012, a copy of which has been delivered to the Designer or which was posted on the DCAMM web page as of the date of this Contract.

## ATTACHMENT C-MBE/WBE PARTICIPATION

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

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

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

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

- a. The 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 (“MBE/WBE Work”) 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 Designer’s 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 Designer's 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/WBE's for MBE/WBE Work actually performed by them under this Contract, the parties agreeing that the damages for failure to meet the MBE/WBE participation goals are difficult to determine and that the foregoing amount to be retained by 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: AFFRIMATIVE ACTION PLAN**

**ATTACHMENT E: TRUTH IN NEGOTIATIONS CERTIFICATE**

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: CORPORATE VOTE OR OTHER EVIDENCE OF AUTHORITY**

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 G : EXECUTIVE ORDER 504 CONTRACTOR CERTIFICATION FORM

## ATTACHMENT G: EXECUTIVE ORDER 504

### (SECURITY AND CONFIDENTIALITY OF PERSONAL INFORMATION)

#### CONTRACTOR CERTIFICATION FORM - INSTRUCTIONS

Effective January 1, 2009, [Executive Order 504](#) establishes new requirements designed to adopt and implement the maximum feasible measures reasonably needed to ensure the security, confidentiality and integrity of personal information, as defined in [M.G.L. c. 93H](#) and personal data, as defined in [M.G.L. c. 66A](#), maintained by state agencies (herein collectively “personal information”). This requirement only pertains to contracts that require the Contractor’s access to personal information owned or controlled by the contracting agency and systems that contain such data. The Executive Order applies to 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.

In order to comply with the contractor certification requirements of Executive Order 504, agencies must require that all vendors executing contracts on or after January 1, 2009 certify compliance with applicable security measures. The Commonwealth’s Standard Contract Form and Instructions will be amended to include certification of compliance; however, until such time as the Standard Contract Form has been amended, agencies that are subject to Executive Order 504 can comply with this obligation by having vendors entering into any new agreements execute the separate certification form attached. The instructions below provide guidance concerning how to comply with the certification requirements of Executive Order 504.

1. For procurements that use the Standard Contract Form:

a. Until the revised Standard Contract form is issued, if the RFQ or RFR was posted on or before January 1, 2009, but the contract will not have been executed as of January 1, 2009, then vendors contracting with agencies must execute the separate Executive Order 504 Contractor Certification Form attached hereto as Exhibit A for all new contracts.

b. Once the Commonwealth’s Standard Contract Form has been amended, agencies will be in compliance with the certification requirements of Executive Order 504 by having vendors execute the Standard Contract Form as part of the bidder’s response to an RFR or RFQ.

2. After January 1, 2009, in any instances where the agency is not using the Commonwealth’s Standard Contract Form, the agency must have all vendors execute a separate Executive Order 504 Certification Form, which will be available on OSD’s website under “[OSD Forms](#)”

3. After January 1, 2009, Departments executing contract amendments or renewals with existing vendors are encouraged to request execution of a separate Executive Order 504 Contractor Certification Form by those vendors if the vendor has not executed the new version of the Standard Contract Form containing the Executive Order 504 certifications.

## 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](http://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](http://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.*