

**CONTRACT FOR PROJECT MANAGEMENT SERVICES**  
**(Accelerated Repair Program)**

This Contract is made this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ between  
(day) (month) (year)  
the \_\_\_\_\_,  
(Owner) (street)  
\_\_\_\_\_, **Massachusetts**, \_\_\_\_\_  
(City) (State) (Zip Code)  
hereinafter called "the Owner" and \_\_\_\_\_  
(Owner's Project Manager)  
\_\_\_\_\_  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,  
(street) (city) (State) (Zip Code)  
hereinafter called the "Owner's Project Manager" to provide the Project Management services required to complete the  
Basic and Extra Services described herein at \_\_\_\_\_  
(name/description of Project)  
\_\_\_\_\_  
\_\_\_\_\_

The Owner's Project Manager is authorized to perform the services required by this Contract through the Schematic Design Phase. At the Owner's option, the Owner's Project Manager may be authorized to perform services for subsequent design phases and/or the Construction Phases and Completion Phase, at which time a mutually agreed upon amendment to this Contract will be executed between the Owner and the Owner's Project Manager.

For the performance of the services required under this Contract for the Schematic Design Phase, and excluding those services specified under Articles 8.3, 8.4, 8.5, 8.6, and 8.7, the Owner's Project Manager shall be compensated by the Owner for Basic Services in accordance with the Payment Schedule included as Attachment A.

IN WITNESS WHEREOF, the Owner and the Owner's Project Manager have caused this Contract to be executed by their respective authorized officers.

OWNER  
\_\_\_\_\_  
(print name)  
\_\_\_\_\_  
(print title)  
By \_\_\_\_\_  
(signature and seal)  
Date \_\_\_\_\_

OWNER'S PROJECT MANAGER  
\_\_\_\_\_  
(print name)  
\_\_\_\_\_  
(print title)  
By \_\_\_\_\_  
(signature )  
Date \_\_\_\_\_

(Attach Certificate of Vote of Authorization)

TABLE OF CONTENTS

|  | <u>Page</u> |
|--|-------------|
| Project description, fee and signatures.....                   | 1           |
| ARTICLE 1 DEFINITIONS.....                                     | 3           |
| ARTICLE 2 RELATIONSHIP OF THE PARTIES.....                     | 5           |
| ARTICLE 3 RESPONSIBILITIES OF THE OWNER.....                   | 6           |
| ARTICLE 4 RESPONSIBILITIES OF THE OWNER’S PROJECT MANAGER..... | 6           |
| ARTICLE 5 SUBCONSULTANTS.....                                  | 7           |
| ARTICLE 6 TERM AND TIMELY PERFORMANCE.....                     | 8           |
| ARTICLE 7 COMPENSATION.....                                    | 8           |
| ARTICLE 8 BASIC SERVICES.....                                  | 9           |
| ARTICLE 9 EXTRA SERVICES.....                                  | 20          |
| ARTICLE 10 REIMBURSABLE EXPENSES.....                          | 21          |
| ARTICLE 11 RELEASE AND DISCHARGE.....                          | 21          |
| ARTICLE 12 ASSIGNMENT, SUSPENSION, TERMINATION.....            | 22          |
| ARTICLE 13 NOTICES.....  | 23          |
| ARTICLE 14 INDEMNIFICATION OF OWNER AND AUTHORITY.....         | 23          |
| ARTICLE 15 INSURANCE.....                                      | 24          |
| ARTICLE 16 OWNERSHIP OF DOCUMENTS.....                         | 26          |
| ARTICLE 17 REGULATORY AND STATUTORY REQUIREMENTS.....          | 27          |

ATTACHMENT A: PAYMENT SCHEDULE

ATTACHMENT B: KEY PERSONNEL

ATTACHMENT C: FORM OF PROJECT MANAGEMENT SERVICES CONTRACT AMENDMENT

## ARTICLE 1: DEFINITIONS

**APPROVAL** – a written communication from the Owner approving either the work of the current Phase, as identified on Attachment A, or authorizing the Owner’s Project Manager to proceed to the next Phase or approving the scope and compensation for either Extra Services or Reimbursable Expenses.

**ARCHITECT/ENGINEER** – herein also referred to as the **DESIGNER** -- the person or firm with whom the Owner has contracted to perform the professional designer services for this Project.

**AUTHORITY** – Massachusetts School Building Authority or its authorized representative, created by St. 2004, c. 208.

**BASIC SERVICES** – the minimum scope of services to be provided by the Owner’s Project Manager under this Contract, unless the Contract is otherwise terminated pursuant to Article 12.

**CERTIFICATE OF FINAL COMPLETION** – The form prescribed by the Authority which contains the certification of the Designer, OPM and the Owner that the Project has reached Final Completion.

**COMMISSIONING CONSULTANT** – a person or firm engaged by the Authority to provide building commissioning services, including advisory services during design and construction.

**CONTRACT** – this Contract, inclusive of all Attachments, between the Owner and the Owner’s Project Manager; all written amendments to this Contract; and all Approvals issued pursuant to this Contract.

**CONTRACTOR** or **GENERAL CONTRACTOR** – the person or firm with whom the Owner has contracted to perform the construction for this Project.

**EXTRA SERVICES** – services requested by the Owner to be performed by the Owner’s Project Manager but which are additional (or “extra”) to the services performed as Basic Services.

**FEE FOR BASIC SERVICES** – the fee to be paid to the Owner’s Project Manager for satisfactorily performing, in the Owner’s sole discretion, the Basic Services required under this Contract, exclusive of the compensation to which the Owner’s Project Manager is entitled pursuant to Articles 9 and 10.

**FINAL COMPLETION** – The work has been completed in accordance with the Construction Contract Documents and the educational specifications, schematic plans and drawings and the Project Funding Agreement approved by the Authority.

**GENERAL LAWS** – the Massachusetts General Laws as amended, including any rules, regulations and administrative procedures implementing said laws.

**GUIDELINES AND STANDARDS** – Documents published by the Authority, including, but not limited to, regulations, policies, procedures, guidelines, Modules, Feasibility Study Guidelines, Science Laboratory Guidelines, and Project Advisories, which are all incorporated herein by reference, that supplement the tasks of Owner’s Project Managers contracting with Owners for projects receiving any funding from the Authority, as they may be amended from time to time by the Authority.

NOTICE to PROCEED – the written communication issued by the Owner to the Contractor authorizing him to proceed with the construction contract and establishing the date for commencement of the contract time.

KEY PERSONNEL - The individuals or subconsultants identified by the Owner's Project Manager to perform Owner's Project Management services pursuant to this Contract, as identified in Attachment B and in the Owner's Project Manager's response to the RFR for Project Management Services (MSBA-RFR-AccRepOPM-2021) which is incorporated herein by reference. Key Personnel include the Project Director, Project Manager, Project Representative and any subconsultants named therein.

OWNER – the entity identified as such on page one of this Contract, or its authorized representative, that is the owner of the property that is the site of the Project and is responsible for administering this Contract.

OWNER'S PROJECT MANAGER or OPM - the individual, corporation, partnership, sole proprietorship, joint stock company, joint venture or other entity identified as such on page one of this Contract performing the professional Project Management Services under this Contract pursuant to the requirements of M.G.L. c. 149, § 44A½ and 963 CMR 2.11.

PHASE – a distinct portion of the work of this Contract and its associated duration, as identified on Attachment A. An Approval to proceed for each Phase is required from the Owner.

PRINCIPALS – the owners and/or officers of the Owner's Project Manager who are actively involved in the management of the Project.

PROJECT – all work that pertains to the study, planning, design, construction, reconstruction, installation, demolition, maintenance or repair, if any, as defined in the Project Funding Agreement.

PROJECT BUDGET – a complete and full enumeration of all costs of the Project, as defined in the Project Funding Agreement.

PROJECT FUNDING AGREEMENT - the Project Funding Agreement described in the 963 CMR 2.02 and executed by the Authority and the Owner.

PROJECT SCHEDULE – a complete list of all activities, time and sequence required to complete the Project, as defined in the Project Funding Agreement.

PROJECT DIRECTOR – the employee of the Owner's Project Manager who has been designated in writing by the Owner's Project Manager as its authorized representative, as approved by the Owner, and subject to the approval of the Authority, pursuant to the requirements of M.G.L. c.149 §44A½ and 963 CMR 2.11 and shall be the person who shall oversee and be responsible for all Project Management Services provided under this Contract.

PROJECT REPRESENTATIVE – the employee or a Subconsultant of the Owner's Project Manager, who shall be dedicated exclusively to the Project, on-site full-time during the Construction Phase in accordance with the requirements of Article 8.6.2.

SUBCONTRACTOR – a person or entity having a direct contractual relationship with the Contractor, who has the contract to perform the construction of the Project, except as otherwise specifically provided or required herein or by Law. Subcontractor when used also means “Trade Contractor” except when otherwise specified.

SUBCONSULTANT – any individual, company, firm, or business having a direct contractual relationship with the Owner’s Project Manager, who provides services on the Project.

TRADE CONTRACTOR – Subcontractors having a direct contractual relationship with the Contractor, to perform one or more sub-bid classes of work listed in M.G.L. c.149 §44F and all other sub-bid classes of work selected by the public agency for the Project, provided the sub-bid work meets or exceeds the threshold sum identified in M.G.L. 149 §44F(1).

## ARTICLE 2: RELATIONSHIP OF THE PARTIES

- 2.1 The Owner’s Project Manager shall act as an independent contractor of the Owner in providing the services required under this Contract.
- 2.2 The Owner’s Project Manager warrants and represents to the Owner that it has fully, completely and truthfully represented the qualifications and skills of the Owner’s Project Manager, its Subconsultants, agents, servants and employees in the proposal submitted by the Owner’s Project Manager, the Contract documents and in all communications with the Owner relative to this Contract and the services to be performed hereunder by the Owner’s Project Manager, its Subconsultants, agents, servants and employees.
- 2.3 The Owner’s Project Manager shall perform its services under this Contract with no less than that degree of skill and care ordinarily exercised by similarly situated members of the Owner’s Project Manager’s profession on projects of similar size, scope and complexity as is involved on the Project. The Owner’s Project Manager’s services shall be rendered in accordance with this Contract.
- 2.4 The Designer is solely responsible for the design requirements and design criteria for the Project (except to the extent specifically delegated to others) and for performing in accordance with the contract between the Owner and Designer.
- 2.5 The Contractor shall be solely responsible for construction means, methods, techniques, sequences and procedures, the Contractor’s schedules, and for safety precautions and programs in connection with the Project and for performing in accordance with the Owner-Contractor Agreement. The Owner’s Project Manager shall be responsible for the Owner’s Project Manager’s negligent acts or omissions but shall not have control over or charge over acts or omissions of the Contractors, Subcontractors, or the agents or employees of the Contractor or Subcontractors, the Designer, the Authority, the Owner or the Commissioning Consultant.
- 2.6 Nothing in this Contract shall be construed as an assumption by the Owner’s Project Manager of the responsibilities or duties of the Contractor or the Designer. The Owner’s Project Manager’s services shall be rendered compatibly and in coordination with the services provided by the Designer. It is not intended that the services of the Owner’s Project Manager and Designer be competitive or duplicative, but rather complementary. The Owner’s Project Manager shall be entitled to rely upon the Designer and Contractor for

the proper performance of their obligations pursuant to their respective contracts with the Owner.

### ARTICLE 3: RESPONSIBILITIES OF THE OWNER

- 3.1 The Owner shall be responsible to oversee and monitor the performance of the Owner's Project Manager to ensure that it performs its obligations in a satisfactory manner. The Owner shall provide the necessary general direction and broad management coordination required to execute the Project.
- 3.2. The Owner shall designate an individual or individuals who shall have the authority to act on behalf of the Owner under this Contract and who shall be responsible for day-to-day communication between the Owner and the Owner's Project Manager.
- 3.3 Upon satisfactory completion of services performed, the Owner shall make payments to the Owner's Project Manager as provided in Articles 7, 8, 9 and 10.
- 3.4 The Owner shall be responsible for requiring the Contractor and/or the Designer to comply with their respective contract obligations and to cooperate with the Owner's Project Manager.
- 3.5 The Owner shall provide timely information with respect to its requirements relative to the Project Schedule and the Project Budget, and shall further give timely notice to the Owner's Project Manager of any changes or modifications to the same.
- 3.6 To the extent such data is available and deemed relevant to the Proposed Project by the Owner, the Owner shall furnish to the Owner's Project Manager existing surveys of the Project site, building plans, borings, test pits, structural, mechanical, chemical or other test data, tests for air and water pollution and for hazardous materials, photographs and utility information. The Owner's Project Manager shall be entitled to reasonably rely upon the sufficiency and accuracy of the information furnished under this Article 3.6, provided that the Owner's Project Manager shall notify the Owner in writing of any deficiencies in such data that the Owner's Project Manager becomes aware of.

### ARTICLE 4: RESPONSIBILITIES OF THE OWNER'S PROJECT MANAGER

- 4.1 The Owner's Project Manager shall provide project management services to monitor procurement procedures, design, construction and other related activities and to facilitate, coordinate and manage the Project with respect to timely performance in accordance with the Project Schedule and the requirements of the Accelerated Repair Program and monitor the quality of services and workmanship and shall recommend courses of action to the Owner when respective contractual requirements are not being fulfilled. Services shall continue through substantial use and occupancy by the Owner, and Project closeout. As part of Basic Services, the Owner's Project Manager shall provide information as requested during final auditing as conducted by the Authority.
- 4.2 The Owner's Project Manager shall perform the services required under this Contract in conformance with applicable federal, state, and local laws, ordinances, and regulations.
- 4.3 The Owner's Project Manager shall report to the Owner any act or inaction in connection with the Project which the Owner's Project Manager believes creates a substantial health or

safety risk. Notwithstanding the immediately preceding sentence, the Owner's Project Manager shall not assume responsibility for safety precautions and programs in connection with the Project, which shall remain the sole responsibility of the Contractor.

- 4.4 The Owner's Project Manager shall comply with terms and conditions of all project agreements executed between the Owner and the Authority and any and all administrative directives issued by the Authority now in effect or hereafter promulgated during the term of this Contract, without any additional compensation. The Owner shall reasonably compensate the Owner's Project Manager for complying with any such term or condition or directive, that was not provided to or was not readily available to the Owner's Project Manager prior to such Services being performed and that materially impacts the Owner's Project Manager's scope, or other aspect of its Services, Fee, schedule, or any obligations and responsibilities under this Contract.
- 4.5 The Owner's Project Manager acknowledges the importance that the Owner attributes to the abilities and qualifications of the Key Personnel of the Owner's Project Manager's team, including Subconsultants, and the continuity of Key Personnel participation in the services to be provided under this Contract. This Contract has been entered into on the representation of the Owner's Project Manager that the individuals, consultants, assignments and responsibilities will be maintained throughout the duration of this engagement. No substitution or replacement of individuals or change in the Subconsultants, listed in Attachment B, shall take place without the prior written approval of the Owner, except when necessitated by causes beyond the Owner's Project Manager's control. If the Owner's Project Manager proposes to replace one of the Key Personnel of the Owner's Project Manager's team, the Owner's Project Manager shall propose a person or consultant with qualifications at least equal to the person or firm the Owner's Project Manager proposes to replace. The Owner shall have the right to approve any substitution or replacement or change in status for the persons or Subconsultants listed in Attachment B and such approval shall not be unreasonably withheld. At the request of the Owner, the Owner's Project Manager shall consult with the Owner to resolve any situation in which the Owner determines that a member of the Owner's Project Manager's team is failing to perform services in an acceptable manner to the Owner. The Owner shall have the right to direct the removal of any such person or consultant. No act or omission of the Owner or the Authority made or permitted under this Section shall relieve the Owner's Project Manager of its responsibility for the performance of the services specified in this Contract.
- 4.6 The Owner's Project Manager shall employ at all times professional and support personnel with requisite expertise and adequate numbers to assure the complete, timely and high quality performance of the obligations of the Owner's Project Manager.
- 4.7 The Owner's Project Manager shall be and shall remain liable to the Owner for all damages incurred by the Owner as a result of the failure of the Owner's Project Manager to perform in conformance with the terms and conditions of this Contract.

#### **ARTICLE 5: SUBCONSULTANTS**

- 5.1 The Owner's Project Manager may employ Subconsultants, subject to the prior written approval of the Owner and subject to Paragraph 10.3 in order to perform services under this Contract. The employment of Subconsultants shall not in any way relieve the Owner's Project Manager from its responsibilities under this Contract. Nor shall the Owner's approval

of a Subconsultant in any way relieve the Owner's Project Manager from its responsibilities under this Contract.

- 5.2 Upon request, the Owner's Project Manager shall provide the Owner copies of its agreements with Subconsultants, including amendments thereto, and shall consult with the Owner with respect to the inclusion therein of appropriate terms and conditions to assure timely, efficient, and competent performance of the Subconsultants.
- 5.3 No substitution of Subconsultants and no use of additional Subconsultants shall be made without prior written approval of the Owner, which approval shall not be unreasonably withheld.
- 5.4 No Subconsultant to the Owner's Project Manager shall have recourse against the Owner or the Authority for payment of monies alleged to be owed to the Subconsultant by the Owner's Project Manager, and the Owner's Project Manager shall include in all contracts with its Subconsultants language so providing.

#### ARTICLE 6: TERM AND TIMELY PERFORMANCE

- 6.1 The Owner's Project Manager acknowledges that expeditious completion of the Owner's Project Manager's services and the Project is of the utmost importance to the Owner. The term of this Agreement shall commence on the date stipulated in an Approval to proceed from the Owner. The Owner's Project Manager shall complete the services required under this Contract in a prompt and continuous manner. The Owner's Project Manager shall perform its services in a timely manner and shall not delay the work of the Designer or the Contractor. The Owner's Project Manager shall monitor the performance of the Designer and the Contractor in accordance with schedules of performance that are established under their contracts with the Owner. The Owner's Project Manager shall immediately advise the Owner, as well as the Designer or the Contractor, in writing, anytime the Owner's Project Manager determines that either the Designer or the Contractor's performance is jeopardizing the Project Schedule or the Project Budget.
- 6.2 Time is of the essence in the performance of the Owner's Project Manager's obligations under this Agreement and under any amendment. The Owner's Project Manager agrees that no other work in its organization will be permitted to interfere with its timely performance of the work required under this Agreement or any amendment.
- 6.3 The Owner's Project Manager's services are to be provided in accordance with the time schedule set forth in the Project Funding Agreement. If the schedule changes causing the need for revisions to the Owner's Project Manager's services, the Owner's Project Manager shall notify the Owner of the revisions to its services. The Owner shall have the right to extend the term of this Contract by amendment. All the rights and obligations of the parties for such extended periods shall be as set forth in this Contract or in the amendment.

#### ARTICLE 7: COMPENSATION

- 7.1 For the satisfactory performance of all services required pursuant to this Contract, excluding those services specified under Articles 9 and 10, the Owner's Project Manager shall be compensated by the Owner in an amount up to the Not-to-Exceed Fee for Basic Services,



identified on Attachment A. The Owner's Project Manager shall submit invoices on a monthly basis in accordance with the Payment Schedule included as Attachment A. The Owner shall make payments to the Owner's Project Manager within 30 days of the Owner's approval of the invoice, which approval shall not be unreasonably withheld or delayed.

- 7.2 The Fee for Basic Services shall include, but not necessarily be limited to, all labor, overhead, profit, insurance, legal services, transportation, communication expenses, reasonable printing and copying necessary for completion of the Project. The fee for Basic Services also shall include (a) the rebidding and re-solicitation of general bids if due to the fault of the Owner's Project Manager, and (b) assisting the Owner as provided by section 8.1.4.2 in litigation or resolution of claims or other administrative proceedings associated with a bid protest arising out of the Designer contract or the construction contract and for assistance beyond the requirements of 8.1.4.2 if such litigation or claims are due to the fault of the Owner's Project Manager.
- 7.3 When the Owner's Project Manager receives payment from the Owner, the Owner's Project Manager shall promptly make payment to each Subconsultant whose work was included in the work for which such payment was received. The Owner shall have the contractual right to investigate any breach of performance of a Subconsultant and to initiate corrective measures it determines are necessary and in the best interest of the Owner.
- 7.4 The Owner's Project Manager shall be paid the remainder of the Fee for Basic Services, less previous payments, upon acceptance by the Owner of the Certificate of Final Completion and submission of evaluations.

## ARTICLE 8: BASIC SERVICES

The Owner's Project Manager shall perform the following Basic Services:

### 8.1 Project Management (For All Phases)

8.1.1 The Owner's Project Manager shall prepare a communication and document control procedure for the duration of the Project. This procedure shall detail the responsibilities and lines of communication among all Project participants (Owner, Authority, Owner's Project Manager, Designer, Contractor, Subcontractors and other consultants, vendors or suppliers) and establish the procedure for correspondence, document control, designer and contractor submittal logs, change order reporting logs and other tracking logs, as needed. A draft of the communication plan shall be submitted to the Owner for approval within 30 days of the Approval to proceed with this Contract and be further updated (a) as needed to include the award of construction contract(s) and (b) no later than 30 days after Approval to Proceed to the Construction Phase of each project. The Owner's Project Manager shall include the Designer in its distribution of the Project Budget, Schedule, Monthly Progress Report and other reports as appropriate and as outlined in the Communications Plan.

8.1.1.2 The Owner's Project Manager shall assist the Owner in the preparation of all information, material, documentation, and reports that may be required or requested by the Authority including without limitation, requests for reimbursement, and audit materials. The Owner's Project Manager shall assist the Owner in the preparation of all material and documents, including bid solicitation

and construction contracts, necessary for the Owner to ensure compliance with the federal Davis Bacon and Massachusetts labor standards.

8.1.1.3 The Owner's Project Manager shall prepare agendas for and attend school building committee meetings, attend meetings with other representatives of the Owner, municipal administration and the school department, and attend neighborhood meetings relating to the Project, and participate as a member of the Owner's Prequalification Committee as applicable. The Owner's Project Manager shall take minutes of all of the above-referenced meetings and promptly distribute minutes of these meetings to the Owner.

8.1.1.4 The Owner's Project Manager shall review all applications for payments, requisitions and invoices relating to the Project as submitted by the Designer, General Contractor, equipment vendors and all other prime contractors and suppliers and make recommendations to the Owner relative to amounts due.

## 8.1.2 Project Control

During the Construction Documents and Bidding Phases, the Owner's Project Manager shall monitor and report to the Owner and the Authority any changes to the Project Budget and Schedule established in the Owner-Authority Project Funding Agreement.

### 8.1.2.1 Project Budget

The Owner's Project Manager shall prepare a detailed baseline Project Budget in a form acceptable to the Owner and the Authority, which will serve as the Project control against which all Designer estimates, contractor bids and other cost information will be measured. The Owner's Project Manager shall submit this detailed baseline Project Budget to the Owner and the Authority within 30 days of Approval to proceed to the Construction Documents Phase. The Owner's Project Manager shall maintain and update the Project Budget throughout the term of this Contract. The Owner's Project Manager shall report any variances to the baseline Project Budget as part of the Monthly Progress Report in accordance with the Project Funding Agreement.

The Owner's Project Manager shall prepare revisions to the Project Budget, as needed, and submit them to the Owner for approval. The Owner's Project Manager shall assist the Owner in preparing and submitting the Authority's Budget Revision Request form to the Authority. The OPM shall assist the Owner in providing materials and documentation as requested by the Authority to support the Authority's determination of eligibility, if any, for these requests.

### 8.1.2.2 Cost Estimating

The Owner's Project Manager shall review the Designer's cost estimates at each Design phase (schematic and construction documents). The Owner's Project Manager shall identify and notify the Owner of any issues or concerns with the Designer's cost estimates.

In the event that the cost as estimated by the Designer exceeds the construction cost in the Project Budget at any of the Design phases, the Owner's Project Manager shall consult with the Designer, and recommend to the Owner appropriate revisions to the scope of work.

The Owner's Project Manager shall develop cash flows and provide updated cash flows with its Monthly Progress Report described in Article 8.1.3.

The Owner's Project Manager shall complete a spreadsheet which tracks and compares the Designer's cost estimates at each Design Phase, from schematic design to the final construction cost estimate provided by the Designer, complete with a single line outline specification description for each item with the detailed unit rate or item cost buildup provided as a backup in each case.

#### 8.1.2.3 Project Schedule

The Owner's Project Manager shall prepare a detailed baseline Project Schedule in a form acceptable to the Owner and the Authority, which will serve as the Project control against which all Project progress will be measured. The Owner's Project Manager shall submit this detailed baseline Project Schedule to the Owner and the Authority within 30 days of Approval to proceed to the Construction Documents Phase. The Owner's Project Manager shall maintain and update the Project Schedule throughout the term of this Contract. The Owner's Project Manager shall assess the actual progress of the Project relative to the baseline Project Schedule and report any variances from the baseline Project Schedule as part of the Monthly Progress Report.

In the event that actual progress of the Project varies from the baseline Project Schedule, the Owner's Project Manager shall consult with the Designer and the Contractor and make appropriate recommendations to the Owner relative to actions that should be taken by the Designer or the Contractor to achieve the baseline Project Schedule and/or recommend revisions to the Project Schedule. The Owner's Project Manager shall not be responsible for delays caused by the Designer, Contractor or Subcontractors, or the employees, agents or Subconsultants of the Designer, Contractor or Subcontractors.

The Owner's Project Manager shall prepare revisions to the Project Schedule, as needed, and submit them to the Owner for approval.

#### 8.1.2.4 Construction Schedule

The Contractor shall be responsible for preparing and updating its construction schedule on a monthly basis. The Owner's Project Manager shall meet once each month with the Contractor and Designer to review and update its schedule, develop the monthly progress information to support the Contractor's payment estimate, and monitor the Contractor's performance for compliance with its contract.

The Owner's Project Manager shall notify the Owner of and include in its Monthly Progress Report any significant changes or delays to the construction schedule.

The Owner's Project Manager shall make appropriate recommendations to the Owner relative to the actions that should be taken by the Contractor and/or advise the Owner when liquidated damages, if included in the construction contract, are anticipated to be incurred.

### 8.1.3 Monthly Progress Report

The Owner's Project Manager shall submit to the Owner and the Authority no later than the twelfth day of each calendar month a written Monthly Progress Report summarizing activity during the preceding calendar month. The first Monthly Progress Report shall be submitted to summarize the month in which the Contract is executed, and the last Monthly Progress Report shall be submitted to summarize the month in which the Owner receives Final Audit approval by the MSBA's Board of Directors. The Monthly Progress Report shall be submitted using the Authority's OPM Monthly Reporting System in accordance with applicable Guidelines and Standards and shall describe work performed by all project participants (OPM, Designer, Contractor) during the reporting period and work planned for the next reporting period. The report shall also address matters of schedule adherence (Project Schedule as well as individual completion percentages for design and construction), costs to date (updated Project Budget and actual expenses incurred), change orders and potential change orders, cash flow projections, Contractor's safety performance, Designer's QA/QC, Contractor's environmental compliance, community issues, Designer and Contractor MBE/WBE activities, the Designer and Contractor M.G.L. c. 149 Workforce Participation activities, any issues that could result in additional time and/or additional costs and any anticipated problems/concerns together with recommended solutions.

### 8.1.4 Change Order and Claims Administration

The Owner's Project Manager shall review and coordinate its review with the Designer and make specific document and processing recommendations to the Owner, consistent with the General Laws and the construction contract documents, which minimize change order and claims processing costs and time. Services provided by the Owner's Project Manager shall include:

#### 8.1.4.1 Change Order Administration

- 8.1.4.1.1 Review all Contractor proposals for change orders and supporting schedules for time extension requests. For change orders in excess of \$100,000, prepare independent cost estimate analysis with associated schedule impact.
- 8.1.4.1.2 Initiate, conduct, and document negotiations through a memorandum of negotiations with the Contractor.
- 8.1.4.1.3 For all change order requests by the Contractor, make recommendations to the Owner for their acceptance or rejection.
- 8.1.4.1.4 Prepare and finalize any documentation required for processing change orders including documentation to support or reject the change.
- 8.1.4.1.5 Maintain a status report system for logging and tracking change orders, claims, and disputes to resolution. At a minimum, monthly reports shall include contract number, description of

change order or claim, reason for change, date initiated, magnitude of estimated cost, actions required (identification of action parties and response dates) and status. This report shall be included in the Monthly Progress Report.

#### 8.1.4.2 Claims and Disputes Management

- 8.1.4.2.1 Implement a claims management procedure consistent with the construction contract documents.
- 8.1.4.2.2 Analyze Contractor claims and propose recommendations to the Owner in support of the Owner's obligations under the claims article of the construction contract documents. Prepare responsive positions in coordination with the Owner, and obtain appropriate input from the Designer and/or Contractor.
- 8.1.4.2.3 In the event that a dispute arises between the Contractor, and/or any Subcontractors, and/or the Designer, including, but not necessarily limited to, disputes regarding the performance, quality, acceptability, fitness and rate of progress of the Project or the requirements of the Designer's contract or the Contractors' construction contract(s), the Owner's Project Manager shall report any such claims, disputes or other matters in question relating to the performance by the Contractor, Subcontractor, Designer or vendor to the Owner and the Authority in writing as soon as reasonably possible.
- 8.1.4.2.4 The Owner's Project Manager shall take all reasonable efforts designed to resolve any such claims, disputes, or other matters in question.

#### 8.1.5 MBE/WBE and Workforce Participation Compliance Monitoring (All Phases)

- 8.1.5.1 The Owner's Project Manager shall monitor and report on the Designer's and Contractor's compliance with MBE/WBE requirements as set forth in M.G.L. c. 7C, §6 and M.G.L. c. 7, §61.
- 8.1.5.2 The Owner's Project Manager shall monitor and report on the Designer's and Contractor's compliance with the Commonwealth's Workforce Participation requirements set forth in M.G.L. c. 149, § 44A(2)(g).

8.1.6 Prior to Designer Selection, the Owner's Project Manager shall assist the Owner in determining the need for and the implementation of site evaluation and testing including, but not necessarily limited to, site surveys, environmental evaluations, hazardous materials evaluation, destructive testing and other investigative work. The determination that any additional services or testing need to be performed shall rest with the Owner or Designer.

#### 8.1.7 Project Records and Reports

The Owner's Project Manager shall maintain a complete Project file including, but not necessarily limited to, a copy of the executed agreements of the Owner-Owner's Project Manager, Owner-Architect/Engineer and the Owner-Contractor including copies of performance and payment bonds, a master list of permits, certificates of insurance, licenses and approvals for the Project, correspondence, daily reports, payment records,

shop drawings, submittals, project schedules, requests for information, change orders/amendments, change directives and meeting minutes. The Owner's Project Manager shall assist the Owner in responding to any public records request received by the Owner.

## 8.2 Schematic Design Phase

### 8.2.1 Designer Selection

The Owner's Project Manager shall assist the Owner in the negotiation of the design contract with the Designer assigned to the Project by the Authority.

### 8.2.2 Schematic Design

The Owner's Project Manager shall monitor the activities and responsibilities of the Designer during this phase and assist the Owner in the review of the proposed scope, schedule and budget, developed by the Designer, including the review of the Designer's preliminary drawings. The Owner's Project Manager shall:

- a. Review the Designer's construction cost estimate pursuant to Section 8.1.2.2. (One estimate during Task 8.2.2)

8.2.2.1 The Owner's Project Manager shall review the schematic design to recommend Value Engineering Changes (VEC) to the Owner. The Value Engineering Change shall include an analysis of the constructability, cost, quality and schedule impact. The Designer will be responsible for a thorough review and recommendation on the technical merit of the VEC.

8.2.2.2 The Owner's Project Manager shall lead design coordination meetings every other week, between the Designer and the Owner and, as required, the Authority, to provide for review and discussion of design/engineering related issues. The Owner's Project Manager shall provide technical assistance to the Owner. The Owner's Project Manager shall take and distribute minutes of these meetings to the Owner.

8.2.2.3 The Owner's Project Manager shall assist in the implementation of additional testing as required by the Designer, including, but not necessarily limited to, environmental evaluations, hazardous materials evaluation, destructive testing and other investigative work in the case of renovation projects.

8.2.2.4 The Owner's Project Manager shall monitor the status of the Designer contract including monitoring the schedule of the Designer, provide review and comment of Designer's work product and make recommendations to the Owner when, in the opinion of the Owner's Project Manager, requirements of the Designer's contract with the Owner are not being fulfilled.

8.2.2.5 The Owner's Project Manager shall meet with the Owner, Designer and other project participants as necessary.

8.2.2.6 The Owner's Project Manager shall assist the Owner with the completion of grant applications for funding for the study of green design strategies and assist by identifying green strategies, as appropriate, for study during this phase. The Owner's Project Manager shall assist the Owner in identifying and

securing additional energy conservation resources from other sources (such as utility conservation programs) and to report on anticipated energy savings from such resources.

### 8.3 Intentionally Omitted

### 8.4 Construction Documents Phase

- 8.4.1 The Owner's Project Manager shall review the construction documents for quality, cost, and schedule improvements, conciseness and clarity. The Owner's Project Manager shall:
- a. Review Designer's cost estimate pursuant to Section 8.1.2.2 of this Contract. (One estimate during Task 8.4)
  - b. Provide advice, consultation and guidance to the Owner relative to value engineering recommendations.
  - c. Work with the Owner and Designer to update the construction budget and schedule.
- 8.4.2 The Owner's Project Manager shall provide advice, consultation and guidance to the Owner and the Designer relative to general contractor and subcontractor prequalification requirements pursuant to M.G.L. c. 149 § 44D<sup>1</sup>/<sub>2</sub> and § 44D<sup>3</sup>/<sub>4</sub> as applicable, including participation as a member of the Owner's Prequalification Committee.
- 8.4.3 The Owner's Project Manager shall monitor and coordinate the schedule, technical accuracy, efficiency, coordination, and constructability of the Project and cost-effectiveness of all designs, drawings, reports, estimates and other work furnished by the Designer. The review of the construction documents shall include compliance with the Project Funding Agreement, constructability, operability and bid-ability as well as document clarity and coordination between drawings and to identify conflicts between drawings and specification. The constructability review will identify potential conflicts, make recommendations specific to any phasing issues, recommend appropriate milestones, constraints and liquidated damages and a review of the project specific requirements in the General Requirements.
- 8.4.4 The Owner's Project Manager's review of the construction documents shall also include, but not be limited to, any concerns of the Owner's Project Manager and/or the Owner relative to access, usable area, parking, utilities, anticipated noise sources during construction and identification of field offices, facilities, supplies and equipment.
- 8.4.5 The Owner's Project Manager shall coordinate the timely review of the construction documents by the Commissioning Consultant to determine that plans and specifications include the recommendations made in regard to materials selection, installation and testing criteria in regard to commissioning and start-up and provide adequate information and allow sufficient time for functional and system testing.
- 8.4.6 The Owner's Project Manager shall monitor the schedule of the Designer, provide review and comment of Designer's work product and make recommendations to the Owner when, in the opinion of the Owner's Project Manager, requirements of

the Designer's contract with the Owner are not being fulfilled.

## 8.5 Bidding Phase

8.5.1 The Owner's Project Manager shall monitor the activities and responsibilities of the Designer in the advertisement, distribution of bidding documents and solicitation of public bids in accordance with M.G.L. c. 149 §§ 44A through 44J and other public construction-related statutes. The Owner's Project Manager shall:

- a. Administer general contractor and subcontractor prequalification requirements pursuant to M.G.L. c. 149 § 44D<sup>1</sup>/<sub>2</sub> and § 44D<sup>3</sup>/<sub>4</sub> as applicable, including participation as a member of the Owner's Prequalification Committee.
- b. Attend, and assist the Owner with, all pre-bid conferences and meetings and, assist, if directed by the Owner.
- c. Attend, and assist the Owner with, all sub-bid and general bid openings and, assist, if directed by the Owner.
- d. Review all sub-bids and general bids in conjunction with Designer's determination of responsiveness, bidder eligibility, completeness, accuracy and price. Provide technical guidance to the Owner relative to its acceptance of bids and determination of bidder responsibility.
- e. Review alternates and make written recommendations as to their acceptance.
- f. If the bid of the lowest eligible and responsible general bidder exceeds the construction budget, the Owner's Project Manager shall consult with the Designer and make recommendations to the Owner in regard to maintaining the Project Budget which may include, consistent with Massachusetts public construction laws, reviewing and recommending acceptance of alternates, re-bidding or seeking additional funding from the City/Town/Regional District.

8.5.2 The Owner's Project Manager shall make recommendations to the Owner relative to the award of a construction contract.

8.5.3 The Owner's Project Manager shall assist the Owner in the preparation and execution of the Owner-Contractor Agreement and shall obtain from the Contractor performance and payment bonds, insurance certificates, and all other documents and certificates required for contract execution.

8.5.4 The Owner's Project Manager shall assist the Owner and the Designer in preparing and sending the Notice to Proceed to the Contractor.

8.5.5 The Owner's Project Manager shall provide the Contractor, Designer, Owner and the Authority with required copies of executed construction contract documents.

## 8.6 Construction Phase

The Owner's Project Manager shall provide supervisory staff for each of the following activities, from Notice to Proceed of the construction contract to contract close-out for each Project.



- 8.6.1 The Owner's Project Manager shall monitor the Designer's administration of the Owner-Contractor Agreement including the processing of submittals, issuance of timely decisions and directives and consultant's or subconsultants' visits to the Project as necessary during the time that construction is occurring on the portions of the work to which the consultant's services relate.
- 8.6.2 The Owner's Project Manager shall provide an on-site Project Representative, who shall be dedicated exclusively to the Project, either as an employee of the Owner's Project Manager or as a subconsultant to the Owner's Project Manager.
  - 8.6.2.1 The Project Representative shall be subject to the approval of the Owner and the Owner reserves the right to require the Owner's Project Manager to replace the Project Representative at any time during the course of the Project.
  - 8.6.2.2 The Project Representative shall have at least five years of experience in on-site supervision of projects similar in size and complexity to the Project.
  - 8.6.2.3 The Project Representative shall be present at all times when the Contractor is conducting operations at the site starting from issuance by the Owner of a Notice to Proceed to the Contractor and continuing until substantial use or substantial completion as determined by the Owner and thereafter on an as needed basis until issuance to the Contractor of a Certificate of Final Completion by the Owner.
- 8.6.3 The Owner's Project Manager shall review the Contractor's schedule of values to determine if it represents a reasonably balanced payment schedule for work. The schedule of values shall include line items for all deliverables, testing requirements and specified operations and maintenance materials. The Owner's Project Manager shall submit recommendations for the Contractor's schedule of values to the Owner within forty-five days of the Owner's Notice to Proceed to the Contractor.
- 8.6.4 The Owner's Project Manager shall review the Contractor's submitted baseline schedule. The Owner's Project Manager shall be responsible for monitoring the timeliness of these submittals and enforcing compliance with schedule submittal requirements of the construction documents. The Owner's Project Manager shall evaluate the Contractor's planning for the execution of the work, evaluate the reasonableness of the proposed schedule and determine if the submitted schedule meets the requirements of the construction documents.
- 8.6.5 The Owner's Project Manager shall provide daily observation and monitoring of construction activities such that all shifts and work activities are observed and documented. Responsibilities shall include:
  - 8.6.5.1 The Owner's Project Manager shall keep a daily log containing a record of weather, the Contractor's work on site, number of workers, visitors to

the site, safety status of the Project, equipment and equipment utilization, material and equipment deliveries, non-compliance with safety procedures and issuance of any safety violation notifications, accidents, general description of work performed and quality of work, visits of code enforcement officials and any resulting reports or orders, verbal instruction to interpretations given to the Contractor, pay items, and any observed delays, deficiencies and field problems.

- 8.6.5.2 The Owner's Project Manager shall prepare weekly progress reports for submittal to the Designer and the Owner that summarize the progress achieved, provide a concise description of problems and include a copy of the daily log.
- 8.6.5.3 The Owner's Project Manager shall assist the Designer in determining if construction and construction related activities are performed in accordance with plans and specifications and the approved shop drawings and are consistent with Massachusetts public construction laws.
- 8.6.5.4 The Owner's Project Manager shall monitor on a daily basis Time and Materials work on change orders for less than \$50,000, including work installed, volume measurements, time sheets, crew sizes and mixes, and equipment utilized.
- 8.6.5.5 The Owner's Project Manager shall evaluate actual quantities and classification of Unit Price work performed by Contractors.
- 8.6.5.6 The Owner's Project Manager shall evaluate field problems, using the proper channels for solution and communication of the information to the Designer and the Owner.
- 8.6.5.7 The Owner's Project Manager shall coordinate and track requests for clarification on drawings/specifications, design changes and proposed change orders.
- 8.6.5.8 The Owner's Project Manager shall prepare responses to Contractor correspondence for the Owner.
- 8.6.5.9 The Owner's Project Manager shall monitor and coordinate the scheduling and activities of independent materials testing functions at the site, including distribution of reports and any necessary actions resulting.
- 8.6.5.10 The Owner's Project Manager shall maintain at the Project site, on a current basis, a record copy of Construction Contract Documents, including, but not necessarily limited to, drawings, specifications, addenda, change orders, and directives as well as all approved shop drawings, product data, samples, submittals, operations and maintenance manuals and all other relevant documents relating to the construction of the Project.
- 8.6.5.11 The Owner's Project Manager shall monitor the Contractor's compliance with federal Davis Bacon prevailing wage requirements and

Massachusetts prevailing wage requirements pursuant to M.G.L. c. 149 §§ 26 to 27H, inclusive including assisting the Owner in cataloging and filing payroll affidavits.

- 8.6.5.12 The Owner's Project Manager shall shoot and maintain Project progress photographs showing construction progress at a frequency sufficient to document major activities or to document safety incidents, differing site conditions and quality issues. The Owner's Project Manager shall maintain a descriptive log and captioning of the photographs on CD.
- 8.6.6 The Owner's Project Manager shall monitor the Contractor's compliance with the construction schedule, identify potential problems, include problem identification on the Monthly Progress Report and make recommendations to the Owner when, in the opinion of the Owner's Project Manager, requirements of the Contractor in the Owner-Contractor Agreement are not being fulfilled.
- 8.6.7 The Owner's Project Manager shall schedule, conduct and prepare minutes of weekly job meetings on progress, coordination and problem resolution and negotiations. The Owner's Project Manager shall prepare and submit minutes to the Owner within three business days of the meeting.
- 8.6.8 The Owner's Project Manager shall schedule the Authority's Commissioning Consultant, as required to support the construction schedule, to provide commissioning services and reports as required.
- 8.6.9 The Owner's Project Manager shall monitor, review and analyze proposed change orders, and claims recommending appropriate action and resolution to the Owner in accordance with Article 8.1.4.
- 8.6.10 The Owner's Project Manager shall review and coordinate its review with the Designer to recommend approval of the General Contractor's monthly payment requisitions. The Owner's Project Manager shall review the Designer's certification that the percentage of work included in the requisition is accurate and the work performed conforms to the construction contract.
- 8.6.11 Intentionally Omitted.
- 8.6.12 The Owner's Project Manager shall verify substantial completion of work; assist the Designer in the Designer's final inspection and receipt of documents, manuals, receipts, certifications, and all other materials required for final closeout as described in the construction contract. The Owner's Project Manager shall coordinate the detailed punchlist with the Designer, including a subsequent walk-through with the Designer and the Authority's Commissioning Consultant. The Owner's Project Manager and the Designer shall then coordinate a walk-through with the Owner to finalize the punchlist. The Owner's Project Manager shall then be responsible for tracking and confirming the completion of the punchlist items.

## 8.7 Completion Phase

- 8.7.1 The Owner's Project Manager shall monitor the activities and responsibilities of the Designer and the Contractor in the close-out and commissioning of the Project and the Owner's Project Manager shall coordinate and execute the Commissioning certification required by the Authority prior to audit closeout.
- 8.7.2 The Owner's Project Manager shall assist in securing and reviewing and recommending approval of all project completion forms and documentation necessary for occupancy and full operation of the facility including, but not necessarily limited to, inspection certificates of local building authorities, Certificate of Substantial Completion, Certificate of Final Completion, Occupancy Permit, shop drawings, as-built drawings, operations and maintenance manuals, warranties, guarantees and any and all documentation as required by the contract documents and the Authority.
- 8.7.3 The Owner's Project Manager shall assist the Owner in completing the written evaluation of the Designer(s) pursuant to M.G. L. c. 7C § 48 and prepare, sign and provide to the Owner for its signature the written evaluation of the Contractor(s) and Trade Subcontractors pursuant to M.G.L. c. 149 §44D.

## ARTICLE 9: EXTRA SERVICES

### 9.1 General

- 9.1.1 Extra Services are those services requested by the Owner to be performed by the Owner's Project Manager but which are additional (or "extra") to the services performed as Basic Services. Such services are not included in the Fee for Basic Services and shall be invoiced and paid for separately. Extra services shall not be deemed authorized until a written Approval is received from the Owner.
- 9.1.2 The proposed cost, scope and schedule of all Extra Services shall be presented to and approved by the Owner in writing prior to the performance of any Extra Services.
- 9.1.3 Cost proposals for Extra Services shall be computed in accordance with the Hourly Rate Schedule established in Attachment A.
- 9.2 Unless specifically prohibited elsewhere and with the prior written Approval of the Owner, the Owner's Project Manager shall perform any of the following services as Extra Services:
- 9.2.1 Preparing special studies, reports, or applications at the written direction of the Owner, other than those specifically required herein as part of Basic Services;
- 9.2.2 Assisting in the appeals process of permitting boards or commissions;
- 9.2.3 Rebidding of the general bid unless such rebidding is made necessary by the fault of the Owner's Project Manager, in which events such rebidding shall be deemed part of Basic Services;

- 9.2.4 Furnishing services in connection with a bid protest filed in court or with the Office of the Attorney General, provided such activities did not arise due to the fault of the Owner's Project Manager;
  - 9.2.5 Furnishing services in excess of Basic Services made necessary by the termination of the General Contractor;
  - 9.2.6 Providing consultation with respect to replacement of work damaged by fire or other casualty during construction;
  - 9.2.7 Assisting the Owner in litigation, claims resolution or non-binding mediation arising out of the Designer contract or the construction contract, provided such litigation or claims did not arise due to the fault of the Owner's Project Manager; and
  - 9.2.8 Providing other services requested by the Owner that are not included as Basic Services pursuant to this Contract.
- 9.3 Invoices for Extra Services shall be accompanied by a complete breakdown listing the name, payroll title, date, number of hours by day, hourly rate and extended amount, per specified task of Extra Services performed. Hourly rates shall be in accordance with the Hourly Rate Schedule in Attachment A.

#### ARTICLE 10: REIMBURSABLE EXPENSES

- 10.1 For coordination and responsibility for the work described in the following paragraphs 10.1.1 and 10.1.2, the Owner's Project Manager shall be reimbursed its actual costs, supported by invoices or receipts. The following are reimbursable expenses:
- 10.1.1 Certain out of pocket expenses paid by the Owner's Project Manager such as filing fees, and permit fees that are normally paid by the Owner; travel to fabrication or manufacturing locations to identify completed, identified, and stored materials or equipment specifically for the Project; field office furnishings.
  - 10.1.2 Any other specially authorized reimbursement deemed essential by the Owner, in the Owner's sole discretion, in writing.
- 10.2 Non-Reimbursable Items: The Owner shall not reimburse the Owner's Project Manager or its Subconsultants for travel expenses, sustenance, telephone, facsimiles, electronic mails, postage and delivery expenses, unless specifically required elsewhere in this Contract.
- 10.3 The Owner's Project Manager shall not be entitled to compensation under this Article for the services of Subconsultants hired to perform Basic Services under this Contract. If a Subconsultant hired to perform Basic Services performs Extra Services approved by the Owner, compensation for such Extra Services shall be made under Article 9.

#### ARTICLE 11: RELEASE AND DISCHARGE

11.1 The acceptance by the Owner's Project Manager of the last payment under the provisions of Article 7 or Article 12 in the event of termination of the Contract, shall in each instance, operate as and be a release to the Owner and the Authority and their employees and agents, from all claims of the Owner's Project Manager and its Subconsultants for payment for services performed and/or furnished, except for those written claims submitted by the Owner's Project Manager to the Owner and Authority with, or prior to, the last invoice.

## ARTICLE 12: ASSIGNMENT, SUSPENSION, TERMINATION

### 12.1 Assignment:

12.1.1 The Owner's Project Manager shall not assign or transfer any part of its services or obligations under this Contract (other than as specified in Article 5), without the prior written approval of the Owner and the Authority. Likewise, any successor to the Owner's Project Manager must first be approved by the Owner and the Authority before performing any services under this Contract. Such written consent shall not in any way relieve the Owner's Project Manager or its assignee from its responsibilities under this Contract.

### 12.2 Suspension

12.2.1 The Owner may, at any time, upon seven (7) days written notice to the Owner's Project Manager, suspend this Contract. If the Owner provides such written notice, the Owner's Project Manager shall be compensated for work satisfactorily performed in accordance with the Contract terms prior to the effective date of such suspension for which invoices have been properly submitted.

### 12.3 Termination

12.3.1 By written notice to the Owner's Project Manager, the Owner may terminate this Contract at any time with or without cause. If such termination shall occur through no fault of the Owner's Project Manager, all compensation and reimbursement due to the Owner's Project Manager in accordance with the Contract terms, for work satisfactorily performed up to the date of termination, including proportionate payment for portions of the work started but incomplete at the time of termination, shall be paid to the Owner's Project Manager, provided no payment shall be made for work not yet performed or for anticipated profit on unperformed work. If such termination is for cause then no further payment shall be due to the Owner's Project Manager beyond the date of termination.

12.3.2 By written notice to the Owner and the Authority, the Owner's Project Manager may terminate this Contract:

- (a) if the Owner, within thirty (30) days following written notice from the Owner's Project Manager of any material default by the Owner under the Contract, shall have failed to cure such default; or

- (b) if, after the Owner's Project Manager has performed all services required during any phase prior to construction, at least six (6) months have elapsed without receipt by the Owner's Project Manager of Approval to proceed with the next Phase of the Project, provided the delay was not the fault of the Owner's Project Manager. This provision shall not apply to an Owner's Project Manager who has received a notice of suspension pursuant to Article 12.2.
- (c) Upon a proper termination by the Owner's Project Manager, the Owner's Project Manager shall be compensated as provided in 12.3.1 above regarding termination without cause.

#### ARTICLE 13: NOTICES

13.1 Any notice required to be given by the Owner or Authority to the Owner's Project Manager, or by the Owner's Project Manager to the Owner or Authority, shall be deemed to have been so given, whether or not received, if mailed by certified or registered mail to the Owner's Project Manager or the Owner at the addresses indicated on page one or to the Authority at 40 Broad Street, Boston, Massachusetts 02109. Notices to the Authority shall be sent to the attention of the Director of Capital Planning.

#### ARTICLE 14: INDEMNIFICATION OF OWNER AND AUTHORITY

- 14.1 With respect to professional services rendered by Owner's Project Manager, to the fullest extent permitted by law, Owner's Project Manager shall defend, indemnify and hold harmless the Owner, and its officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Owner to the extent caused by the negligence of or the breach of any of the provisions of this Contract by the Owner's Project Manager, a person employed by the Owner's Project Manager, or any of its Subconsultants.
- 14.2 With respect to non-professional services rendered by Owner's Project Manager, to the fullest extent permitted by law, Owner's Project Manager shall defend, indemnify and hold harmless the Owner and the Authority, and their officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Owner and/or the Authority arising out of or resulting from the performance of its services provided that such claims, damages, liabilities, injuries, costs, fees, expenses, or losses are attributable to bodily injury or death or injury to or destruction of tangible property and to the extent caused by an act or omission of the Owner's Project Manager, a person employed by the Owner's Project Manager, or any of its Subconsultants.
- 14.3 The indemnification obligation in this Article shall be in addition to, and not a limitation of, any other rights and remedies available to the Owner under this Contract or at law.

## ARTICLE 15: INSURANCE

- 15.1 The Owner's Project Manager shall obtain and maintain at its sole expense all insurance required by law and as may be required by the Authority and by the Owner under the terms of this Contract. The insurance required hereunder shall be provided at the sole expense of the Owner's Project Manager or its Subconsultant, as the case may be, and shall be in full force and effect for the full term of this Contract between the Owner and the Owner's Project Manager or for such longer period as otherwise required under this Contract.
- 15.2 All policies shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts with a financial strength rating of "A" or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the Owner and the Authority.
- 15.3 The Owner's Project Manager and its Subconsultants, shall submit to the Owner original certificates of insurance evidencing the coverage required hereunder, together with evidence that all premiums for such insurance have been fully paid 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 Owner's Project Manager shall submit updated certificates to the Owner and the Authority prior to the expiration of any of the policies referenced in the certificates so that the Owner and the Authority shall at all times possess certificates indicating current coverage. Original certificates shall be provided to the Authority by the Owner's Project Manager upon request by the Authority. Failure by the Owner's Project Manager to obtain and maintain the insurance required by this Section, to obtain all policy renewals, or to provide the respective insurance certificates as required shall constitute a material breach of the Contract and shall be just cause for termination of the services of the Owner's Project Manager under this Contract.
- 15.4 Termination, cancellation, or material modification of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the Owner and the Authority at least thirty days prior to the effective date thereof, which shall be expressed in said notice.
- 15.5 The Owner's Project Manager shall require by contractual obligation, and shall ensure by the exercise of due diligence, that any Subconsultant hired in connection with the services to be provided under this Contract shall obtain and maintain all insurance required by law and as may be required by the Owner under the terms of this Contract.
- 15.6 The Owner's Project Manager or its Subconsultant, as the case may be, is responsible for the payment of any and all deductibles under all of the insurance required by this Contract. Neither the Owner nor the Authority shall be responsible for the payment of deductibles, self-insured retentions or any portion thereof.
- 15.7 Workers' Compensation, Commercial General Liability, Automobile Liability, and Valuable Papers



The Owner's Project Manager shall purchase and maintain at its own expense during the life of this Contract, or such other time period as provided herein, the following types and amounts of insurance, at a minimum:

- 15.7.1 Workers' Compensation Insurance in accordance with General Laws Chapter 152. The policy shall be endorsed to waive the insurer's rights of subrogation against the Owner and the Authority.
- 15.7.2 Commercial General Liability Insurance (including Premises/Operations; Products/Completed Operations; Contractual; Independent Contractors; Broad Form Property Damage; and Personal Injury) with a minimum limit of \$1,000,000 per occurrence, \$2,000,000 aggregate. The Owner's Project Manager shall maintain such insurance in full force and effect for a minimum period of one year after final payment and shall continue to provide evidence of such coverage to the Owner and the Authority. The Owner and the Authority shall be added as an additional insured on this policy. The policy shall be endorsed to waive the insurer's rights of subrogation against the Owner and the Authority.
- 15.7.3 Comprehensive Automobile Liability Insurance (including owned, non-owned and hired vehicles) at limits of not less than:
  - a. \$1,000,000 Each Person for Bodily Injury;
  - b. \$1,000,000 Each Accident for Bodily Injury; and
  - c. \$1,000,000 Each Accident for Property Damage.
- 15.7.4 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 or by the Agreement between the Owner and the Designer in the event of loss or destruction while in the custody of the Owner's Project Manager until the final fee payment is made or all data is turned over to the Owner, and this coverage shall include coverage for relevant electronic media, including, but not limited to, documents stored in computer-aided design drafting (CADD) systems.

15.8 Professional Liability

The Owner's Project Manager shall maintain professional liability insurance covering errors and omissions and negligent acts of the Owner's Project Manager and of any person or entity for whose performance the Owner's Project Manager is legally liable at all times while services are being performed under this Contract. Certificates of professional liability insurance evidencing such coverage shall be provided to the Owner on or before the effective date of this Contract and for a period of at least six years after the earlier of: (1) the date of official acceptance of the completed Project by the Owner; (2) the date of the opening of the Project to public use; (3) the date of the acceptance by the general contractor of a final pay estimate prepared by the Owner pursuant to M.G.L. chapter 30; or (4) the date of substantial completion of the Construction Contract and the taking of possession of the Project for occupancy by the Owner. The certificates shall indicate a retroactive date that is no later than the effective date of this Contract and a limit of not less than \$1,000,000.

In the event that the Owner terminates this Contract at or before the completion of the Feasibility Study/Schematic Design Phase “without cause” as provided in Article 12.3.1; or the Contract term ends pursuant to its own provisions at the completion of the Feasibility Study/Schematic Design Phase and the Contract is not amended to authorize the Owner’s Project Manager to perform services for subsequent design phases, Construction Phases and/or Completion Phase; or the Owner otherwise elects not to proceed with the Project beyond the Feasibility Study/Schematic Design Phase, either because the Owner lacks sufficient funding for the Project or because the Authority’s Board of Directors does not approve the Project to proceed beyond the Schematic Design Phase, the Owner may amend this Article 15.8.

15.9 Liability of the Owner’s Project Manager

Insufficient insurance shall not release the Owner’s Project Manager from any liability for breach of its obligations under this Contract. Without limitation, the Owner’s Project Manager shall bear the risk of any loss if its valuable papers insurance coverage is insufficient to cover the loss of any work product covered by this Contract.

15.10 Waiver of Subrogation

To the extent damages are covered by property insurance, the Owner and the Owner’s Project Manager waive all rights against each other and against the General Contractor, Subcontractors, consultants, agents, and employees of the other for damages caused by fire or other causes of loss, except such rights as they may have to the proceeds of such insurance as set forth in the Owner-Contractor Agreement. The Owner shall require of the General Contractor, Subcontractors, Owner’s Project Manager, consultants, Subconsultants, and agents and employees, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 16: OWNERSHIP OF DOCUMENTS

16.1 Unless provided otherwise by law, ownership and possession of all information, data, reports, studies, designs, drawings, specifications, materials, documents, models, and any other documentation, product or tangible materials authored or prepared, in whole or in part, or purchased, obtained, created by the Owner’s Project Manager pursuant to this Contract (collectively, the “Materials”), other than the Owner’s Project Manager’s administrative communications, records, and files relating to this Contract, shall be the sole property of, and shall vest in, the Owner as “works made for hire” or otherwise. The Owner will own the exclusive rights, worldwide and royalty-free, to and in all Materials prepared and produced by the Owner’s Project Manager pursuant to this Contract, including, but not limited to, United States and International patents, copyrights, trade secrets, know-how and any other intellectual property rights, and the Owner shall have the exclusive, unlimited and unrestricted right, worldwide and royalty-free, to publish, reproduce, distribute, transmit and publicly display all Materials prepared by the Owner’s

Project Manager. At the completion or termination of the Owner's Project Manager's services, all original Materials shall be promptly turned over to the Owner.

#### ARTICLE 17: REGULATORY AND STATUTORY REQUIREMENTS

- 17.1 Truth-in-Negotiations Certificate: If the Owner's Project Manager's fee is negotiated, by signing this Contract, the Owner's Project Manager hereby certifies to the following:
- 17.1.1 Wage rates and other costs used to support the Owner's Project Manager's compensation are accurate, complete, and current at the time of contracting; and
  - 17.1.2 The Contract price and any additions to the Contract may be adjusted within one year of completion of the Contract to exclude any significant amounts if the Owner determines that the fee was increased by such amounts due to inaccurate, incomplete or non-current wage rates or other costs.
- 17.2 The person signing this Contract certifies, as a principal or director of the Owner's Project Manager, that the Owner's Project Manager 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 this Contract; no consultant to or Subconsultant for the Owner's Project Manager has given, offered or agreed to give any gift, contribution or offer of employment to the Owner's Project Manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the Owner's Project Manager or Subconsultant of a contract by the Owner's Project Manager; and no person, corporation or other entity, other than a bona fide full-time employee of the Owner's Project Manager, has been retained or hired by the Owner's Project Manager to solicit for or in any way assist the Owner's Project Manager in obtaining this Contract upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Contract.
- 17.3 Revenue Enforcement and Protection Program (REAP): Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A, the undersigned certifies under the penalties of perjury that to the best of his/her knowledge and belief that the Owner's Project Manager and the principals thereof are in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.
- 17.4 Interest of Owner's Project Manager: The Owner's Project Manager hereby certifies that it is in compliance with the provisions of General Laws Chapter 268A whenever applicable. The Owner's Project Manager covenants that 1) he/she presently has no financial interest and shall not acquire any such interest direct or indirect, which would conflict in any manner or degree with the services required to be performed under this Contract or which would violate M.G.L. Chapter 268A, as amended from time-to-time; 2) in the performance of this Contract, no person having any such interest shall be employed by the Owner's Project Manager; and 3) no partner or employee of the firm is related by blood or marriage to any officer, official, or employee of the Owner, unless approved by the State Ethics Commission.
- 17.5 Equal Opportunity: The Owner's Project Manager shall not discriminate in employment against any person on the basis of race, color, religion, national origin, sex, sexual orientation, age, ancestry, disability, marital status, veteran status, membership in the armed forces, presence of children, or political beliefs. The Owner's Project Manager shall comply with all provisions of Title VI of the Civil Rights Act of 1964 and M.G.L.c.151B.

- 17.6 Certification of Non-Collusion: The Owner's Project Manager certifies under penalties of perjury that its proposal has been made in and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.
- 17.7 Governing Law: This Contract shall be governed by the laws of the Commonwealth of Massachusetts.
- 17.8 Dispute Resolution: If a dispute arises between the parties related to this Contract, the parties agree to use the following procedures to resolve the dispute: (a) Negotiation. A meeting shall be held between representatives of the parties with decision-making authority regarding the dispute to attempt in good faith to negotiate a resolution of the dispute; such meeting shall be held within fourteen calendar days of a party's written request for such a meeting; (b) Mediation. If the parties fail to negotiate a resolution of the dispute, they shall submit the dispute to mediation as a condition precedent to litigation and shall bear equally the costs of the mediation. The parties shall jointly appoint a mutually acceptable mediator; they shall seek assistance from an independent third party in such appointment if they have been unable to agree upon such appointment within 30 days of the meeting just noted in (a) above; (c) Litigation. If the parties fail to resolve the dispute through mediation, or are unable to convene mediation within 90 days of first attempting to do so, then either party may file suit in accordance with Article 17.9; and (d) This paragraph of dispute resolution provisions shall survive termination of this Contract.
- 17.9 Venue: Any suit by either party arising under this Contract shall be brought only in a court of competent jurisdiction in the county where the Project is located. The parties hereto waive any argument that this venue is improper or that the forum is inconvenient.

ATTACHMENT A

PAYMENT SCHEDULE

The Owner’s Project Manager shall perform the Services in accordance with the following Schedule:

| <u>Project Phase/Item of Work</u> | <u>Not-to-Exceed Fee</u> | <u>Completion Date</u> |
|-----------------------------------|--------------------------|------------------------|
| Schematic Design Phase*           | _____                    | _____                  |
| Construction Document             | _____                    | _____                  |
| Bidding Phase                     | _____                    | _____                  |
| Construction Phase                | _____                    | _____                  |
| Completion Phase                  | _____                    | _____                  |

[\* For all Owners whose project includes one or two schools and is estimated to have a Total Project Budget(s) under \$5 million, the fee to provide Owner’s Project Manager services as defined in the OPM Contract – Accelerated Repair Program for the Schematic Design Phase will be an amount not to exceed \$15,000 for an estimated duration of six months. For all Owners whose project includes three or more schools and is estimated to have Total Project Budgets under \$5 million, the fee to provide for the Schematic Design Phase will be an amount not-to-exceed \$20,000 for an estimated duration of six months. For all other Phases beyond Schematic Design, the District will be responsible for negotiating the fee for services for the remainder of the project, dependent upon an evaluation of the level of effort required, job complexity, specialized knowledge required, estimated construction cost, comparison with past project fees, and other considerations. As construction cost is but one of several factors, a final construction figure in excess of the initial construction estimate will not, in and of itself, constitute a justification for an increased Owner’s Project Manager fee.

For projects with an estimated Total Project Budget greater than \$5 million, the Owner will negotiate the fee for services for every Phase dependent upon an evaluation of the level of effort required, job complexity, specialized knowledge required, estimated construction cost, comparison with past project fees, and other considerations. As construction cost is but one of several factors, a final construction figure in excess of the initial construction estimate will not, in and of itself, constitute a justification for an increased Owner’s Project Manager fee.

The MSBA’s level of participation in the OPM fee amount shall be determined by the MSBA and is subject to final review and audit by the MSBA.]

Extra Services

Extra Services provided pursuant to Article 9 shall be compensated as determined by the Owner (a) by a lump sum fee agreed upon in advance in writing by the Owner and the Owner’s Project Manager, or (b) on an hourly basis in accordance with the lesser of \$150 per hour or the rate schedule set forth below for time expended, or (c) on an hourly basis in accordance with the lesser of \$150 per hour or a multiple of 2.5 times the direct personnel expense (without benefits) of the Owner’s Project Manager or Subconsultants personnel including principals.

Hourly Rate Schedule

| <u>Title</u> | <u>Rate/Hr.</u> |
|--------------|-----------------|
| _____        | _____           |
| _____        | _____           |
| _____        | _____           |
| _____        | _____           |
| _____        | _____           |

**ATTACHMENT B**

**KEY PERSONNEL**

(Attach Item 4: Key Personnel from Owner's Project Manager Application Form for the Accelerated Repair Program. Application Form was included in Owner's Project Manager's response to the RFR for Project Management Services (MSBA-RFR-AccRepOPM-2021))

ATTACHMENT C

**CONTRACT FOR PROJECT MANAGEMENT SERVICES**

**AMENDMENT NO. \_\_\_\_\_**

**WHEREAS**, the \_\_\_\_\_ (“Owner”) and \_\_\_\_\_, (the “Owner’s Project Manager”) (collectively, the “Parties”) entered into a Contract for Project Management Services for the \_\_\_\_\_ Project (Project Number \_\_\_\_\_) at the \_\_\_\_\_ School on \_\_\_\_\_ (“Contract”); and

**WHEREAS**, effective as of \_\_\_\_\_, the Parties wish to amend the Contract:

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants contained in this Amendment, and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. The Owner hereby authorizes the Owner’s Project Manager to perform services for the Design Development Phase, the Construction Phases, and the Final Completion Phase of the Project, pursuant to the terms and conditions set forth in the Contract, as amended.
2. For the performance of services required under the Contract, as amended, the Owner’s Project Manager shall be compensated by the Owner in accordance with the following Fee for Basic Services:

| <b>Fee for Basic Services:</b> | <b>Original Contract</b> | <b>Amount of Amendment</b> | <b>New Contract Total</b> |
|--------------------------------|--------------------------|----------------------------|---------------------------|
| Schematic Design Phase         | \$ _____                 | \$ _____                   | \$ _____                  |
| Construction Documents Phase   | \$ _____                 | \$ _____                   | \$ _____                  |
| Bidding Phase                  | \$ _____                 | \$ _____                   | \$ _____                  |
| Construction Phase             | \$ _____                 | \$ _____                   | \$ _____                  |
| Completion Phase               | \$ _____                 | \$ _____                   | \$ _____                  |
| <b>Total Fee</b>               | <b>\$ _____</b>          | <b>\$ _____</b>            | <b>\$ _____</b>           |

This Amendment is a result of: \_\_\_\_\_



3. The Construction Budget shall be as follows:

Original Budget: \$ \_\_\_\_\_

Amended Budget \$ \_\_\_\_\_

4. The Project Schedule shall be as follows:

Original Schedule: \_\_\_\_\_

Amended Schedule \_\_\_\_\_

5. This Amendment contains all of the terms and conditions agreed upon by the Parties as amendments to the original Contract. No other understandings or representations, oral or otherwise, regarding amendments to the original Contract shall be deemed to exist or bind the Parties, and all other terms and conditions of the Contract remain in full force and effect.

IN WITNESS WHEREOF, the Owner, with the prior approval of the Authority, and the Owner's Project Manager have caused this Amendment to be executed by their respective authorized officers.

**OWNER**

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(print title)

By \_\_\_\_\_  
(signature)

Date \_\_\_\_\_

**OWNER'S PROJECT MANAGER**

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(print title)

By \_\_\_\_\_  
(signature)

Date \_\_\_\_\_