

CONTRACT FOR DESIGNER SERVICES
(DESIGN BID BUILD PROJECT)

This Contract is made as of this _____ day of _____ in the year _____ between
(day) (month) (year)
 the _____,
(Owner) (street)
 _____,
(City) Massachusetts (State) (Zip Code)
 hereinafter called "the Owner" and _____
(Designer)

_____ , _____ , _____ , _____
(street) (city) (State) (Zip Code)
 hereinafter called the "Designer" for the Designer to provide the designer services required to complete the Basic and Extra Services described herein at _____

The Designer is authorized to perform the services required by this Contract through the Feasibility Study Phase and, pending receipt of a written Approval to proceed from the Owner, through the Schematic Design Phase. At the Owner's option, the Designer 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 Designer.

For the performance of the services required under this Contract for the Feasibility Study Phase and the Schematic Design Phase, and excluding those services specified under Articles 7.5, 7.6, 7.7, 7.8, 7.9 and 8.3, the Designer shall be compensated by the Owner for Basic Services in accordance with the Payment Schedule included as Attachment A.

Designer's Project Architect/Engineer: _____

The Subconsultants to provide services, either as Basic or Extra Services, to the Designer under this contract may include the following, as identified on the RFS:

	Name of Firm	Name of Principal	MBE/ WBE
Civil Engineering			
Landscape Architecture			
Structural Engineering			
Fire Protection Engineering			
Plumbing Engineering			
HVAC Engineering			
Electrical/Lighting/			
Data/Communications			
Environmental Permitting			
Geotechnical Engineering			
Hazardous Materials			
Cost Estimating			
Kitchen/Food Service Consultant			
Laboratory Consultant			
Acoustical Consultant			

Specifications Consultant			
Library/Media/Audio Visual Consultant			
Technology Consultant			
Theatrical Consultant			
Sustainable/Green Design/Renewable Energy Consultant			
Code Consultant			
Accessibility Consultant			
Traffic Consultant			
Furniture, Fixtures and Equipment Consultant			
Site Surveying			
Security Consultant			

IN WITNESS WHEREOF, the Owner and the Designer hereby agree to the terms of the Contract and have caused this Contract to be executed by their respective authorized officers or other authorized representatives.

OWNER

(print name)

(print title)

By _____
(signature)

Date _____

DESIGNER

(print name)

(print title)

By _____
(signature)

Date _____

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ARTICLE 1: DEFINITIONS

All terms that this Contract defines may be used with or without initial capital letters. Other terms, abbreviations and references are defined as they appear herein. Words and abbreviations that are not defined in the Contract Documents but which have recognized technical or trade meanings are used in accordance with those meanings.

APPLICABLE LAWS – All applicable laws, statutes, ordinances, by-laws, codes, rules and regulations, of the Commonwealth of Massachusetts, its political subdivisions, and the Federal Government applicable to the Project.

APPROVAL -- A written communication from the Owner approving the work of the current Phase, as identified on Attachment A, or authorizing the Designer to proceed to the next Phase or approving the scope and compensation for either Extra Services or Reimbursable Expenses.

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

BASIC SERVICES – The scope of services to be provided by the Designer under this Contract, unless the Contract is otherwise terminated pursuant to Article 12, as described in Article 8 of this Contract, and as it may be amended pursuant to 17.13 below.

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.

CERTIFICATE OF SUBSTANTIAL COMPLETION – The certificate prepared by the Designer and approved by the Owner to the effect that the Work has reached Substantial Completion.

CHANGE ORDER – A written instrument prepared by the Designer and signed by the Owner, Owner's Project Manager, Contractor and Designer, stating their agreement on a change in the Construction Contract Documents, including, but not limited to, a change in the Contract Sum and/or Contract Time, and/or any other specification in the Construction Contract Documents.

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

CONSTRUCTION CONTRACT DOCUMENTS – The Construction Contract Documents consist of the Owner-Contractor Agreement, Advertisement, Instructions to Bidders, Bidding Documents, Contract Forms, Conditions of the Contract, Drawings, Plans, Specifications, all addenda issued prior to execution of the Construction Contract, and other documents approved after execution of the Owner-Contractor Agreement relating thereto.

CONTRACT – This Contract, inclusive of all Attachments, between the Owner and the Designer; 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.

CONTRACTOR APPLICATION AND CERTIFICATE FOR PAYMENT – The form prescribed by the Owner which contains the Contractor’s application or requisition for periodic or final payment for Work performed in accordance with the Construction Contract Documents and the Designer’s certificate for payment as approved by the OPM and the Owner.

DESIGNER – The individual, corporation, partnership, sole proprietorship, joint stock company, joint venture or other entity identified as such on page one of this Contract performing architecture, landscape architecture, and/or engineering services under this Contract and which meets the qualifications set forth in M.G.L. c. 7 § 38A 1/2.

DESIGNER SERVICES – The services to be performed by the Designer and its Subconsultants under this Contract including developing and providing all data, designs, drawings, specifications and estimates required for the Project.

DISTRICT – see “OWNER.”

EXTRA SERVICES – Services requested by the Owner to be performed by the Designer but which are additional (or "extra") to the services performed as Basic Services.

FEASIBILITY STUDY AGREEMENT – The agreement between the Owner and the Authority that sets forth the terms and conditions pursuant to which the Authority will collaborate with the Owner in conducting a feasibility study, which agreement shall include the budget, scope and schedule for the feasibility study.

FEE FOR BASIC SERVICES – The fee to be paid to the Designer for satisfactorily performing the Basic Services required under this Contract, exclusive of the compensation to which the Designer may be entitled pursuant to Articles 8 (Extra Services) and 9 (Reimbursable Expenses).

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.

FINAL DESIGN PROGRAM – A description of the programmatic, functional, spatial, and environmental requirements of the Project in written and graphic form indicating the scope of work and design requirements of the Project.

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 regulations and procedures that supplement the tasks of Designers contracting with Owners for projects receiving any funding from the Authority.

MATERIALS – The designs, drawings, project manual specifications, and other materials prepared by the Designer as defined in 16.1 below.

MBE/WBE – A minority-owned business (MBE) or a women-owned business (WBE) certified by the State Office of Minority and Women Business Assistance (SOMWBA).

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.

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, or has or will have exclusive control over the site for at least the duration of the useful life of the school facility that is the subject of the Project, and is responsible for administering this Contract.

OWNER-CONTRACTOR AGREEMENT – The Contract between the Owner and one or more General Contractors and/or goods or services providers for construction of a whole or part of the Project, including approved change orders.

OWNER'S PROJECT MANAGER or OPM – The individual, corporation, partnership, sole proprietorship, joint stock company, joint venture or other entity with whom the Owner has contracted to perform the Project Management Services for this Project, and who meets the qualifications of M.G.L. c. 149 44A ½ and has been approved by the Authority.

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.

PRINCIPAL – The owner(s) and/or officer(s) of the Designer or Subconsultant who are in responsible charge of the Project.

PROJECT – All work that pertains to the study, planning, programming, design, construction, reconstruction, installation, demolition, maintenance and repair, if any, as described in the Project Scope and Budget Agreement.

PROJECT ARCHITECT AND/OR PROJECT ENGINEER – The individual designated by the Designer as its Project Architect or Project Engineer. Such Project Architect or Project Engineer shall be a registered architect, engineer or landscape architect as required by the Request For Designer Services, shall be the person who shall oversee the performance of all services provided on the Project and shall be certified in the Massachusetts Certified Public Purchasing Official Program as administered by the Inspector General of the Commonwealth of Massachusetts.

PROJECT CONSTRUCTION BUDGET – That portion of the Total Project Budget that enumerates the cost of constructing the Project inclusive of all designed construction, demolition, and renovation work, all supportive and preparatory construction work required for the Project, all general contractors, subcontractors, suppliers, materials, equipment, general conditions, insurance, overhead and profit and all other allowances. The Project Construction Budget includes design, bidding, price escalation, and construction change order contingencies, as appropriate to the phase of the Project.

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

PROJECT SCOPE AND BUDGET AGREEMENT – the Agreement described in 963 CMR 2.10(10) and executed by the Authority and the Owner.

RECORD DRAWINGS – The drawings prepared by the Designer and its Subconsultants pursuant to Article 7.9.5 of this Contract which incorporate the design changes made during the construction period and which incorporate information on the marked-up prints, as-built drawings and other data furnished by the General Contractor and subcontractors.

REIMBURSABLE EXPENSES – Costs and expenses incurred by the Designer that are reimbursable pursuant to the provisions of Article 9 of this Contract.

REQUEST FOR DESIGNER SERVICES or RFS – The written document appended hereto as Attachment B specifying various requirements including the project goals and general scope, project site, scope of services, submission requirements, schedule, and construction budget.

STANDARD OF CARE – The generally accepted professional standard of care ordinarily used by designers performing a similar scope of services in the same geographic area on projects of comparable size and complexity.

SUBCONSULTANT – The Subconsultants listed on page 1 of this Contract, together with any additional Subconsultants engaged by the Designer from time to time, which shall be an individual, company, firm, or business having a direct contractual relationship with the Designer, who provides services on the Project.

SUBCONTRACTOR – The 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.

SUBSTANTIAL COMPLETION – The Work, as evidenced by the Certificate of Substantial Completion, is fully complete or substantially complete so that the value of the Work remaining to be done is, in the estimate of the Owner, less than one percent of the original contract price, or (2) the Contractor substantially completes the work and the Owner takes possession for occupancy, whichever occurs first.

TOTAL PROJECT BUDGET – A complete and full enumeration of all costs of the Project, as defined in the Project Scope and Budget Agreement.

WORK – The entire construction required to be furnished under the Construction Contract Documents. Work includes performing and furnishing any and all services, obligations, duties, responsibilities, labor, materials, equipment, temporary facilities, and incidentals necessary to complete the construction assigned to, or undertaken by the Contractor pursuant to the Construction Contract Documents.

ARTICLE 2: RELATIONSHIP OF THE PARTIES

- 2.1 The Owner's Project Manager shall act as an independent contractor of the Owner in providing certain project management services required for the Project.
- 2.2 The Designer is solely responsible for providing the design for the Project and for performing in accordance with this Contract.
- 2.3 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 Designer shall be responsible for the Designer's negligent acts or omissions but shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or the agents or employees of the Contractor or Subcontractors, the Owner's Project Manager, the Authority or its Commissioning Consultant.
- 2.4 Nothing in this Contract shall be construed as an assumption by the Designer of the responsibilities or duties of the Contractor or the Owner's Project Manager. It is the intention of the parties that the Designer's services shall be rendered in a manner compatible with and in coordination with the services provided by the Owner's Project Manager and the Commissioning Consultant. It is not intended that the services of the Designer and the Owner's Project Manager or the Commissioning Consultant be competitive or duplicative, but rather complementary. The Designer shall be entitled to rely upon the Owner's Project Manager, Commissioning Consultant 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 have the right to approve the Designer's work.
- 3.2 The Owner shall designate an individual 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 Designer.
- 3.3 Upon satisfactory completion of services performed, the Owner shall make payments to the Designer as provided in Articles 6, 7, 8 and 9, 10 and 11.
- 3.4 To the extent such data is available, the Owner shall furnish to the Designer existing surveys of the 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 Designer shall be entitled to reasonably rely upon the sufficiency and accuracy of the information furnished to the Designer under this paragraph Article 3.4 and under paragraph 4.11, provided that the Designer shall coordinate its services with the services of the Owner's consultants and shall notify the Owner in writing of any deficiencies in such data that the Designer becomes aware of.
- 3.5 Except as otherwise provided in this Contract, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Designer's consultants through the Designer about matters arising out of or relating to the

Construction Contract Documents. The Owner shall promptly notify the Designer of any direct communications that may affect the Designer's services.

- 3.6 The Owner shall provide the Designer access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Designer access to the Work wherever it is in preparation or progress.
- 3.7 If the Owner requests the Designer to execute any certificates that are not readily available as of the effective date of this Contract, the proposed language of such certificates shall be submitted to the Designer for review at least 14 days prior to the requested dates of execution. The Designer shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Contract.
- 3.8 The Owner shall deliver to the Designer in a timely manner written copies of all Approvals required by this Contract. If Approval is withheld the Owner shall notify the Designer in a timely manner in writing why such Approval is being withheld.
- 3.9 The Owner shall not unreasonably withhold, delay, condition, or deny any approval, acceptance, or consent required under this Contract, including any Approval.

ARTICLE 4: RESPONSIBILITIES OF THE DESIGNER

- 4.1 The Designer shall perform the Designer Services in accordance with the requirements of this Contract, and in accordance with the Standard of Care. The Designer shall exercise due care and diligence in the rendition of all services under this Contract in accordance with such professional standards and shall exercise the Standard of Care to provide the services required under this Contract in conformity with all Applicable Laws.
- 4.2 The Designer shall be responsible for the Designer Services including any changes to such Services that may be required in accordance with this Contract. The Designer shall furnish appropriate competent professional services for each of the Phases in accordance with the Standard of Care. Any changes, corrections, additions or deletions requested by the Owner and the Authority shall be incorporated into the design of the Project unless detailed objections thereto are issued in writing by the Designer, subject to Article 8.2.2. Nothing herein shall be construed as an assumption by the Owner or the Authority of the responsibilities or duties of the Designer.
- 4.3 The Designer Services shall be performed as expeditiously as is consistent with orderly progress of the work, consistent with the agreed upon project design schedule as established under Article 7.4.1 and as it may thereafter be amended by the parties from time to time. In the event of delays due to causes outside of the Designer's control, the project design schedule may be extended as necessary, and Designer's compensation may be equitably adjusted pursuant to Article 6.6 to the extent that Designer incurs additional direct costs caused by the delay. Time is of the essence for the duration of this Contract.
- 4.4 The Designer shall provide the scope of services required by this Contract, as described in more detail in the RFS and Attachment A.
- 4.5 The Designer shall comply with the 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, that are applicable to Designer's Services under this Contract and that have been provided or are readily available to Designer prior to such Services being performed. The Owner shall reasonably compensate the Designer for complying with any term or condition of a project agreement executed between the Owner and the Authority or any administrative directive issued by the Authority, that was not provided to or was not readily available to the Designer prior to such Services being performed and that materially impacts the Designer's scope or other aspect of its Services, Fee, schedule, or any obligations and responsibilities under this Contract.

- 4.6 The Designer acknowledges the importance that the Owner attributes to the abilities and qualifications of the key members of the Designer's team, including Subconsultants, and the continuity of key members participation in the services to be provided under this Contract. This Contract has been entered into in reliance on the Designer's representation 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 on page 1 of this Contract, shall take place without the prior written approval of the Owner, except when necessitated by causes beyond the Designer's control (such causes shall include if an individual leaves or is no longer associated with the Designer's firm). If the Designer proposes to replace one of the members of the Designer's team, the Designer shall propose a person or consultant with qualifications at least equal to the person or firm the Designer 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 on page 1 of this Contract and such approval shall not be unreasonably withheld. At the request of the Owner, the Designer shall consult with the Owner to resolve any situation in which the Owner determines that a member of the Designer'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. The Owner shall work in good faith with the Designer to resolve any material problems identified by the Owner in writing regarding performance of the Designer's obligations under this Contract. No act or omission of the Owner made or permitted under this Article shall relieve the Designer of its responsibility for the performance of the services specified in this Contract.
- 4.7 The Designer shall compile and distribute a job directory which includes all names, addresses, phone and fax numbers, and e-mail addresses of the representatives of the Designer and their Subconsultants. This shall be distributed upon commencement of the services, and shall be updated and redistributed as project participants and/or contact information change.
- 4.8 The Designer shall employ at all times adequate professional and support personnel with requisite expertise and adequate numbers to assure the complete, timely performance of the obligations of the Designer. The Designer shall acquaint its employees and Subconsultants with all provisions of the General Laws governing public construction projects, including but not limited to M.G.L. c. 149 and M.G.L. c. 30, that are relevant to the performance of Designer's obligations under this Contract.

4.9 The Designer shall be and shall remain liable to the Owner all damages incurred by the Owner as a result of the failure of the Designer or its Subconsultants to perform in conformance with the terms and conditions of this Contract.

4.10 Design Within the Project Construction Budget

4.10.1 The Designer shall prepare cost estimates for the Project to be included with each Phase submission or at more frequent intervals as required in the RFS. Unless otherwise specified in the RFS, the cost estimates shall be considered Basic Services and the Designer is not eligible for any additional compensation for preparing the same. The format for cost estimates shall be in accordance with the requirements of the Authority.

4.10.2 The Project Construction Budget established by the Owner is the amount within the Total Project Budget that has been budgeted for construction of the Project. The Designer shall produce a design for the Project meeting the requirements of the scope of work described in the RFS to be constructed within the Project Construction Budget, provided that the Designer shall be permitted to recommend to the Owner such adjustments to the Project's design, consistent with the Project Funding Agreement, as the Designer reasonably believes may be required to adhere to the Project Construction Budget. In the event the Designer's cost estimate for the Project exceeds the Project Construction Budget, the Owner may require the Designer to revise the design, drawings and specifications to keep the cost estimate for the Project within the Project Construction Budget. The Designer shall not be entitled to extra compensation for making such revisions to contain costs within the Project Construction Budget.

4.10.3 If the Project Construction Budget is exceeded by the lowest bona fide, responsible bid by any amount, the Owner shall direct the Designer to review and compare the Project Construction Budget with the bids received to identify the variances. Upon completion of this review, the Owner shall, with the approval of the Authority,

(a) direct the Designer to revise the Final Design Program, Project scope and quality as required to reduce the estimated construction costs to be within the Project Construction Budget, in accordance with Article 4.10.4 of this Contract; or

(b) give written approval to the Designer of an increase in the Project Construction Budget; or

(c) authorize rebidding of the Project within a reasonable time; or

(d) terminate this Contract in accordance with Article 12.3; or

(e) implement any other mutually accepted alternative that the Owner and the Designer may agree on.

4.10.4 (a) If the Owner chooses to proceed under Article 4.10.3(a), the Designer and his Subconsultants, without receiving additional compensation except if fewer than

three bona fide, responsible bids were received, or if either 4.10.4(b) and/or (c) applies, shall cooperate in revising the designs, drawings and specifications as may be required to reduce or modify the quality or scope or both, of the Project so that they will comply with the Project Construction Budget as approved at the conclusion of the Construction Documents Phase or as amended. Upon completion of these revisions, the Designer shall also be required to produce a revised cost estimate demonstrating that the estimated cost of the Project does not exceed the Project Construction Budget. Revising the designs, drawings, and specifications and updating the cost estimate shall be the sole obligation on the part of the Designer with respect to 4.10.3(a); (b) If the Owner elects to proceed with revisions that significantly increase the complexity either of the Construction Contract Documents themselves or the Construction Administration Phase services that the Designer will have to provide, then the Designer shall be entitled to an equitable adjustment in its Fee to reflect the impact on its services; (c) If the bid or proposal referenced in 4.10.3 above was submitted on a date that is more than three (3) months after approval of the Construction Contract Documents (see 7.7.9 below), then such revisions shall be Extra Services.

4.10.5 The Designer must receive written approval of the Owner and the Authority before the Project Construction Budget shall be considered amended.

4.11 Additional Tests and Surveys: The Designer shall be responsible for reviewing the surveys, investigations, and testing completed by the Owner and as provided under paragraph 3.4, and determining the types of additional or expanded surveys, investigations, or testing required for the Project. Such services shall be provided by qualified specialty Subconsultants as necessary. Both the types of services and the Subconsultants shall be approved by the Owner. In the event that the Designer employs the services of a sub-consultant to provide such services, the Designer shall employ such Subconsultants who have liability insurance coverage covering such services, to the extent that such insurance coverage is generally available to Subconsultants. The Designer shall, upon the Owner's written request, assign to the Owner the Designer's contractual right to pursue a claim against such Subconsultants. Such services shall be paid for as provided in Article 8 – Extra Services unless such services are specifically included as Basic Services in the RFS. Such services may include but need not be limited to:

4.11.1 Site surveys;

4.11.2 Structural tests and materials tests;

4.11.3 Geotechnical and geoenvironmental investigations and reports, including boring tests, test pits, observation wells, testing and chemical analysis of site substrate conditions;

4.11.4 Traffic studies.

ARTICLE 5: SUBCONSULTANTS

5.1 The Designer may engage Subconsultants, subject to the prior written approval of the Owner and subject to Article 9.3, in order to perform services under this Contract. If Subconsultants are engaged, they must be professionally registered in Massachusetts in the

necessary disciplines for the services if such registration is required under the applicable General Laws. The engagement of Subconsultants shall not in any way relieve the Designer from its duties and responsibilities for its work, including, without limitation, coordinating all Designer Services furnished under this Contract by the Subconsultants.

- 5.2 Upon request, the Designer shall provide the Owner copies of its agreements with Subconsultants, including any amendments thereto.
- 5.3 No substitution of Subconsultants and no use of additional Subconsultants or assignment of services shall be made without prior written approval of the Owner, which approval shall not be unreasonably withheld.

ARTICLE 6: COMPENSATION

- 6.1 For the satisfactory performance of all services required pursuant to this Contract, excluding those services specified under Articles 8 and 9, the Designer shall be compensated by the Owner in the amounts specified in Attachment A as that Fee may be amended by written amendment to this Contract.
- 6.2 When the Designer receives payment from the Owner, the Designer shall promptly make payment to each Subconsultant whose work was included in the work for which such payment was received unless payment has been theretofore made.

6.3 Payment Schedule

- 6.3.1 Payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each Phase. The amount of fees attributable to each Phase shall be as set out in the schedule in Attachment A. Payment for approved Reimbursable Expenses and/or Extra Services shall be made monthly upon receipt of an approved invoice from the Designer.
- 6.3.2 The Owner shall make payments to the Designer within 30 days of the Owner's approval of an invoice from the Designer. The Owner's payment for any services provided under this Contract shall not be construed to operate as a waiver of any rights under the Contract or any cause of action arising out of performance of the Contract. The Owner shall not withhold payments to offset costs alleged to have been incurred by the Owner on account of allegedly negligent acts, errors or omissions unless the Designer agrees or has been found liable for specific amounts in a binding agreement or court judgment, or unless the Designer fails to maintain the professional liability insurance required under paragraph 15.7. If Owner and Designer continue to disagree, the disagreement shall be immediately submitted to mediation in accordance with paragraph 18.5(b).

6.4 Installment Payments During Construction

- 6.4.1 During the construction Phase, the Designer shall be paid the Fee for Basic Services stipulated in Attachment A.
- 6.4.2 Payments to the Designer during the construction Phase shall be made in equal monthly installments for the duration of the construction Phase. The amount of each payment shall be determined by dividing 95% of the fee for Construction Phase/Final Completion as stipulated in Attachment A by the number of months between the

Notice to Proceed and the scheduled issuance of the Certificate of Substantial Completion as indicated in the Project Schedule as approved by the Owner. The Designer shall be entitled to Extra Services in accordance with Article 8.3 should the Project be delayed beyond the 60-day period described in Article 8.3 for reasons beyond the control of the Designer.

6.5 Final Installment: The Designer shall be paid the unpaid balance of the fee for Construction Phase/Final Completion as stipulated in Attachment A (as that fee may be amended), upon:

6.5.1 Approval of the Certificate of Final Completion of construction (such Certificate to be in the form developed by the Authority). In cases where a Certificate of Partial Release of Retainage is approved, the Designer shall be paid up to an amount commensurate with the percent of retainage released until a Certificate of Final Completion is approved, and

6.5.2 Delivery by the Designer to the Owner of the Record Drawings required by this Contract, and

6.5.3 Verification of payment to MBE/WBE Subconsultants or Subconsultants identified on Attachment C and as required by Article 17.4, and

6.5.4 A written evaluation of the General Contractor by the Designer from which the Owner shall be able to complete its submission of the Contractor Evaluations as required by M.G.L. c.149 § 44D(7).

6.5.5 In the event that the Designer is unable to comply with items 6.5.1 and 6.5.2 above due to reasons beyond the Designer's control, as determined by the Owner, Final Installment shall not be unreasonably withheld or delayed beyond 60 days after the date of Substantial Completion, provided that the Designer has complied with all other requirements.

6.6 Substantial Change

6.6.1 If there is a substantial change in the services described in the RFS to be provided by the Designer under this Contract, the Designer and the Owner will mutually agree to a written amendment describing the services and an amended Fee for Basic Services to reflect the change and reasonable cost of such change. Such changes shall be designated on Attachment F and shall be executed by the Designer and the Owner.

6.6.2 Should the Designer and the Owner be unable to negotiate a mutually acceptable amendment to the Fee for Basic Services when there has been a substantial change in the specified services, the Owner shall unilaterally and promptly determine, in good faith and supported by a written explanation in sufficient detail, a reasonable maximum dollar amount for the services as amended and process payments to the Designer subject to said maximum amount, until an amendment to the Fee for Basic Services for such change is set by later agreement between the parties, provided, that the Designer's acceptance of such payments shall not be considered a waiver by the Designer of its right to pursue a claim for additional compensation related to the change in services, and provided that such disagreement shall be immediately submitted to mediation in accordance with paragraph 18.5(b). In no event shall the

Designer stop work under this Contract due to a disagreement with the Owner regarding an amendment in the Designer's Fee for Basic Services, provided that the Owner complies with its payment obligations under this Article 6.6.

6.6.3 Notwithstanding the foregoing, the amendment to this Agreement described in paragraph 7.4.8 shall be negotiated and executed by both parties prior to the start of the subsequent Phase.

ARTICLE 7: BASIC SERVICES

7.1 The Designer shall discuss with the Owner and the Authority the requirements for each Phase before beginning work on that Phase.

7.2 The Owner and the Authority will promptly review and approve the Designer's submissions. Upon completion of its review, the Owner shall promptly and in writing:

(a) approve the submission as made; or

(b) approve that part of the submission that is acceptable and reject the remainder;
or

(c) reject the submission; or

(d) require the Designer to submit additional information or details in support of its submission.

7.2.1 The description of Designer Services required during the various Phases as described in the RFS and hereinafter may include specification of the number of submissions the Designer will be required to make and estimates of the approximate number of meetings that the Designer will be required to prepare for and attend during each Phase.

7.2.2 At least six copies of each submission shall be provided to the Owner and two copies provided to the Authority as part of Basic Services. Drawings submitted to the Authority shall be reproduced at half full size. A graphic scale shall be placed upon all such drawings prior to construction documents phase submissions. If the Designer is required to make submissions in excess of the number specified or if the Designer is required to prepare for and attend meetings in excess of the number specified for a Phase, the Designer shall be entitled to compensation for Extra Services, provided, however, that the Designer shall not be entitled to such compensation if and to the extent the Owner or the Authority shall have reasonably determined that the additional submissions or the additional meetings were required due to either the Designer's lack of preparation, or other fault due to deficiencies or omissions in documents prepared by the Designer.

7.2.3 All document submissions shall be in the form of neatly bound printed material, and delivered to the location or locations as indicated by the Owner and Authority. One

or more document submission components may be submitted in an approved electronic format, subject to specific authorization by the Owner and/or Authority.

7.2.4 Electronic Submittals: In addition to all other submittals called for by this Article 7 and elsewhere in the Contract, including but not limited to hard copies and reproducibles of all submittals, the Designer shall submit two (2) electronic copies on compact disks for all required submissions of Deliverables called for by this Contract (“Electronic Submittals”). All Electronic Submittals shall be deemed to be Materials that are subject to all provisions of Article 16.

7.2.4.1 The Electronic Submittals shall be provided on CD electronic format as approved by the Owner and Authority and as follows:

- (a) All drawings shall be provided in standard AutoCAD software (release number and version to be established at time of contract execution) or in a compatible electronic CADD (.dxf) format or other industry-standard format as approved by the Owner and acceptable to the Authority. Electronic file naming convention shall be acceptable to the Owner and the Authority.
- (b) All other documents shall be provided on Microsoft Word, Excel, Project, or PowerPoint, as applicable to the particular submittal.
- (c) All submissions shall be labeled identifying project name and number, file name, drawing title, software and release, and layer investigation.
- (d) The Owner reserves the right to require the Designer to provide all electronic media as may be required at any time during the duration of this Contract due to technology upgrades and/or changes to the electronic systems used by the Owner or Authority, provided that if such requirement demands that the Designer purchase new software or train existing employees for the application of media or software such costs shall be a Reimbursable Expense.
- (e) The Designer’s compliance with the terms of this Article shall be performed as part of the Basic Services under the Contract, and the Designer shall not receive any additional compensation for providing the Electronic Submittals, (including but not limited to conversions or copies of software), except as specified herein. The Designer shall not be responsible for any use of Electronic Submittals on hardware or software for which it was not intended. Creation of a Building Information Model is excluded from the definition of Electronic Submittals; if the Owner requests the Designer to create such a Model, the parties shall execute a separate agreement and Designer shall receive Extra Services for its creation.

7.3 Feasibility Study Phase:

- 7.3.1 The Authority's Feasibility Study Guidelines specify the work to be performed during this phase. The Designer shall meet with the Owner to arrive at a mutual understanding of the requirements of the Feasibility Study. The Designer shall submit a proposed work plan including anticipated tasks and submittals.
- 7.3.2 The Owner is required to ascertain the Authority's input and approval throughout the study process; therefore, the Designer shall develop and prepare the documentation required by the Feasibility Study Guidelines to assist the Owner in securing the Authority's concurrence and/or approval at the following milestones before proceeding to the next milestone. Note that some of the approvals to move to the next milestone require a vote of the MSBA Board of Directors.
- (a) MSBA approved enrollment projections generated through the MSBA's on-line enrollment projection system
 - (b) Scope, cost and schedule for the Feasibility Study
 - (c) Preliminary design program
 - (d) Budget Statement for Educational Objectives, as defined by 963 CMR 2.02
 - (e) Development of alternatives to be studied
 - (f) Preliminary evaluation of alternatives
 - (g) Final Evaluation of Alternatives
 - (h) Recommendation to the Authority's Board of Directors of the preferred alternative that will be advanced to schematic design
- 7.3.3 The Designer shall cooperate with the Owner and the Authority to define and develop a few reasonable, educationally sound, cost effective, and practical solutions to evaluate that satisfy the Owner's educational program requirements that were provided to the Designer by the Owner. The alternatives considered shall address the following as a minimum:
- (a) Analysis of school district student school assignment practices and available space in other schools in the district
 - (b) Tuition agreements with adjacent school districts (per MGL c.70B §8)
 - (c) Rental or acquisition of existing buildings that could be made available for school use. (per MGL c.70B §8)
 - (d) Renovation and/or addition to existing building(s) and related facilities or fields, if appropriate to the Project
 - (e) No-build or status quo option, to be used as a benchmark for comparative analysis of all other alternatives
 - (f) In some cases, it may also be appropriate to consider construction of new building and the evaluation of potential locations

7.3.4 Feasibility Study submittals shall be provided pursuant to Article 7.2.2 and shall be subject to the written Approval of the Owner.

7.3.5 The Designer shall present and explain the Feasibility Study to the Owner, the Authority and at a local public meeting, if any such meeting is scheduled, or in conference.

7.3.6 The Designer shall meet with the Owner every other week during this Phase.

7.4 Schematic Design Phase

7.4.1 Upon receipt of an Approval to proceed to Schematic Design Phase, the Designer shall meet with the Owner to arrive at a mutual understanding of the requirements of the Final Design Program approved in writing by the Owner and the Authority.

7.4.2 The Designer shall submit a proposed design work plan pursuant to this Contract including anticipated tasks and submittals. The Designer shall also submit to the Owner a proposed project schedule consistent with any project schedule included in the RFS (Attachment B) modified as required by any subsequent schedule changes or delays outside of Designer's control. The schedule shall contain dates for submittals, deliverables, actions, milestones, design workshops, meetings and the critical path through all design service activities. It shall include allowances of time for the Owner's and the Authority's review and approval of submittals and for necessary submissions for permits in connection with the Project. The work plan shall also include a work plan schedule of values consistent with Attachment A, which shall be the basis for which payments of the Fee for Basic Services within each Phase shall be made. The work plan schedule of values shall identify deliverables within each Phase and percentages of the phase fee payable upon completion of such deliverable. When approved by the Owner as provided in Article 7.4.8, the work plan schedule of values shall govern the timing of payments of the Fee for Basic Services upon completion of deliverables within each Phase and as each Phase progresses.

7.4.3 The Designer shall: Prepare a preliminary evaluation of the Recommended Preferred Solution from the Feasibility Study, the Final Design Program, and Proposed Total Project Budget; collect and study all available drawings, reports, maintenance reports, and other existing data pertaining to the Project, and conduct a thorough on-site review of conditions relating to the Project; assure that the "Recommended Preferred Solution" complies with all applicable codes and regulations, including any special design standards supplied by the Authority and its Commissioning Consultant; and meet with local building officials to identify and confirm applicable standards and any project specific criteria.

7.4.4 The Designer shall develop the Recommended Preferred Solution to a full schematic design level. Schematic design level documentation shall be based on the Final Design Program, shall incorporate Owner and Authority comments and shall include each of the following, to the extent applicable to the Recommended Preferred Solution:

(a) Siting analysis, including content, traffic and access, topographic and utilities recognition.

- (b) Site Development Plan – Site plan shall be at a minimum scale of 1 inch equals 40 feet and include property lines with bearings and distances, building setbacks, site acreage, wetlands information, proposed and existing topography, proposed and existing buildings and site features, floor and roof elevations for all buildings, proposed and existing utilities and utility connections, emergency equipment access.
- (c) Traffic Analysis - analyze the impact of anticipated vehicular and pedestrian traffic, including impacts to existing infrastructure, to determine efficient and safe site access.
- (d) Environmental Assessment – Provide additional site and building assessments as may be required by the Authority to quantify presence of unsuitable materials and scope of possible remediation efforts.
- (e) Geotechnical and Geoenvironmental Analysis – Provide additional geotechnical analysis as may be required by the Owner or the Authority to describe soil conditions, remediation requirements and appropriate foundation.
- (f) Program Analysis - a space measurement analysis for the design which shall verify that the sum of all program floor areas plus all other floor areas equal the gross floor area of the Final Design Program
- (g) Code Analysis – Determine the impact of all federal, state, regional and local codes, regulations and ordinances having jurisdiction, including a listing of permitting and other regulatory filing requirements.
- (h) Utility Analysis – Determine the availability and capacity of all required building utilities. Provide soils analysis and preliminary design for on-site septic/sewage treatment facilities, if required.
- (i) Massing Study – an analysis of the building’s integration into its surroundings and neighborhood with drawings, models, or photographs.
- (j) Schematic Building Floor Plans of all floors and roof at a minimum scale of 1/16” = 1’-0” showing all elements of the building including overall dimensions, gross square footage of each floor and net square footage of each space, response to functional requirements of program, major and minor access, and circulation.
- (k) Schematic Exterior Building Elevations for all sides and orientations indicating all exterior finishes and fenestration.
- (l) Building Systems Descriptions – Describe in narrative and on schematic plans basic information relative to:
 - 1. Building Structure - a written narrative of the design approach to the structural systems including discussion of the feasible options for

foundations and superstructure as well as treatment of special situations such as unusual soils conditions or long spans.

2. Plumbing and HVAC - written narratives of the basic systems and proposed fuel source(s) and a preliminary life cycle cost analysis pursuant to the criteria of M.G.L. c. 149 § 44(m). Provide schematic plans indicating basic distribution concepts and the location of major equipment items such as boilers, water heaters, cooling towers, chillers, air handling units, heat recovery units, exhaust stacks, special systems (e.g. fume exhausts).
 3. Fire Protection - written narratives of the basic systems and design criteria. Provide schematic plans indicating basic distribution concepts and the location of major equipment items such as fire pumps, standpipes, and fire department connections.
 4. Electrical (including power, lighting, communications, fire alarm, video/CATV, security/surveillance) - written narratives of the proposed electrical and communications systems resources, needs, and proposed scope. Provide schematic plans indicating basic distribution concepts and the location of major equipment items such as switchgear, standby generator, and control centers/panels.
 5. Information Technology - written narratives of the proposed information technology system resources, needs, and proposed scope. Provide schematic plans indicating basic distribution concepts, location of major equipment items such as switches and hubs.
- (m) MA-CHPS Scorecard – Pursuant to the MSBA Green School Guidelines, complete a MA-CHPS Scorecard and describe sustainable design features and each high performance green school prerequisite and credit included in the proposed design and a plan for implementation or inclusion of any appropriate public utility energy conservation design programs.
- (n) Outline specifications in accordance with Unifomat and M.G.L. c.149 § 44F filed sub-bid format that clearly define the scope of construction, identify the sub-trades pursuant to M.G.L. c. 149 § 44F, establish the quality of materials, finishes, products, equipment and workmanship, and the special or unique conditions of construction.
- (o) Accessibility - an analysis of the design's compliance with the Americans with Disabilities Act (ADA) and the Massachusetts Architectural Access Board requirements (MAAB).
- (p) Project Schedule - Provide a reasonable level of design-related input to the OPM such that the OPM can prepare a draft schedule for the proposed project for the Owner in the form of a graphic representation (Gantt Chart) of the duration of all tasks, activities and phases of the design and construction processes against the progression of time up to a proposed occupancy date.

Dependencies between activities and tasks will be delineated. Individual tasks and activities will be rolled up to the major project milestones. Provide input to the OPM regarding priority actions and activities that may have a major impact on the schedule. The OPM, not the Designer, is responsible for preparing and maintaining the draft and updated project schedule document, except as it pertains to the project design schedule developed under Article 7.4.2.

- (q) Construction cost estimate - in Unifomat II Level 2 format with aggregated unit rates and quantities supporting each item. If independent cost estimates are prepared for the Owner by the OPM in this or subsequent phases, then the Designer shall work with the OPM to resolve such any differences in a cost reconciliation process and shall involve any relevant parties in such process.

7.4.5 Schematic design phase drawings, specifications, construction cost estimates and other submittals shall be subject to the written Approval of the Owner, which Approval shall not be unreasonably delayed, withheld, conditioned, or denied. Unless a lesser number is requested by the Owner, the Designer shall submit to the Owner for approval six (6) copies of schematic design drawings, specifications, cost estimates, and other submittals. Two (2) additional copies shall be submitted to the Authority by the Designer.

7.4.6 The Designer shall present and explain the Schematic Design to the Owner, the OPM and the Authority and at a local public meeting, if any such meeting is scheduled, or in conference.

7.4.7 The Designer shall meet with the Owner every other week during this Phase.

7.4.8 Prior to the issuance of an Approval to proceed to the Design Development Phase, the Designer and the Owner shall meet to finalize the design work plan, project schedule, and schedule of values described in Article 7.4.2, and they shall if necessary execute an amendment to the Contract to include all required modifications to govern the subsequent phases of the Designer's services.

7.5 Design Development Phase.

7.5.1 Upon receipt of an Approval to proceed to the Design Development Phase, the Designer shall meet regularly and as necessary with the Owner and the Authority, shall update and refine items submitted during the Schematic Design Phase, and shall submit to the Owner and the Authority, on or before the date specified in the Project Schedule, and on the basis of the approved Schematic Design phase Documents:

- (a) a list of all filings and permits within Designer's scope of services and professional expertise required to implement the design and a schedule of target dates for the procurement of such permits, which list and schedule shall be regularly updated during the term of this Contract;
- (b) information and documentation within the technical expertise of the Designer and that is necessary for the Owner to file local basic zoning and environmental permits. The Designer, as Extra Services, shall provide

information and documentation for the Owner to file Environmental Notification Forms, Environmental Impact Reports, and any other filings for permits that must be filed during the design development phase;

- (c) complete design development drawings; draft specifications indicating any filed sub-bid sections and sub-sub trades based on the cost of the work and other documents necessary to specify the size and character of the Project as to siting, landscape, architectural, structural, fire protection, plumbing, heating, ventilating and air conditioning, electrical, ADA/MAAB, product requirements and other features;
- (d) quality control documentation demonstrating without limitation coordination of: ceiling clearances, mechanical room size, and shaft sizes; specifications and drawings; filed sub-bid work or sections; scheduling; equipment and power; existing and new construction; and phasing;
- (e) design development drawings which the Designer shall submit for review to the local building official;
- (f) a life cycle cost analysis to determine which design decisions related to all energy and water consuming devices and overall building operation and maintenance are the most cost effective [M.G.L. c. 149, s. 44M];
- (g) a construction cost estimate for the design in Unifomat II Level 3 format, with unit rates and quantities supporting each item. The estimate cost shall be projected, to the mid point of the construction period;
- (h) a space measurement analysis for the design verifying that the sum of all program areas in the Project plus all other floor areas in the Project equals the gross floor area of the Project;
- (i) a written summary or summaries comparing the project design, as represented in the design development drawings, specifications and cost estimates with the Final Design Program requirements, and explaining any deviations in writing.

The Designer shall meet with the Owner every other week during this Phase.

7.5.2 Design Development Drawing Requirements: The Design Development drawings shall illustrate and describe the refinement of the design of the Project to a level of detail that is customary and standard, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. Documents shall include, but not be limited to, the following:

- (a) Site and utility drawings showing;
 1. Existing and proposed contours and locations of the proposed building or addition(s). Show entry level elevation and key exterior grades at perimeter. Indicate all retaining walls. Include benchmarks of site if survey is available.
 2. All utilities existing and proposed, indicating location, elevation, composition and size e.g., manholes, sewers, hydrants, light standards. Include work by others, e.g., gas and electric utility providers.

3. Roads, laid out parking areas, walks, recreation areas, terraces and other site improvements.
 4. Building locations fixed and referenced from main survey baseline, if available.
 5. Plant materials with preliminary schedule.
 6. Cuts of benches, light standards.
- (b) Building drawings and other graphic and written requirements with floor plans showing: (minimum scale 1/8" = 1'0");
1. building perimeter with exterior wall thicknesses and overall dimensions;
 2. structural grid;
 3. plan requirements of mechanical and electrical systems;
 4. building core; elevators, stairs, shafts, public toilets, with dimensions;
 5. internal partitions; appropriate thicknesses and dimensions to fix basic organizations; indicate fire rated lines;
 6. door swings;
 7. floor elevations;
 8. built-in furniture and equipment; and
 9. furniture layout concept drawings.
- (c) Large scale plans showing key areas e.g. lobby, special spaces. Indicate surface materials. (minimum scale 1/4" – 1'0");
- (d) Roof plans showing;
1. proposed systems type;
 2. pitch and drainage pattern;
 3. roof drain, gutters and scuppers; and
 4. skylights, stair halls through roof, penthouses, major equipment, chimneys.
- (e) Building sections: One transverse and lone longitudinal section. Indicate floor to ceiling heights and floor-to-floor heights. Label all spaces;
- (f) Building elevations showing;
1. full height elevations including roof structures, e.g., mechanical equipment, chimneys, and penthouses;
 2. floor elevations, floor-to-floor height, and overall height related to benchmarks on site plans;
 3. all fenestration;
 4. column centerlines;
 5. materials indicating major control and expansion joints, and divisions of materials where required;

6. louver locations; and
 7. exterior grades and topographical features in context.
- (g) Full height wall sections for main elevations and at special conditions. Show foundation and perimeter treatment, wall construction including insulation and supporting structure, fenestration and mechanical penetrations, and floor construction;
- (h) Interior elevations: Show at all spaces, e.g. library, lobby, and all typical spaces, e.g. classroom;
- (i) Reflected ceiling plans: show prototypical structural, fire protection, mechanical and electrical information for classrooms and major spaces, including lighting layouts with ceiling height and material charges;
- (j) Schedules;
1. finish schedule by room types;
 2. door schedule by room types;
 3. window schedule; and
 4. equipment schedules, e.g., food service, instructional media.
- (k) An interior color theory statement discussing proposed paint and material selections and colors for typical and special spaces and why they have been selected and, how these selections relate to exterior materials and colors;
- (l) Structural Concepts;
1. Locations and dates of test boring holes and results of soil investigation, including water levels, allowable soil bearing pressure and bottom grades of footing and slabs.
 2. Framing plans: typical floor framing, roof framing, special framing, show framing at major openings and sizes of members.
 3. Foundation plan showing sizes and locations of typical components.
 4. Column locations.
 5. Preliminary details including floor and roof deck, statements as to methods of lateral bracing and how requirement of earthquake code will be met.
 6. Details for special and/or incidental structural features, e.g. tunnels, connecting bridges and unique architectural features.
 7. Connection to existing buildings at foundation and at key points at existing structure if applicable.
- (m) Fire Protection: floor plans indicating wet or dry type systems, hose racks or cabinets and fire department tie-ins. Indicate whether a fire pump will be required and, if so, show location within the building. Show typical sprinkler head layout;

(n) Plumbing and sanitary systems: floor plans indicating locations of all plumbing fixtures and special features, and approximate location and size of all piping systems and principal items of equipment;

(o) Heating, Ventilating and Air Conditioning Systems;

1. Heat gain and loss calculations.
2. Show locations and approximate sizes of piping systems, air handling systems and principal items of equipment such as compressors or cooling towers.
3. Indicate space requirements of major equipment and their location in mechanical rooms and fan rooms. Indicate shaft requirements.

(p) Electrical Systems;

1. Calculations showing total electrical load.
2. All services including those for special purposes shall be located and indicated.
3. Lighting shall be indicated as to type, location and intensities in foot-candles for each special and typical space. Provide fixture cuts of typical lighting fixtures, e.g., classrooms. Provide fixture cuts for special lighting applications.
4. Switchgear and emergency generator.
5. Fire alarm system drawings showing all initiation and signaling devices, control panels, annunciator panels, etc.
6. Security system drawings.
7. Communications drawings showing chases, major equipment locations and any special distribution requirements.
8. CATV/CCTV drawings showing chases, major equipment locations and any special distribution requirements.
9. Information Technology drawings showing chases, major equipment locations and any special distribution requirements.

7.5.3 Other Consultant's Drawings and Other Graphic and Written Requirements: For special consultants, e.g., kitchen, elevator, library, media room, equipment where appropriate, provide drawings that locate and define the scope of the work. Coordinate with other disciplines. Provide cuts of all major pieces of equipment.

7.5.4 Project Manual Requirements (Specifications):

(a) Outline Specifications that are to accompany Design Development Drawings shall be prepared to a level of detail that is standard and customary and shall include, but not be limited to, a comprehensive description of the Project and the materials proposed for use in the work. No detailed specifications of materials or workmanship procedures need be included; however, the general scope shall be indicated by Unifomat divisions as applicable to proposed construction.

1. The Design Development Outline Specification shall also include a comprehensive “BASIS OF DESIGN.” The “BASIS OF DESIGN” shall be a narrative description of the Project and shall include all applicable architectural, civil, structural, mechanical and electrical programs and/or systems. Identify all proposed filed sub-bid categories.
- (b) The following is a list of items that shall at a minimum be identified or outlined in this Phase.
1. Site work; clearing, drives, walks, parking areas, fences, excavation, backfill, planting:
 2. Footings; on earth, rock, piles, caissons, proposed bearing pressures, boring logs:
 3. Foundation walls; type of concrete, reinforcing, type and extent of waterproofing:
 4. Footing drains; type, disposal of drainage:
 5. Exterior walls: superstructure, type, materials, brick type, alternate cladding, back-up materials, damp-roofing material and extent, special features.
 6. Roofs; types, vapor barrier, insulation, flashings, all materials.
 7. Flashings; general types, all materials, weights, where each type is to be used.
 8. Sheet metal; gutters, leaders, others uses, except flashings.
 9. Windows; general types, materials, section weights, sub-frames, finish, glazing, screens.
 10. Doors, exterior and interior; types and thicknesses.
 11. Steps, exterior; including platforms and landings’ materials.
 12. Stairs, interior; including platforms, landings, walls, materials and finishes.
 13. Framing; wood, concrete or metal systems in accordance with general design.
 14. Partitions; materials, thicknesses, finishes.
 15. Cabinet and casework; types and materials.
 16. Food Service Equipment; types and materials.
 17. Furring; lathing, plastering, materials and locations.
 18. Insulation thermal; types, thicknesses, methods of application and locations.
 19. Acoustical treatments; types, thicknesses, methods of application and location.
 20. Interior finishes; materials for floors, walls, bases, wainscots, trim, ceilings, ceiling heights.

21. Fire Protection; standpipe systems, sprinkler systems, fire pumps and accessories.
 22. Water supply; source; location of main to which connection will be made; type of pipe for service main; load requirements; load factors and pressures.
 23. Sanitary sewers; sewage disposal system, pipe and other materials.
 24. Storm sewers; storm drainage disposal system (institution or local facility), pipe and other materials.
 25. Gas main; material, size, location. Interface with utility company.
 26. Plumbing; systems such as wastes, vents, hot water, cold water, gas, air, oxygen, vacuum, main source of supply, materials for each, water heaters, pumps, thermal insulation fixture quality, all special features.
 27. Heating, ventilating and air conditioning; type of heating and refrigeration plants, type and capacity of boilers and cooling equipment, fuel, type of burners, fuel storage, heaters, feed water pumps and heaters, thermal insulation, type of heating medium, supply and return piping, radiation, unit heaters, radiant heating, principal air conditioning equipment types, special features, supply, return and exhaust ductwork.
 28. Electric work; service connection, location, institution or public utility, overhead or underground, transformers including type and location, types of conduit and wiring, types of fixtures, location of main switchboard, radio, fire alarm, telephone, public address, emergency lighting and wiring, emergency or other generators, special features, including Master TV, information retrieval and/or data processing system.
 29. Elevators, dumbwaiters and platform lifts; capacities, speed, travel in feet, landings, operation, controls, platform sizes, machine type and location, car and entrance finishes, signals.
 30. Other built-in equipment, types and materials.
 31. Special features.
- 7.5.5 Construction cost estimate – Provide a construction cost estimate in Unifomat II Level 2 format with aggregated unit rates and quantities supporting each item referenced in Article 7.5.4(b). The estimate cost shall be projected, to the mid point of the construction period.
- 7.5.6 Reports, drawings, specifications, cost estimates and other design development submittals shall be subject to the written approval of the Owner and the Authority. Unless a lesser number is requested by the Owner, the Designer shall submit to the Owner for approval six (6) copies of Design Development drawings, specifications, cost estimates, and other submittals. Two (2) copies shall be submitted to the Authority by the Designer.
- 7.5.7 The Designer shall present and explain the Design Development submission to the Owner, the Authority and at a local public meeting scheduled by the Owner, if any such meeting is scheduled or in conference.

7.5.8 The Designer and its Subconsultants shall collaborate with the Authority's Commissioning Consultant to develop design criteria which will support the purposes of building commissioning and energy/resources conservation concepts as commonly understood and as prescribed by the Commissioning Consultant.

7.6 Construction Documents Phase: In addition to the requirements specified in the RFS (Attachment B), the Designer shall:

7.6.1 Upon receipt of an Approval to Proceed with the Construction Documents Phase of the Project from the Owner, the Designer shall meet regularly as necessary with the Owner, the Authority, the OPM and the Commissioning Consultant based on the submittals approved in the Design Development phase of the Project, shall update and refine the items previously submitted and shall submit on or before the date and time specified in the Project Schedule:

- (a) an updated work plan and recommended updates for incorporation into the Project Schedule by the OPM;
- (b) complete construction drawings and specifications, certified by the Designer as having satisfied the firm's quality control review process as previously confirmed with the Owner, approved as required by subsection (h) below, in sufficient detail to permit fixed-price bids in open competition for construction of the Project;
- (c) an updated environmental permitting assessment, building code analysis, ADA/MAAB analysis, and a certified list of all required testing and all required permits identified in 7.5.1(a) as well as a certification that all applicable local, state and utility officials have been contacted by the Designer regarding each utility connection and that the persons responsible for permits or connection approval have agreed to the systems' use;
- (d) structural and energy calculations;
- (e) at the 60% stage of completion of the final drawings and specifications, a construction cost estimate prepared using the Unifomat II Classification to Level 3, the CSI MasterFormat 6-digit format to Level 3 and MGL c.149 §44F (filed sub-bid) format including quantities of all materials and unit prices of labor, equipment, and materials as well as a cost estimate for each item of work, for review by the Owner and Authority;
- (f) no later than at the 100% stage of completion of the final drawings and specifications, two sets of the final drawings and specifications shall be provided to the local building official to be signed and stamped "Approved" by the local building official. Two sets of plumbing drawings and specifications shall be provided to the local plumbing inspector to be signed and stamped "Approved" by the local plumbing inspector. Two sets of the fire protection, HVAC, and electrical construction documents shall be provided to the local fire official to be signed and stamped "Approved" by the local fire official. Two sets of the electrical construction documents shall be provided to the local electrical inspector to be signed and stamped "Approved" by the local electrical inspector. Notwithstanding the foregoing, the Owner acknowledges that building officials, department inspectors, and

fire officials have varying policies on approvals and submittal procedures, and the only obligation of the Designer in this regard is to make the submissions described herein and assist the Owner or Contractor in receiving the Approvals to the extent available.

- (g) The Designer shall also submit a written summary comparing the final construction drawings and specifications and final estimated construction cost with the Final Design Program requirements and submittals made during the Design Development phase, explaining any significant deviations.
- (h) All submittals by the Designer shall be subject to the written approval of the Owner, which approval shall not be unreasonably delayed, withheld, conditioned, or denied. Unless a lesser number is requested by the Owner or is provided hereinafter, the Designer shall furnish to the Owner for approval six (6) sets of the drawings, specifications construction cost estimates and other submittals. The Designer shall also furnish electronic media copies of the foregoing drawings and documents in such form as may be required by the Authority.
- (i) From the approved construction drawings and specifications, with such changes as the Owner or the Authority requires, the Designer shall prepare and transmit to the Owner a set of reproducible black and white drawings and original specifications on high quality white bond paper, single-sided, properly packaged, suitable for reproduction, stamped and signed by all disciplines, which documents shall become the property of the Owner as provided under Article 16. Other suitable reproducible media, having the same content shall be substituted, when so directed by the Owner. One printed copy of the drawings and specifications shall be submitted with the reproducible drawings and specifications.

7.6.2 The 60 Percent Submission shall include:

- (a) The Basis of Design that accompanied the Outline Specifications in the Design Development Phase shall be updated and expanded to include all architectural, structural, fire protection, plumbing, mechanical, electrical and civil basic drawings and calculations for the Project.
- (b) Keying of graphics shall be sufficient to allow a reviewer to make his or her way through the set.
- (c) Cover sheet shall include a list of all drawings related to the Project.
- (d) Interior Materials Color Boards shall include all samples of interior materials labeled and mounted to indicate relative areas and relative location.
- (e) A materials selection legend identifying typical areas and their materials. Information should include: material name, manufacturer, color name/number and finish.
- (f) Colored interior elevations and perspectives of major and typical spaces.

- (g) Large scale plans of all mechanical and electrical spaces with equipment dotted in.
- (h) Project Manual, including all sections to be included in final technical specifications, developed to include a list of all materials in the building with their manufacturers. Identify all specifications sections which need to be filed sub-bid.
- (i) Identify all proposed alternates by inclusion in a project manual section to be titled "Alternates". Alternates shall be listed in sequence as approved by the Owner.
- (j) Code analysis: Provide a final code analysis. Any deviation of methods of compliance from earlier submittals shall be indicated.

7.6.3 Drawing Requirements: The documents prepared during the Construction Documents Phase shall set forth the requirements for construction of the Project to a level of detail that is customary and standard and shall include, but not be limited to:

- (a) Cover sheet showing drawing index, symbols, abbreviations, notes, locations map.
- (b) Site drawings shall be complete to define the extent and detail of site work. Show the following:
 1. Layout and location of all proposed work including buildings, structures, retaining walls, parking, walls and all other site improvements, with details.
 2. Existing and proposed grades and contours including floor elevations, existing structures and topography, survey base line, bench marks and boring locations.
 3. Landscaping and planting.
 4. All utility service lines, systems and structures for electricity, gas, oil, water, steam, telephone, CATV, fire alarm, sanitary and storm drainage including size, composition, grades and directions of flow.
 5. Contract Limit Line and Storage Area for construction materials.
 6. All existing foundations, obstructions and other physical characteristics of the site which may affect the construction work.
 7. Site survey.
- (c) Demolition drawings and temporary work required.
- (d) Architectural drawings shall include at a minimum:
 1. Floor plans of each floor, including basement and lofts or attic with room and corridor dimensions, wall thicknesses, column locations, floor elevations, mechanical and electrical openings, door and window

- designations, partition types, floor materials, built in furniture and equipment, keyed to other architectural drawings. All rooms numbered.
2. Large scale floor plans where required to illustrate detailed requirements of rooms.
 3. Roof plans showing openings, drainage, slopes, expansion joints and all projections, including equipment.
 4. Key plans on all floor plans and section drawings, where appropriate.
 5. Building Sections as required to show spatial organization of building but no less than one longitudinal and one transverse.
 6. Building elevations. All building elevations shall be fully developed, and hidden elevations shall be shown. Elevations shall be shown in a sequence as unfolded from a certain point.
 7. Full height wall sections indicating dimensions, flashing, anchorage, reinforcing, coursing, cladding, and all other conditions at wall, roof, foundation, interior floors.
 8. Exterior details, for roofing, flashing, expansion control and construction joints, waterstops and other details showing all conditions both vertical and horizontal, including schedules.
 9. Door, window, entrance, and storefront, schedules, and details.
 10. Vertical circulation plans, sections and details including stairs, elevators, conveyors, dumbwaiters.
 11. Interior elevations of all significant and typical spaces.
 12. Interior details including casework, paneling surfacing and acoustical treatment.
 13. Reflected ceiling plans coordinated with fire protection, mechanical and electrical drawings, and ceiling details.
 14. Schedules (clearly define new or existing)
 - a. Doors
 - b. Equipment, e.g. for services
 - c. Partitions
 - d. Finishes

(e) Structural drawings shall indicate the following:

1. Soils exploration plans with dates, elevation water level, and bottom grades for footing and slabs plotted.
2. Foundation plans with bottom grades showing layout of all footings, walls, slabs on grade including reinforcing, grade beams, and columns; include design soil bearing pressures and live loads for each area.
3. Floor and roof plans of structural systems including framing, grades of finished floors and depressed areas, with locations and dimensions for all openings. Also indicate design floor loads.
4. Complete foundation wall elevation and typical sections, with reinforcing indicating location, dimensions and grades for all footings, steps and wall openings.
5. Complete details and section with dimensions for all construction including expansion and construction joints, reinforcing and other embedded items.

6. Schedules (with dimensions) for all lintels, beams, joists, and columns.
 7. Unless detailed on the Drawings, the following information shall appear in the general notes. Sheet S-1: class and 28 day strength of concrete for each portion, structural steel and concrete reinforcing design stresses for each type of structural member, concrete cover for each type of structural member, shrinkage and temperature steel requirements, reinforcing laps for main reinforcing and temperature steel; bendpoint, cutoff, and hook locations for all members, minimum beam and lintel bearing. Reinforcing steel fabrication shall be in accordance with most recent ACI, "Manual of Standard Practice for Detailing Reinforced Concrete." Structural steel fabrication shall be in accordance with the AISC "Manual of Steel Construction."
- (f) Fire protection drawings shall indicate standpipe systems, sprinkler systems, suppression systems, access panels, fire pumps, accessories, and piping. All piping, equipment, fixtures and devices shall be located and sized. Design criteria shall be provided on the drawings in accordance with NFPA requirements.
1. Fire protection work, other than site work, shall not be combined on the same sheets with the Plumbing, HVAC, Electrical, or other drawings except with the prior approval of the Owner.
- (g) Plumbing drawings shall indicate the following:
1. All work done by the Plumbing Subcontractor, which includes all water, gas, air, vacuum, medical gases, sanitary and storm wastes, and accessories. Foundation drain lines are the work of the General Contractor and shall not be indicated on the Plumbing Drawings. Site utilities shall be indicated on the utility drawings.
 2. Plumbing work, other than site work, shall not be combined on the same sheets with the Fire Protection, HVAC, Electrical, or other drawings except with the prior approval of the Owner.
 3. Trapping and venting of all plumbing fixtures including floor drains.
 4. Water and gas supply sources, storm and sanitary discharge mains.
 5. All piping shall be carefully sized and all sizes shall be indicated on drawings and riser diagrams. Indicate all directions of flow and pitch on piping.
 6. All accessories, valves, fixtures including all drinking foundation, grease traps for kitchen waste and all necessary panels, identified as to type and size.
 7. All piping and connections required for other trades (e.g., kitchen equipment, HVAC make-up water, etc.)
 8. Acid waste, vents and neutralization systems for laboratories.
 9. Plumbing Legend and/or graphical symbols on the first sheet of the Plumbing Drawings in accordance with the American National Standards Institute (ANSI).

10. Plumbing riser diagrams for structures two or more stories in height above the ground level.
11. Domestic water booster pumps, boiler feed water, meter location, hose bibbs.
12. Domestic hot water: storage tanks, piping material, hanger details.
13. All required access panels shall be indicated.
14. Backflow preventors, and cleanouts. Verify that access and clearance provisions for periodically inspected devices, including backflow prevention, is adequate to satisfy requirements of inspecting agencies.

(h) Heating, Ventilating and Air Conditioning Drawings shall indicate the following:

1. HVAC work, other than site work, shall not be combined on the same sheets with Fire Protection, Plumbing, Electrical, or other drawings except with the prior approval of the Owner.
2. All piping and ductwork systems shall be located and sized. All ductwork shall be shown double line.
3. All systems shall be sized at all reductions and riser diagrams of piping and duct systems shall be indicated.
4. All directions of flow and pitch on piping, and direction of flow, volumes for duct systems shall be indicated.
5. All equipment shall have sufficient servicing and/or replacement space indicated on drawings.
6. All equipment, accessories, valves and dampers with all necessary access panels, identified as to type and size. Access panels, where required for access to valves and dampers shall be indicated on drawings.
7. Cooling system pumps, chillers, cooling towers, air handling units, ductwork system and dampers, fan details, temperature control system, air and hydronic balancing equipment, and schedules shall be indicated.
8. Cooling tower design shall be indicated on the drawings showing site location, elevations and floor plan of equipment layout and typical flow diagram as related to the total HVAC system.
9. All fire and smoke dampers, access panels and doors.
10. Mechanical room designs:
 - a. Vent pipes for safety valves, relief valves, back pressure valves and tanks shall be extended above flat roofs in accordance with all governing authorities.
 - b. In all designs for boiler and refrigeration plants, include a complete floor plan indicating location of all major mechanical equipment and sufficient service space.
 - c. In designs of new and/or replacement boiler and refrigeration plants, provide a flow diagram detailing steam or hot water distribution systems, return systems, including all existing equipment and their function, as well as any proposed expansions with all necessary instrumentation and controls.

(i). Electrical Drawings shall indicate the following:

1. Site utilities shall be indicated on separate electrical site drawings, unless ample space is available on common site for utility drawings.
2. Electrical work, other than site work, shall not be combined on the same sheets with Fire Protection, Plumbing, HVAC, or other drawings except with the prior approval of the Owner.
3. General arrangement: Outline layout of each floor. Typical sections through the structure, floor and ceiling heights and elevations, and type construction, including concrete pads shall be indicated. Indicate interface with other systems. Identify any work by general contractor or other trades.
4. Interior lighting system: Light fixture schedules, circuiting location and mounting heights of all fixtures, receptacle and switch outlets, sizes and types of all lamps, conduits, all other accessories and riser diagrams shall be indicated on drawings. Indicate details and method of supporting electrical fixtures and conduits. Designer shall specify that all electrical lighting fixtures be supported from the building structure, and shall be independent of ducts, pipes, ceilings and their supporting members. Comply with seismic design criteria.
5. Power system: Locations, types and method of control for all motors, heaters, appliances, controllers, starters, branch circuits, feeder conductors and conduits. Indicate riser diagrams. Show details and indicate method of supporting electrical conduit. For larger projects, thermostats and control wiring are normally covered under the HVAC sub-contract, assure coordination.
6. Fire Alarm, Data, Communications, CATV/CCTV Systems: Locations and types of all devices, outlets and equipment, service connections, wiring diagrams, all other essential details.
7. Services: Location and details of all services, whether overhead or underground, feeder sizes, plans and elevations of switchgear and transformers, metering and service switchboard arrangements, wiring and ground fault diagram and bus ducts.
8. General and sub-stations: Location, size, method of connection and protection of all generators, transformers, exciters, motor generators, switch gear, and associated equipment, current characteristics and equipment capacities. Indicate equipment connections by means of one line and/on wiring diagrams and schedule all major items of equipment and all instruments.
9. Underground work: The size and locations of manholes and types of cables, number, size, and location of ducts, locations, sizes and types of cable supports, fireproofing, duct line profile, and one line diagram of connections. All underground chambers, including manholes and pull-boxes, shall be constructed of cast in place or one piece pre-cast concrete.
10. Pole line work: Location, length, treatment and class of poles, guying, cross arms, insulators, circuiting, transformers, protective and switching devices, lightning arresters, special structures, diagrams, current characteristics and grounding.

11. Exterior lighting: Location, size, and type of transformers, luminary, poles, light standards, cables, ducts, and manholes, details of control equipment and connection diagrams.
12. Emergency system details including transfer switch, type of fuel.
13. One line diagram indicating load KVA, and available short circuit amperes at each transformer, switchboard, distribution panel board, branch circuit panel board, and at major pieces of equipment.
14. Riser diagrams for all systems.

7.6.4 Project Manual Requirements:

- (a) The format for the technical specifications shall be CSI Masterformat with separate sections for each of class of work required by M.G.L. c. 149 §44F.
- (b) The following general information applies to the development of final Specification:
 1. Describe the extent of the work, the materials and workmanship, and include the work under the proper section. If any portion of the work included in a section of the Specifications is to be performed by a trade covered by another section, there shall be clear and distinct cross-referencing between the sections. Merely to state “by others” is not acceptable.
 2. For each item of material or equipment, the specifications shall provide for a minimum of three named brands of material or equipment and the words “or equal” or a description of material or equipment which can be met by a minimum of three manufacturers or producers, and the words “or equal”. Proprietary products shall not be specified except as provided by M.G.L. c. 30, § 39M; however, when they are specified, proprietary specifications are subject to the “or equal” provisions of M.G.L. c.30, § 39M.
 3. Specify materials mined or manufactured in Massachusetts first and the United States of America second whenever possible.
 4. Do not use general clauses intended to be all-inclusive in lieu of complete descriptions.
 5. Do not duplicate standard requirements that are contained in the contract form.
 6. Use consistency throughout. The word “will” shall be used to designate what the Owner, Authority, Owner’s Project Manager, or the Designer can be expected to do, and the word “shall” shall be used to designate what is mandatory for the Contractor or subcontractors to do.
 7. Use the same term throughout for the same subject and the term shall be the same as that used on the drawings.
 8. Do not use the term “etc.”
 9. Avoid such terms as “to the satisfaction of the Designer”, “as directed by the Designer”, “as approved” and “as required”.
 10. Specify work in appropriate Sections according to local trade jurisdiction.
 11. Avoid the use of the following symbols:

<u>Symbol</u>	<u>Use Instead</u>
#	number, no., or pounds
%	percent
"	inch or in.
X	by
'	feet or ft.
+	plus
-	minus
o	degree
/	per or at

12. In sections for which filed sub-bids are required, refrain from using such terms as "the Contractor," the "Heating Contractor," or "the Plumbing Contractor," but where necessary for clarity refer to the "HVAC Subcontractor," the "General Contractor" and so on.
13. Do not give numbers both in words and figures. Numbers less than 10 shall be written in words, 10 and higher numbers shall be written in figures. In expressing dimensions, figures such as 2 in., 16 in., 7 ft., 6 in., shall be used.
14. Each filed sub-bid section shall detail all labor and materials required by the particular sub-trade and list, by number, those drawings (and only those drawings) indicating work of that sub-trade. In addition, list drawings indicating work of a particular trade that appears on drawings that are not customarily included in the work of the trade, when applicable.
15. Do not specify that a product or system shall require prequalification for use prior to bidding.

7.6.5 Special Specification Requirements:

- (a) Proprietary products shall not be specified except as provided by M.G.L. c. 30, § 39M; however, when they are specified, proprietary specifications are subject to the "or equal" provisions of c. 30, § 39M.
- (b) Alternates, if approved in writing by the Owner, shall be properly described and cross-referenced in the project manual and drawings. An alternate proposal sheet shall be prepared by the Designer for insertion into the Contract Form.
- (c) Allowances are prohibited pursuant to M.G.L. c. 149, § 44G(A).
- (d) Unit price items, if permitted or ordered by the Owner, shall be properly described in the Specifications. A unit price proposal sheet shall be prepared for the General Contractor's proposal. When a unit price item is the work of a filed sub-bidder, information shall be included in the applicable specification section with instructions for the sub-bidder to insert the unit price amounts in

the proposal sheet attached to the form for sub-bid. Quantities of unit price items shall be specified if unit prices are to be used in determination of the lowest and responsible bidder.

- (e) Staging, scaffolding cutting and patching, refuse collection and disposal, demolition work and cleaning task, allocation policy and proposed language shall be carefully assigned to avoid duplication or omission.

7.6.6 Estimate and Analysis of Construction Cost

- (a) The Designer shall furnish a final construction cost estimate, based on and current as of a date no earlier than 90% Construction Documents, including cost estimates for general conditions, overhead and profit, insurance, bonds, and all other items; and allowances expressed as percentage rates for construction contingencies and escalation to the bid date; and other mutually agreed upon contingencies. The final construction cost estimate shall be prepared in Unifomat II Elemental Classification to Level 3 (Sections A-G inclusive), the CSI MasterSpec format to Level 3 and M.G.L. c.149, §44F (filed sub-bid) format and shall be 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.
- (b) The date of the estimate shall be a date no earlier than the date of 90% Construction Documents. The detailed estimate cost shall be projected, to the mid point of the construction period.
- (c) The summary sheets shall be developed, which shall contain the following:
 - 1. The date that the estimate was prepared. (Value Date).
 - 2. The anticipated bid date.
 - 3. The project and contract number.
 - 4. The title and location of the project.
 - 5. The name of the Designer.
 - 6. The name of the Estimator.
 - 7. The site cost (including all utilities).
 - 8. The building cost (including fixed equipment).
 - 9. The estimated construction cost of each Phase of the work, totaled.
- (d) The costs of Item 1 and Item 2 work, as distinguished in the General Contractor's bid forms, shall be individually totaled.

(e) In order to maintain uniformity in computation and consistency of both gross and net square foot areas of buildings, they shall be determined in the following manner:

1. Gross Area: The area included within the outside faces of the exterior walls for all stories. Custodial areas such as janitor closets, building maintenance and building employees' locker rooms, circulation areas such as corridors, lobbies, stairs, and elevators, and mechanical areas such as those designated to house mechanical and electrical equipment, utility services, and non-private toilets shall be considered as part of the gross area, but not part of the net area.
2. Net Areas: In general, those areas which have a specific assignment and functional program use as determined by the facility, including, but not limited to, areas such as cafeterias, auditoriums, libraries, administrative and classrooms. These shall be measured from the inside finish of permanent outside walls to the inside finish of corridor walls, and to the inside finish of intermediate partitions.

7.6.7 The Designer shall meet with the Owner twice per month (or more frequently if needed) during this Phase.

7.7 Bidding Phase

- 7.7.1 The Designer shall copy the construction bid documents, including advertisements, for receipt of proposals from construction contractors, and for execution of the Owner-Contractor Agreement. The Designer shall prepare all addenda (to include bidder questions and Designer responses), subject to the Approval of the Owner and the Authority. The Designer shall attend and chair the pre-bid conference if one is scheduled, taking note of all questions asked. Relevant questions submitted in writing shall be answered by the Designer by means of written addenda to the bid documents as required. The Designer shall attend each bid opening and, with the assistance of the Owner's Project Manager, conduct a review of the qualifications of the low filed sub-bidders and general bidder (and of other bidders if necessary) and shall, within five working days of the respective bid opening dates, advise the Owner in writing of the Designer's opinions as to the sub-bidders' bids and as to which general bidder is the responsible and eligible bidder that has submitted the lowest bid.
- 7.7.2 The Designer shall assist the Owner in the prequalification of prime contractors and sub-contractors in the filed sub-bidder or trade contractor scopes of work pursuant to M.G.L. c. 149, §§44D½ and 44D¾ or M.G.L. c. 149A including participation as a member of the Owner's Prequalification Committee.
- 7.7.3 The Designer shall receive all inquiries relating to the bid documents and, when necessary, answer questions by preparing and issuing written addenda. The Owner shall review and approve all such addenda prior to issuance to bidders.

- 7.7.4 When sub-bids are required:
- (a) Attend and conduct sub-bid openings.
 - (b) Review sub-bids with the Owner for completeness and accuracy.
 - (c) Assess sub-bid amounts relative to cost estimates.
 - (d) Check references of sub-bidders and make written recommendations as to their qualifications, only required for projects in which pre-qualification has not occurred.
 - (e) Issue a letter of recommendation to Owner upon acceptance of sub-bids, identify any categories to be re-bid and reason(s) therefor.
 - (f) Prepare and distribute the filed sub-bid tabulation to all prospective bidders. The tabulation shall be reviewed and approved by the Owner prior to its issuance to bidders.
- 7.7.5 Unless otherwise directed by the Owner, attend and conduct the general bid opening.
- 7.7.6 Review with the Owner and the Owner's Project Manager general bids for completeness and accuracy.
- 7.7.7 Review alternates and make written recommendations as to their acceptance.
- 7.7.8 If the Project has to be re-bid because of a defect in the bid documents prepared by the Designer or in procedures proposed by the Designer, the Designer shall correct the defect and take the necessary actions for re-bidding the Project on proper bid documents without any additional compensation to the Designer.
- 7.7.9 If within three (3) months after approval of Construction Contract Documents, in final form, the bids of the lowest responsible and eligible bidders or negotiated proposals exceed the approved Project Construction Budget, the provisions of Article 4.10 shall apply.
- 7.7.10 If the Owner awards a construction contract for an amount that exceeds the amount established in the Project Construction Budget, such an award will not affect the Fee for Basic Services.
- 7.8 Construction Administration Phase - Obligations During Construction: Following the execution of the Owner-Contractor Agreement, the Designer shall undertake certain of the obligations of administering the Owner-Contractor Agreement on behalf of the Owner, provided that Designer shall not be subject to provisions of the Owner-Contractor Agreement that would have the effect of expanding Designer's responsibilities or liabilities under this Contract without Designer's written consent. Services during this phase include, but are not necessarily limited to:
- 7.8.1 Upon the award of the Owner-Contractor Agreement, the Designer shall:
- (a) Furnish the General Contractor with information for establishing lines and grades and such supplemental drawings as are reasonably needed to implement the intent of the Construction Contract Documents;

- (b) With reasonable promptness and in accordance with schedules agreed upon by the Designer and Contractor, observe testing when required under this Contract, and review and act upon samples, schedules, shop drawings and other submissions from the General Contractor;
- (c) Prepare, maintain and update logs for all submittals;
- (d) Visit the site at intervals appropriate to the stage of construction, weekly or as otherwise agreed to by the parties, and observe the progress of the Work, issue written progress reports, and attend job meetings, and review and respond to meeting minutes prepared by the Owner's Project Manager, and to determine in general if the Work observed is being built in a manner indicating the Work when completed will be in accordance with approved Construction Contract Documents.
- (e) Collaborate with the on-site Project Representative of the OPM to identify and monitor issues of concern relative to the progress of the Work, and establish communications processes to help assure that matters of mutual concern are exchanged on a timely basis with one another, the OPM, Commissioning Consultant, and Owner;
- (f) On a weekly basis, make specific recommendations on rejection of any Work observed by the Designer that fails to conform to the Construction Contract Documents, and observe corrected Work;
- (g) Require each Subconsultant engaged in accordance with Article 5 to make visits weekly or as otherwise agreed to by the parties during the progress of any work to which that Subconsultant's services relate, and to report upon it in writing to the Designer;
- (h) Recommend actions to be taken which may include condemnation or rejection of any work that the Designer determines fails to conform to the Owner-Contractor Agreement;
- (i) Review and recommend appropriate action for proposed requests for changes and where required by the Owner, prepare documents associated with requests for a change in any Construction Contract Documents. Compensation for change order work by the Designer shall be determined in accordance with Article 10.
- (j) Conduct semi-final and final inspections of the Project and report the results of such inspections in writing to the Owner
- (k) In association with the Owner's Commissioning Consultant, review the report by such Consultant on the balancing of air and water circulation systems;
- (l) In association with the Owner's Commissioning Consultant, review the report by such Consultant on the setting and adjustment of automatic controls;
- (m) In a timely manner, decide all questions regarding interpretation of, or compliance with, the Construction Contract Documents, except as the Owner may in writing otherwise determine;
- (n) In association with the Owner's Commissioning Consultant, review the recommendations of such Consultant for requirements upon operating and

maintenance documents and building user training events and instructional media as established in the Construction Contract Documents; such Consultant or OPM shall coordinate involvement of contracting parties, the Designer, and Owner.

- (o) Furnish the Record Drawings as submitted by the General Contractor in accordance with 7.8.3, and other required documents;
- (p) Assist the Owner with providing the written Contractor Evaluations required of the Owner pursuant to M.G.L. c.149 §44D(7) at the completion of approximately 50% of the Construction Phase on forms prescribed by M.G.L. c.149 §44D(16);
- (q) Perform inspections of the work as necessary to prepare a punch list identifying each incomplete or deficient Work item and performing re-inspections to authorize removal of satisfactorily completed Work items from the punch list, or to determine that the Project is complete. In association with the OPM, a cost shall be assigned to each incomplete or deficient Work item when it has been determined that the Project has reached Substantial Completion; and
- (r) Receive from the General Contractor all maintenance and operating manuals, occupancy permits, guarantees and other similar relevant materials.

7.8.2 The Designer shall submit to the Owner's Project Manager within 48 hours all requisitions for payment submitted by the General Contractor in the form required by the Owner. The Designer may establish procedures with the Contractor for advance notification of requisition and/or draft version processing. With respect to each such requisition, the Designer shall certify to the best of its knowledge that the percentage of Work included in the requisition is accurate and that the work performed is in accordance with the Construction Contract Documents. In the event the Designer does not approve the requisition exactly as submitted by the General Contractor, the Designer shall forward it for payment to the Owner's Project Manager dated and signed with corrections and with an accompanying letter of explanation setting forth the Designer's objections and recommended changes. The Designer shall coordinate the required visits of its own staff and those of its Subconsultants, to the construction site so as to enable it to submit to the Owner's Project Manager the General Contractor's monthly requisition for payment. Timely payments to the Contractor are required by M.G.L. c. 30, § 39K. Therefore, the Designer shall establish procedures to help assure either immediate mail or messenger delivery of the requisition for payment to the Owner's Project Manager, and shall process requisitions for payment within five business days after receipt of the same, provided the Contractor has submitted a full and complete requisition for payment in the correct form.

7.8.3 Prior to issuance of the Certificate of Substantial Completion, the Designer shall obtain from the General Contractor as-built drawings, including drawings showing the actual installation of the site utilities, plumbing, heating, ventilating and electrical work under the Owner-Contractor Agreement, and recording all changes. The Designer shall ascertain that changes authorized by change orders

are shown on the General Contractor's as-built drawings, but Designer shall be entitled to rely upon the accuracy and completeness of the Contractor's as-built information, and shall forward such to the Owner as Record Drawings.

7.8.4 Issue the Certificate of Substantial Completion of Construction.

7.8.5 The Designer shall meet with the Owner monthly during this Phase.

7.9 Completion Phase: Upon acceptance of the Certificate of Substantial Completion of Construction by the Owner, the Designer shall thereafter provide the following services:

7.9.1 With respect to a completed Project, preparing a Certificate of Final Completion.

7.9.2 With respect to a punch list, re-inspecting the work up to three times in order to determine that the punch list work is satisfactorily completed.

7.9.3 Reviewing and certifying the Contractor's Application(s) and Certificate(s) for Payment as necessary.

7.9.4 Attending meetings as reasonably necessary in the opinion of the Owner's Project Manager, unless such meetings involve continued discussions of incomplete or deficient work and the Basic Services punch list site visits have been expended. In such instance, the meetings shall be paid for as Extra Services.

7.9.5 Using the as-built information maintained by the General Contractor during construction referred to in Article 7.8.3, and revising the applicable original reproducible drawings and electronic media drawings on the basis of the as-built drawings, provided that Designer shall be entitled to rely upon the accuracy and completeness of the Contractor's as-built information. Upon completion of the required drafting and editing, provide one set of mylar reproducibles, two sets of prints and two (2) electronic version copies to the Owner which shall become the property of the Owner. The cost for printing the mylar reproducibles and two sets of prints are Reimbursable Expenses.

7.9.6 Ten (10) months after the date of substantial completion, performing one (1) site inspection and preparing a list of construction warranty deficiencies. The Designer shall consult with the Commissioning Consultant upon the acceptability of warranty compliance requirements and response actions.

7.9.7 Informing the Owner in writing, through the Owner's Project Manager, of all such warranty deficiencies that should be addressed.

7.9.8 Performing one (1) site inspection within a further sixty (60) days to see that all such warranty deficiencies have been corrected.

7.9.9 Evaluation of Contractor: The Designer shall assist the Owner with providing the written Contractor Evaluations required of the Owner pursuant to M.G.L. c.149 § 44D(7) within 70 days of the date of Substantial Completion for construction, on forms prescribed by M.G.L. c.149 § 44D(16).

7.9.10 Two (2) suitably bound legible copies of all original design and quantity calculations including those pertinent to change orders and shop drawings if applicable shall be furnished by the Designer to the Owner at the conclusion of the Owner-Contractor Agreement.

ARTICLE 8. EXTRA SERVICES

8.1 General

8.1.1 Extra Services are those services requested by the Owner to be performed by the Designer 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, which Approvals shall not be unreasonably delayed, withheld, denied, or conditioned.

8.1.2 The proposed cost, scope and schedule of all Extra Services shall be presented and approved by the Owner in writing prior to the performance of any Extra Services.

8.1.3 Cost proposals for Extra Services shall be computed in accordance with Attachment A.

8.2 Unless specifically stated elsewhere and only with the prior written Approval of the Owner, the Designer shall perform any of the following services as Extra Services:

8.2.1 preparing documentation for existing buildings when such documentation does not exist;

8.2.2 substantially revising previously approved reports, drawings, specifications or other documents to address changes authorized or requested by the Owner, including substantial changes in its size, quality, complexity, design, Budget, and/or bidding method or bid packages, and changes in Applicable Laws;

(a) Notwithstanding the provisions of 9.2.2, revisions prepared by the Designer to keep construction costs within the Project Budget that are required pursuant to Article 4.10 of this Contract to be without additional compensation, or to correct incorrect items for which the Designer has responsibility, shall not be Extra Services;

8.2.3 preparing documents for bidding alternates requested by the Owner, except for a reasonable number and extent of alternates to keep construction costs within the Project Budget which shall be Basic Services;

8.2.4 revising Construction Contract Documents which have been initially submitted and approved in their final and complete form, if general bids are not advertised based on such Construction Contract Documents within four months after initial submission;

8.2.5 services in connection with rebidding if the need to rebid is not attributable to the Designer;

8.2.6 attending meetings with the Owner’s Project Manager, Owner, the Authority, Department of Labor and Workforce Development or the Office of Attorney General in matters of dispute if attendance is required by the Owner, provided such dispute did not arise due to the fault of the Designer;

- 8.2.7 furnishing other services in excess of Basic Services made necessary by the default or failure of performance of the General Contractor or Sub-contractors;
 - 8.2.8 providing consultation with respect to replacement of work damaged by fire or other casualty during construction;
 - 8.2.9 preparing change orders and supporting data in accordance with Article 10, or modifying the Construction Documents in response to an unreasonable amount of substitutions proposed by the Contractor, or responding to unreasonable and excessive requests for information (RFIs) by the Contractor, where such information is available from a careful study and review of the Construction Documents;
 - 8.2.10 assisting the Owner in litigation or claims arising out of the Owner-Contractor Agreement, provided such litigation or claims did not arise due to the fault of the Designer;
 - 8.2.11 performing services during a construction period extended beyond the additional 60 calendar day period, specified in 8.3.1 hereinafter;
 - 8.2.12 performing professional services which are not otherwise required under this Contract as Basic Services;
 - 8.2.13 providing services in connection with partial completion or partial systems completion inspections at the time of Substantial Completion due to delay by the Contractor in completing the Work on schedule;
 - 8.2.14 providing services in connection with Contractor or Bidder disputes or questions arising out of the bidding process, unless such protest is a result of an actor omission of the Designer. Such services include research and preparation for and appearance at bid protest hearing and similar proceedings.
- 8.3 Construction Phase Services Provided after the Original Construction Completion Date
- 8.3.1 If construction has not reached substantial completion within the original construction period (as set forth in the Owner Contractor Agreement and as agreed to by the Designer), there shall be added to said construction period a period of sixty (60) calendar days, during which period the Designer shall continue to provide construction phase services for which no extra compensation shall be paid for the services described in Article 7.8 and 7.9.1 through 7.9.4.
 - 8.3.2 If construction has not reached Substantial Completion after the 60 additional calendar days, the Designer shall thereafter be entitled to Extra Services compensation for providing the services described in Article 7.9.3 and 7.9.4. In no event shall the Designer be entitled to any additional compensation on account of an extended construction period if and to the extent that a binding agreement or decision that results from a dispute resolution proceeding determines that the Designer's acts or inactions caused the construction period to be extended.

- 8.4 In the event of an emergency the Designer may proceed to perform Extra Services as required to meet the emergency after obtaining the verbal approval of the Owner. The Designer shall provide a written report to the Owner, as soon after the emergency arises as possible, and such report shall describe the emergency and the Extra Services that were performed.
- 8.5 Invoices for Extra Services shall be accompanied by a 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 9: REIMBURSABLE EXPENSES

- 9.1 For coordination and responsibility for the work, materials and costs described in 9.1.1 through 9.1.6, the Designer shall be reimbursed its actual costs and those of its Subconsultants, supported by invoices or receipts, plus 10%. The following are reimbursable expenses, when authorized by the Owner:
- 9.1.1 The actual cost to the Designer for Subconsultants and for additional tests under 4.11 provided, however, that reimbursement for such costs shall not be made unless the rates of compensation, the total estimated cost of the services and the scope of work for said services shall have been previously approved in writing by the Owner.
- 9.1.2 The cost of printing more than six (6) sets of design submissions and two electronic versions thereof per design phase.
- 9.1.3 The cost of printing the bid documents and the related copying, postage, and handling services during the bid period.
- 9.1.4 The cost of reproducing the mylar reproducible of the construction drawings for use by the General Contractor in preparing the record drawings.
- 9.1.5 Out of pocket expenses paid by the Designer such as filing fees, testing, and permit fees if such fees would be normally paid by the Owner.
- 9.1.6 Renderings, models, mock-ups, photographs and any other presentation materials.
- 9.1.7 Other expenses deemed necessary or appropriate by the Owner in writing.
- 9.2 Non-Reimbursable Expenses: The Owner shall not reimburse the Designer or its Subconsultants for travel expenses, sustenance, telephone, copying, facsimiles, electronic mails, postage and delivery expenses or cost estimating, unless specifically required elsewhere in this Contract.
- 9.3 The Designer shall not be entitled to compensation under this Article for the services of Subconsultants hired to perform Basic Services under this Contract.

ARTICLE 10: COMPENSATION AND RESPONSIBILITY FOR CHANGE ORDERS

- 10.1 The Designer shall be entitled to Extra Services compensation for preparing Change Orders initiated by the Owner except as provided in Article 10.3.
- 10.2 The Designer shall not be entitled to Extra Services compensation for preparing Change Orders to adjust the scope of construction work which arises from existing conditions for which unit prices have been specified in the Construction Contract Documents.
- 10.3 The Designer shall not be entitled to Extra Services compensation for preparing Change Orders necessary to address errors or omissions by the Designer.
- 10.4 Change Orders for which the Designer is not entitled to compensation are to be referred to as “no fee change orders.”
- 10.5 The fact that the Designer is not entitled to compensation for preparing a Change Order shall not limit any legal remedies which the Owner may have for recovering its additional costs necessitated by the Change Order.

ARTICLE 11: RELEASE AND DISCHARGE

- 11.1 The acceptance by the Designer of the last payment under the provisions of Article 6.5 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 officers, from all claims of the Designer and its Subconsultants for payment for services performed and/or furnished, except for those written claims submitted by the Designer to the Owner with, or prior to, the last invoice.

ARTICLE 12: ASSIGNMENT, SUSPENSION, TERMINATION, NO AWARD

12.1 Assignment:

- 12.1.1 The Designer shall not assign or transfer any part of its services or obligations under this Contract (other than as specified in this Article 12), without the prior written approval of the Owner and the Authority. Likewise, any successor to the Designer 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 Designer or its assignee from its responsibilities under this Contract. The Owner shall not assign this Contract without the written consent of the Designer.

12.2 Suspension:

- 12.2.1 The Owner may, at any time, effective upon fifteen (15) business days written notice to the Designer, suspend this Contract. If the Owner provides such written notice, the Designer shall be compensated for Services satisfactorily performed in

accordance with the Contract terms prior to the effective date of such suspension; invoices for such Services shall be properly submitted, but may be submitted after the date of such notice up to the effective date of suspension.

12.2.2 If a written notice of suspension issued pursuant to sub-paragraph 12.2.1 lasts for more than 90 consecutive calendar days, the Designer may, upon resumption of the Contract, be entitled to additional compensation for actual costs incurred due to such suspension provided that the suspension was not attributable to the Designer's fault.

12.3 Termination:

12.3.1 (a) By written notice to the Designer, the Owner may terminate this Contract effective on five (5) calendar days notice without cause. All compensation and reimbursement due to the Designer in accordance with the Contract terms, for services satisfactorily performed up to the date of termination, including proportionate payment for portions of the services started but incomplete at the time of termination, shall be paid to the Designer, provided no payment shall be made for services not yet performed or for anticipated profit on unperformed services. (b) Owner may terminate this Contract effective on five (5) calendar days notice for cause, and no further payment shall be due to the Designer to the extent the Owner can reasonably identify damages in specific amounts for which the Designer is liable under this Contract; Owner shall pay other amounts otherwise due and owing to the Designer.

12.4 Suspension or Termination by Designer:

By written notice to the Owner and the Authority, the Designer may suspend or terminate (at Designer's sole option) this Contract:

- (a) if the Owner, within thirty (30) days following written notice from the Designer of any material default by the Owner under the Contract (including failure to pay in accordance with the Contract), shall have failed to cure such default; or
- (b) if, after the Designer has performed all services required during any Phase prior to construction and at least three (3) months have elapsed without receipt by the Designer of Approval to proceed with the next Phase of the Project, provided the delay was not the fault of the Designer. This provision shall not apply to a Designer who has received a notice of suspension pursuant to 12.2.
- (c) Upon a proper termination by the Designer, the Designer shall be compensated as provided in 12.3.1 above regarding termination without cause.

12.5 No Award of Owner-Contractor Agreement: If the Owner-Contractor Agreement is not awarded by the Owner within one hundred twenty (120) days after the receipt of general bids for the Project and the bids have not been rejected and the Project has not been suspended, the Designer shall be paid through the Bidding Phase as if a contract for construction were awarded according to the payment schedule provided in Attachment A. This Article 12.4 does not apply, however, if the Designer has been directed to perform design revisions pursuant to 4.10.2, for the purposes of bringing the design of the Project within the Project Construction Budget.

ARTICLE 13: NOTICES

13.1 Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person (b) by certified mail, postage prepaid, return receipt requested (c) by facsimile or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

If to_[_____];

If to_[_____];

If to_[_____];

or to such other address as the Owner, Authority and Designer may from time to time specify in writing. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice that has been received by the party to whom it is sent as evidenced by confirmation slip that bears the time and date of request.

ARTICLE 14: INDEMNIFICATION

14.1 For claims arising out or relating to errors and omissions in the performance of professional services rendered by the Designer, to the fullest extent permitted by law, the Designer shall 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 this Contract by, the Designer or a person employed by the Designer, or Subconsultant for whom the Designer is responsible under this Contract.

14.2 For all other claims, to the fullest extent permitted by law, Designer 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 or the Authority to the extent they result 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 are caused by an act or omission of the Designer or a person or Subconsultant for whom the Designer is responsible under this Contract.

ARTICLE 15: INSURANCE

15.1 The Designer 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

Designer or its Subconsultant, as the case may be, and shall be in full force and effect for the full term of the Contract between the Owner and the Designer or for such longer period as 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 Designer, and any of its Subconsultants, shall submit to the Owner originals of the required certificates of insurance simultaneously with the execution of this Contract. Certificates of insurance evidencing the coverage required hereunder, together with evidence that all premiums for such insurance have been fully paid, shall be filed with the Owner and shall be made available to the Authority upon request. 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 to the Owner prior to the expiration of any of the policies referenced in the certificates so that the Owner shall at all times possess certificates indicating current coverage and said certificates shall be made available to the Authority upon request. Failure by the Designer to obtain and maintain the insurance required by this Article, 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 Designer under this Contract.
- 15.4 Termination, cancellation, or modification or reduction of coverage or limits by endorsement 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 Designer or its Subconsultant, as the case may be, is responsible for the payment of any and all deductibles under all of the insurance required below. Neither the Owner nor the Authority shall be responsible for the payment of deductibles, self-insured retentions or any portion thereof.
- 15.6 Workers’ Compensation, Commercial General Liability, Automobile Liability, and Valuable Papers

15.6.1 The Designer 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:

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.

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 Designer 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 included as an additional insured in this policy. The policy shall be endorsed to waive the insurer's rights of subrogation against the Owner and the Authority.

Automobile Liability Insurance (including owned, non-owned and hired vehicles) at limits of not less than \$1,000,000 combined single limit per accident.

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 the Agreement between the Owner and the Designer in the event of loss or destruction while in the custody of the Designer until the final fee payment is made or all data is turned over to the 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.

15.7 Professional Liability

The Designer shall maintain professional liability insurance covering errors and omissions and negligent acts of the Designer and of any person or entity for whose performance the Designer is legally liable at all times while services are being performed under this Contract and for a period of six years thereafter (as calculated in accordance with the terms below in this 15.7). The minimum amount of such insurance shall be \$2,000,000 per claim/annual aggregate.

If the policy is in a "claims made" format, 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: (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 Owner-Contractor Agreement and the taking of possession of the Project for occupancy by the Owner, which requirement can be met by providing renewal certificates of professional liability insurance to the Owner as evidence that this coverage is being maintained.

15.8 Subconsultants

The Designer shall require by contractual obligation, and shall exercise due diligence to enforce, that any professional engineering or landscape architecture Subconsultant hired in connection with the services to be provided under this Contract shall, unless otherwise agreed in writing by the Owner, obtain and maintain all insurance required by law and as may be required by the Owner under the terms of this Contract, except that the limit of Subconsultant's professional liability insurance shall be not less than \$500,000. Other

nonprofessional Subconsultants shall be required to maintain insurance in the types and amounts that they routinely carry in the course of their practice.

15.9 Liability of the 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.

15.10 Asbestos and Hazardous Materials

15.10.1 Unless otherwise provided in the RFS, the Designer shall have no responsibility for the discovery, presence, handling, removal or disposal of or for the exposure of persons to oil or hazardous materials in any form at the Project, including but not limited to asbestos-containing materials or other hazardous materials, as defined in MGL c.21E §2.

15.10.2 In the event that the Designer employs the services of a sub-consultant to provide services related to either the testing for asbestos-containing materials or oil or hazardous materials or related to the specification of methods and procedures for the removal or remediation of such asbestos-containing materials or oil or hazardous materials, the Designer shall employ such Subconsultants who have liability insurance coverage covering such services, to the extent that such insurance coverage is generally available to Subconsultants. Upon the Owner's written request, the Designer shall assign to the Owner the Designer's contractual right to pursue a claim against such Subconsultants. Such services shall be paid for as provided in Article 9 - Reimbursable Expenses unless such services are specifically included as Basic Services in the RFS.

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, computer programs, documents, models, inventions, equipment, and any other documentation, product of tangible materials to the extent authored or prepared, in whole or in part, by the Designer pursuant to this Contract (collectively, the "Materials"), other than the Designer's administrative communications, records, and files relating to this Contract, shall be the sole property of, and shall vest in, the Owner and the Authority as "works made for hire" or otherwise, provided that the Owner complies with its payment obligations under this Contract. The Owner and the Authority will own the exclusive rights, worldwide and royalty-free, to and in all Materials prepared and produced by the Designer 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 and the Authority 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 Designer. The Owner and the Authority shall provide appropriate credit to the

Designer, in terms agreed upon by the Design, in any publicity about or plaque at the Project. The Designer shall have a license to publish and publicly display all Materials prepared by the Designer in its normal marketing and related professional and academic activities. The Designer shall have a license to use the typical or standard details and all other replicable elements of the Materials for this Project on other future projects. At the completion or termination of the Designer's services required pursuant to this Contract, copies of all original Materials shall be promptly turned over to the Owner and the Authority.

- 16.2 The Owner and the Authority agree to waive any and all claims against the Designer and, to the fullest extent permitted by law, to jointly and severally defend, indemnify and hold the Designer harmless from and against any and all claims, losses, liabilities and damages incurred by the Owner or asserted by any other entity or individual arising out of or resulting from any use of the Materials on other projects, modifications of the Materials made by the Owner or others and used on this Project, or any reuse or modification of the Materials or any of Designer's designs, drawings and specifications. The Authority shall be a party to this Contract solely for the purposes of enforcing its rights and obligations under this Article 16.

ARTICLE 17: STATUTORY REQUIREMENTS

- 17.1 Agent for Service of Process: If the Designer's principal place of business is outside of the Commonwealth of Massachusetts, the Designer shall appoint an agent for the service of process as provided in M.G.L. c.227, §5. The power of attorney reflecting such appointment shall be filed with the Secretary of State as provided in M.G.L. c.227, §5. Copies of the power shall be provided to the Owner. There shall be no lapse in such agency for as long as the Designer may have potential liability.
- 17.2 Truth-in-Negotiations Certificate (M.G.L. c.7, §38H)
- 17.2.1 If the Designer's fee has been negotiated, the Designer must file a truth-in-negotiations certificate prior to execution of this Contract by the Owner. The certificate shall contain the following certifications:
- (a) that wage rates and other costs used to support the Designer's compensation are accurate, complete, and current at the time of contracting; and
 - (b) that 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 noncurrent wage rates or other costs.
- 17.3 Certification Pursuant to M.G.L. c.7 §38H (e): In accordance with M.G.L. c.7 §38H(e), the person signing this contract certifies, as a duly authorized signatory of the Designer, 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 this Contract; 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 Designer 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 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.

17.4 Minority-Owned and Woman-Owned Business Participation: Pursuant to M.G.L. c. 7, § 40N, the Designer shall subcontract a minimum of eight percent (8%) of its work to SOMWBA Certified minority-owned enterprises (MBEs) and four percent (4%) to SOMWBA Certified women-owned enterprises (WBEs) certified by the State Office of Minority-and-Women-Owned Business Assistance, SOMWBA, 10 Park Plaza Suite 3740, Boston, MA 02116; such percentages shall be based on the listed services defined and required in the RFS . If the Designer is a SOMWBA certified MBE or WBE the requirements in this Article 17.4 are not applicable.

17.4.1 The Designer shall complete and submit at the time of contract execution a completed Participation Schedule which is attached to this contract as Attachment C in order to be in compliance with Article 17.4 above.

17.5 Accounting Requirements: The Designer shall cause to be maintained complete, accurate and detailed records of all time devoted to the Project by the Designer and each Subconsultant employed by the Designer. The Owner, the Authority, and the Commonwealth's Inspector General may at all reasonable times audit such records that directly pertain to this Contract. On a Contract where the Fee for Basic Services exceeds \$100,000 the Designer shall comply with M.G.L. c.30 §39R which requires the Designer to:

17.5.1 Maintain accurate and detailed accounts for a six-year period after the final payment;

17.5.2 File with the Owner annual audited financial statements or statements from their accountants that their reviews are consistent with state laws.

17.5.3 File with the Owner a statement of management on internal accounting controls on its letterhead as prescribed in Attachment D and a statement from an independent certified public accountant (CPA) on its letterhead as prescribed in Attachment E to this Contract.

17.6 Revenue Enforcement and Protection Program (REAP): Pursuant to M.G.L. c. 62C §49A, the undersigned certifies under the penalties of perjury that to the best of his/her knowledge and belief that the firm and/or individuals in the firm are in compliance with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

17.7 Interest of Designer: The Designer hereby certifies that it is in compliance with the provisions of M.G.L. c. 268A whenever applicable. The Designer covenants that 1) neither he/she nor any member of the Designer firm presently has any 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 Designer; and 3) no partner or employee of the Designer firm is related by blood or marriage to any officer, official, or employee of the Owner.

- 17.8 Equal Opportunity: The Designer 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. Each shall comply with all provisions of Title VII of the Civil Rights Act of 1964 and MGL c.151B.
- 17.9 Certification of Non-Collusion: The signatory certifies under penalties of perjury that the Designer's 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.

ARTICLE 18: MISCELLANEOUS

- 18.1 Governing Law: This Contract shall be governed by the laws of the Commonwealth of Massachusetts.
- 18.2 Venue: Any suit by either party arising under this Contract shall be brought only in the Superior Court 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.
- 18.3 Non-Waiver: Neither the Owner's review, approval, or acceptance of, nor payment for any of the services furnished under this Contract shall be construed to operate as a waiver of any rights under the Contract or any cause of action arising out of the performance of the Contract.
- 18.4 Entire Agreement: This Contract represents the entire and integrated agreement between the Owner and the Designer and, except as otherwise provided herein, supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written agreement signed by both the Owner and the Designer, and approved by the Authority, which approval shall not unreasonably be delayed, denied, conditioned, or withheld.
- 18.5 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, then either party may file suit in accordance with Article 18.2; and (d) This Article of dispute resolution provisions shall survive termination of this Contract.

- 18.6 Waiver of Subrogation: (a) To the extent damages are covered by property insurance, the Owner and the Designer 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. (b) Nothing in this Contract shall create a contractual relationship with or create a cause of action in favor of a third party against the Owner or the Designer.

ATTACHMENT A

PAYMENT SCHEDULE

Payments shall be made in accordance with the provisions outlined in the Contract and with the following schedule:

Basic Services

Feasibility Study Phase	
Schematic Design Phase	
Design Development Phase	
Construction Documents Phase	
Bidding Phase.....	
Construction Administration Phase	
Completion Phase	
TOTAL	

Extra Services

Extra Services provided pursuant to Article 8 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 Designer, 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 Designers or Subconsultants personnel including principals.

Hourly Rates:

ATTACHMENT B

REQUEST FOR DESIGNER SERVICES (RFS)

INSTRUCTIONS FOR COMPLETING THE REQUEST FOR DESIGNER SERVICES

This model Request For Designer Services (“RFS”) is intended for use in the procurement of a Designer by cities, towns, and regional school districts that have been invited by the Massachusetts School Building Authority (the “MSBA”) to conduct a feasibility study or that have been approved for a project by the MSBA. The MSBA Designer Selection Panel has jurisdiction over the procurement of designers, programmers and entities by cities, towns, regional school districts, and independent agricultural and technical schools seeking funding from the MSBA for public school construction projects whose estimated construction cost is anticipated to be \$5,000,000 or greater. Designer selection for public school construction projects whose estimated construction cost is less than \$5,000,000 must be conducted pursuant to Massachusetts General Laws, Chapter 7, Section 38K by the respective city, town, regional school district or independent agricultural and technical school. A copy of the MSBA Designer Selection Panel’s Procedures are attached to this Model RFS as Attachment E.

Unless otherwise approved by the MSBA in writing, a city, town, or regional school district must use this model RFS in the procurement of a Designer in order to qualify for MSBA funding. Each city, town, and regional school district shall be responsible for inserting project and district specific information where indicated in the RFS. Although this model RFS is intended to be comprehensive in meeting the MSBA’s requirements for the procurement of a Designer, each city, town and regional school district shall be solely responsible for ensuring that its particular RFS complies with all applicable provisions of federal, state, and local law, including, but not limited to, all procurement laws. The MSBA recommends that each city, town, and regional school district have its legal counsel review its RFS to ensure that it is in compliance with all provisions of federal, state and local law prior to its publication. No addition, deletion or revision to the model RFS of any kind shall be valid unless approved in advance by the MSBA in writing. The MSBA’s approval of an RFS is solely for the purpose of determining whether the proposed RFS appears consistent with the MSBA’s guidelines and requirements for designer selection and is not for the purpose of determining whether the proposed RFS meets any legal requirements imposed by federal, state or local law, including, but not limited to, public procurement laws. The MSBA shall not be responsible for any legal fees or costs of any kind that may be incurred by a city, town or regional school district in relation to its preparation or review of its RFS.

- 1) Each city, town and regional school district (“Owner”) shall provide the project specific information in the areas noted by italics and bold-face lettering or as indicated by the shaded and text box areas.*

- 2) *The Owner should contact the MSBA prior to commencing completing the RFS model to discuss the use of MSBA documents and the Owner's procurement schedule.*
- 3) *Prior to placing the advertisement, the Owner must submit a red-lined version of the final RFS indicating any and all additions, deletions or revisions to the model RFS for MSBA approval.*
- 4) *Standard attachments included with the RFS submittal do not need to be submitted as part of the red-lined version. However, any attachments added by the Owner should be included with the Owner's red-lined version.*
- 5) *The Owner should allow a minimum of 10 business days for MSBA review of the RFS. Actual review time may vary.*
- 6) *Upon advertisement of the RFS, the Owner is responsible for sending the final RFS, all attachments and the advertisement in electronic format to the MSBA.*
- 7) *A copy of the final RFS and the advertisement must be submitted to the MSBA as part of the required documentation prior to the scheduled Designer Selection Panel meeting.*

This model Request For Designer Services (“RFS”) is intended for use in the procurement of a Designer by cities, towns, and regional school districts that have been invited by the Massachusetts School Building Authority (the “MSBA”) to conduct a feasibility study or that have been approved for a project by the MSBA. Unless otherwise approved by the MSBA in writing, a city, town, or regional school district must use this model RFS in the procurement of a Designer in order to qualify for MSBA funding. Each city, town, and regional school district shall be responsible for inserting project and district specific information where indicated in the RFS. Although this model RFS is intended to be comprehensive in meeting the MSBA’s requirements for the procurement of a Designer, each city, town and regional school district shall be solely responsible for ensuring that its particular RFS complies with all applicable provisions of federal, state, and local law, including, but not limited to, all procurement laws. The MSBA recommends that each city, town, and regional school district have its legal counsel review its RFS to ensure that it is in compliance with all provisions of federal, state and local law prior to its publication. No addition, deletion or revision to the model RFS of any kind shall be valid unless approved in advance by the MSBA in writing. The MSBA’s approval of an RFS is solely for the purpose of determining whether the proposed RFS appears consistent with the MSBA’s guidelines and requirements for designer selection and is not for the purpose of determining whether the proposed RFS meets any legal requirements imposed by federal, state or local law, including, but not limited to, public procurement laws. The MSBA shall not be responsible for any legal fees or costs of any kind that may be incurred by a city, town or regional school district in relation to its preparation or review of its RFS.

REQUEST FOR DESIGNER SERVICES (RFS)

[Town][City] of _____, MA
_____ Public Schools

[Name of Project]

_____, 2008

Invitation: The **(City/Town/Regional District)** of _____ (“Owner”) is seeking the services of a qualified “Designer” within the meaning of M.G.L. Chapter 7, Section 38A½, to provide professional design and construction administration services for the _____ School in _____, Massachusetts. Selection of a Designer will be made by the Designer Selection Panel of the Massachusetts School Building Authority (“MSBA”) in accordance with the MSBA’s Designer Selection Procedures.

The Owner is seeking design services to conduct a Feasibility Study which will include the development and evaluation of potential alternative solutions and continue through the Schematic Design Phase of the preferred alternative initially. Subject to the approval of a Project by the MSBA and further subject to adequate funding authorized by the Owner, the contract between the Owner and the Designer may be amended to include continued designer services through design development, construction contract documents, bidding, award of construction contract(s), construction administration, final closeout and warranty period of the potential Project. A potential Project may include a renovation of the existing school, a renovation of and addition to the existing school and/or new construction.

The estimated construction budget for a potential Project may range from \$ _____ to \$ _____ depending upon the solution that is agreed upon by the Owner and the MSBA and that is ultimately approved by a vote of the MSBA’s Board of Directors. The Fee for Basic Services will be negotiated.

Pursuant to M.G.L. Chapter 7, Section 40N, the Designer must agree to contract with minority and women-owned businesses as certified by the State Office of Minority and Women Business Assistance (SOMWBA). The amount of participation that shall be reserved for such enterprises shall not be less than eight percent (8%) of the contract price for minority business enterprises and four percent (4%) of the contract for women-owned business enterprises. The minority and women-owned business enterprises must be selected from those categories of work identified in Item F of this RFS.

For additional information on Designer qualifications see Sections E. and F. in this RFS.

A. Background:

(Provide background information regarding the City or Town or District, School Building Committee structure, District's grade configuration, school facility inventory and/or any other information that may be helpful to understand the context of the potential project.)

{Provide specific information regarding the identified school including, but not limited to, total square footage, site information, age of building, building conditions and problems, current grade structure and enrollment.}

B. Project Goals and General Scope:

On or about (date), the Owner submitted a Statement of Interest (Attachment A) to the MSBA for (Identify prioritized school). The MSBA is an independent public authority that administers and funds a program for grants to eligible cities, towns, and regional school districts for school construction and renovation projects. The MSBA's grant program is discretionary, and no city, town, or regional school district has any entitlement to any funds from the MSBA. At the , 2008 Board of Directors meeting, the MSBA Board voted to issue an invitation to the Owner to conduct a feasibility study for this Statement of Interest to identify and study possible solutions and, through a collaborative process with the MSBA, reach a mutually-agreed upon solution. The MSBA has not approved a Project and the results of this feasibility study may or may not result in a Project approved by the MSBA.

It is anticipated that the feasibility study will review the problems identified in the Statement of Interest at the (Identify prioritized school)

The Feasibility Study shall include a study of all alternatives and contain all information required by 963 CMR 2.10(8) and any other applicable rules, regulations, policies, guidelines and directives of the Authority, including, but not limited to, a final design program, space summary, budget statement for educational objectives, and a proposed total project budget. The Schematic Design shall include, but not be limited to, the information required by the Authority's Feasibility Study Guidelines, including, but not limited to, a site development plan, environmental assessment, geotechnical assessment, geotechnical analysis, code analysis, utility analysis, schematic building floor plans, schematic exterior building elevations, narrative building systems descriptions, MA-CHPS scorecard, outline specifications, cost estimates, project schedule and proposed total project budget.

Project objectives under consideration by the Owner include:

(Some examples of objectives are shown below. These may or may not apply to this Request for Services and/or the Owner may have others.)

- *Identification of community concerns that may impact study options;*
- *Identification of specific milestone requirements and/or constraints of the District - e.g. Town votes, swing space, occupancy issues;*
- *Life cycle costs of operating the School as it relates to future operational budgets;*
- *Massachusetts High Performance Green Schools Guidelines (MA-CHPS Guidelines);*
- *CM-at-Risk Delivery Method.*

C. Scope of Services:

The required scope of services is set forth in the MSBA's standard Contract for Designer Services (Contract) for a Design/Bid/Build project, a copy of which is attached hereto and incorporated herein by reference. If the Owner determines to use a CM-at-Risk delivery method, this contract will need to be amended and/or substituted. Unless specifically excluded, the Designer's Basic Services consist of the tasks described in the Contract for Designer Services and this RFS including all investigative work (to the extent provided for in the Contract), feasibility study, schematic design, and, at the Owner's option, design work, preparation of construction documents, bidding period administration, construction administration, and other related work reasonably inferred in the opinion of the Owner and the Authority as being necessary to meet the project's stated scope and goals.

This RFS will be appended to and become part of the Contract for Designer Services. Any Designer selected as a result of this RFS will be required to execute the Contract for Designer Services that is attached hereto. Designers submitting an application in response to this RFS must specify any exceptions to the Contract at the time of application. The Owner may consider any such exceptions but shall not be bound by any such exceptions. A failure to specify exceptions will be deemed an acceptance of the Contract's terms and conditions.

The MSBA standard Contract For Designer Services, Article 16, requires a minimum of \$2,000,000 of professional liability insurance. The Owner may determine that due to the complexity and risk factors associated with the project that a higher level of professional liability coverage may be required. If so, the Owner should identify these additional insurance requirements in the RFS. See suggested sentence:

In lieu of the minimum professional liability insurance specified in Article 15, the successful Respondent will be required to provide a certificate of professional liability insurance, at the time of contract execution, indicating minimum coverage in the amount of \$_____ per occurrence, \$_____ aggregate.

Basic Services include, but are not limited to, verification of existing record information including building dimensions, details and general existing conditions, cost estimating, architecture, civil, sanitary,

mechanical, electrical, plumbing, fire protection, structural, site planning and landscape architecture, basic environmental permitting, graphics, lighting design, acoustics, data and communication, educational consultants, any specialty consultants for laboratory, library/media center and kitchen space, code consultants, accessibility, energy evaluations, detailed cost estimates; preparation of construction documents; bidding and administering the Construction Contract Documents and other design and consulting services incidental and required to fulfill the project goals. Please refer to the Contract for a complete summary of Basic Services.

Extra and reimbursable expenses are defined in Articles 8 and 9 of the Contract in Attachment B.

The Owner should identify any available studies, drawings, surveys, photographs and subsoil exploration reports of the proposed project's existing buildings and site or sites.

The Owner should identify any of the services (basic, extra or reimbursable) identified in the Contract that are NOT applicable to this Project.

D. Project Phases and Work Plan:

Work under this RFS is divided into the Project Phases as listed in Article 7 of the Contract and as may be augmented in this RFS. Each Project Phase will consist of one or more required submissions, and may include site visits, meetings with the Owner, Owner's Project Manager, the Authority and others, and other tasks as described.

The estimated total duration of the Contract for Designer Services from Feasibility Study through the approval of Schematic Design, inclusive of review and approval time, is estimated to be **40 weeks** as follows:

(The District should provide the estimated schedule for the preliminary program and the schematic design phase based on the project specifics.)

Preliminary Program through Final Design Program	26	weeks
Schematic Design Phase	14	weeks
Design Development through 100% CD	TBD	
Bidding	TBD	
Construction Administration Phase	TBD	weeks
Estimated Total Duration (Exclusive of Completion Phase)	TBD	weeks

The durations for the Bidding and Construction Administration Phases are estimates only. Actual durations may vary depending upon the agreed upon solution, the extent of required document revisions, the time required for regulatory approvals, and the construction contractor’s performance.

Such variances in estimated time will not, in and of themselves, constitute a justification for an increased Fee for Basic Services, nor are they a substitute for the performance time requirements shown below.

The Designer performance times listed in the table below are requirements, not estimates. The Owner, through the Owner’s Project Manager will review each submission and, if acceptable, provide notice to the Designer to proceed to the next phase.

The Designer’s adherence to the performance times listed below will be part of the Owner’s performance evaluation of the Designer’s work, which will be conducted at the end of the Project.

	<u>Within/Weeks</u>	
• Attend a “Kick-Off” meeting	<u>2</u>	Execution of a contract with the Owner
• Preliminary Program	<u>4</u>	Execution of a contract with the Owner
• Development of Alternatives	<u>6</u>	Execution of a contract with the Owner
• Preliminary Evaluation of Alternatives	<u>4</u>	Approval of Alternatives
• Final Evaluation of Alternatives	<u>4</u>	Approval of Preliminary Evaluation
• Recommendation of Preferred Solution	<u>2</u>	Approval of Final Evaluation
• Final Design Program	<u>2</u>	Approval of Preferred Solution
• Schematic Design	<u>12</u>	Approval of the Final Design Program
• Design Development	<u>TBD</u>	Approval of the Schematic Design
• 60% Construction Documents	<u>TBD</u>	Approval of Design Development
• 100% Construction Documents	<u>TBD</u>	Approval of Design Development

E. Minimum qualifications:

Selection will be made by the MSBA Designer Selection Panel in accordance with the Authority’s Designer Selection Procedures, attached hereto as Attachment E. The Respondent must certify in its cover letter that it meets the following minimum requirements. Any Respondent that fails to include such certification in its response, demonstrating that these criteria have been met, will be rejected without further consideration. To be eligible for selection, the Designer must meet all of the following qualifications.

1. Be a qualified Designer within the meaning of M.G.L. Chapter 7, Section 38A½, employing a Massachusetts registered [architect][engineer] responsible for and being in control of the services to be provided pursuant to the Contract.
2. The Project Architect/Engineer for the Designer has successfully completed the Massachusetts Certified Public Purchasing Official Program seminar “Certification for School Project Designers and Owner’s Project Managers” as administered by the Office of the Inspector General of the Commonwealth of Massachusetts.
3. Pursuant to M.G.L. Chapter 7, Section 40N, the Designer must agree to contract with minority and women-owned businesses as certified by the State Office of Minority and Women Business

Assistance (SOMWBA). The amount of participation that shall be reserved for such enterprises shall not be less than eight percent (8%) of the design contract price for minority business enterprises and four percent (4%) of the design contract for women-owned business enterprises. The minority and women-owned business enterprises must be selected from those categories of work identified in Item F of this RFS.

F. Selection Criteria:

In evaluating proposals, the Owner and Designer Selection Panel will consider the members of the proposed design team. Identify those member(s) of the proposed design team who will be responsible for the following categories of work: (Firm's name, individual's name and professional registration or license number, as applicable, must be listed in the application for each category of work, as well as whether the firm is SOMWBA certified as an MBE and/or WBE).

1. *Architecture*
2. *Environmental Permitting*
3. *Hazardous Materials*
4. *Civil Engineering*
5. *Structural Engineering*
6. *Landscape Architecture*
7. *Fire Protection Engineering*
8. *Plumbing Engineering*
9. *HVAC Engineering*
10. *Electrical Engineering*
11. *Data/Communications Consultant*
12. *Food Service Consultant*
13. *Laboratory Consultant*
14. *Acoustical Consultant*
15. *Specifications Consultant*
16. *Library/Media Consultant*
17. *Theatrical Consultant*
18. *Sustainable/Green Design/Renewable Energy Consultant*
19. *Cost Estimating*
20. *Accessibility Consultant*
21. *Traffic Consultant*
22. *Furniture, Fixtures and Equipment Consultant*
23. *Code Consultant*
24. *Security Consultant*

The Owner should list only those categories of work that are important to the project, and the Applicant's response should include team members for only the categories listed. Be careful what you ask for.

Failure of an Applicant to list a team member may result in elimination of the Applicant for consideration by the DSP - even if that Applicant appears otherwise qualified.

**** N.B. –**

Applicants must address each category of work listed above in their application whether it is to be performed by in-house staff or by sub-consultant(s).

The members of the team for each of the categories of work listed above must be identified including the firm's name, individual's name and professional registration or license number, as applicable, as well as whether the firm is SOMWBA certified as an MBE and/or WBE).

Failure to address each category may result in the elimination of the applicant from consideration on this project.

Applicants should not list any consultants other than those for the categories of work listed above.

The minority and women-owned business enterprises must be selected from the categories of work listed above. Consultants other than those for the categories of work listed above may not be used for purposes of meeting M/WBE requirements.

The Owner and Designer Selection Panel will consider the following additional criteria in evaluating proposals:

1. Prior similar experience best illustrating current qualifications for the specific project.
2. Past performance of the firm, if any with regard to public, private, DOE-funded, and MSBA funded projects across the Commonwealth, with respect to:
 - a. Quality of project design.
 - b. Quality, clarity, completeness and accuracy of plans and contract documents.
 - c. Ability to meet established program requirements within allotted budget.
 - d. Ability to meet schedules including submission of design and contract documents, processing of shop drawings, contractor requisitions and change orders.
 - e. Coordination and management of consultants.
 - f. Working relationship with contractors, subcontractors, local awarding authority and MSBA staff and local officials.
3. Current workload and ability to undertake the contract based on the number and scope of projects for which the firm is currently under contract.
4. The identity and qualifications of the consultants who will work on the project.
5. The financial stability of the firm.
6. The qualifications of the personnel to be assigned to the project.
7. Geographical proximity of the firm to the project site or willingness of the firm to make site visits and attend local meetings as required by the client.
8. Additional criteria that the MSBA Designer Selection Panel considers relevant to the project.

(Provide additional preferred qualifications as desired)

G. Proposal requirements

Persons or firms interested in applying must meet the following requirements:

1. **Applicants must have an up-to-date Master File Brochure on file at the Massachusetts School Building Authority.**
2. Applications shall be on “Standard Designer Application Form for Municipalities and Public Agencies not within DSB Jurisdiction 2005” as developed by the Designer Selection Board of the Commonwealth of Massachusetts (http://www.mass.gov/cam/DSB/DSB_App_2005_CT.doc). Applications (one original and twenty (20) copies) must be received on or before _____ AM/PM, _____, 2008.
3. Applications must be accompanied by a concise cover letter that is a maximum of two pages in length. A copy of the cover letter should be attached to each copy of the application. The cover letter must include the certifications as noted in Section E of this RFS. (A copy of the MCPPO certification should be attached to the cover letter as well as any SOMWBA letters.)
4. Applicants may supplement this proposal with graphic materials and photographs that best demonstrate design capabilities of the team proposed for this project. **Limit additional information to a maximum of three, 8½”x 11” pages, double-sided.**
5. Proposals shall be addressed to:

Name

Address
Phone Number
Email
Fax #

6. Proposals must be clearly identified by marking the package or envelope with the following:

[Name of Project]
"Name of Applicant"

7. All questions regarding this RFS should be addressed exclusively in writing to:

Name
Address
Phone Number
Email
Fax #

H. Pre-Proposal Meeting

All interested parties should attend a briefing session at _____ scheduled for _____, 2008 at 10:00 AM.

I. Withdrawal

Applicants may withdraw an application as long as the written request to withdraw is received by the Town of Marblehead prior to the time and date of the proposal opening.

J. Public Record

All responses and information submitted in response to this RFS are subject to the Massachusetts Public Records Law, M.G.L. c. 66, § 10 and c. 4, § 7(26). Any statements in submitted responses that are inconsistent with the provisions of these statutes shall be disregarded.

K. Waiver/Cure of Minor Informalities, Errors and Omissions

The Owner reserves the right to waive or permit cure of minor informalities, errors or omissions prior to the selection of a Respondent, and to conduct discussions with any qualified Respondents and to take any other measures with respect to this RFS in any manner necessary to serve the best interest of the Owner and its beneficiaries.

L. Rejection of Responses, Modification of RFS

The Owner reserves the right to reject any and all responses if the Owner determines, within its own discretion, that it is in the Owner's best interests to do so. This RFS does not commit the Owner to select any Respondent, award any contract, pay any costs in preparing a response, or procure a contract for any services. The Owner also reserves the right to cancel or modify this RFS in part or in its entirety, or to change the RFS guidelines. A Respondent may not alter the RFS or its components.

M. Additional Information

2/2/097/13/2009
D/B/B

Include any additional information that is required or that may assist Respondents in responding to the RFS.

ATTACHMENTS:

Attachment A: Statement of Interest

Attachment B: Contract for Designer Services (in progress at MSBA)

Attachment C: [Designer Application Form - DSB App 2005](#) (hold control button and click link to access the Attachment)

Attachment D: Certifications (*To be developed by the Owner*)

Attachment E: [MSBA's Designer Selection Panel's Procedures](#) (hold control button and click link to access the Attachment)

End of Request for Designer Services

ATTACHMENT C

PARTICIPATION SCHEDULE FOR DESIGNER CONTRACTS BY SOMWBA CERTIFIED MINORITY/WOMEN BUSINESS ENTERPRISES

This form shall be submitted to the Owner by the Designer upon execution of the Contract for Designer Services attached hereto.

Owner _____

Project No: _____

<u>Name of Company</u>	<u>Description of Work</u>	<u>M/WBE</u>	<u>Dollar Value Participation</u>
1. _____	_____	_____	\$ _____
2. _____	_____	_____	\$ _____
3. _____	_____	_____	\$ _____
4. _____	_____	_____	\$ _____
5. _____	_____	_____	\$ _____
6. _____	_____	_____	\$ _____

Dollar Value of MBE Commitment: \$ _____

Dollar Value of WBE Commitment: \$ _____

Total Dollar Value Commitment: \$ _____

Original Fee for Basic Services Amount \$ _____

DESIGNER CERTIFICATION

The undersigned certifies under the penalties of perjury that (1) it intends to subcontract with the above listed firms for the identified work and dollar amounts and (2) certifies that he/she has read the terms and conditions of the Designer Contract with regards to MBE/WBE participation and is authorized to bind the Designer to the commitment set forth above.

Date _____

Name of Architect/Engineer

Authorized Signature

Address

City, State & Zip Code

ATTACHMENT D

**M.G.L. c.30 §39R - INTERNAL ACCOUNTING CONTROLS
APPLIES TO CONTRACTS OF \$100,000 OR MORE
SAMPLE LETTER TO BE PREPARED ON DESIGNER'S LETTERHEAD**

Date

CEO
Owner
123 Reservoir Street
Enfield, MA 01234

RE: Enfield High School

Dear:

This Statement of Internal Accounting Controls is being submitted in accordance with Article 17.5.3 of the Contract for Design Services for the above captioned project. Please be advised that our firm, the Designer under the Contract, has a system of internal accounting controls which assures that:

1. transactions are executed in accordance with management's general and specific authorization;
2. transactions are recorded as necessary, to permit preparation of financial statements in conformity with generally accepted accounting principles, and 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.

Sincerely,

ATTACHMENT E

**MGL c.30 §39R – INTERNAL ACCOUNTING CONTROLS
APPLIES TO CONTRACTS OF \$100,000 OR MORE
SAMPLE LETTER TO BE PREPARED ON CPA'S LETTERHEAD**

CEO
Owner
123 Reservoir Street
Enfield, MA 01234

RE:

Dear

Please be advised that we have reviewed the Statement of Internal Accounting Controls prepared by the

_____ in connection with the

Name of Designer

above-captioned project. This statement is required under M.G.L. c.30 §39R. In our opinion, representations of management are consistent with our evaluations of the system of internal accounting controls. In addition, we believe that they are reasonable with respect to transactions and assets in the amount which would be material when measured in relation to the firm's financial statements.

Sincerely,

(CPA)

ATTACHMENT F

CONTRACT FOR DESIGNER SERVICES

AMENDMENT NO. _____

WHEREAS, the parties, the _____, Owner, and
 _____, Designer, hereto did enter into an agreement for
 Designer Services for _____ at _____ on _____
Description of Project Date of Contract

Project Number: _____

WHEREAS, the parties wish to amend said agreement as follows:

Article I - Fee for Basic Services:	Original Contract	After this Amendment
Feasibility Study Phase Approval	\$ _____	\$ _____
Schematic Design Phase Approval	\$ _____	\$ _____
Design Development Phase Approval	\$ _____	\$ _____
Construction Document Phase Approval	\$ _____	\$ _____
Bidding Phase	\$ _____	\$ _____
Construction Phase/Final Completion	\$ _____	\$ _____
Furnishings and Equipment Services	\$ _____	\$ _____
Total Fee		\$ _____

This amendment is a result of: _____

Article II., Construction Budget:

Original Budget: \$ _____
 Amended Budget \$ _____

Article III., Schedule:

Original Schedule: _____
 Amended Schedule _____

All other terms and conditions of said contract remain in full force and effect.

SIGNATURES

IN WITNESS WHEREOF, the Owner, with the prior approval of the Authority, and the Designer have caused this Contract to be executed by their respective authorized officers.

OWNER

print name

print title
 By _____
signature
 Date _____

DESIGNER

print name

print title
 By _____
signature Date _____

