

**CONTRACT FOR DESIGNER SERVICES**  
**(BASE CONTRACT FOR DESIGN BID BUILD OR CM at RISK PROJECT)**

This Contract is made as of this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ between  
(day) (month) (year)  
 the \_\_\_\_\_,  
(Owner) (street)  
 \_\_\_\_\_, **Massachusetts**, \_\_\_\_\_,  
(City) (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 \_\_\_\_\_  
(name/description of Project)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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. If the Owner elects to construct the Project using the CM at Risk ("CM-R") construction delivery method pursuant to M.G.L. c. 149A, this Contract shall be amended using the Authority's Standard Amendment for CM-R, as it may be amended from time to time by the Authority. If the Owner elects to construct the Project using the Design-Bid-Build ("DBB") construction delivery method pursuant to M.G.L. c. 149, this Contract shall be amended using the Authority's Standard Amendment for DBB, as it may be amended from time to time by the Authority.

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, 7.10, 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 7 of this Contract, and as it may be amended pursuant to Article 18.4.

**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 or CM at Risk, 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 or Owner-CM at Risk Agreement, Advertisement, Instructions to Bidders, Bidding Documents, Contract Forms, Conditions of the Contract, Drawings, Plans, Technical Specifications, all addenda issued prior to execution of the Construction Contract, and other documents approved after execution of the Owner-Contractor or Owner-CM at Risk Agreement relating thereto.

**CONSTRUCTION MANAGEMENT AT RISK or CONSTRUCTION MANAGEMENT AT RISK SERVICES or CONSTRUCTION MANAGEMENT AT RISK DELIVERY METHOD or CM at RISK DELIVERY METHOD** - a construction method described in

M.G.L. c. 149A wherein a Construction Management at Risk firm provides a range of preconstruction services and construction management services which may include cost estimation and consultation regarding the design of the building project, the preparation and coordination of bid packages, scheduling, cost control, and value engineering, acting as the general contractor during the construction, detailing the Trade Contractor scope of work, holding the trade contracts and other subcontracts, prequalifying and evaluating Trade Contractors and subcontractors, and providing management and construction services, all at a Guaranteed Maximum Price, which shall represent the maximum amount to be paid by the public agency for the building project, including the cost of the work, the general conditions and the fee payable to the Construction Management at Risk Firm.

**CONSTRUCTION MANAGER AT RISK, CONSTRUCTION MANAGEMENT at RISK FIRM or CM at RISK** – the individual, corporation, partnership, sole proprietorship, joint stock company, joint venture or other entity with whom the Owner has contracted pursuant to M.G.L. c. 149A, §§ 6 & 7, to provide Construction Management at Risk Services.

**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 pursuant to M.G.L. c. 149, §§ 44A-44M to perform the construction for this Project.

**CONTRACTOR APPLICATION AND CERTIFICATE FOR PAYMENT** – The form prescribed by the Owner which contains the Contractor's or CM at Risk'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. 7C § 44.

**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.

**GUARANTEED MAXIMUM PRICE or GMP** - The agreed total dollar amount for the Construction Management at Risk services, including the cost of the Work, the general conditions and the fees charged by the Construction Management at Risk firm.

**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, as they may be amended from time to time by the Authority.

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

**MBE/WBE** – A minority-owned business (MBE) or a women-owned business (WBE) certified by the Supplier Diversity Office (SDO).

**NOTICE TO PROCEED** – The written communication issued by the Owner to the Contractor or CM at Risk 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 or OWNER – GENERAL 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-CM at RISK AGREEMENT** – The contract between the Owner and the CM at Risk, including, but not limited to, the GMP Amendment, for the provision of Construction Management at Risk Services for the Project.

**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. Prior Approval to proceed for each Phase is required from the Owner.

**PRINCIPALS** – 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 and Project Funding 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, the General Contractor or the CM at Risk and all subcontractors, suppliers, materials, equipment, general conditions, insurance, overhead and profit and all other expenditures that are ordinarily considered as construction cost allocations. The Project Construction Budget includes the design contingency, bidding contingency, and price escalation contingency, as appropriate to the phase of the Project.

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

**PROJECT SCHEDULE** – A complete list of all activities, time and sequence required to complete the Project, as defined in the Project Scope and Budget Agreement or Project Funding 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 7.10.5 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 or CM at Risk and any 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 design professionals 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, or CM at Risk 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 or Project Funding Agreement.

**TRADE CONTRACTOR** – a subcontractor having a direct contractual relationship with a Contractor or CM at Risk to perform one or more so-called sub-bid classes of work listed in M.G.L. c.149, §44F, and any other sub-bid classes of work selected by the Owner for the Project in accordance with the provisions of either M.G.L. 149, §44F(1)(a) or M.G.L. c. 149A, §8(a).

**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 or the CM at Risk 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 required for the project except where the OPM is an existing public employee of the Owner as described in M.G.L. c. 149, § 149A1/2.
- 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 or CM at Risk, as the case may be, shall be solely responsible for construction means, methods, techniques, sequences and procedures, the Contractor's or CM at Risk's schedules, and for safety precautions and programs in connection with the Project and for performing in accordance with the Owner-Contractor or Owner - CM at Risk 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 or CM at Risk, Subcontractors, or the agents or employees of the Contractor or CM at Risk or Subcontractors, the Owner's Project Manager, the Authority or its Commissioning Consultant or other technical consultants.
- 2.4 Nothing in this Contract shall be construed as an assumption by the Designer of the responsibilities or duties of the Contractor or CM at Risk 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 or CM at Risk 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, reports 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 Article 3.4 and under Article 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 of which the Designer becomes aware.

- 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 or CM at Risk 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 or CM at Risk 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 7.4.2 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 pages 1-2 of this Contract, shall take place without the prior written approval of the Owner and the Authority, 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 and the Authority shall have the right to approve any substitution or replacement or change in status for the persons or Subconsultants listed on page 1-2 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 or the Authority 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, M.G.L. 149A, and M.G.L. c. 30, that are relevant to the performance of Designer's obligations under this Contract. When directed by the Owner, the Designer shall fully cooperate with the Owner in obtaining the Criminal Offender Record Information (CORI) of the Designer and its employees and of any Subconsultants and their employees in accordance with the provisions of M.G.L. c. 71, § 38R, M.G.L. c. 6, §§ 167-178B (the so-called CORI Law), any other applicable law, and District policy. All contracts between the Designer and each Subconsultant shall include appropriate provisions requiring the Subconsultant to fully cooperate with the Owner in obtaining the Criminal Offender Record Information (CORI) of the Subconsultant and its employees as aforesaid.
- 4.9 The Designer shall be and shall remain liable to the Owner for 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 as described in Article 7 of this Contract 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 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 (as reconciled in accordance with the provisions of this Contract) 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 In a Project constructed pursuant to M.G.L. c. 149, §§ 44A-M, 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 and submission of the Designer's report to the Owner and Authority, 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 4.10.5 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 In a Project constructed pursuant to M.G.L. c. 149A, the Designer shall be responsible for managing the design of the Project to stay within the Project Construction Budget. If the GMP proposal submitted by the CM at Risk exceeds the Project Construction Budget, the Designer shall review and compare the Project Construction Budget with the GMP proposal submitted by the CM at Risk to identify the variances. Upon completion of this review, if directed by the Owner, the Designer shall assist the Owner in negotiating a GMP within the Project Construction Budget in accordance with Article 7.7.9. If a GMP cannot be successfully negotiated between the Owner and the CM at Risk within the Project Construction Budget, the Owner shall, with the approval of the Authority:

- (a) direct the Designer to participate with the Owner, OPM, and CM at Risk in design reviews and revise the design, including appropriate revisions to drawings and specifications, as necessary in order to reach an agreement on a GMP within the Project Construction Budget; in accordance with Article 4.10.5; or
- (b) give written approval to the Designer of an increase in the Project Construction Budget and resume negotiating a GMP with the CM at Risk; or
- (c) terminate this Contract in accordance with Article 12.3; or
- (d) implement any other mutually accepted alternative that the Owner and the Designer may agree on.

4.10.5 (a) If the Owner chooses to proceed under Article 4.10.3(a) or 4.10.4(a), the Designer and its Subconsultants, without receiving additional compensation, except if fewer than three bona fide, responsible bids were received (in the case of a Project constructed pursuant to M.G.L. c. 149, §§ 44A-44M) or (in the case of a Project constructed pursuant to G.L. c. 149A) if fewer than three bona fide responsible Trade Contractor or so-called non-trade contractor bids for each category of work were received, or if 4.10.5(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. Any changes to the educational program or the approved space summary shall be subject to the written approval of the Authority. 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) or 4.10.4(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 or 4.10.4 above was submitted on a date that is more than three (3) months after approval of the Construction Contract Documents then such revisions shall be Extra Services.

4.10.6 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, testing and reports completed by the Owner and as provided under Article 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 Subconsultant to provide such services, the Designer shall employ such Subconsultants who have the professional liability insurance coverage described in paragraph 15.8.1 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 existing buildings hazardous material reports, 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, the person responsible for, and in control of, the Subconsultant

services to be provided must be professionally registered or licensed in Massachusetts in the necessary disciplines for the services if such registration or licensing 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 with copies of its agreements with Subconsultants, including any amendments thereto and copies of the Subconsultant's applicable certificates of insurance.
- 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. The Owner shall have the contractual right to investigate any breach of performance of a Subconsultant and to initiate corrective measures it determines are necessary and in the best interest of the Owner. All contracts between the Designer and its Subconsultants shall include a provision in which the Owner's rights to initiate corrective action shall be stipulated.
- 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 paragraphs 15.7.1 and 15.7.2. The Owner may withhold approval of invoice items the Owner reasonably believes have not been performed in accordance with this Contract, including adjustments to payment amounts in instances where required submittals to the Authority may be found to be

missing or incomplete. 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 compliance with the following requirements:

- 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 or CM at Risk 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 submittals. Upon completion of its review, the Owner shall promptly and in writing:
- (a) approve the submittal as made; or
  - (b) approve that part of the submittal that is acceptable and reject the remainder; or
  - (c) reject the submittal; or
  - (d) require the Designer to submit additional information or details in support of its submittal.
- 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 submittals 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 As a part of Basic Services, the Designer shall provide six copies of each submittal to the Owner; two copies of each submittal to the Authority, and, if the Owner elects to proceed with the CM at Risk construction delivery method, one copy of each

submittal to the CM at Risk. 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 submittals. If the Designer is required to make submittals 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 submittals 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 submittals 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 submittal 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. 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 in pdf format, Microsoft Word, Excel, Project, or PowerPoint, as applicable to the particular submittal.
- (c) All submittals shall be labeled identifying project name and number, file name, drawing title, software and release, and layering system.
- (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 but only to the extent that such purchase of

new software or training of existing employees is unique or exclusive to the particular requirements of the Owner or the Authority for this particular Project.

- (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.

- 7.2.5 In reviewing and preparing all documents for evaluation as part of the Feasibility Study and/or any other design phase for which the Designer may be authorized, the Designer shall determine gross area and net areas in the following manner in order to maintain uniformity in computation and consistency of both gross and net square foot areas of buildings:

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.

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.

### 7.3 Feasibility Study Phase:

- 7.3.1 The Designer shall familiarize itself with the Authority's Guidelines and Standards for feasibility studies that further specify the work to be performed by the Designer during this Phase and shall perform its Feasibility Study Phase services in accordance with such Guidelines and Standards and the provisions of this Contract. 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 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 Authority's Board of Directors):

- (a) Preliminary design program;
- (b) Budget Statement for Educational Objectives, as defined by 963 CMR 2.02;
- (c) Development of alternatives to be studied;
- (d) Preliminary evaluation of alternatives;
- (e) Final Evaluation of Alternatives;
- (f) 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 for the Owner and Authority's evaluation that satisfy the Owner's educational program requirements that were provided by the Owner to the Designer. 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; and
- (b) Tuition agreements with adjacent school districts (per M.G.L. c.70B §8); and
- (c) Rental or acquisition of existing buildings that could be made available for school use. (per M.G.L. c.70B §8); and
- (d) Renovation and/or addition to existing building(s) and related facilities or fields, if appropriate to the Project; and
- (e) No-build or status quo option, to be used as a benchmark for comparative analysis of all other alternatives; and
- (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 and 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 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 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; 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, codes 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) Traffic Analysis - analyze the impact of anticipated vehicular and pedestrian traffic, including impacts to existing infrastructure, to determine efficient and safe site access.
- (b) Environmental and Existing Building Assessment – Provide additional site and building assessments as may be required to quantify presence of unsuitable materials and scope of possible remediation efforts.

- (c) Geotechnical and Geoenvironmental Analysis – Provide additional geotechnical analysis as may be required to describe soil conditions, remediation requirements and appropriate foundation.
- (d) 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.
- (e) Code Analysis – Determine the impact of all applicable federal, state, regional and local codes, regulations and ordinances, including a listing of permitting and other regulatory filing requirements.
- (f) 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.
- (g) Massing Study – an analysis of the building’s integration into its surroundings and neighborhood with drawings, models, or photographs.
- (h) MA-CHPS or LEED-S Scorecard – Pursuant to the Authority’s Sustainable Building Design Guidelines complete a MA-CHPS or LEED-S for Schools 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.
- (i) Accessibility - an analysis of the design's compliance with the Americans with Disabilities Act (ADA) and the Massachusetts Architectural Access Board requirements (MAAB).
- (j) 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, and 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, and location of major equipment items such as switches and hubs.
- (k) Outline specifications in accordance with applicable CSI Divisions 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.
- (l) 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.
- (m) Construction cost estimate - in Unifomat II Level 3 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.
- (n) Siting analysis, including content, traffic and access, topographic and utilities recognition.
- (o) 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, and emergency equipment access.

(p) 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, circulation, and room data sheets.

(q) Schematic Exterior Building Elevations for all sides and orientations indicating all exterior finishes and fenestration.

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 the Schematic Design 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.

7.4.9 Construction Delivery Method Evaluation and Selection

(a) The Designer shall assist the Owner in determining the appropriate construction delivery methodology for the Proposed Project. In providing such assistance, the Designer, in conjunction with the Owner's Project Manager, shall advise the Owner on the relative advantages and disadvantages associated with each of the construction delivery methods provided in M.G.L. Chapters 149 and 149A. The decision to pursue a particular construction delivery method shall be within the sole discretion of the Owner, subject to the approval of the Inspector General as provided in M.G.L. c. 149A, §4. The services provided by the Designer in assisting and advising the Owner in its determination of the appropriate construction delivery methodology shall be included in Basic Services.



- (b) If the Owner elects to construct the Project using the CM at Risk construction delivery method pursuant to M.G.L. c. 149A, and has obtained the approval of the Office of the Inspector General to do so, with the Approval of the Owner, this Contract shall be amended using the Authority's Standard Amendment for CM-R which includes Articles 7.5 through 7.10. If the Owner elects to construct the Project using the Design-Bid-Build ("DBB") construction delivery method pursuant to M.G.L. c. 149, with the Approval of the Owner, this Contract shall be amended using the Authority's Standard Amendment for DBB, which includes Articles 7.5 through 7.9.

7.5 INTENTIONALLY OMITTED

7.6 INTENTIONALLY OMITTED

7.7 INTENTIONALLY OMITTED

7.8 INTENTIONALLY OMITTED

7.9 INTENTIONALLY OMITTED

7.10 INTENTIONALLY OMITTED

## **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 measured drawings and detailed construction investigations 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 8.2.2, 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 (Chapter 149) or subcontractor bids (Chapter 149 or 149A) for work required thereunder 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, Owner's Project Manager, the Authority, Department of Labor and Workforce Development, the Office of Attorney General, the Office of the Inspector General, or the CM at Risk (if the project is constructed pursuant to M.G.L. c. 149A) 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 CM at Risk or Subcontractors;
- 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 CM at Risk, or responding to unreasonable and excessive requests for information (RFIs) by the Contractor or CM at Risk, 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 or Owner-CM at Risk 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 Article 8.3;
- 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 of the Work or of a

project construction phase and/or separate bidding package due to delay by the Contractor or CM at Risk in completing the Work on schedule;

8.2.14 providing services in connection with Contractor, CM at Risk or Bidder disputes or questions arising out of the bidding process, unless such protest is a result of an act or 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 of the Work, or of a project construction phase and/or separate bidding package has not reached substantial completion within the original construction period (as set forth in the Owner-Contractor or Owner-CM at Risk 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 7.9 and 7.10.1 through 7.10.4 in a CM at Risk Project or for the services described in Articles 7.8 and 7.9.1 through 7.9.4 in a DBB Project.

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 Articles 7.10.3 (which are fully defined under Article 7.9.2) and 7.10.4 in a CM at Risk Project or for the services described in Articles 7.9.3 (which are fully defined under Article 7.8.2) and 7.9.4 in a DBB Project. The Designer may also be entitled to Extra Services compensation for tasks performed beyond the added sixty (60) calendar days period for tasks related to Article 7.9.1 (d) through (i) in a CM at Risk Project or 7.8.1(d) through (i) in a DBB Project. In any event, the Designer is required to identify and present the anticipated Extra Services contemplated under Article 8.3.2 in accordance with Article 8.1. 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 services, 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 nine (9) sets of design submittals for a CM at Risk project, or more than eight (8) sets of design submittals for a project pursuant to G.L.c. 149, or more than two electronic versions thereof per design submission deliverable phase or sub-phase.
  - 9.1.3 The cost of printing the bid documents and the related copying, postage, and handling services during a prequalification or bid period.
  - 9.1.4 The cost of reproducing the mylar reproducible of the construction drawings for use by the General Contractor or CM at Risk 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:

12.4.1 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

12.4.2 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.

12.4.3 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 Project is constructed pursuant to M.G.L. c. 149, §§ 44A-44M, 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 12.5 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 negligent 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 Owner and by the Authority 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:

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

15.7.1 The Designer shall maintain professional liability insurance covering negligent 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 15.7.2). The minimum amount of such insurance shall be \$2,000,000 per claim/\$2,000,000 annual aggregate.

15.7.2 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 or the CM at Risk 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 or Owner-CM at Risk 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

15.8.1 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 \$2,000,000 per claim/\$2,000,000 annual aggregate.

15.8.2 All professional liability policies obtained by Subconsultants 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.

15.8.3 If the Subconsultant’s insurance policy is in a “claims made” format, it shall include a retroactive date that is no later than the effective date of its contract with the Designer, 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 or CM at Risk 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-General Contractor Agreement or the Owner-CM at Risk 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.

15.8.4 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.7C, §51)
- 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.7C §51 (d): In accordance with M.G.L. c.7C §51(d), 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. 7C, § 6, the Designer shall subcontract with minority-owned business enterprises (MBE) and women-owned business enterprises (WBE), as certified by the Supplier Diversity Office, 1 Ashburton Place, Room 1017, Boston, MA 02108; such participation goals shall be based on the listed services defined and required in the RFS. If the Designer is an SDO-certified MBE or WBE, the Designer must bring a reasonable amount of program participation goals for minority-owned businesses and women-owned businesses that hold the certification which is not held by the prime Designer on the project.
- 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 of Massachusetts 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, genetics, 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.
- 17.10 Minority and Women Workforce Participation: Pursuant to M.G.L. c. 7C, s. 6 and M.G.L. c. 149, s. 44A(2)(G) the Designer shall be required to provide regular reports of the gender and race/ethnicity of employees engaged in work under this contract, for both prime and subconsultants, in the form and format required by the District, including but not limited to, by electronic reporting through the requested means and with the frequency required by the District.

## **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 or CM at Risk, 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 or Owner CM at Risk Agreement. The Owner shall require of the General Contractor or CM at Risk, 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.....	
Early Bid Packages.....	
Bidding Phase.....	
Construction Administration Phase.....	
Completion Phase.....	
<b>TOTAL.....</b>	

### 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)**

**The District must use the MSBA's Designer RFS Template, which  
can be found here:**

**<https://www.massschoolbuildings.org/building/team/dsp>**



# ATTACHMENT C

## PARTICIPATION SCHEDULE FOR DESIGNER CONTRACTS BY SDO 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 \_\_\_\_\_ (“Owner”) and \_\_\_\_\_, (the “Designer”) (collectively, the “Parties”) entered into a Contract for Designer Services for the \_\_\_\_\_ Project (Project Number \_\_\_\_\_) at the \_\_\_\_\_ School on \_\_\_\_\_ “Contract”; and

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

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

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

<b>Fee for Basic Services:</b>	Original Contract	After this Amendment
Feasibility Study Phase	\$ _____	\$ _____
Schematic Design Phase	\$ _____	\$ _____
Design Development Phase	\$ _____	\$ _____
Construction Document Phase	\$ _____	\$ _____
Bidding Phase	\$ _____	\$ _____
Construction Phase	\$ _____	\$ _____
Completion Phase	\$ _____	\$ _____
<b>Total Fee</b>	\$ _____	\$ _____

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

3. The Construction Budget shall be as follows:

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

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

4. The Project Schedule shall be as follows:

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

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

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

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

**OWNER**

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

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

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

Date \_\_\_\_\_

**DESIGNER**

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

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

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

Date \_\_\_\_\_