

MASSACHUSETTS SCHOOL BUILDING AUTHORITY

**40 BROAD STREET
BOSTON, MASSACHUSETTS 02109**

MASTER COMMISSIONING SERVICES AGREEMENT

This MASTER COMMISSIONING SERVICES AGREEMENT (as may be amended from time to time, the "Agreement") is made and entered into as of _____ (the "Effective Date") by and between the Massachusetts School Building Authority (the "MSBA"), an independent public authority of the Commonwealth of Massachusetts with a principal office and place of business at 40 Broad Street, Suite 500, Boston, Massachusetts, and _____, with a principal office at _____, ("Contractor").

Whereas, the MSBA desires to retain Contractor to render certain services to the MSBA and Contractor desires to be so retained by the MSBA and to perform the services specified herein, all in accordance with the terms and conditions of this Agreement.

Now, therefore, in consideration of the premises, mutual covenants and representations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Certain Definitions:** The following capitalized terms have the following meanings for purposes of this Agreement:
 - a) "Agreement" means this Master Commissioning Services Agreement, including all Work Orders entered into hereunder and attached hereto and all other referenced attachments hereto and thereto, as the same may be amended from time to time in accordance with the terms of this Agreement.
 - b) "Commonwealth" means the Commonwealth of Massachusetts (and its political subdivisions or agents where the context so requires).
 - c) "Contractor" means any Person providing the services contemplated by this Agreement.
 - d) "General Counsel" means the MSBA's General Counsel, or, in the event that no Person holds such title at the time in question, such other legal counsel to MSBA as MSBA's Executive Director may designate.
 - e) "Governmental Authority" means any national or federal government, any state or other political subdivision thereof, and any other Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.
 - f) "MSBA" means the Massachusetts School Building Authority and any of its subsidiaries, subdivisions or affiliates, and the successors or assigns thereof.
 - g) "Owner" means the entity identified on a Work Order as the School District that is the owner of the property that is the site for a Project or that has control of said property pursuant to a lease in accordance with 963 CMR 2.05(1) and any other applicable provision of law.
 - h) "Person" means any individual, partnership, corporation, limited liability company, joint venture, trust, unincorporated organization, Governmental Authority or any other entity.
 - i) "Project" means the project identified in any Work Order.
 - j) "Project Personnel" means, with respect to the project hereunder, the employees or other personnel of each party responsible for such project.
 - k) "Public Records Act" means the Massachusetts Public Records Act, M.G.L. Chapter 66, and any successor thereto and M.G.L. Chapter 66A.
 - l) "Services" means the Standard Scope of Commissioning Services set forth in Exhibit 1 to this Agreement, as those Services may be modified, supplemented, or reduced by the

provisions of a Work Order entered into pursuant to this Agreement, and may include requirements of any policies, guidelines, protocols and standards or Commissioning Services Manual issued from time to time by the MSBA.

- m) "Work Order" means the Work Order described in Section 2 of this Agreement in the form set forth in Attachment A.
2. **Scope of Services:** The MSBA hereby retains Contractor to provide Services to the MSBA during the term of this Agreement to the extent authorized by a Work Order, and Contractor hereby accepts such engagement. Contractor represents itself as competent and qualified to accomplish the specific requirements of this Agreement to the satisfaction of the MSBA and in accordance with the terms and conditions of this Agreement and acknowledges that the MSBA is relying upon such representation in entering into this Agreement. Contractor covenants to exercise its professional skill, efforts and judgment in furthering the interests of the MSBA and the Project and shall perform the Services consistent with the interests of the MSBA and the Owner and in accordance with professional standards of care used by consultants or contractors performing a similar scope of services in the Greater Boston area on projects of comparable size, scope, and complexity. This Agreement shall apply to all Services provided from time to time by Contractor to the MSBA during the term specified in Section 4. Each service request from the MSBA shall be in writing and shall be issued as a separate Work Order, substantially in the form of Attachment A-2, specifying the start date and duration of the service request, the services to be performed, any deliverables to be furnished by Contractor and payment terms, and shall be signed by a duly authorized officer or employee of each of the parties. Each Work Order shall reference this Agreement and will be numbered sequentially. In the event of any conflict between the terms and conditions set forth in this Agreement and any provision(s) set forth in any Work Order or other attachment hereto, the terms of this Agreement shall control unless and until amended in accordance with Section 19 hereof.
 3. **Payment:** The MSBA shall compensate Contractor as set forth in the attached Work Order(s). Contractor shall submit to the MSBA detailed **monthly** invoices in a format acceptable to the MSBA, which will include such information as is set forth on the relevant Work Order or as otherwise requested by the MSBA.
 4. **Term of the Agreement:** This Agreement shall take effect as of the Effective Date set forth in the first paragraph of this Agreement, and shall remain in effect for three years. The parties may mutually agree in writing to renew this Agreement. Individual Work Orders issued prior to the expiration of this Agreement will continue to be in force until completed unless terminated sooner under the provisions of Section 8(a).
 5. **Project Personnel:** Subject to the provisions of Section 9, Contractor shall be responsible for the hiring of all individuals, consultants and subcontractors, including but not limited to companies necessary to perform the services and deliverables required by any Work Order, and for the professional services and accuracy and the coordination of all specifications, estimates and other work furnished by the Contractor or the Contractor's consultants and subcontractors. The Contractor shall staff its office with sufficient personnel to complete the services and deliverables required under this Agreement in a prompt and continuous manner, and shall meet the approval schedule and submittal dates established during the course of this Agreement. The relevant Project Personnel shall be set forth on the applicable Work Order. Unless otherwise agreed by the parties, each party will use all reasonable efforts to maintain the same personnel on its project team unless replacement is necessitated by the resignation, extended illness, incapacity or death of specific Project Personnel. The MSBA may request the removal or replacement of any individual(s) from Contractor's project team, and if such a request is made, Contractor shall use all reasonable efforts to replace the relevant individual promptly.
 6. **Timely Performance:** Contractor acknowledges that expeditious completion of Contractor's services and the expeditious delivery of the deliverables is of the utmost importance to the MSBA and that Contractor will diligently and continuously perform its Services during the term of this Agreement.
 7. **Notices:** Unless otherwise specified in an attachment hereto, any notice hereunder shall be in writing and shall be sent either (i) by facsimile or telecopier, (ii) by courier, or (iii) by first class

mail, postage, prepaid, addressed to the Project Personnel listed in the applicable Work Order at the addresses of such Persons indicated in the first paragraph of this Agreement (or to such other address as a party may provide by notice to the party pursuant to this Section 7), and shall be effective (i) if dispatched by facsimile or telecopier and delivery is electronically confirmed by said media, the day such electronic confirmation is received, (ii) if sent by courier, one business day after written confirmation by said courier of delivery, (iii) if sent by first class mail, two business days after its date of posting. A copy of each notice required to be sent pursuant to this Agreement shall also be sent to the General Counsel.

8. Termination or Suspension:

- a) This Agreement shall terminate on the date specified in Section 4, unless amended in accordance with Section 19 to extend the term hereof, or unless earlier terminated or suspended as provided in this Section 8(a). The MSBA may terminate this Agreement without cause and without penalty at any time upon provision of written notice to the Contractor. The MSBA also may terminate or suspend this Agreement if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by this Agreement, by providing written notice of termination or suspension to the Contractor.
- b) Obligations in Event of Termination; Survival: Upon termination of this Agreement, the parties shall have the following obligations:
 - i) *Deliverables:* Contractor shall deliver to the MSBA all work papers and all written and tangible work product identified as deliverables in the applicable Work Order(s) for which services have been performed and payment has been made, and all other property of the MSBA, and all copies thereof in the direct or indirect possession or control of Contractor, up to and including the date of termination.
 - ii) *Payment:* Contractor shall be paid for all requested and authorized services and deliverables described in the applicable Work Order(s) and performed to the satisfaction of the MSBA up to and including the date of termination.
 - iii) Sections 7 and Sections 9 through 23 of this Agreement shall survive termination of this Agreement.

9. Contractor's Representations: As of the date of this Agreement, and as of each date on which a Work Order is entered into by the parties, Contractor hereby represents under the penalties of perjury as follows:

- a) Contractor is duly authorized to enter into this Agreement (including all Work Orders hereunder), and the execution, delivery and performance of this Agreement will not conflict with any other agreement or instrument to which it is a party or by which it is bound and will not violate any law, regulation, order or other legal requirement by which Contractor or any of its assets is bound.
- b) Contractor and all Project Personnel of Contractor are fully capable and qualified to perform the described service(s) and Contractor's other obligations under this Agreement, and have obtained all requisite licenses and permits to perform such obligations.
- c) Contractor and all Project Personnel of Contractor are familiar with, and are and will remain in compliance with, and will not take any actions contrary to the provisions of, any laws, rules, regulations, ordinances, orders or requirements of the Commonwealth and other Governmental Authorities applicable or implicated by the subject matter of this Agreement, including, without limitation, the statutes referenced in Sections 9(d), 9(e), 14, 16 and 17 of this Agreement and the General Laws governing the conduct of public construction projects, including, but not limited to, M.G.L. c.149 and c.30.
- d) Contractor and its employees are independent contractors of the MSBA, and not employees, partners or joint-ventures of the MSBA. Contractor will be solely responsible for withholding and paying all applicable payroll taxes of any nature, including social

security and other social welfare taxes or contributions that may be due on amounts paid to its employees. Contractor has filed and will continue to file all necessary state tax returns and reports, and has paid and will continue to pay all taxes and has complied and will continue to comply will all laws of the Commonwealth relating to Worker's Compensation, M.G.L. c. 152.

- e) Contractor shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation. Contractor agrees to comply with all applicable Federal and State statutes, rules and regulations prohibiting discrimination in employment including but not limited to: Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; and M.G.L. c.151B.
- f) Contractor represents and warrants that all personnel supplied under this Agreement are eligible to work in the United States at the time of execution of this Agreement and that Contractor has a continuing obligation to ensure such status for the duration of the Agreement.

10. **Indemnification and Insurance:**

- a) To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the MSBA, the Owner and each of their respective employees, agents, officers, directors, and members of their governing boards (collectively, the "Covered Persons") from and against any and all actions, claims, liability, loss, damages, costs and expenses (including, but not limited to reasonable legal fees, court costs, fines, and penalties), judgments and awards (collectively, "Damages") sustained, incurred, or suffered by or imposed upon or for which liability is asserted against any Covered Person resulting from: (i) any breach of this Agreement or false representation, covenant, or certification of Contractor or any person or entity for whom Contractor is responsible under this Agreement, or (ii) any negligent acts or omissions or willful misconduct of Contractor or any of Contractor's agents, officers, directors, employees or subcontractors or any other person or entity for whom the Contractor is responsible. Without limiting the foregoing, Contractor shall indemnify and hold harmless each Covered Person against any and all Damages that may arise out of or may be imposed because of the negligence in failing to comply with the provisions of applicable law by Contractor or any of its agents, officers, directors, employees, or subcontractors or any other person or entity for whom the Contractor is responsible.
- b) The aforesaid indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor under workers' compensation, disability benefit acts, or other employee benefits acts.
- c) Contractor shall obtain and maintain in effect through the term of this Agreement, and shall require by contractual obligation that its sub-consultants and subcontractors obtain and maintain through the term of this Agreement, all insurance required by law and as may be required by the MSBA under this Agreement, including but not limited to, comprehensive general liability insurance (bodily injury and property damage) and professional liability insurance in amounts that may be required by the MSBA. The required insurance shall be provided at the sole expense of Contractor, sub-consultant or subcontractor as applicable and shall be in full force and effect for the full term of this Agreement and for the entire period that Contractor is providing Services for a Project. Failure by the Contractor to obtain and maintain the insurance required by this section, to obtain all policy renewals, or to provide the respective insurance certificates as required shall constitute a material breach of the Agreement and shall be just cause for termination of the Services of the Contractor under this Agreement.
- d) All insurance policies shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts and having a

financial strength rating of "A-" or better as assigned by the A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the MSBA. Contractor shall submit to the MSBA and the Owner originals of the required certificates of insurance evidencing the coverage required hereunder, together with evidence that all premiums for such insurance have been fully paid, simultaneously with the execution of this Agreement. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, and policy effective and expiration dates. Contractor shall submit updated certificates to the MSBA and the Owner prior to the expiration of any of the policies referenced in the certificates. The Contractor shall provide advance written notice to the MSBA of any termination, cancellation, reduction in coverage or other material modification of any insurance required by this Agreement, whether by the insurer or the insured. Contractor shall be responsible for the payment of any and all deductibles or self-insured retentions under all of the insurance required below.

- e) Contractor shall purchase and maintain at its own expense during the life of this Agreement, and if greater, for the period of time for the performance of Services under a Work Order and for such other time period as provided herein, the following types and amounts of insurance:
1. Workers' Compensation Insurance in accordance with General Laws Chapter 152. The policy shall be endorsed to waive the insurer's rights of subrogation against the MSBA, the Owner and each of their respective employees agents, officers, directors and members of their governing boards (including Employers Liability Insurance with limits totaling not less than \$500,000.)
 2. Commercial General Liability Insurance (including Premises/Operations; Products/ Completed Operations which shall remain in effect for a minimum of one year after completion of the Contractor's Services under any Work Order; Contractual Liability, including Contractor's obligation to the MSBA as provided in subparagraph (a) of this Section 10; Independent Contractors; Broad Form Property Damage; and Personal Injury) with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate and naming the MSBA, the Owner, and all other Covered Persons as additional insureds. Contractor shall maintain such insurance on an occurrence basis and 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 MSBA. The policy shall be endorsed to waive the insurer's rights of subrogation against the MSBA, the Owner and each of their respective employees agents, officers, directors and members of their governing boards.
 3. Automobile Liability Insurance (including owned, non-owned and hired vehicles) at a limit of not less than \$1,000,000 each accident for bodily injury and property damage liability.
 4. Professional Liability. Contractor shall maintain professional liability insurance covering negligent errors and omissions and negligent acts of the Contractor and of any person or entity for whose performance the Contractor is legally liable with coverage of not less than \$1,000,000 per claim / \$2,000,000 annual aggregate. The coverage, at the minimum limit shall be in force and available from the effective date of this Agreement to the date when all commissioning and post commissioning work designated under this Agreement and all Work Orders issued pursuant to this Agreement is completed and accepted by the MSBA. Contractor shall notify the MSBA and the Owner should coverage become unavailable, and Contractor and the MSBA shall negotiate a Basic Services fee adjustment if coverage is no longer available. Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the Agreement. If the professional liability policy is in a "claims made" format, it shall include a retroactive date that is no later than the effective date of the Agreement, and an extended reporting period of six years following the term of this Agreement which

requirement can be met by providing renewal certificates of professional liability insurance to MSBA and the Owner as evidence that this coverage is being maintained.

- f) The Contractor shall be and shall remain liable to the MSBA and to the Owner for all damages incurred by the MSBA or the Owner as a result of the negligence of the Contractor or its Project Personnel in performing the Services in accordance with this Agreement and any Work Order.
11. **Relationship of the Parties:** The Contractor shall be responsible for its negligent acts or omissions but shall not have control or charge of acts or omissions of the Project Designer, Owner's Contractor or Construction Manager, Subcontractors, Owner's Project Manager or the agents or employees of any of them. Nothing in this Agreement shall be construed as an assumption by Contractor of the responsibilities or duties of the Owner's Designer, Contractor, Construction Manager, or Owner's Project Manager. It is the intention of the MSBA that Contractor's Services shall be rendered in a manner compatible with and in coordination with the services provided by the Owner's Designer and Project Manager. It is not intended that the services of the Contractor, Owner's Designer, or Owner's Project Manager be competitive or duplicative, but rather complementary.
12. **Ownership of Intellectual Property:** Unless provided otherwise by law, ownership and possession of all information, data, reports, computer programs, drawings, documents, designs, models, inventions, equipment, and any other documentation, product of tangible materials authored or prepared, in whole or in part, or purchased, obtained, created by Contractor pursuant to this Agreement specifically for the purposes of, and within the scope of services for, a particular Project for which the Contractor has been engaged as specified in a Work Order (collectively, the "Materials"), other than Contractor's administrative communications, records, and files relating to this Agreement, are the sole property of, and shall vest in, the MSBA as "works made for hire" or otherwise provided the MSBA has paid all of Contractor's non-disputed monthly invoices for services rendered under this Agreement. The MSBA will own the exclusive rights, worldwide and royalty-free, to and in all Materials prepared and produced by Contractor pursuant to this Agreement, including, but not limited to, United States and International patents, copyrights, trade secrets, know-how and any other intellectual property rights, and the MSBA will have the exclusive, unlimited and unrestricted right, worldwide and royalty-free, to publish, reproduce, distribute, transmit and publicly display all Materials prepared by Contractor. The MSBA shall retain exclusive intellectual property rights in all graphics and text provided to Contractor by the MSBA for incorporation into final Materials prepared by Contractor. Contractor shall use graphics and text provided by the MSBA for the sole purpose of fulfilling contractual obligations created by this Agreement.
13. **Assignment by Contractor; Subcontracting:** The MSBA may assign its rights and obligations under this Agreement to any Person who succeeds to all or any portion of the MSBA's business, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns. Contractor shall not assign or in any way transfer any interest in, or any of Contractor's rights or obligations under this Agreement, including by operation of law, without the prior written consent of the MSBA. The Contractor shall not subcontract any services to anyone without the prior written consent of the MSBA, and any such subcontracts shall be consistent with and subject to the provisions of this Agreement. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under this Agreement. The Contractor shall provide the MSBA with copies of all subcontracts.
14. **Conflicts of Interest:** Contractor acknowledges the application of the Massachusetts Conflict of Interest Law (M.G.L. c.268A) to the subject matter of this Agreement and that Contractor's personnel, and Contractor's subcontractor's personnel, if any, may be considered "special state employees" and thus subject to the provisions of such law. Contractor represents that it and its subcontractors, if any, are now in full compliance with the Massachusetts Conflict of Interest Law as it relates to the subject matter of this Agreement and the Contractor further agrees that, for the duration of the term of this Agreement, it and its subcontractors, if any, shall remain in full compliance with the Massachusetts Conflict of Interest Law as it relates to the subject matter of

this Agreement. Contractor agrees to provide the MSBA with the information listed in Attachment B hereto and to disclose all financial interests in the subject matter of this Agreement held by either Contractor or Contractor's other clients. With respect to the subject matter of this Agreement, Contractor further represents that it has consulted with the State Ethics Commission concerning any potential conflicts of interest and has filed all required disclosures regarding its financial interests, both direct and indirect, in any contract to provide designer, project management, or other services to a city, town, or regional school district that may be eligible to receive a Total Facilities Grant from the MSBA for a public school repair, renovation, or construction project. Contractor and its subcontractors, if any, shall not take any action which it knows or has a reasonable basis to believe would cause any officer or employee of the MSBA to participate in any decision relating to this Agreement which affects his/her personal interest or any corporation, partnership, or association in which (s)he is directly or indirectly interested or to have any interest, direct or indirect, in this Agreement or the proceeds thereof. It is hereby acknowledged by the MSBA and understood by all parties that individuals providing services to the MSBA under this Agreement are permitted to engage in personal or private employment during normal business hours. The Contractor further acknowledges and agrees that its failure to comply with the provisions of this section may be deemed a material breach of this Agreement.

15. **Record Keeping, Audit, and Inspection of Records:** Contractor shall maintain books, records and other compilations of data pertaining to its activities under this Agreement to the extent and in such detail as shall properly substantiate claims for payment and Contractor's performance of its duties under the Agreement. All such records shall be kept for a period of not less than seven (7) years or for such longer period as is specified by the MSBA (the "Retention Period"). The Retention Period starts on the first day after final payment under this Agreement is made. If any litigation, claim, negotiation, audit or other action involving the records is commenced prior to the expiration of the Retention Period, all records shall be retained until completion of the action and resolution of all issues resulting therefrom, or until the end of the Retention Period, whichever is later. The MSBA, or its designees, shall have the right at reasonable times and upon reasonable notice, to examine and copy the books, records, and other compilations of data of Contractor which pertain to the provisions and requirements of the Agreement. Such access shall include on-site audits, reviews, and copying of records. If such audit reveals that any portion of the fees was utilized for purposes not permitted under this Agreement, then Contractor shall refund to the MSBA the amount determined by such audit within thirty (30) days of Contractor's receipt of such audit and demand.
16. **Confidentiality/Publicity:**
 - a) Contractor hereby agrees to protect the physical security and restrict access to all data compiled for, used by, or otherwise in the possession of Contractor in performance of the services hereunder in accordance with Contractor's reasonable business practices and as otherwise provided in this Agreement. Contractor shall comply with all applicable laws and regulations relating to confidentiality and privacy, including, without limitation, all requirements of M.G.L. c.66A implicated by the subject matter of this Agreement.
 - b) Contractor shall collaborate with the MSBA to prepare any public statement or announcement relating to or bearing on the work performed or data collected under this Agreement or to prepare any press release or for any news conference in which the MSBA is concerned or discussed. Contractor shall not release, make or issue any such public statement or announcement without the prior written consent of the MSBA.
17. **Public Records:**
 - a) As a public entity, the MSBA is subject to the Massachusetts Public Records Law (M.G.L. c.66 and 66A) and thus certain documents and other materials made or received by the MSBA are subject to public disclosure unless they are specifically exempted. Contractor specifically acknowledges that it bears the risk that any material submitted by Contractor to the MSBA pursuant to this Agreement may be deemed not to qualify for a public records exemption.

- b) Furthermore, it is the intention of the parties that the MSBA will continue to exercise custody of records received or produced under the Agreement. Requests for access to said records shall be forwarded immediately to the MSBA for response. Contractor shall not release information except as authorized to deliver services under this Agreement.
18. **Choice of Law:** This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth, without giving effect to the conflict of laws principles thereof. All legal actions arising out of or relating to this Agreement shall be commenced and maintained in a state or federal court sitting in the Commonwealth. By execution and delivery of this Agreement, each of the parties accepts for such party, generally, exclusively and unconditionally, the jurisdiction of said courts. This Section 18 shall not be construed to limit any other legal rights of the parties. Contractor acknowledges and agrees that any breach or threatened breach of this Agreement by Contractor will result in substantial, continuing and irreparable damage to the MSBA. Therefore, in addition to any other remedy that may be available to the MSBA, the MSBA will be entitled to injunctive or other equitable relief by a court of appropriate jurisdiction in the event of any breach or threatened breach by Contractor of the terms of this Agreement.
19. **Amendments and Waivers:** The MSBA may amend Attachment B (without any action by Contractor) to reflect changes in law or MSBA policies and shall promptly deliver any and all such amendments to Contractor in the manner provided in Section 7 of this Agreement. Except as provided in the immediately preceding sentence, no amendment to or modification of this Agreement (including any Work Order), and no waiver of any provision hereof, shall be effective unless the same shall be in writing and shall be signed by each of the parties hereto. Any waiver by the MSBA of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision of this Agreement. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the remedies available to that party.
20. **Severability:** Each provision of this Agreement shall be treated as a separate and independent clause and any decision from a court of competent jurisdiction to the effect that any clause or provision of this Agreement is null or unenforceable shall in no way impair the validity, power or enforceability of any other clause or provision of this Agreement.
21. **Binding Effect; Benefit; Entire Agreement and Attachments:** This Agreement shall be binding on the parties hereto and their respective successors and permitted assigns and shall inure to the benefit of the parties and their respective successors and permitted assigns. Except as provided in the immediately preceding sentence, nothing in this Agreement shall be construed to create any rights or obligations except between the parties hereto, and *no Person shall be regarded as a third party beneficiary of this Agreement*. This Agreement embodies the entire understanding and agreement between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior oral or written agreements and understandings relating to such subject matter. No statement, representation, warranty, covenant or agreement of any kind not set forth in this Agreement will affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement. The following (together with all exhibits, schedules and attachments thereto) are hereby incorporated into this Agreement by reference:
- a) Attachment A – Form of Work Order, and all Work Orders entered into in accordance with the terms of this Agreement and attached hereto.
- b) Attachment B – Consultant/Contractor Mandatory Disclosure Form.
- c) Attachment C – Consultant/Contractor Certificate of Disclosure.
- d) Exhibit 1 - Standard Scope of Commissioning Services.
22. **Headings:** The headings and captions of the various subdivisions of this Agreement are for convenience of reference only and will in no way modify or affect the meaning or construction of any of the terms or provisions hereof.

23. **Counterparts:** This Agreement may be executed in two or more counterparts, and by different parties hereto on separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

24. **Other Conditions:**

- a) The MSBA does not guarantee the accuracy of information furnished to Contractor during the course of this Agreement, and Contractor must satisfy himself as to the correctness of data, except in instances where written exception to the contrary is specifically indicated by the Owner. If the above data are not available or they are in the opinion of Contractor, insufficient, Contractor, upon request, may be given authorization to obtain the services of a consultant or perform the work with its own employees. In no case shall Contractor commence such work without prior written authorization of the MSBA.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as a document under seal as of the Effective Date set forth in the first paragraph hereof.

Massachusetts School Building Authority

By: _____

By: _____

Name: Mary L. Pichetti

Name: _____

Title: Executive Director

Title: _____

Federal Tax ID No.: _____

To: [CONTRACTOR]
From: Xingzhen (Stephanie) Bai
Date: [DATE]
Re: Electronic Payment of the Massachusetts School Building Authority's Invoices

In an effort to pay your company's invoices in a timely and efficient manner, the Massachusetts School Building Authority would prefer to make electronic ACH transfers directly to the company's account. For this transaction to be possible, the Authority requests the following banking information.

_____ (Contractor) hereby requests that the Massachusetts School Building Authority pay invoices as an electronic ACH directly to the following account:

Banking Information for ACH Transactions

Financial Institution: _____

Address: _____

City & State: _____

Account No.: _____

Transit Number (ABA#): _____
(Routing #)

Vendor Contact Name: _____

Vendor Contact Signature: _____

Vendor Telephone No.: _____

Please return the completed form to Xingzhen (Stephanie) Bai: via email at Xingzhen.Bai@MassSchoolBuildings.org or fax at 617-720-5260

ATTACHMENT B

CONSULTANT/CONTRACTOR MANDATORY DISCLOSURE FORM

Additional Income Disclosure. Please identify any contracts or grants with (or other income received from) the Commonwealth, including any political subdivision or public authority, in effect as of the date of execution of this Agreement. Enter N/A if none. Attach additional sheets as necessary.

Disclosure of Persons with Financial Interest. The following individuals have a financial interest in the Agreement and/or more than a one percent (1%) equity interest in the Consultant/Contractor. Enter N/A if none. Attach additional sheets as necessary.

Conflict of Interest. Consultant/Contractor acknowledges that the individuals performing services under this Agreement may be considered "special state employees" subject to the provisions of the Massachusetts Conflict of Interest Law, M.G.L. c.268A, and certifies that these individuals are familiar with the restrictions imposed thereon. Contractor further certifies that with respect to the subject matter of this Agreement, it has consulted with the State Ethics Commission about any potential conflicts of interest and has filed all required disclosures regarding its financial interests, both direct and indirect, in any contract to provide design, project management, or other services to a city, town, or regional school district that may be eligible to receive a Total Facilities Grant from the MSBA for a public school repair, renovation, or construction project.

Key Personnel. Attach a resume for all key personnel to be assigned to the performance of this Agreement.

The information submitted herein is certified by Consultant/Contractor to be accurate and signed under the penalty of perjury.

Name of Consultant/Contractor: _____

Signature: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT C

CERTIFICATE OF DISCLOSURE

- 1.) State your firm's name and address.
- 2.) State the name and position of the officer completing this disclosure statement.
- 3.) Describe your firm's organizational structure (e.g. partnerships, corporation, etc.) and list any controlling stockholders, general partners or principals. Also list any subsidiaries, joint ventures, consultants, lobbyists, subcontractors or agents that have relationships with your firm and relate in any way to your proposed business with the Authority.
- 4.) Did your firm or will your firm, its related entities or any individual listed in response to question 3 above, provide, agree to provide or arrange to provide any compensation or benefit, direct or indirect to any individual or entity, including without limitation, lobbyists, consultants or agents, whether related or unrelated to your firm, for their services in your firm's obtaining its engagement for the provision of services to the Authority? If the answer is "Yes", please provide the name and address of such individual or entity and a description of the services performed by them and the compensation or benefit.
- 5.) Has your firm, its related entities or any individual listed in response to question 3 above, shared any fees with any person or entity, whether related or unrelated, with respect to your firm's proposed engagements for services with the Authority? If so, please describe such arrangements whether or not any fees have actually been shared.
- 6.) Does your firm, its related entities or any individual listed in question 3 above, have any on-going arrangement with any related or unrelated individual or entity with respect to sharing fees that would be received from services provided to the Authority? If so, please describe such arrangements.
- 7.) If selected pursuant to this RFR to which this statement is attached, please certify that your firm will disclose promptly, in writing, all future relationships like those described above.

Name of Consultant/Contractor: _____

Signature: _____

Name: _____

Title: _____

Date: _____