



Request for Proposals

DESIGN SERVICES: CONSULTING ENGINEER

Boston Convention and Exhibition Center

The John B. Hynes Veterans Memorial Convention Center

The Boston Common Garage

The MassMutual Center

October 28, 2020

Briefing Session: 11 a.m., November 5, 2020

Questions Due: 12 noon, November 10, 2020

Applications Due: 12 Noon, November 18, 2020

Owner:

MASSACHUSETTS CONVENTION CENTER AUTHORITY

415 Summer Street, Boston, Massachusetts 02210

T: (617) 954-2000 F: (617) 954-2299 www.massconvention.com

**MASSACHUSETTS CONVENTION CENTER AUTHORITY
REQUEST FOR PROPOSALS TO PERFORM DESIGN
SERVICES**

**CONSULTING ENGINEER
Table of Contents**

- 1. Public Notice**
- 2. Request for Proposal**
- 3. Designer Application Form**
- 4. Affidavit of Compliance**
- 5. Authority Contractor Agreement and Exhibits**

MASSACHUSETTS CONVENTION CENTER AUTHORITY

REQUEST FOR PROPOSALS TO PERFORM DESIGN SERVICES

Consulting Engineer

The Massachusetts Convention Center Authority (Authority) is soliciting professional consulting services for its house doctor Design Services: Consulting Engineering and Architectural Services Contract. The Authority is seeking 2 or more multi-disciplinary firms or teams to provide professional services with an emphasis on architectural and engineering services to serve as the Authority's House Doctor. The contract with the selected firms will commence on or about **March 1, 2020**, for a term of three years (subject to cancellation), and may be renewed for two additional one-year terms at the election of the Authority. The Consultant shall demonstrate expertise in the following disciplines including but not limited to interior and exterior architectural design and finishes, roofing and building envelope, environmental, acoustical, fire alarm, vertical transportation, cost estimating, civil, structural, HVAC, fire protection, plumbing, electrical, geotechnical, architecture, landscape architecture and sustainable design. The Consultant shall demonstrate its ability to manage costs effectively and shall be experienced in providing similar services on an on-call, as needed basis. The Consultant must be able to work closely with the Authority and other interested parties in order to provide such services in a timely and effective manner. The projects may range in value from \$5,000 to \$1,000,000 for designer services including construction administration

The Authority expects to select two or more consultants. However, the Authority reserves the right to select a different number if it is deemed in its best interest to do so. Each consultant shall be issued a contract authorizing an annual amount not to exceed \$1,000,000. The services shall be authorized on a work order basis issued by the Authority upon reaching agreement on services scope and fee.

Each submission shall include Designer Selection Panel Application and other materials as set forth in the Request for Proposals ("RFP"), highlighting the firm's experience and capabilities, and identifying all sub-consultants, including Minority and Women Business Enterprise ("M/WBE") participation. M/WBE Certification of the prime or any sub-consultants shall be current at the time of submittal and the Consultant shall include a copy of the M/WBE certification letter from the Supplier Diversity Office ("SDO") within its submittal.

In order to be eligible for selection, all aspects of Section 44, Chapter 7C of the General Laws of the Commonwealth of Massachusetts shall be satisfied including the majority of the firm's Board of Directors or ownership shall be registered in the Commonwealth of Massachusetts in accordance with the applicable provisions of the statute. Consultants shall furnish professional registration status of the firm's board of directors or ownership. All individuals responsible for technical disciplines shall, upon commencement of the project, be registered Architects or Engineers, in that discipline, in the Commonwealth of Massachusetts.

The submission shall be evaluated on basis of: (1) current relevant experience on projects of

similar complexity, (2) experience of the Project Manager and experience of other key personnel to be assigned to the project, (3) experience and expertise of sub consultants, (4) demonstrated familiarity with MGL, including filed sub-bid experience, (5) cost management capabilities, (6) M/WBE participation, (7) familiarity with this type of assignment and a demonstrated ability to respond in a timely manner, (8) current level of work with the Authority, if any (9) past performance for the Authority, if any, (10) experience with sustainable design, and (11) such other information required by the RFP.

The selection may include the short listing of firms based on an evaluation of the Statements of Qualifications received in response to this solicitation, followed by a final selection. The Authority reserves the right to interview the firms prior to final selection if deemed appropriate. By responding to this solicitation, consultants agree to accept the terms and conditions of the Authority's standard agreement, which is included herewith.

Proposals must be received at the Executive Office of the Authority, Attn: Brendan Flynn, Director of Purchasing, Massachusetts Convention Center Authority, 415 Summer Street, Boston, Massachusetts 02210, not later than **12:00 p.m. local time on November 18, 2020.** Proposal requirements and content are set forth in this Request for Proposals ("RFP").

The complete Request for Proposals may be obtained from the Authority's website at rfp.massconvention.com **on and after October 28, 2020.** Proposals must be submitted in hard copies, with a signed original (unbound) and ten (10) copies of a bound document and a USB Drive with the proposal in pdf format. Submissions shall be printed on both sides of the sheet (8 1/2" x 11"). each limited to: 1) a cover letter; 2) Designer Selection Panel Application Form and any other documents required by the RFP and shall be addressed to Brendan Flynn, Director of Purchasing and received no later than **12:00 Noon on November 18, 2020** at the Massachusetts Convention Center Authority, Boston Convention & Exhibition Center location, 415 Summer Street, Boston MA 02210. Any submission that is not received in a timely manner shall be rejected by the Authority as non-responsive. Any information provided to the Authority in any Proposal or other written or oral communication between the Proposer and the Authority will not be, or deemed to have been, proprietary or confidential, although the Authority will use reasonable efforts not to disclose such information to persons who are not employees or consultants retained by the Authority except as may be required by M.G.L. c.66.

Questions or Requests for information, clarification or interpretation of the bidding documents must be submitted to bflynn@massconvention.com in writing and accordance with the Instruction to Bidders and must be received no later than **5:00 p.m., November 10, 2020.**

A briefing session will be conducted for prospective offerors at **11 a.m., November 5th, 2020** utilizing remote technology via the Microsoft Teams link which will be provided on the Authority's website: rfp.massconvention.com under Design Services: Consulting Engineer RFP. The Authority anticipates, but does not guarantee, that finalists will be selected on or about January 15, 2021, and that this contract will be awarded on or about January 22, 2021.

The fee for this contract will be negotiated pursuant to the Authority's Designer Selection Procedures. No fee proposal should be submitted in response to this RFP.

MASSACHUSETTS CONVENTION CENTER AUTHORITY

REQUEST FOR PROPOSALS TO PERFORM DESIGN SERVICES

Consulting Engineer

**Boston Convention and Exhibition Center, John B. Hynes Veterans Memorial
Convention Center, the Boston Common Garage and MassMutual Center**

SECTION 1 - INTRODUCTION AND DEFINITIONS

1.1. In accordance with this Request for Proposals (RFP), including all documents bound herewith, the Massachusetts Convention Center Authority (the "Authority") hereby invites applications from firms desiring to serve as consultants to perform the design services described herein. A summary of these services is contained in the Public Notice bound herewith. The full scope of services is set out in the Authority-Contractor Agreement bound herewith.

1.2. The instructions contained in this Request for Proposals are intended to assist Applicants in the preparation of their applications, to call attention to various legal requirements and to set forth certain conditions upon which offers are submitted and received.

1.3. The award of this contract is governed by Massachusetts General Laws Chapter 7C, Section 44 *et seq.* and the Authority's Designer Selection Procedures adopted pursuant thereto and bound herewith. Certain provisions of applicable statutes and procedures are summarized in this Request for Applications. Whenever these instructions or any other documents contained in the RFP set forth or summarize applicable statutory provisions or the procedures adopted pursuant thereto, whether or not the statutes or procedures have been specifically referred to, such summaries are for convenience only, do not purport to be complete or correct as summaries in any material particular, and shall in no respect supersede, expand or limit rights or duties of the Authority or Applicants in matters governed by statute or the applicable procedures.

1.4. The following definitions shall apply in these instructions and in the other documents contained in this RFP:

(1) The terms "Request for Proposals" and "RFP" shall include the Public Notice, this document entitled Request for Proposals, the Contractor's Application Form, the Affidavit of Corporate Vote, the Authority-Consultant Agreement, any other documents bound herewith, any documents specifically incorporated into any of the foregoing documents by reference, and all Addenda issued prior to the opening of applications.

(2) The terms "Addenda" and "Addendum" shall mean written documents and/or drawings issued by the Authority prior to opening of applications which supplement, modify, correct, explain or interpret any other document contained in this RFP.

(3) All definitions set forth in other documents in this RFP as therein defined are applicable to these instructions and to the other RFP documents.

SECTION 2 – SCOPE OF SERVICE

The Authority is seeking 4 or more multi-disciplinary firms or team to provide professional services with an emphasis on architectural and engineering services to serve as the Authority’s House Doctor. The Consultant shall demonstrate expertise in the following disciplines including but not limited to interior and exterior architectural design and finishes, Roofing and Building envelope, environmental, acoustical, fire alarm, vertical transportation, cost estimating, civil, structural, HVAC, fire protection, plumbing, electrical, geotechnical, architecture, landscape architecture and sustainable design. The Consultant shall demonstrate its ability to manage costs effectively and shall be experienced in providing similar services on an on-call, as needed basis. The Consultant must be able to work closely with the Authority and other interested parties in order to provide such services in a timely and effective manner. The projects may range in value from \$5,000.00 to \$1,000,000 for designer services including construction administration

The scope of work may include new construction, alterations or additions to various facilities such as surface and elevated roadways, underground utility distributions, sewers, storm drainage systems, lighting, electrical services, plumbing, HVAC, pumping systems, elevators, escalators, abatement of hazardous materials and security systems. Services may include but shall not be limited to conceptual or schematic drawings and outline specifications, design development or construction drawings and specifications, construction administration services, field inspection services, cost estimates and analyses, building forensic investigations, reports, value engineering, energy, and environmental audits.

The following projects may be included within the scope of services:

- (i) BCEC site waterproofing and sidewalk replacement
- (ii) Hynes HVAC and Electrical System Upgrades
- (iii) Boston Common Garage Main Roof Membrane Replacement

SECTION 3 - AVAILABILITY OF CONTRACT DOCUMENTS

3.1. The Authority in making copies of the RFP available does so only for the purpose of obtaining applications on the work of this contract and does not expressly or impliedly confer a license or permission of any kind to any person for any other use thereof.

SECTION 4 - EXAMINATION OF REQUEST FOR PROPOSALS; BRIEFING SESSION

4.1. Before submitting an application, each Applicant must thoroughly examine the RFP and familiarize himself with Federal, State and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of the contract. Failure of an Applicant to acquaint himself with the RFP shall in no way relieve the Applicant from any obligation with respect to his application.

4.2. Each Applicant shall promptly notify the Authority of any ambiguity, inconsistency or error he may discover upon examination of the RFP. The submission of an application will constitute a representation by the Applicant that he has complied with every requirement of this Section and that the RFP is sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance of the Authority-Consultant Agreement, (attached and incorporated here into).

4.3. A pre-bid briefing session will be held at the time indicated on the cover page of this RFP via the Microsoft Teams link that can be found on the Authority's website: rfp.massconvention.com. Firms intending to file Proposals pursuant to this RFP are required to notify Brendan Flynn, Director of Purchasing, Legal Department, by mail, or electronic mail at BFlynn@MassConvention.com, of their intentions to file a Proposal. Following the pre-bid conference, each Offeror is responsible for thoroughly examining the documents and shall request a visit to the sites which the Authority may or may not grant per current restrictions.

SECTION 5 - ADDENDA AND INTERPRETATION OF REQUEST FOR PROPOSALS

5.1. All questions and requests for clarifications or interpretations of the meaning of the RFP shall be in writing, addressed to the Authority, Attention: Brendan Flynn, Director of Purchasing, Legal Department, and to be given consideration must be received by the date set forth on the cover page of this RFP.

5.2. Clarifications or interpretations and any supplemental instructions or forms, if issued, will be issued in the form of written Addenda prior to the date fixed for opening of applications. Addenda will be sent by U.S. Postal Service "Express Mail" next day delivery service or similar express delivery service, electronic mail to all parties who, according to the Authority's records, have been issued this RFP. Each Applicant shall be responsible for determining that he has received all Addenda issued, and failure of any Applicant to receive any such Addendum shall not relieve such Applicant from any obligation under his application as submitted.

5.3. All Addenda so issued shall become part of the RFP.

5.4. Oral clarifications or interpretations will be of no effect. The Authority will not be responsible for, and an Applicant may not rely upon or use as the basis of a claim against the Authority or a consultant of the Authority, any information, explanation or interpretation of the RFP rendered in any fashion except as herein provided.

5.5. Any firm that contacts directly or indirectly any Member or employee of the Authority or any member of the Authority's Designer Selection Panel in connection with the selection process or the contract contemplated herein, other than to ask questions at the briefing session or to submit a written question or request for clarification as prescribed in this section, is subject to disqualification.

SECTION 6 - SALES TAX

6.1. The Authority represents that it is exempt from Federal excise, State, and local taxes and that sales to the Authority are exempt from Massachusetts State and use taxes.

SECTION 7 - PREPARATION AND SUBMISSION OF APPLICATIONS

7.1. Each application shall be submitted upon the Application form furnished herewith by the Authority sworn to under the penalties of perjury. Attachments to the Application, or any additional material required by this RFP, should be printed or typewritten on 8 1/2" by 11" paper.

7.2. One (1) original and ten (15) copies of each application shall be submitted to the Executive Office of the Authority, Attn: Brendan Flynn, Director of Purchasing, Boston Convention and Exhibition Center, 415 Summer Street, Boston, Massachusetts 02110, not later than 12:00 noon on the date set forth on the cover page of this RFP. Applications should be submitted in a sealed opaque envelope bearing on the outside the name of the Applicant, his address, the words "Design Services; Consulting Engineer".

7.3. Guidelines for Responsible Submissions: In an effort to promote greater use of recycled and environmentally preferable products and minimize waste, all Applicants are asked to comply with the following guidelines:

All submittals and copies should be printed on recycled paper with a minimum post-consumer content of 30% or on tree-free paper (i.e., paper made from raw materials other than trees, such as kenaf). Applicants should note the level of recycled content in the paper being used.

Unless absolutely necessary, all responses and copies should minimize or eliminate the use of non-recyclable or non-renewable materials such as plastic report covers, plastic dividers, vinyl sleeves and GBC binding. Three ringed binders, glued material, paper clips and staples are acceptable.

Applicants should submit materials in a format which allows for easy removal and recycling of paper materials. Applicants are encouraged to use other products which include recycled content in their responses. Such products may include, but are not limited to, folders, binders, paper clips, discs, envelopes, boxes, etc. Where appropriate, Applicants may wish to note which products within their bids are made with recycled materials.

Unnecessary samples, attachments or documents not specifically asked for should not be submitted.

Applicants are advised not to submit extraneous material. Photographs or pictorial representations of firm members shall not be submitted. Extraneous material, and material containing photographs or pictorial representations of firm members, shall not be returned or destroyed.

Participation by Minority Owned Businesses and Women Owned Businesses. Pursuant to M.G.L. Chapter 7C, Section 6, the Applicant must agree to contract with minority and women-owned businesses as certified by the Supplier Diversity Office (SDO) formerly known as the State Office of Minority and Women Business Assistance (SOMWBA). The amount of participation that shall be reserved for such enterprises shall not be less than 17.9% of the contract price for combined minority-owned and women-owned business enterprises.

SECTION 8 - RECEIPT OF APPLICATIONS

8.1. All Applicants are cautioned to allow ample time for transmittal of applications. Applicants are solely responsible for delivery to, and receipt by, the Authority. Applications received after the specified time will not be accepted or recognized. The time of receipt will determine the acceptability of mailed applications, regardless of postmark.

8.2. Applications will not be read publicly, but a register will be maintained of those firms submitting timely applications. The register of applications will be open to public inspection.

SECTION 9 - REJECTION OF APPLICATIONS

9.1. The Authority reserves the right to reject any or all applications if it be in the public interest to do so.

9.2. Every application which does not conform to statutory requirements, or which is on a form not completely filled in, or which is incomplete, conditional or obscure, shall be considered invalid and the Authority shall reject any such application.

9.3. In addition, the Authority may consider informal and may reject any application which is not prepared and submitted in accordance with all requirements of this RFP and the Application form, or which contains erasures, alterations, additions, errors or irregularities of any kind; provided, however, that Authority reserves the right to waive any and all informalities as to form. Matters as to substance shall not be waived.

9.4. Subject to the foregoing, if the Application form or any other documents require submission of special information or data and any Applicant neglects to furnish such information or data with his application, the Authority may reject the application as

incomplete; provided, however, that the Authority reserves the right to deem any such omission which is not an omission of substance as an informality for which such application will not be rejected, and to subsequently receive such information or data prior to award of the contract.

SECTION 10 - CONTENT OF APPLICATIONS; SELECTION CRITERIA

10.1. Each Applicant must submit the following documents, as part of his application, in conformity with the procedures set forth in Section 6, above:

- (a) The signed **Massachusetts Convention Center Authority DSP Application**, with all information and attachments as required therein. *No application may be accepted unless the Applicant provides the names and addresses of all partners if the Applicant is a partnership, or of all officers and directors and all persons with an ownership interest of more than five per cent if the Applicant is not a partnership; a list of all projects for all public agencies within the Commonwealth for which the Applicant has performed or has entered into a contract to perform design services (including preliminary studies) within the five year period immediately preceding the filing of this application; a list of all current projects for which the Applicant is performing or is under contract to perform design services (including preliminary studies); and, if the Applicant is a joint venture, the information required herein shall be submitted as to each joint venturer as well as for the joint venture itself.*

The following information must be included on the Application form:

- (1) **Sub-consultants** performing the following categories of work: (i) civil engineer; (ii) structural engineer; (iii) mechanical engineer; (iv) electrical engineer, (v) architect (vi) traffic and transportation engineer, (vii) landscape architecture, (viii) architecture, (ix) environmental, (x) HVAC, (xi) fire protection, (xii) plumbing (xiii) electrical, and (xiv) acoustical, (xv) Construction Cost Estimating Consultant, (xvi) Vertical Transportation Systems Engineer and (xvii) Building Code Consultant, (xviii) Roof and Building Envelope Consultant, and (xix) Hazardous Material Consultant.

For each sub-consultant, provide a listing of projects best illustrating the sub-consultant's qualifications for this work, including a brief narrative description of the cost, size, nature and complexity of the project; the sub-consultant's role; the location; the dates of the sub-consultant's work; and the name title, address and telephone number of a representative of the owner familiar with the sub-consultant's work. No change in these sub-consultants will be allowed unless the Applicant reports to the Authority's Designer Selection Panel, in writing, the proposed change and the reasons therefor, together with the qualifications

of the proposed sub-consultant(s), and the Authority approves the change.

- (2) **Key persons**, whether employed by the Applicant or by a sub-consultant, who will be responsible for the performance of the Applicant's services, including at least the following tasks: Project Manager; civil engineer; structural engineer; mechanical engineer; architect and electrical engineer. Attach to the Application the resumes of all key personnel. Identify the key individual with experience related to public construction bids and procedures.

- (b) If the Applicant is a corporation, the **Affidavit of Compliance and Vote of Corporation** bound herewith.

10.2. Applications which meet all of the submission requirements set forth in Section 9.1 will be evaluated by the Authority's Designer Selection Panel solely on the basis of the following evaluation criteria:

- (a) Prior similar experience.

Minimum requirements: Completion (at least to an extent sufficient to judge the Applicant's work product) within the past five years of at least five comparable engagements. A "comparable engagement" shall include comprehensive engineering projects of large public or commercial buildings and studies, designs and contract administration on varied improvements, repairs and replacements involving large public buildings in Massachusetts.

If the Applicant is a joint venture, each joint venturer must fulfill this requirement. Applicants shall submit written samples of similar long term comparable engagements.

The panel will rate highly Applicants which have successfully completed engagements most closely similar in size, duration, and complexity to the scope of this engagement and which demonstrate substantial experience with vertical and horizontal public construction bidding laws and procedures, and the creation of plans and specifications required thereunder and G.L. c. 30, c149 and c149A.

- (b) Past performance on public and private projects.

Minimum requirements: The Applicant (and proposed sub-consultants) must receive uniformly positive references on both public and private projects undertaken during the previous five years. A sample of references will be checked during the selection process; the Authority may contact other representatives of the Applicant's (and sub-consultants') clients, whether or not

the Applicant has identified such representatives. If the Applicant is a joint venture, each joint venture must fulfill this requirement.

The panel will rate highly Applicants which, in client interviews, receive strongly positive references regarding public construction including filed sub-bids, reliability of timely performance, soundness of judgment, carefulness and thoroughness in performing services (including documentation), cost-effectiveness of recommendations, and reasonableness in billing for additional services.

(c) Financial stability.

Minimum requirements: The Applicant must demonstrate that it has been in business, in its present form of business organization, for a minimum of two years. If a joint venture, the joint venture must have successfully performed at least one prior engagement of similar scope, and, in addition, each joint venture must have been in business, in its present form of business organization, for a minimum of two years.

(d) Qualifications of sub-consultants whose listing is required by Section 9.1(a) (1).

Minimum requirements: Each sub-consultant must demonstrate that it has completed (at least to an extent sufficient to judge the sub-consultant's work product), within the last five years, at least five engagements in which its role was the performance of work of comparable scope and complexity. "Work of comparable scope and complexity" shall include large public or commercial buildings and studies, designs and contract administration on varied repairs and replacements involving large public buildings in Massachusetts as well as demonstrated substantial experience with vertical and horizontal public construction bidding laws and procedures, and the creation of plans and specifications required thereunder, and G.L. c. 30, c149 and c149A.

The panel will rate highly Applicants whose sub-consultants (i) have successfully completed engagements most closely similar in size, duration, and complexity to the scope of this engagement; and (ii) receive, in client interviews, strongly positive references regarding reliability of timely performance, soundness of judgment, carefulness and thoroughness in performing services (including documentation), cost-effectiveness of recommendations, and reasonableness in billing for additional services.

(e) Qualifications of key personnel.

Minimum requirements: The proposed Project Manager must have had not less than seven years of experience in managing comparable engagements, as defined in subparagraph (a), above. Other key personnel shall each have had not less than

five years of experience in providing services of comparable complexity in their respective fields, including experience in public construction bids and procedures, as well as demonstrated substantial experience with vertical and horizontal public construction bidding laws and procedures, and the creation of plans and specifications required thereunder, and G.L. c. 30, c149 and c149A.

The panel will rate highly Applicants whose key personnel have extensive experience in successfully completing engagements most closely similar in size, duration, and complexity to the scope of this engagement, as well as demonstrated substantial experience with vertical and horizontal public construction bidding laws and procedures, and the creation of plans and specifications required thereunder. as well as demonstrated substantial experience with vertical and horizontal public construction bidding laws and procedures, and the creation of plans and specifications required thereunder, and G.L. c. 30, c149 and c149A.

(f) Insurance.

Minimum requirements: Applicants must provide evidence of Professional Liability Insurance of \$1,000,000, Workers Compensation Insurance in accordance with Massachusetts State Law and General Liability Insurance of at least \$2,000,000.

(g) Minority and Women Business Enterprises

Minority and Women Business Enterprises. Executive Order No. 524 establishes a policy of promoting equity of opportunity in state agency contracting by encouraging the full participation of minority and women owned businesses in all areas of such contracting, including contracts for construction and design. Further, the Commonwealth of Massachusetts establishes combined M/WBE participation goals of 17.9% for design and 10.4% for construction of state-funded and state assisted projects in order to encourage the full participation of M/WBEs. The Authority supports such policy and will evaluate each Proposer's approach to encouraging M/WBE participation in the Project. Accordingly Proposers shall discuss their plans and programs for achieving the goals outlined below, and will be required to certify in their RFP submission that they understand the goals and are committed to achieving them if selected as the top-ranked Proposer. The Authority has established the following minimum M/WBE participation goals for the Project: Combined M/WBE participation goals: 17.9% for design and 10.4% for construction.

Minimum requirements: Proposers must commit to meet the combined minimum M/WBE participation goal of 17.9% for design of the Project. The Commonwealth of Massachusetts promotes the award of state contracts in a manner that develops and strengthens M/WBEs and other traditionally underrepresented groups and individuals. This policy is endorsed by the

Authority and is further emphasized through the requirements and procedures of Chapter 195, as outlined in Section 6.5.

The Authority is strongly committed to providing opportunities for historically underrepresented business and individuals. The Authority will rate highly Proposers who not only commit to meeting the minimum M/WBE participation goal for the Project, but also 1) provide compelling plans for meeting and exceeding these objectives; 2) provide thoughtful, creative plans for achieving broad and meaningful diversity and inclusion; and 3) have a demonstrated record of including historically underrepresented individuals and groups in previous, completed projects.

SECTION 11 - SELECTION OF FINALISTS; AWARD OF CONTRACT

11.1. The Authority's Designer Selection Panel, after reviewing the applications, will determine whether, in order to facilitate the selection or ranking of finalists, Applicants will be required to appear for an interview before the panel. If the panel determines to require an interview, the panel may interview (a) all Applicants; (b) those Applicants which the panel finds, on the basis of an evaluation of the applications, appear to meet the minimum requirements as stated in this RFP; or (c) those Applicants (semifinalists) which the panel determines, on the basis of an evaluation of the applications, appear most likely to be selected as finalists. Applicants selected to appear for an interview will be notified in writing, by mail, facsimile transmission, or otherwise, of the time, place, duration, and format of the interview.

11.2. The panel may select at least six (6) finalists and submit their names to the Authority. In the event that fewer than three Applicants apply for the contract, or that fewer than three Applicants meet the minimum requirements stated in this RFP, the panel may submit fewer than three finalists to the Authority or may, in the alternative, re-advertise for this contract. The panel may specify special conditions or requirements in selecting a particular Applicant as a finalist, including but not limited to requirements that the Applicant shall agree to specified revisions in its proposed work plan as a precondition to the award of the contract.

11.3. No person or firm disqualified under Massachusetts General Laws Chapter 7C, Section 48(e), nor any person or firm suspended or debarred pursuant to Massachusetts General Laws Chapter 29, Section 29F, or any other applicable debarment or disqualification provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder, shall be included as a finalist. An Applicant shall not be selected as a finalist if the Applicant lists on its application a sub-consultant which is disqualified, suspended or debarred pursuant to any of the foregoing provisions, provided that the Applicant may, with the written approval of the panel, substitute an eligible sub-consultant and may then be included as a finalist.

11.4. The Authority shall select from the list of finalists the consultants to which this contract for design services shall be awarded, subject to the following:

11.5. The selected Applicant will be so notified in writing, by mail, facsimile transmission, or otherwise. The notice may specify a time, which shall not be less than five days, Saturdays, Sundays and legal holidays excluded, from the date of the notice, by which the selected Applicant must execute the Authority-Contractor Agreement in substantially the form bound herewith. If the selected Applicant fails or refuses to execute the Agreement within such time then, unless the Authority in its sole discretion elects to extend the time or cancel this procurement, the Authority shall award the contract to a next-ranked finalist.

11.6. The Authority's anticipated schedule for selecting finalists, awarding the contract, and completing the work is set forth in the Public Notice. This schedule is subject to change.

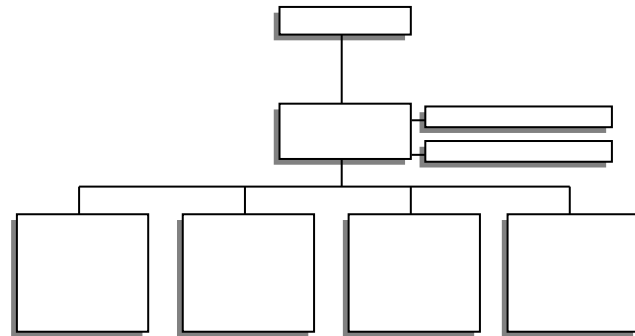
SECTION 12 - CERTIFICATES AND DOCUMENTS TO BE FURNISHED UPON EXECUTION OF AGREEMENT

12.1. At the time of execution of the Agreement, unless the Authority grants an extension in writing, the selected Applicant must furnish to the Authority certificates evidencing required insurance coverage in accordance with the provisions of the insurance requirements contained in the Authority-Consultant Agreement bound herewith.

12.2. Pursuant to Massachusetts General Laws Chapter 30, Section 39R, the selected consultant will be required to make and keep books, records and accounts pertaining to the consultant's financial affairs and, if the Agreement is for an amount greater than \$100,000, to file with the Division of Capital Planning and Operations and the Authority the statements and certificates described in Section 39R. Records and statements required under Section 39R are not public records and are not open to public inspection, but shall be made available as provided in said Section 39R.

Massachusetts Convention Center Authority DSP Application	1. Project Name/Location for Which Firm is Filing:	2a. Item #
		2b. MCCA Project
3a. Firm (Or Joint-Venture) - Name and Address Of Primary Office To Perform The Work:	3e. Name Of Proposed Project Manager: For Study: (if applicable) For Design: (if applicable)	
3b. Date Present and Predecessor Firms Were Established:	3f. Name and Address Of Other Participating Offices Of The Prime Applicant, If Different From Item 3a Above:	
3c. Federal ID #:	3g. Name and Address Of Parent Company, If Any:	
3d. Name and Title Of Principal-In-Charge Of The Project (MA Registration Required): Email Address: Telephone No: Fax No.:	3h. Check Below If Your Firm Is Either: (1) SDO Certified Minority Business Enterprise (MBE) <input type="checkbox"/> (2) SDO Certified Woman Business Enterprise (WBE) <input type="checkbox"/> (3) SDO Certified Minority Woman Business Enterprise (M/WBE) <input type="checkbox"/>	
4. Personnel From Prime Firm Included In Question #3a Above By Discipline (List Each Person Only Once, By Primary Function -- Average Number Employed Throughout The Preceding 6 Month Period. Indicate Both The Total Number In Each Discipline And, Within Brackets, The Total Number Holding Massachusetts Registrations):		
Admin. Personnel () Ecologists () Licensed Site Profs. () Other () Architects () Electrical Engrs. () Mechanical Engrs. () Acoustical Engrs. () Environmental Engrs. () Planners: Urban./Reg. () Civil Engrs. ()) Fire Protection Engrs. () Specification Writers () Code Specialists () Geotech. Engrs. () Structural Engrs. () Construction Inspectors () Industrial Hygienists () Surveyors () Cost Estimators () Interior Designers () () Drafters () Landscape Architects () Total ()		
5. Has this Joint-Venture previously worked together? <input type="checkbox"/> Yes <input type="checkbox"/> No		

6. List **ONLY** Those Prime and Sub-Consultant Personnel Specifically Requested In The Advertisement. This Information Should Be Presented Below In The Form Of An Organizational Chart. Include Name Of Firm and Name Of The One Person In Charge Of The Discipline, With Mass. Registration Number, As Well As MBE/WBE Status, If Applicable:



MCCA

Prime Consultant
Principal-In-Charge

Project Manager for Study

Project Manager for Design

Discipline

(from advertisement)

Name Of Firm
Person In Charge Of Discipline
Mass. Registr. #
MBE/WBE Certified (If
Applicable)

Discipline

(from advertisement)

Name Of Firm
Person In Charge Of Discipline
Mass. Registr. #
MBE/WBE Certified (If
Applicable)

Discipline

(from advertisement)

Name Of Firm
Person In Charge Of Discipline
Mass. Registr. #
MBE/WBE Certified (If
Applicable)

Discipline

(from advertisement)

Name Of Firm
Person In Charge Of Discipline
Mass. Registr. #
MBE/WBE Certified (If
Applicable)

7. Brief Resume Of ONLY Those Prime Applicant and Sub-Consultant Personnel Requested In The Advertisement. <u>Include Resumes of Project Managers</u> . Resumes Should Be Consistent With The Persons Listed On The Organizational Chart In Question # 6. Additional Sheets Should Be Provided Only As Required For The Number Of Key Personnel Requested In The Advertisement and They Must Be In The Format Provided. By Including A Firm As A Sub-Consultant, The Prime Applicant Certifies That The Listed Firm Has Agreed To Work On This Project, Should The Team Be Selected.	
a. Name and Title Within Firm:	a. Name and Title Within Firm:
b. Project Assignment:	b. Project Assignment:
c. Name and Address Of Office In Which Individual Identified In 7a Resides: <div style="text-align: right;"> MBE <input type="checkbox"/> WBE <input type="checkbox"/> </div>	c. Name and Address Of Office In Which Individual Identified In 7a Resides: <div style="text-align: right;"> MBE <input type="checkbox"/> WBE <input type="checkbox"/> </div>
d. Years Experience: With This Firm: _____ With Other Firms: _____	d. Years Experience: With This Firm: _____ With Other Firms: _____
e. Education: Degree(s) /Year/Specialization	e. Education: Degree(s) /Year/Specialization
f. Active Registration: Year First Registered/Discipline/Mass Registration Number	f. Active Registration: Year First Registered/Discipline/Mass Registration Number:
g. Current Work Assignments and Availability For This Project:	g. Current Work Assignments and Availability For This Project
h. Other Experience and Qualification Relevant To The Proposed Project: (Identify Firm By Which Employed, If Not Current Firm):	h. Other Experience and Qualification Relevant To The Proposed Project: (Identify Firm By Which Employed , If Not Current Firm):

8a. Current and Relevant Work By Prime Applicant Or Joint-Venture Members. Include ONLY Work Which Best Illustrates Current Qualifications In The Areas Listed In The RFP (List Up To But Not More Than 5 Projects).					
a. Project Name and Location Principal-In-Charge	b. Brief Description Of Project and Services (Include Reference To Areas Of Experience Listed In RFP)	c. Client's Name, Address and Phone Number. Include Name Of Contact Person	d. Completion Date (Actual Or Estimated)	e. Project Cost (In Thousands)	
				Construction Costs(Actual, Or Estimated If Not Completed)	Fee For Work For Which Firm Was Responsible.
(1)					
(2)					
(3)					
(4)					
(5)					

8b. List Current and Relevant Work By Sub-Consultants Which Best Illustrates Current Qualifications In The Areas Listed In The RFP (Up To But Not More Than 5 Projects For Each Sub-Consultant).
 Use Additional Sheets Only As Required For The Number Of Sub-Consultants Requested In The RFP and They Must Be In The Format Provided.

Sub-Consultant Name:

a. Project Name and Location Principal-In-Charge	b. Brief Description Of Project and Services (Include Reference To Areas Of Experience Listed In RFP)	c. Client's Name, Address and Phone Number (Include Name Of Contact Person)	d. Completion Date (Actual Or Estimated)	e. Project Cost (In Thousands)	
				Construction Costs (Actual, Or Estimated If Not Completed)	Fee for Work for Which Firm Was Responsible
(1)					
(2)					
(3)					
(4)					
(5)					

9. List All Projects Within The Past 5 Years For Which Prime Applicant Has Performed, Or Has Entered Into A Contract To Perform, Any Design Services For All Public Agencies Within The Commonwealth.

# of Total Projects:		# of Active Projects:	Total Construction Cost (In Thousands) of Active Projects (excluding studies):		
Role P, C, JV *	Phases St., Sch., D.D., C.D.,A.C. *	Project Name, Location and Principal-In-Charge:	Awarding Authority (Include Contact Name and Phone Number)	Construction Costs (In Thousands) (Actual, or Estimated if Not Completed)	Completion Date (Actual or Estimated) (R)Renovation or (N)New
		1.			
		2.			
		3.			
		4.			
		5.			
		6.			
		7.			
		8.			
		9.			
		10.			

* P = Principal; C = Consultant; JV = Joint Venture; St. = Study; Sch. = Schematic; D.D. = Design Development; C.D. = Construction Documents; A.C. = Administration of Contract

10. Use This Space To Provide Any Additional Information Or Description Of Resources Supporting The Qualifications Of Your Firm And That Of Your Sub-Consultants For The Proposed Project. If Needed, Up To Three, Double-Sided 8 1/2" X 11" Supplementary Sheets Will Be Accepted. **APPLICANTS ARE REQUIRED TO RESPOND SPECIFICALLY IN THIS SECTION TO THE AREAS OF EXPERIENCE REQUESTED IN THE ADVERTISEMENT.**

Be specific – No Boiler Plate

11. Professional Liability Insurance:

Name of Company	Aggregate Amount	Policy Number	Expiration Date
-----------------	------------------	---------------	-----------------

12. Have monies been paid by you, or on your behalf, as a result of Professional Liability Claims (in any jurisdiction) occurring within the last 5 years and in excess of \$50,000 per incident? Answer **YES** or **NO**. If YES, please include the name(s) of the Project(s) and Client(s), and an explanation (attach separate sheet if necessary).

13. Name Of Sole Proprietor Or Names Of All Firm Partners and Officers:

Name	Title	MA Reg #	Status/Discipline	Name	Title	MA Reg #	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

14. If Corporation, Provide Names Of All Members Of The Board Of Directors:

Name	Title	MA Reg #	Status/Discipline	Name	Title	MA Reg #	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

15. Names Of All Owners (Stocks Or Other Ownership):

Name and Title	% Ownership	MA Reg.#	Status/Discipline	Name and Title	% Ownership	MA Reg.#	Status/Discipline
a.				d.			
b.				e.			
c.				f.			

16. I hereby certify that the undersigned is an Authorized Signatory of Firm and is a Principal or Officer of Firm. I further certify that this firm is a "Designer", as that term is defined in Chapter 7C, Section 44 of the General Laws, or that the services required are limited to construction management or the preparation of master plans, studies, surveys, soil tests, cost estimates or programs. The information contained in this application is true, accurate and sworn to by the undersigned under the pains and penalties of perjury.

Submitted By _____ Printed Name and Title _____ Date _____
 (Signature)

The following forms MUST be attached to only ONE (ORIGINAL Copy) application: 1. SDO Certification required for MBE/WBE Firms; 2. Sub-Consultant Acknowledgment.

MCCA S-CA	Commonwealth of Massachusetts MCCA SUB-CONSULTANT ACKNOWLEDGMENT
--------------	--

Project: _____

Applicant Designer: _____

Sub-consultant: _____

SUB-CONSULTANT ACKNOWLEDGMENT

The sub-consultant named above hereby certifies that it has been notified by the Applicant Designer that it has been nominated to perform work on the Applicant Designer's team for the above Project, which is under consideration at the Massachusetts Convention Center Authority.

Signature of Sub-Consultant Duly Authorized Representative

Print Name and Title

Date _____

It is a requirement that all Applicants supply this document signed, attached to the application, for each of the listed sub-consultants stating that they are aware and agree to being nominated by said Applicant designer. One copy must have an original signature. Electronic signatures are accepted.

AFFIDAVIT OF COMPLIANCE
AND VOTE OF CORPORATION

Massachusetts Business Corporation
 Foreign (non-Mass.) Corp.
 Non-Profit Corporation

I, _____, President/Clerk of _____
[Name of Corporation]

whose principal office is located at _____ do
hereby certify that the above named corporation has filed with the Massachusetts Secretary of State all certificates and annual reports required by Chapter 156B, Section 109 (business corporation), by Chapter 181, Section 4 (foreign corporation) or by Chapter 180, Section 26A (non-profit corporation) of the Massachusetts General Laws.

SIGNED UNDER THE PENALTIES OF PERJURY this ____ day of _____, 20__

Signature of Responsible Corporate Officer _____
_____ Title

If a corporation, complete below or attach to each signed copy of the Contract a notarized copy of vote of corporation authorizing the signatory to sign this Contract.

At a duly authorized meeting of the Board of Directors of _____ held
on _____ [Name of Corporation]
[Date]

at which all the Directors were present or waived notice, it was VOTED, that,

[Name] [Office]

of this corporation be and hereby is authorized to execute contracts, bonds and other instruments in the name and behalf of said corporation and affix its corporate seal thereto, and such execution of any contract or other instrument or obligation in this corporation's name on its behalf by such _____ of the corporation, shall be valid and binding upon this corporation. [Officer]

I hereby certify that I am the Clerk of _____ is
_____ the duly elected _____
[Name] [Office]

of said corporation, and that the above vote has not been amended or rescinded and remains in full force and effect as of the date of this Contract.

A true copy,

ATTEST _____
Clerk

Place of Business _____

Corporate Seal

MASSACHUSETTS CONVENTION CENTER AUTHORITY

**AUTHORITY-CONSULTANT AGREEMENT
for
DESIGN SERVICES**

This Agreement is entered into this ____ day of _____, 2020, between the Massachusetts Convention Center Authority, a body politic and corporate of the Commonwealth of Massachusetts (the "Authority"), with offices at 415 Summer Street, Boston, Massachusetts, 02110, and _____ (the "Consultant" or "Designer"), a [corporation/partnership] organized under the laws of _____ and having a usual place of business at _____.

In consideration of the mutual agreements set forth below, the Authority and the Consultant hereby agree as follows:

ARTICLE 1. DEFINITIONS

1.1 AGREEMENT DOCUMENTS

1.1.1 The Agreement Documents consist of this Agreement and other documents enumerated below or referred to in such other documents. The Agreement Documents are all as fully a part of this Agreement as if attached to this Agreement or repeated herein. The Agreement Documents are as follows; with terms used herein having the meaning assigned to such terms in such Agreement Documents:

Authority-Consultant Agreement
Request for Proposals, including Addenda numbered _____
Consultant's Application, including all attachments thereto
Revised Proposal, attached hereto
Scope of Services, (established through Work Order Process) attached hereto as Exhibit A

1.1.2 In case of discrepancies or conflicts among the Agreement Documents or within any of the Agreement Documents, the Agreement Documents shall be interpreted on the basis of the following priorities:

- .1** Written amendments to the Authority-Consultant Agreement signed by both parties - those of a later date shall take precedence over those of an earlier date.
- .2** Additional Services authorizations executed by the Authority - those of a later date shall take precedence over those of an earlier date.
- .3** The Authority-Consultant Agreement.

- .4 Special Conditions or Requirements issued by the Designer Selection Panel pursuant to Section 10.2 of the Request for Proposals and attached hereto as Revisions to the Consultant's Work Plan.
- .5 Addenda to the Request for Proposals.
- .6 The Request for Proposals.
- .7 The Consultant's Application, including the Consultant's Work Plan and all other attachments to the Consultant's Application.

1.2 WORK ORDER PROCESS

The parties acknowledge the need for a flexible procedure to facilitate the timeliest response to as yet undefined, but reasonably anticipated, needs for professional services. The parties agree that the exact scope of services to be performed by the Consultant shall depend upon events that develop throughout the term of this Agreement. Therefore, the parties agree to define the scope of services with Work Orders, which the Consultant shall prepare and submit to the Authority for its review and approval. The Consultant agrees to cooperate with the Authority in the preparation of detailed, consecutively numbered Work Orders in accordance with the Guidelines for the Preparation of Work Orders and the Sample Work Order attached hereto as Exhibit F.

The Work Order will initially be generated by the Authority including only a description of the project and the anticipated scope of design services needed. The Consultant shall respond with a detailed work plan that breaks the scope of services down into specific tasks which shall be assigned the Consultant and sub-consultant, staffing plans, estimated number of work hours, the applicable hourly rates, allowances and any reimbursable project expense. The Consultant submission shall be negotiated between the parties until the parties reach agreement, upon the scope terms and conditions. Upon reaching agreement, the Authority shall issue the Final Work Order to the Consultant authorizing them to commence work on the work order.

Work Orders are intended to be discrete working documents that will provide, in summary form, the background and factual context within which a particular Work element or series of Work elements shall be completed by the Consultant. Each Work Order shall include a detailed scope of services, level of effort and related costs. Work Orders shall be construed to be in addition to, supplementary to, and consistent with the provisions of this Agreement.

In the event of a conflict between a particular provision(s) of any Work Order and a provision(s) of this Agreement, the provision(s) of this Agreement shall be deemed to take precedence. However, the provisions of a Work Order shall take precedence over Article 1 of this Agreement with respect to the exact scope of services to be provided under the Work Order. A Work Order may be amended by the parties by a written instrument referencing the identification number and date of the original Work Order that is being amended. An amendment to a Work Order shall be

prepared by the parties jointly and signed by their authorized representatives.

1.3 DESIGNER, CONSULTANT

The terms “Designer” and “Consultant” may be used interchangeably in the Agreement Documents and shall mean the person or firm performing professional services under this Agreement. When the context so requires, the term “Designer” shall have the meaning set forth in M.G.L. c.7C, § 44.

1.4 CONTRACT TERM

1.4.1 This Agreement shall commence on March 1, 2021 and shall continue for a three-year period, through February 29, 2024, unless terminated by the Authority earlier in accordance with Article 9.

1.4.2 The Authority shall have the right, in its sole discretion, to renew this Agreement for two additional one-year periods, commencing upon the expiration of the original term hereof. Such right shall be exercised by the Authority by giving written notice to the Contractor at least thirty (30) days prior to the expiration of the original term hereof.

ARTICLE 2. CONSULTANT’S SERVICES AND RESPONSIBILITIES

2.1 SCOPE OF SERVICES

2.1.1 BASIC SERVICES TO BE PERFORMED

The Scope of Services to be performed pursuant to an approved Work Order may consist of, or be related to interior and exterior architectural design, finishes, envelope, environmental/Licensed Site Professional, acoustical, fire alarm, vertical transportation, civil, structural, HVAC, fire protection, plumbing, electrical, geotechnical, architecture, landscape architecture and sustainable design for new construction, alterations or additions to various facilities such as buildings, garages, surface and elevated roadways and bridges, underground utility distributions, sewers, storm drainage systems, lighting, pumping systems, elevators, escalators, and security systems. Services may include but shall not be limited to conceptual or schematic drawings and outline specifications, design development or construction drawings and specifications, construction administration services, field inspection services, cost estimating and analyses, building forensic investigations, reports, value engineering, energy, and environmental audits. The Consultant shall demonstrate the ability to manage cost effectively and shall be experienced in providing similar services on an on-call, as needed basis. The Consultant shall also be able to work closely with the Authority and other interested parties in order to provide such services in a timely and effective manner. The projects may range from small and simple to relatively large and complex. Abatement of hazardous or contaminated materials is not included in the scope of work for this Agreement, but services related to design specifications, estimating, bidding assistance, permit documentation, construction administration, field services and contract close out may be required.

The Consultant shall perform professional services provided for in each individual Work Order executed between the parties, in accordance with the terms of this Agreement. The Consultant shall be solely responsible for the technical completeness and accuracy of all contract documents.

The Consultant shall prepare and submit one (1) original and five (5) copies of a Project Management Plan and Work Schedule to the Authority for approval, outlining the activities to accomplish the Work. The Plan shall establish the framework for the project, including the organization of participants, responsibilities, decision structure, channels of communication and procedures to be followed in developing the design. The Work Schedule shall establish all project milestones pertaining to data collection, field survey/inspection, preliminary and final design submissions, including plans, specifications and construction cost estimates, and construction phasing plans, if appropriate.

The design services required by the Consultant in any work order may include, but shall not be limited to: (1) review of existing data; (2) field survey and inspection; (3) preparation of a Field Inspection Memorandum; (4) identification and evaluation of existing equipment; (5) development of a project matrix, including criteria related to constructability, reliability, maintainability, life cycle costs, regulatory acceptance and approval, and scheduling considerations; (6) draft and final alternatives reports; (7) design, bid and construction phase services, including resident inspection services (if applicable); (8) coordination with design and construction of other adjacent projects; and (9) other related engineering services.

The Consultant shall prepare for and participate with the Authority in internal presentations of findings and implementation functions for the project upon request.

The Consultant shall interact and cooperate fully with the Authority, utility companies, and governmental agencies, and shall ensure that all requirements and specifications are set forth in the initial evaluations, recommendations, and bid documents. All environmental and public health agency contacts and applications shall be made through and with the approval of the Authority's Chief of Operations.

When requested, the Consultant shall deliver the following documents in the specified quantity, as follows:

- A. Management Plan and Work Schedule: 5 copies, 2 originals plus 1 electronic
- B. Existing Conditions Report: 5 copies
- C. Field Inspection Results: 5 copies
- D. Final Alternatives Report: 5 copies
- E. Design Submittals at 50%, 90% and 100%, including cost estimates, construction schedules/phasing plans and technical specifications: 5 copies.
- F. Bid Documents, including Original Reproducible Mylars and Original Technical Specifications (hard copy and electronic copy in the format required by this Agreement).
- G. Design Calculations: Original plus 4 copies (bound sets).
- H. Meeting Minutes: Copies to all attendees and others identified by the Authority.
- I. Record Drawings

The Consultant shall deliver both a hard copy and an electronic copy of each design submittal required under a Work Order. The Electronic Submittals shall be provided on CD electronic format as approved by the Authority.

Unless otherwise directed by the Authority, design documents shall appear in 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 Authority. The drawing file layers shall be named in accordance with the Authority's provided layering standards.

Specifications shall appear in Microsoft Word or Excel Project.

The Authority shall reproduce, bind, advertise, and distribute all bid documents at its expense. The Consultant shall be reimbursed for the reproduction cost (exclusive of sales and use taxes) of the 50%, 90% and 100% submissions, if such printing is not done in-house by the Consultant and is done by others. Any other reproduction costs shall be borne by the Consultant at no additional expense to the Authority.

All operations and maintenance ("O & M") manuals and other documentation for operation and maintenance of physical plant equipment shall be delivered in both printed versions and on CD in Adobe Acrobat .PDF format,

2.1.2 The intent of the Agreement Documents is to describe the performance of services leading to the completion of tasks and the production of deliverables, and it is intended that the Consultant shall perform all work incidental to or reasonably inferable from the Agreement Documents as being necessary to complete the tasks and produce the deliverables, unless it is specifically indicated in the Agreement Documents that such work is to be performed by others.

2.2 NOTICE TO PROCEED

2.2.1 The Consultant shall commence performance of its services under an approved Work Order upon, and the Authority's obligations under this Agreement shall become effective only upon, receipt by the Consultant of a full or partial Notice to Proceed. If the Notice to Proceed is a partial Notice to Proceed, it shall define the particular tasks or phases to be commenced and shall state the maximum amount which the Consultant shall be entitled to be paid for such work. The Authority shall not be obligated to pay for any work or to pay any amount in excess of the limitations stated in a partial Notice to Proceed.

2.2.2 In the event the Authority issues a partial Notice to Proceed, the Authority may issue one or more subsequent partial Notices to Proceed with a successive task or phase. A subsequent partial Notice to Proceed may be issued before or after the completion of a prior task or phase, or may be issued on the condition that the Consultant first complete a prior task or phase.

2.3 PHASES

2.3.1 As set forth in an approved Work Order, the Consultant's services may be performed within one or more of the following phases:

- .1 Study phase**, including any needs assessment, feasibility study, program, preliminary sketches, space utilization criteria, development and review of potential design solutions and evaluation of alternatives, preliminary cost estimate, master plan, survey, or soils test or any related evaluation.
- .2 Design phase**, including any preparation of plans, specifications, or construction contract documents.
- .3 Construction phase**, including advertising for bids, issuing addenda, evaluating bids, contract award, and administration of a construction contract and related services.

2.3.2 The parties acknowledge that the award of this Agreement is subject to the provisions of M.G.L. c.7C, §1 *et seq.*

2.4 CONSULTANT'S RESPONSIBILITIES, ALL PHASES

2.4.1 The Authority and the Consultant acknowledge that the size, public visibility, character and complexity of the Authority's projects require a special relationship of trust, cooperation and good faith between the Authority and the Consultant in order to (i) maintain good relations with clients and constituents of the Authority and all elements of the surrounding properties and neighbors, communities and assure approval and continuing cooperation from all interested public and private bodies, and (ii) ensure proper and timely completion of the Project. The Consultant therefore agrees to use its best and diligent efforts in undertaking its responsibilities hereunder to further the interests of the Authority

2.4.2 The Consultant shall exercise due care in performing all of its services under this Agreement. Without limiting the generality of the foregoing, the Consultant shall exercise due care to determine that inspections, reports, applications, surveys, plans, specifications, other construction documents, and any other submittals which the Consultant has been engaged to prepare, undertake, or review under this Agreement comply with all applicable Federal, State, and municipal laws, regulations, codes, ordinances and orders, and with the conditions and requirements of applicable permits and approvals, as the same may be in effect as of the time of submission of the final documents, report, deliverable or other work product of the Consultant.

2.4.3 The Consultant shall at all times in the performance of its services assist, and cooperate and work closely with, the Authority's Executive Director and other representatives; the Authority's Project Manager, if the Authority has designated a Project Manager, and consultants and other professionals employed by the Authority in connection with the Project, so as to promote the best interest of the Authority and the Project.

2.5 CONSULTANT'S RESPONSIBILITIES, STUDY PHASE

2.5.1 In performing work relating to a needs assessment, feasibility study, program, preliminary

sketches, space utilization criteria, potential design solutions, evaluations, or master plan, the Consultant and its respective sub-consultants shall, in order to ensure that the Consultant is fully cognizant of the Authority's needs, operations, functional constraints, and concerns, and to keep the Authority fully informed as to the Consultant's progress, meet as often as necessary, and in any event no less frequently than specified in an approved Work Order, with the Authority's Executive Director and other representatives; the Authority's Project Manager, if any; and consultants and other professionals employed by the Authority. Meetings with the Authority's Executive Director or other personnel shall be held at the Authority's offices or the site of the work in Boston or Springfield MA. Unless otherwise specified in the Work Order, all meetings shall be in Boston. If The Work Order shall include the cost of such meetings, including travel costs, if any, for the Consultant's or any sub-consultant's personnel to be present.

2.5.2 Unless otherwise specified in the Work Order, all deliverables in the nature of reports (including programs, studies, preliminary cost estimates, and like work products, and including interim reports if required by such Work Order) shall first be submitted in draft form for the Authority's review and comment. Upon notice from the Authority that its review of the draft is complete, and taking due account of the Authority's comments, if any, the Consultant shall promptly complete a final (or final interim) report. Final and final interim reports shall be spiral bound, with card stock covers bearing the name of the Authority, the Consultant, sub-consultants, the title of the report, and the date. The Consultant shall submit two (2) originals and (1) electronic copy of the report.

2.6 CONSULTANT'S RESPONSIBILITIES, DESIGN PHASE

2.6.1 In preparing preliminary and final plans, specifications, or other construction contract documents, the Consultant and its respective sub-consultants shall, in order to enable the Consultant to be fully cognizant of the Authority's needs, operations, functional constraints, and concerns, and to keep the Authority fully informed as to the Consultant's progress, meet as often as necessary, and in any event no less frequently than specified in the Work Order, with the Authority's Executive Director and other representatives, the Authority's Project Manager, if any, and consultants and other professionals employed by the Authority. Meetings with the Authority's Executive Director or other personnel shall be held at the Authority's offices or the site of the work. Unless otherwise specified, all meetings shall be in Boston or in Springfield MA if the project is located there. The Work Order shall include the cost of such meetings, including travel costs, if any, for the Consultant's or any sub-consultant's personnel to be present.


2.6.2 The Authority will furnish to the Consultant relevant design criteria, studies, programs, surveys, inspections, cost estimates, and reports, if available. The Consultant shall produce plans, specifications, and other contract documents in accordance with Exhibit A without substantial deviation from any program approved by the Authority. The Consultant shall design the project within the cost limit or cost estimate approved by the Authority, unless the Authority approves a higher limit. In the event that the lowest acceptable bid for the Project is more than fifteen per cent greater than the final cost limit approved by the Authority, the Consultant at no additional charge to the Authority shall, if so requested by the Authority, revise the design to reduce the construction cost. In producing any such revised design, the Consultant

shall seek to minimize any impairment to the design criteria for the Project.

2.6.3 The Consultant, in consultation with the Authority's Executive Director and other personnel of the Authority, shall make recommendations as to portions of the Project which may efficiently be undertaken by employees of the Authority. If the Authority elects to undertake portion of the work with its own employees, the Consultant shall prepare plans and specifications for said portion of the work sufficient to guide the Authority's employees in the proper performance of the work, secure such building permits as may be required, and document as-built conditions upon satisfactory completion of that portion of the work.

2.6.4 As to any and all portions of the Project other than work which the Authority elects to perform with its own employees, the Consultant shall prepare detailed plans and specifications (in one or more bid packages as the Authority may determine in consultation with the Consultant) suitable for bidding in conformity with the procedures established by law, including but not limited to Sections 44A through 44J of Chapter 149 and Section 39M of Chapter 30 of the Massachusetts General Laws (and any successor statutes thereto), and the Consultant shall insure that all plans, specifications, construction documents, and any other bid documents prepared by the Consultant conform to the requirements of said statutes. Without implied limitation, the Consultant shall insure that (i) all said bid documents prepared by the Consultant comply with the provisions of said Section 39M concerning specification of named brands and or equals; (ii) all said bid documents prepared by the Consultant are in the format required by said statutes, including but not limited to the requirements imposed by those provisions pertaining to filed sub-bids; and (iii) life cycle cost estimates for any energy system to be installed, modified, or replaced as part of the Project have been completed and filed so as to fully comply with the requirements of Section 44M of said Chapter 149.

2.6.5 The Authority will prepare (for each bid package) an Authority-Contractor Agreement for construction of the Project, an Advertisement for Bids, Instructions to Bidders, bid forms, General Conditions, and Supplementary Conditions. The Consultant, in preparing the plans and specifications, shall review the Authority's drafts of the foregoing materials, recommend modifications, and provide information and data as required to complete said materials, and shall adapt the Consultant's plans and specifications to the contract requirements set out in the Authority's documents.

2.6.6 The Consultant, as requested, shall prepare plans and specifications in accordance with model formats provided by the Authority,  provided that the Authority may direct modifications of said model formats in Work Orders and the reasonable requirements of the Project.

2.6.7 Any plans, specifications, or other design or contract documents furnished by the Consultant which do not satisfy or conform to the professional standards of skill, care and diligence required of the Consultant pursuant to the terms of this Agreement will be promptly corrected by the Consultant at no cost to the Authority, and the Consultant will promptly reimburse the Authority for all damages, if any, resulting from the use of such unsatisfactory plans, specifications, or other design or contract documents.

2.7 CONSULTANT' S RESPONSIBILITIES, CONSTRUCTION PHASE

2.7.1 The Consultant shall serve as, and perform all functions required to be performed by, a registered professional architect or engineer under the Massachusetts State Building Code. Following the issuance of the applicable building permit(s) authorizing work on any project; the Consultant shall advise the Authority of any alterations or changes required in the construction documents by any change in applicable laws affecting the design of such project. The Consultant shall coordinate and consult with the Authority, the Authority's Project Manager (if any) and the Contractor in order to expedite the filing of documents required for the approval of governmental authorities and others having jurisdiction over the project. The Consultant shall prepare such additional plans, drawings, certificates and other documents as may be required by governmental authorities and others having jurisdiction over the project for all aspects of the work.

2.7.2 The Consultant agrees to use its best efforts to administer the project so that the project can be constructed and completed within the Authority's approved cost estimate or limit and by contractual completion date.

2.7.3 In the event the Authority elects to award one or more separate construction contracts for the Project, the Authority may require that all of the Consultant's bidding phase, construction administration and other services provided in this Agreement shall be furnished with respect to each such contract for construction.

2.7.4 The Consultant shall assist the Authority in obtaining and reviewing bids and in preparing and awarding contracts for construction. Without limitation, the Consultant's services shall include:

- .1** Assisting in issuance of bid documents.
- .2** Attending pre-bid conferences and advising as to matters relating to design and the construction timetable, as they may arise.
- .3** Timely preparation of, and assistance in, issuing, revisions or addenda to bid documents as necessary.
- .4** Assisting the Authority in evaluating general bids and sub-bids, including checking Update Statements and references, determining whether bids and sub-bids are bona fide and reasonable, and attending conferences with bidders or sub-bidders as necessary; and recommending to the Authority the award or rejection of bids and sub-bids.

2.7.5 The Consultant shall provide administration of the contract(s) for construction of the project. In the event of any inconsistency between the General Conditions set forth in a construction contract and this Agreement with respect to the rights, responsibilities, and duties of the Authority or the Consultant, the provisions of this Agreement shall control.

2.7.6 In coordination with the Authority's Project Manager (if any), the Consultant shall be a representative of the Authority during the construction of the project, and shall advise and consult with the Authority. The Authority may communicate with the Contractor(s) through the Consultant or directly. Copies of any direct communications from the Authority to the Contractor shall be promptly given to the Consultant. The Consultant shall have authority to act on behalf of the Authority only to the extent provided in the Construction Contract(s).

2.7.7 The Consultant shall visit the project site at intervals appropriate to the stage of construction, an average of once per week, to review and become familiar with the progress and quality of the work completed and to determine whether the work is proceeding in accordance with the Construction Contract, including all applicable laws, codes, ordinances, rules and regulations relating to the design of the work. To the extent practicable, such site visits shall be scheduled in conjunction with project meetings. The Consultant shall promptly submit to the Authority a detailed written report subsequent to each such site visit by the Consultant or its sub-consultants. The Consultant shall schedule, convene, conduct and adjourn all project meetings, and shall be responsible for preparing and distributing minutes thereof within 5 business days following each meeting. The Consultant shall serve as the Project's "Affidavit Architect", and shall be responsible for submission of all required affidavits, certificates or other documents to the Massachusetts Department of Public Safety or the City of Boston Inspectional Services Department ("ISD"), and all other obligations of the project architect and project engineer under other laws codes, regulations, requirements or programs, all to the extent applicable to the project. The Consultant shall promptly submit to the Authority all written notes or reports made by the Consultant in connection with its responsibilities and obligations under the preceding sentence. The Consultant shall keep the Authority informed as to the progress and quality of the work, and if the Consultant observes or otherwise becomes aware of any fault, defect, or deficiency in the project or the work, or any non-conformance with the contract documents, prompt written notice thereof shall be given by the Consultant to the Authority. The Consultant shall exercise due care and diligence in discovering such defects or deficiencies in the work, and otherwise endeavoring to guard the Authority against such defects or deficiencies. The Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, but shall ensure that its sub-consultants visit the site as appropriate to review the portions of the work related to their services.

2.7.8 The Consultant shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work of the construction contractor, or for the acts or omissions of the construction contractor, subcontractors or any other persons performing any of the construction work, or for the failure of any of them to carry out the construction work in accordance with the construction contract documents, provided that the consultant shall comply with its obligations under Subparagraph **2.7.7** above.

2.7.9 The Consultant shall at all times have access to the construction work wherever it is in preparation or progress.

2.7.10 In consultation with the Authority's Project Director and Project Manager (if any), the Consultant shall determine the amounts owing to the construction contractor (or contractors, if there is more than one) based on observations at the site and on evaluations of the contractor's requests for payment, and shall issue Certificates for Payment in such amounts, as may be provided in the construction contract documents. Prompt payment to a construction contractor is required by law, and the Consultant shall establish procedures in coordination with the Authority to ensure timely review of the construction contractor's requests for payment and issuance by the Consultant of Certificates for Payment. The Authority shall have the right to designate, by written notice to the Consultant, a specific reasonable time period within which the Consultant shall review requests for payment and issue Certificates for Payment.

2.7.11 The issuance of a Certificate for Payment shall constitute a representation by the Consultant to the Authority, based on the Consultant's observations at the site as provided in Subparagraph 2.7.7, the data comprising the construction contractor's requests for payment, and the analysis and recommendations of the Authority's Project Manager (if any), that the construction work has progressed to the point indicated; that, to the best of the Consultant's knowledge, information and belief, the quality of the construction work is in accordance with the construction contract documents (subject to any specific qualifications stated in the Certificate for Payment); that the record Drawings maintained by the construction contractor are current; and that the construction contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Consultant has made any examination to ascertain how and for what purpose the construction contractor has used the moneys paid to said contractor.

2.7.12 The Consultant shall initially interpret the requirements of the construction contract and evaluate the performance thereunder by the construction contractor. Pursuant to Section 39P of Massachusetts General Laws, Chapter 30, on written request of either the Authority or the construction contractor the Consultant shall render decisions on interpretation of the specifications contained in the construction contract, approval of equipment, material, or any other approval, or progress of the construction work promptly and, in any event, no later than thirty (30) days after the written submission for decision; but if such decision requires extended investigation and study, the Consultant shall, within thirty (30) days after receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty (30) day period and the date by which the decision will be made. The Consultant shall render written decisions, within a reasonable time, on all claims, disputes and other matters in question between the Authority and the construction contractor relating to the execution or progress of the construction work or the interpretation of the construction contract documents in accordance with the provisions of the General Conditions of the construction contract and applicable law.

2.7.13 Interpretations and decisions of the Consultant shall be consistent with the intent of, and reasonably inferable from, the construction contract documents and shall be in written or graphic form.

2.7.14 The Consultant shall have authority to reject construction work which does not conform to the construction contract documents. Whenever, in the Consultant's reasonable opinion, it is necessary or advisable for the implementation of the intent of the construction contract documents, the Consultant may, with the prior authorization of the Authority, require special inspection or testing of the construction work in accordance with the provisions of the construction contract documents, whether or not such construction work be then fabricated, installed or completed. Unless otherwise agreed, such special inspections or testing shall be furnished by a testing laboratory engaged by the Authority as provided in this Agreement.

2.7.15 The Consultant shall review and approve or take other appropriate action upon the construction contractor's submittals such as Shop Drawings, Product Data and Samples for the purpose of determining conformance with the design concept and intent of the Project and the information given in the construction contract documents. Without limitation, when reviewing and approving or taking other appropriate action on submittals showing, or for, structural elements of the Project, the Designer shall consider and evaluate the overall effect of such submittals on the structural design of the Project, in accordance with the standard of care set forth in Paragraph 11.1 Approval by the Consultant of submittals is not intended for purposes of determining accuracy and completeness of other details such as dimensions or quantities, which shall remain the responsibility of the construction contractor. The Consultant's review of the construction contractor's submittals shall not relieve the construction contractor of its obligations with respect to submittals as specified in the General Conditions or elsewhere in the construction contract documents. The Consultant's approval or other action shall be taken consistently with the requirements of the General Conditions of the construction contract and with reasonable promptness so as to cause no delay in the construction work, while allowing sufficient time in the Consultant's professional judgment to permit adequate review. The Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component. For purposes of this Agreement, "design concept" relates to the final in-place installation of material and equipment as part of a functioning whole as required by the construction contract documents. The term "design concept" does not relate to safety precautions, means, methods, techniques, sequences and procedures of construction which are part of the construction contractor's responsibilities. For purposes of this Agreement, the notation by the Consultant "No Exception Taken" on a submittal constitutes an approval.

2.7.16 The Consultant shall, with the assistance of the Authority's Project Manager (if any), prepare and issue all necessary documentation for the proper administration of the contract(s) for construction, including but not limited to field reports, field orders, proposal requests, architect's supplemental instructions, construction change authorizations and Change Orders, using such forms as may be approved by the Authority, in accordance with the construction contract documents. The Consultant shall have the authority to order minor changes in the construction work which are consistent with the intent of the construction contract documents and which do not involve an adjustment in the construction Contract Sum or an extension of the construction Contract Time. The Consultant shall maintain a complete log and record of all such documentation and all submittals by the construction contractor(s).

2.7.17 The Consultant shall, with the assistance of the Authority's Project Manager (if any), conduct inspections to determine the dates of Substantial Completion and Final Completion of the construction contract(s), receive and forward to the Authority written warranties and related documents required by the construction contract documents as conditions precedent to final payment and assembled by the construction contractor(s), and issue a final Certificate of Payment to each construction contractor. In determining the date of Substantial Completion, the Consultant, in conjunction with the Authority's Project Director and Project Manager (if any) and the construction contractor(s), shall prepare a list of those items to be completed or corrected as part of the work required under the construction contract documents. When such list has been finalized after consultation with the Authority's Project Director and Project Manager (if any) and the construction contractor(s), the list shall be issued by the Consultant with the Certificate of Substantial Completion. The inspection of the construction work by the Consultant, the Authority, and the Authority's Project Manager (if any) to determine the date of Final Completion shall include, but not be limited to, an inspection of all of the work performed by the construction contractor(s) pursuant to the list of uncompleted or uncorrected work previously issued by the Consultant. The Consultant shall otherwise assist in an orderly closing-out of the construction work, including advice to the Authority concerning the details of disputes and claims, and participation in testing of systems and equipment.

2.7.18 The Consultant (including its sub-consultants as appropriate) shall, with the assistance of the Authority's Project Manager (if any), periodically review the record drawings and the other record construction contract documents to be maintained (and marked currently to record all changes) by the construction contractor, as further provided in the construction contract documents. At the conclusion of the construction work, the Consultant shall, in consultation with the Authority's Project Manager (if any), make a final review of the record drawings and if any omissions, incorrect information or inconsistencies are found, the drawings shall be returned to the construction contractor for correction and resubmission. When the Consultant finds the record drawings to be acceptable, the Consultant shall endorse and date those drawings and transmit them to the Authority.

2.7.19 The extent of the duties, responsibilities and limitations of authority of the Consultant as the Authority's representative during construction shall not be modified or extended without written consent of the Authority and the Consultant.

2.7.20 The Consultant shall serve as the Authority's representative during the construction of the project, for the fee established herein, until the due date for final payment to the construction contractor (or, if more than one such contractor, the due date for final payment of the contract with the last such date, or, in the absence of a final Certificate of Payment or of such due date for the last contract, the date ninety (90) days after the date of Substantial Completion of the Work, provided that: (i) usual and customary assistance in the utilization of equipment and systems, such as start-up, testing, adjusting and balancing, shall be provided by the Consultant hereunder, whether before or after expiration of such 90-day period, (ii) inspections and other services of the Consultant made necessary by reason of the acts or omissions of the Consultant shall be performed by the Consultant hereunder, whether before or after expiration of such 90-day period, and (iii) if the Consultant's final inspection and close-out

services shall be delayed beyond such 90-day period for reasons beyond the control of the Consultant, the Consultant shall be entitled to additional compensation, but only for services performed and costs incurred by the Consultant beyond those services and costs that would have been performed and incurred had such services been performed prior to expiration of such 90-day period (for example, additional labor costs resulting from changes in or reassignment of personnel).

2.8 Notwithstanding any other provisions of this Agreement, (i) the Consultant or his sub-consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Consultant in the preparation of bid documents (if preparation of such documents is within the Consultant's scope of services set forth in a work order), as reasonably determined by the Executive Director of the Authority, and (ii) no design services made necessary, in whole or in part, by any error or omission of the Consultant in the performance of its obligations or responsibilities hereunder shall be compensated as an Additional Service.

2.9 TESTING AND INSPECTIONS

Unless set forth as a service of the Consultant in a work order or otherwise agreed, the Authority shall, during the construction phase, furnish laboratory testing and inspections as required by law or the construction contract documents. The Consultant shall, as a part of the Consultant's basic services in the design phase, furnish to the Authority a schedule of testing and inspection services required in connection with the Project, and a scope of work description (in sufficient detail, including descriptions of units of service and estimated quantities, all as may be reasonably necessary for the advertised, competitive procurement of such services) for all necessary testing and inspection services, including but not limited to: (i) review of concrete mix designs and other relevant submissions, (ii) provision of certified technicians for inspection of concrete placement, including sampling and making of test specimens, (iii) checking of forms and rebar placement/clearances, (iv) performance of laboratory tests of concrete and other materials, and (v) inspection and/or testing of specialized work. Based upon the schedule of services and scope of work descriptions furnished by the Consultant, the Authority will engage one or more qualified, independent testing laboratories to perform such services.

2.10 TIME

The Consultant shall perform its services hereunder as expeditiously as is consistent with the standards of professional skill and care set forth in Paragraph 11.1 and the orderly progress of construction work. As used in this Agreement, the term "day" shall mean calendar day, except as specifically provided to the contrary.

ARTICLE 3. THE AUTHORITY'S RESPONSIBILITIES

3.1 PROJECT MANAGER

The Authority may, in its sole discretion, engage a Project Manager, substitute for such Project Manager, elect not to engage a Project Manager, or to terminate the services of its Project Manager at any time. Reference in this Agreement to the Authority's Project Manager shall mean the Project Manager, if any, engaged or designated by the Authority as provided in this Paragraph 3.1. The Consultant shall, at all times, work in cooperation and coordination with the Authority's Project Manager. In the event of any conflict, inconsistency or overlap between the responsibilities and authority of the Consultant and the Authority's Project Manager, the parties shall be governed by the decision or allocation of responsibility or authority made by the Executive Director of the Authority.

3.2 PROJECT DIRECTOR

Communications between the Authority and the Consultant shall be primarily between the Consultant's Project Manager identified in Exhibit C (Project Team) and the "Project Director" designated by the Authority. The responsibilities vested in the Project Director may be exercised by the Executive Director of the Authority or by a designee for the Project Director. Written communications to the Authority shall be sent to the Authority's Project Director with a copy to the Authority's Project Manager (if any) and such additional personnel of the Authority as the Project Director may from time to time direct. The Authority's Project Director may be changed by the Authority at any time. The Consultant shall be responsible for keeping the Authority's Project Director fully informed at all times with respect to the progress of the Consultant's work, the progress of construction work during the construction phase, and any problems, delays or other significant matters arising in connection with the Project. If and to the extent directed by the Authority, communications (or communications relating to specific aspects of the Project) may be through the Authority's Project Manager (if any). The Authority may also designate from time to time one or more employees or independent contractors of the Authority as Owner's Representatives. Such Owner's Representatives shall be given access to the site and the construction work and all documents and records relating to the Project maintained by the Consultant. Such Owner's Representatives shall be informed of and may attend Project meetings.

3.3 OTHER PROJECT SERVICES

The Authority shall furnish all legal, accounting and insurance counseling services as the Authority may consider necessary at any time for the Project, including such auditing services as the Authority may require to verify a construction contractor's requests for payment or to ascertain how or for what purposes a contractor uses the moneys paid by or on behalf of the Authority.

3.4 DESIGN REVIEW

The Authority reserves the right to engage additional consultants, at the Authority's expense, for the purpose of obtaining other programming, design or design review services in connection with the any project or reviewing any aspect of any project. The Consultant agrees to work with and cooperate with the Authority's other consultants if requested, to the end that the project is studied, planned, designed and administered in a coordinated and efficient manner, and understands that the Consultant's work product may be reviewed by such Authority's consultants. The engagement by the Authority of such other consultants, if any, is solely for the Authority's benefit, and shall not be construed as creating any rights for the benefit of the Consultant or as relieving the Consultant from any responsibility for the performance of services in connection with the Project, except that the Consultant may rely upon the accuracy of information prepared by such other consultants provided directly by the Authority to the Consultant unless otherwise provided in a work order.

ARTICLE 4. REIMBURSABLE EXPENSES

4.1 Reimbursable Expenses are in addition to the compensation established by a work order and compensation for Additional Services and are limited to actual expenditures made by the Consultant and the Consultant's employees and sub-consultants in the interest of the Project for the items listed in Subparagraph 4.2, provided all such expenditures are reasonable in nature and amount and are at competitive market rates for the locales in which such expenditures are incurred. No Reimbursable Expenses shall be paid to the Consultant unless and until the Consultant shall have submitted, in advance of incurring any such expense, an estimated budget of anticipated Reimbursable Expenses, which shall be subject to Authority's approval. No other expenses of the Consultant incurred in the interest of the Project, other than those listed in this Article 4, shall be reimbursed by the Authority under this Agreement, unless the Authority shall have given its prior written approval to reimburse the Consultant for those expenses.

4.2 The following actual expenses are reimbursable pursuant to Subparagraph 4.1:

- .1** Fees paid for securing approval of authorities having jurisdiction over the Project.
- .2** Long distance communications (including long distance charges for facsimile transmissions).
- .3** Expenditures for reproduction and postage (including use of overnight or messenger services) of Drawings, Specifications and other documents, in excess of the number of sets of such documents specifically required by the provisions of this Agreement, but not including general reproduction and copying costs for the office use of the Consultant and the sub-consultants
- .4** Expenditures for any additional insurance coverage or limits including professional liability insurance requested by the Authority in excess of that

required under **Article 10** of this Agreement.

4.3 The following expenses shall not be reimbursable:

- .1** Expense of computer, data processing, facsimile transmission and word processing equipment usage.
- .2** Payment of sales taxes on the purchase of materials, equipment or other items solely for the Project. The Authority is exempt from such taxes, and the Designer shall, in purchasing materials, equipment or other items solely for the Project, so apprise vendors of the tax-exempt status of the Authority as necessary to permit the sale of such items to be exempt from sales, use or other taxes imposed by governmental authority, to the extent consistent with applicable laws and regulations.
- .3** except as otherwise provided and approved in advance by the Authority in a work order, travel expenses, including such expenses as parking, taxis, or rapid transit.

ARTICLE 5. PAYMENTS TO THE CONSULTANT

The overall contract amount for the complete and proper performance of all services required under this Agreement shall be a sum not to exceed **THREE MILLION DOLLARS (\$3,000,000)**. The parties acknowledge and agree that it is their intention to incorporate in each Work Order under this Agreement the amount and basis of payments to be made to the Consultant. Payments shall be made on the basis of a lump sum or a "not-to-exceed" price, at the sole discretion of the Authority, for each individual Work Order in accordance with this Article.

5.1 PAYMENTS BASED ON A "NOT-TO-EXCEED" PRICE

For the services described in any Work Order based on a "not-to-exceed" price, the Consultant's sole compensation shall be one or more payments computed as a multiple of actual hourly salary attributable to the time each person actually provides services under the relevant Work Order, the total of which payment(s) shall not exceed the "not-to-exceed" price under said Work Order.

Exhibit A attached hereto sets forth the Consultant's personnel (including all sub-consultants), by both name and category/classification, and ranges of the actual hourly salaries to be charged for each such individual and/or category/classification for a total period of 24 months from the effective date of this Agreement. The maximum allowable hourly salary under any range identified in Exhibit A, whether or not set forth in said Exhibit A, shall be established by the Authority. Hourly salaries for principals, and similar classifications in Exhibit

A (as determined by the Authority), shall be fixed and not eligible for any mark-up. Annual salary increases up to 3% for individuals set forth in Exhibit A shall not require the Authority's prior approval; annual salary increases exceeding 3% shall be proposed in advance to the Authority, accompanied by appropriate supporting documentation, for the Authority's approval. The Authority reserves the right not to compensate the Consultant for any salary or category/classification not set forth in Exhibit A.

Exhibit B attached hereto is an authorization by the Authority establishing the Consultant's multiplier. If a different multiplier is approved by the Authority's Internal Auditor after the effective date of this Agreement, such multiplier may be applied retroactively by the Authority.

5.1.1 PAYMENT TO CONSULTANT

Compensation for the Consultant's employees shall be computed at the employee's actual hourly salary times a multiplier. The multiplier for office personnel shall be limited to 2.5, and the multiplier for resident inspectors or other field personnel shall be limited to 2.3, unless the Authority's Internal Auditor determines that a different multiplier is applicable based upon receipt and review of certified audits to be provided by the Consultant. The multiplier shall constitute full payment for all employee benefits, overhead, general administrative costs, profit, and all other unallocated costs and expenses.

5.1.2 PAYMENTS TO CONSULTANT FOR SUBCONSULTANTS

Compensation for sub-consultants shall be in accordance with actual invoices submitted by sub-consultants to the Consultant; provided, however, that such sub-consultants shall invoice their services in accordance with, and subject to, Article 5.1.1 hereof. The Consultant shall make prompt payments to sub-consultants for services satisfactorily performed after receipt by the Consultant of payment from the Authority for such services.

5.1.3 PAYMENT TO CONSULTANT FOR INDEPENDENT CONTRACTORS

Compensation for independent contractors shall be in accordance with actual invoices submitted by the independent contractor to the Consultant; provided, however, that the Consultant may apply a one percent (1%) mark-up to such invoices in order to compensate the Consultant for providing such independent contractors' services, except those of cooperative education ("co-op") program students, which shall not be subject to any mark-up. The Consultant shall make prompt payments to independent contractors for services satisfactorily performed after receipt by the Consultant of payment from the Authority for such services.

5.1.4 PAYMENT FOR REIMBURSABLE EXPENSES

The Authority may reimburse the Consultant for its expenses which are actually made or

incurred in either a not to exceed aggregate amount, and/or for its expenses identified in a particular Work Order up to the maximum amount referenced under said Work Order. As used in this Agreement and any Work Order under this Agreement, the term “reimbursable expenses” shall mean those actual extraordinary expenditures (exclusive of sales and use taxes) previously approved by the Authority that are made or incurred by the Consultant directly, and not paid for elsewhere in connection with and in the interest of the Authority for the following costs:

1. Reproduction of plans, reports, designs and studies expressly requested by the Authority and/or for deliverables.
2. Expense of photography, renderings, models, mockups and specific artwork and graphics.
3. Expense of purchasing information, reports and data.
4. Laboratory testing, site testing and data gathering. For borings or test pits, the lowest qualified and responsible bidder.
5. Expense of out-of-state travel (receipts required) previously approved by the Authority.
6. Hotel and meals in relation to out-of-state travel, previously approved and up to a maximum per diem rate established by the Authority.
7. Out-of-state telephone calls and mileage for personal vehicles associated with meetings requested by the Authority.
8. Mileage associated with resident inspection services shall be at the current Authority approved rate, and pertain to on-site job specific usage only. All other associated costs shall be previously approved by the Authority.

All other costs and equipment necessary to support staff functions and services, and incidental project team coordination costs, including communications, printing, reproduction, mail, and delivery services dealing with internal team functions, are considered overhead and are included in the multiplier.

5.1.5 OVERTIME

The Consultant shall not be reimbursed for any premium overtime expenses incurred without the Authority’s prior written approval. The additional expense for overtime work shall include only the actual premium overtime paid for services rendered under this Agreement plus applicable payroll taxes, and insurance thereon, exclusive of overhead and premium profit. Such overtime expense shall be reimbursed only to the extent that sufficient funds are available under this Agreement or any individual Work Order.

5.2 PAYMENTS BASED ON LUMP SUM PRICE

For services described in any Work Order based on a lump sum price, the Consultant's sole compensation shall be one or more payments not to exceed the lump sum price set forth in the Work Order. The lump sum price shall constitute full payment for all direct and indirect costs, including employee benefits, overhead, general administrative costs, profit, other unallocated costs and expenses, and reimbursable expenses. The lump sum price may be divided at the discretion of the Authority into phased and/or partial payments based on the progress

demonstrated by the Consultant and/or the completion of pre-established events, such as the submission of deliverables or the completion of a phase under the Work Order, as long as work performed by the Consultant is at least proportionate to the phased or partial payment requested. The Consultant shall make prompt payments to sub-consultants and independent contractors for services satisfactorily performed after receipt by the Consultant of payment from the Authority for such services.

5.3 REQUESTS FOR PAYMENT AND DOCUMENTATION

The Consultant shall submit invoices to the Authority in accordance with the schedule set forth in Article 5 (if any), or in one or more fully executed Work Orders (if any), or otherwise on a monthly basis. Invoices shall be accompanied by appropriate supporting documentation, including without limitation, a detailed report of all Work performed during the period in question, the total remuneration within each allocation of dollar amounts as of the date of such monthly invoice (if applicable), any additional detail as may be necessary to show the identification of the personnel performing such services including, without limitation, sub-consultants, independent contractors, their classifications, rates, hours and the nature and extent of the services performed by each (all of which shall be consistent with the corresponding personnel information set forth in Exhibit A), and any additional detail that the Authority may otherwise require in a Work Order. The Authority reserves the right not to accept invoices for services performed or expenses incurred that are older than ninety (90) calendar days.

The Consultant shall also provide, directly to the Authority's Director of Purchasing, monthly reports regarding fees paid to sub-consultants' MBE/WBEs as described in Section 12.19 hereof.

5.4 CONSULTANT'S ACCOUNTING RECORDS

The Consultant shall keep records pertaining to services performed and reimbursable expenses incurred on the basis of generally acceptable accounting principles and in accordance with such reasonable requirements to facilitate audit as the Authority may provide. Authorized representatives of the Authority shall have the right to inspect and audit all records of the Consultant pertaining to the services under this Agreement for a period of six (6) years from the date of completion of the Work, and all such records shall be made available to the Authority promptly upon request during normal business hours. The cost of any audit shall be borne by the Authority unless the Consultant's reports and documentation fail in a material way to support any charges made, in which case such costs shall be borne by the Consultant.

5.5 PAYMENT NOT A WAIVER

Neither the approval nor the making of any payment to the Consultant by the Authority shall be deemed an acceptance of any services not performed in accordance with this Agreement, or an acknowledgment that such services have been performed in accordance with this Agreement.

5.6 AUTHORITY'S RIGHT TO WITHHOLD PAYMENT

The Authority may withhold payment to such extent as it deems necessary as a result of

(a) third party claims arising out of the services and made against the Authority; (b) evidence of fraud, overbilling or overpayment discovered upon audit; (c) failure to make prompt payments to sub-consultants or independent contractors; (d) a payment request that includes fees for unapproved sub-consultants or independent contractors; (e) unsatisfactory performance of services; or (f) any breach of this Agreement.

5.7 SUSPENSION OR ABANDONMENT

If, following issuance by the Authority to the Consultant of a full or partial Notice to Proceed, the Authority abandons the Project or suspends the work of the Consultant for more than three months, the Consultant shall be compensated for all services performed prior to receipt of written notice from the Authority of such suspension or abandonment. If the Consultant's services are resumed after being suspended for more than three months, the Consultant's compensation shall be equitably adjusted.

5.8 PAYMENT CONDITIONS

5.8.1 Any provision of this Agreement to the contrary notwithstanding, the Authority shall not be obligated to make any payment (whether a progress payment or final payment) to the Consultant hereunder if and to the extent that any one or more of the following conditions exist:

- .1** The Consultant is in material default of any of its obligations hereunder so as to cause the possibility of loss, damage, expense or liability to the Authority;
- .2** Any part of such payment is attributable to services which are not performed in accordance with this Agreement; provided, however, that payment shall be made as to the part thereof attributable to services which were performed in accordance with this Agreement; or
- .3** The Consultant has failed, without good cause, to make payments promptly to sub-consultants or other third parties engaged in connection with services for which the Authority has made payment to the Consultant.

No such withholding shall be made under this Subparagraph 5.8.1 on account of allegations by third parties of negligent errors or omissions of the Consultant or its sub-consultants in the performance of professional services, if and to the extent that the Consultant furnishes evidence to the Authority establishing to the Authority's satisfaction that such allegations constitute a claim which is insured under the Consultant's professional liability insurance, and that the Consultant's professional liability insurer has accepted the defense of such claim.

5.8.2 No progress payment made hereunder shall be construed as final acceptance or approval of that part of the services to which such progress payment relates or relieve the Consultant of any of its obligations hereunder with respect thereto. The Consultant shall promptly pay all bills for labor and material performed and furnished by others in connection

with the performance of the services. The acceptance of final payment shall constitute a waiver of all claims by the Consultant except those previously made in writing and identified by the Consultant as unsettled at the time of the final Request for Payment.

ARTICLE 6. CONSULTANT'S ACCOUNTING RECORDS AND CONTROLS

6.1 The Consultant shall maintain records pertaining to all services, including Additional Services, performed hereunder (including complete and detailed time records) and Reimbursable Expenses incurred, in accordance with generally accepted accounting principals and in accordance with such reasonable requirements to facilitate audit as the Authority may specify. All such records shall be kept for at least six years after final payment to the Consultant. Until the expiration of such six-year period, the Authority and the Authority's authorized representatives, the Office of the Inspector General of the Commonwealth of Massachusetts, the Secretary of Administration and Finance, and any other legally authorized person or governmental entity shall have the right to examine, audit and copy such records and any other books, documents, papers or records of the Consultant or of its sub-consultants that directly pertain to, and involve transactions relating to, the Consultant or its sub-consultants. The Consultant shall provide proper facilities for such access and inspection.

6.2 If this Agreement is for an amount greater than \$100,000, the Consultant hereby certifies that the Consultant has internal accounting controls as required by subsection (c) of Section 39R of Chapter 30 of the Massachusetts General Laws, a copy of which is attached hereto as **Exhibit D**, that the Consultant has filed and will continue to file audited financial statements as required by subsection (d) of said Section 39R, and that the Consultant shall otherwise comply with all requirements of said Section 39R.

ARTICLE 7. OWNERSHIP AND USE OF DOCUMENTS

All working papers, calculations, computer programs, models, renderings, drawings, plans, specifications and other records and documents of every type ("Documents") prepared by the Consultant or its sub-consultants pursuant to this Agreement, whether or not delivered to the Authority, and all equipment, materials, items or objects of any kind acquired by the Consultant pursuant to this Agreement and reimbursed by the Authority, whether or not delivered to the Authority, are the property of the Authority and shall be delivered to the Authority upon the termination of this Agreement or at the Authority's request prior thereto. The Consultant shall at all times develop, index and file such Documents in an orderly, logical manner. Both during the term of this Agreement and after its termination, the Consultant shall may not release, disclose, distribute or publish such Documents or information derived from them without the prior written approval of the Authority. Reuse of such Documents by the Authority for other than their intended use (as determined from this Agreement) without written authorization by the Consultant will be at the Authority's risk.

ARTICLE 8. DISPUTE RESOLUTION

All claims, disputes and other matters in question between the parties to this Agreement

arising out of or relating to this Agreement or the alleged breach thereof shall be submitted for resolution to a court of competent jurisdiction in Suffolk County, Massachusetts, unless otherwise agreed by the parties. No such action shall be brought, however, until the completion of all services under this Agreement or the earlier termination hereof as provided in Article 9, unless the continued deferral of filing such action would result in such claim, dispute or other matter in question being barred by statutes of limitation or repose. The parties agree to attempt to negotiate any claims, disputes or other matters in question during the term of this Agreement before resorting to litigation.

ARTICLE 9. TERMINATION OF AGREEMENT

9.1 This Agreement may be terminated by either party upon seven (7) days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

9.2 This Agreement may be terminated by the Authority, with or without cause, upon at least seven (7) days' prior written notice to the Consultant. In the event that this Agreement shall be so terminated without cause, the Consultant shall be compensated for all services performed to the date of termination, together with Reimbursable Expenses then due and other costs and expenses reasonably incurred by the Consultant and its sub-consultants as a direct result of such termination. All agreements between the Consultant and its sub-consultants shall provide that such agreements may be terminated upon a termination by the Authority of this Agreement and that in such event the sub-consultant shall be entitled only to compensation for services performed to the date of termination, together with Reimbursable Expenses then due. In no event will the Authority be responsible for reimbursement to the Consultant or its sub-consultants for lost profits or other consequential damages.

ARTICLE 10. INSURANCE

10.1 The Consultant shall maintain at the Consultant's expense, and shall file with the Authority a certificate evidencing, Professional Liability (Errors and Omissions) Insurance issued by an insurance company admitted to conduct business in Massachusetts with a "Best's Rating" of at least A-XII or a non-admitted insurance company on the Massachusetts Insurance Commissioner's approval list or other insurance company acceptable to the Authority having minimum limits of One Million Dollars (\$1,000,000) for each claim and One Million Dollars (\$1,000,000) annual aggregate covering negligent errors, omissions and acts of the Consultant or of any sub-consultant or other person or business entity for whose performance the Consultant is legally liable arising out of the performance of this Agreement. A reasonable deductible or self-insurance retention will be accepted, but evidence of financial responsibility must be made available to and approved by the Authority. Such Errors and Omissions Insurance shall remain in full force and effect from the date hereof through completion of the Consultant's services hereunder and for a period of six (6) years following the later of (i) completion of the Consultant's services provided pursuant to this Agreement, or (ii) (if this Agreement is for

services in the construction phase) official acceptance of the Project by the Authority, provided that if during such six-year period such insurance is not available at reasonable cost, the parties shall negotiate an equitable adjustment in the Consultant's fee or an alternative arrangement for procuring such coverage as is then required by the Massachusetts Designer Selection Law.

10.2 The Consultant shall also maintain statutory Worker's Compensation coverage and Employer's Liability insurance coverage with limits not less than \$500,000, covering all work performed by the Consultant under this Agreement.

10.3 The Consultant shall carry commercial general liability insurance on an occurrence form with limits not less than \$1,000,000 per occurrence for bodily injury and property damage combined, \$1,000,000 per person for personal and advertising injury, \$1,000,000 aggregate products/completed operations and \$1,000,000 general aggregate, and automobile liability insurance with limits not less than \$1,000,000 for bodily injury and property damage combined, covering all work performed under this Agreement. Such insurance shall include the following:

- .1** All operations including use of any vehicle.
- .2** Contractual liability covering all contracts or agreements.
- .3** Broad form property damage coverage including completed operations of subcontractors.
- .4** "Personal" injury coverage (in addition to "bodily" injury), with no exclusion for claims brought by employees of the Consultant.

10.4 The Consultant shall require sub-consultants listed on Exhibit C to maintain the same insurance coverages as the Consultant is required to maintain under this Agreement in the amounts specified in Paragraphs 10.1 and 10.3 above (unless the Authority agrees in writing to exempt a sub-consultant or to require a lesser amount). The Authority and such other parties as the Authority shall reasonably require shall be included as additional insureds on all such insurance policies, except for Professional Liability and Workers' Compensation policies, for occurrences arising out of the Project or this Agreement (with provisions or endorsements providing protection to the Authority as though separately insured), and the Consultant, and each of the Consultant's engineers, sub-consultants and other professionals, shall list the Project as a covered project under its Professional Liability Insurance Policy. All such insurance policies are to be endorsed to state that the Consultant's policies shall be primary to all other insurance available to the Authority and any other additional insureds required to be included by the Authority for liability arising out of or resulting from the Consultant's operations under this Agreement.

10.5 Upon request, the Consultant shall deliver true copies of the aforementioned insurance policies to the Authority. The Consultant shall provide the Authority with certificates evidencing all of the foregoing insurance (including insurance coverage required of

sub-consultants) at the execution of this Agreement and on an annual basis thereafter. Each insurance policy shall include an endorsement that the issuing company will mail at least thirty (30) days' prior written notice to the Authority before cancellation, expiration without renewal, or amendment of any such policies. All certificates shall indicate that all pertinent policies have been so endorsed, and that the Authority is an additional insured on the general liability policies.

ARTICLE 11. PROJECT TEAM AND SUBCONSULTANTS

11.1 CONSULTANT'S PROJECT TEAM; STANDARD OF CARE

The Consultant agrees to undertake the services required by this Agreement with a sufficient number of qualified personnel (the "Project Team") to assure at all times effective and timely production, management, administration and superintendence with respect to all of said services. The Project Team will include the "Key Persons" identified in the Consultant's Application to the Authority's Designer Selection Panel (whether such persons are employed by the Consultant or a sub-consultant) and any additional positions, individuals or sub-consultants identified in Exhibit C attached to this Agreement. Any additional primary members of the Project Team shall be subject to the Authority's prior written approval. No member of the Project Team identified in Exhibit C shall be removed or replaced (except in the case of death, retirement, or disability) without the Authority's prior written consent. The removal or replacement, without the Authority's consent, of a Key Person whose identification was required by the Request for Proposals for this Agreement shall constitute a material breach of this Agreement. The Authority may require replacement of any member of the Project Team, and may require increased levels of staffing by the Consultant, at no increase in the Consultant's Basic Compensation, if necessary to achieve proper production, management, administration or superintendence, or if necessary to meet time lines set forth in the Consultant's approved Work Plan. Unless the services to be provided under this Agreement are limited to the preparation of studies, surveys, soil testing, cost estimates or programs (in which event this sentence does not apply), the Consultant's Project Manager and Project Architect (if a Project Architect is identified on Exhibit C) shall be architects or engineers registered under the laws of the Commonwealth of Massachusetts. By executing this Agreement, the Consultant certifies that the Consultant and its Project Team comply with all licensing, registration and other requirements applicable to the Consultant pursuant to Massachusetts General Laws Chapter 7C, Section 44 *et seq.* The Consultant shall use its best efforts in undertaking its responsibilities under this Agreement in accordance with the professional standards of skill, care and diligence ordinarily expected of programming, architectural and engineering firms in the greater Boston area on projects of comparable scope and complexity, and in recognition of the special expertise and substantial experience of the Consultant in the programming, study, design and/or construction contract administration of facilities similar to the Project, it being understood that the Authority has relied upon such experience and expertise in engaging the Consultant for the Project. The Consultant's services under this Agreement shall be performed as expeditiously as is consistent with those professional standards, and at least as expeditiously as set forth in the Consultant's approved Work Plan (if any).

11.2 SUB-CONSULTANTS

The Consultant shall engage the sub-consultants listed in the Consultant's Application to the Authority's Designer Selection Panel for the categories of work so listed, and any additional sub-consultants identified in Exhibit C. The services of these sub-consultants engaged by the Consultant shall be provided as a part of the Consultant's services hereunder without additional compensation. No sub-consultant identified in Exhibit C shall be removed or replaced without the Authority's prior written consent. The removal or replacement, without the Authority's consent, of a sub-consultant whose listing was required by the Request for Proposals for this Agreement shall constitute a material breach of this Agreement. The Consultant may, whenever necessary to provide the services required hereunder, engage additional sub-consultants, subject to the prior written approval of the Authority, but the Consultant shall not be entitled to additional compensation unless the services so provided are Additional Services, the provision of and the fees for which have been authorized by the Authority. The Consultant represents that it has made reasonable investigation of the sub-consultants named in Exhibit C to determine that they possess the skill, knowledge and experience qualifying them for the performance of their portions of the services provided in this Agreement. Sub-consultants must be registered or licensed in their respective disciplines if registration or license is required pursuant to applicable law. The engagement by the Consultant of sub-consultants, and the Authority's participation in the selection or approval of such sub-consultants, shall not relieve the Consultant of its full responsibility for the performance and coordination of the services specified in this Agreement and the completeness, accuracy and coordination of documents produced pursuant to this Agreement. References in this Agreement to the Consultant include the Consultant's sub-consultants as appropriate, and specific references in this Agreement to services to be furnished by the sub-consultants shall not be interpreted to imply that in cases where no such specific reference is made services are to be provided exclusively by the Consultant's own personnel.

ARTICLE 12. STATUTORY PROVISIONS; MISCELLANEOUS PROVISIONS

12.1 GOVERNING LAW

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. To the extent any provision is required by the laws of the Commonwealth of Massachusetts to be included herein, such provision is incorporated herein by reference and made a part hereof.

12.2 INTERPRETATION

In the event of any conflict, discrepancy or inconsistency between the provisions of this Agreement and the provisions of any construction contract documents which affect the rights and obligations of the Authority and the Consultant with respect to one another, the provisions of this Agreement shall govern.

12.3 WAIVER OF SUBROGATION

The Authority and the Consultant waive all rights against each other and against the

contractors, consultants, agents and employees of the other for damages covered by any property insurance maintained by the Authority during construction. The Authority and the Consultant each shall require appropriate similar waivers from their contractors, consultants and agents.

12.4 SUCCESSORS AND ASSIGNS

The Authority and the Consultant, respectively, bind themselves and their successors, assigns and legal representatives to the other party to this Agreement and to the successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Provisions of this Agreement which expressly or by their nature are to be performed or remain in effect after termination of this Agreement shall survive such termination. The Consultant shall not assign, sublet or transfer any interest in this Agreement, or any of the Consultant's services or obligations hereunder, without the written consent of the Authority, and any attempted assignment, subletting or transfer without such consent shall be void and without force and effect.

12.5 ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between the Authority and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Authority and the Consultant.

12.6 INDEMNIFICATION

The Consultant, at its expense, shall indemnify and hold harmless the Authority, the Authority's Project Manager (if any), and its or their directors, members, officers, employees, agents, experts and representatives, from and against all claims, causes of action, suits, losses, damages, liabilities and expenses, including reasonable attorney's fees, to the extent the same arise out of or result from the misconduct or negligence, including negligent professional acts, errors or omissions of the Consultant or its sub-consultants or its or their employees, agents, servants, guests or representatives in performance of this Agreement, or from the failure of the Consultant or such other parties to comply with the terms of this Agreement, and the Consultant shall cause this indemnity obligation to be insured under its Commercial General Liability and Professional Liability insurance policies, as applicable, to the extent that such obligation is covered by generally available policy terms or endorsements. Such obligation shall not be construed to negate or abridge any other obligation of indemnification running to the Authority which would otherwise exist. The Authority shall give the Consultant timely notice of any claim threatened or made, or suit instituted against it, which could result in a claim for indemnification hereunder, provided, however, that lack of or delay in such notice shall not be a waiver of the Consultant's indemnification of the Authority (except to the extent that the Consultant demonstrates prejudice resulting from the lack of or delay in such notice). The extent of the foregoing indemnification and hold harmless agreement shall not be limited by any provision of insurance required pursuant to Article 10 of this Agreement and shall survive the termination of

this Agreement.

12.7 NO WAIVER

No delay or omission by either of the parties hereto in exercising any right or power accruing upon the non-compliance or failure of performance by the other party of any of the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any breach of or failure to comply with any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed to be a waiver of any subsequent breach thereof or failure to comply therewith, or of any breach of or failure to comply with any other covenant, condition or agreement herein contained. The Authority's review, approval, acceptance of or payment for services under this Agreement shall not operate as a waiver of any rights under this Agreement, and the Consultant shall be and shall remain liable to the Authority for all of its obligations hereunder and for all damages incurred by the Authority as the result of the Consultant's failure to perform in conformance with the terms and conditions of this Agreement. The rights and remedies of the Authority provided for under this Agreement are in addition to any other rights or remedies provided by law. The Authority may assert a right to recover damages by any appropriate means, including but not limited to set-off, suit, withholding, recoupment, or counter-claim either during or after performance of this Agreement.

12.8 CERTAIN LIMITATIONS RESPECTING LIABILITY

No member, director, officer, joint venturer, beneficiary, consultant, volunteer participant, employee, agent or representative of the Authority shall be personally liable to the Consultant under any term or provision of this Agreement for the Authority's payment obligations or otherwise, or because of any breach hereof, the Consultant agreeing to look solely to the assets of the Authority for the satisfaction of any liability of the Authority hereunder. In no event shall the Authority be liable to the Consultant except for payment for services rendered pursuant to and in accordance with this Agreement, nor shall the Authority ever be liable to the Consultant for indirect, incidental, special or consequential damages. No director, partner, principal or employee of the Consultant shall be personally liable to the Authority under any term or provision of this Agreement.

12.9 HAZARDOUS MATERIALS

Except to the extent that Work Order provides that the Consultant is responsible for detecting, evaluating, and/or providing designs, instructions or specifications for abatement of hazardous materials (in which event this Paragraph 12.9 shall not apply), the Consultant and its sub-consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials of any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. If any such hazardous materials are encountered at the Project site, and the Consultant reasonably concludes that its continued performance of any of its services hereunder could expose the Consultant to loss, damage or liability as a result of the presence of such

hazardous materials, the Consultant may, upon notice to the Authority, suspend performance of those of its services affected thereby until adequate arrangements are made by the Authority to deal with the hazardous materials. The Consultant may rely upon the designs, instructions and specifications provided by consultants engaged by the Authority in any abatement program for such hazardous substances.

12.10 SEVERABILITY, ETC.

If any provision of this Agreement shall to any extent be held invalid or unenforceable, the remainder of this Agreement shall not be deemed affected thereby. The article and paragraph headings contained in this Agreement are for convenience of reference only, and shall not affect the meaning or interpretation of the provisions of this Agreement. Time limits specified in this Agreement are solely for the protection and benefit of the Authority and create no third-party beneficiary rights in any other party.

12.11 NOTICES

All notices or other communications hereunder to either party shall be in writing and shall be delivered by hand, facsimile transmission, certified or registered U.S. Mail, or express delivery service providing evidence of receipt. Such notices or communications shall be deemed to have been given upon receipt by the intended recipient or, if mailed, shall be deemed to have been given on the earlier of actual receipt by the intended recipient or on the second business day after the date when deposited in the United States mail postage prepaid. Notices or other communications hereunder shall be addressed as follows:

If to Authority: Massachusetts Convention Center Authority
 Boston Convention and Exhibition Center
 415 Summer Street
 Boston, Massachusetts 02210
 Attention: John Donahue, Chief of Operations and
 Capital Projects
 Copy: General Counsel

If to Consultant: [Consultant's Name and Address as appearing above]
 Attention: [Consultant's Project Manager]
 Facsimile: [Consultant's Facsimile as appearing in Application]

or to either party at such other address or facsimile number as such party may designate, in a notice to the other party, as its address for receipt of notices hereunder.

12.12 NONDISCRIMINATION

The Consultant agrees as follows:

- .1 In connection with the performance of work under this Agreement, the Consultant shall not discriminate against any employee or Applicant for

employment because of race, color, religion, creed, national origin, ancestry, age, sex, sexual orientation, disability, or handicap. The Consultant shall post in conspicuous places within its Massachusetts office, available for employees and Applicants for employment, such notices as are provided by the Massachusetts Commission Against Discrimination (the "Commission"), setting forth the provisions of the Fair Employment Practices Law of the Commonwealth.

- .2 In connection with the performance of work under this Agreement, the Consultant shall not discriminate in its relationships with sub-consultants or suppliers on the basis of race, color, religion, creed, national origin, ancestry, age, sex, sexual orientation, disability, or handicap. In all the Consultant's solicitations for bids or proposals it shall notify in writing each potential sub-consultant or supplier of the Consultant's obligations under this Subparagraph 12.12.2, and it shall be a term of each contract with a sub-consultant or supplier in connection with the performance of the work under this Agreement that the sub-consultant or supplier shall be bound to non-discrimination and equal opportunity requirements equivalent to the obligations of the Consultant hereunder.
- .3 In connection with the performance of work under this Agreement, the Consultant shall comply with all applicable laws and regulations pertaining to non-discrimination, including without limitation executive orders and rules and regulations of federal and state agencies of competent jurisdiction. The Consultant shall be subject, at the request of the Commission, to the Commonwealth's Supplemental Equal Opportunity, Antidiscrimination and Affirmative Action Program, appropriately adapted by the Commission.
- .4 The Consultant shall ensure that all employees assigned to provide services under this Agreement within any facility of the Authority or at the Project site shall have been instructed, prior to such assignment, regarding laws and regulations against harassment and other forms of discrimination based on sex, race, color, religion, creed, national origin, age, disability, handicap or sexual orientation. The Consultant shall provide each such employee assigned to perform work under this contract with the Authority's personnel policies prohibiting discriminatory behavior (or with a copy of the Consultant's own such policies, if substantially to the same effect). The Consultant shall ensure that its employees, and the employees of its sub-consultants, do not engage in any form of behavior which would contribute to a hostile work environment for employees of the Authority, and shall, upon becoming aware of any such behavior through notice from the Authority or otherwise, take prompt and effective corrective action.

The Consultant's non-compliance with any provision of this Paragraph 12.12 shall constitute a

material breach of this Agreement. The Consultant shall indemnify and hold harmless the Authority from any claims and demands of third persons resulting from the Consultant's non-compliance with any of the provisions of this Paragraph 12.12, and in case of termination or cancellation of this Agreement, the Consultant shall indemnify the Authority during the remainder of the original term against any loss and damage suffered by reason of such termination.

12.13 TRUTH IN NEGOTIATION (M.G.L. c. 7C, §51)

By execution of this Agreement the Consultant incorporates herein by reference the truth-in-negotiation certificate filed with the Authority, and hereby confirms that:

- .1 The wage rates and other costs used to support the Consultant's compensation are accurate, complete and current at the time of contracting; and
- .2 The Consultant agrees that the compensation payable hereunder may be adjusted within one year of final completion of this Agreement to exclude any significant amounts if the Authority determines that the compensation was increased by such amounts due to inaccurate, incomplete or noncurrent wage rates or other costs.

12.14 GIFTS, CONTRIBUTIONS, ETC. (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 Consultant, that:

- .1 The Consultant 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 Agreement.
- .2 No consultant to or subcontractor for the Consultant has given, offered or agreed to give any gift, contribution or offer of employment to the Consultant or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the Consultant.
- .3 No person, corporation or other entity, other than a bona fide full-time employee of the Consultant, has been retained or hired by the Consultant to solicit for or in any way assist the Consultant in obtaining this Agreement 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 Agreement to the Consultant.

12.15 COMPLIANCE WITH TAX LAWS

Pursuant to Section 49A of Chapter 62C of the Massachusetts General Laws, by execution of this Agreement the Consultant certifies under the penalties of perjury that it has, to the best knowledge and belief of the undersigned on the Consultant's behalf, filed all state tax returns and paid all state taxes required under law.

12.16 MODIFICATIONS

In the event that the Commonwealth of Massachusetts or its agencies require modifications to this Agreement as a condition precedent to the granting or release of funds for the Project, the Consultant agrees to consent to such modifications as may be reasonably required to obtain such funds. An equitable adjustment shall be made to the Consultant's compensation on account of any such modifications, if necessary.

12.17 CONFLICT OF INTEREST

The Consultant shall familiarize its employees assigned to perform services under this Agreement with the provisions of Chapter 268A of the Massachusetts General Laws (the Massachusetts conflict-of-interest statute) and the Authority's Policy & Procedures Manual . The Consultant acknowledges that the Authority is a "state agency" for purposes of the aforementioned statute and that the Consultant is an "interested party" for purposes of the aforementioned manual. Accordingly, the Consultant, its employees and agents shall not offer or provide any employee of the Authority any gift, gratuity, favor, meal, entertainment, loan or other item of monetary value.

12.18 ANTI-BOYCOTT COVENANT

The Consultant warrants, represents and agrees that during the time this Agreement is in effect, neither it nor any affiliated company, as hereafter defined, will participate in or cooperate with an international boycott, as defined in Section 999 (b)(3) and (4) of the Internal Revenue Code of 1954, as amended; or engage in conduct declared to be unlawful by Section 2 of Chapter 151E of the Massachusetts General Laws. If there shall be a breach in the warranty, representation and agreement contained in this paragraph, then without limiting such other rights as it may have, the Authority shall be entitled to terminate this Agreement. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Consultant or by a person or persons or business entity or entities directly or indirectly owning at least 51 % of the ownership interests of the Consultant, or which directly or indirectly owns at least 51 % of the ownership interests of the Consultant.

12.19 MINORITY-OWNED AND WOMEN-OWNED BUSINESS PARTICIPATION

Pursuant to M.G.L. Chapter 7C, Section 6, the Consultant shall subcontract portions of the work with firms that are certified by the Supplier Diversity Office (SDO). A minimum of 17.9% of the contract price shall be sub-contracted to SDO certified minority business enterprises and SDO Certified women-owned business enterprises. The Consultant shall complete and submit at the time of contract execution a completed Participation Schedule which is attached to this contract as Exhibit E in order to be in compliance with Article 12.19 above.

12.20 EXHIBITS

The following Exhibits are attached to and incorporated into this Agreement:

- Exhibit A – Consultant and Sub-Consultant Actual salary rates
- Exhibit B - Multiplier
- Exhibit C – Project Team; including subconsultants
- Exhibit D - Copy of M.G.L. c.30, §39R
- Exhibit E- Participation Schedule by SDO Certified M/WBES.
- Exhibit F - Sample Work Order

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

[Consultant]

Massachusetts Convention Center Authority

By:
(Signature)

By:
(Signature)

Name:
(Type or Print)

Name:
(Type or Print)

Title:

Hereunto duly authorized

Title: Executive Director
Hereunto duly authorized

Exhibit A – Consultant and Sub-Consultant Actual salary rates

Exhibit B - Multiplier

Exhibit C – Project Team; including sub-consultants

PART I ADMINISTRATION OF THE GOVERNMENT**TITLE III** LAWS RELATING TO STATE OFFICERS**CHAPTER 30** GENERAL PROVISIONS RELATIVE TO STATE DEPARTMENTS, COMMISSIONS, OFFICERS AND EMPLOYEES**Section 39R** Definitions ; contract provisions ; management and financial statements; enforcement

[Text of section applicable as provided by 2009, 30, Secs. 15 and 46.J

Section 39R. (a) The words defined herein shall have the meaning stated below whenever they appear in this section:

(1) "Contractor" means any person, corporation, partnership, joint venture, sole proprietorship, or other entity awarded a contract pursuant to sections thirty-eight A 1/2 to thirty-eight 0, inclusive, of chapter seven and any contract awarded or executed pursuant to section eleven C of chapter twenty-five A, section thirty-nine M of chapter thirty, or sections forty-four A to forty-four H, inclusive, of chapter one hundred and forty-nine, which is for an amount or estimated amount greater than one hundred thousand dollars.

(2) "Contract" means any contract awarded or executed pursuant to sections thirty-eight A 1/2 to thirty-eight 0, inclusive, of chapter seven and any contract awarded or executed pursuant to section eleven C of chapter twenty-five A, section thirty-nine M of chapter thirty, or sections forty-four A through forty-four H, inclusive, of chapter one hundred and forty-nine, which is for amount or estimated amount greater than one hundred thousand dollars.

(3) "Records" means books of original entry, accounts, checks, bank statements and all other banking documents, correspondence, memoranda, invoices, computer printouts, tapes, discs, papers and other documents or transcribed information of any type, whether expressed in ordinary or machine language.

(4) "Independent Certified Public Accountant" means a person duly registered in good standing and entitled to practice as a certified public accountant under the laws of the place of his residence or principal office and who is in fact independent. In determining whether an accountant is independent with respect to a particular person, appropriate consideration should be given to all relationships between the accountant and that person or any affiliate thereof. Determination of an accountant's independence shall not be confined to the relationships existing in connection with the filing of reports with the awarding authority.

(5) "Audit", when used in regard to financial statements, means an examination of records by an independent certified public accountant in accordance with generally accepted accounting

principles and auditing standards for the purpose of expressing a *certified* opinion thereon, or, in the alternative, a qualified opinion or a declination to express an opinion for stated reasons.

(6) "Accountant's Report", when used in regard to financial statements, means a document in which an independent certified public accountant indicates the scope of the audit which he has made and sets forth his opinion regarding the financial statements taken as a whole with a listing of noted exceptions and qualifications, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed the reason therefor shall be stated. An accountant's report shall include as a part thereof a signed statement by the responsible corporate officer attesting that management has fully disclosed all material facts to the independent certified public accountant, and that the audited financial statement is a true and complete statement of the financial condition of the contractor.

(7) "Management", when used herein, means the chief executive officers, partners, principals or other person or persons primarily responsible for the financial and operational policies and practices of the contractor.

(8) Accounting terms, unless otherwise defined herein, shall have a meaning in accordance with generally accepted accounting principles and auditing standards.

(b) Subsection (a)(2) hereof notwithstanding, every agreement or contract awarded or executed pursuant to sections thirty-eight A 1/2 to thirty-eight 0, inclusive, of chapter seven, or eleven C of chapter twenty-five A, and pursuant to section thirty-nine M of chapter thirty or to section forty-four A through H, inclusive, of chapter one hundred and forty-nine, shall provide that:

(1) The contractor shall make, and keep for at least six years after final payment, books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the contractor, and

(2) until the expiration of six years after final payment, the office of inspector general, and the commissioner of capital asset management and maintenance shall have the right to examine any books, documents, papers or records of the contractor or of his subcontractors that directly pertain to, and involve transactions relating to, the contractor or his subcontractors, and

(3) if the agreement is a contract as defined herein, the contractor shall describe any change in the method of maintaining records or recording transactions which materially affect any statements filed with the awarding authority, including in his description the date of the change and reasons therefor, and shall accompany said description with a letter from the contractor's independent certified public accountant approving or otherwise commenting on the changes, and

(4) if the agreement is a contract as defined herein, the contractor has filed a statement of

management on internal accounting controls as set forth in paragraph (c) below prior to the execution of the contract, and

(5) if the agreement is a contract as defined herein, the contractor has filed prior to the execution of the contracts and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in paragraph (d) below.

(c) Every contractor awarded a contract shall file with the awarding authority a statement of management as to whether the system of internal accounting controls of the contractor and its subsidiaries reasonably assures that:

(1) transactions are executed in accordance with management's general and specific authorization;

(2) transactions are recorded as necessary

i. to permit preparation of financial statements in conformity with generally accepted accounting principles, and

ii. to maintain accountability for assets;

(3) access to assets is permitted only in accordance with management's general or specific authorization; and

(4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference.

Every contractor awarded a contract shall also file with the awarding authority a statement prepared and signed by an independent certified public accountant, stating that he has examined the statement of management on internal accounting controls, and expressing an opinion as to

(1) whether the representations of management in response to this paragraph and paragraph (b) above are consistent with the result of management's evaluation of the system of internal accounting controls; and

(2) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the Applicant's financial statements.

(d) Every contractor awarded a contract by the commonwealth or by any political subdivision thereof shall annually file with the commissioner of capital asset management and maintenance

during the term of the contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report. Such statements shall be made available to the awarding authority upon request.

(e) The office of inspector general, the commissioner of capital asset management and maintenance and any other awarding authority shall enforce the provisions of this section. The commissioner of capital asset management and maintenance may after providing an opportunity for the inspector general and other interested parties to comment, promulgate pursuant to the provisions of chapter thirty A such rules, regulations and guidelines as are necessary to effectuate the purposes of this section. Such rules, regulations and guidelines may be applicable to all awarding authorities. A contractor's failure to satisfy any of the requirements of this section may be grounds for debarment pursuant to section forty-four C of chapter one hundred and forty-nine.

(f) Records and statements required to be made, kept or filed under the provisions of this section shall not be public records as defined in section seven of chapter four and shall not be open to public inspection; provided, however, that such records and statements shall be made available pursuant to the provisions of clause (2) of paragraph (b).

EXHIBIT E

**SPECIAL PROVISIONS
FOR
PARTICIPATION BY MINORITY-OWNED BUSINESSES
AND WOMAN-OWNED BUSINESSES**

Pursuant to State law and Executive Orders 478 and 524 the following goals and procedures are established for the Massachusetts Convention Center Authority (“MCCA”) to encourage full participation by minority business enterprises (“MBEs”) and women businesses enterprises (“WBEs”) (collectively “M/WBEs”) on contracts entered into by MCCA.

The following provisions are severable, and if any of these provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions or any other provisions of the Contract.

I. DEFINITIONS AND GOALS

A. Definitions

1. Minority Business Enterprise (MBE). A business concern which is owned and controlled by one or more minority individuals. For purposes of this provision, owned and controlled means a business: (a) which is at least fifty-one percent (51%) owned by one or more minority individuals, or in the case of a corporate form of organization, minority principals must hold at least fifty-one percent (51%) of all voting stock of the corporation; and (b) whose management and daily business operations are controlled by one or more of such individuals. Notwithstanding the foregoing, a minority-owned business shall be considered an MBE only if it has been certified as a minority owned business by the Supplier Diversity Office (“SDO”) or by another executive office, agency, department, board or commission of the Commonwealth of Massachusetts (a “State Agency”).

2. Women Business Enterprise (WBE). A business concern which is owned and controlled by one or more women. For the purposes of this provision, owned and controlled means a business: (a) which is at least fifty-one percent (51%) owned by one or more women, or in the case of a corporate form of organization, women principals must hold at least fifty-one percent (51%) of all voting stock of the corporation; and (b) whose management and daily business operations are controlled by one or more of such individuals. Notwithstanding the foregoing, a women-owned business shall be considered a WBE only if it has been certified as a women-owned business by SDO or by another State Agency.

3. Certification Letter. A letter or other document issued by SDO or another State Agency certifying, confirming or otherwise establishing the status of the subject contractor as an MBE or WBE.
4. Commission. The Massachusetts Commission Against Discrimination, or an officer, employee or agent thereof designated by the Commission for the particular purpose involved.
5. Contract. The Engagement Agreement for Consulting Services between MCCA and the Consultant, and any other contract entered into by MCCA for services for the Project in which these Special Provisions are expressly incorporated.
6. Consultant. The entity selected by MCCA for award of the Contract.
7. Fee. The fee specified in the Contract as compensation to the Consultant.
8. Letter of Intent. A document to be signed by a principal of a Minority Business Enterprise or Women Business Enterprise with respect to certain work under the Contract, in the form attached to these Special Provisions or other form specified or approved by MCCA.
9. MCCA. The Massachusetts Convention Center Authority or an officer, employee or agent thereof designated by the MCCA for the particular purpose involved.
10. Minority. Any citizen or lawful permanent resident of the United States who comes within one or more of the following definitions:
 - (a) “Native American or American Indian” means all persons having origin in any of the original peoples of North America and who are recognized as Native American by a tribe or tribal organization.
 - (b) “Asian” means all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to China, Japan, Korea, Samoa, India and the Philippine Islands.
 - (c) “African American” or “Black” means all persons having origins in any of the Black groups of Africa, and all persons having origins in any of the original peoples of the Cape Verdian Islands.
 - (d) “Western Hemisphere Hispanic” means all persons having origins in any of the Spanish-speaking peoples of Mexico, Puerto Rico, Cuba, Central or South America or the Caribbean Islands.
11. Performance. The provision of services, labor, labor and materials, equipment, supplies or materials pursuant to a contract or subcontract in connection with the services described in the Contract.

12. Percentage Participation. The ratio of (i) the actual dollar amount to be paid to an M/WBE for work performed under the Contract to (ii) the total Fee under the Contract.

13. RFP. The Request for Proposals issued by MCCA soliciting applications or proposals from firms interested in performing consulting services for the Project.

14. Women. Any citizens or lawful permanent residents of the United States who are of the female gender.

15. Words used in these Special Provisions and not otherwise defined herein shall have the meanings assigned in the Contract.

B. Goals

Subject to the terms of these Special Provisions, the following combined M/WBE participation goals shall apply to the Contract:

17.9%

If the Consultant is an MBE or WBE, then M/WBE participation credit shall be given in an amount equal to the entire Fee paid to the Consultant. If the Consultant is not itself an MBE or WBE, then M/WBE participation credit will be given for the value of any work under the Contract that is actually performed by each MBE or WBE subcontractor or sub-consultant (hereafter “subcontractors”) to the Consultant. MBE participation may not be substituted for WBE participation, nor may WBE participation be substituted for MBE participation.

II. CONTRACT COMPLIANCE

Within seven (7) days after a notice to proceed under the Contract is received by the Consultant, the Consultant shall (i) execute a subcontract with each M/WBE certified by SOWWBA or another State Agency and approved by MCCA, and (ii) furnish MCCA with a signed copy of each such subcontract. Such subcontract shall contain a full and complete description of the work to be performed by such M/WBE (“M/WBE Work”).

All M/WBE Certification Letters must be current and updated. If during the term of the Contract a previously listed M/WBE is deemed ineligible for certification by SDO or another State Agency, or if a firm’s M/WBE designation is rescinded for any reason, the Consultant shall, if requested by MCCA, propose a replacement M/WBE consistent with the provisions of these Special Provisions.

A. Performance of Contract work by M/WBEs

1. The Consultant shall not perform with its own organization or subcontract or assign to any other firm work designated to be performed by any M/WBE Work without the prior written approval of MCCA, nor shall any M/WBE assign or subcontract to any other firm, or permit any other firm to perform any of its M/WBE Work without the prior written approval of MCCA. ANY SUCH UNAPPROVED ASSIGNMENT,

SUBCONTRACTING, SUB-SUBCONTRACTING, OR PERFORMANCE OF M/WBE WORK BY OTHERS SHALL BE A CHANGE IN THE M/WBE WORK FOR THE PURPOSES OF THIS CONTRACT. MCCA SHALL NOT APPLY TO THE M/WBE PARTICIPATION GOAL(S) ANY SUMS ATTRIBUTABLE TO SUCH UNAPPROVED ASSIGNMENTS, SUB-CONTRACTS, SUB-SUBCONTRACTS, OR PERFORMANCE OF M/WBE WORK BY OTHERS.

2. The Consultant shall be responsible for monitoring the performance of M/WBE Work to ensure that each scheduled M/WBE performs its own M/WBE Work.

3. The Consultant shall periodically submit to MCCA a completed and executed Consultant Certification of Payment to Minority and Women Business Enterprises in the form attached to these Special Provisions. MCCA shall establish the schedule for submitting such certifications, which shall not be less often than quarterly.

4. The Consultant and each M/WBE shall provide MCCA with all other information and documentation that MCCA determines is necessary to ascertain whether or not an M/WBE has performed its own M/WBE Work.

5. At the discretion of MCCA, the failure of the Consultant to submit a required Consultant's Certification of Payment to Minority and Women Business Enterprises or any other documentation that MCCA has determined is necessary to ascertain whether or not an M/WBE has performed its own M/WBE Work shall establish conclusively for the purpose of giving M/WBE participation credit under this Contract that such M/WBE did not perform such work.

6. The provisions of the Contract concerning subcontracting are incorporated by reference into these provisions. Standard MCCA procedures on approval of subcontractors will continue to apply. The MCCA retains the right to approve or disapprove all subcontractors.

7. During the term of the Contract, the Consultant's fulfillment of the requirements stated in the Section I B. above shall be determined with reference to the Fee established in the Contract executed with the MCCA. If the Fee increases after execution of the Contract due to additional services or other adjustments, MCCA may, but is not obligated to, require the Consultant to subcontract additional work or to purchase additional goods and services from M/WBEs in order to comply with the percentage goals stated in Section I B. above.

B. Notification of Changes in M/WBE Work

If at any time during the performance of the Contract the Consultant determines or has reason to believe that (i) a contracted M/WBE is unable or unwilling to perform its M/WBE Work, or (ii) there has been or will be a change in the value or scope of any M/WBE Work, or that a party different from the scheduled M/WBE will perform all or part of such work, or (iii) the Consultant will be unable to meet the M/WBE participation goals for this Contract for any reason, the Consultant shall notify MCCA in writing of such circumstances immediately.

Any notice that there will be a change in the value or scope of M/WBE Work or that a party different from the scheduled M/WBE will be performing such work, that is given to MCCA pursuant to this Section II B. shall include a revised Schedule of M/WBE Participation and additional or amended Letters of Intent and subcontracts, as the case may be, all of which shall be subject to the approval of MCCA.

C. Actions Required if There is a Reduction in M/WBE Participation

1. In the event there is a change or reduction in any M/WBE Work which will result in the Consultant failing to meet the M/WBE participation goals for this Contract, other than a reduction in M/WBE Work resulting from a change in the Contract work ordered by MCCA, then the Consultant shall make a diligent, good faith effort to make up the shortfall in M/WBE participation as follows:

(a) The Consultant shall identify all items of work remaining to be performed under the Contract that may be made available for subcontracting to M/WBEs and shall send a list of such items of work to MCCA for its approval. The Consultant shall also send MCCA a list of the remaining items of Contract work that may not be made available to M/WBEs in the Consultant's opinion, and a statement of the reason why each such item of work may not be made available for subcontracting to M/WBEs.

(b) The Consultant shall send written notices soliciting proposals to perform the items of work that may be made available for subcontracting to M/WBEs to all M/WBEs qualified to perform such work. The Consultant shall advise MCCA of (i) each M/WBE solicited, and (ii) each M/WBE listed in the SDO directory under the applicable category of work who was not solicited and the reasons therefor. The Consultant shall also advise MCCA of the dates notices were mailed and provide a copy of the written notice(s) sent.

(c) The Consultant shall make reasonable efforts to follow up the written notices sent to M/WBEs with telephone calls or personal visits in order to determine with certainty whether the M/WBEs are interested in performing the work. Phone logs or other documentation must be submitted to MCCA evidencing this effort.

(d) The Consultant shall make reasonable efforts to assist M/WBEs that need assistance in obtaining insurance or lines of credit in order to perform work under the Contract, and shall provide MCCA with evidence that such efforts were made.

(e) The Consultant shall provide MCCA with a statement of the response received from each M/WBE solicited, including the reason for rejecting any M/WBE which submitted a proposal.

(f) The Consultant shall take any additional measures reasonably requested by MCCA to meet the M/WBE participation goal(s) established for this Contract.

2. The Consultant shall submit to MCCA all information or documentation that is necessary in the judgment of MCCA to ascertain whether or not the Consultant has complied with any of the provisions of this Section.

D. Suspension of Payment and/or Performance for Noncompliance

1. If at any time during the performance of the Contract, MCCA determines or has reason to believe that (i) there has been a change or reduction in any M/WBE Work which will result in the Consultant failing to meet the M/WBE participation goals for this Contract, other than a reduction in M/WBE Work resulting from a change in the Contract work ordered by MCCA, and (ii) the Consultant has failed to comply with all of the terms and conditions of Section II A. through C. above, MCCA may:

(a) suspend payment to the Consultant of an amount equal to the value of the work which was to have been performed by a M/WBE pursuant to the Consultant's Schedule of M/WBE Participation but which was not so performed, in order to ensure that sufficient Contract funds will be available if liquidated damages are assessed pursuant to Section II E. below, and/or

(b) suspend the Consultant's performance of this Contract in whole or in part.

2. MCCA shall give the Consultant prompt written notice of any action taken pursuant to paragraph 1 above and shall give the Consultant and any other interest party, including any M/WBEs, an opportunity to present evidence to MCCA that the Consultant is in compliance with the requirements of these Special Provisions or that there is some justifiable reason for waiving the requirements of these Special Provisions in whole or in part. MCCA may invite SDO or the Commission to participate in any proceedings undertaken pursuant to this paragraph.

3. Upon a showing that the Consultant is in full compliance with the requirements of these Special Provisions, or that the Consultant has met or will meet the M/WBE participation goals for this Contract, MCCA shall release any funds withheld pursuant to clause (a) of paragraph 1 and lift any suspension of the Consultant's performance under clause (b).

E. Liquidated Damages; Termination

1. If payment by MCCA or performance by the Consultant is suspended by MCCA as provided in Section II D. above, MCCA shall have the following rights and remedies if the Consultant thereafter fails to take all action necessary to bring the Consultant into full compliance with the requirements of these Special Provisions or, if full compliance is no longer possible because the default of the Consultant is no longer susceptible to cure, if the Consultant fails to take such other action as may be required to meet the M/WBE participation goals set forth in Section I B.:

(a) MCCA may terminate the Contract, and/or

(b) MCCA may retain from final payment to the Consultant, as liquidated damages, an amount not to exceed the difference between the total amount of M/WBE participation based on the goals set forth in Section I B. of these Special Provisions, and any amounts paid or owing to M/WBE's for M/WBE Work actually performed by them under this Contract, the parties agreeing that the damages for failure to meet the M/WBE participation goals are difficult to determine and that the foregoing amount to be retained by MCCA represents the parties' best estimate of such damages.

2. Before exercising its rights and remedies hereunder, MCCA may, but MCCA shall not be obligated to, give the Consultant and any other interested party another opportunity to present evidence to MCCA that the Consultant is in compliance with the requirements of these Special Provisions or that there is some justifiable reason for waiving the requirements of these Special Provisions in whole or in part. MCCA may invite SDO or the Commission to participate in any proceedings undertaken hereunder.

F. MCCA's Right to Waive Special Provisions in Whole or in Part

MCCA reserves the right to waive any provision or requirement of these Special Provisions if MCCA determines that such waiver is justified and in the public interest. No such waiver shall be effective unless in writing and signed by MCCA's Executive Director. No other action or inaction by MCCA shall be construed as a waiver of any Provision of these Special Provisions.

Forms and Submittals

TITLE

SUBMITTAL

Schedule of M/WBE Participation

Due from highest ranked Consultant Applicant no later than five (5) working days after receiving notice of selection for negotiations.

Letter(s) of Intent

Same as above.

Current Certification Letter(s)

Same as above.

Signed Copy of Each Subcontract with Approved M/WBE

Due from Consultant within seven (7) days after notice to proceed is received by the Consultant.

Consultant's Certification of Payment to Minority and Women Business Enterprises

Due from the Consultant on a periodic basis established by MCCA.

MASSACHUSETTS CONVENTION CENTER AUTHORITY

SCHEDULE OF M/WBE PARTICIPATION

Project Name:

The undersigned intends to subcontract with the following firms for the work described at the specified dollar amounts:

Name of Company	Description of Work	MBE WBE	Supplier or Subcontractor/ Sub-consultant	Dollar Value of Participation
1. _____	_____	_____	_____	\$ _____
2. _____	_____	_____	_____	\$ _____
3. _____	_____	_____	_____	\$ _____
4. _____	_____	_____	_____	\$ _____
5. _____	_____	_____	_____	\$ _____
6. _____	_____	_____	_____	\$ _____
7. _____	_____	_____	_____	\$ _____
8. _____	_____	_____	_____	\$ _____
9. _____	_____	_____	_____	\$ _____
10. _____	_____	_____	_____	\$ _____
Total Dollar Value of M/WBE Participation:			\$ _____	
Total Proposed Fee:			\$ _____	
Total M/WBE Participation as a Percentage of Total Proposed Fee			\$ _____	

Date _____

_____ (Name of Consultant Applicant)

_____ (Authorized Signature)

_____ (Address)

_____ (City, State & Zip Code)

MASSACHUSETTS CONVENTION CENTER AUTHORITY
LETTER OF INTENT

This form must be completed by each MBE and WBE and submitted by the Applicant using the MBE/WBE.

TO: Consultant Applicant		FROM: MBE/WBE
Name: _____		Name: _____
Street Address: _____		Street Address: _____
City/Town: _____		City/Town: _____
State: _____		State: _____
Phone: _____		Phone: _____
Fax: _____		Fax: _____
Project Name: _____		

Contract: Agreement for Consultant Services

1. My company intends to perform work in connection with the above project as:
- an individual a corporation a partnership
- a joint venture with _____
- other (explain) _____

2. My company is certified by SDO or by ___ as a MBE WBE in the following categories:

WARNING:

Misrepresenting your firm's SDO certification or other agency certification may result in disqualification from this and other MCCA-funded projects.

3. My company has not changed its ownership, control, or management in any way so as to affect certification, since obtaining certification from SDO or _____.
4. My company understands that if your company is awarded the contract, your company intends to enter into an agreement to perform the work described below for the price indicated.
5. My company intends to _____
(Brief description of work)

This Work includes: Labor & Materials Labor Only Materials Only

for a total amount of _____ dollars (\$ _____)

Date: _____

(Authorized signature of MBE/WBE)

Name and Title

Please advise MCCA immediately if either party attempts to renegotiate the above.

MASSACHUSETTS CONVENTION CENTER AUTHORITY
CONSULTANT'S CERTIFICATION OF PAYMENT TO
MINORITY AND WOMEN BUSINESS ENTERPRISES

Consultant: _____

Report For: _____ To: _____

Project Name: _____

Contact Person: _____

Project Start Date: _____ End Date: _____

Prepared By: _____

Title: _____

Signature: _____ Date: _____

Name of MBE/WBE Firm	Indicate		Description of Work	Date of Award	Total Amount of Contract	MBE Amount Paid This Period	WBE Amount Paid This Period
	MBE	WBE					
<u>Professional Services</u>							
<u>Non-Professional Services</u>							
<u>Goods</u>							
				Totals			

NOTE: This report is due within 10 working days following the reporting period for which this report has been prepared.

Directions to Consultant: Complete and sign this form and submit to: The General Counsel, Massachusetts Convention Center Authority, 415 Summer Street, Boston, Massachusetts 02110

EXHIBIT F

Rev date: XX-XX-XXX

MASSACHUSETTS CONVENTION CENTER AUTHORITY

MCCA Proj. Acct No. [XX-XXX-XXXXXX-XXX]
MCCA Proj. Title BCEC-----Project
MCCA Facility Name BCEC
Work Order No. MCCA-2020-XXX-XX #001
Work Order Title Design Documentation, Procurement Support, and Construction
Administration Services
Issue Date XX-XX-XXXX
Funding Source FY2020 CapEx Budget

1. COMPENSATION

In accordance with the provisions of the Agreement between the Authority and FIRM NAME, the Consultant, under MCCA Project Titled “AAA BBB CCC, the Consultant is authorized to perform services as described in this Work Order for an amended total of \$0.00. Such amount is further broken down as follows:

- a) A Not-to-Exceed hourly labor fee amount of \$ 0.00
- b) A Not-to-Exceed reimbursable expenses amount of \$ 0.00
- Work Order Total \$ 0.00

2. EFFECTIVE DATE

This Work Order is effective beginning MO. / DAY / YEAR.
[Completed By MCCA Project Manager]

3. CONTRACT SUMMARY

Original Contract Amount	(date xx.xx.xxxx)	\$ 0.00
Work Order #	(date xx.xx.xxxx)	\$ 0.00
Work Order #	(date xx.xx.xxxx)	\$ 0.00
Work Order #	(date xx.xx.xxxx)	\$ 0.00
Work Order #	(date xx.xx.xxxx)	\$ 0.00
Work Order #	(date xx.xx.xxxx)	<u>\$ 0.00</u>
TOTAL Revised Contract Amount		\$ 0.00
Less Previously Authorized (work orders)		\$ 0.00
This Authorization (work order #)		\$ 0.00
Subtotal		\$ 0.00
Remaining Unallocated		\$ 0.00

4. SUMMARY DESCRIPTION, GOALS, AND OBJECTIVES

Summary Description of Work Order:

[COMPLETED BY MCCA PROJECT MANAGER]

5. SCOPE of WORK and DELIVERABLES

Task	Description	Deliverable	D1	D2	D3	D4	D5	D6	D7	D8	D9
1.1	Design Development Phase Service										
a		yes/no									
b		yes/no									
c		yes/no									
d		yes/no									
e		yes/no									
1.2	Construction Document & Bid Procurement Phase Services										
a		yes/no									
b		yes/no									
c		yes/no									
d	-	yes/no									
e		yes/no									
3.3	Construction Administration Phase										
a		yes/no									
b		yes/no									
c		yes/no									
d		yes/no									
e		yes/no									

LEGEND:	D1	Prime A/E Firm	-Role / Discipline
	D2	Subconsultant Firm	-Role / Discipline
	D3	Subconsultant Firm	-Role / Discipline
	D4	Subconsultant Firm	-Role / Discipline
	D5	Subconsultant Firm	-Role / Discipline
	D6	Subconsultant Firm	-Role / Discipline
	D7	Subconsultant Firm	-Role / Discipline
	D8	Subconsultant Firm	-Role / Discipline
	D9	Subconsultant Firm	-Role / Discipline

6. SCHEDULE of MILESTONES and DELIVERABLES

Instructions: Consultant to provide design deliverables schedule including MCCA review periods (allow 7 days). Approved schedule to be included with Final Work Order Authorization.

Schedule of Milestones:

Notice-to-Proceed issuance date	(on or near) xx-xx-xxxx
Milestone 1 Description	(on or near) xx-xx-xxxx
Milestone 2 Description	(on or near) xx-xx-xxxx
Milestone 3 Description	(on or near) xx-xx-xxxx
Milestone 4 Description	(on or near) xx-xx-xxxx
Milestone 5 Description	(on or near) xx-xx-xxxx
Work Order Services Completion	(on or near) xx-xx-xxxx

*Notes: TO BE COMPLETED BY MCCA PROJECT MANAGER

7. ASSUMPTIONS

[COMPLETED BY A/E PRIME]

8. STAFFING PLAN/ORGANIZATION CHART

[COMPLETED BY A/E PRIME]

9. CONSULTANT COST PROPOSAL

[COMPLETED BY A/E PRIME]

INSTRUCTIONS: LEVEL OF EFFORT LABOR AND COST BREAKDOWN TO BE ATTACHED

10. PAYMENT SCHEDULE

INSTRUCTIONS: ASSUME MONTHLY PAYMENT. TO BE BASED ON EARNED VALUE ANALYSIS COMPARING AGAINST DELIVERABLES SCHEDULE

