REQUEST FOR STATEMENT OF QUALIFICATIONS
FOR
ARCHITECTURAL AND ENGINEERING SERVICES

UMBA PROJECT NO. 22-S1
ON-CALL DESIGNER SERVICES
FOR PROJECTS AT UMASS CAMPUSES

June 1, 2022

Qualifications Due: June 17, 2022 at 2:00pm
REQUEST FOR QUALIFICATIONS
FOR
ARCHITECTURAL AND ENGINEERING SERVICES
ON-CALL DESIGNER SERVICES
FOR PROJECTS AT UMASS CAMPUSES

I. NOTICE OF REQUEST FOR QUALIFICATIONS

The University of Massachusetts Building Authority (the “Authority”) requests Statement of Qualifications from qualified firms to provide On-Call Architectural and Engineering (“Designer”) Services for projects at UMass Campuses which may include, but not limited to, programming, feasibility studies, studies, design, construction documents, bidding, construction administration of residence halls, garages, dining commons, laboratories, research buildings, classroom buildings, auditoriums, general academic buildings, power plants, and utility infrastructure projects including both new construction and renovation projects and/or related tasks which are undertaken by the Authority or an UMass Campus (the Projects). As a result of this Request for Qualifications process, the Authority will select a number of firms, each of which will be on-call to provide Architectural and Engineering Services for specific tasks/projects, as deemed appropriate by the Authority.

Submission of Statement of Qualifications in response to this RFQ shall be submitted electronically and must be received and successfully uploaded by the deadline on or before 2:00pm on June 17, 2022 (unless such date and/or time is extended in writing pursuant to an Addenda issued by the Authority). Qualifications shall be electronically delivered to:

UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY
Barbara J. Kroncke, Executive Director
(Via a Dropbox Link provided by UMBA for response to this RFQ.)

Delivery Instructions:
A. Each respondent shall submit an electronic copy of its complete Statement of Qualifications, with all required forms, attachments, supporting documentation and information.
B. The electronic document title shall include the UMBA Project Number, Name of Firm, and the language “On-Call Architectural and Engineering (Designer) Services”.
C. No earlier than five-business days prior to the submission due date and no later than two-business days prior to the submission due date, firms submitting Statement of Qualifications shall email capitalcorrespondence@umassp.edu and request the Dropbox Link established for response to this RFQ. The Dropbox Link will be emailed to you within one-business day.
D. No later than the submission due date and time, the Statement of Qualifications shall be submitted and uploaded to the Dropbox Link provided. The link will expire after the established submission due date and time.
Each Statement of Qualifications shall clearly identify the responding firm’s name, business address, the contact person responsible for the Statement of Qualifications, email and the telephone number of the contact person.

The Authority assumes no responsibility for electronic delivery or the complete and successful upload of the Statement of Qualifications documents.

The Authority reserves the right to reject any or all Statement of Qualifications submitted in response to this Request for Qualifications (“RFQ”) and to take any other action, as the Authority may deem to be in its best interest.

Please note: Through this RFQ, the Authority will identify a number of firms which may be engaged in the future for projects/tasks of the Authority or an UMass Campus, as they are identified. However, being qualified through this RFQ to provide Architectural and Engineering services for future projects does not guarantee that the firm will be awarded or entitled to be awarded a contract by the Authority in connection with any future project(s). The Authority reserves the right to issue a new Request for Qualifications for Architectural and Engineering services in connection with any or all of its future projects. In addition, being awarded a contract for Architectural and Engineering services for any future project pursuant to this RFQ shall not entitle the selected responding firm to the award of any additional contract for Architectural and Engineering services in connection with any other project that the Authority may determine to undertake. The Authority reserves the right, but shall not have an obligation, to expand the scope of services of any contract as it may determine to be appropriate or convenient.

II. EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND AFFIRMATIVE ACTION

The Authority is committed to equal employment opportunity and non-discrimination on all of its projects and will take affirmative action to ensure equal employment opportunity and to eliminate discriminatory barriers. The Authority will consider the respondents’ demonstrated commitment to equal employment opportunity and affirmative action in selecting the Architect for the Project.

The specific tasks/projects where possible, shall have the following participation goals for minority business enterprises (MBE) and women business enterprises (WBE):

Design: MBE firm participation goal 6.6% and WBE firm participation goal 15.0%

Applications from MBE and WBE firms as prime consultant are encouraged. Applicants are strongly encouraged to utilize multiple disciplines and firms to meet and exceed their MBE and WBE goals. Consultants to the prime can team within their disciplines in order to meet the MBE and WBE goals, but must state their relationship on the organization chart. Respondents are encouraged to propose a team that reflects such diversity and reflects the established participation goals.
When assigned a specific task/project, the Architect shall submit to the Authority, a Schedule for Participation in Design by Minority and Women Business Enterprises, listing each minority business enterprise and women’s business enterprise which the Architect intends to use in connection with that specific task/project, and for each such firm a letter of Intent and Certification Letter from the Massachusetts Supplier Diversity Office (formerly SOWMBA) or another state or federal agency. The Authority’s forms of Schedule for Participation and Letter of Intent are attached as Attachment 2.

III. THE AUTHORITY

The University of Massachusetts Building Authority (Authority) is an independent body politic and corporate and an authority of the Commonwealth of Massachusetts created by and existing under Chapter 773 of the Acts of 1960, as amended (the “Authority’s Enabling Act”). The Authority is separate and independent from the University of Massachusetts (the University), but provides dormitories, dining commons and other buildings and structures for the use of the University, its students, staff and their dependents and certain approved organizations. The mission of the Authority is to aid and contribute to the performance of the educational and other purposes of the University by providing high quality buildings and infrastructure that make a difference to the University community and that meet and exceed the University’s needs. New facilities constructed by the Authority as a part of any of its projects are owned by the Authority, but operated and maintained by the University.

IV. NOT USED

V. NOT USED

VI. SCOPE OF SERVICES

The scope of Architectural and Engineering Services may vary on a project by project basis and may include investigative work, programming, feasibility study, studies, schematic design, design work, construction documents, bidding period administration, construction administration, or other related work which the Authority undertakes to support the goals and mission of the University at its five campuses. Firms engaged by the Authority pursuant to this RFQ will be responsible to and will provide services to the Authority. As the Authority’s Designer, the Designer shall work with the Authority, and with any University representatives designated by the Authority, in performing services in connection with each specific Project/task.

Services for a specific task/project may include the usual and customary architectural, geotechnical engineering, code compliance, structural engineering, mechanical engineering, electrical engineering, plumbing engineering, fire protection engineering, acoustic engineering, lighting design, interior design, telecommunications, information technology, civil engineering, landscape design, security, parking and traffic engineering, wetlands mapping, soil borings, test pits, environmental needs analysis, environmental and all other required permitting, cost
estimating, surveys, any other services described in the Agreement and any other services customarily performed by architects.

If the assigned project includes design services, design will incorporate and be consistent with the specific Campus Design Standards and Guidelines.

In performing the Scope of Services for a given task/project, the Architect shall consider energy efficiency and sustainable design practices, using the U. S. Green Building Council’s LEED© Rating System, and shall advise the Authority of any financial impact which may result. It is intended that project will be energy efficient and environmentally sustainable, and if applicable to the assigned project, will meet the requirements of a minimum LEED© Silver Certification. When possible, the design team should pursue utility rebates available to the assigned project.

In addition, the University requires that all projects incorporate robust, forward-looking strategies for reducing carbon emissions and energy use. If applicable, design needs to consider high energy efficiency systems including possible utilization of full electrification options and geothermal among other solutions. The project shall minimize use of fossil fuels to the fullest extent possible.

If applicable, BIM design and construction drawings shall be developed using the latest BIM software. The BIM models shall be used by the Design Team and Construction Manager/General Contractor for design coordination, collision avoidance, clash detection and production of traditional two-dimensional drawings, and may be used for coordination drawings, energy analysis, day lighting analysis, and other building or systems analysis. The implementation and use of BIM shall be developed by the Project Team and updated periodically in the BIM Execution Plan throughout the project as needed. The Architect shall provide the BIM model(s) to Construction Manager/General Contractor prior to and during construction for scheduling, coordination, resource management, estimating, and other uses deemed necessary. The Design Team shall update the BIM model(s) at the end of construction to reflect the actual "as-built" conditions and provide the Final “Record Document” model(s) to the Owner in the BIM format(s) as originally developed.

It is anticipated that construction services for the Project will be procured using a general contractor selected pursuant to Mass. Gen. Laws c. 149; a Construction Manager at Risk selected pursuant to Mass. Gen. Laws c. 149A, secs. 1-13 and the Authority’s Procedures for the Procurement of Construction Management at Risk Services pursuant to M.G.L. c. 149A, §§ 1-13 (the “Authority’s CM at Risk Procedures”), a copy of the Authority’s CM at Risk Procedures is attached hereto as Attachment 3; or by any other procurement method authorized by Section 18 of the Authority’s Enabling Act or other special legislation.

The Authority may engaged an OPM Firm to serve as the Owner’s Project Manager in connection with a given task/project, if in the best interest of the Authority to do so.

The Authority may engage a Commissioning Agent Firm to review Design documentation, and assist the Campus with the Owner’s Project Requirements and definition of Building Envelope
and systems to be commissioned, as well as necessary testing of systems and/or equipment and start of warranties after systems acceptance.

All contractors, consultants, vendors and visitors will be required to comply with the most current COVID-19 public health and safety measures required at the Campus where the task/project is assigned. Requirements are subject to change and are posted on the Campus’s website.

VII. SCHEDULE

Work will commence on assigned tasks/projects as they are identified by the Authority and as Architectural and Engineering firms are awarded contracts for those tasks/projects.

VIII. FEE

Firms responding to this RFQ shall include in their qualifications a brief description of the methodology they propose be used in determining the fees for services. However, no specific fee proposal should be included or will be accepted at the present time. Fee proposals will be requested from pre-qualified firms on a specific project basis with a defined scope.

IX. FORM OF AGREEMENT

Pre-qualified Architectural and Engineering firms shall execute a contract with the Authority, which shall be in the form of the Master Services Agreement for Professional Services between Owner and Architect (the “Agreement”) without revisions or modifications, which is attached hereto as Attachment 4. At the Authority’s sole discretion, the Authority may make minor non-material changes to the form of the Agreement. If a pre-qualified firm is selected to perform Architectural and Engineering services for a specific task/project, the firm will execute an addendum to the Agreement, which will detail the agreed upon scope of services and fee for that specific project. The Addendum is included as an attachment to Attachment 4.

Please note that the submission of a Statement of Qualifications in response to this RFQ shall be deemed an acceptance of all terms and conditions of the Agreement and an agreement to execute the same without revision or modification.

Duration of the Agreement shall continue for a period of three (3) years from the establishment of the Designer Bench resulting from this procurement, plus the actual duration, beyond the three (3) years, of the Designer’s obligations with respect to any projects under contract. The Authority shall have the right to extend the term of this Agreement with up to (2) one year options beyond the initial three years.

X. MINIMUM QUALIFICATIONS

Each Statement of Qualifications will be reviewed by the Authority to determine if it meets the minimum qualifications set forth in this Section prior to actual evaluation. If determined by the
Authority, in its sole and absolute discretion, that a Statement of Qualifications does not meet the minimum qualifications, the Authority will eliminate the Statement of Qualifications from further consideration and deemed it as non-responsive to the RFQ.

A. Massachusetts registration and licensing in all applicable disciplines.

B. Demonstrated knowledge (through experience of completed projects) of the:
   1. Massachusetts State Building Code
   2. Americans with Disabilities Act, and Massachusetts Architectural Access Board

C. Responding firm, major consultant firms and key team members (PIC, PM and Project Architect, Project Engineers) experience on at least two (2) Commonwealth of Massachusetts public projects, each successfully completed within the last seven (7) years generating public bid documents, including Filed Sub-Bid / Trade Bid packages. In addition, it is strongly encouraged that at least one of the responding firms key team members (PIC, PM or PA) is certified in the Massachusetts Certified Public Purchasing Officer (“MCPPO”) Program as administered by the Commonwealth of Massachusetts Office of the Inspector General.

D. Documented experience utilizing BIM on at least five (5) projects.

XI. SUBMISSION REQUIREMENTS

Each Statement of Qualifications shall contain all of the information and documentation described below. The entire electronic submission shall be formatted so that it can be printed by the Authority on 8 ½” x 11” paper, in color, double sided, with a minimum of 12pt font size.

In order to facilitate the Authority’s review of submissions, applicants are encouraged to organize their submission into tabbed sections corresponding to the following list of topics:

A. Cover Letter – Cover letter identifying the contact individual for the firm or firms if applicant is submitting as an association or joint venture and an executive summary detailing the key elements, background and factors that differentiate the applicant from other respondents.

B. Applicant Background – Description of the responding firm’s or applicant’s background.

C. Project Organization Chart – A Project team organization chart showing communication among team members and the Authority. List all team members (indicate whether a team member is employed by the Designer or by a specified sub-consultant) proposed to provide services on the Project, and identify those who are key team members. Please note that the Authority requires that the key team members identified in the responding firm’s Statement of Qualifications be the individuals who render services under the Agreement, and such individuals must be fully available to devote time and attention necessary to ensure timely and complete delivery of required services.
D. Applicant’s Project Team – Detailed information for key members of the responding applicant’s project team. The team description shall include the Principal-in-Charge, the Project Manager who will have overall responsibility for completion of the Project/tasks, and Project Architect and other members outlining the specific responsibilities of each member of the team.

The responding firm shall provide a resume for each Project team member, which outlines the individual's academic and professional achievements, Massachusetts registration and licensing status, tenure with the firm, and the number of years of experience dealing with similar projects. The responding firm shall provide a cross reference for each team member to any project listed in item (F) below.

For each key project team member, list the projects with their construction cost which qualify that team member as described in Section X of this RFQ.

The team description shall include individual and Project team experience with design for energy efficiency and sustainability, including LEED certified buildings, and use of LEED® Rating System and other guidelines. At least one member of the project team must have experience with design for energy efficiency and sustainability and the use of the LEED Rating System and other guidelines.

E. Applicant Experience – Description of the responding applicant's and team member’s experience with particular attention to identifying projects in which similar services, was performed. Provide specific lists within this section of the projects or other activities which demonstrate the firm’s compliance with the minimum qualification of Section X of this RFQ. Include projects for public Agencies in the Commonwealth of Massachusetts, Higher Education projects and On-Call Architectural and Engineering services.

For each project, provide a complete project description, including:
1. Summary of building program;
2. Building size with net program area and gross building area;
3. Sustainable design elements incorporated;
4. Estimated and actual project costs;
5. Estimated and actual construction costs;
6. Total and percentage of change orders;
7. Estimated and actual design and construction schedule and date project completed;
8. If applicable, indicate projects that were bid under the Commonwealth of Massachusetts public construction procurement laws (c.149, c.149A or c.30);
9. Names, telephone numbers, email address, and other contact information for project reference person(s). Please provide reference from both Owner and contractor or construction manager.

Provide the value of firm’s current work load and back log. Include the number of projects that comprise the current work load and back log.
F. References – Provide three (3) references of persons who are familiar with the work of the responding firm and its Project team. In addition, provide three (3) references of persons who are familiar with the work and professional skills of the proposed Project Manager. By submitting a Statement of Qualifications, a responding firm expressly authorizes the Authority and its representatives to contact all named references regarding the past performance of the firm and any of the proposed team members identified in the Statement of Qualifications.

G. MBE and WBE Record – Information on and evidence of the applicant’s compliance record with respect to minority business enterprise and women business enterprise inclusion goals on recent projects. The Authority strongly encourages responding firms to propose a team that reflects diversity including MBE and WBE prime and consultant firms.

H. Sub-consultant Team – Identify (in a matrix format) any firms or individuals not part of the responding firm that may be collaborating on assigned Projects/tasks. For each sub-consultant provide a detailed description of their potential role on assigned projects/tasks, and a complete resume for those individuals proposed, Massachusetts registration and licensing, as applicable, and the length and substance of their experience. Provide a specific list within this section of the projects or other activities which demonstrate compliance with the minimum qualification of Section X of this RFQ.

I. Sub-consultant Firms – Provide information on all consulting firms listed below who will play a potential role on assigned projects/tasks, including an identification of any such firm that is an MBE or WBE. Indicate if any of these services will be provided by the responding firm:

- Architect
- Civil Engineer
- Landscape Architect
- Structural Engineer
- Plumbing Engineer
- Fire Protection Engineer
- Mechanical Engineer
- Electrical Engineer
- Sustainability Consultant
- Building Code Consultant
- Food Service/Kitchen Consultant
- Audio Visual Consultant
- Lighting Consultant
- Interior Designer
- Acoustic Engineer
- Security Consultant
- Telecommunications Consultant
- Information Technology Consultant
- Cost Estimator / Scheduling Consultant
- Accessibility Consultant
- Building Envelope Consultant
- FF&E Consultant
- Geotechnical Engineer (Design Services and Const. Monitoring)
- Environmental Permitting Consultant
- Hazmat Consultant & Industrial Health Hygienist certified in asbestos and PCB testing (testing, design & monitoring)

J. Legal History – List the lawsuits and arbitrations to which the firm has been or is a party within the last three years, including a list of all convictions or fines for violations of state or federal law.
K. Failure to Complete Record – Information on any projects within the last seven (7) years where the firm was terminated or failed to complete the work.

L. Financial Stability – Document the Applicant's financial stability, with detailed financial information that can be used to evaluate and ascertain the firm's ability to provide the required services for the duration of the Agreement.

M. Insurance Capacity – Provide evidence of the Applicant’s current insurance coverage or ability to obtain such, including (i) professional liability; (ii) comprehensive general liability (“CGL”) insurance; (iii) automobile liability insurance; (iv) statutory workers’ compensation insurance coverage; (v) employer’s liability insurance; and (vi) umbrella or excess liability insurance, automobile liability and employer’s liability coverage and all of such coverage as detailed the terms and amounts set forth in the Master Services Agreement for Professional Services between Owner and Architect.

N. Forms - Completed and executed copies of each of the following documents in the form attached as Attachments 5 through 10:

- Employment Opportunity and Affirmative Action Questionnaire (Attachment 5)
- Conflict of Interest Statement (Attachment 6)
- Certificate of Non-Collusion (Attachment 7)
- Certificate of State Tax Compliance (Attachment 8)
- Certification regarding Undocumented Workers (Attachment 9)
- Certification regarding Equal Employment Opportunity, Non-Discrimination and Affirmative Action (Attachment 10)

XII. SELECTION PROCEDURES

Each Statement of Qualifications will be reviewed by the Authority to determine if it is complete prior to actual evaluation. The Authority reserves the right, but shall have no obligation, to eliminate from further consideration any Statement of Qualifications deemed to be substantially or materially non-responsive to the RFQ. The Authority will review all qualifications and may select a number of responding firms who best meet the qualifications set forth in this RFQ. The selection of the finalists will be based on who best meets or exceeds the following criteria, as applied by the Authority in its sole and absolute discretion:

- Demonstrated experience of applicant and team members working on projects of similar type, scope of services, and complexity, including the quality, depth and relevance of the respondent's prior experience and expertise in providing similar services to public agencies. Prior similar experience would include public projects for public Agencies in the Commonwealth of Massachusetts, Higher Education projects, studies, renovation and/or new projects and On-Call Architectural and Engineering services.

- Strength of sub-consulting team working with applicant on similar projects
• Demonstrated ability to design to budget and maintain the project schedule

• Past experience with projects built under Mass. Gen. Laws. c.149, c.149A and c.30

• Financial stability

• Identity and qualifications of consultants proposed by the responding firm

• Ability of the firm to meet the project schedule

• Current total workload

• Experience with BIM and projects designed for sustainability, carbon neutrality and energy efficiency, using the LEED rating system

• Overall commitment to equal employment opportunity and affirmative action

• History of compliance with MBE/WBE participation goals

• Current Statement of Qualifications compliance with MBE/WBE participation goals

XIII. ADDITIONAL INFORMATION

Prospective respondents shall not communicate with the Authority, the University, or any of their representatives, including the OPM, at any time during the RFQ process except through written questions submitted prior to the deadline set forth herein. All questions must be submitted in writing, via email only, addressed to:

Charles A. Paradie Jr, AIA
Director of Project Planning
University of Massachusetts Building Authority
cparadie@umassp.edu

The deadline for receipt of written questions is 12:00pm on June 8, 2022. The Authority will respond to all written questions which, in the Authority’s sole judgment, may have a material effect on the RFQ by posting written responses on the Authority’s website, www.umassba.net, no later than 5:00pm on June 10, 2022.

XIV. OTHER PROVISIONS

A. The Authority reserves the right to modify this RFQ, in whole or in part, prior to the date fixed for submission of the Statement of Qualifications, by issuance of an addendum or addenda, which shall be posted on the above-referenced website. The Authority may extend the deadline for submission of Statement of Qualifications if, in the Authority’s judgment, such extension is necessary for any reason. It is the responsibility of each responding firm
desiring to submit a Statement of Qualifications to obtain the Request for Qualifications and any and all addenda that may be issued in connection with this RFQ.

B. All expenses and costs, including but not limited to legal costs, associated with developing or submitting a Statement of Qualifications in response to this RFQ, or associated with oral or written clarification thereof, including all presentation materials and related costs and travel expenses, shall be borne solely by the responding firm, and under no circumstances shall the Authority be responsible for any such cost or expense incurred by any responding firm. The Authority assumes no responsibility for these costs and expenses.

C. Responding firms may withdraw their Statement of Qualifications, by written request only, received by the Authority prior to, but not after the time set for submission of Statement of Qualifications. Thereafter, Statement of Qualifications shall be irrevocable for a period of not less than forty five (45) days, and may not be withdrawn or modified.

D. Any Statement of Qualifications which is not electronically received by the Authority by the date and time for submission of Qualifications set forth herein will be determined to be late and shall not be considered.

E. The Authority may cancel or modify this RFQ, in whole or in part, or reject all Statement of Qualifications submitted in response to this RFQ if such action is determined to be in the best interest of the Authority. The Authority also reserves the right to waive any irregularities or requirements; and to negotiate with all respondents, in any manner necessary, in its sole judgment and discretion, to serve the best interest of the Authority. Statement of Qualifications that are incomplete, conditioned, or are otherwise not in conformance with this RFQ may be rejected at the sole discretion of the Authority.

F. A Statement of Qualifications may be considered non-responsive if it includes extraneous information not specifically requested in this RFQ. The clarity and conciseness of submissions will be valued over sheer volume.

G. The Authority reserves the right to request clarification of any aspect of any submitted Statement of Qualifications or to request additional information that might be required to evaluate a submission.

H. By submission of a Statement of Qualifications, each respondent acknowledges and agrees that all documentation and/or materials submitted with its Qualifications shall become and remain the property of the Authority. The Authority shall have the right to use all or any portions of any Statement of Qualifications, as it considers necessary or desirable, in connection with the Project. By the submission of a Statement of Qualifications, the respondent thereby grants to the Authority an unrestricted royalty-free license to use the Statement of Qualifications and all materials submitted therewith in connection with the Project.

I. Respondents are advised that, once a Designer Bench has been established, Statement of Qualifications submitted to the Authority in response to this RFQ are considered public records as defined by Massachusetts General Laws, Chapter 4, §7, clause 26.
XV. ATTACHMENTS

Attachment 1: Not Used
Attachment 2: Authority’s Minority and Women Project Participation Requirements
Attachment 3: Procedures of the University of Massachusetts Building Authority for the Procurement of Construction Management at Risk Services pursuant to M.G.L. c. 149A, §§ 1-13 (dated February 17, 2010)
Attachment 4: Master Services Agreement for Professional Services Between Owner and Architect
Attachment 5: Equal Employment Opportunity and Affirmative Action Questionnaire
Attachment 6: Conflict of Interest Statement
Attachment 7: Certificate of Non-Collusion
Attachment 8: Certificate of State Tax Compliance
Attachment 9: Certification regarding Undocumented Workers
Attachment 10: Certification regarding Equal Employment Opportunity, Non-Discrimination and Affirmative Action
ATTACHMENT 1

Not Used
ATTACHMENT 2

Authority Minority and Women Project Participation Requirements
The University of Massachusetts Building Authority is committed to equal employment opportunity, non-discrimination and affirmative action on all of its projects. The Authority has established participation goals for minority and women business enterprises as well as minority and women workers to be employed on all Authority projects. These goals are as follows:

- Construction MBE and WBE participation goals: MBE: 4.2%; WBE: 8.8%
- Design MBE and WBE participation goals: MBE: 6.6%; WBE: 15.0%
- Construction Workforce - Minorities: 15.3%; Women: 6.9%

The following information is presented to ensure compliance with these goals.

DEFINITIONS

Minority: For the purposes of meeting the goals, minority means a person who meets one or more of the following definitions:

1. American Indian or Native American: all persons having origins in any of the original peoples of North America and who are recognized as an Indian by a tribe or tribal organization.
2. Asian: All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands, including, but not limited to China, Japan, Korea, Samoa, India, and the Philippine Islands.
3. Black: All persons having origins in any of the Black racial groups of Africa, including, but not limited to African Americans, and all persons having origins in any of the original peoples of the Cape Verdean Islands.
4. Eskimo or Aleut: All persons having origins in any of the peoples of Northern Canada, Greenland, Alaska and Eastern Siberia.
5. Hispanic: All persons having their origins in any of the Spanish speaking peoples of Mexico, Puerto Rico, Cuba, Central or South America, or the Caribbean Islands.

**MBE or WBE Status:** A minority owned business shall be considered an MBE only if it has been certified as a minority business enterprise by the Massachusetts Supplier Diversity Office or another state or federal agency; A woman owned business shall be considered a WBE only if it has been certified as a woman business enterprise by Massachusetts Supplier Diversity Office or another state or federal agency.

**M/WBE Participation:** The MBE and WBE participation goals are percentages of total contract fee.

1. If the consultant is itself an MBE or WBE, MBE or WBE participation credit shall be given in an amount equal to the entire contract fee.

2. If the contractor is a joint venture with one or more MBE or WBE joint venturers, MBE or WBE participation credit shall be given to the joint venture as follows: a) If the joint venture is certified by a State or Federal Agency as an MBE or WBE, MBE or WBE credit shall be given to the joint venture in an amount equal to the entire contract; b) If the joint venture is not certified, then participation credit shall be given for the value of the work that is performed by the MBE or WBE joint venturer(s) and for the value of the work that is performed by each MBE or WBE consultant.

**REQUIREMENTS**

The Authority requires that all consultants make maximum possible efforts to reach these goals. These efforts may include, but are not limited to the following:

- Develop and implement outreach plans for MBE or WBE.
- Document MBE or WBE availability and response to outreach.
• Include sufficient MBE and WBE consultant firms in your proposal to meet or exceed the Design MBE and WBE participation goals.

DOCUMENTATION

The Authority requires the completion of the following forms in order to document efforts, progress and compliance with this program. The Authority may require any other reasonable documentation in connection with this program.

Design

• MBE and WBE Schedule for Participation
• MBE and WBE Letter of Intent
• MBE and WBE Design Report
• Request for Waiver
UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY

SCHEDULE FOR PARTICIPATION
IN DESIGN
BY MINORITY AND WOMEN BUSINESS ENTERPRISES

UMBA Project Number: ____________________________  Project Location: ____________________________

Project Name: ____________________________  Design Firm: ____________________________

The Design Firm must, within five (5) working days after it receives a Notice of Award, submit to UMBA a completed Schedule for Participation listing each and every MBE and WBE firm it will utilize with the scope of work and dollar value commitment for each firm and the overall MBE and WBE dollar value commitments.

This form must be accompanied by a completed LETTER of INTENT for each firm listed, signed by an authorized signatory for the MBE or WBE firm and a copy of the firm’s current CERTIFICATION LETTER from the Massachusetts Supplier Diversity Office (SDO) or another state or federal agency.

DESIGN FIRM CERTIFICATION:
The undersigned Design Firm agrees that if awarded the contract it will subcontract with the following listed firms for the work described and for the dollar amounts listed below. For purposes of this commitment, MBE and WBE designation means that a business has been certified by SDO or another state or federal agency as a MBE, WBE or M/WBE. The Design Firm must indicate the MBE and WBE firms it intends to utilize on the contract as follows (attach additional sheets as necessary):

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<tr>
<th>Company Name &amp; Address (If Designer is a MBE or WBE, list name here)</th>
<th>MBE or WBE</th>
<th>Describe MBE or WBE Scopes of Work</th>
<th>Total Dollar Value of Participation</th>
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MBE Goal: 6.6%  Total Dollar Value of MBE Commitment: $__________________  MBE Percent Achieved: ________%

WBE Goal: 15.0%  Total Dollar Value of WBE Commitment: $__________________  WBE Percent Achieved: ________%

The undersigned hereby certifies that he/she has read the terms and conditions of the RFP and the contract for the Project with regard to MBE and WBE participation and is authorized to bind the undersigned Design Firm to the commitment set forth above.

Name of Design Firm: ____________________________

Business Address: ____________________________  Print Name of Signatory: ____________________________

Title: ____________________________

Authorized Signature: ____________________________

Telephone No.: ____________________________  Date: ____________________________
LETTER OF INTENT
MINORITY AND WOMEN BUSINESS ENTERPRISES PARTICIPATION

To be completed by MBE or WBE and submitted by the Designer to UMBA within five (5) working days after the Designer receives a Notice of Award.

UMBA Project Number________________________ Project Name ________________________________

Project Location ________________________________

To ____________________________________________
Name of Designer

Indicate Certification agency and type: SDO or other state or federal agency ________________:

Check appropriate category: _____ MBE _____ WBE _____ M/WBE

1. This firm intends to perform work in connection with the above project.
2. This firm is currently certified by SDO or the other indicated state or federal agency to perform the work identified below, and has not changed its minority/women ownership, control, or management without notifying SDO or the other state or federal agency within thirty (30) days of such a change. **A copy of the most recent certification letter must be attached.**
3. This firm understands that if the Designer referenced above is awarded the contract, the Designer intends to enter into an agreement with this firm to perform the activity described below for the prices indicated. This firm also understands that the above-referenced firm, as Designer, will make substitutions only as allowed by the terms of the Contract and applicable law.
4. This firm understands that under the terms of the contract, only work actually performed by an MBE or WBE will be credited toward MBE and WBE participation goals, this firm cannot assign or subcontract out any of its work without prior written approval of the University of Massachusetts Building Authority, and any such assignment or subcontracting will not be credited toward MBE or WBE participation goals.

**MBE/WBE PARTICIPATION**

<table>
<thead>
<tr>
<th>Describe MBE or WBE Scopes of Work</th>
<th>Dollar Value of Participation</th>
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Total Dollar Value: $______________

Name of MBE or WBE Firm ________________________________

Business Address __________________________________

Print Name of Authorized Signatory ____________________

Authorized Signature ________________________________

Title ______________________________________________

Telephone No. ________________________________

Date ____________________________________________
UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY

REQUEST FOR REDUCTION OR WAIVER
OF MINORITY OR WOMEN BUSINESS ENTERPRISE PARTICIPATION GOALS

UMBA Project Number: ___________________  Project Location: ___________________

Project Name: __________________________

Firm requesting reduction/waiver _____________________________________________

Identified MBE Goal: ________%  Reduction sought_____________________________

Identified WBE Goal: ________%  Reduction sought_____________________________

Please note that the University of Massachusetts Building Authority reserves the right to reduce or waive the MBE or WBE participation goal established for this Contract upon written request made by a Designer to UMBA within five (5) days of the RFP due date. Such written request must demonstrate to the satisfaction of the Authority that it is not feasible for the Designer, which is not itself an MBE or WBE, to meet the goals established for this Contract based upon any or all of the following: (i) actual MBE and WBE availability, (ii) the scope of the work, (iii) the percentage of work available for MBEs and WBEs, and (iv) other relevant factors.

Explain in detail why reduction or waiver is needed ___________________________

________________________________________________________________________

Provide documentation of efforts made to engage MBEs and WBEs, including at a minimum, the following:

1. List all items of work under the Contract made available to MBEs and WBEs.

________________________________________________________________________

Identify all items of work not made available and state the reasons for not making such work available to MBEs and WBEs. __________________________________________________________________

________________________________________________________________________

Where commercially reasonable, explain how subcontracts were divided into units capable of being performed by MBEs and WBEs. __________________________________________________________________

2. Describe and document evidence that you sent written notices soliciting proposals to perform the items of work made available for MBEs and WBEs to all MBEs and WBEs qualified to perform such work. Identify: (i) each MBE and WBE solicited, and (ii) each MBE and WBE listed in the Supplier Diversity Office directory under the discipline that was not solicited and reasons. For each MBE and WBE solicited: (a) provide a copy of the written notice(s) sent, (b) provide evidence that you made reasonable efforts to follow up the written notices sent to MBEs and WBEs with telephone calls or personal visits in order to determine with certainty whether the firms were interested in performing the work (Phone logs or other documentation must be submitted), and (c) provide a statement of the response received from each firm solicited, including the reason for rejecting any MBE or WBE that submitted a bid or proposal.

________________________________________________________________________
3. Provide any other information supporting the request for a waiver or reduction in the MBA or WBE participation goal.

4. Provide any other information reasonably requested by the Authority to show that the Designer has taken all actions that could reasonably be expected to achieve the MBE or WBE participation goal.

Name of Firm: ________________________________
Business Address: ____________________________  Print Name of Signatory: ________________
Title: ________________________________
Authorized Signature: __________________________
Telephone No.: ________________  Date: ________________
DEPARTMENT OF TRANSPORTATION

DESIGN GOALS: MBE: 6.6%; WBE: 15.0%

PROJECT: ________________________________
UMBA Project No.: __________________________
DESIGNER: ________________________________
PERIOD COVERED: ______________________ THROUGH __________

<table>
<thead>
<tr>
<th>SUBCONSULTANT</th>
<th>WBE or MBE</th>
<th>BASE FEE</th>
<th>TOTAL DOLLARS</th>
<th>INVOICED THIS PERIOD</th>
<th>TOTAL DOLLARS</th>
<th>% OF BASE FEE</th>
<th>INVOICED TO DATE</th>
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TOTALS:
TOTAL BASE DESIGNER FEE:
MBE AND WBE PERCENTAGE OF BASE DESIGNER FEE:
MBE _________%
WBE _________%

MBE AND WBE JOB-TO-DATE PERCENTAGE:
MBE _________%
WBE _________%
ATTACHMENT 3

Procedures of the University of Massachusetts Building Authority for the
Procurement of Construction Management at Risk Services
pursuant to M.G.L. c. 140A, §§ 1-13 (dated February 17, 2010)
Procedures for the Procurement of Construction Management at Risk Services Pursuant to M.G.L. c.149A, §§ 1-13

1.0 Introduction

The following constitutes the procedures of the University of Massachusetts Building Authority (the “Authority”) relating to the procurement of construction management at risk (“CM at Risk”) services pursuant to the Massachusetts General Laws, Chapter 149A, sections 1 thru 13 inclusive (“Chapter 149A”). The procedures outlined below (the “Procedures”) will be used for Authority projects involving the construction, reconstruction, installation, demolition, maintenance or repair of any building estimated to cost not less than $5,000,000 to be procured using the CM at Risk delivery method under authority of Chapter 149A and any regulations promulgated thereunder.

The Authority will seek CM at Risk services from contractors and other entities, including joint ventures, that have the appropriate DCAM Certification of Eligibility in the category of General Building Construction. The Authority has established a two (2) phase sealed competitive process for the selection of a CM at Risk firm, hereinafter referred to as the “CM” or the “CM Firm,” with which the Authority may enter into a contract to provide construction management at risk services for a particular project. During the first phase, the Authority will “pre-qualify” entities through dissemination of a publicly-advertised Request for Qualifications (“RFQ”). During the second phase, the Authority will solicit proposals to provide CM at Risk services from the pre-qualified firms, through a Request for Proposals (“RFP”) issued by the Authority. At the conclusion of the RFP phase, the Authority will award a contract to the highest ranked proposer, with whom it is able to successfully negotiate.

2.0 Overview of Selection Process

2.1 Prequalification Committee (Phase One). The Authority will appoint a prequalification committee to review and evaluate all of the firms that respond to the RFQ issued by the Authority with respect to the project. The prequalification committee will be comprised of one (1) representative of the designer, the Authority’s project manager, and at least two (2) other representatives of the Authority (the “Prequalification Committee”).

2.2 Request For Qualifications (Phase One). After the appointment of the Prequalification Committee, the Authority will solicit CM Firms by inviting interested firms to respond to a publicly-advertised RFQ. CM Firms will be requested to submit their qualifications only, following the format that may be identified in the RFQ. The RFQ shall comply with the requirements of Chapter 149A, including matters of content and public advertising. The
Prequalification Committee will evaluate the qualifications of all CM Firms and select qualified firms to participate in the RFP Phase (Phase Two) of the selection process.

2.3 **Selection Committee (Phase Two).** In Phase Two, the Authority will appoint a selection committee, which selection committee may be the same as the Prequalification Committee appointed by the Authority in Phase One. The selection committee will be comprised of one (1) representative of the designer, the Authority’s project manager, and at least two (2) other representatives of the Authority (the “Selection Committee”). The Selection Committee will evaluate and rank the proposals submitted in response to the RFP issued by the Authority.

2.4 **Request for Proposals (Phase Two).** After the appointment of the Selection Committee, the Authority will solicit proposals from CM Firms that are pre-qualified in Phase One. The RFP shall comply with the requirements of Chapter 149A, including matters of content and public advertising. The CM at Risk contract shall be awarded to the CM Firm that submits the highest ranked proposal with which the Authority is able to successfully negotiate.

3.0 **Request For Qualifications (Phase One)**

3.1 **Purpose.** The Authority shall utilize a Request for Qualifications in order to pre-qualify CM Firms to participate in the Request For Proposal stage (Phase Two) of the selection process.

3.2 **Prequalification Committee.** Prior to issuing a RFQ, the Authority shall establish a Prequalification Committee the role of which shall be to review and evaluate the Qualification Statements received in response to the RFQ. The Prequalification Committee shall be comprised of no fewer than four (4) persons and shall include the Authority’s project manager, a representative of the designer, and at least two (2) other representatives of the Authority.

3.3 **Advertisement.** The Authority will publicly notice the RFQ at least two (2) weeks prior to the deadline for submitting responses to the RFQ. The public notice of the RFQ shall be: (a) published in a newspaper of general circulation in the area in which the project is located; (b) published in the Central Register; and (c) listed on the COMPASS system. The Authority will make copies of the RFQ available to all interested firms on an equal basis.

3.4 **Minimum Contents of the RFQ.** The Authority shall issue a RFQ, which shall include, at a minimum, the following information:

   (a) a general description of the project that may include, if available, preliminary concept designs and key factors important to the final selection;

   (b) identification of the owner, the designer, and the owner’s project manager;
(c) a specific description of the scope of services that the CM Firm will be requested to provide during the design, pre-construction, and construction phases;

(d) a general description of the anticipated project schedule and estimated construction cost for the project;

(e) a description of the submission procedures including the time, date, and place for submission of responses to the RFQ, and information regarding the general time frame in which the Authority will respond to said responses;

(f) a description of the format to which the responses to the RFQ shall conform, including the number of copies required to be submitted;

(g) a general description of the qualifications evaluation procedure and criteria;

(h) a description of the evaluation criteria that will be used in the CM Firm selection process;

(i) a strict prohibition against any unauthorized communication or contact with the Authority or others involved with the project, outside of official pre-proposal meetings conducted by the Authority, if any; and

(j) a statement indicating that the RFQ process is being used to pre-qualify CM Firms that may be invited to submit a proposal in response to a RFP pursuant to these Procedures.

The RFQ may also impose a limit on the size and number of pages to be included in the response to the RFQ.

3.5 Qualification Statements. The RFQ shall provide that interested CM Firms shall submit a Qualification Statement (the “Qualification Statement”) in response to the RFQ, that every Qualification Statement must be signed under pains and penalties of perjury by a duly authorized representative of the submitting CM Firm, and that a Qualification Statement failing to conform to the foregoing requirement shall not be considered by the Prequalification Committee. The RFQ shall inform prospective responders that notarizing a document is not the same as signing a document under the pains and penalties of perjury and that notarizing the Qualification Statement alone does not satisfy this mandatory requirement.
The RFQ shall provide that a Qualification Statement submitted in response to the RFQ shall include, at a minimum, the following:

(a) a cover letter addressed to the Authority’s Prequalification Committee for the project;

(b) an executive summary detailing the response to each evaluation criteria, if any are set forth in the RFQ, as well as the key elements and factors that differentiate the submitting firm from other responders;

(c) completion of an application, such as the AIA Document A305, 1986 edition, or an SF330 or other similar application form that may be identified in the RFQ, providing general business information and financial capacity of the submitting firm;

(d) a list of lawsuits and arbitrations to which the firm is a party relating to construction contracts within the last three (3) years, including, if applicable, any convictions or fines for violations of state or federal law;

(e) a project organization chart identifying key project personnel whom the submitting firm proposes will have primary responsibility over the specific project, including any key subconsultants identified in the RFQ for the project, and a description of the respective roles and responsibilities of each identified person;

(f) an audited financial statement for the most recent fiscal year, which financial statement shall remain confidential and shall not be deemed a public record to the fullest extent permissible under the law;

(g) a letter from a surety company confirming the CM Firm’s ability to provide performance and payment bonds in the full amount of the estimated construction cost for the project;

(h) detailed information on the firm’s safety record including its workers’ compensation experience modifier for the prior three (3) years;

(i) evidence of the firm’s compliance record with minority business enterprise and women business enterprise inclusion goals and workforce inclusion goals, if applicable;

(j) information regarding the firm’s experience on prior projects of similar scope, cost, and complexity including references from
owners and architects (and current contact information) of no fewer than three (3) such projects within a specified period of time;

(k) information regarding the firm’s experience on prior projects delivered using construction management at risk methods, including references from owners and architects of such projects (and current contact information for them);

(l) a detailed list of any and all projects on which the firm was terminated, failed to complete the work, or paid liquidated damages to the owner within the past five (5) years, with an appropriate explanation of the circumstances surrounding each incident;

(m) a summary of the firm’s project management capabilities including specific examples of prior project management reports or other illustrations of the firm’s operating philosophy, policies, and procedures;

(n) a Certificate of Eligibility issued by the Massachusetts Division of Capital Asset Management and Maintenance (DCAM), pursuant to section 44D of G.L. c.149, showing a capacity rating sufficient for the project;

(o) a current DCAM Update Statement; and

(p) any other relevant information that the Authority determines to be desirable.

3.6 Qualification Statement Evaluation Process. The Prequalification Committee shall evaluate each Qualification Statement using the evaluation criteria provided in the RFQ. The Prequalification Committee in its discretion may elect to conduct an interview with any CM Firm that submitted a Qualification Statement if, in the opinion of the Authority, an interview is necessary to determine whether such CM Firm should be deemed qualified. Only CM Firms determined by the Prequalification Committee to be qualified pursuant to the qualifications evaluation and criteria described in the RFQ will be selected to participate in Phase Two of the selection process.

The Prequalification Committee shall pre-qualify a minimum of three (3) CM Firms. During Phase Two, the Authority shall not accept proposals submitted by firms not pre-qualified by the Prequalification Committee. The decision of the Prequalification Committee shall be final and binding and shall not be subject to appeal except on the grounds of fraud or collusion. If the Prequalification Committee is not able to pre-qualify a minimum of three (3) CM Firms, the Authority shall either: (i) re-advertise the project pursuant to G.L. c.149A; (ii) procure the project pursuant to the provisions of sections 44A to 44J, inclusive, of G.L. c.149; or (iii) procure the project pursuant to any other method of procurement authorized by law.
4.0 **Request For Proposals (Phase Two)**

4.1 **Purpose.** The Authority shall utilize a Request for Proposal process in order to evaluate CM Firms pre-qualified in Phase One and to make a final selection of a CM Firm with which to enter into contract negotiations for the project.

4.2 **Selection Committee.** Prior to issuing a RFP, the Authority shall establish a Selection Committee, the role of which shall be to review and evaluate proposals submitted by pre-qualified CM Firms. The Selection Committee shall be comprised of no fewer than four (4) persons including the Authority’s project manager, a representative of the designer, and at least two (2) other representatives of the Authority. The Authority may appoint any or all of the same individuals who served on the Prequalification Committee to serve as members of the Selection Committee for the same project.

4.3 **Minimum Contents of the RFP.** The Authority shall issue a RFP to each pre-qualified CM Firm that incorporates the elements of the RFQ and which RFP also includes, but may not be limited to, the following additional information:

(a) the date, time and place for submission of proposals;

(b) a description of the submission requirements including separate price and technical components;

(c) information concerning the project scope including any preliminary design information, geotechnical reports, existing condition surveys and specifications that may be available;

(d) information on the project schedule including design deliverables, site availability, and occupancy expectations;

(e) a detailed description of the scope of work and deliverables expected from the CM Firm during the preconstruction phase and the construction phase;

(f) the minority business enterprise and women business enterprise inclusion goals and workforce inclusion goals for the building project;

(g) a description of the communication guidelines to be followed during the procurement process including any measures to assure that the selection process will be open and fair;

(h) the form of contract between the Authority and the CM Firm, including general and supplemental conditions, and any incentive
provisions allowable under Chapter 149A or any damages for delay provisions;

(i)  the budget for the project;

(j)  a schedule of cost items including fee items, cost of the work items, and cost of general conditions items;

(k)  specific information on the proposal evaluation criteria including any rating system that will be used to evaluate and rank proposals;

(l)  a timetable and process for establishing the guaranteed maximum price ("GMP") for the CM at Risk contract, including, if known, the level of design that will serve as the basis for the GMP and limitations on the amount and use of contingency; and

(m)  a list of the trade contractor classes of work to be required in the trade contractor prequalification plan.

4.4  Price Proposal. The RFP shall require the submission of separate price and technical proposals. The price proposal shall be submitted separately from, but at the same time as, the technical proposal in a separately sealed envelope. All price information shall be submitted with appropriate back-up in sufficient detail as required by the RFP. The price proposal shall include the following information:

(a)  the preconstruction services fee, including appropriate detail, subject to the maximum preconstruction services fee as may be established by the Authority for the project;

(b)  the fee for construction services, including an explanation of the basis for the fee, subject to the maximum construction services fee as may be established by the Authority for the project;

(c)  the estimated general conditions costs with appropriate break-down thereof; and

(d)  the construction contingency, including an explanation of the proposed use thereof.

4.5  Technical Proposal. The RFP shall require the submission of a separate technical proposal which shall include:

(a)  a detailed project approach, including both preconstruction and construction phase services;
(b) supplemental relevant project references;

(c) the project team members with position descriptions and relevant time commitments of those team members throughout the course of the project;

(d) a specific construction management plan indicating CM Firm’s approach to controlling costs, schedule, quality, documents and claims;

(e) preliminary definition of trade contractor and subcontractor bid packages and scopes of work, and anticipated workers compensation payroll class codes involved in the trade contractor scope of work;

(f) affidavit of prevailing wage compliance pursuant to sections 26 through 27D, inclusive, of G.L. c.149;

(g) a commitment letter from a surety company licensed to do business in the commonwealth and whose name appears on United States Treasury Department Circular 570 stating the surety's willingness to bond the building project in the full sum of the contract at 110 percent of the budget for the building project;

(h) a technical challenges and potential solutions plan consisting of a detailed discussion of the project’s technical challenges and potential alternative solutions;

(i) any specific qualifications or exceptions to the terms of the form of contract, general conditions, or supplemental conditions as included in the RFP; and

(j) any other information deemed necessary or desirable by the Authority.

4.6 **Selection Process.** Upon receipt of the proposals in response to the RFP, the Selection Committee shall evaluate and rank each proposal in accordance with the criteria set forth in the RFP, which criteria may include any component of the technical and price proposals. The Selection Committee may elect to interview all of the pre-qualified CM Firms who submitted proposals in response to the RFP. If interviews are conducted, the Selection Committee may, but shall not be required to, consider the interview when making its evaluation of the CM Firms. The decision of the Selection Committee shall be final and not subject to appeal except on the grounds of fraud or collusion. The list and ranking of CM Firms shall be certified by the Authority and made available as a public record after such negotiations are complete and a contract has been executed with a CM Firm.

4.7 **Contract Negotiations.** The Authority shall establish a schedule and process for contract negotiations and execution of a contract between the Authority and the highest ranked CM Firm and shall commence non-fee negotiations with the highest ranked CM Firm pursuant to said schedule and process. At the conclusion of the negotiations, the Authority and the CM Firm
shall initially execute a contract for construction management at risk services, which contract may initially be limited to pre-construction services. The CM contract shall utilize a cost-plus not to exceed guaranteed maximum price form of contract, which contract shall be acceptable to the Authority in all respects. The CM contract shall stipulate that the Authority be entitled to monitor and audit all project costs as it deems necessary and prudent. If the Authority determines that negotiations with the highest ranked CM Firm will not result in a contract acceptable to the Authority, the Authority shall terminate negotiations with the highest ranked CM Firm and shall commence negotiations with the next highest ranked CM Firm. The process shall continue until the Authority has reached an acceptable contract with one of the pre-qualified CM Firms.

4.7.1 **GMP Negotiation Schedule and Process.** The Authority shall establish a schedule and process for determining the GMP and execution of the GMP Amendment to the selected CM Firm’s contract, which shall comply with the following minimum requirements:

(a) the GMP shall be established based on construction documents developed to a minimum of sixty (60) percent completion;

(b) the GMP shall include a pricing structure that specifically identifies the following costs: (a) general conditions, (b) cost of the work, (c) construction contingency, and (d) fee (or profit). The GMP shall be the maximum price payable to the CM Firm for all project costs subject to modification only in accordance with the changes provisions of the CM contract. The GMP may include an Owner’s Contingency if the Authority chooses to include such an item. The contract or the GMP Amendment shall allow the Authority to monitor and audit all costs associated with the GMP;

(c) the GMP Amendment may allow for incentives related to various performance objectives so long as the total dollars available to the CM Firm from incentive provisions shall not exceed one percent (1%) of the estimated construction cost. However, the GMP Amendment shall not include any incentive provisions related to the sharing of savings between the final GMP and the final cost of construction services;

(d) the GMP Amendment shall be executed before the commencement of any construction work; provided, however, the Authority may choose to authorize the commencement of construction work on so-called early construction packages prior to the execution of the GMP Amendment. If, in the opinion of the Authority, the project requires the implementation of one or more early construction packages, the Authority and the CM Firm shall execute a separate CM contract Amendment setting forth the scope of work and price of each early construction package. The CM Firm shall be required to provide payment and performance bonds covering the full value of each early construction package. Each early construction package
Amendment shall specify the cost of the work, the general conditions cost, and the CM fee, if any;

(e) if an early construction package is authorized by the Authority, the early construction package scope of work shall be subject to the trade contractor selection process for the stated scope of work only;

(f) in the event that a GMP cannot be successfully negotiated between the Authority and the CM Firm within the schedule established by the Authority or on terms acceptable to the Authority, any existing trade contractor or subcontractor agreements between the CM Firm and a trade contractor or subcontractor for work associated with an early construction package shall be assigned to the Authority or to another CM Firm designated by the Authority in writing without the assent of the trade contractor or subcontractor. The Authority, the CM Firm, the trade contractors, and the subcontractors shall be bound by the terms of their respective trade contractor and subcontractor agreement;

(g) the GMP Amendment to the CM Firm’s contract shall include the following information:

(i) a detailed schedule of values including a line item breakdown by trade of all costs associated with construction services including any costs for early construction packages that are be included in the GMP;

(ii) dollar amounts of the CM Firm’s contingency;

(iii) dollar amounts for the general conditions costs;

(iv) dollar amount of the CM Firm’s fee, including any fee associated with an early construction package;

(v) a detailed list of all drawings, specifications, and other information on which the GMP is based;

(vi) a list of allowances and a statement of their basis;

(vii) a list of any technical assumptions or clarifications on which the GMP is based;

(viii) the dates for substantial and final completion on which the GMP is based; and

(ix) a schedule of applicable alternates and unit prices;
4.7.2 **Failure to Reach Agreement.** In the event that the Authority is unable to negotiate a GMP with the CM Firm in accordance with the schedule and procedure established by the Authority, the Authority may commence non-fee contract and GMP negotiations with the next highest ranked CM Firm in accordance with a revised schedule and procedure established by the Authority. In the event that a contract and GMP Amendment cannot be successfully negotiated between the Authority and the next highest ranked CM Firm within the schedule established by the Authority and on terms acceptable to the Authority, the Authority shall terminate the Chapter 149A process and shall instead procure the project in accordance with sections 44A to 44J, inclusive, of G.L. c.149. Following such termination, the Authority may not use the Chapter 149A CM at Risk delivery method for the same building project unless the building project has been materially changed in form or function.

5.0 **Trade Contractors and Subcontractors**

5.1 **Definitions.** The term “trade contractor” shall be defined as those firms performing any sub-bid classification of work listed in section 44F of G.L. c.149, or any other sub-bid class of work specifically identified by the Authority for the project, provided that the sub-bid work meets or exceeds the threshold sum identified in subsection (1) of section 44F of G.L. c.149. The term “subcontractor” shall refer to those subcontractors who are not trade contractors.

5.2 **Applicability.** The Authority shall establish separate processes with respect to the prequalification of trade contractors. If the actual cost of trade contractor work falls below the threshold sum identified in subsection (1) of section 44F of G.L. c.149, the CM Firm may award such contracts using any reasonable and fair selection method, so long as such selection method documented in writing by the CM and approved by the Authority in writing prior to implementation.

5.3 **Self-Performed Work.** The CM Firm may submit its qualifications to bid on trade contract or subcontract work in accordance with this Section provided that: (a) the CM Firm customarily performs the work for which it submits qualifications; (b) the CM Firm performs such work with employees on its own payroll; (c) the CM Firm meets all requirements of the trade contractor or subcontractor selection process; and (d) the CM Firm does not participate as a member of any prequalification or selection committee relative to a trade for which it seeks to submit qualifications and/or bids. In such cases, the Authority shall appoint a person to carry out the prequalification and selection committee responsibilities of the CM Firm.

5.4 **Trade Contractor Selection Process.**

5.4.1 **Trade Contractor Prequalification.** The Authority shall issue a Trade RFQ in order to solicit Qualification Statements from all interested trade contractors, and to pre-qualify
trade contractors to participate in the project. The Authority shall develop a Trade RFQ for each category of trade contractor work. Any entity performing trade contractor work on the project shall be pre-qualified in accordance with the trade prequalification process described in this Section.

5.4.2 **Trade Prequalification Committee.** Before issuing a request for qualifications for trade contractor work, hereinafter referred to as a Trade RFQ, the Authority shall establish a Trade Prequalification Committee for the purpose of reviewing and evaluating Qualification Statements received from trade contractors in response to a Trade RFQ. The Trade Prequalification Committee shall be comprised of one (1) representative of the designer, one (1) representative of the CM Firm, and two (2) representatives appointed by the Authority (the “Trade Prequalification Committee”).

5.4.3 **Advertisement of Trade RFQ.** Each Trade RFQ shall be advertised at least two (2) weeks prior to the deadline for submitting responses to the Trade RFQ. The advertisement shall be (i) published in a newspaper of general circulation in the area in which the project is located, (ii) published in the Central Register, and (iii) listed on the COMPASS system. The public notice and advertisement shall appear at least 2 weeks prior to the deadline for submitting responses to the Trade RFQ, and shall contain the following information, at a minimum:

(a) the date, time and place for submission of Qualification Statements;
(b) relevant information about the project and the bidding process;
(c) specific criteria for trade contractor prequalification and selection;
(d) a statement indicating that the RFQ will be used to pre-qualify trade contractors that will be invited to submit a bid; and
(e) a statement that the procurement process does not include a public opening of Qualification Statements received from trade contractors, but indicating that responders’ names will be posted.

The CM Firm shall provide detailed information describing the scope of work required for each category of trade work, which description shall serve as the basis for the Trade RFQ. The Trade RFQ shall require only the information set forth below in this paragraph, and shall identify the specific point allocation for each category of information. The Authority will use its discretion in allocating points among the subcategories, consistent with the total points for the category as indicated below.

(A) Management Experience (50 points total with a minimum requirement of 25 points necessary to be pre-qualified):

(i) Ownership – including name, title, years with firm of each of the owners of the business;
(ii) Personnel – including names, titles, years with the firm, education, construction experience, and a list of projects completed by each person identified;

(iii) Similar Project Experience – detailed information on similar projects completed within that period of time specified in the Trade RFQ. Such information shall include the project name and general description, description of the scope, original trade contract sum, final trade contract sum with a detailed explanation of any differences, and the original completion date and final completion date with a detailed explanation of any differences;

(iv) Terminations – a list of any projects on which the trade contractor was terminated or failed to complete the work.

(v) Lawsuits – a list of lawsuits commenced within the last three years in which the trade contractor is a defendant or defendant-in-counterclaim. Such list does not have to include lawsuits involving primarily personal injury or workers’ compensation claims, or where the sole cause of action involves the trade contractor’s exercise of its rights for direct payment under section 39F of G.L. c.30.

(vi) Safety Record – a three (3) year history of the trade contractor’s workers’ compensation experience modifier.

(B) References (30 points with a minimum requirement of 15 points necessary to be pre-qualified):

(i) Clients – a list of references for all projects listed in A(iii) above including the project name, client’s name, address, telephone and fax number, and contact person. The trade contractor should ensure that such contact information is current and usable.

(ii) Credit – a list of a minimum of 5 credit references, including telephone and fax number of contact person from key suppliers, vendors and banks. The trade contractor should ensure that such contact information is current and usable.

(iii) Public Project Record – a list of all completed public building construction projects as defined in section 44A of G.L. c.149 during past three (3) years with client’s name, address, telephone and fax number and contact person. The trade contractor should ensure that such contact information is current and usable.
CM at Risk Procedures under M.G.L. c.149A

(C) Capacity to Complete Projects (20 points with a minimum requirement of 10 points necessary to be pre-qualified):

(i) Annual revenue for prior three (3) fiscal years. There shall be no requirement for submission of financial statements.

(ii) Revenue under contract for the next three (3) fiscal years.

(D) Mandatory Requirements (for which no points are assigned):

(i) Commitment Letter for payment and performance bonds at 110 percent of the estimated trade contract value from a surety company licensed to do business in the Commonwealth and whose name appears on United States Treasury Department Circular 570.

(ii) a Certificate of Eligibility issued by DCAM pursuant to section 44F of G.L. c.149 for each category of trade work for which the trade contractor seeks to be pre-qualified.

(iii) a current DCAM Update Statement.

5.4.4 Trade Contractor Qualification Statements. Each Trade RFQ shall provide that every Qualification Statement submitted in response to a Trade RFQ must be signed under pains and penalties of perjury by a duly authorized representative of the submitting CM Firm, and that a Qualification Statement failing to conform to the foregoing mandatory requirement or any other mandatory requirement set forth in the RFQ shall not be considered by the Trade Prequalification Committee. The RFQ shall also inform trade contractors that notarizing a document is not the same as signing it under the pains and penalties of perjury and therefore that notarizing the Qualification Statement alone does not satisfy this mandatory requirement.

5.4.5 Trade Contractor Evaluation. Qualification Statements submitted by trade contractors shall be reviewed and scored by the Trade Prequalification Committee. The Authority may provide an additional 5 points to the total score of each DBE, MBE or WBE trade contractor who is certified by SOMWBA and participates in the Trade Prequalification Process. All trade contractors who achieve a score of 70 points or greater shall be pre-qualified and entitled to submit a bid. The Authority shall notify the pre-qualified trade contractors of their approval to submit a bid in that trade as well as the schedule and timing for the issuance of the Request for Bids, if known. The decision of the Trade Prequalification Committee shall be final and binding and not subject to appeal except on the grounds of fraud or collusion.

An individual trade contractor’s score shall be made available to the trade contractor upon request, but shall not be a public record as defined in section 7 of chapter 4 and shall not be open to public inspection to the fullest extent possible under the law. In addition, financial information provided by a trade contractor in response to the Trade RFQ shall remain
confidential and shall not become a public record as defined in section 7 of chapter 4 and shall not be open to public inspection to the fullest extent possible under the law.

5.4.6 **Trade Contractor Bidding Process.** Pre-qualified trade contractors shall be invited to submit a bid within their trade pursuant to a Request for Bids. The Request for Bids shall include, but may not be limited to, the following information:

(a) the date, time and place for submission of bids,

(b) fully detailed drawings and specifications for a particular trade in order to provide for full competition of each item of material to be furnished under the trade contract in accordance with G.L. c.30 and c.149;

(c) a description of the trade contractor’s scope of work, including alternates and allowances, if any;

(d) a project schedule indicating the planned sequence and duration of the trade contractor's work;

(e) a list of all pre-qualified trade contractors for a particular scope of work;

(f) a bid form that shall require, without limitation, a listing of price, addenda, alternates and allowances, if any, for the trade work; certification that the trade contractor will perform the complete trade work with employees on its own payroll, except for work customarily performed by sub-trade subcontractors within the trade; the names of all sub-trade contractors to be used if awarded the trade contract with the contract sum for each sub-trade contractor, and anticipated workers compensation payroll class codes involved in the trade contractor scope of work;

(g) an affidavit that all sub-trade contractors named on the bid form have been pre-qualified by the trade contractor using criteria similar to the criteria used in the trade prequalification process;

(h) an affidavit of tax compliance;

(i) an affidavit of prevailing wage compliance pursuant to sections 26 through 27D, inclusive, of G.L. c.149;

(j) a non-collusion affidavit;
(k) a requirement for the trade contractor to post a five (5) percent bid bond from a surety company licensed to do business in the commonwealth and whose name appears on U.S. Treasury Department Circular 570; but, the bid bond shall be returned to the bidder if the bidder is not selected as the trade contractor;

(l) the budget for the entire project, as well as the budget for the trade contractor scope of work as provided in the GMP, if available, or as provided in the most recent budget for the project; and

(m) a trade contractor agreement form including all exhibits.

Bids shall be opened publicly by the Authority and a contract shall be awarded to the lowest prequalified bidder. Any bid which does not include the bid bond or affidavits required or any response in which the information requested is incomplete, conditional, or obscure or which contains any additions not required in the request for bids shall be rejected. If the Authority receives fewer than three (3) responsive bids for any trade and the lowest bid exceeds the estimated cost of the work for which the bids are requested, the CM Firm shall attempt to negotiate an acceptable price with the lowest prequalified bidder. If the negotiations are unsuccessful, the CM Firm shall terminate negotiations with the lowest prequalified bidder and shall initiate negotiations with the trade contractor who was the second lowest prequalified bidder. If the CM Firm is unsuccessful in negotiating an acceptable price with the lowest prequalified bidder and second lowest prequalified bidder, the CM Firm, on behalf of and with the consent of the Authority, may solicit additional bids, utilizing the Subcontractor Selection Process established by the Authority for those subcontractors not interested in providing sub-bid work.

5.4.7 Trade Contractor Agreements. Trade contractors selected by the CM Firm shall return an executed trade contract, consistent with the form specified in subsection (k) of Section 8 of Chapter 149A, including the required performance and payment bonds, insurance certificate, and any other form or exhibit that may be required by the Authority in the Request for Bids to the CM Firm within ten (10) business days of receipt of the trade contract from the CM Firm. The CM Firm shall execute a trade contract with each trade contractor.

5.5 Subcontractor Selection Process. For subcontractors who are not trade contractors as defined herein and whose work has an estimated cost at or exceeding the threshold sum identified in subsection (1) of Section 44F of G.L. c.149, the CM Firm shall provide the Authority with a detailed written description of the qualifications that a subcontractor must have in order to perform the work successfully as well as a list of three (3) subcontractors that the CM Firm believes meet such qualifications. The Authority may, without the approval of the CM Firm, eliminate subcontractors proposed by the CM Firm and may consider additional subcontractors as long as such additional subcontractors are reasonably acceptable to the CM Firm.
Once all of the approved subcontractors are identified, the CM Firm shall prepare a list of approved subcontractors for each specific scope of subcontractor work. The CM Firm shall develop detailed bidding information and provide such information to each subcontractor on the list of approved subcontractors and invite each approved subcontractor to submit a written bid for the work. The CM Firm shall indicate the bidders who are selected to be awarded a subcontract and shall provide to the Authority a written explanation as to the reason for the award of a subcontract.

If the CM Firm submits a bid to self-perform subcontract work, all bids shall be transmitted to the Authority’s project manager. The project manager shall present a list of the bids submitted by approved subcontractors to the Authority and shall indicate the bidders who are selected to be awarded a subcontract.

If the cost of the subcontract work falls below the threshold sum identified in subsection (1) of section 44F of G.L. c.149, the CM Firm may award contracts using any reasonable and fair selection method, so long as such selection method is approved by the Authority.

5.5.1 **Subcontractor Agreements.** The CM Firm may utilize the statutory form of trade contract, or a different form of subcontract acceptable to the Authority.


*End of Document*
ATTACHMENT 4

Master Services Agreement for Professional Services
Between Owner and Architect
MASTER SERVICES AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN OWNER AND ARCHITECT

This AGREEMENT made and entered into as of the XX day of Month 202X by and between the Owner and the Architect in connection with the Project, all as defined below.

Owner: UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY, an entity established by Chapter 773 of the Acts of 1960, as amended, having its usual place of business at 100 Carlson Avenue, Newton, Massachusetts 02459.

Architect: Firm, having a principal place of business at Address.

Project: The one or more projects described in Section 1.2 of this Agreement and in a Project Addendum (each a “Project,” and together the “Project”)

Attachments:

Attachment A: Form of Project Addendum
Attachment B: Owner’s Construction Management at Risk Procedures
Attachment C: Authority’s Minority and Women Project Participation Requirements
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The Owner and the Architect enter into this Master Services Agreement for Professional Services (the “Agreement”) on the terms and conditions hereinafter set forth and specifically incorporate into this Agreement the Attachments referenced above. The specific scope will be defined in the Project Addendum for a given Project (or task).

ARTICLE 1. GENERAL, DEFINITIONS AND PROJECT INFORMATION

§ 1.1 Term of Agreement. Unless terminated in accordance with the provisions of this Agreement, this Agreement shall continue in force and effect for a period of three (3) years, plus the actual duration, beyond such three (3) year period, of the Architect’s obligations with respect to each project, undertaken by the Owner or an UMass Campus, for which the Owner has engaged the contracting firm to provide Architectural and Engineering (“Design”) services during such three-year period and for which the Owner and the Architect have executed a Project Addendum. Notwithstanding the foregoing, the Owner shall have the option to extend the term of this Agreement by executing a written extension signed by the parties with up to (2) one year extensions beyond the initial three years.

§ 1.2 Applicable Projects. During the term of this Agreement, the Owner may select the Architect to provide design services in connection with one (1) or more Projects (or Tasks) undertaken by the Owner or an UMass Campus. For each project for which the Owner selects the Architect to provide such services, the Owner and the Architect shall execute a Project Addendum in the form attached hereto as Attachment A, which Project Addendum shall be an amendment to this Agreement, and shall set forth for the applicable project the Architect’s Project staff assigned to such project, the Project schedule when known, and the hourly billing rates of the Architect, its staff and consultants. Each project which is the subject of a Project Addendum executed by the parties is hereinafter referred to as a “Project”, and together all such projects are referred to as the “Projects.”

§ 1.3 Architect’s Services. The Architect shall provide the professional services and all other services and perform all other obligations as set forth in this Agreement and the applicable Project Addendum pursuant to the terms and conditions hereof. The Architect acknowledges and accepts the relationship of trust and confidence established by this Agreement between the Owner and the Architect in connection with the assigned Projects and undertakes to protect and further the interests of the Owner with respect to the Projects. The Architect’s services consist of those services performed by the Architect, the Architect’s employees, and the Architect’s consultants.

§ 1.4 Standard of Care. The Architect shall exercise due care and diligence in the rendering of all services under this Agreement in accordance with the applicable professional standards and practice applicable to design professionals engaged in performing comparable services in the geographic area of each Project. The Architect’s services shall be performed as expeditiously as is consistent with such standards, the Owner’s approved schedule for design services, and the orderly progress of the Project.
§ 1.5 Schedule for Design Services. Within fourteen (14) days of the award of each Project, the Architect shall submit, for the Owner’s approval, a schedule for the performance of the Architect’s services which, when approved, shall be attached to the Project Addendum. The Project Design Schedule shall conform to the milestone dates set forth in the Request for Proposals for a given Project, and shall be developed using commercially available Critical Path Method (CPM) scheduling software compatible with Primavera® software, or such other software approved by the Owner, and, all submissions shall be provided electronically in both executable and PDF format.

The Project Design Schedule shall be acceptable to the Owner in form, substance, and detail and shall be based on an orderly, reasonable, efficient, and economical progression of the Architect’s services, allowing adequate time for each phase of the Architect’s work and for the performance of services by the Owner’s other consultants and contractors. The Project Design Schedule shall include design milestone dates, anticipated dates when cost estimates or design reviews will occur, and allowances for periods of time required (1) for the Owner’s review, (2) for the performance of the Owner’s other consultants and contractors, and (3) for approval of submissions by authorities having jurisdiction over the Project. The Architect shall update the Project Design Schedule no less frequently than monthly and shall submit such updates to the Owner, along with a schedule narrative explaining any changes made from the approved schedule as well as the prior month’s submission, with each payment application. The Project Design Schedule may be adjusted by the Owner as the Project proceeds. The Architect shall consult with the Owner regarding the Owner’s desired Project milestone dates, which milestone dates shall be subject to modification by the Owner at any time and for any reason. To the extent Project milestone dates are known at the time of execution of this Agreement, they shall be set forth in the Project Design Schedule.

§ 1.6 Staffing, Time of the Essence. The Architect shall provide sufficient personnel to complete the services required for each Project and this Agreement in a continuous and timely manner and shall meet the approved Project Design Schedule, and all other dates and time requirements established pursuant to the Project Addendum. Time limits established by the Project Design Schedule as approved by the Owner shall not, except for causes beyond the Architect’s reasonable control, be exceeded by the Architect. In the event the Architect recognizes that such time limits may be exceeded, the Architect shall promptly notify the Owner in writing. The Architect shall explain in detail the reasons why the time limits may be exceeded and propose steps, for review and approval by the Owner, to accelerate the design schedule to recover the original milestones or minimize the delay. The Architect acknowledges that time, including each design and construction milestone date, is of the essence of this Agreement.

§ 1.7 Responsibility for Architect’s Consultants. Subject to the provisions of this Agreement, whenever the services of consultants to the Architect are required, the Architect shall employ them and be responsible for their work, payment, and the coordination and supervision thereof in all respects. The Architect shall be fully responsible for the professional and technical accuracy of the services rendered by all consultants, whether listed in the Project Addendum or otherwise engaged pursuant to this Agreement, and for the coordination of all designs, drawings,
§ 1.8 Employment of Consultants. The Architect shall retain the Consultants identified in the Project Addendum to this Agreement. Except as specifically provided in this Agreement, the Architect shall not employ any consultants, or sublet, assign or transfer any part of its services, obligations, or responsibilities under this Agreement without the prior written approval of the Owner. The Architect shall provide the Owner with complete copies of its contracts, including the Project Addendum(s) with each of its consultants within fourteen (14) calendar days of the execution of any such contracts. No agreement between the Architect and any of the Architect’s consultants may include any limits on liability unless approved in writing by the Owner prior to the execution of the consultant agreement. In all respects, the Architect shall bind its consultants in the same manner as the Architect is bound to the Owner. As part of this obligation, the Architect shall require and be held responsible to ensure that its consultants purchase and maintain insurance coverages in the types and limits at least equal to the requirements in Article 8 and defense and indemnification obligations of Article 9 hereof. If, at any time during the course of the Project, the Owner has an objection to any one or more of the Architect’s consultants for any reason, the Architect shall, after receiving written direction from the Owner, replace the consultant(s) with new consultant(s) acceptable to the Owner. The Architect’s compensation shall be equitably adjusted for the increase or decrease in the cost of the new consultant’s services. The Architect shall not replace any consultant without the Owner’s prior written approval, which approval shall not be unreasonably withheld.

§ 1.9 Licensure. Architect’s employees and consultants engaged on each Project shall be registered in Massachusetts in their respective disciplines if registration is required by Applicable Laws, as hereinafter defined. The Architect represents and warrants that its employees and consultants are duly qualified, licensed, and authorized by law to perform the services required under this Agreement. Each of Architect’s employees and consultants shall also be experienced and competent in the work assigned to them.

§ 1.10 Architect’s Key Project Team Members. The Architect has designated its key project team members (“Key Project Team Members”) including a Principal-in-Charge and Project Manager who will have overall responsibility for the delivery of services and completion of the Project (the Key Project Team Members being identified in the Project Addendum to this Agreement), and all other team members identified in the Architect’s proposal. The Key Project Team Members shall be available to devote the time and attention necessary to ensure complete and timely delivery of all services under this Agreement. The Architect has also designated one of the Key Project Team Members as the authorized representative to bind the Architect with respect to contract modifications and other legal matters, such designated person also being identified on the Project Addendum. The Architect shall not replace any Key Project Team Member or the representative authorized to bind the Architect without the Owner’s prior written approval, which approval shall not be unreasonably withheld.

§ 1.11 Participation by Minority Business Enterprises/Women Business Enterprises. The Authority is committed to equal employment opportunity and non-discrimination on all of
its projects and will take affirmative action to ensure equal employment opportunity and to eliminate discriminatory barriers. The Project will have the following participation goals for minority business enterprises (MBE) and women business enterprises (WBE) and for workforce utilization:

- Design MBE/WBE participation goals: MBE: 6.6%; WBE: 15.0%
- Construction MBE/WBE participation goals: MBE: 4.2%; WBE: 8.8%
- Construction workforce: Minorities: 15.3%; Women: 6.9%

All provisions related to the participation of MBE/WBE set forth in the RFQ and the Authority’s Minority and Women Project Participation Requirements as attached hereto as Attachment C.

§ 1.12 Construction Delivery Method. The Owner intends to procure construction services for this Project in accordance with: (i) the Owner’s Enabling Act, c. 773 of the Acts of 1960, as amended; (ii) M.G.L. c. 149 §§ 44A through 44H (or) M.G.L. c. 149A, §§ 1-13; (iii) the Owner’s Construction Management at Risk Procedures under M.G.L. c. 149A (the “CM at Risk Procedures,” attached hereto as Attachment B); and (iv) all other Applicable Laws.

§ 1.13 Definitions. Where appearing in this Agreement, the terms identified below shall have the following definitions.

Additional Services – All services other than Basic Services to be performed by the Architect as described in Project Addendum and this Agreement in accordance with the terms and conditions of this Agreement.

Applicable Laws – Applicable statues, acts, rules, regulations, requirements, executive orders, directions, ordinances, by-laws, codes, judgments, decrees, and injunctions of or by the United States of America, the Commonwealth of Massachusetts, and any political subdivisions of either of them, and any agency, department, commission, board, bureau, or instrumentality of any of them, that are in any way applicable to the Project.

Basic Compensation – The amount of fee specified in the Project Addendum and this Agreement to be paid to the Architect for performance of Basic Services in accordance with the terms and conditions of the Agreement.

Basic Services – All services required to be performed by the Architect as described in the Project Addendum and Article 2 of this Agreement in accordance with the terms and conditions of this Agreement.

Construction Contract – The contract for construction management at risk services, or firm fixed price contract, executed between the Owner and the Construction Manager or the Construction Contractor, including all general, supplementary, and technical conditions applicable thereto.

Construction Contractor – The general contractor holding a firm fixed price construction contract or cost plus fixed fee with a guaranteed maximum price contract with the Owner for the Project. Throughout this document, the terms General Contractor, Construction Contractor and Construction Manager shall be interchangeable.

Construction Documents – As described in Section 2.6.
Construction Manager – The construction management firm holding a construction management at risk contract with the Owner for the Project. Throughout this document, the terms Construction Contractor and Construction Manager shall be interchangeable.

Contract Amendment – A written modification to the Project Addendum or this Agreement executed by the Owner and the Architect. Contract Amendments shall be in the form attached to the Project Addendum.

Contract Documents – The fixed-price construction contract, the specifications and drawings or, if applicable the Agreement and General Conditions between Owner and Construction Manager for Construction Management at Risk Services, the GMP Amendment, the OCIP Insurance Manual, the specifications and drawings. The Contract Documents shall also include all Contract Modifications.

Contract Modification – Any properly issued and executed contract amendment, addendum, Change Order, Construction Change Directive, or written order for a minor change in the Work not impacting the GMP or the Master Project Schedule.

Cost of the Work – The Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Manager’s general conditions costs, bonds, insurance, overhead, and profit. The Cost of the Work shall not include the compensation of the Architect, the costs of the land, rights-of-way, financing, and contingencies for changes in the work or other Project-related soft costs that are the responsibility of the Owner.

Day – Calendar day unless otherwise indicated.

Independent Engineer/Commissioning Agent – The entity holding a contract with the Owner to provide independent engineering and/or commissioning agent services on the Project.

Owner’s Project Manager (“OPM”) – At the discretion of the Owner, an Owner’s Project Manager may be retained by the Owner to administer and manage the Project on behalf of the Owner as the Owner’s authorized representative. Wherever in this Agreement, reference is made to the “Owner” it shall be understood that the Owner may act by and through the OPM. Wherever notice may or must be given by the Owner, such notice may be given by the OPM. Wherever notice may or must be given to the Owner, such notice shall be given to both the Owner and the OPM.

Permits – Governmental, quasi-governmental and other necessary permits and approvals, including the filing of notices or information with governmental or quasi-governmental entities and authorities, that are necessary for the implementation of the Project at the Project site. The term shall include permits, approvals, and/or back-charges from utility companies and may also include permissions, approvals and consents by private parties necessary for the design and construction of the Project, such as an approval by a landlord or other holder of an interest in the Project site.

Reimbursable Expenses – Expenses that are incurred by the Architect that are eligible for reimbursement by the Owner in addition to the Basic Compensation. Reimbursable Expenses are limited to those set forth in Section 7.7 of this Agreement, and all require the Owner’s prior
written approval. All other expenses of the Architect shall be included in the Basic Compensation and shall not be eligible for reimbursement.

Capitalized terms not defined in this Agreement shall have the meanings defined elsewhere in the Construction Documents or the Construction Contract.

§ 1.14 Attachments. All Attachments, and each one of them, referenced in this Agreement are incorporated in their entirety as if fully restated in the body of the Agreement. Any term, condition, or limitation of any nature contained in any Attachment to this Agreement prepared or generated by the Architect shall not be binding on the parties hereto if such term, condition, or limitation conflicts with any term, condition, or limitation contained in the body of this Agreement.

ARTICLE 2. SCOPE OF ARCHITECT’S BASIC SERVICES

§ 2.1 Overview. The Architect’s Basic Services consist of those described in the Project Addendum and in this Article 2 and may include usual and customary architectural, geotechnical engineering, code compliance, accessibility, sustainability, structural engineering, mechanical engineering, electrical engineering, plumbing engineering, fire protection engineering, acoustic engineering, lighting design, interior design, telecommunications, civil engineering, landscape design, all permitting, cost estimating and scheduling, any other services described in the Project Addendum and this Agreement, and any other services customarily performed by architects on projects of similar size, type, scope, and complexity.

Notwithstanding the foregoing, the services described in Section 3.1 as Additional Services shall be compensated as Additional Services in accordance with Section 7.5 or 7.6 of this Agreement. The Owner reserves the right in its sole discretion to adjust the Architect’s scope of services and the Architect’s fee for Basic Services based on the findings and outcome of any phase of work, the decision on the method of procurement of construction services, or any other factors that may affect the Project.

§ 2.2 General Obligations (All Phases). During each phase of the Project, the Architect shall perform the services set forth in this Section 2.2 as a part of Basic Services, unless otherwise indicated.

§ 2.2.1 Coordination and Collaboration. The Architect shall manage and coordinate the Architect’s services and the services of the Architect’s consultants, consult with the Owner, research and establish applicable design criteria, attend and facilitate Project meetings, communicate with members of the Project team, and report progress to the Owner. The Architect shall fully coordinate its services with those services provided by the Owner, the OPM, and the Owner’s other consultants and contractors. The Architect shall also continuously cooperate and collaborate with the Owner, the OPM, the University (with oversight by Owner), and the Owner’s other consultants and contractors, including but not limited to, the Construction Manager, the Independent Engineer/Commissioning Agent, and their respective subconsultants and subcontractors, throughout the duration of the Project to the extent appropriate given the phase of the Project to ensure close collaboration and appropriate exchange of information.
regarding all aspects of the design and construction of the Project. The Architect shall endeavor to promote harmony and effective communication between and among all Project participants for the duration of the Project.

§ 2.2.2 Information Exchange. The Architect shall provide to the Owner and each of the Owner’s other consultants and contractors, and their respective subconsultants and subcontractors, all necessary documents, analyses, data, and information, regardless of physical form, to enable such parties to timely and efficiently perform their services under their respective contracts with the Owner.

§ 2.2.3 Sustainable Design. Unless otherwise stated, the Project shall be designed so that it is certifiable according to LEED standards at no less than a LEED Silver for New Construction certification level; however, the Authority has not yet determined whether the project will be submitted to the USGBC for certification. Therefore, the Architect shall be responsible for coordinating the delivery of all LEED and associated sustainable design services required for the Project but shall NOT register the project with the USGBC or submit any documentation to the USGBC unless specifically directed by the Authority. The Architect shall perform such services in a timely fashion as early as practicable during the Project to allow the Owner to make decisions regarding sustainable design elements in the most efficient manner so as to not delay the Project or cause the Architect to re-render any services. All LEED and sustainable design services necessary to obtain LEED Silver certification, including the Architect’s written comparative analysis of achieving, as an alternative, LEED Gold or higher certification, shall be included as a part of Basic Services including identification of cost to obtain each higher level of LEED certification. If a higher level of LEED certification is selected by the Owner, any incremental services required of the Architect shall be performed as Additional Services on a negotiated fixed fee basis. All LEED-related registration fees shall be paid as reimbursable expenses and shall be limited to the actual fees incurred without any premium or markup by the Architect. In performing Basic Services relating to LEED, the Architect shall, at a minimum:

(a) Provide at least one LEED Accredited Professional approved by the Owner (“LEED AP”) to serve as the LEED team leader to develop and implement the LEED program for the Project.

(b) Review the University’s Green Building Design Guidelines (if applicable);

(c) Assemble a sustainable “Green Team” composed of members of the Architect’s design team, the Owner, the University, and other Project stakeholders (subject to the approval of the Owner) who will establish and implement the sustainable design goals for the Project;

(d) Conduct a sustainable design charrette with the Green Team at the inception of the Project to identify alternative sustainable design strategies and establish LEED goals for the Project;

(e) Recommend to the Owner a plan for achieving LEED Silver, or higher, certification. This plan will include, but may not be limited to: (i) a comparative analysis of the requirements to achieve LEED Silver, or higher, certification including an explanation of
why each LEED credit is or is not feasible or cost effective; (ii) an analysis of the design and construction cost impacts, life-cycle cost impacts, and performance benefits of each LEED credit requirement; (iii) an analysis of the incremental LEED-related costs for each higher certification level compared with a LEED Silver design and a non-LEED design; and (iv) the schedule impact, if any, of each higher level of LEED certification;

(f) During each phase of design, perform the required calculations, conduct the required energy modeling, and compile and review the required information needed to meet the LEED prerequisites and credit requirements. Prior to the expiration of one year from the date of Substantial Completion, perform an energy analysis to compare the final model with the actual data on energy usage, and conduct any necessary review to reconcile actual energy usage with the model;

(g) Fully integrate the LEED process, goals, and budget into all phases of the design and construction documents;

(h) Prepare drawing and specifications that incorporate LEED requirements and design elements in the Contract Documents to define the Construction Manager’s responsibilities and documentation requirements related to LEED certification; and

(i) Provide LEED certification services throughout the duration of the Project.

If the Authority determines to submit the Project for LEED certification, the following services will be required of the Architect as Additional Services:

(a) If directed by the Authority, register the Project with the U.S. Green Building Council (“USGBC”);

(b) If directed by the Authority, submit all appropriate documentation, including all required calculations and documentation, throughout the design and construction process to the USGBC;

(c) If directed by the Authority, prepare responses and submit additional documentation required by comments or questions received from the USGBC after review of the documentation submitted by the Architect;

(d) If directed by the Authority, submit all prerequisites and credits for review by the USGBC at the completion of the Project and oversee all matters pursuant to the issuance (or denial) of certification including any appeals which may be filed after either review period;

(e) Work with the Owner to apply for and administer the receipt of any and all state, local and private sector initiatives that may result in grant or rebate monies to be applied to the Project’s LEED initiative;

(f) If directed by the Authority, prepare a final LEED certification report documenting the LEED rating the Project achieved, including the LEED certification plan, LEED certification documentation submitted, and LEED certification reviews received from the USGBC, together with the specific LEED credits that the Project is recognized as having received. The final LEED certification report shall include a detailed summary of the Owner’s post-commissioning obligations with regard to the LEED-certified elements of
§ 2.2.4 Coordination with Governmental Entities. In collaboration with the Owner and the University, the Architect shall, at appropriate times commencing in the Schematic Design Phase, contact and coordinate with the governmental entities required to approve the Construction Documents and the other entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental and non-governmental authorities and by such entities providing utility services.

§ 2.2.5 Other Projects. The Architect shall render its services in coordination with all other projects on the University campus that may impact, or be impacted by, this Project.

§ 2.2.6 Environmental Analysis, Permitting, and Design. Unless otherwise set forth herein or agreed to in writing, with the exception of the standard building permits customarily obtained by the general contractor/construction manager, the Architect shall obtain all other permits required to implement Architect's design as part of Basic Services required under the Agreement. The Architect shall obtain the prior approval of the Owner of all permit applications, notices, and accompanying documentation before filing them with the appropriate governmental entity or other party. The Architect shall provide the Owner with a list of all permits required to implement the design at the site as soon as possible during design development, shall schedule target dates for the procurement of such permits, and shall regularly update such list and schedule during the term of this Contract. The Architect shall certify in writing at the time that construction documents (or changes thereto) are submitted to the Owner that the Architect has identified all permits required to implement the Project and that those not identified in writing as being the responsibility of the Owner have been identified in the specifications as being the Construction Contractor’s/Construction Manager’s responsibility. The Architect shall also provide to the Owner a written certification of all Permits required to implement change order work at the site when the Architect submits for approval any change order request to the Owner during the construction phase of the Project, whether the change order request was made by the Architect, Owner, or the Construction Contractor/Construction Manager. Notwithstanding the foregoing, for the following services that may be required in connection with the permitting activities, the Architect shall be compensated as follows:

a. With respect to environmental permitting, the Architect shall conduct an environmental permitting analysis as required in each phase of the Project (and update in each phase as necessary) and shall assist the Owner and the University in connection with their responsibilities for filing documents required with respect to environmental permitting as part of Basic Services. It is anticipated that the Owner will prepare and file Environmental Notification Forms (ENF) and Environmental Impact Reports (EIR) during the Design Development phase of the Project. To the extent that the Owner requests the Architect to prepare and submit such ENF or EIR for the Project, the Architect shall be compensated as Additional Services. The Architect’s provision of information and documentation within the technical expertise of the Architect and its
b. To the extent that it is determined that the Project requires a Project Notification Form (PNF) to be submitted to the Massachusetts Historical Commission, it is anticipated that the Owner will prepare and submit the PNF. To the extent that the Architect is required to prepare and submit the PNF on behalf of the Owner, then the Architect shall be compensated as Additional Services. The Architect’s provision of information and documentation within the technical expertise of the Architect and its Consultants that is necessary for the Owner to file such PNF forms shall be included in Basic Services.

c. Any required attendance by the Architect at any public hearing in connection with any permit shall be considered an Additional Service to be compensated in accordance with Section 7.5 of this Agreement.

Any permit application fee shall be considered a Reimbursable Expense to be reimbursed in accordance with the provisions of Section 7.7 of this Agreement.

§ 2.2.7 Procurement of Additional Consultants. Whenever the services of a special consultant or expert, which is not a part of the Architect’s consultant team at the beginning of a Project, are requested by the Owner or, in the opinion of the Architect, required on the Project, the Architect shall prepare, with the prior written approval of the Owner, requests for qualifications, requests for proposals, and such other documents as may be necessary in the opinion of the Owner to procure the required services. The Architect shall obtain a minimum of three (3) competitive proposals from qualified consultants or experts and shall deliver same to the Owner, together with the Architect’s written recommendation as to which consultant or expert should be selected and the reasons for such recommendation. The Architect shall retain such consultants or experts only upon written approval of the Owner and shall be compensated for same as Additional Services in accordance with Section 7.6.

§ 2.2.8 Procurement of Construction Inspection and Materials Testing Services. The Architect shall retain the services of a construction inspection and materials testing company, approved by the Owner, which shall provide all independent inspection services and materials testing and analysis required during the construction of the Project, including, but not limited to soil, concrete, masonry, steel, and fireproofing. The Architect shall procure such services using the procedures set forth in Section 2.2.7, and shall be compensated for same as Additional Services in accordance with Section 7.6. The Architect’s services required to coordinate and administer testing and inspection services, review and comment on testing reports, etc. shall be considered base contract scope and included in Basic Services.

§ 2.2.9 Review of Information. Throughout the Project, the Architect shall review all data, information, materials and reports submitted by the Architect’s consultants, by the Construction Manager, and by all other consultants, experts and consulting companies, including those described in Sections 2.2.7 and 2.2.8, that provide services in connection with the Project,
making recommendations to the Owner regarding appropriate response actions with respect thereto, and implementing such actions.

§ 2.2.10 Owner’s Consultants. If the Owner directly employs an independent cost estimator, project manager, and/or other consultant(s) or advisor(s), the Architect and its consultants shall work directly with the Owner’s consultant(s), at no additional cost to the Owner, to ensure that Project objectives are met and the Scope of Services is delivered in accordance with the requirements of this Agreement.

§ 2.2.11 Procurement of Construction Services. The Architect shall assist the Owner in the procurement of construction services for the Project, regardless of the mode of procurement selected. In the event that construction services are procured pursuant to Mass. Gen. Laws c. 149A, §§ 1-13 and the Owner’s CM at Risk Procedures, then the Architect shall serve on the Pre-Qualification Committee and the Selection Committee in connection with the qualification and selection of a Construction Manager at Risk for the Project, and shall participate in the selection of trade contractors by serving on the Trade Contractor Prequalification Committee.

§ 2.2.12 Independent Engineer/Commissioning Agent. The Architect shall, if requested by the Owner, support the Owner’s procurement of Independent Engineer/Commissioning Agent services for the Project, including providing all documents that may be necessary to facilitate the procurement. As appropriate and necessary during each stage of the Project, the Architect shall fully cooperate and support the work of the Independent Engineer/Commissioning Agent. The Architect shall fully coordinate its services with the Independent Engineer/Commissioning Agent to ensure that the Independent Engineer/Commissioning Agent can timely, effectively, and efficiently perform its scope of services under its contract with the Owner. The Architect shall participate in meetings to resolve programming, design, and construction issues that bear on the commissioning of the Project. The Architect shall provide the Independent Engineer/Commissioning Agent with full information and data about the design of the Project reasonably requested by the Independent Engineer/Commissioning Agent.

§ 2.2.13 Quality Assurance. Upon execution of the Agreement, the Architect shall submit to the Owner a written description of the quality assurance procedures the Architect will implement in the performance of all services required under this Agreement. The Architect shall identify individual(s) responsible for document preparation, bid document review, and cost estimating, as well as methods utilized to determine the completeness, accuracy, and coordination of drawings, specifications, cost estimates, and other data and documentation.

§ 2.2.14 Proprietary Specifications. The Architect shall not incorporate specifications for proprietary items in the Construction Documents without the express prior written authorization of the Owner. Without limitation, the Architect, the Architect’s employees, and the Architect’s consultants shall adhere to the provisions of M.G.L. c. 30, § 39M, which provides in part:

"Specifications for such contracts, and specifications for contracts awarded pursuant to the provisions of said sections forty-four A to forty-four L of said chapter one hundred and forty-nine, shall be written to provide for full competition for each item of material
to be furnished under the contract; except, however, that said specifications may be otherwise written for sound reasons in the public interest stated in writing in the public records of the awarding authority or promptly given in writing by the awarding authority to anyone making a written request therefor, in either instance such writing to be prepared after reasonable investigation. Every such contract shall provide that an item equal to that named or described in the said specifications may be furnished; and an item shall be considered equal to the item so named or described if, in the opinion of the awarding authority: (1) it is at least equal in quality, durability, appearance, strength and design, (2) it will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased, and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the said specifications. For each item of material the specifications shall provide for either a minimum of three named brands of material or a description of material which can be met by a minimum of three manufacturers or producers, and for the equal of any one of said name or described materials."

The Architect shall refer to the law and consult with the Owner for procedures regarding proprietary specifications. The Architect shall conduct and fully document any investigations that the Owner may require with respect to proprietary items and shall provide such documentation to the Owner along with the Architect’s written recommendation with regard to proposed proprietary items.

§ 2.2.15 Applicable Laws Pertaining to Accessibility. The Architect hereby assumes the obligations of the Owner and the University, including those that exist under the Massachusetts Architectural Access Board (“MAAB”) regulations (521 CMR 1.1 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.), and any other Applicable Laws to design facilities accessible to and usable by people with disabilities, including, in the case of renovations to or expansion of an existing building, identifying required improvements to the entire building, if applicable. The Architect shall provide the Owner with designs that provide access to all programs, activities and services to be conducted within the facilities to be designed in accordance with the scope of services of the Agreement and to document compliance with the above referenced standards, as well as any variance or waivers of the above requirement the Architect may obtain. The Architect shall not seek any such variance or waiver of the above requirements without the express, prior written authorization of the Owner.

§ 2.2.16 Coordination with Owner’s Insurers. Prior to commencing Design Development, the Architect shall become thoroughly familiar with the design and engineering standards of the Owner’s property insurance provider, FM Global, and shall at all times incorporate such standards into the design of the Project and the Construction Documents. If requested by the Owner during the Design Development and Construction Documents Phases, the Architect shall submit copies of the specifications, drawings and other documents to the Owner’s insurers for their review and comment, and shall make such modifications to the drawings, specifications, and other documents prepared by the Architect as the insurers may require at no additional cost to the Owner.
§ 2.2.17 **Owner’s Information.** The Architect shall thoroughly review all documents and information provided by the Owner in accordance with the Standard of Care applicable to this Agreement, and shall promptly advise the Owner in writing of any inadequacies, errors, omissions, inconsistencies, or conflicts in the documents or information supplied, including any services provided by the Owner or any of its other consultants or contractors. The Owner does not warrant the accuracy of information furnished to the Architect, and the Architect shall satisfy itself as to the correctness and completeness of all documents and information, except in instances where written exception to the contrary is specifically indicated by the Owner.

§ 2.2.18 **Building Information Modeling.** The Architect shall advise the Owner on the use of building information modeling (BIM) on the Project and, at no additional cost to the Owner, prepare all design documents, data, and other information in a form suitable for use in a BIM model for design, construction, commissioning, and building operations and maintenance. BIM design and construction drawings shall be developed using BIM software – latest approved version. Additional design and construction drawings such as civil, landscape and interiors shall be developed using AutoCAD or BIM software. The Architect shall be responsible to develop, facilitate, transmit, revise and manage BIM, digital data, and protocols, all subject to the Owner’s review and approval. The Architect shall provide the Owner with options on how to apply BIM on the Project and shall make recommendations on alternative methods of BIM implementation. Implementation and use of BIM shall not relieve the Architect from any of its obligations under this Agreement as the entity responsible for the design of the Project. The BIM models shall be used by the Design Professional and Construction Manager for design coordination, collision avoidance, clash detection and production of traditional two-dimensional drawings, and may be used for coordination drawings, energy analysis, day lighting analysis, and other building or systems analysis. The implementation and use of BIM shall be discussed with Owner, Design Professional and Owner Project Manager at a BIM kickoff meeting as early in design as possible, with the agreed-upon parameters captured by the Design Professional in a document to be entitled “BIM Execution Plan”. The BIM Execution Plan shall be updated and augmented by the Design Professional, with concurrence and agreement by Owner and OPM throughout design, and by Owner, OPM and Construction Manager throughout construction, as needed to solidify details regarding terminology, schedule, content, format, risk allocation, and use of the model(s). Design Professional shall provide the BIM model(s) to Construction Manager prior to and during construction, subject to the limitations outlined in the BIM Execution Plan, for scheduling, coordination, resource management, estimating, and other uses deemed beneficial to Owner for delivery of the Project. Construction Manager shall conduct BIM coordination meetings with its subcontractors and manage a central BIM model for all primary trades with the intent of detecting clashes of building systems prior to their final approval and fabrication. The Architect shall update the BIM model(s) at the end of construction to reflect the actual "as-built" conditions. Final “Record Document” model(s) shall be delivered to Owner in the BIM format(s) as originally developed and as a fully integrated Revit-based model containing the architectural, structural, and mechanical, electrical and plumbing content. All source documentation, data, and other information generated for the Project will be provided to the Owner and shall become the property of the Owner upon completion of the Project.
§ 2.2.19 Life Cycle Costs. At each phase of design, the Architect shall conduct a life cycle cost analysis of all major components and systems to be included in the Project. As design options and value engineering items are developed, a revised life cycle cost analysis shall be provided to assist the Owner in decision making.

§ 2.2.20 Basis of Design. The Architect shall develop a complete written basis of design document (“Basis of Design”), in executive summary narrative format, which shall be a stand-alone document, that includes at a minimum, all architectural, structural, mechanical, electrical, plumbing, fire protection systems, building controls, and equipment meeting the most current American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Building Commissioning Standards. The Basis of Design shall be delivered to the Owner for review at the completion of the Schematic Design Phase, and a modified Basis of Design shall be delivered at the completion of the Design Development Phase.

§ 2.2.21 Electronic Information. The Architect shall provide to the Owner and the Owner’s other consultants and contractors, including, but not limited to, the Independent Engineer/Commissioning Agent and the Construction Manager, with useable CADD, BIM and/or other electronic information of drawings to assist in the performance of their respective services including, but not limited to, the preparation of the coordination drawings and to provide the basis for as-built drawings.

§ 2.2.22 Deliverables. The Architect shall provide six (6) hard copies of all deliverables, including, but not limited to, all studies, reports, and each set of progress design documents, to the Owner for review and approval at the completion of each phase of services. The Architect shall provide one (1) electronic copy of all deliverables in native format (or such other format as shall be agreed upon with the Owner) to be posted on the Architect’s FTP site, and/or provided to the OPM on zip drive, disc, or other like medium. In addition to the six (6) hard copies, all drawings shall be provided electronically in both AutoCAD and PDF format.

§ 2.2.23 Available Rebates. The Architect shall work with the Owner to identify all Federal, State and Utility rebates (including tax credits for energy efficient design) available. The Architect shall develop and submit to the Owner for review all documents necessary to obtain all available rebates and shall file and administer all such applications upon the Owner’s approval.

§ 2.3 Programming and Feasibility Phase Services. During the Programming and Feasibility Phase, the Architect’s scope of services may include, but not be limited to, the following services:

§ 2.3.1 The Architect shall manage and administer the Programming and Feasibility Phase services. The Architect shall consult with the Owner and the University, coordinate Project meetings, and communicate with members of the Project team to ensure the Programming and Feasibility Phase is advanced in accordance with the Owner’s objectives and schedule. The Architect shall prepare, and periodically update, a schedule for Programming and Feasibility Phase services that identifies milestone dates for decisions required of the Owner, services furnished by the Architect, and completion of documentation to be provided by the Architect.
during this phase of work. The Architect shall coordinate the Programming and Feasibility Phase schedule of services with the Owner-approved Project Design Schedule.

§ 2.3.2 The Architect shall meet with the Owner and the University, as necessary, to review Project objectives and information. The Architect shall establish a protocol for and shall conduct all necessary interviews and programming meetings to identify Project objectives and programmatic requirements.

§ 2.3.3 The Architect shall compile and review all available plans, documents, studies, reports, conceptual space programs, building codes, ordinances, University planning and design guidelines and standards, and any and all other documents provided by the Owner or the University that pertain to the Project.

§ 2.3.4 The Architect shall develop options for the functional and spatial requirements for all anticipated program spaces, including general support spaces in the proposed facilities. The Architect shall propose specific space requirements for the Project including, but not limited to, identifying required spaces, establishing alternative size and space relationships, and identifying space requirements for major building systems and equipment. The Architect shall right-size each space type in the conceptual space program using benchmarks and industry standards in conjunction with the programmatic goals and the University’s space requirements. In consultation with the Owner and the University, the Architect shall analyze and confirm that the mix of program spaces for the Project meets the pedagogical, programmatic, and scheduling needs of the University.

§ 2.3.5 The Architect shall advise the Owner and make specific recommendations regarding further investigations and analyses that may be necessary or desirable to undertake and complete prior to selection of the final facilities program.

§ 2.3.6 The Architect shall develop options for the scale, massing, and building configuration of the Project on the site or each proposed site. The Architect shall develop alternatives for the “blocking and stacking” of programmatic elements and public spaces in an effort to optimize program affinities and the use of building amenities.

§ 2.3.7 The Architect shall analyze and develop schemes for interior circulation including accessibility considerations of the preferred building configuration.

§ 2.3.8 The Architect shall prepare an analysis of the building’s operational efficiency including operating costs, energy costs, and staffing requirements.

§ 2.3.9 The Architect shall prepare conceptual cost estimates of various building configuration options and develop a matrix to summarize the analysis.

§ 2.3.10 The Architect shall develop a detailed building program in consultation with the Owner and the University, based on the Architect’s review of existing facilities, user group interviews, site visits to facilities on other college campuses that are similar to the proposed facilities, and the Architect’s knowledge and expertise in the design of this type of facility.

§ 2.3.11 The Architect shall develop formal design intent documents that establish the performance goals and design guidelines of the Project, and shall update these documents at each phase of design.
§ 2.3.12 The Architect shall prepare drawings and calculations with the configuration, footprint, height and size of each option; provide a matrix that delineates the favorable and unfavorable factors of each option; and provide a cost-benefit analysis associated with each option. As often as necessary, the Architect shall meet with representatives of the Owner and the University to review options. The Architect’s cost estimator shall attend these meetings as appropriate to provide input on the review and analysis of design options.

§ 2.3.13 The Architect shall provide a thorough written analysis of all environmental permitting and other regulatory approvals required for the Project.

§ 2.3.14 The Architect shall advise the Owner and make specific recommendations regarding further investigations and analyses that may be necessary or desirable to undertake and complete prior to selection of the final facility program.

§ 2.3.15 The Architect shall conduct a sustainable design/LEED charrette for the Project, or at the option of the Owner, conduct the sustainable design/LEED charrette during the Schematic Design Phase.

§ 2.3.16 The Architect shall develop a conceptual cost estimate for the various configuration options and develop a matrix to summarize the analysis.

§ 2.3.17 The Architect shall prepare site plans and other materials to describe pedestrian and vehicular access and circulation, service areas, utility requirements, including, but not limited to, electrical service and distribution, water supply and distribution, site drainage, sanitary sewer collection and disposal, storm water collection and disposal, central-plant mechanical system connections, fire systems, emergency systems, security, pollution control, site illumination, wetlands, required set-backs, easements, height limits, and communications systems. The Architect shall also analyze the availability of existing utility mains, transmission, and distribution lines.

§ 2.3.18 After consultation with the Owner and the University, the Architect shall develop specific detailed recommendations for the preferred development option for the Project site or each selected site or sites.

§ 2.3.19 The Architect shall develop a final Programming and Feasibility Report as a record of all work and services completed during this phase, which report shall contain, at a minimum: (1) stacking diagrams, preliminary floor layouts, and narratives to describe options for the Project’s physical space layout; (2) diagrams and narratives to describe the Project’s systems and major equipment, including the mechanical, electrical, plumbing, elevator, fire protection, security, telecommunications, and information technology systems; and (3) specific recommendations, and supporting rationale, regarding the facility program, layout, building systems and major equipment, and other relevant factors. The Architect shall also include in the Programming and Feasibility Report its specific recommendations regarding all features of the Project, including the size, height, footprint, configuration, building systems, site improvements, and all other relevant factors, together with a rationale for its specific recommendations. The Architect shall also identify any unresolved programming or site selection issues and considerations and discuss options, and present recommendations, for their resolution.
§ 2.4 Schematic Design Phase Services. Based on the Owner’s approval of the preferred development option or options identified during the Programming and Feasibility Phase, the Architect’s scope of services during the Schematic Design Phase may include, but not be limited to, the following services.

§ 2.4.1 The Architect shall prepare Schematic Design Documents for the Owner’s review and approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations, and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings and described in writing. The Architect shall prepare the following to the extent such is applicable to this Project:

(a) drawings and narrative descriptions of building systems including architectural, structural, mechanical, electrical, plumbing, fire protection, elevator, telecommunications, information technology, and other relevant systems;

(b) floor plans of all building levels including the roof;

(c) exterior and interior building elevations, cross-sections, and three-dimensional views, as required to provide a full visual description of the proposed Project;

(d) furniture and equipment layouts of all spaces within the structure;

(e) an outline specification of all site and building components, systems requirements and performance criteria;

(f) a detailed code review of all proposed construction to ensure compliance with applicable building, fire, and other codes including the Americans with Disabilities Act and MAAB regulations, and a life safety plan for each building level indicating allowable area for construction type proposed, location of fire separation walls, means of egress paths, and required exit widths for doors, stairs and corridors;

(g) a site assessment of the applicable Project site, and a thorough written review and assessment of all environmental permitting and other regulatory approvals required for the Project, including the entities responsible for obtaining each permit and approval;

(h) site plans and diagrams showing pedestrian, handicapped, and vehicular access and circulation, service areas, utilities, wetlands, required set-backs, height limits, environmental factors, easements, site drainage, landscaping, site amenities, and all other relevant factors. The Architect shall identify the location of existing utilities and infrastructure, and review and evaluate any new utilities and infrastructure and their impact on the Project. The Architect shall provide drawings that identify the proposed routing and tie-in points to campus utilities and infrastructure;

(i) information and documentation to support Owner’s preparation of and submission of an Environmental Notification Form, Environmental Impact Report, Notice of Project Change, and any other filings which may be required pursuant to MEPA regulations or any other Applicable Laws;
(j) information and documentation to support Owner’s preparation and submission of a Project Notification Form for submission to the Massachusetts Historical Commission; and

(k) a detailed project schedule and phasing strategy, outlining the time required to obtain all necessary permits, approvals, and/or waivers, complete all design work, conduct procurement of construction services, award contracts, and complete construction and commissioning.

§ 2.4.2 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner’s program, schedule and budget for the Cost of the Work.

§ 2.4.3 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner’s schedule and budget for the Cost of the Work. The Architect shall prepare a comparative analysis of significant characteristics of each building system, including a comparison of construction costs, maintenance costs, and all other relevant factors, such as rebates and utility operating expenses, in order to provide the Owner with information adequate to assess the options presented.

§ 2.4.4 Throughout the Schematic Design Phase, the Architect shall meet with the Owner on a regular basis, which shall be no less frequently than every two (2) weeks, to review and discuss the development of the design. At the request of the Owner, the cost estimators shall attend these meetings to provide input on the evaluation of materials, systems, and equipment as noted in Section 2.4.3, and on the review and analysis of design options. The Architect shall submit the Schematic Design Documents to the Owner for review and approval.

§ 2.4.5 At the end of the Schematic Design Phase, the Architect shall prepare a full and complete cost estimate for the Project including, but not limited to, information technology, telecommunications, furniture, fixtures, and equipment. All cost estimates shall be provided in form, substance, and detail acceptable to the Owner (Construction Specification Institute (“CSI”) or similar). The Architect shall compare its Schematic Design cost estimate to the cost estimate prepared at the completion of the Programming and Feasibility Phase and recommend appropriate actions to modify, correct, or value engineer (“VE”) the design in order to avoid potential cost overruns. The Architect shall implement all such actions approved by the Owner and shall, at the Architect’s sole cost and expense, modify the design and all associated plans, specifications, and other contract documents as necessary until such time as the cost estimates for the current phase are equal to or less than the last cost estimate approved by the Owner.

§ 2.4.6 Prior to the end of the Schematic Design Phase, the Architect’s team shall meet at least once with state building, state plumbing, and local fire department authorities having jurisdiction over the Project, and as reasonably necessary thereafter.

§ 2.5 Design Development Phase Services. During the Design Development Phase, the Architect’s scope of services may include, but not be limited to, the following services.
§ 2.5.1 Based on the Owner’s approval of the Schematic Design Documents, and on the Owner’s authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner’s review and approval. The Design Development Documents shall consist of drawings, specifications and other documents to fix and describe the size, character and quality of the Project with respect to architectural, structural, mechanical, electrical, plumbing and fire protection systems, materials and such other elements as may be appropriate, and that fully define the scope, quality, and quantities of all proposed components of the Project including, but not limited to, building materials, building systems, furniture, fixtures, equipment, and anticipated construction methods. The Architect shall prepare the following:

(a) descriptions of proposed structural, mechanical, electrical, plumbing, fire protection, and other building systems;

(b) detailed interior layouts and configurations based upon consultations with the Owner;

(c) appropriate data and illustrations for furniture, fixtures, and equipment necessary to further develop interior layouts and configurations, including specially designed items or elements, to indicate finished appearance and functional operation;

(d) recommendations as to colors, materials, and finishes not otherwise specified;

(e) detailed exterior and interior building elevations, cross-sections, and three-dimensional views, as required to provide a full visual description of the proposed Project;

(f) a 3-dimensional presentation model of the selected design;

(g) recommendations for furniture, fixtures, and equipment to be procured for approval by the Owner and recommendations on the method of procurement including separate bidding if appropriate and/or inclusion in the prime construction contract;

(h) construction phasing strategies as necessary or appropriate;

(i) recommendations to the Owner with respect to long lead-time procurement items and early bid packages;

(j) applications for any required environmental and other regulatory approvals, including any required MEPA filings, submission of applications, and attendance at review and other meetings and hearings required by governmental authorities and others having jurisdiction over the Project;

(k) initial mechanical, electrical, and plumbing systems design intent document that defines the performance expectations and objectives for the MEP systems;

(l) Project schedule updates and phasing strategy, outlining the time required to obtain all necessary permits and approvals, complete the final design, bid the Project, award contracts, and complete construction and commissioning; and

(m) a detailed update to the cost estimate and project budget for construction of the proposed design, including furniture, fixtures and equipment recommended for the Project, based upon quantity and unit costs.
§ 2.5.2 Throughout the Design Development Phase, the Architect shall meet with the Owner on a regular basis, which shall be no less frequently than every week, to review and discuss the development of the design. The Architect’s cost estimator shall attend design review meetings as appropriate to provide input on the review and analysis of design options. The Architect shall submit the Design Development Documents to the Owner for review and approval.

§ 2.5.3 At the end of the Design Development Phase, the Architect shall prepare a full and complete cost estimate for the Project including, but not limited to, information technology, telecommunications, furniture, fixtures, and equipment. All cost estimates shall be provided in form, substance, and detail acceptable to the Owner (CSI or similar). The Architect shall compare its Design Development cost estimate to the cost estimate prepared at the completion of the Schematic Design Phase and recommend appropriate actions to modify, correct, or value engineer the design in order to avoid potential cost overruns. The Architect shall implement all such actions approved by the Owner and shall, at the Architect’s sole cost and expense modify the design and all associated plans, specifications, and other Contract Documents as necessary until such time as the cost estimates for the current phase are equal to or less than the last cost estimate approved by the Owner.

§ 2.5.4 Throughout the Design Development Phase, the Architect shall meet with the Construction Manager, if engaged, to review and reconcile cost estimates and schedules, discuss project constructability issues, and assist the Construction Manager with preconstruction services.

§ 2.6 Construction Documents Phase Services. During the Construction Documents Phase, the Architect’s scope of services may include, but not be limited to, the following services.

§ 2.6.1 Based on the Owner’s approval of the Design Development Documents, the Owner’s authorization of any adjustments in the Project requirements, and the budget for the Cost of the Work, the Architect shall prepare complete and fully coordinated Construction Documents for the Owner’s review and approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Construction Documents shall include complete drawings and specifications that establish in detail the quantity and quality of all materials, systems and equipment required to construct a fully complete and operational Project.

§ 2.6.2 The Architect shall incorporate into the Construction Documents the applicable design requirements of governmental authorities having jurisdiction over the Project.

§ 2.6.3 During the development of the Construction Documents, the Architect shall, with the assistance of the Owner, prepare all trade contractor prequalification, bidding, and procurement information and documents that may be required by laws, rules, regulations, and procedures applicable to the Project. The Architect shall review and become fully familiar with the Owner’s form of agreement and general conditions (General, Supplementary and other Conditions) between the Owner and Construction Manager and between the Construction Manager and the trade contractors. All Construction Documents prepared by the Architect shall be fully integrated with the Owner’s forms of agreement and general conditions and comply with applicable law in all respects, including any and all laws, regulations, orders, requirements and
guidelines relating to the novel 2019 Coronavirus (COVID-19), construction site safety, and the most current procedures for compliance and enforcement thereof. Where applicable, the Architect shall include such requirements and guidelines in any invitations for bids from general contractors and any requests for qualifications for construction services. The Architect shall also compile a project manual that includes the conditions of the Construction Contract and Specifications and may include prequalification requirements, bidding requirements, and sample forms.

§ 2.6.4 The Architect shall submit the Construction Documents, cost estimates, and project schedules to the Owner for review and approval at the fifty percent (50%) and ninety percent (90%) stages of completion. Copies of such documents shall also be furnished to the Construction Manager, Independent Engineer/Commissioning Agent, the University, and any other entities directed by the Owner. The Architect shall respond in writing to all comments on the 50% and 90% complete Construction Documents, identifying action taken on each comment. All comments shall be incorporated in the Construction Documents unless doing so would require the Architect to violate the applicable standard of care.

§ 2.6.5 The Architect shall assist the Owner in the identification of bid alternates, if required, and shall prepare all necessary Construction Documents in support of same.

§ 2.6.6 Upon completion of the Architect’s cost estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 5.4 and request the Owner’s approval of the Construction Documents. The Architect shall assist in the development of VE items and alternatives as a part of this effort.

§ 2.6.7 The Architect shall develop a final Basis of Design document (each of which shall be a stand-alone document) at the fifty percent (50%), ninety percent (90%), and one hundred percent (100%) stages of completion of Construction Documents, which shall include all code review, design calculations, life cycle cost analysis, value engineering documents and all required information necessary to meet the most current ASHRAE building commissioning standards.

§ 2.6.8 The Architect shall submit ninety percent (90%) complete Construction Documents to the Owner’s property insurer for review and comment. The Architect shall respond to such comments in writing and incorporate any comments as directed by the Owner.

§ 2.6.9 Upon approval of the ninety percent (90%) plans, cost estimates, and Project schedule by the Owner, the Architect shall develop final Construction Documents for the Project.

§ 2.6.10 At the completion of Construction Documents Phase, the Architect shall prepare a final update to the detailed estimate of construction costs, including a breakdown by trade. The Architect shall assist the Owner in updating the Project budget including the final total Project costs.

§ 2.6.11 In support of commissioning, the Architect shall provide, at a minimum, the following documents: Sequence of Operations, Commissioning Specifications, Start-up and Testing Protocol, Functional Testing Performance criteria, Performance Testing Specification, Training Specification, and System Turnover Requirements. All such documents shall be provided in form, substance, and detail satisfactory to the Owner and its commissioning agent.
§ 2.7 Procurement Phase Services. During the Procurement Phase, the Architect’s scope of services may include, but not be limited to, the following services.

§ 2.7.1 Consistent with the fast-tracked method of delivery, the Architect shall assist the Owner and, as appropriate, the Construction Manager in the preparation of the necessary bidding information and bidding forms for all required trade contractors and subcontractors.

§ 2.7.2 The Architect shall provide Construction Documents for bidding with division of work clearly defined between all required publicly bid sub-trades and alternate bid items. All Construction Documents shall be prepared to conform to the bidding requirements of the Owner with input from the Construction Manager.

§ 2.7.3 Following the Owner’s approval of the Construction Documents, the Architect shall assist the Owner and, as appropriate, the Construction Manager in connection with the trade contractor and subcontractor prequalification and bidding process in conformance with the requirements of the procurement method selected by the Owner. The Architect shall, at a minimum:

(a) review and confirm responsiveness of bids or proposals;

(b) participate in determining the successful bid or proposal, if any;

(c) perform a detailed reconciliation of the bid prices received to the cost estimate developed as part of the Construction Documents Phase Services. This reconciliation shall include an explanation by the Architect of major variances (e.g. greater than +/- 5%) and the reasons why the Architect thinks the bid price varied from the construction estimate provided by the Architect; and

(d) perform all other services reasonably necessary in connection with the procurement of construction services by the Owner and, as appropriate, the Construction Contractor.

(e) serve on the Trade Contractor Prequalification Committee as indicated in Section 2.2.11;

(f) compile and review all trade contractor prequalification documents;

(g) prepare all bidding documents, including technical specifications and information for trade contractors and subcontractors and addenda as needed;

(h) provide Construction Documents with division of work clearly defined between all required publicly bid trades and alternate bid items; and

(i) issue a minimum of three (3) early construction bid packages as design, permitting, and Project sequencing allow and the Owner may direct. For each bid package, the Architect shall prepare and deliver preliminary and final submissions of Construction Documents, and revisions as necessary, that shall include the following: drawings showing in detail the work to be performed by contractors, including plans, drawings, specifications (consisting of all CSI Division 1 through 16 specifications) and other design-related documents required to support the Owner’s and Construction Manager’s construction procurement proposals (e.g., special conditions and technical specifications) as required by the Owner and the Construction Manager.
§ 2.7.4 The Architect shall assist the Owner in negotiating all contract amendments with the CM relating to early construction packages and all interim and final guaranteed maximum price amendments. The Architect shall prepare all Construction Documents necessary for such amendments and shall review all submissions from the Construction Manager relating to same and continuously advise the Owner on such negotiations until they are completed.

§ 2.7.5 The Architect shall consider, in accordance with Applicable Laws, requests for substitutions, if the Construction Documents permit substitutions. Substitutions shall be allowed only on an “approved equal” basis as expressly authorized by the Owner in advance and in writing.

§ 2.8 Construction Administration Phase Services. During the Construction Administration Phase, the Architect’s scope of services may include, but not be limited to, the following services.

§ 2.8.1 General

§ 2.8.1.1 The Architect shall provide administration of the contract between the Owner and the Construction Manager as set forth below and in the Agreement and General Conditions between the Owner and the Construction Manager.

§ 2.8.1.2 The Architect shall advise and consult with the Owner and the University during the Construction Administration Phase. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ 2.8.1.3 The Architect’s responsibility to provide Construction Administration Phase Services shall commence with the Owner’s notice to the Construction Manager to proceed with construction and shall terminate on the date the Architect issues the final Certificate for Payment provided that: (i) usual and customary assistance in the utilization of equipment and systems, such as start-up, testing, commissioning, adjusting and balancing, shall be provided as a part of Basic Services, whether before or after the date of the final Certificate for Payment; (ii) inspections and other services of the Architect made necessary by reason of the acts, errors, or omissions of the Architect shall be performed by the Architect as a part of Basic Services, whether before or after the date of the final Certificate for Payment; (iii) if the Architect’s final inspection and close-out services shall be delayed, for reasons beyond the control of the Architect, the Architect shall be entitled to compensation for Additional Services, but only for services performed and costs incurred by the Architect beyond those services and costs that would have been performed and incurred had such services been timely performed; and (iv) the Architect shall perform all other services required, whether explicitly or by reasonable inference,
to be performed after the issuance of a final Certificate for Payment to the Construction Manager.

§ 2.8.1.4 The Architect shall perform all functions required to be performed by a registered professional architect under the Massachusetts State Building Code and other laws, codes, and regulations applicable to the Project.

§ 2.8.1.5 The Architect shall attend and facilitate weekly Project meetings and prepare and distribute minutes of such meetings in a timely manner.

§ 2.8.1.6 The Architect shall review all reports of independent testing agencies and provide timely written notification to the Owner and Construction Manager of observed deficiencies in the Work.

§ 2.8.2 Evaluations of the Work

§ 2.8.2.1 The Architect shall visit the site at least once per week and at more frequent intervals as appropriate to the stage of construction to become familiar with the progress and quality of the portion of the Work completed, and to determine if the Work observed is being performed in accordance with the Contract Documents. The Architect shall also require each of its consultants to conduct similar site visits at least once weekly during the construction of each respective consultant’s work.

§ 2.8.2.2 The Architect shall also ensure that, during the periods when the Construction Manager is performing a significant segment of the Work designed by a particular consultant to the Architect, such consultant shall visit the site at least once a week and at more frequent intervals as appropriate to become familiar with the progress and quality of the completed portion of such segment of the Work and to determine if such Work is in accordance with the Construction Documents. Whenever any significant issue or change in the Work is expected to be discussed at a site visit or job meeting, the Architect shall ensure that the appropriate members of the design team, and all appropriate consultants and subconsultants who contributed to the design of the affected portion of the Work, participate in the site visit or job meeting.

§ 2.8.2.3 On the basis of the site visits by the Architect and its consultants, the Architect shall keep the Owner informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work. The Architect shall document (and shall require its consultants to document) each site visit with a written narrative Site Report describing Work in place, specific inspections conducted (including reference to applicable CSI specification sections), Work in place that does not meet the requirements of the Contract Documents, and an appropriate number of photographs (no less than 12) of the general site and all Work observed to not be in conformance with the requirements of the Contract Documents. In addition, the Architect shall provide at least two (2) photos of each item of non-complying Work, which photos shall clearly indicate the manner in which the Work is not in compliance with the Contract Documents. The Architect shall submit Site Reports, with photos, to the Owner within forty-eight (48) hours after each site visit.
§ 2.8.2.4 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 2.8.2.5 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect’s response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness, so as to not delay the performance of the Work and, in any event, no later than fourteen (14) days after the written submission for decision; but if such decision requires extended investigation and study, the Architect shall, within thirty (30) days after the receipt of the submission, give the party making the submission written notice of the reasons why the decision cannot be made within the thirty day period and the date by which the decision will be made.

§ 2.8.2.6 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing and, as appropriate, in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both the Owner and the Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 2.8.2.7 The Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Construction Contract.

§ 2.8.2.8 The Architect shall monitor progress of the Work performed by the Construction Manager relative to established schedules and, on a monthly basis or more frequently if requested by the Owner, make status reports to the Owner regarding the progress of the Work.

§ 2.8.2.9 The Architect shall attend and facilitate weekly job meetings, and shall prepare and distribute in a timely manner minutes of such meetings.

§ 2.8.3 Certificates for Payment to Construction Manager

§ 2.8.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect’s certification for payment shall constitute a representation to the Owner, based on the Architect’s evaluation of the Work as provided in Section 2.8.2 and on the data comprising the Construction Manager’s Application for Payment, that the Work has progressed to the point indicated and that the Work is in accordance with the Contract Documents. The Architect shall consult with the OPM in its review of the Construction Manager’s monthly Applications for Payment prior to certification of same.

§ 2.8.3.2 Deleted.
§ 2.8.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 2.8.4 Submittals

§ 2.8.4.1 The Architect shall provide prompt and timely performance of construction administration services so as to cause no delay to the progress of the Work, including, but not limited to, processing of all submittals, including receipt, review of, and appropriate action on Shop Drawings, Product Data, Samples and other submittals; timely response to Requests for Information (RFI), and issuing of Architect’s Supplemental Information, as needed. For purposes of this paragraph “timely” is deemed to be a response issued by the Architect within fourteen (14) calendar days.

§ 2.8.4.2 The Architect shall review the Construction Manager’s submittal schedule and shall not unreasonably delay or withhold approval. The Architect’s action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect’s professional judgment to permit adequate review, which time period shall not exceed fourteen (14) calendar days. Should the Architect require additional time to review a submittal, the Architect shall inform the Owner and the Construction Manager of the reasons that additional time is required.

§ 2.8.4.3 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Construction Manager’s submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager’s responsibility. The Architect’s review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect’s approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 2.8.4.4 If the Construction Contract or the Construction Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Construction Manager that bear such professional’s seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 2.8.4.5 The Architect shall promptly review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific drawings or specifications in need of clarification.
and the nature of the clarification requested. The Architect’s response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness so as to cause no delay to the progress of the Work. The Architect shall respond to requests for information within fourteen (14) calendar days. Should the Architect require additional time to review a request for information, the Architect shall inform the Owner and the Construction Manager of the reasons that additional time is required.

If appropriate, the Architect shall prepare and issue supplemental drawings and specifications in response to requests for information.

§ 2.8.4.6 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Construction Contract and the Contract Documents.

§ 2.8.5 Changes in the Work

§ 2.8.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Any change that has an additive and a deductive amount that results in a net no cost shall not be considered “minor” and must be approved by the Owner before being issued. The Architect shall prepare Change Orders and Construction Change Directives for the Owner’s approval and execution in accordance with the Construction Contract.

§ 2.8.5.2 The Architect shall maintain detailed and complete records relative to changes in the Work.

§ 2.8.5.3 For Architect proposal requests and Construction Manager proposed change orders, the Architect shall prepare and distribute supplemental drawings, instructions, and/or specifications describing the Work to be added, deleted or modified, review the proposals from the Construction Manager(s) for quantities and the costs of labor and materials, review and make recommendations relative to changes in time for completion of the Project and prepare Change Orders and Construction Change Directives for the Owner’s approval, review Construction Manager submitted time impact analyses and make recommendations on any Construction Manager requests for extension of time for any Change Order or Construction Change Directive, and coordinate all communications, approvals, notifications and record keeping relative to changes in the Work. Prior to the issuance to the Construction Manager of any Change Order, Construction Change Directive, Field Change Request, or other similar document, the Architect shall provide to the Owner for review a written estimate of the impact on cost and schedule the change will have on the Work, a brief written description of what the change is and an explanation of the reasons why the change is required.

§ 2.8.5.4 If the Architect determines that implementation of the requested changes in the Work would result in a substantial and material change to the Work that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation, and based upon information gathered by the Owner, the Architect shall review and advise the Owner concerning the additional cost and time that might result from such change.
§ 2.8.6 Project Completion

§ 2.8.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, issue Certificates of Substantial and Final Completion, receive from the Construction Manager and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Construction Contract and assembled by the Construction Manager, and issue a final Certificate for Payment based upon a final inspection indicating that the Work complies with the requirements of the Construction Documents. The Architect shall perform all Project closeout services required by this Agreement as well as all services required of the Architect under the Construction Contract.

§ 2.8.6.2 Upon notice from the Construction Manager that Work is substantially complete, the Architect shall perform a comprehensive and detailed inspection for conformity of the Work to the Contract Documents and verification of the list of items to be completed or corrected which has been submitted by the Construction Manager. The Architect shall promptly notify the Construction Manager, with a copy to the Owner, of all deficiencies in the Work. After development of the deficient work list the Architect and MEP Engineer shall meet with the Commissioning Agent and University to review the Basis of Design, compare the actual equipment performance and commissioning report to that anticipated in the Basis of Design, and develop corrective action recommendations for equipment that is not performing as anticipated in the Basis of Design.

§ 2.8.6.3 The Architect’s inspections shall be conducted with the Owner to check conformance of the Work to the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 2.8.6.4 The Architect shall assemble a single combined punch list, in a format approved by the Owner, which includes all outstanding Work, including, though not limited to, architectural, hardware, site, and mechanical, electrical, plumbing and fire protection; and monetize the punch list to determine a recommendation for the Owner of amounts to be withheld until final acceptance of the Work.

§ 2.8.6.5 The Architect shall determine the date of Substantial Completion and the date of Final Completion in accordance with the detailed requirements of the Construction Contract and shall prepare affidavits required by the Building Inspector for issuance of a Certificate of Occupancy. The Architect shall issue a final Certificate for Payment upon the Construction Manager’s compliance with the requirements of the Contract Documents.

§ 2.8.6.6 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or to the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents. The Architect shall also receive from the Construction Manager, review, and transmit to the Owner all warranties, guarantees, affidavits, operating manuals, balancing reports, invoices, as-built drawings, LEED Certificates, commissioning documents, and related documents that are required by the Contract Documents and assembled and submitted by the Construction Manager.
§ 2.8.6.7 Upon receipt of the as-built drawings from the Construction Contractor, the Architect shall develop and submit to the Owner a consolidated record set of drawings (e.g. record drawings) and Record Document models that incorporates all Change Orders, Construction Change Directives, revisions, sketches and as-built information.

§ 2.8.6.8 Prior to the expiration of one year from the date of Substantial Completion, the Architect shall conduct a meeting with the Authority, Independent Engineer/Commissioning Agent, and, as necessary University personnel to review the facility operations and performance and to conduct a post-construction evaluation. Additionally, prior to the expiration of two years from the date of Substantial Completion, the Architect shall conduct two additional meetings with the Authority and, as necessary, the Independent Engineer/Commissioning Agent, and/or University personnel to address problems with material / equipment that have been discovered / occurred during the normal course of building operations. No additional compensation shall be provided for the Architect to conduct these three (3) meetings.

ARTICLE 3. ADDITIONAL SERVICES

§ 3.1 General. The Additional Services described in this Section 3.1 shall be paid for by the Owner as provided in this Agreement in addition to the compensation for Basic Services set forth in Section 7.2 and shall be provided by the Architect if requested and authorized by the Owner. Provided, the Architect shall be entitled to compensation for Additional Services only to the extent such Additional Services were authorized in writing by the Owner.

(a) Additional Project Representation. If more extensive representation at the site than is described in Section 2.8.2 is required, the Architect shall provide one or more project representatives to assist in carrying out such additional on-site responsibilities. Project representatives shall be selected, employed and directed by the Architect. Through the observations by such project representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement;

(b) Preparation of measured drawings and detailed surveys of existing facilities;

(c) Providing services made necessary by the default of the Construction Manager, by major defects or deficiencies in the work of the Construction Manager, or by failure of performance by the Construction Manager under its contract with the Owner;

(d) Providing consultation concerning replacement of construction work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such work;

(e) deleted;

(f) Providing services required because of substantial and material changes in the Project (other than changes which, in the reasonable judgment of the Owner, should have been anticipated by the Architect) that fundamentally change the nature of the design services required;
(g) Construction testing and inspection services (the Architect’s effort required to coordinate and administer testing and inspection services is considered Basic Services and is included in the base design fee;

(h) deleted;

(i) Preparation of final applications, studies, analyses, and other documents necessary to secure required environmental permits and approvals;

(j) Design and construction administration services for hazardous material assessments and remediation;

(k) Geotechnical engineering when such services are required by the Architect in order to perform its duties under this Agreement. Such services may include, but are not limited to, providing test borings, test pits, percolation tests, and other similar tests, as well as the analysis of test results as required in order to assess soil bearing values, and to develop reports and appropriate professional recommendations;

(l) Environmental engineering when such services are required by the Architect in order to perform its duties under this Agreement. Such services may include, but are not limited to, wetlands mapping, flood plain analysis, environmental site assessments, evaluations of hazardous materials, including recommendations regarding the handling, removal, disposal of or exposure of persons to hazardous materials in any form at the Project site, which hazardous materials shall include, but not be limited to, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions with reports and appropriate professional recommendations;

(m) Land surveying including detailed topographical surveys describing physical characteristics, legal limitations and utility locations for any alternative development site and a written legal description of any such site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site (at maximum one foot increments); locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including invert and depths. All the information on the survey shall be referenced to a Project benchmark. All such work is to be done in accordance with sound engineering practices;

(n) Making revisions in drawings, specifications, or other documents when such revisions are: (1) requested by the Owner and inconsistent with approvals or instructions previously given by the Owner, including revisions required by adjustments in the scope or quality of the Project or in the Construction budget; or (2) required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents;

(o) Design, selection, and procurement of furniture, furnishings, and equipment;

(p) Providing services in connection with a legal proceeding except where the Architect is party thereto;
(q) Providing any other services not otherwise included in this Agreement if mutually agreed to in advance and in writing by the Owner and the Architect; and

(r) The time associated with any travel outside of the state necessary to observe factory testing (if any) and/or perform site visits of comparable facilities is considered Basic Services. Travel costs, including meals and lodging, are considered Reimbursable Expenses.

§ 3.2 Written Contract Amendment. Additional Services may be provided only upon the prior written agreement of the Owner and the Architect with regard to the scope of the Additional Services and the Architect’s fee for such services, which may, at the option of the Owner, be a lump sum or on the basis of hourly rates set forth in the Project Addendum. If Additional Services are proposed by the Architect, upon recognizing the need for Additional Services, the Architect shall promptly notify the Owner and explain in writing the facts and circumstances giving rise to the need for such Additional Services and provide a cost proposal in form, substance, and detail required by the Owner to permit the Owner to evaluate the added cost, but at a minimum shall include labor classification (or names of individuals) of those who will work on the additional scope, estimated level of effort (e.g. hours) per labor classification (or individual) and labor rate per labor classification (or individual). The Architect shall not proceed to render any services that it believes may constitute Additional Services without the prior written approval of the Owner, which shall be set forth in a fully executed Contract Amendment. Notwithstanding the foregoing, in the event of a disagreement between the Owner and Architect as to whether any particular service constitute Additional Services under this Agreement, the Architect shall nonetheless perform such services, upon written direction by the Owner.

§ 3.3 Duty to Anticipate Required Services. The Architect shall not be compensated for any additional services required to incorporate additional or changed work in the Project that, in the reasonable opinion of the Owner, could have been or reasonably should have been anticipated by the Architect in the preparation of the Contract Documents.

ARTICLE 4. OWNER’S RESPONSIBILITIES

§ 4.1 Owner’s Information. The Owner shall provide information regarding requirements for each Project, including a program which shall set forth the Owner’s objectives, schedule, constraints and criteria, which objectives, schedule, constraints and criteria are subject to modification by the Owner at any time prior to the approval of the Programming and Feasibility Report and commencement of the Schematic Design Phase. The Architect shall thoroughly review all documents provided by the Owner and promptly advise the Owner in writing of any inadequacies or inconsistencies in the information supplied.

§ 4.2 Accuracy of Owner’s Information. The Owner does not guarantee the accuracy of information furnished, and the Architect must satisfy himself as to the correctness of such information, except in instances where written exception to the contrary is specifically indicated by the Owner. If the above information is not available or is, in the opinion of the Architect, insufficient, the Architect, upon request, may be given authorization to obtain the services of a
consultant or perform the work with its own employees. In no case shall the Architect commence such work without prior written authorization of the Owner.

§ 4.3 Owner’s Representative. The Owner has designated its OPM as its authorized representative, who, in addition to the Owner, is authorized to act on the Owner’s behalf with respect to the Project. The Owner or its authorized representative shall endeavor to render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect’s services.

§ 4.4 Payment for Services Rendered. The Owner shall compensate the Architect for satisfactory performance of the scope of services required hereunder pursuant to the terms and conditions set forth in this Agreement. If the services rendered by Architect under this Agreement are unsatisfactory to the Owner, the Architect shall, at the sole discretion of the Owner and at no cost to the Owner, render the unsatisfactory services again until satisfactory to the Owner, or the Owner may withhold payment, or offset other monies due to Architect, for such unsatisfactory services.

§ 4.5 Project Budget. Based on information from the Architect, the Construction Manager, and the Owner’s other consultants and contractors, the Owner shall establish and periodically update the Owner’s budget for the Project. If the Owner significantly increases or decreases the Project budget, the Owner will notify the Architect and shall, thereafter, work with the Architect to appropriately modify the Project scope and, if appropriate in the sole discretion of the Owner, the Architect’s Scope of Services and Basic Compensation.

§ 4.6 Project Communications. The Owner shall endeavor to communicate with the Construction Manager and the Architect’s consultants through the Architect about matters relating to the Contract Documents and shall endeavor to notify the Architect regarding any such direct communications. The Architect shall promptly notify the Owner of any direct communications with the Construction Manager, trade contractors, subcontractors, or any of the Owner’s other consultants, including providing the Owner contemporaneous copies of all written and electronic communication with such entities.

§ 4.6.1 Media Inquiry. Any media inquiry, of any kind, regarding any UMBA Premises shall be communicated to UMBA within 24 hours from the time OPM / Designers / CA / GC / CM becomes aware. There shall be no response to any such media inquiry without consent from UMBA.

§ 4.7 Site Access. The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall require the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 5. COST OF THE WORK

§ 5.1 Generally. Evaluations of the Owner’s budget for the Cost of the Work and all cost estimates prepared by the Architect represent the Architect’s judgment as a design professional.
The Cost of the Work shall be based on current market rates for labor and materials furnished, which shall be no less than the prevailing wage rates, and equipment specified by the Architect.

§ 5.2 Contingencies. The Owner may require the Architect to include in its estimates of the Cost of the Work appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions.

§ 5.3 Submission of Cost Estimates. At the end of the Programming and Feasibility Phase, the Schematic Design Phase, the Design Development Phase, and at the fifty (50%) percent and ninety (90%) percent stages of completion of the Construction Documents during the Construction Documents Phase, the Architect and, when and if selected, the Construction Manager, shall, within Basic Services, prepare full and complete cost estimates for review and approval by the Owner. All estimates shall be provided in form, substance, and detail acceptable to the Owner (CSI or similar) and shall be fully reconciled with any other cost estimate(s) prepared by the Owner or the Construction Manager, if any.

§ 5.4 Reconciliation of Cost Estimates. At the end of the Programming and Feasibility Phase, the Architect shall evaluate its estimate against any previously developed estimates that may be provided by the Owner and shall reconcile the estimates to the satisfaction of the Owner. At the end of each succeeding phase, the Architect shall evaluate the estimate for that phase against the estimate completed during the previous phase. At the end of each cost estimate evaluation, and otherwise as necessary in the Owner’s judgment, the Architect shall recommend and, with the Owner’s prior approval, implement appropriate actions to modify, correct, or value engineer (“VE”) the design in order to avoid potential cost overruns. The Architect shall also identify potential VE items and alternates. If, in any phase of the Architect’s services, following the Programming and Feasibility Phase, the cost estimates for the then current design exceed the cost estimates for the previous phase, the Architect shall, using any modifications, changes, and VE proposals approved by the Owner, modify the design and all associated plans, specifications, and other Instruments of Service as necessary, and at no additional cost to the Owner, until such time as the cost estimates for the current phase are equal to or less than the last cost estimate approved by the Owner. In addition, if the aggregate cost estimate for the Cost of the Work exceeds the final estimated cost approved by the Owner, then the Owner, its sole discretion, shall: (1) give written approval of an increase in the budget for the Cost of the Work; (2) authorize rebidding or re-negotiating of the Project within a reasonable period of time; (3) terminate this Agreement; (4) in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or (5) implement another alternative. If instructed by the Owner, the Architect shall, at no additional cost to the Owner, promptly modify the design and all associated plans, specifications, and other Instruments of Service as necessary until the cost estimate for the Cost of the Work is equal to or less than the sum of the last Owner-approved cost estimate.

ARTICLE 6. INTELLECTUAL PROPERTY RIGHTS

§ 6.1 Grant of License by Architect. The Architect hereby grants to the Owner an irrevocable royalty-free license to use for any purpose the following items developed or made part of the
services performed under this Agreement by the Architect and its consultants: all drawings, designs, specifications, photographs, images, notes, reports, analyses, studies, models, materials and other work and ideas of the Architect and its consultants related to the performance of this Agreement which are or may be covered by copyright, patent, or other intellectual property laws or as to which the Architect and its consultants may assert any rights or establish any claim under any Applicable Law. The Architect agrees on behalf of itself and its consultants that the Owner shall have unlimited royalty-free rights, for the benefit of the Owner and any public entity, including, but not limited to, the University, to which the Owner may grant the right to share such rights, in any and all drawings, designs, specifications, photographs, images, notes, reports, analyses, studies, models, materials and other work and ideas developed in the performance of this Agreement, including the right to use the same on any other project. The Architect shall incorporate this provision by reference into all contracts with its consultants on this Project including, but not limited to, architects, engineers, estimators, designers, surveyors, planners, and photographers. The Architect and its consultants shall not be responsible for changes made in the documents without the Architect's authorization, nor for the Owner's use of the documents on building projects other than the Project, unless this is a contract for design services intended to serve as the basis for a follow-on design contract. The Owner assumes the risk resulting from any such changes made in the documents without the Architect's authorization, and for the Owner's use of the documents on building projects other than the Project if the Architect is not retained for such other projects. In the event this Agreement is terminated for any reason, all instruments of service created by the Architect or its consultants as of the date of termination shall be assigned to, and shall become the copyright property of, the Owner.

§ 6.2 Reproduction of Design. The Architect agrees that it will not reproduce the design of the Project for other clients in whole or in substantial part, but it is agreed that the Architect may reuse details, specification sections, and individual design concepts which, taken together, do not reproduce the design of the Project in whole or in substantial part.

§ 6.3 Use of Documents on Other Projects. In the event the Owner uses the Architect’s work product prepared pursuant to this Agreement in connection with a different building project without retaining the author of such work product or receiving written authorization of such use, the Owner shall release the authors from all claims and causes of action by the Owner arising from such unauthorized use.

§ 6.4 Consent to Use Electronic Information. In no event shall the Architect require, without the Owner’s prior written approval, the Construction Manager or any of the Owner’s other consultants or contractors to execute any waivers, releases, acknowledgements, or any similar document purporting to establish terms of use of the Architect’s electronic information required or permitted to be furnished by the Architect under this Agreement.

§ 6.5 Use of Project Renderings. The Architect may, with the Owner’s prior approval which shall not be unreasonably withheld, make renderings of the Project, whether photographic or otherwise, for use in promotional or informational materials, and the Architect shall deliver to the Owner and the University copies of all such renderings regardless of physical or electronic
ARTICLE 7. PAYMENT AND COMPENSATION

§ 7.1 Direct Personnel Expenses. Direct Personnel Expense is defined as the direct salaries of the Architect’s personnel engaged on each Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits. The Architect warrants and represents that the hourly billing rates set forth in the Project Addendum, as set in accordance with the provisions of Section 7.5, include all Direct Personnel Expenses.

§ 7.2 Compensation for Basic Services. BASIC SERVICES, as described in the Project Addendum and Article 2, shall be the Owner’s maximum obligation to the Architect and shall include the Architect’s Direct Personnel Expenses, all fees for the services of all consultants that form a part of Basic Services, overhead, profit, all expenses of the Architect and each of its consultants (except for Reimbursable Expenses as defined in this Agreement), the costs of all travel, telephone and fax correspondence, postage and deliveries, insurance, and the cost of reproduction of one (1) electronic copy in a format suitable to the Owner and hard copies (as defined in Article 2.2.22 “Deliverables” above) of all materials required to be provided to the Owner under the Agreement. The Basic Compensation shall compensate Architect for all of Architect’s obligations specified in this Agreement, except as otherwise specifically provided herein.

§ 7.3 NOT USED.

§ 7.4 Entitlement to Additional Compensation. The Architect acknowledges and agrees that it shall not be entitled to any additional compensation for its work on each Project based solely upon either: (1) any increases in the construction cost of the Project without any corresponding increase in the scope of services requested or required of the Architect, which increase must be documented in the Contract Amendment to this Agreement executed by both parties hereto; or (2) any increases in the Architect’s personnel, office, or general business expenses.

§ 7.5 Compensation for Additional Services of the Architect. For Additional Services performed by the Architect, which are agreed upon in advance in writing by the parties, compensation shall be computed on the basis of the billing rates set forth in the Project Addendum. The Architect’s billing rates, and those of its consultants, set forth in the Project Addendum shall be fixed for the entirety of the Project.

§ 7.6 Compensation for Additional Services of Consultants. For Additional Services performed by the Architect’s consultants, which are agreed upon in advance in writing by the parties, the Owner shall compensate the Architect a multiple of One and One-Tenth (1.10) times the amount billed to and paid by the Architect for such consultant’s services.
§ 7.7 Reimbursable Expenses. Reimbursable Expenses are in addition to compensation for Basic Services and Additional Services and include expenses incurred by the Architect and Architect’s employees and consultants in the interest of the Project. All Reimbursable Expenses are subject to the Owner’s prior written approval in order to be eligible for reimbursement by the Owner. Reimbursable Expenses are limited to the following:

(a) Expense of reproduction of any of the materials required to be delivered by the Architect in connection with the Project in excess of that indicated in section 2.2.22 above;

(b) Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of the limits required by Article 8 of this Agreement; and

(c) Any other expenses that the Owner and the Architect agree in advance in writing shall be reimbursed as a Reimbursable Expense in addition to the Basic Compensation.

§ 7.8 Invoicing and Payment. Payments for Basic Services, as approved by the Owner, shall be made no more frequently than monthly and, where appropriate, shall be in proportion to services performed within each phase of the Architect’s services. Payments on account of the Architect’s Additional Services and for Reimbursable Expenses, as approved by the Owner, shall be made no more frequently than monthly after presentation of the Architect’s invoice for Additional Services rendered or Reimbursable Expenses incurred. All invoices for Additional Services payable on a time and materials basis shall be submitted promptly after the services are rendered with the next submitted monthly payment application and shall include calculations of the fees for Additional Services using hourly billing rates then in effect under the terms of the Agreement and receipts for all expenses eligible for reimbursement. All invoices submitted by the Architect shall be in form, substance, and detail acceptable to the Owner and shall not be deemed received until received in full, complete, and proper form.

§ 7.9 Accounting Records. Records of Reimbursable Expenses and expenses pertaining to Additional Services performed by the Architect or its consultants on the basis of a multiple of hourly billing rates shall be available to the Owner or the Owner’s authorized representative upon reasonable notice to the Architect.

§ 7.10 Compensation for Defective Performance. The Architect and its 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 Architect in the preparation of Construction Documents, as reasonably determined by the Owner.

§ 7.11 Right to Offset. If the Owner finds that services previously paid for by the Owner contained deficiencies, errors or omissions then the Owner may withhold from any future payment an amount reasonably calculated by the Owner to cover the cost of correcting the deficiency, error or omission until the services have been corrected. The Owner may also offset against any payment due, or that may become due, to the Architect the amount of any costs incurred, or that may reasonably be expected to be incurred, by the Owner arising from the Architect’s failure to provide required services in accordance with the provisions of this Agreement or arising from any deficiencies, errors or omissions in the Architect’s services. If
the Owner shall discover that the charge for any previously paid-for services was calculated based upon incorrect hourly rates or other incorrect information, the Owner may offset any overcharges against any future payment. Any disputes related to offsets taken by the Owner shall be subject to resolution pursuant to Article 10 of this Agreement. Nothing in this Section shall limit any legal remedies of the Owner against the Architect for default, errors, omissions, erroneous claims, false claims, tort claims, or any breach by the Architect of the terms of this Agreement or any Applicable Law.

§ 7.12 Withholding of Payment. In the event that the Owner shall be entitled to withhold payment to the Architect under the terms of this Agreement, the Architect shall not be permitted to suspend services, if, in the judgment of the Owner, the withheld amounts are reasonable or necessary to secure the Owner’s claims against the Architect.

ARTICLE 8. INSURANCE

§ 8.1 Insurance. The Architect shall purchase and maintain insurance of the type and limits listed in this Article 8 with respect to the services to be performed under this Agreement. Except as otherwise specifically provided in this Agreement, such insurance shall be provided at the Architect’s sole cost and expense and shall be in force and effect for the full term of the Agreement or for such longer period as this Article may require. With respect to each such required insurance coverage and policy, the following shall apply:

§ 8.2 General Insurance Requirements.

§ 8.2.1 Certificates of Insurance. Simultaneously with its execution of each Project Addendum, the Architect shall deliver to the Owner three (3) original copies of a properly endorsed Certificate or Certificates of Insurance acceptable to the Owner as evidence that each of the required insurance coverages (with no less than the required limits) as hereinafter set forth have been purchased and are in full force and effect. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, and policy effective and expiration dates. Copies of all required endorsements shall be attached to the Certificates. Throughout the period that the Architect is required to maintain any policies of insurance hereunder, the Architect shall submit updated Certificates prior to the expiration of each of the policies referenced in the Certificates so that the Owner shall at all times possess Certificates indicating current coverage. In accordance with Section 1.7 hereof, the Architect shall require its consultants to purchase and maintain insurance coverage in the types and limits at least equal to that required of the Architect under this Agreement, and the Architect shall furnish evidence of such coverage satisfactory to the Owner. Failure by the Architect to obtain all policy renewals and to provide the respective insurance Certificates as required shall constitute just cause for termination of Architect’s services under this Agreement. The Owner reserves the right to request, and upon request, the Architect agrees to furnish, a copy of each insurance policy and all endorsements thereto.

§ 8.2.2 Additional Insured Endorsements. The Owner, the University, and the Commonwealth of Massachusetts and all of their respective members, trustees, officers,
employees, agents, consultants, contractors, successors, assigns, and other representatives (the “Indemnified Parties”) will be named as additional insureds on all policies, with the exception of Workers’ Compensation and Professional Liability Policies. Additional insured coverage for the commercial general liability policy shall apply for ongoing and completed operations on a form no less broad than CG 20 10 (11 85) or a combination of forms CG 20 10 07 04 and CG 20 37 07 04 (or forms providing equivalent coverage). The additional insured endorsement form(s) shall state “Owner, the University, and the Commonwealth of Massachusetts and all of their respective members, trustees, officers, employees, agents, consultants, contractors, successors, assigns, and other representatives” as the Additional Insured and shall state “All Locations” as the Location. Additional Insured coverage shall be maintained for 6 years after Final Acceptance or the expiration or termination of the Agreement, whichever is greater. Throughout the 6 year period, Architect, and other parties as required, shall submit renewal Certificates, including additional insured and other endorsements, as evidence that coverage is being maintained.

§ 8.2.3 Financial Capacity. All required insurance coverages shall be placed with a company or companies licensed and qualified to do business in the Commonwealth of Massachusetts (unless agreed upon in advance in writing by the Owner) and certified by an agent licensed and qualified to do business in the Commonwealth of Massachusetts. Each insurer shall have a financial strength rating of A, VIII or better by A.M. Best, or an equivalent rating assigned by a similar rating agency acceptable to the Owner, or otherwise acceptable to the Owner.

§ 8.2.4 Limitations on Modifications of Coverage. Each required policy shall contain, or be endorsed to contain, a provision that the policies or coverage cannot be canceled, terminated, voided, suspended, lapsed, modified or reduced except after thirty (30) days’ (or for non-payment of premium, 10 days’) prior written notice to the Authority. For any insurance required by this Article where the insurance carrier will not modify the policy to grant the above stated notice of cancellation, or anytime the Architect becomes aware of an impending or actual cancellation, non-renewal, expiration, or reduction in coverage of any insurance required by the Contract Documents, the Architect shall provide written notice to Authority within two (2) business days of the date the Architect becomes aware of such impending or actual cancellation or expiration. Upon receipt of notice from the Architect, the Authority shall, unless the lapse in coverage arises from an act or omission of the Authority, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Architect. The furnishing of notice by the Architect shall not relieve the Architect of any contractual obligation to provide any required coverage. The Architect shall require the same Cancellation Notice Requirement from its Hired Parties.

§ 8.2.5 Primary and Non-Contributory. All required coverage of Architect shall be primary to any coverage that may be available to the Indemnified Parties. The coverage afforded shall be primary as respects any claims, losses, damages, expenses or liabilities arising out of, relating to in any way, or incident to the work or any activities of any Architect, regardless whether instituted against Architect alone or jointly with others, and noncontributing with any other insurance maintained by the Indemnified Parties.
§ 8.2.6 Deductibles. The Architect shall be responsible for the payment of any and all deductibles under all of the insurance required herein, and the Owner shall not be responsible for the payment of any deductibles, self-insured retentions or any portion thereof.

§ 8.2.7 No Limitation of Liability. Insufficient insurance shall not release the Architect from any liability for breach of its obligations under this Agreement. Without limitation, the Architect shall bear the risk of any loss not covered by the insurance policies that it maintains.

§ 8.3 Professional Liability Insurance. Architect, and its Consultants as required by Architect, shall purchase and maintain professional liability insurance appropriate to parties’ profession. If any of the Work performed by Architect or its Consultants includes the rendering of professional services including, but not limited to, architectural, engineering, design, or consulting services, Architect shall maintain and shall require any Consultant involved in the same or similar services, to maintain Professional Liability or Errors and Omissions insurance. Coverage shall apply to liability for a negligent professional error, act, or omission arising out of Architect’s services or any person or entity for whose performance the Architect is legally liable. If coverage is written on a claims-made basis, any retroactive date shall be no later than the effective date of the Architect; and continuous coverage shall be maintained or an extended discovery period exercised for six (6) years beginning from the time that work under the Architect is completed or the statute of repose has expired, whichever is greater. Architect shall submit either (i) renewal insurance certificates to evidence coverage is maintained throughout the six (6) year period; or (ii) a six (6) year extended reporting period endorsement. Limits shall not be less than $5,000,000 per claim and $5,000,000 annual aggregate for Architect and $3,000,000 per claim and $3,000,000 annual aggregate for Consultants.

§ 8.4 Other Insurance. The Architect shall purchase and maintain at its sole cost and expense during the term of this Agreement, and shall require its consultants to purchase and maintain at their sole cost and expense, the following insurance:

(a) Workers’ Compensation Insurance as required under the Massachusetts Workers’ Compensation Reform Act (M.G.L. Chapter 152, as amended) and as required by any other jurisdictions in which workers are residents, or through which they may travel to perform Work, as required by applicable law and imposed by worker’s compensation, occupational disease or similar laws, including the Longshore and Harbor Workers’ Act, the Federal Employers’ Liability and the Jones Act, if applicable. No proprietor, partner, executive officer or member shall be excluded. Employers’ liability limits shall not be less than $1,000,000 each accident, $1,000,000 by disease-policy limit, and $1,000,000 by disease-each employee. Such policy shall be endorsed with a waiver of subrogation or waiver of transfer of rights of recovery in favor of the Indemnified Parties. The Architect’s employees, servants and agents shall be deemed not to be the Owner’s employees for either worker’s compensation or unemployment insurance purposes.

(b) Commercial General Liability (CGL) Insurance, written on an occurrence basis, and coverage shall be at least as broad as the broadest available version of Insurance Services Office form CG 00 01. No amending or exclusionary endorsements material to any parties’ obligations in the Agreement may be attached. There shall be no endorsement or modification of
the CGL limiting the scope of coverage for liability assumed under an insured contract or limiting the liability owed to the Indemnified Parties to that limit required in contract. The policy shall provide for separation of insureds and shall contain no insured vs. insured exclusion. The policy shall contain additional insured endorsements as described in 8.2.2 Additional Insured Endorsements and a waiver of subrogation or waiver of transfer of rights of recovery endorsement in favor of the Indemnified Parties. Products and completed operations coverage shall be maintained for 6 years after Final Acceptance or the expiration or termination of the Agreement, whichever is greater. The policy shall contain an endorsement granting a per project aggregate limit for the Project.

(c) Environmental Liability insurance to cover pollution claims arising out of professional services including bodily injury, property damage, including loss of use of owned and non-owned, damaged or stigmatized property, or of property that has not been physically injured or destroyed, on and off-site cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims all in connection with any loss arising from the Agreement. Coverage shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, soot, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. If coverage is written on a claims-made basis, any retroactive date shall be no later than the effective date of the Agreement; and continuous coverage will be maintained or an extended discovery period exercised for 3 years beginning from the time that work under the Agreement is complete. Architect shall submit either (i) renewal insurance certificates to evidence coverage is being maintained throughout the 3 year period; or (ii) a 3-year extended reporting period endorsement. Limits shall not be less than $2,000,000 per claim and $2,000,000 annual aggregate.

(d) Automobile Liability Insurance coverage for all owned (if any), non-owned and hired automobiles. Coverage shall be no less broad than as provided under symbol 1. If party does not own autos, symbols 2, 8 and 9 shall be provided on the automobile policy or hired and non-owned coverage shall be provided on commercial general liability policy. The policy shall contain an additional insured endorsement and a waiver of subrogation or waiver of transfer of rights of recovery endorsement in favor of the Indemnified Parties.

(e) Umbrella or Excess Liability Insurance on a follow-form providing coverage no less broad than the coverage for Commercial General Liability, Automobile Liability and Employers Liability described in this Agreement. Products and completed operations liability under the umbrella or excess liability policy(s) shall be maintained for 6 years after Final Acceptance or the expiration or termination of the Agreement, whichever is greater. The policy shall contain additional insured endorsements or follow form coverage as described in 8.2.2 Additional Insured Endorsements and a waiver of subrogation or waiver of transfer of rights of recovery endorsement in favor of the Indemnified Parties. Any Excess or Umbrella liability coverage will not require contribution before it will apply.

(f) Limits of Liability shall be no less than the following:

<table>
<thead>
<tr>
<th>Coverage</th>
<th>Limit</th>
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<tr>
<td>General Liability - each occurrence</td>
<td>$6,000,000</td>
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</table>
General Liability - personal/advertising injury  $6,000,000
General Liability - products and completed operations aggregate  $6,000,000
General Liability - general aggregate  $6,000,000
Automobile Liability – each accident  $6,000,000

(g) **Valuable Papers insurance** in an amount sufficient to assure the restoration of any plans, drawings, computations, field notes, or other similar data relating to the work covered by this Agreement in the event of loss or destruction while in the custody of the Architect until the final fee payment is made or all data is turned over to the Owner, and this coverage shall include coverage for relevant electronic media including, but not limited to, documents stored in computer aided design drafting (CADD) systems and building information models (BIM) maintained by the Architect.

The required insurance coverages and limits are solely for the protection of the Owner and other Indemnified Parties. There is no assurance that the scope or limits of coverage are sufficient to protect the interest of the Architect or any consultants. Nothing contained herein shall limit the liability of the Architect or any consultants to Owner or other Indemnified Parties or to claims of third parties.

**ARTICLE 9. INDEMNIFICATION**

The Architect shall, to the fullest extent of the law, indemnify, defend, and hold harmless the Owner, the University, and the Commonwealth and all of their respective members, trustees, officers, employees, agents, consultants, contractors, successors, assigns, and other representatives (the “Indemnified Parties”) from and against any and all actual or alleged claims, demands, losses, damages, injuries, liabilities, actions, causes of actions, costs and expenses (including reasonable attorneys’ fees) for or on account of any injuries to persons (including death), damage to property, or any other loss, financial or otherwise, to the extent caused by the Architect’s breach of this Agreement or any fraudulent, wrongful, negligent, or actual or alleged willful act, error, omission, failure to perform, breach of contract, infringement of any patent or intellectual property right, or other misconduct of or by the Architect or any of its consultants, subconsultants, contractors, employees, agents or other representatives. The Architect’s duty to defend the Indemnified Parties shall not extend to claims covered by Architect’s professional liability insurance policy required by this Agreement. The Architect shall cause its indemnity obligations hereunder to be insured under the respective insurance policies, as applicable. Such obligation shall not be construed to limit, negate or abridge any other obligation of indemnification running to the Owner or Indemnified Parties which would otherwise exist. The extent of the foregoing defense, indemnification, and hold harmless agreement shall not be limited by any provision of insurance required pursuant to Article 8 of this Agreement and shall survive the termination of the Agreement.

**ARTICLE 10. DISPUTE RESOLUTION**
§ 10.1 Governing Law and Venue. All claims and disputes between the parties to this Agreement arising out of or relating to this Agreement or the Project, whether in contract, tort, or otherwise, shall be submitted for resolution to a court of competent jurisdiction in Suffolk County, Massachusetts, unless otherwise agreed by the parties, and shall be governed by the laws of the Commonwealth of Massachusetts.

§ 10.2 Limitation on Commencement of Legal Actions. No litigation shall be brought, however, until the completion of all services required to be rendered by the Architect under this Agreement or the earlier termination of this Agreement pursuant to its terms, unless the continued deferral of filing such action would result in such claim, dispute, or other matter in question being barred by applicable statutes of limitations or repose. In no event shall the Architect suspend or delay the performance of its services, including its consultants’ services, under this Agreement due to the existence of pending claims or disputes between the Owner and the Architect.

§ 10.3 Mediation. Prior to the commencement of litigation of any claim, dispute, or any other matter arising out of this Agreement or any Project, the Owner and the Architect shall, at the Owner’s option, mediate any such claim, dispute, or other controversy as a condition precedent to litigation. A request for mediation shall be made in writing and delivered to the other party no less than sixty (60) days before the commencement of litigation. Should either party fail or refuse to participate in mediation in good faith within a reasonable time after the other party’s request for mediation, the participating party shall not be barred from proceeding with litigation. The parties shall share equally the mediator’s fees and filing fees, if any. The mediation shall be held in Boston, Massachusetts unless another location is mutually agreed upon. Any settlement agreements reached in mediation shall be enforceable in any court having jurisdiction thereof.

ARTICLE 11. SUSPENSION AND TERMINATION

§ 11.1 Termination by Either Party. This Agreement may be terminated by either party with respect to each Project upon not less than seven (7) days’ written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Failure of the Owner to make payments to the Architect in accordance with the terms of this Agreement shall be considered substantial nonperformance and cause for termination.

§ 11.2 Suspension by Owner. If any Project is suspended by the Owner for more than ninety (90) consecutive days regardless of cause and at the Owner’s sole discretion, the Architect shall be compensated for services performed prior to notice of such suspension, as long as the Architect is not in default under the terms of the Agreement. When the Project is resumed, the Architect’s compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect’s services, and any estimate of Construction Cost established prior to such suspension shall be adjusted to reflect changes in the general level of prices in the construction industry, if any, during the period of such suspension.
§ 11.3 Termination by Owner For Cause. If this Agreement is terminated with respect to all or any Project due to the failure of the Architect to fulfill its contractual obligations, the Owner may assume the design work and replace the Architect and/or prosecute the Project to completion by contract with a replacement architect or otherwise. In such case, the Architect shall be liable to the Owner for any damages incurred by the Owner thereby (including, but not limited to, attorneys’ fees and costs) to the extent resulting from Architect’s breach. These rights and remedies of the Owner are in addition to any other rights and remedies provided by law or under this Agreement. In the event of termination for cause by the Owner, no compensation shall be paid to the Architect until the completion of the Project. Upon completion, any monies remaining due to the Architect shall be promptly paid by the Owner less the sum of Owner’s damages incurred as a result of Architect’s breach. If the sum of Owner’s damages exceeds the amount of monies remaining due to the Architect, the Architect shall reimburse the Owner for the difference.

§ 11.4 Termination by Owner For Convenience. This Agreement may also be terminated by the Owner upon seven (7) days written notice with respect to any or all of the Projects, without regard to any fault or failure to perform by any party, and solely for the Owner’s convenience. In the event of such termination, the Architect shall be compensated for services performed in accordance with the terms and conditions of the Agreement prior to termination including any Reimbursable Expenses then due, and the Owner shall have no further liability for compensation, expenses, or fees to the Architect hereunder, except as set out under Section 11.5.

§ 11.5 Architect’s Duties Upon Termination. In the event of any termination under this Article 11, the Architect consents to the Owner’s selection of another architect of the Owner’s choice to assist the Owner in any way in completing the Project. The Architect further agrees to cooperate and provide any information and documents, regardless of physical form, requested by the Owner in connection with the completion of the Project and consents to and authorizes the making of any reasonable changes to the design of the Project by the Owner and such other architect as the Owner may desire; and the Owner agrees that, in such circumstances, the Architect shall not be responsible to it for any claims, suits, or damages of any nature arising from such changes. Any services provided by the Architect which are requested by the Owner after termination shall be compensated by the Owner as if such services were Additional Services, and any expenses shall be compensated in accordance with Section 7.5.

ARTICLE 12. MISCELLANEOUS PROVISIONS

§ 12.1 Severability. If any provision of this Agreement is adjudged by any court of competent jurisdiction to be invalid or unenforceable, then such provision shall be modified only to the extent necessary to preserve the original intentions of the parties, and the validity or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

§ 12.2 Assignment. The Owner and Architect, respectively, bind themselves, their agents, partners, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the prior written consent of the other, except
that the Owner may assign this Agreement, or any portion thereof, to the University as the 
Owner may deem appropriate at its sole discretion.

§ 12.3 Construction of Agreement. The section headings, captions, or other titles contained 
within this Agreement are for reference and convenience only, and are not to be construed in any 
way as a part of this Agreement in the event of any suits and actions with respect to this 
Agreement and enforcement of its terms.

§ 12.4 No Intended Third Party Beneficiaries. Nothing contained in this Agreement shall 
create a contractual relationship with or a cause of action in favor of a third party against either 
the Owner or the Architect.

§ 12.5 Hazardous Materials. Unless otherwise required in this Agreement, the Architect shall 
have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure 
of persons to, hazardous materials or toxic substances in any form at the Project site unless 
placed or left on the site by the Architect or one of its consultants or subconsultants.

§ 12.6 Promotional Rights. The Architect shall have the right to include photographic or 
artistic representations of the design of the Project among the Architect’s promotional and 
professional materials. The Architect shall be given reasonable access to the completed Project 
to make such representations. However, the Architect’s materials shall not include the Owner’s 
confidential or proprietary information. The Owner shall endeavor to provide professional credit 
for the Architect in the Owner’s promotional materials for the Project.

§ 12.7 Owner’s Information Confidential. The Architect shall keep the Owner’s and the 
University’s information relating to each Project strictly confidential and shall not disclose it to 
any third party except to: (1) its employees working on the Project, (2) those who need to know 
the content of such information in order to perform services or construction solely and 
exclusively for the Project, or (3) its consultants and contractors whose contracts include similar 
restrictions on the use of the Owner’s information. The Architect shall not make any disclosure 
of the Owner’s or the University’s information relating to the Project to any third party unless the 
Architect is compelled to do so by order of a court of competent jurisdiction.

§ 12.8 Applicable Laws. The Architect shall perform the services required under this 
Agreement in conformity with all Applicable Laws in effect at the time of the completion of the 
Construction Documents for each Project. The cost of such compliance shall be included in the 
Architect’s Basic Compensation.

§ 12.9 Public Construction. The Architect shall thoroughly acquaint its employees and 
consultants with all provisions of the Massachusetts General Laws governing the conduct of 
public construction projects, including, but not limited to, M.G.L. c. 30, 149, and 149A, 
including, without limitation, M.G.L. c. 30, § 39M, which sets forth requirements for the 
description of material specifications and proprietary items in construction bid documents.

§ 12.10 Waiver of Claims. The Owner’s review, approval, acceptance of, or payment for, any 
of the services furnished by the Architect shall not be construed as a waiver of any rights under
this Agreement or of any cause of action arising out of the performance of this Agreement. The Owner’s approval shall not in any way relieve the Architect from its responsibility for the professional and technical accuracy and coordination of all data, designs, drawings, specifications, cost estimates and other work or materials furnished by the Architect or its consultants.

§ 12.11 Registration/Licensing. The Architect hereby certifies that: (a) if an individual, the individual is a registered Architect; (b) if a partnership, a majority of all the partners are persons who are registered Architects; (c) if a corporation, sole proprietorship, joint stock company or other entity, the majority of the directors or a majority of the stock ownership and chief executive officer are persons who are registered Architects or registered civil engineers, and the person to have the Project in his or her charge is a registered Architect; and (d) if a joint venture, each joint venturer satisfies the requirements of this Section, where in each case "registered" means registered in the Commonwealth of Massachusetts.

§ 12.12 No Gifts or Other Inducements; Certifications per M.G.L. c. 7C, section 51. The Architect hereby certifies under the penalties of perjury that the Architect has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this contract; no consultant to or subcontractor for the Architect has given, offered or agreed to give any gift, contribution or offer of employment to the Architect, 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 Architect; and no person, corporation or other entity, other than a bona fide full-time employee of the Architect has been retained or hired by the Architect to solicit for or in any way assist the Architect in obtaining this contract for design services upon a contract or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this contract to the Architect.

§ 12.13 Corrections by Owner. The Architect shall furnish appropriate competent professional services for each of the phases of each Project such that detail checking or reviewing by the Owner is not necessary. Any changes, corrections, additions, or deletions made by the Owner shall be incorporated into the design of the Project by the Architect unless specific written objections thereto are made by the Architect. The decision of the Owner shall be final in matters pertaining to this Section, but the Architect shall not be responsible for any such decision by the Owner that is inconsistent with generally accepted standards of care provided that the Architect advised the Owner in writing of the inconsistency at the time the decision was made.

§ 12.14 Financial Interest in Construction Work. The Architect shall not employ in any element of design, specification, estimating, evaluation, or other work under this Agreement any person or firm that expects to be a bidder, contractor, subcontractor, or supplier for the construction of any Project or any part thereof. The Architect shall obtain from every consultant a written representation that such consultant is aware that it is prohibited from serving as a bidder, contractor, subcontractor, or supplier for the construction of the Project or any part thereof.
§ 12.15 Entire and Integrated Agreement. This Agreement and any Project Addendum represents the entire and integrated agreement between the Owner and the Architect 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 Owner and the Architect.

§ 12.16 Certification of Tax Compliance. The Architect hereby certifies under penalties of perjury that the Architect has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting of child support, as set forth in M.G.L. c. 62C, § 49A (b).

§ 12.17 Conflict of Interest. The Architect hereby certifies under penalties of perjury and rejection of contract, without financial recourse to Owner, that the Architect and its employees and/or agents have complied with all laws of the Commonwealth of Massachusetts including the Massachusetts Conflict of Interest law, M.G.L. c. 268A in its entirety, and any related Massachusetts conflict of interest statute or regulation, if any.

§ 12.18 Good Standing. By executing the Contract, the Architect certifies that it, its consultants, employees, representatives, agents, and any other party performing Work or providing Services for the Contract on behalf of, under, by or through the Architect (the “Certifying Parties”), shall at all times be fully licensed, qualified and in good standing; that all fee proposals were bona fide and made without collusion or fraud; and that all tax obligations with the Commonwealth of Massachusetts and the U.S. government are paid and current. If at any time any of the Certifying Parties is in violation of the certifications made herein, including, without limitation: is debarred or deemed unqualified by any agency of the Commonwealth; is subject to an investigation by any governmental entity or agency involving or arising from improper, bad faith, gross negligence, or criminal activity; is deemed delinquent with tax or other financial obligations; is or is likely to become insolvent or unable to pay debts in the normal course; or is otherwise deemed by the Authority, in its sole but reasonable discretion, to be or have fallen out of good standing, the Authority may, but is not compelled to, require that the Architect immediately remove and replace the Certifying Party in violation, at the Architect’s cost. In addition, the Authority may, in its discretion, take any other action to protect the interests of the Authority, the University, other Project participants, and the public. In such event, the Architect shall not be entitled to an extension of time, and the Architect shall defend, indemnify and hold the Authority harmless from and against any claims, damages or expenses, including attorney’s fees, arising out of or relating to any violation of the requirements of this paragraph. The requirements of this paragraph shall survive Project completion the Contract generally.

ARTICLE 13. INTERNAL ACCOUNTING CONTROLS

§13.1 Audited Financial Statements. The Architect hereby certifies that it has internal accounting controls which conform to the requirements of subsection (c) of M.G.L. c. 30, § 39R and that the Architect has filed and will continue to file an audited financial statement as referred to in subsection (d) of said § 39R.
§13.2 Financial Books and Records. The Architect shall maintain all books, records and accounts related to the Project in compliance with M.G.L. c. 30, § 39R, as set forth in this Section 13.2, and all terms used herein shall have the same meaning as those in the statute:

§13.2.1 The Architect shall make, and keep for at least six (6) years after final payment, books, records and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Architect.

§13.2.2 Until the expiration of six (6) years after final payment, the Owner shall have the right to examine any books, documents, papers or records of the Architect and of its consultants and subcontractors that directly pertain to, and involve transactions relating to, the Architect or its consultants or subcontractors.

§13.2.3 The Architect shall describe any change in the method of maintaining records or recording transactions which materially affects any statements filed with the Owner, including in the Architect’s description the date of the change and reasons therefor, and shall accompany said description with a letter from the Architect’s independent certified public accountant approving or otherwise commenting on the changes.

§13.2.4 The Architect has filed a statement of management on internal accounting controls as set forth in Section 13.2.6 below prior to the execution of this Agreement.

§13.2.5 The Architect has filed prior to the execution of this Agreement and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in Section 13.2.8 below.

§13.2.6 The Architect shall file with the Owner a statement of management as to whether the system of internal accounting controls of the Architect and its subsidiaries reasonably assures that:

(a) transactions are executed in accordance with management’s general and specific authorization;

(b) 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;

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

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

§13.2.7 The Architect shall also file annually with the Owner a statement prepared and signed by an independent certified public accountant, stating that such accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to:
(a) whether the representations of management in response to this Section and Sections 13.2.1 through 13.2.5 above are consistent with the result of management’s evaluation of the system of internal accounting controls; and

(b) 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 Architect’s financial statements.

§ 13.2.8 The Architect shall annually file with the Owner during the term of this Agreement a year-end 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 Owner upon request.

§ 13.2.9 Records and statements required to be made, kept or filed in compliance with the provisions of this Section 13.2 shall not be public records (as that term is defined in M.G.L. c. 4, §7) and shall not be open to public inspection, except as provided in Section 13.2.2.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Professional Services as of the date first written above, and the individual executing this Agreement on behalf of the Architect makes the representations and certifications set forth in this Agreement under the pains and penalties of perjury.

OWNER:  
UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY

By: _______________________
Barbara J. Kroncke
Its Executive Director

ARCHITECT:  
FIRM NAME

By: ___________________________
___________________________
Its _______________________

#1521816.7
ATTACHMENT A

FORM OF PROJECT ADDENDUM
PROJECT ADDENDUM
FOR
MASTER SERVICES AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN OWNER AND ARCHITECT

Architect: Firm Name
Project Addendum Number: X
Added Project: Project Name
Project No. (of Added Project): XX-XX
Not to Exceed Fee: ___________________ Dollars ($______.00)

This Project Addendum related to the Agreement for Professional Services by and between the University of Massachusetts Building Authority (the “Owner”) and Firm Name (the “Architect”) is made and entered into as of Month XX, 20XX.

The Owner and the Architect have entered into a certain Master Services Agreement (the “Agreement”), dated as of Month XX, 20XX (and together with all Attachments thereto and all other documents as defined and referenced therein the “Agreement”), in connection with the provision of Architectural and Engineering services for one or more Authority projects (each a “Project”) to be identified and agreed to by the parties.

This Project Addendum is entered into by the Owner and the Architect to evidence their agreement that the terms of the Agreement shall apply to the Owner’s Project Name at the University of Massachusetts Campus (the “Added Project”). By executing this Project Addendum, the Architect specifically agrees to perform for the Added Project all Design services described in the Agreement in strict compliance with the Agreement and on the terms and for the compensation set forth herein.

Exhibits

Exhibit A: Scope of Architectural and Engineering Services
Exhibit B: Key Project Staff
Exhibit C: List of Architect’s Consultants
Exhibit D: Current Billing Rates of the Architect and Consultants
Exhibit E: Form of Contract Amendment
Exhibit F: Firm Proposal dated Month XX, 20XX and Supplemental Information dated Month XX, 20XX
In consideration of the mutual promises and obligations contained in the Agreement and this Project Addendum, the Owner and Architect hereby agree as follows:

1. The Agreement is hereby amended by adding to the Projects that are subject to the Agreement the Added Project described above;

2. The Architect shall render the required scope of services as set forth in Exhibit A for the Added Project with the key Project Staff set forth in Exhibit B and consultants, if any, set forth in Exhibit C hereof for the full duration of the Added Project;

3. In performing its services with respect to the Added Project, the Architect agrees to adhere to the Project Schedule set forth in the RFP dated Month XX, 20XX, as it may be amended by the Owner from time to time;

4. The maximum Fee for the Architect in connection with the Added Project, as defined in ARTICLE 7 of the Agreement, is _________________________ ($_________.00);

5. The hourly billing rates of the Architect described in Sections 7.1, 7.2 and 7.5 and of the Architect’s Consultants described in Section 7.6 of the Agreement are those set forth in Exhibit D hereof; and

6. Add other applicable provisions if necessary.

IN WITNESS WHEREOF, the parties hereto have executed this Project Addendum under seal, in multiple counterparts, each of which shall be deemed to be an original hereof and collectively comprising a fully executed instrument, as of the day and year first above written.

OWNER:
UNIVERSITY OF MASSACHUSETTS
BUILDING AUTHORITY

By: ______________________________
   Barbara J. Kroncke
   Its Executive Director
   Hereunto Duly Authorized

ARCHITECT:
FIRM NAME

By: ______________________________
   Its ______________________
   Hereunto Duly Authorized
EXHIBIT A

SCOPE OF OPM SERVICES
EXHIBIT B

KEY PROJECT STAFF
## EXHIBIT C

### LIST OF ARCHITECT’S CONSULTANTS

<table>
<thead>
<tr>
<th>Discipline</th>
<th>Name of Entity and Authorized Representative</th>
<th>Business Address</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consultants Performing Basic Services (included in Basic Compensation Amount)</td>
<td>Main Phone: Direct Line: Email:</td>
<td></td>
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<tr>
<td>Architect</td>
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<tr>
<td>Structural Engineer</td>
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<tr>
<td>Mechanical Engineer</td>
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<tr>
<td>Electrical Engineer</td>
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<td>Plumbing Engineer</td>
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<tr>
<td>Fire Protection Engineer</td>
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<tr>
<td>Civil Engineer</td>
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<tr>
<td>Geotechnical Engineer (Design Services)</td>
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<tr>
<td>Role</td>
<td>Main Phone</td>
<td>Direct Line</td>
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<tr>
<td>Geotechnical Engineer (Construction Monitoring)</td>
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<tr>
<td>Interior Designer</td>
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<tr>
<td>Telecommunications Consultant</td>
<td>Main Phone</td>
<td>Direct Line</td>
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<tr>
<td>Cost Estimating Consultant</td>
<td>Main Phone</td>
<td>Direct Line</td>
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<tr>
<td>Scheduling Consultant</td>
<td>Main Phone</td>
<td>Direct Line</td>
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<tr>
<td>Lighting Consultant</td>
<td>Main Phone</td>
<td>Direct Line</td>
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<tr>
<td>Building Code Consultant</td>
<td>Main Phone</td>
<td>Direct Line</td>
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<tr>
<td>Accessibility Consultant</td>
<td>Main Phone</td>
<td>Direct Line</td>
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<tr>
<td>Landscape Architect</td>
<td>Main Phone</td>
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<tr>
<td>Sustainability Consultant</td>
<td>Main Phone</td>
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<tr>
<td>Acoustic Engineer</td>
<td>Main Phone</td>
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<tr>
<td>Land Surveyor</td>
<td>Main Phone</td>
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<tr>
<td>Consultant</td>
<td>Main Phone:</td>
<td>Direct Line:</td>
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<tr>
<td>Environmental Permitting Consultant</td>
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<tr>
<td>Industrial Health Hygienist, certified in Asbestos and PCB (Testing &amp; Monitoring)</td>
<td>Main Phone:</td>
<td>Direct Line:</td>
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<tr>
<td>Parking Consultant</td>
<td>Main Phone:</td>
<td>Direct Line:</td>
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<tr>
<td>Traffic Engineer</td>
<td>Main Phone:</td>
<td>Direct Line:</td>
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<tr>
<td>Building Envelope Consultant</td>
<td>Main Phone:</td>
<td>Direct Line:</td>
<td>Email:</td>
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<tr>
<td>Audio Visual Consultant</td>
<td>Main Phone:</td>
<td>Direct Line:</td>
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<tr>
<td>Information Technology Consultant</td>
<td>Main Phone:</td>
<td>Direct Line:</td>
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<tr>
<td>Security Consultant</td>
<td>Main Phone:</td>
<td>Direct Line:</td>
<td>Email:</td>
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<tr>
<td>FF&amp;E Consultant</td>
<td>Main Phone:</td>
<td>Direct Line:</td>
<td>Email:</td>
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<tr>
<td>Food Service / Kitchen Consultant</td>
<td>Main Phone:</td>
<td>Direct Line:</td>
<td>Email:</td>
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<tr>
<td>Other (Specify)</td>
<td>Main Phone:</td>
<td>Direct Line:</td>
<td>Email:</td>
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</table>

**Consultants Paid for as Additional Services under Section 3.1**
| Other (Specify) |  | Main Phone: Direct Line: Email: |
EXHIBIT D

HOURLY BILLING RATES OF ARCHITECT AND CONSULTANTS
PROJECT ADDENDUM AMENDMENT
FOR
MASTER SERVICES AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN OWNER AND ARCHITECT

UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY
UMBA PROJECT NO. XX-XX

UNIVERSITY OF MASSACHUSETTS CAMPUS PROJECT NAME

Amendment Number: X-X
Compensation Adjustment (Not to Exceed): XX Dollars ($XX.00)
Schedule Change: Xxx
Summary Description of Change: See detail below and attachments

This Master Services Contract Addendum Amendment ("Amendment") is made and entered into as of Month X, 20XX, by and between the University of Massachusetts Building Authority (the "Owner") and Firm ("Architect").

The Owner and the Architect have entered into a certain Master Services Agreement between Owner and Architect, dated as of Month X, 20XX (the "Agreement" and, together with all Attachments thereto and all other documents as defined and referenced therein, the "Contract"), and Project Addendum X between Owner and Architect, dated as of Month X, 20XX (the "Project Addendum" and, together with all Attachments thereto and all other documents as defined and referenced therein, the "Contract"), in connection with the design and construction of Project Name located on the XX campus of the University of Massachusetts Town, Massachusetts (the "Project").

This Amendment is entered into by the Owner and the Architect to evidence their agreement with respect to the modification of the scope of services and/or certain terms and conditions of the Contract as set forth herein. Capitalized terms used in this Amendment shall have the meanings assigned in the Contract except as otherwise expressly provided herein. The Architect shall perform all services required by this Amendment in strict compliance with the Contract unless otherwise expressly set forth herein.

In consideration of the mutual promises and obligations contained in the Contract and this Amendment, the Owner and Architect hereby agree to amend the Contract as follows:

<table>
<thead>
<tr>
<th>Modification</th>
<th>Not to Exceed Fee</th>
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<td></td>
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</tbody>
</table>
Modification

1. The Parties agree…

Contract Summary

<table>
<thead>
<tr>
<th>Original Contract Value:</th>
<th>$0.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>Previous Amendments thru 000:</td>
<td>$0.00</td>
</tr>
<tr>
<td>This Amendment:</td>
<td>$0.00</td>
</tr>
<tr>
<td>Current Contract Value:</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

Descriptions of the above-referenced Modifications are attached hereto and incorporated herein by reference. Except as expressly incorporated herein, no documents or statements of any kind (including but not limited to any transmittals or correspondence) are part of or included in this Amendment.

Except as expressly reserved herein, this Amendment constitutes complete and final compensation for the Architect in connection with the modified scope, terms and/or conditions of this Amendment and the Architect represents that it shall have no claim against the Owner for any additional or further compensation or time for performance relating in any way to the subject matter of this Amendment. Except as expressly provided herein, all terms and conditions of the Contract remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment under seal, in multiple counterparts, each of which shall be deemed to be an original hereof and collectively comprising a fully executed instrument, as of the day and year first above written.

Owner: Architecture

UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY

By: ____________________________
Barbara J. Kroncke
Its Executive Director
Hereunto Duly Authorized

Architect: FIRM

By: ____________________________
Its ________________
Hereunto Duly Authorized
EXHIBIT F

FIRM PROPOSAL DATED MONTH XX, 20XX AND SUPPLEMENTAL INFORMATION DATED MONTH XX, 20XX
ATTACHMENT B

OWNER’S CONSTRUCTION MANAGEMENT AT RISK PROCEDURES
ATTACHMENT C

AUTHORITY’S MINORITY AND WOMEN PROJECT PARTICIPATION
ATTACHMENT 5

Equal Employment Opportunity and Affirmative Action Questionnaire
EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION QUESTIONNAIRE

Firm Name:________________________________

Person responsible for EEO/Affirmative Action compliance:

Name:__________________________  Title:___________________________________

Tel: ___________________  E-Mail: __________________

1. Is the Firm a MBE? ___ Yes ___ No

2. Is this Firm a WBE? ___Yes ___No

3. Firm Diversity:

<table>
<thead>
<tr>
<th>Type of Employee</th>
<th>Total No. of Employees</th>
<th>No. of Women Employees</th>
<th>No. of Minority Employees*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senior Management</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Project Management</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Preconstruction and</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Construction Staff</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Field Supervisors</td>
<td></td>
<td></td>
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<tr>
<td>Other Field Staff</td>
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<tr>
<td>Administrative Staff</td>
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<tr>
<td>Office Staff</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*For purposes of this questionnaire, minority means a person who meets one or more of the following definitions:

American Indian or Native American: all persons having origins in any of the original peoples of North America and who are recognized as Indian by a tribe or tribal organization.

Asian: All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands, including, but not limited to, China, Japan, Korea, Samoa, India, and the Philippine Islands.

Black: All persons having origins in any of the Black racial groups of Africa, including, but not limited to African Americans, and all persons having origins in any of the original peoples of the Cape Verdean Islands.

Eskimo or Aleut: All persons having origins in any of the peoples of Northern Canada, Greenland, Alaska and Eastern Siberia.

Hispanic: All persons having their origins in any of the Spanish – speaking peoples of Mexico, Puerto Rico, Cuba, Central or South America, or the Caribbean Islands.
4. Does the firm have an affirmative action plan? _____Yes  _____No
   If yes, include a copy.

5. Outline below what affirmative action steps the firm uses in its hiring process.
   
   (a) Is there an equal employment opportunity statement in all the job descriptions
       that the firm issues:  ___ Yes  ___ No
   (b) Is there an equal employment opportunity statement in the job applications
       that the firm uses: ___ Yes  ___ No
   (c) Describe other affirmative action steps in hiring:

   6. On a separate sheet, identify all projects the firm completed within the last five (5)
      years which had MBE, WBE or other affirmative action goals. For each such project,
      provide the following information:

      (a) Identify the specific MBE, WBE or other affirmative action goals for the project.
      (b) Describe the actions that the firm took to endeavor to meet those goals.
      (c) State whether the firm was successful in achieving all of the goals.
      (d) If the firm was not able to achieve any of the goals, explain why it was not
          able to reach each goal that was not met.

______________________________________
Firm (Typed or printed)

______________________________________
Name of Authorized Principal (Typed or printed)

______________________________________
Signature of Authorized Principal

______________________________________
Title

______________________________________
Date
ATTACHMENT 6

Conflict of Interest Statement
The respondent hereby certifies, under the penalties of perjury, that:

1) The respondent, its employees/agents, has not given, offered, or agreed to give any person (as that term is defined below), or received, accepted, or agreed to accept from any person, any gift, contribution, offer of employment, or financial incentive/interest, direct or indirect, of any kind as an inducement for, or in connection with, the award of the contract for services for which the respondent its employees/agents is applying.

2) No consultant to or subcontractor for the respondent has given, offered, or agreed to give any gift, contribution, offer of employment or financial incentive/interest, direct or indirect, of any kind to the respondent or to any other person as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the respondent its employees/agents.

3) No person, other than a bona fide full-time employee of the respondent has been retained or hired by the respondent its employees/agents to solicit for or in any way assist the respondent its employees/agents in obtaining the contract for services for which the respondent its employees/agents is applying, upon an agreement or understanding that such person be paid a fee or other consideration contingent upon the award of the contract to the respondent its employees/agents.

4) Throughout the duration of the contract, if awarded the contract, the respondent its employees/agents will not have any financial relationship, direct or indirect, in connection with the performance of the contract with any materials or system manufacturer, distributor or vendor or in any capacity except for the contractual services rendered.

5) The Architect and/or its employees/agents hereby certify under penalties of perjury and rejection of contract, without financial recourse to Owner, that the Architect and its employees and/or agents has complied with all laws of the Commonwealth of Massachusetts including the Massachusetts Conflict of Interest law, M.G.L. c. 268A in its entirety, and not enumerated above, and any related Massachusetts conflict of interest statutes or regulations, if any.

As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals. These provisions shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten percent of the outstanding stock entitled to vote at the annual meeting of such corporation.

The respondent further hereby certifies, under the penalties for perjury, that all information provided in this proposal to provide services is true and correct.
Firm

Name of Authorized Principal (Typed or printed)

Signature of Authorized Principal

Title

Date
ATTACHMENT 7

Certificate of Non-Collusion
UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under the penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity or group of individuals.

_______________________________________
Firm

_______________________________________
Name of Authorized Principal (Typed or printed)

_______________________________________
Signature of Authorized Principal

_______________________________________
Title

_______________________________________
Date
ATTACHMENT 8

Certificate of State Tax Compliance
UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY

CERTIFICATE OF STATE TAX COMPLIANCE
Mass. Gen. Laws, Chapter 62C, Section 49A(b)

I, in my capacity as principal of ________________________________________,
   (Firm Name)

hereby certify that the above-named organization has complied with all laws of the
Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and

Signed under the pains and penalties of perjury

_______________________________________
Firm

_______________________________________
Name of Authorized Principal (Typed or printed)

_______________________________________
Signature of Authorized Principal

_______________________________________
Title

_______________________________________
Date
ATTACHMENT 9

Certification regarding Undocumented Workers
UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY

CERTIFICATION REGARDING UNDOCUMENTED WORKERS

NAME OF FIRM: ______________________________

PROJECT: ______________________________
______________________________
______________________________

As evidenced by the signature of the Firm’s Authorized Principal below, the Firm certifies under the pains and penalties of perjury that the Firm shall not knowingly use undocumented workers in connection with the performance of any contract with the University of Massachusetts Building Authority; that pursuant to federal requirements, the Firm shall verify the immigration status of all workers assigned to such contracts without engaging in unlawful discrimination; and that the Firm shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker(s). The Firm understands and agrees that breach of any of these terms during the period of each contract may be regarded as a material breach, subjecting the Firm to sanctions, including, but not limited to, monetary penalties, withholding of payments, contract suspension or termination.

_________________________________________  Date: ______________________
Signature of Authorized Principal

_________________________________________
Name of Authorized Principal (Typed or Printed)

Title: ___________________________  Telephone No.: ___________________________

Email: ___________________________  Fax No.: ___________________________
ATTACHMENT 10

Equal Employment Opportunity, Non-Discrimination and
Affirmative Action Certification
UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY

EQUAL EMPLOYMENT OPPORTUNITY, NON-DISCRIMINATION AND AFFIRMATIVE ACTION CERTIFICATION

The undersigned Respondent hereby certifies, under the penalties of perjury, that:

1. The Respondent will not discriminate in its employment practices;

2. The respondent will make good faith efforts to ensure MBE,WBE and women and minority employee participation in reasonable proportion to their availability in the workforce;

3. The Respondent will communicate equal employment opportunity and affirmative action expectations to all consultants, sub-contractors, and unions involved in the Project;

4. The Respondent will provide oversight and will monitor compliance with applicable equal employment opportunity regulations and any affirmative action goals; and

5. The Respondent is in compliance with all applicable federal and state laws, rules and regulations governing fair labor and employment practices.

Respondent Firm (Typed or printed)

________________________________________

Name of Authorized Principal (Typed or printed)

________________________________________

Signature of Authorized Principal

________________________________________

Title

________________________________________

Date

4814-0800-2832.2

#1581016.2