

# The City of Waltham



**Invites  
Interested Parties  
To propose the best Proposal  
For the service or product herewith described:**

**Certified Energy Commissioning Professional (CECP) Services**

**Proposal Due: 10:00 AM on Tuesday May 8, 2018**

**Last day for written questions: 12 Noon Tuesday April 24, 2018.**

(via email only to [jpedulla@city.waltham.ma.us](mailto:jpedulla@city.waltham.ma.us))

## **CONTRACT**

### **Certified Energy Commissioning Professional (CECP) Services**

#### **ARTICLE 1: DEFINITIONS**

**Approval; Approved:** A signed written communication from the Authorized Representative of the City of Waltham to the CECP expressing the City of Waltham's approval of services or documents prepared by the CECP, which approval shall not relieve the CECP from any of its professional responsibilities under this Contract; item with respect to which such written approval has been given.

**As-Built Drawings:** All Drawings, Specifications, Approved shop drawings, catalogue cuts and other items bearing markings or containing information provided by the general contractor to indicate construction details and changes made during the construction period.

**Attachment A:** Attachment A, attached hereto and incorporated herein by reference, is the Scope of Services for this Contract.

**Authorized Representative:** The Authorized Representative(s) of the City of Waltham is (are) the person(s) named in the signature page of this Contract or such other person or persons as the chief executive officer of the City of Waltham may designate in writing.

**City of Waltham:** The City of Waltham named in this Contract.

**Basic Fee:** The Basic Fee is the CECP's fee specified in Article 5 of this Contract.

**Basic Services:** All services required to be performed by the CECP under this Contract except those for which reimbursement is made or provision for additional compensation provided for under Articles 6 and 7.

**Construction Contract:** One or more contracts between the City of Waltham and a general contractor for the construction of the Project.

**Construction Cost:** The cost of constructing the Project inclusive of all designed construction, demolition, and renovation work, all supportive and preparatory construction work required for the Project, all general contractors, subcontractors, suppliers, materials, equipment, general conditions, insurance, overhead and profit and all other allowances. The Construction Cost includes change orders during the construction administration phase of the Project.

**Construction Cost Estimate:** The written estimate of the Construction Cost of the Project prepared by the CECP at various phases of the Project. The following contingencies are included in the Construction Cost Estimate: estimating, phasing and temporary work, and escalation.

**Consultant:** The CECP or its subcontractor.

**Contract:** This Contract for CECP's Services.

**Contract Schedule:** A critical path management or Gantt schedule for the activities of the CECP and its Consultants required by this Contract.

**Estimated Construction Cost:** The Construction Cost as estimated in the Construction Cost Estimate prepared by the CECP at various phases of the Project to the level of detail and in the format specified in this Contract.

**Fixed Limit Construction Cost:** The maximum Construction Cost established by the City of Waltham as set forth in the Scope of Services.

**Gross Floor Area:** The total floor area of the Project buildings measured using the perimeter dimensions of the building shells and calculated in accordance with the *ASTM International Standard Classification for Building Floor Area Measurements for Facility Management*.

**Laws:** Applicable statutes, acts, rules, regulations, requirements, orders, directions, ordinances, judgments, decrees, and injunctions of or by the United States of America, the City of Waltham of Massachusetts; and any political subdivisions of either of them; and any agency, department,

commission, board, bureau, or instrumentality of any of them.

**Neutral:** An impartial third party not having an interest in the Public Entity, City of Waltham, CECP, any construction contractor on the Project, or the Project.

**Notice to Proceed:** A written communication from the Chief Procurement Officer of the City of Waltham directing the CECP to perform services for the particular phase of the Project as set forth in such communication. The NTP shall follow the execution of the contract by the Mayor.

**Owner's Project Manager:** *(If required by the size of the construction estimated cost).* A professional consultant or professional construction manager hired by the City of Waltham pursuant to M.G.L. c. 149, s. 44A1/2 or otherwise to work with the CECP as the owner's representative on the project to ensure an optimum project including construction quality, cost control, and schedule control.

**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 site. The term "Permits" shall include permits and approvals from utility companies and 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. All City-required permitting fees are waived.

**Program:** The program prepared for the Project in accordance with the provisions of M.G.L. c. 29, § 7k or any other pre-design document prepared for the Project in accordance with any other statute, appropriation, authorization or administrative directive consistent therewith.

**Project:** The Project identified in this Contract.

**Public Entity:** The City of Waltham of Massachusetts its agent or instrumentality.

**Qualified Testing Laboratory:** A testing laboratory licensed by the City of Waltham or otherwise qualified to perform specific analyses of samples.

**Record Drawings:** The Drawings prepared by the CECP and its Consultants pursuant to this Contract which incorporate the changes made during the construction period and which incorporate information on the marked-up prints, As-Built Drawings and other data furnished by the general contractor and subcontractors.

**Resident Engineer:** The on-site representative of the City of Waltham for the Project.

**Schedule of Values:** A schedule prepared by the CECP and Approved by the City of Waltham that allocates the payments of the Basic Fee to various milestones in the performance of the CECP's Basic Services, which schedule shall be consistent with the percentages specified in Section 8.2.

**Standard Application:** The standard application promulgated by DCAM to be used by CECPs contracting with DCAM; if the City of Waltham is other than DCAM, then the City of Waltham at its election may require the CECP to use the Standard Specification but is not required to do so.

**Study:** feasibility or other study to identify and evaluate alternative solutions to and recommend a solution to the needs and requirements defined by the City with respect to the facility that is the subject of the Project.

## **ARTICLE 2: RESPONSIBILITIES OF THE CITY OF WALTHAM**

**2.1 Approvals.** The City of Waltham shall without unreasonable delay either i) render to the CECP any Approval required by this Contract or ii) notify the CECP in writing why such Approval is being withheld. The City of Waltham shall not unreasonably withhold any Approval, acceptance, or consent required under this Contract.

- 2.2 Payment.** For satisfactory performance of all of the CECP's obligations under this Contract, the City of Waltham shall compensate the CECP in accordance with the provisions of Articles 5, 6, 7, 8, and 9 of this Contract.
- 2.3 Surveys and Data.** The City of Waltham shall furnish to the CECP existing and available surveys of the Project's building site or sites, showing the grades and lines of streets, pavements and adjoining properties; the rights, restrictions, easements, boundaries and contours of the site or sites; reports from any borings, test pits; chemical, mechanical or other tests; photographs and information as to water, sewer, electricity, steam, gas, telephone and other services; and data and drawings regarding existing buildings. All items and data provided to the CECP by the City of Waltham shall remain the property of the City of Waltham or the Public Entity. The CECP may use items and data provided by the City of Waltham only for the purposes of this Contract, unless the City of Waltham shall give the CECP specific written permission for some other use. The City of Waltham does not guarantee nor does it make any express or implied warranties concerning the accuracy of any such information furnished to the CECP.
- 2.4 Construction Contract Procurement.** The City of Waltham shall reproduce, advertise and distribute the bid documents necessary for the competitive procurement of the Construction Contract and shall conduct the procurement process with the assistance of the CECP as provided in Section 4.3 of this Contract.
- 2.5 No Waiver.** The City of Waltham's review, approval, acceptance of, or payment for, any of the services furnished by the CECP shall not be construed as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract. The City of Waltham's Approval shall not in any way relieve the CECP from performing all work required under this Contract in accordance with the standard of care set forth in Section 3.3 herein.
- 2.6 Right to Rescind Approval of Consultant.** The City of Waltham may rescind the City of Waltham's prior consent to a Consultant if a Consultant or subcontractor is incompetent, irresponsible or otherwise unsatisfactory, and the CECP shall remove such Consultant or subcontractor from the work. If a Consultant is so removed, the CECP shall provide another Consultant with similar credentials and qualifications (including but not limited to MBE/WBE) that meets with the Approval of the City of Waltham. The removal of such Consultant or sub consultant shall not relieve the CECP from its responsibilities for services of its Consultants and sub consultants under this Contract.

### **ARTICLE 3: CECP'S BASIC SERVICES -- GENERAL**

- 3.1 General.** The CECP shall perform professional services in accordance with the terms of this Contract, the Study for the Project which is incorporated herein by reference, the Scope of Services set forth in Attachment A, the provisions of M.G.L. c. 7, § 42C, the City of Waltham requirements, and in accordance with the procedures set forth. If the CECP did not perform the Study for the Project, then the CECP Selection Board advertisement is also incorporated herein by reference and the CECP shall perform its services in accordance with such advertisement. In the case of conflict between the terms of this Contract and any of the provisions incorporated herein by reference, the provisions of this Contract shall control. The CECP shall be responsible for the professional accuracy and coordination of all designs, drawings, specifications, cost estimates, and

other services and submittals furnished by CECP and by its Consultants in accordance with the standard of care set forth below in paragraph 3.3. The Basic Fee shall compensate CECP for all of CECP's obligations specified in this Contract except as otherwise specifically provided herein. Unless otherwise specified in the Scope of Services the CECP's Basic Services do not include prequalification services required for either a Construction Manager At-Risk Project in accordance with M.G.L. c. 149A or prequalification services required or decided upon by the City of Waltham under M.G.L. c. 149 §§44D1/2 or 44D3/4.

- 3.2 Staffing; Time of Essence.** The CECP's personnel who shall provide services under this Contract. The CECP shall provide sufficient personnel to complete the services required by this Contract in a continuous and timely manner, and shall meet the Approved Contract Schedule agreed upon in accordance with Section 4.1 of this Contract. Time is of the essence of this Contract.
- 3.3 Standard of Care, Compliance with Laws.** The Consultant agrees that the services provided hereunder shall conform to the standard of care and practice exercised by design professionals or consultants engaged in performing comparable services; that the personnel furnishing said services shall be qualified and competent to perform adequately the services assigned to them; and that the recommendations, guidance and performance of such personnel shall reflect such standards of care and practice. In addition to and without limiting the foregoing, the CECP agrees that the work and services performed hereunder shall conform to the standards set forth in this Contract and will endeavor to conform to all applicable Laws.
- 3.4 Quality Assurance.** The CECP shall demonstrate to the Authority the presence and implementation of quality assurance procedures. The CECP shall identify individual(s) responsible for 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.
- 3.5 Fixed Limit Construction Cost.** The CECP shall determine the materials, equipment, component systems and types of construction included in the design of the Project so that it may be awarded within the Fixed Limit Construction Cost without alternates (unless Approved by the City of Waltham) and without allowances of any nature. Such determination shall be subject to the Approval of the City of Waltham, which shall not be unreasonably withheld. If the City of Waltham has appointed a construction manager or an independent cost estimator for the Project, the CECP shall validate its Construction Cost Estimates with such person. Construction Cost Estimates shall be subject to the Approval of the Authorized Representative. The decision of the City of Waltham shall be final in matters pertaining to this section but the CECP shall not be responsible for any decision by the City of Waltham that is inconsistent with generally accepted standards of professional practice provided that the CECP shall have advised the City of Waltham in writing of the inconsistency at the time of the Approval. If within three (3) months after approval of Construction Documents, in final form, the bids of the lowest responsible and eligible bidders exceed the Fixed Limit Construction Cost, the CECP shall, if so instructed in writing by the City of Waltham, provide such revised construction drawings and specifications and Construction Cost Estimates as the City of Waltham shall require for the purpose of bringing the cost within the Fixed Limit Construction Cost; provided that CECP may in connection with such revision make reasonable adjustments in the scope of the project subject to the written approval of the City of

Waltham, which approval shall not be unreasonably withheld. The CECP shall not be paid additional compensation for such services.

**3.6 CECP to Evaluate Surveys and Data.** The CECP shall analyze and evaluate the information furnished by the City of Waltham pursuant to Section 2.3 above. If items or data of the type identified in Section 2.3 are not available or are, in the reasonable opinion of the CECP, insufficient to permit the CECP properly to perform its services hereunder, the CECP shall submit a written request to the City of Waltham for permission to obtain the services of one or more Consultants to perform the necessary services, in which case unless the services are included in the Scope of the Contract, the CECP shall be reimbursed in accordance with Article 7 (Reimbursable Costs and Expenses), or to perform the services with the CECP's own employees, in which case the CECP shall be compensated in accordance with Article 6 (Additional Services; Additional Compensation). In no case shall the CECP commence or authorize a Consultant to commence such services without the prior Approval of the City of Waltham.

**3.7 Corrections by City of Waltham.** The CECP shall furnish appropriate competent professional services for each of the phases of the Project to the point where detail checking or reviewing by the City of Waltham is not necessary. Any changes, corrections, additions, or deletions made by the City of Waltham shall be incorporated into the design of the Project unless specific written objections thereto are made by the CECP and Approved by the City of Waltham. The decision of the City of Waltham shall be final in matters pertaining to this section, but the CECP shall not be responsible for any such decision by the City of Waltham that is inconsistent with generally accepted standards of professional practice provided that the CECP advised the City of Waltham in writing of the inconsistency at the time the decision was made.

**3.8 Employment of Consultants.** Subject to the provisions of this Contract and the Approval of the City of Waltham, whenever the services of the following Consultants, and any other Consultants listed in Attachment A or in the CECP Selection Board's advertisement for the Project, are required, the CECP shall employ them and be responsible for their work and the coordination and supervision thereof: structural engineers, electrical engineers, mechanical engineers, civil engineers, plumbing engineers, sanitary engineers, architects, landscape architects, code specialists, cost estimators, specification writers, interior CECPs, and [insert others, if required]:

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Consultants shall be registered in Massachusetts in their respective disciplines if registration is required by the applicable Laws. If the City of Waltham directly employs an independent cost estimator, Owner's Project Manager, and/or other consultant(s), the CECP and its Consultants shall work directly with the City of Waltham's consultant(s) to ensure that optimum cost, scheduling, and ease of construction objectives are met.

- 3.9 Approval of Consultants.** Except as specifically provided in this Contract, the CECP shall not employ Consultants, or sublet, assign or transfer any part of its services or obligations under this Contract without the prior Approval of the City of Waltham subject to the provisions of M.G.L. c. 7, §38H. To obtain such Approval, the CECP must submit the items required by M.G.L. c. 7, §38H. The CECP shall provide the City of Waltham with complete copies of its contracts with each of its Consultants within 14 calendar days of the execution of such contracts.
- 3.10 Consultants Barred from Construction Work.** The CECP shall not employ in any element of design, specification, estimating, evaluation or other work under this Contract any person or firm that expects to be a bidder, subcontractor or supplier for the construction of the Project or any part thereof. The CECP shall obtain from every Consultant a written representation that such Consultant is aware that it is prohibited from serving as a bidder, subcontractor, or supplier for the construction of the Project or any part thereof.
- 3.11 Prompt Payments to Consultants.** The CECP shall, within 14 calendar days after receiving payment from the City of Waltham, either make payment to each Consultant whose work was included in the work for which such payment was received or notify the City of Waltham in writing of the reason why such payment is not being made within such time period.
- 3.12 Proprietary Items.** Without limitation, the CECP, CECP's employees and 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 City of Waltham or promptly given in writing by the City of Waltham to anyone making a written request therefore, 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 City of Waltham: (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 City of Waltham becomes the sole proprietor of all design and bid documents including specifications, drawings, plans, submittals and all other information for which the CECP has been paid to produce.

The CECP shall refer to the law and consult with the City of Waltham for procedures regarding proprietary items. The City of Waltham may waive the provisions of this law for "sound reasons in the public interest." No such waiver shall bind the City of Waltham unless made in writing and executed by the City of Waltham.

**3.13 ADA, Handicap Access and Nondiscrimination Laws.** Consistent with the standard of care and practice stipulated in Section 3.3 above, the CECP shall perform its services under this Agreement in strict compliance with all Laws relating to architectural accessibility, including without limitation, the applicable sections of the Americans with Disabilities Act of 1990 (“ADA”, 42 U.S.C. sections 12101 et. seq.), the ADA Accessibility Guidelines for Buildings and Facilities (“ADAAG”), and the regulations of the Massachusetts Architectural Access Board (“MAAB”, 521 CMR 1.1 et. seq.). The CECP recognizes that the Public Entity, the City of Waltham is a Public Entity subject to Title II of the Americans with Disabilities Act, may be recipients of federal funds under the Rehabilitation Act of 1973, and are subject to the MAAB regulations referenced above. The CECP hereby assumes the Public Entities’ obligations, including those that exist under the MAAB, ADAAG and/or the Rehabilitation Act of 1973 to design a facility accessible to and usable by people with disabilities. The CECP shall provide the City of Waltham 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 work of the Contract and to document compliance with the above referenced standards, as well as any variance or waivers of the above requirement the CECP may have obtained on behalf of the public entities. The CECP shall not seek any such variance or waiver of the above requirements without the express, written authorization of the City of Waltham. The CECP shall exercise due care and diligence in accordance with the standard of care set forth in paragraph 3.3 above, in performing the work required under this Contract to protect, indemnify and defend the City of Waltham from claims for failure to comply with the laws, rules and regulations pertaining to architectural accessibility for people with disabilities.

**3.14 Permits Generally.** Unless otherwise instructed by the City of Waltham in writing, the CECP shall obtain all Permits required to implement CECP's design at the site other than standard building permits customarily obtained by the general contractor. The CECP shall obtain the prior Approval of the City of Waltham of all permit applications, notices, and accompanying documentation before filing them with the appropriate governmental entity or other party. The CECP shall provide the City of Waltham with a certified 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 CECP shall certify in writing at the time that construction documents (or changes thereto) are submitted to the City of Waltham that the CECP has identified all Permits required to implement the Project and that those not identified in writing as being the responsibility of the City of Waltham have been identified in the specifications as being the general contractor’s responsibility. Notwithstanding the foregoing, any required attendance by the CECP at any public hearing in connection with any Permit shall be considered an Additional Service to be compensated in accordance with Article 6 of this Contract, and any Permit application fee shall be considered a Reimbursable Expense to be reimbursed in accordance with the provisions of Article 7.

**3.15 Permits Related to Change Orders.** The CECP shall also provide to the Awarding Authority a written certification of all Permits required to implement change order work at the site when the CECP submits for approval any change order request to the City of Waltham during the construction phase of the Project, whether the change order request was made by the CECP, the City of Waltham, or the general contractor.



**3.16 Special Consultants.** The CECP shall retain the services of a Qualified Testing Laboratory, special field inspectors, and other special Consultants not referenced in Section 3.8 above when required for the CECP's services for the Project. The identity of such Consultants shall be approved in advance by the City of Waltham, which Approval shall not be withheld unreasonably. When such a special Consultant's services are required, including the services of a Qualified Testing Laboratory functioning under the jurisdiction of both a Massachusetts registered engineer and licensed inspectors, a detailed description of the proposed services shall be prepared by the CECP and shall be subject to the Approval of the City of Waltham. Consultant fee proposals shall be obtained by the CECP from at least three such consultants and submitted to the City of Waltham together with the CECP's recommendation for selection before any work shall be approved. The City of Waltham may waive the requirement for three proposals for good cause. Each such Consultant whose fee for such services exceeds \$25,000 shall demonstrate coverage by liability insurance in an amount not less than its fee. The cost for services of any Approved special Consultant not listed in Section 3.8, in the Scope of Services or in the CECP Selection Board advertisement for the Project shall be reimbursed as provided in Article 7. For solicitation, inspection, analysis, coordination, and evaluation of such Consultants' services, and for assuming liability therefore, the CECP shall be compensated as provided in Article 7.

**3.17 Copyrights, Patents, Intellectual Property Rights.** The CECP hereby grants to the City of Waltham an irrevocable royalty-free license to use for any purpose the following items developed or made part of the work or services performed under this Contract: all drawings, designs, specifications, photographs, images, notes, materials and other work and ideas of the CECP and its Consultants and subcontractors related to the performance of this Contract which are or may be covered by copyright, patent, or other intellectual property Laws or as to which CECP and its Consultants and subcontractors may assert any rights or establish any claim under any such Laws. The CECP agrees on behalf of itself and its Consultants and subcontractors that the City of Waltham and the Public Entity shall have unlimited royalty-free rights, for the benefit of the City of Waltham and the Public Entity and any public entity to which the City of Waltham or the Public Entity may grant the right to share such rights, in any and all drawings, designs, specifications, photographs, images, notes, materials and other work and ideas developed in the performance of this Contract, including the right to use the same on any Public Entity or other public entity projects. The CECP shall incorporate by reference this provision into all contracts with its Consultants and subcontractors on this Project including, but not limited to, architects, engineers, estimators, CECPs and photographers. The CECP and its Consultants and subcontractors shall not be responsible for changes made in the documents without the CECP's authorization, nor for the City of Waltham's or other public entity's use of the documents on projects other than the Project, unless this is a contract for design services for a master plan or prototype. The City of Waltham assumes the risk resulting from any such changes made in the documents without the CECP's authorization, or for the City of Waltham's or other public entity's use of the documents on projects other than the Project.

**3.18 Security and Confidentiality.** The CECP and its Consultants and subcontractors shall maintain the confidentiality of Project records, including, but not limited to, all prints, plans, policies, procedures, studies, specifications and drawings, which relate to internal layout and structural elements, electrical and mechanical systems, security measures, emergency preparedness, threat or vulnerability assessments, and any other records relating to the security or safety of persons or buildings, structures, facilities, utilities, transportation or other infrastructure located within the

City of Waltham, the disclosure of which, in the reasonable judgment of the City of Waltham, is likely to jeopardize the safety of persons or property. Without limiting the foregoing, if the Project is a designated "Security Sensitive Information" project, the CECP shall execute a separate Security Sensitive Information Procedures and Confidentiality Agreement and shall comply with such document protection requirements as may be referenced in said agreement.

#### **ARTICLE 4: PROSECUTION AND PROGRESS OF BASIC SERVICES**

**4.1** The Certified Energy Commissioning Professional (**CECP**) shall perform the following specific tasks

##### **TASK 1. Design, Commissioning and Construction Administration – 5 City Buildings**

File Prescriptive Energy Management System Utility Incentives, develop and design documents, perform shop drawing review, construction management, and commissioning of heating control upgrades for 5 city buildings:

- ***Waltham City Hall*** – Steam Boiler Heating Controls
- ***Senior Center*** – Perimeter Hydronic Heating System
- ***Government Center*** – Steam Boiler Heating Controls
- ***Waltham Community & Cultural Center*** – Steam Boiler Heating Controls & Heating Hot Water Boiler Heating Controls and associated heating hot water pumps.
- ***Library*** – Front End and Heating Controls – Steam Boiler Heating Controls & Heating Hot Water Boiler Heating Controls and associated heating hot water pumps. The project will include a communication loop for all existing HVAC equipment. The non-boiler HVAC equipment will add to the base front end at a later date.

The design documents shall include proposed sequences of operations, list of points, and performance specifications of the control devices and sensors. The selected CECP shall also include the following:

- ***Waltham City Hall*** – Integrating the new Carrier RTU's into the EMS for monitoring and scheduling
- ***Government Center*** – Integrate the four air conditioning units for temperature control, scheduling, and monitoring
- ***Waltham Community & Cultural Center*** – Replacing the manual time clock with EMS scheduling of the pneumatic night setback

The City of Waltham will provide an IP address (coordinate with the winning contractor) to the EMS controls for remote access for monitoring and control. The design will provide individual building access with username and password.

The contractor shall apply for utility incentives or compiling data for future applications on behalf of the City.

##### **TASK 2. Commissioning Agent - 5 School Buildings**

Work as a commissioning agent to complete the commissioning plan for 5 schools:

- ***Fitzgerald ES***
- ***Kennedy MS***
- ***Northeast ES***

- **McDevitt MS**
- **Whittemore ES**

Commissioning report will include all action items completed, documenting all changes in set points, and list all devices and control modular that have failed in service. Normal existing building commissioning process shall include replacement of failed sensors, addition CO2 sensors for ventilation control, modernizing control algorithms, and setting up trend logging, but repair or replacement of control modular or actuators that have failed in service due to wear and tear are identified for the owner. Repair is at the discretion of the owner.

The contractor shall apply for utility incentives or compiling data for future applications on behalf of the City.

### **TASK 3. Develop Existing Building Commissioning Plan - 5 School Buildings**

To develop existing building commissioning plans for 5 schools:

- **Fitzgerald ES**
- **Kennedy MS**
- **Northeast ES**
- **McDevitt MS**
- **Whittemore ES**

The plans shall be intended for a third-party Johnson Controls and AERCO certified installation and maintenance systems integrator to complete the work under the supervision of The Certified Energy Commissioning Professional selected by the City of Waltham. Since most schools have AERCO Benchmark condensing boilers the plan shall also include a second package for the work of an authorized AERCO service provider. This may become the service provider with the School district to maintain continuity. Air balancing shall also be included in the bid package.

The contractor shall apply for utility incentives or compiling data for future applications on behalf of the City.

The selected shall also prepare budget estimates for the repair or replacement of identified failing systems.

#### **4.11 Preliminary Services.**

- i. Upon receipt of a Notice to Proceed from the City of Waltham, the CECP and its appropriate Consultants shall meet with agents of the City of Waltham and the to arrive at a mutual understanding of the requirements of the Study or Program.
- ii. The CECP shall submit a proposed design work plan for the CECP's Services pursuant to this Contract including anticipated tasks and submittals. The CECP shall submit a proposed Contract Schedule consistent with any project schedule included in the Study or Scope of Services referenced in Attachment A. The schedule shall contain dates for submittals, deliverables, actions, milestones, design workshops, meetings and the critical path through all design service activities. It shall include allowances of time for the City of Waltham's

review and approval of submittals and for necessary submissions for Permits in connection with the Project. When Approved by the City of Waltham the work plan and the Contract Schedule shall govern the CECP's duties hereunder. The work plan shall also include a work plan schedule of values consistent with the payment schedule for the Basic Fee specified in Section 8.2, which shall be the basis of which payments of the Basic Fee within each phase shall be made. The work plan schedule of values shall identify deliverables within each phase and percentages of the phase fee payable upon completion of such deliverable. When Approved by the City of Waltham the work plan schedule of values shall govern the timing of payments of the Basic Fee upon completion of deliverables within each phase and as each phase progresses.

- iii. The CECP shall prepare a preliminary evaluation of the City of Waltham's Program, Study and construction budget requirements subject including, if applicable, the following
- (a) drawings, concept sketches, three dimensional representations, and specifications;
  - (b) a building code analysis;
  - (c) an environmental assessment;
  - (d) a preliminary life cycle cost analysis,
  - (e) a plan for implementation or inclusion of any appropriate public utility energy conservation design programs;
  - (f) an analysis of the design's compliance with the Americans with Disabilities Act/Massachusetts Architectural Access Board requirements;
  - (g) a space measurement analysis for the design which shall verify that the sum of all program floor areas in the Project plus all other floor areas in the Project equal the Gross Floor Area of the Project;
  - (h) a Construction Cost Estimate for the design
- iv. Schematic design level documentation shall also include Estimated Construction Cost of the design to the Program and Study requirements and shall explain any deviation from there. The CECP shall be aware of the following provisions of M.G.L. c. 29, § 26A and shall cause its services to comply therewith:

*“No state agency . . . administering a capital facility project shall enter into any contracts for that project . . . or cause to be performed design services for that project . . . if such would result in the completion of a project which cannot be accomplished (a) within the appropriation or authorization for the project or within the project cost limits specified by the appropriation or authorization and (b) without substantial deviation from (i) any study or program which must be prepared in accordance with the provisions of section 7K of this chapter or (ii) any other pre-design planning document which must be prepared in accordance with any other statute, appropriation or authorization or administrative directive consistent therewith. In no event shall the design work be such as would result in a change in the number of gross square feet to be constructed in the project of more than ten per cent from the number specified in the study, program or other pre-design document referred to [above].”*

- v. Schematic design phase drawings, specifications, Construction Cost Estimates and other submittals shall be subject to the written Approval of the City of Waltham. Unless a lesser number is requested by the City of Waltham, the CECP shall submit to the City of Waltham for approval six (6) copies of schematic design drawings, specifications, cost estimates, and other submittals.

#### **4.2 Design Development Phase Services.**

- i. Upon receipt of a Notice to Proceed with the Design Development Phase, the CECP and its Consultants shall meet regularly and as necessary with agents of the City of Waltham shall update and refine items submitted during the schematic design phase, and shall submit, on or before the date specified in the Contract Schedule, and on the basis of the Approved schematic design phase documents for the following areas, *if applicable*:
  - (a) an updated work plan and Project Schedule;
  - (b) a list of all Permits required to implement the design and a schedule of target dates for the procurement of such Permits, which list and schedule shall be regularly updated during the term of this Contract;
  - (c) information and documentation within the technical expertise of the CECP and its Consultants that is necessary for the City of Waltham to file Environmental Notification Forms, Environmental Impact Reports, and any other filings for Permits that must be filed during the design development phase;
  - (d) complete design development drawings, draft specifications indicating any filed sub-bid sections based on the cost of the work and other documents necessary to specify the size and character of the Project as to siting, landscape, architectural, structural, fire protection, plumbing, HVAC, electrical, ADA/MAAB, product requirements, and other features;
  - (e) quality control documentation demonstrating without limitation coordination of: ceiling clearances, mechanical room size, and shaft sizes; specifications and drawings; filed sub-bid work or sections; scheduling; equipment and power; existing and new construction; and phasing;
  - (f) design development drawings for which the CECP shall submit for a "tentative approval" review to the public agency having jurisdiction over enforcement of the State Building Code with respect to the Project (the Department of Public Safety of the City of Waltham for state-owned Projects or the building commissioner of the city or town in which the Project is located for other projects);
  - (g) a life cycle cost analysis to determine which design decisions related to all energy and water consuming devices and overall building operation and maintenance are the most cost effective [M.G.L. c. 149, s. 44M];
  - (h) a Construction Cost Estimate for the design in Uniformat II Level 3 format, with unit rates and quantities supporting each item, which shall have been reviewed and approved as accurate and complete by any cost estimator or Owner's Project Manager employed by the City of Waltham with respect to the Project;
  - (i) a space measurement analysis for the design verifying that the sum of all program areas in the Project plus all other floor areas in the Project equals the Gross Floor Area of the Project;

(j) a summary or summaries comparing the design development drawings, specifications and cost estimates with the Program requirements, and explaining any deviations in writing.

- ii. Such drawings, specifications, cost estimate and other design development submittals shall be subject to the written Approval of the City of Waltham. Unless a lesser number is requested by the City of Waltham, the CECP shall submit to the City of Waltham for approval six (6) copies of design development drawings, specifications, cost estimates, and other submittals.

#### **4.21 Ownership of CECP produced documents.**

Upon payment of the CECP's fee as specified in Articles 5 and 8, the City becomes the owner of all sketches, prints, drawings, submittals, etc. produced as a result of this project.

#### **4.3 Construction Documents Phase Services.**

- i. Upon receipt of a Notice to Proceed with the Construction Documents Phase of the Project from the City of Waltham, the CECP and its Consultants shall meet regularly as necessary with agents of the City of Waltham and based on the submittals Approved in the design development phase of the Project, shall update and refine the items previously submitted and shall submit on or before the date and time specified in the Approved Project Schedule including, *if applicable*, the following:
  - (a) an updated work plan and Project Schedule;
  - (b) complete construction drawings and specifications, certified by the CECP as having satisfied the applicable quality control review, approved as required by subsection ii below, in sufficient detail to permit fixed-price bids in open competition for construction of the Project;
  - (c) an updated environmental assessment, building code analysis, ADA/MAAB analysis, and a certified list of all required testing and all required Permits as well as a certification that all applicable local, state and utility officials have been contacted by the CECP regarding each utility connection and that the persons responsible for permits or connection approval has agreed to the systems' use;
  - (d) structural and energy calculations, building code analysis, ADA/MAAB analysis;
  - (e) at the 60% stage of completion of the final drawings and specifications, a Construction Cost Estimate prepared using the Uniformat II Classification to Level 3, including quantities of all materials and unit prices of labor, equipment, and materials as well as a cost estimate for each item of work, for review by the City of Waltham;
- ii. The CECP shall furnish a revised and final Construction Cost Estimate, current as of the date of the final bid document submission, including cost estimates for general conditions, overhead and profit, insurance, bonds, and all other items; provisional allowances for work not sufficiently designed at this phase; and allowances expressed as percentage rates for construction contingencies and escalation to the bid date.

- iii. The CECP shall furnish a final Construction Cost Estimate, current to the date of the final bid document submission. and profit and for any further allowances for escalation and other contingencies.
- iv. The CECP shall also submit a summary comparing the final construction drawings and specifications and final Estimated Construction Cost with the Program requirements and submittals made during the design development phase, explaining any significant deviations.
- v. All submittals shall be subject to the written approval of the City of Waltham. Unless a lesser number is requested by the City of Waltham or is provided below in subsection vii, the CECP shall furnish to the City of Waltham for approval six (6) sets of the drawings, specifications Construction Cost Estimates and other submittals. The CECP shall also furnish electronic media copies of the foregoing drawings and documents in such form as is required by the City of Waltham.
- vi. From the Approved construction drawings and specifications, with such changes as the City of Waltham requires, the CECP shall prepare and transmit to the City of Waltham a set of reproducible black and white drawings and original specifications on high quality white bond paper, single-sided, properly packaged, suitable for reproduction, stamped and signed by all disciplines, which documents shall become the property of the City of Waltham. Other suitable methods may be used with the prior Approval of the City of Waltham. One copy of the drawings and specifications shall be submitted with the reproducible drawings and specifications.
- vii. The City of Waltham will copy the construction bid documents, including advertisements, for receipt of proposals from construction contractors, and for execution of a Construction Contract or contracts. The CECP shall prepare all addenda (to include bidders' questions and CECP's responses), subject to the Approval of the City of Waltham. The CECP and its Consultants shall attend and chair the pre-bid conference if one is scheduled, taking note of all questions asked. Relevant questions submitted in writing shall be answered by means of written addenda to the bid documents as required. The CECP shall attend the bid opening and conduct a review of the qualifications of the low filed sub-bidders and general bidder (and of other bidders if necessary) and shall, within five working days of the respective bid opening dates, advise the City of Waltham in writing of the CECP's opinions as to the sub-bidders' bids and as to which general bidder is the responsible and eligible bidder that has submitted the lowest bid.
- viii. If required by law or requested by the City of Waltham, the CECP shall, as an Additional Service, assist the City of Waltham in the prequalification of prime contractors and sub-contractors in the filed sub-bidder or trade contractor scopes of work pursuant to M.G.L. c. 149, §§44D1/2 and 44D3/4 or M.G.L. c. 149A.
- ix. If within three (3) months after approval of Construction Documents, in final form, the bids of the lowest responsible and eligible bidders exceed the Fixed Limit Construction Cost, the CECP shall, if so instructed in writing by the City of Waltham, provide such revised construction drawings and specifications and construction cost estimates as the City of

Waltham shall require for the purpose of bringing the cost within the Fixed Limit Construction Cost; provided the CECP may in connection with such revision make reasonable adjustments in the scope of the project subject to the written approval of the Director, which approval shall not be unreasonably withheld. The CECP shall not be paid additional compensation for such services.

#### **4.4 Construction Administration Phase Services.**

- i. Consistent with the standard of care and practice stipulated in Section 3.3 above, upon the award of the Construction Contract the CECP and its Consultants shall, for the purposes of ensuring construction quality, cost control, schedule control, compliance with the City of Waltham's obligations under the Construction Contract, and protecting the City of Waltham, against defects and deficiencies in the work of the Project under the Construction Contract documents:
  - (a) be charged with general administration of the Construction Contract to the extent set forth herein;
  - (b) furnish the general contractor with information for establishing lines and grades and such large-scale drawings and full-sized detailed drawings as are needed to implement the intent of the Construction Contract documents;
  - (c) promptly and in accordance with the requirements of the Construction Contract check, obtain testing where necessary, and approve samples, schedules, shop drawings and other submissions by the general contractor;
  - (d) prepare, maintain and update logs for all submittals and changes to the Construction Contract;
  - (e) visit the site at intervals appropriate to the stage of construction but not less than weekly, and observe the progress of the work, issue written progress reports, and conduct job meetings, and prepare and distribute meeting minutes to assure that the work is technically correct and is being built in conformance with Approved construction documents;
  - (f) report to the City of Waltham weekly in writing on the progress of the work including whether or not the general contractor is keeping as-built drawings updated;
  - (g) on a weekly basis (or more often as may be necessarily), make specific recommendations on rejection of all Project work observed by the CECP that fails to conform to the Construction Contract documents, and review and inspect corrected work;
  - (h) require each Consultant employed in accordance with Article 3 to make visits weekly during the progress of any work to which that Consultant's services relate and to report upon it in writing to the CECP;
  - (i) conduct semi-final and final inspections of the Project and report the results of such inspections in writing to the City of Waltham;
  - (j) observe the balancing of air and water circulation systems and report the results thereof;
  - (k) observe the setting and adjustment of automatic controls and report thereon; (l) in a timely manner, decide all questions regarding interpretation of, or compliance



with, the Construction Contract documents, except as the City of Waltham may in writing otherwise determine;

(m) furnish electronic versions of the Record Drawings, a final cost report, and other required documents; and

(n) assist the City of Waltham in any bid protest hearings, change order appeal hearings requested under M.G.L. c. 30, § 39Q, and any other litigation, except as provided in Article 6.

(o) Except as otherwise specifically set forth in the Construction Contract documents, the CECP shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Construction Contract documents

- ii. The CECP shall submit to the City of Waltham in a timely manner all requisitions for payment submitted by the general contractor in the form required by the City of Waltham. With respect to each such requisition, the CECP shall certify to the best of its knowledge that the percentage of work included in the requisition is accurate and that the work performed conforms to the Construction Contract documents. In the event the CECP does not approve the requisition exactly as submitted by the general contractor, the CECP shall forward it for payment to the City of Waltham dated and signed with corrections with an accompanying letter of explanation setting forth the CECP's objections and recommended changes. The CECP shall coordinate the required visits to the construction site so as to enable it to submit to the City of Waltham the general contractor's monthly requisition for payment bearing the Resident Engineer's approval or accompanied by the Resident Engineer's letter of exceptions. Timely payments to the contractor are required by M.G.L. c. 30, § 39K; therefore, the CECP shall establish procedures assuring either immediate mail or messenger delivery of the requisition for payment to the City of Waltham, and shall process requisitions for payment within two working days after receipt of the same.
- iii. Before examining the requisition for final payment submitted to the City of Waltham by the general contractor and making any certification in response thereto, the CECP shall obtain from the general contractor As-Built Drawings, including drawings showing the actual installation of the site utilities, plumbing, heating, ventilating and electrical work under the Construction Contract, and recording all changes. The CECP shall ascertain that changes authorized by change orders are shown on the general contractor's As-Built Drawings. The CECP shall revise the applicable original reproducible drawings and electronic media drawings on the basis of the As Built Drawings and shall submit them as Record Drawings along with two sets of prints to the City of Waltham; which Record Drawings shall become the property of the City of Waltham, all as part of its Basic Fee.
- iv. At the conclusion of the Construction Contract the CECP shall assist the City of Waltham's Authorized Representative or Owner's Representative in the evaluation of the performance of the general contractor as required by M.G.L. c. 149, § 44D or any other law.

- v. Two suitably bound legible copies of all original design and quantity calculations including those pertinent to change orders and shop drawings if applicable shall be furnished by the CECP to the City of Waltham at the conclusion of the Construction Contract.

## ARTICLE 5: CECP'S BASIC FEE

- 5.1 **Basic Fee.** For the performance of all services required in this contract and excluding those services specified under Articles 6 and 7, the CECP shall be paid a negotiated lump sum Fee.
- 5.2 **Equitable Adjustments to Basic Fee.** If there is a substantial change, as defined by the City, in the services provided in this Contract as determined by the City of Waltham, the CECP and the City of Waltham will agree to an equitable adjustment in the CECP's Basic Fee. For the purposes of this Contract, a "substantial change" in services shall include:
  - i. a substantial change in the scope of CECP's services that is not the fault of the CECP; or
- 5.3 **Manner of Payment.** Payment of the CECP's Basic Fee shall be made in accordance with Article 8.

## ARTICLE 6: OTHER SERVICES

- 6.1 **Other Services.** With the prior Approval of the City of Waltham, the CECP shall perform all or any of the following services in addition to the Basic Services:
  - i. revise previously Approved drawings, specifications or other documents to accomplish changes authorized by the City of Waltham or required by changes in applicable Laws, and revisions not occasioned by the CECP's errors or omissions;
  - ii. attend permit or public hearings and preparing presentation renderings and presentation models in connection therewith that are authorized by the City of Waltham;
  - iii. prepare documents for alternate bids requested by the City of Waltham except or alternates required to be prepared by the CECP to adjust the Estimated Construction Cost to within the Fixed Limit Construction Cost;
  - iv. assist the City of Waltham with the pre-qualification of bidders in accordance with M.G.L. c. 149, §§ 44E1/2 and 44D3/4 or M.G.L. c. 149A
  - iv. to the extent not specified in the Scope of Services, provide prequalification services required in accordance with M.G.L. c. 149A for the Construction Manager At-Risk Delivery Method;
  - v. provide consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing professional services of the type set forth in Article 3 as may be required in connection with the replacement of such work;

- vi. provide professional services necessary to evaluate substitutions proposed by the general contractor and preparing subsequent revisions to drawings and other documents resulting there from or furnishing professional services made necessary by the default of the general contractor;
- vii. provide services after final payment to the general contractor, except for services occasioned by the CECP's errors or omissions;
- viii. prepare special documents for or appearing as a witness in change order appeal hearings under M.G.L. c. 30, s. 39Q or in judicial litigation arising out of the Construction Contract, except for litigation arising from the CECP's negligent acts or omissions;
- ix. prepare change orders and supporting data, except as set forth in Section 6.4;
- x. revise construction drawings and specifications submitted in their final and complete form for which bids were not received within six months after submission;
- xi. make studies other than those normally required and preparing applications and reports to assist the City of Waltham in obtaining federal aid;
- xii. additional site visits requested by the City of Waltham for which additional payment is provided in Section 6.2.

Prior to performing any Additional Services the CECP shall agree with the City of Waltham upon the fee for such services in accordance with Section 6.3 of this Contract. No authorization by the City of Waltham for the performance of any Additional Services shall be valid unless it contains a "not to exceed" amount.

**6.2 Additional Site Visits.** Additional services shall also include additional site visits by the CECP or its Consultants at the request of the City of Waltham during the construction administration phase at no additional cost to the City..

**6.3 Compensation for Other Services.** The services provided pursuant to sections 6.1 and 6.2 of this Article are part of the basic services rendered by the CECP and no additional compensation will be made. The cost of other services, if any, shall be incorporated in the basic fee.

**6.4 Change Orders and Modifications.** The CECP shall be compensated in accordance with the rates negotiated PRIOR to the change order or modifications. Neither the CECP nor its consultants shall be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the CECP in the preparation of the bid documents, or that were occasioned by the CECP's errors or omissions, as reasonably determined by the executive head of the City of Waltham. [M.G.L. c. 7, s. 38H(J)] The CECP shall not be compensated for any services involved in preparing changes required to make unit price adjustments due to existing conditions, nor for services involved in change orders for time extensions only. Changes for which the CECP receives no compensation under this Article shall be called "no fee modifications" or "no fee change orders." The fact that the CECP receives no fee shall not waive the City of Waltham's legal remedies regarding such changes.

## ARTICLE 7: REIMBURSABLE COSTS AND EXPENSES

**7.1** **General.** The CECP shall be reimbursed by the City of Waltham for:

- i. The actual cost to the CECP of special consultants Approved by the City of Waltham but not specified in Article 3 or in the CECP Selection Board's advertisement for the Project. No reimbursement for such expense shall be made unless the rates of compensation for said consultant services shall have been previously approved by the City of Waltham. The City of Waltham may approve a lump sum fee.
- ii. Permit filing fees required by agencies other than the City and other actual costs for items not included in the Basic Fee, including special printing, but only when specifically authorized in writing in advance by the City of Waltham.
- iii. For document copies in excess of 8.

The City of Waltham shall not reimburse the CECP for any telephone or other out-of-pocket expenses unless specifically authorized in advance as provided above.

**7.2.** **Travel.** The City of Waltham shall not reimburse the CECP for travel expenses under this Contract, provided, however, that in special circumstances and with prior written Approval of the City of Waltham, the CECP may be reimbursed for out-of-state travel expenses consistent with applicable statutes, rules, and regulations.

## ARTICLE 8: PAYMENTS TO THE CECP

**8.1** **Change Orders.** Unless otherwise Approved by the City of Waltham, payments to the CECP for a modification or a change order shall be made when the modification or change order has been Approved by the City of Waltham and the CECP's services with respect to the same, other than construction administration services, have been completed.

**8.2** **Schedule for Payment of Basic Fee.** The lump sum fee under Article 5 above shall be paid in accordance with the Approved work plan schedule of values prepared in accordance with Section 4.1, for performance of all services specified in Articles 3 and 4. The Schedule of Values shall be consistent with the following schedule so that the total installments of the Basic Fee in each phase of the schedule equals the percentage of the Basic Fee allocated to each such phase of the schedule below. Actual payments can be requisitioned by the CECP upon completion of deliverables within each phase as set for in the Approved work plan schedule of values:

- i. Fifteen percent (15%) for the initial design phase services;
- ii. Twenty-five percent (25%) for the design development phase services;
- iii. Thirty percent (30%) for the construction documents phase services;
- iv. Thirty percent (30%) for the construction administration phase services.

The CECP shall submit requisitions on a monthly basis for any deliverables completed within that month. City of Waltham shall not be obliged to pay any claims received more than forty-five days after notification to the CECP of final acceptance of the contractor's work under the Construction Contract.

- 8.3 Applications for Payment.** All invoices except for those made under the provisions of Section 8.1 above may be submitted monthly and will be promptly processed by the City of Waltham if they are in conformity with this Contract and properly documented; if not they will be returned to the CECP. No invoice (other than an invoice for the final payment to CECP under this Contract) shall be required to be so submitted or processed when the net amount due is less than \$200. Amounts of less than \$200 shall be added to the subsequent month's invoice. All invoices from the CECP shall be submitted to the City of Waltham accompanied by a completed City of Waltham of Massachusetts Payment Voucher Input Form PV if this is a City of Waltham project, otherwise accompanied by such forms as the City of Waltham may require.
- 8.4 Right of Offset.** If the City of Waltham finds that services previously paid for by the City of Waltham contained deficiencies, errors or omissions then the City of Waltham may withhold from any future payment an amount reasonably calculated by the City of Waltham to cover the cost of correcting the deficiency, error or omission until the services have been corrected. The City of Waltham may also offset against any payment due to the CECP the amount of any costs incurred by the City of Waltham arising from the CECP's failure to provide required services, deficiencies, errors or omissions. If the City of Waltham shall discover that the charge for any previously paid-for services was calculated based upon incorrect salary rates or other incorrect information, the City of Waltham may offset any overcharges against any future payment. Any disputes related to offsets taken by the City of Waltham shall be subject to resolution pursuant to Section 3.19 of this Contract. Nothing in this paragraph shall limit any legal remedies of the City of Waltham against the CECP for default, errors, omissions, erroneous claims, false claims, tort claims, or any breach by the CECP of the terms of this Contract or applicable Laws.

## **ARTICLE 9: TERMINATION**

- 9.1 City of Waltham's Right to Terminate.** By written notice to the CECP, the City of Waltham may terminate this Contract, in whole or in part, at any time for either the City of Waltham's convenience or for the failure of the CECP to fulfill its obligations under this Contract.
- 9.2 Termination by City of Waltham for Convenience.** If any such termination shall occur without the fault of the CECP, all compensation and reimbursable expenses due to the CECP up to the date of termination, in accordance with all Contract terms, including proportionate payment for partially completed work, shall be paid to the CECP by the City of Waltham. The payments to the CECP shall not exceed the fair value of the CECP's work, as the City of Waltham shall determine. No amount shall be allowed for anticipated profit on unperformed services.
- 9.3 Termination by City of Waltham for Cause.** If this Contract is terminated due to the failure of the CECP to fulfill the CECP's obligations under this Contract, the City of Waltham may assume the design work and replace it and/or prosecute the same to completion by contract or otherwise. In such case, the CECP shall be liable to the City of Waltham for any additional cost incurred by the

City of Waltham thereby. These rights and remedies of the City of Waltham are in addition to any rights and remedies provided by law or under this Contract.

- 9.4 Termination by CECP.** By written notice to the City of Waltham, the CECP may terminate this Contract (i) if the City of Waltham, within ninety (90) days following written notice to the City of Waltham from the CECP of any default by the City of Waltham hereunder, shall have failed to remove such default, or (ii) if, after the CECP shall have performed all services required of the CECP in the schematic design phase, the design development phase, or the construction documents phase of the Project as described in this Contract, at least six months shall have elapsed without receipt by the CECP of a Notice to Proceed with the next phase of the CECP's services. Upon any such termination by the CECP all compensation and reimbursement payable to the CECP in accordance with this Contract up to and including the date of termination shall be paid to the CECP by the City of Waltham. The payments to the CECP shall not exceed the fair value of the CECP's work, as the City of Waltham shall determine. No amount shall be allowed for anticipated profit on unperformed services.
- 9.5 CECP's Duties upon Termination.** Upon any termination of this Contract the CECP shall deliver to the City of Waltham all data, drawings, specifications, reports, estimates, summaries, and such other information and materials, whether completed or in process, as may have been accumulated by the CECP in performing this Contract.

#### **ARTICLE 10: RECORDS, DISCLOSURE STATEMENTS, ACCOUNTING CONTROLS, AUDITS**

- 10.1 Records to be Kept for Six Years.** The CECP 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 CECP. [M.G.L. c. 30, §39R(b)(1)-(2)]
- 10.2 Records Open to Inspection.** Until the expiration of six (6) years after final payment, the Governor or his designee, the Secretary of Administration and Finance, the State Auditor, the Office of the Inspector General, the Commissioner of DCAM, the City of Waltham and any other public official authorized by law, shall have the right to examine any books, documents, papers or records of the CECP or of its Consultants and subcontractors that directly pertain to, and involve transactions relating to, the CECP or its Consultants and subcontractors. [M.G.L. c. 30, §39R(b)(1)-(2); Executive Order 195]
- 10.3 Changes in Method of Accounting.** If this Contract is a contract for an amount exceeding \$10,000 or is a contract for the design of a Project with an Estimated Construction Cost exceeding \$100,000, and if the CECP shall make any change in its method of maintaining records that would materially affect any statements filed by the CECP with the City of Waltham, the CECP shall forthwith deliver to the City of Waltham a written description of such change, the effective date thereof, and the reasons therefore. The CECP shall submit with such description a letter from the CECP's independent certified public accountant approving or otherwise commenting on the change. [M.G.L. c. 30, §39R(b)(3)] The CECP hereby represents that there have been no such changes to date that have not been so reported to the City of Waltham.

- 10.4 Warranty by CECP.** If this Contract is for an amount exceeding \$10,000 or is for the design of a Project with an Estimated Construction Cost exceeding \$100,000, the CECP warrants and represents that CECP has filed a statement of management on internal accounting controls as set forth in section 10.5 below prior to the execution hereof. [M.G.L. c. 7, §38H(e)(iv)]
- 10.5 Filing of Statement of Management on Internal Accounting Controls.** If this is a Contract for an amount exceeding \$10,000 or is for the design of a Project with an Estimated Construction Cost exceeding \$100,000, the CECP maybe requested to file with the City of Waltham a statement of management as to whether the system of internal accounting controls of the CECP and its subsidiaries reasonably assures that: (1) transactions are executed in accordance with management's general and specific authorization; (2) transactions are recorded as necessary i) to permit preparation of financial statements in conformity with generally accepted accounting principles, and ii) to maintain accountability for assets; (3) access to assets is permitted only in accordance with management's general or specific authorization; and (4) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any difference. The CECP may also be requested to file with the City of Waltham a statement prepared and signed by an independent certified public accountant, stating that the accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to (1) whether the representations of management in response to this section and sections 1 and 2 above are consistent with the result of management's evaluation of the system of internal accounting controls; and (2) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the applicant's financial statements. [M.G.L. c. 7, §38H(e)(iv); M.G.L. c. 30, §39R(c)]
- 10.6 Representation Regarding Audited Financial Statement.** If this is a contract for an amount exceeding \$10,000 or is for the design of a Project having an Estimated Construction Cost exceeding \$100,000, the CECP represents that it has filed prior to the execution hereof and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in section 7 below. [M.G.L. c. 7, §38H(e)(iv) M.G.L. c. 30, §39R(d)]
- 10.7 Filing of Annual Statement Required.** The CECP shall annually file with the Commissioner of DCAM during the term of this Contract a financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report. Such statements shall be made available to the City of Waltham upon request. [M.G.L. c. 7, §38H(e)(iv); M.G.L. c. 30, §39R(d)]
- 10.8 Records Not Public.** Records and statements required to be made, kept or filed under the provisions of this Article shall not be public records as defined in M.G.L. c. 4, s. 7 and shall not be open to public inspection; provided, however, that such records and statements shall be made available pursuant to the provisions of section 10.2 above.

## **ARTICLE 11: RELEASE AND DISCHARGE**

The acceptance by the CECP of the last payment for services paid under the provisions of either Article 8 or Article 9 in the event of termination of this Contract, shall in each instance operate as a release of the

Public Entity, the City of Waltham, and every employee and agent thereof, from all claims of the CECP arising from this Contract, and from liability for any act or omission relating to or affecting the CECP's services hereunder, except for those written claims submitted by the CECP to the City of Waltham with the last payment requisition; and except that such acceptance shall not operate as a release of claims not known to CECP, which CECP could not reasonably have known about at the time of such acceptance.

## **ARTICLE 12: INSURANCE**

**12.1 General Requirements [M.G.L. c.7, §38H(f)]**. The CECP shall purchase and maintain insurance of the type and limits listed in this Article with respect to the services to be performed under this Contract. This insurance shall be provided at the CECP's expense and shall be in force and effect for the full term of the Contract or for such longer period as this Article requires.

All policies shall be issued by companies lawfully authorized to write that type of insurance under the Laws of the City of Waltham with a financial strength rating of "A-" or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the City of Waltham, or otherwise acceptable to the City of Waltham.

The CECP shall submit three originals of each certificate of insurance acceptable to the City of Waltham simultaneously with the execution of this Contract. The certificate of Insurance shall have written in the description of Services box, through a policy endorsement, the following language: "**The City of Waltham is a named additional insured for General Liability**". Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, and policy effective and expiration dates. The CECP shall submit updated certificates prior to the expiration of any of the policies referenced in the certificates so that the City of Waltham shall at all times possess certificates indicating current coverage. Failure by the CECP to obtain all policy renewals and to provide the respective insurance certificates as required shall constitute just cause for termination of CECP's services under this Contract.

Termination, cancellation, or material modification of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the City of Waltham at least thirty days prior to the effective date thereof, which shall be expressed in said notice.

The CECP is responsible for the payment of any and all deductibles under all of the insurance required below. The City of Waltham shall not be responsible for the payment of deductibles, self-insured retentions or any portion thereof.

## **12.2 Workers' Compensation, Commercial General Liability, Automobile Liability, and Valuable Papers**

The CECP shall purchase and maintain at its own expense during the life of this Contract the following insurance:

- i. Workers' Compensation Insurance in accordance with M.G.L. chapter 152.
- ii. Commercial General Liability Insurance, with a minimum limits of \$1,000,000 each occurrence. The Public Entity and the City of Waltham shall each be listed as an additional insured.



- iii. Automobile Liability Insurance at a limit of not less than \$1,000,000 each accident.
- iv. 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 Contract in the event of loss or destruction while in the custody of the CECP until the final fee payment is made or all data is turned over to the City of Waltham, and this coverage shall include coverage for relevant electronic media including, but not limited to, documents stored in computer aided design drafting (CADD) systems.

**12.3 Professional Liability.** The CECP shall maintain professional liability insurance covering errors and omissions and negligent acts of the CECP, and of any person or entity for whose performance the CECP is legally liable. Unless an alternate amount is otherwise specified in the documents incorporated by reference into Section 3.1 of this Contract, the minimum amount of such insurance shall equal the lesser of \$5,000,000 or 10% of the Project's Fixed Limit Construction Cost but in no event less than \$250,000 per claim. Unless the CECP is specifically required to provide project specific insurance in the documents incorporated by reference into Section 3.1, the policy may be in a "claims made" format. If the policy is a "claims made" policy, it shall include a retroactive date that is no later than the effective date of this Contract, and an extended reporting period of at least six years after the earlier of: (1) the date of official acceptance of the completed Project by the City of Waltham; (2) the date of the opening of the Project to public use; (3) the date of the acceptance by the general contractor of a final pay estimate prepared by the City of Waltham pursuant to M.G.L. chapter 30; or (4) the date of substantial completion of the Construction Contract and the taking of possession of the Project for occupancy by the City of Waltham which requirement can be met by providing renewal certificates of professional liability insurance to the City of Waltham as evidence that this coverage is being maintained.

**12.4 Liability of CECP.** Insufficient insurance shall not release the CECP from any liability for breach of its obligations under this Contract. Without limitation, the CECP shall bear the risk of any loss if its valuable papers insurance coverage is insufficient to cover the loss of any work covered by this Contract.

## **ARTICLE 13: INDEMNIFICATION**

The CECP shall indemnify and hold harmless the City of Waltham and all of their agents and employees from and against all claims, damages, losses and expenses, including but not limited to court costs, reasonable attorneys' fees, interest and costs arising out of or resulting from the wrongful and/or negligent acts or omissions of the CECP in performance of the services covered by this Contract and/or of failure to comply with the terms and conditions of this Contract, whether by CECP or its employees, Consultants or subcontractors, provided that the City of Waltham shall notify the CECP of such suits and claims within a reasonable time after the City of Waltham becomes aware of them. The CECP shall be afforded an opportunity to participate in the defense and/or settlement of all such suits and claims. The CECP shall not be bound by the amount of damages suffered in any litigation or settlement unless the CECP is given the opportunity to participate in negotiations for settlement and/or defense of such litigation or claim.

## **ARTICLE 14: MISCELLANEOUS LEGAL REQUIREMENTS**

#### **14.1. Left Blank Intentionally**

**14.2. Anti-Boycott Covenant [Executive Order #130].** The CECP warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, will participate in or cooperate with an international boycott, as defined in section 999 (b) (3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by General Laws Chapter 151E, §§2 and 3. If there shall be a breach in the warranty, representation and Contract contained in this section, then without limiting such other rights as it may have the City of Waltham shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the contractor, or which directly or indirectly owns at least 51% of the ownership interests of the contractor.

**14.3 Truth-In-Negotiations Certificate [M.G.L. Chapter 7, Sec. 38H].** To the extent that the CECP's fee has been negotiated, the CECP certifies that it has filed a truth-in negotiations certificate in accordance with M.G.L. c. 7, s. 38H (b) prior to being awarded this Contract. Said certificate is attached hereto as Attachment B.

### **ARTICLE 15: NON-DISCRIMINATION IN EMPLOYMENT AND AFFIRMATIVE ACTION**

**15.1 Compliance.** The CECP shall comply with all Laws promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate against any qualified employee or applicant for employment because of race, color, national origin, ancestry, age sex, religion, physical or mental handicap, or sexual orientation or for exercising any right afforded by Law. The CECP shall comply with all applicable Laws prohibiting discrimination in employment including but not limited to: Title VII of the Civil rights Act of 1964; the Age Discrimination in Employment Act of 1967; Section 504 of the Rehabilitation Act of 1973; M.G.L. c. 151B, s. 4(1); and all relevant administrative orders and executive orders, including Executive Order 227 and Executive Order 246. If a complaint or claim alleging violation of such statutes, rules or regulations is presented to the Massachusetts Commission Against Discrimination (MCAD), the CECP and its agents agree to cooperate fully with MCAD in the investigation and disposition of such complaint or claim. In the event of the CECP's noncompliance with the provisions of this section, the City of Waltham shall impose such sanctions as it deems appropriate, including, but not limited to, withholding of payments due the CECP under this Contract until the CECP complies, and termination or suspension of this Contract.

**15.2 Material Breach.** Any breach of this Article shall be regarded as a material breach and shall be subject to all other sections of this Contract. The City of Waltham shall have access to all records which are necessary to document compliance with this Article.

### **ARTICLE 16: CHOICE OF LAW**

This Contract shall be construed under and governed by the laws of the Commonwealth of Massachusetts. The CECP, and the agents thereof, agree to bring any federal or state legal proceedings arising under this Contract, in which either the City of Waltham or the City of Waltham is a party, in a court of competent jurisdiction within the Commonwealth of Massachusetts. This section shall not be

construed to limit any rights a party may have to intervene in any action, in any court or wherever, pending, in which the other is a party.

#### **ARTICLE 17: AMENDMENTS, SEVERABILITY, and WAIVERS**

No amendment to this Contract shall be effective unless it is in writing and is executed by authorized representatives of both parties. If any provision of this Contract is declared or found illegal, unenforceable, or void, then both parties shall be relieved of all obligations under that provision. The remainder of the Contract shall be enforced to the fullest extent permitted by law. The City of

Waltham reserves the right to waive any provision or requirement of this Contract if the City of Waltham determines that such waiver is justified and in the public interest. No such waiver shall be effective unless in writing and signed by the Authorized Representative of the City of Waltham. No other action or inaction by the City of Waltham shall be construed as a waiver of any provision of this Article.

#### **ARTICLE 18: NON-APPROPRIATION**

The City of Waltham certifies that at the time of the execution of this Contract, sufficient appropriations exist and shall be encumbered to fund the Contract Price. Payments are subject to appropriation and shall be made only for work performed in accordance with the terms of this Contract. The CECP shall not be obligated to perform, and may not perform, services outside the duration and scope of this Contract without an appropriate amendment to this Contract, and a sufficient appropriation(s) to support such additional services. The City of Waltham may immediately terminate or suspend this Contract in the event that the appropriation(s) funding this Contract is eliminated or reduced to an amount which will be insufficient to support anticipated future obligations under this Contract.

#### **ARTICLE 19: NOTICES, APPROVALS, and INVOICES**

Notices to the CECP shall be deemed given when hand-delivered to the CECP at the Project site, or when deposited in the U.S. mail addressed to the CECP at the CECP's address specified in this Contract, when delivered by courier to said address, or when delivered via e-mail or facsimile transmission. Unless otherwise specified in writing by the City of Waltham, notices and deliveries to the City of Waltham shall be effective only when delivered to the City of Waltham at the address specified in this Contract and date-stamped at the reception desk or for which a receipt has been signed by the agent or employee designated by the City of Waltham to receive official notices.

#### **ARTICLE 20: CERTIFICATIONS OF CECP MADE UNDER PAINS AND PENALTIES OF PERJURY**

No changes shall be made in the matters represented in this Article at any time during the life of this Contract without written notification to the City of Waltham and when required, receipt of written Approval from the City of Waltham. (Attach additional sheets if necessary for each section.)

**20.1 CECP's Beneficial Owners.** By signing this Contract, the CECP certifies under the penalties of perjury that the following named entities and individuals are the legal and beneficial owners of the CECP as of the date of the execution hereof [M.G.L. c. 7, §38E(a)](attach additional sheets if necessary):

CORPORATION: (Names of Officers and Shareholders of Corporation, including their titles,

\_\_\_\_\_

**Federal ID Number:** \_\_\_\_\_

PARTNERSHIP: (Names of all Partners):

\_\_\_\_\_

\_\_\_\_\_

**Federal ID Number:** \_\_\_\_\_

INDIVIDUAL (Name of Owner):

\_\_\_\_\_

**20.2 Persons Having an Interest in this Contract.** M.G.L. c. 7A, §6 provides as follows: *"No contract to provide consultant services shall be awarded by the City of Waltham, or by any department, board, commission, or other agency acting in its behalf, unless the person signing such contract on behalf of the party contracting to provide such services files with the Comptroller a statement under the penalties of perjury setting forth the names and addresses of all persons having a financial interest therein, not including, however, any person whose only financial interest therein consists of the holding of one percent or less of the capital stock of a corporation contracting to provide such services."*

NOTE: Individuals who sign this Contract in their individual capacity must also complete the certification below as well as sign this Contract. For the purpose of this directive, the term "person having a financial interest" will generally refer to any person who, in some direct manner, will benefit financially from a given contractual relationship with the City of Waltham. However, this may not, in every case, preclude the possibility of an existing financial interest within the meaning of the statute where a financial benefit is to be realized in some indirect manner. Where doubts arise in a specific case, it is advisable that names and addresses be included.

By signing this Contract, the individual executing this Contract on behalf of the CECP hereby certifies under the penalties of perjury that the following sets forth the names and addresses of all persons having a financial interest in this Contract, not including any person whose only financial interest herein consists of the holding of one percent or less of the capital stock of CECP if CECP is a corporation, in addition to the persons listed in section 21.1 above:

Name

Address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**20.3 Professional Registrations.** By signing this Contract, the individual executing this Contract on behalf of the CECP certifies under the penalties of perjury that the following named individuals are registered by the City of Waltham as architects, landscape architects, or engineers pursuant to the provisions of General Laws Chapter 112, §§ 60A - 60O and further that i) if the CECP is an individual the CECP is the individual named below, ii) if the CECP is a partnership, the majority of all the partners are persons who are registered architects, landscape architects, or engineers, iii) if the CECP is a corporation, sole proprietorship or joint stock company or other entity, the majority of the directors or a majority of the stock ownership and the chief executive officer, are persons who are registered architects, landscape architects, or engineers and the person to have the Project in his or her charge is registered in the discipline required for the Project, or iv) if the CECP is a joint venture, each joint venturer satisfies the requirements of the preceding clauses i – iii as the case may be [M.G.L. c. 7, §38E(a)(i)].

<u>Name</u>	<u>Title</u>	<u>Mass. Registration</u>
_____		
_____		
_____		
_____		

[NOTE: The above information must be completed to comply with the provisions of General Laws Chapter 7, §38A 1/2. Programmers and construction managers are not required to be registered under §38A 1/2.]. CECP warrants that the Massachusetts registered principal of the CECP responsible for the project is:

Name: \_\_\_\_\_

**20.4 Resume on File with CECP Selection Board.** By signing this Contract, the CECP certifies under the penalties of perjury that in accordance with the provisions of General Laws Chapter 29, section 29A (4) a resume of the CECP has been filed with the CECP Selection Board.

**20.5 No Inducements.** By signing this Contract, the CECP certifies under the penalties of perjury that the CECP 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 the Contract for design services; no consultant to or subcontractor for the CECP has given, offered or agreed to give any gift, contribution or offer of employment to the CECP, 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 CECP; and no person, corporation or other entity, other than a bona fide full-time employee of the CECP has been retained or hired by the CECP to solicit for or in any way assist the CECP in obtaining the Contract for design services upon an Contract or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the Contract to the CECP. [M.G.L. c. 7, §. 38H(e)(i)-(iii)]

**20.6 Tax Returns.** By signing this Contract, the CECP certifies under the penalties of perjury that pursuant to General Laws Chapter 62C §49A, the CECP has filed all state tax returns, paid all taxes and complied with all Laws of the City of Waltham relating to taxes; and that pursuant to General Laws Chapter 151A, § 19A, the CECP has complied with all Laws of the City of Waltham relating to contributions and payments in lieu of contributions to the Employment Security System.

**20.7 Existing Government Contracts.** By signing this Contract, the CECP certifies under the penalties of perjury that the following is a listing of all other existing contracts or income derived by CECP from the City of Waltham or any political subdivision thereof or public authority therein, from the Federal Government or any agency thereof, and from the City of Waltham or any governmental source for services rendered. [M.G.L. c. 7, § 38E(a)(v)]:

CONTRACT DESCRIPTION	PRESENT STATUS %	FEE	TOTAL FEE

**20.8 Annual Reports; Corporate Filings.** By signing this Contract, the CECP certifies under the penalties of perjury that, if the CECP is a corporation, the Corporation has filed with the State of Secretary all certificates and annual reports required by Chapter 156B, §109 (Business Corporation), by Chapter 181, §4 (Foreign Corporation), or by Chapter 180, §26A (Non-Profit Corporation) of the Massachusetts General Laws.

**20.9 Dependent Care Assistance Program.** By signing this Contract, the CECP certifies under the penalties of perjury that, at the time of execution, CECP is in compliance with the provisions of section 7 of Chapter 521 of the Acts of 1990 as amended by Chapter 329 of the Acts of 1991, and 102 CMR 12.00 and the Contractor is either a "qualified employer" because it has fifty (50) or more full time employees and has established a dependent care assistance program, child care tuition assistance, or on-site or near-site child care placements, or is an "exempt employer."

**20.10 Debarment; Suspension.** By signing this Contract, the CECP certifies under the penalties of perjury that the CECP is not currently debarred or suspended by the City of Waltham of Massachusetts, or any if its entities or subdivisions under any City of Waltham law or regulation, including but not limited to M.G.L. c. 29, § 29F and M.G.L. c. 152, § 25C and that it is not currently debarred or suspended by the Federal Government under any federal law or regulation.

**SIGNATURES**

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date of its execution by the City of Waltham of Massachusetts below, first written above and the individual executing this Contract on behalf of the CECP makes the representations and certifications set forth in this Design Contract under the pains and penalties of perjury.

**CECP:** \_\_\_\_\_

By: \_\_\_\_\_, Date: \_\_\_\_\_

Its:  
Hereunto duly authorized

**CITY OF WALTHAM:**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Its: Mayor, Jeannette McCarthy  
Hereunto duly authorized

By: \_\_\_\_\_ Date: \_\_\_\_\_

Its: Chief Procurement Officer, Joseph Pedulla  
Hereunto duly authorized

By: \_\_\_\_\_ Date: \_\_\_\_\_

Its: Drew Echelson, Superintendent of Schools  
Hereunto duly authorized

By: \_\_\_\_\_ Date: \_\_\_\_\_

Its: Auditor, Paul Centofanti  
Hereunto duly authorized

By: \_\_\_\_\_ Date: \_\_\_\_\_

Its: Planning Director, Catherine Cagle  
Hereunto duly authorized

By: \_\_\_\_\_ Date: \_\_\_\_\_

Its: Director of Wires, Tim Kelly  
Hereunto duly authorized

**As To Form Only**

By: \_\_\_\_\_ Date: \_\_\_\_\_

Its: City Solicitor, John Cervone

**ATTACHMENT A**  
**SCOPE OF SERVICES**

**Certified Energy Commissioning Professional (CECP) Services**

**TASK 1. Design, Commissioning and Construction Administration – 5 City Buildings**

File Prescriptive Energy Management System Utility Incentives, develop and design documents, perform shop drawing review, construction management, and commissioning of heating control upgrades for 5 city buildings:

- ***Waltham City Hall*** – Steam Boiler Heating Controls
- ***Senior Center*** – Perimeter Hydronic Heating System
- ***Government Center*** – Steam Boiler Heating Controls
- ***Waltham Community & Cultural Center*** – Steam Boiler Heating Controls & Heating Hot Water Boiler Heating Controls and associated heating hot water pumps.
- ***Library*** – Front End and Heating Controls – Steam Boiler Heating Controls & Heating Hot Water Boiler Heating Controls and associated heating hot water pumps. The project will include a communication loop for all existing HVAC equipment. The non-boiler HVAC equipment will add to the base front end at a later date.

The design documents shall include proposed sequences of operations, list of points, and performance specifications of the control devices and sensors. The selected designer shall also include the following:

- ***Waltham City Hall*** – Integrating the new Carrier RTU's into the EMS for monitoring and scheduling
- ***Government Center*** – Integrate the four air conditioning units for temperature control, scheduling, and monitoring
- ***Waltham Community & Cultural Center*** – Replacing the manual time clock with EMS scheduling of the pneumatic night setback

The City of Waltham will provide an IP address (coordinate with the winning contractor) to the EMS controls for remote access for monitoring and control. The design will provide individual building access with username and password.

The contractor shall apply for utility incentives or compiling data for future applications on behalf of the City.

**TASK 2. Commissioning Agent - 5 School Buildings**

Work as a commissioning agent to complete the commissioning plan for 5 schools:

- ***Fitzgerald ES***
- ***Kennedy MS***
- ***Northeast ES***
- ***McDevitt MS***
- ***Whittemore ES***

Commissioning report will include all action items completed, documenting all changes in set points, and list all devices and control modular that have failed in service. Normal existing building commissioning



process shall include replacement of failed sensors, addition CO2 sensors for ventilation control, modernizing control algorithms, and setting up trend logging, but repair or replacement of control modular or actuators that have failed in service due to wear and tear are identified for the owner. Repair is at the discretion of the owner.

The contractor shall apply for utility incentives or compiling data for future applications on behalf of the City.

### **TASK 3. Develop Existing Building Commissioning Plan - 5 School Buildings**

To develop existing building commissioning plans for 5 schools:

- Fitzgerald ES
- Kennedy MS
- Northeast ES
- McDevitt MS
- Whittemore ES

The plans shall be intended for a third-party Johnson Controls and AERCO certified installation and maintenance systems integrator to complete the work under the supervision of The Certified Energy Commissioning Professional selected by the City of Waltham. Since most schools have AERCO Benchmark condensing boilers the plan shall also include a second package for the work of an authorized AERCO service provider. This may become the service provider with the School district to maintain continuity. Air balancing shall also be included in the bid package.

The contractor shall apply for utility incentives or compiling data for future applications on behalf of the City.

The selected CECP shall also prepare budget estimates for the repair or replacement of identified failing systems.

#### **1. CECP Qualification and Proposal Evaluation**

- a. The CECP performing the tasks required by this project must have at least 10 years of experience in the design of similar system. Provide evidence. **Value 40%**
- b. CECP must have a CBCP certification in the design of such system. Provide Certification and Licenses from AEE. Must be a Certified Energy Manager (CEM). **Value 25%**
- c. Listed Completed project similar to this. **Value 20%**
- d. List References. **Value 15%**

**ATTACHMENT B**

**COMPLIANCE FORMS**

**(PLEASE COMPLETE AND SUBMIT THESE FORMS WITH YOUR RESPONSE)**

“Wet” Signature required

**NON-COLLUSION FORM AND TAX COMPLIANCE FORM**

**CERTIFICATE OF NON-COLLUSION**

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity or group of individuals. The undersigned certifies that no representations made by any City officials, employees, entity, or group of individuals other than the Purchasing Agent of the City of Waltham was relied upon in the making of this bid

\_\_\_\_\_, \_\_\_\_\_  
(Signature of person signing bid or proposal)      Date

\_\_\_\_\_  
(Name of business)

“Wet” Signature required

**TAX COMPLIANCE CERTIFICATION**

Pursuant to M.G.L. c. 62C, & 49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

\_\_\_\_\_, \_\_\_\_\_  
Signature of person submitting bid or proposal      Date

\_\_\_\_\_  
Name of business

**NOTE**

Failure to submit any of the required documents, in this or in other sections, with your bid response package may cause the disqualification of your proposal.

**CERTIFICATE OF VOTE OF AUTHORIZATION**

Date:

I \_\_\_\_\_, Clerk of \_\_\_\_\_ hereby certify that at a meeting of the Board of Directors of said Corporation duly held on the \_\_\_\_\_ day of \_\_\_\_\_ at which time a quorum was present and voting throughout, the following vote was duly passed and is now in full force and effect:

VOTED: That \_\_\_\_\_ (*name*) is hereby authorized, directed and empowered for the name and on behalf of this Corporation to sign, seal with the corporate seal, execute, acknowledge and deliver all contracts and other obligations of this Corporation; the execution of any such contract to be valid and binding upon this Corporation for all purposes, and that this vote shall remain in full force and effect unless and until the same has been altered, amended or revoked by a subsequent vote of such directors and a certificate of such later vote attested by the Clerk of this Corporation.

I further certify that \_\_\_\_\_ is duly elected/appointed \_\_\_\_\_ of said corporation

SIGNED:

(Corporate Seal)

\_\_\_\_\_  
Clerk of the Corporation:

Print Name: \_\_\_\_\_

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COMMONWEALTH OF MASSACHUSETTS

County of \_\_\_\_\_

Date:

Then personally appeared the above named and acknowledged the foregoing instrument to be their free act and deed before me, \_\_\_\_\_

Notary Public;

My Commission expires: \_\_\_\_\_

**CORPORATION IDENTIFICATION**

The bidder for the information of the Awarding Authority furnishes the following information.

If a Corporation:

Incorporated in what state \_\_\_\_\_

President \_\_\_\_\_

Treasurer \_\_\_\_\_

Secretary \_\_\_\_\_

Federal ID Number \_\_\_\_\_

If a foreign (out of State) Corporation – Are you registered to do business in Massachusetts?

Yes \_\_\_\_\_, No \_\_\_\_\_

If you are selected for this work you are required under M.G.L.ch. 30S, 39L to obtain from the Secretary of State, Foreign Corp. Section, State House, Boston, a certificate stating that you Corporation is registered, and furnish said certificate to the Awarding Authority prior to the award.

If a Partnership: (Name all partners)

Name of partner \_\_\_\_\_

Residence \_\_\_\_\_

Name of partner \_\_\_\_\_

Residence \_\_\_\_\_

If an Individual:

Name \_\_\_\_\_

Residence \_\_\_\_\_

If an Individual doing business under a firm’s name:

Name of Firm \_\_\_\_\_

Name of Individual \_\_\_\_\_

Business Address \_\_\_\_\_

Residence \_\_\_\_\_

Date \_\_\_\_\_

Name of Bidder \_\_\_\_\_

By \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Business Address \_\_\_\_\_ (POST OFFICE BOX NUMBER NOT ACCEPTABLE)

City

State

Telephone Number

Today's Date

"Wet" Signature required

**DEBARMENT CERTIFICATION**

In connection with this bid and all procurement transactions, by signature thereon, the respondent certifies that neither the company nor its principals are suspended, debarred, proposed for debarment, declared ineligible, or voluntarily excluded from the award of contracts, procurement or non-procurement programs from the Commonwealth of Massachusetts, the US Federal Government and /or the City of Waltham. "Principals" means officers, directors, owners, partners and persons having primary interest, management or supervisory responsibilities with the business entity. Vendors shall provide immediate written notification to the Purchasing Agent of the City of Waltham at any time during the period of the contract of prior to the contract award if the vendor learns of any changed condition with regards to the debarment of the company or its officers. This certification is a material representation of fact upon which reliance will be placed when making the business award. If at any time it is determined that the vendor knowingly misrepresented this certification, in addition to other legal remedies available to the City of Waltham, the contract will be cancelled and the award revoked.

---

Company Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_, State \_\_\_\_\_, Zip Code \_\_\_\_\_

Phone Number (\_\_\_\_) \_\_\_\_\_

E-Mail Address \_\_\_\_\_

Signed by Authorized Company Representative: \_\_\_\_\_

Print name. \_\_\_\_\_, Date \_\_\_\_\_

## PROOF OF CONTRACTOR’S RESPONSIBILITY

Before a contract will be awarded to any bidder, he/she will be required to furnish evidence satisfactory to the City that he/she has all of the following qualifications:

- A. Ability, equipment, organization, and financial resources sufficient or enable him/her to construct and complete the work successfully within the time required.
- B. Experience during the past five (5) years in the successful completion of turf restoration projects, the magnitude of which shall be not less than one-half (1/2) the work herein specified. In this connection, the attention of the bidder is directed to the “Bidder’s Experience” attached hereto, which shall be used in determining the responsibility of the bidder. The City may require additional information as necessary to determine the responsibility of the bidder.
- C. An experienced bidder shall be construed to mean that the bidder has an individual within his/her organization with the experience to supervise a job of this nature.
- D. Provide Certification as a 1) Certified Building Commissioning Professional (CBCP) by the Association of Energy Engineers and 2) Certified Energy manager by the Association of Energy Engineers.

In the event the bidder fails, refuses, or neglects to submit any required information within the reasonable time stated in any request or fails to qualify as a responsible bidder, his/her bid guaranty shall be forfeited to the use of the owner, not as a penalty, but as liquidated damages.

The determination of whether a bidder is responsible shall rest solely with the City.

### PROPOSER’S EXPERIENCE

The following is a list of the projects similar in character and scope to the work specified under this contract, which have been successfully completed by this bidder during the past three years.

This information must be furnished by each bidder. A completed project is one that has been accepted and the final payment received from the City or authorized representative.

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Proposer's Signature

Date

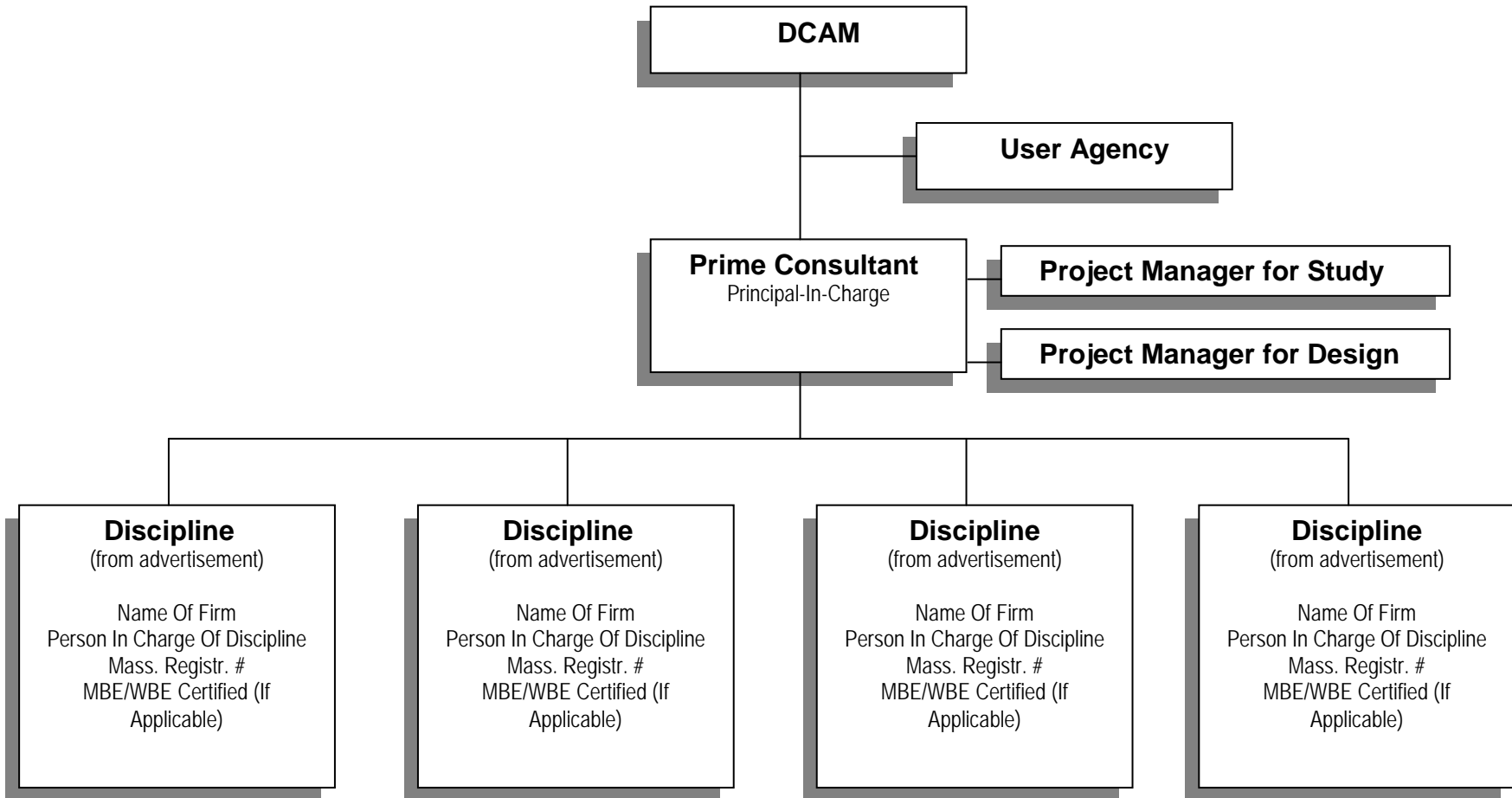
**ATTACHMENT C**

**Please complete and submit the attached DSB Application Form**



<b>Commonwealth of Massachusetts DSB Application Form (Updated February 2013)</b>	1. Project Name/Location for Which Firm is Filing:		2a. DSB #	Item #				
			2b. Mass. State Project #					
3a. Firm (Or Joint-Venture) - Name and Address Of Primary Office To Perform The Work:	3e. Name Of Proposed Project Manager:  For Study: (if applicable) For Design: (if applicable)							
3b. Date Present and Predecessor Firms Were Established:	3f. Name and Address Of Other Participating Offices Of The Prime Applicant, If Different From Item 3a Above:							
3c. Federal ID #:	3g. Name and Address Of Parent Company, If Any:							
3d. Name and Title Of Principal-In-Charge Of The Project (MA Registration Required):   Email Address: Telephone No:	3h. Check Below If Your Firm Is Either: (1) SDO Certified Minority Business Enterprise (MBE) <input type="checkbox"/> (2) SDO Certified Woman Business Enterprise (WBE) <input type="checkbox"/> (3) SDO Certified Minority Woman Business Enterprise (MWBE) <input type="checkbox"/>							
4. Personnel From Prime Firm Included In Question #3a Above By Discipline (List Each Person Only Once, By Primary Function -- Average Number Employed Throughout The Preceding 6 Month Period. Indicate Both The Total Number In Each Discipline And, Within Brackets, The Total Number Holding Massachusetts Registrations):								
Admin. Personnel	_____ ( ___ )	Ecologists	_____ ( ___ )	Licensed Site Profs.	_____ ( ___ )	Other	_____ ( ___ )	
Architects	_____ ( ___ )	Electrical Engrs.	_____ ( ___ )	Mechanical Engrs.	_____ ( ___ )	_____	_____ ( ___ )	
Acoustical Engrs.	_____ ( ___ )	Environmental Engrs.	_____ ( ___ )	Planners: Urban./Reg.	_____ ( ___ )	_____	_____ ( ___ )	
Civil Engrs.	_____ ( ___ )	Fire Protection Engrs.	_____ ( ___ )	Specification Writers	_____ ( ___ )	_____	_____ ( ___ )	
Code Specialists	_____ ( ___ )	Geotech. Engrs.	_____ ( ___ )	Structural Engrs.	_____ ( ___ )	_____	_____ ( ___ )	
Construction Inspectors	_____ ( ___ )	Industrial Hygienists	_____ ( ___ )	Surveyors	_____ ( ___ )	_____	_____ ( ___ )	
Cost Estimators	_____ ( ___ )	Interior Designers	_____ ( ___ )	_____	_____ ( ___ )	_____	_____ ( ___ )	
Drafters	_____ ( ___ )	Landscape Architects	_____ ( ___ )	_____	_____ ( ___ )	Total	_____ ( ___ )	
5. Has this Joint-Venture previously worked together?					<input type="checkbox"/> Yes	<input type="checkbox"/> No		

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



<p>7. Brief Resume of ONLY those Prime Applicant and Sub-Consultant personnel requested in the Advertisement. Confine responses to the space provided on the Form and limit Resumes to ONE person per discipline requested in the Advertisement. <u>Include Resumes of Project Managers</u>. Resumes should be consistent with the persons listed on the Organizational Chart in Question # 6. Additional sheets should be provided only as required for the number of Key Personnel requested in the Advertisement and they must be in the format provided. By including a Firm as a Sub-Consultant, the Prime Applicant certifies that the listed Firm has agreed to work on this Project, should the team be selected.</p>	
a. Name and Title Within Firm:	a. Name and Title Within Firm:
b. Project Assignment:	b. Project Assignment:
c. Name and Address Of Office In Which Individual Identified In 7a Resides: <div style="text-align: right;"> MBE <input type="checkbox"/>  WBE <input type="checkbox"/> </div>	c. Name and Address Of Office In Which Individual Identified In 7a Resides: <div style="text-align: right;"> MBE <input type="checkbox"/>  WBE <input type="checkbox"/> </div>
d. Years Experience: With This Firm: _____ With Other Firms: _____	d. Years Experience: With This Firm: _____ With Other Firms: _____
e. Education: Degree(s) /Year/Specialization	e. Education: Degree(s) /Year/Specialization
f. Active Registration: Year First Registered/Discipline/Mass Registration Number	f. Active Registration: Year First Registered/Discipline/Mass Registration Number:
g. Current Work Assignments and Availability For This Project:	g. Current Work Assignments and Availability For This Project
h. Other Experience and Qualification Relevant To The Proposed Project: (Identify Firm By Which Employed, If Not Current Firm):	h. Other Experience and Qualification Relevant To The Proposed Project: (Identify Firm By Which Employed , If Not Current Firm):

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

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

Sub-Consultant Name:

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

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

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

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

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

**Be specific – No Boiler Plate**

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11. Professional Liability Insurance:

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

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

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

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

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

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

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

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16. I hereby certify that the undersigned is an Authorized Signatory of Firm and is a Principal or Officer of Firm. I further certify that this firm is a "Designer", as that term is defined in Chapter 7, Section 38A1/2 of the General Laws, or that the services required are limited to construction management or the preparation of master plans, studies, surveys, soil tests, cost estimates or programs. The information contained in this application is true, accurate and sworn to by the undersigned under the pains and penalties of perjury.

Submitted By \_\_\_\_\_ Printed Name and Title \_\_\_\_\_ Date \_\_\_\_\_  
 (Signature)

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

DSB S-CA	Commonwealth of Massachusetts Designer Selection Board <b>SUB-CONSULTANT ACKNOWLEDGMENT</b>
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**Project:** \_\_\_\_\_

**Applicant Designer:** \_\_\_\_\_

**Sub-consultant:** \_\_\_\_\_

**SUB-CONSULTANT ACKNOWLEDGMENT**

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

\_\_\_\_\_  
**Signature of Sub-Consultant Duly Authorized Representative**

\_\_\_\_\_  
**Print Name and Title**

Date \_\_\_\_\_

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