

City of Somerville
East Somerville Community School Renovation Project

**REQUEST FOR OWNER'S PROJECT MANAGEMENT SERVICES
(RFS)**

1. Introduction

The City of Somerville ("Owner") is seeking the services of a qualified "Owner's Project Manager" as defined in Massachusetts General Laws Chapter 149, Section 44A½ and as further defined by the provisions of this RFS, to provide Project Management Services for the additions and renovation of the East Somerville Community School in Somerville, Massachusetts ("Project").

The Owner is requesting the services of an Owner's Project Manager to represent the Owner from the current phase of the Project, as is further explained herein, through project closeout. The selection of the OPM will be subject to approval by the Massachusetts School Building Authority (the "MSBA"). The estimated Total Project Cost of the approved Project is approximately \$38,000,000. The Owner elected to use the Construction Manager at Risk delivery method for the Project. At this time, approximately 87% of the Project has been bid and construction is anticipated to begin by mid-November.

2. Project Background and Current Status

The East Somerville School was originally constructed in 1973 and damaged by fire in December 2007. The City of Somerville filed an Emergency Statement of Interest to the MSBA immediately following the incident per MSBA regulations. The MSBA invited Somerville to collaborate with the MSBA on a feasibility study to determine the best solution to mitigate the building issues caused by the fire. On September 29, 2010 the MSBA Board of Directors approved the renovation and additions project at the East Somerville Community School.

The school is 121,100 square feet and will house grades K-8. In collaboration with the Somerville Public Schools, Maguire Group provided design and construction documents for the renovation of the school. The Project Schedule has been and remains of paramount importance as the students of the East Somerville Community School have been displaced into four different schools for four years. An Early Bid Package provided abatement of all hazardous materials and selective demolition in preparation for the additions and renovation Project. Gilbane Building Company was selected to be the Construction Manager and has assisted in the bidding of 21 bid packages. The final bid packages are being prepared for bidding and a draft GMP has been developed. Plans and specifications for the school are available on the City's website.

On December 2, 2010, the City appropriated \$33,185,258, which was estimated to be sufficient for the Project. Bids and estimates for outstanding bid packages indicated a budget overage. The Project went through extensive value engineering and the construction documents are currently being modified to incorporate these changes. To date, a City Employee has served as OPM for the project. At this time, the City, in collaboration with the MSBA, has decided that it is in the Project's best interest to solicit an Owner's Project Manager to assist with the oversight and management of the remaining phases.

3. Objectives and Scope of Services

The main objectives for the OPM are to assist in maintaining Project costs, construction schedule and MSBA reporting requirements.

The general Scope of Services for the OPM includes but is not limited to the following:

- Total Project Budget Control;
- Cost Control of Value Engineering Items that will be implemented by Change Order;
- Schedule Analysis and Control;
- Identification of specific milestone requirements of the District – e.g. FFE, moving and occupancy issues;
- Guide Owner's role in Massachusetts High Performance Green Schools Guidelines (MA-CHPS or LEED for Schools Guidelines);
- Coordination with CM-at-Risk Delivery Method;
- MSBA OPM Reporting requirements.

The required full scope of services is set forth in Article 8 of the standard contract for Owner's Project Management Services for a CM-at-Risk delivery method. The total duration of the Contract, based on the Owner's experience and actual durations may vary, is estimated as follows:

- | | |
|-----------------------------|-----------|
| 1. Final Bidding Phase; and | 2 months |
| 2. Construction Phase. | 18 months |
| 3. Closeout | 3 months |

4. Minimum Requirements and Evaluation Criteria:

Minimum Requirements:

In order to be eligible for selection, each Respondent must certify in its cover letter that it meets the following minimum requirements. Any Response that fails to include such certification in its response, demonstrating that these criteria have been met, will be rejected without further consideration.

Each Respondent must designate an individual who will serve as the Project Director. The Project Director shall be certified in the Massachusetts Certified Public Purchasing Officer Program as administered by the Inspector General of the Commonwealth of Massachusetts and must also meet the following minimum requirements:

- The Project Director shall be a person who is registered by the Commonwealth of Massachusetts as an architect or professional engineer and who has at least 5 years' experience in the construction and supervision of construction and design of public buildings:

or,

- if not registered as an architect or professional engineer, the Project Director must be a person who has at least 7 years' experience in the construction and supervision of construction and design of public buildings.

Evaluation Criteria

In addition to the minimum requirements set forth above, all Respondents must demonstrate that they have experience, knowledge and abilities with respect to public construction projects, particularly involving the construction and renovation of K-12 schools in Massachusetts. The Owner will evaluate Responses based on criteria that shall include, but not be limited to, the following:

1) 0-15 Points

Past performance of the Respondent, with regard to public, private, DOE funded and MSBA-funded school projects across the Commonwealth, as evidenced by:

- a) Documented performance on previous projects as set forth in Attachment C, including the number of projects managed, project dollar value, number and percentage completed on time, number and dollar value of change orders, average number of projects per project manager per year, number of accidents and safety violations, dollar value of any safety fines, and number and outcome of any legal actions;
- b) Satisfactory working relationship with designers, contractors, Owner, the MSBA and local officials.

2) 0 - 5 Potential Points

Thorough knowledge of the Massachusetts State Building Code, regulations related to the Americans with Disabilities Act, and all other pertinent codes and regulations related to successful completion of the project.

3) 0 – 5 Potential Points

Thorough knowledge of Commonwealth construction procurement laws, regulations, policies and procedures, as amended by the 2004 Construction Reform laws. Knowledge and experience with CM-At-Risk Procurement methodology is required.

4) 0 – 15 Potential Points

Management approach: Describe the Respondent's approach to providing the level and nature of services required as evidenced by proposed project staffing for a renovation of 118,500 square feet and additions of 2,600 square feet; proposed project management systems; effective information management; and examples of problem solving approaches to resolving issues that impact time and cost. Align management approach with the current status of the project and the remaining effort required to complete the project.

5) 0 – 15 Potential Points

Key personnel: Provide an organizational chart that shows the interrelationship of key personnel to be provided by the Respondent for this project and that identifies the individuals and associated firms (if any) who will fill the roles of Project Director, Project Representative and any other key roles identified by the Respondent, including but not limited to roles in design review, estimating, cost and schedule control. Specifically, describe the time commitment, experience and references for these key personnel including relevant experience in the supervision of construction of several projects that have been either successfully completed or in process that are similar in type, size, dollar value and complexity to the project being considered. The City's Capital Projects Department will work closely with the OPM to provide continuity for the project and background information on the project essential to maintaining current project schedule and budget.

6) 0 – 10 Potential Points

Capacity and skills: Identify existing employees by number and area of expertise (e.g. field supervision, cost estimating, schedule analysis, quality control and safety). Identify any services to be provided by Sub-consultants.

7) 0 – 5 Potential Points

Identify the Respondent's current and projected workload for projects estimated to cost in excess of \$1.5 million.

8) 0 – 5 Potential Points

Familiarity with Massachusetts-CHPS (MA-CHPS) High Performance Green Schools Guidelines and USGBC LEED for Schools (LEED-S). Demonstrated experience working on high performance green buildings (if any), green building rating system used (e.g., MA-CHPS or LEED-S), life cycle cost analysis and recommendations to Owners about building materials, finishes etc., ability to assist in grant applications for funding and track Owner documentation for MA-CHPS or LEED-S prerequisites.

9) 0 – 15 Potential Points

Thorough knowledge and demonstrated experience with cost estimating, schedule analysis and cost control with actual examples of recommendations and associated benefits to Owners.

10) 0 – 5 Potential Points

Knowledge of the purpose and practices of the services of Building Commissioning Consultants.

11) 0 – 5 Potential Points

Financial Stability: Provide current balance sheet and income statement as evidence of the Respondent's financial stability and capacity to support the proposed contract.

In order to establish a short list of Respondents to be interviewed, the Owner will base its initial ranking of Respondents on the above Evaluation Criteria. The Owner will establish its final ranking of the short-listed Respondents after conducting interviews and reference checks. The Owner may or may not, within its sole discretion, seek additional information from Respondents.

This Request for Services, any addenda issued by the Owner, and the selected Respondent's response, will become part of the executed contract. The key personnel that the Respondent identifies in its response must be contractually committed for the Project. No substitution or replacement of key personnel or change in the Sub-consultants identified in the response shall take place without the prior written approval of the Owner and the MSBA.

The selected Respondent(s) will be required to execute a Contract for Project Management Services with the Owner in the form that is attached hereto as Attachment B and incorporated by reference herein. Prior to execution of the Contract for Project Management Services with the Owner, the selected Respondent will be required to submit to the Owner a certificate of insurance that meets the requirements set forth in the Contract for Project Management Services.

Prior to execution of the Contract for Project Management Services, the fee for services shall be negotiated between the Owner and the selected Respondent to the satisfaction of the Owner, within its sole discretion.

5. Selection Process and Selection Schedule

Process

- 1) The Selection Committee reserves the right to re-advertise if there are fewer than four Respondents that meet the minimum requirements. After submission of qualifications, a four-person Selection Committee will review all applications to determine which ones meet the minimum requirements. The Selection Committee will rate every Respondent that meets the minimum qualifications using the weighted evaluation criteria in this RFS. The weighted evaluation criteria will be assigned by all committee members with a brief written explanation for their assigned score. After individual evaluations, the Procurement Officer will collect all committee members' evaluation sheets for each Respondent and will compile a master list ranking the Respondents from most advantageous (the highest cumulative score) to least advantageous (the lowest cumulative score).
- 2) Following the ranking of Respondents, the committee will short-list a minimum of three Respondents and will conduct interviews with the short-listed Respondents.
- 3) Each short-listed Respondent will be required to make a presentation of their qualifications to the Selection Committee. Each interview will consist of a question and answer period and time allotted for Respondents to present past experience with projects of similar scope and size. All three finalists will be asked the same questions and given the same opportunities to present. The interview process will also have a ranking system and committee members will be required to rank each of the three finalist. Based on the interview process, Respondents will be ranked and references will be checked for the highest ranking Respondent. After acceptable references, fee negotiations will ensue.
- 4) The Owner will commence fee negotiations with the first-ranked selection.
- 5) If the Owner is unable to negotiate a contract with the first-ranked selection, the Owner will then commence negotiations with its second-ranked selection and so on, until a contract is successfully negotiated and approved by the Owner.
- 6) First-ranked selection will be submitted to the MSBA for its approval.
- 7) The first-ranked selection may be asked to participate in a presentation to the MSBA and/or submit additional documentation, as required by MSBA, as part of the MSBA approval process.

The following is a schedule of the selection process, subject to change at the Owner's and MSBA's discretion.

November 9, 2011	Advertise RFS in Central Register of the Commonwealth of Massachusetts and a newspaper of general circulation in the area in which the project is located or to be located.
November 16, 2011	Informational meeting and site visit, 10:00 a.m. Wednesday, November 16, 2011 at the job site construction trailer located adjacent to 42 Cross Street and in front of the East Somerville Community School located at 55 Cross Street, Somerville, MA 02143.
November 18, 2011	Last day for questions from Respondents, due by 4:30 p.m. in writing to the Director of Purchasing, Angela M. Allen
November 23, 2011	Responses due by 11:00 a.m. to the Director of Purchasing
December 2, 2011	Respondents short-listed

December 8-9, 2011	Interview short-listed Respondents
December 12-14, 2011	Negotiate with selected Respondent
December 14, 2011	Final selection submitted to the MSBA for review and approval
January 9, 2012	Execute contract

Requests for Services may be obtained from:

Angela M. Allen
City of Somerville
Purchasing Department
93 Highland Avenue
Somerville, MA 02143
Telephone: 617-625-6600
Email: AMAllen@somervillema.gov
Fax: 617-625-1344
Website: <http://www.somervillema.gov/departments/finance/purchasing>

by the close of business on the date stated in the tentative schedule above .

(If the RFS is obtained from the above website, it is the sole responsibility of the Respondent to obtain any and all addenda.)

On or after November 9, 2011.

Any questions concerning this Request for Services must be submitted in writing to:

Angela M. Allen
City of Somerville
Purchasing Department
93 Highland Avenue
Somerville, MA 02143
Telephone: 617-625-6600
Email: AMAllen@somervillema.gov
Fax: 617-625-1344
Website: <http://www.somervillema.gov/departments/finance/purchasing>

by the close of business on Friday, November 18, 2011 as stated in the schedule above.

Sealed Responses to the Requests for Services for Owner's Project Manager Services must be clearly labeled "Owner's Project Management Services for East Somerville Community School" and delivered to:

Angela M. Allen
City of Somerville
Purchasing Department
93 Highland Avenue
Somerville, MA 02143
Telephone: 617-625-6600
Email: AMAllen@somervillema.gov
Fax: 617-625-1344
Website: <http://www.somervillema.gov/departments/finance/purchasing>

no later than 11:00 a.m. on Wednesday, November 23, 2011. The Owner assumes no responsibility or liability for late delivery or receipt of Responses. All responses received after the stated submittal date and time will be judged to be unacceptable and will be returned unopened to the sender.

6. Requirements for content of response:

Submit four hard copies of the response to this Request for Services and an electronic version in PDF format on four CDs. All responses shall be:

- In ink or typewritten;
- Presented in an organized and clear manner;
- Must include the required forms in Attachment C;
- Must include all required certifications;
- Must include the following information:

1. Cover letter shall be a maximum of two pages in length and include:

- a. An acknowledgement of any addendum issued to the RFS.
- b. An acknowledgement that the Respondent has read the Request for Services. Respondent shall note any exceptions to the RFS in its cover letter.
- c. An acknowledgement that the Respondent has read the Standard Contract. Respondent shall note any exceptions to the Standard Contract in its cover letter.
- d. A specific statement regarding compliance with the minimum requirements identified in Item 4 of this Request for Services to include identification of registration, number of years of experience and where obtained (as supported by the resume section of Attachment C), as well as the date of the MCCPO certification. (A copy of the MCCPO certification should be attached to the cover letter).
- e. A description of the Respondent's organization and its history.
- f. The signature of an individual authorized to negotiate and execute the Contract for Project Management Services, in the form that is attached to the RFS, on behalf of the Respondent.
- g. The name, title, address, e-mail and telephone number of the contact person who can respond to requests for additional information.

2. Selection Criteria: The response shall address the Respondent's ability to meet the "Selection Criteria" Section including submittal of additional information as needed. The total length of the Response (including Attachment C only but excluding Attachments A, B and D) may not exceed twenty (20) single-sided numbered pages with a minimum acceptable font size of "12 pt" for all text.

Respondents may supplement this proposal with graphic materials and photographs that best demonstrate its project management capabilities of the team proposed for this project. **Limit this additional information to a maximum of 3 - 8½"x 11" pages, double-sided.**

3. Certifications

The Respondent is required to submit the following certifications along with the response to the City of Somerville (the certifications are not included in the above mentioned page limits):

- Certificate of Authority

- Certificate of Non-Collusion and Tax Compliance Certification
- Somerville Living Wage Ordinance Form

The Respondent will be required to submit the following certifications if awarded a contract by the City of Somerville. The inclusion of the following certifications in this RFS is for informational purposes only. The Respondent understands and agrees to submit the following certifications if the Respondent is awarded a contract.

- Certificate of Good Standing
- Certificate of Insurance (referenced in OPM contract – see Attachment B)
- Vendor Certificate
- W-9 Form (to be obtained from IRS – please use most recent form)

7. Payment Schedule and Fee Explanation:

The Owner will negotiate the fee for services dependent upon an evaluation of the level of effort required, job complexity, specialized knowledge required, estimated construction cost, comparison with past project fees, and other considerations. As construction cost is but one of several factors, a final construction figure in excess of the initial construction estimate will not, in and of itself, constitute a justification for an increased Owner's Project Manager fee.

8. Other Provisions

A. Public Record

All responses and information submitted in response to this RFS are subject to the Massachusetts Public Records Law, M.G.L. c. 66, § 10 and c. 4, § 7(26). Any statements in submitted responses that are inconsistent with the provisions of these statutes shall be disregarded.

B. Waiver/Cure of Minor Informalities, Errors and Omissions

The Owner reserves the right to waive or permit cure of minor informalities, errors or omissions prior to the selection of a Respondent, and to conduct discussions with any qualified Respondents and to take any other measures with respect to this RFS in any manner necessary to serve the best interest of the Owner and its beneficiaries.

C. Communications with the Owner

The Owner's Procurement Officer for this Request for Services is:

Angela M. Allen
 City of Somerville
 Purchasing Department
 93 Highland Avenue
 Somerville, MA 02143
 Telephone: 617-625-6600
 Email: AMAllen@somervillema.gov
 Fax: 617-625-1344
 Website: <http://www.somervillema.gov/departments/finance/purchasing>

Respondents that intend to submit a response are prohibited from contacting any of the Owner's staff other than the Procurement Officer. An exception to this rule applies to Respondents that currently do

business with the Owner, but any contact made with persons other than the Procurement Officer must be limited to that business, and must not relate to this RFS. In addition, such respondents shall not discuss this RFS with any of the Owner's consultants, legal counsel or other advisors. ***FAILURE TO OBSERVE THIS RULE MAY BE GROUNDS FOR DISQUALIFICATION.***

D. Costs

Neither the Owner nor the MSBA will be liable for any costs incurred by any Respondent in preparing a response to this RFS or for any other costs incurred prior to entering into a Contract with an Owner's Project Manager approved by the MSBA.

E. Withdrawn/Irrevocability of Responses

A Respondent may withdraw and resubmit their response prior to the deadline. No withdrawals or re-submissions will be allowed after the deadline.

F. Rejection of Responses, Modification of RFS

The Owner reserves the right to reject any and all responses if the Owner determines, within its own discretion, that it is in the Owner's best interests to do so. This RFS does not commit the Owner to select any Respondent, award any contract, pay any costs in preparing a response, or procure a contract for any services. The Owner also reserves the right to cancel or modify this RFS in part or in its entirety, or to change the RFS guidelines. A Respondent may not alter the RFS or its components.

G. Subcontracting and Joint Ventures

Respondent's intention to subcontract or partner or joint venture with other firm(s), individual or entity must be clearly described in the response.

H. Validity of Response

Submitted responses must be valid in all respects for a minimum period of ninety (90) days after the submission deadline.

ATTACHMENTS:

Attachment A: Intentionally Omitted.

Attachment B: Contract for Owner's Project Management Services

Attachment C: OPM Application Form - May 2008

Attachment D: Required Certifications

Attachment E: Construction Schedule

ATTACHMENT A
(Intentionally Omitted)

ATTACHMENT B
MSBA STANDARD CONTRACT
(CM-at-Risk)

CONTRACT FOR PROJECT MANAGEMENT SERVICES

This Contract is made this _____ day of January in the year 2012 between
(day) (month) (year)

The City of Somerville, _____
(Owner) (Street)
Somerville, Massachusetts 02143
(City) (State) (Zip Code)

hereinafter called "the Owner" and _____
(Owner's Project Manager)

_____, _____, _____, _____
(street) (City) (State) (Zip Code)

hereinafter called the "Owner's Project Manager" to provide the Project Management services required to complete the Basic and Extra Services described herein at the East Somerville Community School, located at 115 Pearl Street, Somerville, MA. The project is a 121,100 square foot additions and renovation project for which an Early Bid Package abated all hazardous materials and selective demolition occurred in preparation for the new construction work. The project is proceeding under a Construction Manager at Risk construction delivery. Design is complete and a GMP will be in place prior to the execution of this contract.

(name/description of Project)

The Owner's Project Manager is authorized to perform the services required by this Contract for the Construction Phases and Completion Phase. The project will be pursuant to G.L. c. 149A, this Contract includes the Authority's Base OPM Contract Amendment for CM at Risk, for Basic Services required for the CM at Risk construction delivery method.

For the performance of the services required under this Contract, the Owner's Project Manager shall be compensated by the Owner for Basic Services in accordance with the Payment Schedule included as Attachment A.

IN WITNESS WHEREOF, the Owner and the Owner's Project Manager have caused this Contract to be executed by their respective authorized officers.

OWNER

OWNER'S PROJECT MANAGER

(print name)

(print name)

(print title)

(print title)

By _____
(signature and seal)

By _____
(signature)

Date _____

Date _____

(Attach Certificate of Vote of Authorization)

TABLE OF CONTENTS

	<u>Page</u>
Project description, fee and signatures	1
ARTICLE 1 DEFINITIONS.....	3
ARTICLE 2 RELATIONSHIP OF THE PARTIES.....	5
ARTICLE 3 RESPONSIBILITIES OF THE OWNER.....	6
ARTICLE 4 RESPONSIBILITIES OF THE OWNER’S PROJECT MANAGER	7
ARTICLE 5 SUBCONSULTANTS.....	8
ARTICLE 6 TERM AND TIMELY PERFORMANCE	9
ARTICLE 7 COMPENSATION	9
ARTICLE 8 BASIC SERVICES.....	10
ARTICLE 9 EXTRA SERVICES	15
ARTICLE 10 REIMBURSABLE EXPENSES	16
ARTICLE 11 RELEASE AND DISCHARGE	17
ARTICLE 12 ASSIGNMENT, SUSPENSION, TERMINATION	17
ARTICLE 13 NOTICES.....	18
ARTICLE 14 INDEMNIFICATION OF OWNER AND AUTHORITY	18
ARTICLE 15 INSURANCE.....	19
ARTICLE 16 OWNERSHIP OF DOCUMENTS	21
ARTICLE 17 REGULATORY AND STATUTORY REQUIREMENTS	22
 ATTACHMENT A: PAYMENT SCHEDULE	
 ATTACHMENT B: KEY PERSONNEL	

ARTICLE 1: DEFINITIONS

APPROVAL – a written communication from the Owner approving either the work of the current Phase, as identified on Attachment A, or authorizing the Owner’s Project Manager to proceed to the next Phase or approving the scope and compensation for either Extra Services or Reimbursable Expenses.

ARCHITECT/ENGINEER – herein also referred to as the **DESIGNER** -- the person or firm with whom the Owner has contracted to perform the professional designer services for this Project.

AUTHORITY – Massachusetts School Building Authority or its authorized representative, created by St. 2004, c. 208.

BASIC SERVICES – the minimum scope of services to be provided by the Owner’s Project Manager under this Contract, unless the Contract is otherwise terminated pursuant to Article 12.

CERTIFICATE OF FINAL COMPLETION – The form prescribed by the Authority which contains the certification of the Designer, OPM and the Owner that the Project has reached Final Completion.

COMMISSIONING CONSULTANT – a person or firm engaged by the Authority to provide building commissioning services, including advisory services during design and construction.

CONTRACT – this Contract, inclusive of all Attachments, between the Owner and the Owner’s Project Manager; all written amendments to this Contract; and all Approvals issued pursuant to this Contract.

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

CONSTRUCTION MANAGER AT RISK, CONSTRUCTION MANAGEMENT at RISK FIRM or CM at RISK – a sole proprietorship, partnership, corporation, or other legal entity with which the Owner has contracted pursuant to G.L. c. 149A, § 6(e), to provide Construction Management at Risk Services;

EXTRA SERVICES – services requested by the Owner to be performed by the Owner’s Project Manager but which are additional (or “extra”) to the services performed as Basic Services.

FEE FOR BASIC SERVICES – the fee to be paid to the Owner’s Project Manager for satisfactorily performing, in the Owner’s sole discretion, the Basic Services required under this Contract, exclusive of the compensation to which the Owner’s Project Manager is entitled pursuant to Articles 9 and 10.

FINAL COMPLETION – The work has been completed in accordance with the Construction Contract Documents and the educational specifications, schematic plans and drawings and the Project Funding Agreement approved by the Authority.

GENERAL LAWS – the Massachusetts General Laws as amended, including any rules, regulations and administrative procedures implementing said laws.

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

GUIDELINES AND STANDARDS – Documents published by the Authority including regulations and procedures that supplement the tasks of Owner’s Project Managers contracting with Owners for projects receiving any funding from the Authority.

NON-TRADE CONTRACTOR – for purposes of a project utilizing the CM at Risk construction delivery method only, a subcontractor, as described in M.G.L. c. 149A, § 8(j), who is not a Trade Contractor, as defined herein, and who has a direct contractual relationship with a CM at Risk whether or not the work exceeds the threshold sum as identified in M.G.L. c. 149, § 44F(1).

NOTICE to PROCEED – the written communication issued by the Owner to the Contractor or the CM at Risk authorizing him to proceed with the services specified in the construction contract or the CM at Risk contract and establishing the date for commencement of the contract time.

OWNER – the entity identified as such on page one of this Contract, or its authorized representative, that is the owner of the property that is the site of the Project and is responsible for administering this Contract.

OWNER’S PROJECT MANAGER – the individual, corporation, partnership, sole proprietorship, joint stock company, joint venture or other legal entity identified as such on page one of this Contract performing the professional Project Management Services under this Contract.

PHASE – a distinct portion of the work of this Contract and its associated duration, as identified on Attachment A. Prior Approval to proceed for each Phase is required from the Owner.

PRINCIPALS – the owners and/or officers of the Owner’s Project Manager who are actively involved in the management of the Project.

PROJECT – all work that pertains to the study, planning, design, construction, reconstruction, installation, demolition, maintenance or repair, if any, as defined in the Project Scope and Budget Agreement or Project Funding Agreement .

PROJECT BUDGET – a complete and full enumeration of all costs of the Project, as defined in the Owner-Authority Project Scope and Budget Agreement or Project Funding Agreement.

PROJECT DIRECTOR – the employee of the Owner’s Project Manager who has been designated in writing by the Owner’s Project Manager as its authorized representative, as approved by the Owner, and subject to the approval of the Authority, pursuant to the requirements of M.G.L. c.149 §44A½ or G.L. c. 149A, § 2, as the case may be, for an “owner’s project manager” and 963 CMR 2.00 et seq., and shall be the person who shall oversee and be responsible for all Project Management Services provided under this Contract. The Project Director shall be certified in the Massachusetts Certified Public Purchasing Official Program as administered by the Inspector General of the Commonwealth of Massachusetts.

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

PROJECT REPRESENTATIVE – the employee or a Subconsultant of the Owner’s Project Manager, who shall be dedicated exclusively to the Project, on-site full-time during the Construction Phase in accordance with the requirements of Article 8.6.2.

PROJECT SCHEDULE – a complete list of all activities, time and sequence required to complete the Project, as defined in the Owner-Authority Project Scope and Budget Agreement or Project Funding Agreement.

PROJECT SCOPE AND BUDGET AGREEMENT – the Agreement described in 963 CMR 2.10(10) and executed by the Authority and the Owner.

REIMBURSABLE SERVICES OR REIMBURSABLE EXPENSES – the cost of services requested by the Owner to be performed by the Owner’s Project Manager or the cost of expenses paid by the Owner’s Project Manager that are reimbursable pursuant to the provisions of Article 10.

SUBCONTRACTOR – for purposes of a project utilizing the design-bid-build construction delivery method pursuant to G.L. c. 149, a person or entity having a direct contractual relationship with the Contractor, who has the contract to perform the construction of the Project, except as otherwise specifically provided herein or as required by Law.

SUBCONSULTANT – any individual, company, firm, or business having a direct contractual relationship with the Owner’s Project Manager, who provides services on the Project.

TRADE CONTRACTOR – for purposes of a project utilizing the CM at Risk construction delivery method only, subcontractors having a direct contractual relationship with a CM at Risk pursuant to G.L. c. 149A, § 8 (a)-(i), to perform one or more so-called sub-bid classes of work listed in M.G.L. c.149 §44F and all other sub-bid classes of work selected by the public agency for the Project, provided the sub-bid work meets or exceeds the threshold sum identified in M.G.L. 149 §44F(1).

ARTICLE 2: RELATIONSHIP OF THE PARTIES

- 2.1 The Owner’s Project Manager shall act as an independent contractor of the Owner in providing the services required under this Contract.
- 2.2 The Owner’s Project Manager warrants and represents to the Owner that it has fully, completely and truthfully represented the qualifications and skills of the Owner’s Project Manager, its Subconsultants, agents, servants and employees in the proposal submitted by the Owner’s Project Manager, the Contract documents and in all communications with the Owner relative to this Contract and the services to be performed hereunder by the Owner’s Project Manager, its Subconsultants, agents, servants and employees.
- 2.3 The Owner’s Project Manager shall perform its services under this Contract with no less than that degree of skill and care ordinarily exercised by similarly situated members of the Owner’s Project Manager’s profession on projects of similar size, scope and complexity as is involved on the Project. The Owner’s Project Manager’s services shall be rendered in accordance with this Contract.
- 2.4 The Parties hereto agree that the Designer is solely responsible for the design requirements and design criteria for the Project (except to the extent specifically delegated to others) and for performing in accordance with the contract between the Owner and Designer.

- 2.5 The Parties hereto agree that the CM at Risk shall be solely responsible for construction means, methods, techniques, sequences and procedures, the CM at Risk's schedules, and for safety precautions and programs in connection with the Project and for performing in accordance with the Owner-CM at Risk Agreement. The Owner's Project Manager shall be responsible for the Owner's Project Manager's negligent acts or omissions but shall not have control over or charge over acts or omissions of the CM at Risk, Trade Contractors or Non-Trade Contractors or the agents or employees of the CM at Risk, Trade Contractors or Non-Trade Contractors the Designer, the Authority, the Owner or the Commissioning Consultant.
- 2.6 Nothing in this Contract shall be construed as an assumption by the Owner's Project Manager of the responsibilities or duties of the CM at Risk or the Designer. The Owner's Project Manager's services shall be rendered compatibly and in coordination with the services provided by the Designer. It is not intended that the services of the Owner's Project Manager and Designer be competitive or duplicative, but rather complementary. The Owner's Project Manager shall be entitled to rely upon the Designer and CM at Risk for the proper performance of their obligations pursuant to their respective contracts with the Owner.

ARTICLE 3: RESPONSIBILITIES OF THE OWNER

- 3.1 The Owner shall be responsible to oversee and monitor the performance of the Owner's Project Manager to ensure that it performs its obligations in a satisfactory manner. The Owner shall provide the necessary general direction and broad management coordination required to execute the Project.
- 3.2. The Owner shall designate an individual or individuals who shall have the authority to act on behalf of the Owner under this Contract and who shall be responsible for day-to-day communication between the Owner and the Owner's Project Manager.
- 3.3 Upon satisfactory completion of services performed, the Owner shall make payments to the Owner's Project Manager as provided in Articles 7, 8, 9 and 10.
- 3.4 The Owner shall be responsible for requiring the CM at Risk and/or the Designer to comply with their respective contract obligations and to cooperate with the Owner's Project Manager.
- 3.5 The Owner shall provide timely information with respect to its requirements relative to the Project Schedule and the Project Budget, and shall further give timely notice to the Owner's Project Manager of any changes or modifications to the same.
- 3.6 To the extent such data is available, the Owner shall furnish to the Owner's Project Manager existing surveys of the Project site, building plans, borings, test pits, structural, mechanical, chemical or other test data, tests for air and water pollution and for hazardous materials, photographs and utility information. The Owner's Project Manager shall be entitled to reasonably rely upon the sufficiency and accuracy of the information furnished under this Article 3.6, provided that the Owner's Project Manager shall notify the Owner in writing of any deficiencies in such data that the Owner's Project Manager becomes aware of.

ARTICLE 4: RESPONSIBILITIES OF THE OWNER'S PROJECT MANAGER

- 4.1 The Owner's Project Manager shall provide project management services to monitor construction and other related activities and to facilitate, coordinate and manage the Project with respect to timely performance in accordance with the Project Schedule and monitor the quality of services

and workmanship and shall recommend courses of action to the Owner when respective contractual requirements are not being fulfilled. Services shall continue through substantial use and occupancy by the Owner, and Project closeout. As part of Basic Services, the Owner's Project Manager shall provide information as requested during final auditing as conducted by the Authority.

- 4.2 The Owner's Project Manager shall perform the services required under this Contract in conformance with applicable federal, state, and local laws, ordinances and regulations.
- 4.3 The Owner's Project Manager shall report to the Owner any act or inaction in connection with the Project which the Owner's Project Manager believes creates a substantial health or safety risk. Notwithstanding the immediately preceding sentence, the Owner's Project Manager shall not assume responsibility for safety precautions and programs in connection with the Project, which shall remain the sole responsibility of the CM at Risk.
- 4.4 The Owner's Project Manager shall comply with terms and conditions of all project agreements executed between the Owner and the Authority and any and all administrative directives issued by the Authority now in effect or hereafter promulgated during the term of this Contract, without any additional compensation. The Owner shall reasonably compensate the Owner's Project Manager for complying with any such term or condition or directive, that was not provided to or was not readily available to the Owner's Project Manager prior to such Services being performed and that materially impacts the Owner's Project Manager's scope, or other aspect of its Services, Fee, schedule, or any obligations and responsibilities under this Contract.
- 4.5 The Owner's Project Manager acknowledges the importance that the Owner attributes to the abilities and qualifications of the key members of the Owner's Project Manager's team, including Subconsultants, and the continuity of key members participation in the services to be provided under this Contract. This Contract has been entered into on the representation of the Owner's Project Manager that the individuals, consultants, assignments and responsibilities will be maintained throughout the duration of this engagement. No substitution or replacement of individuals or change in the Subconsultants, listed in Attachment B, shall take place without the prior written approval of the Owner and the Authority, except when necessitated by causes beyond the Owner's Project Manager's control. If the Owner's Project Manager proposes to replace one of the key members of the Owner's Project Manager's team, the Owner's Project Manager shall propose a person or consultant with qualifications at least equal to the person or firm the Owner's Project Manager proposes to replace. The Owner and the Authority shall have the right to approve any substitution or replacement or change in status for the persons or Subconsultants listed in Attachment B and such approval shall not be unreasonably withheld. At the request of the Owner, the Owner's Project Manager shall consult with the Owner to resolve any situation in which the Owner determines that a member of the Owner's Project Manager's team is failing to perform services in an acceptable manner to the Owner. The Owner shall have the right to direct the removal of any such person or consultant. No act or omission of the Owner or the Authority made or permitted under this Section shall relieve the Owner's Project Manager of its responsibility for the performance of the services specified in this Contract.
- 4.6 The Owner's Project Manager shall employ at all times professional and support personnel with requisite expertise and adequate numbers to assure the complete, timely and high quality performance of the obligations of the Owner's Project Manager.

- 4.7 The Owner's Project Manager shall be and shall remain liable to the Owner for all damages incurred by the Owner as a result of the failure of the Owner's Project Manager to perform in conformance with the terms and conditions of this Contract.

ARTICLE 5: SUBCONSULTANTS

- 5.1 The Owner's Project Manager may employ Subconsultants, subject to the prior written approval of the Owner and subject to Paragraph 10.3 in order to perform Basic, Extra and Reimbursable services under this Contract. The employment of Subconsultants shall not in any way relieve the Owner's Project Manager from its responsibilities under this Contract. Nor shall the Owner's approval of a Subconsultant in any way relieve the Owner's Project Manager from its responsibilities under this Contract.
- 5.2 Upon request, the Owner's Project Manager shall provide the Owner copies of its agreements with Subconsultants, including amendments thereto, and shall consult with the Owner with respect to the inclusion therein of appropriate terms and conditions to assure timely, efficient and competent performance of the Subconsultants.
- 5.3 No substitution of Subconsultants and no use of additional Subconsultants shall be made without prior written approval of the Owner, which approval shall not be unreasonably withheld.
- 5.4 The OPM shall be responsible for all compensation to be paid to a subconsultant. No Subconsultant shall have recourse against the Owner or the Authority for payment of monies alleged to be owed to the Subconsultant by the Owner's Project Manager, and the Owner's Project Manager shall include in all contracts with its Subconsultants language so providing.
- 5.5 All contracts between the Owner's Project Manager and its Subconsultants shall include a provision in which the Owner's rights to initiate corrective action shall be stipulated

ARTICLE 6: TERM AND TIMELY PERFORMANCE

- 6.1 The Owner's Project Manager acknowledges that expeditious completion of the Owner's Project Manager's services and the Project is of the utmost importance to the Owner. The term of this Agreement shall commence on the date stipulated in an Approval to proceed from the Owner. The Owner's Project Manager shall complete the services required under this Contract in a prompt and continuous manner. The Owner's Project Manager shall perform its services in a timely manner and shall not delay the work of the Designer or CM at Risk. The Owner's Project Manager shall monitor the performance of the Designer and the CM at Risk in accordance with schedules of performance that are established under their contracts with the Owner. The Owner's Project Manager shall immediately advise the Owner, as well as the Designer or CM at Risk, in writing, any time the Owner's Project Manager determines that either the Designer's or CM at Risk's performance is jeopardizing the Project Schedule or the Project Budget.
- 6.2 Time is of the essence in the performance of the Owner's Project Manager's obligations under this Agreement and under any amendment. The Owner's Project Manager agrees that no other work in its organization will be permitted to interfere with its timely performance of the work required under this Agreement or any amendment.
- 6.3 The Owner's Project Manager's services are to be provided in accordance with the time schedule included in Attachment E of the RFS for OPM. If the schedule changes causing the need for revisions to the Owner's Project Manager's services, the Owner's Project Manager shall notify the

Owner of the revisions to its services. The Owner shall have the right to extend the term of this Contract by amendment. All the rights and obligations of the parties for such extended periods shall be as set forth in this Contract or in the amendment.

ARTICLE 7: COMPENSATION

- 7.1 For the satisfactory performance of all services required pursuant to this Contract, excluding those services specified under Articles 9 and 10, the Owner's Project Manager shall be compensated by the Owner in an amount up to the Not-to-Exceed Fee for Basic Services, identified on Attachment A. The Owner's Project Manager shall submit invoices on a monthly basis in accordance with the Payment Schedule included as Attachment A. The Owner shall make payments to the Owner's Project Manager within 30 days of the Owner's approval of the invoice, which approval shall not be unreasonably withheld or delayed.
- 7.2 The Fee for Basic Services shall include, but not necessarily be limited to, all labor, overhead, profit, insurance, legal services, transportation, communication expenses, reasonable printing and copying necessary for completion of the Project. The fee for Basic Services also shall include (a) the costs of rebidding and re-solicitation of proposals, bids, or qualifications if due to the fault of the Owner's Project Manager, and (b) assisting the Owner as provided by section 8.1.4.2 in litigation or resolution of claims or other administrative proceedings associated with a bid protest arising out of the Designer contract or the construction contract and for assistance beyond the requirements of 8.1.4.2 if such litigation or claims are due to the fault of the Owner's Project Manager.
- 7.3 When the Owner's Project Manager receives payment from the Owner, the Owner's Project Manager shall promptly make payment to each Subconsultant whose work was included in the work for which such payment was received. The Owner shall have the contractual right to investigate any breach of performance of a Subconsultant and to initiate corrective measures it determines are necessary and in the best interest of the Owner. All contracts between the Owner's Project Manager and its Subconsultants shall include a provision in which the Owner's rights to initiate corrective action shall be stipulated.
- 7.4 The Owner's Project Manager shall be paid the remainder of the Fee for Basic Services, less previous payments, upon acceptance by the Owner of the Certificate of Final Completion and submission of evaluations.

ARTICLE 8: BASIC SERVICES

The Owner's Project Manager shall perform the following Basic Services:

- 8.1 Project Management (For Construction and Closeout Phases)
- 8.1.1 The Owner's Project Manager shall prepare a communication and document control procedure and continue to update it as specified for the duration of the Project. This procedure shall detail the responsibilities and lines of communication among all Project participants (Owner, Authority, Owner's Project Manager, Designer, CM at Risk, Trade Contractors, Non-Trade Contractors and other consultants, vendors or suppliers) and establish the procedure for correspondence, document control, designer and CM at Risk submittal logs, change order reporting logs and other tracking logs, as needed. The Owner's Project Manager shall include the Designer in its distribution of the Project Budget,

Schedule, Monthly Progress Report and other reports as appropriate and as outlined in the Communications Plan.

8.1.1.2 The Owner's Project Manager shall assist the Owner in the preparation of all information, material, documentation, and reports that may be required or requested by the Authority, including without limitation, documentation related to incentive reimbursement percentage points that may be awarded to the Owner by the Authority, requests for reimbursement, and audit materials.

8.1.1.3 The Owner's Project Manager shall prepare agendas for and attend school building committee meetings, attend meetings with other representatives of the Owner, municipal administration and the school department, and attend neighborhood meetings relating to the Project. The Owner's Project Manager shall take minutes of all of the above-referenced meetings and promptly distribute minutes of these meetings to the Owner.

8.1.1.4 The Owner's Project Manager shall review all applications for payments, requisitions and invoices relating to the Project as submitted by the Designer, equipment vendors and all other contractors and suppliers and make recommendations to the Owner relative to amounts due.

8.1.2 Project Control

8.1.2.1 Project Budget

The Owner's Project Manager shall maintain and update the baseline Project Budget throughout the term of this Contract. The Owner's Project Manager shall report any variances to the baseline Project Budget as part of the Monthly Progress Report. The Owner's Project Manager shall monitor the Guaranteed Maximum Price, and other cost information to this Project Budget and identify and report all variances to the Owner and the Authority.

The Owner's Project Manager shall prepare revisions to the baseline Project Budget, as needed, and submit them to the Owner for approval.

8.1.2.2 Cost Estimating

The Owner's Project Manager shall provide cost estimating services, as may be required, to for cash flow projections and change order reviews.

8.1.2.3 Project Schedule

The Owner's Project Manager shall maintain and update the Project Schedule throughout the term of this Contract. The Owner's Project Manager shall prepare revisions to the Project Schedule, as needed, and submit them to the Owner for approval.

8.1.2.4 Construction Schedule

The CM at Risk shall be responsible for preparing and updating its construction schedule on a monthly basis. The Owner's Project Manager shall meet once each

month with the CM at Risk, and Designer to review and update its schedule, develop the monthly progress information to support the CM at Risk's payment estimate, and monitor the CM at Risk's performance for compliance with its contract.

The Owner's Project Manager shall notify the Owner of and include in its Monthly Progress Report any significant changes or delays to the construction schedule.

The Owner's Project Manager shall make appropriate recommendations to the Owner relative to the actions that should be taken by the CM at Risk and/or advise the Owner when liquidated damages, if included in the CM at Risk contract, are anticipated to be incurred.

8.1.3 Monthly Progress Report

The Owner's Project Manager shall submit to the Owner and the Authority no later than the twelfth day of each calendar month, a written Monthly Progress Report summarizing activity during the preceding calendar month. The Monthly Progress Report shall be submitted in a format acceptable to the Authority and shall describe work performed by all project participants (OPM, Designer, and CM at Risk) during the reporting period and work planned for the next reporting period. The report shall also address matters of schedule adherence (Project Schedule as well as individual completion percentages for design and construction), costs to date (updated Project Budget and actual expenses incurred), change orders and potential change orders, cash flow projections, CM at Risk's safety performance, Designer's QA/QC, CM at Risk's environmental compliance, community issues, Designer and CM at Risk's MBE/WBE activities, any issues that could result in additional time and/or additional costs and any anticipated problems/concerns together with recommended solutions.

8.1.4 Change Order and Claims Administration

Services provided by the Owner's Project Manager shall include:

8.1.4.1 Change Order Administration

8.1.4.1.1 Review all CM at Risk proposals for change orders and supporting schedules for time extension requests. For change orders in excess of \$100,000, prepare independent cost estimate analysis with associated schedule impact.

8.1.4.1.2 Initiate, conduct, and document negotiations through a memorandum of negotiations with the CM at Risk.

8.1.4.1.3 For all change order requests by the CM at Risk, make recommendations to the Owner for their modification, acceptance or rejection and provide an analysis and recommendation regarding the cost.

8.1.4.1.4 Prepare and finalize any documentation required for processing change orders including a summary of the Owner's Project Manager's review of the reasonableness of the costs and documentation to support or reject the change.

8.1.4.1.5 Maintain a status report system for logging and tracking change orders, claims, and disputes to resolution. At a minimum, monthly reports shall include contract number, description of change order or claim, reason for change, date initiated, magnitude of estimated cost, actions required (identification of action parties and response dates) and status. This report shall be included in the Monthly Progress Report.

8.1.4.2 Claims and Disputes Management

8.1.4.2.1 Implement a claims management procedure consistent with the construction contract documents.

8.1.4.2.2 Analyze CM at Risk claims and propose recommendations to the Owner in support of the Owner's obligations under the claims article of the construction contract documents. Prepare responsive positions in coordination with the Owner, and obtain appropriate input from the Designer and/or CM at Risk.

8.1.4.2.3 In the event that a dispute arises between the CM at Risk, and/or any Subcontractors, and/or the Designer, including, but not necessarily limited to, disputes regarding the performance, quality, acceptability, fitness and rate of progress of the Project or the requirements of the Designer's contract or the CM at Risk's construction contract(s), the Owner's Project Manager shall report any such claims, disputes or other matters in question relating to the performance by the CM at Risk, Subcontractor, Designer or vendor to the Owner and the Authority in writing as soon as reasonably possible.

8.1.4.2.4 The Owner's Project Manager shall take all reasonable efforts designed to resolve any such claims, disputes, or other matters in question.

8.1.5 MBE/WBE Compliance Monitoring (All Phases)

The Owner's Project Manager shall monitor and report on the Designer's and CM at Risk's compliance with MBE/WBE requirements.

8.1.6 NOT USED

8.1.7 Project Records and Reports (All Phases)

The Owner's Project Manager shall maintain a complete Project file including, but not necessarily limited to, a copy of the executed agreements of the Owner-Owner's Project Manager, Owner-Architect/Engineer and the Owner- CM at Risk, including copies of performance and payment bonds, a master list of permits, certificates of insurance, licenses and approvals for the Project, correspondence, daily reports, payment records, shop drawings, submittals, project schedules, requests for information, change orders/amendments, change directives and meeting minutes. The Owner's Project Manager shall assist the Owner in responding to any public records request received by the Owner.

8.2 NOT USED

8.3 CM at Risk

8.3.1 General

The Owner's Project Manager shall assist and advise the Owner in regard to matters concerning the Construction Manager at Risk ("CM at Risk") in accordance with the provisions of M.G.L. c. 149A §§5 and 6, the applicable regulations and procedures promulgated by the Inspector General, and all other applicable law.

8.3.2 NOT USED

8.3.3 NOT USED

8.3.4 NOT USED

8.3.5 CM at Risk Contract and Guaranteed Maximum Price

8.3.5.1 The Owner's Project Manager shall obtain from the CM at Risk and maintain on file any required performance and payment bonds, including, but not limited to, those in the amount of the Guaranteed Maximum Price ("GMP") in accordance with M.G.L. c. 149A, §§ 5(a) & 7(b)(4) and those in the full amount of trade contracts in accordance with M.G.L. c. 149A, § 8; any required insurance certificates; and any other documents and certificates required by law or by the provisions of the Owner-CM at Risk contract.

8.3.5.2 The Owner's Project Manager shall provide advice, consultation, guidance and assistance to the Owner in negotiating amendments to the CM at Risk contract in accordance with the provisions of M.G.L. 149A, §§5-8, and the applicable regulations and procedures promulgated by the Inspector General.

8.3.5.3 The Owner's Project Manager shall verify that the GMP is consistent with the requirements of the CM at Risk contract and that the CM at Risk has implemented an adequate cost control system to provide verification that all costs incurred within the GMP are true and actual in accordance with the CM at Risk contract.

8.3.5.4 The Owner's Project Manager shall review the minutes prepared by the CM at Risk for accuracy and completeness and shall advise the Owner accordingly.

8.4 NOT USED

8.5 NOT USED

8.6 NOT USED

8.7 Construction Phase

The Owner's Project Manager shall provide supervisory staff for each of the following activities, throughout construction to contract close-out.

- 8.7.1 The Owner's Project Manager shall monitor the Designer's administration of the Owner-CM at Risk Agreement including the processing of submittals, issuance of timely decisions and directives and consultant's or subconsultants' visits to the Project as necessary during the time that construction is occurring on the portions of the work to which the consultant's services relate.
- 8.7.2 The Owner's Project Manager shall provide an on-site Project Representative, who shall be dedicated exclusively to the Project, either as an employee of the Owner's Project Manager or as a subconsultant to the Owner's Project Manager.
- 8.7.2.1 The Project Representative shall be subject to the approval of the Owner and the Owner reserves the right to require the Owner's Project Manager to replace the Project Representative at any time during the course of the Project.
- 8.7.2.2 The Project Representative shall have at least five years' experience in on-site supervision of projects similar in size and complexity to the Project.
- 8.7.2.3 Unless otherwise directed, the Project Representative shall be present at all times when the CM at Risk is conducting operations at the site starting from issuance by the Owner of a Notice to Proceed to the CM at Risk and continuing until issuance to the CM at Risk of a Certificate of Substantial Completion by the Owner and thereafter on an, as needed basis, until issuance to the CM at Risk of a Certificate of Final Completion by the Owner.
- 8.7.3 The Owner's Project Manager shall review the CM at Risk's schedule of values to determine if it represents a reasonably balanced payment schedule for work to be performed with no items front-end loaded or artificially inflated. The schedule of values shall include line items for all deliverables, testing requirements and specified operations and maintenance materials.
- 8.7.4 The Owner's Project Manager shall review the CM at Risk's submitted baseline schedule. The Owner's Project Manager shall be responsible for monitoring the timeliness of these submittals and enforcing compliance with schedule submittal requirements of the construction documents. The Owner's Project Manager shall evaluate the CM at Risk's planning for the execution of the work, evaluate the reasonableness of the proposed schedule and determine if the submitted schedule meets the requirements of the construction documents.
- 8.7.5 The Owner's Project Manager shall provide daily observation and monitoring of construction activities such that all shifts and work activities are observed and documented. Responsibilities shall include:
- 8.7.5.1 The Owner's Project Manager shall keep a daily log containing a record of weather, the CM at Risk's work on site, number of workers, visitors to the site, safety status of the Project, equipment and equipment utilization, material and equipment deliveries, non-compliance with safety procedures and issuance of any safety violation notifications, accidents, general description of work performed and quality of work, visits of code enforcement officials and any resulting reports or orders, verbal instruction to interpretations given to the CM at Risk, pay items, and any observed delays, deficiencies and field problems.

- 8.7.5.2 The Owner's Project Manager shall prepare weekly progress reports for submittal to the Designer and the Owner that summarize the progress achieved, provide a concise description of problems and include a copy of the daily log.
- 8.7.5.3 The Owner's Project Manager shall assist the Designer in determining if construction and construction related activities are performed in accordance with plans and specifications and the approved shop drawings and are consistent with Massachusetts public construction laws.
- 8.7.5.4 The Owner's Project Manager shall monitor on a daily basis Time and Materials work on change orders for less than \$50,000, including work installed, volume measurements, time sheets, crew sizes and mixes, and equipment utilized.
- 8.7.5.5 The Owner's Project Manager shall evaluate actual quantities and classification of Unit Price work performed by the CM at Risk.
- 8.7.5.6 The Owner's Project Manager shall evaluate field problems, using the proper channels for solution and communication of the information to the Designer and the Owner.
- 8.7.5.7 The Owner's Project Manager shall coordinate and track requests for clarification on drawings/specifications, design changes and proposed change orders.
- 8.7.5.8 The Owner's Project Manager shall prepare responses to CM at Risk correspondence for the Owner.
- 8.7.5.9 The Owner's Project Manager shall monitor and coordinate the scheduling and activities of independent materials testing functions at the site, including distribution of reports and any necessary actions resulting.
- 8.7.5.10 The Owner's Project Manager shall maintain at the Project site, on a current basis, a record copy of Construction Contract Documents, including, but not necessarily limited to, drawings, specifications, addenda, change orders, and directives as well as all approved shop drawings, product data, samples, submittals, operations and maintenance manuals and all other relevant documents relating to the construction of the Project.
- 8.7.5.11 The Owner's Project Manager shall monitor the CM at Risk's compliance with Massachusetts prevailing wage requirements pursuant to M.G.L. c. 149 §§ 26 to 27H inclusive including assisting the Owner in cataloging and filing payroll affidavits.
- 8.7.5.12 The Owner's Project Manager shall shoot and maintain Project progress photographs showing construction progress at a frequency sufficient to document major activities or to document safety incidents, differing site conditions and quality issues. The Owner's Project Manager shall maintain a descriptive log and captioning of the photographs on CD.

- 8.7.6 The Owner's Project Manager shall monitor the CM at Risk's compliance with the construction schedule, identify potential problems, include problem identification on the Monthly Progress Report and make recommendations to the Owner when, in the opinion of the Owner's Project Manager, requirements of the CM at Risk in the Owner-CM at Risk Agreement are not being fulfilled.
- 8.7.7 The Owner's Project Manager shall attend weekly job meetings on progress, coordination and problem resolution and negotiations. The Owner's Project Manager shall review the meeting minutes that are submitted to the Owner by the CM at Risk and shall advise the Owner as to the completeness, accuracy and general acceptability of the minutes.
- 8.7.8 The Owner's Project Manager shall schedule the Authority's Commissioning Consultant, as required to support the construction schedule, to provide commissioning services and reports as required.
- 8.7.9 The Owner's Project Manager shall monitor, review and analyze proposed change orders, and claims recommending appropriate action and resolution to the Owner in accordance with Article 8.1.4.
- 8.7.10 The Owner's Project Manager shall review and coordinate its review with the Designer to recommend approval of the CM at Risk's monthly payment requisitions. The Owner's Project Manager shall review each Trade Contractor's or Non-Trade Contractor's payment requisition and the CM at Risk's requisition of costs to ascertain that the Owner is paying for actual costs and fees in accordance with the Owner-CM at Risk contract.
- 8.7.11 The Owner's Project Manager shall oversee and monitor the procurement of furniture, fixtures, equipment and technology that is not included in the construction contract.
- 8.7.12 After the Owner and the CM at Risk have agreed on a Guaranteed Maximum Price ("GMP") in accordance with M.G.L. c. 149A, § 7, the Owner's Project Manager shall promptly notify the Owner when actual costs exceed the detail line item cost breakdowns set forth in the GMP amendment.
- 8.7.13 The Owner's Project Manager shall verify substantial completion of work; assist the Designer in the Designer's final inspection and receipt of documents, manuals, receipts, certifications, and all other materials required for final closeout as described in the Owner-CM at Risk contract, including, but not limited to, the GMP amendment and any other amendments thereto. The Owner's Project Manager shall coordinate the detailed punchlist with the Designer, including a subsequent walk-through with the Designer, CM at Risk and the Authority's Commissioning Consultant. The Owner's Project Manager and the Designer shall then coordinate a walk-through with the Owner to finalize the punchlist. The Owner's Project Manager shall then be responsible for tracking and confirming the completion of the punchlist items.

8.8 Completion Phase

- 8.8.1 The Owner's Project Manager shall monitor the activities and responsibilities of the Designer and the CM at Risk in the close-out and commissioning of the Project.
- 8.8.2 The Owner's Project Manager shall assist in securing and reviewing and recommending approval of all project completion forms and documentation necessary for occupancy and

full operation of the facility including, but not necessarily limited to, inspection certificates of local building authorities, Certificate of Substantial Completion, Certificate of Final Completion, Occupancy Permit, shop drawings, as-built drawings, operations and maintenance manuals, warranties, guarantees and any and all documentation as required by the contract documents and the Authority.

- 8.8.3 The Owner's Project Manager shall assist the Owner in completing the written evaluation of the Designer(s) pursuant to M.G.L. c. 7 § 38E and prepare, sign and provide to the Owner for its signature the written evaluation of the Contractor(s) or CM at Risk, and subcontractors in accordance with the provisions of M.G.L. c. 149 § 44D.

ARTICLE 9: EXTRA SERVICES

9.1 General

- 9.1.1 Extra Services are those services requested by the Owner to be performed by the Owner's Project Manager but which are additional (or "extra") to the services performed as Basic Services. Such services are not included in the Fee for Basic Services and shall be invoiced and paid for separately. Extra services shall not be deemed authorized until a written Approval is received from the Owner.

- 9.1.2 The proposed cost, scope and schedule of all Extra Services shall be presented to and approved by the Owner in writing prior to the performance of any Extra Services.

- 9.1.3 Cost proposals for Extra Services shall be computed in accordance with the Hourly Rate Schedule established in Attachment A.

- 9.2 Unless specifically prohibited elsewhere and with the prior written Approval of the Owner, the Owner's Project Manager shall perform any of the following services as Extra Services:

- 9.2.1 Preparing special studies, reports, or applications at the written direction of the Owner, other than those specifically required herein as part of Basic Services;

- 9.2.2 Assisting in the appeals process of permitting boards or commissions;

- 9.2.3 Rebidding, resolicitation, or re-advertising for bids, proposals, or qualifications unless made necessary by the fault of the Owner's Project Manager, in which events such rebidding shall be deemed part of Basic Services;

- 9.2.4 Furnishing services in connection with a bid protest filed in court or with the Office of the Attorney General, provided such activities did not arise due to the fault of the Owner's Project Manager;

- 9.2.5 Furnishing services in excess of Basic Services made necessary by the termination of the General Contractor or CM at Risk;

- 9.2.6 Providing consultation with respect to replacement of work damaged by fire or other casualty during construction;

- 9.2.7 Assisting the Owner in litigation, claims resolution or non-binding mediation arising out of the Designer contract or the construction contract, provided such litigation or claims did not arise due to the fault of the Owner's Project Manager; and
- 9.2.8 Providing other services requested by the Owner that are not included as Basic Services pursuant to this Contract.
- 9.3 Invoices for Extra Services shall be accompanied by a complete breakdown listing the name, payroll title, date, number of hours by day, hourly rate and extended amount, per specified task of Extra Services performed. Hourly rates shall be in accordance with the Hourly Rate Schedule in Attachment A.

ARTICLE 10: REIMBURSABLE EXPENSES

- 10.1 For coordination and responsibility for the work described in the following paragraphs 10.1.1 and 10.1.2, the Owner's Project Manager shall be reimbursed its actual costs and those of its Subconsultants, supported by invoices or receipts, plus 10%. The following are reimbursable expenses:
- 10.1.1 Certain out of pocket expenses paid by the Owner's Project Manager such as filing fees, and permit fees that are normally paid by the Owner; travel to fabrication or manufacturing locations to identify completed, identified, and stored materials or equipment specifically for the Project; field office furnishings.
- 10.1.2 Any other specially authorized reimbursement deemed essential by the Owner, in the Owner's sole discretion, in writing.
- 10.2 Non-Reimbursable Items: The Owner shall not reimburse the Owner's Project Manager or its Subconsultants for travel expenses, sustenance, telephone, facsimiles, electronic mails, postage and delivery expenses, unless specifically required elsewhere in this Contract.
- 10.3 The Owner's Project Manager shall not be entitled to compensation under this Article for the services of Subconsultants hired to perform Basic Services under this Contract. If a Subconsultant hired to perform Basic Services performs Extra Services approved by the Owner, compensation for such Extra Services shall be made under Article 9.

ARTICLE 11: RELEASE AND DISCHARGE

- 11.1 The acceptance by the Owner's Project Manager of the last payment under the provisions of Article 7 or Article 12 in the event of termination of the Contract, shall in each instance, operate as and be a release to the Owner and the Authority and their employees and agents, from all claims of the Owner's Project Manager and its Subconsultants for payment for services performed and/or furnished, except for those written claims submitted by the Owner's Project Manager to the Owner and Authority with, or prior to, the last invoice.

ARTICLE 12: ASSIGNMENT, SUSPENSION, TERMINATION

- 12.1 Assignment:
- 12.1.1 The Owner's Project Manager shall not assign or transfer any part of its services or obligations under this Contract (other than as specified in Article 5), without the prior

written approval of the Owner and the Authority. Likewise, any successor to the Owner's Project Manager must first be approved by the Owner and the Authority before performing any services under this Contract. Such written consent shall not in any way relieve the Owner's Project Manager or its assignee from its responsibilities under this Contract.

12.2 Suspension

12.2.1 The Owner may, at any time, upon seven (7) days written notice to the Owner's Project Manager, suspend this Contract. If the Owner provides such written notice, the Owner's Project Manager shall be compensated for work satisfactorily performed in accordance with the Contract terms prior to the effective date of such suspension for which invoices have been properly submitted.

12.3 Termination

12.3.1 By written notice to the Owner's Project Manager, the Owner may, with prior written approval of the Authority, terminate this Contract at any time with or without cause. If such termination shall occur through no fault of the Owner's Project Manager, all compensation and reimbursement due to the Owner's Project Manager in accordance with the Contract terms, for work satisfactorily performed up to the date of termination, including proportionate payment for portions of the work started but incomplete at the time of termination, shall be paid to the Owner's Project Manager, provided no payment shall be made for work not yet performed or for anticipated profit on unperformed work. If such termination is for cause then no further payment shall be due to the Owner's Project Manager beyond the date of termination.

12.3.2 By written notice to the Owner and the Authority, the Owner's Project Manager may terminate this Contract:

- (a) if the Owner, within thirty (30) days following written notice from the Owner's Project Manager of any material default by the Owner under the Contract, shall have failed to cure such default; or
- (b) if, after the Owner's Project Manager has performed all services required during any phase prior to construction, at least six (6) months have elapsed without receipt by the Owner's Project Manager of Approval to proceed with the next Phase of the Project, provided the delay was not the fault of the Owner's Project Manager. This provision shall not apply to an Owner's Project Manager who has received a notice of suspension pursuant to Article 12.2.
- (c) Upon a proper termination by the Owner's Project Manager, the Owner's Project Manager shall be compensated as provided in 12.3.1 above regarding termination without cause.

ARTICLE 13: NOTICES

13.1 Any notice required to be given by the Owner or Authority to the Owner's Project Manager, or by the Owner's Project Manager to the Owner or Authority, shall be deemed to have been so given, whether or not received, if mailed by certified or registered mail to the Owner's Project Manager or the Owner at the addresses indicated on page one or to the Authority at 40 Broad Street,

Boston, Massachusetts 02109. Notices to the Authority shall be sent to the attention of the Director of Capital Planning.

ARTICLE 14: INDEMNIFICATION OF OWNER AND AUTHORITY

- 14.1 With respect to professional services rendered by Owner's Project Manager, to the fullest extent permitted by law, Owner's Project Manager shall defend, indemnify and hold harmless the Owner, and its officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Owner to the extent caused by the negligence of or the breach of any of the provisions of this Contract by the Owner's Project Manager, a person employed by the Owner's Project Manager, or any of its Subconsultants.
- 14.2 With respect to non-professional services rendered by Owner's Project Manager, to the fullest extent permitted by law, Owner's Project Manager shall defend, indemnify and hold harmless the Owner and the Authority, and their officers and employees from and against all claims, damages, liabilities, injuries, costs, fees, expenses, or losses, including, without limitation, reasonable attorney's fees and costs of investigation and litigation, whatsoever which may be incurred by the Owner and/or the Authority arising out of or resulting from the performance of its services provided that such claims, damages, liabilities, injuries, costs, fees, expenses, or losses are attributable to bodily injury or death or injury to or destruction of tangible property and to the extent caused by an act or omission of the Owner's Project Manager, a person employed by the Owner's Project Manager, or any of its Subconsultants.
- 14.3 The indemnification obligation in this Article shall be in addition to, and not a limitation of, any other rights and remedies available to the Owner under this Contract or at law.

ARTICLE 15: INSURANCE

- 15.1 The Owner's Project Manager shall obtain and maintain at its sole expense all insurance required by law and as may be required by the Authority and by the Owner under the terms of this Contract. The insurance required hereunder shall be provided at the sole expense of the Owner's Project Manager or its Subconsultant, as the case may be, and shall be in full force and effect for the full term of this Contract between the Owner and the Owner's Project Manager or for such longer period as otherwise required under this Contract.
- 15.2 All policies shall be issued by companies lawfully authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts with a financial strength rating of "A" or better as assigned by A.M. Best Company, or an equivalent rating assigned by a similar rating agency acceptable to the Owner and the Authority.
- 15.3 The Owner's Project Manager and its Subconsultants, shall submit to the Owner original certificates of insurance evidencing the coverage required hereunder, together with evidence that all premiums for such insurance have been fully paid simultaneously with the execution of this Contract. 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 Owner's Project Manager shall submit updated certificates to the Owner and the Authority prior to the expiration of any of the policies referenced in the certificates so that the Owner and the Authority shall at all times possess certificates indicating current coverage. Original certificates shall be provided to the Authority by the Owner's Project Manager upon

request by the Authority. Failure by the Owner's Project Manager to obtain and maintain the insurance required by this Section, to obtain all policy renewals, or to provide the respective insurance certificates as required shall constitute a material breach of the Contract and shall be just cause for termination of the services of the Owner's Project Manager under this Contract.

- 15.4 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 Owner and the Authority at least thirty days prior to the effective date thereof, which shall be expressed in said notice.
- 15.5 The Owner's Project Manager shall require by contractual obligation, and shall ensure by the exercise of due diligence, that any Subconsultant hired in connection with the services to be provided under this Contract shall obtain and maintain all insurance required by law and as may be required by the Owner under the terms of this Contract.
- 15.6 The Owner's Project Manager or its Subconsultant, as the case may be, is responsible for the payment of any and all deductibles under all of the insurance required by this Contract. Neither the Owner nor the Authority shall be responsible for the payment of deductibles, self-insured retentions or any portion thereof.
- 15.7 Workers' Compensation, Commercial General Liability, Automobile Liability, and Valuable Papers

The Owner's Project Manager shall purchase and maintain at its own expense during the life of this Contract, or such other time period as provided herein, the following types and amounts of insurance, at a minimum:

- 15.7.1 Workers' Compensation Insurance in accordance with General Laws Chapter 152. The policy shall be endorsed to waive the insurer's rights of subrogation against the Owner and the Authority.
- 15.7.2 Commercial General Liability Insurance (including Premises/Operations; Products/Completed Operations; Contractual; Independent Contractors; Broad Form Property Damage; and Personal Injury) with a minimum limit of \$1,000,000 per occurrence, \$2,000,000 aggregate. The Owner's Project Manager shall maintain such insurance in full force and effect for a minimum period of one year after final payment and shall continue to provide evidence of such coverage to the Owner and the Authority. The Owner and the Authority shall be added as an additional insured on this policy. The policy shall be endorsed to waive the insurer's rights of subrogation against the Owner and the Authority.
- 15.7.3 Comprehensive Automobile Liability Insurance (including owned, non-owned and hired vehicles) at limits of not less than:
 - a. \$1,000,000 Each Person for Bodily Injury;
 - b. \$1,000,000 Each Accident for Bodily Injury; and
 - c. \$1,000,000 Each Accident for Property Damage.
- 15.7.4 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 or by the Agreement between the Owner and the Designer in the event of loss or destruction while in the custody of the Owner's Project Manager until the final fee payment is made or all data is turned over to the Owner, and this coverage shall include coverage for relevant electronic media, including, but not limited to, documents stored in computer-aided design drafting (CADD) systems.

15.8 Professional Liability

The Owner's Project Manager shall maintain professional liability insurance covering errors and omissions and negligent acts of the Owner's Project Manager and of any person or entity for whose performance the Owner's Project Manager is legally liable at all times while services are being performed under this Contract. Certificates of professional liability insurance evidencing such coverage shall be provided to the Owner on or before the effective date of this Contract and for a period of at least six years after the earlier of: (1) the date of official acceptance of the completed Project by the Owner; (2) the date of the opening of the Project to public use; (3) the date of the acceptance by the general contractor of a final pay estimate prepared by the Owner pursuant to M.G.L. chapter 30; or (4) the date of substantial completion of the Construction Contract and the taking of possession of the Project for occupancy by the Owner. The certificates shall indicate a retroactive date that is no later than the effective date of this Contract and a limit of not less than \$1,000,000.

15.9 Liability of the Owner's Project Manager

Insufficient insurance shall not release the Owner's Project Manager from any liability for breach of its obligations under this Contract. Without limitation, the Owner's Project Manager shall bear the risk of any loss if its valuable papers insurance coverage is insufficient to cover the loss of any work product covered by this Contract.

15.10 Waiver of Subrogation

To the extent damages are covered by property insurance, the Owner and the Owner's Project Manager waive all rights against each other and against the General Contractor or CM at Risk, Subcontractors, Trade Contractors, Non-Trade Contractors, consultants, agents, and employees of the other for damages caused by fire or other causes of loss, except such rights as they may have to the proceeds of such insurance as set forth in the Owner-Contractor Agreement or the Owner-CM at Risk Agreement. The Owner shall require of the General Contractor or CM at Risk, Subcontractors, Trade Contractors, Non-Trade Contractors Owner's Project Manager, consultants, Subconsultants, and agents and employees, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 16: OWNERSHIP OF DOCUMENTS

- 16.1 Unless provided otherwise by law, ownership and possession of all information, data, reports, studies, designs, drawings, specifications, materials, documents, models, and any other documentation, product or tangible materials authored or prepared, in whole or in part, or purchased, obtained, created by the Owner's Project Manager pursuant to this Contract

(collectively, the “Materials”), other than the Owner’s Project Manager’s administrative communications, records, and files relating to this Contract, shall be the sole property of, and shall vest in, the Owner as “works made for hire” or otherwise. The Owner will own the exclusive rights, worldwide and royalty-free, to and in all Materials prepared and produced by the Owner’s Project Manager pursuant to this Contract, including, but not limited to, United States and International patents, copyrights, trade secrets, know-how and any other intellectual property rights, and the Owner shall have the exclusive, unlimited and unrestricted right, worldwide and royalty-free, to publish, reproduce, distribute, transmit and publicly display all Materials prepared by the Owner’s Project Manager. At the completion or termination of the Owner’s Project Manager’s services, all original Materials shall be promptly turned over to the Owner.

ARTICLE 17: REGULATORY AND STATUTORY REQUIREMENTS

- 17.1 Truth-in-Negotiations Certificate: If the Owner’s Project Manager’s fee is negotiated, by signing this Contract, the Owner’s Project Manager hereby certifies to the following:
- 17.1.1 Wage rates and other costs used to support the Owner’s Project Manager’s compensation are accurate, complete, and current at the time of contracting; and
- 17.1.2 The Contract price and any additions to the Contract may be adjusted within one year of completion of the Contract to exclude any significant amounts if the Owner determines that the fee was increased by such amounts due to inaccurate, incomplete or non-current wage rates or other costs.
- 17.2 The person signing this Contract certifies, as a principal or director of the Owner’s Project Manager, that the Owner’s Project Manager has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Contract; no consultant to or Subconsultant for the Owner’s Project Manager has given, offered or agreed to give any gift, contribution or offer of employment to the Owner’s Project Manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the Owner’s Project Manager or Subconsultant of a contract by the Owner’s Project Manager; and no person, corporation or other entity, other than a bona fide full-time employee of the Owner’s Project Manager, has been retained or hired by the Owner’s Project Manager to solicit for or in any way assist the Owner’s Project Manager in obtaining this Contract upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Contract
- 17.3 Revenue Enforcement and Protection Program (REAP): Pursuant to Massachusetts General Laws, Chapter 62C, Section 49A, the undersigned certifies under the penalties of perjury that to the best of his/her knowledge and belief that the Owner’s Project Manager and the principals thereof are in compliance with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.
- 17.4 Interest of Owner’s Project Manager: The Owner’s Project Manager hereby certifies that it is in compliance with the provisions of General Laws Chapter 268A whenever applicable. The Owner’s Project Manager covenants that 1) he/she presently has no financial interest and shall not acquire any such interest direct or indirect, which would conflict in any manner or degree with the services required to be performed under this Contract or which would violate M.G.L. Chapter 268A, as amended from time-to-time; 2) in the performance of this Contract, no person having any such interest shall be employed by the Owner’s Project Manager; and 3) no partner or

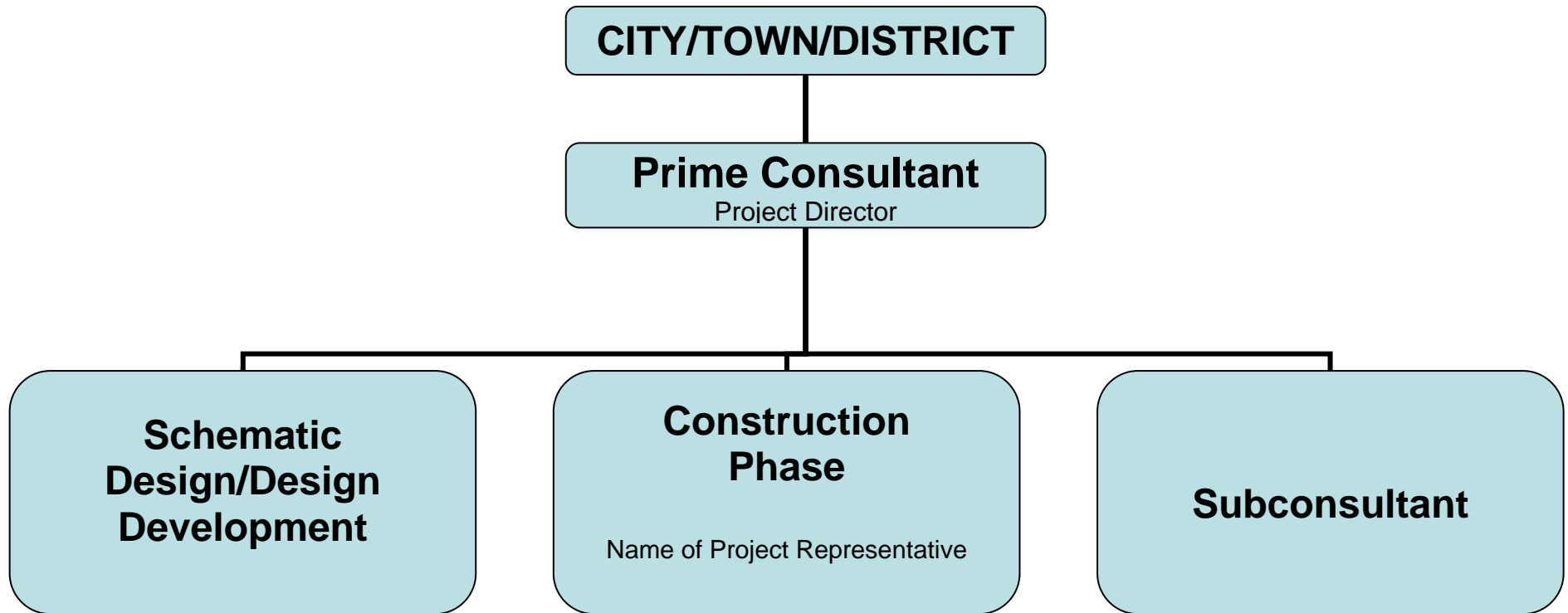
employee of the firm is related by blood or marriage to any officer, official, or employee of the Owner, unless approved by the State Ethics Commission.

- 17.5 Equal Opportunity: The Owner's Project Manager shall not discriminate in employment against any person on the basis of race, color, religion, national origin, sex, sexual orientation, age, ancestry, disability, marital status, veteran status, membership in the armed forces, presence of children, or political beliefs. The Owner's Project Manager shall comply with all provisions of Title VI of the Civil Rights Act of 1964 and M.G.L c.151B.
- 17.6 Certification of Non-Collusion: The Owner's Project Manager certifies under penalties of perjury that its proposal has been made in and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.
- 17.7 Governing Law: This Contract shall be governed by the laws of the Commonwealth of Massachusetts.
- 17.8 Dispute Resolution: If a dispute arises between the parties related to this Contract, the parties agree to use the following procedures to resolve the dispute: (a) Negotiation. A meeting shall be held between representatives of the parties with decision-making authority regarding the dispute to attempt in good faith to negotiate a resolution of the dispute; such meeting shall be held within fourteen calendar days of a party's written request for such a meeting; (b) Mediation. If the parties fail to negotiate a resolution of the dispute, they shall submit the dispute to mediation as a condition precedent to litigation and shall bear equally the costs of the mediation. The parties shall jointly appoint a mutually acceptable mediator; they shall seek assistance from an independent third party in such appointment if they have been unable to agree upon such appointment within 30 days of the meeting just noted in (a) above; (c) Litigation. If the parties fail to resolve the dispute through mediation, or are unable to convene mediation within 90 days of first attempting to do so, then either party may file suit in accordance with Article 17.9; and (d) This paragraph of dispute resolution provisions shall survive termination of this Contract.
- 17.9 Venue: Any suit by either party arising under this Contract shall be brought only in the court of competent jurisdiction in the county where the Project is located. The parties hereto waive any argument that this venue is improper or that the forum is inconvenient.

Owner's Project Manager Application Form - May 2008			
1. Project Name/Location for Which Firm is Filing:			
1a. MSBA Project Number:			
2a. Respondent, Firm (Or Joint-Venture) - Name And Address Of Primary Office To Perform The Work:	2b. Name And Address Of Other Participating Offices Of The Prime Applicant, If Different From Item 3a Above:		
2c. Date Present And Predecessor Firms Were Established:	2d. Name And Address Of Parent Company, If Any:		
2e. Federal ID #:	2f. Name of Proposed Project Director:		
3. Personnel From Prime Firm Included In Question #2 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):			
Admin. Personnel _____ Architects _____ Acoustical Engrs. _____ Civil Engrs. _____ Code Specialists _____ Construction Inspectors _____	Cost Estimators _____ Electrical Engrs. _____ Environmental Engrs. _____ Licensed Site Profs. _____ Mechanical Engrs. _____	Other _____ _____ _____ _____ _____ _____ Total _____	_____ _____ _____ _____ _____ _____ _____
4. Has this Joint-Venture previously worked together? <input type="checkbox"/> Yes <input type="checkbox"/> No			

5.

List ONLY Those Prime and Sub-Consultant Personnel identified as Key personnel in the Response to Request for Services. This Information Should Be Presented Below In The Form Of An Organizational Chart modified to fit the firm's proposed management approach. Include Name of Firm And Name Of The Person:



6. Brief Resume for Key Personnel ONLY as indicated in the Request for Services. Resumes Should Be Consistent With The Persons Listed On The Organizational Chart In Question # 5. Additional Sheets Should Be Provided Only As Required For The Number Of Key Personnel And They Must Be In The Format Provided. By Including A Firm As A Subconsultant, The Prime Applicant Certifies That The Listed Firm Has Agreed To Work On This Project, Should The Team Be Selected.	
a. Name And Title Within Firm:	a. Name And Title Within Firm:
b. Project Assignment:	b. Project Assignment:
c. Name And Address Of Office In Which Individual Identified In 6a Resides:	c. Name And Address Of Office In Which Individual Identified In 6a Resides:
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. Date of MCCPO Certification:	f. Date of MCCPO Certification:
g. Applicable Registrations and Certifications :	g. Applicable Registrations and Certifications:
h. Current Work Assignments And Availability For This Project:	h. Current Work Assignments And Availability For This Project
i. Other Experience And Qualification Relevant To The Proposed Project: (Identify Firm By Which Employed, If Not Current Firm):	i. Other Experience And Qualification Relevant To The Proposed Project: (Identify Firm By Which Employed , If Not Current Firm):

7a	Past Performance: List all Completed Projects, in excess of \$1.5 million, for which the Prime Applicant has performed, or has entered into a contract to perform Owner's Project Management Services for all Public Agencies within the Commonwealth within the past 10 years.									
a.	Project Name And Location Project Director	b. Brief Description Of Project And Services(Include Reference To Areas Of Similar Experience)	c. Project Dollar Value	d. Completion Date (Actual Or Estimate)	e. On Time (Yes Or No)	f. Original Construction Contract Value	g. Change Orders	h. Number of Accidents and Safety Violations	i. Dollar Value of any Safety fines	j. Number And Outcome Of Legal Actions
(1)										
(2)										
(3)										
(4)										
(5)										

7b. Past Performance: Provide the following information for those completed Projects listed above in 7a for which the Prime Applicant has performed, or has entered into a contract to perform (cont) Owner's Project Management Services for all Public Agencies within the Commonwealth within the past 10 years.						
a. Project Name And Location Project Director	b. Original Project Budget	c. Final Project Budget	d. If different, provide reason(s) for variance	e. Original Project Completion	e. Actual Project Completion On Time (Yes or No)	f. If different, provide reason(s) for variance.
(1)						
(2)						
(3)						
(4)						
(5)						

8. **Capacity:** Identify all current/ongoing Work by Prime Applicant, Joint-Venture Members or Subconsultants. Identify project participants and highlight any work involving the project participants identified in the response.

Project Name And Location Project Director	b. Brief Description Of Project And Services(Include Reference To Areas Of Similar Experience)	c. Original Project Budget	d. Current Project Budget	d. Project Completion Date	e. Current forecast completion date On Time (Yes Or No)	f. Original Construction Contract Value	g. Number and dollar value of Change Orders	h. Number and dollar value of claims
1.								
2.								
3.								
4.								
5.								
6.								
7.								
8.								

9. References: Provide the following information for completed and current Projects listed above in 7 and 8 for which the Prime Applicant has performed, or has entered into a contract to perform Owner's Project Management Services for all Public Agencies within the Commonwealth within the past 10 years.						
a.	Project Name And Location Project Director	Client's Name, Address and Phone Number. Include Name of Contact Person	Project Name And Location Project Director	Client's Name, Address and Phone Number. Include Name of Contact Person	Project Name And Location Project Director	Client's Name, Address and Phone Number. Include Name of Contact Person
1)			5)		9)	
2)			6)		10)	
3)			7)		11)	
4)			8)		12)	

9. Use This Space To Provide Any Additional Information Or Description Of Resources Supporting The Qualifications Of Your Firm And That Of Your Subconsultants. If Needed, Up To Three, Double-Sided 8 ½" X 11" Supplementary Sheets Will Be Accepted. **APPLICANTS ARE REQUIRED TO RESPOND SPECIFICALLY IN THIS SECTION TO THE AREAS OF EXPERIENCE REQUESTED.**

10. I hereby certify that the undersigned is an Authorized Signatory of Firm and is a Principal or Officer of Firm. The information contained in this application is true, accurate and sworn to by the undersigned under the pains and penalties of perjury.

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

ATTACHMENT D
Required Certifications

The Respondent is required to submit the following certifications along with the response to the City of Somerville:

- Certificate of Authority
- Certificate of Non-Collusion and Tax Compliance Certification
- Somerville Living Wage Ordinance Form

The Respondent will be required to submit the following certifications if awarded a contract by the City of Somerville. The inclusion of the following certifications in this RFS is for informational purposes only. The Respondent understands and agrees to submit the following certifications if the Respondent is awarded a contract.

- Certificate of Good Standing
- Certificate of Insurance (referenced in OPM contract – see Attachment B)
- Vendor Certificate
- W-9 Form (available from the IRS – January 2011 or most recent version)

Certificate of Authority

At a meeting of the Board of Directors of: _____,

Held on: _____, at which a quorum was present, it was VOTED,

that: _____, _____ of this company

is hereby authorized to execute contracts and bonds in the name of an on behalf of said

company, and affix its corporate seal thereto; and such execution of any contract or

obligation in this company's name on its behalf by such: _____

under seal of this company shall be valid and binding upon this company.

A True Copy Attest:

Clerk/Secretary: _____

Signature

Print Name

Place of Business

I, _____, hereby certify that I am the

clerk/secretary of the: _____

and that: _____

is the duly authorized person of said company, and that the above vote has not been

amended or rescinded and that said vote remains in full force as of this date below.

Clerk/Secretary

Date

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.

Signature of individual submitting bid or proposal

Name of business

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, as well as paid all contributions and payments in lieu of contributions pursuant to MGL 151A, §19A(b).

Signature of person submitting bid or proposal

Name of business

Date:

FID#

CITY OF SOMERVILLE

Living Wage Ordinance # 1999-1

TO: All Vendors

FROM: Purchasing Department
City of Somerville

Enclosed is a summary of Ordinance # 1999-1 “the Living Wage” passed by the Board Of Aldermen in the City of Somerville.

Please read very carefully. Your signature is required on the compliance form included.

PLEASE POST

**NOTICE TO ALL EMPLOYEES
REGARDING
PAYMENT OF LIVING WAGE**

Under the Somerville, Massachusetts' Living Wage Ordinance (Ordinance No. 1999-1), any person or entity who has entered into a contract with the City of Somerville is required to pay its employees who are involved in providing services to the City of Somerville no less than a "Living Wage". The Living Wage as of July 1, 2011 is \$11.22 per hour. The only employees who are not covered by the Living Wage Ordinance are individuals in a Youth Program. "Youth Program" as defined in the Ordinance, "means any city, state or federally funded program which employs youth, as defined by city, state or federal guidelines, during the summer, or as part of a school to work program, or in any other related seasonal or part-time program."

For assistance and information regarding the protections and obligations provided for in the Living Wage Ordinance and/or a copy of the Living Wage Ordinance, all employees should contact the City of Somerville's Purchasing Department directly.

SOMERVILLE LIVING WAGE ORDINANCE FORM

(Ordinance No. 1999-1*)

This form shall be included in all Invitations for Bids and Requests for Proposals which involve the furnishing of labor, time or effort (with no end product other than reports) by vendors contracting or subcontracting with the City of Somerville, where the contract price meets or exceeds the following dollar thresholds:

- a) \$50,000 for contracts commencing during the period 7-1-99 to 6-30-01
(Fiscal Years 2000 and 2001);
- b) \$30,000 for contracts commencing during the period 7-1-01 to 6-30-03
(Fiscal Years 2002 and 2003); and
- c) \$10,000 for contracts commencing during the period 7-1-03 and thereafter
(Fiscal Years 2004 and thereafter.);

The purpose of this form is to ensure that such vendors pay a "Living Wage" (defined below) to all covered employees (i.e., all employees except individuals in a city, state or federally funded youth program). In the case of bids, the City will award the contract to the lowest responsive and responsible bidder paying a Living Wage. In the case of RFP's, the City will select the most advantageous proposal from a responsive and responsible offeror paying a Living Wage. In neither case, however, shall the City be under any obligation to select a bid or proposal that exceeds the funds available for the contract.

Definition of "Living Wage" For this contract or subcontract, as of 07-01-2011 "Living Wage" shall be deemed to be an hourly wage of no less than \$11.22/hour. From time to time, the Living Wage may be upwardly adjusted and amendments, if any, to the contract or subcontract may require the payment of a higher hourly rate if a higher rate is then in effect.

If the undersigned bidder or offeror is selected, this form will be attached to the contract or subcontract and the certifications made herein shall be incorporated as part of such contract or subcontract.

CERTIFICATIONS

- 1. The undersigned shall pay no less than the Living Wage to all covered employees who directly expend their time on the contract or subcontract with the City of Somerville.
- 2. The undersigned shall post a notice, (copy enclosed), to be furnished by the contracting City Department, informing covered employees of the protections and obligations provided for in the Somerville Living Wage Ordinance, and that for assistance and information, including copies of the Ordinance, employees should contact the contracting City Department. Such notice shall be posted in each location where services are performed by covered employees, in a conspicuous place where notices to employees are customarily posted.
- 3. The undersigned shall maintain payrolls for all covered employees and basic records relating hereto and shall preserve them for a period of three years. The records shall

* Copies of the Ordinance are available upon request to the Purchasing Department.

contain the name and address of each employee, the number of hours worked, the gross wages, a copy of the social security returns, and evidence of payment thereof and such other data as may be required by the contracting City Department from time to time.

4. The undersigned shall submit payroll records to the City upon request and, if the City receives information of possible noncompliance with the provisions the Somerville Living Wage Ordinance, the undersigned shall permit City representatives to observe work being performed at the work site, to interview employees, and to examine the books and records relating to the payrolls being investigated to determine payment of wages.
5. The undersigned shall not fund wage increases required by the Somerville Living Wage Ordinance by reducing the health insurance benefits of any of its employees.
6. The undersigned agrees that the penalties and relief set forth in the Somerville Living Wage Ordinance shall be in addition to the rights and remedies set forth in the contract an/or subcontract.

Executed this _____ day of _____, 20__

Name of Vendor

By: _____
Name

Its: _____
Title

Signature

CERTIFICATE OF GOOD STANDING

TO: Vendor

FROM: Purchasing Department

RE: **CERTIFICATE OF GOOD STANDING**

The **Awarded Vendor** must comply with our request for a **CURRENT** “Certificate of Good Standing”.

If you require information on how to obtain the “Certificate of Good Standing” or Certificate of Registration (Foreign Corporations) from the Commonwealth of Massachusetts, please call the Secretary of State’s Office at (617) 727-2850 (Press #1) located at One (1) Ashburton Place, 17th Floor, Boston, MA 02133 or you may access their web site at: www.sec.state.ma.us/corp/certificates/certificate_request.asp

If your company is incorporated outside of Massachusetts and therefore is a “foreign corporation”, but is registered to do business in Massachusetts, please comply with our request for the Certificate of Registration from the Commonwealth of Massachusetts. If your company is a foreign corporation, but is not registered to do business in Massachusetts, please provide the Certificate of Good Standing from your state of incorporation.

Please note that without the above certificate (s), the City of Somerville cannot execute your contract.

IMPORTANT NOTICE

Requests for Certificates of Good Standing by mail may take a substantial amount of time. A certificate may be obtained immediately in person at the Secretary’s Office at the address above. Also, at this time, the Secretary of State’s Office may not have your current annual report recorded. If this is the case, and you are therefore unable to obtain the Certificate of Good Standing, please forward a copy of your annual report filing fee check with your signed contracts. Please forward your original Certificate of Good Standing to the Purchasing Department upon receipt.

Thank You,

Purchasing Director



CITY OF SOMERVILLE, MASSACHUSETTS

Joseph A. Curtatone
MAYOR

Vendor Certification

The vendor certifies that it has provided the City of Somerville with an accurate tax identification number (TIN). In the event that the City is fined by the IRS for an incorrect TIN provided by the vendor, the vendor agrees to reimburse the City for the amount of the fine.

TIN

Signature

Printed Name of Person signing

Company

Date

ATTACHMENT E
Construction Schedule

Activity ID	Activity Description	Orig Dur	Rem Dur	Early Start	Early Finish	BDPK	2011												2012												2013																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																							
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Data Date

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01MAR11

29JUL13

11OCT11

11OCT11 14:32

Early Bar

Progress Bar

Critical Activity

ES07

GILBANE BUILDING COMPANY (ES07)

EAST SOMERVILLE COMMUNITY SCHOOL

It-03 CONSTRUCTION BY AREA LEVEL

Sheet 1 of 10

Gilbane

Date

14APR11

Revision

For Review

Checked

Approved

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[illegible]

Activity ID	Activity Description	Orig Dur	Rem Dur	Early Start	Early Finish	BDPK	2011												2012												2013																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																							
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ES07

GILBANE BUILDING COMPANY (ES07)

EAST SOMERVILLE COMMUNITY SCHOOL

It-03 CONSTRUCTION BY AREA LEVEL

Sheet 6 of 10

Date	Revision	Checked	Approved
14APR11	For Review		

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Activity ID	Activity Description	Orig Dur	Rem Dur	Early Start	Early Finish	BDPK	2011												2012												2013											
							M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A								
6105D	R.I. ELECTRIC IN WALLS - 1ST	20	20	12JUL12	08AUG12	16A																																				
6110D	R.I. PLUMBING IN WALLS - 1ST	20	20	12JUL12	08AUG12	15A																																				
6112D	TEST & INSULATE IN WALL PLMG - 1ST	10	10	09AUG12	22AUG12	15A																																				
6115D	IN WALL INSPECTION - 1ST	5	5	23AUG12	29AUG12	15A																																				
6120D	DRYWALL - 1ST	15	15	30AUG12	20SEP12	09A																																				
6125D	TAPE DRYWALL - 1ST	15	15	14SEP12	04OCT12	09A																																				
6300D	CERAMIC TILE IN TOILETS - 1ST - NEAR GYM	10	10	21SEP12	04OCT12	09C																																				
6302D	WALL LIGHTS IN TOILETS - 1ST - NEAR GYM	5	5	05OCT12	11OCT12	16A																																				
6305D	PLUMBING FIXTURES IN TOILET - 1ST 0 NEAR GYM	8	8	05OCT12	16OCT12	15B																																				
6130D	PRIME PAINT - 1ST	10	10	05OCT12	18OCT12	09I																																				
6303D	CEILING GRID IN TOILETS - 1ST - NEAR GYM	3	3	12OCT12	16OCT12	09D																																				
6304D	RGD IN TOILETS - 1ST - NEAR GYM	2	2	17OCT12	18OCT12	15C																																				
6306D	SPKL HEADS IN TOILETS - 1ST - NEAR GYM	2	2	17OCT12	18OCT12	15C																																				
6307D	CEILING TILE IN TOILETS - 1ST - NEAR GYM	2	2	19OCT12	22OCT12	09D																																				
6135D	CEILING GRID - 1ST	10	10	19OCT12	01NOV12	09D																																				
6310D	TOILET PARTTIONS IN TOILET - 1ST - NEAR GYM	4	4	23OCT12	26OCT12	09B																																				
6315D	TOILET ACCESSORIES IN TOILET - 1ST - NEAR GYM	3	3	29OCT12	31OCT12	09B																																				
6320D	MIRRORS IN TOILET - 1ST - NEAR GYM	2	2	01NOV12	02NOV12	08G																																				
6137D	CHALK/TACK/SMART BRDS - 1ST	10	10	02NOV12	16NOV12	06A																																				
6140D	LIGHTING - 1ST	10	10	02NOV12	16NOV12	16A																																				
6145D	RGD - 1ST	10	10	02NOV12	16NOV12	15C																																				
6150D	SPKL HEADS - 1ST	10	10	02NOV12	16NOV12	15B																																				
6152D	ABOVE CEILING INSPECTION AND COR - 1ST	10	10	19NOV12	03DEC12	15B																																				
6160D	CEILING TILE - 1ST	10	10	27NOV12	10DEC12	09D																																				
6185D	TEST & BALANCE- 1ST	5	5	11DEC12	17DEC12	15C																																				
6165D	CASEWORK & MILLWORK - 1ST	10	10	11DEC12	24DEC12	06B																																				
6163D	FEC - 1ST	3	3	20DEC12	24DEC12	06A																																				
6167D	FINAL PAINT - 1ST	5	5	26DEC12	02JAN13	09I																																				
6171D	CARPET - 1ST	10	10	26DEC12	09JAN13	09G																																				
6170D	RESILIENT FLOORING - 1ST	15	15	26DEC12	16JAN13	09E																																				
6180D	FINISH PLATES AND COVERS- 1ST	10	10	03JAN13	16JAN13	16A																																				
6172D	BLINDS & SHADES- 1ST	8	8	17JAN13	28JAN13	06A																																				
6175D	DOORS AND HARDWARE- 1ST	10	10	17JAN13	30JAN13	09A																																				
6200D	FA PRETEST BUILDING	5	5	31JAN13	06FEB13	16A																																				
6190D	PUNCHLIST - 1ST	10	10	31JAN13	13FEB13	99A																																				
6210D	FIRE DEPARTMENT TEST BUILDING	2	2	07FEB13	08FEB13	16A																																				
6195D	FINAL CLEAN - 1ST	5	5	14FEB13	20FEB13	01A																																				
AUDITORIUM																																										
4000AUD	CONSTRUCTION & FITOUT - AUDITORIUM	120	120	29MAY12	16NOV12	09A																																				

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EAST SOMERVILLE COMMUNITY SCHOOL

It-03 CONSTRUCTION BY AREA LEVEL

Sheet 9 of 10

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