

UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY



**REQUEST FOR PROPOSALS
FOR ARCHITECTURAL AND ENGINEERING SERVICES**

**EDWARD M. KENNEDY INSTITUTE
FOR THE UNITED STATES SENATE**

UNIVERSITY OF MASSACHUSETTS – BOSTON

UMBA PROJECT NO. UMBA 08-B5

December 10, 2008

*Proposals Due: Wednesday,
January 14, 2009 at 2:00 p.m.*



REQUEST FOR PROPOSALS FOR ARCHITECTURAL AND ENGINEERING SERVICES

EDWARD M. KENNEDY INSTITUTE FOR THE UNITED STATES SENATE UNIVERSITY OF MASSACHUSETTS – BOSTON

I. NOTICE OF REQUEST FOR PROPOSALS

The University of Massachusetts Building Authority (the “Authority”) requests proposals from qualified design firms to provide full architectural and engineering services for the new Edward M. Kennedy Institute for the United States Senate (the “Project”) at the University of Massachusetts – Boston (“UMASS – Boston” or the “University”).

Proposals shall be received at the University of Massachusetts Building Authority, 225 Franklin Street, 12th Floor, Boston, MA 02110, Attention: David J. MacKenzie, Executive Director, by **2:00 p.m. on Wednesday, January 14, 2009**. Each respondent shall submit nine (9) copies of its proposal clearly marked “Edward M. Kennedy Institute for the United States Senate, UMASS – Boston.” Each proposal shall clearly identify the respondent’s name and business address.

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

II. OVERVIEW

The Edward M. Kennedy Institute for the United States Senate (the “Institute”) shall dedicate itself to educating the general public, students, new senators, senate staff, and others in public service about the role and importance of the United States Senate. In addition, it will celebrate the long, illustrious career of Senator Edward M. Kennedy and profile his legacy and accomplishments. With approximately 40,000 square feet of program area, the Institute will heighten awareness of the Senate’s functions by bringing the public inside the legislative process.

III. PROJECT DESCRIPTION

The Institute will be located on the University of Massachusetts’ Boston Campus and



will be built on the open land to the southwest of the John F. Kennedy Presidential Library and Museum, as identified in the Project Locus Map included as **Attachment 6**.

Based upon a preliminary conceptual overview by Rafael Viñoly P.C. Architects, at the present time, the Institute is expected to include the following program:

- Replica of the U.S. Senate chambers: +/- 10,000 square feet
- Ceremonial/reception space-lobby: 3,000 – 5,000 square feet
- Museum space for exhibits: 3,000 – 4,000 square feet
- Three classrooms: +/- 1,500 square feet total
- Library/research area: 3,000 – 4,000 square feet
-digital library available on site and on line
- Studio for archiving and website: +/- 3,000 square feet
- Auxiliary Space (coat, kitchen, etc.) +/- 5,000 square feet
- Archival Storage: +/- 5,000 square feet
- Office Space: 3,000 – 4,000 square feet

It is intended that the facility will be an energy efficient and environmentally sustainable facility that will obtain the highest practicable LEED[®] Certification for New Construction with the assistance of the selected design team.

The Project consists of full architectural, engineering, and construction administration services required to design and construct the new facility on the proposed site. The selected architect will be required to provide programming and planning studies and to perform necessary site analysis to confirm the program and to determine whether the site can accommodate the full development of the program requirements.

Chan Krieger Sieniewicz is currently completing a Master Plan for the campus and there is a planned expansion project for the John F. Kennedy Presidential Library and Museum (the “JFK Library”). The selected architect will be required to become familiar with the scope of the Master Plan and to ensure that the Project design is consistent with the Master Plan and is coordinated with the JFK Library expansion project.

The method of procurement of construction services will be determined during the programming/feasibility study or schematic design phase. The Project may be constructed by a General Contractor pursuant to Mass. Gen. Laws c. 149, secs. 44A-H. However, the Authority may instead procure a construction manager at risk as authorized by Section 18 of the Authority’s enabling statute, Chapter 773 of the Acts of 1960, as amended, by Mass. Gen. Laws c. 149A, or as otherwise may be authorized by law.

The Authority has hired Joslin, Lesser + Associates, Inc. to serve as the Owner’s Project Manager in connection with the Project.



IV. SCOPE OF SERVICES

In general, proposals shall demonstrate the ability of the Respondent to provide full planning, architectural, engineering and construction administration services required to complete the Project (the “Scope of Services”) as described hereafter in this RFP and in the Agreement for Professional Services between Owner and Architect (the “Design Agreement”) which is attached and marked **Attachment 5**. The Scope of Services of the architect selected pursuant to this RFP (the “Architect”) shall also include all other services customarily performed by consultants required for projects of similar type, scope, and complexity.

In the event that a Construction Manager at Risk project delivery method is used, then the Construction Manager at Risk will begin work during the schematic design phase of the Project and this should be considered in preparing proposals. The Architect shall be required to provide construction documents for early packages which may include but not be limited to the demolition of existing structures, early site work, concrete work and purchase of long-lead time materials including steel.

Portions of the work may be fully designed and construction commenced prior to completion of the design of other portions of the Work. The Architect shall work in cooperation with the Authority and the Contractor or Construction Manager, subject to the directions of the Authority, to determine which portions of the Work will be designated for early construction and to agree upon the schedule for design and construction activities. The Authority will review the construction packages for such portions of Work prior to bidding or issuance to a Construction Manager. The Architect shall prepare Construction Documents for each such designated portion of the Work in accordance with the agreed-upon schedule.

Basic Services of the Architect shall include full construction administration services for ninety (90) days beyond Substantial Completion of the Project.

In performing the Scope of Services for the Project, wherever possible, the selected architect shall consider energy efficiency and sustainable design practices, using the U. S. Green Building Council’s LEED[®] Rating System and other similar guidelines as planning tools, and shall advise the Authority of any financial impact which may result.

Throughout the Project, the selected design team (the “Architect”) shall:

- Coordinate the work of all designers, engineers, consultants and sub-consultants, on the Architect’s design team (the “Design Team”);
- Coordinate with all other Project contributors, not part of the Design Team, including, but not limited to, legal counsel and any permitting consultants;
- Coordinate with the Authority, the University, the Institute and as necessary, the JFK Library, with regard to other existing and proposed projects in the area.



- Provide written recommendations to the Authority regarding the selection of other required consultants and sub-consultants (including, but not limited to, site surveyors and geotechnical engineers) not included in the proposal, after securing proposals from no fewer than three (3) of each type of consultant, and, with the approval of the Authority, hire such consultants;
- Throughout the design process, provide life cycle cost analyses for all major components and systems, and as options and value engineering items are developed, provide such analyses to assist the Authority in decision making;
- At the end of the Programming/Feasibility Study Phase and the Schematic Design Phase, the Architect shall within the proposed fee and without additional cost to the Authority prepare full and complete cost estimates for the Project. All estimates shall be provided in form, substance, and detail acceptable to the Authority (Construction Specification Institute ("CSI") or similar). At the end of the Programming/Feasibility Study Phase, the Architect shall evaluate any estimates that may be provided by the Authority. At the end of each succeeding phase, the Architect shall evaluate the estimate for that phase against the estimate completed during the previous phase. At the end of each cost estimate evaluation and otherwise as necessary in the Authority's judgment, the Architect shall recommend and, with the Authority's prior approval, implement appropriate actions to modify, correct, or value engineer ("VE") the design in order to avoid potential cost overruns. If in any phase following the Feasibility Study Phase, the cost estimates for the then current design exceed the cost estimates for the previous phase, the Architect shall, at the Architect's sole cost and expense, using the modifications, changes, and VE proposals approved by the Authority, modify the design and all associated plans, specifications, and other contract documents as necessary until such time as the cost estimates for the current phase are equal to or less than the last construction cost estimate approved by the Authority; and
- Provide all other Basic Services as described in the Design Agreement.

PROGRAMMING/FEASIBILITY STUDY PHASE

During the Programming/Feasibility Study Phase, the Scope of Services of the Architect shall include, but not be limited to, the following:

- Meet with representatives of the Authority, the Institute and the University to review Project objectives;
- Review any drawings or documents provided by the Authority, the Institute or the University;
- Develop a detailed program in consultation with the Authority, the Institute and the University, based on: (a) a space needs analysis, (b) a functional needs analysis, (c) user interviews, and (d) the Architect's knowledge and expertise in the design of similar facilities;



- Analyze the development capacity of the proposed site, including building, parking and infrastructure, and propose no less than three (3) alternative solutions that each meet the Institute's needs, assess each option's opportunities and challenges, and make specific recommendations regarding the approach to design;
- Prepare diagrams and written narratives to describe options for the building systems including architectural, structural, mechanical, electrical, plumbing, fire protection, telecommunications information technology, and other systems;
- Prepare an analysis of the requirements for the new facility and any impact on neighboring buildings and building systems;
- Prepare a comparative analysis of significant characteristics of each system, including a comparison of construction costs, maintenance costs, operational costs and all other relevant factors, in order to provide the Authority, the Institute and the University with information adequate to assess the options presented;
- Prepare relative cost analyses for the building options explored, which identify all project development costs, and operational and maintenance expense, and a comparison of costs, using similar facilities at peer institutions as a benchmark;
- Prepare a Project schedule and phasing strategy, outlining the time required to complete and occupy the building;
- Conduct a LEED Charrette during the Programming/Feasibility Phase, or at the option of the Authority, during the Schematic Design Phase;
- Prepare a detailed cost estimate (including both hard and soft costs) and a project schedule for the Project. The final facility program and the associated cost estimate and project schedule shall be approved by the Authority prior to commencement of schematic design services; and
- Prepare a Feasibility Study Report that contains, at a minimum: (1) a compilation and summary of all of the required deliverables set forth above, and (2) specific recommendations and supporting rationale regarding the facility program, and all physical features of the Project, including the size, height, configuration, building systems, infrastructure, and site improvements, and other relevant factors, a preliminary draft of LEED certification goals and strategies to achieve them, and a thorough analysis of all Project development costs.

SCHEMATIC DESIGN PHASE

During the Schematic Design Phase, the Scope of Services of the Architect shall include, but not be limited to, the following:

- Consult with the Authority as necessary to develop a sufficient number of alternative schemes that accommodate the Project's full set of needs and final building program. It is intended that the Schematic Design Phase be iterative and include a series of drawings, models, and narratives to present alternative workable scenarios followed by working meetings with the Authority to arrive at a fully refined design alternative;



- Prepare schematic design drawings depicting no fewer than three (3) options for the organization of programmed spaces for the Institute;
- Meet with community groups and other interested parties, as necessary, to address potential community impacts and provide general public outreach, input and information relative to the Project;
- Develop strategies and alternatives to maximize energy efficiency and sustainable building design including a comparative analysis of alternative systems, a comparison of construction costs, maintenance costs, operational and life cycle costs, and other relevant factors, in order to provide the Authority with information adequate to assess the Schematic Design alternatives presented;
- Prepare detailed drawings and written narratives describing the location of existing utilities infrastructure, and identifying the proposed routing and tie-in points to existing campus utilities and infrastructure;
- Prepare a complete set of Schematic Design Documents for each design alternative for the Project, which shall include:
 - Diagrams to show the objectives for the design, including sketches to illustrate program functional relationships
 - Site plans and diagrams showing pedestrian, handicapped and vehicular access, and circulation, service areas, utilities, environmental factors, site drainage, landscaping, site amenities and all other relevant factors
 - Floor plans of each building level identifying all program spaces and building components in sufficient detail to evaluate Project and associated costs
 - Exterior and interior building elevations and, where appropriate, cross-sections, and three-dimensional views, as required to provide a full visual description of the schematic design alternatives
 - Drawings and narrative descriptions of building systems requirements and performance standards, including the structural, mechanical, electrical, plumbing, fire protection, elevator, telecommunications, information technology, security and other relevant systems
 - Furniture layouts of major spaces and sample layouts
 - An outline specification of all building components, systems requirements, and performance criteria
- Prepare a comparative analysis of alternative systems, including a comparison of construction costs, maintenance costs, operational and life cycle costs, and other relevant factors, in order to provide the Authority with information adequate to assess the Schematic Design alternatives presented;
- Prepare a detailed code review of all proposed construction to ensure compliance with applicable building, fire, plumbing, electrical and other codes, including the Americans with Disabilities Act (ADA), and a life safety plan indicating allowable area for construction type proposed, location of fire separation walls, means of egress paths, and required exit widths for doors, stairs and corridors;
- Meet at least once with each of the following: State Building Inspector, Boston Fire Department, State Plumbing Inspector, Boston Electrical Inspector, and other local,



- municipal departments and utility providers (to determine necessary utility tie-ins and assess the related costs);
- Develop a detailed project schedule and phasing strategy outlining the time required to obtain all necessary permits and approvals, complete the final design, bid and award construction contracts, complete construction, commission and occupy the building in accordance with the target completion and occupancy date specified in Section V, Schedule;
 - Prepare a detailed estimate of Total Project Cost for the recommended schematic design alternative;
 - If a Construction Manager has been selected, meet with the Construction Manager to review and reconcile Project cost estimates and schedules, discuss Project design and constructability issues, and assist the Construction Manager with other pre-construction issues;
 - Complete the U.S. Green Building Council's LEED[®] Rating System checklist for the Project; and discuss with the Authority options for increasing the "score," and provide documentation for construction costs associated with increasing the checklist score;
 - Prepare a Schematic Design Phase deliverable that includes a written summary report. Said report shall include all work product prepared during the Schematic Design Phase including, but not limited to, schematic drawings, and preliminary specifications coordinated between disciplines, detailed code review and analysis, LEED certification analysis, energy model, detailed environmental permitting and regulatory approval report, comparative systems analysis, detailed floor plans and elevations, site plan and Project schedule and budget; and
 - Prepare interior and exterior building renderings suitable for use in project presentations and community outreach initiatives.

DESIGN DEVELOPMENT

During the Design Development Phase, the Scope of Services of the Architect shall include, but not be limited to, the following:

- Based upon the option and building systems selected during the Schematic Design Phase, prepare, for approval by the Authority, Design Development Documents consisting of drawings, specifications and other documents to fix and describe the size, character and quality of the Project with respect to architectural, structural, mechanical, electrical and plumbing systems, materials and such other elements as may be appropriate, and that fully define the scope, quality, and quantities of all proposed components of the Project including, but not limited to, building materials, building systems, equipment, and anticipated construction methods;
- Consult with the Authority, the Institute and the University as necessary to develop interior layouts and configurations;



- Prepare appropriate data and illustrations for furniture, fixtures, and equipment necessary to develop interior layouts and configurations, including specially designed items or elements, to indicate finished appearance and functional operation;
- Make recommendations as to colors, materials, and finishes not otherwise specified;
- Provide, for approval of the Authority, recommendations for furniture, fixtures, and equipment to be procured and recommendations on the method of procurement including separate bidding if appropriate and/or inclusion in the prime construction contract;
- Make recommendations to the Authority with respect to long lead time procurement items and early bid packages;
- Prepare an initial mechanical, electrical, and plumbing systems design intent document that defines the performance expectations and objectives for the MEP systems;
- Update the Project schedule and phasing strategy, outlining the time required to obtain all necessary permits and approvals, complete the final design, bid the Project, award contracts, and complete construction and commissioning;
- If a Construction Manager has been selected, meet with the Construction Manager to review and reconcile project cost estimates and schedules, discuss project design and constructability issues, and assist the Construction Manager with other pre-construction issues; and
- Assist in developing a detailed update to the cost estimate and project budget for construction of the proposed design, including furniture, fixtures and equipment recommended for the Project, based upon quantity and unit costs.

CONSTRUCTION DOCUMENTS PHASE

During the Construction Documents Phase, the Scope of Services of the Architect shall include, but not be limited to, the following:

- Based on the approved Design Development Documents and any further adjustments in the scope, quality, construction budget, or schedule for the Project authorized by the Authority, prepare for review and approval by the Authority full and completely coordinated Construction Documents consisting of drawings and specifications setting forth in detail the requirements for the construction of the Project, including, but not limited to, structural, mechanical, electrical, plumbing, fire protection, telephone/data requirements, and all other systems and equipment;
- The Construction Documents shall include drawings and specifications that establish in detail the quantity and quality of all materials, systems and equipment required for the Project;



- Construction Documents, and cost estimates and Project schedules shall be submitted to the Authority for review and approval at the fifty percent (50%) and ninety percent (90%) stages of completion;
- Develop a final basis of design document (“Basis of Design”) at the fifty percent (50%), ninety percent (90%) and one hundred percent (100%) stages of completion of Construction Documents, which shall include all code review, design calculations, life cycle cost analysis, value engineering documents and all required information necessary to meet the most current ASHRAE commissioning standard;
- Upon approval of the ninety percent (90%) plans, cost estimates and Project schedule by the Authority, develop final Construction Document drawings and specifications for the Project, including all bid documents and packages, incorporating any comments including those from a coordination review;
- Assist the Authority in connection with the Authority’s responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project; and
- At the completion of Construction Document Phase, develop a final update to the detailed estimate of construction costs, including a breakdown by filed sub-bid. Assist in updating the project budget including the final total project costs. Assist the Authority in the establishment of bid alternates, if required.

BID PHASE

During the Bid Phase, the Scope of Services of the Architect shall include, but not be limited to, the following:

- Assist the Authority in a general and sub bid prequalification process if so directed by the Authority;
- Assist the Owner in obtaining, tabulating, and reviewing responses to all sub bids and general bids; and
- Participate in one (1) pre-proposal conference with prospective bidders, prepare written answers to questions from prospective bidders during the bidding period and assist the Authority in selecting the Construction Manager and in awarding the Construction Contract.

CONSTRUCTION ADMINISTRATION, COMMISSIONING AND PROJECT CLOSEOUT PHASE

During the Construction Administration, Commissioning and Project Closeout Phases of the Project, the Scope of Services of the Architect shall include, but not be limited to, the following:



- Perform all functions required to be performed by a registered professional Architect under the Massachusetts State Building Code and other laws and regulations applicable to the Project;
- Make site visits at least once a week and at more frequent intervals as appropriate to the stage of construction to become generally familiar with the progress and quality of the work (including participation by Architect's consultants as needed in order to ensure that they are generally familiar with the progress and quality of those portions of the work which they designed), document all site visits with a written narrative Site Report describing work in place, specific inspections conducted (including reference to applicable CSI specification section), work in place that does not meet the specifications, and at least 4-5 photos of the general site and 2-3 photos of all non-complying work, and submit Site Reports to the Authority and its Project Manager within twenty-four (24) hours after each such site visit;
- Attend weekly job meetings, keeping and distributing minutes of such meeting in a timely manner;
- Prepare documents for LEED Certification, including obtaining from the Construction Manager any requisite information that is part of the LEED Certification process;
- Prompt and timely performance of office construction administration services, including but not limited to processing of all submittals, including receipt, review of, and appropriate action on Shop Drawings, Product Data, Samples and other submittals; timely response to Requests for Information (RFI), issuing of Architect's Supplemental Information as needed, and certification of substantial and final completion;
- Review of reports of independent testing agencies and written notification to the Authority and Contractor or Construction Manager of observed deficiencies in the work;
- Provide the Contractor or Construction Manager with CADD, BIM and/or other useable electronic versions of drawings to assist in the preparation of Contractor or Construction Manager coordination drawings and to provide the basis for as-built drawings;
- Review of Contractor or Construction Manager's Applications for Payment, and based on the Architect's observations and evaluations, recommend to the Authority whether such payment should be made and if the Authority concurs, certify the amount due the Contractor or Construction Manager;
- For Architect Proposed Requests and Contractor or Construction Manager Proposed Change Orders, prepare and distribute supplemental Drawings, Instructions, and/or Specifications describing the work to be added, deleted or modified; review the proposals from the Contractor or Construction Manager(s) for quantities and the costs of labor and materials; review and make recommendations relative to changes in time for completion of the Project and prepare Change Orders and Construction Change



Directors for the Authority's approval; review Contractor or Construction Manager submitted Time Impact Analyses and make recommendations on any Contractor or Construction Manager requests for extension of time for any Change Order or Construction Change Directive; and coordinate all communications, approvals, notifications and record keeping relative to changes in the Work;

- Coordinate and cooperate with the Authority's Commissioning Agent; verify that the Contractor or Construction Manager has met all Commissioning requirements;
- Project Closeout services initiated upon notice from the Contractor or Construction Manager that Work is sufficiently complete, in accordance with the Contract Documents, to permit occupancy or use of the facility, consisting of but not limited to:
 - A detailed inspection with the Authority for conformity of the Work to the Contract Documents and to verify the list of items to be completed or corrected which has been submitted by the Contractor or Construction Manager
 - Based on detailed inspection assemble a single combined punch list, in a format approved by the Authority, which includes all outstanding work including architectural, hardware, site, and mechanical, electrical, plumbing and fire protection; and monetizing the punch list to determine a recommendation of amounts to be withheld until final acceptance of the Work
 - Issuance of the Certificate of Final Acceptance
 - Inspection(s) upon notice of the Contractor or Construction Manager that the Work is ready for final inspection
 - Notice to Contractor or Construction Manager of deficiencies found in follow up inspections
 - Final inspection with the Authority to verify final completion of the Work
 - Receipt, review, and transmittal of warranties, affidavits, invoices, record drawings, and related documents that are required by the Contract Documents and assembled and submitted by the Contractor or Construction Manager;
- Conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; prepare affidavits required by the Building Inspector for issuance of a Certificate of Occupancy; issue a final Certificate of Payment upon compliance with the requirements of the Contract Documents;
- Interpret matters concerning performance of the Contractor or Construction Manager under the requirements of the Contract Documents; such response to be made with reasonable promptness and within any time limits agreed upon; and
- Provide all other Construction Administration Phase services set forth in the Design Agreement.



RELATIONSHIP WITH THE CONSTRUCTION MANAGER

If the Authority determines to use a Construction Manager for the Project, its procurement of a Construction Manager may occur at any time determined by the Authority after award of the contract to the Architect. In such event the Architect's Scope of Services shall include, but not be limited to, the following:

- Assist the Authority in developing a request for proposals for Construction Manager at risk services and obtaining and reviewing responses from respondents;
- Participate in pre-proposal conferences with prospective proposers, answer questions from prospective proposers, interview proposers, and assist the Authority in selecting the Construction Manager and in awarding and preparing the construction contract;
- Coordinate the work of the Architect's team with the Construction Manager during the Construction Manager's pre-construction phase of work to ensure that the Construction Manager plays an integral part in the Project planning at the earliest practicable phase. The design and construction process is envisioned as a cooperative and coordinated team approach in which the Authority, the Architect, and the Construction Manager will engage in early and continuous interaction to accomplish the Project within the construction budget and project schedule. The Architect will be required to work cooperatively with the Construction Manager and the Authority and to fully utilize the Construction Manager's services and resources to accomplish the design and construction of the Project as efficiently as possible;
- Work with the Construction Manager by reviewing the design drawings and the construction documents at each stage in the Project (the "Architect/Construction Manager Review"). The Architect/Construction Manager Review shall take into account quality of materials, systems, and equipment to ensure that the design drawings and construction documents will result in a complete, fully functional, and efficient design with minimum lifecycle cost. The Architect/Construction Manager Review will also seek to eliminate areas of conflict and overlap of work to be performed by subcontractors and to ensure that there are no gaps in design. The Architect will interact with the Construction Manager to obtain information, estimates, options and recommendations regarding construction materials, methods, systems, phasing, and costs that will provide the highest quality building within the Project budget and schedule approved by the Authority;
- Interact with the Construction Manager to develop phasing and project schedules that identify all major design phase milestones and all significant project activities. With input from the Authority, and the Construction Manager, the Architect will be required to provide schedule updates at the conclusion of each phase of work;
- Work with the Construction Manager to develop the most logical, competitive, seamless and distinct subcontractor bid packages with all scopes of work included in the packages and provide for bid alternatives (deductive or additive) in each subcontractor bid package where appropriate; and



- Participate in the negotiation of the guaranteed maximum price with the selected Construction Manager and prepare all required documentation and contract documents.

LEED DESIGN AND CERTIFICATION

The Project will be designed to meet LEED certification standards and achieve the highest practicable LEED for New Construction certification level. The Architect will provide at least one LEED Accredited Professional (“LEED AP”) to serve as the LEED team leader to develop and implement the LEED process for the Project. In performing the Scope of Services, the Architect’s responsibilities shall include, but not be limited to the following:

- Provide all LEED and sustainable design services necessary to obtain the highest practicable LEED for New Construction certification;
- Assemble a sustainable “Green Team” composed of members of the Architect’s design team, the Authority, the Owner’s Project Manager, the Institute, the University, and other Project stakeholders (subject to the approval of the Authority) who will establish and implement the sustainable design goals for the Project;
- Coordinate the delivery of all LEED and sustainable design services required on the Project; and
- Prepare a final LEED certification report documenting the LEED rating the Project achieved, including the LEED certification plan, LEED certification documentation submitted, LEED certification reviews received from the USGBC, together with the specific LEED credits that the Project is recognized as having received. The final LEED certification report shall include a detailed summary of the Authority post-commissioning obligations with regard to the LEED certified elements of the Project, including any ongoing operations, maintenance, re-certification, or other similar obligations.

The Architect shall perform such services in a timely fashion as early as practicable during the Project to allow the Authority to make decisions regarding sustainable design elements in the most efficient manner so as to not delay the Project or cause the architect to re-render any services. All LEED-related registration fees shall be paid as reimbursable expenses.

OTHER REQUIREMENTS

Other services that shall be provided by the Architect as a part of the Scope of Services shall include but not be limited to:

- Develop a complete Basis of Design for the Project which includes all structural, architectural, wall cladding, mechanical, electrical, plumbing, building controls, and fire protection meeting the most current ASHRAE Building Commissioning standards;



- Coordinate services between the Design Team and the Authority's Commissioning Agent;
- Providing nine (9) hard copies of all deliverables including, but not limited to, the Programming/Feasibility Study, the Schematic Design Documents and summary report, Design Development Documents and Construction Documents for review at the completion of each phase of the work and one final set of Construction Documents for reproduction;
- Provide one (1) electronic copy of all deliverables in format suitable to the Authority; and
- Provide all construction completion documents including AutoCADD as-builts, permit affidavits, Project and construction schedules and schedule updates, and Basis of Design updates.

For additional information regarding the required Scope of Services, please refer to the attached Agreement for Professional Services between Owner and Architect that shall be executed by the selected respondent and the Authority.

V. SCHEDULE

The Authority anticipates selecting a designer in January 2008. The selected designer shall be expected to complete the Scope of Services in a timely manner in order to meet the target schedule for building completion and occupancy in the 1st quarter of 2012.

VI. FEE

To be determined.

VII. FORM OF CONTRACT

The Architect shall execute a contract with the Authority, which shall be in the form attached hereto as **Attachment 5**. At the Authority's sole discretion, the Authority may make minor non-material changes to the form of the contract. The submission of a proposal in response to this RFP shall be deemed an acceptance of all terms and conditions of the Agreement and an agreement to execute same without revision or modification.

VIII. MINIMUM QUALIFICATIONS

- Massachusetts registration and licensing in all applicable disciplines;
- Thorough knowledge of the Massachusetts State Building Code and regulations of the Massachusetts Architectural Access Board and the Americans with Disabilities Act;
- Thorough knowledge of Massachusetts public design and construction laws;



- Documented experience working with a Construction Manager at Risk project delivery method;
- Thorough knowledge of all environmental permitting and compliance laws; and
- Documented experience with design for sustainability and energy efficiency, including specifically the LEED rating system and participation of LEED certified personnel with the Project, including at least one project completed within the last five (5) years which had met LEED standards that substantial participation from persons included in the proposed Design Team;
- At least five (5) years prior experience designing new buildings of type, scope and complexity similar to those required for the Project, including at least two (2) such projects successfully completed within the last five (5) years; and
- Documentation of financial stability including a balance sheet and income statement for the prior two years, and insurance including: (i) professional liability insurance of not less than \$5,000,000; (ii) comprehensive general liability (“CGL”) insurance of not less than \$1,000,000; (iii) automobile liability insurance of not less than \$1,000,000; (iv) statutory workers’ compensation insurance coverage; (v) employer’s liability insurance of not less than \$1,000,000; and (vi) umbrella or excess liability insurance of not less than \$5,000,000 covering over the CGL, automobile liability and employer’s liability coverages; and all of such coverages shall be provided on the terms set forth in the Design Agreement.

Please note. Firms involved in the preparation of the campus Master Plan or any preliminary program for the proposed facility shall not be disqualified from consideration for the work of this Project.

IX. SUBMISSION REQUIREMENTS

All responding firms must submit following information:

1. Description of the firm’s background, including a description of the firm’s experience on projects in which similar services were performed, including an outline of the scope of each such project.
2. A synopsis of the firm’s approach to the Project, including team organization and proposed scheduling, and given the importance of meeting the target completion and occupancy of the first quarter 2012, detail demonstrating the firm’s ability to meet the proposed schedule.
3. Description of the firm’s management approach, describing in detail how coordination will occur for all designers, engineers, consultants, and sub-consultants on the Architect’s proposed design team.
4. Identification of the firm’s design team for the Project, including the Principal-in-Charge and the Project Manager who will have overall responsibility for the delivery of services and completion of the Project (at least one member of which is experienced with design for energy efficiency and sustainability and the use of the LEED Rating System and other similar guidelines) and the specific responsibilities of



- all members of the design team. Describe individual and Project team experience with design for energy efficiency and sustainability, including LEED[®] certified buildings, and use of the LEED[®] Rating System and other similar guidelines.
5. A Project team organization chart listing all team members, whether employed by the Architect or by a sub-consultant, proposed to provide services on the Project. **Please note that the Authority requires that the key team members identified in the responding firm's proposal be the individuals who render services under the Agreement, and such individuals must be fully available to devote the time and attention necessary to ensure timely and complete delivery of required services.**
 6. A resume and references for each Project team member. The resume shall outline the individual's academic and professional achievements including the number of years of experience working on similar projects and tenure with the firm. Provide a cross-reference for each team member to any project listed in Item No. 9 below by using a matrix that shows all projects listed in Item No. 9 on one axis and all project team members on the other axis.
 7. Identification of any firms or individuals not part of the responding firm which will be collaborating on the Project. For each such firm and individual, provide a detailed description of their role in the Project, and a complete resume and description of the length and substance of their experience as it relates to the Project.
 8. Background data on consulting firms (representing the disciplines below) which may be part of the Architect's design team and other consultants who will play a role in the Project:

Civil Engineer	Code Consultant
Landscape Architect	LEED Consultant
Structural Engineer	Interior Designer
Mechanical Engineer	Telecommunications Consultant
Electrical Engineer	Information Technology Consultant
Plumbing Engineer	Exhibit Design Consultant
Fire Protection Engineer	Cost Estimator
Lighting Consultant	Security Consultant
Parking and Traffic Consultant	Acoustical Consultant
 9. List of all similar projects of comparable size, scope and complexity that the responding firm has substantially completed within the past five (5) years. For each project, provide a complete description, including estimated and actual project costs, estimated and actual project schedule, and the names and current telephone numbers and other contact information for reference person(s). If the respondent is a joint venture, describe all projects on which the joint venture partners have previously worked together identifying the duties and responsibilities of each firm on each of such projects.
 10. Evidence of the firm's stability by providing a balance sheet and income statement for the last two (2) years that can be used to evaluate and ascertain the firm's ability to provide the required services for the duration of the Project.



11. Three (3) references of persons who are familiar with the work of the responding firm. In addition, provide three (3) references of persons who are familiar with the work and professional skills of the proposed Project Manager. By submitting a proposal, each respondent expressly provides its consent for the Authority and its representatives to contact the listed references to obtain information about the respondent's past performance.
12. Executed original copies of: (i) Conflict of Interest Statement (attached as **Attachment 1**), (ii) Certificate of Non-Collusion (attached as **Attachment 2**), (iii) Certificate of State Tax Compliance (attached as **Attachment 3**), and (iv) Certification regarding Undocumented Workers (attached as **Attachment 4**).

X. SELECTION PROCEDURES

Each proposal will be reviewed by the Authority to determine if it is complete prior to actual evaluation. The Authority reserves the right, but shall have no obligation, to eliminate from further consideration any proposal deemed to be substantially or materially non-responsive to the RFP. The Authority will review all proposals and may select one or more responding firms for personal interviews. The selection of the finalists will be based on the following criteria, as applied by the Authority in its sole and absolute discretion:

- (A) Quality of prior experience and performance on projects of similar size, scope of services, and complexity, including:
 - (1) Quality, clarity, completeness and accuracy of design concepts and studies;
 - (2) Effectiveness of meeting established program requirements and functions within allotted budget and schedule;
 - (3) Management ability to meet schedules including submission of design and study documents; and
 - (4) Coordination and management of sub-consultants.
- (B) Past experience with Massachusetts public construction laws, public bid process and relevant Massachusetts codes, laws and regulations;
- (C) Demonstrated experience and expertise of the key persons and consultants who will work on the Project.
- (D) References;
- (E) Financial stability of the Respondent.
- (F) Current total workload with private clients and public agencies and ability of the firm to meet the Project schedule; and
- (G) Demonstrated understanding of the Project.



XI. ADDITIONAL INFORMATION

Prospective Respondents shall not communicate with the Authority, the Institute, the University, or any of their representatives, including the Owner's Project Manager, at any time during the RFP process except through written questions submitted prior to the deadline set forth herein. All questions must be submitted in writing by mail, fax, or email addressed to:

Joslin, Lesser + Associates, Inc.
Attention: Stuart D. Lesser
44 Pleasant Street
Watertown, MA 02472
Fax 617-924-3800
slesser@joslinlesser.com

The deadline for receipt of written questions is 5:00 p.m. on **Monday, January 5, 2009**. The Authority will respond to all written questions which in the Authority's sole judgment may have a material effect on the RFP by posting written responses on the Joslin, Lesser & Associates website, www.joslinlesser.com not later than **Wednesday, January 7, 2009**.

XII. OTHER PROVISIONS

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

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

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

Any proposal which is not received by the Authority by the date and time and at the location for submission of proposals set forth herein will be determined to be late and shall not be considered.



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

A proposal may be considered non-responsive if it includes extraneous information not specifically requested in this RFP. The clarity and conciseness of proposals will be valued over sheer volume.

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

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

Respondents are advised that, once an award has been made, proposals submitted to the Authority in response to this RFP are considered public records as defined by Massachusetts General Laws, Chapter 4, §7, clause 26.

XIII. ATTACHMENTS

- | | |
|---------------|---|
| Attachment 1: | Conflict of Interest Statement |
| Attachment 2: | Certificate of Non-Collusion |
| Attachment 3: | Certificate of State Tax Compliance |
| Attachment 4: | Certification Regarding Undocumented Workers |
| Attachment 5: | Agreement for Professional Services Between Owner and Architect |
| Attachment 6: | Project Locus Map |

ATTACHMENT 1

Conflict of Interest Statement

UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY

CONFLICT OF INTEREST STATEMENT

The proposer hereby certifies, under the penalties of perjury, that:

- 1) The proposer has not given, offered, or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the contract for services for which the proposer is applying.
 - 2) No consultant to or subcontractor for the proposer has given, offered, or agreed to give any gift, contribution or offer of employment to the proposer or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the proposer.
 - 3) No person, corporation or other entity, other than a bona fide full-time employee of the proposer has been retained or hired by the proposer to solicit for or in any way assist the proposer in obtaining the contract for services for which the proposer is applying, upon an agreement or understanding that such person, corporation, or entity be paid a fee or other consideration contingent upon the award of the contract to the proposer.
-

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

Firm

Signer (Typed)

Signer (Written)

Title

Date

ATTACHMENT 2

Certificate of Non-Collusion

UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY

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 other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity or group of individuals.

Firm

Signer (Typed)

Signer (Written)

Title

Date

ATTACHMENT 3

Certificate of State Tax Compliance

UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY

CERTIFICATE OF STATE TAX COMPLIANCE

Mass. Gen. Laws, Chapter 62C, Section 49A(b)

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

hereby certify that the above-named organization has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting of child support, as set forth in Mass. Gen. Laws, c. 62C, § 49A(b).

Signed under the pains and penalties of perjury

Firm

Authorized Principal (Typed)

Authorized Principal (Signature)

Title

Date

ATTACHMENT 4

Certification regarding Undocumented Workers

UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY

CERTIFICATION REGARDING UNDOCUMENTED WORKERS

NAME OF COMPANY: _____

PROJECT: _____

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

Company Authorized Signatory

Date: _____, 2008

Printed Name of Authorized Signatory

Title: _____ Telephone No.: _____

Email: _____ Fax No.: _____

ATTACHMENT 5

Agreement for Professional Services
Between Owner and Architect

DRAFT AIA® Document B103™ – 2007

Standard Form of Agreement Between Owner and Architect for a Large or Complex Project

AGREEMENT made as of the [] day of [] in the year 2009.
(In words, indicate day, month and year)

BETWEEN the Architect's client identified as the Owner:
(Name, address and other information)

University of Massachusetts Building Authority, an entity established by Chapter 773 of the Acts of 1960, as amended, having its usual place of business at 225 Franklin Street, 12th Floor, Boston, Massachusetts 02110 ("UMBA", the "Authority" or the "Owner")

and the Architect:
(Name, address and other information)

for the following Project:
(Name, location and detailed description)

EDWARD M. KENNEDY INSTITUTE FOR THE UNITED STATES SENATE,
UMBA Project No. 08-B5.

The Project consists of full architectural, engineering, and construction administration services required to design and construct the Edward M. Kennedy Institute for the United States Senate (the "Institute") on the University of Massachusetts' Boston campus in Boston, Massachusetts. The Architect will be responsible for design and construction administration phases of the Project from programming through construction administration, commissioning and closeout.

The Owner and Architect agree as follows:

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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TABLE OF ARTICLES

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as “not applicable,” “unknown at time of execution” or “to be determined later by mutual agreement.”)

§ 1.1.1 The Owner's program for the Project:

(Identify documentation or state the manner in which the program will be developed.)

At the time of execution of this Agreement, the Owner's program for the Institute is expected to consist of the following:

- Replica of the U.S. Senate chambers: +/- 10,000 square feet
- Ceremonial/reception space-lobby: 3,000 – 5,000 square feet
- Museum space for exhibits: 3,000 – 4,000 square feet
- Three classrooms: +/- 1,500 square feet total
- Library/research area: 3,000 – 4,000 square feet
-digital library available on site and on line
- Studio for archiving and website: +/- 3,000 square feet
- Auxiliary Space (coat, kitchen, etc.) +/- 5,000 square feet
- Archival Storage: +/- 5,000 square feet
- Office Space: 3,000 – 4,000 square feet

The Owner's program is more fully described in the RFP for Architectural Services, attached hereto as **Attachment A**, and is subject to change during the course of the Project.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

Physical characteristics of the Project at the time of execution of this Agreement are known only to the extent described in the RFP for Architectural Services.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

Unknown at the time of execution of this Agreement.

§ 1.1.4 The Owner's anticipated design and construction schedule:

- .1 Design phase milestone dates, if any:

Unknown at the time of execution of this Agreement

- .2 Commencement of construction:

Unknown at the time of execution of this Agreement

- .3 Substantial Completion date or milestone dates:

First quarter 2012

- .4 Other:

§ 1.1.5 The Owner intends the following procurement or delivery method for the Project:

(Identify method such as competitive bid, negotiated contract or construction management.)

The method of procurement of construction services will be determined during the programming/feasibility study or schematic design phase. The Project may be constructed by a General Contractor pursuant to Mass. Gen. Laws c. 149, Sections 44A-H. However, the Authority may instead procure a construction manager at risk as authorized by Section 18 of the Authority's enabling statute, Chapter 773 of the Acts of 1960, as amended, by Mass. Gen. Laws c. 149A, or as otherwise may be authorized by law.

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:

(List number and type of bid/procurement packages.)

At the time of execution of this Agreement, it is anticipated that the Project will involve one or more early construction packages. The Architect shall be required to provide construction documents for early packages which may include but not be limited to early site work, concrete work and purchase of long-lead time materials and equipment including steel.

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

As further described in the RFP and in this Agreement, the Project shall be designed to achieve the highest practicable rating LEED certification level for New Construction.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4 who will serve as the Owner's Project Manager ("OPM") for the Project:

(List name, address and other information.)

Mr. Stuart D. Lesser
c/o Joslin, Lesser + Associates, Inc.
44 Pleasant Street, Watertown, MA 02472
Fax 617-924-3800
slesser@joslinlesser.com

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

(List name, address and other information.)

Mr. Stephan Chait
Director of Capital Projects
University of Massachusetts Building Authority
225 Franklin Street, 12th Floor
Boston, Massachusetts 02110

§ 1.1.10 The Owner will retain the following consultants and contractors:

(List name, address and other information.)

- .1 Cost Consultant:

Cost consultant services will be provided by the Architect as a part of Basic Services.

- .2 Scheduling Consultant:

Owner's Scheduling Consultant is the OPM.

- .3 Geotechnical Engineer:

Geotechnical engineering services shall be provided by the Architect as a part of Basic Services.

- .4 Civil Engineer:

Civil engineering services shall be provided by the Architect as part of Basic Services.

- .5 Other, if any:

(List any other consultants or contractors retained by the Owner, such as a Project or Program Manager, construction contractor, or construction manager as constructor.)

The Owner has retained the Owner's project manager identified in Section 1.1.8. It is anticipated, but not definite, that a construction manager will be selected and retained during the design phase and will perform pre-construction and construction management services. An independent engineer/commissioning agent will also be selected and retained. At the time of execution, no other Owner-retained consultants are anticipated.

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.4:

(List name, address and other information.)

§ 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2 under the terms and conditions set forth in this Agreement.

(List name, address and other information.)

§ 1.1.12.1 Consultants retained under Basic Services by the Architect include, but may not be limited to:

- .1 Structural Engineer:

.2 Mechanical Engineer:



.3 Electrical Engineer:



.4 Plumbing Engineer:



.5 Fire Protection Engineer:



.6 Parking & Traffic Engineer:



.7 Civil Engineer:



.8 Acoustical Consultant:



.9 Interior Designer:



.10 Telecommunications Consultant:



.11 Information Technology Consultant:



.12 Exhibit Design Consultant:



.13 Cost Estimating Consultant:



.14 Lighting Consultant:



.15 Code Consultant:



.16 Landscape Architect:



.17 LEED Consultant:

.18 Security Consultant:

The Architect may perform any category of the above-listed work with persons on its own payroll provided the Architect demonstrates to the satisfaction of the Owner, prior to commencing any portion of its Services, that it is qualified to perform such Services with its in-house professional staff. The Owner's approval shall be written and may be withheld for any reason or for no reason.

§ 1.1.12.2 Consultants retained under Additional Services:

None at the time of execution of this Agreement.

§ 1.1.13 Other Initial Information on which the Agreement is based:

None.

§ 1.2 The Architect recognizes that any Initial Information provided by Owner is provided for the Architect's convenience only and that such information shall be verified by the Architect and may materially change.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 Relationship. The Architect shall provide the professional services as set forth in this Agreement (the "Services"). The Architect acknowledges and accepts the relationship of trust and confidence established by this Agreement in connection with the Project and undertakes to cooperate with the Owner and the Owner's other consultants and contractors in furthering the interests of the Owner with respect to the Project. The Architect shall endeavor to promote harmony, cooperation, and effective communication between and among all Project participants for the duration of the Project.

§ 2.2 Standard of Care. The Architect shall perform the Services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances on projects of the same or similar size, scope, and complexity. The Architect shall perform the Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project and in conformance with the last project schedule approved by the Owner. The Architect represents and warrants that it possesses the requisite skill, expertise, and licensing to perform the Services required under this Agreement in accordance with the applicable standard of care.

§ 2.3 Project Team. The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project. The Architect's designation shall include certain key project team members ("Key Project Team Members") including a Principal-In Charge and Project Manager who will have overall responsibility for the delivery of services and completion of the Project and all other team members identified in the Architect's proposal, who shall be identified in **Exhibit C**, which is attached hereto and incorporated herein. The Key Project Team Members shall be available to devote the time and attention necessary to ensure complete and timely delivery of all Services under this Agreement. The Architect shall not replace any Key Project Team Member without the Owner's prior written approval, which approval shall not be unreasonably withheld.

§ 2.3.1 Consultants. Subject to the provisions of this Agreement, whenever the Services of consultants to the Architect are required, the Architect shall employ them and be fully responsible to the Owner for their work, payment, and the coordination and supervision thereof in all respects. The Architect shall be fully responsible for the professional and technical accuracy of all consultants and for the coordination of all designs, drawings, specifications, estimates and other services furnished by the Architect or the Architect's consultants. The Architect represents and warrants that its consultants are duly qualified, licensed, registered, and authorized by law to perform

the Services required under this Agreement in the Commonwealth of Massachusetts. If, at any time during the course of the Project, the Owner has an objection to any one or more of the listed consultants, the Architect shall, after receiving written direction from the Owner, replace the consultant(s) with new consultant(s) reasonably acceptable to the Owner. The Architect's compensation shall be equitably adjusted for the increase or decrease in the cost of the new consultant's services. The Architect shall provide the Owner a copy of its agreements with each listed consultant within fourteen (14) days of the execution thereof. No agreement between the Architect and any of the Architect's consultants may include any limits of liability unless approved in writing by the Owner prior to the execution of the consultant agreement. In all respects, the Architect shall bind its consultants in the same manner as the Architect is bound to the Owner.

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

§ 2.4 **Conflict of Interest.** Except with the Owner's prior knowledge and written approval, which approval may be withheld by Owner for any reason or for no reason, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 **Insurance.** The Architect shall maintain the following insurance for the duration of this Agreement or longer if required herein. Compensation for the insurance requirements of this section shall be included in the Basic Compensation to be paid to the Architect for Basic Services.

§ 2.5.1 Comprehensive General Liability ("CGL") with policy limits of not less than **One Million Dollars (\$1,000,000.00)** for each occurrence and in the aggregate for bodily injury (including death) and property damage including coverage for contractual liability on an occurrence basis. Additional Insured status with respect to the CGL insurance shall be provided for the Authority, the University of Massachusetts, and the Commonwealth under endorsements no less broad than CG 2026 (7/04 version) and CG 2037 (7/04 version), and shall continue through the 6-year extended reporting period described in Section 2.5.5. Copies of such endorsements shall be provided to the Authority with each required Certificate of Insurance. The required CGL coverage shall be maintained by the Architect for the same minimum period as required for professional liability coverage. The following exclusionary endorsements may be attached to the standard CGL form: Asbestos, Nuclear Hazard, War, Employment Practices Liability, and Fungus. No other exclusionary endorsements shall be attached without the prior written consent of the Authority, which consent the Authority shall have no obligation to provide.

§ 2.5.2 Automobile Liability covering owned, non-owned, rented, leased, and hired vehicles operated by the Architect with policy limits of not less than **One Million Dollars (\$1,000,000.00)** combined single limit and in the aggregate for bodily injury and property damage.

§ 2.5.3 Umbrella or excess policy covering over the CGL, the Automobile Liability, and the Employers Liability coverages in an amount not less than Five Million Dollars (\$5,000,000.00).

§ 2.5.4 Workers' Compensation at statutory limits under the Massachusetts Workers' Compensation Reform Act (M.G.L. c. 152) and Employers Liability with a policy limit of not less than **One Million Dollars (\$1,000,000.00)** each accident/each employee/policy limit. Such policy shall be endorsed with a waiver of subrogation in favor of the Authority, the University, and the Commonwealth. The Architect's employees, servants and agents shall be deemed not to be the Owner's employees for either worker's compensation or unemployment insurance purposes.

§ 2.5.5 Professional Liability covering the Architect's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than **Five Million Dollars (\$5,000,000.00)** per claim and in the aggregate. Unless, in the documents incorporated by reference into the Agreement or a the written request of the Owner, the Architect is specifically required to provide project specific insurance, the policy may be a "claims made" policy. If the policy is a "claims made" policy, it shall include a retroactive date that is no later than the effective date of this Agreement, and an extended reporting period of at least six (6) 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 acceptance by the Construction Manager of final payment under the construction management agreement; or (4) the date of final completion of the Project and the taking of possession of the Project for

occupancy by the Owner. Throughout the term of the Agreement and the entire extended reporting period, the Architect shall provide renewal certificates of professional liability insurance to the Owner as evidence that this coverage is being maintained.

§ 2.5.6 Reserved.

§2.5.7 Architect shall obtain and carry for the duration of the Project 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 Services required under this Agreement in the event of loss or destruction while in the custody of the Architect until all covered papers and data are turned over to the Owner. This coverage shall include coverage for relevant electronic media, data, and models, including, but not limited to, documents stored in computer aided design drafting (CADD) systems and building information models (BIM) maintained by the Architect.

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

§2.5.9 Simultaneously with its execution of the Agreement, the Architect shall deliver to the Owner three (3) original copies of a properly endorsed certificate or certificates of insurance acceptable to the Owner as evidence that each of the required insurance coverages (with no less than the required limits) as herein set forth have been purchased and are in full force and effect. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, endorsements, exclusions, and policy effective and expiration dates. The certificates will show the Owner, the University of Massachusetts, and the Commonwealth of Massachusetts as additional insured on the Comprehensive General Liability, Automobile Liability, umbrella or excess policies. Throughout the period that the Architect is required to maintain any policies of insurance hereunder, the Architect shall submit updated certificates prior to the expiration of each of the policies referenced in the certificates so that the Owner shall at all times possess certificates indicating current coverage. Failure by the Architect to obtain all policy renewals and to provide the respective insurance certificates as required shall constitute just cause for Owner's suspension of the Architect's Services or termination of this Agreement. In the event of any such suspension or termination, the Architect shall be fully liable to the Owner for any increased costs or schedule impacts to the performance of the Architect's Services for the Project.

§2.5.10 Cancellation, non-renewal or material modification of any insurance required by the Agreement, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the Owner at least thirty (30) days prior to the effective date thereof, which shall be expressed in said notice. Each certificate of insurance shall state that the insurer will provide to the Owner at least thirty (30) days prior written notice of cancellation, non-renewal or material modification of the policy.

§2.5.11 All insurance policies maintained by the Architect pursuant to the requirements of this Agreement other than the professional liability insurance policy shall provide that the insurance, as it applies to the Owner, shall be primary, and any insurance maintained by the Owner shall be non-contributing.

§2.5.12 The Owner reserves the right to request, and upon request, the Architect agrees to furnish, a copy of each insurance policy and all endorsements thereto.

§2.5.13 The Architect shall be responsible for the payment of any and all deductibles under all of the insurance required by this Agreement. In no event shall the Owner be responsible for the payment of any deductibles, self-insured retentions or any portion thereof.

§2.5.14 No limitation of insurance shall release the Architect from any liability under this Agreement. Without limitation, the Architect shall bear the risk of any loss not covered by the insurance policies that it maintains.

§2.5.15 The Architect shall require all consultants engaged by it in connection with the Project to maintain similar insurance coverages as the Architect is required to maintain under this Agreement. Notwithstanding the foregoing sentence, the insurance maintained by any consultant engaged by the Architect to undertake work for the Project with respect to hazardous materials may not include any exclusion for asbestos, fungus, pollution, or any other

hazardous condition, and in any event, the Authority shall determine on an individual basis which exclusions are acceptable for each such consultant.

§2.6 Relation to Construction Manager. In the event that the Owner determines to construct the Project using a construction manager at risk form of procurement, then the Owner's procurement of a construction manager ("Construction Manager") may occur at any time determined by the Owner after award of this Agreement to the Architect. In such case, the Architect's Services relating to the Construction Manager shall include, but may not be limited to, the following:

§2.6.1 Assist the Owner in developing a request for proposals for construction manager at risk services and obtaining and reviewing responses from respondents.

§2.6.2 Participate in pre-proposal conferences with prospective respondents, answer questions from prospective respondents, interview respondents, and assist the Owner in selecting the construction manager and in awarding and preparing the construction management contract. The Architect shall prepare all information reasonably required by the Owner for inclusion in the Owner's solicitation of proposals from prospective construction managers.

§2.6.3 Continuously coordinate the work of the Architect and its consultants with the Construction Manager during the Construction Manager's pre-construction phase of work to ensure that the Construction Manager plays an integral part in Project planning at the earliest practicable phase. In the event that a construction manager at risk is hired, then the design and construction process will be envisioned as a cooperative and coordinated team approach in which the Owner, the Architect, and the Construction Manager will engage in early and continuous interaction to accomplish the Project within the Project budget and Project schedule approved by the Owner, and the Architect will be required to work cooperatively with the Construction Manager and the Owner and to fully utilize the Construction Manager's services and resources at the earliest possible phase of the Project to accomplish the design and construction of the Project as efficiently as possible.

§2.6.4 Work with the Construction Manager by reviewing the design drawings and the construction documents at each stage in the Project (the "A/CM Review"). The A/CM Review shall take into account quality of materials, systems, and equipment to ensure that the design drawings and construction documents will result in a complete, fully functional, and efficient design with minimum lifecycle cost. The A/CM Review will also seek to eliminate areas of conflict and overlap of work to be performed by subcontractors and to ensure that there are no errors, omissions or inconsistencies in design. The Architect will interact with the Construction Manager to obtain information, estimates, options and recommendations regarding construction materials, methods, systems, phasing, and costs that will provide the highest quality building within the Project budget and schedule approved by the Owner.

§2.6.5 Work with the Construction Manager and the Owner to develop phasing and project schedules that identify all major design phase milestones and all significant project activities.

§2.6.6 Work with the Construction Manager to develop the most logical, competitive, seamless and distinct trade bid packages with all scopes of work included in the packages and provide for bid alternatives (deductive or additive) in each trade bid package where appropriate.

§2.6.7 Participate in the negotiation of the guaranteed maximum price with the selected Construction Manager and prepare all required documentation and contract documents.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include all usual and customary architectural, engineering, geotechnical engineering, code compliance, structural engineering, mechanical engineering, electrical engineering, plumbing engineering, fire protection engineering, laboratory design, acoustical engineering, lighting, interior design, telecommunications, information technology, civil engineering, landscape design, security, parking and traffic engineering, wetlands mapping, soil borings, test pits, environmental needs analysis, cost estimating, surveys, any other such services as are described in this Agreement and in the Architect's lump sum fee proposal, set forth in **Exhibit A** hereof, and any other services performed by Architects on project of similar scope and complexity, except that those services described in Section 3.1.7 shall be compensated in accordance with Section 11.2. During each phase of the Project, the Architect shall perform the following Services as a part of Basic Services:

§ 3.1.1 Coordination and Schedule. The Architect shall manage the Architect's Services and the Services rendered by Architect's consultants, consult with the Owner, research applicable design criteria, attend and facilitate Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall fully coordinate its services with those services provided by the Owner and the Owner's other consultants and contractors in connection with this Project and any other project on the Boston campus that may impact the Project, including the expansion project for the John F. Kennedy Library and Museum. In the event that a Construction Manager is hired, then the Architect and its consultants shall provide the Construction Manager with all necessary documents and information so that the Construction Manager may perform its preconstruction services.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner for review and approval a proposed schedule of the Architect's Services for inclusion in the Project schedule. The Architect's proposed schedule information shall be in form, substance, and detail acceptable to the Owner. The schedule of the Architect's Services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required: (1) for the Owner's review, (2) for the orderly performance of the Owner's consultants, (3) for approval of submissions by authorities having jurisdiction over the Project, and (4) to coordinate the work of the Architect with the work of Owner's other consultants and contractors on this Project, all in an efficient and orderly fashion.

§ 3.1.4 Once the Owner and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for causes beyond the Architect's reasonable control. Time limits established by the Project schedule as approved by the Owner are of the essence of this Agreement.

§ 3.1.5 LEED. The Project shall be designed to meet LEED standards and achieve the highest practicable LEED for New Construction certification level. The Architect shall be responsible for coordinating the delivery of all LEED and sustainable design services required on the Project. The Architect shall perform such services in a timely fashion as early as practicable during the Project to allow the Owner to make decisions regarding sustainable design elements in the most efficient manner so as to not delay the Project or cause the Architect to re-render any services. All LEED and sustainable design services necessary to obtain the highest practicable LEED certification level, including the Architect's written comparative analysis of achieving as an alternative higher levels of certification, shall be included as Basic Services. All LEED-related registration fees shall be paid as reimbursable expenses and shall be limited to the actual fees incurred without any premium or markup by the Architect. The Architect shall provide at least one LEED Accredited Professional ("LEED AP") to serve as the LEED team leader to develop and implement the LEED program for the Project.

In performing Basic Services, the Architect shall:

§ 3.1.5.1 Register the Project with the U.S. Green Building Council ("USGBC");

§ 3.1.5.2 Assemble a sustainable "Green Team" composed of members of the Architect's design team, the Owner, the University, the Institute, and other Project stakeholders (subject to the approval of the Owner) who will establish and implement the sustainable design goals for the Project;

§ 3.1.5.3 Conduct a sustainable design charrette with the Green Team at the inception of the Project to identify alternative sustainable design strategies and establish LEED goals for the Project, and prepare a written comparative analysis of achieving as an alternative LEED-Silver or higher certification;

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

§ 3.1.5.5 Perform the required calculations, conduct energy modeling, and collect the required information needed to meet the LEED prerequisites and credit requirements;

§ 3.1.5.6 Fully integrate the LEED process, goals, and budget into the all phases of the design and construction documents;

§ 3.1.5.7 Submit all appropriate documentation, including all required calculations and documentation, throughout the design and construction process to the USGBC;

§ 3.1.5.8 Prepare responses and submit additional documentation required by comments or questions received from the USGBC after review of the documentation submitted by the Architect;

§ 3.1.5.9 Submit all prerequisites and credits for review by the USGBC at the completion of the building's construction and oversee all matters pursuant to the issuance (or denial) of certification including any appeals which may be filed after either review period;

§ 3.1.5.10 Work with the Owner to apply for and administer the receipt of any and all state, local and private sector initiatives that may result in grant monies to be applied to the Project's LEED initiative;

§ 3.1.5.11 Prepare drawings and specifications that incorporate LEED requirements and design elements in the Contract Documents to define the Construction Manager's (or General Contractor's) responsibilities and documentation requirements related to LEED certification;

§ 3.1.5.12 Provide LEED certification services throughout the duration of the Project; and

§ 3.1.5.13 Prepare a final LEED certification report documenting the LEED rating the Project achieved, including the LEED certification plan, LEED certification documentation submitted, LEED certification reviews received from the USGBC, together with the specific LEED credits that the Project is recognized as having received. The final LEED certification report shall include a detailed summary of the Owner's post-commissioning obligations with regard to the LEED certified elements of the Project, including any ongoing operations, maintenance, re-certification, or other similar obligations.

§ 3.1.6 Coordination with Governmental Entities. The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services. The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.1.7 Other Consultants. Each of the following services shall also be included in the scope of the Architect's Basic Services, but in each event, such services, if provided by a consultant to the Architect, shall be paid for as additional services pursuant to Section 11.2 of the Agreement:

- .1 If requested by the Owner, furnishing detailed topographical surveys describing physical characteristics, legal limitations and utility locations for each alternative development site and a written legal description of each site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site (at maximum one foot increments); locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. All such work is to be done in accordance with sound engineering practices.
- .2 If requested by the Owner, furnishing the services of geotechnical engineers when such services are required by the Architect in order to perform its duties under this Agreement. Such services may include but are not limited to providing test borings, test pits, percolation tests, and other similar tests, as well as the analysis of test results as required in order to assess soil bearing values, and to develop reports and appropriate professional recommendations.
- .3 If requested by the Owner, furnishing the services of environmental engineers when such services are required by the Architect in order to perform its duties under this Agreement. Such services may

- include but are not limited to wetlands mapping, flood plain analysis, environmental site assessments, evaluations of hazardous materials, including recommendations regarding the handling, removal, disposal of or exposure of persons to hazardous materials in any form at the Project site, which hazardous materials shall include but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions with reports and appropriate professional recommendations.
- .4 If requested by the Owner, furnishing the services of a traffic and parking consultant when such services are required by the Architect in order to perform its duties under this Agreement. Such services may include but are not limited to the review and analysis of existing traffic conditions and parking facilities near the location of the Project site, and the calculation of the anticipated impact that the new building will have on these traffic conditions and parking facilities, with reports and appropriate professional recommendations.
 - .5 Furnishing the services of any other type of consultant, expert or consulting company which may be requested by the Owner in connection with the Project, including but not limited to, consultants, experts and consulting companies to provide any of the following services: utility verification, air quality monitoring services, hazardous materials abatement advice, and noise abatement design services.

§ 3.1.8 Selection of Other Consultants. Whenever the services of a consultant or expert, which is not a part of the Architect's team, are requested by the Owner, the Architect shall prepare requests for qualification, requests for proposals and such other documents as may be necessary in the opinion of the Owner to procure the requested services. The Architect shall obtain a minimum of three (3) competitive proposals from qualified consultants or experts and shall deliver same to the Owner, together with the Architect's written recommendation as to which consultant or expert should be selected and the reasons for such recommendation. The Architect shall retain such additional consultants or experts only upon written approval of the Owner.

§ 3.1.9 BIM. The Architect shall advise the Owner on the use of building information modeling (BIM) and, if required by the Owner, prepare all Instruments of Services in a form suitable for use in a BIM model for design, construction, commissioning, and building operations and maintenance.

§ 3.1.10 Independent Engineer/Commissioning Agent. As appropriate and necessary during each stage of the Project, the Architect shall fully cooperate and support the work of the Project's independent engineer/commissioning agent. The Architect shall fully coordinate its services with the independent engineer/commissioning agent to ensure that the independent engineer/commissioning agent can timely and efficiently perform its scope of services. The Architect shall participate in meetings to resolve programming, design, construction, operational and maintenance issues that bear on the commissioning of the Project. The Architect shall provide the independent engineer/commissioning agent will full information about the design of the Project.

§ 3.1.11 Life Cycle Costs. At each phase of design, the Architect shall conduct a life cycle cost analysis of all major components and systems to be included in the Project. As design options and value engineering items are developed, a revised life cycle cost analysis shall be provided to assist the Owner in decision making.

§ 3.1.12 Basis of Design. Develop a complete written Project basis of design to include all structural, architectural, wall cladding, mechanical, electrical, plumbing, building controls, and fire protection meeting the most current ASHRAE Building Commissioning standards.

§ 3.1.13 Document Requirements. Provide all construction completion documents including building information models (if required), permit affidavits, Project and construction schedules and schedule updates, and Basis of Design updates.

§ 3.1.14 Early Packages. The Architect shall be required to provide construction documents for early packages which may include but not be limited to early site work, concrete work and purchase of long-lead time materials and equipment including steel.

§ 3.2 PROGRAMMING/FEASIBILITY STUDY PHASE SERVICES

§ 3.2.1 Basic Services will include a Programming/Feasibility Study Phase. During this phase, the Architect's Services shall include, but may not be limited to, the Services listed in this Section 3.2.

§ 3.2.2 Meet with representatives of the Owner, the Institute and the University to review Project objectives.

§ 3.2.3 Review any drawings or documents provided by the Owner, the Institute or the University.

§ 3.2.4 Develop a detailed program in consultation with the Owner, the Institute and the University, based on: (a) a space needs analysis, (b) a functional needs analysis, (c) user interviews, and (d) the Architect's knowledge and expertise in the design of similar facilities.

§ 3.2.5 Analyze the development capacity of the proposed site, including building, parking and infrastructure, and propose no less than three (3) alternative solutions that each meet the Institute's needs, assess each option's opportunities and challenges, and make specific recommendations regarding the approach to design.

§ 3.2.6 Prepare diagrams and written narratives to describe options for the building systems including architectural, structural, mechanical, electrical, plumbing, fire protection, telecommunications information technology, and other systems.

§ 3.2.7 Prepare an analysis of the requirements for the new facility and any impact on neighboring buildings and building systems.

§ 3.2.8 Prepare a comparative analysis of significant characteristics of each system, including a comparison of construction costs, maintenance costs, operational costs and all other relevant factors, in order to provide the Authority, the Institute and the University with information adequate to assess the options presented.

§ 3.2.9 Prepare relative cost analyses for the building options explored, which identify all project development costs, and operational and maintenance expense, and a comparison of costs, using similar facilities at peer institutions as a benchmark.

§ 3.2.10 Prepare a Project schedule and phasing strategy, outlining the time required to complete and occupy the building.

§ 3.2.11 Conduct a LEED Charrette during this Phase, or at the option of the Owner, during the Schematic Design Phase.

§ 3.2.12 Prepare a Feasibility Study Report that contains, at a minimum: (1) a compilation and summary of all of the required deliverables set forth above, and (2) specific recommendations and supporting rationale regarding the facility program, and all physical features of the Project, including the size, height, configuration, building systems, infrastructure, and site improvements, and other relevant factors, a preliminary draft of LEED certification goals and strategies to achieve them, and a thorough analysis of all Project development costs.

§ 3.2.13 Prepare a detailed cost estimate (including both hard and soft costs) and a project schedule for the Project. The cost estimate and project schedule shall be form, substance and detail acceptable to the Owner. The final facility program and the associated cost estimate and Project schedule shall be approved by the Owner prior to commencement of schematic design services.

§ 3.3 SCHEMATIC DESIGN PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the documents and information prepared by the Architect during the Programming/Feasibility Study Phase, during the Schematic Design Phase of the Project, the Architect shall render the Services described in this Section 3.2 as a part of Basic Services.

§ 3.3.2 The Architect shall discuss with the Owner and Construction Manager alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project and shall consult with the Owner as necessary to develop a sufficient number of alternative schemes that accommodate the Project's full set of needs and final building program. The Schematic Design Phase shall be iterative and include a

series of drawings, models, and narratives to present alternative workable scenarios followed by working meetings with the Owner and to arrive at a fully refined design alternative.

§ 3.3.3 The Architect shall conduct meetings with community groups and other interested parties, as necessary, to address potential community impacts and provide general public outreach, input and information relating to the Project. The Architect shall prepare all documents and presentation materials for such meetings.

§ 3.3.4 Based on the Project requirements discussed with the Owner, the Architect shall prepare and present for the Owner's review and approval schematic design documents ("Schematic Design Documents") depicting no fewer than three (3) options for the organization of programmed spaces for the Institute. The Schematic Design Documents shall consist generally of drawings and other documents including a site plan, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.3.5 For each of the three (3) design alternatives for the Project, the Architect shall prepare a complete set of schematic design documents (the "Schematic Design Documents"). The Schematic Design Documents shall include:

- (a) Diagrams to show the objectives for the design, including sketches to illustrate program functional relationships;
- (b) Site plans and diagrams showing pedestrian, handicapped and vehicular access and circulation, service areas, environmental factors, site drainage, landscaping, site amenities, utilities and all other relevant factors for the Project;
- (c) Detailed floor plans of each building level identifying all program spaces and new, existing, and demolished building components in sufficient detail to evaluate Project and associated costs;
- (d) Exterior and interior building elevations and where appropriate, cross-sections, and three dimensional views, as required to provide a full visual description of each of the schematic design alternatives;
- (e) Drawings and narrative descriptions of building systems including architectural, structural, mechanical, electrical, plumbing, fire protection, elevator, telecommunications, information technology, security and other relevant systems; and
- (f) Furniture layouts for major spaces and sample layouts.

§ 3.3.6 The Architect shall prepare a comparative analysis of alternative systems, including a comparison of construction costs, maintenance costs, operational and life cycle costs, and other relevant factors, in order to provide the Owner with information adequate to assess the schematic design alternatives presented.

§ 3.3.7 The Architect shall provide a written analysis of the impact of the Project on existing campus operations including, but not limited to, pedestrian, handicapped and vehicular traffic, utilities, public safety, security, and neighboring buildings.

§ 3.3.8. The Architect shall prepare a detailed code review of all proposed construction to ensure compliance with applicable building, fire, plumbing, electrical and other codes, including the Americans with Disabilities Act (ADA), and a life safety plan indicating allowable area for construction type proposed, location of fire separation walls, means of egress paths, and required exit widths for doors, stairs and corridors.

§ 3.3.9 The Architect shall conduct a thorough review and analysis of all permitting and regulatory approvals required for the Project and shall prepare, for the Owner's review and approval, a permitting schedule and strategy outlining, among other things, the time required to obtain all necessary governmental permits approvals. The Architect shall be responsible for implementing the permitting plan on behalf of, and in coordination with, the Owner. The Owner shall provide and pay for legal counsel in support of Project permitting.

§ 3.3.10 The Architect shall meet at least once with each of the following: State Building Inspector, Boston Fire Department, State Plumbing Inspector, Boston Electrical Inspector, and other local, municipal departments and utility providers to determine necessary utility tie-ins and assess the related costs.

§ 3.3.11 The Architect shall work with the Owner to develop a detailed Project schedule and phasing strategy, outlining the time required to obtain all necessary permits and approvals, acquire access to the site, complete design,

bid and award construction contracts, and complete construction, commission and occupy the building within the target completion and occupancy date specified in Section 1.1.4.

§ 3.3.12 The Architect shall develop a detailed estimate of Total Project Cost for the Project and a Project budget update for the recommended schematic design alternative for review and approval by the Owner.

§ 3.3.13 If a Construction Manager has been hired, the Architect shall meet with the Construction Manager to review, coordinate, and reconcile Project cost estimates and schedules, discuss Project design and constructability issues, and value engineering proposals, and assist the Construction Manager with other pre-construction tasks.

§ 3.3.14 The Architect shall complete the U.S. Green Building Council's LEED® Rating System checklist for the Project; and discuss with the Owner options for increasing the "score," and provide documentation for construction costs associated with increasing the checklist score.

§ 3.3.15 The Architect shall review all laws, codes, and regulations applicable to the Architect's services based on the schematic design alternatives.

§ 3.3.16 The Architect shall prepare a written Schematic Design Phase Summary Report for the Owner's review and approval including all Instruments of Service prepared during the Schematic Design Phase including, but not limited to, a coordinated 3D BIM design and versions (if required), 2D schematic drawings, and preliminary specifications coordinated between disciplines, detailed code review and analysis, LEED certification analysis, energy model, detailed permitting and regulatory approval report, comparative systems analysis, detailed floor plans and elevations, site plan, and Project schedule and budget. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.3.17 The Architect shall present the data and conclusions of the Schematic Design Phase Summary Report at meetings with the Owner.

§ 3.3.18 The Architect shall prepare interior and exterior building renderings suitable for use in project presentations and community outreach initiatives.

§ 3.4 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.3, the Architect shall prepare Design Development Documents for the Owner's review and approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including 2D drawings and plans, specifications, a fully coordinated 3D BIM (if required), sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project with respect to architectural, structural, mechanical, electrical and plumbing systems, materials and such other elements as may be appropriate.

§ 3.4.2 Design Development Documents prepared by the Architect shall consist of drawings, specifications and other documents that fully define the scope, quality, and quantities of all proposed components of the Project including, but not limited to, building materials, building systems, equipment, and anticipated construction methods.

§ 3.4.3 The Architect shall consult with the Owner, the Institute and the University as necessary to develop interior layouts and configurations.

§ 3.4.4 The Architect shall prepare appropriate data and illustrations for furniture, fixtures, and equipment necessary to develop interior layouts and configurations, including specially designed items or elements, to indicate finished appearance and functional operation.

§ 3.4.5 The Architect shall make recommendations as to colors, materials, and finishes not otherwise specified.

§ 3.4.6 The Architect shall make recommendations to the Owner with respect to long lead time procurement items and early bid packages.

§ 3.4.7 The Architect shall provide, for approval by the Owner, recommendations for layouts for furniture, fixtures, and equipment to be procured and recommendations on the method of procurement including separate bidding if appropriate and/or inclusion in the prime construction contract.

§ 3.4.8 The Architect shall prepare for review and approval by the Owner applications for any required regulatory approvals (other than environmental permits), submit applications, and attend review and other meetings and hearings required by governmental authorities and others having jurisdiction over the Project.

§ 3.4.9 The Architect shall prepare an initial mechanical, electrical, and plumbing systems design intent document that defines the performance expectations and objectives for the MEP systems, and an outline of the technical specifications for the Project.

§ 3.4.10 The Architect shall update the Project schedule and phasing strategy, outlining the time required to obtain all necessary permits and approvals, complete the final design, bid the Project, award contracts, and complete construction and commissioning.

§ 3.4.11 If a Construction Manager has been hired, the Architect shall meet with the Construction Manager to review and reconcile Project cost estimates and schedules, discuss Project design, construction phasing, constructability issues, and value engineering proposals and assist the Construction Manager with other pre-construction issues.

§ 3.4.12 The Architect shall assist in the development of a detailed update to the cost estimate and Project budget for construction of the proposed design, including the furniture, fixtures and equipment recommended for the Project, based upon quantity and unit costs.

§ 3.4.13 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development documents to the Owner for review and approval.

§ 3.5 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.5.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project scope or quality, Project schedule, and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's review and approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of a 3D BIM (if required), and 2D drawings and specifications setting forth in full, complete, and coordinated detail the quality levels of materials and systems and other requirements for the construction of the Project. The Construction Documents shall illustrate, specify, and describe in full, complete, and coordinated detail the requirements for the construction of the Project, including, but not limited to, structural, mechanical, electrical, plumbing, fire protection, telecommunications and information technology requirements, and all other systems and equipment that, once constructed, will result in a complete and fully-operational facility.

§ 3.5.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project. The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.5.3 The Construction Documents shall include drawings and specifications that establish in detail the quantity and quality of all materials, systems and equipment required for the Project.

§ 3.5.4 The Architect shall submit the Construction Documents and associated cost estimates and Project schedule to the Owner and if one is hired to the Construction Manager for review and approval at the fifty percent (50%) and ninety percent (90%) stages of completion. The Architect shall meet with the Owner and Construction Manager to review the partial completion drawings and shall respond and incorporate comments in the Construction Documents as necessary and appropriate. The Architect shall be obligated to incorporate the Owner's comments unless doing so would result in the Architect's breach of its professional standard of care. Upon approval of the ninety percent (90%) plans, cost estimates, and Project Schedule by the Owner, the Architect shall proceed to develop final Construction Document drawings and specifications for the Project, including all trade contractor bid documents and bid packages.

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

§ 3.5.6 The Architect shall prepare early bid packages and related contract documents as may be required by the Owner.

§ 3.5.7 Upon approval by the Owner of the ninety percent (90%) plans, cost estimates and Project schedule, the Architect shall develop final Construction Document drawings and specifications for the Project, including all bid documents and packages, incorporating any comments including those from a coordination review.

§ 3.5.8 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Construction Manager(or General Contractor); and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms. The Architect shall assist the Owner, the Construction Manager or Contractor, and the Owner's Project Manager in evaluating sub-bids and/or proposals, and shall make recommendations to the Owner with respect to the award or rejection of sub-bids/proposals with appropriate justification. The Architect shall also assist the Owner in evaluating any Guaranteed Maximum Price proposals and supporting documentation.

§ 3.5.9 The Architect shall assist the Owner in connection with the Authority's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.5.10 The Architect shall assist the Owner in the establishment of bid alternates, if required, and shall prepare and issue any required addenda to bid documents.

§ 3.5.11 The Architect shall develop at the completion of Construction Document Phase a final update to the detailed cost estimate construction costs, including a breakdown by trade or filed sub-bids, which shall be reviewed and reconciled with the Construction Manager, if any, and the Owner.

§ 3.6 BIDDING PHASE SERVICES

§ 3.6.1 GENERAL

The Architect shall assist the Owner in any general and sub bid prequalification process required by the Owner, which may include establishing a list of prospective subcontractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in connection with the subcontractor, and if applicable general contractor procurement, by (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.6.2 BIDDING

§ 3.6.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents. Consistent with the fast-tracked method of delivery, the Architect shall assist the Owner and the Construction Manager, if any, in the preparation of the necessary bidding information, and bidding forms for all required sub-trades. The Architect will provide Construction Documents with division of work clearly defined between all required publicly bid sub-trades and alternate bid items. All Construction Documents shall be prepared to conform with the bidding requirements of the Owner. It is the intention of Owner to issue multiple bid packages as design, permitting, and Project sequencing allows. For each bid package, the Architect shall prepare and deliver preliminary and final submissions of Construction Documents, and revisions as necessary, that shall include the following: drawings showing in detail the work to be performed by contractors, including plans, drawings, specifications (consisting of all CSI Division 1 through 16 specifications) and other design related documents required to support the Owner's and, if applicable, the Construction Manager's construction procurement proposals (e.g., special conditions and technical specifications) as required by the Owner.

§ 3.6.2.2 The Architect shall participate in one (1) pre-proposal conference with prospective bidders, prepare written answers to questions from prospective bidders during the bidding period and assist the Authority in selecting the Construction Manager (or General Contractor) and in awarding the Construction Contract.

§ 3.6.2.3 In the event that a Construction Manager is hired, the Architect shall assist the Construction Manager in bidding the trade work for the Project by assisting with the prequalification of trade contractors and subcontractors, scheduling bid proposals, preparation and delivery of bid documentation, and participating in pre-bid conferences with prospective bidders and review of bids. The Architect shall advise the Owner as to matters relating to design as they may arise at pre-bid conferences, prepare and provide the Owner with minutes of said conferences, and respond to written or other bidder questions through the Owner.

§ 3.6.2.4 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.6.2.5 The Architect shall assist the Owner in obtaining, tabulating, and reviewing responses to all sub bids and general bids.

§ 3.7 CONSTRUCTION PHASE SERVICES

§ 3.7.1 GENERAL

§ 3.7.1.1 The Architect shall provide administration of the Contract between the Owner and the construction manager as set forth below and in the Contract for Construction.

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

§ 3.7.1.3 The Architect's responsibility to provide Construction Phase Services commences with the Owner's approval to the Construction Manager (or General Contractor) to proceed with construction under the agreement between the Owner and the Contractor and terminates on the date the Architect issues the final Certificate for Payment provided that: (i) usual and customary assistance in the utilization of equipment and systems, such as start-up, testing, adjusting and balancing, shall be provided as a part of Basic Services, whether before or after the date of the final Certificate of Payment, (ii) inspections and other services of the Architect made necessary by reason of the acts, errors, or omissions of the Architect shall be performed by the Architect as a part of Basic Services, whether before or after the date of the final Certificate of Payment, and (iii) if the Architect's final inspection and close-out services shall be delayed, for reasons beyond the control of the Architect, the Architect shall be entitled to compensation for Additional Services, but only for services performed and costs incurred by the Architect beyond those services and costs that would have been performed and incurred had such services been timely performed.

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

§ 3.7.1.5 The Architect shall prepare documents for LEED Certification, including obtaining from the Construction Manager or General Contractor any requisite information that is part of the LEED Certification process.

§ 3.7.1.6 The Architect shall coordinate and cooperate with the Owner's independent engineer and commissioning agent.

§ 3.7.2 EVALUATIONS OF THE WORK

§ 3.7.2.1 The Architect shall visit the site at least once a week and at more frequent intervals as appropriate to the stage of construction to become generally familiar with the progress and quality of the portion of the Work completed (including participation by the Architect's consultants as needed in order to ensure that they are generally familiar with the progress and quality of those portions of the Work which they designed), and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will

be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect, and its consultants as appropriate, shall document all site visits with a written narrative Site Report describing work in place, specific inspections conducted (including reference to applicable CSI specification section), work in place that does not meet the specifications, and at least 4-5 photos of the general site and 2-3 photos of all non-complying work, and submit Site Reports to the Owner. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and shall specifically report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work..

§ 3.7.2.2 The Architect shall attend all weekly job meetings, and will keep and distribute minutes of such meetings in a timely manner.

§ 3.7.2.3 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager or General Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.7.2.4 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

§ 3.7.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.7.3.1 The Architect shall review Applications for Payment and based upon its observations and evaluations shall recommend to the Owner whether such payments shall be made and, if the Owner concurs, shall certify the amounts due the Construction Manager or General Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.7.2 and on the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.7.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the right to payment, or (4) ascertained how or for what purpose the Construction Manager or General Contractor has used money previously paid on account of the Contract Sum.

§ 3.7.3.3 The Architect shall maintain a detailed record of the Applications and Certificates for Payment.

§ 3.7.4 SUBMITTALS

§ 3.7.4.1 The Architect shall provide prompt and timely performance of office construction administration services, including but not limited to processing of all submittals, including receipt, review of, and appropriate action on Shop Drawings, Product Data, Samples and other submittals; timely response to Requests for Information (RFI), issuing of Architect's Supplemental Information as needed, and certification of substantial and final completion.

§ 3.7.4.2 For Architect Proposed Requests and Contractor or Construction Manager Proposed Change Orders, prepare and distribute supplemental Drawings, Instructions, and/or Specifications describing the work to be added, deleted or modified; review the proposals from the Contractor or Construction Manager(s) for quantities and the costs of labor and materials; review and make recommendations relative to changes in time for completion of the Project and prepare Change Orders and Construction Change Directives for the Authority's approval; review Contractor or Construction Manager submitted Time Impact Analyses and make recommendations on any Contractor or Construction Manager requests for extension of time for any Change Order or Construction Change Directive; and coordinate all communications, approvals, notifications and record keeping relative to changes in the Work.

§ 3.7.4.3 The Architect shall review the Construction Manager's (or General Contractor's) submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review, which time period shall not exceed fourteen (14) calendar days. Should the Architect require additional time to review a submittal, the Architect shall inform the Owner and the Construction Manager (or General Contractor) for the reasons that additional time is required. The Architect shall not be required to review partial submittals nor submittals for which necessary correlated submissions have not been received.

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

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

§ 3.7.4.6 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness in no more than fourteen (14) calendar days. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

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

§ 3.7.5 CHANGES IN THE WORK

§ 3.7.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.7.5.2 If the Architect determines that implementation of the requested changes in the Work would result in a material change to the Contract for Construction that may cause an adjustment in the Contract Time or Contract

Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation, and based upon information gathered by the Owner, the Architect shall review and advise the Owner concerning the additional cost and time that might result from such change.

§ 3.7.5.3 The Architect shall maintain records relative to changes in the Work.

§ 3.7.6 PROJECT COMPLETION

§ 3.7.6.1 The Architect shall fully cooperate and support the work of the Project's independent engineer/commissioning agent during the commissioning and start-up phase of the project. The Architect shall participate in meetings to resolve operational issues with the Project and shall provide the independent engineer/commissioning agent with full information about the design of the Project, and shall verify that the Construction Manager (or General Contractor) has met all commissioning requirements.

§ 3.7.6.2 Upon receipt of notice from the Construction Manager (or General Contractor) that the Work is sufficiently complete, in accordance with the Contract Documents, to permit occupancy or use of the facility, the Architect shall initiate Project closeout services.

§ 3.7.6.3 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; prepare affidavits required by the Building Inspector for issuance of a certificate of occupancy, receive from the Construction Manager and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Construction Manager; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents, and a Certificate of Final Acceptance for the Project.

§ 3.7.6.4 The Architect shall conduct detailed inspections with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager (or General Contractor) of Work to be completed or corrected.

§ 3.7.6.5 Based on its detailed inspections, the Architect shall assemble a single combined punch list, in a format approved by the Authority, which includes all outstanding work including architectural, hardware, site, and mechanical, electrical, plumbing and fire protection work; and shall monetize the punch list to determine a recommendation of amounts to be withheld until final completion, correction and acceptance of the Work. When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.7.6.6 The Architect shall give notice to the Construction Manager (or General Contractor) of deficiencies found in follow up inspections.

§ 3.7.6.7 The Architect shall conduct a final inspection with the Owner to verify final completion of the Work.

§ 3.7.6.5 The Architect shall give receipts for, review and forward to the Owner the following materials and information received from the Construction Manager (or the General Contractor): (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; (3) warranties, affidavits, invoices, record drawings, and as-builts, and (4) any other documentation required of the Construction Manager or the General Contractor under the Contract Documents.

§ 3.7.6.6 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct no fewer than three (3) meetings with the Owner, independent engineer/commissioning agent, and campus personnel to review the facility operations and performance and conduct a post-construction evaluation.

§ 3.7.6.7 The Architect shall provide assistance to equipment suppliers in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance and consultation during operation.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 The following table indicates whether certain Services are Basic or Additional Services. The Architect shall provide Additional Services, whether or not listed below, if requested the Owner and authorized by the Owner in writing prior to the rendering of any such additional services.

Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	Architect	Basic Services
§ 4.1.2 Multiple preliminary designs	Architect	Basic Services
§ 4.1.3 Measured drawings	Architect	Basic Services
§ 4.1.4 Existing facilities surveys	Architect	Basic Services
§ 4.1.5 Site Evaluation and Planning	Architect	Basic Services
§ 4.1.6 Building information modeling	Architect	Basic Services
§ 4.1.7 Civil engineering	Architect	Basic Services
§ 4.1.8 Landscape design	Architect	Basic Services
§ 4.1.9 Architectural Interior Design	Architect	Basic Services
§ 4.1.10 Value Analysis	Architect	Basic Services
§ 4.1.11 Detailed cost estimating	Architect	Basic Services
§ 4.1.12 On-site project representation	Owner	--
§ 4.1.13 Conformed construction documents	Architect	Basic Services
§ 4.1.14 As designed record drawings	Architect	Basic Services
§ 4.1.15 As constructed record drawings	CM	Additional Services
§ 4.1.16 Post occupancy evaluation	Architect	Basic Services
§ 4.1.17 Facility Support Services	Architect	Additional Services
§ 4.1.18 Tenant-related services	Owner	Additional Services
§ 4.1.19 Coordination with Owner's consultants	Architect	Basic Services
§ 4.1.20 Telecommunications/data design	Architect	Basic Services
§ 4.1.21 Security Evaluation and Planning	Architect	Basic Services
§ 4.1.22 Coordination with Commissioning Agent	Architect	Basic Services
§ 4.1.23 Extensive environmentally responsible design	Architect	Basic Services – LEED
§ 4.1.24 LEED® Certification (highest practicable level)	Architect	Basic Services – LEED
§ 4.1.25 Historic Preservation	Not Applicable	--
§ 4.1.26 Furniture, Finishings, and Equipment Design	Architect	Basic Services
§ 4.1.27 Providing services required because of significant changes in the Project (other than changes which in the reasonable judgment of the Owner should have been anticipated by the Architect) that fundamentally change the nature of the Project design	Architect	Additional Services
§ 4.1.28 Providing services made necessary by the default of the Construction Manager or General Contractor, by major defects or deficiencies in the Work of the Construction Manager, or by failure of performance by the Construction Manager under the Construction Management Contract	Architect	Additional Services
§ 4.1.29 Providing any other services not otherwise included in this Agreement if mutually agreed to by the Owner and the Architect	Architect	Additional Services

§ 4.2 Other Additional Services may be provided after execution of this Agreement, without invalidating the Agreement, in accordance with written authorization of the Owner. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 may entitle the Architect to compensation pursuant to Section 11.3.

§ 4.3 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide any Additional Services, including those listed above in Section 4.1 or listed in this Section 4.3, until the Architect receives the Owner's written authorization:

- .1 Making revisions to drawings, specifications or other Instruments of Service when such revisions are inconsistent with previous instructions or approvals given by the Owner, or a substantial and material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations applicable to the Project;
- .3 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto; or
- .4 Consultation concerning replacement of Work resulting from fire or other cause during construction.

§ 4.4 The Architect and its consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Architect in the preparation of construction bid documents, as reasonably determined by the Owner.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a preliminary program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements to the extent known and identified by the Owner. The Architect shall thoroughly review all documents and information provided by the Owner and shall promptly advise the Owner in writing of any inadequacies in the documents or information supplied.

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

§ 5.2 Based on input from the Architect, Construction Manager (if hired), and Owner's other consultants, the Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Architect shall furnish the services of a Cost Consultant that shall be responsible for preparing all estimates of the Cost of the Work. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. Where submittals, notices, and other communications are required under this Agreement or necessary for completion of the Architect's services, the Architect shall work through the Owner's representative. In all cases, the final decision making authority on all matters requiring Owner's review and/or approval shall remain with the University of Massachusetts Building Authority..

§ 5.4 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.5 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Architect's consultants through the Architect about matters arising out of or relating to the Architect's Services. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's Services. Similarly, the Architect shall endeavor to communicate with the Construction Manager and through the Owner and shall promptly notify the Owner of any direct communications with these entities, including providing contemporaneous copies of all written and electronic communication.

§ 5.6 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager (or General Contractor as the case may be), including the General Conditions of the Contract for Construction.

§ 5.7 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager or the General Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractor's general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other Project-related soft costs that are the responsibility of the Owner.

§ 6.2 If the Owner's budget for the Cost of the Work is provided in Initial Information, it may be adjusted throughout the Project as determined appropriate by the Owner. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional. The Cost of the Work shall be based on current market rates of labor and materials furnished and equipment designated, specified, selected or specially provided for by the Architect. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction. The Cost of the Work shall also include the compensation of the Construction Manager or General Contractor.

§ 6.3 At the end of the Programming/Feasibility Study Phase, the Schematic Design Phase, the Design Development Phase, and at the fifty (50%) percent and ninety (90%) percent stages of completion of the construction documents during the Construction Documents Phase, the Architect and, when and if selected, the Construction Manager, shall within Basic Services prepare full and complete cost estimates. All estimates shall be provided in form, substance, and detail acceptable to the Owner (Construction Specification Institute "CSI" or similar) and shall be fully reconciled with estimates prepared by the Owner and the Construction Manager, if any.

§ 6.4 At the end of the Programming/Feasibility Study Phase, the Architect shall evaluate any previously developed estimates that may be provided by the Owner. At the end of each succeeding phase, the Architect shall evaluate the estimate for that phase against the estimate completed during the previous phase. At the end of each cost estimate evaluation and otherwise as necessary in the Owner's judgment, the Architect shall recommend and, with the Owner's prior approval, implement appropriate actions to modify, correct, or value engineer ("VE") the design in order to avoid potential cost overruns. If, in any Phase following the Programming/Feasibility Study Phase, the cost estimates for the then current design exceed the cost estimates for the previous phase, the Architect shall, using the modifications, changes, and VE proposals approved by the Owner, modify the design and all associated plans, specifications, and other contract documents as necessary at no additional cost to the Owner until such time as the cost estimates for the current phase are equal to or less than the last approved estimate for the Cost of the Work. In addition, based upon the accepted bid of the general contractor if the project is procured under Mass. Gen. Laws c. 149, or the GMP if it is procured using a Construction Manager at Risk, if the aggregate Cost of the Work exceeds the final estimated cost approved by the Owner by more than ten (10%) percent, then the Architect shall, at no additional cost to the Owner, modify the design and all associated plans, specifications, and other contract documents as necessary until the Cost of the Work is equal to or less than such last approved estimate. The VE proposals shall be developed by the Architect with input from the Owner and the Construction Manager, if any.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect represents and warrants that in transmitting Instruments of Service, or any other information, the Architect is the copyright owner of such information or the Architect has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, the Architect shall establish necessary written protocols governing such transmissions, which protocols shall be agreeable to the Owner in all respects. The protocol shall specify:

- (a) The definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally;

- (b) Management and coordination responsibilities;
- (c) Necessary equipment, software, and IT services;
- (d) Acceptable formats, transmission methods and verification procedures;
- (e) Methods for maintaining version control;
- (f) Privacy and security requirements;
- (g) Storage and retrieval requirements; and
- (h) A requirement that each party shall be responsible for costs incurred to comply with the digital transmission protocols.

§ 7.1.1 Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 7.2 The Owner shall be deemed the owner of all property rights, except for copyrights, of all documents, drawings, specifications, electronic data, and information prepared, provided, or procured by the Architect or its consultants in connection with this Project. The Owner's property rights shall vest upon the creation of the Instruments of Services and shall remain with the Owner on the condition Owner pay all undisputed sums to Architect for performance of Services under this Agreement. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Architect agrees that it will not reproduce the design of the Project for other clients in whole or in substantial part, but it is agreed that the Architect may reuse details, specification sections, and individual design concepts which, taken together, do not reproduce the design of the Project in whole or in substantial part.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive royalty-free license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, reconstructing, using, occupying, maintaining, repairing, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager or General Contractor as the case may be, the Subcontractors, the Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate if the Owner fails to pay Architect the undisputed amounts due for Services performed through the date of termination in accordance with this Agreement.

§ 7.3.1 In the event the Owner uses the Instruments of Service in connection with a different project without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action of the Owner arising from such uses.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party—except to the University or the Institute—without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than ten (10) years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1. The Owner and Architect agree and acknowledge that no action shall be brought, however, until the completion of all Services required to be rendered by the Architect under this Agreement or the earlier termination hereof as provided herein, unless the continued deferral of filing such action would result in such claim, dispute or other matter in question being barred by applicable statutes of limitation or repose. In no event shall the Architect suspend or delay the

performance of its Basic Services or Additional Services, including consultants' Services, under this Agreement due to the existence of pending claims or disputes between the Owner and the Architect.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3. **Indemnification.** The Architect shall fully completely and without limitation indemnify and hold the Owner, its members, employees, agents and representatives, the University of Massachusetts, the University of Massachusetts, and the Commonwealth of Massachusetts, and all of their respective officers, trustees, employees, agents and representatives harmless from and against any and all claims, demands, losses, damages, injuries, liabilities, actions, causes of actions, costs and expenses (including reasonable attorneys' fees) for or on account of any injuries to persons (including death), damage to property, or any other financial loss to the extent caused by the Architect's breach of this Agreement or any fraudulent, wrongful, negligent, or willful act, error, omission, breach of contract, or infringement of any patent or intellectual property right of or by the Architect or any of the Architect's agents, consultants, subconsultants, employees, agents or other representatives.

Notwithstanding the foregoing, in connection with any claim arising solely from the services performed by a hazardous materials consultant engaged by the Architect pursuant to Paragraph 2.3.1 of the Agreement, so long as: (a) such consultant maintains all insurance required by the terms of Article 2.5 in the amounts and on the terms set forth in that Article, and (b) the Architect provides evidence of such insurance to the Owner (both at the time such consultant is engaged and annually thereafter) in the form of Certificates of Insurance in form satisfactory to the Owner, then the liability of the Architect with respect to any such claims shall be limited to the amount of insurance required to be maintained by such consultant.

§ 8.1.4 **Consequential Damages.** The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement may, at the Owner's election, be subject to mediation as a condition precedent to binding dispute resolution.

§ 8.2.2 Mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may not be made concurrently with the filing of a complaint unless such filing is necessitated to preserve the expirations of rights to bring suit under an applicable statute of limitations or repose. Should either party fail or refuse to participate in mediation in good faith within a reasonable time after the other party's request for mediation, the participating party shall not be barred from proceeding with litigation.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. Any mediation shall be held in Boston, Massachusetts.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

☒ Litigation in a court of competent jurisdiction in Boston, Massachusetts

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments properly due and owing to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give fourteen (14) days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. Upon resumption, the Architect's fees for the remaining services and the time schedules shall be equitably adjusted provided that the Architect demonstrates to the Owner's satisfaction that Architect's suspension of services resulted in increased costs or impacted the Architect's schedule for performance of services.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed, and reimbursable expenses incurred, in accordance with this Agreement prior to the effective date of such suspension. If the suspension is for more than ninety (90) days, then, upon resumption, the Architect's fees for the remaining services and the time schedules shall be equitably adjusted provided that the Architect demonstrates to the Owner's satisfaction that the suspension of services resulted in increased costs or impacted the Architect's schedule for performance of services.

§ 9.3 If the Owner suspends the Project for more than ninety (90) cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven (7) days' written notice to the Owner. The Agreement may be terminated by the Owner upon not less than seven (7) days' written notice to the Architect in the event that the Project is permanently abandoned.

§ 9.4 Either party may terminate this Agreement upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed, and reimbursable expenses incurred, in accordance with this Agreement prior to termination.

§ 9.7 In the event of any termination under this Article, the Architect consents to the Owner's selection of a replacement architect of the Owner's choice to assist the Owner in any way in completing the Project. The Architect further agrees to cooperate and provide any information requested by the Owner or the replacement architect in connection with the completion of the Project and consents to and authorizes the making of any reasonable changes to the design of the Project by the Owner and such replacement architect as the Owner may desire; and the Owner agrees that, in such circumstances, the Architect shall not be responsible to the Owner for any such changes. Any services provided by the Architect which are requested by the Owner after termination shall be compensated by the Owner as if such Services were Additional Services and any expenses shall be reimbursed in accordance with Article 11.3.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 **Governing Law.** This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

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

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

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

§ 10.5 Third Parties. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

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

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

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

§ 10.9 Applicable Laws. The Architect shall perform the work required under this Agreement in conformity with all applicable laws, statutes, ordinances, by-laws, codes, rules and regulations, and executive orders of the Commonwealth and its political subdivisions, and the Federal Government in effect at the time of the completion of the Construction Documents. The Construction Documents, as they describe the work to date, shall comply with all applicable laws, statutes, ordinances, by-laws, codes, rules and regulations, and executive orders in effect at the time the Construction Documents are delivered, and the cost of compliance shall be included in each cost analysis provided by the Architect.

§ 10.10 Public Construction. The Architect shall thoroughly acquaint its employees and consultants with all provisions of the General Laws governing the conduct of public construction projects, including, but not limited to, M.G.L. c. 149 and M.G.L. c. 30, and in particular, M.G.L. c. 30, § 39M, which sets forth requirements for the description of material specifications and proprietary items in construction bid documents.

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

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

§ 10.13 No Gifts. The Architect hereby certifies that it 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. The Architect hereby certifies that no consultant to or subcontractor for the Architect has given, offered or agreed to give any gift, contribution or offer of employment to the Architect, or to any other

person, corporation or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the Architect.

§10.14 Reserved.

§10.15 Contract Procurement. The Architect hereby certifies that no person, corporation or other entity, other than a bona fide full time employee of the Architect, has been retained or hired by the Architect to solicit for or in any way assist the Architect in obtaining this contract upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of the contract to the Architect.

§10.16 Accounting and Records. The Architect hereby certifies that it has internal accounting controls which conform to the requirements of subsection (c) of M.G.L. c. 30, § 39R and that the Architect has filed and will continue to file an audited financial statement as referred to in subsection (d) of said § 39R.

§10.17 The Architect shall maintain all books, records and accounts related to the Project in compliance with M.G.L. c. 30, § 39R, as set forth in this Agreement, and all terms used herein shall have the same meaning as those in the statute.

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

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

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

§10.21 The Architect has filed a statement of management on internal accounting controls as set forth in Section 10.23 below prior to the execution of this Agreement.

§10.22 The Architect has filed prior to the execution of this Agreement and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in Section 10.25 below.

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

- (a) transactions are executed in accordance with management's general and specific authorization;
- (b) transactions are recorded as necessary:
 - (i) to permit preparation of financial statements in conformity with generally accepted accounting principles, and
 - (ii) to maintain accountability for assets;
- (c) access to assets is permitted only in accordance with management's general or specific authorization; and
- (d) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any difference.

§10.24 The Architect shall also file annually with the Owner a statement prepared and signed by an independent certified public accountant, stating that such accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to:

- (a) whether the representations of management in response to this Section and Section 10.18 through 10.22 above are consistent with the result of management's evaluation of the system of internal accounting controls; and
- (b) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the Architect's financial statements.

§10.25 The Architect shall annually file with the Owner during the term of this Agreement a year-end financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report. Such statements shall be made available to the Owner upon request.

§10.26 Records and statements required to be made, kept or filed in compliance with the provisions of Section 10.17 through 10.26 shall not be public records (as that term is defined in M.G.L. c. 4, § 7) and shall not be open to public inspection, except as provided in Section 10.19.

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

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3 and rendered in accordance with this Agreement, the Owner shall compensate the Architect as follows: _____ (\$ _____) ("Basic Compensation"). The amount of Basic Compensation shall include all personnel expenses and shall be the Owner's maximum obligation for the Architect's professional staff, personnel, consultants, and expenses, overhead, profit, costs of travel, telephone and facsimile communications, postage and deliveries, and costs of reproduction of one (1) electronic copy in form suitable to the Owner and nine (9) hard copies of all deliverables and other materials delivered to the Owner in connection with performance of Basic Services for the Project, except for Reimbursable Expenses. The Architect acknowledges and agrees that it shall make no claim for additional compensation in connection with performance of Basic Services based solely upon the increased cost of construction without any corresponding increase in the scope of the Architect's Basic Services.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows: *(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

For Additional Services of the Architect, which are agreed upon in advance in writing by the Owner and Architect, compensation shall be computed on the basis of hourly billing rates set forth in Section 11.7 hereof.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows: *(Insert amount of, or basis for, compensation.)*

Pursuant to Section 11.2, above.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or Section 11.3, shall be the amount invoiced to and paid by the Architect plus ten (10) percent (10.0%).

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Programming Phase		percent (		%)
Schematic Design Phase		percent (		%)
Design Development Phase		percent (		%)
Construction Documents Phase		percent (		%)
Bidding or Negotiation Phase		percent (		%)
Construction Phase		percent (		%)
Total Basic Compensation	one hundred	percent (	100	%)

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect may be permitted to invoice monthly in proportion to services performed in each phase of Services, as appropriate, if approved in writing by the Owner in advance. Such approval may not be unreasonably withheld.

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The Architect's hourly rates shall include all personnel expenses and shall be the Owner's maximum obligation for the Architect's professional staff, personnel, and consultants engaged on the Project in connection with Additional Services. The Architect's hourly billing rates shall be fixed for the first eighteen (18) months after the date of this Agreement. Adjustments to billing rates beyond the initial eighteen (18) month period shall be limited to the Architect's actual increase in salary/wage costs over the preceding twelve (12) month period, which increase shall be documented to the reasonable satisfaction of the Owner. The billing rate adjustments shall apply equally to Architect's consultants.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate
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§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .2 Expense of producing more than nine (9) copies of any documents or materials required to be delivered by the Architect in connection with the Project;
- .3 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that required by Section 2.5;

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses actually incurred and paid by the Architect and the Architect's consultants plus **Ten Percent** (**10%**) of the expenses so incurred and paid.

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 Reserved.

§ 11.10.2 Unless otherwise agreed by Owner and Architect in writing, payments for Basic Services shall be made monthly in proportion to services performed within each phase of the Project. The allocation of Basic Compensation among the Project phases is set forth in Section 11.5. Payments on account of Additional Services of the Architect and its consultants shall be made monthly in accordance with Section 11.2. Payments to the Architect for Basic or Additional Services are due and payable thirty (30) days after the presentation to the Owner of the Architect's invoice in form, substance, and detail acceptable to the Owner.

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding, provided that sufficient unexhausted insurance coverage remains available to satisfy the Owner's claim(s) against the Architect.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be retained by the Architect for no less than seven (7) years after final completion of construction of the Project and shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

§ 12.1 Special terms and conditions that modify this Agreement are as follows:

Modifications to this B103-2007 standard form of agreement between Owner and Architect have been incorporated throughout the body of this Agreement.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement, including the documents attached hereto and/or incorporated herein by specific reference, represent the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by duly authorized representatives of both Owner and Architect. Any term, condition, or limitation of any nature contained in any Exhibit or Attachment to this Agreement prepared or generated by the Architect shall not be binding on the parties hereto if such term, condition, or limitation conflicts with any term, condition, or limitation contained in the body of this Agreement

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B103™–2007, Standard Form Agreement Between Owner and Architect, as amended by the Owner for the Project
- .2 Reserved
- .3 Other documents incorporated by reference in this Agreement:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

Exhibit A Architect's Lump Sum Fee Proposal, dated _____

Exhibit B Project Schedule for Design Services

Exhibit C Key Project Team Members

Attachment A Requests for Proposals for Architectural Services, dated December 10, 2008

Attachment B Other correspondence with the Architect, if any

This Agreement entered into as of the day and year first written above.

OWNER – UNIVERSITY OF MASSACHUSETTS
BUILDING AUTHORITY

ARCHITECT

(Signature)

DAVID J. MACKENZIE, EXECUTIVE
DIRECTOR

(Printed name and title)

(Signature)

(Printed name and title)

#1306055

CLERK'S CERTIFICATE

I, _____, Clerk of _____ (the "Corporation"), a _____ corporation, do hereby certify that the following vote was duly adopted by the Board of Directors of the Corporation:

That, _____, a _____ of the Corporation be, and he hereby is, authorized to execute and deliver on behalf of the Corporation a certain Agreement for Professional Services between the Corporation, as Architect, and the University of Massachusetts Building Authority, as Owner.

I do hereby further certify that the foregoing vote has not been altered, amended or rescinded, and is, as of this date, in full force and effect; and that _____ is a duly elected and serving _____ of the Corporation.

IN WITNESS WHEREOF, I have set my hand and seal of the Corporation this _____ day of _____, 200__.

Signed:

ATTACHMENT 6

Project Locus Map



Attachment #6
Project Locus