

****THIS AGREEMENT IS SUBJECT TO BEING UPDATED BY MASSPORT****

MPA CONTRACT NO.

(project title)

by and between

MASSACHUSETTS PORT AUTHORITY

and

(consultant's name)

for

PROFESSIONAL SERVICES

This Agreement shall be effective as of _____ by and between the **MASSACHUSETTS PORT AUTHORITY** (Authority), a body politic and corporate established and existing pursuant to Chapter 465 of the Acts of 1956 (Enabling Act), having a principal place of business at the Logan Office Center, One Harborside Drive, Suite 200S, East Boston, Massachusetts, and *(consultant's name)* (Consultant), a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with a principal place of business at *(consultant's address)*, for professional services by the Consultant on a project denominated **MPA Contract No.** _____, entitled *(project title and location)*, for which the general project description is agreed upon by the parties as follows, and more particularly described in Article 1:

Work Order Process.

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

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

In the event of a conflict between a particular provision(s) of any Work Order and a provision(s) of

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

RECITALS

WHEREAS, the parties hereto recognize and recite the following facts upon which the covenants and agreements herein are based:

1. The Authority is the owner and proprietor of Logan International Airport, Hanscom Field, Tobin Bridge, and other facilities and development properties in the Commonwealth of Massachusetts.
2. The Authority is authorized and empowered under the Enabling Act to rehabilitate, maintain, and repair the facilities under its control.
3. The Authority has undertaken a rigorous selection process, including public advertisement in accordance with its Designer Selection Procedures, to secure the highest quality design services for the project. The Consultant shall be directed and managed by the Authority under the terms and conditions of this Agreement.
4. This Agreement is authorized by Board vote of the Authority dated _____. (*if contract amount exceeds \$200,000*).

NOW, THEREFORE, in consideration of the mutual promises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Authority and the Consultant agree as follows:

Article 1 - Scope of Services

1.1 Basic Services to Be Performed.

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

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

The design services required by the Consultant may include, but shall not be limited to: (1) review of

existing data; (2) field survey and inspection; (3) preparation of a Field Inspection Memorandum; (4) identification and evaluation of existing equipment; (5) development of a project matrix, including criteria related to constructability, reliability, maintainability, life cycle costs, regulatory acceptance and approval, and scheduling considerations; (6) draft and final alternatives reports; (7) design, bid and construction phase services, including resident inspection services (if applicable); (8) coordination with design and construction of other adjacent projects; and (9) other related engineering services.

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

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

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

- A. Management Plan and Work Schedule: Original plus 4 copies.
- B. Existing Conditions Report: 5 copies
- C. Field Inspection Results: 5 copies
- D. Final Alternatives Report: 5 copies
- E. Design Submittals at 30%, 60% and 100%, including cost estimates, construction schedules/phasing plans and technical specifications: 5 copies.
- F. Bid Documents, including Original Reproducible Mylars and Original Technical Specifications (hard copy and electronic copy in the format required by this Agreement).
- G. Design Calculations: Original plus 4 copies (bound sets).
- H. Meeting Minutes: Copies to all attendees and others identified by the Authority.
 - I. Record Drawings in accordance with Section 1.5.7.

The Consultant shall deliver both a hard copy and an electronic copy of each design submittal required under a Work Order. Unless otherwise approved by the Authority, design documents shall appear in AUTOCADD release 2000, on CD's . Specifications shall appear in MS Word 2000. The drawing file size shall contain no more than 1 MB of data. The drawing file layers shall be named in accordance with the Authority's provided layering standards: "The CAD Layering Master List", and the "Master Abbreviation List".

The Authority shall reproduce, bind, advertise, and distribute all bid documents at its expense. The Consultant shall be reimbursed for the reproduction cost (exclusive of sales and use taxes) of the 30%, 60% and 100% submissions, if such printing is not done in-house by the Consultant but is done by others. Any other reproduction costs shall be borne by the Consultant at no additional expense to the Authority.

Design services shall be performed in accordance with the following provisions unless otherwise provided for under a Work Order.

1.2 Preliminary Design Phase Requirements.

Upon the effective date of the Work Order prepared for the Preliminary Design Phase services, executed in accordance with the guidelines set forth in Exhibit F, the Consultant shall:

1.2.1. Develop a Preliminary Design Report that includes design criteria, schematic plans, outline specifications, prioritized construction phasing plan for pedestrian and vehicular control during construction, design exceptions and variances requested, quantity take-offs and construction cost estimates. The Consultant shall be prepared to meet with the Authority to present the Preliminary Design Report and to solicit comments. The Consultant shall receive and respond to such comments and modify the design documents accordingly. The scope of preliminary design services shall include the following:

1.2.1.a Prepare preliminary plans (approximately 30% complete) and an outline of Division III technical specifications. Prepare a construction cost estimate that includes quantities and unit prices and assures complete compliance with Massachusetts public bidding laws. The accuracy of the plans, specifications and construction cost estimate shall be consistent with the percentage of completion of the submission.

1.2.1.b Prepare construction sequencing and staging schedules that take into account the season, traffic, milestones, critical path activities, Authority activities and operations, materials requiring early and/or lengthy procurement, and any temporary relocations and/or construction measures or other confining conditions that may affect the Work. Identify all needs related to construction barriers, special graphic design barriers, length of downtime, temporary provisions and enclosures, security plan and mitigation, and general contractor's staging areas. Provide a work plan that clearly identifies any work that needs to be done beyond standard construction hours.

1.2.1.c Prepare and submit four (4) copies of the Preliminary Design Report in both a written and graphic format to the Authority. Submission shall consist of, at a minimum: inventory of existing conditions, deficiencies uncovered, field notes and calculations, preliminary plans and outline specifications completed to 30%, final design criteria for the items identified above a construction cost estimate for the Work, and construction schedules that take into consideration project phasing, Authority operations and other continuing conditions affecting the Work, including any temporary provisions that may be required. Provide electronic files for the Preliminary Design Report.

1.2.1.d The Authority, upon review of the Preliminary Design Report, shall advise the Consultant on the program it wishes to implement to accomplish the project. The Consultant shall respond promptly to the written comments and/or directions provided by the Authority.

1.3. Final Design Phase Requirements.

After receiving approval of the Preliminary Design Report from the Director of Capital Programs and Logan Modernization, or designee, the Consultant shall:

1.3.1 Prepare and deliver two (2) Final Design submissions. The first submission shall be 60% complete and the second shall be 100% complete. The Consultant shall provide four (4) copies of each submission, which shall include design drawings showing in detail the work to be performed by contractors, including final plans, drawings, specifications and any other bid documents, such as federal and state wage rates, special provisions and technical specifications, as required by the Authority to engage construction contractors and comply with Massachusetts public bidding laws. Such submissions shall incorporate all relevant comments and suggestions received from the

Authority related to the Preliminary Design Report and each previous submission. The Consultant shall provide electronic files for each Final Design submission.

1.3.2. Furnish the necessary plans and specifications in support of applications for non-environmental reviews, approvals, and permits from governmental authorities. Make and pursue application on the Authority's behalf for non-environmental approvals, variances, and permits, including the Authority's insurance carrier and Authority's Department of Public Safety. All environmental and public health agency contacts and applications shall be made through the Project Manager and only with the approval of the Authority's Manager of Environmental Services.

1.3.3. Provide a detailed construction cost estimate in a format(s) acceptable to the Authority and meeting all of its bidding requirements, including estimates of quantities, unit prices, filed sub-bids, and potential subcontracting opportunities for Disadvantaged Business Enterprises (DBEs).

1.3.4. Prepare a probable schedule for the implementation of construction phasing, including the identification of critical path elements and milestones.

1.4 Bid Phase Requirements.

After receiving approval of the Final Design from the Director of Capital Programs and Logan Modernization, or designee, the Consultant shall:

1.4.1 Attend a prebid conference and provide advice related to design issues. Prepare and provide the Authority with written responses to specific questions that may arise at the conference.

1.4.2 Provide a written response addressing all specific questions that may arise and prepare addenda to bid documents, as deemed necessary by the Authority.

1.4.3 Assist the Authority in evaluating general bids and recommend in writing to the Authority the award or rejection of bids with appropriate justification. The Consultant shall include in its recommendation a discussion of the general contractor's prior work performance.

1.5 Construction Phase Requirements.

After execution by the Authority of construction contract documents, the Consultant shall consult with, advise, and represent the Authority during construction to identify problems with the Work Schedule or portions of the Work as construction progresses. The scope of construction phase services shall include the following:

1.5.1. Attend bi-weekly job meetings as deemed appropriate by the Authority and as provided for in a Work Order to observe the progress and quality of the Work and to determine if the Work is proceeding in accordance with the contract documents. Identify critical Work items requiring special inspections and ensure that items have been inspected prior to initiating subsequent Work items. Keep the Authority informed of the progress of the Work in order to protect the Authority against defects and deficiencies in the Work. Call deficiencies in the Work to the attention of the Authority and the general contractor in writing and disapprove or reject Work failing to conform to the contract documents. Prepare and submit written progress reports each week reporting findings.

1.5.2. Review and approve construction programming, shop drawings, catalog cuts, samples, and laboratory and mill tests, for conformance with the design concept and compliance with the contract

documents. Prepare all supplemental drawings necessary to execute the Work in response to changed field conditions, and advise the Authority of cost differentials.

1.5.3. Interpret the contract documents and render decisions (in writing, if necessary) on the requirements of the contract documents, as required. Assess each project change request and, if necessary, prepare change orders for the Authority's approval and execution. Assist the Authority in the resolution of claims or disputes between the Authority and the general contractor.

1.5.4. Certify the validity of the general contractor's partial and final requisitions for payment, including schedules, quantities, payroll compliance with federal and state wage requirements, payments to sub-contractors, and other requirements. Such certifications by the Consultant shall constitute a representation to the Authority, based on the Consultant's observation, that the Work has progressed to the indicated point, and that to the best of the Consultant's knowledge and belief after due inquiry, the Work is in accordance with the contract documents (subject to evaluation upon substantial completion, the results of subsequent tests called for in the contract documents, and specific qualifications stated in the certificate), and that the general contractor is entitled to payment in the certified amount. The Consultant shall not certify the final payment requisition until an inspection for final completion has been performed in accordance with Section 1.5.6 and the Authority has acted affirmatively on the Consultant's recommendation that the Work be accepted.

1.5.5. Review the general contractor's construction schedule on a monthly basis to determine the integrity of critical sequencing relationships and the cumulative effect on the schedule of all adjustments and changes to Work already incorporated in the construction documents.

1.5.6. Inspect the Work with the Authority's Director of Capital Programs and Logan Modernization or designee to determine substantial completion and final completion in accordance with the contract documents. Recommend final acceptance of the Work and provide reports, as requested by the Authority, concerning the condition of the Work and the performance of the general contractor.

1.5.7. Prepare a complete set of Record Drawings from the resident inspector's and general contractor's as-built drawings and certify as to the accuracy of such record drawings. The Record Drawings shall appear on 4 mil. single matted mylars which are reproducible through a photographic process. Ensure delivery of CADD diskettes to the Authority.

1.5.8. Perform an orderly close-out of the Work, including advice to the Authority concerning the details of disputes and claims, and testing of systems and equipment. Prepare and submit the general contractor's evaluation form. If appropriate, prepare a final change order for approval by the Authority.

1.6 Resident Inspection Services (if applicable).

If resident inspection services are authorized in a Work Order, such resident inspection services shall be provided to allow for more consistent and extensive site representation than specified in Section 1.5 in order to provide further protection for the Authority against defects and deficiencies in the Work. Resident inspection services shall be provided by a resident inspector and additional inspectors or specialists shall be provided by the Consultant, as necessary, depending upon the amount and type of work under construction at any given time. The Consultant shall provide all office equipment including calculators, computers and any other incidental items necessary for the complete

support of field personnel at no additional expense to the Authority. The scope of resident inspection services shall include, but shall not be limited to:

1.6.1 Review documents and submissions prepared by the general contractor pertaining to scheduling, and advise the Authority as to their acceptability.

1.6.2 Attend pre-construction and construction job conferences and prepare and distribute minutes of such meetings.

1.6.3 Coordinate submission and processing of shop drawings, samples and test results.

1.6.4 Observe the Work to determine conformance with the contract documents and to ascertain the need for correction or rejection of the Work, uncovering of the Work for inspection, or for special testing.

1.6.5 Verify the performance of tests in accordance with the contract documents, and assure proper record-keeping and reporting of all test results.

1.6.6 Maintain orderly and complete job site records, including but not limited to certified payroll and wage rate records, change requests, change orders, interpretations, and program reports. Keep a complete project diary recording resident inspection activities; weather conditions; nature and location of Work being performed; verbal instructions and interpretations given to the general contractor; any occurrence or Work that might result in a claim for a change in contract sum or contract time; and a list of visitors and their titles, and the time and purpose of their visit. Verify general contractor's assembly of guarantees, certificates, operations and maintenance manuals and the like, and assure delivery of such to the Authority promptly upon completion of the Work.

1.6.7 Review all general contractor requisitions for payment, making notations and recommendations as required regarding Work completed, quantities used, and observations respecting general contractor's compliance with manpower requirements. Review general contractor's payroll to determine compliance with federal and state wage rate and other requirements. Obtain a certification that the general contractor has paid DBEs for the Work contracted.

1.6.8 Assist in preparing lists of incomplete, unacceptable or corrective items of Work prior to the inspection for substantial completion. Revise such lists prior to the final inspection and verify satisfactory completion or correction of all such matters prior to recommendation of acceptance of the Work for final payment.

1.6.9 Assist in the preparation of all change orders and documentation of actual construction costs of the several Work items. Assist in the analysis and resolution of claims and disputes, as required.

Article 2 - Term, Commencement and Completion

2.1. Term

This Agreement shall commence on the effective date recited above and remain in effect until the completion of the Consultant's services hereunder, unless extended or terminated by the Authority in accordance with this Agreement. Individual Work Orders shall have effective dates and completion dates for the related scope of Work.

2.2. Commencement of Services

The Consultant shall commence services in accordance with individual Work Orders. The Consultant shall not be entitled to any compensation for services performed unless and until it has received a Work Order authorizing such services.

2.3. Time of the Essence.

Time is of the essence for this Agreement, and the completion dates for various phases of the Consultant's services may be extended only as provided in this Agreement. The Consultant shall commence performance of the services in accordance with the Work Schedule agreed upon and set forth in a Work Order, or as otherwise required by the Authority, (a) upon the Authority's execution of the Work Order, (b) upon the Consultant's receipt from the Authority of a written Notice(s) to Proceed with the services under an unexecuted Work Order (which Notice to Proceed shall also specify the number of the unexecuted Work Order and the date for completion of the services thereunder, or (c) upon verbal request from the Project Manager or an authorized representative of the Authority in an emergency situation. The Consultant shall complete the services generally in the most efficient, appropriate and expeditious manner that professional diligence and good engineering practice shall permit, subject to the Authority's instructions and directions.

Article 3 - Changes, Coordination, Design Requirements and Other Provisions Related to Performance of the Services.

3.1. Changes and Additions to the Scope of Work and Scope of Services.

The Consultant shall continually review the projected construction cost and, regardless of the stage of the Work, shall report immediately in writing to the Authority any conditions which would warrant a change in the scope of Work, budget, method of investigation, and/or the Consultant's scope of services. The Authority reserves the right at any time to make changes or additions to the scope of Work, and/or the Consultant's scope of services. Such changes shall be authorized in writing by the Authority. The Consultant shall not perform any services beyond the scope of this Agreement, or subsequent amendment, without written approval of the Authority. Whenever the Consultant or any of its approved subconsultants receives a request to perform services from the Authority that the Consultant considers to be a change or addition to the services hereunder, and that will cause an increase in the cost of the performance of such services, the Consultant shall so notify the Authority within ten (10) business days of the receipt of such a request; otherwise, any such adjustment in the price or claim for additional compensation shall be deemed waived, and the Consultant shall not be entitled to any additional compensation for such change or addition.

3.2. Standards of Performance.

The Consultant agrees that the services provided hereunder shall conform to the high professional standards of care and practice exercised by architectural, engineering and construction organizations engaged in performing comparable services; that the personnel furnishing said services shall be qualified and competent to perform adequately the services assigned to them; and that the recommendations, guidance and performance of such personnel shall reflect such standards of professional knowledge and judgment.

The Consultant shall demonstrate to the Authority's Project Manager the presence and implementation of quality assurance. The Consultant shall identify individual(s) responsible for bid document review and cost estimating, as well as methods utilized to determine the completeness and accuracy of drawings, specifications (including filed sub-bid requirements), cost estimates, and other data and documentation. Resumes for such individuals shall be provided if requested by the Authority.

3.3. General Design Requirements

The Consultant acknowledges that it is familiar with and has a working knowledge of the Massachusetts provisions relating to competitive public bidding, including, but not limited to M.G.L. Ch. 149, Section 44A-44J, and M.G.L. Ch. 30, Section 39M, and agrees that all design submissions and contract bid documents shall conform to the appropriate statutory requirements. The Consultant shall, upon request, furnish the Authority the name and experience of the individual(s) with such statutory bidding experience and provide resumes, if requested. The Consultant agrees that if, in the opinion of the Director of Capital Programs and Logan Modernization, the Consultant does not clearly demonstrate the expertise necessary, the Consultant shall engage, at its own expense, competent personnel subject to the approval of the Authority. The Authority's approval of such personnel shall not relieve the Consultant of its duties and obligations under this Agreement.

The Consultant further agrees that, in the performance of the services required under this Agreement, it shall adhere to the requirements in the "Instruction Manual for the Consultants" prepared by the Authority's Capital Programs Department, and incorporated herein by reference. This Agreement shall govern in the event of conflicting requirements between said Manual and this Agreement.

3.4. Laws and Codes

The Consultant shall perform the scope of services under this Agreement in conformance with, and shall design any improvements in compliance with, all construction, building and health codes and other applicable federal, state and local rules, regulations and laws, specifically including, without limitation, any requirements of the Authority's Department of Public Safety, and any other entities having jurisdiction with respect to the Work, as the same now exist or may hereafter become effective through the completion of the Work, subject to an adjustment in the compensation established under Article 5 hereof to accommodate the increased costs of redesigning the project or any part thereof required by a change in the law after final design.

3.5. Compliance with ADA and other Handicap Access and Nondiscrimination Laws

To the extent applicable to the Work, the Consultant shall perform the scope of services under this Agreement and design any site and facility improvements in strict compliance with all laws, regulations and codes relating to handicap accessibility, including without limitation, the Americans with Disabilities Act of 1990 (ADA@ 42 U.S.C. sections 12101 et. seq.), the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG@, the regulations of the Massachusetts Architectural Access Board (MAAB@, 521 CMR 1.1 et. seq.) and the accessibility requirements contained in the Instruction Manual for Consultants@ and Access Massport@ which are incorporated into this Agreement. The Consultant further recognizes that the Authority is a public entity subject to Title II of the ADA, and to the extent permitted by law, the Consultant shall assume the Authority's ADA obligations along with the Authority's obligations under the MAAB regulations and any other accessibility laws and requirements relating to the Consultant's performance of its services under this Agreement.

3.6. Construction Cost Estimates

The Authority shall rely on the Consultant's Construction Cost Estimates to determine whether it desires to go forward with all or part of the construction, and the Consultant shall engage competent and experienced professionals throughout the term of this Agreement in order to assess construction cost and budget impacts. The Consultant, upon request, shall furnish the names and experience and resumes, if necessary, of the professionals responsible for providing estimating services. Estimates which indicate that construction cannot be accomplished within the established budget shall be addressed in a manner satisfactory to the Authority in order to bring the Work within the established budget at no additional cost to the Authority. Further, should the bid amount of the lowest responsible and eligible bidder exceed the Consultant's final estimate by more than ten percent (10%), the Authority has the right to instruct the Consultant to re-design the whole or parts of the Work at no additional cost to the Authority, until a low responsible and eligible bid is received within ten percent (10%) of the Consultant's final estimate.

3.7. Right of Review

The Authority shall have the right at any time and in its sole discretion to submit for review to consulting engineers or consulting architects engaged by the Authority for that purpose any or all parts of the scope of services performed by the Consultant, and the Consultant shall cooperate fully in such review at the Authority's request.

3.8. Access to Facilities

The Consultant, during the course of its services, shall coordinate its access to and inspections of the site with the Authority. Interruptions or interference with the tenants' operations shall be allowed only with approval in advance by the Authority. All requested access shall be made a minimum of forty-eight (48) hours in advance. Where the Consultant requires access to secured areas, and where the Authority determines that the Consultant's personnel require security badges, the Consultant shall provide the Authority with written justification for such request, and shall fully cooperate and comply with all Authority requirements, including without limitation those set forth in Exhibit G, attached hereto and incorporated by reference herein.

3.9. Inspection Aids/Equipment

The Consultant shall provide inspection aids and/or equipment required for the examination of any site, as well as any subconsultants or contractors required to perform inspection services. All materials and/or surfaces removed or altered in any manner shall be restored, subsequent to inspection, to the condition that existed prior to inspection.

Article 4 - Use of Subconsultants

4.1. Approved Subconsultants.

The Authority hereby approves the Consultant's use of the following subconsultants. Notwithstanding such approval, the Authority reserves the right to require the Consultant to employ different subconsultants to perform any type of services required for the successful completion of any services under this Agreement.

[INSERT NAME AND DESCRIPTION OF SERVICE FOR EACH SUBCONSULTANT]

The Authority expects the Consultant to engage the above subconsultants for the services described above. The Consultant shall immediately notify the Authority in writing of any requested changes. No substitution or elimination of such subconsultants or alteration of the services listed above or use of additional subconsultants shall be made without prior written approval of the Authority.

4.2. Consultant's Personnel, Subconsultants.

The Consultant shall employ qualified and competent personnel to perform the services under this Agreement, particularly specification writers, building code experts and professionals experienced in construction cost estimating. The Authority shall have the right to approve such personnel prior to their engagement and to require the removal of any employee of the Consultant, or any employee of the Consultant's subconsultants, who, in the opinion of the Authority, is careless, incompetent, or otherwise unqualified to perform the services hereunder, or whose conduct is in any way considered improper by the Authority.

4.3. Consultant's Responsibility for Subconsultants.

The Consultant represents that it has made and will make reasonable investigation of all subconsultants to be utilized in the performance of services under this Agreement to determine that they possess the skill, knowledge and experience necessary to enable them to perform such services. Nothing in this Article shall relieve the Consultant of its prime and sole responsibility for the proper performance of the services under this Agreement.

Article 5 - Compensation

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

5.1. Payments Based on a "Not-to-Exceed" Price.

For the services described in any Work Order based on a "not-to-exceed" price, the Consultant's sole compensation shall be a payment or payments computed as a multiple of actual hourly salary for each person actually engaged in the provision of services, the total of which payment or payments shall not exceed the "not-to-exceed" price under the relevant Work Order. The following provisions shall govern the calculation of payments based on a "not-to-exceed" price:

5.1.1. Payment to Consultant.

Compensation for the Consultant's employees shall be computed at a multiple times the employee's actual hourly salary. The multiplier for professional services shall be limited to 2.5, except that the multiplier for resident inspection or other field services shall be limited to 2.3, unless the Authority's Internal Auditor determines that a different multiplier is applicable based

upon receipt and review of certified audits to be provided by the Consultant. The multiplier shall constitute full payment for all employee benefits, overhead, general administrative costs, profit, and all other unallocated expenses. Exhibit A attached hereto sets forth the classifications and ranges of actual hourly salaries to be charged. Exhibit B attached hereto is an authorization by the Authority establishing the Consultant's multiplier. If a different multiplier is approved by the Authority's Internal Auditor, after the effective date of this Agreement, such multiplier may be applied retroactively by the Authority.

5.1.2. Payments to Consultant for Subconsultants.

Compensation for subconsultants shall be in accordance with actual invoices submitted by subconsultants to the Consultant, provided, however, that such subconsultants shall invoice their services at a multiple times the actual hourly salary of its employees. The subconsultants' multiplier shall be in accordance with a certified audit, but shall not exceed 2.5, unless otherwise approved by the Authority's Internal Auditor. If a subconsultant is providing resident inspection services, the multiplier shall be limited to 2.3. The multiplier shall constitute full payment for all employee benefits, overhead, general administrative costs, profit, and all other unallocated expenses. The Consultant shall make prompt payments to subconsultants for services satisfactorily performed after receipt by the Consultant of payment from the Authority for such services. If a different multiplier is approved by the Authority's Internal Auditor, after the effective date of this Agreement, such multiplier may be applied retroactively by the Authority.

5.1.3. Payment for Reimbursable Expenses.

The Authority shall reimburse the Consultant for its reimbursable expenses which are actually made or incurred in an amount not to exceed the maximum reimbursable amount provided for in each individual Work Order. Such expenses shall only be eligible for reimbursement if they have been submitted and approved in writing and in advance by the Authority. As used in this Agreement, and any Work Order under this Agreement, the term "reimbursable expenses" shall mean the actual extraordinary expenditures made or incurred by the Consultant directly in connection with and in the interests of the Authority. Each Work Order under this Agreement shall identify the type of expenses that shall be eligible for reimbursement and the maximum reimbursable amount for that Work Order.

5.2. Payments Based on Lump Sum Price.

For services described in any Work Order based on a lump sum price, the Consultant's sole compensation shall be a payment or payments not to exceed the lump sum price set forth in the Work Order. The lump sum price shall constitute full payment for all direct and indirect costs, including employee benefits, overhead, general administrative costs, profit and reimbursable expenses. The lump sum price may be divided at the discretion of the Authority into phased and/or partial payments based on the progress demonstrated by the Consultant and/or the completion of pre-established events, such as the submission of deliverables or the completion of a phase under the Work Order, or based upon the progress of the services hereunder, as long as work performed by the Consultant is at least proportionate to the phased or partial payment requested. The Consultant shall make prompt payments to subconsultants for services satisfactorily performed after receipt by the Consultant of payment from the Authority for such services.

5.3. Requests for Payment and Documentation

The Consultant shall submit requisitions for payment to the Authority accompanied by appropriate supporting documentation, including without limitation, a summary report of all services performed during the period, and any additional detail the Authority may require in a Work Order.

5.4. Consultant's Accounting Records.

The Consultant shall keep records pertaining to services performed and reimbursable expenses incurred on the basis of generally acceptable accounting principles and in accordance with such reasonable requirements to facilitate audit as the Authority may provide. All records shall be available to the Authority or its authorized representative during normal business hours. The cost of any audit shall be borne by the Authority unless the Consultant's reports and documentation fail in a material way to support any charges made, in which case such costs shall be borne by the Consultant.

5.5. Payment Not A Waiver.

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

5.6. Authority's Right to Withhold Payment.

The Authority may withhold payment to such extent as it deems necessary as a result of (a) third party claims arising out of the services and made against the Authority; (b) evidence of fraud, overbilling or overpayment discovered upon audit; (c) failure to make prompt payments to subconsultants; (d) payment requests which include fees for unapproved subconsultants; (e) unsatisfactory performance of services; or (f) any breach of this Agreement.

Article 6 - Insurance.

6.1. Professional Liability Insurance Coverage.

The Consultant shall maintain at all times during the performance of services under this Agreement professional liability insurance coverage for professional errors and omissions arising out of the performance of this Agreement in an amount of not less than \$1,000,000. Such insurance shall extend to the Consultant and to its legal representatives in the event of death, dissolution or bankruptcy of the Consultant, and shall cover any errors and omissions arising out of the performance of services under this Agreement committed (or alleged to have been committed) by the Consultant or any person for whom the Consultant is legally responsible, including its agents and employees.

6.2. Deductible.

The Consultant may maintain a professional liability insurance policy with a deductible clause in an amount approved by the Authority if, in the judgment and opinion of the Authority, the Consultant's financial resources are sufficient to adequately cover possible liability in the amount of the

deductible. In no event shall the Authority be responsible for payment of any deductible.

6.3. Worker's Compensation, General Liability, Automobile and Other Insurance.

The Consultant shall carry worker's compensation insurance as required under federal and Massachusetts law, and employer's liability insurance with a minimum limit per accident or disease of \$1,000,000. The Consultant shall also carry insurance sufficient to discharge its responsibilities under applicable provisions of the Jones Act and the Longshore and Harbor Worker's Compensation Act. The Consultant shall carry commercial general liability insurance for bodily injury and property damage in the combined single limit of \$5,000,000, and shall include blanket contractual liability insurance covering all liabilities assumed by the Consultant under this Agreement; comprehensive automobile liability insurance for bodily injury and property damage in the combined single limit of \$10,000,000 covering all owned, hired, and non-owned vehicles; and valuable papers insurance for the restoration of plans, drawings, field notes and other documents in the event of their loss or destruction while in the custody of the Consultant.

6.4. Insurance Policies and Certificates.

Prior to the execution of this Agreement, the Consultant shall furnish to the Authority certificates of insurance reflecting policies in force, and shall also provide certificates evidencing all renewals of any expiring insurance policy required hereunder within ten (10) days of the expiration thereof. The Consultant's failure to provide and continue in force and effect any insurance required under this Article shall be deemed a material breach of this Agreement for which the Authority, in its sole discretion, may terminate this Agreement immediately or on such other terms as it sees fit. If requested by the Authority, the Consultant shall provide copies of its insurance policies and/or evidence satisfactory to the Authority concerning the effectiveness and the specific terms of the insurance, including deductibles.

6.5. No Cancellation.

All insurance maintained by the Consultant pursuant to this Article shall be written by insurance companies having a Best's Rating of B+ or better, and licensed to do business in Massachusetts, shall be in a form and substance satisfactory to the Authority, and shall provide that the insurance will not be subject to cancellation, expiration without renewal, termination, or material change during its term except upon thirty (30) days' prior written notice to the Authority.

6.6. Duration of Insurance Obligations.

The Consultant shall maintain its professional liability insurance coverage required under this Agreement in force and effect for a period not less than six years after the Authority's final acceptance of the Work or the completion of the Consultant's services under this Agreement, whichever comes later. Commercial general liability insurance coverage required under this Agreement shall be in full force and effect for a period of three years after the Authority's final acceptance of the Work or the completion of the Consultant's services, whichever comes later. All other insurance shall be maintained in full force and effect until the Authority's final acceptance of the Work or completion of the Consultant's services, whichever comes later.

6.7. Consultant's Insurance Primary.

MPA CONTRACT NO.

The Commercial/General Liability and Automobile Liability policies maintained by the Consultant pursuant to this Agreement shall provide that insurance applying to the Authority shall be primary, and that the Authority's own insurance shall be non-contributing.

6.8. Additional Insured

All liability insurance policies, except the professional liability policy, and the workers' compensation and employer's liability policy, maintained by the Consultant pursuant to this Agreement shall be endorsed to include the Authority, its officers, directors and employees as additional insureds, and all liability insurance policies, except professional liability shall be endorsed with a waiver of subrogation by the insurer as to the Authority.

Article 7 - Indemnification and Related Provisions.

7.1. Indemnification.

The Consultant, at its expense, shall indemnify, defend and hold harmless the Authority, its members, officers and employees from and against all Consultant and third party claims, causes of action, and suits, and all losses, damages, and expenses which are the subject thereof, including attorneys' fees and costs of investigation and litigation, arising out of or resulting from any, error, omission, or negligent act, or any breach of contractual duties of the Consultant and/or its subconsultants and their employees, in the performance of this Agreement; provided, however, that the Consultant shall not be liable to the extent that any loss is caused by the willful misconduct or gross negligence of the Authority. The foregoing express obligation of indemnification shall not be construed to negate or abridge any other obligation of indemnification running to the Authority which would otherwise exist. The Authority shall give the Consultant prompt and timely notice of any claim, threatened or made, or any lawsuit instituted against it which could result in a claim for indemnification hereunder. The extent of this agreement of indemnification shall not be limited by any obligation or any term or condition of any insurance policy required pursuant to Article 6 of this Agreement.

7.2. No Personal Liability.

Members or employees of the Authority shall not be charged personally or held contractually liable by or to the Consultant under any term or provision of this Agreement or because of any breach thereof or because of its execution or attempted execution.

7.3. Independent Contractor Relationship.

The parties intend that an independent contractor relationship shall be created by this Agreement. As between the Consultant and the Authority, the Consultant shall be responsible for any liability to third parties resulting from errors, omissions, or negligent or intentional acts of the Consultant, its agents, employees or subconsultants arising from or occurring in the course of the performance of the services under this Agreement. No act or direction of the Authority shall be deemed to be the exercise of supervision or control of the Consultant's performance hereunder.

7.4. Limitation of Liability.

MPA CONTRACT NO.

The liability of the Authority under this Agreement is limited to the compensation provided by Article 5, and shall in no event include liability for incidental, indirect, special or consequential damages, or for damages or loss from causes beyond the Authority's reasonable control.

7.5. Non-Waiver.

Neither the Authority's review, approval, acceptance or payment for services under this Agreement, nor the failure of the Authority to require performance by the other of any provision of this Agreement, shall operate as a waiver of any rights under this Agreement, and the Consultant shall be and remain liable to the Authority for all damages incurred by the Authority as the result of the Consultant's failure to perform in accordance with the terms and conditions of this Agreement. The rights and remedies of the Authority provided for under this Agreement are in addition to any other rights or remedies provided by law. The Authority may assert a right to recover damages by any appropriate means, either during or after performance of this Agreement.

Article 8 - Form, Ownership and Publication of Documents.

8.1. Form and Number of Documents.

All plans, drawings and specifications that shall be part of the bid documents shall be prepared in accordance with the requirements for size and quality specified by the Authority's Capital Programs Department. All such plans, drawings and specifications shall be stamped and signed as appropriate by the professional engineer or architect licensed in Massachusetts who was the author of such plans, drawings, or specifications, or who was in responsible charge and such services were performed under his/her personal supervision by regularly employed subordinates. Approval stamps used by the Consultant for shop drawings or other submittals shall be in a form approved by the Authority. The Consultant shall provide review copies of all plans, drawings and other documents prepared by the Consultant under this Agreement in a number provided for in each Work Order; provided however, that one of the copies shall be a reproducible. The Consultant shall provide electronic files for each design submittal.

8.2. Ownership.

All records and documents, including without limitation calculations, plans, drawings, and specifications, prepared pursuant to this Agreement, are property owned by the Authority and shall be clearly marked, identified, in good order, and delivered to the Authority's Project Manager, with a cover letter, upon the completion of the services, but in no event later than sixty (60) days after the acceptance of the Work or termination of this Agreement, unless such time limit shall be extended in writing by the Authority. The Authority may use all such records and documents as it determines.

8.3. Publication.

Except as required for the discharge of its duties to the Authority under this Agreement, the Consultant shall not communicate any information obtained or developed under this Agreement in any form to any third party without the prior written approval of the Authority. The Consultant agrees to hold all

information it obtains from or about the project in the strictest confidence and not to use such information other than for the performance of the services under this Agreement. Plans, sketches, drawings or other renderings or documents shall not be released or disclosed by the Consultant to any other person without the prior written approval of the Authority.

Article 9 - Authority of the Director of Capital Programs and Logan Modernization.

9.1. The duly-appointed Director of Capital Programs and Logan Modernization of the Authority is hereby authorized to act on behalf of the Authority with respect to all powers of written approval reserved to the Authority in this Agreement.

9.2. Except for Section 3.1, the authority vested in the Director of Capital Programs and Logan Modernization may be exercised by the Project Manager for the project hereunder, who shall be appointed by the Director of Capital Programs and Logan Modernization or the Executive Director of the Authority.

Article 10 - Nondiscrimination and Affirmative Action

10.1. Authority Requirements.

In accordance with policies adopted by the Authority, the Consultant agrees:

10.1.1. The Consultant shall not discriminate by segregation or otherwise against any employee or applicant for employment because of race, color, creed, national origin, age or sex, and shall undertake affirmative action measures designed to guarantee and effectuate equal employment opportunity for all persons.

10.1.2. The Consultant shall provide information and reports requested by the Authority pertaining to its obligations under this Article 10, and will permit access to its facilities and any books, records, accounts or other sources of information which may be determined by the Authority to affect the Consultant's obligation herein.

10.1.3. The Consultant shall comply with all federal and state laws and Authority regulations pertaining to civil rights and equal opportunity, including executive orders and rules and regulations of appropriate federal and state agencies, unless otherwise exempt therein.

10.1.4. The Consultant's noncompliance with the provisions of this Article shall constitute a material breach of this Agreement, for which the Authority may, in its discretion, upon failure to cure said breach within thirty (30) days of written notice thereof, terminate this Agreement upon ten (10) days' written notice.

10.1.5. The Consultant shall indemnify and hold harmless the Authority from any claims and demands of third persons resulting from the Consultant's noncompliance with any of the provisions of this Article.

10.1.6. On a quarterly basis, the Consultant shall submit to the Authority a report of payments made to each DBE participating on the project during that calendar quarter on the form attached hereto as Exhibit H.

10.2. Federal Requirements.

In all work pertaining to Hanscom Field and Boston-Logan International Airport, financed in whole or in part with federal funds, Consultant agrees to the following provisions required by federal grant agreements entered into by Authority:

10.2.1. Compliance with Regulations. Consultant shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (DOT) Title 49 Code of Federal Regulations, Part 21, (~~AR~~Regulations~~@~~) as they may be amended from time to time, which are hereby incorporated by reference and made a part of this Agreement.

10.2.2. Nondiscrimination. Consultant, with regard to the services performed by it during the term of this Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program as set forth in Appendix B of the Regulations.

10.2.3. Solicitations for Subcontracts. In all solicitations either by competitive bidding or negotiation made by Consultant for services to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Consultant of Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

10.2.4. Information and Reports. Consultant shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations or directives. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to the sponsor or the FAA as appropriate, and shall set forth what efforts it has made to obtain the information.

10.2.5. Sanctions for Noncompliance. In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, the Authority shall impose such contractual sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to Consultant under this Agreement until Consultant complies, and/or
- (b) cancellation, termination, or suspension of this

Agreement, in whole or in part.

10.2.6. Incorporation of Provisions. Consultant shall include the provisions of Paragraphs 10.2.1. through 10.2.5. in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that, in the event the Consultant becomes involved in, or is threatened with, litigation, Consultant may request the United States to enter into such litigation to protect the interests of the United States or the sponsor.

10.2.7. Further Provision Required by 49 CFR Part 23 and 14 CFR Part 152, Subpart E.

Policy. It is the policy of the DOT that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR Part 23 apply to this Agreement.

DBE Obligation. The Authority or its contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard, all sponsors or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Sponsors and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

Consultant agrees that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to ensure that no person shall be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Consultant agrees that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Consultant agrees that it will require that its covered suborganizations provide assurances to Consultant that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

Article 11 - Successors and Assigns.

11.1. Prohibition on Delegation or Assignment.

Except as specifically provided in Article 4 hereof, the Consultant shall not, directly or indirectly, assign, mortgage, pledge, delegate or otherwise transfer (collectively referred to as a "transfer") this Agreement or delegate its duties without the prior written approval of the Authority, which approval may be withheld at the Authority's sole discretion. At the Authority's option, any attempted transfer without said written approval shall be void, ab initio, shall be of no force and effect, and shall confer no rights on or in favor of third parties.

MPA CONTRACT NO.

If the Consultant is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership shall be deemed a transfer of this Agreement. If the Consultant is a corporation, (i) unless the Consultant is a public corporation whose stock is regularly traded on any national or recognized stock exchange in the over-the-counter market and quoted on NASDAQ, any merger, consolidation, or other reorganization of the Consultant or sale or other transfer of a percentage of capital stock of the Consultant which results in a change of controlling persons, or (ii) any dissolution, sale or other transfer of substantially all of the assets of the Consultant, shall be deemed a transfer of this Agreement.

If the Consultant is a joint venture, and if, during the course of the project, any of the foregoing occurs to any member of the joint venture, or if any member of the joint venture withdraws from the joint venture, such event shall be deemed a transfer of this Agreement.

If the Consultant changes its name, but does not otherwise transfer this Agreement within the meaning of this Section 11.1, the Consultant shall notify the Authority in writing of such name change and provide certificates of insurance evidencing coverages in force and required under Article 6 hereof that reflect such name change. Failure to so notify the Authority of such name change within thirty (30) days of effecting such change shall be deemed a material breach of this Agreement for which the Authority, in its sole discretion, may terminate this Agreement immediately or on such terms as it sees fit.

Any transfer shall be made only if, and shall not be effective until, the transferee shall execute, acknowledge and deliver to the Authority an agreement, in form and substance reasonably satisfactory to the Authority, whereby the transferee shall assume the Consultant's obligations and performance of this Agreement, and shall agree to be bound by all of the covenants, agreements, terms, provisions and conditions hereof on the part of the Consultant to be performed or observed. This agreement shall also include the transferee's obligation to deliver to the Authority certificates of insurance evidencing coverages in force and required under Article 6 hereof ten (10) days prior to the effective date of the transfer. Notwithstanding any transfer, the Consultant shall remain fully liable under this Agreement (jointly and severally with such assignee) and shall not be released from performing any of the terms and conditions of this Agreement.

11.2. Successors.

The Authority for itself and its successors, and the Consultant for itself, its successors, assigns, partners and legal representatives, bind themselves each to the other with respect to all the covenants of this Agreement.

Article 12 - Suspension and Termination.

12.1. Suspension or Termination Without Cause.

Notwithstanding any other provision of this Agreement, the Authority reserves the right at any time in its absolute discretion to suspend or terminate this Agreement in whole or in part without cause upon thirty (30) days' written notice to the Consultant. With respect to services performed, the Authority

agrees to pay the Consultant the progress payments accruing to the Consultant under Article 5 hereof through and including the effective date of the suspension or termination. If any portion of this Agreement so suspended is not recommenced by written notice of the Authority within the time period specified in the written notice of suspension, the suspended portion of this Agreement shall be thereupon deemed terminated as to that portion for the convenience of the Authority in accordance with this provision. The Authority shall incur no liability by reason of such termination for convenience, except for the obligation to pay in accordance with this Agreement progress payments and reimbursable expenses accruing through and including the date of termination, which obligation shall not exceed the limits established under each phase of the Work as to which the Authority has expressly authorized the Consultant to proceed, plus reasonable costs incurred in connection with the termination as approved by the Authority.

12.2. Termination for Cause.

If this Agreement or any part hereof shall be assigned or sublet by the Consultant without the prior written consent of the Authority, or if the Consultant shall violate any material provision of this Agreement, or if the Consultant shall fail to perform the services or any material obligations and such failure shall not be cured by the Consultant within five (5) days of its receipt of written notice thereof from the Authority, or if the Consultant becomes unable to perform the services contemplated under this Agreement, the Authority may terminate this Agreement upon seven (7) days' written notice or as otherwise provided in this Agreement, and the Authority may complete the services by such means as it determines. In the event of a termination for cause, the Consultant shall not be entitled to any further payment. If the total expense of completing the services reasonably incurred by the Authority, plus the Authority's losses and damages arising out of the Consultant's default, exceeds the unpaid balance of any amounts due the Consultant under this Agreement, the Consultant shall pay the deficiencies to the Authority upon demand.

12.3. Authority's Rights Upon Termination.

In the event of termination for convenience or cause, the Consultant shall promptly deliver to the Authority all documents pertaining to the Consultant's professional services performed through and including the effective date of termination. Any termination of this Agreement shall not impair the right of the Authority to recover damages occasioned by the fault or default of the Consultant.

Article 13 - Miscellaneous Provisions.

13.1. Conflict of Interest.

The Consultant shall not hire or employ, on either a full-time or part-time basis during the term of this Agreement, any person or persons so long as such person shall be employed by the Authority. The Consultant hereby certifies that this Agreement is made in good faith, without fraud, collusion of any kind with any other consultant for the same services, and that the Consultant is acting solely on its own behalf without connection with, or obligation to, any undisclosed person or firm and in full compliance with the provisions of M.G.L. Chapter 268A and any other applicable conflict of interest laws. If any officer, agent or employee of the Authority has a financial interest in the Consultant, the Consultant hereby agrees that its representatives shall consult with the Authority's legal

representatives to learn what action shall be taken to comply with the provisions of M.G.L. Chapter 268A, and any other applicable conflict of interest laws.

13.2. Assistance in Claims and/or Litigation.

The Consultant shall render assistance to and on behalf of the Authority in claims and/or litigation in connection with or arising out of this Agreement, including without limitation, any claims and/or litigation involving the Consultant or its subconsultants, and any claims and/or litigation brought by or against the Authority and any third parties, by providing technical information, analyses and expert witnesses only for the Authority. The Consultant shall provide services under this Section 13.2 at a mutually agreed upon and reasonable rate.

13.3. Certificates.

The Consultant shall complete, sign, and comply with the provisions of the Consultant's Certificate, the Certificate of Compliance with Laws and the Consultant's Truth-in-Negotiations Certificate, attached as Exhibits C, D and E to this Agreement.

13.4. Notices.

All notices, approvals, requests, consents or other communications, required or permitted pursuant to this Agreement shall be effective upon receipt if hand delivered, sent by Federal Express or sent by United States registered mail, return receipt requested, to the Authority addressed to **MASSACHUSETTS PORT AUTHORITY, Logan Office Center, One Harborside Drive, Suite 200S, East Boston, Massachusetts, 02128**, and directed to the attention of the Director of Capital Programs and Logan Modernization, or to the Consultant addressed to **(Consultant's Name and Address with zip code)** and directed to the attention of **(Name and Title of Consultant's contact person)**, or to such other address as either party may specify to the other by notice given as provided herein.

13.5. Invalid Provisions.

If any term or condition of this Agreement or any application thereof shall to any extent be held invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining terms and conditions of this Agreement shall not be deemed affected thereby, unless one or both parties would be substantially or materially prejudiced.

13.6. Governing Law.

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Commonwealth of Massachusetts.

13.7. Jury Waiver.

The parties, by execution of this Agreement, voluntarily and intentionally waive all rights to trial by

jury as to all claims, disputes, or controversies arising out of, or relating to, this Agreement or the performance thereof.

13.8. Entire Agreement.

The following exhibits described in this Agreement and attached to it as of the date of its execution shall be incorporated in and made a part of this Agreement:

- Exhibit A: Consultant's Hourly Rates and Classifications
- Exhibit B: Authorization of Consultant's Multiplier
- Exhibit C: Consultant's Certificate
- Exhibit D: Certificate of Compliance with Laws
- Exhibit E: Consultant's Truth-in-Negotiations Certificate
- Exhibit F: Guidelines for Preparation of Work Orders
- Exhibit G: Consultant's Security Identification Requirements for Airport Projects
- Exhibit H: Disadvantaged Business Enterprise Quarterly Expenditure Report

If there is any inconsistency between this Agreement and the provisions of any exhibit, the provisions of this Agreement shall take precedence. The terms used in this Agreement and also used in any exhibit to this Agreement shall have the same meaning in the exhibit as in this Agreement.

This Agreement, including exhibits attached hereto at the time of its execution, constitutes the entire integrated agreement between the parties with respect to the matters described. This Agreement supersedes all prior agreements, negotiations and representations, either written or oral, and it shall not be modified or affected by any course of dealing, course of performance, or usage of trade.

13.9. Section Headings and Captions.

All section headings and captions used in this Agreement are solely for convenience and shall not affect the interpretation of this Agreement.

13.10. Counterparts.

This Agreement may be executed in any number of counterparts, and each fully executed counterpart shall be deemed an original.

13.11. Survival of Terms.

The Authority's rights and the Consultant's obligations hereunder that contemplate continuing rights and obligations, respectively, including without limitation, the Consultant's obligations to indemnify the Authority and to keep certain insurance coverages in effect, shall survive completion of the Consultant's services hereunder and the expiration or earlier termination of this Agreement.

13.12. Amendments.

This Agreement may be amended only by a written instrument specifically referencing this Agreement executed by authorized representatives of the parties.

IN WITNESS WHEREOF, this Agreement is executed as of the day and year first written above.

[CONSULTANT'S NAME]

MASSACHUSETTS PORT AUTHORITY

By: _____

By:

Title: _____

Title: _____

Date: _____

Date:

EXHIBIT A

CONSULTANT'S HOURLY RATES AND CLASSIFICATIONS

EXHIBIT B

AUTHORIZATION OF CONSULTANT'S MULTIPLIER

MPA CONTRACT NO.

EXHIBIT C

CONSULTANT'S CERTIFICATE

The Consultant named in an agreement with Massachusetts Port Authority numbered **MPA CONTRACT NO. _____** certifies that:

- a) the Consultant or construction manager has not given, offered or agreed to give any gift, contribution or offer of employment as an inducement for, or in connection with, the award of the contract for design services;
- b) no consultant to or subcontractor for the Consultant or construction manager has given, offered or agreed to give any gift, contribution or offer of employment to the Consultant or construction manager, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the Consultant or subcontractor of a contract by the Consultant or construction manager;
- c) no person, corporation or other entity, other than a bona fide full-time employee of the Consultant or construction manager, has been retained or hired to solicit for or in any way assist the Consultant or construction manager in obtaining the contract for design services 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 Consultant; and
- d) with respect to contracts which exceed ten thousand dollars, or which are for the design of a building for which the budgeted or estimated construction costs exceed one hundred thousand dollars, that the Consultant has internal accounting controls as required by M.G.L. Chapter 30, Section 39R, and that the Consultant will:
 - (1) retain accurate and detailed books, records, and accounts for a six-year period after the final payment;
 - (2) file regular statements of management concerning internal auditing controls;
 - (3) file an annual audited financial statement; and

MPA CONTRACT NO.

- (4) submit a statement from an independent certified public accountant that such CPA has examined management's internal auditing controls and expresses an opinion as to their consistency with management's statements described in (2) above, and whether such statements are reasonable with respect to transactions and assets that are material in relation to the Consultant's financial statements.

For the purposes of this Certificate, the terms "consultant" and/or "Construction Manager" shall be synonymous with "Consultant".

Consultant

By:
duly authorized

Print Name

Date:

EXHIBIT D

CERTIFICATE OF COMPLIANCE WITH LAWS

Massachusetts Employment Security Law

Pursuant to G.L. c. 151A, ' 19A(b), the undersigned hereby certifies* under the penalties of perjury that Consultant, with D.E.T. ID Number _____, has complied with all laws of the Commonwealth relating to unemployment compensation contributions and payments in lieu of contributions.

*Compliance may be certified if Consultant has entered into and is complying with a repayment agreement satisfactory to the Commissioner, or if there is a pending adjudicatory proceeding or court action contesting the amount due pursuant to G.L. c. 151A, ' 19A(c).

or check the following:

_____ *The undersigned certifies that the Massachusetts Employment Security Law does not apply to it because Consultant does not have any individuals performing services for it within the Commonwealth to the extent that it would be required to make any contributions or payments to the Commonwealth.*

Massachusetts Child Care Law

Pursuant to Chapter 521 of the Massachusetts Acts of 1990, as amended by Chapter 329 of the Massachusetts Acts of 1991, the undersigned hereby certifies that Consultant (*check applicable item*):

1. _____ employs fewer than fifty (50) full-time employees; or
2. _____ offers either a dependent care assistance program or a cafeteria plan whose benefits include a dependent care assistance program; or
3. _____ offers child care tuition assistance, or on-site or near-site subsidized child care placements.

Revenue Enforcement and Protection Program

Pursuant to G.L. c. 62C, ' 49A, the undersigned hereby certifies under the penalties of perjury that Consultant's tax payer identification No. is (complete applicable item): Social Security No. is _____ **or** Federal Identification No. is _____ and that to the best of his/her knowledge and belief Consultant has complied with all laws of the Commonwealth relating to taxes, the reporting of employees and contractors, and withholding and remitting of child support.

In order to comply with all laws of the Commonwealth relating to taxes, the undersigned certifies that Consultant (*check applicable item*):

1. _____ has filed all tax returns and paid all taxes required by law; or
2. _____ has filed a pending application for abatement of such tax; or
3. _____ has a pending petition before the appellate tax board contesting such tax; or
4. _____ does not derive taxable income from Massachusetts Sources such that it is subject to taxation by the Commonwealth.

Exhibit D

MPA CONTRACT NO.

Certification Regarding Companies Doing Business with or in Northern Ireland

Pursuant to G.L. c. 7, ' 22C, the undersigned hereby certifies under the pains and penalties of perjury that Consultant is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland, and that Consultant (check applicable item):

1. _____ does not employ ten or more employees in an office or other facility located in Northern Ireland;
or
2. _____ employs ten or more employees in an office or other facility located in Northern Ireland, but such office or other facility in Northern Ireland (a) does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and (b) promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination.

Signed this ____ day of _____, 20____.

Name of Consultant: _____

Authorized Signature: _____

Print Name: _____

Title: _____

EXHIBIT E

CONSULTANT'S TRUTH-IN-NEGOTIATIONS CERTIFICATE

The Consultant for design services under MPA Contract No. ____, whose fee has been negotiated, hereby certifies and agrees to the following:

- a) The Consultant certifies that the wage rates and other costs used to support the Consultant's compensation are accurate, complete, and current at the time of contracting; and
- b) The Consultant agrees that the original contract price and any additions to the contract may be adjusted within one year of completion of the contract to exclude any significant amounts if the Authority determines that the fee was increased by such amounts due to inaccurate, incomplete, or noncurrent wage rates or other costs.

Consultant

By:
duly authorized

Print Name:

Date:

EXHIBIT F

Guidelines for Preparation of Work Orders

Work Orders are intended to be discrete working documents that will provide, in summary form, the background and factual context within which a particular work element or series of work elements are presented and a detailed scope of work and costs. Work Orders shall be construed to be in addition to, supplementary to and consistent with the provisions of the text of this Agreement. Work Orders shall provide and reflect to the extent appropriate under the circumstances at least the following representative information:

1. The Work Order identification number and date, and reference to the Agreement.
2. A list of the Authority's goals, objectives and other controlling criteria, assumptions, limitations and recommendations sought.
3. A detailed list of functions, activities, tasks and subtasks under the Work Order.
4. The proposed organization and management plan for the accomplishment of the Work Order, including the leading responsible representative, and any special staffing considerations.
5. A schedule for the performance of the Work Order, including phasing, sequence of the work, progress reporting.
6. A list of work products anticipated in connection with the Work Order, such as drawings, schematic plans, models, schedules, calculations, written reports, oral presentations, meeting minutes, appearances at hearings.
7. Agency and/or community liaison and coordination required.
8. Estimate of man-hours.
9. Fees and costs/manner of payment.
10. Background information available to be considered by the Consultant.

SAMPLE WORK ORDER
MASSACHUSETTS PORT AUTHORITY

MPA Contract No. _____
MPA Contract Title _____
Location/Facility _____
Work Order No. _____
Work Order Title _____
Date _____

1. AUTHORIZATION

In accordance with the provisions of the Agreement between the Authority and _____, the Consultant, under MPA Contract No. _____, the Consultant is authorized to perform services as described in this Work Order for:

a) A not-to-exceed amount of \$ _____

or

b) A lump sum amount of \$ _____

2. EFFECTIVE DATE

This Work Order is effective beginning _____ until _____.

3. CONTRACT AMOUNT SUMMARY

Contract Amount	\$	
Less Previously Authorized This Authorization	\$	\$
Subtotal		-----
Remaining Unallocated	\$	

4. SUMMARY DESCRIPTION, GOALS, AND OBJECTIVES

5. SCOPE, DELIVERABLES

The scope of work to be accomplished under this Work Order, within the limits of the established budget is as follows:

TASK 1
TASK 2
TASK 3

6. SCHEDULE

The work shall proceed in accordance with the following schedule.

Start Work _____ (date)
Complete Task 1 _____ (date)
Complete Task 2 _____ (date)
Complete Task 3 _____ (date)

7. ASSUMPTIONS

8. RESOURCE ALLOCATIONS/PAYMENT SCHEDULE

9. AGREEMENT

Recommended by: _____
Consultant

Recommended by: _____
Authority/Project Manager - Contract

Recommended by: _____
Authority/Project Manager - Funding

Approved by: _____
Authority/Business Strategy Manager

Approved by: _____
Authority/Director of Capital Programs and Logan Modernization

cc: G. Younger
R. Luongo

EXHIBIT G

CONSULTANT'S SECURITY IDENTIFICATION REQUIREMENTS FOR AIRPORT PROJECTS

The following procedures shall apply for all projects at Logan International Airport performed in an Aircraft Operations Area (AOA) or any other Security Identification Display Area (SIDA).

A. Airport Security Badges

The Consultant shall provide airport security badges to its employees and employees of its subconsultants working in an AOA or other SIDA of Logan International Airport. All such security badges shall be issued by the Public Safety Department of the Authority's Aviation Department. The Consultant shall issue one security badge to each of its employees and those of each subconsultant working in the aforementioned areas, and shall maintain a record of the name and Social Security Number of each individual to whom a security badge has been issued.

The term "SIDA" which shall include the AOA, shall be defined as any and all of the following areas at Logan International Airport: (1) all ramp and apron areas, (2) all runways and taxiways, (3) perimeter service road, (4) vehicle service road, (5) hangar areas where individuals have unescorted access on the AOA, (6) cargo facilities -- ten feet within the cargo area from the front bay doors, (7) baggage makeup areas/baggage rooms, and (8) terminal jetways.

The Consultant shall appoint a Security Badge Coordinator who shall be responsible for ensuring that all of the Consultant's and subconsultants' employees complete all necessary training and application requirements, including attendance at a federally-mandated SIDA Training Course, prior to the submission of Security Badge Applications. The Authority's Security Badge Office shall provide the required SIDA training materials and application processing instructions to the Security Badge Coordinator. The Consultant, through its Security Badge Coordinator, is required to provide documentation that all Consultant and subconsultant employees applying for Unescorted-Access badges have received the mandatory SIDA training. Such documentation, which shall be made a part of the Security Badge Application, shall include the date and location of the training, and the name of the instructor who conducted the training.

There shall be two types of security badges: Unescorted-Access and Escort-Required. Unescorted-Access security badges and access key cards shall be issued ONLY to supervisory employees of the Consultant and supervisory employees of its subconsultants (*i.e.*, project manager, resident engineer, design engineer, project engineer). Escort-Required security badges shall be issued to the non-supervisory employees of the Consultant and its subconsultants. Employees with Escort-Required security badges shall be accompanied by an employee with an Unescorted-Access security badge at all times while working in the AOA or SIDA. The Consultant shall ensure that there are sufficient supervisory personnel to perform the required escort functions. Security badges must be worn above the waist and be visible at all times while in the AOA or SIDA. Failure to appropriately display a security badge will result in the issuance of a fine, revocation of the security badge, and removal of the employee from the AOA or SIDA.

The Authority is subject to the procedures set forth in 14 CFR 107.31 regarding unescorted access to the AOA and SIDA. All first-time applicants for an Unescorted-Access security badge shall be fingerprinted, and shall undergo a Federal Bureau of Investigation (“FBI”) criminal history records check. The Authority shall retain control and responsibility for the maintenance and destruction of the criminal history records as outlined in 14 CFR 107.31. Applicants who refuse to be fingerprinted and/or undergo the FBI criminal history records check shall be denied unescorted access privileges and an Unescorted-Access security badge.

On a daily basis, the Consultant shall issue to and retrieve from non-supervisory employees all Escort-Required security badges. The Consultant shall maintain a daily log for all Escort-Required security badges, which shall contain the date of issue, the Consultant’s name, employee’s name and Social Security number, and badge number. The Consultant shall also conduct periodic accountability audits of all badges, and documentation of such audit results must be kept on file and made available to the Authority’s Public Safety Department upon request.

The Consultant shall assume full responsibility for the proper and complete application, issuance, control, and return of all security badges and access key cards issued to its employees and employees of its subconsultants. The Authority may, in its discretion, audit the records of the Consultant to verify the accountability of all security badges and access key cards issued. Within twenty-four (24) hours following the first to occur of (a) expiration of this Agreement, (b) completion of the services under this Agreement, (c) the expiration date for the security badge or access key card, and (d) the Consultant’s or subconsultant’s termination of an employee to whom a security badge or access key card has been issued under this Agreement, the Consultant shall return to the Authority’s Public Safety Department all security badges and access key cards issued and/or expired under this Agreement.

Each Security Badge Application form submitted for a security badge and/or access key card is subject to a \$30.00 processing fee and a \$41.00 fingerprint fee (which shall be subject to change as the Authority shall determine). The Consultant shall pay the Authority, as listed hereafter, for every security badge and access key card that is unaccounted for, lost, missing, or not returned to the Authority within the applicable time period listed above, or at the conclusion of an audit. Final payment to the Consultant may be withheld pending the Consultant’s return of all security badges and access key cards to the Authority. All security badges and access key cards that cannot be located shall be reported immediately to the Authority’s Security Badge Office at (617) 561-1706 between the hours of 8:30 a.m. to 4:30 p.m., Monday through Thursday, and 6:30 a.m. to 4:30 p.m., Friday; and to the Authority’s Operations Department at (617) 561-1919, after hours and during weekends.

Failure to comply with the requirements described herein shall constitute a direct violation of the General Rules and Regulations for Logan International Airport, and the FAA-approved Logan International Airport Security Program, and shall be subject to the penalty set forth for each violation.

The Consultant is advised that if the FAA declares a security alert, all security badges and access key cards shall require a recertification by the Authority.

In addition:

- a. No separate payment will be made to the Consultant for this security identification program, the cost of which is considered a subsidiary part of this Agreement.
- b. All supervisory employees of the Consultant and its subconsultants who require unescorted access to the AOA and/or any SIDA at Logan International Airport must obtain security clearance in accordance with the then current version of the Security Badge Application form entitled, "APPLICATION FOR UNESCORTED ACCESS PRIVILEGES AT LOGAN INTERNATIONAL AIRPORT", which shall be completed and executed as required by the Authority, and submitted to the Authority's Project Manager with justification as to need. The Authority's Project Manager shall review all such requests for unescorted access, and the Capital Programs Department Security Coordinator shall approve the justification as to need prior to submission of the Security Badge Application to the Authority's Security Badge Office for processing. The Consultant shall be responsible for the accuracy and completeness of the information provided on the Security Badge Application form. The Consultant shall schedule submission of the Security Badge Application form at least four (4) weeks in advance of need.
- c. In addition to the above requirements, any consultant performing work in the U.S. Customs area of Terminal E will be required to obtain further authorization as determined by the U.S. Customs Department, Officer in Charge. No separate payment will be made to the Consultant for U.S. Customs authorization, the costs of which are considered a subsidiary part of this Agreement.
- d. Fees to be charged for security badges shall be as follows:

Initial Issue\$30 per badge
(All Badges)

Fingerprint Fee\$41 per badge

Expired Badge Renewal Fee ...\$60 per badge not renewed before badge's expiration date

Unaccountable Badges*

First\$50 per badge

Second\$50 per badge plus \$45 fine per badge

ThirdDenial of badge for thirty (30) days

* Replacement badges will require a new application and a \$30 application fee.

The aforementioned fees shall be subject to change as the Authority shall determine.

B. Vehicle Apron Permit/Aerodrome Operator Permit

All vehicles authorized for access to AOAs shall be equipped with Vehicle Apron Permits issued by the Public Safety Department of the Authority's Aviation Department. A fee of \$20 shall be charged for each Vehicle Apron Permit. Each vehicle must be registered in the Commonwealth of Massachusetts, must clearly display company identification on each side, and must pass an inspection conducted by the State Police prior to issuance of a Vehicle Apron Permit.

Drivers must be trained and tested by the Authority's Aviation Department Operations Personnel and issued an Aerodrome Vehicle Operator's Permit prior to driving in AOAs. Drivers must have in their possession, whenever driving on the Airport, their Aerodrome Vehicle Operator Permit.

Application for a Vehicle Apron Permit or Aerodrome Vehicle Operator Permit should be forwarded to the Authority's Capital Programs Department Project Manager for processing by the Aerodrome Office. These permits will only be issued to the Consultant; therefore, the Consultant must provide sufficient personnel and escort vehicles to comply with this requirement.

All Security Badges, Vehicle Apron Permits, and Aerodrome Vehicle Operator Permits require the approval of the Capital Programs Department Security Badge Coordinator.

EXHIBIT H

DISADVANTAGED BUSINESS ENTERPRISE QUARTERLY EXPENDITURE REPORT

MPA Contract No./Title:

Name of Consultant:

Name of DBE(MBE/WBE) subconsultant:

Date Work Began: _____

Est. Date of Completion:

Total Amount of MPA Contract: \$

NOTE: A separate report must be furnished for each Disadvantaged Business Enterprise.

Reports are to be submitted to the Compliance Department each calendar quarter for the duration of the project. Reports can be faxed to John Pires, Construction Compliance Manager @ (617) 568-3199. If necessary, Mr. Pires can be reached @ (617) 568-3196.

DUE DATES FOR REPORT SUBMITTAL TO MASSPORT ARE AS FOLLOWS:

1st Quarter (July 1 - September 30)

Report is due no later than OCTOBER 15

2nd Quarter (October 1 - December 31)

Report is due no later than JANUARY 15

3rd Quarter (January 1 - March 31)

Report is due no later than APRIL 15

4th Quarter (April 1 - June 30)

Report is due no later than JULY 15

Quarter Reporting: Begin: _____ End: _____ Final Report?: Yes: ____ No:

1. DBE Contract Amount: \$
2. Amount paid to DBE this quarter: \$
3. Total amount paid to DBE to date: \$
4. Balance due DBE: \$
5. Comments:

Under the pains and penalties of perjury we hereby certify that the information supplied herein is correct and complete:

Consultant:

Disadvantaged Business Enterprise:

Signed: _____
Title: _____
Tel #: _____
Date: _____

Signed: _____
Title: _____
Tel #: _____
Date: _____