

**MASSACHUSETTS DEVELOPMENT
FINANCE AGENCY**

REQUEST FOR QUALIFICATIONS

**DESIGN AND ENGINEERING SERVICES
FOR THE
HOSPITAL ROAD SUBSTATION EXPANSION**

DEVENS, MA 01434

DATE ISSUED: 12/27/2021

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I. INTRODUCTION

The Massachusetts Development Finance Agency (“MassDevelopment,” “Owner,” or “Agency”) is seeking the services of a qualified engineering firm with at least the minimum qualifications as further defined in the provisions of this Request for Qualifications (“RFQ”), to provide Design and Engineering Services for the design, construction management, and commissioning necessary for the expansion of the 69/13.8kV substation at 111 Hospital Road in Devens, Massachusetts (“Project”).

II. MASSDEVELOPMENT

MassDevelopment is a body politic and corporate created by the Commonwealth of Massachusetts to help foster economic development across the Commonwealth. The Agency is governed by an 11-member Board of Directors. MassDevelopment prides itself on a team-oriented, solutions-based approach to economic development. The Agency provides its clients with entrepreneurial solutions to complex real estate projects and financing options that create economic opportunities in Massachusetts. Our staff are located in offices throughout the Commonwealth.

II.A DEVENS REDEVELOPMENT PROJECT

MassDevelopment, pursuant to Chapter 498 of the Acts of 1993, as amended, was designated as the public agency responsible for the redevelopment, reuse, and operation of the Devens Regional Enterprise Zone, located in Devens, Massachusetts (“Devens”). Located in central Massachusetts, Devens is the site of the former Fort Devens military installation. MassDevelopment is overseeing the redevelopment of the old base into a 4,400-acre mixed-use community. To date over 5 million square feet of industrial and commercial development has been completed. The size and scale of the development ranges from commercial buildings of less than 5,000 sf to large-scale manufacturing and warehouse-distribution facilities. Devens features over 100 businesses and organizations that collectively employ more than 6,000 workers. There are approximately 200 new and existing housing units and a newly constructed three-story, age restricted residential facility. MassDevelopment’s primary activities and responsibilities in Devens include:

- Ensuring compliance with the legal requirements governing the redevelopment of Devens;
- Managing development of new and upgraded infrastructure to service Devens, including wastewater treatment facilities, water supply systems, an expanded storm water management system, road improvements, and municipal utility systems;
- Maintenance of buildings, grounds, recreational facilities, and infrastructure;
- Provision of municipal services to Devens, including public works, public safety, and education (through a contract with a local school district);
- Maintaining cooperative and effective relations with the local towns and key state and federal agencies;
- Overseeing a coordinated one-stop state permitting and financing system for firms seeking to locate in Devens; and
- Marketing, selling and/or leasing land and buildings in Devens to new users.

MassDevelopment owns and manages the electric, gas, sewer, and water utilities in Devens and utilizes the services of operating and maintenance contractors in this effort.

III. PROJECT DESCRIPTION

The selected firm will provide turnkey engineering services on a time and materials basis as required for the design, construction management, and commissioning necessary for the expansion of the 69/13.8kV substation at 111 Hospital Road in Devens, Massachusetts. Services shall include but not be limited to the preparation of above and below grade plans, control and protection plans, specifications for the procurement of substation equipment, and technical evaluation of vendor responses.

The work necessary for the expansion of the substation shall include but not be limited to expanding the 69kV opened-air bus structures, installing one (1) 69kV rated circuit breaker, installing three (3) gang-operated disconnect switches, installing two (2) 69kV/13.8kV transformers (existing transformer will be replaced), installing one (1) 13.8kV metal-enclosed switchgear, designing substation getaways for new circuit feeders, designing of the relay protection scheme, designing of the control scheme, and reviewing of above and below grade plans and the protection and control schemes. Additionally, the existing 13.8kV metal-enclosed switchgear with three distribution feeders, and existing 69kV/13.8kV 20 MVA transformer will need to be decommissioned and replaced by the new metal-enclosed switchgear to be fed by two large 69/13.8kV transformers (size to be determined at a later date).

The substation expansion must be designed to be constructed with equipment that is compatible with the SCADA system designated by Devens. Installation of all necessary telecommunications equipment for voice and data communications for the Project must be included in the proposed design.

Any technical specifications produced by the successful respondent shall be used by MassDevelopment to hire vendors to perform site development work, fabricate all equipment required for the substation, and deliver, install and test all new equipment. All work shall be performed under the direction of MassDevelopment staff in Devens, or its designated agents.

MassDevelopment expects to enter into a contract with a responsive, responsible respondent based on qualifications, professional capability, and best value. Services will be provided by the selected respondent pursuant to a contract prepared by MassDevelopment and substantially in the form attached hereto as Attachment A. The anticipated duration of the contract is 36 months.

Award of a contract for the work contemplated by this RFQ may be subject to the approval of MassDevelopment's Board of Directors.

IV. SELECTION SCHEDULE/TIME AND PLACE OF SUBMISSION OF RESPONSES

The selection schedule is as follows (subject to change):

RFQ Available:	12/27/2021
Site Visit:	TBD
Deadline for Questions:	1/17/2022
Responses to Questions:	1/24/2022
Response Submission Deadline:	1/31/2022
Interviews (if needed):	TBD
Selection of Firm (expected):	2/28/2022

MassDevelopment reserves the right to alter the timeline as it deems necessary.

All inquiries concerning this RFQ must be addressed to the following person:

Jim Moore
Director of Utilities
MassDevelopment
33 Andrews Parkway
Devens, MA 01434
Direct (office): 978-784-2931
Email: jmoore@massdevelopment.com

This RFQ has been distributed electronically using MassDevelopment's website (<https://www.massdevelopment.com/rfp-rfq/>). It is the responsibility of respondents to check the website for any addenda or modifications to this RFQ.

All questions should be submitted in writing on or before the date referenced within the RFQ schedule above. **Electronic submission of questions is encouraged.** Prospective respondents should note that all clarifications and questions must be submitted prior to the deadline for questions. Answers to all questions of a substantive nature will be in the form of a formal addendum, which will be posted on MassDevelopment's website (<https://www.massdevelopment.com/rfp-rfq/>). It is the responsibility of respondents to ensure that they receive all information pertaining to this RFQ by visiting the website link listed above.

MassDevelopment anticipates offering a site visit for those interested in this Project. The time and date of a site visit will be provided at a later date.

As a pre-condition for submitting qualifications for this Project, each respondent must:

- A. Be qualified and licensed by the Commonwealth of Massachusetts to perform the services requested in this RFQ (including any sub-consultant).
- B. Be willing and able to dedicate the highest time priority to this Project.

- C. Be familiar with the State Building Code of the Commonwealth of Massachusetts, the National Electrical Safety Code (NESC), and with all applicable local, state and federal laws and regulations.
- D. Have previous experience with projects similar in nature and scope to those being requested in the RFQ (including any sub-consultants).
- E. Agree to carry, if selected for the project, insurance coverage consistent with MassDevelopment requirements at the time of award.

Respondents to this RFQ must submit their responses, containing all of the information specified in Section VII – Elements of Response, **via email** (pdf format ONLY, preferably searchable) to jmoore@massdevelopment.com with the subject line “Response to RFQ: Design and Engineering Services for the Hospital Road Substation Expansion”.¹ Responses must be received no later than **January 31, 2022 by 2:00 PM**.

MassDevelopment also requests that respondents to this RFQ submit three (3) hard copies of their responses to this RFQ by mail, nationally-recognized overnight package delivery service or by hand to the contact person listed above.

Any response received after the time specified will be considered a late response. A late response may not be considered for award.

V. DIVERSE BUSINESS ENTERPRISES

MassDevelopment strongly encourages the use of Minority Owned Business Enterprises (“MBEs”), Women Owned Business Enterprises (“WBEs”), Veteran-Owned Business Enterprises (“VBEs”), and Service Disabled Veteran Business Enterprises (“SDVBEs”, and collectively with the MBEs, WBEs, and VBEs hereinafter referred to as “Diverse Business Enterprise(s)”, as consultants, contractors, subconsultants, subcontractors, and suppliers in the procurement of its direct design, engineering, construction and all professional services.

Accordingly, MassDevelopment has developed a Diverse Business Participation Program (the “DBE Program”) which establishes criteria to encourage and measure participation by Diverse Business Enterprises in the provision of such services. The DBE Program addresses MassDevelopment’s commitment and the commitment of respondents to this RFQ, to seek opportunities for Diverse Business Enterprise participation in this contract.

Please see Attachment B for MassDevelopment’s DBE Program guidelines and forms that must be submitted with respondent’s response.

VI. SCOPE OF SERVICES

MassDevelopment is seeking responses for the design, construction management, and commissioning necessary for the expansion of the 69/13.8kV substation at 111 Hospital Road in

¹ Please note that MassDevelopment cannot receive e-mail attachments larger than 25 megabytes (an attachment larger than 25 megabytes will cause your email to be rejected entirely). If your response exceeds that limit, please upload your response to your own storage service and provide MassDevelopment with a link to the file(s).

Devens, Massachusetts. The successful respondent may be asked to perform/provide design, oversight, and construction management services including, but not limited to, the following tasks:

- A. Site Evaluation – Evaluate the suitability of the proposed area for the Hospital Road substation expansion. Evaluations should include, but not be limited to:
 - 1. Lot Size
 - 2. Soil Conditions, Access and Egress, and General Suitability

- B. Site Development – Provide plans and specifications that will be used to solicit bids for all required site development work associated with final substation expansion. This will include, but not be limited to, all labor, equipment, and materials associated with:
 - 1. Construction grading
 - 2. Relocation of existing utilities
 - 3. Fence location and grounding
 - 4. Circuit breaker foundation, excavation, and installation
 - 5. Transformers foundations, existing oil containment vessel expansion or removal and necessary excavation and installation of new oil containment system if necessary
 - 6. Relay and switchgear enclosure foundation, excavation, and installation
 - 7. Transfer coordination of feeders from old switchgear to new switchgear
 - 8. Coordinate taking offline and removing the existing 69 kV/13.8 kV transformer and 13.8 kV switchgear
 - 9. Conduit excavation and installation
 - 10. Ground grid evaluation and expansion
 - 11. Removal of old 13.8 kV switchgear foundations
 - 12. Finish grading and crushed stone installation
 - 13. Structural steel foundations, excavation, and installation

- C. Electrical Equipment – Provide plans and specifications that will be used to solicit bids for the procurement and installation of all electrical equipment necessary to expand the substation including, but not limited to:
 - 1. 1 – 69 kV, 1200 amp, 3 pole, outdoor circuit breaker
 - 2. 3 – 69 kV, 1200 amp gang operated disconnect switches
 - 3. 2 – 69 kV – 13.8 kV substation transformers with load tap changers (size to be determined)
 - 4. 13.8 kV Main-Tie-Main switchgear with 8 outbound breaker positions
 - 5. All necessary 69 kV and 13.8 kV surge protection
 - 6. All necessary potential and current transformers
 - 7. All necessary control and relay panels
 - 8. All necessary substation steel support structures, air-insulated bus, wires, cables, insulators, connectors, etc.
 - 9. All necessary equipment for sufficiently sized AC and DC station service

- D. Relay Protection – Complete relay protection design and provide plans and specifications that will be used to solicit bids for the procurement and installation of all relay protection schemes. Review all customer interconnection relay schemes.

- E. Schedules – Provide a tentative schedule of delivery dates for the design, plans and specifications.
- F. Estimate – Submit an itemized cost estimate for the Project including all equipment, materials, installation services, consulting services, etc. prior to public bidding of plans and specifications.
- G. Design Drawings – Prepare and submit the following design drawings:
 - 1. One-line station diagram
 - 2. Three-line relay diagram
 - 3. AC and DC schematics
 - 4. Site Drawings
 - 5. Civil above and below grade C Construction Drawings
 - 6. Other drawings necessary or desirable to comprise a complete bid package
- H. SCADA Compatibility – Specify an RTU, relays and controls suitable for monitoring and operation via the existing SCADA system. Specifications shall include all installation, wiring and testing of all hardware necessary to incorporate the new substation into the existing Devens SCADA system. A complete set of points will be developed during the design phase of the project.
- I. Bid Evaluation – Perform bid analysis and preparation of recommendations for contract award(s).
- J. As-Built Drawings – Point to point interconnection wiring diagrams, physical layout details showing site finished grading, underground fixtures and trenches, switchyard, control house, conduit, cable, cable tray, grounding and lighting will be supplied by the selected respondent when the Project is complete. The selected respondent will review all shop drawings submitted by any and all contractors and may be asked to resolve any discrepancies or problems with them. Upon completion of construction, the selected respondent shall provide MassDevelopment with a complete electronic set of as-built drawings compatible with the MassDevelopment CAD system, and shall contact the Devens Engineering Division prior to submission thereof to ensure compatibility.
- K. Project Management Services – Project management services during the construction phase may include periodic visits to the site for the purposes of: general inspection of the work in progress; review and distribution of shop drawings submitted by the contractor(s); evaluation and recommendation of solutions to field problems; inspection of completed work; and recommendations for acceptance and/or rejection of the contract work.
- L. Clerk of the Works – MassDevelopment will provide an on-site representative to oversee the daily site operations from the initial site work through to final acceptance of the substation expansion project.

M. Acceptance Testing – The selected respondent may be asked to supervise, oversee, and certify all mechanical and electrical acceptance testing of all materials and equipment purchased, installed and placed in service as a part of this Project.

VII. ELEMENTS OF RESPONSE

All responses shall provide information relating to the elements listed below in sufficient detail to allow MassDevelopment to conduct an informed and fair selection process. All submissions must, at a minimum, include the following elements in order to be considered for this Project:

- **Proposed Team:** Provide resumes and organizational structure of proposed key team members, including Principal-in-Charge, Project Manager, Project Engineer, Sub-Consultants and any other proposed key personnel. Define the current availability of each key team member, including quantity of other projects being managed or worked on at time of response submission and projected during the anticipated project schedule.
- **Experience and Financial Solvency:** Provide a narrative of the firm's (and sub-consultants') qualifications for this Project, along with a certified statement to attest to the firm's financial solvency.
- **Project Delivery Method:** Firm's approach to providing the potential services listed above in Section V – Scope of Services. Provide examples of design and construction oversight of at least three major engineering projects completed within the last five years, provide examples of involvement with permitting processes including but not limited to those involving Mass Historic, the Department of Environmental Protection (DEP), local conservation commissions (e.g., wetlands), and the Army Corps of Engineers.
- **List of Project References:** Provide contact information for professional references (i.e., project owner's) from three to five projects performed by the project team during the past five years, including the names and phone numbers of those familiar with the work performed (MassDevelopment shall have express permission to contact, either in person, by phone, or by correspondence, the references listed). Identify project scope, budget and year completed with each reference.
- **Schedule:** Develop a preliminary schedule showing a timeline for project completion.
- **Cost Estimating:** Provide examples of where the firm's project team created preliminary budgets and cost estimate development during design and comparisons of same to final as-built cost.
- **Capacity:** Provide a detailed explanation of the firm's size and depth with respect to the firm's capacity to complete the anticipated project within in a timely manner.
- **Schedule of Rates and Fees:** Provide a fee structure broken down by project phase, task, and team member. Respondent must submit fee table in excel format identifying proposed hourly rates for team members throughout the duration of the anticipated project.
- **Complete the Diverse Business Enterprise (DBE) Participation Schedule and Narrative** (See Attachment 2).

- **Insurance:** Provide a certificate of insurance setting forth the firm’s current liability insurance coverage including limits and deductibles. Provide a statement declaring the firm’s agreement, if awarded this contract, to purchase and maintain the liability insurance set forth below as evidenced by a certificate of insurance from an insurance company having an A.M. Best rating of “A-, VII” and licensed to transact business in the Commonwealth of Massachusetts.
 - a. Commercial General Liability Requirements, including personal injury and if applicable, product liability/completed operations coverage in the minimum amount of \$1 million personal injury, \$1 million per occurrence, and \$2 million general/product/completed operations aggregate. Policy must be written on a per project basis;
 - b. Auto liability coverage for owned, hired and non-owned vehicles in the minimum amount of \$1 million per occurrence combined single limit;
 - c. Workers’ Compensation for all its employees, as required by statute, with employer’s liability of \$500,000 or more including \$500,000 accident and \$500,000 disease;
 - d. Professional liability (errors & omissions) with per claim limits of not less than \$5 million.

Massachusetts Development Finance Agency must be included as additional insured on (a) and (b) above.

Please note that all sub-consultants under the proposed contract will be required to carry the same policies as noted above.

VIII. EVALUATION CRITERIA

MassDevelopment’s selection committee will evaluate and compare each submitted response using the following evaluation criteria. The criteria are not listed in any order of importance:

- A. Prior similar experience performing electric substation design and engineering.
- B. Desirability of the submittal.
- C. Qualifications and experience of the people to be assigned to the Project – The selected firm(s) will have demonstrable experience with a broad range of project types. Firms should also demonstrate experience in complying with relevant Massachusetts codes and laws.
- D. Timeliness of proposed schedule for project completion – submitted in a Gant chart format.
- E. Past performance on similar public/private projects for a minimum of 3 projects.
- F. Financial stability – provided in form of a letter from company’s CFO.
- G. Level of and commitment to Diverse Business Enterprise Participation – as described in Section V.

Selection of a successful respondent(s) will be made using a best value determination with the goal of making award to a respondent who is responsible, possesses the management, financial and technical capabilities necessary to fulfill the requirements of the contract, whose response

conforms to the RFQ's requirements stated herein, and who is judged by an integrated assessment of the general considerations and specific criteria defined in the evaluation criteria set forth herein to be most advantageous to MassDevelopment, with the proposed price and other factors considered.

MassDevelopment has determined that it is in the public interest, for purposes of this procurement, that evaluation factors relating to the respondent's response are more important than the proposed price alone. Therefore, MassDevelopment may select a respondent(s) who offers a price higher than the lowest price among the responsible, eligible and qualified respondent(s) if it is determined that the additional technical merit or other advantages offered are worth the additional price in relation to the other responses received. For evaluation purposes, if the responses received are determined to be technically comparable, then the proposed price becomes more important.

IX. SELECTION PROCESS

Only responses containing the Elements of Response (Section VII) and meeting the minimum requirements set forth in the Evaluation Criteria (Section VIII) may be considered for further evaluation.

There will be no public opening of responses submitted under this RFQ. An internal selection committee will review the submitted responses, and this committee may or may not contact respondents for further clarification or interviews and may also contact references. The committee may choose to identify a "short list" of qualified respondents for follow-up interviews or to make recommendations based on the information contained in the responses. Information concerning interviews, if scheduled, will be provided to the short-listed firms.

MassDevelopment will select one or more finalists by comparing the merits of the semi-finalists based on the above criteria. In such case where two or more of the semi-finalists appear to be equally meritorious or advantageous, they may be additionally required to: a) appear for an interview with MassDevelopment staff; b) present a more detailed response to MassDevelopment; and/or c) provide work samples from past similar project.

Once MassDevelopment selects the semi-finalists, it will engage in fee and scope of service negotiations with the selected firms. Prior to negotiations, the selected semi-finalists will be required to prepare and to submit fee rates, including not-to-exceed amounts, a detailed scope of services; and an anticipated time schedule. Any final response submitted in response to this RFQ or subsequent negotiations shall be considered a firm offer and remain effective unconditionally for sixty (60) days.

MassDevelopment reserves the right to waive any of the requirements of this RFQ, to request additional information from any respondent, to award without negotiations or discussions, to negotiate with any respondent, to reject any or all responses or parts of responses, to solicit new responses, and to award contracts to one or more respondents or to reject any or all respondents as it deems in its best interest.

The firm selected will begin to perform services, as needed by MassDevelopment, subject to execution of a contract substantially in the form attached as Attachment A hereto. MassDevelopment reserves the right to negotiate the final terms of the contract and compensation. Should MassDevelopment be unable to negotiate a satisfactory fee with the selected finalist, then the next highest ranked finalist will be selected and the negotiation process repeated until a contract is executed.

X. GENERAL PROVISIONS

- A. MassDevelopment reserves the right to reject any or all responses or parts of responses, to solicit new responses and to award a contract(s) as it deems to be in its best interest.
- B. By submitting a response to this RFQ to MassDevelopment, the respondent is certifying that its response is in all respects bona fide, fair, and made without collusion or fraud with any person. As used in this section, “person” shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.
- C. Respondents are encouraged to utilize Diverse Business Enterprises (as defined above). MassDevelopment hereby notifies all respondents that Diverse Business Enterprises will be afforded full opportunity to submit responses to this RFQ and will not be subjected to discrimination on the basis of race, color, sex or national origin in consideration for an award.
- D. Potential respondents are hereby notified that issuance of this RFQ and receipt of responses does not assure that a respondent will be selected.
- E. MassDevelopment is not liable for any costs incurred by a respondent in the preparation and production of a response or for any work performed prior to contract execution.
- F. MassDevelopment reserves the right to waive any informalities, minor deviations, insignificant mistakes and matters of form rather than substance and to seek clarification of the responses, which can be waived or corrected without prejudice to other respondents, potential respondents or MassDevelopment. No officer or agent of MassDevelopment is authorized to waive this reservation.
- G. A response may be modified or withdrawn by a respondent prior to ten (10) business days after the response submission deadline by delivering a written notice to the location designated as the place where responses are to be received.
- H. Any response submitted in response to this RFQ that is not modified or withdrawn as specified in Section X (G) above, shall be considered a firm offer and shall remain effective unconditionally for ninety (90) days.
- I. No respondent shall hold any press conference, issue news releases, or make announcements concerning its selection or non-selection for a contract prior to

MassDevelopment's public release of this information; thereafter any such press conference, release, or announcement shall be made only after obtaining the written approval of MassDevelopment.

- J. MassDevelopment provides respondents with an opportunity to administratively resolve disputes, complaints or inquiries related to MassDevelopment solicitations or contract awards. MassDevelopment encourages respondents to seek resolution of disputes through consultation with MassDevelopment staff. All such matters will be accorded impartial and timely consideration. If consultation with MassDevelopment staff does not lead to a resolution of the dispute, respondents must file a written dispute with the MassDevelopment Office of General Counsel.
- K. During the evaluation process, the content of each response will be held in confidence and details of any response will not be revealed (except as required under law).
- L. Unless otherwise specified in the response to the RFQ, quoted prices include all overhead, insurance, taxes, fees, and licenses applicable to the delivery or services set forth in the response.
- M. Respondents are further advised that upon signing a contract, the selected firm must certify that it has complied with any and all laws of the Commonwealth relating to the payment of taxes, reporting of employees and contractors, and withholding and remitting of child support as required by M.G.L. c.62C, §49A, and has either (i) filed all tax returns and paid all taxes required by law; (ii) has filed a pending application for abatement of such taxes; (iii) has a pending petition before the appellate tax board contesting such taxes; or (iv) does not derive taxable income from Massachusetts Sources such that it is subject to taxation by the Commonwealth of Massachusetts; and must certify that it is a "Qualified Employer" or an "Exempt Employer" as defined under Chapter 521 of the Massachusetts Acts of 1990, as amended by Chapter 329 of the Massachusetts Acts of 1991, and 102 CMR 12.00 *et. seq.* as provided in the contract. A respondent's failure to certify compliance with said laws would be cause for MassDevelopment not to enter into a contract. MassDevelopment further reserves the right to investigate, at any time prior to MassDevelopment's execution of a contract or during the term of a contract, any information indicating that there has been a failure to comply with said laws. If MassDevelopment determines that any selected respondent has not complied with said laws, it shall decline to enter into a contract, may terminate any contract entered into, and further may decline to extend the contract.
- N. This procurement is subject to M.G.L. c. 7 §§ 22C - 22F which provides that a state agency, state authority, the house of representatives or the senate may not procure goods or services from any person employing ten or more employees in an office or other facility located in Northern Ireland, who fails to certify that:
 - i. he/she does not discriminate in employment, compensation, or terms, conditions and privileges of employment on account of religious or political belief; and
 - ii. he/she promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and

- iii. he/she 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.

Mass. Gen. Laws c. 7, §§22C – 22F shall not apply if (i) the procurement is essential, as determined by MassDevelopment, and compliance would eliminate the only proposal or offer or would result in inadequate competition; or (ii) there is not comparable proposal or offer (i.e. within 10%) by a certifying firm; or (iii) the firm does not employ ten or more employees in an office or other facility located in Northern Ireland.

- O. MassDevelopment is subject to the requirements concerning the disclosure of public records under the Massachusetts Public Records law, M.G.L. c. 66. Accordingly, documents and other materials made or received by MassDevelopment are subject to public disclosure.
- P. All respondents must be registered to do business and be in good standing with the Massachusetts Secretary of State's Office in order to transact business in Massachusetts. MassDevelopment may request evidence of good standing prior to entering into any contract.
- Q. A respondent will not be selected if it appears on any list of debarred or suspended contractors maintained by the Commonwealth or the federal government.
- R. See the attached contract form for other certifications and other provisions with which the selected respondents must comply. MassDevelopment reserves the right to modify this contract and certifications to the extent it deems necessary.

ATTACHMENT A
RESPONSE SUBMISSION FORM

SUBMIT TO: Massachusetts Development Finance Agency
Attn: Mr. Jim Moore, Director of Devens Utilities
33 Andrews Parkway
Devens, MA 01434

DATE RECEIVED: _____

SUBMITTED BY:

Firm: _____

Address: _____

Telephone: _____

CONTACT PERSON: _____

FEDERAL TAX ID #: _____

The accompanying response is submitted in accordance with the Request for Qualifications for Design and Engineering Services for the Hospital Road Substation Expansion issued by the Massachusetts Development Finance Agency.

Signature

Date

ATTACHMENT B

MASSDEVELOPMENT'S DIVERSE BUSINESS PARTICIPATION PROGRAM GUIDELINES

MassDevelopment strongly encourages the use of Diverse Business Enterprises (as defined in Section V of the RFQ) as consultants, contractors, sub-consultants, subcontractors, and suppliers in the procurement of its direct design, engineering, construction and all professional services. Accordingly, MassDevelopment has developed a Diverse Business Participation Program (the "DBE Program") that establishes criteria to encourage and measure participation by Diverse Business Enterprises in the provision of such services.

The DBE Program addresses MassDevelopment's commitment, and the commitment of respondents to this RFQ, to seek opportunities for Diverse Business Enterprise participation. The DBE Program requires MassDevelopment to reach out to Diverse Business Enterprises in its contracting opportunities and to track the percentage of Diverse Business Enterprises, which participate in Agency contracting at the direct contracting level. The participation levels of Diverse Business Enterprises in MassDevelopment's direct contracting will be reported to MassDevelopment's Board of Directors annually.

In addition, the DBE Program requires examination of respondent's anticipated utilization of Diverse Business Enterprises at the subcontractor/subconsultant level, including the percentage of the total proposed price to be supplied by Diverse Business Enterprises and the identity of the work to be performed by Diverse Business Enterprises. The DBE Program also considers the strategies and good faith efforts each respondent will use to obtain qualified Diverse Business Enterprise subcontractors/subconsultants and suppliers, how the respondent will interface with MassDevelopment for outreach, pre-solicitation review of subcontracting/subconsulting, and compliance monitoring and reporting. It will also consider how the respondent will address resolving disputes with Diverse Business Enterprise subcontractors/subconsultants, including proposed termination and alternative plans for the substitution and replacement of Diverse Business Enterprise firms that have been terminated. Finally, it will consider what technical assistance initiatives and supportive service strategies the respondent will employ to promote full participation by Diverse Business Enterprises and to support the efforts by such firms to build capacity.

Respondent Submission Requirements

As part of respondent's response, the Participation Schedule (attached hereto as Exhibit A to this Attachment B) must be submitted. The response **must include a narrative** with a summary of the below information.

1. Explain how the respondent intends to ensure overall compliance with MassDevelopment's policy of promoting equity and opportunity for Diverse Business Enterprises, including the strategies the respondent used to obtain certified MBE, WBE, VBE or SDVBE subcontractors and suppliers to perform work or provide supplies for the project.

2. Explain the good faith efforts the respondent has already made to obtain Diverse Business Enterprise participation, including:
 - The strategies the respondent has used to obtain certified MBE, WBE, VBE or SDVBE subcontractors and suppliers,
 - Documented communication with MassDevelopment about Diverse Business Enterprise outreach,
 - How the respondent used information concerning Diverse Business Enterprise subcontracting opportunities provided by MassDevelopment during the pre-response conference, if any, and/or through other means,
 - Solicitations placed by the respondent in general circulation media, trade association publications, minority-focused media and other reasonable and available means to obtain Diverse Business Enterprise involvement,
 - Written notifications sent by the respondent to Diverse Business Enterprises encouraging participation in the proposed contract,
 - Efforts the respondent made to identify specific portions of the work that might be performed by Diverse Business Enterprises,
 - A list of names, addresses, and telephone numbers of Diverse Business Enterprises that were contacted,
 - A description of the information provided to targeted Diverse Business Enterprises regarding the particular project, and
 - Efforts made by the respondent to assist Diverse Business Enterprises in obtaining bonding or insurance required by the Bidder/proposer or by MassDevelopment.
3. Submit a narrative explaining how during performance of the contract the respondent will maintain continued efforts to preserve and enhance Diverse Business Enterprise participation, including the respondent's:
 - Description of how the respondent will interface with the MassDevelopment project manager and contract manager for outreach and assistance generally and with respect to the specific issues below,
 - Description as to how the respondent will abide by the monitoring and reporting requirements of the contract,
 - Description of the dispute resolution procedures the respondent will institute under its subcontracts with Diverse Business Enterprises to encourage amicable resolution of disputes and continued performance by the Diverse Business Enterprises, and
 - Description of the procedures and guidelines for the termination of Diverse Business Enterprises as well as for the identification and selection of substitutes.
4. Respondent will provide an explanation of its efforts to diversify its workforce, management, and ownership in order to make its business a more equitable and inclusive work place.
5. At the time the contract is executed, respondent shall submit its final DBE Participation Schedule to MassDevelopment. Respondent shall cooperate with MassDevelopment and exercise good faith efforts to seek opportunities for Diverse Business Enterprise participation.

Exhibit A
MassDevelopment's Diverse Business Enterprise (DBE) Participation Schedule
[THIS SCHEDULE AND A NARRATIVE MUST BE RETURNED WITH
RESPONDENT'S PROPOSAL]

PART 1: CONSULTANT INFORMATION

Business Name and Address: _____
 Contact Name and Phone Number: _____
 Email Address: _____

Is Consultant Supplier Diversity Office certified as a DBE:
 Yes (**attach** any SDO Certification Letters) No

Consultant is a 1) Minority Business Enterprise; 2) Women Business Enterprise; 3) Veteran Business Enterprise; or
 4) Service-Disabled Veteran-Owned Business Enterprise (**check the appropriate category(ies) below**):

MBE WBE VBE SDVBE

PART 2: NARRATIVE

Consultant **must attach** to this schedule a narrative containing: (1) communications regarding DBE outreach, (2) identification of the work that may be completed by any DBEs, (3) a dispute resolution process with DBEs, (4) procedures for the replacement of DBEs if termination is required, and (5) explain efforts to diversify your own staff and leadership and make your business a more equitable and inclusive work place.

PART 3: CONSULTANT'S DBE SUBCONTRACTORS/SUBCONSULTANTS

Have you sought out DBE Participation at the subcontract/subconsultant level: Yes No N/A

If yes, which methods did you use: Solicitation placed in trade publications Written notification Assist DBEs in obtaining required bonding or insurance COMMBUYS

Other: _____

If yes, complete the below list:

<u>Name and Address of Planned Diverse Business Enterprise Subcontractors/ Subconsultants</u>	<u>Circle Appropriate Certification</u>	<u>Dollar Amount of Participation on a Massachusetts fiscal year (July 1 – June 30) basis</u>
	MBE / WBE / VBE / SDVBE	
	MBE / WBE / VBE / SDVBE	
	MBE / WBE / VBE / SDVBE	
	MBE / WBE / VBE / SDVBE	
	MBE / WBE / VBE / SDVBE	

PART 4: CERTIFICATION (REQUIRED)

Under the pains and penalties of perjury, I certify that the information provided on this form and all attachments is accurate.

Signature: _____
 Written Name: _____

**ATTACHMENT C
ENGINEERING PROFESSIONAL SERVICES CONTRACT
ENGINEERING PROFESSIONAL SERVICES
CONTRACT**

MASSACHUSETTS DEVELOPMENT FINANCE AGENCY
("MassDevelopment")

And

as

for the Provision of Professional Services Related to

Dated as of the _____ day of _____.

THIS IS AN AGREEMENT effective as of _____, _____ (“Effective Date”) between the Massachusetts Development Finance Agency, a Massachusetts body politic and corporate established by M.G.L. Chapter 23G (“MassDevelopment” or the “Agency”), as may be amended from time to time, having a principal place of business at 99 High Street, 11th Floor, Boston, Massachusetts 02110, and _____, a corporation, limited liability company, having a principal place of business at _____ (“Engineer”).

MassDevelopment’s project, of which Engineer’s services under this Agreement are a part, is generally identified as follows:

_____ (“Project”). Engineer’s services under this Agreement are generally identified as follows:

_____.

Agency and Engineer further agree as follows:

The Term of this Agreement shall be from the Effective Date of this Agreement to _____. The fee hereunder shall not exceed _____ (\$ _____) as set forth on Exhibit C.

MassDevelopment and Engineer further agree as follows:

DEFINITIONS

1.01 “Additional Services” – means the services to be performed for or furnished to MassDevelopment by Engineer in accordance with this Agreement that are in addition to Basic Services or as otherwise set forth in Exhibit A to this Agreement.

1.02 “Agreement” – means this document between MassDevelopment and Engineer as modified by the parties in accordance with this Agreement and the Exhibits made a part of this Agreement upon execution.

1.03 “Asbestos” – means any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

1.04. “Basic Services” – means the services to be performed for or furnished to MassDevelopment by Engineer in accordance with the Agreement that are included in the base fee set forth in Exhibit C or are otherwise set forth in Exhibit A.

1.05 “Contractor” – means the person or entity retained by MassDevelopment to perform Work for the Project and includes the Contractor’s Representative.

1.06 “Construction Contract” – means the entire and integrated written agreement between MassDevelopment and Contractor concerning the Work.

1.07 “Constituent of Concern” – means any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, the environment or any hazardous, toxic, or dangerous waste, substance, or material.

1.08 “Consultants” – means individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants, subcontractors, or vendors.

1.09 “Contract Documents” – means those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.

1.10 “Cost of Construction” – means MassDevelopment’s total cost of Project components designed or specified by Engineer. In the event the Project is not completed, Cost of Construction shall mean the final approved estimated cost of Project components. Cost of Construction does not include the costs incurred by Engineer or costs of land acquisition or any costs not concerning the construction of the Project.

1.11 “Delivery Order” – means written instructions to Engineer from MassDevelopment instructing Engineer to commence with performance of a particular part of the Basic Services under this Agreement.

1.12 “Diverse Business Enterprise(s)” shall mean a minority business enterprise, women business enterprise, veteran business enterprise, or service-disabled veteran-owned business enterprise.

1.13 “Documents” – means data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to MassDevelopment pursuant to this Agreement.

1.14 “Drawings” – means that part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

1.15 “Effective Date” – means the date indicated on page 1 of this Agreement on which this Agreement becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.

1.16 “Engineer” – means the person or entity that has entered into this Agreement with MassDevelopment and includes Engineer’s representatives.

1.17 “Laws and Regulations; Laws or Regulations” – means any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction over MassDevelopment, the Work, or the Project, as the same now exist or may hereafter become effective through completion of the Services.

1.18 “MassDevelopment” – means the Massachusetts Development Finance Agency or its authorized successor, and is the person or entity identified in the above recitations, and includes MassDevelopment’s representative(s).

1.19 “MassDevelopment’s Program” – means the initial description of MassDevelopment’s objectives that shall include budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

1.20 “Notice to Proceed” – means a notice issued to Engineer by MassDevelopment directing Engineer to commence with the performance of the Basic Services under this Agreement.

1.21 “Others” – means other contractors, material suppliers and persons at the Site who are not employed by the Contractor or Subcontractors.

1.22 “Project” – means the building, facility, and/or improvements that are the subject matter of this Agreement.

1.23 “Record Drawings” – means the Drawings depicting the completed Project, prepared by Engineer based on Contractor’s record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.

1.24 “Reimbursable Expenses” – means the expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.

1.25 “Resident Project Representative” – means the authorized representative of Engineer assigned to assist Engineer at the Site during the construction phase.

1.26 “Samples” – means physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

1.27 “Services” - means the services provided by Engineer and/or by Consultants retained by Engineer for the Project. Such Services may constitute and/or relate to the whole or a portion of the Project. Services include Basic Services and Additional Services.

1.28 “Shop Drawings” – means all drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.

1.29 “Site” – means lands or areas to be indicated in the Contract Documents as being furnished by MassDevelopment upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by MassDevelopment which are designated for the use of Contractor.

1.30 “Specifications” – means that part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

1.31 “Subcontractor” – means a party or entity retained by the Contractor as an independent contractor to provide labor, materials equipment and/or services necessary to complete a specific portion of the Work.

1.32 “Substantial Completion” – means the time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of MassDevelopment, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.

1.33 “Supplier” – means a manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.

1.34 “Total Project Costs” – means the sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer and Consultants, together with such other Project-related costs that MassDevelopment furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, MassDevelopment’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to MassDevelopment pursuant to Exhibit B of this Agreement.

1.35 “Work” – means the entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of

performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

RELATIONSHIP OF THE PARTIES

2.01 Engineer accepts the relationship of trust and confidence established by this Agreement and covenants with MassDevelopment to cooperate and exercise Engineer's skill and judgment in accordance with the Agreement and in furthering the interests of MassDevelopment. Engineer represents that it possesses the requisite skill, expertise, and licensing to perform the required Services.

2.02 Engineer shall perform and execute this Agreement as an independent contractor. Neither Engineer nor its subcontractors nor any of their respective representatives shall be deemed an agent, servant, employee, partner, joint venturer or representative of MassDevelopment in any capacity. Engineer and its agents or employees shall not act on behalf of or in the name of MassDevelopment except as authorized in writing by MassDevelopment.

SCOPE OF SERVICES OF ENGINEER

Scope

Engineer shall provide, or cause to be provided, the Services set forth and reasonably implied both herein and in Exhibit A.

If applicable, Engineer's Services shall include at a minimum those engineering services necessary to design the Project in accordance with MassDevelopment's requirements and Laws and Regulations.

In the performance of the Basic Services, Engineer shall identify, consult with, and analyze requirements of Law and Regulations and governmental authorities having jurisdiction to approve the portions of the Project designed or specified by Engineer, including but not limited to mitigating measures identified in any environmental assessment, if applicable.

MASSDEVELOPMENT'S RESPONSIBILITIES

General

MassDevelopment shall have the responsibilities set forth herein and in Exhibit B.

MassDevelopment shall pay Engineer as set forth in Exhibit C.

MassDevelopment shall make decisions and carry out its other responsibilities in a timely manner so as not to delay Engineer's performance of its Services.

SCHEDULE FOR RENDERING SERVICES

Commencement

Engineer is authorized to begin rendering Services upon the issuance of a Notice to Proceed or a Delivery Order from MassDevelopment.

Time for Completion

Time is of the essence of this Agreement.

Engineer shall complete its obligations under this Agreement within the time set forth within Exhibit A of this Agreement. Specific periods of time for rendering Services or specific dates by which Services are to be completed are set forth in Exhibit A and are hereby agreed to be reasonable.

Engineer shall continually review the Cost of Construction and, regardless of the stage of the Work, shall report immediately in writing to MassDevelopment any conditions that would warrant a change in the scope of the Work, budget, method of investigation, and/or the scope of Services. If Engineer believes an event has occurred, through no fault of Engineer or the Consultants, that entitles Engineer to an equitable extension of time and/or adjustment in compensation, including MassDevelopment's failure to carry out its responsibilities in a timely manner, Engineer shall provide written notice of such an occurrence to MassDevelopment within 5 business days of the occurrence of such event, which written notice is a condition precedent to Engineer's right to an equitable extension of time and/or adjustment in compensation hereunder; otherwise, any such extension or adjustment shall be deemed waived.

MassDevelopment reserves the right at any time to make changes or additions to the scope of the Work and/or to the scope of Services. Such changes shall be authorized in writing by MassDevelopment. Engineer shall not perform any services beyond the scope of Services under this Agreement, or subsequent amendment, without written approval of MassDevelopment. If MassDevelopment authorizes changes in the scope extent, or character of the Work or the Services that Engineer considers to be a change or addition to the Services hereunder that will cause an increase in the cost of the performance of such Services or require an extension of time for such completion, Engineer shall so notify MassDevelopment in writing within 5 business days of Engineer's receipt of MassDevelopment's request, which written notice is a condition precedent to Engineer's right to an equitable extension of time and/or adjustment in compensation hereunder; otherwise, any such extension or adjustment shall be deemed waived.

INVOICES AND PAYMENTS

Invoices

Preparation and Submittal of Invoices: Engineer shall prepare invoices in accordance with standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to MassDevelopment on a monthly basis. Invoices are due and payable within 30 days of MassDevelopment's receipt of satisfactory invoices and supporting documentation.

Release of Liens and or Claims: Engineer shall include with each of its invoices a release of claims and liens by Engineer and its Consultants with respect to Services, materials and supplies provided by Engineer and the Consultants to the Project in a form acceptable to MassDevelopment and in accordance with Massachusetts law.

Invoices shall not be recognized as payable to the extent they seek payment for services rendered more than 60 days prior to the date of the invoice.

Payments

Disputed Invoices: If MassDevelopment contests an invoice, MassDevelopment shall promptly advise Engineer of the specific basis for doing so. MassDevelopment may withhold payment for that portion of an invoice that is so contested.

Legislative Actions: If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's Services or compensation under this Agreement, then Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. MassDevelopment shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges and such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

OPINIONS OF COST

Opinions of Probable Construction Cost

Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. Engineer does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer.

Designing to Construction Cost Limit

If a Construction Cost limit is established between MassDevelopment and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit D to this Agreement.

Opinions of Total Project Costs

The Services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting MassDevelopment in collating the various cost categories that comprise Total Project Costs.

GENERAL CONSIDERATIONS

Licensing

Engineer shall ensure that its Services and those of the Consultants are performed by duly licensed professionals in compliance with the professional engineering licensing requirements of the Commonwealth of Massachusetts.

Standards of Performance

Standard of Care: The standard of care for all professional engineering and related Services performed or furnished by Engineer and its Consultants under this Agreement will be the care and skill ordinarily used by members of the subject profession specializing in the type of work for which the services are being performed in connection with the Project under similar circumstances at the same time and in the same locality.

Technical Accuracy: MassDevelopment shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's Services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly and solely attributable to deficiencies in MassDevelopment-furnished information.

Consultants: Engineer may employ such duly licensed Consultants as Engineer deems necessary to assist in the performance or furnishing of the Services, subject to reasonable, timely, and substantive objections by MassDevelopment. Engineer shall be liable to MassDevelopment for the Services provided by its Consultants to the same extent as if Engineer had performed such Services. Engineer is responsible for paying and managing its Consultants as part of the Basic Services. Engineer shall include in each of its Consultant's agreements a provision stating that each Consultant's agreement for completion of its respective portion of the Services is conditionally assigned by Engineer to MassDevelopment, and that such assignment shall be effective only after termination of this Agreement by MassDevelopment for cause, and only after MassDevelopment accepts and assumes such Consultant's agreement by notifying the Consultant and Engineer in writing of such acceptance and assumption.

Reliance on Others: Subject to the standard of care set forth in Article 8.02.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

Compliance with Laws and Regulations and MassDevelopment's Policies and Procedures:

1. Engineer and MassDevelopment shall comply with and be solely responsible for any violation of all federal, state, and local laws, ordinances, rules, regulations or orders, including, but not limited to, emergency orders relating to the COVID-19 pandemic, which are applicable to the Services being provided hereunder and in the performance of the Agreement.
2. MassDevelopment shall provide to Engineer in writing any and all policies and procedures of MassDevelopment applicable to Engineer's performance of the Services under this Agreement. Engineer shall comply with such policies and procedures to the extent such compliance is not inconsistent with professional practice requirements.
3. Engineer acknowledges that it is familiar with and has a working knowledge of the Massachusetts provisions relating to competitive public bidding, including without limitation M.G.L. c. 149, §§ 44A-44J and M.G.L. c. 30, § 39M, and, to the extent applicable to Engineer's Services under this Agreement, agrees that all design submissions and contract bid documents shall conform to the appropriate statutory requirements. Engineer shall, upon request, provide to MassDevelopment the name, experience and resume of the individual(s) with such statutory bidding experience.
4. This Agreement is based on Laws and Regulations of the Commonwealth of Massachusetts and MassDevelopment-provided written policies and procedures in effect as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to MassDevelopment-provided written policies and procedures, may be the basis for modifications to MassDevelopment's responsibilities or to Engineer's scope of Services, times of performance, or compensation.

Engineer shall not be required to sign any documents, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain upon reasonable inspection or investigation.

Engineer shall not at any time supervise, direct, control, or have authority over any Contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Contractor to comply with Laws and Regulations applicable to such Contractor's furnishing and performing of the Work unless Engineer specifically agrees in writing to take responsibility for construction means and methods.

Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.

While at the Site, employees and representatives of Engineer and its Consultants shall comply with the specific applicable requirements of the Contractor's and MassDevelopment's safety

programs and the Laws and Regulations, including without limitation Occupational Health and Safety Administration (OSHA) requirements.

Engineer shall keep the Project and the Site free and clear of any liens and encumbrances arising out of or relating to Services, materials and supplies provided by Engineer or the Consultants to the Project. At MassDevelopment's request, Engineer shall provide to MassDevelopment written proof of payment of any item that would or might constitute the basis for such a lien or encumbrance on the Project or the Site if not paid. If a lien or encumbrance is filed or claimed against the Project or the Site by any Consultant, Engineer agrees, at its expense, immediately to bond such lien or encumbrance in accordance with Laws and Regulations, or otherwise to cause such lien or encumbrance to be discharged and released. If Engineer shall fail to do so, MassDevelopment may, at its option and at the expense of Engineer, bond such lien or encumbrance, otherwise cause it to be discharged or released, and deduct all amounts so paid from the compensation due to Engineer, or deduct the same from the next succeeding payment due to Engineer until the total amount of same shall be recouped, as MassDevelopment may elect. Engineer shall indemnify, defend, and hold harmless MassDevelopment from all costs, attorneys' fees, claims, losses, demands, causes of action or suits of whatever nature arising out of the filing of a notice of contract or subcontract, or the imposition of any such lien or encumbrance.

Ownership and Use of Documents

The Drawings, Specifications and other documents prepared by Engineer and its Consultants for this Project shall be considered the legal property of MassDevelopment, which shall retain all common law, statutory and other rights, including, but not limited to, the copyright. MassDevelopment may use such documents in connection with completion of the Project regardless of whether Engineer is in default. The Drawings, Specifications or other documents that are specific to this Project shall not be used by Engineer or others on other projects except with the prior written consent of MassDevelopment. The Drawings, Specifications and other documents that contain standard elements and parameters may be used by Engineer on other projects; provided, however, that MassDevelopment will have no liability for Engineer's use of such Drawings, Specifications and other documents on other projects and Engineer will defend, indemnify, and hold harmless MassDevelopment from and against claims, suits, damages, costs and expenses arising out of or relating to Engineer's use of any such Drawings, Specifications or other documents on another project.

When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

The Drawings, Specifications and other documents prepared by Engineer and its Consultants for this Project shall be in a current electronic format utilized by or compatible with MassDevelopment's systems and equipment as determined by MassDevelopment.

Insurance

Engineer shall procure and maintain insurance as set forth in Exhibit E, “Insurance” with companies licensed to do business in the Commonwealth of Massachusetts, having an A.M. Best Company rating of “A-, VII” and otherwise satisfactory to MassDevelopment. Engineer shall cause MassDevelopment to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer including excess liability, auto liability and, if required, pollution liability, with the exceptions of Errors and Omissions and Workers’ Compensation insurance, as follows: “Massachusetts Development Finance Agency, its successors and/or assigns, as their interests may appear.”

Engineer shall deliver to MassDevelopment insurance certificates and copies of policies of insurance evidencing the coverages indicated herein. Such insurance policies shall be furnished prior to the execution of the Agreement and at renewals thereafter during the life of the Agreement.

All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits, and that renewal will not be refused, until at least 30 days prior written notice has been given to MassDevelopment.

Engineer shall require that all Consultants maintain insurance meeting all the requirements stated herein, including without limitation, the requirement that “Massachusetts Development Finance Agency, its respective successors, officers, directors and/or employees and/or assigns, as their interests may appear” is an additional insured on any applicable general liability insurance policy carried by Consultants including excess liability, auto liability, and if required, pollution liability, with the exceptions of Errors and Omissions and Workers’ Compensation insurance. All policies shall provide that written notification of cancellation of the insurance policies required hereunder shall be given to MassDevelopment thirty (30) days prior to such cancellation. Engineer shall obtain and maintain copies of all insurance certificates from any Consultants on the project and will update them annually, if necessary. During the term of this Agreement, Engineer will annually certify in writing to MassDevelopment that all such insurance and certificates issued on behalf of any Consultants remain in effect. Such certification shall list, among other things, the Consultants, the insurer and the policy number for the Consultants’ policies. Engineer shall provide MassDevelopment with certificates of insurance of such Consultants upon demand.

At any time, MassDevelopment may request that Engineer or its Consultants, at Engineer’s sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified herein. If so requested by MassDevelopment, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by MassDevelopment.

Suspension and Termination

Suspension:

By MassDevelopment: MassDevelopment may suspend the Project for up to 180 days upon seven days written notice to Engineer.

Termination: The obligation to provide Services under this Agreement may be terminated:

1. For cause,

By either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

By Engineer:

upon seven days' written notice if MassDevelopment demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

upon seven days' written notice if the Engineer's Services for the Project are delayed or suspended for more than 180 days for reasons beyond Engineer's control.

Engineer shall have no liability to MassDevelopment on account of such termination.

Notwithstanding the foregoing, this Agreement will not terminate under Article 8.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

For convenience,

By MassDevelopment effective upon Engineer's receipt of notice from MassDevelopment.

Effective Date of Termination: The terminating party under Article 8.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

Payments Upon Termination

1. In the event of any termination under Article 8.05, Engineer will be entitled to invoice MassDevelopment and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination.

Controlling Law

This Agreement is to be governed by the laws of the Commonwealth of Massachusetts.

Successors, Assigns, and Beneficiaries

MassDevelopment and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of MassDevelopment and Engineer (and to the extent permitted by Article 8.07.B the assigns of MassDevelopment and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

Neither MassDevelopment nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

Unless expressly provided otherwise in this Agreement:

Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by MassDevelopment or Engineer to any third party, including without limitation, any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of MassDevelopment and Engineer and not for the benefit of any other party.

Dispute Resolution

MassDevelopment and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to commencing litigation under this Agreement, or exercising their rights under law. If, in the event that the parties are unable to resolve their dispute through negotiations, the parties can through mutual agreement bring their dispute to mediation. In the event that the parties are still unable to resolve their dispute the parties mutually agree to resolve their dispute in the Suffolk Superior Court of the Commonwealth of Massachusetts.

Engineer agrees to include a provision within all of its Consultants' and/or Suppliers' contracts that provides that all litigation arising from the Services or the Project shall be in the Suffolk Superior Court of the Commonwealth of Massachusetts.

Environmental Condition of Site

MassDevelopment has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern located at or near the Site, including type, quantity, and location.

MassDevelopment represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.

If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) MassDevelopment and (2) appropriate governmental officials if Engineer reasonably concludes that notifying such officials is required by applicable Laws or Regulations.

If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's Services under this Agreement, Engineer shall so notify MassDevelopment in writing within 5 business days after Engineer encounters or learns of such undisclosed Constituents of Concern, which written notice is a condition precedent to Engineer's right to an equitable extension of time and/or adjustment in compensation hereunder; otherwise, any such extension or adjustment shall be deemed waived.

MassDevelopment acknowledges that Engineer is performing professional services for MassDevelopment, and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's or any Consultant's activities under this Agreement if the hazardous substances are not at or near the Site due to Engineer's or any Consultant's activities at the Site.

Indemnification Waiver of Consequential Damages

Indemnification by Engineer: To the fullest extent permitted by law, Engineer shall release, indemnify, defend and hold harmless MassDevelopment, and MassDevelopment's officers, directors, members, partners, agents, consultants, and employees, from claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.

Waiver of Consequential Damages: To the fullest extent permitted by law, Engineer waives any and all claims against MassDevelopment, and MassDevelopment's employees, officers,

directors, members, agents, insurers, partners, and consultants, for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and to damages or losses from causes beyond MassDevelopment's reasonable control.

Miscellaneous Provisions

Notices: Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

Survival: All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

Force Majeure: Neither party shall be liable to the other or be deemed to be in breach of the Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, pandemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this Article, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay. Nothing contained in this Article shall derogate from or affect the Agency's rights to terminate this Agreement pursuant to Article 8.05.B above.

Severability: Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon MassDevelopment and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

Waiver: A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

No Personal Liability: Officers, directors, members or employees of MassDevelopment shall not be charged personally or held contractually liable by or to Engineer under any term or provision of this Agreement, or because of any breach hereof, or because of its execution or attempted execution.

Limitation of Liability: The liability of MassDevelopment under this Agreement is limited to the compensation set forth in Exhibit C.

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

EXHIBITS AND SPECIAL PROVISIONS

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

Exhibit A, Engineer's Services

Exhibit B, MassDevelopment's Responsibilities

Exhibit C, Compensation to Engineer for Services and Reimbursable Expenses

Exhibit C-1, Hourly Rate Schedule

Exhibit D, Construction Cost Limit and Engineer's Rights and Responsibilities

Exhibit E, Insurance

Exhibit F, MassDevelopment's Diverse Business Enterprise Participation (DBE) Schedule

Total Agreement:

This Agreement, (together with the exhibits identified above) constitutes the entire agreement between MassDevelopment and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by Engineer and MassDevelopment.

Designated Representatives:

With the execution of this Agreement, Engineer and MassDevelopment shall designate specific individuals to act as Engineer's and MassDevelopment's representatives with respect to the Services to be performed or furnished by Engineer and responsibilities of MassDevelopment under this Agreement. Each such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

Engineer's Certifications:

Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Article 9.04:

"corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the execution of the Agreement;

"fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of MassDevelopment, or (b) to deprive MassDevelopment of the benefits of free and open competition;

“coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

By signing the Agreement, Engineer certifies that:

Engineer 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;

no Consultant of Engineer has given, offered, or agreed to give any gift, contribution, or offer of employment to Engineer, or to any other person, corporation, or entity, as an inducement for, or in connection with, the award to such Consultant of a contract by Engineer;

no person, corporation, or other entity, other than a bona-fide full-time employee of Engineer, has been retained or hired to solicit for or in any way assist Engineer 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 Engineer;

if this Agreement exceeds \$30,000, or is for the design of a building for which the budgeted or estimated construction costs exceed \$300,000, Engineer has internal accounting controls as required by M.G.L., c. 30, § 39R, and that Engineer shall: (i) retain accurate and detailed books, records and accounts for a six-year period after final payment; (ii) file the requirement statements of management concerning Engineer’s internal accounting controls; (iii) file an annual audited financial statement; and (iv) submit a statement prepared and signed by an independent certified public accountant stating that such CPA has examined the statement of management on internal accounting controls, and expressing an opinion as to whether management’s statement described in (ii) above is consistent with the result of management’s evaluation of the system of internal accounting controls, and whether such statement is reasonable with respect to transactions and assets that are material in relation to Engineer’s financial statements; and

if this Agreement is for design services with a negotiated fee, wage rates and other costs used to support Engineer’s compensation are accurate, complete and current at the time of contracting, and the original compensation amount under the Agreement and any additions thereto may be adjusted within one year of the Agreement to exclude any significant amounts if MassDevelopment determines that the fee was increased by such amounts due to inaccurate, incomplete, or noncurrent wage rates or other costs.

By signing the Agreement, Engineer certifies under the pains and penalties of perjury, that it is in compliance with, and shall remain in compliance with, all legal requirements governing performance of this Agreement and Engineer’s authority to transact business in Massachusetts, and that Engineer is:

1. in compliance with all Massachusetts laws relating to the payment of taxes reporting of employees and contractors and withholding and remitting of child support, as required by M.G.L. c. 62C, § 49A, and has either (i) filed all tax returns and paid all taxes required by law; (ii) has filed a pending application for abatement of such taxes; (iii) has a pending petition before the appellate tax board contesting such taxes; or (iv) does not derive taxable income from Massachusetts Sources such that it is subject to taxation by the Commonwealth of Massachusetts;
2. a “Qualified Employer” or an “Exempt Employer” as defined under Chapter 521 of the Massachusetts Acts of 1990, as amended by Chapter 329 of the Massachusetts Acts of 1991, and 102 CMR 12.00 et seq.;
3. in compliance with all federal and state laws and regulations prohibiting discrimination, including without limitation Executive Order 11246;
4. not currently debarred or suspended from doing business with any governmental entity by the Commonwealth of Massachusetts, or any of its entities or subdivisions under any Commonwealth law or regulation, including without limitation M.G.L. c. 29, § 29F and M.G.L. c. 152, § 25C, and that it is not currently debarred or suspended from doing business with any governmental entity by the federal government under any federal law or regulation;
5. in compliance with federal anti-lobbying requirements of 31 U.S.C. § 1352;
6. in compliance with all laws of the Commonwealth relating to unemployment compensation contributions and payments in lieu of contributions pursuant to M.G.L. c. 151A, § 19A(b), or has notified MassDevelopment in writing that M.G.L. c. 151A does not apply to Engineer because Engineer does not have any individuals performing services for it within the Commonwealth of Massachusetts to the extent that Engineer would be required to make any such contributions or payments to the Commonwealth;
7. not employing ten or more employees in an office or other facility located in Northern Ireland and 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; or, if applicable, is employing ten or more employees in an office or other facility located in Northern Ireland and (i) does not discriminate in employment, compensation, or terms, conditions and privileges of employment on account of religious or political belief; (ii) promotes religious tolerance within the work place, and the eradication of any manifestations or religious and other illegal discrimination; and (iii) 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

8. and (i) shall not knowingly use undocumented workers in connection with the performance of the Agreement or any contract with MassDevelopment; (ii) shall verify, pursuant to federal requirements, the immigration status of all workers assigned to perform Services under this Agreement without engaging in unlawful discrimination; and (iii) shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker(s). Any breach of the foregoing requirements shall constitute a material breach of this Agreement subjecting Engineer to sanctions, including but not limited to monetary penalties, withholding of payments, and/or suspension or termination of this Agreement or any other contract with MassDevelopment.

9.05. *Conflict of Interest; Special State Employee Status:*

- A. Engineer shall not hire or employ, on either a full-time or part-time basis during the duration of this Agreement, any person(s) so long as such person(s) shall be employed by MassDevelopment. Engineer hereby certifies that this Agreement is made in good faith, without fraud or collusion of any kind with any other consultant for the same services, and that Engineer is acting solely on its own behalf without connection with or obligation to, any undisclosed person or firm and in full compliance with M.G.L. Chapter 268A and any other applicable conflict of interest laws. By execution of this Agreement, Engineer certifies and discloses that Engineer and its Consultants have no financial or other interest in the execution or outcome of the Project that is the subject of this Agreement. If any officer, director, member, agent or employee of MassDevelopment has a financial interest in Engineer, Engineer hereby agrees that its representatives shall consult with MassDevelopment's legal representatives to learn what action shall be taken to comply with M.G.L. Chapter 268A and any other applicable conflict of interest laws. All conflict of interest matters that arise during the duration of this Agreement shall be handled in a manner consistent with the Laws and Regulations, and Engineer and its Consultants shall conduct themselves at all times in a manner that will avoid any conflict of interest.
- B. Engineer understands that any person providing services under the Agreement will be a "special state employee," for purposes of M.G.L. Chapter 268A, but shall otherwise be an independent contractor and not an employee of MassDevelopment. Engineer further agrees to comply with said Chapter 268A, as "special state employee," and to promptly disclose to MassDevelopment any activity under the Agreement by Engineer or an employee thereof that is or may result in a violation thereof.
- C. MassDevelopment acknowledges that Engineer can perform services for other clients during the duration of this Agreement, provided such services for other clients do not conflict with the Services required under this Agreement or with Laws and Regulations.

9.06. *Responsible Contractor:*

- A. Contractor certifies that it (i) will check the debarment lists maintained by the Commonwealth of Massachusetts' Division of Capital Asset Management and Maintenance, the Department of Transportation, the Department of Industrial

Accidents, the Office of the Attorney General and the federal government (the “Debarment Lists”) before directly engaging a subcontractor or other vendor and (ii) has not and will not contract directly with a subcontractor or other vendor listed on a Debarment List. The contractor understands and acknowledges that noncompliance may result in debarment from future MassDevelopment funded projects for a period of one year from the date of written notification of noncompliance.

The Commonwealth’s Executive Office of Administration and Finance maintains a webpage with a link to the lists at: <http://www.mass.gov/anf/property-mgmt-and-construction/design-and-construction-of-public-bldgs/vendor-debarment.html>.

9.07. *Diverse Business Enterprise Preference*

- A. It is the policy of the Commonwealth and the Agency to promote equity of opportunity in state contracting; and, to that end, to encourage full participation of Diverse Business Enterprises (as defined below) in all areas of state contracting pursuant to Executive Orders 565, 523, and 526. For purposes of this Agreement, “Diverse Business Enterprise(s)” shall mean a minority business enterprise, women business enterprise, veteran business enterprise, or service-disabled veteran-owned business enterprise. It is the Agency’s intention to create a level playing field on which Diverse Business Enterprises can compete fairly for contracts.
- B. In addition to all other equal opportunity employment requirements of this Agreement, the Agency strongly encourages the use of Diverse Business Enterprise as consultants, contractors, subconsultants, subcontractors, and suppliers. Lists of Diverse Business Enterprises certified or verified by the SDO are located at www.mass.gov/sdo.
- C. The Engineer shall cooperate with the Agency and exercise good-faith efforts to seek opportunities for Diverse Business Enterprise participation. At the time this Agreement is executed, Engineer shall submit certified Diverse Business Enterprise Participation Schedule, in the form attached hereto as Exhibit F, to the Agency. The Diverse Business Enterprise Participation Schedule is incorporated by reference into this Agreement.

AGREEMENT VOIDABLE BY MASSDEVELOPMENT IF VIOLATED:

This Agreement is not valid for any services that must be procured in accordance with the designer selection procedures set forth in M.G.L. c. 7C, Secs. 44-58, which must be used when contracting for design services for any public building construction, reconstruction, alteration, remodeling or repair project that has an estimated construction cost of more than \$300,000 and an estimated design fee of \$30,000 or more. For public building projects, design services include the preparation of master plans, feasibility and other studies, surveys, soil tests, cost estimates and programs; preparation of drawings, plans, and specifications, including schematic drawings and preliminary plans and specifications; supervision or administration of a construction contract; and construction management and scheduling. Any services provided that violate this provision shall automatically render this Agreement voidable by MassDevelopment. If MassDevelopment elects to void the agreement, it shall have no further force or effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

Massachusetts Development Finance Agency:

Engineer:

By: _____
Title: _____
Date Signed: _____

By: _____
Title: _____
Date Signed: _____

Engineer License or Firm's Certificate No.

State of: _____

Address for giving notices:

Address for giving notices:

Designated Representative (Article 9.03.A):

Designated Representative (Article 9.03.A):

Title: _____

Title: _____

Phone Number: _____

Phone Number: _____

Facsimile Number: _____

Facsimile Number: _____

E-Mail Address: _____

E-Mail Address: _____

EXHIBIT A – Engineer’s Services

Article 3 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

1. Engineering Services for _____
2. The Services shall be performed on an as needed basis under separate Delivery Order for each task. Each Delivery Order will include the scope of work, project schedule, and staff effort and fees for the agreed upon scope of work. The Services shall be billed for actual hourly staff effort in accordance with the approved hourly rate schedule, attached as Exhibit B, or such other rate scheduled as MassDevelopment may approve in a Delivery Order.

EXHIBIT B – MassDevelopment’s Responsibilities

Article 4 of the Agreement is supplemented to include the following agreement of the parties:

EXHIBIT C – Compensation to Engineer for Services and Reimbursable Expenses

4.01B Compensation for Basic Services – Standard Hourly Rates Method of Payment

A. MassDevelopment shall pay Engineer for Basic Services set forth in Exhibit A, as follows:

1. General:

For services of Engineer's personnel engaged directly in the performance of the Basic Services set forth in a Delivery Order, an amount equal to the cumulative hours charged to the Project by each class of Engineer's personnel times Standard Hourly Rates (attached hereto as Exhibit C-1 or as otherwise approved by MassDevelopment in the Delivery Order) for each applicable billing class for all Basic Services performed on the Project, plus related Reimbursable Expenses, if any. Premium rates may be charged for overtime hours, night shifts, and weekend work only upon MassDevelopment's advance written approval of such work hours and of any premium rates.

B. Reimbursable Expenses:

1. Reimbursable Expenses include the following categories: mileage based on the applicable Internal Revenue Code rate; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items, except that MassDevelopment, in its sole discretion, may elect to arrange itself for the reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items; deliveries; printing; telecommunication; project supplies; and soil and water testing. In addition, if authorized in writing in advance by MassDevelopment, Reimbursable Expenses will also include expenses incurred for the use of highly specialized equipment and for charges to Engineer by its subcontractors or consultants or special consultants. Reimbursable Expenses shall not include any other type of expenses or out of pocket costs incurred by Engineer unless they are set forth in a Delivery Order signed by MassDevelopment and the Engineer.

2. The amounts payable to Engineer for Reimbursable Expenses shall be the direct costs Engineer incurred and shall not be subject to any overhead charge.

3. The Reimbursable Expenses are not to exceed the amounts set forth on a Reimbursable Expenses Schedule that will be attached to each Delivery Order.

C. Other Provisions Concerning Payment:

1. Whenever Engineer is entitled to compensation for the charges of Engineer's subcontractors or consultants, those charges shall be the amounts billed by Engineer's subcontractors or consultants to Engineer with no overhead charge.

2. To the extent necessary to verify Engineer's charges and upon MassDevelopment's timely request, Engineer shall make copies of such records available to

MassDevelopment at cost. Engineer's labor at producing such records shall not be charged to MassDevelopment.

EXHIBIT C-1 – Hourly Rate Schedule

EXHIBIT D – Construction Cost Limit and Engineer’s Rights and Responsibilities

EXHIBIT E – Insurance

Article 8.04 of the Agreement is supplemented to include the following agreement of the parties. The higher limits of A or B below shall be provided by Engineer under this Agreement.

8.04 *Insurance*

A. The limits of liability for the insurance required by Article 8.04.A of the Agreement are as follows:

1. By Engineer:

- a. Workers’ Compensation: Statutory
- b. Employer’s Liability --
 - 1) Each Accident: \$500,000
 - 2) Disease, Policy Limit: \$500,000
 - 3) Disease, Each Employee: \$500,000
- c. General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
 - 2) Personal and Advertising Injury: \$1,000,000
 - 3) General Aggregate: \$2,000,000
 - 4) Products/Completed Operations Aggregate: \$2,000,000
- d. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage) for Owned, Hired and Non-Owned Vehicles: \$1,000,000
- e. Professional Liability –written on a claims made basis
 - 1) Each Claim Made \$5,000,000
 - 2) Annual Aggregate \$5,000,000

EXHIBIT B

MassDevelopment's Diverse Business Enterprise (DBE) Participation Schedule