BARNSTABLE COUNTY

In the Year Two Thousand Seventeen

Proposed Ordinance 17- _____

The Cape Cod Regional Government, known as Barnstable County, hereby ordains;

To add to the County's operating budget for Fiscal Year 2017, as enacted in Ordinance No. 16-06, by making a supplemental appropriation for legal expenses for the Fiscal Year two-thousand and seventeen.

Section 1.

Based on a revised estimate of income of Barnstable County for the current fiscal year, made as of March 1, 2017, the sum set forth in section one, for the purpose set forth therein and subject to the conditions set forth in sections five through twelve of the Barnstable County Ordinance 16-06, is hereby appropriated from the Statutory Reserve amounts for FY2017 as a supplemental appropriation for Barnstable County for the fiscal year ending June thirtieth, two thousand and seventeen. Said funds shall be derived from the Legal Reserve Fund.

Budget #	Sub-Program	Group	$ Amount
0019102	Legal Services	2	$50,000
	TOTAL SUPPLEMENTAL APPROPRIATION		$ 50,000

Approved by the Board of County Commissioners_____ (date), at _____ (time).

Leo G. Cakounes	Mary Pat Flynn	Ronald R. Beaty
Chairman	Vice Chairman	Commissioner

COOPERATIVE AGREEMENT
BETWEEN
BARNSTABLE COUNTY
AND
TOWN OF DENNIS

THIS AGREEMENT, made and entered into this _____ day of _____, 2017 by and between the County of Barnstable, hereinafter called the "County," and the Town of Dennis, hereinafter called the "Town."

WHEREAS, Barnstable County received financial assistance in the form of a capital equipment grant from the Commonwealth, through DEM and Waterways to implement a regional maintenance and improvement dredging program, including the purchase and acquisition of a dredge and associated capital equipment; and

WHEREAS, the expenditure of local funds for dredging for maintenance or improvement of the waterways of the Commonwealth is authorized under Chapter 33 of the Acts of 1991; and

WHEREAS, it has been determined that the implementation of a regional dredging program, as a pilot project to ascertain the cost effectiveness of a publicly operated dredging program, is in the best interest of the towns in Barnstable County and the Commonwealth; and

WHEREAS, the Town has participated in the development and establishment of the regional dredge program through the Dredge Advisory Committee, and has identified its dredging needs through the Barnstable County Dredge Management Plan; and

WHEREAS, the Town wishes to have the County undertake the dredging projects covered by this agreement.

ARTICLE I. STATEMENT OF WORK

NOW THEREFORE, in consideration of the above premises and in the interest of the mutual advantage in attainment of common objectives, the parties hereto agree as follows:

BARNSTABLE COUNTY AGREES:

1. To do and perform all dredge related work for Bass River in accordance with the specifications, drawings and plans (Attachment I) up to a maximum contract amount of $300,000.00. This is based on removing approximately 23,077 cubic yards of material at $13.00 per cubic yard and no charge for

mobilization/demobilization costs. Final and complete specifications, plans and drawings shall be provided to the County by the Town in a timely manner.

2. To observe, comply with, and be subject to all terms, conditions, requirements, and limitations of the specifications, plans, and drawings identified in Attachment I as applicable to dredging and rough placement of materials.

3 To provide a hydraulic dredge and all related equipment to conduct maintenance dredging for the Town, according to and guided by the specifications, plans, drawings as provided.

4. To pump dredge materials and provide rough beach placement of said materials at a rate of $13.00 per cubic yard for standard dredge material. This price includes before and after dredge surveys to be performed by the County.

5. To comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage injury or loss or on dredging or handling of dredge materials.

6. To the extent permitted by law, to indemnify and hold harmless any party sustaining damage or loss resulting from the negligence of the County and its employees with respect to the County's performance of its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this agreement.

7. Immediately notify the Town and cease operations whenever the dredging operations exceed the specifications, drawings and plans or whenever situations or conditions are encountered outside the scope of the specifications, drawings, and plans.

8. Without the prior approval of the Town, the dredge will operate between the hours of 7:00 A.M. and 7:00 P.M.

THE TOWN OF DENNIS AGREES:

1. To obtain all required federal, state, and local permits and approvals to conduct the dredge project.

2. To furnish all specifications, drawings, and plans required to perform the dredge project at the execution of this document. Said documents will be incorporated by reference as Attachment I.

3. To conduct required inspections and testing consistent with federal, state and local

permits and approvals.

4. To inspect the County's on-site dredging work in a timely manner.

5. To obligate funds to conduct the dredging work specified in Attachment I.

6. To indemnify and hold harmless any party sustaining damage or loss resulting from the negligence of the Town with respect to the Town's performance of its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this agreement.

BOTH BARNSTABLE COUNTY AND THE TOWN OF DENNIS AGREE:

That nothing herein shall be construed as obligating either Barnstable County or the Town of Dennis to expend funds or to be obligated to spend funds beyond the scope of this contract.

This AGREEMENT may only be modified in the form of amendments in writing by mutual agreement by both parties. Request for modification will be forwarded to one party by the other party by written notice.

ARTICLE II. TERM OF AGREEMENT

This AGREEMENT shall be effective when signed by all parties and shall remain in effect until the dredging identified in Attachment I is completed to the mutual satisfaction of all parties.

ARTICLE III. PAYMENT TO COUNTY:

The cost of the project shall be based on a per cubic yard basis, and calculated on the total cubic yards of material moved, using standard engineering practices, except as specified in Article VIII, and the mobilization and demobilization costs. The cost per cubic yard is $13.00 for standard dredge material. The Town shall be billed, and the County shall be paid for the following services:

Mobilization costs for project;

50% movement/placement of dredge materials;

100% movement/placement of dredge materials;

Demobilization costs for the project.

The Town shall submit payment within 30 days of date of invoice to the County. Failure

to pay said invoice within 30 days will result in the assessment of a late fee in the amount of 1% per month (12% annually) on the unpaid balance remaining after the 30th day. Said late fee will be assessed daily 0.033%. Failure to pay invoice within 90 days may result in legal action. The Town shall be responsible for all legal costs incurred by the County in collection of unpaid debts.

ARTICLE IV. WEATHER CONDITIONS

In the event of temporary suspension of work due to inclement weather conditions, the County shall cease work with no adverse consequences to the County. The decision to cease work shall be made by the County in consultation with the Town.

ARTICLE V. CHANGES IN WORK

No changes in the work covered by this Agreement shall be made without having prior written approval of both the Town and County. Costs for additional cubic yardage shall be determined utilizing the costs identified in Article III.

ARTICLE VI. COUNTY INSURANCE

The County shall maintain the following insurance coverage while conducting the dredge project:

1. Compensation insurance. The County shall maintain during the life of this Agreement Workmen's Compensation Insurance as required by applicable state law.

2. Protection and Indemnity insurance.

3. General liability and excess liability insurance.

4. Pollution insurance.

5. Contingent watercraft liability insurance.

ARTICLE VII. INDEMNIFICATION

To the extent permitted by law, Barnstable County agrees to defend, indemnify, defend and hold harmless the Town of Dennis from any claims, demands, suits or judgments by third parties which may arise out of the negligent activities of Barnstable County or its employees while performing its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the County's liability under the Massachusetts Tort Claims Act or under other provisions of this

Agreement.

To the extent permitted by law, the Town of Dennis agrees to defend, indemnify, defend and hold harmless Barnstable County from any claims, demands, suits or judgments by third parties which may arise out of the negligent activities of the Town of Dennis or its employees while performing its obligations under this Agreement. Nothing in the previous sentence shall be construed as a waiver of the limitations on the Town's liability under the Massachusetts Tort Claims Act or under other provisions of this Agreement.

ARTICLE VIII TERMINATION

Either party may terminate this Agreement by providing ten (10) days written notice to the other. The Town shall pay the County all costs incurred by the County to the date of termination, including staff time, review of documents and any other costs associated with the project up to said termination.

IN WITNESS WHEREOF, the TOWN and the COUNTY execute this Agreement this _____ day of _____, 2017.

BARNSTABLE COUNTY COMMISSIONERS:

_____
Leo G. Cakounes

_____
Mary Pat Flynn

_____
Ronald Beaty

_____
Date

TOWN OF DENNIS:

_____
2/23/17
Date

MASSDOT STANDARD CONTRACT FORM

This form is issued and published by the Massachusetts Department of Transportation (MassDOT or Department). Any changes to the official printed language of this form shall be void. Additional non-conflicting terms may be added by Attachment. Contractors may not require any additional agreements, engagement letters, contract forms or other additional terms as part of this Contract without prior Department approval. Click on hyperlinks for definitions, instructions and legal requirements that are incorporated by reference into this Contract. An electronic copy of this form is available at www.mass.gov/osc under Guidance For Vendors - Forms or www.mass.gov/osd under OSD Forms.

CONTRACTOR LEGAL NAME: **County of Barnstable** (and d/b/a): **Cape Cod Commission**	DEPARTMENT NAME: **Massachusetts Department of Transportation** MMARS Department Code: **DOT**
Legal Address: **(W-9, W-4,T&C): 3195 Main Street, Barnstable, MA 02630-1105**	Business Mailing Address: **10 Park Plaza, Boston, MA 02116**
Contract Manager: **Paul Niedzwiecki**	
E-Mail: **pniedzwiecki@capecodcomission.org**	Contract Manager: **Bryan K. Pounds**
Phone: **508.352.3136** Phone: **508.352.3136**	E-Mail: **bryan.pounds@state.ma.us**
Contractor Vendor Code: **VC6000194979**	Phone: **857.368.8860** Fax: **857.368.0639**
Vendor Code Address ID (e.g. "AD001"): **AD001.** (Note: The Address Id Must be set up for EFT payments.)	MMARS Doc ID(s): **99744** RFR/Procurement or Other ID Number: **0099744**

_X_ NEW CONTRACT

PROCUREMENT OR EXCEPTION TYPE: **(Check one option only)**

__ Statewide Contract (OSD or an OSD-designated Department)
__ Collective Purchase (Attach OSD approval, scope, budget)
__ Department Procurement (includes State or Federal grants 815 CMR 2.00) (Attach RFR and Response or other procurement supporting documentation)
__ Emergency Contract (Attach justification for emergency, scope, budget)
__ Contract Employee (Attach Employment Status Form, scope, budget)
_X_ Legislative/Legal or Other: (Attach authorizing language/justification, scope and budget)

___ CONTRACT AMENDMENT

Enter **Current Contract End Date *Prior*** to Amendment: ___, 20___.
Enter **Amendment Amount**: $ ___. (or "no change")

AMENDMENT TYPE: **(Check one option only. Attach details of Amendment changes.)**

__ Amendment to Scope or Budget (Attach updated scope and budget)
__ Interim Contract (Attach justification for Interim Contract and updated scope/budget)
__ Contract Employee (Attach any updates to scope or budget)
__ Legislative/Legal or Other: (Attach authorizing language/justification and updated scope and budget)

The following MassDOT TERMS AND CONDITIONS (T&C) has been executed, filed with CTR and is incorporated by reference into this Contract.

_X_ MassDOT Terms and Conditions __ Commonwealth Terms and Conditions For Human and Social Services

COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for MassDOT/Commonwealth owed debts under 815 CMR 9.00.

__ Rate Contract (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)

_X_ Maximum Obligation Contract Enter Total Maximum Obligation for total duration of this Contract (or ***new*** Total if Contract is being amended). **$72,419**

PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting **accelerated** payments must identify a PPD as follows: Payment issued within 10 days __% PPD; Payment issued within 15 days __ % PPD; Payment issued within 20 days __ % PPD; Payment issued within 30 days __% PPD. If PPD percentages are left blank, identify reason: __agree to standard 45 day cycle __ statutory/legal or Ready Payments (G.L. c. 29, § 23A); __ only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.) **To continue the 3C transportation planning activities for Federal Transit Administration Section 5303 grant for the Cape Cod Commission (MA-80- X011)**

ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:

__ 1. may be incurred as of the Effective Date (latest signature date below) and **no** obligations have been incurred **prior** to the Effective Date.

_X_ 2. may be incurred as of **April 1, 2017**, a date **LATER** than the Effective Date below and **no** obligations have been incurred **prior** to the Effective Date.

__3. were incurred as of ___, 20___ , a date **PRIOR** to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth and MassDOT from further claims related to these obligations.

CONTRACT END DATE: Contract performance shall terminate as of **March 31, 2018,** with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.

CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the **"Effective Date"** of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor makes all certifications required under the attached Contractor Certifications (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the MassDOT Terms and Conditions, this Standard Contract Form including the Instructions and Contractor Certifications, the Request for Response (RFR) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

AUTHORIZING SIGNATURE FOR THE CONTRACTOR:

X: _____. Date: _____.
(Signature and Date Must Be Handwritten At Time of Signature)
Print Name: Leo Cakounes, Mary Pat Plynn, Ronald Beaty
Print Title: Barnstable County Commissioners

AUTHORIZING SIGNATURE FOR MassDOT:

X: _____. Date: _____.
(Signature and Date Must Be Handwritten At Time of Signature)
Print Name: David Mohler
Print Title: Executive Director

MASSDOT STANDARD CONTRACT FORM

INSTRUCTIONS AND CONTRACTOR CERTIFICATIONS

The following instructions and terms are incorporated by reference and apply to this Standard Contract Form. Text that appears underlined indicates a "hyperlink" to an Internet or bookmarked site and are unofficial versions of these documents and Departments and Contractors should consult with their legal counsel to ensure compliance with all legal requirements. Using the Web Toolbar will make navigation between the form and the hyperlinks easier. Please note that not all applicable laws have been cited.

CONTRACTOR LEGAL NAME (AND D/B/A): Enter the **Full Legal Name** of the Contractor's business as it appears on the Contractor's W-9 or W-4 Form (Contract Employees only) **and** the MassDOT Terms and Conditions If Contractor also has a "doing business as" (d/b/a) name, BOTH the legal name and the "d/b/a" name must appear in this section.

Contractor Legal Address: Enter the Legal Address of the Contractor as it appears on the Contractor's W-9 or W-4 Form (Contract Employees only) **and** the MassDOT Terms and Conditions, which must match the legal address on the 1099I table in MMARS (or the Legal Address in HR/CMS for Contract Employee).

Contractor Contract Manager: Enter the authorized Contract Manager who will be responsible for managing the Contract. The Contract Manager should be an Authorized Signatory or, at a minimum, a person designated by the Contractor to represent the Contractor, receive legal notices and negotiate ongoing Contract issues. The Contract Manager is considered "Key Personnel" and may not be changed without the prior written approval of the Department. If the Contract is posted on COMMBUYS, the name of the Contract Manager must be included in the Contract on COMMBUYS.

Contractor E-Mail Address/Phone/Fax: Enter the electronic mail (e-mail) address, phone and fax number of the Contractor Contract Manager. This information must be kept current by the Contractor to ensure that the Department can contact the Contractor and provide any required legal notices. Notice received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any written legal notice requirements.

Contractor Vendor Code: The Department must enter the MMARS **Vendor Code** assigned by the Commonwealth. If a Vendor Code has not yet been assigned, leave this space blank and the Department will complete this section when a Vendor Code has been assigned. The Department is responsible under the Vendor File and W-9s Policy for verifying with authorized signatories of the Contractor, as part of contract execution, that the legal name, address and Federal Tax Identification Number (TIN) in the Contract documents match the state accounting system.

Vendor Code Address ID: (e.g., "AD001") The Department must enter the MMARS Vendor Code Address Id identifying the payment remittance address for Contract payments, which MUST be set up for EFT payments PRIOR to the first payment under the Contract in accordance with the Bill Paying and Vendor File and W-9 policies.

COMMONWEALTH DEPARTMENT NAME: Enter the full Department name with the authority to obligate funds encumbered for the Contract.

Commonwealth MMARS Alpha Department Code: Enter the three (3) letter MMARS Code assigned to this Commonwealth Department in the state accounting system.

Department Business Mailing Address: Enter the address where all formal correspondence to the Department must be sent. Unless otherwise specified in the Contract, legal notice sent or received by the Department's Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address for the Contract Manager will meet any requirements for legal notice.

Department Billing Address: Enter the Billing Address or email address if invoices must be sent to a different location. Billing or confirmation of delivery of performance issues should be resolved through the listed Contract Managers.

Department Contract Manager: Identify the authorized Contract Manager who will be responsible for managing the Contract, who should be an authorized signatory or an employee designated by the Department to represent the Department to receive legal notices and negotiate ongoing Contract issues.

Department E-Mail Address/Phone/Fax: Enter the electronic mail (e-mail) address, phone and fax number of the Department Contract Manager. Unless otherwise specified in the Contract, legal notice sent or received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any requirements for written notice under the Contract.

MMARS Document ID(s): Enter the MMARS 20 character encumbrance transaction number associated with this Contract which must remain the same for the life of the Contract. If multiple numbers exist for this Contract, identify all Doc Ids.

RFR/Procurement or Other ID Number or Name: Enter the Request for Response (RFR) or other Procurement Reference number, Contract ID Number or other reference/tracking number for this Contract or Amendment and will be entered into the Board Award Field in the MMARS encumbrance transaction for this Contract.

NEW CONTRACTS (left side of Form):

Complete this section ONLY if this Contract is brand new. (Complete the CONTRACT AMENDMENT section for any material changes to an existing or an expired Contract, and for exercising options to renew or annual contracts under a multi-year procurement or grant program.)

PROCUREMENT OR EXCEPTION TYPE: Check the appropriate type of procurement or exception for this Contract. Only one option can be selected. See State Finance Law and General Requirements, Acquisition Policy and Fixed Assets, the Commodities and Services Policy and the Procurement Information Center (Department Contract Guidance) for details.

Statewide Contract (OSD or an OSD-designated Department). Check this option for a Statewide Contract under OSD, or by an OSD-designated Department.

Collective Purchase approved by OSD. Check this option for Contracts approved by OSD for collective purchases through federal, state, local government or other entities.

Department Contract Procurement. Check this option for a Department procurement including state grants and federal sub-grants under 815 CMR 2.00 and State Grants and Federal Subgrants Policy, Departmental Master Agreements (MA). If multi-Department user Contract, identify multi-Department use is allowable in Brief Description.

Emergency Contract. Check this option when the Department has determined that an unforeseen crisis or incident has arisen which requires or mandates immediate purchases to avoid substantial harm to the functioning of government or the provision of necessary or mandated services or whenever the health, welfare or safety of clients or other persons or serious damage to property is threatened.

Contract Employee. Check this option when the Department requires the performance of an Individual Contractor, and when the planned Contract performance with an Individual has been classified using the Employment Status Form (prior to the Contractor's selection) as work of a Contract Employee and not that of an Independent Contractor.

Legislative/Legal or Other. Check this option when legislation, an existing legal obligation, prohibition or other circumstance exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative "earmarks" exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Supporting documentation must be attached to explain and justify the exemption.

CONTRACT AMENDMENT (Right Side of Form)

Complete this section for any Contract being renewed, amended or to continue a lapsed Contract. All Contracts with available options to renew must be amended referencing the original procurement and Contract doc ids, since all continuing contracts must be maintained in the same Contract file (even if the underlying appropriation changes each fiscal year.) "See Amendments, Suspensions, and Termination Policy.)

Enter Current Contract End Date: Enter the termination date of the Current Contract being amended, even if this date has already passed. (Note: Current Start Date is not requested since this date does not change and is already recorded in MMARS.)

Enter Amendment Amount: Enter the amount of the Amendment increase or decrease to a Maximum Obligation Contract. Enter "no change" for Rate Contracts or if no change.

AMENDMENT TYPE: Identify the type of Amendment being done. Documentation supporting the updates to performance and budget must be attached. **Amendment to Scope or Budget.** Check this option when renewing a Contract or executing any Amendment ("material change" in Contract terms) even if the Contract has lapsed. The parties may negotiate a change in any element of Contract performance or cost identified in the RFR or the Contractor's response which results in lower costs, or a more cost-effective or better value performance than was presented in the original selected response, provided the negotiation results in a better value within the scope of the RFR than what was proposed by the Contractor in the original selected response. Any "material" change in the Contract terms must be memorialized in a formal Amendment even if a corresponding MMARS transaction is not needed to support the change. Additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

Interim Contracts. Check this option for an Interim Contract to prevent a lapse of Contract performance whenever an existing Contract is being re-procured but the new procurement has not been completed, to bridge the gap during implementation between an expiring and a new procurement, or to contract with an interim Contractor when a current Contractor is unable to complete full performance under a Contract.

Contract Employee. Check this option when the Department requires a renewal or other amendment to the performance of a Contract Employee.

Legislative/Legal or Other. Check this option when legislation, an existing legal obligation, prohibition or other circumstance exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative "earmarks" exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Attach supporting documentation to explain and justify the exemption and whether Contractor selection has been publicly

posted.

MASSDOT TERMS AND CONDITIONS

The MassDOT Terms and Conditions has been executed by the Contractor and is incorporated by reference into this Contract. This Form is signed only once and recorded on the Vendor Customer File (VCUST). See Vendor File and W-9s Policy.

COMPENSATION

Identify if the Contract is a **Rate Contract** (with no stated Maximum Obligation) or a **Maximum Obligation Contract** (with a stated Maximum Obligation) and identify the Maximum Obligation. If the Contract is being amended, enter the new Maximum Obligation based upon the increase or decreasing Amendment. The Total Maximum Obligation must reflect the total funding for the dates of service under the contract, including the Amendment amount if the Contract is being amended. The Maximum Obligation must match the MMARS encumbrance. Funding and allotments must be verified as available and encumbered prior to incurring obligations. If a Contract includes both a Maximum Obligation component and Rate Contract component, check off both, specific Maximum Obligation amounts or amended amounts and Attachments must clearly outline the Contract breakdown to match the encumbrance.

PAYMENTS AND PROMPT PAY DISCOUNTS

Payments are processed within a 45 day payment cycle through EFT in accordance with the Commonwealth Bill Paying Policy for investment and cash flow purposes. Departments may NOT negotiate accelerated payments and Payees are NOT entitled to accelerated payments UNLESS a prompt payment discount (PPD) is provided to support the Commonwealth's and MassDOT's loss of investment earnings for this earlier payment, or unless a payments is legally mandated to be made in less than 45 days (e.g., construction contracts, Ready Payments under G.L. c. 29, s. 23A). See Prompt Pay Discounts Policy. PPD are identified as a percentage discount which will be automatically deducted when an accelerated payment is made. Reduced contracts rates may not be negotiated to replace a PPD. If PPD fields are left blank please identify that the Contractor agrees to the standard 45 day cycle; a statutory/legal exemption such as Ready Payments (G.L. c. 29, § 23A); or only an initial accelerated payment for reimbursements or start up costs for a grant, with subsequent payments scheduled to support standard EFT 45 day payment cycle. Financial hardship is not a sufficient justification to accelerate cash flow for *all* payments under a Contract. Initial grant or contract payments may be accelerated for the *first* invoice or initial grant installment, but subsequent periodic installments or invoice payments should be scheduled to support the Payee cash flow needs and the standard 45 day EFT payment cycle in accordance with the Bill Paying Policy. Any accelerated payment that does not provide for a PPD must have a legal justification in Contract file for audit purposes explaining why accelerated payments were allowable without a PPD.

BRIEF DESCRIPTION OF CONTRACT PERFORMANCE

Enter a brief description of the Contract performance, project name and/or other identifying information for the Contract to specifically identify the Contract performance, match the Contract with attachments, determine the appropriate expenditure code (as listed in the Expenditure Classification Handbook) or to identify or clarify important information related to the Contract such as the Fiscal Year(s) of performance (ex. "FY2012" or "FY2012-14"). Identify settlements or other exceptions and attach more detailed justification and supporting documents. Enter "Multi-Department Use" if other Departments can access procurement. For Amendments, identify the purpose and what items are being amended. Merely stating "see attached" or referencing attachments without a narrative description of performance is insufficient.

ANTICIPATED START DATE

The Department and Contractor must certify WHEN obligations under this Contract/Amendment may be incurred. Option 1 is the default option when performance may begin as of the Effective Date (latest signature date and any required approvals). If the parties want a new Contract or renewal to begin as of the upcoming fiscal year then list the fiscal year(s) (ex. "FY2012" or "FY2012-14") in the Brief Description section. Performance starts and encumbrances reflect the default Effective Date (if no FY is listed) or the later FY start date (if a FY is listed). Use Option 2 only when the Contract will be signed well in advance of the start date and identify a specific future start date. Do not use Option 2 for a fiscal year start unless it is certain that the Contract will be signed prior to fiscal year. Option 3 is used in lieu of the Settlement and Release Form when the Contract/Amendment is signed late, and obligations have already been incurred by the Contractor prior to the Effective Date for which the Department has either requested, accepted or deemed legally eligible for reimbursement, and the Contract includes supporting documents justifying the performance or proof of eligibility, and approximate costs. Any obligations incurred outside the scope of the Effective Date under any Option listed, even if the incorrect Option is selected, shall be automatically deemed a settlement included under the terms of the Contract and upon payment to the Contractor will release the Commonwealth and MassDOT from further obligations for the identified performance. All settlement payments require justification and must be under same encumbrance and object codes as the Contract payments. Performance dates are subject to G.L. c.4, § 9.

CONTRACT END DATE

The Department must enter the date that Contract performance will terminate. **If the Contract is being amended and the Contract End Date is not changing, this date must be re-entered again here.** A Contract must be signed for at least the initial duration but not longer than the period of procurement listed in the RFR, or other solicitation document (if applicable). No new performance is allowable beyond the end date without an amendment, but the Department may allow a Contractor to complete minimal close out performance obligations if substantial performance has been made prior to the termination date of the Contract and prior to the end of the fiscal year in which payments are appropriated, provided that any close out performance is subject to appropriation and funding limits under state finance law, and CTR may adjust encumbrances and payments in the state accounting system to enable final close out payments. Performance dates are subject to G.L. c.4, § 9.

CERTIFICATIONS AND EXECUTION

See Department Head Signature Authorization Policy and the Contractor Authorized Signatory Listing for policies on Contractor and Department signatures.

Authorizing Signature for Contractor/Date: The Authorized Contractor Signatory must (in their own handwriting and in ink) sign AND enter the date the Contract is signed. See section above under "Anticipated Contract Start Date". Acceptance of payment by the Contractor shall waive any right of the Contractor to claim the Contract/Amendment is not valid and the Contractor may not void the Contract. **Rubber stamps, typed or other images are not acceptable**. Proof of Contractor signature authorization on a **Contractor Authorized Signatory Listing** may be required by the Department if not already on file.

Contractor Name /Title: The Contractor Authorized Signatory's name and title must appear legibly as it appears on the **Contractor Authorized Signatory Listing**.

Authorizing Signature For Department/Date: The Authorized Department Signatory must (in their own handwriting and in ink) sign AND enter the date the Contract is signed. See section above under "Anticipated Start Date". **Rubber stamps, typed or other images are not accepted.** The Authorized Signatory must be an employee within the Department legally responsible for the Contract. See Department Head Signature Authorization. The Department must have the legislative funding appropriated for all the costs of this Contract or funding allocated under an approved Interdepartmental Service Agreement (ISA). A Department may not contract for performance to be delivered to or by another state department without specific legislative authorization (unless this Contract is a Statewide Contract). For Contracts requiring Secretariat signoff, evidence of Secretariat signoff must be included in the Contract file.

Department Name /Title: Enter the Authorized Signatory's name and title legibly.

CONTRACTOR CERTIFICATIONS AND LEGAL REFERENCES

Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified, subject to any required approvals. The Contractor makes all certifications required under this Contract under the pains and penalties of perjury, and agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein:

MassDOT and Contractor Ownership Rights. The Contractor certifies and agrees that MassDOT is entitled to ownership and possession of all "deliverables" purchased or developed with Contract funds. A Department may not relinquish rights to deliverables nor may Contractors sell products developed with MassDOT resources without just compensation. The Contract should detail all MassDOT deliverables and ownership rights and any Contractor proprietary rights.

Qualifications. The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability; and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State's website as licensed to do business in Massachusetts, as required by law.

Business Ethics and Fraud, Waste and Abuse Prevention. The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

Collusion. The Contractor certifies that this Contract has been offered in good faith and without collusion, fraud or unfair trade practices with any other person, that any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

Public Records and Access The Contractor shall provide full access to records related to performance and compliance to the Department and officials listed under Executive Order 195 and G.L. c. 11, s.12 seven (7) years beginning on the first day after the final payment

under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor can not claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under 950 C.M.R. 32.00.

Debarment. The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation including, Executive Order 147; G.L. c. 29, s. 29F G.L. c.30, § 39R, G.L. c.149, § 27C, G.L. c.149, § 44C, G.L. c.149, § 148B and G.L. c. 152, s. 25C.

Applicable Laws. The Contractor shall comply with all applicable state laws and regulations including but not limited to the applicable Massachusetts General Laws; the Official Code of Massachusetts Regulations; Code of Massachusetts Regulations (unofficial); 801 CMR 21.00 (Procurement of Commodity and Service Procurements, Including Human and Social Services); 815 CMR 2.00 (Grants and Subsidies); 808 CMR 1.00 (Compliance, Reporting and Auditing for Human And Social Services); AICPA Standards; confidentiality of Department records under G.L. c. 66A; and the Massachusetts Constitution Article XVIII if applicable.

Invoices. The Contractor must submit invoices in accordance with the terms of the Contract and the Commonwealth Bill Paying Policy. Contractors must be able to reconcile and properly attribute concurrent payments from multiple Departments. Final invoices in any fiscal year must be submitted no later than August 15th for performance made and received (goods delivered, services completed) prior to June 30th, in order to make payment for that performance prior to the close of the fiscal year to prevent reversion of appropriated funds. Failure to submit timely invoices by August 15th or other date listed in the Contract shall authorize the Department to issue an estimated payment based upon the Department's determination of performance delivered and accepted. The Contractor's acceptance of this estimated payment releases the Commonwealth and MassDOT from further claims for these invoices. If budgetary funds revert due to the Contractor's failure to submit timely final invoices, or for disputing an estimated payment, the Department may deduct a penalty up to 10% from any final payment in the next fiscal year for failure to submit timely invoices.

Payments Subject To Appropriation. Pursuant to G.L. c. 29 § 26, § 27 and § 29, Departments are required to expend funds only for the purposes set forth by the Legislature and within the funding limits established through appropriation, allotment and subsidiary, including mandated allotment reductions triggered by G.L. c. 29, § 9C. A Department cannot authorize or accept performance in excess of an existing appropriation and allotment, or sufficient non-appropriated available funds. Any oral or written representations, commitments, or assurances made by the Department or any other Commonwealth representative are not binding. The Commonwealth and MassDOT have no legal obligation to compensate a Contractor for performance that is not requested and is intentionally delivered by a Contractor outside the scope of a Contract. Contractors should verify funding prior to beginning performance.

Intercept. Contractors may be registered as Customers in the Vendor file if the Contractor owes a Commonwealth debt. Unresolved and undisputed debts, and overpayments of Contract payments that are not reimbursed timely shall be subject to intercept pursuant to G.L. c. 7A, s. 3 and 815 CMR 9.00. Contract overpayments will be subject to immediate intercept or payment offset. The Contractor may not penalize any state Department or assess late fees, cancel a Contract or other services if amounts are intercepted or offset due to recoupment of an overpayment, outstanding taxes, child support, other overdue debts or Contract overpayments.

Tax Law Compliance. The Contractor certifies under the pains and penalties of perjury tax compliance with Federal tax laws; state tax laws including but not limited to G.L. c. 62C, G.L. c. 62C, s. 49A; compliance with all state tax laws, reporting of employees and contractors, withholding and remitting of tax withholdings and child support and is in good standing with respect to all state taxes and returns due; reporting of employees and contractors under G.L. c. 62E, withholding and remitting child support including G.L. c. 119A, s. 12; TIR 05-11; New Independent Contractor Provisions and applicable TIRs.

Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts. The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing **at least 45 days prior** to filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is **any risk** to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill the terms of this Contract or Amendment. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

Federal Anti-Lobbying and Other Federal Requirements. If receiving federal funds, the Contractor certifies compliance with federal anti-lobbying requirements including 31 USC 1352; other federal requirements; Executive Order 11246; Air Pollution Act; Federal Water Pollution Control Act and Federal Employment Laws.

Protection of Personal Data and Information. The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all Commonwealth/MassDOT data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under G.L. c. 93H and c. 66A and Executive Order 504. The Contractor is required to comply with G.L. c. 93I for the proper disposal of all paper and electronic media, backups or systems containing personal data and information, provided further that the Contractor is required to ensure that any personal data or information transmitted electronically or through a portable device be properly encrypted using (at a minimum) Information Technology Division (ITD) Protection of Sensitive Information, provided further that any Contractor having access to credit card or banking information of Commonwealth/MassDOT customers certifies that the Contractor is PCI compliant in accordance with the Payment Card Industry Council Standards and shall provide confirmation compliance during the Contract, provide further that the Contractor shall immediately notify the Department in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the Commonwealth/MassDOT and provide access to any information necessary for the Commonwealth/MassDOT to respond to the security breach and shall be fully responsible for any damages associated with the Contractor's breach including but not limited to G.L. c. 214, s. 3B.

Corporate and Business Filings and Reports. The Contractor certifies compliance with any certification, filing, reporting and service of process requirements of the Secretary of the Commonwealth, the Office of the Attorney General or other Departments as related to its conduct of business in the Commonwealth; and with its incorporating state (or foreign entity).

Employer Requirements. Contractors that are employers certify compliance with applicable state and federal employment laws or regulations, including but not limited to G.L. c. 5, s. 1 (Prevailing Wages for Printing and Distribution of Public Documents); G.L. c. 7, s. 22 (Prevailing Wages for Contracts for Meat Products and Clothing and Apparel); minimum wages and prevailing wage programs and payments; unemployment insurance and contributions; workers' compensation and insurance, child labor laws, AGO fair labor practices; G.L. c. 149 (Labor and Industries); G.L. c. 150A (Labor Relations); G.L. c. 151 and 455 CMR 2.00 (Minimum Fair Wages); G.L. c. 151A (Employment and Training); G. L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); G.L. c. 152 (Workers' Compensation); G.L. c.153 (Liability for Injuries); 29 USC c. 8 (Federal Fair Labor Standards); 29 USC c. 28 and the Federal Family and Medical Leave Act.

Federal And State Laws And Regulations Prohibiting Discrimination including but not limited to the Federal Equal Employment Oppurtunity (EEO) Laws the Americans with Disabilities Act,; 42 U.S.C Sec. 12,101, et seq., the Rehabilitation Act, 29 USC c. 16 s. 794; 29 USC c. 16. s. 701; 29 USC c. 14, 623; the 42 USC c. 45; (Federal Fair Housing Act); G. L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); the Public Accommodations Law G.L. c. 272, s. 92A; G.L. c. 272, s. 98 and 98A, Massachusetts Constitution Article CXIV and G.L. c. 93, s. 103; 47 USC c. 5, sc. II, Part II, s. 255 (Telecommunication Act; Chapter 149, Section 105D, G.L. c. 151C, G.L. c. 272, Section 92A, Section 98 and Section 98A, and G.L. c. 111, Section 199A, and Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities, and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also MCAD and MCAD links and Resources.

Small Business Purchasing Program (SBPP). A Contractor may be eligible to participate in the SBPP, created pursuant to Executive Order 523, if qualified through the SBPP COMMBUYS subscription process at: www.commbuys.com and with acceptance of the terms of the SBPP participation agreement.

Limitation of Liability for Information Technology Contracts (and other Contracts as Authorized). The Information Technology Mandatory Specifications and the IT Acquisition Accessibility Contract Language are incorporated by reference into Information Technology Contracts. The following language will apply to Information Technology contracts in the U01, U02, U03, U04, U05, U06, U07, U08, U09, U10, U75, U98 object codes in the Expenditure Classification Handbook or other Contracts as approved by CTR or OSD. Pursuant to Section 11. Indemnification of the MassDOT Terms and Conditions, the term "other damages" shall include, but shall not be limited to, the reasonable costs the Commonwealth/MassDOT incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a Contract. "Other damages" shall not include damages to the Commonwealth/MassDOT as a result of third party claims, provided, however, that the foregoing in no way limits the Commonwealth's or MassDOT's right of recovery for personal injury or property damages or patent and copyright

infringement under Section 11 nor the Commonwealth's/MassDOT's ability to join the contractor as a third party defendant. Further, the term "other damages" shall not include, and in no event shall the contractor be liable for, damages for the Commonwealth's or MassDOT's use of contractor provided products or services, loss of Commonwealth or MassDOT's records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the Commonwealth or MassDOT. In no event shall "other damages" exceed the greater of $100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. Section 11 sets forth the contractor's entire liability under a Contract. Nothing in this section shall limit the Commonwealth's or MassDOT's ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference Section 11 of the MassDOT Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement. These terms may be applied to other Contracts only with prior written confirmation from the Operational Services Division or the Office of the Comptroller. The terms in this Clarification may not be modified.

Northern Ireland Certification. Pursuant to G.L. c. 7 s. 22C for state agencies, state authorities, the House of Representatives or the state Senate, by signing this Contract the Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor 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.

Pandemic, Disaster or Emergency Performance. In the event of a serious emergency, pandemic or disaster outside the control of the Department, the Department may negotiate emergency performance from the Contractor to address the immediate needs of the MassDOTeven if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

Consultant Contractor Certifications (For Consultant Contracts "HH" and "NN" and "U05" object codes subject to G.L. Chapter 29, s. 29A). Contractors must make required disclosures as part of the RFR Response or using the Consultant Contractor Mandatory Submission Form.

Attorneys. Attorneys or firms providing legal services or representing MassDOT may be subject to G.L. c. 30, s. 65, and if providing litigation services must be approved by the Office of the Attorney General to appear on behalf of a Department, and shall have a continuing obligation to notify the Commonwealth of any conflicts of interest arising under the Contract.

Subcontractor Performance. The Contractor certifies full responsibility for Contract performance, including subcontractors, and that comparable Contract terms will be included in subcontracts, and that the Department will not be required to directly or indirectly manage subcontractors or have any payment obligations to subcontractors. .

EXECUTIVE ORDERS

For covered Executive state Departments, the Contractor certifies compliance with applicable Executive Orders (see also Massachusetts Executive Orders), including but not limited to the specific orders listed below. A breach during period of a Contract may be considered a material breach and subject Contractor to appropriate monetary or Contract sanctions.

Executive Order 481. Prohibiting the Use of Undocumented Workers on State Contracts. For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established, by signing this Contract the Contractor certifies under the pains and penalties of perjury that they shall not knowingly use undocumented workers in connection with the performance of this Contract; that, pursuant to federal requirements, shall verify the immigration status of workers assigned to a Contract without engaging in unlawful discrimination; and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker

Executive Order 130. Anti-Boycott. The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott (See IRC § 999(b)(3)-(4), and IRS Audit Guidelines Boycotts) or engages in conduct declared to be unlawful by G.L. c. 151E, s. 2. A breach in the warranty, representation, and agreement contained in this paragraph, without limiting such other rights as it may have, MassDOT and the Commonwealth shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

Executive Order 346. Hiring of State Employees By State Contractors Contractor certifies compliance with both the conflict of interest law G.L. c. 268A specifically s. 5 (f) and this order; and includes limitations regarding the hiring of state employees by private companies contracting with the Commonwealth/MassDOT. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

Executive Order 444. Disclosure of Family Relationships With Other State Employees. Each person applying for employment (including Contract work) within the Executive Branch under the Governor must disclose in writing the names of all immediate family related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

Executive Order 504. Regarding the Security and Confidentiality of Personal Information. For all Contracts involving the Contractor's access to personal information, as defined in G.L. c. 93H, and personal data, as defined in G.L. c. 66A, owned or controlled by Executive Department agencies, or access to agency systems containing such information or data (herein collectively "personal information"), Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read Commonwealth of Massachusetts Executive Order 504 and agrees to protect any and all personal information; and (2) has reviewed all of the Commonwealth **Information Technology Division's Security Policies.** Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all state agencies in the Executive Department, including all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with the contracting agency's Information Security Program (ISP) and any pertinent security guidelines, standards, and policies; (2) comply with all of the Commonwealth of Massachusetts Information Technology Division's "Security Policies") (3) communicate and enforce the contracting agency's ISP and such Security Policies against all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information to which the Contractor is given access by the contracting agency from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information (collectively referred to as the "unauthorized use"): (a) immediately notify the contracting agency if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the contracting agency to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the contracting agency and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth and MassDOT may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 11 of MassDOT's Terms and Conditions, withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under G.L. c. 214, § 3B for violations under M.G.L c. 66A.

Executive Orders 523, 524 and 526. Executive Order 526 (Order Regarding Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action which supersedes Executive Order 478). Executive Order 524 (Establishing the Massachusetts Supplier Diversity Program which supersedes Executive Order 390). Executive Order 523 (Establishing the Massachusetts Small Business Purchasing Program.) All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices; and the Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and the Contractor commits to purchase supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. These provisions shall be enforced through the contracting agency, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

ATTACHMENT I
STANDARD PROVISIONS

MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

OFFICE OF TRANSPORTATION PLANNING

ARTICLE I: GENERAL PROVISIONS

1. DEFINITIONS

The following words as used herein, heretofore, and hereinafter shall mean:

CONSULTANT....The party of the second part to this Contract, acting directly or through an authorized lawful agent or employee.

COMMONWEALTH....The Commonwealth of Massachusetts

DEPARTMENT....The Massachusetts Department Transportation.

DIRECTOR....The Executive Director of the Office of Transportation Planning acting directly or through an authorized representative, such representative acting within the scope of the particular duties entrusted to him/her.

FEDERAL HIGHWAY ADMINISTRATION OR "FHWA"....The Federal Highway Administration of the United States Department of Transportation.

PROJECT....All work described in the Scope of Services (Scope of Work) contained in Attachment A.

SPECIFICATIONS....The directions, provisions and requirements comprising the Terms and Conditions, the Standard Contract, Standard Provisions and the Special Provisions.

SPECIAL PROVISIONS....The special directions, provisions and requirements prepared to cover proposed work not expressly provided for in these specifications. The Special Provisions shall be included within the general term "Specifications" and shall be made a part of the contract with the expressed understanding that in the event of conflict, they shall prevail over all other specifications of the contract.

STANDARD CONTRACT....Commonwealth of Massachusetts Standard Contract

STANDARD SPECIFICATIONS....Most recent Massachusetts Department of Transportation Standard Specification for Highways and Bridges

TERMS AND CONDITIONS....Commonwealth Terms and Conditions

2. TIME SCHEDULE

The Consultant shall begin performance of the services designated in the contract promptly and shall complete the services without delay. All work shall be performed by the Consultant in accordance with the time schedule as shown in the Standard Contract and/or in the SPECIAL PROVISIONS, if applicable.

Should circumstances occur, which are beyond the control of the Consultant, such as an increase in the scope of work, revisions to approved work, or a change in the conditions under which the work is to performed, the specified estimated completion date may be extended. If the extension of time is more than one year beyond the originally specified time-period, the contract fee may be renegotiated. Four months prior to reaching the completion date for the Contract, it shall be the Consultant's responsibility to notify the Department in writing if the completion date cannot be met. The Consultant shall state the reason why that date cannot be met and request a revised date for consideration. If the Department determines that an extension of time is warranted, both parties shall agree to a new completion date. Any adjustment to the contract fee attributed to escalated salaries and/or other costs resulting from the extended time shall only apply to costs incurred beyond the one-year addition to the original completion date. Also, the Consultant is made aware that no compensation will be paid for services that are rendered either prior to the date of the Notice to Proceed or beyond the duration specified in the Contract, unless an extension of time is granted.

3. TERMINATION

Upon receipt of written notification from the Department that this Contract, or any part thereof, is to be terminated, the Consultant shall immediately cease operations on the work stipulated, and assemble all material that has been prepared, developed, furnished or obtained under the terms of this Contract that may be in its possession or custody, and shall transmit the same to the Department on or before the fifteenth day following the receipt of the above written notice of termination, together with an evaluation of the cost of the work performed, unless otherwise provided for in the SPECIAL PROVISIONS. The Consultant shall be entitled to just and equitable payment in accordance with ARTICLE II, Section D for any uncompensated work satisfactorily performed prior to such notice.

The Department shall determine the amount of acceptable work performed by the Consultant under this Contract. The Department's evaluation shall be used as a basis to determine the amount of compensation due for this work, provided it shall be made in good faith and supported by substantial evidence. In determining the value of the work performed by the Consultant prior to termination, no consideration will be given to profit, which the Consultant might have reasonably expected to make on the uncompleted portion of the work.

4. STANDARD SPECIFICATIONS

The Consultant agrees to perform the work required under this contract under strict conformity with the provisions of the Department's current Standard Specifications for Highways and Bridges and amendments thereto insofar as said provisions are applicable to this contract, said Standard Specifications and amendments being specifically made a part of this contract as fully and to the same effect as if the same had been set forth at length herein, except herein otherwise provided.

5. DESIGN STANDARDS

All work shall be designed in accordance with the standards adopted by the American Association of State Highway and Transportation Officials and with the design standards of the Department using data as appears in the Department's current Standard Specifications for Highways and Bridges, as amended, and as shown in the Highway Design Manual, Manual on Uniform Traffic Control Devices, Bridge Manual, Construction Manual, Survey Manual, Right of Way Manual and the Utility Accommodation Policy, along with all other standards, specifications, memoranda, directives and practices presently adopted for

use by the Department and as may be from time to time amended. The design of projects on the Federal Aid Highway System must comply with standards as approved by the United States Department of Transportation, Federal Highway Administration. All roads on the Interstate System must comply with the Standards as provided in Section 109 Title 23 of the Federal Highway Act of 1956, as amended.

6. STAFFING OF OFFICE AND INSPECTION OF WORK

The Consultant shall maintain an office located within the confines of the Commonwealth of Massachusetts. Such office shall be staffed with professional personnel adequate in number, training and experience to perform the work required under this contract.

Prior to the beginning of work, the Consultant shall submit the names, resumes, titles and salary rates of all personnel to be assigned to the work. Any subsequent increase in salary rates shall require the written approval of the Executive Director. In addition, education and experience records of supervisory personnel who will actively participate in the work shall be submitted. If, at any time during the term of this contract, any supervisory position is vacated, notice shall be immediately sent to the Executive Director as to the person vacating the position and the name, title, education, experience record and rate of pay of the person who will fill the vacancy. Prior written approval of the Executive Director for the change in supervisory personnel must be received by the Consultant. It is understood that authorized representatives of the Massachusetts Department of Transportation, Office of Transportation Planning and the United States Department of Transportation, Federal Highway Administration may inspect or review the Consultant's work in progress during normal working hours. Plans and documents, including those in the formative stage, shall be readily available in the Consultant's Massachusetts Office at all times during normal working hours. It is agreed that any or all portions of the work performed by the Consultant may be reviewed by other Consultants retained by the Department for this purpose.

7. LODGING, ETC.

Every person employed in the work covered by this Contract shall lodge, board or trade where and with whom he/she elects, and neither the Consultant nor its agents or employees shall directly or indirectly require as a condition of employment therein that an employee shall lodge, board or trade at a particular place or with a particular person.

8. AVAILABLE DATA AND MATERIALS

All data applicable to this project in possession of the Department shall be made available to the Consultant by the Department. When appropriate, the Department shall furnish to the Consultant forms, cross section paper and other material for the preparation of plans, profiles, cross sections, etc. if such materials are standard only with the Department and cannot be obtained elsewhere.

9. HEARINGS & MEETINGS

The Department shall make all arrangements for and hold all necessary official public hearings in connection with the project. Public meetings to obtain citizen participation in the planning and design of the project may be arranged by the Department or by the Consultant under the direction of the Executive Director. The Consultant shall not, at any time, make any commitments or give any information regarding projects being planned by the Department without prior approval of the Executive Director. The Consultant shall, when requested by the Executive Director, render such assistance as necessary,

including preparation and explanation of materials, at or for any hearing, meeting or conference held by the Department.

10. AGREEMENTS

The Department shall negotiate and prepare all necessary agreements with railroads, public utilities, municipalities, agencies of the United States Government or others. The Consultant shall prepare the plans, sketches and other data necessary in connection with these agreements and assist the Executive Director, if requested, at conferences related to such agreements.

11. APPEARANCE AS WITNESS

If and when required by the Department, the Consultant shall prepare for and appear in any litigation concerning this project on behalf of the Commonwealth, and shall be paid actual salary and overhead costs with no profit allowance for this services and shall be reimbursed for any expenses incurred in relation thereto. These services and expenses shall not be considered as covered by the total of the fees stipulated in this contract.

12. REPORTS OF MEETINGS

The Consultant shall keep a record indicating the subject and substance of all formal meetings with the members of the Department as well as with representatives of other State and Federal agencies, municipalities, private organizations and the general public, at which it is in attendance. Meeting reports shall be prepared and submitted to the Executive Director describing the subject matter discussed at each meeting, and subsequent reports shall be submitted as to actions taken as a result of recommendations presented.

13. CONTRACT PROPOSALS: Not applicable

14. APPROVAL OF CONTRACT PLANS: Not applicable

15. REVISIONS

Should the Department require additional work or revisions to the Consultant's work product beyond that which is to be delivered in accordance with the Scope of Work outlined in Attachment A of this contract, additional compensation may be negotiated in accordance with Article II section 3.

No compensation will be made under this section for work that the Consultant has completed and for which approval has not been given, or for revisions caused by errors, omissions, oversight or neglect on the part of the Consultant.

16. PUBLICATION OF PLANS

No copies of data or plans, including material in the formative stage are to be released by the Consultant to any other person or agency, except after prior approval of the Department. All press releases including plans and information to be published in newspapers, magazines, and other news media are to be through Department sources only.

17. EMPLOYMENT OF DEPARTMENT PERSONNEL

The employment by the Consultant of personnel on the payroll of the Massachusetts Department of Transportation shall not be permitted in the execution of this Contract, even though such employment may be outside of the employee's regular working hours or on Saturdays, holidays or vacation time. The Consultant is presumed to have a sufficient and competent organization to do the work required.

18. WARRANTY

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, the Department shall have the right to annul this Contract without liability, or, in its discretion, to deduct from the Contract price or consideration without liability, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

19. SUBCONTRACTING

The Consultant shall perform with its own organization not less than fifty (50) percent of the contract fee, except that any items designated in the contract as "Specialty Items" may be performed by subcontract.

If the complexity and nature of the project are such as to require highly specialized professional or expert assistance, services or advice in connection with special phases of the work which normally are not the type performed directly by the Consultant, such services may be obtained, provided that prior written approval is received from the Department, and, in the case of Federal-Aid Projects, both the Department and the FHWA.

The Consultant warrants that its contracts with subcontractors shall bind each subcontractor to all provisions of this contract to the extent that the regulations, rights and interests of the Department and the Federal Highway Administration may be effected; and the Consultant accepts legal and financial responsibility for any failures to so protect and enforce the regulations, rights and interests of the Department and the Federal Highway Administration.

The Department reserves the right to approve any changes in subcontractors or changes in the

amounts or rates of cost reimbursement to any subcontractor. The employment of other firms or individuals for supplemental specialized services, such as soil testing and ground or aerial survey work included in the predetermined fee, shall not require approval of the Federal Highway Administration or the Board of Commissioners, but prior written approval shall be obtained from the Executive Director.

Requests for approval of work to be subcontracted shall include a clear description of the work to be performed, capabilities of the subcontractor to perform such work, breakdown of costs and man hours, method of payment and maximum amount to be paid. Any subcontract which exceeds $50,000 in cost shall contain all the contractual provisions which are contained in contracts for prime consultants, including insurance certificates and pre-award audit data. For subcontracts whose costs are between $25,000 and $50,000, the Department may, at its discretion, require that the aforementioned provisions be included. The aforementioned provisions are not required for subcontracts that are less than $25,000 in costs.

20. NON-DISCRIMINATION IN EMPLOYMENT AND AFFIRMATIVE ACTION

During the performance of this contract, the Consultant, for itself, its assignees and successors in interest, shall comply with the regulations of the United States Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, CFR, Part 21, hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

The Consultant shall comply with all provisions of the "Required Contract Provision for Equal Opportunity, the Special Provision for Specific Equal Opportunity Responsibilities" and the "Disadvantaged Business Enterprise Provision" which are included herein and made a part of this Contract.

21. NOTICE

Unless otherwise specified, any notice hereunder shall be in writing and shall be deemed delivered when given in person to either party or deposited in the U.S. mail, postage prepaid and addressed as indicated in the SPECIAL PROVISIONS.

22. INSURANCE

The Consultant shall carry insurance in a sufficient amount to assure the restoration of any plans, drawings, computations, field notes or other similar data relating to the work covered by this Contract in the event of loss or destruction until all data is turned over to the Department.

The Consultant shall submit copies of the insurance policies as well as any applicable certificates to the Department for subsequent filing with the Department Secretary. The Department shall not be obligated to make any payment to the Consultant for services performed under the provisions of this contract before receipt of evidence of insurance coverage.

The Consultant shall also carry Professional Services Liability Insurance for errors and omissions, in an amount stated in the SPECIAL PROVISIONS, if such insurance is applicable to this contract. This insurance shall be obtained by the Consultant and shall remain in force from the date when the Consultant affixes its Registered Professional Engineer's stamp to the Contract documents to the date when all construction work designed under this Contract is completed, unless this Contract is terminated as herein provided, or until it is determined by the Engineer that construction has advanced to the stage where errors in design cannot further affect said construction. This policy shall indemnify and save harmless the Commonwealth, its officers, agents and employees from claims, suits, actions, damages and costs of every name and description resulting from errors and omissions in the work performed by the Consultant after the starting date of and under the terms of this Contract. A certificate showing that it is carrying this insurance shall be submitted to the Department for subsequent filing with the Department Secretary.

No cancellation of such insurance, whether by the insurers or by the insured, shall be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the Department at least twenty (20) days prior to the intended effective date thereof, which date shall be expressed in said notice. Notice of cancellation sent by the party proposing cancellation by certified mail, postage prepaid, with a return receipt of addressee requested, shall be sufficient notice. An affidavit from any officer, agent or employee, duly authorized by the insured, shall be prima facie evidence that the notice was sent.

This section shall apply to the legal representative, trustee in bankruptcy, receiver, assignee, trustee and the successor in interest of such Consultant. The aforesaid insurance shall be taken out and maintained by the Consultant.

Failure to provide and continue in force any insurance as described in this section shall be deemed a material breach of the Contract and shall operate as an immediate termination thereof.

23. INDEMNIFICATION OF COMMONWEALTH/CONSULTANT LIABILITY

The Consultant shall be liable for all damage caused by errors or omissions in its work or in the work of its subcontractors, agents, or employees performed under this agreement. The Consultant expressly agrees that its subcontractors, agents, or employees shall possess the experience, knowledge and character necessary to qualify them individually for the particular duties they perform. Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the Consultant, or the Department beyond such as may legally exist irrespective of this Article or Agreement.

24. AMENDMENT

If, during the term of the contract, the Department revises the limits of the project or makes other substantial changes in the scope or character of the work so as to thereby increase the work to be performed by the Consultant, such increased work shall result in an additional fee to be paid to the Consultant in accordance with ARTICLE II, provided that a written agreement concerning such increased work and additional fee has been made by all parties concerned prior to the performance of such increased work. In the event that no such written agreement has been executed prior to the performance of such increased work, the Consultant shall not be entitled to any additional fee. On projects being reimbursed with federal funds, approval of said written agreement by the FHWA shall be required prior to the performance of such increased work.

25. NEGOTIATION SUBSEQUENT TO CONTRACT EXECUTION: Not applicable

26. OWNERSHIP OF DATA

All materials prepared by the Consultant for the purpose of performing the services set forth in this contract shall be owned by the Department. During the performance of the Contract, such material shall be maintained by the Consultant; the Department will have full access to such materials with copies available to the Department upon request.

27. COPYRIGHT

The Consultant shall be free to copyright material developed under the contract with the provisions that the Department, and the FHWA reserve a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use the work for government purposes.

ATTACHMENT I
STANDARD PROVISIONS

ARTICLE II: COMPENSATION OF CONSULTANT

1. GENERAL FEE

The Consultant shall insure that the compensation provisions and the "Contract Cost Principles and Procedures" set forth in the Federal Acquisition Regulation 31 (Technical Reference 48 CFR Chapter 1 Part 31) which document is incorporated herein and made a part hereof by reference are adhered to and are referenced in all contracts with subconsultants and subcontractors.

The Commonwealth hereby agrees to pay and the Consultant agrees to accept as full compensation for all services rendered to the satisfaction of the Department a fee established in accordance with one of the following two payment methods:

PAYMENT METHOD 1 LUMP SUM: Not applicable, unless specified in the SPECIAL PROVISIONS.

PAYMENT METHOD 2 COSTS or COSTS PLUS A NET FEE: Actual Maximum Payment Amount is specified in the SPECIAL PROVISIONS.

For all services to be performed under the General Fee, the Consultant shall be paid an amount equal to the sum of the following items a, b, c, and d:

a) Actual direct salary costs paid professional employees by the Consultant for the time such employees are directly utilized on work necessary to fulfill the provisions of the Contract. Actual direct salary costs shall consist of payroll costs at straight time for professional employees, excluding all principals or administrative officers such as owners, partners, stockholders owning more than one percent of the common stock outstanding, or other major supervisory personnel, for the time such employees are directly utilized on the work covered by this Contract. If it is the usual practice for salaried principals or administrative officers of small firms to perform planning, research or technical work, permission may be granted by the Executive Director to compensate them for the time when they are actually engaged in this work, but only at a rate of pay commensurate with the type of work performed. Permission may also be given by the Executive Director for certain principals or administrative officers of large firms to be paid for professional work performed by them at a rate of pay commensurate with the type of work performed, but only under unusual conditions for specific periods of time. Written approval shall be required from the Executive Director prior to the use of said principals or officers by both large and small firms.

Payment of any said principals or officers for administrative duties at the usual rate of pay for these positions will not be allowed, it being considered that their salaries are included under overhead.

Salary rates and increases thereof paid to professional employees assigned to this project shall be commensurate with salaries paid and increases thereof made to other employees of the Consultant engaged in similar work. Any increases in salary shall be the result of company wide evaluation of all professional employees. Such evaluation shall be in accordance with company wide personnel regulations and established policies.

The Executive Director shall have the right to exercise the power of review and approval of

salaries and increases thereof for a period of thirty days following receipt of the Consultant's written notice of such rates and/or increases. This notice must be submitted prior to the date when such rates become effective.

Unless the Executive Director notifies the Consultant in writing during the thirty-day period that such salary rate or increase thereof is in his opinion, unreasonable, such lack of notice shall constitute approval of the rate or increase from the proposed effective date. All salary changes from those submitted on the previous invoice shall be specifically noted by the Consultant on his next invoice giving the date of the letter requesting such increase. Changes in salary rates made prior to the date of this letter will not be approved for payment. Any such salary increase shall not be considered as justification for an increase in the maximum payment for direct salary costs shown under Maximum Payment Amounts herein before.

No premium payment shall be made for overtime work unless previously approved by the Executive Director. It is the current policy of the Department to limit the hourly rate for professional employees to **$51.00** per hour. Permission for higher rates per hour may be granted in special situations with the written approval of the Executive Director.

b) Applicable indirect costs incurred during the period of this contract, to the extent that such indirect costs are allowable under the "Contract Cost Principles and Procedures" set forth in the Federal Acquisition Regulation 31 (Technical Reference 48 CFR Chapter 1 Part 31) which document is incorporated herein and made a part hereof by reference.

For purposes of partial payments a provisional indirect cost additive rate, expressed as a percent of actual direct salary costs, will be specified in the SPECIAL PROVISIONS.

The amount to be allowed for indirect costs shall be the actual audited amounts of such costs incurred by the Consultant, provided, however, that the total allowance for such costs shall in no event exceed an amount which is obtained by multiplying the actual direct salary costs paid under "a" above by the indirect costs additive percentage rate as set forth in the SPECIAL PROVISIONS, but limited to a maximum of **155%** percent. Said limit on allowable indirect costs shall apply notwithstanding any audit which indicates that higher indirect costs were actually incurred unless otherwise specified in the SPECIAL PROVISIONS.

c) A net fee, if applicable, as shown in the SPECIAL PROVISIONS to cover consultant's profit, miscellaneous expenses, and other factors that may be considered under the applicable regulations and that are not paid for otherwise.

d) Reimbursement for direct expenses to the extent that they are allowable under the provisions of the Federal Acquisition Regulation referred to above and meet the requirements set forth below.

Reimbursable direct expenses shall include, but not be limited to, costs covering work performed by other parties such as borings, laboratory tests, field survey, special electronic computer programming, services of other professionals or specialists, special printing and reproductions and certain telephone and travel expense as further set forth below and normally not included in overhead expense.

The Consultant Shall adhere to the applicable provisions of 48 CFR, Chapter 1, Part 31 and 49 CFR, Part 18.00, particularity Section 18.32, with respect to nonexpendable property. All such nonexpendable property shall become the property of the Department and shall be transferred unto its care and custody at the Department's direction.

Prior written approval shall be obtained by the Consultant from the Executive Director before these direct expenses are incurred. Reimbursable direct expenses are included under the Maximum Payment Amount.

All requests for reimbursement of such direct expenses shall be submitted in writing to the Director, together with estimates of the cost for each type of expense and the reasons for such expenses.

All billing of direct expenses shall be itemized by date, name of person incurring such expenses, location of travel or communication points, and shall include all other data relevant to a verification of the expenses together with a copy of the Executive Director's letter (when required) authorizing such expenditure.

Telephone charges shall not be considered as a direct expense except for toll charges specifically approved by the Executive Director.

When applicable, no direct charges for computer time or computer aided drafting and design costs will be eligible for reimbursement.

Travel Expenses when authorized under the SPECIAL PROVISIONS of this Contract shall be measured from the Massachusetts office of the Consultant, or the residence of the Consultant's employee traveling to a project-related destination point, whichever is the lesser distance, unless otherwise expressly authorized by the Director in writing. No travel expense will be paid unless provided for in the SPECIAL PROVISIONS or as may be previously approved in writing by the Executive Director. Travel shall be made by the least expensive reasonable means. First class air-fare, deluxe accommodations and unreasonable meal costs will not be approved. The use of rented automobiles will be reimbursed only at the same mileage rate as approved for personal or firm-owned vehicles. The cost of meals related to trips made in the course of a normal work-day will not be reimbursed. Travel and certain other necessary expenses for attendance at public meetings and hearings, as designated by the Executive Director, may be reimbursed subject to written approval of the Executive Director.

Since it is agreed that the work under this contract shall be performed in an adequately staffed office of the Consultant located within the Commonwealth of Massachusetts, costs incurred by the Consultant for telephone calls and travel to or from his out-of-state offices, shall not be reimbursed. Travel and subsistence shall not be paid for employees from any out-of-state office to work in Massachusetts except for certain specialists when expressly approved by the Executive Director in writing.

Printing of plans and copying of data as required for reviews and normal submissions shall not be reimbursed as direct expense, notwithstanding the fact that the Consultant may not own printing or copying equipment. Payment for special printing of reports and preparation of matter to distribute at public meetings, hearings and similar occasions may, with the approval of the Executive Director, be reimbursed.

Expenses for administrative personnel performing administrative work will not be reimbursed.

No markup shall be allowed on direct expenses.

All direct costs not reimbursable under this Article, and not allowable upon audit of the Consultant's records as an overhead item, shall be included in the net fee, if applicable, for profit and unallocated costs.

All costs as described in the foregoing paragraphs are to be determined by actual records kept by the Consultant in accordance with the provision of this contract and are subject to final audit by the Department, Massachusetts Executive Office of Transportation and/or the FHWA. The total partial payments made shall be adjusted to conform to determinations made in such final audit in accordance with the above provisions of this Article. At their discretion, the Department, Massachusetts Executive Office of Transportation and/or the federal government may undertake interim audits at any time during the term of the Contract.

In no event shall the maximum amount to be paid under this Contract exceed the amount as shown on Page 1 of the STANDARD CONTRACT notwithstanding final audit results, except by agreement of all parties, and with the concurrence of the U.S. Department of Transportation, Federal Highway Administration in the case of federal-aid projects.

The maximum amount may be adjusted when the Consultant establishes, and the Department and the FHWA are in agreement, that there has been or is to be a significant change in

a) the scope, complexity, or character of the services to be performed;

b) conditions under which the work is required to be performed; and

c) the duration of work, if the change from the time period specified in the agreement for completion of the work warrants such adjustment.

Upon adjustment of the maximum amount, an appropriate adjustment in the predetermined net fee shall be considered.

2. PAYMENT FOR WORK DURING CONSTRUCTION Not applicable

3. ADDITIONAL FEES IN EXCESS OF GENERAL FEE

If the Consultant performs services for revisions of plans as described in ARTICLE I, Section 15 or other services for which an additional fee is provided, he shall be paid an amount based on one of the following methods:

PAYMENT METHOD 1 - LUMP SUM: Not applicable unless specified in the SPECIAL PROVISIONS.

PAYMENT METHOD 2 - COSTS or COSTS PLUS A NET FEE: See Article II Section 1.GENERAL FEE.

4. PAYMENT FOR TERMINATION OF WORK

In the event the Department sees fit to notify the Consultant to abandon, limit or defer the work under this Contract, or any part thereof, the Consultant shall be paid for any uncompensated work satisfactorily performed prior to date of said notice in one or more of the following methods, as shall be determined by the Director:

a) Lump sum amount: Not applicable unless specified in the SPECIAL PROVISIONS.

b) By costs plus a net fee as stated in ARTICLE II, Section 1, Payment Method 2. Such net fee, if applicable, shall be in proportion to the amount of work performed.

c) By payment of work completed as applied to costs of each unit of work, if applicable.

If the work to be performed under this Contract is terminated due to bankruptcy proceedings, or for any other cause due to action or inaction by the Consultant, the Consultant shall be paid for any uncompensated work satisfactorily performed prior to said termination as so stated above, minus the percentage of all previous partial payments, if any, which were retained, as part security for fulfillment of this Contract. This amount will be forfeited by the Consultant to the Department to compensate for damages suffered by the Department due to the Consultant's failure to complete the Contract.

5. PAYMENTS

Partial payments against the General Fee shall be due and paid monthly upon approval by the Executive Director of the Consultant's invoice for all services performed to the end of the preceding month.

No compensation will be paid for services that are rendered prior to the date of the Notice to Proceed or beyond the duration specified in the contract, as amended.

Partial payments against the General Fee shall be for the value of all services performed as shown on invoices submitted by the Consultant and approved by the Executive Director. Invoices must be accompanied by actual or certified copies of time records of the consultant's employees and receipted bills from other firms for work authorized and performed under the provisions of this Contract. Invoices and all supporting documentation shall be submitted in quintuplicate: an original and four legible copies.

Partial payments shall be based on actual salaries paid monthly as specified under ARTICLE II Section 1. Method 2 paragraph (a); plus costs as specified under paragraph (b); plus the proportionate share of the net fee, if applicable, as specified under paragraph (c), which represents the percentage of work completed to date covered by the monthly invoices; plus reimbursement for authorized direct expenses based on receipted bills as provided under paragraph (d).

The Department reserves the right to defer any partial payments when the ratio of the total salary costs billed (exclusive of direct costs) to the total salary costs as shown in the original proposal is greater than the ratio of the work completed to the total work to be performed under the contract provisions.

Payments on account of additional fees for revisions or for other services as specified in ARTICLE II Section 3 shall be due and payable upon approval by the Executive Director of the Consultant's invoices for such services performed to the end of the preceding month accompanied by actual or certified copies of paid invoices and/or payrolls for the same, if required under the method of payment used.

Payments in reimbursement to the Consultant for direct costs and expenses incurred by him or any of his sub-consultants shall be due and payable upon submission and approval by the Executive Director of the Consultant's invoice accompanied by actual or certified copies of paid invoices and/or payrolls for the same. No premium payments shall be made for overtime work unless previously approved by the Executive Director.

Periodic invoices shall, in addition to current charges, incorporate all previous charges, either paid or unpaid, for services performed under the contract through the date of each such invoice. Periodic invoices

shall also segregate and accumulate, for Payments Method 2, total salary costs and indirect cost billed by the Consultant, and subconsultants if applicable, fiscal year end.

All invoices and time records shall contain a statement that the Consultant certifies, under the pains and penalties of perjury, that all work for which payment is requested has been performed and that such performance is in full compliance with the provisions of the Contract.

6. RETAINAGE

The Department reserves the right to retain a percentage of all amounts due for partial payments made against work performed under this Contract, except for amounts due for actual reimbursable direct costs, as part security for the fulfillment of this Contract by the Consultant. If this right is exercised, it shall be further described in the SPECIAL PROVISIONS.

7. RECORDKEEPING, AUDIT, AND INSPECTION OF RECORDS

All costs and expenses as described in the foregoing paragraphs are to be determined by actual records kept by the Contractor in accordance with the provisions of this Contract and are subject to final audit by the Executive Office of Transportation and/or Department (or its designee) and the FHWA. The total partial payments made hereunder shall be adjusted to conform to determinations made in such audit(s), Payments as made to the Contractor shall be subject to adjustments on the basis of final audit by the Executive Office of Transportation and/or Department. At their discretion, the Department and the FHWA may undertake interim audits and make retroactive Interim payment adjustments as a result of such audits at any time during the term of this Contract.

The Contractor is obligated to maintain in an acceptable form books, records, and other compilations of data pertaining to the performance of the provisions and requirements of this Contract to the extent and in such detail as shall properly substantiate claims for payment under this Contract, including complete employee time and payroll records, as well as documents, papers, and other evidence pertaining to billings to the Executive Office of Transportation and/or Department under this Contract; and shall also maintain records supporting the original cost proposal on this Contract. The Contractor shall make such materials available at its office at reasonable times during the term of this Contract and thereafter for inspection by the various agencies and entities identified in this Section; and copies of such materials shall be furnished upon request of the Executive Office of Transportation and/or Department or its designee or the FHWA.

The Contractor shall comply with any programmatic or fiscal reporting requirements identified in this Contract, including format, contents, detail and submission requirements. The Contractor's failure to timely submit required reports may be considered a material breach of this Contract and may subject the Contractor to delayed or reduced payments without penalty to the Executive Office of Transportation and/or Department.

All such records and reports, noted above, shall be kept for a minimum period of seven (7) years or until the resolution of any litigation, claim, negotiation, audit or other action involving the records which arise at any time during the retention period. All document retention periods shall begin on the first day after final payment under this Contract, If any litigation, claim negotiation, audit or other action involving the records has been started before the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues resulting there from, or until the end of the applicable retention period whichever is later.

Pursuant to Executive Order No, 195, or as amended, the Executive Office of Transportation and/or Department, the Governor of the Commonwealth of Massachusetts or his/her designee, the Secretary of

Administration and Finance, the State Auditor, or their duly authorized designees, shall have access, at reasonable times and upon reasonable notice to examine the books, records, reports, and other compilation of data of the Contractor noted above which pertain to the performance of the provisions and requirements of this Contract. Such access shall include on-site audits, review, and photocopying of such records, reports or other data, at a reasonable expense.

ATTACHMENT J
SPECIAL PROVISIONS

MASSACHUSETTS DEPARTMENT of TRANSPORTATION
OFFICE OF TRANSPORTATION PLANNING

Federal Transit Administration 5303 Contract
Contract # 99744

Contract period: 4/01/2017 through 03/31/2018

These SPECIAL PROVISIONS shall be made part of this contract with the expressed understanding that in the event of conflict, the SPECIAL PROVISIONS shall prevail over the STANDARD PROVISIONS, Office of Transportation Planning version. In the event of conflicts between any parts of this contract and the COMMONWEALTH OF MASSACHUSETTS STANDARD CONTRACT (STANDARD CONTRACT) or the COMMONWEALTH TERMS AND CONDITIONS (TERMS AND CONDITIONS), the provisions contained in the STANDARD CONTRACT and/or the TERMS AND CONDITIONS shall prevail.

During the performance of this contract, the CONSULTANT shall comply with the terms and conditions contained in the STANDARD CONTRACT, TERMS AND CONDITIONS, and ARTICLES I and II of the STANDARD PROVISIONS included in ATTACHMENT I of this contract, except as said STANDARD CONTRACT and STANDARD PROVISIONS are expressly amended or supplemented as follows below.

The numbering of amendments in these SPECIAL PROVISIONS corresponds to that of the preceding STANDARD PROVISIONS. Skipping a number in the SPECIAL PROVISIONS indicates only that there is no change to the corresponding number in the STANDARD PROVISIONS.

ARTICLE I - GENERAL PROVISIONS

1. DEFINITIONS

Add the following:

METROPOLITAN PLANNING ORGANIZATION or "MPO"... The organization designated by the Governor as being responsible for carrying out 3C transportation planning for an urbanized area.

REGIONAL PLANNING AGENCY or "RPA"... One of thirteen planning agencies in the Commonwealth established under Massachusetts General Laws or the Central Transportation Planning Staff "CTPS," having responsibility for comprehensive regional and transportation planning, and acting as the CONSULTANT.

UNIFIED PLANNING WORK PROGRAM or "UPWP"... Document required by the U.S. Department of Transportation Metropolitan Planning regulations that contains a description of all proposed transportation-related planning activities and air quality planning activities.

2. TIME SCHEDULE:

Amend to include the following:

The Consultant shall perform all work described in Attachment A, Scope of Services, in accordance with the time schedule shown therein. Allotment of time and cost for each task shall not be changed without the prior approval of the Executive Director.

3. TERMINATION:

Add the following:

This contract shall commence on the date indicated in the written Notice to Proceed from the Massachusetts Department of Transportation and shall remain in effect until **03/31/2018**, subject to satisfactory completion of the work tasks in accordance with Attachment A, Scope of Services, as outlined in the annually endorsed Unified Planning Work Program.

15. REVISIONS:

Amend the 1st paragraph by deleting the words "in accordance with Article II section 3."

17. EMPLOYMENT OF DEPARTMENT PERSONNEL:

Add the following paragraph:

Neither the Consultant nor the Massachusetts Department of Transportation shall engage in any conduct that violates or induces others to violate any provisions of the Massachusetts General Laws regarding the conduct of public employees. No officer, member, or employee of the Consultant or Massachusetts Department of Transportation, and no public official of the Commonwealth or any political subdivision thereof who exercises any functions or responsibilities in the review, approval or implementation of this contract shall: a) participate in any decision relating to this contract which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is directly or indirectly interested; or b) have any interest, direct or indirect, in this contract or the proceeds thereof.

21. **NOTICE**

Amend to read as follows:

Unless otherwise specified, any notice here under shall be in writing and deemed delivered when given in person or deposited in the U.S. mail, postage prepaid and addressed as follows:

To Department: David Mohler, Executive Director
Office of Transportation Planning
Massachusetts Department of Transportation
10 Park Plaza, Room 4150
Boston, MA 02116

To Consultant: **Paul Niedzwiecki,** Executive Director
Cape Cod Commission
3225 Main Street, P.O. Box 2226
Barnstable, Massachusetts 02630

22. INSURANCE: Not Applicable

27. COPYRIGHT:

Add the following:

Furthermore, any materials to be published and/or copyrighted by the Consultant as a result of work for this contract shall receive prior written approval of the Executive Director. Materials published by the consultant shall contain the acknowledgement: "Prepared in cooperation with the Massachusetts Department of Transportation and the U.S. Department of Transportation. The views and opinions of the [Consultant] expressed herein do not necessarily state or reflect those of the Massachusetts Department of Transportation or the U.S. Department of Transportation." Unless otherwise specified or requested, at least three paper copies and one electronic copy of all documents, reports or other materials developed as products of this contract shall be submitted to the Massachusetts Department of Transportation upon completion.

ATTACHMENT J
SPECIAL PROVISIONS

ARTICLE II – COMPENSATION OF CONSULTANT

Replace Article II in its entirety with the following:

1. **GENERAL FEE (MAXIMUM FEE)** The Commonwealth hereby agrees to pay and the Consultant agrees to accept, as full compensation for all services rendered to the satisfaction of the Massachusetts Department of Transportation, a fee established in accordance with the following.

   All costs and charges of the Consultant under this contract must be billed to and associated with a task as listed in Attachment B. The maximum labor cost that shall be billed to each task is equal to the amount referenced for that task in Attachment B. Labor costs in excess of these limits shall be considered unallocated costs. Any deviation from the task structure (financial or otherwise) of the budget in Attachment B must have prior written approval of the Executive Director.

   For all services to be performed under the General Fee, the Consultant shall be paid an amount equal to the sum of the following items a, b, and c:

   (a) Actual direct salaries paid to professional employees by the Consultant for the time such employees are directly utilized on work necessary to fulfill the provisions of the contract. Actual direct salary shall consist of payroll costs at straight time for professional employees, excluding all principals, administrative officers or other major supervisory personnel, for the time such employees are directly utilized on the work covered by this contract. If it is the usual practice for salaried principals or administrative officers to perform planning, research or technical work, permission may be granted by the Executive Director to compensate them for the time when they are actually engaged in this work. Payment of any said principals or officers for administrative duties at the usual rate of pay for these positions will not be allowed, it being considered that their salaries are included under overhead. Salary rates and increases thereof paid to professional employees assigned to this contract shall be commensurate with salaries paid and increases thereof made to other employees of the Consultant engaged in similar work. A specific listing of all employees who shall perform work on this contract and each employee's salary rate must be provided in Attachment B. If the Consultant wants to add new employees to perform work on this contract, the Consultant must request prior written approval by the Executive Director; if the Executive Director does not respond to the request within 10 days of receiving the request, then the request to add staff to the contract is automatically granted. Any increases in salary shall be in accordance with company-wide personnel regulations and established policies, but require prior written approval of the Executive Director. However, no cost of living adjustments to employee salaries will be approved, nor may they be requested; the only salary increases that will be considered for approval are merit increases. Request of such merit increases must be submitted in writing sufficiently in advance to afford the Executive Director thirty days to review. The Executive Director shall notify the Consultant in writing by the end of the thirty-day period that such salary rate or increase is approved or disapproved. If the Executive Director does not respond to a request for staff merit increase(s) by the end of the thirty day review period, that merit increase is automatically approved; however, this provision does not apply to cost of living adjustments, which may be neither requested nor approved. All salary changes from those submitted on the previous invoice shall be specifically noted by the Consultant on its next invoice giving the date of the letter approving such increase. Changes in salary rates made prior to the date of this letter will not be approved for payment. Any such salary increase shall not be

considered as justification for an increase in the maximum fee. No premium payment shall be made for overtime work unless previously approved by the Executive Director.

It is the current policy of the Massachusetts Department of Transportation to impose NO MAXIMUM LIMIT on the hourly rate for RPA professional employees. The Consultant is approved to submit each employee's actual direct salary rate, as approved under the contract, for payment.

The amount to be allowed for indirect costs to a sub-contractor shall be the actual audited amounts of such costs incurred by the sub-contractor, provided, however, that the total allowance for such costs shall in no event exceed **155%** percent. Said limit on allowable indirect costs shall apply notwithstanding any audit that indicates that higher indirect costs were actually incurred.

(b) Applicable indirect costs incurred during the period of this contract, to the extent that such indirect costs are allowable under the "Federal Acquisition Regulations," incorporated herein and made a part hereof by reference.

For purposes of partial payments a provisional indirect cost additive rate, expressed as a percent of actual direct salary costs, shall be used. For this contract, the rate is **127.68 %** as documented by the most recent audit report required by the Office of Management and Budget Circular A-133.

(c) Reimbursement for authorized direct expenses as allowed under the provisions of the Federal Acquisition Regulations referred to above and meeting the requirements set forth below. In order to be allowable under Federal awards, the direct cost must be necessary and reasonable for proper and efficient performance and administration of the work executed under this contract. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally-funded.

1) Items of direct expenses attributable directly to this contract, listed in Exhibit B. Inclusion of Exhibit B does not constitute prior approval to incur these expenses.

2) Actual reasonable meeting place expenses of the MPO and the transportation advisory committees of the MPO.

3) Travel: All travel is to be made via the least expensive reasonable means. In keeping with MassDOT's GreenDOT Policy and mode shift initiative, MassDOT strongly encourages travel by public transit, walking or bicycling whenever feasible for travel related to this contract. When automobile travel is necessary, Consultant staff are expected to travel together whenever feasible.

4) Automobile travel reimbursement: The Consultant may charge for automobile travel either on a per-mile basis or for actual expenses of using a rental automobile. Mileage charges for use of automobiles for contract-related purposes are not to exceed the Internal Revenue Service (IRS) approved business standard mileage reimbursement rate that is in effect at the time of travel. Mileage reimbursement is to be the means of payment for automobile travel by private staff-owned automobile, Consultant-owned vehicle, or Consultant-leased vehicle. If the overall cost (factoring in mileage charges, parking, gasoline, etc.) for a rental car is expected to be lower than for mileage charges, the Consultant may charge for the car rental usage fee and gasoline. Tolls and parking costs may also be reimbursed with documentation. The Consultant must provide a clear and explicit delineation of all automobile travel charges,

including travel purpose and destination, method of reimbursement (mileage or rental fee plus gasoline), distance, breakdown of charges, and receipts as appropriate.

5) Overnight out-of-state travel: All out-of-state travel expenses that entail an overnight stay shall require prior written approval of the Executive Director.

6) Meetings and conferences. Costs of meetings and conferences, the primary purpose of which is the dissemination of technical information required for work under this contract, are allowable. Travel by planning staff is allowable for attendance at meetings or conferences where technical information will be disseminated that would help the employee(s) perform work under this contract and satisfy the requirements of the metropolitan planning process. Expenses related to attendance at general policy-oriented meetings and conferences not directly related to the tasks covered under this contract are not reimbursable as direct expenses.

7) Memberships, subscriptions, and professional activity costs. Costs of the Consultant's organizational memberships in technical and professional organizations are allowable. Costs of the governmental unit's subscriptions to professional and technical periodicals are allowable. Costs of membership in organizations substantially engaged in policy and lobbying are not reimbursable as direct expenses. Costs of individual staff memberships in technical and professional organizations are not reimbursable as direct expenses.

8) Meals reimbursement: Breakfast $5.00; lunch $10.00; dinner $20.00. Meal expenses for breakfast or lunch may only be reimbursed when a staff member is absent from his or her home for more than twenty-four hours. Meal expenses for dinner may only be reimbursed for travel ending two or more hours after compensated time.

9) Lodging: All lodging expenses require prior written approval of the Executive Director. Hotel/motel expenses will be reimbursed at actual cost provided such cost is found to be reasonable by the Executive Director; room costs over the lodging per diem rate approved by the U.S. General Services Administration (GSA) require documentation of lodging options and justification of the expense. The Consultant shall provide backup of the approved GSA rate with the travel request and with the final invoice for the charge.

10) Capital and expendable property and equipment. Expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except where approved in advance by the awarding agency.

11) Any individual direct expense of $1,000 or more shall require prior written approval of the Executive Director. For any individual direct expense of $1,000 or more, the Consultant shall obtain three competitive cost bids or estimates from reputable vendors, and supply those to the Executive Director with the request for approval of the direct expense. The request for approval shall include justification for the Consultant's selection of vendor. These requirements apply to all direct expenses that have a total cost of $1,000 or more, not just $1,000 or more charged to this contract. That is, if the Consultant allocates a direct expense of $1,000 or more between two or more contracts, or in any way "splits" the expense, the total cost (not just the cost charged to this contract) determines the applicability of these requirements. If the Consultant makes a purchase through the State Procurement Contract, the requirement for three competitive bids or estimates is waived.

12) Production costs: Reimbursement may be provided for unusual production expenses (e.g. large reports, promotional materials, large scale graphics, etc.), but not for typical day-to-day production expenses (e.g. copies of agendas, memos, etc.). In keeping with the material

reduction element of the GreenDOT Policy, MassDOT strongly encourages the Consultant to minimize production of hard copy materials and encourage staff and members of the public to rely upon online dissemination of materials and information.

13) Other reasonable direct expenses attributable to this contract provided such costs are not included in overhead expenses.

2. **AUDIT ADJUSTMENTS** All costs described above are to be determined by records kept during the contract period, subject to audit by the Massachusetts Department of Transportation. The total of payments made shall be adjusted to conform to a final audit. The total audited amount shall not exceed the maximum fee. Interim audits may be undertaken at any time. Interim adjustments of provisional indirect cost rates may be requested for approval by the Executive Director on the basis of post audits of individual fiscal years or adequate cost allocation plans and/or indirect cost proposals prepared in accordance with Federal Acquisition Regulations (FAR) and approved by the Massachusetts Department of Transportation.

   Toward compliance with federal Office of Management and Budget (OMB) requirements, the Consultant shall engage the services of an independent public accountant (IPA) to conduct annual audits and issue audit reports. Prior to engaging an IPA the Consultant shall obtain Massachusetts Department of Transportation review and comment on the proposed agreement with the IPA. The Massachusetts Department of Transportation will not, however, participate in any way in the selection of the IPA. The Massachusetts Department of Transportation may make suggestions as to the IPA's audit coverage and/or audit program. For purposes of this contract, the cost of the services of an IPA shall be allowable as an indirect cost item. The written agreement with the IPA shall include the following provisions:

   a) The IPA audits shall fully satisfy OMB requirement; including the Single Audit Act Amendments of 1997.

   b) The IPAs working papers shall be retained for a minimum of three (3) years from the date of the audit report and shall be made available upon request for review by the US Department of Transportation and/or the US General Accounting Office

   c) The IPA shall be alert to the fact that this duly executed contract is governed by the statutes of the Commonwealth and therefore stands on different legal ground than a direct federal grant. As the Consultant is paid out of state funds, provisions of this contract may differ from federal requirements on direct grants. So as to protect the interests of the Commonwealth, the IPA audit shall contain adequate testing of compliance by the Consultant with all provisions of this contract, including provisions which may differ from the requirements of federal funding agencies under direct federal grants.

      The IPA's audit report will include a schedule, "Indirect Cost Rate(s) Applicable to Massachusetts Department of Transportation contract(s) for Fiscal Year 20xx (fiscal year audited)" or similar schedule, disallowed and indirect costs allowed; and a calculation of the indirect cost rate (indirect which shall include columnar tabulations, by account, of Consultant's indirect costs incurred, indirect costs divided by direct salary costs). The schedule will include a tabulation of disallowances under FAR. The indirect cost rate used to determine final payments under this contract will be an annual rate (rather than a series of monthly rates) and will be calculated using indirect costs and direct labor costs for the fiscal year in the base period.

   d) The IPA's audit report will include a "Schedule of Public Support, Revenue and Expenses by Agreement/Grant/Contract Fund." This schedule shall include a listing of revenue sources

(federal, state, etc.) and expense classifications (direct salaries, indirect costs, direct costs, etc.) by agreement/grant contract.

e) The Federal Program Description for these funds is Section 5303 Metropolitan Planning, and the Catalog of Federal Domestic Assistance number (CFDA#) is 20-505.

The Massachusetts Department of Transportation reserves the right to reject IPA audit findings and to perform its own audit and issue its own audit reports insofar as this contract is concerned.

3. **METHOD OF PAYMENT** Partial payments against the General (Maximum) Fee shall be for the value of all services performed as shown on invoice(s) submitted by the Consultant and approved by the Executive Director. These partial payments shall be based on actual salaries paid for the period invoiced; plus applicable provisional indirect rate (overhead) for the period invoiced; plus reimbursement for authorized direct expenses for the period invoiced. No premium shall be paid for overtime work. The Massachusetts Department of Transportation reserves the right to defer any partial payments when the ratio of the total salary costs billed (exclusive of direct costs) to the total salary costs as shown in the original proposal is greater than the ratio of the work completed to the total work to be performed under the contract provisions. All invoices and time records shall contain a statement that the Consultant certifies, under the pains and penalties of perjury, that all work for which payment is requested has been performed and that such performance is in full compliance with the provisions of the contract.

   All invoices shall be submitted no later than thirty (30) days following the month in which the services were performed and shall include a monthly summary sheet, in a format prescribed by the Massachusetts Department of Transportation/Office of Transportation Planning, showing the number of hours per day and total hours for each individual.

   The Consultant shall furnish progress reports for each monthly pay period of its work. The progress report shall accompany the invoice for that period. All work products are subject to the approval of the Executive Director before payment is made. The progress report shall be prepared with a title page indicating the contractor name, the contract number, the report time period, and shall include the following:

   a) Brief narrative describing the work accomplished by task.
   b) Key personnel attendance at meeting(s) held for each week.
   c) Objectives/planned activities for the next month.
   d) Percent of work completed by task.
   e) Some measure of actual resources (hours, funds, etc.) charged to the contract over the past month.
   f) Comparison of actual cumulative resources expended compared to the contract budget.

4. **ELIGIBILITY QUESTIONS** Interpretation of questions regarding the eligibility of specific items for payment under the contract will be made by the Massachusetts Department of Transportation in accordance with applicable Massachusetts Department of Transportation requirements, and Massachusetts and federal laws and regulations. The Massachusetts Department of Transportation reserves the right to defer any partial payment until such time as disputes concerning the partial payment are resolved by the Massachusetts Department of Transportation. Should the decision of the Massachusetts Department of Transportation be unsatisfactory to the Consultant, it shall have recourse to a hearing with the Massachusetts Department of Transportation Hearing Examiner. The Massachusetts Department of Transportation shall have the final decision in any dispute.

5. **RECORDKEEPING, AUDIT, AND INSPECTION OF RECORDS** All costs and expenses as described in the foregoing paragraphs are to be determined by actual records kept by the Consultant in accordance with the provisions of this Contract and are subject to final audit by the Department (or its designee) and the FHWA. The total partial payments made hereunder shall be adjusted to conform to determinations made in such audit(s), Payments as made to the Consultant shall be subject to adjustments on the basis of final audit by the Department At their discretion, the Department and the FHWA may undertake interim audits and make retroactive Interim payment adjustments as a result of such audits at any time during the term of this Contract.

   The Consultant is obligated to maintain in an acceptable form books, records, and other compilations of data pertaining to the performance of the provisions and requirements of this Contract to the extent and in such detail as shall properly substantiate claims for payment under this Contract, including complete employee time and payroll records, as well as documents, papers, and other evidence pertaining to billings to the Department under this Contract; and shall also maintain records supporting the original cost proposal on this Contract. The Consultant shall make such materials available at its office at reasonable times during the term of this Contract and thereafter for inspection by the various agencies and entities identified in this Section; and copies of such materials shall be furnished upon request of the Department or its designee or the FHWA.

   The Consultant shall comply with any programmatic or fiscal reporting requirements identified in this Contract, including format, contents, detail and submission requirements. The Consultant's failure to timely submit required reports may be considered a material breach of this Contract and may subject the Consultant to delayed or reduced payments without penalty to the Department.

   All such records and reports, noted above, shall be kept for a minimum period of seven (7) years or until the resolution of any litigation, claim, negotiation, audit or other action involving the records which arise at any time during the retention period. All document retention periods shall begin on the first day after final payment under this Contract, If any litigation, claim negotiation, audit or other action involving the records has been started before the expiration of the applicable retention period, all records shall be retained until completion of the action and resolution of all issues resulting there from, or until the end of the applicable retention period whichever is later.

   Pursuant to Executive Order No, 195, or as amended, the Department, the Governor of the Commonwealth of Massachusetts or his/her designee, the Secretary of Administration and Finance, the State Auditor, or their duly authorized designees, shall have access, at reasonable times and upon reasonable notice to examine the books, records, reports, and other compilation of data of the Consultant noted above which pertain to the performance of the provisions and requirements of this Contract. Such access shall include on-site audits, review, and photocopying of such records, reports or other data, at a reasonable expense.

6. **NONDISCRIMINATION AND UNIVERSAL ACCESSIBILITY**
   During the performance of this contract, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

   a) **Compliance with Regulations:** The Consultant shall comply with the Acts and the Regulations relative to Nondiscrimination in federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

   b) **Nondiscrimination:** The Consultant, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the

discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers a program set forth in Appendix B of 49 CFR Part 21. The Consultant shall also abide by the Massachusetts Public Accommodation Law, M.G.L. c 272 §§92a, 98, 98a, and the Governor's Executive Order 526, section 4 which provide that access to programs, services and benefits be provided without regard to religious creed, sexual orientation, gender identity and expression, veteran's status and/or ancestry, along with the bases previously referenced.

c) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Consultant of the Consultant's obligations under this contract, the Acts and the Regulations, Massachusetts General Laws, and Governor's Executive Orders relative to Nondiscrimination on the grounds of race, color, national origin, sex, age, disability, religious creed, sexual orientation, gender identity and expression, veteran's status and/or ancestry.

d) **Universal Accessibility of Websites, Meeting Materials, Presentations, Notices, and Contract Deliverables.** The Consultant shall ensure that all materials prepared under this contract meet applicable federal and state requirements for accessibility for persons with disabilities. All electronic and information technology products that are submitted under this contract must be compliant with Section 508 of the Rehabilitation Act so that they can be web posted without further modification. Accordingly, final deliverable reports prepared under this Agreement and submitted in electronic format must meet the requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The act requires that all electronic products prepared for the Federal Government be accessible to persons with disabilities, including those with vision, hearing, cognitive, and mobility impairments. View Section 508 of the Rehabilitation Act **(http://www.access-board.gov/508/508standards.htm** - PART 1194) and the Federal IT Accessibility Initiative Home Page **(http://section508.gov)** for detailed information. The following paragraphs summarize the requirements for preparing reports in conformance with Section 508.

(i) Electronic documents with images, figures, or tables**.** Provide a text equivalent for every non-text or tabular element (including photographs, charts and equations) in all publications prepared in electronic format. Use descriptions such as "alt" and "longdesc" for all non-text images or place them in element content. "Text equivalent" means text sufficient to reasonably describe the non-text or tabular element. Images that are merely decorative require only a very brief "text equivalent" description. However, images that convey information that is important to the content of the report require text sufficient to reasonably describe that image and its purpose within the context of the report.

(ii) Electronic documents with forms. When electronic forms are designed to be completed on-line, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

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

f) **Sanctions for Noncompliance:** In the event of the Consultant's noncompliance with the Nondiscrimination provisions of this contract, the Recipient shall impose such contract sanctions as it, the FHWA, and/or MassDOT may determine to be appropriate, including, but not limited to: Withholding of payments to the Consultant under the contract until the Consultant complies; and/or Cancellation, termination, or suspension of the contract, in whole or in part.

g) **Incorporation of Provisions:** The Consultant shall include the provisions of paragraphs 1 through 6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the Recipient to enter into such litigation to protect the interests of the Recipient and, in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

7. **GREENDOT POLICY IMPLEMENTATION** In compliance with the Cooperative Agreement provisions regarding the federal Resource Conservation and Recovery Act of 1976, as well as MassDOT's GreenDOT policy, the Consultant shall follow the provisions of Massachusetts Executive Order 515 – Establishing an Environmental Purchasing Policy.

   If possible, the Consultant and its Sub-Consultants shall utilize 100% recycled content paper for all deliverables. The Consultant and its Sub-Consultants shall minimize paper use in the Project through digital distribution and double-sided copying whenever possible. Selection of all office and cleaning supplies purchased fully or partially with funds from this Contract shall include consideration of recycled content, reduced hazardous material use in production, natural material content, and other relevant environmental criteria. All equipment purchased as a direct cost of this contract shall be selected with increased energy efficiency and minimal hazardous material content as key criteria. Any wood materials purchased must be Sustainable Forestry Certified.

   Additionally all public meetings and events shall be held in a facility that is accessible by public transit if held in a community with fixed route or demand-responsive service, and all reasonable efforts shall be made to schedule public meetings and events during periods when public transit is operating. All reasonable efforts should be made to select meeting locations that provide secure bicycle parking; if a preferred meeting location does not provide secure bicycle parking, the Consultant should request that the venue install bicycle parking in order to provide reasonable access for all transportation modes. Notices for public meeting that include driving directions shall also include comparable transit and bicycling directions to the venue.

SUBORDINATION OF MORTGAGE

WHEREAS, Michele F. O'Connor the owner of certain real estate located at 17 Timothy Bourne Cartway, East Falmouth MA, Barnstable County, Massachusetts and

WHEREAS, Barnstable County is the holder of a mortgage on said premises which mortgage is dated **November 12, 2004** and registered in **Barnstable County Registry of Deeds, Book #19237 Page #104** in the original amount of **$4,800.00** and

WHEREAS, Michele F. O'Connor has received commitment for mortgage financing from **Santander Bank N.A. OSAOA/ATIMA** in the amount of **$85,000.00.**

NOW THEREFORE, in consideration of making of said mortgage loan in the amount of **$85,000.00** and the sum of One ($1.00) Dollar, the receipt of which is hereby acknowledged, and in order to avoid the inconvenience and expense of releasing and renewing the outstanding mortgage, the undersigned do hereby consent to the execution of the new first mortgage to **Santander Bank N.A. OSAOA/ATIMA** and do hereby, for value received, waive any and all priority of lien or right under or by virtue of the mortgage in **Barnstable County Registry of Deeds, Book #19237 Page #104** and do hereby covenant, agree and declare that said mortgage registered in **Barnstable County Registry of Deeds, Book #19237 Page #104** shall be in all respects subject to and subordinate to the new mortgage for **$85,000.00** which is registered herewith at the Barnstable County Registry of Deeds.

IN WITNESS WHEREOF, Barnstable County has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by Leo Cakounes, Mary Pat Flynn, and Ron Beaty hereto duly authorized, this **8th day of March, 2017.** The execution of these presents by two Commissioners constitutes a quorum of the Barnstable County Commissioners.

_____

_____

_____

ITS: Barnstable County Commissioners

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss. March 8, 2017

On this 8th day of March 2017, before me, the undersigned notary public, personally appeared _____
_____
_____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose

_____
Notary Public
My Commission Expires: