

**AGREEMENT  
FOR  
PROFESSIONAL SERVICES**

**AND**

**GENERAL CONDITIONS  
TO THE  
AGREEMENT FOR PROFESSIONAL SERVICES**



**pennsylvania**  
DEPARTMENT OF GENERAL SERVICES

**HARRISBURG, PENNSYLVANIA**

**2010 EDITION**

Attachments:

1. Request for Project Action
2. Orientation Summary Sheet
3. Special Conditions (if applicable)

## AGREEMENT FOR PROFESSIONAL SERVICES

AGREEMENT made this \_\_\_\_\_ day, \_\_\_\_\_, 20\_\_\_\_, by and between the Department of General Services (the "DEPARTMENT") and

\_\_\_\_\_  
NAME

\_\_\_\_\_  
ADDRESS

Federal Identification No. \_\_\_\_\_

Commonwealth Vendor Identification No. \_\_\_\_\_ (the "PROFESSIONAL").

### WITNESSETH THAT:

**WHEREAS**, the DEPARTMENT is duly authorized by 62 P.C.S.A. § 905 to retain the PROFESSIONAL to provide and perform the design, bidding and construction administration services required for Project No. DGS \_\_\_\_\_, for the construction of \_\_\_\_\_, hereinafter referred to as the "Project."

\_\_\_\_\_  
PROJECT TITLE

**WHEREAS**, the PROFESSIONAL warrants that the architects and engineers that are in responsible charge, are regularly licensed, as required by the Pennsylvania Statutes and Pennsylvania Code (Architects Licensure Law, Act of Dec. 14, 1982, P.L. 1227, as amended, 63 P.S. §34.1 et seq. and Regulations of the State Architects Licensure Board, 49 PA. CODE §9.1 et seq. and the Engineer, Land Surveyor and Geologist Registration Law, Act 367, 63 P.S. §148-158.2, as amended and Regulations of the Board of Engineers, Land Surveyors and Geologists, 37 PA. Code §37.31 et seq.), to practice their professions in the Commonwealth of Pennsylvania.

**WHEREAS**, the PROFESSIONAL warrants that it has not paid or agreed to pay any Commonwealth officer or employee any compensation, contingent or otherwise, either directly or indirectly, in the solicitation, procurement or execution of this agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions herein provided, the DEPARTMENT does hereby retain the PROFESSIONAL to perform the design, bidding and construction administration services required to satisfactorily complete the Project and the PROFESSIONAL agrees to expeditiously perform such required services and work. Further, the parties covenant and agree as follows:

1. **SCOPE OF PROJECT.** The Project is more generally described on the "Request for Project Action", as supplemented by the additional documentation included in that package, and attached hereto and incorporated by reference herein.

2. **TIME SCHEDULE**. The time schedule established at the Orientation meeting for the completion of the several submission is:

	<u>Accepted On or Before</u>
a. Programming	_____
b. Schematic	_____
c. Design Development	_____
d. Interim Construction Documents	_____
e. Construction Documents	_____
f. Anticipated Bid Opening Date	_____
g. Anticipated Final Inspection	_____

The Bid Opening Date and the Final Inspection Date are tentative dates, subject to adjustment by the DEPARTMENT.

3. **ADHERENCE TO TIME SCHEDULE**. Time shall be of the essence of this Agreement and it is the responsibility of the PROFESSIONAL to maintain and strictly adhere to the submission schedule set forth in Paragraph 2 (a.-e.). If it appears any submission or stage of the Project will be delayed, the PROFESSIONAL shall immediately notify the DEPARTMENT and the Using Agency, in writing, prior to the due date of that submission or stage, unless the dates cannot be met due to conditions made by the DEPARTMENT. The PROFESSIONAL shall include in the written notice the reason(s) for the PROFESSIONAL's inability to meet the date(s) and a request that the DEPARTMENT amend the time schedule.

The DEPARTMENT will review the PROFESSIONAL's notice and determine whether or not to amend the time schedule. If the DEPARTMENT determines that the delay is due to the fault of the PROFESSIONAL, the DEPARTMENT may:

- A. Amend the schedule and direct the PROFESSIONAL to expeditiously proceed with the design of the Project, in which case the DEPARTMENT may hold the PROFESSIONAL responsible for any costs attributable to the delay; or
  - B. Terminate the Agreement for default of the PROFESSIONAL, in accordance with the provisions of Paragraph 9.1.102 of the General Conditions.
- 3.1. Failure to give the required notification of delay or failure to meet the submission schedule constitutes failure to perform in accordance with the terms of this Agreement and may result in the following:
- A. Termination of this Agreement in accordance with Paragraph 9.1.102 of the General Conditions;
  - B. A negative performance evaluation which could result in the loss of future projects with the DEPARTMENT; or
  - C. An assessment of the PROFESSIONAL's fee.

If the DEPARTMENT determines that the delay is not due to the fault of the PROFESSIONAL, the DEPARTMENT may amend the time schedule. The PROFESSIONAL agrees that such an amendment of the time schedule is the exclusive remedy for a delay and that a claim may not be made against the DEPARTMENT for increased costs due to the delay.

The period between the approval of the Construction Documents and authorization to prepare for the Construction Procurement Stage shall be considered a suspension and the provisions of General Conditions 9.3, Reactivation of Project, shall apply, if the time

has not been extended due to a fault of the PROFESSIONAL. The length of the construction period shall, prior to the Bid Opening Date, be set by the DEPARTMENT commensurate with the Project design and conditions. There shall be no adjustment in compensation due solely to the adjustment of the construction period from the time schedule in paragraph 2.

4. **COMPENSATION AND COSTS.**

- A. The PROFESSIONAL's compensation for Basic Services ("Basic Services Compensation") shall be a negotiated fixed percentage of \_\_\_\_\_% and is based on the Base Construction Amount of \$ \_\_\_\_\_, as agreed to by the PROFESSIONAL and the DEPARTMENT. This amount is payable as set forth in Paragraph 4.1.100 of the General Conditions. The PROFESSIONAL's compensation for Basic Services shall be adjusted in extreme circumstances due to major adjustments to the Base Construction Amount during the Design Stage. The PROFESSIONAL's compensation for Basic Services will not be adjusted based upon construction contract award amounts.
- B. PROFESSIONAL's compensation for any required Additional Services shall be compensated in the following manner:
1. If the Additional Service has been identified by the DEPARTMENT as necessary for the completion of the Project at the time of negotiation of this Agreement, the PROFESSIONAL will be compensated as either a part of the Basic Services Compensation or by Additional Compensation on the basis of a not-to-exceed fee or a not-to-exceed fee "to be determined" at a later date, as identified in Exhibit B, attached herein.
  2. If an additional service is determined by the DEPARTMENT to be necessary for the completion of the Project after the execution of this Agreement, the PROFESSIONAL shall be compensated a not-to-exceed fee for such services, as mutually agreed upon in advance by the DEPARTMENT and the PROFESSIONAL.
  3. Compensation for Additional Services performed directly by the PROFESSIONAL and all of PROFESSIONAL's Consultants shall be calculated using the employee gross hourly rate times a maximum multiplier of 3 applied to the gross hourly rate. The total billing rate shall not exceed \$180.00 per hour. When salary is the source of employee compensation, an equivalent gross hourly rate shall be developed considering a 40-hour workweek, and then calculated for billing as above.
- C. No additional monies, fees or compensation shall be paid by the DEPARTMENT without an approved written modification by an Amendment or Work Order.
- D. Upon acceptance by the PROFESSIONAL of the final payment under the terms of this Agreement, as it may be modified by the parties, the PROFESSIONAL waives any and all claims for any additional fees under this Agreement.
5. **LIMITED BUDGET.** The PROFESSIONAL must design this Project within the Base Construction Amount as set in Paragraph 4A, and authorized in the Project Scope.
6. **INCORPORATION BY REFERENCE.** This Agreement is made subject to and is governed by the DEPARTMENT's General Conditions of Professional Services Agreement, 2010 Edition. The PROFESSIONAL's 150 Form is incorporated herein by reference. All Plans and Specifications must be prepared in conformity with the

DEPARTMENT's Bureau of Engineering and Architecture Project Procedure Manual, as amended, and with the DEPARTMENT's Construction Contract Documents in effect at the time of execution of the Agreement. This Agreement is subject to and governed by any Special Conditions made a part of thereof. In case of any irreconcilable inconsistency, the General Conditions of the Agreement for Professional Services govern.

7. **CLAIMS.** The following process will be followed for claims:

Claims By PROFESSIONAL Against the DEPARTMENT:

1. Any claim, dispute, question or other matter, which the PROFESSIONAL may have against the DEPARTMENT under this Agreement, will be considered by the Deputy Secretary or his designee, if the PROFESSIONAL files a written claim with the Deputy Secretary within six (6) months after the PROFESSIONAL knew or should have known that the claim arose. No claim can be filed later than six (6) months after the PROFESSIONAL knew or should have known of the conditions or facts giving rise to the claim, dispute, or other matter.
2. If the controversy is not resolved by mutual agreement, the Deputy Secretary will issue a decision in writing. The decision will:
  1. State the reasons for the action taken, and
  2. Inform the PROFESSIONAL of its right to administrative and judicial review.
3. A copy of the decision will be delivered to the PROFESSIONAL by registered mail.
4. The decision issued by the Deputy Secretary is final and conclusive unless the PROFESSIONAL files a claim with the Board of Claims within (15) fifteen days of its receipt of the decision.
5. If the Deputy Secretary does not issue a written decision within 120 days after the claim is filed, then the PROFESSIONAL may proceed as if an adverse decision had been received. The 120 day period may be extended with the written consent of the DEPARTMENT and the PROFESSIONAL.
6. The PROFESSIONAL shall carry on its work during the claims process, including Board of Claims proceedings, if any, unless otherwise agreed by it and the DEPARTMENT in writing. Should the PROFESSIONAL fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the DEPARTMENT or the PROFESSIONAL as a result of such failure to proceed shall be borne by the PROFESSIONAL, and the PROFESSIONAL shall make no claim against the DEPARTMENT for such costs.

Claims against the PROFESSIONAL:

- A. Should any claim be brought, or action brought, either directly or indirectly relating to the PROFESSIONAL's services supplied under this Agreement, the PROFESSIONAL shall render to the DEPARTMENT without compensation any proper and necessary assistance which the DEPARTMENT may require, provided however, that if the claim is the result of action or negligence by the DEPARTMENT, the PROFESSIONAL shall be reimbursed for any assistance he may be required to provide.
- B. The terms and conditions of this Agreement, the General Conditions and Special Conditions and any other document incorporated by reference herein, shall not be

construed so as to enable any party other than the DEPARTMENT and its assigns to bring any claim or action as referenced in this Section 7 to this Agreement.

- C. The PROFESSIONAL shall carry on its work during the claims process, including Board of Claims proceedings, if any, unless otherwise agreed by the PROFESSIONAL and the DEPARTMENT in writing. Should the PROFESSIONAL fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the DEPARTMENT or the PROFESSIONAL as a result of such failure to proceed shall be borne by the PROFESSIONAL, and the PROFESSIONAL shall make no claim against the DEPARTMENT for such costs.
8. **ASSIGNMENT.** The PROFESSIONAL and the DEPARTMENT each binds itself, its partners, successors, legal representatives and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. The PROFESSIONAL shall not assign, sublet or transfer any interest in the whole or any part of this Agreement without the written consent of the DEPARTMENT. The DEPARTMENT may assign, sublet or transfer its interest in this Agreement explicitly under statutory authority. This provision does not prevent an assignment for financing purposes of amounts, due or to become due under this Agreement, nor the retaining, by the PROFESSIONAL, on its own responsibility and at its own expense, of such specialized architects or PROFESSIONAL engineers as may be necessary for the proper design and development of the Project.
9. **AMENDMENTS.** This Agreement may be amended by an agreement of the parties, reduced to writing and executed by authorized representatives of the respective parties. The PROFESSIONAL hereby acknowledges receipt of notice that no person has any authority to amend or modify this Agreement or waive any term or provision hereof except by written amendment hereto signed by the Secretary of the DEPARTMENT or by the Deputy Secretary for Public Works of the DEPARTMENT.
10. **NOTICES.** Wherever the term "notice" is used, to be effective, notice must be in writing and if to the DEPARTMENT must be sent by registered or certified mail, postage and fees prepaid, or hand delivered to the Director of the Bureau of Engineering and Architecture, 18th and Herr Streets, Harrisburg, Pennsylvania 17125, and if to the PROFESSIONAL notice must be similarly mailed or hand delivered to the address set forth in the caption of this Agreement, unless notice of another address has been given, in which case notices shall be so hand delivered or mailed to that address. Transmissions by electronic mail (email) do not constitute notice.
11. **INTEGRATION.** This Agreement contains all the terms and conditions agreed to by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement exists.
12. **NO THIRD PARTY RIGHTS.** Nothing in this Agreement or in the General Conditions or Special Conditions or in any other document incorporated herein by reference or issued hereunder, expressed or implied, is intended to or shall be construed to confer upon, or give to, any person, firm or corporation or any Governmental Agency other than the DEPARTMENT, its successors and assigns, and the PROFESSIONAL, any right, remedy or claim, legal or equitable, whether as third party beneficiary or otherwise. This Agreement and all provisions applicable hereto or incorporated herein are for the sole and exclusive benefit of the DEPARTMENT, its successors and assigns and the PROFESSIONAL.
13. **HOLD HARMLESS CLAUSE.** The PROFESSIONAL agrees to defend, protect, indemnify, and hold harmless the DEPARTMENT from and against any and all liabilities, losses, damages, costs, expenses, reasonable attorney's fees, causes of action, suits,

claims, demands, or judgments of any nature arising from a negligent act, error, or omission of the PROFESSIONAL, its employees, its agents or its consultants, arising out of the performance of its PROFESSIONAL services under this Agreement.

14. **PROFESSIONAL EVALUATIONS.** In signing this Agreement, the PROFESSIONAL consents to the evaluation of its performance by the DEPARTMENT and understands that any such evaluation may be used in future selections of Professionals. Furthermore, the PROFESSIONAL's Consultants will also be evaluated. The PROFESSIONAL is required to notify each of its Consultants that in contracting with the PROFESSIONAL, the Consultant consents to the DEPARTMENT's evaluation of the consultant and to the use of any such evaluation in future selections of Professionals. The DEPARTMENT shall provide the PROFESSIONAL and PROFESSIONAL's Consultants with written notice of any unsatisfactory evaluations and the reasons therefore. PROFESSIONAL shall be entitled to submit a reply.
15. **PROFESSIONAL CONSULTANTS.** The PROFESSIONAL agrees to contract with the PROFESSIONAL's Consultants listed in Exhibit A, attached hereto and incorporated by reference herein, for specialized portions of the services. Each such consultant shall comply with the conditions of this Agreement to the same extent as the PROFESSIONAL and the PROFESSIONAL should include a clause in its Consultant Contracts to this effect. No changes shall be made to the PROFESSIONAL's Consultants listed in Exhibit A unless the PROFESSIONAL requests and receives written approval in the form of an Amendment.
16. **ADDITIONAL SERVICES.** The PROFESSIONAL will perform all necessary Additional Services required by the project, as found in Exhibit B to this Agreement. Provisions of all Additional Services will be consistent with the terms of the General Conditions, and will be by written direction of the DEPARTMENT expressly for the purpose of authorizing Additional Services. An amendment to the Agreement is not required for Additional Services enumerated in Exhibit B. These Additional Services will be authorized by a work order.
17. **ADDITIONAL SERVICES COMPENSATION.** Compensation for Additional Services performed directly by the PROFESSIONAL and all Consultants shall be calculated using the employee gross hourly rate times a maximum multiplier of 3 applied to the gross hourly rate. This total billing rate shall not exceed \$180.00 per hour. When salary is the source of employee compensation, an equivalent gross hourly rate shall be developed considering a 40-hour workweek, and then calculated for billing as above.
18. **ATTENDANCE AT MEETINGS.** The PROFESSIONAL shall attend all meetings during design which are required by the DEPARTMENT as part of Basic Services, unless described as Additional Services in Exhibit B. During the Construction Contract Administration Stage of the Project, the PROFESSIONAL shall attend the number of meetings as listed in this Section. Meetings for the purpose of the Construction Contract Administration Stage include job conferences, special meetings, and site visits. In order to utilize the PROFESSIONAL's time in an efficient manner during its attendance at meetings, the PROFESSIONAL is expected to conduct site visits after its attendance at regularly scheduled job conferences. The PROFESSIONAL shall be compensated as an Additional Service for its attendance at meetings in excess of the numbers shown below:

Construction Procurement Stage	_____
Construction Contract Administration Stage*	_____
Meetings up to one (1) year after Closeout Inspection	_____

(\* ) Or one meeting per week based on the approved construction period at the time of the bid opening date, whichever is greater.

19. **SUSTAINABLE DESIGN, DEVELOPMENT AND PRACTICES.** The PROFESSIONAL shall adhere to its profession's Code of Ethics and PROFESSIONAL Conduct, including but not limited to practices prescribed by Canon VI Obligations to the Environment. The PROFESSIONAL shall, in performing its design services, give due consideration to environmentally responsible and sustainable building and site design and discuss opportunities to incorporate such design with DEPARTMENT.
20. **RIGHT-TO-KNOW LAW.**
- A. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Contract.
  - B. Unless the PROFESSIONAL provides the Commonwealth, in writing, with the name and contact information of another person, the agency shall notify the PROFESSIONAL using the PROFESSIONAL information provided by the PROFESSIONAL in SRM [or "the legal contact information provided in this Contract"] if the agency needs the PROFESSIONAL's assistance in any matter arising out of the Right to Know Law ("RTKL"). The PROFESSIONAL shall notify the agency in writing of any change in the name or the contact information within a reasonable time prior to the change.
  - C. Upon notification from the Commonwealth that the Commonwealth requires the PROFESSIONAL's assistance in responding to a RTKL request for records in the PROFESSIONAL's possession, the PROFESSIONAL shall provide the Commonwealth, within fourteen (14) calendar days after receipt of such notification, access to, and copies of, any document or information in the PROFESSIONAL's possession which arises out of the Contract that the Commonwealth requests ("Requested Information") and provide such other assistance as the Commonwealth may request in order to comply with the RTKL. If the PROFESSIONAL fails to provide the Requested Information within fourteen (14) calendar days after receipt of such request, the PROFESSIONAL shall indemnify and hold the Commonwealth harmless for any damages, penalties, detriment or harm that the Commonwealth may incur as a result of the PROFESSIONAL's failure, including any statutory damages assessed against the Commonwealth.
  - D. The Commonwealth's determination as to whether the Requested Information is a public record is dispositive of the question as between the parties. PROFESSIONAL agrees not to challenge the Commonwealth's decision to deem the Requested Information a Public Record. If the PROFESSIONAL considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, the PROFESSIONAL will immediately notify the Commonwealth, and will provide a written statement signed by a representative of the PROFESSIONAL explaining why the requested material is exempt from public disclosure under the RTKL within seven (7) calendar days of receiving the request. If, upon review of the PROFESSIONAL's written statement, the Commonwealth still decides to provide the Requested Information, PROFESSIONAL will not challenge or in any way hold the Commonwealth liable for such a decision.
  - E. The Commonwealth will reimburse the PROFESSIONAL for any costs associated with complying with this provision only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.

F. PROFESSIONAL agrees to abide by any decision to release a record to the public made by the Office of Open Records, or by the Pennsylvania Courts. The PROFESSIONAL agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL. PROFESSIONAL's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the PROFESSIONAL has Requested Information in its possession.

21. **SPECIAL CONDITIONS**. Special Conditions are attached as Attachment \_\_\_\_\_.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

IN WITNESS WHEREOF, This Agreement has been executed and delivered as of the date set forth above.

WITNESS:

DEPARTMENT OF GENERAL SERVICES

\_\_\_\_\_  
Date

APPROVED ELECTONICALLY  
Date

**AND**

\_\_\_\_\_  
Corporation

ATTEST:

\_\_\_\_\_  
Secretary/Treasurer Date

\_\_\_\_\_  
President/Vice President Date

**OR**

WITNESS(ES):

\_\_\_\_\_

\_\_\_\_\_  
Limited Liability Company Date

\_\_\_\_\_

\_\_\_\_\_  
Partnership Date

APPROVED AS TO FORM AND LEGALITY

DEPARTMENT OF GENERAL SERVICES

OFFICE OF GENERAL COUNSEL

APPROVED ELECTONICALLY  
Chief Counsel

APPROVED ELECTONICALLY  
Deputy (Assistant) General Counsel

OFFICE OF ATTORNEY GENERAL

APPROVED ELECTONICALLY  
Deputy (Assistant) Attorney General

I hereby certify that funds in the amount of \_\_\_\_\_ are available under Appropriation Symbol

APPROVED ELECTONICALLY  
Comptroller Date

**DEPARTMENT OF GENERAL SERVICES  
PROFESSIONAL ARCHITECT OF ENGINEER  
CERTIFICATE OF COMPLIANCE**

CONTRACT NO. D.G.S. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In accordance with the Rules and Regulations promulgated by the Department of General Services of the Commonwealth of Pennsylvania, the undersigned, in person, or by its duly authorized representative, hereby certifies that I, or it, have not, or has not employed or retained any person, partnership, or corporation, other than a bona fide employee or agent working for me or it, to solicit or secure this agreement; that I, or it, have not, or has not paid or agreed to pay any person, partnership or corporation, other than a bona fide employee or agent, any fee or any other consideration contingent upon the making of this agreement, and that I, or it, have not, or has not made any political contributions because of this agreement.

Dated at \_\_\_\_\_ this \_\_\_\_\_  
day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Name of Professional Firm

\_\_\_\_\_  
Signature & Title of Person Signing

County of \_\_\_\_\_

SS:

COMMONWEALTH OF PENNSYLVANIA

\_\_\_\_\_, being duly sworn, deposes and says that he is \_\_\_\_\_  
of \_\_\_\_\_ (Name of Organization) and acknowledges that he  
executed the foregoing statement for the purpose therein contained.

Sworn to before me this  
\_\_\_\_\_ Day of \_\_\_\_\_, 20 \_\_\_\_\_

\_\_\_\_\_  
Notary Public  
My Commission Expires \_\_\_\_\_

## **Exhibit A**

### **LIST OF PROFESSIONAL'S CONSULTANTS**

The PROFESSIONAL agrees to contract with the following Consultants listed below, for specialized portions of the Work. The Consultants listed below shall be the same as those listed on the PROFESSIONAL's 150 Form. Each such Consultant shall comply with the General Conditions of this Agreement to the same extent as the PROFESSIONAL. If the PROFESSIONAL lists a Consultant which does not appear on its 150 Form, then it must explicitly identify such Consultant and such Consultant must be accepted by the DEPARTMENT as a substitution and/or as a necessary and essential additional Consultant.

Consultant's Name \_\_\_\_\_  
Consultant's Address \_\_\_\_\_  
Consultant's Phone \_\_\_\_\_  
Consultant's Fax \_\_\_\_\_  
Services \_\_\_\_\_  
MBE/WBE? \_\_\_\_\_  
Listed on 150 Form? \_\_\_\_\_

Consultant's Name \_\_\_\_\_  
Consultant's Address \_\_\_\_\_  
Consultant's Phone \_\_\_\_\_  
Consultant's Fax \_\_\_\_\_  
Services \_\_\_\_\_  
MBE/WBE? \_\_\_\_\_  
Listed on 150 Form? \_\_\_\_\_

Consultant's Name \_\_\_\_\_  
Consultant's Address \_\_\_\_\_  
Consultant's Phone \_\_\_\_\_  
Consultant's Fax \_\_\_\_\_  
Services \_\_\_\_\_  
MBE/WBE? \_\_\_\_\_  
Listed on 150 Form? \_\_\_\_\_

Consultant's Name \_\_\_\_\_  
Consultant's Address \_\_\_\_\_  
Consultant's Phone \_\_\_\_\_  
Consultant's Fax \_\_\_\_\_

Services \_\_\_\_\_

MBE/WBE? \_\_\_\_\_

Listed on 150 Form? \_\_\_\_\_

Consultant's Name \_\_\_\_\_

Consultant's Address \_\_\_\_\_

Consultant's Phone \_\_\_\_\_

Consultant's Fax \_\_\_\_\_

Services \_\_\_\_\_

MBE/WBE? \_\_\_\_\_

Listed on 150 Form? \_\_\_\_\_

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Consultant's Fax \_\_\_\_\_

Services \_\_\_\_\_

MBE/WBE? \_\_\_\_\_

Listed on 150 Form? \_\_\_\_\_

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Consultant's Address \_\_\_\_\_

Consultant's Phone \_\_\_\_\_

Consultant's Fax \_\_\_\_\_

Services \_\_\_\_\_

MBE/WBE? \_\_\_\_\_

Listed on 150 Form? \_\_\_\_\_

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Consultant's Phone \_\_\_\_\_

Consultant's Fax \_\_\_\_\_

Services \_\_\_\_\_

MBE/WBE? \_\_\_\_\_

Listed on 150 Form? \_\_\_\_\_

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MBE/WBE? \_\_\_\_\_  
Listed on 150 Form? \_\_\_\_\_

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Consultant's Phone \_\_\_\_\_  
Consultant's Fax \_\_\_\_\_  
Services \_\_\_\_\_  
MBE/WBE? \_\_\_\_\_  
Listed on 150 Form? \_\_\_\_\_

## **Exhibit B**

### **DESIGNATION AND DESCRIPTION OF SERVICES**

#### **A. PROFESSIONAL SERVICES.**

The PROFESSIONAL's Services for the Project are included within the following categories for the purposes of compensation. The listed services encompass typical services, which will be reviewed by the DEPARTMENT and the PROFESSIONAL during the negotiation of the Agreement and designated into one of three potential categories:

1. Basic Services paid within the Basic Services Compensation; or
2. Additional Services identified as needed during the initial negotiations of the Basic Services Compensation, but not included in Basic Services Compensation, and paid by Work Order at a Not to Exceed Fee or a Lump Sum Fee; or
3. Additional Services not evident or agreed upon during the negotiation of the Agreement, to be determined later and paid by Work Order as an Additional Service at a Not to Exceed Fee or a Lump Sum Fee.

The DEPARTMENT may supplement this Exhibit with further detailed description of the services. Such supplement will be an Attachment to this Exhibit and shall be incorporated into the Agreement.

#### **B. ITEMIZATION OF BASIC SERVICES AND POTENTIAL ADDITIONAL SERVICES.**

**Services listed in paragraphs 1, 2 and 3 are services deemed to be included as Basic Services unless negotiated by the parties as an Additional Service. Services listed in paragraph 4 are services deemed to be an Additional Service unless negotiated by the parties as Basic Services. Services listed starting in paragraph 5 and in paragraphs thereafter are deemed to be Additional Services.**

1. BASIC SERVICE PROJECT STUDIES. The PROFESSIONAL shall perform project studies using the PROFESSIONAL's own employees or a Consultant, consistent with the inherent requirements of the project to meet the fundamental needs of the Project, as part of Basic Services. These services include the following enumerated items below:
  - Coal Use Justification/Fuel Feasibility & Energy Source Analysis with Life Cycle Costing
  - Electrical Load/Distribution Investigation
  - Land Use Investigation
  - Site and Existing Conditions Investigation
  - Utility Service Investigation
2. CUSTOMARY SERVICES. The PROFESSIONAL shall perform customary services, using the PROFESSIONAL's own employees or a Consultant, consistent with the inherent requirements to meet the fundamental needs of the Project, as part of Basic Services. These services include the following enumerated items below:
  - Architectural
  - Civil Engineering
  - Electrical Engineering

- Fire Protection Engineering
  - HVAC Engineering
  - Plumbing Engineering
  - Structural Engineering
3. SPECIALIZED SERVICES. The PROFESSIONAL shall perform the listed specialized services, using the PROFESSIONAL's own employees or a Consultant, consistent with the inherent requirements to meet the fundamental needs of the Project, as part of Basic Services. These services include the following enumerated items below:
- Acoustical Consultation and Design
  - Audiovisual Consultation and Design
  - Code and Life Safety Consultation
  - Data Management/Networking Consultation and Design
  - Elevator/Escalator Consultation and Design
  - Environmental/Hazmat Remediation Design
  - Fire and Smoke Protection Consultation and Design
  - Foundation and Soils Engineering
  - Interior Design/Space Planning/Finishes/Signage/Furnishings Layout
  - Kitchen/Food Service Consultation and Design
  - Land Development Consultation and Design
  - Landscaping & Irrigation Consultation and Design
  - Security Consultation and Design
  - Sustainable Design Consultation and Design
  - Lighting Consultation and Design
  - T.V./Telephone Consultation and Design
4. Additional Specialized Services: Additional Specialized Services identified as needed shall be performed using the PROFESSIONAL's own employees or a Consultant, as an Additional Services. These services include the following enumerated items below:
- Acoustical/Audiovisual/Lighting/Theatrical Consultation for Performance Halls, Broadcast Studios & Exhibitions
  - Data Management/Networking Software/Hardware Selection
  - Historic Preservation Consultation and Design
  - Hospital/Medical Specialties
  - Industrial Hygienist
  - Interior Design for Artscaping/Plantscaping & Furnishings Selection
  - Laboratory Consultation
  - LEED® Consultation/Certification Services
  - Library/Archives Consultation
  - Quality Assurance Testing and Inspection

- Sound/Vibration Analysis

The following descriptions provide a general statement of what each Additional Service entails, but may include related services not specifically listed in the description and is not limited to what is described herein.

5. ATTENDANCE AT MEETINGS. The PROFESSIONAL shall be compensated as an additional service, for its attendance at meetings in excess of the numbers shown in Paragraph 18 of the Agreement.
6. CHANGE ORDERS. The services of the PROFESSIONAL arising from a Change Order authorized by the DEPARTMENT, which is not the result of the PROFESSIONAL's error or omission, shall be compensated at the Basic Services Fee percentage established for the Project applied to the change order amount, with no reduction for Credit Change Orders. Additional compensation other than at the established percentage rate may be paid in the following circumstances:
  - a. When PROFESSIONAL services for a debit or credit change order are determined in writing by the Director of Engineering and Architecture to be so extensive that the applicable percentage fee is not just compensation, a negotiated amount will be established by a Work Order.
  - b. When negotiating additional compensation in an emergency situation or when failure to proceed with the Change Order would delay the Project (neither of which is the result of the PROFESSIONAL's error or omission) the PROFESSIONAL shall prepare the Change Order and keep accurate records of costs incurred in preparing and reviewing the change order. If, within the DEPARTMENT's sole discretion, the DEPARTMENT deems it appropriate based upon the particular circumstances, the DEPARTMENT will pay additional compensation based on the DEPARTMENT's review and subsequent acceptance of the PROFESSIONAL's records of costs incurred.
  - c. When an authorized Change Order has been canceled prior to its execution, the PROFESSIONAL may be compensated for the Additional Services performed prior to cancellation at a mutually negotiated amount. If the Work included in the canceled change order is subsequently undertaken by a separate phase or contract under this Agreement, the DEPARTMENT shall be credited the portion of the additional compensation paid for the canceled Change Order Design Work.
7. CODES, ORDINANCES AND PERMITS. The PROFESSIONAL shall be reimbursed the actual amount paid to regulatory agencies for approvals, applications for approvals and permits obtained by the PROFESSIONAL. Drawings and compilations of computations that are not incorporated into the Contract Documents or required in the preparation of the Contract Drawings, but which are required by the regulatory agency, municipality or zoning board shall also be compensated as an Additional Service. The completion of application forms, including sewage modules, and the design of project construction elements necessary to comply with the regulatory requirements, including sewage facilities, storm water management, sediment and erosion control, is compensated as part of Basic Services and is not considered an additional service.
8. DEFAULT OF CONTRACTOR. The PROFESSIONAL shall be compensated as an additional service for its preparation of Bidding Documents and review of Work completed and/or yet to be done upon the default of the Contractor(s) and the

services made necessary by major defects or deficiencies in the Work of the Contractor(s).

9. FIELD/LABORATORY TESTS. The PROFESSIONAL shall be compensated as Additional Services for the field and/or laboratory tests it provides, including: sub-surface explorations, test borings, test pits, groundwater investigations, conductivity tests on groundwater, geothermal testing, laboratory testing of soils, testing of concrete, steel, masonry or other construction materials and equipment, compaction, permeability testing, bearing capacity, and any related testing.
10. MASTER PLANNING. The PROFESSIONAL shall be compensated as an additional service for developing a Master Plan showing how the Project will relate to the existing site context as well as any identified future projects contemplated at the site. Considerations shall include at a minimum, as applicable, the following:
  - Access to public transit
  - Areas available to Contractors during construction
  - Building(s) placement and orientation
  - Construction phasing
  - Cycle parking
  - Detention and retention facilities
  - Future demolition
  - Hardscape
  - Natural and landscape areas
  - Parking
  - Phasing of future facilities
  - Site pedestrian and bicycle circulation
  - Site utilities expansion zones Building(s) expansion zones
  - Site utilities
  - Temporary access and features during construction
  - Visitor, user, and service vehicular circulation
  - Water features

The PROFESSIONAL shall engage the necessary Consultants to address the listed considerations and shall document all Master Plan conclusions in a format and medium acceptable to the DEPARTMENT to serve as a guide to the Final Design of the Project.

11. MEETINGS FOR REZONING AND VARIANCES AFTER FIRST REQUEST AND PRESENTATION. When required by the DEPARTMENT, the PROFESSIONAL shall initiate and complete all necessary requests for rezoning and/or variances as a Basic Service, including filling out and submitting all necessary applications and/or permits and making the first representation to the applicable Code Enforcement Authority, Zoning Board, Planning Commission or Municipal Ruling Body. The PROFESSIONAL shall be compensated as an additional service for all subsequent hearings, public meetings, presentations and/or additional requests for rezoning and/or variances.
12. ON-SITE REPRESENTATION.

- a. If more extensive representation at the Site is required by the DEPARTMENT than is provided for in the Agreement, the PROFESSIONAL shall provide one (1) or more Full Time Project Representative(s) to assist the PROFESSIONAL. Such Full Time Project Representatives shall be selected, employed and directed by the PROFESSIONAL. The PROFESSIONAL shall submit the name and qualifications of the proposed Full Time Project Representative to the Director of the Bureau of Engineering and Architecture for review and/or approval.
  - b. The Full Time Project Representative or Representatives shall provide the services noted in the Bureau of Engineering and Architecture's Project Procedure Manual and through continuous on-site observations, exercise good faith and due care to provide further protection to the DEPARTMENT against defects or deficiencies in the Work, but this additional service shall not relieve the PROFESSIONAL of its responsibilities under this Agreement.
  - c. Compensation for each full-time Project Representative shall be mutually agreed upon in advance.
  - d. The PROFESSIONAL's full-time on-site representation required by the DEPARTMENT during periods of construction overrun due to the fault of the PROFESSIONAL shall not be compensated.
13. RE-ACTIVATION OF THE PROJECT. Where a Project has been suspended during the Design Stage or if the time between Construction Document Submission approval and the authorization to prepare for Construction Procurement is a period longer than six (6) months and the Project is subsequently re-activated, the PROFESSIONAL shall be paid in accordance with the provisions of Article 9.3 of the General Conditions of the Agreement for Professional Services.
14. RE-BIDDING. When the DEPARTMENT determines, in its discretion, to re-bid the construction contracts, the PROFESSIONAL shall be compensated its direct cost for reissuing the documents and providing any services related to the administration of the re-bidding.
15. REPLACEMENT OF WORK DAMAGED BY FIRE OR OTHER CAUSES. The PROFESSIONAL shall be compensated as an additional service for evaluating and/or providing replacement studies for any Work damaged by fire or other causes beyond the PROFESSIONAL's control during design or construction.
16. REVISIONS TO APPROVED DRAWINGS AND SPECIFICATIONS. The PROFESSIONAL shall be compensated as an additional service when directed by the DEPARTMENT to revise previously approved Drawings or Specifications in whole or in part to accomplish changes not initiated by the PROFESSIONAL and not required by the terms of the Agreement to bring costs within the Base Construction Amount. In no case, however, shall revisions through the Schematic and Design Development Documents Submissions, other than revisions made necessary by an approved revised Project Scope or fundamental Program change, be considered as Additional Services.
17. SOILS TESTING & ANALYSIS. The PROFESSIONAL shall be paid additional compensation for engaging the services of a registered qualified soils foundation engineer for furnishing analysis/recommendation and construction soils and/or foundation testing, test borings, test pits, laboratory testing, inspections, approvals.
18. SPECIAL PRESENTATION DRAWINGS OR MODELS FOR PUBLIC MEETINGS. The PROFESSIONAL shall be compensated as an additional service for all drawings and/or models that it prepares exclusively for public meetings deemed necessary by the DEPARTMENT.

19. SPECIAL STUDIES. The PROFESSIONAL shall be compensated as Additional Services for the special studies listed below when such studies are required by the DEPARTMENT or Local, State or Federal Government agencies and are not provided within the Project Scope. Additional detail is provided in the Bureau of Engineering and Architecture Project Procedure Manual.
- Endangered Species/Rare Plants Studies
  - Environmental Assessments and/or Environmental Impact Statements
  - Feasibility Studies
  - Flood Plain Delineation
  - Forensic Investigation
  - HAZMAT - asbestos monitoring and testing during construction
  - HAZMAT Survey and Reports
  - Land Surveying
  - Phase I and Phase II Archaeological Studies
  - Soil Contamination Studies
  - Solid Waste Management Studies
  - Test Wells
  - Traffic Studies
  - Wetland Delineation and Mitigation
20. SUBSURFACE UTILITY INVESTIGATION: The PROFESSIONAL shall be compensated as an additional service for providing subsurface utility investigation services, to determine the location and identification of unknown, unobservable underground facilities, utilities, tanks and other buried objects to the extent required for construction of the Project. Prospecting techniques including radio frequency electromagnetic, magnetic acoustic emission sonics, terrain conductivity, ground penetrating radar and select excavation shall be used to provide a comprehensive horizontal map and give an indication of vertical position. Information obtained using this service shall be shown on the Plat of Survey of the Project Site.
21. MEASURED DRAWING. When existing drawings are not available the preparation of measured drawings may be authorized as an additional service for an extensive survey of the existing structures to provide a comprehensive record of existing conditions. The survey may include all Architectural, Structural, HVAC, Plumbing, Electrical, Fire Protection, and all other conditions necessary for a comprehensive record of existing conditions. The surveys of existing conditions may include reasonable cutting of exploratory holes and other investigations to determine the location of existing elements. The Using Agency shall determine if the exploratory hole location is acceptable, considering the facility's operation and assist with relocation, if necessary. The Using Agency is responsible for actual cutting and patching of the holes. All existing conditions affecting the Work shall be documented on Contract Drawings.
22. WASTED DESIGN The PROFESSIONAL shall be compensated as an additional service for abandoning or revising in-progress design when directed by the DEPARTMENT and not required by the terms of the Agreement to bring costs within the Base Construction Amount.

## **EXHIBIT C**

### **NONDISCRIMINATION AND SEXUAL HARASSMENT CLAUSE**

**For purposes of this Exhibit C, the term "contract" means the Agreement and the term "contractor" means the PROFESSIONAL.**

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.
3. The Contractor and each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. The Contractor and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.
5. The Contractor and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the Contractor shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. If the contract is a construction contract, then the Contractor shall be required to complete, sign and submit Form STD-28, the "Monthly Contract Compliance Report for Construction Contractors", each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD-21 submission requirement from the contracting agency.
6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

## **EXHIBIT D**

### **CONTRACTOR INTEGRITY AND DISCLOSURE OF FINANCIAL INTEREST PROVISIONS**

**For purposes of this Exhibit D, the term “contractor” means the PROFESSIONAL.**

It is essential that those who seek to contract with the Commonwealth of Pennsylvania (“Commonwealth”) observe high standards of honesty and integrity. They must conduct themselves in a manner that fosters public confidence in the integrity of the Commonwealth procurement process.

In furtherance of this policy, Contractor agrees to the following:

1. Contractor shall maintain the highest standards of honesty and integrity during the performance of this contract and shall take no action in violation of state or federal laws or regulations or any other applicable laws or regulations, or other requirements applicable to Contractor or that govern contracting with the Commonwealth.
2. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to Contractor employee activity with the Commonwealth and Commonwealth employees, and which is distributed and made known to all Contractor employees.
3. Contractor, its affiliates, agents and employees shall not influence, or attempt to influence, any Commonwealth employee to breach the standards of ethical conduct for Commonwealth employees set forth in the *Public Official and Employees Ethics Act, 65 Pa.C.S. §§1101 et seq.*; the *State Adverse Interest Act, 71 P.S. §776.1 et seq.*; and the [\*Governor’s Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.\*](#), or to breach any other state or federal law or regulation.
4. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person at the direction or request of any Commonwealth official or employee.
5. Contractor, its affiliates, agents and employees shall not offer, give, or agree or promise to give any gratuity to a Commonwealth official or employee or to any other person, the acceptance of which would violate the [\*Governor’s Code of Conduct, Executive Order 1980-18, 4 Pa. Code §7.151 et seq.\*](#) or any statute, regulation, statement of policy, management directive or any other published standard of the Commonwealth.
6. Contractor, its affiliates, agents and employees shall not, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any Commonwealth official or employee.
7. Contractor, its affiliates, agents, employees, or anyone in privity with him or her shall not accept or agree to accept from any person, any gratuity in connection with the performance of work under the contract, except as provided in the contract.
8. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project, unless the financial interest is disclosed to the Commonwealth in writing and the Commonwealth consents to Contractor’s financial interest prior to Commonwealth execution of the contract. Contractor shall disclose the financial interest to the Commonwealth at the time of bid or

proposal submission, or if no bids or proposals are solicited, no later than Contractor's submission of the contract signed by Contractor.

- 9.** Contractor, its affiliates, agents and employees shall not disclose to others any information, documents, reports, data, or records provided to, or prepared by, Contractor under this contract without the prior written approval of the Commonwealth, except as required by the *Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104*, or other applicable law or as otherwise provided in this contract. Any information, documents, reports, data, or records secured by Contractor from the Commonwealth or a third party in connection with the performance of this contract shall be kept confidential unless disclosure of such information is:
- a.** Approved in writing by the Commonwealth prior to its disclosure; or
  - b.** Directed by a court or other tribunal of competent jurisdiction unless the contract requires prior Commonwealth approval; or
  - c.** Required for compliance with federal or state securities laws or the requirements of national securities exchanges; or
  - d.** Necessary for purposes of Contractor's internal assessment and review; or
  - e.** Deemed necessary by Contractor in any action to enforce the provisions of this contract or to defend or prosecute claims by or against parties other than the Commonwealth; or
  - f.** Permitted by the valid authorization of a third party to whom the information, documents, reports, data, or records pertain: or
  - g.** Otherwise required by law.
- 10.** Contractor certifies that neither it nor any of its officers, directors, associates, partners, limited partners or individual owners has not been officially notified of, charged with, or convicted of any of the following and agrees to immediately notify the Commonwealth agency contracting officer in writing if and when it or any officer, director, associate, partner, limited partner or individual owner has been officially notified of, charged with, convicted of, or officially notified of a governmental determination of any of the following:
- a.** Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.
  - b.** Commission of fraud or a criminal offense or other improper conduct or knowledge of, approval of or acquiescence in such activities by Contractor or any affiliate, officer, director, associate, partner, limited partner, individual owner, or employee or other individual or entity associated with:
    - (1)** obtaining;
    - (2)** attempting to obtain; or
    - (3)** performing a public contract or subcontract.Contractor's acceptance of the benefits derived from the conduct shall be deemed evidence of such knowledge, approval or acquiescence.
  - c.** Violation of federal or state antitrust statutes.

- d. Violation of any federal or state law regulating campaign contributions.
- e. Violation of any federal or state environmental law.
- f. Violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations.
- g. Violation of the *Act of June 2, 1915 (P.L.736, No. 338)*, known as the *Workers' Compensation Act, 77 P.S. 1 et seq.*
- h. Violation of any federal or state law prohibiting discrimination in employment.
- i. Debarment by any agency or department of the federal government or by any other state.
- j. Any other crime involving moral turpitude or business honesty or integrity.

Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause upon such notification or when the Commonwealth otherwise learns that Contractor has been officially notified, charged, or convicted.

11. If this contract was awarded to Contractor on a non-bid basis, Contractor must, (as required by *Section 1641* of the *Pennsylvania Election Code*) file a report of political contributions with the Secretary of the Commonwealth on or before February 15 of the next calendar year. The report must include an itemized list of all political contributions known to Contractor by virtue of the knowledge possessed by every officer, director, associate, partner, limited partner, or individual owner that has been made by:
- a. Any officer, director, associate, partner, limited partner, individual owner or members of the immediate family when the contributions exceed an aggregate of one thousand dollars (\$1,000) by any individual during the preceding year; or
  - b. Any employee or members of his immediate family whose political contribution exceeded one thousand dollars (\$1,000) during the preceding year.

To obtain a copy of the reporting form, Contractor shall contact the Bureau of Commissions, Elections and Legislation, Division of Campaign Finance and Lobbying Disclosure, Room 210, North Office Building, Harrisburg, PA 17120.

12. Contractor shall comply with requirements of the *Lobbying Disclosure Act, 65 Pa.C.S. § 13A01 et seq.*, and the regulations promulgated pursuant to that law. Contractor employee activities prior to or outside of formal Commonwealth procurement communication protocol are considered lobbying and subjects the Contractor employees to the registration and reporting requirements of the law. Actions by outside lobbyists on Contractor's behalf, no matter the procurement stage, are not exempt and must be reported.
13. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or in these provisions has occurred or may occur, including but not limited to contact by a Commonwealth officer or employee which, if acted upon, would violate such ethical standards, Contractor shall immediately notify the Commonwealth contracting officer or Commonwealth Inspector General in writing.
14. Contractor, by submission of its bid or proposal and/or execution of this contract and by the submission of any bills, invoices or requests for payment pursuant to the contract,

certifies and represents that it has not violated any of these contractor integrity provisions in connection with the submission of the bid or proposal, during any contract negotiations or during the term of the contract.

- 15.** Contractor shall cooperate with the Office of Inspector General in its investigation of any alleged Commonwealth employee breach of ethical standards and any alleged Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refers to or concern this contract.
- 16.** For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.
- 17.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.

  - a.** "Confidential information" means information that a) is not already in the public domain; b) is not available to the public upon request; c) is not or does not become generally known to Contractor from a third party without an obligation to maintain its confidentiality; d) has not become generally known to the public through a act or omission of Contractor; or e) has not been independently developed by Contractor without the use of confidential information of the Commonwealth.
  - b.** "Consent" means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by pre-qualification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this contract.
  - c.** "Contractor" means the individual or entity that has entered into this contract with the Commonwealth, including those directors, officers, partners, managers, and owners having more than a five percent interest in Contractor.
  - d.** "Financial interest" means:

    - (1)** Ownership of more than a five percent interest in any business; or
    - (2)** Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
  - e.** "Gratuity" means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services,

employment, or contracts of any kind. The exceptions set forth in the [Governor's Code of Conduct, Executive Order 1980-18](#), the 4 Pa. Code §7.153(b), shall apply.

- f.** "Immediate family" means a spouse and any unemancipated child.
- g.** "Non-bid basis" means a contract awarded or executed by the Commonwealth with Contractor without seeking bids or proposals from any other potential bidder or offeror.
- h.** "Political contribution" means any payment, gift, subscription, assessment, contract, payment for services, dues, loan, forbearance, advance or deposit of money or any valuable thing, to a candidate for public office or to a political committee, including but not limited to a political action committee, made for the purpose of influencing any election in the Commonwealth of Pennsylvania or for paying debts incurred by or for a candidate or committee before or after any election.

## **EXHIBIT E**

### **CONTRACTOR RESPONSIBILITY PROVISIONS**

**For purposes of this Exhibit E, the term "contract" means the Agreement and the term "contractor" means the PROFESSIONAL.**

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
6. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:  
Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125  
Telephone No: (717) 783-6472  
FAX No: (717) 787-9138

## **EXHIBIT F**

### **AMERICANS WITH DISABILITIES ACT (ADA) PROVISIONS**

**For purposes of this Exhibit F, the term "contract" means the Agreement and the term "contractor" means the PROFESSIONAL.**

During the term of this contract, the contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities Act, 28 C.F.R. 35.202 et seq., the contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from such activities provided for under this contract. As a condition of accepting and executing this contract, the contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. 35.130, and all other regulations promulgated under Title II of The Americans with Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
2. The contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the contractor's failure to comply with the provisions of paragraph A above.

## **EXHIBIT G**

### **TRADE PRACTICES ACT PROVISIONS**

1. It has long been the policy of the Commonwealth not to purchase any supplies, equipment, or materials manufactured in any foreign country which prohibits the specification for or use of supplies, equipment, or materials manufactured in Pennsylvania.
2. Many world trading countries, directly or indirectly by statute, regulation, policy, procedure, or practice, grant or bestow a preference for supplies, equipment or materials manufactured in their country, thereby discriminating against the use of supplies, equipment or materials manufactured in the Commonwealth.
3. It is the policy of the Commonwealth that aluminum and steel products made in the United States should be purchased by all public agencies in preference to aluminum and steel products made in foreign countries which discriminate against supplies, equipment or materials manufactured in Pennsylvania.

a. Definitions

- i. The word “discriminates” means an act, regulation, or policy of a foreign country which, directly or indirectly;
  1. Prevents the importation, sale or use of any supplies, materials or equipment manufactured in this Commonwealth;
  2. Grants or bestows a preference, discount or other competitive advantage to supplies, materials or equipment manufactured in the foreign country, the effect whereof is to place similar supplies, materials or equipment manufactured in this Commonwealth at a competitive disadvantage;
  3. Restricts the opportunities for persons having a business situs in this Commonwealth to bid on or compete for government contracts, including but not limited to a preference for residents of the foreign country;
  4. Solicits for, awards or negotiates public works contracts on a selective tender basis;
  5. Imposes discriminatory duties, tariffs, or border taxes on the importation of supplies, materials, or equipment not produced in the foreign country, the effect whereof is to place supplies, materials, or equipment manufactured in this Commonwealth at a competitive disadvantage with like goods manufactured in any foreign country;
  6. Adopts or condones any other unfair method of competition in international trade, including but not limited to, the exportation of aluminum or steel products made in the foreign country through cartels or the subsidization of said products.
- ii. The word “person” means natural persons, corporations, partnerships, business units, and associations existing under or authorized by the laws of either the United States, the laws of any territories, or the laws of any state.
- iii. The words “public agency” mean:

1. Counties, cities, boroughs, townships, school districts, and any other governmental unit or district;
  2. The General State Authority, the State Public School Building Authority, the State Highway and Bridge Authority, and any other authority now in existence or hereafter created or organized by the Commonwealth;
  3. All municipal or school or other authorities now in existence or hereafter created or organized by any county, city, borough, township or school district or combination thereof; and
  4. Any and all other public bodies, authorities, officers, agencies or instrumentalities, whether exercising a governmental or proprietary function.
- iv. The words “public works” mean any structure, building, highway, waterway, street, bridge, pier, transit car or system, airport or other betterment, work or improvement whether of a permanent or temporary nature and whether for governmental or proprietary use contracted for by any public agency or financed in whole or in part by any public agency.
- v. The words “aluminum or steel products made in a foreign country” mean aluminum or steel products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more of such operations, from aluminum or steel not made in the United States.
- vi. The word “importer” means any person registered in the Commonwealth and doing business in the Commonwealth who engages in the receiving, storing, distributing, or other processing of aluminum or steel products made in a foreign country; or who engages in the solicitation or acceptance of orders or contracts for the furnishing of or supplying of aluminum or steel products made in a foreign country.

## **EXHIBIT H**

### **TAX LIABILITY PROVISION**

**For purposes of this Exhibit H, the term “contract” means the Agreement and the term “contractor” means the PROFESSIONAL.**

The contractor, by execution of the contract:

1. Certifies that the contractor has no outstanding tax liability to the Commonwealth of Pennsylvania;
2. Authorizes the Department of Revenue to release information related to its tax liability to the Department of General Services; and
3. Authorizes that the Commonwealth of Pennsylvania (Commonwealth) may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the contractor under any contract with the Commonwealth.

The certification of no outstanding tax liability is a material representation of fact upon which reliance is placed by the DEPARTMENT in entering into the contract. If it is later determined that the contractor knowingly rendered an erroneous certification, the DEPARTMENT may find the contractor in default and terminate the contract. Erroneous certification may also be grounds for the initiation of civil or criminal proceedings.

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# **GENERAL CONDITIONS TO THE AGREEMENT FOR PROFESSIONAL SERVICES**

## **ARTICLE 1 – DEFINITIONS**

**1.1.**           **DEFINITIONS:** Whenever in these General Conditions to the Agreement for Professional Services the following words and expressions occur, they have the following meanings, which shall be construed in conjunction with applicable Commonwealth Procurement Code definitions:

**1.1.100**       **ADDITIONAL SERVICES:** Any and all Professional Services determined by the DEPARTMENT during and/or after the execution of the Agreement to be necessary for Project completion, but not included as Basic Services.

**1.1.101**       **ADMINISTRATIVE PROCEDURES:** The Department of General Services' (the Department) construction procedures manual to be followed for various administrative functions, including but not limited to, Project correspondence, Job Conferences, schedules, testing, submittals, Applications for Payment, Change Orders, Extensions of Time, Steel Product Procurement compliance, Substantial Completion, Final Inspection, and Closeout Inspection.

**1.1.102**       **AGREEMENT FOR PROFESSIONAL SERVICES:** The Agreement for Professional Services, including these General Conditions thereto and any Special Conditions, in addition to any Amendments, between the DEPARTMENT and the PROFESSIONAL. The Agreement for Professional Services represents the entire and integrated contract between the parties and supersedes all prior negotiations or representations, either written or oral. To the extent these referenced documents are amended by statute, statutory language will control. The Agreement for Professional Services is commonly referred through these General Conditions as "Agreement" or "Professional Agreement".

**1.1.103**       **ALLOCATION:** The amount of Commonwealth Capitol Budget funds authorized by the Commonwealth Legislature for the design and construction of the Project.

**1.1.104**       **APPLICATION FOR PAYMENT:** Document submitted by each Prime Contractor pursuant to the applicable Administrative Procedure for review by the PROFESSIONAL and the DEPARTMENT and for subsequent release of payment.

**1.1.105**       **AS-BUILT RECORD DRAWINGS:** Contract prints or drawings, corrected with suitable markings to show all changes or variations from the original contract drawings, including all items uncovered during the Work and show details of the work as actually built, including but not limited to horizontal and vertical dimensional references of all concealed pipe, conduit and other lines and equipment and similar items.

As-built record drawings are not "Record Drawing", which is terminology used the by the Department to describe the revised set of construction documents (also referred to as L&I Record Drawings) in which the PROFESSIONAL is responsible for submitting to the Department of Labor and Industry for approval of changes made during construction that are not in accordance with the approved construction documents.

**1.1.106**        **BASE BID:** Scope of work encompassed for various construction scenarios of the Project.

**1.1.107**        **BASE CONSTRUCTION AMOUNT:** Dollar value designated in the Agreement to construct the Project.

**1.1.108**        **BASIC SERVICES:** Normal and customary architectural and engineering services, which may include as applicable, civil, structural, HVAC (heating, ventilating, air conditioning), plumbing, electrical, fire protection, and landscaping architecture and all other mutually agreed upon services by the PROFESSIONAL required for the Project which are designated as Basic Services and set forth in the spreadsheet which is included in Exhibit B.

**1.1.109**        **BID OPENING DATE:** Date upon which bids are received for construction contracts for the Project and opened publicly in accordance with the Commonwealth Procurement Code.

**1.1.110**        **BUREAU OF PROFESSIONAL SELECTIONS AND ADMINISTRATIVE SERVICES (BPSAS):** DGS Bureau responsible for issuance and administration of all procurement related services, including Arbitration, Fiscal, Project Administration, and Capital Planning and Contract Services.

**1.1.111**        **CHANGE ORDER:** A written order developed by the PROFESSIONAL and signed by the DEPARTMENT directing a construction contractor to make changes to the Work, construction cost and construction time, which is made under the authority of the changes clause of the construction contract. The change order may be either with the consent of the construction contractor or a unilateral order by the DEPARTMENT.

**1.1.112**        **CLOSEOUT INSPECTION:** An inspection of the Work conducted by the Department, with the assistance of the Professional to determine whether the Work and Punch List items are complete.

**1.1.113**        **COMMISSIONING AGENT:** Individual or entity retained by the DEPARTMENT for the purpose of providing services such as design intent documentation, commissioning plan, constructability evaluation, commissioning of any of the various constructed building systems, and training.

**1.1.114**        **COMMONWEALTH:** Commonwealth of Pennsylvania.

**1.1.115**        **CONSTRUCTION BUDGET:** Base Construction Amount plus the amount of Contingencies.

**1.1.116**        **CONSTRUCTION MANAGER:** Consultant that may be retained by the DEPARTMENT to act as the DEPARTMENT's agent and authorized representative to coordinate and manage the Project. The PROFESSIONAL agrees that there is no privity of contract between the Construction Manager and the PROFESSIONAL, nor is the PROFESSIONAL an intended third party beneficiary of the DGS/CM contract.

**1.1.117**        **CONSTRUCTION PROCUREMENT SERVICES:** Services performed by the PROFESSIONAL to assist the DEPARTMENT in obtaining construction contracts for the Project, which includes reproduction of the Contract Documents, and when required, attendance at pre-bid conferences and evaluation of bids/qualifications.

**1.1.118**        **CONTRACT COMPLETION DATE:** Date specified in the construction contract for completion of the Work.

**1.1.119**      **Contract Sum:** Total amount payable by the DEPARTMENT to the PROFESSIONAL for the performance of the Services under the Agreement.

**1.1.120**      **DAYS:** Calendar days unless specifically stated otherwise in the Agreement.

**1.1.121**      **DEPARTMENT:** Commonwealth of Pennsylvania Department of General Services, also known as “DGS”, or any authorized representative, and is referred to throughout the Agreement as singular in number. The terms “DEPARTMENT” and “DGS” are used interchangeably throughout these General Conditions.

**1.1.122**      **DIRECTOR OF BUREAU OF ENGINEERING AND ARCHITECTURE:** Administrative head of DGS’ Bureau of Engineering and Architecture. The Bureau of Engineering and Architecture may serve as the PROFESSIONAL on a project.

**1.1.123**      **EFFECTIVE DATE OF THE CONTRACT:** Date on which the last Commonwealth official required to execute the contract, signs.

**1.1.124**      **ERROR OR OMISSION CHANGE ORDER:** A change order to a construction contract required to correct DEPARTMENT-deemed deficiencies caused by the PROFESSIONAL’s failure to comply with its standard of care in the performance of services under the Agreement.

**1.1.125**      **FINAL INSPECTION:** A review of the Work conducted by the PROFESSIONAL, when requested by a Contractor, to determine whether the Project is at substantial completion. If, as a result of this inspection the Work is determined to be substantially complete, the Professional generates a certificate of completion and a Punch List of uncompleted items and a reasonable cost of completion.

**1.1.126**      **JOB CONFERENCE:** Bi-weekly meetings scheduled and conducted on-site by DGS’ Bureau of Construction Inspector Manager with the PROFESSIONAL and all Prime Contractors, and when necessary, the Construction Manager, to discuss and review the progress of the Work.

**1.1.127**      **LEAD CONTRACTOR:** Prime Contractor who coordinates the progress of the Work. The Lead Contractor will be designated in the Specifications.

**1.1.128**      **ORIENTATION:** A meeting scheduled and conducted by the DEPARTMENT with the PROFESSIONAL and the Using Agency for the purpose of reviewing and discussing the Project Scope, the PROFESSIONAL’s services, and scheduling, where applicable, an initial site visit.

**1.1.129**      **PHASED PROJECT:** A Project that is usually designed by the same PROFESSIONAL and divided into parts and released for bidding at different times.

**1.1.130**      **PRIME CONTRACTOR:** Any contractor who holds a contract (“Prime Contract”) with the DEPARTMENT for construction services on the Project. The DEPARTMENT, in its sole discretion, shall determine the number of Prime Contractors on each Project. The PROFESSIONAL is not entitled to any additional fee for a Project that has more than one Prime Contractor or if the DEPARTMENT, during any point prior to Bid Opening Date, increases the number of Prime Contracts to be bid.

**1.1.131**      **PRIME CONTRACTOR DOCUMENTS:** Standard Form of Contract for construction, Notice to Bidders (if procured through low sealed bids), Instructions to Bidders (if procured through low sealed bids), the Bid Proposal (if procured through low sealed bids), Notice to Proposers (if procured through sealed proposals), Request for Proposals (if procured through sealed proposals), construction contractor’s entire proposal (if procured through sealed

proposals), Contract Bonds, Conditions of the Construction Contract (General, Special, Supplementary, and other Conditions), Drawings of all Prime Contracts, Specifications of all Prime Contracts, all bulletins and addenda issued prior to execution of the Standard Form of Agreement for Construction, all construction change orders, and the Administrative Procedures of the Bureau of Construction. These documents form the entire construction contract and are incorporated in the construction contract by reference as if fully set forth therein. To the extent that any of these documents are amended by statute, statutory language will control.

**1.1.132**        **PROFESSIONAL:** Architect and/or Engineer retained by the DEPARTMENT or the PROFESSIONAL's authorized representative or consultant(s).

**1.1.133**        **PROFESSIONAL'S CONSULTANT:** Specialist(s) providing Professional Services which has been retained under a contract by the PROFESSIONAL as identified in Exhibit A to this Agreement or subsequently approved by the DEPARTMENT for the performance of its specialty. No privity of contract exists between the DEPARTMENT and any PROFESSIONAL's Consultant and, to the extent set forth by law, the PROFESSIONAL's Consultant has no direct cause of action against the DEPARTMENT for any claim arising out of the Project.

**1.1.134**        **PROJECT PROCEDURE MANUAL:** Document provided and issued by the DEPARTMENT to direct the PROFESSIONAL as to proper DEPARTMENT procedures and policies with regards to the PROFESSIONAL's responsibilities, duties and obligations necessary for the completion of its Services under the Agreement.

**1.1.135**        **PROJECT:** The total Work to be performed by all separate Prime Contractors under the same Project Number, including separate phases.

**1.1.136**        **PROJECT SCOPE:** The authorization or approval by the DEPARTMENT and the Office of Budget of a capital improvement project that defines the Allocation, the property site and a description of the construction required. The Project Scope shall be contained in a document entitled "Request for Project Action" or a work request submitted by the Using Agency.

**1.1.137**        **PROPOSER:** A person or entity who is capable of, or who has submitted a proposal to the DEPARTMENT.

**1.1.138**        **PUNCH LIST:** A list of uncompleted items of Work generated by the PROFESSIONAL at Final Inspection.

**1.1.139**        **RECORD DRAWINGS:** The revised set of construction documents (also referred to as L&I Record Drawings) in which the PROFESSIONAL is responsible for submitting to the Department of Labor and Industry for approval of changes made during construction that are not in accordance with the approved construction documents.

**1.1.140**        **REQUEST FOR INFORMATION:** A written question issued by the construction contractor to the PROFESSIONAL seeking clarification of the Contract Documents.

**1.1.141**        **SAMPLES:** Physical examples furnished by the construction contractor to illustrate materials, equipment or workmanship, and to establish standards by which the Work will be judged.

**1.1.142**        **SECRETARY:** The administrative head of the Department of General Services.

**1.1.143**        **SPECIFICATION:** A description of the physical or functional characteristics or the nature of a construction item, including a description of any requirement for inspecting, testing or preparing a construction item for delivery. The specifications are a part of the Contract

Documents and must be interpreted in conjunction with the other Contract Documents, as specified further in the General Conditions.

**1.1.144**        **SUBCONTRACTOR:** A person or organization that has a contract with a construction contractor to perform any of the Work. The term Subcontractor is referred throughout the Contract Documents as singular in number and means a Subcontractor or its authorized representative. There is no privity of contract between the DEPARTMENT and any Subcontractor. The Subcontractor has no direct cause of action against the DEPARTMENT for any claim arising out of the Project.

**1.1.145**        **SUBMITTALS:** Administrative or technical information, including but not limited to shop drawings, diagrams, illustrations, schedules, performance charts, brochures, catalog data, and other data that are prepared by the construction contractor or any Subcontractor, manufacturer, supplier, or distributor, and which illustrate some portion of the Work or how it fits in relation to other parts of the Work.

**1.1.146**        **SUBSTANTIAL COMPLETION:** When the Work on the Contract is sufficiently completed in accordance with the Contract Documents and certified by the Department and the Professional so that the Project or specified part(s) of the Project can be used, occupied or operated for its intended use. In no event shall a Project be certified as substantially complete until at least 90% of the Work has been completed and accepted by the Department and is capable of Beneficial Occupancy.

**1.1.147**        **UNIFORM CONSTRUCTION CODE (UCC):** Pennsylvania's Uniform Construction Code (35 P.S. §7210.101 et seq.) that grants the Pennsylvania Department of Labor & Industry sole jurisdiction over state-owned buildings. A general description and important links can be found at <http://www.dli.state.pa.us> and clicking on the Building Codes Quick Link. The Contractor is responsible for compliance as set forth in the UCC and these General Conditions.

**1.1.148**        **USING AGENCY:** The DEPARTMENT, Board, Commission, Agency, State-Affiliated Entity, State-Related Institution of the Commonwealth, which has proposed or requested the construction of the Project and will use the Project.

**1.1.149**        **WORK:** The construction and services required by Contract Documents, whether completed or partially completed, including all labor, materials, equipment and services provided or to be provided by a construction contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project.

**1.1.150**        **WORK ORDER:** Written authorization by the DEPARTMENT for Additional Services.

## **ARTICLE 2 – THE PROFESSIONAL’S RESPONSIBILITIES AND SERVICES**

### **2.1 GENERAL REQUIREMENTS**

**2.1.100 PROFESSIONAL’S SERVICES.** The PROFESSIONAL’s Services consist of Stages and Submissions described in these General Conditions and the Basic and Additional Services required for the Project, as further described in **Exhibit B** to this Agreement.

**2.1.101 LIMITED BUDGET CONTRACT.** This is a limited budget agreement. It is the PROFESSIONAL’s responsibility to promptly notify the DEPARTMENT if, in the PROFESSIONAL’s opinion, the Project cannot be designed and constructed within the Base Construction Amount for the Project as set forth in Paragraph 4 (**Compensation and Costs**) of the Agreement. It is the PROFESSIONAL’s responsibility to so notify the DEPARTMENT that such a situation is apparent. If, without such notification, the following occurs:

- A. The construction contracts are bid; and
- B. The construction contractors’ bids when received are in excess of the Base Construction Amount; and
- C. The Project cannot be awarded by authorization of additional project funds,

then the DEPARTMENT has the discretion to require the PROFESSIONAL to adjust the Project’s design, without charge to the DEPARTMENT, and rebid the Project until the aggregate of the bids is within the Base Construction.

**2.1.102 PROFESSIONAL CLIENT RELATIONSHIP.** The PROFESSIONAL is responsible to the DEPARTMENT, and only the DEPARTMENT may give instructions which bind the DEPARTMENT. The DEPARTMENT is constructing the Project for the Using Agency in accordance with the Project Scope. The PROFESSIONAL is required to coordinate and communicate with the Using Agency, but such coordination and communication does not constitute a client relationship between the PROFESSIONAL and the Using Agency. Neither the Using Agency nor the PROFESSIONAL may change the Project Scope or direct that items be included in the design which will increase the construction cost above the Base Construction Amount. All requests for such changes must be submitted to the DEPARTMENT in writing by the Using Agency. If the PROFESSIONAL receives communication and/or information from the Using Agency regarding the Project Scope, schedule or an increase in the Construction Budget over the Base Construction Amount then the PROFESSIONAL shall notify the DEPARTMENT in writing immediately and shall not proceed to act upon such communication and/or information unless instructed to do so by the DEPARTMENT. If the PROFESSIONAL relies on such information and/or communication regarding the Project Scope, schedule and/or an increase in the Construction Budget over the Base Construction Amount that has not been submitted to and approved by the DEPARTMENT, the PROFESSIONAL would be relying on such information and/or communication at its own risk and shall absorb all costs associated with its services performed upon such reliance.

**2.1.103 PROFESSIONAL’S CONSULTANTS.** The PROFESSIONAL’s Compensation for Basic Services, except as otherwise specifically provided, includes the compensation for all consultants in the several branches of the architectural and engineering professions necessary to perform the Basic Services.

- A. Consultant Agreement(s): The PROFESSIONAL, within sixty (60) days of the Effective Date of the Agreement, shall furnish to the DEPARTMENT a written certification that a counterpart of its agreement with each PROFESSIONAL's Consultant necessary for the performance of Basic Services and approved Additional Services has been executed. Each PROFESSIONAL's Consultant Agreement shall incorporate these General Conditions and shall include an acknowledgement by the PROFESSIONAL's Consultant that it has received and read a copy of this Agreement with the DEPARTMENT, including these General Conditions. All provisions of these General Conditions relating to PROFESSIONAL's Consultants or to their services, are binding upon and shall be a part of each PROFESSIONAL's Consultant's Agreement. At the DEPARTMENT's discretion, the PROFESSIONAL shall submit a copy of every PROFESSIONAL's Consultant Agreement to the DEPARTMENT.
- B. All agreements between the PROFESSIONAL and its PROFESSIONAL's Consultant must:
  - 1. Set forth the amount the PROFESSIONAL's Consultant is to be paid;
  - 2. Describe the scope of services to be performed by the PROFESSIONAL's Consultant; and
  - 3. Require that the PROFESSIONAL's Consultant is without privity of contract with the DEPARTMENT and that the Consultant agrees by signing the Consultant Agreement that it neither acquires nor intends to acquire any rights against the DEPARTMENT on a third party beneficiary theory or any other theory.
  - 4. Require the PROFESSIONAL to pay the PROFESSIONAL's Consultant in accordance with the requirements of the Prompt Payment Act, (62 Pa.C.S. §3931 et seq.) where the PROFESSIONAL shall be "the Contractor" and the PROFESSIONAL's Consultant shall be "the subcontractor". Violation of the provisions of the Prompt Payment Act will have ramifications, including but not limited to subjecting the PROFESSIONAL to penalties and attorneys fees under §3935, and possible suspension and/or debarment under §531 of the Commonwealth Procurement Code.
- C. At the DEPARTMENT's discretion, the PROFESSIONAL shall submit a copy of every PROFESSIONAL's Consultant Agreement with a MBE or WBE to the DEPARTMENT's Bureau of Minority and Women Business Opportunities.

**2.1.104**

**PROGRESS REPORTS DURING DESIGN.** The PROFESSIONAL shall, during all Design Submissions, provide the DEPARTMENT monthly progress reports showing:

- A. Percentage of completion of the design documents and items pending since the last report; and
- B. The Project progress;
- C. Comparison of schedule and actual progress;
- D. Decisions or information required; and other significant actions.

The monthly progress report must appear in a format acceptable by the DEPARTMENT. If in the PROFESSIONAL's opinion, the Project cannot be designed and constructed within the Base Construction Amount for the Project as set forth in Paragraph 4 (Compensation and Costs) of the Agreement or within the Time Schedule as set forth in Paragraph 3 of the Agreement, the monthly progress report shall be accompanied by a separate letter so stating and setting forth the reason for the change. The report shall also state the date on which the PROFESSIONAL proposes to make the next submission. The monthly progress report must be received by the DEPARTMENT before that month's payment to the PROFESSIONAL is due. Failure to submit monthly progress reports during design may result in the delay of payments made to the PROFESSIONAL.

**2.1.105 ATTENDANCE AT AND MINUTES OF CONFERENCES AND MEETINGS.** The PROFESSIONAL shall attend all meetings during design stages which are required by the DEPARTMENT as part of Basic Services. The PROFESSIONAL, or its authorized representative, and the PROFESSIONAL's Consultants when appropriate, shall attend all meetings and conferences that are reasonably required by the DEPARTMENT. The PROFESSIONAL shall submit to the DEPARTMENT detailed minutes of all meetings and conferences, except for Job Conferences, within one (1) week after each such conference and meeting. The PROFESSIONAL must have in attendance at the meeting all individuals from the PROFESSIONAL or any of PROFESSIONAL's Consultants who are deemed necessary by the DEPARTMENT to properly address the agenda. PROFESSIONAL attendance at meetings is indicated in Paragraph 18 (Attendance at Meetings) of the Agreement. Meetings at the same location on a given date, regardless of the number of attendees or meetings, constitute one meeting for the purposes of the Attendance at Meetings paragraph in the Agreement.

**2.1.106 CONTRACTOR CLAIM REVIEW AND ATTENDANCE AND TESTIMONY AS WITNESS.**

- A. Field Dispute Review Meetings: Neither the PROFESSIONAL nor any of PROFESSIONAL's Consultants will be compensated for preparing for or participating in the four mandatory field dispute review meetings (at 25%, 50%, 75% and 100% as described in the Construction Contract General Conditions) at the project site. These meetings are deemed to be Basic Services.
- B. In-House DGS Claim Conferences: The PROFESSIONAL shall attend all In-House Claim Conferences scheduled by the DEPARTMENT. The PROFESSIONAL shall provide up to 24 man-hours (including preparation, travel and meeting time) as Basic Services. Compensation for any hours beyond the 24 man-hours will be negotiated as an Additional Service.
- C. If any construction contractor pursues a claim or other dispute against the DEPARTMENT or another construction contractor at the Board of Claims or any other formal hearing or court proceeding (i.e., not In-House) not involving the PROFESSIONAL's failure to design or administer construction in accordance with this Professional Agreement then, if requested by the DEPARTMENT, the PROFESSIONAL and/or the appropriate PROFESSIONAL's Consultant, and/or their qualified and authorized representative(s) shall assist with preparation for such formal hearings and/or Board of Claims or other court proceedings and shall prepare testimony and shall testify, both as to facts and as to expert opinion, in all such proceedings on behalf of the DEPARTMENT as an Additional Service with compensation negotiated with the DEPARTMENT prior to the assistance being rendered.
- D. If any construction contractor pursues a claim or other dispute against the DEPARTMENT or another construction contractor at the Board of Claims or

any other formal hearing or court proceeding that concerns or alleges the PROFESSIONAL failed to design or administer construction in accordance with this Professional Agreement, then PROFESSIONAL and/or the appropriate PROFESSIONAL's Consultant, and/or their qualified and authorized representative(s) shall attend all formal hearings and/or Board of Claims or other court proceedings as part of Basic Services without any initial additional charge to the DEPARTMENT, subject to Paragraph 2.1.106.E.

- E. The PROFESSIONAL will only be compensated for travel, preparation and meeting time and for providing testimony at any formal hearings and/or Board of Claims or other court proceedings if the entity having jurisdiction over the claim does not render a final decision that such dispute occurred because of an error or omission made by the PROFESSIONAL.
- F. If the construction contractor's case involved both types of claims (PROFESSIONAL failed to design and/or administer construction AND claim not involving PROFESSIONAL) then, upon a final determination that determines the PROFESSIONAL failed in some manner, compensation for Additional Services may be calculated in a pro rata method to compensate for the portion of the Additional Services related to awarded damages not relating to or arising out of the PROFESSIONAL's failure.
- G. Under no circumstances, regardless of the cause, will the PROFESSIONAL be paid a fee on any settlement agreement paid by the DEPARTMENT to a construction contractor to settle an in-house claim or judgment awarded by the Board of Claims or any other court.
- H. The DEPARTMENT's decision will be final regarding the compensation due the PROFESSIONAL or PROFESSIONAL's Consultants, subject to the claims process set forth in the Agreement for Professional Services.

**2.1.107**      **COORDINATION WITH EXISTING FACILITIES AND UTILITIES.** As part of Basic Services, the PROFESSIONAL shall consult with the Using Agency and obtain all necessary data for coordinating the Project with existing structures and all support utilities. The PROFESSIONAL shall consult with the DEPARTMENT regarding any correlation of design with future planning. The PROFESSIONAL shall confirm in writing to the DEPARTMENT and the Using Agency all data furnished to the PROFESSIONAL in this connection and the data's adequacy. The PROFESSIONAL shall obtain from the various Public Services and Utility Companies, such as gas, electric, water, steam, waste water treatment/disposal, surface water disposal, telephone and communication, a written commitment of their capability to service this Project and shall arrange for all such services to be provided to the Project site. Where water or sewage disposal are not readily available from the public services, the PROFESSIONAL's design responsibility, unless otherwise directed by the DEPARTMENT, includes the preparation of necessary plans and specifications for well drilling or for the sewage disposal system, and the cost thereof will be included in the Statement of Probable Construction Cost.

**2.1.108**      **VISITS TO SITE.** During the design of the Project, the PROFESSIONAL shall visit the Project Site as required and shall obtain and study available record drawings, investigate existing conditions, visual topographic and site data, and the Using Agency's available future plans. Such documentation shall be obtained for the purpose of acquiring any and all pertinent or necessary information as to local conditions not required to be shown, or shown without complete detail, on the Plat of Survey and Report of Survey furnished by the DEPARTMENT, which may affect the design of the Project and the necessity for special provisions or wording in the Specifications. The PROFESSIONAL shall verify in writing to the DEPARTMENT, no later than with its Schematic Submission, that it has requested and obtained pertinent interference

documentation from all utility companies, the Using Agency, and any other entity that may have underground or concealed lines or objects in the area of the proposed construction. The PROFESSIONAL shall verify project related existing conditions by visual inspection and measurement and not by sole reliance on the Record Documents or the Land Survey. If any corrective or additional work becomes necessary by reason of such failure to obtain all necessary, clarifying and available data for a proper and correct design of the Project, the PROFESSIONAL shall reimburse the DEPARTMENT for the cost of such corrective or additional work to the extent that such costs exceed the costs that would have been payable if the initial design taken such data into proper consideration.

**2.1.109**      **SUBMISSIONS.**

- A. SCHEDULING SUBMISSIONS: The PROFESSIONAL must undertake to obtain all approvals in a timely manner to permit the Services to continue on schedule.
- B. APPROVAL: All submissions must be approved under the written direction of the DEPARTMENT as provided elsewhere in this Agreement.
- C. REVISIONS: The PROFESSIONAL is responsible for responding to any and all comments to design made by the DEPARTMENT and/or the Using Agency as provided for elsewhere in this Agreement.

**2.1.110**      **SEPARATE PRIME CONTRACTS.** The PROFESSIONAL shall develop and coordinate the Construction Documents for all the separate prime contracts to ensure against omissions, conflicts, overlaps or duplication of any items of Work or materials on the Project. All documents, including all Statements of Probable Construction Cost, must be prepared in accordance with the Separations Act (71 P.S. § 1618 ) and the Commonwealth Procurement Code (62 Pa.C.S. §322).

**2.1.111**      **REPRESENTATION AS TO QUALIFICATIONS.** The PROFESSIONAL specifically represents and covenants with the DEPARTMENT that the PROFESSIONAL and PROFESSIONAL's Consultants and each of their agents, employees and officers possess and shall possess the experience, knowledge and skills necessary to qualify them individually for the particular duties they perform. The DEPARTMENT may demand, with written justification to the PROFESSIONAL, the withdrawal from the Project of any person employed by the PROFESSIONAL who the DEPARTMENT deems to be insufficiently qualified for that portion of the Services or who is incompetent or guilty of misconduct.

**2.1.112**      **SELECTED CONSTRUCTION MANAGEMENT.** When the DEPARTMENT has determined, at any point in the design, construction procurement or construction contract administration stage, that construction management services will be used to provide selected services, including but not limited to, cost estimating, scheduling, constructability review, value engineering, and construction administration, the PROFESSIONAL shall cooperate with the Construction Manager. The PROFESSIONAL shall provide the Construction Manager with drawings, specifications and other information pertinent to the selected construction management services. No additional compensation shall be paid to the PROFESSIONAL for services and documents provided in support of the Construction Manager.

**2.1.113**      **SELECTED COMMISSIONING AGENT.** When the DEPARTMENT has determined, at any point during the design, construction procurement or construction contract administration stage of the Project, that a Commissioning Agent will be used to provide services, including but not limited to, design intent documentation, commissioning plan, constructability evaluation, commissioning of any of the various constructed building systems, and training, the PROFESSIONAL shall cooperate with the Commissioning Agent. The PROFESSIONAL shall provide the Commissioning Agent with design and construction documents, Statements of

Probable Construction Costs, and all other information pertinent to the building systems. No additional compensation shall be paid to the PROFESSIONAL for services and documents provided in support of the Commissioning Agent.

**2.1.114 STATEMENT OF PROBABLE CONSTRUCTION COSTS.** The PROFESSIONAL's Statement of Probable Construction Cost must be submitted on the form prescribed in the DEPARTMENT's Bureau of Engineering and Architecture Project Procedure Manual and shall be to the level of detail commensurate with the current level of design. If the PROFESSIONAL proposes to use a different but similar format to the DEPARTMENT's prescribed forms that provides a comparable level of detail, the PROFESSIONAL shall submit the proposed cost structure to the DEPARTMENT for written approval prior to its use. The DEPARTMENT reserves the right to have the Construction Manager, if any, on the Project, review and comment on the PROFESSIONAL's Statement of Probable Construction Cost.

- A. The PROFESSIONAL shall submit a Statement of Probable Construction Cost with each design submission as provided for elsewhere in this Agreement. Such Statements of Probable Construction Costs shall always be based upon the Base Construction Amount. The PROFESSIONAL shall not rely on any potential increase in the Base Construction Amount, unless same has been approved by the DEPARTMENT.
- B. Beginning with the Interim Construction Documents Submission, the PROFESSIONAL shall list a minimum of three (3) proposed add base bids of approximate equal incremental value, which may be used to compartmentalize the construction costs. The add base bids shall begin at 80-85% of the Base Construction Amount. The PROFESSIONAL shall not use deduct base bids.
- C. If the Statement of Probable Construction Cost indicates a potential problem in securing a base bid within the Base Construction Amount, the PROFESSIONAL shall notify the DEPARTMENT and shall coordinate with the Using Agency to redefine the design concepts of space utilization, building efficiencies, materials of construction, etc., so that the estimated cost of construction does not exceed the Base Construction Amount.
- D. The Statement of Probable Construction Cost should reflect construction standards and should address indexes utilized, outreach to the contracting community, and any assumptions made in computing the Statement of Probable Construction Cost, including escalation to the midpoint of construction.

## **2.2 PROGRAMMING SUBMISSION**

**2.2.100 PROJECT SCOPE STATEMENT.** A Project Scope Statement will be supplied by the DEPARTMENT for the Project. The Project Scope Statement may contain background and justification for the Project and quantification of work items contained in the Project. The Project Scope Statement will define the Base Construction Amount. For new construction and major rehabilitation projects, the DEPARTMENT may provide a program statement describing proposed program activities, space requirements and equipment needs.

**2.2.101 ORIENTATION CONFERENCE.** The Project Scope Statement will be discussed with the PROFESSIONAL at the Orientation Conference. Beginning with the Initial Site Visit, the PROFESSIONAL shall meet and work with the Using Agency to determine detailed program requirements and shall refine and complete the Program as described in the Bureau of Engineering and Architecture Project Procedure Manual.

**2.2.102**        **PROGRAM.** The Program is developed by the PROFESSIONAL in order to describe the DEPARTMENT's budget, objectives, schedule, constraints, applicable codes, criteria, including space requirements and relationships, special equipment, systems and site conditions, including but not limited to local zoning, utilities, permits and all state and federal regulatory approvals. The Programming portion of the Design Stage is intended to gather and to clarify the project requirements with all involved parties. The Program shall be submitted for review and approval by DGS and the Using Agency. If the PROFESSIONAL determines, after coordinating and problem-solving with the Using Agency, that the program cannot be developed as defined in this section, then the PROFESSIONAL shall submit a written explanation to the DEPARTMENT immediately and the DEPARTMENT may direct the PROFESSIONAL accordingly.

**2.2.103**        **CONCEPT DESIGN OPTIONS.** In accordance with the Program as accepted by the DEPARTMENT and the Using Agency, the PROFESSIONAL shall prepare and submit to the DEPARTMENT and the Using Agency no more than 3 concept design options consisting of site concepts, bubble diagrams, shape and size sufficient to demonstrate an understanding of the program and such other graphic and narrative information as is necessary to describe fully the PROFESSIONAL's proposed solution and an explanation of all of the concept designs options considered by the PROFESSIONAL. These options shall consider land use, the environment, master plans, traffic, parking, transportation, utilities, and functional relationships within the Project and building systems. In order to be considered complete, the submission shall include the written acceptance of the Using Agency of the proposed solution, in accordance with the Bureau of Engineering and Architecture Project Procedure Manual.

**2.2.104**        **PROGRAMMING SUBMISSION APPROVAL.** The DEPARTMENT shall provide written direction as to the PROFESSIONAL's proposed solution, including the Program and all considered concept design options with Statements of Probable Construction Cost for each option. The DEPARTMENT reserves the right to require the PROFESSIONAL to modify the proposed solution prior to the PROFESSIONAL's preparation of the Schematic Design Submission for the Project.

## **2.3**            **SCHEMATIC DESIGN SUBMISSION**

**2.3.100**        **SCHEMATIC DESIGN DOCUMENTS.** Upon approval of the Programming Submission by the DEPARTMENT, the PROFESSIONAL shall prepare and submit to the DEPARTMENT and the Using Agency the Schematic Design Documents, which shall be based upon the proposed solution accepted by the DEPARTMENT and shall include drawings. These documents shall represent a further development of the approved design concept, providing additional detail and specificity regarding the intended design solution. Typically, all such documents shall be drawn to scale, indicating materials and assemblies, as appropriate, to convey the design intent. All major pieces of equipment shall be illustrated to scale. The Schematic Design Documents shall be as detailed in accordance with the requirements of the Bureau of Engineering and Architecture Project Procedure Manual.

**2.3.101**        **STATEMENTS OF PROBABLE CONSTRUCTION COST.** The PROFESSIONAL shall prepare and submit an initial Statement of Probable Construction Cost on forms prescribed by the DEPARTMENT's Bureau of Engineering and Architecture Project Procedure Manual. If the PROFESSIONAL proposes to use a different, but similar format to the DEPARTMENT's prescribed forms, providing a comparable level of detail, the PROFESSIONAL shall submit the proposed cost structure to the DEPARTMENT for written approval prior to its use. The PROFESSIONAL is responsible for providing a complete budget summary based on areas, volume, and other unit costs, escalated to midpoint of construction. The PROFESSIONAL shall prepare and submit to the DEPARTMENT a Statement of Probable Construction Cost which should reflect 80-90% of the Base Construction Amount. This percentage range is necessary because the PROFESSIONAL must design this Project within the Base Construction Amount as

set in Paragraph 4(a) of the Agreement for Professional Services. This reduced percentage reflects the scope of the Project at this submission stage. Statements of Probable Construction Cost shall be coordinated and consistent with Project descriptions, plans, drawings and Specifications at the time the statement is prepared. If the Statement of Probable Construction Cost at the Schematic stage exceeds 80-90% of the Base Construction Amount, the PROFESSIONAL shall revise the Project's scope, size, or quality as approved by the DEPARTMENT.

**2.3.102**        **SCHEMATIC DESIGN APPROVAL.** The PROFESSIONAL shall meet with the DEPARTMENT for the purpose of presenting and reviewing the Schematic Design Documents including the updated schedule and the Statement of Probable Construction Cost at the scheduled Review Conference. The PROFESSIONAL shall obtain the written approval of the Using Agency and the DEPARTMENT of the Schematic Design Documents prior to proceeding with the Design Development Submission. Once the Schematic Design Submission is approved, the PROFESSIONAL may not change any of the approved Schematic Design Documents with its submission of any subsequent submission without the DEPARTMENT's approval.

**2.3.103**        **SCHEMATIC DESIGN DOCUMENTS REJECTION.** The DEPARTMENT will provide the PROFESSIONAL written documentation regarding any rejection of the submission due to failure to adhere to the requirements of the Bureau of Engineering and Architecture Project Procedure Manual.

- A. The PROFESSIONAL shall address all comments and issues raised by the DEPARTMENT and shall submit revised Schematic Design Documents that address all such comments within the revised submission deadline provided by the DEPARTMENT in the rejection letter. The PROFESSIONAL shall also submit a proposed recovery design schedule with the revised submission. The DEPARTMENT will set forth the final recovery design schedule that the PROFESSIONAL shall adhere to throughout the remainder of the Project.
- B. During the period of rejection, the PROFESSIONAL shall not submit any additional invoices for this submission or any subsequent submission until it receives written approval of the submission from the DEPARTMENT. The PROFESSIONAL shall not be paid on any outstanding invoices submitted prior to the date of the written rejection, until it receives the written approval from the DEPARTMENT.
- C. If the PROFESSIONAL fails to remedy the reasons for rejection by the revised submission date, the DEPARTMENT may direct that design cease and continue to cease payment and such failure may result in default by the PROFESSIONAL of this Professional Agreement.

## **2.4**            **DESIGN DEVELOPMENT SUBMISSION**

**2.4.100**        **DESIGN DEVELOPMENT DOCUMENTS.** Upon receipt of written approval of the Schematic Design Submission from the DEPARTMENT, the PROFESSIONAL shall, based on the Project Scope, Program and Schematic Submission approval, prepare the Design Development Documents. These documents consist of such drawings, outline specifications and other documents as may be necessary to fix and describe the approximate size and character of the entire Project, its exact site location, and character and capacity of all structural, mechanical and electrical systems, and such other estimates as may be appropriate or as may be required by the DEPARTMENT. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include Outline

Specifications that give a basic description of each component of all systems, identify major materials and establish, in general, their quality levels. The Design Development Documents shall be as detailed in accordance with the requirements of the Bureau of Engineering and Architecture Project Procedure Manual.

**2.4.101 STATEMENT OF PROBABLE CONSTRUCTION COST.** With the Design Development Documents, the PROFESSIONAL shall submit a Statement of Probable Construction Cost, on forms prescribed in the DEPARTMENT's Bureau of Engineering and Architecture Project Procedure Manual. If the PROFESSIONAL proposes to use a different, but similar format to the DEPARTMENT's prescribed form, providing a comparable level of detail, the PROFESSIONAL shall submit the proposed cost structure to the DEPARTMENT for written approval prior to its use. At this submission, the Statement of Probable Construction Cost shall include a breakdown of the estimated construction cost computed at present prices, projected to the midpoint of construction, and a justification of the factors used for such projection. The PROFESSIONAL is responsible for providing a complete budget summary showing the breakdown including detailed line items. Statements of Probable Construction Cost shall be coordinated and consistent with project descriptions, plans, drawings and specifications at the time the statement is prepared. The Statement of Probable Construction Cost furnished with this submission shall be within 80% to 90% of the Base Construction amount. The PROFESSIONAL shall not adjust the design by presenting multiple base bids at this stage.

**2.4.102 DESIGN DEVELOPMENT APPROVAL.** The PROFESSIONAL shall meet with the DEPARTMENT for the purpose of presenting and reviewing the Design Development Documents including the updated schedule and the Statement of Probable Construction Cost at the scheduled Review Conference. The Design PROFESSIONAL shall obtain the written approval of the DEPARTMENT and the Using Agency of the Design Development submission prior to proceeding to the Interim Construction Documents Submission. Once the Design Development Submission is approved, the PROFESSIONAL may not change any of the approved Design Development design with its submission of any subsequent submission without the DEPARTMENT's approval.

**2.4.103 DESIGN DEVELOPMENT DOCUMENTS REJECTION.** The DEPARTMENT will provide the PROFESSIONAL written documentation regarding any rejection of the submission due to failure to adhere to the requirements of the Bureau of Engineering and Architecture Project Procedure Manual. Architecture Project Procedure Manual.

- A. The PROFESSIONAL shall address all comments and issues raised by the DEPARTMENT and shall submit revised Design Development Documents that address all such comments within the revised submission deadline provided by the DEPARTMENT in the rejection letter. The PROFESSIONAL shall also submit a proposed recovery design schedule with the revised submission. The DEPARTMENT will set forth the final recovery design schedule that the PROFESSIONAL shall adhere to throughout the remainder of the Project.
- B. The PROFESSIONAL shall not be paid on any outstanding invoices above 90% of the fee for the rejected until it receives the written approval from the DEPARTMENT of the Design Development Documents.
- C. If the PROFESSIONAL fails to remedy the reasons for rejection by the revised submission date, the DEPARTMENT may direct that design cease and continue to cease payment and such failure may result in default by the PROFESSIONAL of this Professional Agreement.

## **2.5 INTERIM CONSTRUCTION DOCUMENTS SUBMISSION**

**2.5.100 INTERIM CONSTRUCTION DOCUMENTS.** Upon receipt of the approval of the Design Development Submission, the PROFESSIONAL shall proceed with the Interim Construction Documents Submission. The purpose of the Interim Construction Document is to enable the PROFESSIONAL to further develop its Design Development Documents in response to any comments or required changes made by the DEPARTMENT and to develop the Construction Contract Drawings and Specifications. The Interim Construction Documents should be developed to demonstrate that at least seventy five percent (75%) of the Construction Documents Submission is complete. The Construction Documents are the drawings and specifications from which the Project is built. They must be clear, concise, and prepared in accordance with generally accepted PROFESSIONAL design practices. The PROFESSIONAL shall meet with the DEPARTMENT for the purpose of showing the progress to date, presenting any and all revised Documents, and confirming the remainder of the schedule. The Interim Construction Documents shall be as detailed in accordance with the requirements of the Bureau of Engineering and Architecture Project Procedure Manual.

**2.5.101 STATEMENT OF PROBABLE CONSTRUCTION COST.** With the Interim Construction Documents, the PROFESSIONAL shall provide an updated Statement of Probable Construction Cost on the form prescribed in the DEPARTMENT's Bureau of Engineering and Architecture's Project Procedure Manual. If the PROFESSIONAL proposes to use a different, but similar format to the DEPARTMENT's prescribed forms, providing a comparable level of detail, the PROFESSIONAL shall submit the proposed cost structure to the DEPARTMENT for written approval prior to its use. At this submission, the Statement of Probable Construction Cost shall include a breakdown of the estimated construction cost computed at present prices, projected to the midpoint of construction, and a justification of the factors used for such projection. This Statement shall address any modifications made by the PROFESSIONAL in the course of revising the Interim Construction Documents. The PROFESSIONAL is responsible for providing a complete budget summary showing the breakdown, including detailed line items and takeoffs. Statements of Probable Construction Cost shall be coordinated and consistent with project descriptions, plans, drawings and specifications at the time the statement is prepared.

**If the Statement of Probable Construction Cost furnished with this submission is not within the Base Construction amount, the DEPARTMENT, subject to the limitations of Section 2.1.101, may require the PROFESSIONAL to adjust the design, at no expense to the DEPARTMENT, to bring the Statement of Probable Construction Cost within the Base Construction.**

**2.5.102 DEVELOP BASE BIDS.** As part of the Interim Construction Documents Submission, the PROFESSIONAL shall submit a minimum of three (3) proposed add base bids of approximate equal incremental value, which may be used to compartmentalize the construction costs. Base Bid Number One (#1) must be within 80-85% of the Base Construction amount. The PROFESSIONAL shall not use deduct base bids. All three required base bids shall be within the Base Construction amount. These add base bids shall be reviewed by the Using Agency and the DEPARTMENT.

**2.5.103 INTERIM CONSTRUCTION DOCUMENTS APPROVAL.** The PROFESSIONAL shall meet with the DEPARTMENT for the purpose of presenting and reviewing the Interim Construction Documents, including the updated schedule and the Statement of Probable Construction Cost. The Design PROFESSIONAL shall obtain the written approval of the DEPARTMENT of the Interim Construction Documents Submission before proceeding with the next submission. Once the Interim Construction Document Submission is approved, the PROFESSIONAL may not change any of the subsequent submissions without the DEPARTMENT's approval.

**2.5.104 INTERIM CONSTRUCTION DOCUMENTS REJECTION.** The DEPARTMENT will provide the PROFESSIONAL written documentation regarding any rejection of the submission due to

failure to adhere to the requirements of the Bureau of Engineering and Architecture Project Procedure Manual.

- A. The PROFESSIONAL shall address all comments and issues raised by the DEPARTMENT and shall submit revised Design Development Documents that address all such comments within the revised submission deadline provided by the DEPARTMENT in the rejection letter. The PROFESSIONAL shall also submit a proposed recovery design schedule with the revised submission. The DEPARTMENT will set forth the final recovery design schedule that the PROFESSIONAL shall adhere to throughout the remainder of the Project.
- B. The PROFESSIONAL shall not be paid on any outstanding invoices above 90% of the fee for the rejected until it receives the written approval from the DEPARTMENT of the Design Development Documents.
- C. If the PROFESSIONAL fails to remedy the reasons for rejection by the revised submission date, the DEPARTMENT may direct that design cease and continue to cease payment and such failure may result in default by the PROFESSIONAL of this Professional Agreement.

## **2.6 CONSTRUCTION DOCUMENTS SUBMISSION**

**2.6.100 CONSTRUCTION DOCUMENTS.** Upon receipt of the DEPARTMENT's written approval of the Interim Construction Document Submission, the PROFESSIONAL shall finalize the Construction Documents, on or before the date provided in the Final Time Schedule, and shall submit the same for review and approval to the DEPARTMENT and for review by the Using Agency. The submission shall include the recommendation for the number of calendar days for construction and the number of calendar days for Temporary Heat. This submission shall include working drawings setting forth all items necessary for bidding and proper execution of the Work including but not limited to, materials, workmanship, finishes, mechanical and electrical systems, special equipment, site work, and utility connections and services. The Construction Documents shall be detailed in accordance with the requirements of the Bureau of Engineering and Architecture Project Procedure Manual.

**2.6.101 FINAL STATEMENT OF PROBABLE CONSTRUCTION COST.** With the Construction Documents Submission, the PROFESSIONAL shall provide an updated Statement of Probable Construction Cost on the form prescribed in the DEPARTMENT's Bureau of Engineering and Architecture Procedure Manual. If the PROFESSIONAL proposes to use a different, but similar format to the DEPARTMENT's prescribed forms, providing a comparable level of detail, the PROFESSIONAL shall submit the proposed cost structure to the DEPARTMENT for written approval prior to its use. At this submission, the Statement of Probable Construction Cost shall include a breakdown of the estimated construction cost computed at present prices, **projected to the midpoint of construction**, and a justification of the factors used for such projection. This Statement shall address any modifications made by the PROFESSIONAL in the course of revising the Interim Construction Documents. The PROFESSIONAL is responsible for providing a complete budget summary showing the breakdown including detailed line items and takeoffs. Statements of Probable Construction Cost shall be coordinated and consistent with project descriptions, plans, drawings and specifications at the time the statement is prepared.

**If the Statement of Probable Construction Cost furnished with this submission is not within the Base Construction, the DEPARTMENT, subject to the limitations of Section 2.1.101, may require the PROFESSIONAL to adjust the design, at no expense to the DEPARTMENT, to bring the Statement of Probable Construction Cost within the Base Construction.**

**2.6.102 DEVELOP BASE BIDS.** As part of the Construction Documents Submission, the PROFESSIONAL shall submit a minimum of three (3) proposed add base bids of approximate equal incremental value, which may be used to compartmentalize the construction costs. Base Bid Number One (#1) must begin at 80–85% of the Base Construction Amount. The PROFESSIONAL shall not use deduct base bids. All three required base bids shall be within the Base Construction Amount. These add base bids shall be reviewed by the Using Agency and the DEPARTMENT.

**2.6.103 UNIFORM CONSTRUCTION CODE (UCC) APPLICATION FOR BUILDING PERMIT.** If the DEPARTMENT determines the Construction Documents Submission is adequate for building permit purposes, it will direct the PROFESSIONAL in writing to submit all the construction documents to the Department of Labor and Industry with completed UCC Application for building permit.

**2.6.104 CONSTRUCTION DOCUMENTS APPROVAL.** The PROFESSIONAL shall meet with the DEPARTMENT for the purpose of presenting and reviewing the Construction Documents including the updated schedule and the Final Statement of Probable Construction Cost. The Design PROFESSIONAL shall obtain the written approval of the DEPARTMENT. The PROFESSIONAL agrees that approval of the Construction Documents by any person, body or agency shall not relieve the PROFESSIONAL of the responsibility for the adequacy, fitness, suitability and correctness of architectural and engineering design and for designing the work in accordance with sound and accepted engineering and architectural practices.

**2.6.105 CONSTRUCTION DOCUMENTS REJECTION.** The DEPARTMENT will provide the PROFESSIONAL written documentation regarding any rejection of the submission due to failure to adhere to the requirements of the Bureau of Engineering and Architecture Project Procedure Manual.

- A. The PROFESSIONAL shall address all comments and issues raised by the DEPARTMENT as reasons for rejection and shall submit revised Construction Documents which address all such comments within the revised submission deadline provided by the DEPARTMENT in the rejection letter.
- B. The PROFESSIONAL shall not be paid on any outstanding invoices above 90% of the fee for the submission, until it receives the written approval from the DEPARTMENT.
- C. If the PROFESSIONAL fails to remedy the reasons for rejection by the revised submission date, the DEPARTMENT may direct that design cease and continue to cease payment and such failure may result in default by the PROFESSIONAL of this Professional Agreement.

## **2.7 CONDITIONAL ACCEPTANCE OF DESIGN SUBMISSION DOCUMENTS**

**2.7.100 SCHEMATIC DESIGN DOCUMENTS.** Upon review of the Schematic Design Documents, the DEPARTMENT may conditionally accept the Schematic Design Submission in writing by submitting comments.

- A. Conditional acceptance means that the PROFESSIONAL may proceed with the design of the next submission while resolving the comments to design made by the DEPARTMENT for the previous submission.
- B. The PROFESSIONAL shall address any and all comments made by the DEPARTMENT within fifteen (15) days after receiving conditional acceptance or notify the DEPARTMENT within five (5) days of receipt of the conditional

acceptance of their need for an extension of time including the requested days of extension and reasons for the inability to comply within the fifteen (15) day period. The DEPARTMENT shall require the PROFESSIONAL to either respond to all comments in writing and/or resubmit a revised partial submission. If the DEPARTMENT requires a revised partial submission, then the PROFESSIONAL shall highlight each change on each drawing of the submission.

- C. During this period of conditional acceptance, the PROFESSIONAL shall not submit any additional invoices for this submission or any subsequent submission, until it receives the DEPARTMENT's written unconditional approval of the submission.
- D. If the PROFESSIONAL fails to satisfactorily address the comments to design made by the DEPARTMENT within fifteen (15) days, the DEPARTMENT may direct the PROFESSIONAL to cease design until further direction is received from the DEPARTMENT.

**2.7.101**      **DESIGN DEVELOPMENT DOCUMENTS.** Upon review of the Design Development Documents, the DEPARTMENT may conditionally accept the Design Development Submission in writing by submitting comments.

- A. Conditional acceptance means that the PROFESSIONAL may proceed with the design of the next submission while resolving the comments to the submission made by the DEPARTMENT for the previous submission.
  - 1. The DEPARTMENT shall require the PROFESSIONAL to either respond to all comments in writing or resubmit a revised partial submission or submit both.
  - 2. If the DEPARTMENT requires a revised submission, then the PROFESSIONAL shall highlight each change on each drawing of the submission.
- B. Upon receiving the DEPARTMENT's written conditional acceptance, the PROFESSIONAL shall either:
  - 1. Address any and all comments regarding the submission made by the DEPARTMENT and/or resubmit a revised partial submission within fifteen (15) days of receipt of the conditional acceptance; or
  - 2. Notify the DEPARTMENT, within 5 days of receipt of the conditional acceptance, of their inability to comply within this period.
- C. If the PROFESSIONAL fails to satisfactorily respond to the comments to design made by the DEPARTMENT within fifteen (15) days, the DEPARTMENT may direct the PROFESSIONAL to cease design until further direction is received from the DEPARTMENT.
- D. The DEPARTMENT has 15 days from the receipt of the PROFESSIONAL's response to accept or reject the PROFESSIONAL's response. If the DEPARTMENT does not reject the PROFESSIONAL's response within fifteen (15) days of receiving it, the response shall be deemed acceptable to the DEPARTMENT.

- E. The PROFESSIONAL shall not be paid on any outstanding invoices above 90% of the fee for the Design Development Submission until it receives the written approval or the DEPARTMENT's fifteen days to approve has lapsed.

**2.7.102**      **INTERIM CONSTRUCTION DOCUMENTS.** Upon review of the Interim Construction Documents, the DEPARTMENT may conditionally accept the Interim Construction Documents submission in writing by submitting comments.

- A. Conditional acceptance means that the PROFESSIONAL may proceed with the design of the next submission while resolving the comments to the submission made by the DEPARTMENT for the previous submission.
- B. The PROFESSIONAL shall address any and all comments made by the DEPARTMENT within fifteen (15) days after receiving conditional acceptance, or notify the DEPARTMENT within five (5) days of receipt of the conditional acceptance of their inability to comply within the fifteen (15) day period. The DEPARTMENT shall require the PROFESSIONAL to
  - 1. Address any and all comments regarding the submission made by the DEPARTMENT and/or resubmit a revised partial submission. If the DEPARTMENT requires a revised partial submission, then the PROFESSIONAL shall highlight each change on each drawing of the submission.
- C. If the PROFESSIONAL fails to satisfactorily respond to the comments to design made by the DEPARTMENT within fifteen (15) days, the DEPARTMENT may direct the PROFESSIONAL to cease design until further direction is received from the DEPARTMENT.
- D. The DEPARTMENT has fifteen (15) days from the receipt of the PROFESSIONAL's response to accept or reject the PROFESSIONAL's response. If the DEPARTMENT does not reject the PROFESSIONAL's response within fifteen (15) days of receiving it, the response shall be deemed acceptable to the DEPARTMENT.
- E. The PROFESSIONAL shall not be paid on any outstanding invoices above 90% of the fee for the submission until it receives the written approval or the DEPARTMENT's fifteen days to approve has lapsed.

**2.7.103**      **CONSTRUCTION DOCUMENTS.** Upon review of the Construction Documents, the DEPARTMENT may conditionally accept the Construction Documents Submission in writing by submitting comments.

- A. Conditional acceptance means that the PROFESSIONAL may proceed to Construction Procurement while resolving the comments to the submission made by the DEPARTMENT.
  - 1. The PROFESSIONAL shall address any and all comments made by the DEPARTMENT within fifteen (15) days after receiving conditional acceptance, or notify the DEPARTMENT within five (5) days of receipt of the conditional acceptance of their inability to comply within the fifteen (15) day period. The DEPARTMENT shall require the PROFESSIONAL to address any and all comments regarding the submission made by the DEPARTMENT and/or resubmit a revised partial submission. If the DEPARTMENT requires a revised partial submission, then the

PROFESSIONAL shall highlight each change on each drawing of the submission.

- B. If the PROFESSIONAL fails to satisfactorily respond to the comments to design made by the DEPARTMENT within fifteen (15) days, the DEPARTMENT may direct the PROFESSIONAL to cease design until further direction is received from the DEPARTMENT.
- C. The DEPARTMENT has 15 days from the receipt of the PROFESSIONAL's response to accept or reject the PROFESSIONAL's response. If the DEPARTMENT does not reject the PROFESSIONAL's response within fifteen (15) days of receiving it, the response shall be deemed acceptable to the DEPARTMENT.
- D. The PROFESSIONAL shall not be paid on any outstanding invoices above 90% of the fee for the submission until it receives the written approval or the DEPARTMENT's fifteen days to approve has lapsed.

## **2.8 CONSTRUCTION PROCUREMENT**

**2.8.100 SCOPE OF SERVICES.** When the DEPARTMENT determines the Project is ready for bidding, it will provide to the PROFESSIONAL all necessary instructions required to proceed with Construction Procurement. The DEPARTMENT will provide forms for Bidding or Proposal requirements, Contract Forms and Contract Conditions, which the PROFESSIONAL shall use without alteration. The PROFESSIONAL's Services are suspended in accordance with Article 9, Section 9.2 for the period between written approval of the Construction Documents Submission and direction to reactivate to commence the Bidding Phase. If the DEPARTMENT utilizes the Competitive Sealed Proposal procurement method for designated projects, the PROFESSIONAL shall attend the Initial Determination Meeting, the Initial Committee Meeting and the Pre-Proposal Conference. The PROFESSIONAL shall attend the Pre-Proposal Conference in sealed bid procurements to answer all technical and constructability issues.

**2.8.101 ADVERTISING AND RECEIPT OF BIDS OR PROPOSALS.** The DEPARTMENT will designate the construction period and advertise the Project. The DEPARTMENT will designate the date, hour and place for the receipt, public opening, and reading of bids. If the DEPARTMENT is utilizing the Competitive Sealed Proposal procurement method, the DEPARTMENT will designate the date, hour and place for receipt of the proposals.

### **2.8.102 REPRODUCTION AND DISTRIBUTION OF BIDDING OR PROPOSAL DOCUMENTS.**

- A. Upon receipt of a deposit from a prospective bidder or proposer, the PROFESSIONAL shall assemble and issue complete bidding or proposal documents to the prospective bidder or proposer. The prospective bidder or proposer must pay the costs of delivery of the documents separate from the deposit.
- B. The deposit amount shall be determined by the DEPARTMENT.
- C. The PROFESSIONAL shall also issue Contract Documents as directed by the DEPARTMENT.
- D. A complete set of documents shall include:
  - 1. Project Manual including:

- a. Notice to Bidders or Proposers;
  - b. Instruction to Bidders or the Request for Proposals;
  - c. Construction Contract, Bonds, and General Conditions to the Construction Contract;
  - d. Certified Contractors/Vendors List;
  - e. Prevailing Wage Determination;
  - f. Special Conditions; and
  - g. Specifications
2. Proposal Form, bid Envelope, Bid Bond Forms, and
  3. All drawings for all contracts.
- E. The PROFESSIONAL shall not provide answers, clarifications or other explanations to one bidder and not to others since this creates an unfair bidding environment. If the PROFESSIONAL provides answers, clarifications or other explanations to any potential bidder or proposer, the conversation shall be reduced to writing and issued to all bidders or proposers in the form of a bulletin.
- F. The PROFESSIONAL shall only issue bulletins that have been approved by the DEPARTMENT in accordance with the instructions provided by the DEPARTMENT.
- G. The PROFESSIONAL shall receive and return deposits in accordance to the Notice to Bidders or Notice to Proposers. All deposits not returned shall become the property of the PROFESSIONAL.
- H. The DEPARTMENT will reimburse the PROFESSIONAL for all complete sets of bid documents which have been distributed to prospective bidders or proposers, Bidders' Services and the DEPARTMENT. The payment will be made on actual direct costs, subject to DEPARTMENT established maximum reproduction rates, as shown on invoices submitted to the DEPARTMENT. The DEPARTMENT will also reimburse the PROFESSIONAL for the actual cost of delivery of drawings and specifications to Bidders' Services and the DEPARTMENT, with no mark-up, or other administrative costs. The DEPARTMENT will not reimburse the PROFESSIONAL for delivery costs to bidders or proposers.

**2.8.103**      **PRE-BID CONFERENCES.** When required by the DEPARTMENT, the PROFESSIONAL, with its key consultants, shall attend, as the chairperson, pre-bid conferences as part of Basic Services. The PROFESSIONAL shall be responsible for taking and issuing the Minutes of the Pre-Bid Conference to the DEPARTMENT. The meeting Minutes, alone, shall not be issued as a bulletin. Only written questions received, resulting from the Pre-Bid Conference, shall be addressed by bulletin.

**2.8.104**      **EVALUATION OF BIDS.** At the discretion of the DEPARTMENT, the PROFESSIONAL shall evaluate the reasonableness of the bids and their compliance with the requirements of the bidding documents. The PROFESSIONAL shall render its opinion of

qualification with a confidential report to the DEPARTMENT on all information known or ascertainable by reasonable inquiry, bearing on the qualifications of the three (3) lowest bidders or proposers on each contract for which contractor qualifications are required by the bid documents. The evaluation and report must be submitted within three (3) calendar days after the receipt of the qualification information from the DEPARTMENT.

## **2.9 CONSTRUCTION CONTRACT ADMINISTRATION**

**2.9.100 Scope of Services.** The Construction Contract Administration Stage commences with the issuance of a Letter of Intent or a Notice of Award of construction contracts and ends at the issuance of the final payment to the PROFESSIONAL unless otherwise specified by the DEPARTMENT in writing. The PROFESSIONAL shall assist and cooperate with the DEPARTMENT's administration of the Contract and review the performance of the Work in accordance with the applicable provisions of these General Conditions and as described elsewhere in the DGS Construction Contract Documents. Services shall include both construction field and office activities.

**2.9.101 Access to Work and On-Site Representation.** The PROFESSIONAL, the PROFESSIONAL's Consultants and authorized representatives shall have full access to the Work at all times and be required to abide by the applicable safety programs and access requirements, if any, of the Using Agency and security programs established for the Project. The PROFESSIONAL is not responsible for the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connections with the Work. The PROFESSIONAL shall, as an Additional Service, provide a representative at the site during all times of active construction when directed by the DEPARTMENT.

**2.9.102 Visits to the Site and Meetings.** The PROFESSIONAL or PROFESSIONAL's Consultants must visit the site at such intervals as deemed necessary by the DEPARTMENT, to review the respective phases of the Work in order to achieve the requirements of each Contract, with a maximum number of visits as set forth in the Agreement. When directed by the DEPARTMENT the PROFESSIONAL must attend any and all meetings and job conferences that are required by the DEPARTMENT. The PROFESSIONAL's attendance at the biweekly job conference shall be counted towards the number of meetings at set forth in the Agreement. Any other meeting required by the DEPARTMENT shall also be counted towards the number of meetings as set forth in the Agreement. The PROFESSIONAL shall review the progress of the Work, including the completeness of the construction contractors' installation drawings, and take actions necessary or appropriate to assist in achieving the compliance with the Contract Documents. The PROFESSIONAL shall advise the DEPARTMENT's representative as to particular matters to watch and guard against. The PROFESSIONAL shall maintain a log of all of its site visits and the PROFESSIONAL's Consultant's visits to the Site for each discipline.

**2.9.103 Interpreter.** The PROFESSIONAL is, in the first instance, the interpreter of the Construction Documents and the initial evaluator of the construction contractor's performance. Within seven (7) days after receipt of a written request from a construction contractor (in the form of an RFI-Request for Information), the PROFESSIONAL will, render in writing an interpretation or evaluation consistent with the Contract Documents. The PROFESSIONAL will provide the DEPARTMENT with a copy of the interpretation.

**2.9.104 Review of Contractor's Submittals.** The PROFESSIONAL shall review and approve or take other appropriate action with regard to submittals, including shop drawings, samples, materials or other submissions of the construction contractor for compliance with the requirements of the Contract Documents. The PROFESSIONAL shall follow the process and procedures more specifically set forth in Article 6 of these General Conditions. The PROFESSIONAL shall request from the construction contractor and may rely on bona fide test

data, certifications and other evidence submitted by the construction contractor, as needed to establish conformity with the Contract Documents prior to approving material and products.

**2.9.105 Progress Reports as to Construction.** The PROFESSIONAL shall, within seven (7) days of each job conference or other meeting, make written reports to the DEPARTMENT relative to the progress of the Work and or issues discussed at the meeting. The Progress Reports to the DEPARTMENT shall include the PROFESSIONAL's or PROFESSIONAL's Consultants' findings on each of their site visits. In the event of construction contractor's non-compliance, including omission of Work or faulty workmanship, the PROFESSIONAL shall recite in the report the paragraph number or article of the Specifications or detail or drawing that has been violated, indicating the deviation from design.

**2.9.106 Review and Approval of Contractor's Breakdown Sheets.** PROFESSIONAL shall review and approve or disapprove the detailed Cost Breakdown sheets submitted by all Contractors.

**2.9.107 Change Orders.** The PROFESSIONAL's role in the change order process is specifically set forth in the Administrative Procedures. Pursuant to the Administrative Procedures, the PROFESSIONAL shall evaluate and recommend action to the DEPARTMENT on all change order requests initiated by the DEPARTMENT, the Using Agency, the construction contractors, or by the PROFESSIONAL's own observation of the Work.

- A. EVALUATION OF INITIAL REQUEST. The evaluations shall include a Statement of Probable Construction Costs (with a breakdown of major items of work), an opinion of the cause of the change order with substantiating background and a recommendation as to whether the change order should be pursued.
- B. CONSTRUCTION CONTRACTOR'S CHANGE ORDER BREAKDOWN. The PROFESSIONAL shall review the construction contractor's proposed cost of the work including labor and materials and effect upon time dependent costs. The PROFESSIONAL shall comment on these proposed costs and expenses and advise the DEPARTMENT in writing.
- C. DEPARTMENT'S REVIEW. The DEPARTMENT will review the PROFESSIONAL's input and determine those change orders to be pursued.

**2.9.108 Errors and Omissions.**

- A. The PROFESSIONAL shall receive no compensation or fee for any change orders which result from an error or omission by the PROFESSIONAL. However, PROFESSIONAL shall be compensated for Change Orders which, although originally designated as due to an error or omission, are not finally determined to have resulted from an error or omission.
- B. If it becomes necessary during the course of construction to issue change orders which increase the cost of the Project because of the PROFESSIONAL's failure to produce proper and coordinated specifications and drawings, or any portions thereof relating to the Project, in accordance with accepted standards and practice, the PROFESSIONAL shall be assessed the difference between the amount of the change order and what the DEPARTMENT would have paid had the error or omission not occurred, plus administration costs incurred by the DEPARTMENT. The DEPARTMENT's administration costs will not exceed the PROFESSIONAL's fixed fee percentage fee established for the Project applied to the change

order amount. The assessment for added costs will be based on the following:

1. If the change order is an **omission change order**, the assessment for the difference between the amount of the change order and what the DEPARTMENT would have paid had the omission not occurred will be based on the construction cost index change between the bid opening date and the change order cost proposal, but in no case shall this amount be less than zero. For purposes of this section, a change order is an omission change order if additional work is required due to the failure of the PROFESSIONAL to produce proper and coordinated specifications and drawings, but no contract work must be removed or replaced to carry out the change order work.
  2. If the change order is an **error change order**, the assessment for the difference between the amount of the change order and what the DEPARTMENT would have paid had the error not occurred will be the same as for an omission change order plus the cost of removing and replacing Work in order to remedy the error. For purposes of this section, a change order is an error change order if Work must be removed and/or replaced because of the failure of the PROFESSIONAL to produce proper and coordinated specifications and drawings.
- C. During the Construction Contract Administration stage, the DEPARTMENT will review change orders preliminarily designated to be an error or omission. No fee will be paid for change orders preliminarily designated as resulting from an error or omission. If the value of the preliminarily designated error or omission change orders exceeds 2.5% of the amended project award amount, the DEPARTMENT may initiate an error or omission review, to be conducted at a time determined by the DEPARTMENT.
1. If the value of the review assessment determines that the total of all error or omission change orders do not exceed 2.5% of the amended project award amount, no fees will be paid on the reviewed error and omissions change orders and no assessment will be made against the PROFESSIONAL.
  2. If the value of the review assessment determines error or omission change orders exceeds 2.5% of the amended project award amount, no fees will be paid on the reviewed error and omissions change orders and costs will be assessed and an assessment shall be made against the PROFESSIONAL.

**2.9.109 Rejection or Stoppage of Work.** Where the PROFESSIONAL observes deficiencies or observes the construction contractor failing to execute the Work in accordance with the Contract Documents, the PROFESSIONAL shall promptly notify the construction contractor in writing of all such deficiencies and shall issue such notices of Non-Compliant Work that the PROFESSIONAL deems appropriate. The PROFESSIONAL shall recommend rejection of work that does not conform to the Contract Documents and immediately notify the Department of the recommendation of rejection. The PROFESSIONAL shall recommend stoppage of construction contractors' work or special testing whenever such testing or stoppage is necessary, in the PROFESSIONAL's opinion, to achieve compliance of the finished Work with the Contract Documents. Recommendation of stoppage shall be made orally to the DEPARTMENT's field representative and confirmed, in writing, within twenty-four (24) hours of the recommendation. The confirmation must include the reasons for such recommendation.

**2.9.110 Construction by State Employees.** If the DEPARTMENT decides to perform the actual construction using its own personnel, or other State employees, or inmates, the PROFESSIONAL shall prepare appropriate drawings, specifications, and material lists as a negotiated additional service.

**2.9.111 Standards of Quality.** Where trade names, catalog number and manufacturers of material or equipment are specified, they are to be mentioned for the purpose of establishing a standard of quality, performance, and appearance, and for establishing a standard of competitive bidding. If the construction contractor wishes to utilize material or equipment that is of the same type, but manufactured by others than those named in the specifications, the construction contractor shall certify that the material or the equipment is equal in quality, performance and appearance to that mentioned in the specifications. The construction contractor shall submit to the PROFESSIONAL and the DEPARTMENT, subsequent to the Effective Date of the Contract, a request to furnish such material or equipment as equal to those named in the specification. The construction contractor's request shall include a comprehensive description of the material or equipment proposed to be utilized as equal, including engineering, construction, dimension and performance data. Within thirty days after receipt of the construction contractor's request, the PROFESSIONAL will render a written determination to the construction contractor. Products, material or equipment determined as equal to that named in the specification are not Substitutions.

**2.9.112 Substitutions.** If the construction contractor desires to furnish material or equipment different in quality, performance, or appearance from that named in the specification, the construction contractor shall submit to the PROFESSIONAL and the DEPARTMENT a comprehensive description of the proposed substitution, including engineering, construction, dimension, performance and appearance data, along with a statement of the cost involved. The PROFESSIONAL shall render a written opinion of the proposed substitution to the DEPARTMENT within thirty (30) days after receipt of the request for Substitution. The PROFESSIONAL's opinion shall include an evaluation of the salient characteristics of the proposed substitution, its compatibility with the Project, its cost and any schedule impact on the Project.

**2.9.113 Extensions of Time.** The PROFESSIONAL shall assist the DEPARTMENT, if requested, in the review of construction contractors' requests for Extension of Time and claims of any type.

**2.9.114 PROFESSIONAL Observation of Testing.** If the PROFESSIONAL needs to observe inspections, tests or approvals, it shall do so promptly, and where practicable, at the source of supply.

## **2.10 PROJECT CLOSEOUT**

**2.10.100 CLOSEOUT GENERALLY.** Project Closeout consists of a Final Inspection and a Closeout Inspection. The PROFESSIONAL shall provide such services as are necessary to ensure that the Project has been fully completed in accordance with the Contract Documents. Such services include, but are not limited to, coordinating and conducting Final Inspections and Closeout Inspections, collecting all necessary documents from the construction contractors, and providing assistance for all dispute claims. During the one (1) year period after the date of Closeout Inspection, the PROFESSIONAL shall assist the DEPARTMENT in securing remedy of any of the construction work found to be not in accordance with the contract.

**2.10.101 FINAL INSPECTION.** This inspection occurs after a Contractor submits a request in writing to the Department for a Final Inspection and an application for final payment. The Department or its designee and the Professional will conduct a Final Inspection within thirty (30) calendar days of the date of the Department's receipt of the request. If the Department and the

Professional concur that the Work is at substantial completion, the Professional shall issue a certificate of completion and a final certificate for payment. In such case, the Professional shall produce and deliver to the Contractor, at the Final Inspection, a list of uncompleted items and a reasonable cost of completion (Punch List). The Professional shall submit Record Drawings to the Department of Labor and Industry (L&I) on the date of the Final Inspection in order to receive a certificate of occupancy by the L&I by Closeout Inspection.

**2.10.102**      **CLOSEOUT INSPECTION.** This inspection occurs thirty (30) days from the date of the Final Inspection (provided the Work was at substantial completion). The Contractor shall prepare and deliver to the Professional, at Closeout Inspection, a complete set of contract prints, corrected with suitable markings to show all changes or variations from the original contract, including all items uncovered during the work and showing the details of the work as actually built, including but not limited to horizontal and vertical dimensional references of all concealed pipe, conduit and other lines and equipment. The Department and the Professional shall conduct a Closeout Inspection to determine if the Work is complete (including the completion of all Punch List items) or whether the Contractor can show just cause to the satisfaction of the Department why the Work could not be completed within thirty (30) days from the date of the Final Inspection.

- A. The Contractor may make a written request for early Closeout Inspection. If the Department approves such request, the Closeout Inspection shall occur on a date earlier than thirty (30) days from the date of Final Inspection at a time mutually agreed by the Department and Contractor.

**2.10.103**      **CONSTRUCTION ADMINISTRATION BEYOND SCHEDULED COMPLETION DATE.** If the last Closeout Inspection for the Prime Contracts occurs after the period of scheduled construction as specified in the contract documents, then the PROFESSIONAL is entitled to additional compensation for each month up to Closeout Inspection for which there is: (a) actual and active construction at the site, and (b) bi-weekly job conferences held and the PROFESSIONAL actively attends to both (a) and (b). The additional compensation is payable monthly, upon approval of an invoice, in the amount of seventy-five percent (75%) of the regular monthly installment computed under Section 4.1.103. If the services of a full-time, on-site PROFESSIONAL's representative during an extended or overrun period are required by the DEPARTMENT, they shall be provided as an Additional Service in accordance with this Article 2, Section 2.10. The PROFESSIONAL shall not be entitled to compensation under this paragraph for delays in construction that are attributable in whole or in part to the PROFESSIONAL. If there is more than one construction phase in the Project, the calculation of additional compensation due the PROFESSIONAL under this paragraph shall be made separately for each phase. The decision of the DEPARTMENT shall be final in so far as determining when there is actual and active construction at the job site and when the PROFESSIONAL's compensation shall be withheld because of delays that are attributed in whole or in part to the PROFESSIONAL.

**2.10.104**      **DEPARTMENT OF LABOR AND INDUSTRY "RECORD DRAWINGS".** The PROFESSIONAL is responsible for submitting to the Department of Labor and Industry a revised set of construction documents for approval for changes made during construction that are not in accordance with the approved construction documents. This revised set of construction shall be referred to as "L&I Record Drawings" and shall be submitted in accordance with L&I UCC requirements.

**2.10.105**      **DGS "AS-BUILT RECORD DRAWINGS".** Within ninety (90) days from the Closeout Inspection of the Project, the PROFESSIONAL shall submit record drawings showing all changes or variations from the original contract drawings made during the course of construction. The Record Drawings shall indicate all items uncovered during the Work and show details of the work as actually built, including but not limited to horizontal and vertical dimensional references of all concealed pipe, conduit and other lines and equipment and similar items. Recorded changes shall be obtained from clearly marked field prints provided by the construction contractors and

field office and from change orders. The As-Built Record Drawings shall be on archival Mylar reproducible medial and three identical copies of electronic formatted documents suitable to the DEPARTMENT shall be identified as "DGS As-Built Record Drawings", shall be delivered to, and shall become the sole property of, the DEPARTMENT.

**2.10.106**      **CONSTRUCTION AND MAINTENANCE DATA.** At the time of the Project, the PROFESSIONAL shall collect from the Prime Contractors, as provided in the Construction Documents, a rough draft of the Operation and Maintenance Instructions Manuals prepared by the construction contractors. The PROFESSIONAL shall review the rough draft for completeness including all pertinent shop drawings, diagrams, catalog data, manufacturers operating instructions, manufacturer's or supplier's maintenance instructions, certificates, warranties, guarantees and other pertinent operating and maintenance data. The PROFESSIONAL shall indicate its approval of the rough draft with correction if necessary or request a revised draft and resubmission of the manual for the PROFESSIONAL's review and approval. Upon receipt of the two (2) final bound manuals from each Prime Contractor, the PROFESSIONAL shall review them for compliance with the requirements of the Contract Documents, and when the Manuals meet the PROFESSIONAL's approval, the PROFESSIONAL shall forward the two (2) copies to the DEPARTMENT.

## **2.11**            **ADDITIONAL SERVICES**

**2.11.100**      **ADDITIONAL SERVICES NOT COVERED BY COMPENSATION FOR BASIC SERVICES.** The DEPARTMENT shall clearly identify at the time of negotiation of the Agreement all those services which are required by the Project scope or which should be included as part of Basic Services. Those services are described in Exhibit B of the Professional Agreement and will be designated as "included", meaning that it is included and shall be compensated as a part of Basic Services. Unless identified as included in Basic Services, the Additional Services described in Exhibit B of the Professional Agreement are not covered by the Compensation for Basic Services. If requested, in writing, by the Director of the Bureau of Engineering and Architecture, and performed by the PROFESSIONAL, such Additional Services shall be the subject for additional compensation, as provided in this part.

**2.11.101**      **COMPENSATION FOR ADDITIONAL SERVICES.** Compensation for Additional Services shall be in accordance with Section 4.1.101 of these General Conditions and Exhibit B of the Professional Agreement.

## **2.12**            **UCC COMPLIANCE**

**2.12.100**      **COMPLIANCE DURING CONSTRUCTION.** This Project shall be subject to the Uniform Construction Code (UCC). The PROFESSIONAL shall become familiar with and adhere to the UCC, including but not limited to site inspection procedures set forth in the Department of Labor and Industry's Inspection Procedures. The most recent list of inspections required by the Department of Labor and Industry is located on the web at <http://www.dli.state.pa.us/landi/lib/landi/ucc/forms/ucc-9.pdf>. The PROFESSIONAL, included under Basic Services, shall facilitate and make all site visits during construction required by the Pennsylvania Department of Labor and Industry Uniform Construction Code (UCC), including but not limited to, standard inspections and special inspections in accordance with the International Building Code (IBC). These site visits are in addition to the number of meetings listed in the Professional Agreement.

## **ARTICLE 3 – THE DEPARTMENT’S RESPONSIBILITIES AND DUTIES**

**3.1.100**        **BASIC INFORMATION.** The DEPARTMENT shall provide the PROFESSIONAL with the Project Scope and all available information as to the requirements of the Project, including the amount of the Base Construction. If the information furnished is not sufficient for the initiation of the Programming Submission, the PROFESSIONAL shall immediately notify the DEPARTMENT.

**3.1.101**        **PLAT OR SURVEY AND SURVEYOR’S REPORT AND DUE DILIGENCE IN INVESTIGATING CONDITIONS.** If there is any existing and available Plat or Survey of the site and sufficient adjacent lands, and a Report of Survey, the DEPARTMENT will furnish such information to the PROFESSIONAL. Nothing in this paragraph shall relieve the PROFESSIONAL from responsibility for investigating and determining the quality of such information provided by the DEPARTMENT and providing, when necessary, the performance of any additional Plat or Survey and exercising due diligence in investigating existing conditions.

**3.1.102**        **INTERPRETATION OF INSTRUCTIONS.** The DEPARTMENT is the sole interpreter of any printed instructions, including the Bureau of Engineering and Architecture Project Procedure Manual.

**3.1.103**        **DEPARTMENT TO ACT PROMPTLY.** The DEPARTMENT shall act with reasonable promptness upon all submissions and any failure of the DEPARTMENT to so act shall result in an extension of time to the PROFESSIONAL under the current Time Schedule equal to the number of days of the delay. If the PROFESSIONAL and the Director of the Bureau of Engineering and Architecture of the DEPARTMENT cannot agree upon the extension to be granted, the Deputy Secretary of Public Works shall make the final decision. Such extension of time is the only remedy for such delay. The PROFESSIONAL is not entitled to any additional compensation as a result of such delay.

**3.1.104**        **EFFECT OF DEPARTMENT’S DECISION ON DESIGN WORK.** Any conditional acceptance, approval, or failure of the DEPARTMENT to disapprove or reject, design work submitted by the PROFESSIONAL does not relieve the PROFESSIONAL of its full responsibility to the DEPARTMENT for the proper and PROFESSIONAL performance of all design work on the Project.

**3.1.105**        **DUTY TO REPORT.** Prompt notice shall be given by the DEPARTMENT if the DEPARTMENT actually becomes aware of any fault, defect, or inconsistency in the Project. However, failure to do so will not limit the responsibility of the PROFESSIONAL to detect and address any fault, defect or inconsistency.

## **ARTICLE 4 – THE PROFESSIONAL’S COMPENSATION AND PAYMENT**

**4.1.100 BASIS OF PROFESSIONAL’S COMPENSATION.** The PROFESSIONAL’s compensation and payments for all submissions, the construction procurement services, and construction contract administration services shall be the negotiated fixed percentage fee set forth in Paragraph 4 of the Professional Agreement. Payments shall be made in accordance with the payment schedule established in this section.

**4.1.101 BASIS OF PROFESSIONAL’S COMPENSATION FOR ADDITIONAL SERVICES.** Any services not designated as Basic Service in Exhibit B to the Professional Agreement, “List and Description of Additional Services,” which has been deemed by the DEPARTMENT as a necessary service for the completion of the Professional Agreement as a Basic Service, shall be compensated based upon a negotiated not-to-exceed value or lump sum payment.

- A. This fee shall be negotiated at the time that the DEPARTMENT discovers the need for the Additional Services and shall be incorporated into this Professional Agreement as a Work Order to the Professional Agreement. In addition to the cost of the services of the PROFESSIONAL’s Consultant, the PROFESSIONAL shall be compensated 10% of that value for performance of the Additional Services of the PROFESSIONAL’s Consultants and its application into the project.
- B. In the event an agreement cannot be reached, the DEPARTMENT may direct the PROFESSIONAL to provide the Additional Services as a Work Order to the Professional Agreement at the amount specified by the DEPARTMENT, in which case, the PROFESSIONAL shall provide said services and shall keep a daily record of the services performed and its cost for performing the Additional Services. After the Additional Services authorized by the DEPARTMENT are completed by the PROFESSIONAL or are terminated by the DEPARTMENT, the PROFESSIONAL may submit a request for cost incurred in performing the Additional Services to the Director of the Bureau of Engineering and Architecture.

**4.1.102 SCHEDULE OF PAYMENTS DURING DESIGN.** The PROFESSIONAL may invoice monthly for the percent complete for the design stage. The value of each design stage shall be calculated using the percentages below. When the Project is being designed and bid in multiple bid packages or phases, payment for services in subsequent design phases is not contingent on the approval of a prior phase.

	<u>Payment</u>	<u>Aggregate</u>
A. Upon approval of the Programming Submittal	5%	5%
B. Upon approval of the Schematic Submission	15%	20%
C. Upon approval of Design Development Submission	20%	40%
D. Upon approval of Interim Constr. Docs. Submission	20%	60%
E. Upon approval of Construction Documents Submission (The amount shall include subsequent Construction Procurement Services)	15%	75%

The PROFESSIONAL shall only invoice up to ninety (90) percent of the value of a stage until the stage submission is approved by the DEPARTMENT.

As used above, the approval required is the written approval of the DEPARTMENT that the indicated stage has been satisfactorily completed. The final 10% of the stage shall not be paid until the PROFESSIONAL receives the written approval from the DEPARTMENT.

**4.1.103 SCHEDULE OF PAYMENTS DURING CONSTRUCTION CONTRACT ADMINISTRATION.**

Invoicing for this stage starts with the Initial Job Conference. Twenty percent (20%) of the PROFESSIONAL's fee may be paid in monthly installments as follows:

- A. Balance of payment apportioned into as many installments as there are calendar months from the actual start of construction to the completion date specified in the Construction Contract Documents. Monthly payments will be made upon determination by the Bureau of Construction that acceptable performance has been rendered.

<u>Payment</u>	<u>Aggregate</u>
20%	95%

**4.1.104 FINAL PAYMENT.** Upon acceptance by the DEPARTMENT and PROFESSIONAL's Certificate of Final Completion and approval of the DGS As-Built Record Drawings, completion of the DEPARTMENT's evaluation of Error/Omission change orders, and final resolution of all construction contractor and PROFESSIONAL claims, the PROFESSIONAL's compensation will be paid in accordance with the schedule below:

<u>Payment</u>	<u>Aggregate</u>
5%	100%

At the DEPARTMENT's discretion, it may release the Final Payment upon receipt of certificate of Final Completion and the DGS As-Built Record Drawings. Final payment by the DEPARTMENT does not constitute a waiver of claims by the DEPARTMENT or the PROFESSIONAL.

**4.1.105 PHASING.** During any of the design stages, the DEPARTMENT at its sole discretion may determine that the Project and the related Contracts will be designed, bid and/or constructed in more than one phase. The PROFESSIONAL's compensation for phasing shall be negotiated with the DEPARTMENT but shall not exceed one percent (1%) of the total Base Construction Amount. This additional fee shall compensate the PROFESSIONAL for additional basic services,

**4.1.106 CHANGE ORDERS.** The services of the PROFESSIONAL arising from a Change Order authorized by the DEPARTMENT, which is not the result of the PROFESSIONAL's error or omission, shall be compensated at the Basic Services Fee percentage established for the Project applied to the change order amount, with no reduction in Basic Services Compensation for Credit Change Orders. The PROFESSIONAL shall invoice for payment for fees on Change Orders.

**4.1.107 NO FEES ON CLAIMS.** Under no circumstances, regardless of the cause, will the PROFESSIONAL be paid a fee on any settlement agreement paid by the DEPARTMENT to a Contractor to settle an in-house claim or judgment awarded by the Board of Claims or any other court.

**4.1.108 NO FEES ON CONSTRUCTION MANAGER OR COMMISSIONING AGENT CONTRACT.** Coordination with the Construction Manager or the Commissioning Agent is required as part of

the negotiated fee for Basic Services as described in 2.1.112 and 2.1.113. Under no circumstances shall the PROFESSIONAL receive a fee calculated upon the value of the contracts for the Construction Manager or the Commissioning Agent.

## **ARTICLE 5 – PROFESSIONAL’S ACCOUNTING RECORDS**

**5.1.100**        **RECORDS.** The PROFESSIONAL shall keep and maintain a record of the following expenses using generally acceptable accounting principles: direct personnel costs, Consultant costs and all other expenses pertaining to the Project. Such records shall be available to the DEPARTMENT at the PROFESSIONAL’s office for inspection and copying at mutually convenient times for a period of at least three (3) years beyond completion or termination of the contract.

**5.1.101**        **RECORDS OF ADDITIONAL SERVICES.** Cost incurred by PROFESSIONAL for providing Additional Services shall be kept separate and apart from all other project costs. Such records shall be available to the DEPARTMENT at the PROFESSIONAL’s office for inspection and copying at mutually convenient times for a period of at least three (3) years beyond completion or termination of the contract.

## **ARTICLE 6 – SUBMITTALS**

**6.1.100**      **PRIORITY SUBMITTAL SCHEDULE.** Prime Contractors shall submit all necessary submittals to the PROFESSIONAL in accordance with a priority submittal schedule established by the PROFESSIONAL and the construction contractors. The priority submittal schedule shall be determined no later than the first Job Conference held after the initial job conference.

**6.1.101**      **APPROVAL OF SUBMITTALS.** The PROFESSIONAL agrees that time is of the essence with regards to review and decision-making for submittals. Therefore, the PROFESSIONAL shall return the approved submittals, or detailed notation for resubmission if required, within fourteen (14) calendar days of receipt, unless a different period is approved by the DEPARTMENT. The fourteen day period consists of the time from the PROFESSIONAL's receipt of the submittal to the time of the date that the PROFESSIONAL sends the submittal to the Prime Contractor and the DEPARTMENT. If the receipt of the submittals is late by the approved schedule, the PROFESSIONAL shall endeavor to meet the schedule for acting upon the submission, but shall have the submission delivered to the DEPARTMENT no later than within fourteen (14) calendar days after receipt. Nothing in this paragraph relieves the construction contractor from its responsibility for a late submission.

**6.1.102**      **CONTRACTOR COORDINATION OF APPROVED SUBMITTALS.** Each Prime Contractor shall be responsible for reviewing other Prime Contractors' approved submittals for consistency and interface with its work. Any exception taken to the content of another construction contractor's approved submittal must be formally presented to that Prime Contractor, the PROFESSIONAL, and the DEPARTMENT within seven (7) calendar days of the Prime Contractor's receipt of the approved submittal. The PROFESSIONAL shall work with Prime Contractors to resolve these discrepancies. Nothing in this paragraph relieves the Prime Contractors from their responsibilities to coordinate their work with the other Prime Contractors.

**6.1.103**      **CORRECTIONS TO SUBMITTALS.** The PROFESSIONAL shall review and approve or disapprove or take other appropriate action on any resubmissions within ten (10) calendar days of its receipt, unless a different period is approved by the DEPARTMENT. The ten (10) calendar day period is the time from the date of receipt of the resubmission to the date that the PROFESSIONAL sends the resubmission to the Prime Contractor and the DEPARTMENT.

**6.1.104**      **EFFECT OF APPROVAL.** The PROFESSIONAL's review and approval is only for conformance with the Program of the project and with the information given in the Contractor Documents. The PROFESSIONAL's approval of a separate item does not indicate approval of an assembly in which the item functions. The PROFESSIONAL's approval of submittals does not relieve the construction contractor of responsibility for any deviation from the Contract Documents, unless the construction contractor has informed the PROFESSIONAL in writing of such deviation at the time of submission, has noted the deviation on the submittals, and the PROFESSIONAL has given written approval of the specific deviation.

**6.1.105**      **RECORDS OF SUBMITTALS.** The PROFESSIONAL shall keep and maintain a detailed log as to date of receipt of the submittals and date of return with adequate notes as to their disposition.

**6.1.106**      **FAILURE TO ADHERE TO SCHEDULE.** If the PROFESSIONAL fails to comply with the time provisions of this section or fails to act in a timely manner, the DEPARTMENT reserves its rights at a later date to assess damages attributable to the PROFESSIONAL's delays in approving the submittals. Any reduction in the PROFESSIONAL's compensation shall not be the DEPARTMENT's sole remedy for damages caused by the delay of the submittal approval.

**ARTICLE 7 – PROFESSIONAL’S RESPONSIBILITY FOR CONSULTANTS,  
OBSERVANCE OF LAWS AND COOPERATION WITH LOCAL BODIES, AND  
INSTRUCTION REGARDING PROPRIETARY ITEMS**

**7.1.100**        **RESPONSIBILITY.** The PROFESSIONAL is responsible for preparing the Drawings and Specifications in compliance with all applicable permits, laws, regulations and ordinances of all commissions, agencies and government (federal, Pennsylvania and local), insofar as they are applicable to, and have jurisdiction over, the Project. The PROFESSIONAL shall make all required submittals to, and shall obtain all required approvals from, the applicable agencies in a timely manner so as not to cause delays to the Project.

**7.1.101**        **COOPERATION WITH LOCAL BODIES.** During the design of the Project, the PROFESSIONAL shall keep informed of and comply with the requirements of all local zoning, planning and supervisory bodies. If these requirements change during the course of the Project, or should any required approvals be withheld by the local bodies, the PROFESSIONAL shall immediately notify the DEPARTMENT.

**7.1.102**        **PROPRIETARY ITEMS, COPYRIGHTS, PATENTS.** The PROFESSIONAL shall not include in the design of the Project any equipment, material or mode of construction which is proprietary or which contains a copyright or patent right relating to designs, plans, drawings or specifications, unless the equipment, material or mode of construction is required to meet the unique circumstances of the Project. If the PROFESSIONAL includes in the design of the Project any equipment, material or mode of construction which is proprietary, it shall have prior approval by the DEPARTMENT. Approval of a proprietary item will only be given because the item is required to meet the unique circumstances of the Project, and shall not be given for the purpose of preventing or restricting competitive bidding.

## **ARTICLE 8 – INSURANCE**

**8.1.100**      **PROFESSIONAL LIABILITY INSURANCE.** The PROFESSIONAL shall secure and maintain, at its sole cost and expense, Professional Liability Insurance to protect against loss resulting from design errors and omissions, failure to coordinate properly the Drawings and Specifications of the Project, and failure to properly execute the construction administration duties for the Project.

- A. Unless otherwise specifically provided in the Professional Agreement, the PROFESSIONAL shall be required to secure and maintain Professional Liability Insurance with a minimum coverage of \$1,000,000, or the total of the PROFESSIONAL's fee under all the contracts (including Additional Services) with the DEPARTMENT as of the date of this Professional Agreement, whichever is greater.
- B. If the PROFESSIONAL is a Joint Venture, one Professional Liability Insurance policy covering the Joint Venture, or separate policies covering the individual companies that comprise the joint venture may be furnished. If separate policies covering the individual joint ventures are furnished, each policy must provide the minimum coverage called for by Paragraph 8.1.100 (a) of the General Conditions. In addition, the certificates of insurance required under Paragraph 8.1.102 of the General Conditions, these separate policies, must be accompanied by statements that the insurance covers joint venture projects.
- C. The PROFESSIONAL is required to secure and maintain Professional Liability Insurance, in accordance with this Paragraph 8.1.100 of the General Conditions, up to and including one year after the date of the last Closeout Inspection of the contracts under the Project.

**8.1.101**      **GENERAL LIABILITY INSURANCE.** The PROFESSIONAL shall secure and maintain, at its sole cost and expense, adequate General Liability Insurance to indemnify, protect and hold harmless the DEPARTMENT and its employees against claims arising out of the PROFESSIONAL's services during the design and construction of the Project for damages in law or equity for property damage and personal injury, including wrongful death. The DEPARTMENT shall be named as an additional insured in the policy and the PROFESSIONAL shall submit a certified copy of the entire policy to the DEPARTMENT, prior to the DEPARTMENT's submission of the executed Professional Agreement to the PROFESSIONAL. The limits of coverage shall be acceptable to the DEPARTMENT. The PROFESSIONAL is required to secure and maintain General Liability Insurance up to and including the submission of Record Drawings and a Certificate of Final Completion.

**8.1.102**      **CERTIFICATE OF INSURANCE.** The PROFESSIONAL shall return to the DEPARTMENT with the signed Professional Agreement, a Certificate of Insurance from an Insurance Carrier authorized to do business in Pennsylvania. The Certificate shall be furnished annually, unless otherwise requested, and shall indicate the following:

- A. Existence of the insurance required under this Article;
- B. Amount of the deductible; and
- C. The amount of coverage of such insurance.

The PROFESSIONAL shall submit a Certificate of Insurance covering the Professional Liability Insurance requirement for one year beyond the last Closeout Inspection referenced in Paragraph 8.1.100. **These certificates shall contain a provision that coverages afforded under the policies will not be canceled or changed without giving sixty (60) days prior written notice to the DEPARTMENT.**

**8.1.103 UNACCEPTABLE INSURANCE COMPANY.** Should any insurance company providing the required coverage become unsatisfactory to the DEPARTMENT, the PROFESSIONAL shall promptly furnish such additional insurance coverage as may be required to protect the interest of the DEPARTMENT.

**8.1.104 FAILURE TO COMPLY WITH INSURANCE REQUIREMENTS.** During any period in which the PROFESSIONAL is not in compliance with the terms of this Article 8, no compensation shall be paid by the DEPARTMENT to the PROFESSIONAL, and such failure to comply will result in the issuance of a notice of default to the PROFESSIONAL.

## **ARTICLE 9 – TERMINATION OF PROFESSIONAL AGREEMENT AND SUSPENSION OF WORK THEREUNDER**

### **9.1                   TERMINATION**

**9.1.100**           **TERMINATION FOR CONVENIENCE OF THE DEPARTMENT.** The DEPARTMENT shall have the right at any time for any reason, to terminate the Professional Agreement by written notice, which termination shall be effective as provided in said notice. The PROFESSIONAL shall comply with all reasonable instructions of the DEPARTMENT then or subsequently given, relating to such termination, including but not limited to: instructions concerning delivery of drawings, sketches, and other architectural/engineering data to the DEPARTMENT; discontinuance of the Services on outstanding contracts; and furnishing to the DEPARTMENT information concerning all action to be taken respecting outstanding agreements with consultants, contracts, awards, orders or other matters. The DEPARTMENT may inform the Selection Committee regarding an explanation of the termination of a PROFESSIONAL who has been terminated by reason of convenience.

**9.1.101**           **TERMINATION UPON DISABILITY OF PROFESSIONAL.** In the event of death or mental or physical disability of PROFESSIONAL, or the PROFESSIONAL's inability to complete the Professional Agreement for any other reason over which PROFESSIONAL has no control including military mobilization, or dissolution of the PROFESSIONAL firm, the DEPARTMENT may terminate the Professional Agreement by written notice, which termination shall be effective as provided in said notice, and select and employ a new PROFESSIONAL to complete the Services. The PROFESSIONAL or its personal representative shall comply with all reasonable instructions of the DEPARTMENT then or subsequently given, relating to such termination, including but not limited to: instructions concerning delivery of drawings, sketches, and other architectural/engineering data to the DEPARTMENT; discontinuance of the Services on outstanding contracts; and furnishing to the DEPARTMENT information concerning all action to be taken respecting outstanding agreements with PROFESSIONAL's Consultants, contracts, awards, orders or other matters.

**9.1.102**           **TERMINATION FOR DEFAULT OF PROFESSIONAL.** The DEPARTMENT may terminate this Professional Agreement for any material default of the PROFESSIONAL, including default in making submissions or failing to take action within the time limits specified in the Professional Agreement, by providing written notice to the PROFESSIONAL. The notice shall apprise the PROFESSIONAL that it shall cure the default within a period of not less than ten (10) days from the date of the letter of default and that failure to do so will result in termination by default of the PROFESSIONAL. The PROFESSIONAL shall comply with all reasonable instructions of the DEPARTMENT then or subsequently given, relating to such termination, including but not limited to: instructions concerning delivery of drawings, sketches, and other architectural/engineering data to the DEPARTMENT; discontinuance of the Services on outstanding contracts; and furnishing to the DEPARTMENT information concerning all action to be taken respecting outstanding agreements with PROFESSIONAL's Consultants, contracts, awards, orders or other matters. The DEPARTMENT may refer a PROFESSIONAL **who has been terminated by reason of default to the Contractor Responsibility Program relating to suspension and debarment. A copy of such notice of default shall be sent to the PROFESSIONAL Selections Committee.**

**9.1.103**           **ADJUSTMENT OF COMPENSATION UPON TERMINATION.** Upon termination of the Professional Agreement, as herein provided, the compensation of the PROFESSIONAL shall be adjusted in accordance with the following:

- A. If the Professional Agreement is terminated for any reason except the material default by the PROFESSIONAL, at any time during the course of any Design Submission or the Construction Procurement Services Stage, all obligations of the DEPARTMENT to the PROFESSIONAL shall be discharged by the payment to the PROFESSIONAL of all sums due and unpaid in respect of all completed design phases, plus any applicable reimbursable costs and an appropriate portion of the payment due for the phase in which the Professional Agreement is terminated.
- B. If the Professional Agreement is terminated at any time during the Construction Contract Administration Stage, for any reason except the material default by the PROFESSIONAL, the obligation of the DEPARTMENT to the PROFESSIONAL shall be discharged by the payment of the monthly payment due for the month in which such termination occurs, plus any other unpaid items due and owing for work performed prior to the termination date.
- C. If the Professional Agreement is terminated by reason of death or incapacity of the PROFESSIONAL, all payments due and owing shall be made to the PROFESSIONAL's personal representative for a sole proprietorship or to the company/partnership which employed the deceased or incapacitated PROFESSIONAL. If the Professional Agreement is terminated by reason of the liquidation of a partnership, the dissolution of a corporation or the dissolution of a joint venture, payment shall be made in accordance with the articles of dissolution.
- D. If the Professional Agreement is terminated by reason of a material default of the PROFESSIONAL, continuing for the period specified in the written notice of such default and demand for cure, the only payments which may be made shall be for Services deemed completed and acceptable at the time of termination, otherwise no further payments will be made until the DEPARTMENT has engaged another PROFESSIONAL to complete the Project. If another Professional is engaged, the cost to the DEPARTMENT of the compensation and expenses of such other Professional will be deducted from the remainder of the compensation otherwise payable to the PROFESSIONAL for completion of the Services under the Professional Agreement. If the costs of furnishing the Services which the DEPARTMENT has incurred in accordance with the Professional Agreement exceeds the Contract Sum for the completion of the Services, the PROFESSIONAL shall pay the difference to the DEPARTMENT. .

## **9.2**            **SUSPENSION**

**9.2.100**            **SUSPENSION OF WORK.** The DEPARTMENT may, at any time, direct the PROFESSIONAL in writing to suspend all work on the Project, or any part thereof, pending receipt of further notice from the DEPARTMENT. In all such cases the DEPARTMENT and the PROFESSIONAL shall agree upon an appropriate phasing out of the Services, or any part thereof, in such a manner that the work may be resumed with a minimum of added cost to the DEPARTMENT.

**9.2.101**            **PAYMENT DURING SUSPENSION.** When Services are suspended, compensation shall be paid for all Services provided to the date of suspension, but no additional compensation shall be paid during the period of suspension. If the Project is suspended due to the fault of the PROFESSIONAL, including failure to design within the allocation, no further payments shall be made.

### **9.3 REACTIVATION OF PROJECT**

**9.3.100 ADJUSTMENT OF COMPENSATION ON REACTIVATION OF PROJECT.** Where a Project has been suspended or if the time between Construction Document Submission approval and the authorization to prepare for Construction Procurement is a period longer than six (6) months and is then subsequently reactivated, the DEPARTMENT and the PROFESSIONAL shall agree, prior to the beginning of the reactivation Services, upon a lump-sum, or other basis of reimbursement to the PROFESSIONAL for extra start up costs occasioned as a result of the Services having been suspended or terminated.

**9.3.101 DISPUTES REGARDING REACTIVATION.** In the event of a disagreement between the PROFESSIONAL and the DEPARTMENT as to the amount of reimbursement, the PROFESSIONAL shall proceed with the Services when so directed and submit the dispute to a claim as provided in Paragraph 7 Claims of the Professional Agreement. Failure of the PROFESSIONAL to proceed when directed by the DEPARTMENT will be cause for termination of the Professional Agreement as a material default.

## **ARTICLE 10 – OWNERSHIP OF DOCUMENTS**

**10.1.100 DEPARTMENT OWNS DOCUMENTS.** All design concepts; preliminary, feasibility and special studies; design calculations; Contract Drawings and Specifications; Special Conditions; Statements of Probable Construction Costs; and all other data, samples and surveys compiled by the PROFESSIONAL or its Consultants under this Professional Agreement, become the sole property of the DEPARTMENT. Such documents may be used by the DEPARTMENT for any desired purpose without any compensation to the PROFESSIONAL.

**10.1.101 PATENTS, COPYRIGHTS, LICENSES, AND OWNERSHIP OF DOCUMENTS.** All proprietary materials and methodologies brought by the PROFESSIONAL to the Project and all documents, sketches, drawings, designs, works, papers, files, reports, computer programs, data, computer documentation and other tangible materials authored and prepared by PROFESSIONAL as the work product covered in the scope of work shall be treated in accordance with the following principles:

- A. **PATENT OWNERSHIP:** PROFESSIONAL and its Subconsultants shall retain ownership to patentable items, patents, processes, inventions of discoveries (collectively the “PATENTABLE ITEMS”) made by the PROFESSIONAL during the performance of this Professional Agreement. Notwithstanding the foregoing, the DEPARTMENT is granted a non-exclusive, non-transferable, royalty free license to use or practice the PATENTABLE ITEMS. **The DEPARTMENT may disclose to third parties any such PATENTABLE ITEMS made by PROFESSIONAL or any of its Subconsultants under the scope of work for the Project that have been previously publicly disclosed.** The DEPARTMENT understands that any third party disclosure will not confer any license under such PATENTABLE ITEMS.
- B. **COPYRIGHT OWNERSHIP – OWNERSHIP OF MATERIALS DEVELOPED AS PART OF THE SCOPE OF WORK FOR THE PROJECT:** All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, data, computer documentation and other tangible materials authored and prepared by PROFESSIONAL as the Work Product covered in the scope of work for the Project (collectively the “Works”) including Works developed by Subconsultants are the sole and exclusive property of the DEPARTMENT and shall be considered works made for hire. In the event that such Works do not fall within the specifically enumerated works that constitute works made for hire under the United States copyright laws, PROFESSIONAL agrees to assign and, upon their authorship or creation, expressly and automatically assigns all copyright interests, proprietary rights, trade secrets, and other right, title and interest in and to such Works to the DEPARTMENT. The DEPARTMENT shall have the rights accorded a holder of copyright under the United States copyright laws including, but not limited to, the exclusive right to reproduce the Works in copies, the right to distribute copies by sale or other transfers, the right to register all copyrights in its own name as author in the United States and in foreign countries, the right to prepare derivative works based upon the WORKS, and the right to display the WORKS. Upon completion or termination of this Professional Agreement, all working papers, files and other documentation shall immediately be delivered by PROFESSIONAL to the DEPARTMENT. PROFESSIONAL warrants that the Works are original and do not infringe the rights of any other work.

- C. PROFESSIONAL LICENSE: Notwithstanding the foregoing, PROFESSIONAL and any Subconsultants shall retain a royalty free non-exclusive license to reproduce such Works for internal use and to have such Works published for any academic purpose including, but not limited to, publication as part of any thesis or dissertation or journal article.
  
- D. PREEXISTING MATERIALS BROUGHT BY THE PROFESSIONAL TO THE PROJECT: The DEPARTMENT shall have no ownership rights to PROFESSIONAL's proprietary materials, data, software, methodologies or other intellectual property that PROFESSIONAL brings to the Project or has previously developed with or obtained from third parties ("PROFESSIONAL Property");
  
- E. FEDERAL GOVERNMENT INTERESTS: It is understood that certain funding under this Professional Agreement may be provided by the Federal government. Accordingly, the rights to Works or Patentable Items of PROFESSIONALS or Subconsultants hereunder will be further subject to government rights as set forth in 37 C.F.R. Section 401, and other applicable statutes. Notwithstanding the foregoing, the DEPARTMENT retains the right to share information relating to WORKS or Patentable Items developed under the scope of work for a wholly state-funded contract with the Federal Government.

**ARTICLE 11 – PROVISIONS REQUIRED BY PENNSYLVANIA  
OR FEDERAL LAW TO BE INSERTED**

**11.1.100**      **PROVISIONS DEEMED INSERTED.** Each and every provision required to be inserted in Professional Agreement by the law of Pennsylvania, or the lawful regulations of any agency of the Commonwealth are included in the Professional Agreement by reference, and the Professional Agreement shall be read, interpreted and enforced as if such provisions were set forth herein in full. If the Project involves the use of federal funds, each and every provision required to be inserted by any law of the United States of America or the lawful regulations of any federal agency thereof applicable to the Professional Agreement, are included in the Professional Agreement by reference, and the Professional Agreement shall be read, interpreted and enforced as if such provisions were set forth herein in full.

**11.1.101**      **NONDISCRIMINATION AND SEXUAL HARASSMENT CLAUSE.** So long as this Professional Agreement is in effect, the PROFESSIONAL agrees to the terms of the Nondiscrimination and Sexual Harassment Clause attached hereto as Exhibit “C”. For purposes of this Professional Agreement, the word “Contractor” in these provisions means “PROFESSIONAL.”

**11.1.102**      **CONTRACTOR INTEGRITY PROVISIONS AND DISCLOSURE OF FINANCIAL INTEREST.** So long as this Professional Agreement is in effect, the PROFESSIONAL agrees to the Contractor Integrity Provisions attached hereto as Exhibit “D”. For purposes of this Professional Agreement, the word “Contractor” in these provisions means “PROFESSIONAL.”

**11.1.103**      **CONTRACTOR DEBARMENT PROVISIONS.** The PROFESSIONAL agrees to the Contractor Debarment Provisions, included in and made a part of this Professional Agreement in Exhibit “E”, Certification and Stipulations Related to Debarment. For purposes of this Professional Agreement, the word “Contractor” in these provisions means “PROFESSIONAL.”

**11.1.104**      **AMERICANS WITH DISABILITIES ACT (ADA) PROVISIONS.** The PROFESSIONAL agrees to the ADA Provisions attached hereto as Exhibit “F”.

**11.1.105**      **TRADE PRACTICES ACT PROVISIONS.** The PROFESSIONAL agrees to the Trade Practices Act Provisions attached hereto as Exhibit “G”.

**11.1.106**      **TAX LIABILITY PROVISIONS.** The PROFESSIONAL agrees to the Tax Liability Provisions, included in and made part of this Professional Agreement as Exhibit “H”. For purposes of this Professional Agreement, the word “Contractor” in these provisions means “PROFESSIONAL.”

**11.1.107**      **ENVIRONMENTAL STATEMENT.** According to the Commonwealth Procurement Code, Act of May 15, 1998, P.L. 358, No. 57, 62 Pa.C.S. §§ 101-4509, all invitations for bids and requests for proposals for construction projects issued by any government agency shall set forth any provision of Federal and State statutes, rules, and regulations dealing with the prevention of environmental pollution and the preservation of public natural resources that affect the Project.

**11.1.108**      **STEEL PRODUCTS PROCUREMENT ACT.** The PROFESSIONAL may not knowingly list as acceptable any item which cannot comply with the Steel Products Procurement Act.

## **ARTICLE 12 – PROFESSIONAL AND CONSULTANT RELATIONSHIP**

**12.1.100 PROFESSIONAL AND CONSULTANT RELATIONSHIP.** The PROFESSIONAL, in accordance with Paragraph 2.1.103, must enter into a Professional Agreement with each of PROFESSIONAL's Consultants listed on the 150 form and deemed necessary for the proper design of the Project. The relationship between the PROFESSIONAL and the PROFESSIONAL's Consultants limits the participation of the PROFESSIONAL's Consultant as follows:

- A. PROFESSIONAL's Consultant may not individually or as a firm submit a bid directly or indirectly to the Commonwealth, to any Prime Contractor, Sub-contractor or any Contractor or firm submitting a bid on a project on which the PROFESSIONAL's Consultant has provided design or technical services.
- B. PROFESSIONAL's Consultant may not individually or as a firm have any personal interest or holding in any firm or company that bids as a Prime Contractor, Subcontractor or Sub-sub-contractor, submitting a bid on a project on which the PROFESSIONAL's Consultant has provided design or technical services.
- C. PROFESSIONAL's Consultant may not individually or as a firm have any personal interest or holding, in any firm that bids as a manufacturer, distributor or supplier on any project on which the Consultant has provided design or technical services.
- D. During Design Stages, if the PROFESSIONAL desires to change any PROFESSIONAL's Consultant, it shall obtain written approval by the DEPARTMENT.

PROFESSIONAL's Consultant must immediately inform the DEPARTMENT of any current or former Commonwealth employees on its payroll. The names of former employees who have not been employed by the Commonwealth within the last twelve (12) months need not be disclosed.

**12.1.101 PROFESSIONAL'S CONSULTANT PAYMENT.** Performance by PROFESSIONAL's Consultant in accordance with the provisions of a contract shall entitle the PROFESSIONAL's Consultant to prompt payment from the PROFESSIONAL with whom the PROFESSIONAL's Consultant contracted.