

**AGREEMENT
FOR
PROFESSIONAL SERVICES**

AND

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



pennsylvania
DEPARTMENT OF GENERAL SERVICES

HARRISBURG, PENNSYLVANIA

2017 EDITION

v.4

Attachments:

- 1. Negotiated Project Scope

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made on this _____ day of _____ 20__ by and between the Commonwealth of Pennsylvania ("Commonwealth"), Department of General Services ("Department") and

NAME
having its principal place of business at

ADDRESS
("Professional").

WHEREAS, the Department is duly authorized by 62 Pa. C.S. § 905 to retain the Professional to provide and perform the design, procurement, and construction administration services required for Project No. DGS _____, for the construction of _____, ("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, including any member of the Department's Professional Selection Committee, any compensation or gratuity, contingent or otherwise, either directly or indirectly, in the solicitation, procurement or execution of this agreement.

NOW THEREFORE, the parties, hereto, in consideration of mutual promises herein contained, and intending to be legally bound hereby, the covenant and agree as follows:

1. **SCOPE OF WORK.** The Professional's scope of work for the Project is described in the "Negotiated Project Scope" as attached hereto and incorporated herein as Attachment 1.
2. **TIME SCHEDULE.** The time schedule established for the completion of the several submissions or stages is as follows:

| | <u>Days after effective date of Agreement.</u> |
|-----------------------------------|------------------------------------------------|
| a. Programming | _____ |
| b. Schematic Design | _____ |
| c. Design Development | _____ |
| d. Interim Construction Documents | _____ |
| e. Construction Documents | _____ |

3. **ADHERENCE TO TIME SCHEDULE.** Time shall be of the essence with regard to the Time Schedule set forth in paragraph 2 this Agreement, and it is the responsibility of the Professional to maintain and strictly adhere to it.
- A. If it appears that any submission or stage of the Project will be delayed, the Professional shall immediately notify the Department and Client Agency (as defined in Exhibit J) in writing prior to the due date of that submission or stage, unless the due 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 extend the Time Schedule.
 - B. The Department will review the Professional's request(s) to extend the Time Schedule and will determine whether or not to Approve the request(s), in its sole discretion. Time Schedules may only be extended in writing by the Director of the Bureau of Capital Project Design Management.
 - C. If the Department determines that the delay is the fault of the Professional, the Department may:
 - i. approve the extension request in full or in part and extend the Time Schedule to reflect the accepted dates.
 - ii. deny the extension request 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, which may also result in a negative performance evaluation; or
 - iii. deny the extension request and terminate the Agreement for default of the Professional, in accordance with the provisions of the General Conditions, attached hereto as Exhibit J, in which case the Department may hold the Professional responsible for any costs attributable to the delay, which may also result in a negative performance evaluation.
 - D. The Professional's failure to give the required prior notice of delay or failure to meet a submission's Time Schedule shall constitute failure to perform in accordance with the terms of this Agreement, and may result in the following:
 - i. termination of this Agreement in accordance with the General Conditions;
 - ii. a negative performance evaluation, which could result in the loss of future projects with the Department and/or entry into the Contractor Responsibility Program (as defined in Exhibit E); or
 - iii. an assessment of the Professional's fee.
 - E. If the Department determines that the delay is not due to the fault of the Professional, the Department may extend the Time Schedule as necessary. The Professional agrees that such an extension 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.
 - F. 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 provision of General Conditions set forth in Article 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/Proposal Opening Date (defined

in Exhibit J), be set by the Department commensurate with the Project design and conditions.

4. COMPENSATION AND COSTS.

- A. The Professional’s compensation for Basic Services as defined in Exhibit B (which is attached hereto and incorporated by reference herein), shall consist of the following negotiated amounts, hereinafter called “Basic Services Compensation”:

| <u>Schedule of Payments</u> | <u>Dollar Amount</u> |
|------------------------------------------|----------------------|
| Programming | \$ |
| Schematic | \$ |
| Design Development | \$ |
| Interim Construction Documents | \$ |
| Construction Documents | \$ |
| Procurement Services | \$ |
| Construction Contract Administration | \$ |
| Final Payment | \$ |
| TOTAL Basic Services Compensation | \$ |

This Basic Services Compensation is based on the Negotiated Project Scope and the Base Construction Amount of \$_____, as agreed to by the Professional and the Department. The Basic Services Compensation amount is payable, as set forth in Paragraph 4.1.100 of the General Conditions, unless there is a Special Condition governing payment outlined in Exhibit K, attached hereto and incorporated by reference herein. The Professional’s compensation for Basic Services may be adjusted in extreme circumstances due to major adjustments to the scope of work during the Design Stages. The Professional’s Basic Services Compensation will not be adjusted based upon construction contract award amounts.

- B. The Professional shall be compensated for any required Additional Services as defined in Exhibit B, Section B in the following manner:
- i. if the Additional Service was identified by the Department as necessary for the completion of the Project as of the date of this Agreement, they will be paid as either a part of the Basic Services Compensation or by Additional Compensation on the basis of a lump sum or a not-to-exceed fee, as written in the Negotiated Project Scope;
 - ii. if an Additional Service is determined by the Department to be necessary for the completion of the Project after the full execution of this Agreement, the Professional shall be paid a lump sum or a not-to-exceed fee for such services, as mutually agreed upon in advance by the Department and the Professional; or
 - iii. if an Additional Service has been identified by the Department as necessary during negotiations of this Agreement, but the scope and amount of compensation is unknown until after the Agreement is fully executed, the Professional shall be paid

a lump sum or a not-to-exceed fee as mutually agreed upon by the parties in advance of the commencement of the Additional Service.

Except for a negotiated lump sum, compensation for Additional Services performed directly by the Professional and all of the Professional consultants shall be calculated using the employee direct labor hourly rate times a maximum multiplier of 3 applied to the direct labor hourly rate. The total billing rate shall not exceed \$180.00 per hour. When salary is the source of employee compensation, an equivalent direct labor hourly rate shall be developed considering a 40-hour workweek, and then calculated for billing as above.

- C. **No Additional Services shall be performed without the prior written approval of the Department.** No additional monies, fees, or compensation shall be paid by the Department without an approved Work Order. The Professional will not be entitled to payment for services performed without the prior written approval of the Department.
 - D. The Services of the Professional arising from a Change Order (as defined in Exhibit J) to a prime contractor authorized by the Department, which is not a result of the Professional's error or omission, shall be compensated at a rate of _____% applied to the Change Order amount, with no reduction for credit Change Orders. See **Article 2.9.107 of the General Conditions** and **Exhibit B** for additional information.
 - E. The Professional shall submit invoices to the Department in accordance with this Agreement. The Department will make payments to the Professional, in accordance with this Agreement and the provisions of the Prompt Payment Schedules found in the Commonwealth Procurement Code, 62 Pa. C.S. §3931-§3939, which is incorporated herein by reference and made a part hereof as if those provisions were fully and at length herein recited, except that, where those provisions refer to the government agency, it is deemed to refer to the Department of General Services.
 - F. Payments Though Automated Clearing House.
 - i. The Department will make all payments to the Professional through an Automated Clearing House (ACH).
 - ii. The Professional, within ten (10) days of receiving the Agreement, must include their ACH information in their user profile in the Commonwealth's PA Supplier Portal.
 - iii. The Professional must submit a unique invoice number with each invoice submitted. The unique invoice number will be listed on the Commonwealth of Pennsylvania's ACH remittance advice to enable the Professional to properly apply the Project's payment to the invoice submitted.
 - iv. It is the Professional's responsibility to ensure that the ACH information contained in SRM is accurate and complete. Failure to maintain accurate and complete information may result in delays in payments.
 - G. Upon acceptance by the Professional of the final payment under the terms of this Agreement, including any Amendments hereto, the Professional waives any and all claims for any costs, damages, or additional fees under this Agreement.
5. **LIMITED BUDGET.** The Professional must design this Project within the Base Construction Amount, in accordance with Article 2.1.115 of the General Conditions to this Agreement.

6. **SMALL DIVERSE BUSINESS (SDB) and VETERAN BUSINESS ENTERPRISE (VBE) PARTICIPATION.** The Professional agrees to meet and maintain its _____% commitment to utilize SDBs made in its SDB Participation Submittal and associated required documents and its _____% commitment to utilize VBEs made in its VBE Participation Submittal and the associated required documents. The SDB and VBE commitments are based on the total compensation paid to the Professional for this Project. The Professional agrees to complete the SDB and VBE payment information in the Department's Compliance Management Software, or as otherwise directed by the Department, in accordance with the Contract Documents.
7. **INCORPORATION BY REFERENCE.** This Agreement is made subject to and is governed by the Department's General Conditions of Professional Services Agreement, attached hereto as Exhibit J. The Professional's Application for Professional Selection is incorporated herein by reference. All Plans and Specifications must be prepared in conformity with the Department's Bureau of Capital Project Design Management Project Procedure Manual, as amended, and with the Department's Construction Contract Documents in effect at the time of the Construction Procurement Stage. This Agreement is subject to and governed by any Special Conditions made a part of thereof. In case of any irreconcilable inconsistency between a Special Condition and the General Conditions, the Special Condition shall govern.
8. **LAWS, REGULATIONS/ORDINANCES, and COMMONWEALTH PROVISIONS.** The Professional shall comply at all times with all applicable federal, Commonwealth of Pennsylvania, and local laws, ordinances, rules, regulations, and orders of any public authority having jurisdiction. Examples include but are not limited to the Americans with Disability Act Accessibility Guidelines and the Pennsylvania Uniform Construction Code. The Professional shall comply at all times with the laws and Commonwealth of Pennsylvania provisions included in Article 11 of the General Conditions and found throughout the Agreement for Professional Services and its General Conditions.
9. **APPLICABLE LAWS.** This Agreement for Professional Services shall be governed, construed, and enforced in accordance with the substantive laws of the Commonwealth of Pennsylvania.
10. **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.
11. **AMENDMENTS.** This Agreement may only be amended by a written agreement between the parties, executed by authorized representatives of the respective parties. The Professional hereby acknowledges receipt of notice that no person, including, but not limited to, the Client Agency, 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.
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

given 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. **NO PRIVITY OF CONTRACT.** The Professional agrees that there is no privity of contract between any other entity under contract with the Department and the Professional, and that the Professional is not an intended third party beneficiary of any other Department contract/agreement.

14. **HOLD HARMLESS AND INDEMNIFY CLAUSE.**
 - A. The Professional agrees to hold the Department and Commonwealth harmless from and indemnify the Department and Commonwealth against any and all third-party claims, demands and actions based upon or arising out of any activities performed by the Professional and its employees and agents under this Agreement, provided the Commonwealth gives Professional prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, et seq.), the Office of Attorney General (OAG) has the sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Professional, the Commonwealth will cooperate with all reasonable requests of Professional made in the defense of such suits.

 - B. Notwithstanding the above, neither party shall enter into any settlement without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Professional to control the defense and any related settlement negotiations.

15. **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 may 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.

16. **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 prior written approval from the Department.

17. **ADDITIONAL SERVICES.** The Professional will perform all necessary Additional Services required by the Project, as found in the Negotiated Project Scope and 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. Compensation for Additional Services shall be calculated as set forth in paragraph 4 herein.

18. **ATTENDANCE AT MEETINGS.** The Professional shall attend all meetings during Design and Construction Procurement Stages of the Project, 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 of the Project include job conferences and special meetings. In order to utilize the Professional's time in an efficient manner during its attendance at meetings, the Professional shall conduct site visits after its attendance at regularly scheduled job conferences. See Article 2.9.102 of the General Conditions for additional information regarding site visits and meetings. The Professional shall be compensated as an Additional Service for its attendance at meetings in excess of the numbers shown below:

Construction Contract Administration Stage _____
Meetings up to one (1) year after Final Inspection _____

Any visits compensated as an Additional Service shall not be counted against the number of visits included as Basic Services above. Any visits to the site by the Professional or Consultants not required by the Department, shall not be counted against the number of visits included as Basic Services above. Excluded visits would include those related to Change Orders or RFI responses.

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 Obligations to the Environment. In performing its design services, the Professional shall give due consideration to environmentally responsible and sustainable building and site design, and discuss opportunities to incorporate such design with the Department.
20. **RIGHT-TO-KNOW LAW.**
- A. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, ("RTKL") applies to this Agreement.
 - B. If the Commonwealth needs the Professional's assistance in any matter arising out of the RTKL related to this Agreement, it shall notify the Professional using the legal contact information provided in this Agreement. The Professional, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
 - C. Upon written notification from the Commonwealth that it requires the Professional's assistance in responding to a request under the RTKL for information related to this Agreement that may be in the Professional's possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Professional shall:
 - 1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Professional's possession arising out of this Agreement that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 - 2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Agreement.
 - D. 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, or other information that the Professional considers exempt from production under the RTKL, the Professional must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Professional explaining why the requested material is exempt from public disclosure under the RTKL.

- E. The Commonwealth will rely upon the written statement from the Professional in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Professional shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.
 - F. If the Professional fails to provide the Requested Information within the time period required by these provisions, the Professional shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Professional's failure, including any statutory damages assessed against the Commonwealth.
 - G. The Commonwealth will reimburse the Professional for any costs associated with complying with these provisions 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.
 - H. The Professional may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Professional shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Professional's failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, 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.
 - I. The Professional's duties relating to the RTKL are continuing duties that survive the expiration of this Agreement and shall continue as long as the Professional has Requested Information in its possession.
21. **MERGER CLAUSE.** This Agreement with all its Exhibits and Attachment 1, when executed, approved and delivered, shall constitute the entire Agreement between the parties, and there are no other representations or Agreements, oral or written, except as expressly set forth in this Agreement. This Agreement may not be amended or modified by the parties except as provided herein.
22. **SPECIAL CONDITIONS.** If required for the Project, Special Conditions are attached hereto as Exhibit K and incorporated by reference herein.

SIGNATURE PAGE IMMEDIATELY FOLLOWS

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

ATTEST: _____
Corporation
Secretary/Treasurer _____ Date _____
Name: _____ Date _____
President/Vice-President

WITNESS(ES): _____
Name: _____ Date _____
Limited Liability Company or Partnership

Name: _____ Date _____
Limited Partnership

Federal Identification No. _____

Commonwealth Vendor Identification No. _____

AND

COMMONWEALTH OF PENNSYLVANIA,
ACTING THROUGH THE DEPARTMENT
OF GENERAL SERVICES

Secretary of General Services

APPROVED AS TO FORM AND LEGALITY

DEPARTMENT OF GENERAL SERVICES

OFFICE OF GENERAL COUNSEL

Office of Chief Counsel, DGS

Office of General Counsel

OFFICE OF ATTORNEY GENERAL

Office of Attorney General

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

Comptroller Operations _____ Date

TABLE OF CONTENTS

EXHIBITS AND ATTACHMENTS

| <u>EXHIBIT</u> | <u>TITLE</u> | <u>PAGE</u> |
|-----------------------|----------------------------------------------------------------------|--------------------|
| A | List of Professional's Consultants | 11 |
| B | Designation and Description of Services | 14 |
| C | Non-Discrimination and Sexual Harassment Clause | 20 |
| D | Contractor Integrity and Disclosure of Financial Interest Provisions | 22 |
| E | Contractor Responsibility Provisions | 25 |
| F | Americans with Disability Act (ADA) Provisions | 26 |
| G | Trade Practices Act Provisions | 27 |
| H | Steel Products Provisions | 28 |
| I | Tax Liability Provisions | 29 |
| J | General Conditions to the Agreement for Professional Services | 30 |
| K | Special Conditions | 85 |

| <u>ATTACHMENT</u> | <u>TITLE</u> |
|--------------------------|-----------------------------------------------------|
| A | Negotiated Project Scope for Professional Agreement |

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 include all Small Diverse Businesses and/or Veteran Business Enterprises and other Consultants listed on its Design Professional Selection Application ("Application"). Each Consultant shall comply with the General Conditions of this Agreement to the same extent as the Professional. No changes shall be made to those Consultants listed on the Application, unless specifically approved by the Director of the Bureau of Capital Project Design Management. Additionally, no changes to the Consultants listed below shall be made unless the Professional requests and receives approval from the Director of Capital Project Design Management.

Consultant's Name _____

Consultant's Address _____

Consultant's Phone _____

Email Address _____

Services _____

Small Diverse Business (SDB) YES / NO

Veteran Business Enterprise (VBE) YES / NO

Listed on Application YES / NO

Consultant's Name _____

Consultant's Address _____

Consultant's Phone _____

Email Address _____

Services _____

Small Diverse Business (SDB) YES / NO

Veteran Business Enterprise (VBE) YES / NO

Listed on Application YES / NO

Consultant's Name _____

Consultant's Address _____

Consultant's Phone _____

Email Address _____

Services _____

Small Diverse Business (SDB) YES / NO

Veteran Business Enterprise (VBE) YES / NO

Listed on Application YES / NO

Consultant's Name _____
Consultant's Address _____
Consultant's Phone _____
Email Address _____
Services _____
Small Diverse Business (SDB) YES / NO
Veteran Business Enterprise (VBE) YES / NO
Listed on Application YES / NO

Consultant's Name _____
Consultant's Address _____
Consultant's Phone _____
Email Address _____
Services _____
Small Diverse Business (SDB) YES / NO
Veteran Business Enterprise (VBE) YES / NO
Listed on Application YES / NO

Consultant's Name _____
Consultant's Address _____
Consultant's Phone _____
Email Address _____
Services _____
Small Diverse Business (SDB) YES / NO
Veteran Business Enterprise (VBE) YES / NO
Listed on Application YES / NO

Consultant's Name _____
Consultant's Address _____
Consultant's Phone _____
Email Address _____
Services _____
Small Diverse Business (SDB) YES / NO
Veteran Business Enterprise (VBE) YES / NO
Listed on Application YES / NO

Consultant's Name _____
Consultant's Address _____
Consultant's Phone _____
Email Address _____
Services _____
Small Diverse Business (SDB) YES / NO
Veteran Business Enterprise (VBE) YES / NO
Listed on Application YES / NO

Consultant's Name _____
Consultant's Address _____
Consultant's Phone _____
Email Address _____
Services _____
Small Diverse Business (SDB) YES / NO
Veteran Business Enterprise (VBE) YES / NO
Listed on Application YES / NO

Consultant's Name _____
Consultant's Address _____
Consultant's Phone _____
Email Address _____
Services _____
Small Diverse Business (SDB) YES / NO
Veteran Business Enterprise (VBE) YES / NO
Listed on Application YES / NO

Consultant's Name _____
Consultant's Address _____
Consultant's Phone _____
Email Address _____
Services _____
Small Diverse Business (SDB) YES / NO
Veteran Business Enterprise (VBE) YES / NO
Listed on Application YES / NO

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 that 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.

B. ITEMIZATION OF BASIC 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.

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
 - a. Utility Agreements and License Agreements: All services associated with design, documentation, identification of service fees and construction costs and construction administration required for Agreements with utility companies to interrupt, upgrade, relocate, maintain or provide new service for the Project are included in Basic Services. Also included are review and assistance with any Agreement.
2. **CUSTOMARY BASIC SERVICES.** The Professional shall perform customary Basic 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 items:
 - Architectural
 - Civil Engineering

- Electrical Engineering
 - Fire Protection Engineering
 - HVAC Engineering
 - Plumbing Engineering
 - Structural Engineering
 - All regulatory permits and approvals required for construction of the Project, including but not limited to: Labor & Industry, Department of Health, Department of Environmental Protection, land development plan, sewage module, erosion and sedimentation control, stormwater management, PNDI, NPDES, PHMC, highway occupancy, zoning and code variances. Basic Services includes completion of application forms, including sewage modules, design of project construction elements necessary to comply with the regulatory requirements, including land development plans, sewage facilities, storm water management, sediment and erosion control, attendance at meetings with the governing body staff and/or Boards/Commissions/Councils/Authorities in connection with obtaining permits and approvals, drawings and compilations of computations which are required by the regulatory agency, municipality or zoning boards, and the review and development of any agreement if required by a Municipality or Authority.
 - AutoCAD compatible files of the bid drawings uploaded to e-Builder.
3. SPECIALIZED BASIC SERVICES. The Professional shall perform the listed specialized Basic 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 Analysis and Life Safety Consultation
 - IT 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 Equipment and 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
 - Telecommunication Infrastructure Consultation and Design
 - Wetland Absence/Presence Determination
 - LEED® Consultation/Certification Services

C. ITEMIZATION OF POTENTIAL ADDITIONAL SERVICES

Services listed in paragraph 1 are services deemed to be an Additional Service unless negotiated by the parties as a Basic Service. Services listed starting in paragraph 2 and in paragraphs thereafter under this subsection C are deemed to be Additional Services.

1. Additional Services: Additional Services identified as needed shall be performed using the Professional's own employees or a Consultant, as Additional Services. These 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. These services include, but are not limited to:
 - Acoustical/Audiovisual/Lighting/Theatrical Consultation for Performance Halls, Broadcast Studios & Exhibitions
 - IT Management/Networking Software/Hardware Selection
 - Historic Preservation Consultation and Design
 - Hospital/Medical Specialties
 - Industrial Hygienist
 - Interior Design for Artscaping/Plantscaping & Furnishings Selection
 - Laboratory Consultation
 - Library/Archives Consultation
 - Quality Assurance Testing and Inspection, including Special Inspections
 - Sound/Vibration Analysis
 - Environmental/Hazmat Survey and Testing
 - Wetlands Delineation and Mitigation
 - Invasive Testing and Exploration on Existing Facilities
2. ATTENDANCE AT CONSTRUCTION MEETINGS. The Professional shall be compensated as an additional service for its attendance at construction meetings in excess of the meetings required by paragraph 18 of the Agreement.
3. CHANGE ORDERS. Additional compensation other than at the established percentage rate for Change Orders established in Paragraph 4 of the Agreement may be paid in the following circumstances at the sole discretion of the Department:
 - a. When the Department determines that Professional services for a debit or credit change order are such that the applicable percentage fee is not appropriate compensation, a negotiated amount will be established by a Work Order.
 - b. When directed to proceed in an emergency situation or when failure to proceed with the services would delay the Project (neither of which is the result of the Professional's error or omission) the Professional shall keep accurate records of costs incurred. If, within the Department's sole discretion, the Department deems it appropriate based upon the particular circumstances, the Department may 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 cost of services provided up to the fee amount that would have been calculated had the change order been awarded. The award amount used to calculate fee may be the contractor's submitted price, the Professional's initial or final estimate, or the Construction Manager's estimate,

at the Department's discretion. 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.

4. Scope Changes. The Professional, during the Design stage, may be compensated as an Additional Service when directed by the Department for scope additions and/or changes, as is more generally described in the "Negotiated Project Scope" and as supplemented by any additional incorporated documentation. These scope additions/changes shall be limited to items consistent with the Legislative authorization for the Project. The Professional's compensation for Basic Services and the Base Construction Amount in paragraph 4 of the Professional Agreement shall not be adjusted due to Scope Changes authorized under this paragraph.
5. CODES, ORDINANCES AND PERMITS. The Professional shall be reimbursed the actual amount paid to regulatory agencies for approvals, application for approvals and permits obtained by the Professional.
6. 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).
7. FIELD/LABORATORY TESTS AND INVASIVE EXPLORATION. 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 and reports.
8. MEETINGS FOR REZONING AND VARIANCES AFTER FIRST REQUEST AND PRESENTATION. When required by the Department/Project, 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. Also, included in Basic Services is the review and development of any agreement, if required by a Municipality or Authority. The Professional shall be compensated as an additional service for all subsequent hearings, public meetings, and/or additional requests for rezoning and/or variances, if resubmission of the request is approved by the Department.
9. ON-SITE REPRESENTATION (FULL TIME OR PART TIME).
 - 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 Project Representative(s) to assist the Professional. Such Project Representatives shall be selected, employed, and directed by the Professional. The Professional shall submit the name and qualifications of the proposed Project Representative to the Director of the Bureau of Capital Project Design Management for review and/or approval.
 - b. The Project Representative or Representatives shall provide the services noted in the Bureau of Capital Project Design Management'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 Project Representative shall be mutually agreed upon in advance.
 - d. The Professional's on-site representation required by the Department during periods of construction overrun due to the fault of the Professional shall not be compensated.
10. 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 the General Conditions of the Agreement for Professional Services.
 11. 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, unless the re-bidding is required due to the Professional's actions.
 12. 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.
 13. REVISIONS TO APPROVED DRAWINGS AND SPECIFICATIONS. The Professional shall be compensated as an Additional Service when directed by the Department to make major revisions to previously approved Drawings or Specifications in whole, or to a significant extent, 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 Design Development Documents Submissions, other than revisions made necessary by an approved revised Project Scope or fundamental Program change, be considered as Additional Services. Revisions addressing submission of Reviewers' comments, even after Design Development Approval, are not considered to be Revisions to Approved Drawings and Specifications, unless they involve complete or major changes to previously approved documents and are specifically authorized by the Department as an Additional Service.
 14. 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 and where such drawings or models are not specifically required by the permit or regulatory approval process. Drawings or models created under Basic Services shall not be an Additional Service.
 15. 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 Capital Project Design Management 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
 - Water Flow Tests
 - Site Selection Investigations
16. 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 Site Survey drawings and on the Construction documents.
17. 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 Client Agency shall determine if the exploratory hole location is acceptable, considering the facility's operation and assist with relocation, if necessary. All existing conditions affecting the Work shall be documented on Contract Drawings.
18. WASTED DESIGN. The Professional shall be compensated as an Additional Service for abandoning or revising, to a significant extent, 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.

During the term of this Contract, the Contractor agrees as follows:

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 discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the *Pennsylvania Human Relations Act* (PHRA) and applicable federal laws, 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 by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract.
3. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under the contract.
4. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the *Public Employee Relations Act*, *Pennsylvania Labor Relations Act* or *National Labor Relations Act*, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.
5. The Contractor and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.
6. The Contractor and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and

applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.

7. The Contractor and each subcontractor represent that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The Contractor and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission ("EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to *Title VII of the Civil Rights Act of 1964*, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The Contractor and each subcontractor shall, upon request and within the time periods requested by the commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.
8. 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.
9. The Contractor's and each subcontractor'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 and each subcontractor shall have an obligation to inform the commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.
10. 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 contracting and procurement process.

1. **DEFINITIONS.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Section:
 - a. **“Affiliate”** means two or more entities where (a) a parent entity owns more than fifty percent of the voting stock of each of the entities; or (b) a common shareholder or group of shareholders owns more than fifty percent of the voting stock of each of the entities; or (c) the entities have a common proprietor or general partner.
 - 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 prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of the execution of this contract.
 - c. **“Contractor”** means the individual or entity that has entered this contract with the Commonwealth.
 - d. **“Contractor Related Parties”** means any affiliates of the Contractor and the Contractor’s executive officers, Pennsylvania officers and directors, or owners of five (5) percent or more interest in the Contractor.
 - e. **“Financial Interest”** means either:
 - i. **(1)** Ownership of more than a five percent interest in any business; or
 - ii. **(2)** Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 - f. **“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.
 - 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.
2. In furtherance of this policy, Contractor agrees to the following:
 - a. 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 or procurement with the Commonwealth.

- b. Contractor shall establish and implement a written business integrity policy, which includes, at a minimum, the requirements of these provisions as they relate to the Contractor activity with the Commonwealth and Commonwealth employees and which is made known to all Contractor employees. Posting these Contractor Integrity Provisions conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contract services are performed shall satisfy this requirement.
- c. Contractor, its affiliates, agents, employees, and anyone in privity with Contractor shall not accept, agree to give, offer, confer, or agree to confer or promise to confer, directly or indirectly, any gratuity or pecuniary benefit to any person, or to influence or attempt to influence any person in violation of any federal or state law, regulation, executive order of the Governor of Pennsylvania, statement of policy, management directive or any other published standard of the Commonwealth in connection with performance of work under this contract, except as provided in this contract.
- d. Contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material under this contract, 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.
- e. Contractor certifies to the best of its knowledge and belief that within the last five (5) years Contractor or Contractor Related Parties have not:
 - i. been indicted or convicted of a crime involving moral turpitude or business honesty or integrity in any jurisdiction;
 - ii. been suspended, debarred, or otherwise disqualified from entering into any contract with any governmental agency;
 - iii. had any business license or professional license suspended or revoked;
 - iv. had any sanction or finding of fact imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, bid rigging, embezzlement, misrepresentation, or anti-trust; and
 - v. been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or civil anti-trust investigation by any federal, state, or local prosecuting or investigative agency.

If Contractor cannot so certify to the above, then it must submit along with its bid, proposal or contract a written explanation of why such certification cannot be made and the Commonwealth will determine whether a contract may be entered into with the Contractor. The Contractor's obligation pursuant to this certification is ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to immediately notify the Commonwealth in writing if at any time during the term of the contract it becomes aware of any event which would cause the Contractor's certification or explanation to change. Contractor acknowledges that the Commonwealth may, in its sole discretion, terminate the contract for cause if it learns that any of the certifications made herein are currently false due to intervening factual circumstances or were false or should have been known to be false when entering into the contract.

- f. Contractor shall comply with the requirements of the *Lobbying Disclosure Act (65 Pa.C.S. §13A01 et seq.)* regardless of the method of award. If this contract was awarded on a Non-bid Basis, Contractor must also comply with the requirements of the *Section 1641 of the Pennsylvania Election Code (25 P.S. §3260a)*.
- g. When Contractor has reason to believe that any breach of ethical standards as set forth in law, the Governor's Code of Conduct, or these Contractor Integrity 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 the Office of the State Inspector General in writing.
- h. 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, to include any extensions thereof. Contractor shall immediately notify the Commonwealth in writing of any actions for occurrences that would result in a violation of these Contractor Integrity Provisions. Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of the 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. Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
- i. Contractor shall cooperate with the Office of the State Inspector General in its investigation of any alleged Commonwealth agency or employee breach of ethical standards and any alleged Contractor non-compliance with these Contractor Integrity Provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of an 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 Office of the State 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 refer to or concern this contract. Contractor shall incorporate this paragraph in any agreement, contract or subcontract it enters into in the course of the performance of this contract/agreement solely for the purpose of obtaining subcontractor compliance with this provision. The incorporation of this provision in a subcontract shall not create privity of contract between the Commonwealth and any such subcontractor, and no third party beneficiaries shall be created thereby.
- j. 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.

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 online at <http://www.dqs.pa.gov>.

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 1 above.

EXHIBIT G

TRADE PRACTICES ACT PROVISIONS

1. **Prohibition.** The *Trade Practices Act* prohibits the Commonwealth from specifying, purchasing or permitting to be furnished or used, in any public works, aluminum or steel products made in a foreign country which has been determined as “discriminating” by the court. It is also unlawful for any importer to sell or offer for sale to any person for use in any public works, aluminum or steel products made in a foreign county which has been determined as “discriminating.”

2. **Requirement.** In accordance with the Trade Practices Act (71 P.S. § 773.101, et seq.) the Contractor shall not specify, or permit to be used, in the Work any aluminum or steel products made in a foreign country that discriminates against aluminum or steel products manufactured in Pennsylvania. The countries of Brazil, South Korea, Spain, Mexico and Argentina have been found to discriminate against certain products manufactured in Pennsylvania. Therefore, the specification, purchase or use of those countries' products, as listed below, is not permitted for a project.
 - a. **Public Works** means any structure, building, highway, waterway, street, pier, transit car or system, airport or other betterment, work or improvement, whether for governmental or proprietary use contracted for by any public agency or financed in whole or in part by any public agency.

 - b. **Aluminum or Steel Products** means 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.

 - c. **Discriminating Countries.**
 - i. **Brazil:** Welded carbon steel pipes and tubes; carbon steel wire rod; tool steel; certain stainless steel bar; stainless steel wire rod and cold form stainless steel bar; pre-stressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet, and cold-rolled carbon steel sheet.

 - ii. **Spain:** Certain stainless steel products, including stainless steel wire rod, hot-rolled stainless steel bars and cold-formed stainless steel bars; pre-formed stainless steel bars; pre-stressed concrete steel wire strand; certain steel products including hot rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes, galvanized carbon steel sheet, hot-rolled carbon steel bars, and cold-formed carbon steel sheet.

 - iii. **South Korea:** Welded carbon steel pipes and tubes hot-rolled carbon steel place; hot-rolled carbon steel sheet and galvanized steel sheet.

 - iv. **Argentina:** Carbon steel wire rod and cold-rolled carbon steel sheet.

EXHIBIT H

STEEL PRODUCTS PROVISION

Pursuant to the Steel Products Procurement Act (SPPA), 73 P.S. § 1881, et seq. (“the SPPA”) steel products including approved proprietary products must be composed of steel manufactured in the United States. Products containing foreign steel are permitted only if 75% of the cost of the product is composed of articles or materials mined, produced or manufactured in the United States. The Department may grant an exception to the prohibition when it determines that the product is not manufactured of United States steel in sufficient quantity for the project. The Professional shall not knowingly specify a prohibited product if there are other steel products that meet the requirements of the SPPA.

EXHIBIT I

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 Commonwealth to set off any state and local tax liabilities of the Contractor or any of its subsidiaries, as well as any other amount due to the Commonwealth from the Contractor, not being contested on appeal by the Contractor, against any payment due to the Contractor under a 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. Such erroneous certification may also be grounds for the initiation of civil or criminal proceedings.

EXHIBIT J
GENERAL CONDITIONS TO THE
AGREEMENT FOR PROFESSIONAL SERVICES

TABLE OF CONTENTS

ARTICLE 1: DEFINITIONS

| | |
|---------|-------------------------------------------------------------|
| 1.1 | Definitions |
| 1.1.100 | Additional Services |
| 1.1.101 | Administrative Procedures |
| 1.1.102 | Agreement for Professional Services |
| 1.1.103 | Allocation |
| 1.1.104 | Application for Payment |
| 1.1.105 | Base Bid |
| 1.1.106 | Base Construction Amount |
| 1.1.107 | Basic Services |
| 1.1.108 | Basic Services Compensation |
| 1.1.109 | Bid Opening Date |
| 1.1.110 | Change Order |
| 1.1.111 | Client Agency |
| 1.1.112 | Commissioning Agent |
| 1.1.113 | Commonwealth |
| 1.1.114 | Construction Budget |
| 1.1.115 | Construction Contract Duration |
| 1.1.116 | Construction Contract Start Date |
| 1.1.117 | Construction Manager |
| 1.1.118 | Construction Procurement Services |
| 1.1.119 | Contract Completion Date |
| 1.1.120 | Days |
| 1.1.121 | Department |
| 1.1.122 | Department of Labor and Industry "Plan Revision" Submission |
| 1.1.123 | Director of Bureau of Capital Project Design Management |
| 1.1.124 | Effective Date of the Agreement |
| 1.1.125 | Error or Omission Change Order |
| 1.1.126 | Final Inspection |
| 1.1.127 | Job Conference |
| 1.1.128 | Lead Contractor |
| 1.1.129 | Negotiated Project Scope |
| 1.1.130 | Orientation |
| 1.1.131 | Phased Project |
| 1.1.132 | Prime Contractor |
| 1.1.133 | Prime Contractor Documents |
| 1.1.134 | Professional |
| 1.1.135 | Professional's Consultant |
| 1.1.136 | Project Procedure Manual |
| 1.1.137 | Project |
| 1.1.138 | Project Schedule |
| 1.1.139 | Project Scope |
| 1.1.140 | Punch List |
| 1.1.141 | Record Drawings |
| 1.1.142 | Request for Information |
| 1.1.143 | Samples |

| | |
|---------|-----------------------------------------------------------------|
| 1.1.144 | Secretary |
| 1.1.145 | Small Diverse Business/ Veteran Business Enterprise Consultants |
| 1.1.146 | Specification |
| 1.1.147 | Subcontractor |
| 1.1.148 | Submittals |
| 1.1.149 | Substantial Completion |
| 1.1.150 | Uniform Construction Code (UCC) |
| 1.1.151 | Work |
| 1.1.152 | Work Order |

ARTICLE 2: THE PROFESSIONALS RESPONSIBILITIES AND SERVICES

| | |
|------------|---------------------------------------------------------------------|
| <u>2.1</u> | General Requirements |
| 2.1.100 | Professional's Services |
| 2.1.101 | Limited Budget Contract |
| 2.1.102 | Professional Client Relationship |
| 2.1.103 | Professional's Consultants |
| 2.1.104 | Progress Reports During Design |
| 2.1.105 | Attendance at and Minutes of Conferences and Meetings During Design |
| 2.1.106 | Contractor Claim Review and Attendance and Testimony as Witness |
| 2.1.107 | Coordination of Services, Utilities and Existing Facilities |
| 2.1.108 | Coordination with Occupant Activities and Other Projects |
| 2.1.109 | Visits to Site |
| 2.1.110 | Submissions |
| 2.1.111 | Separate Prime Contracts |
| 2.1.112 | Representation as to Qualifications |
| 2.1.113 | Selected Construction Management |
| 2.1.114 | Selected Commissioning Agent |
| 2.1.115 | Statement of Probable Construction Costs |
| <u>2.2</u> | Programming Submission |
| 2.2.100 | Project Scope Statement |
| 2.2.101 | Orientation Conference |
| 2.2.102 | Program |
| 2.2.103 | Concept Design Option |
| 2.2.104 | Programming Submission Approval |
| 2.2.105 | Programming Submission Rejection |
| <u>2.3</u> | Schematic Design Submission |
| 2.3.100 | Schematic Design Documents |
| 2.3.101 | Statements of Probable Construction Costs |
| 2.3.102 | Schematic Design Approval |
| 2.3.103 | Small Diverse Business and Veteran Business Enterprise Requirements |
| 2.3.104 | Schematic Design Documents Rejection |
| <u>2.4</u> | Design Development Submission |
| 2.4.100 | Design Development Documents |
| 2.4.101 | Statement of Probable Construction Costs |
| 2.4.102 | Design Development Approval |
| 2.4.103 | Design Development Documents Rejection |
| <u>2.5</u> | Interim Construction Documents Submission |
| 2.5.100 | Interim Construction Documents |
| 2.5.101 | Statement of Probable Construction Cost |
| 2.5.102 | Interim Construction Documents Approval |
| 2.5.103 | Interim Construction Documents Rejection |

| | |
|-------------|--------------------------------------------------------------------|
| <u>2.6</u> | Construction Document Submission |
| 2.6.100 | Construction Documents |
| 2.6.101 | Final Statement of Probable Construction Cost |
| 2.6.102 | Uniform Construction Code (UCC) Application for Building Permit |
| 2.6.103 | Construction Documents Approval |
| 2.6.104 | Construction Documents Rejection |
| | |
| <u>2.7</u> | Conditional Acceptance of Design Submission Documents |
| 2.7.100 | Schematic Design Documents |
| 2.7.101 | Design Development Documents |
| 2.7.102 | Interim Construction Documents |
| 2.7.103 | Construction Documents |
| | |
| <u>2.8</u> | Construction Procurement |
| 2.8.100 | Scope of Services |
| 2.8.101 | Advertising and Receipt of Bids or Proposals |
| 2.8.102 | Addenda |
| 2.8.103 | Pre-Bid Conferences |
| 2.8.104 | Evaluation of Bids |
| 2.8.105 | Payment upon Award of Contract |
| | |
| <u>2.9</u> | Construction Contract Administration |
| 2.9.100 | Scope of Services |
| 2.9.101 | Access to Work and On-Site Representation |
| 2.9.102 | Visits to the Site and Meetings |
| 2.9.103 | Interpreter |
| 2.9.104 | Review of Contractor's Submittals |
| 2.9.105 | Progress Reports as to Construction |
| 2.9.106 | Review and Approval of Contractor's Breakdown Sheets |
| 2.9.107 | Change Orders |
| 2.9.108 | Errors and Omissions |
| 2.9.109 | Rejection or Stoppage of Work |
| 2.9.110 | Construction by State Employees |
| 2.9.111 | Standards of Quality |
| 2.9.112 | Substitutions |
| 2.9.113 | Extensions of Time |
| 2.9.114 | Professional Observation of Testing |
| 2.9.115 | Record Drawing Maintenance |
| | |
| <u>2.10</u> | Project Closeout |
| 2.10.100 | Closeout Generally |
| 2.10.101 | Final Inspection |
| 2.10.102 | Punch List Completion Verification and Acceptance |
| 2.10.103 | Construction Administration Beyond Scheduled Completion Date |
| 2.10.104 | Department of Labor and Industry "Record Drawings" |
| 2.10.105 | DGS "Record Drawings" |
| 2.10.106 | Construction and Maintenance Data |
| | |
| <u>2.11</u> | Additional Services |
| 2.11.100 | Additional Services Not Covered by Compensation for Basic Services |
| 2.11.101 | Compensation for Additional Services |
| | |
| <u>2.12</u> | UCC Compliance |
| 2.12.100 | Compliance During Construction |

ARTICLE 3: THE DEPARTMENT'S RESPONSIBILITIES AND DUTIES

- 3.1.100 Basic Information
- 3.1.101 Plat or Survey and Surveyor's Report and Due Diligence in Investigating Conditions
- 3.1.102 Interpretation of Instructions
- 3.1.103 Department to Act Promptly
- 3.1.104 Effect of Department's Decision on Design Work
- 3.1.105 Duty to Report

ARTICLE 4: THE PROFESSIONAL'S COMPENSATION AND PAYMENT

- 4.1.100 Basis of Professional's Compensation
- 4.1.101 Basis of Professional's Compensation for Additional Services
- 4.1.102 Schedule of Payments During Design
- 4.1.103 Schedule of Payments During Construction Contract Administration
- 4.1.104 Final Payment
- 4.1.105 Phasing
- 4.1.106 Change Orders
- 4.1.107 No Fees on Claims
- 4.1.108 No Fees on Construction Manager or Commissioning Agent Contract

ARTICLE 5: PROFESSIONAL'S ACCOUNTING RECORDS

- 5.1.100 Records
- 5.1.101 Records of Additional Services

ARTICLE 6: SUBMITTALS

- 6.1.100 Submittal Register
- 6.1.101 Submittal Schedule
- 6.1.102 Approval of Submittals
- 6.1.103 Contractor Coordination of Approved Submittals
- 6.1.104 Corrections to Submittals
- 6.1.105 Effect of Approval
- 6.1.106 Failure to Adhere to Schedule

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

- 7.1.100 Responsibility
- 7.1.101 Cooperation with Local Bodies
- 7.1.102 Proprietary Items, Copyrights, Patents

ARTICLE 8: INSURANCE

- 8.1.100 Professional Liability Insurance
- 8.1.101 General Liability Insurance
- 8.1.102 Certificate of Insurance
- 8.1.103 Unacceptable Insurance Company
- 8.1.104 Failure to Comply with Insurance Requirements

ARTICLE 9: TERMINATION OF PROFESSIONAL AGREEMENT AND SUSPENSION OF WORK THEREUNDER

- 9.1 Termination
 - 9.1.100 Termination for Convenience of the Department
 - 9.1.101 Termination Upon Disability of Professional
 - 9.1.102 Termination for Default of Professional
 - 9.1.103 Adjustment of Compensation Upon Termination

- 9.2 Suspension
- 9.2.100 Suspension of Work
- 9.2.101 Payment During Suspension

- 9.3 Reactivation of Project
- 9.3.100 Adjustment of Compensation on Reactivation of Project
- 9.3.101 Disputes Regarding Reactivation

ARTICLE 10: OWNERSHIP OF DOCUMENTS

- 10.1.100 Department Owns Documents
- 10.1.101 Patents, Copyrights, Licenses, and Ownership of Documents

ARTICLE 11: PROVISIONS REQUIRED BY LAW TO BE INSERTED

- 11.1.100 Provisions Deemed Inserted
- 11.1.101 Nondiscrimination and Sexual Harassment Clause
- 11.1.102 Contractor Integrity Provisions and Disclosure of Financial Interest
- 11.1.103 Contractor Debarment Provisions
- 11.1.104 Americans with Disabilities Act (ADA) Provisions
- 11.1.105 Trade Practices Act Provisions
- 11.1.106 Steel Products Procurement Act
- 11.1.107 Tax Liabilities Provisions
- 11.1.108 Environmental Statement

ARTICLE 12: PROFESSIONAL AND CONSULTANT RELATIONSHIP

- 12.1.100 Professional and Consultant Relationship
- 12.1.101 Professional's Consultant Payment

ARTICLE 13: SMALL DIVERSE BUSINESS AND VETERAN BUSINESS ENTERPRISE PARTICIPATION

- 13.1.100 General Information
- 13.1.101 Professional's Duty
- 13.1.102 Small Diverse Business / Veteran Business Enterprise Utilization Report
- 13.1.103 Calculation and Credit of the Professional's Payments Toward the Submitted Participation Percentage
- 13.1.104 Remedies

ARTICLE 14: DISPUTES

- 14.1.100 Professional Must Carry on Work During the Dispute Process
- 14.1.101 Dispute Resolution is a 3-Step Process
- 14.1.102 Step 1: Field Dispute Review Request
- 14.1.103 Step 2: Claim Settlement Conference
- 14.1.104 Step 3: Filing a Claim at the Board of Claims

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, and Final 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 to as the "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:** The document submitted by the contractor pursuant to the applicable Administrative Procedure for review by the Department and/or release of payment.

1.1.105 **BASE BID:** A discreetly defined scope of construction work encompassed for various construction scenarios of the Project.

1.1.106 **BASE CONSTRUCTION AMOUNT:** Dollar value designated in the Agreement within which to award construction contracts.

1.1.107 **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.

1.1.108 **BASIC SERVICES COMPENSATION:** Total amount payable by the Department to the Professional for the performance of the Services under this Agreement.

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. Also, known as the Proposal Due Date if the Department uses the Best Value RFP method of procurement.

1.1.110 **CHANGE ORDER:** A written order signed by the Department directing the construction contractor to make changes that the Changes In The Work article of the Construction Contract authorizes the Department to order. The change order may be either with the consent of the construction contractor or a unilateral order by the Department. The construction contract sum may be changed only by change order.

1.1.111 **CLIENT AGENCY:** This term refers to any executive agency, government agency, state-affiliated agency, or state-related institution that will ultimately use the completed Project, which includes the Work covered by the construction contract.

1.1.112 **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.

1.1.113 **COMMONWEALTH:** Commonwealth of Pennsylvania.

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

1.1.115 **CONSTRUCTION CONTRACT DURATION:** The number of calendar days set forth in the construction contract for completion of the Work, also referred to as Contract Time.

1.1.116 **CONSTRUCTION CONTRACT START DATE:** For purposes of calculating dates for completion of the Work, this is the date upon which the Initial Job Conference is held for the Project.

1.1.117 **CONSTRUCTION MANAGER:** There may not be a Construction Manager on every project. If the Department does not retain a Construction Manager, any reference in these General Conditions to "Construction Manager" shall be interpreted to mean the Department's representative from the Bureau of Construction. If the Department does retain a Construction Manager at any point during the Project, the Construction Manager shall be the consultant retained by the Department to act as the Department's designee and authorized representative to 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 Department/Construction Manager contract.

1.1.118 **CONSTRUCTION PROCUREMENT SERVICES:** Services performed by the Professional to assist the Department in obtaining construction contracts for the Project, which may include reproduction of the Contract Documents, and when required, attendance at pre-bid or pre-proposal conferences and evaluation of bids/qualifications.

1.1.119 **CONTRACT COMPLETION DATE:** The date calculated by adding the Contract Duration and any granted Extensions of Time to the Construction Contract Start Date for the completion of the Work.

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

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

1.1.122 **DEPARTMENT OF LABOR AND INDUSTRY “PLAN REVISION” SUBMISSION.** The revised set of Construction documents submitted by the Professional to the Department of Labor and Industry for approval of design and construction changes made after the UCC Building Permit is issued. This “Plan Revision Submission” is also referred to as the “Department of Labor & Industry Record Drawings” and shall be submitted in accordance with PA L&I and PA UCC requirements. Receipt of the approved Plan Revision Submission is required before an L&I Occupancy Permit will be issued.

1.1.123 **DIRECTOR OF BUREAU OF CAPITAL PROJECT DESIGN MANAGEMENT:** The Department’s employee who is the administrative head of the Bureau of Capital Project Design Management. The Bureau of Capital Project Design Management may serve as the Professional.

1.1.124 **EFFECTIVE DATE OF THE AGREEMENT:** Date on which the last Commonwealth official required to execute the agreement executes it.

1.1.125 **ERROR OR OMISSION CHANGE ORDER:** A change order to a construction contract required to correct deficiencies that the Department deems were caused by the Professional’s failure to comply with its standard of care in the performance of services under this Agreement.

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

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

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

1.1.129 **NEGOTIATED PROJECT SCOPE:** A detailed Scope of Services prepared and agreed upon by the Department and the Professional during the Project negotiations for Professional Services which becomes an attachment to the Agreement for Professional Services.

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

1.1.131 **PHASED PROJECT:** A Project that is usually designed by the same Professional and divided into separate projects or parts and released for bidding at different times.

1.1.132 **PRIME CONTRACTOR:** Any contractor holding a contract (“Prime Contract”) with the Department for construction of 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 having more than one Prime Contractor or if the Department, during any point prior to Bid Opening Date, increases the number of Prime Contracts.

1.1.133 **PRIME CONTRACT DOCUMENTS:** The Standard Construction Contract, Notice to Bidders (if procured through competitive sealed bids), Instructions to Bidders (if procured through competitive sealed bids), the Bid Proposal (if procured through competitive sealed bids), Notice to Proposers (if procured through competitive sealed proposals), Request for Proposals (if procured through competitive sealed proposals), construction contractor's entire proposal (if procured through competitive 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 Contract, all change orders, all schedules, and the Administrative Procedures of the Bureau of Construction. These form the 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.

1.1.134 **PROFESSIONAL:** The Commonwealth employee or any Architect and/or Engineer retained by the Department to design and document the work of the Project. The term may also include the Architect and/or Engineer's authorized representative or consultant(s). Throughout the Specifications and Drawings, wherever the term A/E, Architect or Engineer are used, it shall mean "Professional."

1.1.135 **PROFESSIONAL'S CONSULTANT:** Specialist(s) providing Professional Services that have 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. This term includes Small Diverse Business consultants and Veteran Business Enterprise consultants. 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.

1.1.136 **PROJECT PROCEDURE MANUAL:** Document provided and issued by the Department to direct the Professional setting forth the 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.

1.1.137 **PROJECT:** The total Work to be performed by all separate Prime Contractors under the Project Number.

1.1.138 **PROJECT SCHEDULE:** A schedule identifying all project activities and milestones from commencement of Design through completion of Construction. Schedule format is at the Professional's option but a bar chart type schedule is acceptable. The schedule must include but is not limited to all activities and milestones associated with the following activities: each design submissions, project site meetings and meetings with the Client Agency, all permits and approvals, all utility confirmations and agreements, post stormwater agreement if applicable, all additional services work orders, bid advertisement, bid receipt and award of construction contracts, start and completion of construction. This scheduling requirement is in addition to any scheduling activities that may be in e-Builder.

1.1.139 **PROJECT SCOPE:** The authorization or approval by the Department and the Office of Budget of a capital improvement project that describes the Allocation, the property site and a description of the construction required.

1.1.140 **PUNCH LIST:** An itemized list of WORK requiring completion or correction generated by the Professional at the Final Inspection.

1.1.141 **RECORD DRAWINGS:** Terminology used by the Department to identify 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 showing 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.

“Record Drawings” are not the same as the Department of Labor and Industry “Plan Revision” submission.

1.1.142 **REQUEST FOR INFORMATION:** A written question issued by a Prime Contractor to the Professional seeking clarification of the Contract Documents.

1.1.143 **SAMPLES:** Physical examples furnished by a Prime Contractor to illustrate materials, equipment or workmanship, and to establish standards by which the Work will be judged.

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

1.1.145 **SMALL DIVERSE BUSINESS / VETERAN BUSINESS ENTERPRISE CONSULTANT:** See “Professional’s Consultant” in these Definitions.

1.1.146 **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 of the Construction Contract.

1.1.147 **SUBCONTRACTOR:** A person or organization that has a contract with a Prime 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.

1.1.148 **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 a Prime 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.

1.1.149 **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.

1.1.150 **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.gov> and clicking on the Uniform Construction Code link. The Professional is responsible for compliance as set forth in the UCC and these General Conditions.

1.1.151 **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 Prime Contractor to fulfill its obligations. The Work may constitute the whole or a part of the Project.

1.1.152 **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. The Professional shall utilize the following for its required submissions unless otherwise instructed by the Department:

- A. **E-Builder Construction Management Software. To improve productivity and efficiency, and to streamline the process of construction management during all phases of design, procurement, award and contract administration, the Department will utilize the e–Builder Enterprise Software Program (e-Builder). The Professional shall become familiar with and utilize e-Builder for all Professional Services and administrative duties provided under this Agreement.**

- B. **Compliance Management Software. To improve efficiency and to streamline the process of reporting Small Diverse Business (SDB) and Veteran Business Enterprise (VBE) payment information to the Bureau of Diversity, Inclusion, and Small Business Opportunities (BDISBO), the Department will utilize a Compliance Management Software. The Professional shall become familiar with and utilize the Department's Compliance Management Software to report all payment information from the Professional to SDBs and VBEs under 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 Article 2.1.115 of these General Conditions. 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 or RFP is issued; and

- B. The construction contractors' bids/Proposals 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 Amount.

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 Client Agency in accordance with the Project Scope. The Professional is required to coordinate and communicate with the Client Agency, but such coordination and communication does not constitute a client relationship between the Professional and the Client Agency. Neither the Client Agency nor the Professional may change the Project Scope. All requests for such changes must be submitted to the Department in writing

by the Client Agency. If the Professional receives communication and/or information from the Client 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): All agreements between the Professional and the 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 Schedule, (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 Schedule will have ramifications, including but not limited to subjecting the Professional to penalties and attorney fees under §3935, and possible suspension and/or debarment under §531 of the Commonwealth Procurement Code.
 - 5. Incorporate these General Conditions and 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.
- B. Upon request from the Department, the Professional shall upload a copy of the requested Professional's Consultant Agreement to e-Builder.
- C. The Professional shall upload a copy of every Professional's Consultant Agreement with a Small Diverse Business or Veteran Business Enterprise to e-Builder.

2.1.104 **PROGRESS REPORTS DURING DESIGN.** The Professional shall, during all Design Submissions, provide the Department with 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;
- E. Status of issued and anticipated Work Orders; and
- F. 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(s). 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 DURING DESIGN.

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 within one (1) week after each such conference or 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. See Article 2.9.102 for meetings during the Construction Contract Administration.

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 three mandatory field dispute review meetings (at 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 Settlement Conferences: The Professional shall attend all In-House Claim Settlement Conferences scheduled by the Department. The Professional shall provide up to 12 man-hours (including preparation, travel and meeting time) as Basic Services. Compensation for any hours beyond the 12 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 disputes process set forth in Article 14 of these General Conditions.

2.1.107 **COORDINATION OF SERVICES, UTILITIES AND EXISTING FACILITIES.** As part of Basic Services, the Professional shall coordinate all of its services with and between its consultants, the Department and the Client Agency and obtain all necessary data for coordinating the Project with existing structures and all support utilities. The Professional shall consult with the Department and Client Agency regarding any correlation of design with future planning. The Professional shall confirm in writing to the Department and the Client 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 but not limited to 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 Project studies, reports, investigations, tests, or specialized additional services have been performed, the Professional shall, as part of Basic Services, coordinate, incorporate and develop design appropriately. In cases where new or modified utility

service requires access to Commonwealth property, the Professional shall notify the Department so necessary Public Service Line License or Rights-of-Way with the respective utility companies can be prepared. 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 (municipal or private), and the cost thereof will be included in the Statement of Probable Construction Cost.

2.1.108 **COORDINATION WITH OCCUPANT ACTIVITIES AND OTHER PROJECTS.** Multiple design and construction projects by others and occupant activities may be occurring within the limit of contract. The Professional will be required to coordinate their ongoing design with construction of these projects, and with the occupant activities, in order to minimize disruption of services, occupant relocation, and/or interference of work. Coordinate construction staging, phasing, overlapping project limits, building, systems and piping interconnection between projects and scheduling. A detailed coordination plan will be required in Division 1 of the specifications for construction coordination among projects and occupant activities and is required as part of Basic Services.

2.1.109 **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 Client 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 Client 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 had taken such data into proper consideration.

2.1.110 **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 by the Department through e-Builder.
- C. **REVISIONS:** The Professional is responsible for responding to any and all comments to design made by the Department and/or the Client Agency through e-Builder.

2.1.111 **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).

2.1.112 **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.

2.1.113 **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.

2.1.114 **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.

2.1.115 **STATEMENT OF PROBABLE CONSTRUCTION COSTS.** The Professional's Statement of Probable Construction Cost must be submitted in e-Builder on the form prescribed in the Department's Bureau of Capital Project Design Management 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 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 through e-Builder. 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. For each design submission beginning with Schematic Design, the Professional shall list a minimum of three (3) proposed additive ascending Base Bids of approximately equal incremental value, which may be used to compartmentalize the construction costs. At least two (2) Base Bids shall be within the Base Construction Amount, with Base Bid No. 1 at approximately 90% but no more than 95% of the Base Construction Amount. Additional Base Bids over the Base Construction Amount may be permitted on a project by project basis. Written approval by the Department is required on any Base Bids in excess of the Base Construction Amount. 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 Client 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.

- C. 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 Client Agency to determine detailed program requirements and shall refine and complete the Program as described in the Bureau of Capital Project Design Management Project Procedure Manual.

2.2.102 PROGRAM. The Program is developed by the Professional in order to describe the Department's budget, objectives, Project 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 Client Agency. If the Professional determines, after coordinating and problem-solving with the Client Agency, that the program cannot be developed as defined in this section, then the Professional shall submit an 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 Client Agency, the Professional shall prepare and submit to the Department and the Client 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. A Statement of Probable Construction Cost shall be included for each concept option. In order to be considered complete, the submission shall include the written acceptance of the Client Agency of the proposed solution, in accordance with the Bureau of Capital Project Design Management Project Procedure Manual.

2.2.104 PROGRAMMING SUBMISSION APPROVAL. The Department shall provide 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.

2.2.105 **PROGRAMMING SUBMISSION REJECTION.** The Department will provide the Professional documentation regarding any rejection of the submission due to failure to adhere to the requirements of the Bureau of Capital Project Design Management Project Procedure Manual.

- A. The Professional shall address all comments and issues raised by the Department and shall submit revised Programming Submission Documents that address all such comments within the revised submission deadline provided by the Department in the rejection. The Professional shall also submit a proposed recovery Project Schedule with the revised submission. The Department will set forth the final recovery Project 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 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 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. Such failure may result in default by the Professional of this Professional Agreement.

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 Client 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 Capital Project Design Management Project Procedure Manual.

2.3.101 **STATEMENT OF PROBABLE CONSTRUCTION COST.** The Professional shall prepare and submit a Statement of Probable Construction Cost on forms prescribed by the Department's Bureau of Capital Project Design Management 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 is within the Base Construction Amount as set in Paragraph 4(a) of the Agreement for Professional Services. The Statement 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 the Base Construction Amount and include ascending Base Bids as per Paragraph 2.1.115 of these General Conditions.

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 Project Schedule and the Statement of Probable Construction Cost at the scheduled Review Conference. The Professional shall obtain the approval of the Client 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 **SMALL DIVERSE BUSINESS AND VETERAN BUSINESS ENTERPRISE REQUIREMENTS.** The Professional shall submit, as a condition of Schematic Design approval, consultant agreements for each SDB or VBE the Professional listed on Exhibit A of Agreement. The Professional shall also submit all other SDB or VBE consultant agreements when appropriate to be considered for credit.

2.3.104 **SCHEMATIC DESIGN DOCUMENTS REJECTION.** The Department will provide the Professional documentation regarding any rejection of the submission due to failure to adhere to the requirements of the Bureau of Capital Project Design Management 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. The Professional shall also submit a proposed recovery Project Schedule with the revised submission. The Department will set forth the final recovery Project 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 rejection, until it receives 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. 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 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 Capital Project Design Management 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 Capital Project Design Management 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. The Statement 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 the Base Construction Amount and shall include additive ascending Base Bids as per Paragraph 2.1.115 of these General Conditions

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 Project Schedule and the Statement of Probable Construction Cost at the scheduled Review Conference. The Design Professional shall obtain the approval of the Department and the Client 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 documentation regarding any rejection of the submission due to failure to adhere to the requirements of the Bureau of Capital Project Design Management 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. The Professional shall also submit a proposed recovery Project Schedule with the revised submission. The Department will set forth the final recovery Project 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 submission until it receives 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. 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. However, for Federally funded Department of Military and Veterans Affairs' projects, the Interim Construction Documents should be developed to demonstrate that at least sixty-five percent (65%) 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 Capital Project Design Management 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 Capital Project Design Management 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 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. The Statement of Probable Construction Cost shall be coordinated and consistent with project descriptions, plans, drawings and specifications at the time the statement is prepared and shall be within the Base Construction amount and shall include additive ascending Base Bids per Paragraph 2.1.115 of these General Conditions.

If the Statement of Probable Construction Cost for at least two (2) of the required Base Bids 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 **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 Project Schedule and the Statement of Probable Construction Cost. The Design Professional shall obtain the 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.

2.5.103 **INTERIM CONSTRUCTION DOCUMENTS REJECTION.** The Department will provide the Professional documentation regarding any rejection of the submission due to failure to adhere to the requirements of the Bureau of Capital Project Design Management Project Procedure Manual.

- A. The Professional shall address all comments and issues raised by the Department and shall submit revised Interim Construction Documents that address all such comments within the revised submission deadline provided by the Department in the rejection. The Professional shall also submit a proposed recovery Project Schedule with the revised submission. The

Department will set forth the final recovery Project 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 submission until it receives approval from the Department of the Interim Construction 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. Such failure may result in default by the Professional of this Professional Agreement.

2.6 CONSTRUCTION DOCUMENTS SUBMISSION

2.6.100 CONSTRUCTION DOCUMENTS. Upon the Department's 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, as amended, and shall submit the same for review and approval to the Department and for review by the Client 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 Capital Project Design Management 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 Capital Project Design Management 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 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 and shall be within the Base Construction amount and shall include additive ascending Base Bids per Paragraph 2.1.115 of these General Conditions.

If the Statement of Probable Construction Cost for at least two (2) of the required Base Bids 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 UNIFORM CONSTRUCTION CODE (UCC) APPLICATION FOR BUILDING PERMIT. The Professional shall determine when the Project documentation is sufficiently completed and ready to be submitted for building permit purposes and will submit all the construction documents to the Department of Labor and Industry with completed UCC Application for building permit.

2.6.103 **CONSTRUCTION DOCUMENTS APPROVAL.** The Professional shall meet with the Department for the purpose of presenting and reviewing the Construction Documents, including but not limited to the updated schedule, the Final Statement of Probable Construction Cost, permits and approvals, and utility agreements. The Design Professional shall obtain the 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.

2.6.104 **CONSTRUCTION DOCUMENTS REJECTION.** The Department will provide the Professional documentation regarding any rejection of the submission due to failure to adhere to the requirements of the Bureau of Capital Project Design Management 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.
- B. The Professional shall not be paid on any outstanding invoices above 90% of the fee for the rejected submission, until it receives 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. 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 by adding 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 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 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 or the approved extension

date, 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 by adding 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 or resubmit a revised partial submission, or 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 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 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 by adding 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 by adding 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 SERVICES**

2.8.100 **SCOPE OF SERVICES.** When the Department determines the Project is ready for bidding, it will utilize the e-Builder Enterprise Software Program (e-builder) for electronic bidding.

The Professional will provide all forms and documents, including a complete set of Contract Documents, required for bidding through the CD submissions process in e-Builder. The Design Manager will move the Contract Documents to the bidding folder. The Professional shall attend the Pre-Bid Conference in sealed bid procurements to answer all technical and constructability issues. If the Department utilizes the Competitive Sealed Proposal (Best Value RFP) procurement method for designated projects, the Professional shall attend the Initial Determination Meeting, the Initial Evaluation Committee Meeting and the Pre-Proposal Conference to provide, at a minimum, an overview of the Project and answer all technical and constructability issues. The Professional will upload all forms and documents, including a complete set of Contract Documents, in e-Builder.

2.8.101 **ADVERTISING AND RECEIPT OF BIDS OR PROPOSALS.** The Department will designate the construction period and advertise the Project in PA e-marketplace at www.emarketplace.state.pa.us. The Department will designate the date and time of the Bid Opening in e-Builder, and it will be open to the public via web conference. The web conference link will be provided in the Notice to Bidders. If the Department is utilizing the Best Value RFP procurement method, the Department will designate the date, hour and place for receipt of the proposals.

2.8.102 **ADDENDA.** The Professional's response to any question, clarification, or other explanation regarding the Contract Documents shall be in the form of an Addendum issued in e-Builder. All bidders that have created a user profile in e-Builder will be notified as addenda are issued. The Professional shall only issue addenda that have been approved by the Department.

2.8.103 **PRE-BID/PRE-PROPOSAL CONFERENCES.** The Professional, with its key consultants, shall attend, as the chairperson, pre-bid / pre-proposal conferences as part of Basic Services. The Professional shall be responsible for taking and issuing the Minutes of the Pre-Bid / Pre-Proposal Conference to the Department. The meeting Minutes, alone, shall not be issued as an addendum. Only written questions received, resulting from the Pre-Bid / Pre-Proposal Conference, shall be addressed by an addendum issued via e-Builder.

2.8.104 **EVALUATION OF BIDS.** Evaluation of Bids is the responsibility of the Department. At the discretion of the Department, the Professional may evaluate the reasonableness of the bids and their compliance with the requirements of the bidding documents. The Professional, upon request, 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.

2.8.105 **PAYMENT UPON AWARD OF CONTRACT.** The Professional shall be paid the fee for Bidding Services upon the award of a contract by the Department. If after the bids or proposals are received and, through no fault of the Professional, the award of the construction contract(s) is not made, the Professional shall be paid its Procurement Services amount.

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. 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. The Professional shall provide two complete paper sets of the Contract Documents to BOC.

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 Client 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 and such duration as necessary to properly review the respective phases of the Work in order to achieve the requirements of Construction Contract Administration for each Contract. The maximum number of visits is as set forth in the Agreement. When directed by the Department, the Professional and Professional's Consultants must attend any and all meetings and job conferences that are required by the Department. The Professional's and Professional's Consultants 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. A meeting on a given day is counted as one (1) meeting regardless of the number of attendees; however, a consultant will not be required to attend more than one meeting in a thirty (30) day period while work related to the Consultant's expertise is ongoing without an additional meeting being counted towards the number of meetings 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 and submit a Progress Report. 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, including 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 request from a construction contractor or the Department (in the form of an RFI-Request for Information submitted in e-Builder), the Professional will render an interpretation or evaluation consistent with the Contract Documents.

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 three (3) days of each job conference or other meeting, submit these reports through e-Builder to the Assistant Project Manager relative to the progress of the Work and or issues discussed at each meeting, in a general discussion, as well as any issues identified and/or discussed during a review of the project and work in progress. The Progress Reports 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. Failure to timely submit Progress Reports may delay payment.

2.9.106 **REVIEW AND APPROVAL OF CONTRACTOR'S BREAKDOWN SHEETS.** The Professional shall review and approve or disapprove the detailed Cost Breakdown sheets submitted by all Contractors in e-Builder.

2.9.107 **CHANGE ORDERS.** The Professional shall evaluate the scope and cost and recommend action to the Department on all change orders initiated by the Department, the Client Agency, the construction contractors, or by the Professional's own observation of the Work.

- A. EVALUATION OF THE CHANGE ORDER. The evaluations shall include a Statement of Probable Construction Cost (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 through e-Builder. If the costs are disputed, the Professional shall provide a detailed cost breakdown to substantiate their dispute of the contractor's costs.
- C. DEPARTMENT'S REVIEW. The Department will review the Professional's input and determine those change orders to be pursued.
- D. FEES. At Final Inspection, or at a time sooner than Final Inspection as determined in the sole discretion of the Department, the Professional shall be paid its fee on all appropriate change orders in accordance with Paragraph 4 of the Agreement.

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.** For purposes of this section, error and omission change orders are defined as follows.
 - 1. 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.
 - 2. A change order is an **error** change order if work must be removed and/or replaced due to the failure of the Professional to produce proper and coordinated specifications and drawings.
- B. At Final Inspection, 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 contract award amount, the Department may initiate an error or omission review, to be conducted at a time determined by the Department.

1. If the outcome of the review determines that the total of all error or omission change orders do not exceed 2.5% of the contract 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 outcome of the review determines that the total of all error or omission change orders exceeds 2.5% of the contract award amount, no fees will be paid on the reviewed error and omissions change orders and an assessment will be made against the Professional.

C. **Assessment Costs.** 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 errors or omissions, and the total of all Error or Omission change orders exceeds 2.5% of the contract award amount, the Professional will be assessed the following on each Error or Omission Change Order:

1. For **omission** change orders, the Professional will be assessed 10% of the change order amount which will cover all associated costs owed to the Department due to the omission.
2. For **error** change orders, the Professional will be assessed the cost of removing and replacing the work to remedy the error, **plus** an Administrative Cost of 10% of the change order amount, **plus** any other costs resulting from the error, which may include but not be limited to inefficiencies, acceleration and delay costs.

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 a manufacturer's name and product/model designation is specified, it is to be used as a "basis of design," to establish a standard of quality, appearance, design, function, and performance, and for establishing a standard of competitive bidding. The construction contractor will furnish submittals to the Professional and the Department, subsequent to the Effective Date of the Agreement, which shall include a comprehensive description for each material or item of equipment proposed to be utilized, with engineering, construction, dimension and performance data, and certifying that the item is "equal" in quality, appearance, design, function, and performance to the "basis of design." The Professional will render a written determination to the construction contractor. Products,

materials, or equipment determined as “equal” to that named in the specifications 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 Department’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.

2.9.115 **RECORD DRAWING MAINTENANCE.** The Professional shall maintain a set of record drawings that incorporate drawing changes developed by the Professional and its Consultants in response to RFIs, Change Orders and other administrative information issued by the Professional related to the drawings. The maintained record drawing set is to be shared electronically in PDF format and be updated monthly as the construction progresses. The Professional shall only upload to e-Builder the drawings that have been updated. The Drawing changes to be included generally align with the requirements of the L&I “Plan Revision” Submission referenced in Paragraph 2.10.104. “redlines” or “as-builts” will continue to be maintained by the Contractor(s) and will be turned over to the Professional at the end of construction for incorporating into the final DGS Record Drawings referenced in Paragraph 2.10.105.

2.10 **PROJECT CLOSEOUT**

2.10.100 **CLOSEOUT GENERALLY.** Project Closeout consists of a Final Inspection, which is deemed to be a significant activity considered to be a Project Milestone. 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, 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 Final 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.** A determination of substantial completion will occur within five (5) days from the receipt of both a request by the Contractor to the Department for a Final Inspection and an application for final payment. If the Department and the Professional concur that the Work is at substantial completion, the Final Inspection shall be conducted within ten (10) days by the Department and the Professional. In such case, the Professional shall produce and deliver to the Contractor, at the Final Inspection or soon thereafter, 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.

2.10.102 **PUNCH LIST COMPLETION VERIFICATION AND ACCEPTANCE.** At the Department’s direction, the Professional shall visit the site for the purpose of verifying and accepting Punch List

work. The Department will be responsible for managing the punch list completion process and requesting the Professional's presence.

2.10.103 **CONSTRUCTION ADMINISTRATION BEYOND SCHEDULED COMPLETION DATE.** If the last Final Inspection for the Prime Contracts occurs after the period of scheduled construction as specified in the contract documents, as amended, then the Professional is entitled to additional compensation for each month up to Final 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 (a) and (b) above are not satisfied, a Work Order may be issued, at the Department's sole discretion, for Professional services beyond the scheduled completion date. 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 2.11 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 "PLAN REVISION" SUBMISSION.** The Professional is responsible for submitting to the Department of Labor and Industry a revised set of Construction Documents for approval of design and construction changes made after the UCC Building Permit is issued. This "Plan Revision Submission" is also referred to as the "Department of Labor & Industry Record Drawings" and shall be submitted in accordance with PA L&I and PA UCC requirements. The Professional shall provide both the DGS Design Project Manager and the Client Agency with a CD of the approved L&I Plan Revision Submission in .pdf format. Receipt of the approved Plan Revision Submission is required before an L&I Occupancy Permit will be issued

2.10.105 **DGS RECORD DRAWINGS.** Within ninety (90) days from the last Final Inspection of the Project, the Professional shall submit Record Drawings showing all changes from the Construction Documents made during the course of construction. The Record Drawings shall indicate the vertical and horizontal alignment of concealed pipes, conduits and similar items. Recorded changes shall be obtained from clearly marked field prints, provided by the Construction Contractors and from Change Orders, and incorporated into the AutoCAD Construction Document drawing files. Record Drawings shall be delivered to, and shall become the property of the Department.

2.10.106 **OPERATION AND MAINTENANCE DATA.** At Final Inspection, the Professional shall collect from the Prime Contractors, as provided in the Construction Documents, a rough draft of the Operation and Maintenance Instructions Manuals ("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 indexed PDF 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) PDF 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 in the Negotiated Project Scope, all those services which are required by the Project scope or which should be included as 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 authorized by the Director of the Bureau of Capital Project Design Management , and performed by the Professional, such Additional Services shall be the subject for additional compensation, as provided in this part. Upon direction from the Department, the Professional shall proceed with Additional Services so as not to cause delay to the Project.

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.pa.gov>. 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), except that special inspections, in accordance with the International Building Code (IBC), will be Additional Services.

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 Capital Project Design Management 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 Capital Project Design Management 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 compensation and payments for all submissions, the construction procurement services, and construction contract administration services shall be the negotiated fee set forth in Paragraph 4 of the Professional Agreement. Payments shall be made in accordance with the payment schedule established in this section and the provisions of the Prompt Payment Schedules found in the Commonwealth Procurement Code, 62 Pa. C.S. §3931-§3939.

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 may be compensated up to a maximum of 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 regarding the fee, 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 Capital Project Design Management .

4.1.102 SCHEDULE OF PAYMENTS DURING DESIGN. Unless a Special Condition states otherwise, the Professional may invoice monthly for the percent complete for the design stage. The negotiated dollar value of each design stage is listed in the Agreement. 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. 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. The below percentages were used as a guide during negotiations.

| | <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 | 17% | 57% |
| E. Upon approval of Construction Documents Submission | 17% | 74% |

F. Procurement Services (upon Award) 1% 75%

The Professional shall also submit updated Small Diverse Business / Veteran Business Enterprise payment information in the Department’s Compliance Management Software at least every thirty (30) days or prior to every invoice, whichever is more frequent. Failure to submit this payment information prior to each monthly invoice may result in delays in payment.

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.

Unless a Special Condition states otherwise, invoicing for this stage starts with the Initial Job Conference. The Professional’s Construction Contract Administration fee listed in the Agreement 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, including timely submission of Progress Reports. The Professional shall also submit updated Small Diverse Business and Veteran Business Enterprise payment information at least every thirty (30) days or prior to every invoice, whichever is more frequent. Failure to submit updated payment information prior to each monthly invoice may result in delays in payment. The following percentages were used as a guide during negotiations.

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

4.1.104 FINAL PAYMENT. Upon approval by the Professional and the Department that all of the construction work of this Project has been completed in an acceptable manner and in accordance with the plans and specifications and any approved contract modifications, and approval of the DGS Record Drawings, completion of the Department’s evaluation of Error/Omission change orders, final resolution of all construction contractor and Professional claims and completion of all other contract requirements, the Department will pay the Professional’s Final Payment compensation listed in the Agreement.

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

At the Department’s discretion, it may release half of the Final Payment upon approval by the Professional and the Department that all of the construction work of this Project has been completed in an acceptable manner and in accordance with the plans and specifications and any approved contract modifications and receipt of the DGS 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 Department and the Professional’s will negotiate an Agreement for Professional Services for each phase.

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 Change Order Fee established for the Project applied to the Change Order amount, with no reduction in Basic Services Compensation for Credit Change Orders. The Department will issue a Work Order for some or all Change Order fees owed to the Professional after Final Inspection or at the Department's discretion and then the Professional shall submit an invoice for payment for these fees.

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 2.1.113 and 2.1.114. 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 **SUBMITTAL REGISTER.** The Professional must prepare and submit a listing of all submittals identified in the Project Manual including but not limited to shop drawings, material data, samples and product data. Include all items the Professional is required to review to verify the correct products and equipment will be provided by the construction contractors. Prepare the Submittal Register as a separate document for the Construction Document submission. The final Submittals Register is to be uploaded to e-Builder® by the Professional no later than Notice of Award to the Contractors.

6.1.101 **SUBMITTAL SCHEDULE.** Prime contractors shall submit all necessary submittals in e-Builder for the Professional to review in accordance with a priority submittal schedule established by the Professional and the prime contractors. The priority submittal schedule shall be determined no later than the first job conference held after the Initial Job Conference.

6.1.102 **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 take action on the submittals 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 in e-Builder to the time of the date that the Professional takes action on the submittal. 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 take action no later than fourteen (14) calendar days after receipt. Nothing in this paragraph relieves the Prime Contractor from its responsibility for a late submission.

6.1.103 **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. A Prime Contractor must note any exceptions taken to the content of another prime contractor's approved submittal in e-Builder 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.

6.1.104 **CORRECTIONS TO SUBMITTALS.** The Professional shall review and take action by approving or disapproving any resubmissions within ten (10) calendar days of its receipt in e-Builder, 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 in e-Builder to the date that the Professional takes action on the resubmission.

6.1.105 **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 Contract 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 Prime Contractor of responsibility for any deviation from the Contract Documents, unless the Prime 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.

6.1.106 **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 the right to assess damages attributable to the Professional's delays in approving the submittals at a later date. 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. Basic Services shall include all regulatory permits and approvals required for construction of the Project, including but not limited to: Labor & Industry, Department of Health, Department of Environmental Protection, land development plan, sewage module, erosion and sedimentation control, stormwater management, PNDI, NPDES, highway occupancy, zoning and code variances.

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 Project 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 these General Conditions. In addition, the certificates of insurance required under Paragraph 8.1.102 of these 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 these General Conditions, up to and including one year after the date of the last Final Inspection of the Project contracts.

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 if requested, 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 Final 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, at that time or subsequently given, relating to such termination, including but not limited to: instructions concerning delivery of electronic files, drawings, sketches, and other architectural/engineering data to the Department; discontinuance of 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 the 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 the Department may 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, at that time 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 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, at that time or subsequently given, relating to such termination, including but not limited to: instructions concerning delivery of electronic files, drawings, sketches, and other architectural/engineering data to the Department; discontinuance of 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 provided 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 to all

completed design phases, plus 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 replacement 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 exceed the Basic Services Compensation 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, the Department and the Professional shall agree, prior to the reactivation of Services, upon a lump-sum or other basis of reimbursement to the Professional for extra startup 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 for reactivation of Services, the Professional shall proceed with the Services when so directed and submit the dispute in accordance with Article 14 Disputes of these General Conditions. 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, electronic files 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:** The Professional and its Consultants 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 Consultants 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, electronic files, 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 Consultants are the sole and exclusive property of the Department and shall be considered “works made for hire” under the Copyright Act of 1976, as amended, 17 United States Code. 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. The 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 Consultants 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 Professional's or Consultants 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 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 RESPONSIBILITY PROVISIONS.** The Professional agrees to the Contractor Responsibility Provisions, included in and made a part of this Professional Agreement in Exhibit “E.” 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 **STEEL PRODUCTS PROCUREMENT ACT.** The Professional agrees to comply with the provisions of the Steel Products Procurement Provisions attached hereto as Exhibit “H.”

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

11.1.108 **ENVIRONMENTAL STATEMENT.** The Commonwealth Procurement Code, Act of May 15, 1998, P.L. 358, No. 57, 62 Pa. C.S. §§ 101-4509, requires 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.

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 Consultant Agreement with each of the Professional's Consultants listed on the Exhibit A and deemed necessary for the proper design of the Project and any other Consultant 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 of any tier or any Contractor or firm submitting a bid or proposal 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 or proposes as a Prime Contractor or Subcontractor of any tier, submitting a bid or proposal 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 or proposes 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 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 pursuant to 62 Pa. C.S. §3933 *Contractor's and Subcontractor's payment obligations*.

ARTICLE 13 – SMALL DIVERSE BUSINESS AND VETERAN BUSINESS ENTERPRISE PARTICIPATION

13.1.100 **GENERAL INFORMATION.** The Professional must meet or exceed the participation percentages provided in the Agreement for Small Diverse Business (SDB) and Veteran Business Enterprise (VBE) utilization. The Professional acknowledges that the total percentages committed to SDBs and VBEs are contractual obligations upon execution of the Agreement, are calculated based upon the total compensation paid to the Professional, and cannot be altered without written approval from the Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO).

13.1.101 **PROFESSIONAL’S DUTY.** The Professional must meet or exceed the participation percentages for the Project. The Professional’s compliance with this contractual obligation will be tracked through the Professional’s submission of SDB/VBE payment information to BDISBO.

13.1.102 **SMALL DIVERSE BUSINESS (SDB)/ VETERAN BUSINESS ENTERPRISE (VBE) UTILIZATION REPORT.**

- A. The SDB/VBE payment information submitted in the Department’s Compliance Management Software will be used to track and confirm the actual dollar amount paid to SDB/VBE consultants and will serve as a record of fulfillment of the contractual commitment.
- B. The Professional shall submit updated the SDB/VBE payment information in the Department’s Compliance Management Software at least every thirty (30) days or prior to every invoice, whichever is more frequent. A Professional invoice may not be processed if the payment information is not submitted in accordance with this Article.

13.1.103 **CALCULATION AND CREDIT OF THE PROFESSIONAL’S PAYMENTS TOWARD THE SUBMITTED PARTICIPATION PERCENTAGES.**

- A. The participation percentages shall be calculated by adding the dollar values of payments to Commonwealth self-certified and verified SDB/VBE primes (i.e., Professional), and consultants and dividing the payment sum by the total compensation paid to the Professional.
- B. Only DGS verified SDB/VBE primes (i.e., Professional), and consultants can be credited toward satisfying the participation percentage provided in the Agreement. For any additional SDB/VBE firms not listed on Exhibit A but hired by the Professional, these SDB or VBE consultants must be a DGS-verified SDB or VBE as of the date of the execution of the consultant agreement for the Professional to receive credit.
- C. SDB primes (i.e., Professional) may satisfy commitments made toward the SDB participation goal through their own performance. VBE primes (i.e., Professional) may satisfy commitments made toward the VBE participation goal through their own performance.
- D. For the SDB/VBE consultants providing design professional services associated with their consultant agreement, these SDB/VBE consultants through their own employees must perform at least 50% of the amount of the consultant agreement. **If this occurs, 100 percent of the consultant agreement payments will be counted towards the Professional’s SDB/VBE participation percentages.**

13.1.104

REMEDIES.

- A. The Professional's compliance with the SDB and VBE participation requirements, including the fulfillment of any SDB and VBE commitments in all consultant agreements, is material to the Agreement between the Professional and the DGS. Any failure to comply with these requirements constitutes a substantial breach of the Agreement. It is further understood and agreed that in the event the DGS determines that the Professional has failed to comply with these requirements, the DGS may, in addition to any other rights and remedies the DGS may have under the Agreement or at law or in equity, impose remedies as applicable on the Professional. Remedies for breach of this component may include but are not limited to, withholding of payments; termination of the contract along with consequential damages; revocation of the Professional's SB, SDB, and/or VBE status; a determination that the Professional's SDB or VBE participation submittal be deemed non-responsible in future procurements; and/or any actions under the Commonwealth's Contractor Responsibility Program, up to and including suspension or debarment from future contracting opportunities with the Commonwealth. The remedies enumerated herein are for the sole benefit of the DGS and the DGS's enforcement of any provision or the DGS's indulgence of any non-compliance with any provision hereunder shall not operate as a waiver of any of the DGS's rights in connection with the Agreement, nor shall it give rise to actions by any third parties, including any SDB or VBEs.

ARTICLE 14 – DISPUTES

14.1.100 **PROFESSIONAL MUST CARRY ON WORK DURING DISPUTE.** The Professional may note that they are performing the Work under protest and may keep records of costs during the dispute resolution process but the Professional shall not refuse to perform as directed by the Department. The Professional must meet the Time Schedule unless otherwise agreed to by the Department. If the Professional fails or refuses to perform as directed, this action will constitute a breach of contract and the Department may terminate the Professional and/or may default the Professional.

14.1.101 **DISPUTE RESOLUTION IS A 3-STEP PROCESS.** The Professional and the Department agree that any and all disputes arising out of this Agreement are subject to a 3-step resolution process described in this Article. The Professional and the Department agree that participation in each preceding step is a condition precedent to the Professional's right to pursue any and all unresolved disputes in the next step.

14.1.102 **STEP 1: DESIGN PROFESSIONAL DISPUTE REVIEW REQUEST.** The Design Professional Field Dispute Review Request is the initial step in identifying and attempting to reach a timely and equitable resolution of the variety of issues that arise on any project. The Field Dispute Review Request process will be automatically started in e-Builder at the project intervals listed below. The Professional must take action on the FDR process by declaring any disputes or indicating that they have no disputes at this time.

A. Project Intervals: A Design Professional Field Dispute Request ("FDR") will occur at the following intervals of the Project:

1. Within thirty (30) days after Design Development approval;
2. Within thirty (30) days after construction contract award; and
3. Concurrent with the Bureau of Construction's 100% contractor's FDR; and
4. At any time deemed necessary by the Department.

B. Procedure:

1. The Professional will see and take action on the Field Dispute Review process in e-Builder. If the Professional does not have any disputes at the above project interval, the Professional shall indicate "no disputes at this time" and submit. Any submitted information regarding disputes will be available to the Department and the Professional. The Professional must upload documentation in support of its contentions and shall advance no claim in the absence of such documentation or use or attempt to use any verbal conversation with any parties against the Department, or in prosecuting any claim against the Department. At a minimum, the Professional shall provide with its FDR Request:

- a. A factual background of the disputed issue(s);
- b. Time schedule impacts, which may only be presented using the current Time Schedule in the Agreement; and
- c. A proposed solution to the dispute, including but not limited to:
 - i. Time Schedule modifications;

- ii. Damages attributed to the dispute;
 - iii. If applicable, identify the party the Professional believes is responsible for creating the dispute.
2. The Design Project Manager, after the Professional submits its FDR, will also provide the following:
 - a. Their understanding of the disputed issue(s);
 - b. A response to the dispute(s) raised by the Professional, including:
 - i. The Department's view of the Time Schedule impact;
 - ii. The Department's response to the proposed solution(s); and
 - iii. If applicable, the identity of the party/parties the Department believes is responsible for creating the dispute.
3. The Director of Capital Project Design Management, or designee, will review the FDR request and all documentation provided by the Professional and Design Project Manager. The Director, or designee, may request additional information from the Professional, the Design Project Manager, or any other party that may have relevant information regarding the disputed issue(s).
4. If necessary, the Department may schedule a mutually convenient date and time for a meeting to discuss the dispute(s). The nature of such a meeting shall be flexible and consist of an informal, good faith discussion of the issues raised in the initial FDR request. If possible, the FDR meeting will be convened through video conference or at Public Works. The Department's Designated Representative will chair the meeting.
5. Within two weeks of the FDR Request, the Director of Capital Project Design Management, or designee, will render a decision on the issues raised. The decision will be uploaded to e-builder. The decision is not binding upon any party if the Professional proceeds to Step 2.
6. If the Professional is dissatisfied with the decision reached, they may appeal the decision to the second step in the dispute process.
7. If the Professional is satisfied with the decision reached, they must notify the Design Project Manager and then Capital Project Design Management and/or the Professional will proceed as the FDR decision states.
8. **Any issue or dispute arising on the Project must be presented at the first FDR Request interval after the dispute arose. If a Professional fails to raise an issue at the appropriate FDR Request interval, then the Professional is deemed to have waived the issue**
9. **Only claims raised during an FDR Request may be appealed to the Claim Settlement Conference stage.**

14.1.103 **STEP 2: CLAIM SETTLEMENT CONFERENCE.** The second step in the dispute resolution process is a Claim Settlement Conference, which is a more formal step in the process and is described in general in §1712.1 of the Commonwealth Procurement Code. To the extent that this language conflicts with §1712.1, the statutory language controls.

- A. TIME TO FILE A CLAIM: Under this second step of the process, a Professional may appeal the FDR Meeting decision by submitting a written claim to the Deputy Secretary for Public Works, 18th & Herr Streets, Harrisburg, PA 17125.
1. **Any issue or dispute arising on the Project that is not mutually resolved at the FDR stage may only be appealed to the Claim Settlement Conference stage. If the Professional fails to pursue any unresolved FDR issue to a Claim Settlement Conference within the 6-month time frame set forth below, then the Professional is deemed to have waived the issue.**
 2. **A claim accrues upon the date of the Director's, or designee's, written decision in Step 1. If the Professional decides to appeal the decision reached as a result of the FDR Request, the Professional must file an appeal of the decision to the Deputy Secretary within six months of the date of the Director's, or designee's, written decision by requesting a Claim Settlement Conference. If the Professional fails to file a written request within this time period, the Professional is deemed to have waived its right to assert the claim in any forum. The Deputy Secretary will disregard untimely claims.**
- B. CONTENTS OF THE CLAIM: The claim filed by the Professional with the Deputy Secretary shall state **all grounds** upon which the Professional asserts a controversy exists. The claim must contain, at a minimum:
1. The documentation submitted by the Professional to the Department during the FDR Meeting to substantiate the Professional's view of the issue; and
 2. The Director's, or designee's, decision.
- C. DATE OF THE CLAIM SETTLEMENT CONFERENCE: The Deputy Secretary or a designee may schedule a mutually convenient date and time for the Claim Settlement Conference.
- D. ATTENDEES: All parties identified in the Claim Packet or deemed necessary by the Department shall attend the Claim Settlement Conference. At a minimum, the Professional and the Bureau of Capital Project Design Management personnel assigned to the Project shall attend the Claim Settlement Conference.
- E. PROCEDURE: If the Deputy Secretary deems the Claim Settlement Conference is necessary, the Deputy Secretary or a designee may convene the Claim Settlement Conference.
1. The Claim Settlement Conference shall not be subject to 2 Pa. C.S. (relating to administrative law and procedure).
 2. Neither audio recording nor videotaping will be allowed during the Claim Settlement Conference.
 3. No transcripts will be taken but attendees are free to take their own notes.
 4. The Deputy Secretary or a designee will allow all parties a reasonable time to present and discuss the issues.
 5. The Professional's representative shall present a description of the issue, including:
 - a. the factual background of the issue;

- b. the Time Schedule impacts, which may only be presented using the current Time Schedule in the Agreement; and
 - c. the proposed solution to the dispute, including:
 - i. Time Schedule modifications;
 - ii. Damages attributed to the dispute;
 - iii. Change Order cause modification; and
 - iv. If applicable, identify the party the Professional believes is responsible for creating the dispute.
6. The Department's representative shall present a description of:
- a. a response to the dispute(s) raised by the Professional, including:
 - i. the Department's view of the Time Schedule impact, which may only be presented using the current Time Schedule; and
 - ii. the Department's response to the Professional's proposed solution(s); and
 - iii. the identity of the party the Department believes is responsible for creating the dispute.
7. The Deputy Secretary may render a final determination on the contents of the Claim within 120 days of the receipt of the claim by the Deputy Secretary. The parties may, during the 120-day period, mutually agree to extend the 120-day deadline. Department will confirm all agreements to extend the 120-day deadline in writing. If no decision is rendered within the 120 days of the receipt of the claim by the Deputy Secretary, and the Department has not confirmed in writing the parties agreement to extend the 120-day deadline, the claim is deemed to be denied on the 120th day. The determination of the Deputy Secretary shall be the final order of the Department with regard to the contents of the Claim.

14.1.104 **STEP 3: FILING A CLAIM AT THE BOARD OF CLAIMS.** The third step in the dispute resolution process is filing a Statement of Claim with the Board of Claims, which is a more formal step in the process and is described in general in §1712.1 and §1721 *et seq.* of the Commonwealth Procurement Code. To the extent that this language conflicts with §1712.1 or §1721 *et seq.*, the statutory language controls.

- A. TIME TO FILE A STATEMENT OF CLAIM. The Professional may proceed to the third stage of the dispute resolution process by filing a claim with the Board of Claims either:
- 1. Within fifteen (15) days of the mailing date of the Deputy Secretary's final determination denying a claim; or
 - 2. Within 135 days of the Professional filing the claim with the Deputy Secretary if no final determination has been received and no agreement to extend the 120-day deadline has been confirmed in writing by the Department;
- whichever occurs first.

Only claims that were raised during a Claim Settlement Conference may proceed to the Board of Claims.

EXHIBIT K

SPECIAL CONDITIONS

These Special Conditions are incorporated into the Agreement and govern over the General Conditions to the Professional Agreement.

Project Number - _____
Professional - _____

Special Conditions:

- 1.