

**AGREEMENT
FOR
FEASIBILITY SERVICES**



pennsylvania
DEPARTMENT OF GENERAL SERVICES

HARRISBURG, PENNSYLVANIA

2018 EDITION

rev. 4/26/18

FEASIBILITY SERVICES AGREEMENT

This Feasibility Services Agreement (“Feasibility Agreement”), by and between the Commonwealth of Pennsylvania (“Commonwealth”), Department of General Services (“Department”) and

Having its principal place of business at

(“Professional”), for certain preconstruction feasibility assessments relating to Project No. DGS _____, is effective this _____ day of _____, 20____.

1. **SCOPE OF WORK**

- a. The Professional shall conduct feasibility analyses described in **Attachment 1** (“Services”) with the intent of determining the technical and economic feasibility of the design, procurement, construction, operation and maintenance of _____ or for other purposes described in **Attachment 1**.
- b. The Professional agrees that the Feasibility analyses must be objective. Multiple options with clear pros and cons must be provided. Each option must include a realistic projection of the duration of the work. **No final recommended option is to be stated/provided in any deliverable.**
- c. The Professional shall become familiar with and utilize the e-Builder Enterprise Software Program (e-Builder) for all Services to be provided under this Feasibility Agreement.
- d. The Professional agrees to exercise its independent, professional and trade judgement in performing the services under this Feasibility Agreement.

2. **TIME SCHEDULE.** The Time Schedule established for the completion of the Services is as follows:

Days after effective
date of Feasibility
Agreement

- a. Submission No. 1
- b. Submission No. 2
- c. Submission No. 3
- d. Submission No. 4
- e. Submission No. 5

3. **ADHERENCE TO TIME SCHEDULE.** Time shall be of the essence with regard to the Time Schedule set forth in Paragraph 2 of this Feasibility 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 Services will be delayed, the Professional shall immediately notify the Department 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 request that the Department extend the Time Schedule.
- b. The Department will review the Professional's request 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 Pre-Construction.
- 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 Services, 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 Feasibility Agreement for default of the Professional, 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 the Time Schedule dates shall constitute a failure to perform in accordance with the terms of this Feasibility Agreement and may result in the following:
 - i. Termination of this Feasibility Agreement;
 - ii. a negative performance evaluation, which may result in the loss of future projects with the Department and/or entry into the Contractor Responsibility Program (CRP); 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.

4. COMPENSATION AND COSTS

- a. The Professional's compensation for the Services shall consist of the following negotiated amounts:

<u>Schedule of Payments</u>	<u>Dollar Value</u>
Submission No. 1	
Submission No. 2	
Submission No. 3	
Submission No. 4	
Submission No. 5	

The Compensation is based on the negotiated Services described in **Attachment 1** as agreed to by the Professional and the Department.

- b. Unless a Special Condition states otherwise, the Professional may invoice monthly for the percent complete of the stages listed in Paragraph 4(a) above. The Professional shall only invoice up to 90% of the value of the stage until the stage submission is approved by the Department.
- c. The Professional shall also submit an updated Small Diverse Business/Small Business Utilization Report every thirty (30) days or prior to every invoice.

Failure to submit an updated Utilization Report prior to each monthly invoice may result in delays in payment.

- d. Upon acceptance by the Professional of the final payment under the terms of this Feasibility Agreement, including any Amendments hereto, the Professional waives any and all claims for any costs, damages or additional fees under this Feasibility Agreement.
- 5. ADDITIONAL SERVICES.** No additional services beyond those Services provided in **Attachment 1** 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.
- 6. SMALL DIVERSE BUSINESS PARTICIPATION.**
- a. The Professional provided its Small Diverse Businesses (i.e., Disability-Owned Business Enterprise (DOBE), LGBT Business Enterprise (LGBTBE), Minority Business Enterprises (MBE), Service-Disabled Veteran Business Enterprises (SDVBEs), Veteran Business Enterprises (VBEs), and Women Business Enterprises (WBE) (together referred to hereinafter as Small Diverse Businesses)) and Small Business percentage(s) for SDB and SB consultants for this Project in its Design Professional Selection Application. The Professional's Small Diverse Business consultant percentage is _____% and Small Business consultant percentage is _____% of its Services Compensation for this Project. The Professional shall enter consultant agreements with those SDB and SB firms listed on its Application.
 - b. The Professional must meet or exceed the participation percentage listed in Paragraph 6(a) above. The Professional's compliance with this contractual obligation will be tracked through the Professional's monthly submission of its Small Diverse Business/Small Business Utilization Report.
 - c. Calculation and credit of the Professional's payments toward the submitted percentage is explained in **Exhibit B** to this Feasibility Agreement.
- 7. TERMINATION.** The Department shall have the right at any time for any reason, to terminate this Feasibility 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, reports, analyses and other architectural/engineering data to the Department and the discontinuance of the Services.

8. **OWNERSHIP OF DOCUMENTS.** All design concepts and feasibility analyses, calculations, drawings, specifications, statements of costs and all other data, samples and surveys completed by the Professional or its Consultants as part of the Services performed under this Feasibility Agreement become the sole property of the Department. Such documents and data may be used by the Department for any desired purpose without any compensation to the Professional.
9. **APPLICABLE LAWS.** This Feasibility Agreement 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 Feasibility Agreement and to the partners, successors, legal representatives, and assigns of such other party in respect to the covenants of this Feasibility Agreement. The Professional shall not assign, sublet, or transfer any interest in whole or any part of this Feasibility Agreement without the written consent of the Department.
11. **AMENDMENTS.** This Feasibility 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 Feasibility 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 Feasibility Agreement is intended to or shall be construed to confer upon, or be 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 a third-party beneficiary or otherwise. This Feasibility 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 PRIVACY 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. **INDEMNIFICATION.** The Professional agrees to defend, protect, indemnify and hold harmless the Department from and against any and all liabilities, losses, damages, costs, expenses, reasonable attorney's fees, causes of action, suits, claims, demands,

or judgments of any nature arising from a negligent act, error, or omission of the Professional, its employees, its agents or consultants, arising out of the performance of the Services under this Feasibility Agreement.

15. 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 under this Feasibility Agreement 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 Feasibility Agreement to the Professional. The limits of coverage shall be acceptable to the Department.

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 Feasibility Agreement to the same extent as the Professional, and the Professional shall include a clause in its Consultant Contracts to this effect. No changes shall be made to the Professional Consultants listed in **Exhibit A** unless the Professional requests and receives prior written approval of the Department.

17. RIGHT TO KNOW LAW.

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Contract.
- b. Unless the Professional provides the Commonwealth, in writing, with the name and contact information of another person, the Department shall notify the Professional using the Professional information provided by the Professional if the Department needs the Professional's assistance in any matter arising out of the Right to Know Law ("RTKL"). The Professional shall notify the Department in writing of any change in the name or the contact information within a reasonable time prior to the change.
- c. Upon notification from the Commonwealth that the Commonwealth requires the Professional's assistance in responding to a RTKL request for records in the Professional's possession, the Professional shall provide the Commonwealth, within fourteen (14) calendar days after receipt of such notification, access to, and copies of, any document or information in the Professional's possession which arises out of the Contract that the Commonwealth requests ("Requested Information") and provide such other assistance as the Commonwealth may request in order to comply with the RTKL. If the Professional fails to provide the

Requested Information within fourteen (14) calendar days after receipt of such request, the Professional shall indemnify and hold the Commonwealth harmless for any damages, penalties, detriment or harm that the Commonwealth may incur as a result of the Professional's failure, including any statutory damages assessed against the Commonwealth.

- d. The Commonwealth's determination as to whether the Requested Information is a public record is dispositive of the question as between the parties. Professional agrees not to challenge the Commonwealth's decision to deem the Requested Information a Public Record. If the Professional considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, the Professional will immediately notify the Commonwealth, and will provide a written statement signed by a representative of the Professional explaining why the requested material is exempt from public disclosure under the RTKL within seven (7) calendar days of receiving the request. If, upon review of the Professional's written statement, the Commonwealth still decides to provide the Requested Information, the Professional will not challenge or in any way hold the Commonwealth liable for such a decision.
- e. The Commonwealth will reimburse the Professional for any costs associated with complying with this provision only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- f. Professional agrees to abide by any decision to release a record to the public made by the Office of Open Records, or by the Pennsylvania Courts. The Professional agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL. The Professional's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Professional has Requested Information in its possession.

18. MERGER CLAUSE. This Feasibility Agreement, 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 Feasibility Agreement. This Feasibility Agreement may not be amended or modified by the parties except as provided herein.

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

Corporation

ATTEST:

Secretary/Treasurer Date

Name: Date
President/Vice-President

OR

WITNESS(ES):

Name: Date
Limited Liability Company or Partnership

Name: Date
Limited Partnership

AND

COMMONWEALTH OF PENNSYLVANIA
ACTING THROUGH THE DEPARTMENT OF
GENERAL SERVICES

Secretary of General Services Date

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

Attachment 1

SCOPE OF SERVICES

--

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 Businesses and/or Small Diverse Businesses and other Consultants listed on its Design Professional Selection Application ("Application"). Each Consultant shall comply with the terms of this this Feasibility 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 Pre-Construction. Additionally, no changes to the Consultants listed below shall be made unless the Professional requests and receives approval from the Director of Pre-Construction.

Consultant's Name _____

Consultant's Address _____

Consultant's Phone _____

Email Address _____

Services _____

Small Diverse Business (SDB) YES / NO

Small Business 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

Small Business 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 |

Small Business | 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 |

Small Business | 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 |

Small Business [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]

Small Business [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]

Small Business [YES / NO]

Listed on Application [YES / NO]

Exhibit B

SMALL DIVERSE BUSINESS AND SMALL BUSINESS PARTICIPATION

GENERAL INFORMATION. The Professional must meet or exceed the participation percentage provided in the Small Diverse Business / Small Business Submittal for Small Diverse Businesses (i.e., Disability-Owned Business Enterprise (DOBE), LGBT Business Enterprise (LGBTBE), Minority Business Enterprises (MBE), Service-Disabled Veteran Business Enterprises (SDVBEs), Veteran Business Enterprises (VBEs), and Women Business Enterprises (WBE) (together referred to hereinafter as Small Diverse Businesses)) and Small Businesses. . The Professional acknowledges that the total percentages committed to Small Diverse Businesses and Small Businesses are contractual obligations upon execution of the Feasibility Agreement and cannot be altered without the written approval of the Bureau of Diversity, Inclusion and Small Business Opportunities (BDISBO).

PROFESSIONAL'S DUTY. The Professional must meet or exceed the participation percentage for the Project. The Professional's compliance with this contractual obligation will be tracked through the Professional's submission of SDB/SB Utilization Reports to BDISBO.

SMALL DIVERSE BUSINESS / SMALL BUSINESS UTILIZATION REPORT

- A. The Utilization Report forms will be used to track and confirm the actual dollar amount paid to SDB/SB consultants and sub-consultants and will serve as a record of fulfillment of the contractual commitment. If there was no activity during the month, the form must still be completed/submitted in e-Builder.
- B. The Professional shall submit and update the SDB/SB Utilization Form at least every thirty (30) days or prior to every invoice. A Professional invoice will not be processed if the Utilization Report forms are not submitted in accordance with this Article.

CALCULATION AND CREDIT OF THE PROFESSIONAL'S PAYMENTS TOWARD THE SUBMITTED PARTICIPATION PERCENTAGE.

- A. The participation percentage shall be calculated by adding the dollar values of payments to Commonwealth self-certified and verified SDB/SB consultants and sub-consultants and dividing the payment sum by the total dollar value of the Basic Services Fee.
- B. Only DGS self-certified and or verified SDB/SB consultants and sub-consultants can be credited toward satisfying the participation percentage provided in the Small Diverse Business / Small Business Submittal. For any additional SDB/SB firms not listed on the Submittal but hired by the Professional, the Professional should ensure that all SDB/SBs hold a DGS SDB/SB certification that is current (not revoked, lapsed or pending) as of the consultant agreement execution date in order to obtain credit for the payment.
- C. For the SDB/SB consultants and sub-consultants providing design professional services associated with their consultant agreement, these SDB/SB consultants and sub-consultants through their own employees must perform at least 50% of the amount of the consultant agreement. **100 percent of the consultant agreement payments will be counted towards the SDB/SB percentage.**

REMEDIES.

- A.** Professionals who fail to meet their Small Diverse Business and or Small Business percentage commitment(s) may be subject to sanctions including, but are not limited to, one or more of the following: a determination that the Professional is not responsible under the Contractor Responsibility Program; withholding of payments; suspension or termination of the Feasibility Agreement together with consequential damages; revocation of the Professional's Small Business self-certification status and/or Small Diverse Business verification status; and/or suspension or debarment from future contracting opportunities with the Commonwealth.

- B.** The Professional's compliance with requirements of the Small Diverse Business / Small Business participation component, including the fulfillment of any Small Diverse Business / Small Business commitments in all consultant agreements, is material to the Feasibility Agreement between the Professional and the DGS. Any failure to comply with these requirements constitutes a substantial breach of the Feasibility Agreement.

EXHIBIT C

NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE

For purposes of this Exhibit C, the term “contract” means the Feasibility 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. 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.
4. 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.
5. The Contractor and each subcontractor represents 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, 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.

6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The 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.
8. 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 into 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 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 Feasibility 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.dgs.pa.gov>.

EXHIBIT F

AMERICANS WITH DISABILITIES ACT (ADA) PROVISIONS

For purposes of this Exhibit F, the term "contract" means the Feasibility 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 Feasibility 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.

