

**HISTORICAL DESIGN
CONTRACT
AND
GENERAL CONDITIONS**

Pennsylvania Historical and Museum Commission

HARRISBURG, PENNSYLVANIA

2013 EDITION

Historical Design Contract

This Historical Design Contract ("Design Contract"), made this _____ day, _____, 20____, by and between the Pennsylvania Historical and Museum Commission (the "PHMC") and

_____ NAME

_____ ADDRESS

Federal Identification No. _____

Commonwealth Vendor Identification No. _____

Small Design Business No. _____ (the "Professional")

WITNESSETH THAT:

WHEREAS, the PHMC is duly authorized by the History Code (37 Pa.C.S. §101 et seq.) to procure services, including those to be provided by the Professional to design, and assist in bidding and construction administration services required for various Small Historical Construction projects, hereinafter referred to as "Small Historical projects."

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

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

NOW THEREFORE, in consideration of the mutual covenants and conditions herein provided, the PHMC does hereby retain the Professional to perform the design, and assist in bidding and construction administration services required to satisfactorily complete various Small Historical projects and the Professional agrees to expeditiously perform such required services and work. Further, the parties covenant and agree as follows:

1. **SCOPE OF PROJECT.** The Project is more generally described on the "Work Order", as supplemented by the additional documentation included in that project specific Work Order.
2. **TIME SCHEDULE.** The project-specific time schedule for design and construction milestones will be established at the Orientation Meeting for any Small Historical project that the Professional may be selected to perform.

3. **ADHERENCE TO TIME SCHEDULE.** PHMC and the Professional shall negotiate the schedule for each Small Historical project assigned through a Work Order under the contract based on the scope of work and project needs. In extreme situation outside the control of professional, if it appears any submission or stage of various Small Historical projects will be delayed, the Professional shall immediately notify the PHMC. 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 PHMC amend the time schedule. The PHMC will review the Professional's notice and determine whether or not to amend the time schedule. If the PHMC determines that the delay is due to the fault of the Professional, the PHMC may:

- A. Amend the schedule and direct the Professional to expeditiously proceed with the design of the project, in which case the PHMC may hold the Professional responsible for any costs attributable to the delay; or
- B. Terminate the work order and/or the Design Contract for default of the Professional, in accordance with the provisions of the General Conditions.

The Professional's failure to meet the project schedule and/or to provide the required notification of delay constitutes failure to perform in accordance with the terms of this Design Contract. Such failure will result in a negative performance evaluation, which will be considered by the PHMC in considering whether to select the Professional for any future Small Historical projects.

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

4. **COMPENSATION AND COSTS.**

- A. The Professional's compensation ("Basic Services Compensation") shall be the dollar value set forth in the project-specific Work Order. **This fee is negotiated based on the project scope of work, the Professional's scope of services and the estimated project construction cost.** This amount is payable through Work Orders issued under this Contract as set forth more fully in the General Conditions. The Professional's Basic Services Compensation may be adjusted only in extreme circumstances due to major adjustments to the Base Construction Amount during the Design Stage. The Professional's Basic Services Compensation will not be adjusted based upon Small Historical Construction contract award amounts. The Total Amount for all Work Orders issued under this contract is not expected to exceed \$1,000,000.
- B. No additional monies, fees or compensation shall be paid by the PHMC without an approved written modification in the form of an Additional Work Order.
- C. Upon acceptance by the Professional of the final payment under the terms of this Design Contract, as it may be modified by the parties, the Professional waives any and all claims for any additional fees under this Design Contract.

5. **LIMITED BUDGET.** The Professional must design this Project within the Base Construction Amount set forth in the project-specific Small Business Work Order.

6. **TERM OF CONTRACT.** This Contract shall terminate on June 30, 2019 ("Termination Date"), subject to any specific exceptions, including termination in accordance with the provisions of Article 9 of the General Conditions to this Contract. In the event the Historical Design Business has not completed any PHMC-issued

Work Order prior to the Termination Date, the Contract shall remain in effect as to that Work Order until its completion. This term may be extended at PHMC's sole option where a continued need exists for the services of Historical Design Business. The Historical Design Business agrees that the extension of this Contract shall be on the same terms and conditions as the original Contract except as otherwise agreed to in writing by the parties.

7. **INCORPORATION BY REFERENCE.** The Professional's Qualification Submission Form is incorporated herein by reference. This Design Contract is made subject to and is governed by the PHMC's General Conditions to the Historical Design Business Contract, 2012 Edition. All Plans and Specifications must be prepared in conformity with the PHMC's Historical Design Business Project Procedure Manual and Historical Business Construction Contract Documents. The Procedure Manual and the Construction Contract documents are subject to amendment by the PHMC during the course of this Design Contract, currently anticipated to occur annually. Services performed on each Work Order issued under this Design Contract should be performed in accordance with the version of the Procedure Manual and Construction Contract documents in effect at the time of issuance of the project-specific Work Order. This Design Contract is subject to and governed by any Special Conditions made a part of thereof. In case of any irreconcilable inconsistency, the General Conditions of the Design Contract for Professional Services govern.
8. **CLAIMS.** The following process will be followed for claims:

Claim By A Historical Design Business Against the PHMC:

- A. In the event of a controversy or claim arising from a Work Order, the Contractor must, within six months after the cause of action accrues, file a written claim with the PHMC for a determination. The claim shall state all grounds upon which the Historical Design Business asserts a controversy exists. If the Historical Design Business fails to file a claim or files an untimely claim, the Historical Design Business is deemed to have waived its right to assert a claim in any forum.
- B. The PHMC shall review timely-filed claims and issue a final determination, in writing, regarding the claim. The final determination shall be issued within 120 days of the receipt of the claim, unless extended by consent of the PHMC and the Historical Design Business. The PHMC shall send his/her written determination to the Historical Design Business. If the PHMC fails to issue a final determination within the 120 days (unless extended by consent of the parties), the claim shall be deemed denied. The PHMC's determination shall be the final order of the PHMC.
- C. Within fifteen (15) days of the mailing date of the determination denying a claim or within 135 days of filing a claim if, no extension is agreed to by the parties, whichever occurs first, the Historical Design Business may file a statement of claim with the Commonwealth Board of Claims. Pending a final judicial resolution of a controversy or claim, the Historical Design Business shall proceed diligently with the performance of the Contract in a manner consistent with the determination of the PHMC and the PHMC shall compensate the Historical Design Business pursuant to the terms of the Work Order.

Claims against the Historical Design Business:

- A. If any claim or action is brought, either directly or indirectly relating to the Historical Design Business' services supplied under this Historical Design Business Contract or Work Order, the Historical Design Business shall render to the PHMC without compensation any proper and necessary assistance which the PHMC may require, provided however, that if the claim is the result of action or negligence by the PHMC, the Historical Design Business shall be reimbursed for any assistance he may be required to provide.
 - B. The terms and conditions of this Historical Design Business Contract, the General Conditions and Special Conditions and any other document incorporated by reference herein, shall not be construed so as to enable any party other than the PHMC and its assigns to bring any claim or action as referenced in this Section to this Historical Design Business Contract.
 - C. The Historical Design Business shall carry on its work during the claims process, including Board of Claims proceedings, if any, unless otherwise agreed by the Historical Design Business and the PHMC in writing. Should the Historical Design Business fail to continue to perform its responsibilities regarding all work, without delay, any additional costs incurred by the PHMC, or the Historical Design Business as a result of such failure to proceed shall be borne by the Historical Design Business, and the Historical Design Business shall make no claim against the PHMC for such costs.
9. **ASSIGNMENT.** The Historical Design Business and the PHMC each binds itself, its partners, successors, legal representatives and assigns to the other party to this Design Contract and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Design Contract. The Historical Design Business shall not assign, sublet or transfer any interest in the whole or any part of this Design Contract without the prior written consent of the PHMC. The PHMC may assign, sublet or transfer its interest in this Design Contract explicitly under statutory authority. This provision does not prevent an assignment for financing purposes of amounts, due or to become due under this Design Contract, nor the retaining, by the Historical Design Business, on its own responsibility and at its own expense, of such specialized architects or Historical Design Business engineers as may be necessary for the proper design and development of various Historical projects.
10. **AMENDMENTS.** This Design Contract may be amended by an agreement of the parties, reduced to writing and executed by authorized representatives of the respective parties. The Historical Design Business hereby acknowledges receipt of notice that no person has any authority to amend or modify this Design Contract or waive any term or provision hereof except by written amendment hereto signed by the Executive Director of PHMC.
11. **NOTICES.** Wherever the term "notice" is used, to be effective, notice must be in writing and if to the PHMC must be sent by registered or certified mail, postage and fees prepaid, or hand delivered to the Chief of the Division of Architecture and Preservation, PHMC, Commonwealth Keystone Building, Room N118, 400 North Street, Harrisburg, PA 17120-0053, and if to the Small Design Business notice must be similarly mailed or hand delivered to the address set forth in the caption of this Design Contract, unless notice of another address has been given, in which case notices shall be so hand delivered or mailed to that address. Transmissions by electronic mail (email) do not constitute notice.
12. **INTEGRATION.** This Design Contract contains all the terms and conditions agreed to by the parties hereto, and no other agreements, oral or otherwise, regarding the subject matter of this Design Contract exists.

13. **NO THIRD PARTY RIGHTS.** Nothing in this Design Contract or in the General Conditions or Special Conditions or in any other document incorporated herein by reference or issued hereunder, expressed or implied, is intended to or shall be construed to confer upon, or give to, any person, firm or corporation or any Governmental Agency other than the PHMC, its successors and assigns, and the Historical Design Business, any right, remedy or claim, legal or equitable, whether as third party beneficiary or otherwise. This Design Contract and all provisions applicable hereto or incorporated herein are for the sole and exclusive benefit of the PHMC, its successors and assigns and the Historical Design Business.
14. **HOLD HARMLESS CLAUSE.** The Historical Design Business shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contactor and its employees and agents under this Contract, provided the Commonwealth gives Historical Design Business 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 Historical Design Business, the Commonwealth will cooperate with all reasonable requests of Historical Design Business made in the defense of such suits. 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 Historical Design Business to control the defense and any related settlement negotiations.
15. **HISTORICAL DESIGN BUSINESS EVALUATION.** In signing this Design Contract, the Historical Design Business consents to the evaluation of its performance by the PHMC and understands that any such evaluation may be used in future selections of Historical Design Businesses. Furthermore, the Historical Design Business' Consultants may also be evaluated. The Historical Design Business is required to notify each of its Consultants that in contracting with the Historical Design Business, the Consultant consents to the PHMC's evaluation of the consultant and to the use of any such evaluation in future selections of Historical Design Businesses. The PHMC shall provide the Historical Design Business and Historical Design Business' Consultants with written notice of any unsatisfactory evaluations and the reasons therefore.
16. **HISTORICAL DESIGN BUSINESS CONSULTANTS.** Any consultant retained by the Historical Design Business on a specific Historical Business project shall comply with the conditions of this Design Contract to the same extent as the Historical Design Business and the Historical Design Business should include a clause in its Consultant Contracts to this effect.
17. **ADDITIONAL SERVICES.** The Historical Design Business will perform all necessary Additional Services required by the project, as described in a project-specific Work Order. Provisions of all Additional Services will be consistent with the terms of the General Conditions, and will be by written direction of the PHMC expressly for the purpose of authorizing Additional Services. An amendment to the Design Contract is not required for Additional Services. These Additional Services will be authorized by a Work Order.
18. **ADDITIONAL SERVICES COMPENSATION.** Compensation for Additional Services performed directly by the Historical Design Business and all Consultants shall be

calculated using the employee gross hourly rate times a maximum multiplier of 3 applied to the gross hourly rate. This total billing rate shall not exceed \$180.00 per hour. When salary is the source of employee compensation, an equivalent gross hourly rate shall be developed considering a 40-hour workweek, and then calculated for billing as above.

19. **ATTENDANCE AT MEETINGS.** The Historical Design Business shall attend (in person or via conference call or video conference as decided by the PHMC) an Orientation Meeting with the PHMC on any Historical design project the Historical Design Business is selected to perform. During the Construction Contract Administration Stage of any Historical design project the Historical Design Business is selected to perform, the Historical Design Business shall also attend the Initial Job Conference (in person or via conference call or video conference as decided by the PHMC) and at least one construction phase job conference on site and the Final Inspection on site to review the Historical Business Contractor's Work, as more specifically described in the project-specific Work Order.
20. **RIGHT-TO-KNOW LAW.** The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Contract. Unless the Historical Design Business provides the PHMC, in writing, with the name and contact information of another person, the PHMC shall notify the Historical Design Business using the Historical Design Business information provided by the Historical Design Business in the legal contact information provided in this Contract if the PHMC needs the Historical Design Business' assistance in any matter arising out of the Right to Know Law ("RTKL"). The Historical Design Business shall notify the PHMC in writing of any change in the name or the contact information within a reasonable time prior to the change.
 - A. Upon written notification from the Commonwealth that it requires the Historical Design Business' assistance in responding to a request under the RTKL for information related to this Contract that may be in the Historical Design Business' possession, constituting, or alleged to constitute, a public record in accordance with the RTKL ("Requested Information"), the Historical Design Business shall provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Historical Design Business' possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL and provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract. If the Historical Design Business fails to provide the Requested Information within ten (10) calendar days after receipt of such request, the Historical Design Business shall indemnify and hold the Commonwealth harmless for any damages, penalties, detriment or harm that the Commonwealth may incur as a result of the Historical Design Business' failure, including any statutory damages assessed against the Commonwealth.
 - B. If the Historical Design Business 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 Historical Design Business considers exempt from production under the RTKL, the Historical Design Business 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 Historical Design Business explaining why the requested material is exempt from public disclosure under the RTKL. The Commonwealth will rely upon the written statement from the Historical Design Business 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 Historical Design Business shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth's determination.

- C. If the Historical Design Business fails to provide the Requested Information within the time period required by these provisions, the Historical Design Business 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 Historical Design Business' failure, including any statutory damages assessed against the Commonwealth
- D. The Commonwealth will reimburse the Historical Design Business 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.
- E. The Historical Design Business 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 Historical Design Business 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 Historical Design Business' failure, including any statutory damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Historical Design Business 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

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, this Historical Design Business Contract has been executed and delivered as of the date set forth above.

WITNESS:

PA Historical and Museum Commission

Date

AND

Executive Director Date

ATTEST:

Corporation

Secretary/Treasurer Date

OR

President/Vice President Date

WITNESS(ES):

Limited Liability Company Date

Partnership Date

Sole Proprietor Date

APPROVED AS TO FORM AND LEGALITY

To be obtained electronically _____
Office of Chief Counsel, PHMC

To be obtained electronically _____
Office of General Counsel

To be obtained electronically _____
Office of Attorney General

This Design Contract is awarded based on an open-ended need. Funds will be encumbered on a per-Project basis via directed Work Orders.

To be obtained electronically _____
Comptroller Operations

**HISTORICAL DESIGN BUSINESS
CERTIFICATE OF COMPLIANCE**

CONTRACT NO. _____

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

Dated at _____ this _____
day of _____, 20 _____

Name of Historical Design Business

Signature & Title of Person Signing

County of _____

SS:

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

Sworn to before me this
_____ Day of _____, 20 _____

Notary Public
My Commission Expires _____

Exhibit A

DESIGNATION AND DESCRIPTION OF SERVICES

The Historical Design Business' services for various Historical design projects are included within the following categories for the purposes of compensation. The listed services encompass typical services, which will be reviewed by the PHMC and designated into one of three potential categories:

- A. Survey Cost Estimate; or
- B. Basic Services paid within the Basic Services Compensation; or
- C. Additional Services identified as needed but not included in Basic Services Compensation, and paid by Work Order at a Not to Exceed Fee or a Lump Sum Fee;

The Department may supplement this Exhibit with further detailed description of the services for a specific Historical design project. Such supplement will be an Attachment to this Exhibit and shall be incorporated into the Design Contract.

- A. **SURVEY COST ESTIMATE.** The scope of Work and the details regarding the process for conducting the survey and preparing the estimate of costs is set forth in detail in the PHMC's Project Procedure Manual. The fee to be paid by the PHMC for these services will be set forth in the Notice to Historical Design Businesses. The fee will not be subject to negotiation.
- B. **ITEMIZATION OF BASIC SERVICES.** All services listed in paragraphs 1, 2 and 3 are deemed to be included as Basic Services.
 - 1. **PROJECT STUDIES.** The Historical Design Business shall perform project studies using the Historical Design Business' own employees or a Consultant consistent with the inherent requirements of the project to meet the fundamental needs of various Historical design projects, as part of Basic Services. These services include the following enumerated items below:
 - Electrical Load/Distribution Investigation
 - Land Use Investigation
 - Site and Existing Conditions Investigation
 - Utility Service Investigation
 - 2. **CUSTOMARY SERVICES.** The Historical Design Business shall perform customary services, using the Historical Design Business' own employees or a Consultant, consistent with the inherent requirements to meet the fundamental needs of various Small Business projects, as part of Basic Services. These services include the following enumerated items below:
 - Architectural
 - Civil Engineering
 - Electrical Engineering
 - Fire Protection Engineering
 - HVAC Engineering
 - Plumbing Engineering
 - Structural Engineering

3. **SPECIALIZED SERVICES.** The Historical Design Business shall perform the listed specialized services, using the Historical Design Business' own employees or a Consultant consistent with the inherent requirements to meet the fundamental needs of various Historical design projects, as part of Basic Services. These services include the following enumerated items below:

- Code and Life Safety Consultation
- Environmental/Hazmat Remediation Design
- Fire and Smoke Protection Consultation and Design
- Foundation and Soils Engineering
- Interior Design/Space Planning/Finishes/Signage/Furnishings Layout
- Land Development Consultation and Design
- Landscaping & Irrigation Consultation and Design
- Sustainable Design Consultation and Design
- Lighting Consultation and Design
- Library/Archives Consultation

C. **ADDITIONAL SPECIALIZED SERVICES.** Items listed in Paragraphs 1-9 are deemed to be a potential additional services that may arise on any project.

1. **CHANGE ORDERS.** The services of the Historical Design Business arising from a Change Order authorized by the Department, which is not the result of the Historical Design Business' error or omission, shall be compensated at the Basic Services Fee percentage established in the Work Order applied to the change order amount, with no reduction for Credit Change Orders.
2. **CODES, ORDINANCES AND PERMITS.** The Historical Design Business shall be reimbursed as an additional service the actual amount paid to regulatory agencies for approvals, applications for approvals and permits obtained by the Historical Design Business. Drawings and compilations of computations that may not be incorporated into the Contract Documents or required in the preparation of the Contract Drawings, but which are required by the regulatory agency, municipality or zoning board shall be compensated as a Basic Service. The completion of application forms, including sewage modules, and the design of project construction elements necessary to comply with the regulatory requirements, including sewage facilities, storm water management, sediment and erosion control, is compensated as part of Basic Services and is not considered an additional service.
3. **FIELD/LABORATORY TESTS.** The Historical Design Business 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, mortar, paint or other construction materials and equipment, compaction, permeability testing, bearing capacity, and any related testing.
4. **RE-BIDDING.** If the PHMC determines, in its discretion, to re-bid the Historical Business Construction contracts for reasons not attributable to the Historical Design Business, the Historical Design Business shall be compensated its direct cost for providing any services related to the administration of the re-bidding not to exceed 10% of the Basic Services Design fee.

5. REVISIONS TO APPROVED DRAWINGS AND SPECIFICATIONS. The Historical Design Business shall be compensated as an additional service when directed by the PHMC to revise previously approved Drawings or Specifications in whole or in part to accomplish changes not initiated by the Historical Design Business and not required by the terms of the Design Contract to bring costs within the Base Construction Amount. In no case, however, shall revisions other than revisions made necessary by an approved revised Project Scope or fundamental Program change, be considered as Additional Services.
6. SOILS TESTING & ANALYSIS. The Historical Design Business shall be paid additional compensation for engaging the services of a registered qualified soils foundation engineer for furnishing analysis/recommendation and construction soils and/or foundation testing, test borings, test pits, laboratory testing, inspections, approvals.
7. SUBSURFACE UTILITY INVESTIGATION: The Historical Design Business 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 various Historical Design projects. Prospecting techniques including radio frequency electromagnetic, magnetic acoustic emission sonics, terrain conductivity, ground penetrating radar and select excavation shall be used to provide a comprehensive horizontal map and give an indication of vertical position. Information obtained using this service shall be shown on the Plat of Survey of various Historical Design projects Site.
8. ADDITIONAL SPECIALIZED SERVICES: The Historical Design Business shall perform the following if authorized by the PHMC using the Historical Design Business' own employees or a Consultant:
 - Data Management/Networking Software/Hardware Selection
 - Interior Design for Artscaping/Plantscaping & Furnishings Selection
 - Quality Assurance Testing and Inspection
 - Sound/Vibration Analysis
9. CONTRACTOR CLAIM REVIEW AND ATTENDANCE AND TESTIMONY AS WITNESS.
 - A. Field Dispute Review Meeting: Neither the Historical Design Business nor any of Historical Design Business' Consultants will be compensated for preparing for or participating in the mandatory field dispute review meeting when Work is 100% complete, as described in the Construction Contract General Conditions) at the project site. This meeting is deemed to be a Basic Service.
 - B. In-House DGS Claim Conferences: The Historical Design Business shall attend all In-House Claim Conferences scheduled by the PHMC. The Small Design Business shall provide up to 24 man-hours (including preparation, travel and meeting time) as Basic Services. Compensation for any hours beyond the 24 man-hours may be negotiated as an Additional Service.
 - C. If any Historical Business Construction contractor pursues a claim or other dispute against the PHMC or another Historical Business Construction contractor at the Board of Claims or any other formal

hearing or court proceeding (i.e., not In-House) not involving the Historical Design Business' failure to design or administer construction in accordance with this Historical Design Business Design Contract then, if requested by the PHMC, the Historical Design Business and/or the appropriate Historical Design Business' Consultant and/or their 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 PHMC as an Additional Service with compensation negotiated with the PHMC prior to the assistance being rendered.

- D. If any Historical Business Construction contractor pursues a claim or other dispute against the PHMC or another Historical Business Construction contractor at the Board of Claims or any other formal hearing or court proceeding that concerns or alleges the Historical Design Business failed to design or administer construction in accordance with this Historical Design Business Design Contract, then Historical Design Business and/or the appropriate Historical Design Business' 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 PHMC.
- E. If the Historical Business Construction contractor's case involved both types of claims (Historical Design Business failed to design and/or administer construction AND claim not involving Historical Design Business) then, upon a final determination which determines the Historical Design Business 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 Historical Design Business' failure.
- F. Under no circumstances, regardless of the cause, will the Historical Design Business be paid a fee on any settlement agreement paid by the PHMC to a Historical Business Construction contractor to settle an in-house claim or judgment awarded by the Board of Claims or any other court.
- G. The PHMC's decision will be final regarding the compensation due the Historical Design Business or Historical Design Business' Consultants, subject to the claims process set forth in the Design Contract for Historical Design Business Services.

EXHIBIT B

NONDISCRIMINATION AND SEXUAL HARASSMENT CLAUSE

For purposes of this Exhibit, the term “contract” means the Design Contract and the term “Contractor” means the Historical Design Business.

The Contractor agrees:

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

EXHIBIT C

CONTRACTOR INTEGRITY AND DISCLOSURE OF FINANCIAL INTEREST PROVISIONS

For purposes of this Exhibit, the term “Contractor” means the Historical Design Business.

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

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

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

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

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

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

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

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

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

Contractor non-compliance with these provisions. Contractor agrees to make identified Contractor employees available for interviews at reasonable times and places. Contractor, upon the inquiry or request of the Office of Inspector General, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to Contractor's integrity and compliance with these provisions. Such information may include, but shall not be limited to, Contractor's business or financial records, documents or files of any type or form that refers to or concern this contract.

- 16.** For violation of any of these Contractor Integrity Provisions, the Commonwealth may terminate this and any other contract with Contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all additional costs and expenses incurred in obtaining another contractor to complete performance under this contract, and debar and suspend Contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or non-use of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.
- 17.** For purposes of these Contractor Integrity Provisions, the following terms shall have the meanings found in this Paragraph 17.

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

 - (1)** Ownership of more than a five percent interest in any business; or
 - (2)** Holding a position as an officer, director, trustee, partner, employee, or holding any position of management.
 - e.** "Gratuity" means tendering, giving or providing anything of more than nominal monetary value including, but not limited to, cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. The exceptions set forth in the [Governor's Code of Conduct, Executive Order 1980-18](#), the 4 Pa. Code §7.153(b), shall apply.
 - f.** "Immediate family" means a spouse and any unemancipated child.

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

EXHIBIT D

CONTRACTOR RESPONSIBILITY PROVISIONS

For purposes of this Exhibit, the term “contract” means the Design Contract and the term “Contractor” means the Historical Design Business.

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

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.

2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.

3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.

5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.

6. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
FAX No: (717) 787-9138

EXHIBIT E

AMERICANS WITH DISABILITIES ACT (ADA) PROVISIONS

For purposes of this Exhibit, the term “contract” means the Design Contract and the term “Contractor” means the Historical Design Business.

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. § 35.101 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 F

TRADE PRACTICES ACT PROVISIONS

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

a. Definitions

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

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

EXHIBIT G

TAX LIABILITY PROVISION

For purposes of this Exhibit, the term “contract” means the Design Contract and the term “Contractor” means the Historical Design Business.

The contractor, by execution of the contract:

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

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

General Conditions To The Historical Business Design Contract

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General Conditions To The **Small Business Design Contract**

ARTICLE 1 – DEFINITIONS

1.1. DEFINITIONS: Whenever in these General Conditions to the Design Contract for Historical Design Business 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 Historical Design Business Services determined by the PHMC during and/or after the execution of the Design Contract to be necessary for a specific Historical Business Project that is not included as Basic Services.

1.1.101 ADMINISTRATIVE PROCEDURES: Follow standard American Institute of Architects administrative procedures, including but not limited to, Project correspondence, Job Conferences, schedules, testing, submittals, Applications for Payment, Change Orders, Extensions of Time, , Substantial Completion, Final Inspection, and Closeout Inspection. Follow DGS administrative procedures for Steel Product Procurement compliance.

1.1.102 APPLICATION FOR PAYMENT: Document submitted by each Prime Contractor pursuant to the applicable Administrative Procedure for review by the PHMC for subsequent release of payment.

1.1.103 BASE CONSTRUCTION AMOUNT: Dollar value which shall be the basis for the design fee that is designated in the Work Order. This value shall be the limit for design estimate and shall also be used to designate the proper Small Business Tier.

1.1.104 BASIC SERVICES: Professional services including architectural and engineering services which may include, as applicable, civil, structural, HVAC (heating, ventilating, air conditioning), plumbing, electrical, fire protection, and landscaping architecture which are designated as Basic Services and set forth in the spreadsheet included as an Exhibit to the Historical Business Design Contract.

1.1.105 BID OPENING DATE: Date upon which bids are received for Historical Business Construction contracts and opened publicly in accordance with the Commonwealth Procurement Code.

1.1.106 FISCAL OFFICE AND SUPPORT SERVICES: PHMC officeresponsible for issuance and administration of all procurement related services, including Arbitration, Fiscal, Project Administration, and Contract Services.

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

1.1.108 CLEARED FOR BID: All permits have been secured, all stamped bidding documents have been accepted as conforming to PHMC's Project Procedure Manual,

1.1.109 CONTRACT COMPLETION DATE: Date specified in the Historical Business Construction contract for completion of the Work.

1.1.110 DAYS: Calendar days unless specifically stated otherwise in the Design Contract.

1.1.111 DEPARTMENT: The Commonwealth of Pennsylvania Department of General Services, also known as “DGS” and referred to throughout the Design Contract as singular in number. The terms “Department” and “DGS” are used interchangeably throughout these General Conditions.

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

1.1.113 ERROR OR OMISSION CHANGE ORDER: A change order to a Historical Business Construction contractor required to correct Department-deemed deficiencies caused by the Historical Design Business’ failure to comply with its standard of care in the performance of services under the Design Contract.

1.1.114 FINAL INSPECTION: A review of the Work conducted by the Historical Design Business, at a time and date requested by a Contractor, to determine whether the Historical project is at substantial completion.

1.1.115 HISTORICAL DESIGN BUSINESS: Architect and/or Engineer retained directly by the PHMC or the Historical Design Business’ authorized representative or consultant(s).

1.1.116 HISTORICAL DESIGN BUSINESS’ CONSULTANT: Specialist(s) providing Historical Design Business Services which has been retained under a contract by the Historical Design Business for the performance of its specialty. No privity of contract exists between the PHMC and any Historical Design Business’ Consultant and, to the extent set forth by law the Historical Design Business’ Consultant has no direct cause of action against the PHMC for any claim arising out of a Historical Business project.

1.1.117 HISTORICAL BUSINESS DESIGN CONTRACT: The contract for Historical Design Business Services, including these General Conditions thereto and any Special Conditions, in addition to any Amendments, between the PHMC and the Historical Design Business. The Historical Business Design Contract 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 Historical Business Design Contract is commonly referred through these General Conditions as “Design Contract”.

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

1.1.119 HISTORICAL BUSINESS PRIME CONTRACTOR DOCUMENTS: Standard Form of Contract for construction, Notice to Bidders, Instructions to Bidders, the Bid Package, Contract Bonds, Conditions of the Construction Contract (General, Special, 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 for Construction, and all construction change orders. These documents form the entire Historical Business Construction contract and are incorporated in the Historical Business 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.

1.1.120 JOB CONFERENCE: Meetings scheduled and conducted on-site by PHMC with the Historical Design Business and all Prime Contractor(s), to discuss and review the progress of the Work. Regularity and attendance will be project-specific.

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

1.1.122 ORIENTATION MEETING: A meeting scheduled and conducted by the PHMC with the Historical Design Business for the purpose of reviewing and discussing the Scope, the Historical Design Business’ services, and scheduling, where applicable, an initial site visit.

1.1.123 PHMC: Pennsylvania Historical and Museum Commission, the administering agency for the Design Contract and the projects. The Division of Architecture and Preservation is the office within PHMC that manages the Design Contract and the projects.

1.1.124 PROJECT PROCEDURE MANUAL: Document provided and issued by the PHMC to direct the Historical Design Business as to proper PHMC procedures and policies with regards to the Historical Design Business' responsibilities, duties and obligations necessary for the completion of its Services under the Design Contract.

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

1.1.126 PROJECT BUDGET: The funding for the entire project, including Historical Design Business fee, Historical Design Business contingency, construction contract amounts and construction contingency.

1.1.127 PUNCH LIST: A list of uncompleted items of Work generated by the Historical Design Business at Final Inspection.

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

1.1.129 REQUEST FOR INFORMATION: A written question issued by the Historical Business Construction contractor to the Historical Design Business seeking clarification of the Contract Documents.

1.1.130 SAMPLES: Physical examples furnished by the Historical Business Construction contractor to illustrate materials, equipment or workmanship, and to establish standards by which the Work will be judged.

1.1.131 SPECIFICATION: A description of the physical or functional characteristics or the nature of a construction item, including a description of any requirement for inspecting, testing or preparing a construction item for delivery. The specifications are a part of the Contract Documents and must be interpreted in conjunction with the other Contract Documents, as specified further in the General Conditions.

1.1.132 SUBCONTRACTOR: A person or organization that has a contract with a Small Business Construction contractor to perform any of the Work. The term Subcontractor is referred throughout the Contract Documents as singular in number and means a Subcontractor or its authorized representative. There is no privity of contract between the PHMC and any Subcontractor. The Subcontractor has no direct cause of action against the Department or the Historical Design Business for any claim arising out of a Small Business project.

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

1.1.134 SUBSTANTIAL COMPLETION: The point in time when the Work on the Contract is sufficiently completed in accordance with the Contract Documents and certified by the PHMC and the Historical Design Business so that the Small Business project or specified part(s) of the Historical Business 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 PHMC and is capable of Beneficial Occupancy.

1.1.135 UNIFORM CONSTRUCTION CODE (UCC): Pennsylvania's Uniform Construction Code (35 P.S. §7210.101 et seq.) that grants the Pennsylvania Department of Labor & Industry sole jurisdiction over state-owned buildings. A general description and important links can be found at <http://www.dli.state.pa.us> and clicking on the Building Codes Quick Link.

1.1.136 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 Historical Business Construction contractor to fulfill its obligations. The Work may constitute the whole or a part of various Historical Business projects.

1.1.137 WORK ORDER: The authorization or approval by the PHMC that defines the scope of work, the schedule, the fee and the base construction amount.

ARTICLE 2

HISTORICAL DESIGN BUSINESS' RESPONSIBILITIES AND SERVICES

2.1 GENERAL REQUIREMENTS

2.1.100 HISTORICAL DESIGN BUSINESS' SERVICES. These Services consist of stages and submissions described in these General Conditions and the Basic and Additional Services required for various Historical Business projects, as further described in the Design Contract.

2.1.101 LIMITED BUDGET CONTRACT AND WORK ORDERS. This is a limited budget agreement. It is the Historical Design Business' responsibility to promptly notify the PHMC if, in the Historical Design Business' opinion, a Historical Business project cannot be designed and constructed within the Base Construction Amount for the project as set forth in Article 4 (Compensation and Costs) of the Design Contract. It is the Historical Design Business' responsibility to so notify the PHMC that such a situation is apparent.

If, without such notification, the following occurs:

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

then the PHMC has the discretion to require the Historical Design Business to adjust the Historical Business project's design, without charge to the PHMC, and rebid the Historical Business project until the aggregate of the bids is within the Base Construction.

2.1.102 HISTORICAL DESIGN BUSINESS CLIENT RELATIONSHIP. The PHMC is constructing a Small Business project in accordance with the Historical Business project scope of work. The Historical Design Business is responsible to the PHMC, and only the PHMC may give instructions which bind the PHMC. The Historical Design Business is required to coordinate and communicate with PHMC, The Historical Design Business may not change the Historical Business project Scope or direct that items be included in the design which will increase the construction cost above the Base Construction Amount. All requests for such changes must be approved by the PHMC. PHMC may, issue Work Orders to the Historical Design Business for Additional Services necessary within the scope of work for the project.

2.1.103 HISTORICAL DESIGN BUSINESS' CONSULTANTS. The Historical Design Business' 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 Design Contract(s): At the PHMC's discretion, the Historical Design Business shall submit a copy of every Historical Design Business' Consultant Design Contract.
- B. All agreements between the Historical Design Business and its Historical Design Business' Consultant must:

1. Set forth the amount the Historical Design Business' Consultant is to be paid;
2. Describe the scope of services to be performed by the Historical Design Business' Consultant; and
3. Require that the Historical Design Business' Consultant is without privity of contract with the PHMC and that the Consultant agrees by signing the Consultant Design Contract that it neither acquires nor intends to acquire any rights against the PHMC on a third party beneficiary theory or any other theory.
4. Require the Historical Design Business to pay the Historical Design Business' Consultant in accordance with the requirements of the Prompt Payment Act, (62 Pa.C.S. §3931 et seq.), where the Historical Design Business shall be "the Contractor" and the Historical Design Business' Consultant shall be "the subcontractor". Violation of the provisions of the Prompt Payment Act will have ramifications, including but not limited to subjecting the Historical Design Business to penalties and attorneys fees under §3935, and possible suspension and/or debarment under §531 of the Commonwealth Procurement Code.

2.1.104 ATTENDANCE AND MINUTES OF CONFERENCES AND MEETINGS. The Historical Design Business shall attend all meetings during design stages which are required by the PHMC as part of Basic Services. The Historical Design Business, or its authorized representative, and the Historical Design Business' Consultants when appropriate, shall attend all meetings and conferences that are reasonably required by the PHMC.

2.1.105 COORDINATION OF SERVICES, UTILITIES AND EXISTING FACILITIES. As part of Basic Services, the Historical Design Business shall coordinate all its services with and between its consultants, and PHMC and obtain all necessary data for coordinating the Project with existing structures and all support utilities. The Historical Design Business shall consult with PHMC regarding any correlation of design with future planning. The Historical Design Business shall confirm in writing to the PHMC all data furnished to the Historical Design Business in this connection and the data's adequacy. The Historical Design Business shall obtain from the various Public Services and Utility Companies, such as gas, electric, water, steam, waste water treatment/disposal, surface water disposal, telephone and communication, a written commitment of their capability to service this Project and shall arrange for all such services to be provided to the Project site. Where special project studies, reports, investigations, tests or specialized additional services have been performed, the Historical Design Business shall, as part of Basic Services, coordinate, incorporate and develop design appropriately. Where water or sewage disposal are not readily available from the public services, the Historical Design Business' design responsibility, unless otherwise directed by the PHMC, includes the preparation of necessary plans and specifications for water supply or for the sewage disposal systems and the cost thereof shall be included in the project.

2.1.106 VISITS TO SITE. During the design of the Historical Business project, the Historical Design Business shall visit the Historical Business project Site at least once and shall obtain and study available record drawings, investigate existing conditions. The Historical Design Business shall verify in writing to the PHMC that it has requested and obtained pertinent interference documentation from all utility companies, and any other entity that may have underground or concealed lines or objects in the area of the proposed construction. The Historical Design Business shall verify project related existing conditions by visual inspection and measurement and not by sole reliance on the Record Documents or the Land Survey.

2.1.107 SUBMISSIONS.

- A. **SCHEDULING SUBMISSIONS:** The Historical Design Business must undertake to obtain all approvals in a timely manner to permit the Services to continue on schedule.

- B. APPROVAL: All submissions must be approved under the written direction of the PHMC as provided elsewhere in this Design Contract.
- C. REVISIONS: The Historical Design Business is responsible for responding to any and all comments to design made by the PHMC as provided for elsewhere in this Design Contract.

2.1.108 SEPARATE PRIME CONTRACTS. The Historical Design Business 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 Historical Business 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).

2.1.109 REPRESENTATION AS TO QUALIFICATIONS. The Historical Design Business specifically represents and covenants with the PHMC that the Historical Design Business and Historical Design Business' 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 Historical Design Business, the withdrawal from various Historical Business projects of any person employed by the Historical Design Business who the PHMC deems to be insufficiently qualified for that portion of the Services or who is incompetent or guilty of misconduct.

2.1.110 STATEMENT OF PROBABLE CONSTRUCTION COSTS. The Historical Design Business' Statement of Probable Construction Cost must be submitted in a format that is acceptable to PHMC and shall be to the level of detail commensurate with the current level of design. The PHMC reserves the right to review and comment on the Historical Design Business' Statement of Probable Construction Cost.

- A. The Historical Design Business shall submit a Statement of Probable Construction Cost with each design submission as provided for elsewhere in this Design Contract. Such Statements of Probable Construction Costs shall always be based upon the Base Construction Amount.
- B. If the Statement of Probable Construction Cost indicates a potential problem in securing a bid within the Base Construction Amount, the Historical Design Business shall notify the PHMC and shall coordinate with PHMC 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 SCHEMATIC SUBMISSION

2.2.100 PROJECT SCOPE STATEMENT. A Survey Cost Estimate, including a Project Scope Statement will be supplied by the PHMC for a Historical Business project. The Project Scope Statement may contain background information for the Historical Business project and quantification of work items contained in the Historical Business project. The Survey Cost Estimate will have been used to define the Base Construction Amount. For major preservation projects, the PHMC 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 Historical Design Business at the Orientation Conference. Beginning with the Initial Site Visit, the

Historical Design Business shall meet and work with PHMC to determine detailed program and scope requirements and shall refine and complete the scope.

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

2.3 CONSTRUCTION DOCUMENTS SUBMISSION

2.3.100 CONSTRUCTION DOCUMENTS. Upon receipt of written approval of the Schematic Submission, the Historical Design Business shall finalize the Construction Documents, on or before the date provided in the Final Time Schedule, and shall submit the same for review and approval to PHMC. The submission shall include the recommendation for the number of calendar days for construction and, if required, 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.

2.3.101 FINAL STATEMENT OF PROBABLE CONSTRUCTION COST. With the Construction Documents Submission, the Historical Design Business shall provide an updated Statement of Probable Construction Cost in a format that is acceptable to PHMC. 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 significant modifications made by the Historical Design Business in the course of developing the Construction Documents. The Historical Design Business is responsible for providing a complete budget summary showing the breakdown including detailed line items and takeoffs. Statements of Probable Construction Cost shall be coordinated and consistent with project descriptions, plans, drawings and specifications at the time the statement is prepared.

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

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

2.3.103 CONSTRUCTION DOCUMENTS APPROVAL. The Historical Design Business shall meet with PHMC for the purpose of and reviewing the Construction Documents including the updated schedule and the Final Statement of Probable Construction Cost. Once accepted, PHMC will proceed with bidding the project. The Historical Design Business agrees that approval of the Construction Documents by any person, body or agency shall not relieve the Historical Design Business 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.

- A. **CONSTRUCTION DOCUMENTS REJECTION.** PHMC will provide the Historical Design Business written documentation regarding any rejection of the submission. **THE HISTORICAL DESIGN BUSINESS** shall address all comments and

issues raised by PHMC as reasons for rejection and shall submit revised Construction Documents which address all such comments within the revised submission deadline provided by PHMC in the rejection letter.

- B. The Historical Design Business shall not be paid for the Construction Documents design fee until it receives the written approval from the PHMC.
- C. If the Historical Design Business fails to remedy the reasons for rejection by the revised submission date, the PHMC may direct that design cease and continue to cease payment and such failure may result in default by the Historical Design Business of this Historical Design Business Design Contract.

2.4 CONSTRUCTION PROCUREMENT

2.4.100 ADVERTISING AND RECEIPT OF BIDS. The PHMC will designate the construction period and advertise the Historical Business project. The PHMC will designate the date, hour and place for the receipt, public opening, and reading of bids.

2.4.101 REPRODUCTION AND DISTRIBUTION OF BIDDING DOCUMENTS.

- A. PHMC will administer the reproduction and distribution of the bidding documents.
- B. The Historical Design Business shall not provide answers, clarifications or other explanations to one bidder and not to others since this may create an unfair bidding environment.
- C. The Historical Design Business shall provide the PHMC with written responses on Requests for Information received from bidders as a Basic Service.
- D. The Historical Design Business shall create the language, but shall not actually issue bulletins. All bulletins will be issue by the PHMC.

2.4.102 PRE-BID CONFERENCES. If required by the PHMC, the Historical Design Business, with its key consultants, shall attend a pre-bid conference as part of Basic Services. The Historical Design Business shall be responsible for taking and issuing the Minutes of the Pre-Bid Conference to the PHMC. The meeting Minutes alone shall not be issued as a bulletin. Only written questions received resulting from the Pre-Bid Conference shall be addressed by bulletin.

2.5 ADMINISTRATION OF HISTORICAL BUSINESS CONSTRUCTION

2.5.100 SCOPE OF SERVICES. The Construction Contract Administration Stage commences with the issuance of a Notice of Award of Historical Business Construction contracts and ends at the issuance of the final payment to the Historical Design Business unless otherwise specified by the PHMC in writing. The Historical Design Business shall assist and cooperate with the PHMC'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 PHMC Construction Contract Documents. Services shall include both construction field and office activities.

2.5.101 ACCESS TO WORK AND ON-SITE REPRESENTATION. The Historical Design Business, the Historical Design Business' 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 PHMC and security programs established for various Historical Business projects. The Historical Design Business is not responsible for the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connections with the Work. The Historical Design Business shall, as an Additional Service, provide a representative at the site during all times of active construction when directed by the PHMC.

2.5.102 VISITS TO THE SITE AND MEETINGS. The Historical Design Business or Historical Design Business' Consultants must visit the site at least once to review the Work in order to achieve the

requirements of each Contract, with a maximum number of visits as set forth in the Work Order. The Historical Design Business shall review the progress of the Work, including the completeness of the Historical Business Construction contractors' installation drawings, and take actions necessary or appropriate to assist in achieving the compliance with the Contract Documents. The Historical Design Business shall advise the PHMC's as to particular matters to watch and guard against. The Historical Design Business shall maintain a log of all of its site visits and the Historical Design Business' Consultant's visits to the Site for each discipline.

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

2.5.104 REVIEW OF CONTRACTOR'S SUBMITTALS. The Historical Design Business shall review and approve or take other appropriate action with regard to submittals, including shop drawings, samples, materials or other submissions of the Historical Business Construction contractor for compliance with the requirements of the Contract Documents. The Historical Design Business shall follow the process and procedures set forth these General Conditions. The Historical Design Business shall request from the Historical Business Construction contractor and may rely on bona fide test data, certifications and other evidence submitted by the Historical Business Construction contractor, as needed to establish conformity with the Contract Documents prior to approving material and products.

2.5.105 PROGRESS REPORTS AS TO CONSTRUCTION. The Historical Design Business shall, within seven (7) days of being at the site make a written report to the PHMC relative to the progress of the Work and or issues discussed at the meeting. In the event of Historical Business Construction contractor's non-compliance, including omission of Work or faulty workmanship, the Historical Design Business shall recite in the report the paragraph number or article of the Specifications or detail or drawing that has been violated, indicating the deviation from design.

2.5.106 CHANGE ORDERS. The Historical Design Business shall evaluate and recommend action to the PHMC on all change order requests initiated by the PHMC, the Historical Business Construction contractors, or by the Historical Design Business' own observation of the Work.

- A. **EVALUATION OF INITIAL REQUEST.** The evaluations shall include a Statement of Probable Construction Costs (with a breakdown of major items of work), an opinion of the cause of the change order with substantiating background and a recommendation as to whether the change order should be pursued.
- B. **CONSTRUCTION CONTRACTOR'S CHANGE ORDER BREAKDOWN.** The Historical Design Business shall review the Historical Business Construction Contractor's proposed cost of the work including labor and materials and effect upon time dependent costs. The Historical Design Business shall comment on these proposed costs and expenses and advise the PHMC in writing.
- C. **PHMC'S REVIEW.** The PHMC will review the Historical Design Business' input and determine those change orders to be pursued.
- D. The Historical Design Business shall receive no compensation or fee for any change orders which result from an error or omission by the Historical Design Business. However, Historical Design Business shall be compensated for Change Orders which, although originally designated as due to an error or omission, are not finally determined to have resulted from an error or omission.

2.5.107 REJECTION OR STOPPAGE OF WORK. Where the Historical Design Business observes deficiencies or observes the Historical Business Construction contractor failing to execute the Work in accordance with the Contract Documents, the Historical Design Business shall promptly

notify the Historical Business Construction contractor in writing of all such deficiencies and shall issue such notices of Non-Compliant Work that the Historical Design Business deems appropriate. The Historical Design Business shall recommend rejection of work that does not conform to the Contract Documents and immediately notify the PHMC of the recommendation of rejection. The Historical Design Business shall recommend stoppage of Historical Business Construction contractors' work or special testing whenever such testing or stoppage is necessary, in the Historical Design Business' opinion to achieve compliance of the Work with the Contract Documents. Recommendation of stoppage shall be made orally to the PHMC's field representative and confirmed, in writing, within twenty-four (24) hours of the recommendation. The confirmation must include the reasons for such recommendation.

2.5.108 CONSTRUCTION BY STATE EMPLOYEES. If the PHMC decides to perform the actual construction using its own personnel, or other State employees, or inmates, the Historical Design Business shall prepare appropriate drawings, specifications, and material lists as a negotiated additional service.

2.5.109 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 or quality, appearance, design, function, and performance, and for establishing a standard of competitive bidding. The Historical Construction Business Contractor will furnish submittals to the Historical Design Business and the PHMC subsequent to the Effective Date of the Contract, which shall include a comprehensive description for each material or equipment proposed to be utilized, with engineering, construction, dimension and performance data. The Historical Design Business will render a written determination to the Historical Business Construction Contractor.

2.5.110 SUBSTITUTIONS. If the Historical Business Construction contractor desires to furnish material or equipment different in quality, performance, or appearance from that named in the specification, the Historical Business Construction contractor shall submit to the Historical Design Business 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 Historical Design Business shall render a written opinion of the proposed substitution to the PHMC within thirty (30) days after receipt of the request for Substitution. The Historical Design Business' opinion shall include an evaluation of the salient characteristics of the proposed substitution, its compatibility with the Historical Business project, its cost and any schedule impact on the Historical Business project.

2.5.111 HISTORICAL DESIGN BUSINESS OBSERVATION OF TESTING. If the Historical Design Business needs to observe inspections, tests or approvals, it shall do so promptly, and where practicable, at the source of supply.

2.6 PROJECT CLOSEOUT

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

2.6.101 FINAL INSPECTION. This inspection occurs after the Historical Construction Business Contractor submits a request in writing to the PHMC for a Final Inspection and an application for final payment. The PHMC or its designee and the Historical Design Business will conduct a Final Inspection within ten (10) calendar days of the date of the PHMC's receipt of the request. If the PHMC and the Historical Design Business concur that the Work is at substantial completion, the Historical Design Business shall issue a certificate of completion and a final certificate for payment. In such case, the Historical Design Business shall produce and deliver to the Contractor, at the Final Inspection, a list of uncompleted items and a reasonable cost of

completion (Punch List). The Historical Design Business shall submit Record Drawings to the Department of Labor and Industry (L&I) on the date of the Final Inspection in order to receive a certificate of occupancy by the L&I by Closeout Inspection.

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

2.6.103 CONSTRUCTION AND MAINTENANCE DATA. Prior to Final Inspection, the Historical Design Business shall collect from the Prime Contractors, as provided in the Construction Documents, a rough draft of the Operation and Maintenance Instructions Manuals prepared by the Historical Business Construction contractors. The Historical Design Business 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 Historical Design Business shall indicate its approval of the rough draft with correction if necessary or request a revised draft and resubmission of the manual for the Historical Design Business’ review and approval. Upon receipt of the two (2) final bound manuals from each Prime Contractor, the Historical Design Business shall review them for compliance with the requirements of the Contract Documents, and when the Manuals meet the Historical Design Business’ approval, the Historical Design Business shall forward the two (2) copies to the PHMC.

2.7 ADDITIONAL SERVICES

2.7.100 ADDITIONAL SERVICES NOT COVERED BY COMPENSATION FOR BASIC SERVICES. The PHMC shall clearly identify in the Design Contract all those services which are required on a Small Business project scope which are Basic Services. Those services are described in the Historical Design Business Design Contract and will be designated as “included”, meaning that it is included and shall be compensated as a part of Basic Services. Unless identified as included in Basic Services, the Additional Services described in the Historical Design Business Design Contract are not covered by the Compensation for Basic Services. If requested in writing, and approved by the PHMC such Additional Services shall be the subject for additional compensation, as provided in this part. Compensation for Additional Services shall be in accordance with these General Conditions and the applicable Exhibit of the Historical Design Business Design Contract.

2.8 UCC COMPLIANCE

2.8.100 COMPLIANCE DURING CONSTRUCTION. This Project shall be subject to the Uniform Construction Code (UCC). The Historical Design Business 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 Labor and Industry is located on the web at <http://www.dli.state.pa.us/landi/lib/landi/ucc/forms/ucc-9.pdf>. The Historical Design Business, 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). Special inspections in accordance with the International Building Code (IBC). These site visits are an Additional Service to the number of meetings listed in the Historical Design Business Design Contract.

ARTICLE 3

THE PHMC’S RESPONSIBILITIES AND DUTIES

3.1.100 BASIC INFORMATION. The PHMC shall provide the Historical Design Business with the Historical Business project Scope and all available information as to the requirements of the Historical Business project, including the amount of the Base Construction. If the information furnished is not sufficient for the initiation of the Schematic Submission, the Historical Design Business shall immediately notify the PHMC.

3.1.101 PLAT/SURVEY AND REPORT; 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 PHMC will furnish such information to the Historical Design Business. Nothing in this paragraph shall relieve the Historical Design Business from responsibility for investigating and determining the quality of such information provided by the PHMC 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 PHMC is the sole interpreter of any printed instructions.

3.1.103 DEPARTMENT TO ACT PROMPTLY. The PHMC shall act with reasonable promptness upon all submissions and any failure of the PHMC to so act shall result in an extension of time to the Historical Design Business under the current Time Schedule equal to the number of days of the delay. If the Historical Design Business and the PHMC project manager cannot agree upon the extension to be granted, the PHMC Director of Management Services shall make the final decision. Such extension of time is the only remedy for such delay. The Historical Design Business is not entitled to any additional compensation as a result of such delay.

3.1.104 EFFECT OF PHMC'S DECISION ON DESIGN WORK. Any conditional acceptance, approval, or failure of the PHMC to disapprove or reject, design work submitted by the Historical Design Business does not relieve the Historical Design Business of its full responsibility to the PHMC for the proper and Historical Design Business performance of all design work on various Historical Business projects.

3.1.105 DUTY TO REPORT. Prompt notice shall be given by the PHMC if it actually becomes aware of any fault, defect, or inconsistency in various Historical Business projects. However, failure to do so will not limit the responsibility of the Historical Design Business to detect and address any fault, defect or inconsistency.

ARTICLE 4

THE HISTORICAL DESIGN BUSINESS' COMPENSATION AND PAYMENT

4.1.100 BASIS OF HISTORICAL DESIGN BUSINESS' COMPENSATION. The Historical Design Business' compensation and payments for all submissions, the construction procurement services, and Historical Business Construction contract administration services shall be the dollar value set forth in the Work Order. The dollar value shall be based upon a fixed percentage of the Base Construction Amount. Payments shall be made in accordance with the payment schedule established in this section.

4.1.101 BASIS OF HISTORICAL DESIGN BUSINESS' COMPENSATION FOR ADDITIONAL SERVICES. Any services not designated as Basic Service in the Historical Design Business Design Contract, which has been deemed by the PHMC as a necessary service for the completion of the Historical Design Business Design Contract shall be compensated based upon a not-to-exceed value or lump sum payment.

- A. This fee shall be set as described in the Design Contract. In addition to the cost of the services of the Historical Design Business' Consultant, the Historical Design Business shall be compensated 10% of that value for performance of the Additional Services of the Historical Design Business' Consultants and its application into the project.
- B. In the event an agreement cannot be reached, the PHMC may direct the Historical Design Business to provide the Additional Services as a Work Order to the Historical Design Business Design Contract at the amount specified by the PHMC, in which case, the Historical Design Business 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 PHMC are completed by the Historical Design Business or are terminated by the PHMC, the Historical Design Business may submit a request for cost incurred in performing the Additional Services to the Director of the Bureau of Management Services for PHMC.

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

	<u>Payment</u>	<u>Aggregate</u>
A. Upon approval of the Schematic Submittal	20%	20%
B. Upon approval of Constr. Documents Submission	30%	50%
C. Upon award of Construction Contracts	25%	75%

4.1.103 SCHEDULE OF PAYMENTS DURING CONSTRUCTION CONTRACT ADMINISTRATION. Invoicing for this stage starts with the Initial Job Conference. Twenty percent (20%) of the Historical Design Business' fee may be paid in monthly installments as follows:

- A. Balance of payment apportioned into two equal installments of 10%. The first installment may be paid after all submittals have been processed. The second installment may be paid upon the construction completion date.

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

4.1.104 FINAL PAYMENT. Upon acceptance and Historical Design Business' Certificate of Final Completion and approval of the Record Drawings, and final resolution of all Historical Business Construction contractor and Historical Design Business claims, the Historical Design Business' compensation will be paid in accordance with the schedule below:

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

At the PHMC's discretion it may release the Final Payment upon receipt of certificate of Final Completion and the PHMC Record Drawings. Final payment by the PHMC does not constitute a waiver of claims by the PHMC or the Historical Design Business.

4.1.105 CHANGE ORDERS. The services of the Historical Design Business arising from a Change Order authorized by the PHMC, which is not the result of the Historical Design Business' error or omission, shall be compensated at the Basic Services Fee percentage established for various Historical Business projects applied to the change order amount, with no reduction in Basic Services Compensation for Credit Change Orders. The Historical Design Business shall invoice for payment for fees on Change Orders.

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

ARTICLE 5 – HISTORICAL DESIGN BUSINESS' ACCOUNTING RECORDS

5.1.100 RECORDS. The Historical Design Business 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 various Historical Business projects. Such records shall be available to the PHMC at the Historical Design Business' office for inspection and copying at mutually convenient times for a period of at least 3 years beyond completion or termination of the contract.

5.1.101 RECORDS OF ADDITIONAL SERVICES. Cost incurred by Historical Design Business for providing Additional Services shall be kept separate and apart from all other project costs. Such records shall be available to the PHMC at the Historical Design Business' 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 APPROVAL OF SUBMITTALS. The Historical Design Business agrees that time is of the essence with regards to review and decision-making for submittals. Therefore, the Historical Design Business shall return the approved submittals, or detailed notation for resubmission if required, within fourteen (14) calendar days of receipt, unless a different period is approved by the PHMC. The fourteen day period consists of the time from the Historical Design Business'

receipt of the submittal to the time of the date that the Historical Design Business returns the submittal. If the receipt of the submittals is late by the approved schedule, the Historical Design Business shall endeavor to meet the schedule for acting upon the submission, but shall have the submission delivered no later than within fourteen (14) calendar days after receipt. Nothing in this paragraph relieves the Historical Business Construction Contractor from its responsibility for a late submission.

6.1.101 CONTRACTOR COORDINATION OF APPROVED SUBMITTALS. Each Prime Contractor shall be responsible for reviewing other Prime Contractors' approved submittals for consistency and interface with its work. Any exception taken to the content of another Historical Business Construction contractor's approved submittal must be formally presented to that Prime Contractor, the Historical Design Business, and the PHMC within seven (7) calendar days of the Prime Contractor's receipt of the approved submittal. The Historical Design Business 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.

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

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

6.1.104 RECORDS OF SUBMITTALS. The Historical Design Business shall keep and maintain a detailed log as to date of receipt of the submittals and date of return with adequate notes as to their disposition.

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

ARTICLE 7 – HISTORICAL DESIGN BUSINESS' RESPONSIBILITY FOR CONSULTANTS, OBSERVANCE OF LAWS AND COOPERATION WITH LOCAL BODIES, AND INSTRUCTION REGARDING PROPRIETARY ITEMS

7.1.100 RESPONSIBILITY. The Historical Design Business 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 various Historical Business projects. The Historical Design Business 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 various Historical Business projects.

7.1.101 COOPERATION WITH LOCAL BODIES. During the design of various Historical Business projects, the Historical Design Business 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 a Historical Business project, or should any required approvals be withheld by the local bodies, the Historical Design Business shall immediately notify the PHMC.

7.1.102 PROPRIETARY ITEMS, COPYRIGHTS, PATENTS. The Historical Design Business shall not include in the design of any Historical Business projects 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 a Historical Business projects. If the Historical Design Business includes in the design of any Historical Business projects any equipment, material or mode of construction which is proprietary, it shall have prior approval by the PHMC. Approval of a proprietary item will only be given because the item is required to meet the unique circumstances of a Historical Business project, and shall not be given for the purpose of preventing or restricting competitive bidding.

ARTICLE 8 – INSURANCE

8.1.100 HISTORICAL DESIGN BUSINESS LIABILITY INSURANCE. The Historical Design Business 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 various Historical Business projects, and failure to properly execute the construction administration duties for various Historical Business projects.

- A. Unless otherwise specifically provided in the Historical Design Business Design Contract, the Historical Design Business shall be required to secure and maintain Professional Liability Insurance with a minimum coverage of \$1,000,000 or otherwise acceptable to the Department.
- B. The Historical Design Business is required to secure and maintain Professional Liability Insurance up to and including one year after the date of the last Closeout Inspection of the Work under various Historical Business projects.

8.1.101 GENERAL LIABILITY INSURANCE. The Historical Design Business 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 Historical Design Business' services during the design and construction of various Historical Business projects for damages in law or equity for property damage and personal injury, including wrongful death. The PHMC shall be named as an additional insured in the policy and the Historical Design Business shall submit a certified copy of the entire policy to the PHMC, prior to the PHMC's submission of the executed Historical Design Business Design Contract to the Historical Design Business. The limits of coverage shall be acceptable to the PHMC. The Historical Design Business is required to secure and maintain General Liability Insurance up to and including the submission of Record Drawings and a Certificate of Final Completion of the last completed Historical Business project.

8.1.102 CERTIFICATE OF INSURANCE. The Historical Design Business shall return to the PHMC with the signed Historical Design Business Design Contract, 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 Historical Design Business shall submit a Certificate of Insurance covering the Historical Design Business Liability Insurance requirement for at least one year beyond the date the Historical Design Business executes the Historical Design Business contract. **This certificate**

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 PHMC.

8.1.103 UNACCEPTABLE INSURANCE COMPANY. If any insurance company providing the required coverage become unsatisfactory to the PHMC, the Historical Design Business shall promptly furnish such additional insurance coverage as may be required to protect the interest of the PHMC.

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

ARTICLE 9 – TERMINATION OF HISTORICAL DESIGN BUSINESS DESIGN CONTRACT AND SUSPENSION OF WORK THEREUNDER

9.1 TERMINATION

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

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

9.1.102 TERMINATION FOR DEFAULT OF HISTORICAL DESIGN BUSINESS. The PHMC may terminate this Historical Design Business Design Contract for any material default of the Historical Design Business, including default in making submissions or failing to take action within the time limits specified in the Historical Design Business Design Contract, by providing written notice to the Historical Design Business. The notice shall apprise the Historical Design Business 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 Historical Design Business. The Historical Design Business shall comply with all reasonable instructions of the PHMC then or subsequently given, relating to such termination, including but not limited to: instructions concerning delivery of drawings, sketches, and other architectural/engineering data to the PHMC; discontinuance of the Services on outstanding contracts; and furnishing to the PHMC information concerning all action to be taken respecting outstanding agreements with Historical Design Business' Consultants, contracts, awards, orders or other matters. The PHMC may refer a

Historical Design Business **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 also be sent to the Historical Design Business Selections Committee.**

9.1.103 ADJUSTMENT OF COMPENSATION UPON TERMINATION. Upon termination of the Historical Design Business Design Contract, as herein provided, the compensation of the Historical Design Business shall be adjusted in accordance with the following:

- A. If the Historical Design Business Design Contract is terminated for any reason except the material default by the Historical Design Business, at any time during the course of any Design Submission or the Construction Procurement Services Stage, all obligations of the PHMC to the Historical Design Business shall be discharged by the payment to the Historical Design Business of all sums due and unpaid in respect of all completed design phases.
- B. If the Historical Design Business Design Contract is terminated at any time during the Construction Contract Administration Stage, for any reason except the material default by the Historical Design Business, the obligation of the PHMC to the Historical Design Business shall be discharged by the payment of the installments due at the time such termination occurs.
- C. If the Historical Design Business Design Contract is terminated by reason of death or incapacity of the Historical Design Business, all payments due and owing shall be made to the Historical Design Business' personal representative for a sole proprietorship or to the company/partnership which employed the deceased or incapacitated Historical Design Business. If the Historical Design Business Design Contract is terminated by reason of the liquidation of a partnership or the dissolution of a corporation, payment shall be made in accordance with the articles of dissolution.
- D. If the Historical Design Business Design Contract is terminated by reason of a material default of the Historical Design Business, 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 PHMC has engaged another Historical Design Business to complete various Historical Business projects. If another Historical Design Business is engaged, the cost to the PHMC of the compensation and expenses of such other Historical Design Business will be deducted from the remainder of the compensation otherwise payable to the Historical Design Business for completion of the Services under the Historical Design Business Design Contract. If the costs of furnishing the Services which the PHMC has incurred in accordance with the Historical Design Business Design Contract exceed the Contract Sum for the completion of the Services, the Historical Design Business shall pay the difference to the PHMC.

9.2 SUSPENSION

9.2.100 SUSPENSION OF WORK. The PHMC may, at any time, direct the Historical Design Business in writing to suspend all work on various Historical Business projects, or any part thereof, pending receipt of further notice from the PHMC. In all such cases the PHMC and the Historical Design Business 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 PHMC.

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 various Small Business projects are suspended due to the fault of the Historical Design Business, including failure to design within the allocation, no further payments shall be made.

ARTICLE 10 – OWNERSHIP OF DOCUMENTS

10.1.100 PHMC 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 Historical Design Business or its Consultants under this Historical Design Business Design Contract, become the sole property of the PHMC. Such documents may be used by the PHMC for any desired purpose without any compensation to the Historical Design Business.

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

- A. **PATENT OWNERSHIP:** Historical Design Business and its Subconsultants shall retain ownership to patentable items, patents, processes, inventions of discoveries (collectively the “PATENTABLE ITEMS”) made by the Historical Design Business during the performance of this Historical Design Business Design Contract. Notwithstanding the foregoing, the PHMC is granted a non-exclusive, non-transferable, royalty free license to use or practice the PATENTABLE ITEMS. **The PHMC may disclose to third parties any such PATENTABLE ITEMS made by Historical Design Business or any of its Subconsultants under the Work Order for various Historical Business projects that have been previously publicly disclosed.** The PHMC 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 WORK ORDER FOR VARIOUS HISTORICAL BUSINESS PROJECTS:** All documents, sketches, drawings, designs, works, papers, files, reports, computer programs, data, computer documentation and other tangible materials authored and prepared by Historical Design Business as the Work Product covered in the Work Order for various Historical Business projects (collectively the “Works”) including Works developed by Subconsultants are the sole and exclusive property of the PHMC and shall be considered works made for hire under the federal Copyright Act of 1976, as amended. (Copyright Act). In the event that such Works do not fall within the specifically enumerated works that constitute works made for hire under the Copyright Act, Historical Design Business 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 PHMC. The PHMC shall have all rights accorded a holder of copyright under the Copyright Act 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, the right to display the WORKS and the right to perform the work digitally. Upon completion or termination of this Historical Design Business Design Contract, all working papers, files and other documentation shall immediately be delivered by Historical Design Business to the PHMC. Historical Design Business warrants that the Works are original and do not infringe the rights of any other work.
- C. **HISTORICAL DESIGN BUSINESS LICENSE:** Notwithstanding the foregoing, Historical Design Business and any Subconsultants shall retain a royalty free non-exclusive license to reproduce such Works for internal use and to have such

Works published for any academic purpose including, but not limited to, publication as part of any thesis or dissertation or journal article. This license is conditioned on the Historical Design Business' and the Subconsultants' compliance with the provisions of the intellectual property laws of the United States. All copies of reproductions and publications made pursuant to this License shall bear appropriate proprietary notices.

- D. PREEXISTING MATERIALS BROUGHT BY THE HISTORICAL DESIGN BUSINESS TO VARIOUS HISTORICAL BUSINESS PROJECTS: The PHMC shall have no ownership rights to Historical Design Business' proprietary materials, data, software, methodologies or other intellectual property that Historical Design Business brings to various Historical Business projects or has previously developed with or obtained from third parties ("Small Design Business Property");
- E. FEDERAL GOVERNMENT INTERESTS: It is understood that certain funding under this Historical Design Business Design Contract may be provided by the Federal government. Accordingly, the rights to Works or Patentable Items of Historical Design Business or Subconsultants hereunder will be further subject to government rights as set forth in 37 C.F.R. Section 401, and other applicable statutes. Notwithstanding the foregoing, the PHMC retains the right to share information relating to WORKS or Patentable Items developed under the Work Order 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 Historical Design Business Design Contract by the law of Pennsylvania, or the lawful regulations of any agency of the Commonwealth are included in the Historical Design Business Design Contract by reference, and the Historical Design Business Design Contract shall be read, interpreted and enforced as if such provisions were set forth herein in full. If various Historical Business projects 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 Historical Design Business Design Contract, are included in the Historical Design Business Design Contract by reference, and the Historical Design Business Design Contract 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 Historical Design Business Design Contract is in effect, the Historical Design Business agrees to the terms of the Nondiscrimination and Sexual Harassment Clause attached hereto as an Exhibit. For purposes of this Historical Design Business Design Contract, the word "Contractor" in these provisions means "Historical Design Business."

11.1.102 CONTRACTOR INTEGRITY PROVISIONS AND DISCLOSURE OF FINANCIAL INTEREST. So long as this Historical Design Business Design Contract is in effect, the Historical Design Business agrees to the Contractor Integrity Provisions attached hereto as an Exhibit. For purposes of this Historical Design Business Design Contract, the word "Contractor" in these provisions means "Historical Design Business."

11.1.103 CONTRACTOR DEBARMENT PROVISIONS. The Historical Design Business agrees to the Contractor Debarment Provisions, included in and made a part of this Historical Design Business Design Contract, Certification and Stipulations Related to Debarment. For purposes of this Historical Design Business Design Contract, the word "Contractor" in these provisions means "Historical Design Business."

11.1.104 AMERICANS WITH DISABILITIES ACT (ADA) PROVISIONS. The Historical Design Business agrees to the ADA Provisions attached hereto as an Exhibit.

11.1.105 TRADE PRACTICES ACT PROVISIONS. The Historical Design Business agrees to the Trade Practices Act Provisions attached hereto as an Exhibit.

11.1.106 TAX LIABILITY PROVISIONS. The Historical Design Business agrees to the Tax Liability Provisions, included in and made part of this Historical Design Business Design Contract as an Exhibit. For purposes of this Historical Design Business Design Contract, the word "Contractor" in these provisions means "Historical Design Business."

11.1.107 ENVIRONMENTAL STATEMENT. According to the Commonwealth Procurement Code, Act of May 15, 1998, P.L. 358, No. 57, 62 Pa.C.S. §§ 101-4509, all invitations for bids 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 various Historical Business projects.

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

ARTICLE 12 – HISTORICAL DESIGN BUSINESS AND CONSULTANT RELATIONSHIP

12.1.100 HISTORICAL DESIGN BUSINESS AND CONSULTANT RELATIONSHIP. The Historical Design Business must enter into a Historical Design Business Design Contract with each of Historical Design Business' Consultants deemed necessary for the proper design of various Historical Business projects. The relationship between the Historical Design Business and the Historical Design Business' Consultants limits the participation of the Historical Design Business' Consultant as follows:

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

Historical Design Business' Consultant must immediately inform the PHMC 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 HISTORICAL DESIGN BUSINESS' CONSULTANT PAYMENT. Performance by Historical Design Business' Consultant in accordance with the provisions of a contract shall entitle the Historical Design Business' Consultant to prompt payment from the Historical Design Business with whom the Historical Design Business' Consultant contracted.