

**COMMONWEALTH OF VIRGINIA**



**TERMS AND CONDITIONS OF THE A/E CONTRACT**

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**PLEASE NOTE:** The Terms and Conditions of the A/E Contract (CO-3a) (“Terms and Conditions”), have been created specifically for the use of agencies of the Commonwealth of Virginia, which may not alter any provisions without the express written approval of the Virginia Department of General Services, Division of Engineering and Buildings. The Terms and Conditions have significant legal implications and shall not be altered or modified. The Terms and Conditions shall not be amended or deleted or its intent changed, except by an approved and properly issued Supplemental General Conditions. The Commonwealth of Virginia makes no representation as to their suitability for any other purpose. Note: Governmental entities not subject to DGS purview intending to modify the Terms and Conditions for their use should consult with their legal counsel.

## 1. DEFINITIONS

Whenever used in these Terms and Conditions of the A/E Contract (“Terms and Conditions”) the following terms have the meanings indicated, which are applicable to both the singular and plural and the male and female gender thereof:

**AARB:** Commonwealth of Virginia’s Art and Architectural Review Board

**ADA:** The Americans with Disabilities Act of 1990.

**ADAAG:** Americans with Disabilities Act Architectural Guidelines.

**Addendum:** Written or graphic instruments issued prior to the opening of bids or proposals that clarify, correct or change the IFB or RFP.

**Advertisement:** The term commonly used to describe the public announcement or “Notice” of the availability of the IFB or RFP made by publishing a notice in eVA, and by providing public notice pursuant to the Virginia Public Procurement Act ([Code of Virginia](#), § 2.2-4300, *et seq.*).

**A/E Contract:** The Contract between Owner and A/E for Professional Services ([CO-3, CO-3.1, or CO-3.2](#)) and any documents expressly incorporated therein, including but not limited to: the Terms and Conditions of the A/E Contract (CO-3a); Supplemental General Conditions; the A/E Manual; the MOU; all addenda; and all modifications, including subsequent A/E Change Orders.

**A/E Change Order:** A document (CO-11ae) issued on or after the effective date of the A/E Contract which is agreed to by the A/E and approved by the Owner, and which authorizes an addition, deletion or revision in the A/E Services, including any adjustment in the Total Contract Amount, Contract Price and/or the Contract Completion Date. An A/E Change Order, once signed by all parties, is incorporated into and becomes a part of the A/E Contract.

**A/E Manual:** The A/E Manual shall consist of the following Chapters and Sections of the CPSM: Chapters 1, 2, 3, 6, 7; and Sections 4.0 through 4.18, Sections 5.0 through 5.16, ; and Appendices A thru through Z, including all revisions thereto. The A/E Manual and all revisions shall be incorporated into the A/E Contract in their entirety except as amended or superseded in the A/E Contract or an addendum thereto.

**A/E of Record:** An individual person named by the A/E to oversee, coordinate, review and be the professional responsible for the aggregate collection of A/E Services and the Construction Documents.

**A/E Project Manager:** The A/E Project Manager as used herein shall be the A/E’s designated representative for the Project. The A/E Project Manager shall be the person through whom the A/E generally conveys written decisions and notices. The A/E may change the A/E Project Manager from time to time and may, in the event that the A/E Project Manager is absent, disabled or otherwise temporarily unable to fulfill his duties, appoint an interim A/E Project Manager.

**A/E Services:** The entirety of the services that the A/E performs that constitute the scope of services for the A/E under the A/E Contract, including the Basic Services (Section 42 below), Additional Services, and any Extra Services.

**Additional Services:** Services required by the A/E Contract to be performed by the A/E that are in addition to those services required under Section 42 for “A/E Basic Services.”

**Agency:** The agency, institution, or department which is a party to the A/E Contract. For purposes of the Contract, the term Owner shall include such Agency, whether or not the Agency owns the Site or the building.

**Agency Contracting Officer:** The person designated in writing by the Agency as being delegated authority to award and sign contracts, change orders, and other documents related to capital outlay projects for the Agency (may also be called the **Chief Facilities Officer**).

**Agency Manual:** The Agency Manual shall consist of the following Chapters and Sections of the CPSM: Chapters 1 through 8, Appendices A through Z, and all revisions thereto.

**APELSCIDLA Board:** Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects.

**Architect:** A person who is qualified and licensed to practice architecture in Virginia by the APELSCIDLA Board. "Architect" may also be used to refer to a firm of such individuals which is properly licensed in the Commonwealth of Virginia.

**Architect/Engineer ("A/E"):** The Virginia licensed Architect or Engineer that contracts with the Owner to provide the A/E Services for the Project. The A/E is a separate contractor and not an agent of the Owner. The term includes any subcontractors, associates or consultants employed by the A/E to assist in providing the A/E Services.

**ASAD:** ADA Standards for Accessible Design, current edition.

**Association:** As applied to architects or engineers, this term shall mean a legal entity formed by several architects and/or engineers who have associated together for the purposes of working as a unit on a specific Project. The Association may take the form of a partnership, joint venture, corporation, etc.

**Beneficial Occupancy:** The time, following Substantial Completion, at which the Project or portion thereof, is sufficiently complete and systems operational such that the Owner could, after obtaining necessary approvals and certificates, occupy and utilize the space for its intended use. Guarantees and warranties applicable to that portion of the Work begin on the date the Owner accepts and occupies the Project, or a portion thereof, unless otherwise specified in the Supplemental General Conditions or by separate agreement.

**Bid:** The offer provided by a bidder submitted on the prescribed form and setting forth the bidder's price(s) for the Work to be performed.

**Bid Documents:** Another term for the **Invitation for Bids** ("IFB"), defined below.

**BIM Model:** The documents and electronic information produced by the building information modeling ("BIM") process.

**Building Official:** The Building Official for all buildings on Commonwealth of Virginia property excluding non-occupiable buildings, bridges and structures in the VDOT right-of-way and who is the Director of the Division of Engineering and Buildings, Department of General Services. The Building Official's duties, responsibilities and authority generally conform to those described in the Uniform Statewide Building Code ([Code of Virginia](#), § 36-98.1).

**Chief Facilities Officer:** Another term for **Agency Contracting Officer**, defined above.

**Code of Virginia:** Code of Virginia 1950, as amended. Sections of the Code referred to herein are noted by (§ xx-xx).

**Competitive Negotiations:** A method of contractor selection that includes the following elements ([Code of Virginia](#), § 2.2-4302.2):

- Issuance of a written RFP indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the Contractor.
- Public notice of the RFP at least ten (10) days prior to the date set for receipt of the proposal by posting in a public area normally used for posting of public notices and by publication on the eVA web site.

**Competitive Sealed Bidding:** A method of contractor selection that includes the following elements ([Code of Virginia](#), § 2.2-4302.1):

- Issuance of a written IFB containing or incorporating, by reference, the specifications and contractual terms and conditions applicable to the procurement.
- Public notice of the IFB at least ten (10) days prior to the date set for receipt of bids by posting in a designated public area and by publication of the public announcement or “Notice” of the availability of the IFB (i.e. Bid Documents) on the eVA web site [www.eva.virginia.gov](http://www.eva.virginia.gov). Bids may be solicited solely from contractors who have prequalified. ([Code of Virginia](#), § 2.2-4317). In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the DSBSD.
- Public opening and announcement of all bids received.
- Evaluation of bids based upon the requirements set forth in the invitation.
- Award to the lowest responsive and responsible bidder.
- Competitive sealed bidding shall not be used for procurement of Professional Services.

**Construction:** Includes new construction, reconstruction, renovation, restoration, major repair, demolition, and all similar work upon buildings and ancillary facilities owned or to be acquired by the Commonwealth of Virginia, including any draining, dredging, excavation, grading, or similar work upon real property.

**Construction Administration:** Non-professional services provided under a contract with the Owner which generally includes inspection of the Work, coordinating testing services contracts procured by the Owner, reviewing change orders and schedule submittals from the Contractor, and providing other construction period services for the benefit of the Owner.

**Construction Administrator (“CA”):** The CA is the entity responsible to the Owner for providing these services to assure compliance with the Contract Documents but is not responsible under the Construction Contract for providing the Work. The Owner may use an employee to perform Construction Administration services. This differs from the **Contract Administration** services required under the A/E Contract, defined below.

**Construction Contract:** The Contract between Owner and Contractor (CO-9), signed by the Owner, for the Work of the Project and all documents expressly incorporated therein. Also known as the **Contract Documents**, defined below.

**Construction Change Order:** A document (CO-11) issued on or after the effective date of the Construction Contract which is agreed to by the A/E and approved by the Owner, and which authorizes an addition, deletion or revision in the Work, including any adjustment in the Total Contract Amount, Contract Price and/or the Contract Completion Date. A Construction Change Order, once signed by all parties, is incorporated into and becomes a part of the Construction Contract.

**Construction Documents:** Written, graphic and pictorial documents prepared or assembled for describing the design, location and physical characteristics of the elements of a Project necessary for construction and for obtaining a building permit. See **Working Drawings**, defined below.

**Construction Management:** Services provided under contract with the Owner, which generally include coordinating and administering construction contracts for the benefit of the Owner, but may also include, if

provided in the Construction Contract, furnishing construction services to the Owner. See CPSM, Section 7.2 for further descriptions.

**Construction Manager (“CM”):** The CM has direct responsibility and liability to the Owner for performing the Work as described by the Contract Documents. Also called the **CM at Risk**, or the **Contractor** for the Project.

**Consultant:** An individual or firm with professional expertise engaged to render a specific service in connection with a Project.

**Contract Administration:** The duties and responsibilities normally performed by the A/E during the construction phase of a Project. This differs from **Construction Administration** services, defined above.

**Contract Completion Date:** The date by which the Work must be substantially complete. The Contract Completion Date is customarily established in the Notice To Proceed, based on the Time for Completion. In some instances, however, the Contract contains a mandatory Contract Completion Date, which shall be stated in the Invitation for Bids.

**Contract Documents:** The Contract between Owner and Contractor (CO-9) signed by the Owner and the Contractor and any documents expressly incorporated therein. In the event of a conflict between or among the Contract Documents, the precedence of the Contract Documents shall be in the following order: the Contract; the Supplemental General Conditions; the General Conditions; the Special Conditions; the Specifications; and the Plans.

**Contractor:** The person with whom the Owner has entered into a Contract between Owner and Contractor to do the Work.

**Contract Price:** The total compensation payable to the Contractor for performing the Work in accordance with the Contract Documents, subject to modification by Change Order.

**CM At Risk:** Another term for **Construction Manager**, defined above.

**CPSM:** The most current edition of DEB’s Construction and Professional Services Manual (“CPSM”), as amended and revised from time to time.

**Day(s):** Calendar day(s) unless otherwise noted.

**DEB:** Division of Engineering and Buildings, a division of the Commonwealth of Virginia Department of General Services.

**Defective:** An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, deficient, does not conform to the Contract Documents or does not meet the requirements of inspections, standards, tests or approvals required by the Contract Documents, or Work that has been damaged prior to the A/E’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion or Beneficial Occupancy).

**DEQ:** Commonwealth of Virginia Department of Environmental Quality.

**Design-Build (“DB”):** A contract between a public body and a design-build Contractor in which the Contractor agrees to both design and build the structure, roadway or other item specified in the Contract between Owner and Contractor. See CPSM, Section 7.3 for further descriptions.

**“Design-not-to-exceed” Budget:** The Project construction budget established in the A/E Contract as the maximum cost for the construction of the Project for which the A/E is engaged to provide A/E Services.

**DGS:** Commonwealth of Virginia Department of General Services.

**DHR:** Commonwealth of Virginia Department of Historic Resources.

**DPOR:** Commonwealth of Virginia Department of Professional and Occupational Regulation.

**DSBSD:** Commonwealth of Virginia Department of Small Business and Supplier Diversity.

**Drawing:** A page or sheet of the Plans which presents a graphic representation, usually drawn to scale, showing the technical information, design, location, and dimensions of various elements of the Work. The graphic representations include, but are not limited to, plan views, elevations, transverse and longitudinal sections, large and small scale sections and details, isometrics, diagrams, schedules, tables and/or pictures.

**Emergency:** Any unforeseen situation, combination of circumstances, or a resulting state that poses imminent danger to health, life or property.

**Engineer:** A person who is qualified and licensed to practice engineering in Virginia as a Professional Engineer by the APESCIDLA Board of the DPOR. "Engineer" may also be used to refer to a firm of such individuals which is properly licensed in the Commonwealth of Virginia.

**Equal:** Any other brand, make or manufacturer of a product, assembly or equipment that, in the opinion of the A/E, is equivalent to that specified, considering quality, capabilities, workmanship, configuration, economy of operation, useful life, compatibility with design of the Work and suitability for the intended purpose, and which is accepted as such by the Owner.

**Equipment:** A tangible resource, such as machinery, articles or apparatus, of a permanent or long-term nature, used in an operation or activity.

**eVA:** DGS' central electronic procurement system used in the Commonwealth of Virginia. The eVA home page address is [www.eva.virginia.gov](http://www.eva.virginia.gov).

**Extra Service(s):** A service which the Owner tasks the A/E to provide after the A/E Contract has been signed and which was not included in the Basic Services or in the Additional Services as described in the A/E Contract. Extra Services, and the compensation therefore, are authorized by a modification to the A/E Contract using an A/E Change Order ([CO-11 ae](#)).

**Field Order:** A written order issued by the A/E which clarifies or explains the Plans or Specifications, or any portion or detail thereof, without changing the design, the Contract Price, the Time for Completion or the Contract Completion Date.

**Final Completion:** Completion and full performance of all Work in accordance with the terms and requirements of the Contract Documents, including the completion of all items identified on punch lists generated through the inspections set forth in Section 44(b) and submission of all information, manuals, warranties and documentation required by the Contract.

**Final Completion Date:** The date of the Owner's acceptance of the Work following Final Completion.

**Final Construction Documents:** The set of plans from which the project is built, are prepared by the A/E for use in (1) obtaining the necessary permits and (2) completing the Work. Final Construction Documents are completed documents ready for bidding and include all corrections required by the DEB review. Each sheet of the drawings reproduced in the bid documents shall bear the seal and dated signature of the responsible licensed professional and a uniform document date.

Final Construction Documents Addendum: The first sheet of each and every addendum issued to bidders shall indicate the number of pages in the addendum and shall list any attached sketches, drawings or other material included in the addendum.

**General Conditions:** The General Conditions of the Construction Contract (CO-7).

**Governor:** The Governor of the Commonwealth of Virginia.

**Informality:** A minor defect or variation of a bid or proposal from the exact requirements of the Invitation for Bids or Request for Proposals that does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured, as established by [Code of Virginia](#), § 2.2-4301.

**Invitation for Bids (“IFB”):** A formal solicitation to the public including the Notice, Instructions To Bidders, Bid Form, General Conditions of the Construction Contract (CO-7), Supplemental General Conditions, Special Conditions, Forms to be used, the Plans and Specifications, and any other documents listed in the Specifications, all of which request qualified bidders to submit competitive prices or bids for providing the described Work on a Project. The IFB is the “Invitation for Bid” required by [Code of Virginia](#), § 2.2-4302.1.

**Instruments of Service:** All materials and documentation including the original drawings, the Plans and Specifications (including electronic files), and copies of any calculations and analyses prepared pursuant to the Contract between the Owner and the A/E

**Landscape Architect:** An individual licensed by the Commonwealth of Virginia as a “Landscape Architect” by the APELSCIDLA Board of the DPOR. The Landscape Architect may function as an A/E Project Manager and may be the A/E of Record on those Projects where the preponderance of the work is represented by the application of the principles and methodology of landscape architecture in consultation, evaluation, planning (including the preparation and filing of sketches, drawings, plans and specifications) and responsible supervision or administration of contracts relative to Projects principally directed at the functional and aesthetic use of land.

**LEED:** Leadership in Energy and Environmental Design.

**Manual:** The CPSM.

**Micro Business:** A business certified as a Micro Business by the DSBSD.

**Minority-Owned Business:** A business certified as a Minority-owned business by the DSBSD.

**MOU:** A Memorandum of Understanding between the Owner and A/E.

**NFPA:** National Fire Protection Association.

**Nonprofessional Services:** Any services not specifically identified as “professional services” in the definition of “professional services” provided by [Code of Virginia](#), § 2.2-4301.

**Notice:** All written notices required or permitted under the A/E Contract or Contract Documents. Notice shall be given in writing to the email address or physical delivery location identified in the A/E Contract or Contract Documents for receipt of Notice by the receiving party. A Notice is deemed to have been properly given and effective at the time such Notice is (i) deposited with a nationally recognized overnight delivery service using no more than two (2) business day delivery service for delivery to the Notice address; (ii) hand delivered to the Notice address; (iii) enclosed in a postage prepaid envelope addressed to the Notice address and delivered to a United States Postal Service for delivery by prepaid certified or registered mail; or (iv) sent via email to the email address identified for Notice in the A/E Contract or Contract Documents.

**Notice of Award:** The written notification by Owner to the apparent successful bidder notifying the bidder that it has been awarded the contract, pending the submittal and execution of all documents required in the IFB.

**Notice of Intent to Award:** The written public posting by Owner announcing the apparent successful bidder and notifying the bidder and all other bidders that the Owner intends to award the contract to the



apparent successful bidder pending completion of the verification that it is a Responsible Bidder and the receipt and acceptance of all executed documents required in the IFB.

**Notice to Proceed:** A written Notice given by the Owner to the Contractor fixing the date on which the Time for Completion will commence for the Contractor to begin the execution of the Work. The Notice to Proceed will identify the Contract Completion Date if not otherwise established by the Contract.

**Owner:** The public body with whom the Contractor and A/E have entered into contractual agreements and for whom the Work and A/E Services are to be provided. The term “Owner,” as used herein, shall also mean the Agency.

**Owner’s Project Manager:** Shall be the Owner’s designated representative for the Project. The scope of the Owner’s Project Manager’s authority is limited to that authorized by the Owner, who shall provide written information to the Contractor at the preconstruction meeting defining those limits. This authorization by the Owner or Owner’s Project Manager authority shall not impinge upon or supersede the professional responsibility and liability of the A/E.

**Performance Specification:** A specification which generally describes the characteristics of the article required, e.g. the style, type, quality, character, economy of operation and purpose to be served by the article and the results required of the article provided. It does not restrict bidders to a specific brand, make, or manufacturer, nor does it tell the A/E or Contractor how to achieve the required result.

**Person:** This term includes any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

**Plan Holder:** A Person that has received Plans from the A/E.

**Plans:** The term used to describe the group or set of Project-specific drawings which are included in the Contract Documents.

**Pre-bid Conference:** A meeting of interested, prospective bidders held at the Owner’s discretion, usually with the assistance of the A/E, prior to the receipt of bids in which comments or questions concerning specifications or other provisions in the IFB or RFP can be received and considered (*Code of Virginia*, § 2.2-4316). Any response shall be in writing and distributed to all who requested and received the IFB and RFP.

**Prequalification of Bidders:** The process by which the qualifications and credentials of potential bidders may be evaluated for particular types of services or construction in accordance with criteria established in writing and sufficiently in advance of their implementation to allow interested persons or firms a fair opportunity to complete the process (*Code of Virginia*, § 2.2-4317).

**Professional Services:** As defined in *Code of Virginia*, § 2.2-4301, work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering. “Professional Services” shall also include the services of an economist procured by the State Corporation Commission.

**Project:** The term used instead of the specific or proper assigned title of the entire undertaking which includes, but is not limited to, the Work and the A/E Services.

**Project Inspector:** One or more persons employed by the Owner to inspect the Work for the Owner and/or to document and maintain records of activities at the Site to the extent required by the Owner. The scope of the Project Inspector’s authority with respect to the Contractor is limited to that indicated in Section 16 (e) and (f) of the General Conditions and as supplemented by the Owner in writing to the Project Inspector and to the Contractor.

**Project Order:** A specific commission that is issued to the A/E with a CO-3.1a in accordance with the MOU incorporated into the A/E Contract (for use only with the Term Contract Between Owner and Architect/Engineer for Professional Services (CO-3.1)).

**Proprietary:** An adjective used to describe a product or piece of equipment which is manufactured under some exclusive right but which is available to Subcontractors from multiple vendors or Suppliers; (e.g. a product or piece of equipment which is specified by a single brand name and model number and which is available to bidders from more than one source, but for which no "Equal" is permitted).

**Provide:** Shall mean furnish and install ready for its intended use.

**Record Drawings:** Record Drawings are a final compilation set of drawings showing the "as built" condition of the Work, including all conditions, locations and dimensions based on the Contractor's As-Built Drawings. The Record Drawings shall contain the Plans, Specification, Addenda, approved shop drawings, and any other information needed to show the final condition of the work, actual location of piping and utilities, the depths of pilings or caissons if pilings or caissons were in the construction, and the integration of all Change Orders to the Work. Record Drawings shall be provided to the Owner in electronic PDF format, in addition to any other physical format required by the Owner.

**Responsible Bidder:** A bidder who has the capability, in all respects, to perform fully the Contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required ([Code of Virginia](#), § 2.2-4301).

**Responsive Bidder:** A person or firm who has submitted a bid which conforms in all material respects to the Invitation for Bid ([Code of Virginia](#), § 2.2-4301).

**Reviewing Agency:** Any agency from which an approval is required per the Code of Virginia or other policy or procedure in effect.

**RFP:** Request for Proposal.

**RFQ:** Request for Qualifications.

**Sealed Bid:** A bid which has been submitted in a sealed envelope to prevent its contents from being revealed or known before the deadline for the submission and opening of all bids.

**Service Disabled Veteran-Owned Business:** A business that meets the definition of Service disabled veteran business set forth in [Code of Virginia](#), § 2.2-4310.

**Services:** Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials, or supplies ([Code of Virginia](#), § 2.2-4301).

**Shop Drawings:** The drawings, diagrams, illustrations, schedules, installation descriptions and other data prepared by or for the Contractor to provide detailed information for the fabrication, location, erection, installation, connection and methodology associated with the Work. Shop drawings are intended to aid in the preparation and installation of materials and to ascertain that the materials proposed by the Contractor conform to the requirements of the Contract Documents.

**Site:** Shall mean the location at which the Work is performed or is to be performed.

**Small Business:** A business certified as a small business by the DSBSD.

**Sole Source:** A product, item of equipment, service or combination of these which is available from only one manufacturer, vendor or provider in an area to the exclusion of others (e.g. within the constraints of the particular Project, whether geographic, time, material or other). If products, equipment or services are

franchised to only one vendor in an area, the vendor would be considered a Sole Source for such products, equipment or services specified for this Project.

**Special Conditions:** That part of the Contract Documents which describes special or additional requirements or procedures applicable to the Project. The Special Conditions do not amend or supersede the General Conditions of the Construction Contract (CO-7).

**Specifications:** That part of the Contract Documents containing the written administrative requirements and the technical descriptions of materials, equipment, construction systems, standards, and workmanship for the Work.

**Subcontractor:** A person or firm having a direct contract with the Contractor or with any other Subcontractor for the performance of the Work, or who has a direct contract with the A/E for professional services for the Project. Subcontractor includes any person or firm who provides on-site labor but does not include a Supplier.

**Submittals:** All shop, fabrication, setting and installation drawings, diagrams, illustrations, schedules, samples, and other data required by the Contract Documents which are specifically prepared by or for the Contractor to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by the Contractor to illustrate material or equipment conformance of some portion of the Work with the requirements of the Contract Documents.

**Substantial Completion:** The condition when the Owner agrees that the Work, or a specific portion thereof, is sufficiently complete, in accordance with the Contract Documents, so that it can be utilized by the Owner for the purposes for which it was intended. The Owner at its sole discretion may, after obtaining the necessary approvals and certificates, take Beneficial Occupancy at this time or choose to wait to occupy until after Final Completion is achieved.

**Substitute:** A material, product, equipment, or assembly that deviates from the requirements of the Contract Documents but which the Contractor deems will perform the same function and have equal capabilities, service life, economy of operation, and suitability for the intended purpose. The proposal must include any cost differentials proposed. Any such proposed substitute must be submitted to the A/E for review and, if acceptable to the A/E and the Owner, incorporated into the Construction Contract by Change Order.

**Supplemental General Conditions:** An amendment or modification which amends or supplements the General Conditions of the Construction Contract ([CO-7](#)) or the Terms and Conditions of the A/E Contract ([CO-3a](#)).

**Supplier:** A manufacturer, fabricator, distributor, material provider or vendor who provides material for the Project but does not provide on-site labor.

**SWaM/SDV Business:** All subcategories of Small Businesses including Micro Business, Minority-Owned Business, Service Disabled Veteran-Owned Business, Small Business, and/or Women-Owned Business together as a group.

**Time for Completion:** The number of consecutive Days following the Date of Commencement within which the Contractor must achieve Substantial Completion of the Work in accordance with the Contract Documents.

**Total Contract Amount:** The total compensation payable to the A/E for performing the A/E Services, subject to modification by Change Order.

**Unit Price Work:** Work to be paid for on the basis of established unit prices for the quantity of material provided or Work done.

**USBC:** Another term for **Virginia Uniform Statewide Building Code**, defined below.

**VDOT:** Commonwealth of Virginia Department of Transportation.

**VPPA:** Virginia Public Procurement Act, *Code of Virginia*, § 2.2-4300 – 2.2-4383, as amended.

**VUSBC:** Virginia Uniform Statewide Building Code (also referred to as the **USBC**).

**Women-Owned Business:** A business certified as women-owned by the DSBSD.

**Work:** The construction and services required by the Contract Documents, whether completed or partially completed, including, but not limited to, furnishing labor, furnishing and incorporating materials and equipment into the Construction. The Work includes the entire completed Construction, or the various separately identifiable parts thereof, required to be provided under the Contract Documents or which may reasonably be expected to be provided as part of a complete, code compliant and functioning system for those systems depicted in the Plans and Specifications.

**Working Drawings:** Written, graphic and pictorial documents prepared or assembled for describing the design, location and physical characteristics of the elements of a Project necessary for obtaining a building permit. See **Construction Documents**, defined above.

## 2. LICENSE AND REGISTRATION

Persons providing architectural and/or engineering services shall be properly registered and licensed in Virginia as required by DPOR through the APELSCIDLA Board, and, if incorporated, the State Corporation Commission. Professional corporations shall obtain a Certificate of Authority as required by *Code of Virginia*, § 13.1-549. Other business entities shall register with DPOR as required by *Code of Virginia*, § 54.1-411, as amended.

The individual Architect or Engineer responsible for the control and supervision of each discipline shall be at all times licensed in the Commonwealth of Virginia and shall affix his or her seal to those documents for which he or she is responsible.

## 3. A/E OF RECORD

The A/E shall designate an A/E of Record on behalf of the A/E .

## 4. PROFESSIONAL SERVICES

The architectural, civil, structural, mechanical, and electrical portions of the Project shall be planned and designed by, or under the immediate supervision of, a licensed Architect or Engineer who has expertise in the particular discipline involved. Where the A/E chooses to subcontract a portion of the architectural, civil, structural, mechanical and electrical portions of the A/E Services, the A/E shall retain only entities which employ architects or engineers with the requisite expertise to provide the required services. The Subcontractors proposed by the A/E during the selection process to be part of the A/E Project team shall perform the A/E Services as proposed.

If circumstances require a change of personnel from the originally proposed Project team, the A/E shall advise the Owner of the proposed change, the reasons for the change, and the name and qualifications of the proposed replacements. The replacements must be acceptable to the Owner.

Any associates, Consultants, or Subcontractors proposed to be part of the A/E's Project team shall be contracted by the A/E at the beginning of the A/E Services and shall be active participants in all phases of the A/E Services related to their discipline from beginning to end. The A/E shall be responsible to the Owner for A/E Services provided by its Consultants and Subcontractors, whether employees of the A/E or not, performed for the A/E Contract.

**5. TAXPAYER IDENTIFICATION NUMBER**

The A/E shall furnish to the Owner its Federal Employer Identification Number (“FEIN”) if a proprietorship, corporation or a partnership, or it’s Social Security Number (“SSN”) if an individual at the time of A/E Contract award.

**6. DEBARMENT STATUS**

By entering into this Contract, the A/E certifies that it is not currently debarred or enjoined by the Commonwealth of Virginia from submitting bids or proposals on contracts for the type of goods and/or services covered by this A/E Contract, nor is it an agent of any Person that is currently so debarred or enjoined.

**7. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

By entering into this Contract, the A/E certifies that it does not and shall not during the performance of this Contract knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986, or otherwise violate its provisions.

If the A/E has an average of more than fifty (50) employees in the twelve (12) months preceding this A/E Contract, and the Total Contract Amount is in excess of \$50,000 then the A/E shall, during the performance of this A/E Contract, be registered and participate in the federal E-Verify program for employers as defined by *Code of Virginia*, § 2.2-4308.2.

**8. RELATIONSHIP OF ARCHITECT/ENGINEER TO OWNER**

After the A/E Contract has been fully executed, the A/E shall be the professional advisor and consultant to the Owner for technical matters related to the Project and shall be responsible directly to and only to the Owner. The Owner shall communicate all approvals, rejections, change requirements and other similar information to the A/E. The A/E shall advise the Owner of changes necessary to keep the Project within the prescribed area and cost limits. The A/E’s status, relationship and authority during the construction phase of the Project are further defined in the General Conditions, Section 15, (a) through (h), and are included herein by reference.

Generally, the Owner will observe the procedure of issuing orders to the Contractor through the A/E or, if the A/E’s construction period duties have been so modified, through the Owner’s Project Manager. If the Owner issues orders directly to the Contractor, the A/E shall be copied on such orders.

**9. ARCHITECT/ENGINEER’S MANUAL (A/E MANUAL)**

The most current A/E Manual is incorporated into the A/E Contract in its entirety except as expressly amended or superseded by the requirements of the A/E Contract or an addendum thereto.

For the sake of simplicity, the provisions of the A/E Manual dealing with Architects and Engineers are written as though they apply to the design of buildings and to Construction Administration only. They also shall apply, however, to all architectural and engineering services of every kind including, but not limited to, project studies, development of master site plans, other studies, and related professional services.

Many of the changes, additions, or deletions made in revisions to the A/E Manual are necessary to keep abreast with codes, statutes, or regulations related to the Project. They require immediate compliance by the A/E.

If the A/E determines that Extra Services will be needed to incorporate the requirements of the latest edition of the CPSM or any A/E Manual revision issued after the date of the A/E Contract, the A/E shall notify the

Owner of same within sixty (60) days of the date of revision distribution, and shall provide an itemized list of the Extra Services required.

After consultation with DEB, the Owner shall provide direction to the A/E regarding the effort necessary to incorporate the requirements of the revision. If appropriate, the Owner shall issue a Change Order to the A/E Contract for the Extra Services, as described in Section 20. Generally, revisions issued prior to the date of approval of the preliminary submittal can be incorporated with minimal, if any, Extra Services.

If the A/E fails to notify the Owner within sixty (60) days after the date of distribution of an A/E Manual revision that the revision will require Extra Services, the A/E waives the right to make claims for Extra Services provided to address the requirements of the revision.

#### **10. "DESIGN-NOT-TO-EXCEED" BUDGET AS RELATED TO A/E CONTRACT**

The Owner shall provide the A/E with a description of the Project including information on functions, space requirements, special features and requirements, aesthetic requirements, authorized square footage and "Design-not-to-exceed" Budget. If the low bid for the Work exceeds the "Design-not-to-exceed" Budget by ten percent (10%) or more, all revisions to the Plans and Specifications required to bring the cost of the Project within the "Design-not-to-exceed" Budget shall be executed by the A/E at no additional cost to the Owner.

The A/E's cost estimate shall be in the systems format described in CPSM Chapter 5 and Appendix E. The estimate shall be provided at a level of detail commensurate with the current design phase. The A/E shall submit a cost estimate with each phase submittal. If the cost estimate indicates a potential problem in securing a bid within the "Design-not-to-exceed" Budget, the A/E shall notify and work with the Owner 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 "Design-not-to-exceed" Budget.

Substantial changes in the Project scope, such as those which affect the area (whether increase or decrease) or function of the proposed facility, must be justified by the A/E and shall be approved by the Owner and may require the approval of the Governor or his designee.

#### **11. CODE AND REGULATORY COMPLIANCE**

The A/E is responsible for designing the Project and administering the construction phase of the Project in accordance with the VUSBC, the A/E Manual, and other statutory and/or regulatory requirements applicable to the Project. Nothing contained herein shall be construed as relieving the A/E or any Subcontractor, Contractor, Supplier or any other participant from any professional or legal responsibility for performance. Reviews, comments and approvals by DGS, DEB, Owner, or the staff of any Agency, in no way absolve any other Person involved in a Project from complying with his or her full responsibilities under the VUSBC and applicable laws, codes and professional regulations and standards. Lack of comment by DGS, DEB, or the Owner does not relieve the A/E from designing the Project to meet the VUSBC, other applicable codes, the A/E Manual requirements, and applicable state and local regulations related to water, sewer, fire department service, and other utilities.

If the correction is to comply with the requirements of the VUSBC, the A/E Manual, or to correct other statutory or regulatory violations and results in a Change Order to the Construction Contract during construction, any additional costs incurred by the Owner shall be paid by the party responsible for the violation or omission. The Owner shall bear only the costs attributable to the work as it should have been originally specified by the A/E as described in Section 13.

If the A/E believes that a VUSBC, A/E Manual requirement, or other statute or regulation is unclear as to meaning, the A/E shall request a written opinion as to the applicable interpretation from DEB or from the applicable regulatory agency, as appropriate. The A/E shall be entitled to rely on the written opinion, if any, which he receives in response.

**12. A/E PROFESSIONAL LIABILITY INSURANCE**

The A/E shall carry professional liability insurance covering acts, errors and omissions in the course of its professional services and the A/E Services. Prior to the start of any A/E Services, the A/E shall provide to the Owner Certificates of Insurance for review by the Owner. Upon request, the A/E also shall provide full copies of its insurance policies.

The A/E shall carry either “basic practice policy” or “project policy insurance” coverage. The minimum limits of liability coverage shall be the greater of either (a) an amount equal to five percent (5%) of the estimated “Design-not-to-exceed” Budget for all projects by the A/E for the Commonwealth currently under contract and where the Work has been completed within the past 5 years, per claim, and twice that amount, in the aggregate; or (b) \$500,000 per claim and in the aggregate. The maximum amount of insurance required, regardless of the “Design-not-to-exceed” Budget shall be \$5,000,000 per claim and \$10,000,000 in the aggregate.

The A/E shall maintain insurance coverage for a period of not less than five (5) years after completion of Work under the Contract Documents.

All coverage shall be considered primary and non-contributory with respect to other insurance that might be available to the A/E, Owner, or Agency.

The insurer shall waive rights of subrogation against the Owner and Agency for any claims covered by the insurance required herein.

Insurance shall not be canceled, dropped, replaced or materially changed without at least thirty (30) days’ prior written notice to and consent of the Owner.

**13. DESIGN ERRORS AND/OR OMISSIONS**

The Commonwealth of Virginia shall actively pursue reimbursement of damages resulting from the A/E’s errors, omissions or negligent performance of A/E Services, breaches of the A/E Contract, and failures by the A/E to comply with the applicable standard of care. Upon determination that there may be A/E financial responsibility, the A/E shall be contacted by the Owner in writing. The A/E shall be advised of the design deficiency or other breach or omission and informed that it is the Agency’s opinion that the A/E may be financially responsible. The A/E shall provide a technical solution to the identified problem, including cost estimate. The A/E also shall coordinate with the Owner to determine required technical support and timing to minimize delays and costs resulting from the issue. Pending final decision by the Owner, the A/E will be invited to attend all price negotiations with the Contractor for the corrective work.

If the A/E refuses to cooperate in the negotiations or disputes its responsibility, the Owner shall have the right to proceed with the remedial and corrective action, including necessary revisions, construction and/or Change Order negotiations without the A/E.

All changes to the Contract Documents, whether to correct errors or omissions, to accommodate unforeseen or differing site conditions, or Owner requested changes, must be made and documented by Change Order, using CO-11 or CO-11ae, as applicable.

The A/E shall not be responsible for the actual cost to correct equipment or systems which should have been originally specified in the Contract Documents, but the A/E shall be responsible for any increased costs, whether the result of inflation, reordering, restocking or otherwise, of incorporating the corrected Work into a Construction Contract Change Order as a result of the A/E’s errors, omissions, negligence or breach.

For the purposes of determining the A/E’s share of such costs for Work which has not yet been performed, the cost of Work performed under a Construction Contract Change Order shall generally be presumed to be at least fifteen percent (15%) greater than if the work had been included in the original Contract Documents. The A/E shall have the burden of disproving this presumption.

When determining the A/E's contribution for Construction Contract Change Orders attributed to errors, omissions, breaches or negligent performance of the A/E Services, where the work has not yet been done by the Contractor, the Owner/Agency may also take into account the actions and efforts of the A/E during the construction phase that were above and beyond the scope of its contract to assist the Owner in obtaining a timely, quality product.

**14. OTHER INSURANCE REQUIRED OF THE A/E**

Prior to the start of any A/E Services, the A/E shall provide to the Owner Certificates of Insurance for review by the Owner. Upon request, the A/E also shall provide full copies of its insurance policies. The A/E shall maintain all insurance required by this Section until the completion of the Work under the Contract Documents. The minimum types of coverage and limits of liability shall be as follows:

- Workers' Compensation and Employer's Liability Insurance – Coverage meeting all Commonwealth of Virginia statutory requirements and regulations to provide all benefits to which employees may be entitled, with limits no less than \$1 million bodily injury by accident or disease, each employee.
- Comprehensive General Liability – \$1,000,000 per occurrence and \$2,000,000 in the aggregate applicable on a per project basis. The coverage shall include: Broad Form Contractual Liability; Premises/Operations; Products and Completed Operations Coverage; Independent Contractor's Liability; and Personal Injury Liability (Libel, Slander, Defamation of Character, etc.).
- Automobile Liability – \$1,000,000 combined single limit for bodily injury and property damage per occurrence, covering all owned non-owned, hired and borrowed vehicles.

With the exception of worker's compensation insurance, the Commonwealth of Virginia and Owner shall be named as an additional insured on all policies. All insurance coverage shall be considered primary and non-contributory with respect to other insurance that might be available to the A/E, Owner, or Agency.

All insurers shall waive rights of subrogation against the Owner and Agency for any claims covered by the insurance required herein.

Insurance shall not be canceled, dropped, replaced, or materially changed without at least thirty (30) days' prior written notice to and consent of the Owner.

**15. RECORDS RETENTION**

The A/E shall retain record copies of its design calculations, BIM, Plans, Specifications, bid/contract documents, addenda, field orders, clarifications, and responses to Requests For Information, approved shop drawings and submittals, inspection/observation reports, fiscal records, Instruments of Service, and other documents relative to the A/E Contract for five (5) years after completion of the A/E Services or five years after Final Completion of Work whichever occurs earlier. Should the A/E cease its business prior to that time, the A/E will provide those Project related documents to the Owner.

**16. OWNERSHIP OF DOCUMENTS AND MATERIALS**

Instruments of Service shall belong exclusively to the Owner whether the Instruments of Service are completed or not and whether the Work for which they are made is executed or not. The A/E shall not use these materials on any other work or release any information from these Instruments of Service without the express written consent of the Owner.

Instruments of Service may be subject to public inspection in accordance with the Virginia Freedom of Information Act. Security-related documents and information are excluded from the Act unless a specific need to know can be shown. Trade secrets or proprietary information submitted by a bidder, offeror, or Contractor in connection with a procurement transaction shall not be subject to disclosure under the Virginia Freedom of Information Act, provided the bidder, offeror, or Contractor invokes the protections of *Code of*



Virginia, § 2.2-4342(F) prior to or upon submission of the data or other materials, identifies the data or materials to be protected and states the reason why the protection is necessary.

The A/E shall provide the following documents to the Owner at the completion of the A/E Services:

- Original sealed, signed, and dated Plans;
- Original copy of the Specifications;
- Copy of analyses made for the Project;
- Indexed copy of the calculations made by each discipline for the Project; and
- The Owner copy of all shop drawings, submittals, cut sheets, operation and maintenance instructions, parts lists, and other material related to the Project.

If the A/E creates a Building Information Model (“BIM”), Computer Aided Design and Drafting (“CADD”) or other renderings of the Project in digital design software, the A/E shall deliver the final renderings and underlying digital data to the Owner at the completion of the A/E Services with the same level of completeness as it would the documents discussed in the preceding paragraph.

The Commonwealth of Virginia, as owner of the documents prepared for its Projects, has the right to use the Project documents and Instruments of Service as a prototype to demonstrate scope, size, functional relationships, etc., to an Architect or Engineer designing a similar Project for the Commonwealth of Virginia or its agencies. The A/E shall not be responsible or liable to the Owner for any such use of the Instruments of Service.

#### **17. STANDARD/PROTOTYPE PLANS**

Where the Owner has engaged the A/E to prepare “Standard Designs” such as “Standard Plans” and/or “Prototype Plans” for structures such as picnic shelters, sheds, bath houses, single family residences, cabins, and utility buildings for the Owner to site adapt for use at various locations, the drawings for the Standard or Prototype Plans shall include:

- The name of the Owner;
- The Title of the Standard or Prototype Structure for which the design was developed;
- The name of the A/E; and
- The seal and dated signature of the responsible licensed professional.

The Standard Plans shall also indicate the applicable codes, standards, loadings and design parameters used to develop the design.

Where the A/E has not been engaged to review the site adaptation of the Standard Plans nor review the submittals or construction, the Owner, and not the A/E, shall be responsible for the proper site adaptation and use of the Standard Plans. The A/E shall, however, be responsible for negligent acts, errors or omissions in the Standard Plans.

When the A/E Services involve the site adaptation of Standard Plans, the cover sheet for the Project plans shall list the drawings included in the set of plans and shall differentiate between the Standard Plans and the “site-specific” site development, utility, and foundation drawings prepared by the A/E for that site. These site-specific drawings shall be sealed and signed by the responsible licensed A/E.

#### **18. REQUIREMENTS FOR A/E SEALS AND SIGNATURES**

The professional seal and signature of the Engineer, Architect, or Landscape Architect on the drawings provides notice to the public that the drawings are complete and that the professional has exercised complete direction and control over the A/E Services and the drawing to which the seal or signature is affixed. All Final Construction Documents for building Projects designed for the Owner shall bear the seal(s) and dated signature(s) of the responsible licensed professional(s).

Each drawing to be reproduced shall include:

- The name of the A/E;
- The Project Title;
- The Project location;
- The 11-digit Project Code;
- The Drawing/Sheet Title;
- The Drawing/Sheet number;
- The seal and dated signature of the responsible licensed professional; and
- The uniform date of the completed documents.

The Title sheet drawing(s) shall include:

- The Index of Drawings;
- The Project VUSBC data;
- The seal and dated signature of the A/E of Record of the Project; and
- The uniform date of the completed documents.
- Note: A/E may also require the seal and signature of a principal of its Subcontractors.

The Specifications Table of Contents or Title Page shall include:

- The seal and dated signature of the A/E of Record of the Project;
- The uniform date of the completed documents; and
- The list of specification sections included for the Project.
- Note: A/E may also require the seal and signature of a principal of its Subcontractors.

“Working Drawing Sets” submitted to DEB for review are expected to be complete documents ready for bidding.

Copies of each Final Construction Documents Addendum, with date, seal, and signature shall be distributed to the above recipients in the same fashion as the official Final Construction Documents.

Each Final Construction Documents Addendum shall include:

- The name of the A/E;
- The Project Title;
- The Addendum Number;
- The 11-digit Project Code;
- The seal and dated signature of the A/E of Record and all applicable responsible licensed professionals;
- The date of the Addendum;
- The page number and total number of pages; and
- A list of any attachments to and part of the Addendum.

## **19. SUBCONTRACTS**

No portion of the A/E Services shall be subcontracted without prior written consent of the Owner. Consultants proposed by the A/E during the selection and fee negotiation phases are assumed to be acceptable to the Owner unless the Owner notes otherwise during those phases. In the event that the A/E desires to subcontract some part of the A/E Services required by the Contract to a Consultant or Subcontractor not previously approved, the A/E shall furnish the Owner with names, qualifications and experience of the proposed Consultants for approval. The A/E shall, however, remain fully liable and responsible for all A/E Services performed by his Consultants and Subcontractors and shall assure that their A/E Services comply with all requirements of the A/E Contract.

## **20. MODIFICATION OF THE A/E CONTRACT (A/E CHANGE ORDERS)**

The Owner may, upon mutual agreement with the A/E, issue written modifications to the scope of services of the A/E Contract using CO-11ae.

Any single A/E Change Order, or accumulation of A/E Change Orders, which increases the original Total Contract Amount by more than twenty-five percent (25%) or \$50,000, whichever is greater, shall have the prior approval of the Governor or his designee. (*Code of Virginia*, § 2.2-4309 as amended).

When the cumulative total of A/E Change Orders exceed twenty-five percent (25%) of the original Total Contract Amount, or \$50,000, whichever is greater, all succeeding A/E Change Orders which increase the Total Contract Amount shall have the prior approval of the Governor or his designee. (*Code of Virginia*, § 2.2-4309 as amended).

In making any A/E Change Order, the resulting increase or decrease in cost shall be accompanied by adequate consideration in accordance with requirements of the JMU HECOM.

## 21. PAYMENTS TO THE ARCHITECT/ENGINEER

The following requirements are established in conformance with the JMU HECOM and, in particular, *Code of Virginia*, § 2.2-4347 *et seq.*, which is referred to as the “Prompt Payment Act.”

- a. The A/E shall submit an invoice to the Owner along with Owner-required documentation. The invoice shall generally itemize the various phases or parts of the Total Contract Amount, the value of the various phases or parts, the previously invoiced and approved amounts for payment, and the amount of the current invoice. The invoice shall also include a certification statement signed by the A/E stating that the A/E has paid its Consultants, Subcontractors and Suppliers their individual proportional share of all previous payments, including interest, received from the Owner. Invoices for reimbursables shall include documentation of costs for which reimbursement is sought. Invoices for A/E Services being performed on an hourly rate basis shall show the technical classifications, names of the persons performing the A/E Services, hours expended, marked up hourly rates for the classification, and the extended cost amount.
- b. Unless there is a dispute about the compensation due the A/E including, but not limited to, claims by the Owner against the A/E, then **within thirty (30) days** after receipt by the Owner of the A/E’s valid invoice, which shall be considered the invoice receipt date, the Owner shall pay to the A/E the amount approved less any retainage and less any prior payments or advances made to the A/E. The date on which payment is due shall be referred to as the “Payment Date.”
- c. The Owner may agree to make progress or partial payments to the A/E during any phase of the A/E Services based on the estimated value of the A/E Services completed by the A/E on that phase. Any such progress payment shall be based on the Owner’s opinion of the value of the A/E Services completed as of the date of the invoice. The A/E may invoice the Owner for progress payments. If the Owner agrees that the submittal for the particular design phase is complete, the Owner may approve payment of a cumulative amount of not more than ninety-five percent (95%) of the value of that phase at the time the phase submittal is made to the Owner. The A/E may invoice the Owner for the remaining five percent (5%) (i.e., the balance of the value of that phase) when the submittal has been reviewed and approved.
- d. Disputes regarding the compensation due the A/E may include, but are not limited to, the amount due, the value or percentage of the A/E Services completed, defects or deficiencies in the A/E Services, quality of the A/E Services, compliance with the Contract Documents, completion itself, or negligent performance of professional services on the part of the A/E. In the event of disputes, payment shall be mailed on or before the Payment Date for amounts and A/E Services not in dispute, subject to any setoffs claimed by the Owner.
- e. All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any payment and shall be corrected and adjusted in the final payment. In the event that any invoice by the A/E contains a defect or impropriety which would prevent payment by the Payment Date, the Owner shall notify the A/E in writing of such defect or impropriety within ten (10) days after the

invoice receipt date. Any disputed amounts determined by the Owner to be payable to the A/E shall be due thirty (30) days from the date the dispute is resolved.

- f. Interest shall accrue on all amounts owed by the Owner to the A/E which remain unpaid seven (7) days following the Payment Date. Said interest shall accrue at the discounted ninety day U.S. Treasury bill rate as established by the Weekly Auction and as reported in the publication entitled *The Wall Street Journal* on the weekday following each such Weekly Auction. During the period of time when the amounts due to the A/E remain unpaid following the fifteenth day after the Payment Date, the interest accruing shall fluctuate on a weekly basis and shall be that established by the immediately prior Weekly Auction. It shall be the responsibility of the A/E to gather and substantiate the applicable weekly interest rates to the satisfaction of the Owner and to calculate to the satisfaction of the Owner the interest due. In no event shall the rate of interest charge exceed the rate of interest established pursuant to *Code of Virginia*, § 6.2-1520. No interest shall accrue when payment is delayed because of a dispute between the Owner and the A/E as described in subparagraph d above, or a dispute as to the accuracy of any Request for Payment received. This exception to the accrual of interest shall apply only to that portion of a delayed payment which is actually the subject of the dispute and shall apply only for the duration of such disagreement. Nor shall interest accrue on retainage, which is withheld to assure faithful performance of the Contract. No interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, interest shall accrue at the rate determined above on amounts withheld which remain unpaid after seven (7) days following the payment date. In those cases where payment is made by mailing, the date of mailing of any payment by the U.S. Postal Service is deemed to be the date of payment to the addressee. Where payment is made by electronic transfer of funds, the date of the transfer of funds is deemed to be the date of payment. The Owner is entitled to interest on all amounts from the A/E that remain unpaid thirty (30) days after the amount is deemed due, whether as a result of a resolution of a dispute or otherwise. Any such interest shall be calculated by the same method as set forth in this subsection.

## 22. PAYMENTS BY ARCHITECT/ENGINEER

The following procedures are established in conformance with the JMU HECOM and, in particular, *Code of Virginia*, § 2.2-4347 *et seq.* (Prompt Payment Act).

- a. The A/E shall, at the time of contract award to the A/E, require every individual Consultant, Subcontractor and Supplier to provide its Social Security Number ("SSN"), or if a proprietorship, corporation or partnership, its Federal Employer Identification Number ("FEIN").
- b. Except in cases of bona fide disputes, or where the A/E has some other justifiable reason for delaying payment, the A/E shall pay:
- i. To each of its Consultants, Subcontractors and Suppliers, not later than seven (7) calendar days after receipt of amounts paid to the A/E by the Owner, the proportionate share of the total payment, including any interest, received from the Owner attributable to the A/E Services performed by Consultants and Subcontractors and materials furnished by Suppliers less a retainage of not more than five percent (5%), said retainage being the same money, not additional money, retained by the Owner from the payment to the A/E.
- ii. In the case of bona fide disputes or where the A/E has some other justifiable reason to delay payment, not later than seven (7) calendar days after receipt of amounts paid to the A/E by the Owner, the A/E shall notify the Owner and the Consultant, Subcontractor, or Supplier, in writing, of his intention to withhold all or a part of the Consultant, Subcontractor or Supplier's payment with the reason for nonpayment. The A/E shall make timely payments of those portions of the payment not in dispute.

- iii. The A/E shall pay interest to the Consultants, Subcontractors, or Suppliers on all amounts owed by the A/E that remain unpaid after seven (7) days following receipt by the A/E of payment from the Owner for A/E Services performed by the Consultants, Subcontractors, or materials furnished by Suppliers under the contract, except for amounts withheld as allowed in subsection (ii) of this Section. Unless otherwise provided under the terms of this A/E Contract, interest shall accrue at the rate of one percent per month.
  - iv. The A/E's obligation to pay interest to its Consultants, Subcontractors, or Suppliers pursuant to subsection (iii) of this Section shall not be construed to be an obligation of the Owner.
  - v. A contract modification shall not be made for the purpose of providing reimbursement to the A/E for such interest charge. The A/E's invoice shall not include any amount for reimbursement for such interest charge.
- c. Failure on the part of the A/E to conform to the requirements of this section and the JMU HECOM will be a breach of the requirements of the A/E Contract and/or a violation of law.
  - d. The A/E shall include in each of its subcontracts a provision requiring each Consultant, Subcontractor or Supplier to include in each of their subcontracts a provision requiring each Subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower tier Consultant, Subcontractor or Supplier. Each Consultant, Subcontractor or Supplier shall include with its invoice to, or request for payment from, the A/E, a certification that that it has paid each of its Consultants, Subcontractors and Suppliers and lower tier Consultants, Subcontractors and Suppliers their proportionate share of previous payments received from the A/E attributable to the Work performed or the materials furnished by it under this A/E Contract.

**23. AUDIT**

The A/E shall provide documentation, subject to audit, for all invoices requesting payment for services provided on a cost reimbursement or hourly rate basis. Compensation paid to the A/E on these bases is subject to adjustment based on the results of the audit.

Notwithstanding the requirements of Section 15, the A/E, by signing the Contract, agrees to retain all books, records, and other documents relative to the A/E Contract for five (5) years after final payment, or until audited by the Commonwealth of Virginia, whichever is sooner. The Owner, its authorized agents, and/or Commonwealth's auditors shall have full access to and the right to examine any of the materials during said period.

**24. CONFLICTS OF INTEREST**

The A/E, including any subsidiaries or affiliates or other entities in which the A/E has a pecuniary interest, which design, prepare plans and specifications, or prepare cost estimates for a Construction Contract is prohibited from providing all or a portion of said construction, or the building materials, supplies or equipment used in such construction. (*Code of Virginia*, § 2.2-4374).

In addition, an entity which provides to the A/E any design services specifying a sole source for building materials, supplies or equipment to be used in the construction shall be prohibited from bidding on, or otherwise furnishing such building materials, supplies or equipment for the construction. This prohibition is not applicable to vendors who provide catalog information, technical data and such on products, material or equipment to the A/E solely for the A/E's consideration.

**25. RELEASE OF INFORMATION PERTAINING TO PROJECT DESIGN**

Release, in any form by the A/E, of information pertaining to the estimated construction cost of a Project under design to anyone other than authorized Owner personnel, DEB personnel, and other Architects, Engineers or Consultants performing design of related state facilities is prohibited.

The A/E shall not release information concerning a Project to which it is providing A/E Services to anyone other than authorized Owner personnel, other Architects or Engineers performing design of related state facilities, and personnel of DEB without specific prior written approval of the Owner to release such information. This includes, but is not limited to, Project photographs, floor plans, and Project cost information.

When the Project is advertised, the A/E may provide the following information to “construction information/plan room” services who serve the construction industry:

- Type of Project or facility;
- Size (area) and number of stories;
- Types of materials;
- Bidding requirements;
- IFB (document) source; and
- A Project cost range (e.g. \$3,000,000 to \$5,000,000).

As documents are issued to prospective bidders, a current list of plan holders should be made available to those who request such information, including the plan room services.

During the bidding period, the A/E shall not respond to requests by prospective bidders to clarify or state the intent of Plans or Specifications unless such requests are in writing. The response shall be in the form of an addendum issued to all Plan Holders. Sources of supply for special equipment may be made available to all bidders in writing. The A/E shall promptly prepare and issue addenda for any necessary corrections or clarifications to the Plans and Specifications.

## 26. **DEFAULT**

In case of the A/E’s failure to deliver the reports, documents, Record Drawings, or A/E Services in accordance with the A/E Contract, or the A/E’s breach of any of the terms and conditions of the A/E Contract; then the Owner, after written notice, may procure A/E Services, in whole or in part, from other sources and the A/E shall be responsible for any resulting additional costs incurred by the Owner. This remedy shall be in addition to any other remedies which the Owner may have.

## 27. **TERMINATION OF CONTRACT BY THE OWNER/AGENCY**

The Owner may terminate the A/E Contract for cause or for convenience after giving thirty (30) days’ written notice to the A/E, or as otherwise specified below.

**Delivery of Materials:** Any termination shall not relieve the A/E of the obligation to deliver to the Owner all products of the A/E Services for which the A/E has been or will be compensated, including, but not limited to Instruments of Service, drawings and specifications, copies of electronic files, calculations, and analyses. Unless otherwise agreed to in writing, the A/E shall deliver the materials to the Owner within thirty (30) days of receipt of the notice of termination. Failure to do so shall result in the withholding of final payment and shall constitute a breach of contract.

### a. **Termination For Cause**

If the A/E should repeatedly or substantially breach the A/E Contract, or fail to perform the A/E Services or any portion thereof, then the Owner may terminate the A/E Contract for cause.

Before termination of the Contract, the Owner shall give the A/E at least ten (10) days’ written notice stating the breach (or breaches) forming the basis for the termination and provide the A/E an expressed period of time within which to remedy the stated breach (or breaches). If the A/E fails to remedy the breach (or breaches) within the allotted time, then the Owner may immediately

terminate the A/E Contract for cause without the necessity of further ten (10) day notice, by notifying the A/E in writing of the termination.

The Owner's forbearance in not terminating the A/E Contract shall not constitute a waiver of the Owner's right to terminate in the future for similar breaches or failures to perform.

If the Owner terminates the A/E Contract for cause, the A/E shall be responsible for all damages incurred by the Owner as a result of the A/E's breach or failure to perform, including but not limited to, all costs and expenses incurred in securing a replacement professional to fulfill the obligations of the A/E Contract, or to remedy deficiencies in the A/E's performance.

Any termination by the Owner for cause, if determined by a court of competent jurisdiction not to have been justified as a termination for cause, shall be deemed a termination for the convenience of the Owner.

b. **Termination For Convenience**

The Owner may terminate the A/E Contract in whole or in part for convenience by delivering to A/E a written notice of termination as set forth above, specifying the extent to which performance under the A/E Contract is terminated and the effective date of the termination. Upon receipt of such notice, the A/E must stop performing the A/E Services, including but not limited to A/E Services performed by Subcontractors and Consultants, at such time and to the extent specified in the notice.

If the A/E Contract is terminated for convenience, the A/E shall be entitled to those fees earned for A/E Services performed in accordance with the A/E Contract prior to the date the notice of termination is effective. Thereafter, the A/E shall be entitled to any fees earned for A/E Services not terminated, but shall not be entitled to lost profits for the portions of the A/E Contract which were terminated. The A/E shall be compensated for reasonable costs or expenses for delivery to the Owner of the Instruments of Service or other products of the services for which the A/E has or will receive compensation.

**Compensation Due the A/E:** When the A/E is terminated for convenience, the following method shall be utilized in computing amounts due the A/E for services prior to termination:

- If terminated at the completion of a design phase or the bidding phase, the amount due shall be the cumulative total of the fees for the phases completed according to the A/E Contract.
- If terminated prior to completion of a design phase or the bidding phase, the amount due shall be the sum of the previously completed phase fees plus a negotiated amount based on the portion of services provided for the phase not completed.
- If terminated during the construction phase, the total amount earned shall be the sum of the previously completed design and bidding phase fees plus a negotiated amount based on the portion of the construction period services provided through the notice of termination.
- Payment for the Additional Services portion of the fee shall be for those services provided up through the effective date of the written notice of termination unless otherwise specifically agreed to between the Owner and the A/E.
- Payment for the Reimbursable Expenses shall be based on approved reimbursable expenses incurred up through the notice of termination.

The A/E shall submit invoices for all such amounts in accordance with the normal billing process, but in no event later than sixty (60) days after the last A/E Services are performed. All amounts invoiced are subject to deductions for amounts previously paid or for amounts due the Owner.

**28. ASSIGNMENT OF CONTRACT**

The A/E shall not assign the A/E Contract, in whole or in part, without the written consent of the Owner.

**29. ANTITRUST**

By entering into this A/E Contract, the A/E conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Owner under said Contract.

**30. ETHICS IN PUBLIC CONTRACTING**

The A/E shall not offer or receive any kickbacks or inducements from any other offeror, Supplier, manufacturer, or Subcontractor in connection with this Project. The A/E shall not confer on any public employee having official responsibility for this Project any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged. (*Code of Virginia § 2.2-4372, et seq.*)

**31. NONDISCRIMINATION**

- a. By signing the A/E Contract, the A/E certifies to the Commonwealth of Virginia that the A/E, in the role as “contractor” for the A/E Services with respect to the use of the term “contractor” in the statutes and regulations referred to in this Section 31, shall comply the Federal Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, the Virginia Human Rights Act, as amended, and the laws of the Commonwealth of Virginia and all Executive Orders in effect at the time of the Work which safeguard individuals from unlawful discrimination in employment.
- b. *Code of Virginia § 2.2-4311* shall be applicable to the A/E Services of the Contract. During the performance of this Contract, the A/E agrees as follows:
  1. The A/E shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The A/E agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
  2. The A/E, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such A/E is an equal opportunity employer.
  3. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
  4. The A/E shall include the provisions of the foregoing subparagraphs 1, 2 and 3 in every Subcontract or purchase order over \$10,000, so that the provisions will be binding upon each Subcontractor and Consultant.



- c. *Code of Virginia*, § 2.2-4201 shall be applicable to the Work of the Contract. During the performance of this Contract, the A/E agrees as follows:
1. The A/E shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the A/E. The A/E shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the A/E has contracts over \$10,000.
  2. The A/E will, in all solicitations or advertisements for employees placed by or on behalf of the A/E, state that A/E is an equal opportunity employer. However, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this chapter
  3. If the A/E employs more than five (5) employees, the A/E shall: (i) provide annual training on the A/E's sexual harassment policy to all A/E's supervisors and employees providing services in the Commonwealth of Virginia, except such supervisors or employees who are required to complete sexual harassment training provided by the Commonwealth of Virginia Department of Human Resource Management; and (ii) post the A/E's sexual harassment policy in: (a) a conspicuous public place in each building located in the Commonwealth that the A/E owns or leases for business purposes; and (b) the A/E's employee handbook.
  4. The A/E shall include the provisions of the foregoing subparagraph 1, 2 and 3 in every Subcontract and purchase order over \$10,000, so that the provisions will be binding upon each Subcontractor and Consultant.
- d. Where applicable, the Virginians With Disabilities Act and the federal Americans With Disabilities Act shall apply to A/E and all Subcontractors and Consultants.
- e. The Owner does not discriminate against faith-based organizations as defined in *Code of Virginia* § 2.2-4343.1(B).

**32. CONTRACTUAL DISPUTES  
(Code of Virginia, § 2.2-4363)**

The Owner's Dispute Resolution Procedures shall apply if provided in writing and attached to the A/E Contract.

Alternatively, the following procedures shall apply:

A/E claims for contractual claims, whether relating to additional compensation, additional services, delay, or other claims, shall be submitted in writing, no later than sixty (60) days after final payment; however, written notice of the A/E's intention to file such claim must be given to the Owner's Project Manager within ten (10) days of the time of the occurrence or beginning of the A/E Services upon which the claim is based. Such notice shall state that it is a "notice of intent to file a claim" and include a written statement describing the act or omission of the Owner or its agents that allegedly caused or may cause damage to the A/E and the nature of the claimed damage. The filing of a timely notice is a condition precedent to recovery under this Section. Failure to submit such notice of intent within the time and in the manner required shall be a conclusive waiver of the claim by the A/E. Oral notice, the Owner's actual knowledge, or a written notice given after the expiration of ten (10) days of time of the occurrence or beginning of A/E Services upon which the claim is based, shall not be sufficient to satisfy the requirements of this Section. Although the A/E may be required to submit certain classes of claims prior to final payment, and the A/E is not prevented from filing claims during the pendency of the A/E Services, the Owner shall not be obligated to render a

final written decision on any claim until after final payment. All claims shall be submitted along with all practically available supporting evidence and documentation.

No written decision denying a claim or addressing issues related to the claim, if rendered prior to final payment, shall be considered a denial pursuant to this Section unless the written decision makes express reference to this Section and is signed by the Agency head or his designee. The A/E may not institute legal action prior to receipt of the Owner's final written decision on the claim unless the Owner fails to render such a decision within ninety (90) days of submission of the claim or within ninety (90) days of final payment, whichever is later.

The decision of the Owner on a claim shall be final and conclusive unless the A/E within six (6) months of the date of the final decision on a claim, initiates legal action as provided in *Code of Virginia*, § 2.2-4364, . Failure of the Owner to render a timely decision shall not result in the A/E's being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of the Owner's failure to render a timely decision shall be the A/E's right to immediately institute legal action. No administrative appeals procedure pursuant to *Code of Virginia*, § 2.2-4365, has been established for contractual claims under this A/E Contract.

**33. INFORMAL ALTERNATIVE DISPUTE RESOLUTION**

Pursuant to *Code of Virginia*, § 2.2-4366, Alternative Dispute Resolution, the Owner may enter into an agreement with the A/E to submit disputes arising from the performance of this A/E Contract to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures entered into by the Owner, the Commonwealth, or any department, institution, division, commission, board, or bureau thereof, shall be nonbinding and subject to *Code of Virginia*, § 2.2-514, as applicable. The details for the implementation of Alternative Dispute Resolution are provided in CPSM Section 3.2.7.

**34. APPLICABLE LAW AND COURTS**

The A/E Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth, as provided under Virginia law.

In performing any services under the A/E Contract, the A/E shall comply with applicable federal, state and local laws and regulations.

**35. PROHIBITION OF ALCOHOL AND OTHER DRUGS AT WORKPLACE**

Pursuant to *Code of Virginia*, § 2.2-4312, the A/E shall establish a written policy to maintain and enforce a drug-free workplace, to specify actions that will be taken against persons for violations of the policy, and to require that such policy be binding on each of its Consultants, Subcontractors, and Suppliers performing A/E Services for the Project.

The A/E's policy shall prohibit the following acts by the A/E, its employees, Subcontractors, Consultants, and Suppliers while performing services under the terms of the A/E Contract:

1. The unlawful or unauthorized manufacture, distribution, dispensation, possession, or use of marijuana, or other drugs (except the possession and use of medically prescribed drugs for legitimate medical purposes) in the workplace or at the construction site;
2. The unlawful or unauthorized manufacture, distribution, dispensation, or use of alcoholic beverages in the workplace or at the construction site during hours of work; and

3. The impairment of a person in the workplace, or at the construction site, related to the use of alcohol, marijuana, or other drugs including impairment from prescription drugs.

The A/E shall post a copy of this policy in a conspicuous place at the workplace and assure that all personnel, including potential hires, are advised of the policy. A violation of this policy will be recognized as a breach of contract and may result in termination of the A/E Contract.

The A/E shall include in all solicitations or advertisements for employees placed by or on behalf of the A/E that the A/E maintains a drug-free workplace.

In every A/E subcontract or purchase order over \$10,000 the A/E shall include the foregoing provisions as binding upon each Subcontractor, or vendor.

For the purposes of this section, “drug-free workplace” means a site for the performance of A/E Services done in connection with a specific contract awarded to a contractor (i.e. the A/E and its Consultants, Subcontractors, and Suppliers), in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance during the performance of the contract.

In every A/E subcontract or purchase order over \$10,000 the A/E shall include the foregoing provisions as binding upon each Consultant, Subcontractor, and Supplier.

### 36. DESIGN OF SECURITY SYSTEMS

Any bidder, offeror, Consultant, Architect or Engineer providing for the installation, service, maintenance, or design of security equipment or any central station alarm condition monitoring service shall be licensed by the Department of Criminal Justice Services (“DCJS”) pursuant to *Code of Virginia*, § 9.1-139. An A/E proposing to provide any of these services with its own staff shall be exempt from the DCJS licensing requirement if properly licensed by the APELSCIDLA Board. (*Code of Virginia*, § 9.1-140). If the A/E proposes to have the security system designed by a Subcontractor or Consultant, such Person shall be properly licensed as required by *Code of Virginia*, § 9.1-139.

Any Project designed by the A/E which has such security systems shall include the licensing requirements of *Code of Virginia*, § 9.1-139 in the specifications and the requirement that the successful bidder shall provide documentation within five (5) calendar days of bid opening that the Person performing the security system work possesses the proper license.

### 37. USE OF STANDARD FORMS AND FORMATS

The A/E shall incorporate in every Construction Contract the applicable CO-7 (General Conditions) and CO-7a (Instructions to Bidders), which may be found at <http://forms.dgs.virginia.gov>. **These forms shall not be retyped or modified in any way.** If changes are required to either, the changes shall be made in the form of “Supplemental General Conditions” or “Supplemental Instructions to Bidders” (collectively, “Supplements”). Such Supplements shall be approved by the Director of DEB prior to their incorporation in the Construction Contract.

The A/E shall use the applicable Capital Outlay Forms and the standard DEB forms which are available electronically for viewing and download from the DGS Forms Center, available at <http://forms.dgs.virginia.gov>. The wording on the forms shall not be modified or altered without the specific written approval of the Director of DEB. Where spaces are provided for insertion of information, or *italics* signify information to be modified, the size of the space may be adjusted to accommodate the information being inserted.

The A/E shall use the standard formats which are available electronically for viewing and download at <http://forms.dgs.virginia.gov> (e.g., PDF, Microsoft Excel, or Microsoft Word, as appropriate). Formats may

be edited to delete portions which are not applicable to the Project and to insert necessary information. *Italics* signify information to be modified. The format and the basic wording shall be retained.

### 38. PARTICIPATION OF SMALL BUSINESSES

If the Total Contract Amount of the A/E Contract is greater than \$10,000 and the A/E is a Micro Business, Small Business, Women-Owned Business, Minority-Owned Business, or Service Disabled Veteran-Owned Business (together “SWaM/SDV Business”); then the A/E shall include in its Bid a plan to subcontract SWaM/SDV Businesses (a “Small Business Procurement Plan”) (if subcontracting work is intended by the A/E as part of its performance of the A/E Contract).

If the Total Contract Amount of the A/E Contract is greater than \$80,000, then the A/E shall include in its Bid a Small Business Procurement Plan and report on the involvement of SWaM/SDV Businesses in the A/E’s performance of the A/E Contract as follows:

1. **Periodic Progress Reports:** The A/E shall report on involvement of SWaM/SDV Business with each periodic invoice submitted by the A/E. The report shall identify each subcontract or agreement with a SWaM/SDV Business, including the total contract value, and state the total amounts paid to each SWaM/SDV Business in connection with the A/E Contract as of the report date. The report shall provide this information separately for each type of SWaM/SDV Business and shall clearly indicate those SWaM/SDV Businesses which were identified in the A/E’s Small Business Procurement Plan submitted by the A/E in the procurement phase for the A/E Contract. The A/E shall provide two (2) copies of each periodic report to the Owner. Failure to submit the report with each invoice will result in the invoice being rejected by the Owner without payment.
2. **Final Compliance Report:** Prior to or with its final invoice for payment, the A/E shall certify and report on its compliance with the Small Business Procurement Plan, submitted by the A/E in the procurement phase for the A/E Contract, to the Owner through DGS’ eVA system (the “Final Compliance Report”). In the Final Compliance Report, the A/E shall:
  - Provide a written explanation to the Owner of any variances between the A/E’s Small Business Procurement Plan and the actual participation of SWaM/SDV Businesses in the A/E’s performance of the A/E Contract; and
  - Report on the involvement of other SWaM/SDV Businesses in the A/E’s performance of the A/E Contract, including the contract value, the type of SWaM/SDV Business, a comparison of the actual amount paid with the planned amounts, the total amount paid to each type of SWaM/SDV Business, and a calculation of the percentage of the Total Contract Amount paid to SWaM/SDV Business.

A format for the Final Compliance Report will be provided by the Owner.

The Owner may withhold final payment to the A/E until the A/E has complied with the requirements of its Small Business Procurement Plan submitted by the A/E in the procurement phase for the A/E Contract.

### 39. RESPONSIBILITIES OF THE OWNER TO THE A/E

The Owner is responsible for providing the following information/data to the A/E, if required, for the planning and design of the Project. The information so furnished shall not relieve the A/E of its independent responsibility for evaluating the information provided and for notifying the Agency of any additional surveys, investigations, tests, or other information required for the A/E to perform its services. The Agency may request that the A/E obtain such information as an additional service.

1. Information to establish the scope of the design including: building space requirements, adjacencies, functional requirements, special systems, and siting requirements.
2. “Design-not-to-exceed” Budget.

3. Schedule for the planning and design of the Project.
4. Survey of the Site in the form of topographic maps or plats locating relevant existing buildings to scale and, where necessary, showing benchmarks, grades, 100 year and 500 year floodplains, lines of streets, pavements, property lines, rights-of-way, restrictions, easements, other improvements, and trees.
5. Utility maps showing the location, size and elevation of all existing public and private utilities which might interfere with the Project or to which the Project might be connected.
6. Location and dimensions of existing buildings. Where the interior arrangement, construction, or floor level of an existing building affects the plans for the Project, the Agency shall furnish the A/E with the necessary information as to interior arrangement, including reasonably accurate Record Drawings (if available), construction system information, and floor levels.
7. Existing equipment, furniture, furnishings, apparatus, etc., to be used on the Project, including all necessary characteristics required to coordinate the equipment in the Project.
8. Itemized list of required equipment, with the standards as to type, size, and quality for use by the A/E in preparing the specifications for this equipment.
9. If the A/E determines that roof scans, structural, chemical, mechanical, asbestos, lead based paint, or geotechnical investigations including borings or load tests for soil bearing capacity, are necessary, the A/E shall inform the Agency of such requirements and the Agency shall secure such information. The A/E shall provide guidance and criteria to assist the Agency in obtaining these services as part of the A/E's Basic Services.
10. Geotechnical investigation including: testing, analysis of test results, and design recommendations based on preliminary design parameters furnished by the A/E (e.g. type of construction, estimated column loads, estimated wall footing loads, and proposed floor elevations relative to existing grade). Preparing a scope of work and the preliminary design parameters to assist the Agency in securing the geotechnical services shall be part of the A/E's Basic Services.
11. Determine any specific development requirements of political subdivisions appropriate and consistent with state policy, opinions of the Attorney General, and existing statutes.
12. Pay the invoice cost of all sets of Plans and Specifications for the initial schematic, preliminary and working drawing submittals. Where the Agency determines that the submittals made by the A/E were deficient, the A/E may be required to reimburse the Agency for the cost of any resubmittals required for DEB review.
13. Compensate the A/E for Additional Services in the preparation or presentation of any submittals to secure approvals for environmental or other applicable special requirements such as air and noise pollution provisions of local, state, or federal agencies or preparation of environmental impact statements. These Additional Services are apart from those normally required by the Owner, the AARB, State Fire Marshal, DEB, Department of Health, DEQ, Department of Conservation and Recreation (Division of Soil and Water Conservation), and DHR.

#### **40. QUALITY OF WORK**

The A/E shall be responsible for the A/E Services, including the technical accuracy and coordination of all designs, drawings, specifications, cost estimates, and other A/E Services or materials provided. The Project documents submitted by the A/E shall represent a reasonable, VUSBC compliant, and acceptable architectural and/or engineering solution based on the scope of work, "Design-not-to-exceed" Budget, and other constraints of the A/E Contract. All A/E Services must be in accordance with current criteria, guides, and specifications set forth in the CPSM, and shall conform to good, professional architectural and

engineering practices and skill. Workmanship shall be neat with all lines and lettering of uniform weight and clarity for complete legibility and satisfactory reproduction. All elements of the A/E's submittals shall be checked by professional personnel trained in that specific discipline. The A/E's submittal will be reviewed by DEB for compliance with VUSBC and the CPSM requirements and criteria. Errors and deficiencies shall be corrected by the A/E at no additional cost to the Owner.

**41. STANDARDS FOR A/E SERVICES**

The A/E shall possess the required degree of skill, learning and experience needed to provide the A/E Services. The A/E shall provide services with the highest level of competence, care, skill, and diligence. The A/E shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

The A/E shall adhere to the design policies of the CPSM in developing the Project design. The Owner may request a waiver of policy from the DEB Director where technical requirements and life cycle cost considerations justify such a waiver.

The A/E shall restrict itself to the authorized scope of services. It is the A/E's contractual responsibility to design a facility that can be constructed within the "Design-not-to-exceed" Budget and which conforms with applicable codes, and the technical criteria of the CPSM.

During the development of the Project and through approval of preliminaries, the A/E may expect clarifications and refinements within the general scope of the Project and shall make necessary adjustments accordingly. Approved preliminary design based on incorporation of review comments and accepted value engineering recommendations ("VE Recommendations") establishes the requirements for development of the working drawings and final design of the Project. Incorporating VE Recommendations justified on payback and changes in functional layout to achieve greater efficiency or cost savings are within the scope of the Contract. Changes or modifications required to conform to code requirements are within the scope of the A/E Contract.

**42. A/E BASIC SERVICES**

The following services are to be provided during each phase of the Project, unless modified by a MOU:

The A/E shall document all meetings in writing (including summaries, direction, guidance, clarifications, Site-visit observations, and field orders). The A/E shall provide copies of the meeting documentation to the Owner and to other participants or attendees as appropriate.

**Project Initiation, including Schematic Phase**

- (1) Consult with the Agency to define, clarify and refine the Agency's requirements for the Project; review available data; confirm the scope of the Project and the services required from the A/E; review the "Design-not-to-exceed" Budget; establish the quality of materials, aesthetics desired and other factors pertinent to the Project. Some or all of this information should be contained in the Capital Project Request. As directed by the Agency, consultations shall include the user of the facility and the staff responsible for the maintenance of the facility in the Project discussions and development of the Project criteria and in the review of the A/E's schemes for satisfying the Project criteria.
- (2) Identify and analyze requirements of governmental authorities having jurisdiction to approve the design of the Project and participate in consultations with such authorities.
- (3) The A/E shall not rely totally on information contained in the "as-built" documents. As part of the required services, it is the A/E's responsibility to verify, by on-site observations of applicable existing buildings, the configurations, locations, dimensions, sizes and conditions accessible for verification. Certain assumptions are made regarding existing conditions in the remodeling and or rehabilitation of an existing building. Some of these assumptions may not be verifiable without additional exploration or investigation of the building or site. To minimize the risk during construction of uncovering conditions

that are not as shown on the documents and delaying Project progress, the Agency should consider and evaluate the advice of the A/E to conduct additional investigation, verifications, or checks to verify assumptions.

- (4) Analyze the Agency's spatial and functional requirements, its required and preferred space adjacencies, its planning surveys, its site evaluations, and its comparative studies of prospective sites; provide alternative schemes or solutions for review, approval and/or selection by the Agency.
- (5) Prior to preparing the Schematic Submittal, submit floor plan and elevation schemes to the Agency, and describe how the schemes relate to the space, function, and adjacency requirements in the Project criteria.
- (6) Provide a general economic analysis of Agency's requirements applicable to various alternatives.
- (7) Prepare a budget systems cost estimate for the building systems proposed.
- (8) Prepare and submit Schematic material for this phase as described in CPSM Chapter 5.
- (9) Prepare presentation for the AARB for new construction and for exterior renovations, alterations and rehabilitations of existing buildings; make presentations as necessary to obtain recommendations for approval.
- (10) Prepare materials for presentation to the DHR for supportive recommendation on Projects involving interior renovation, rehabilitation and/or remodeling of existing buildings and for exterior renovations of existing building.
- (11) Prepare data and pictures of buildings proposed for demolition and assist Agency in obtaining approval recommendations from AARB and DHR.
- (12) Prepare and distribute minutes of Project meetings or telephonic discussions summarizing discussions, agreements and direction given or received.

### **Preliminary Design Phase**

After Agency's written authorization to proceed with the Preliminary Design Phase, A/E shall:

- (1) In consultation with Agency and based on the accepted study and/or submittal documents and review comments, determine the scope, extent, and character of the Project. As directed by the Agency, the consultations shall include review and input from the user of the facility and the staff responsible for the maintenance and operation of the facility in the discussions at this phase.
- (2) Advise Agency if additional data or services are necessary and assist Agency in obtaining such data or services.
- (3) Prepare and submit preliminary design documents, calculations, and life cycle cost and energy analyses as described in CPSM Chapter 5 for this phase.
- (4) Prepare furnishing and equipment information floor plans that depict the proposed layout and demonstrate that the required items will fit functionally and spacewise in the rooms.
- (5) Prepare and make presentations to the AARB and DHR as may be required for recommendations for approval.
- (6) Prepare and submit a complete systems cost estimate with appropriate backup data. See CPSM Chapter 5 and Appendix E for specific requirements.

- (7) Prepare and submit to the Agency written responses to all reviewing Agency's (or Agencies') comments and, if applicable, provide the technical data the Agency may need to substantiate any waiver request required.
- (8) Resolve all outstanding issues, comments from reviewers, and value engineering recommendations ("VE Recommendations") before proceeding with the Working Drawings Phase.
- (9) Prepare and distribute minutes of Project meetings or telephonic discussions summarizing discussions, agreements and direction given or received.

The A/E shall provide the preliminary submittal to the Agency, for distribution to the user of the facility and staff responsible for its maintenance and operation. This review is to assure that the spatial, functional, and operational requirements have been satisfied. All outstanding issues must be resolved and agreement reached on how to proceed before the A/E is authorized to prepare the Working Drawings. Changes made after authorization to proceed with Working Drawings may subject the Agency to a claim by the A/E for a change in scope or extra services.

#### **Working Drawings (Construction Documents) Phase**

After Agency's written authorization to proceed with the final design, A/E shall:

- (1) On the basis of the accepted Preliminary Design documents, the accepted VE Recommendations, and the review comments as finally resolved, prepare final drawings (hereinafter called "Plans") to be included in the Contract Documents showing the complete scope, extent, and character of the Work to be furnished and performed by Contractor(s). Also prepare Specifications for inclusion in the Contract Documents that conform to the recognized format of the Construction Specifications Institute. Specify all finishes and provide color selections of all materials and finishes included in the Construction Contract.
- (2) Provide technical criteria, written descriptions, and design data for the Agency's use in filing applications for permits with or obtaining approvals of such governmental authorities as have jurisdiction to approve the design of the Project; and assist the Agency in consultations with appropriate authorities.
- (3) Advise the Agency of potential cost overruns, the necessity for unit pricing of any Work, and the necessity for additive bid items, and assist in preparing and documenting any requests or submittals required.
- (4) Prepare soil and erosion control plans and stormwater management plans for the Agency to submit to appropriate agencies for approval.
- (5) Prepare/update a detailed systems cost estimate with back-up data and submit with working drawing submittal. See CPSM Chapter 5 and Appendix E for specific requirements.
- (6) Provide recommendation on number of days estimated for substantial completion of the construction of the Project.
- (7) Prepare and submit completed Plans and Specifications and other documents in accordance with the requirements of CPSM Chapters 4, 5, and 6 for approval.



- (8) Make any revisions necessary to the Plans and Specifications so that they incorporate resolution and/or correction of all deficiencies identified during review; and submit a written response to all review comments to DEB **prior to issuing the Bid Documents**.
- (9) Assist the Agency in evaluating Contractor and/or Subcontractor prequalification data if bidders/firms are prequalified for the Project.
- (10) Prepare and distribute minutes of Project meetings or telephonic discussions summarizing discussions, agreements and direction given or received.

### **Interior Design Services**

The Basic Services of the A/E for a Project require the A/E to provide informational floor plans which use basic template outlines to show that the required furniture will fit in the rooms or spaces. The A/E is also required to specify all building materials and finishes and to select the colors for all building components which the Contractor is required to provide and/or install.

The selection, specification, and procurement of furniture and furnishings are not a part of the A/E's Basic Services and would be considered Additional Services as described below (Section 43).

### **Bidding Phase**

After Owner's written authorization to proceed with the Bidding Phase, the A/E shall (unless deleted by the Construction Contract, MOU, or A/E Change Order):

- (1) Print a sufficient number of Bid Document sets. If the Owner's Project Manager approves the issuance of electronic Bid Documents in lieu of paper drawings and specifications, it is the A/E's responsibility to provide electronic Bid Documents in a read-only format which are readily usable by the agency and by all bidders. If Bid Documents are distributed electronically by requiring prospective bidders to download documents via file transfer, no deposit shall be charged for this service by the A/E. If the Bid Documents are distributed via removable electronic media (e.g., DVDs, flash drives, etc.), the deposit shall be minimized to cover direct costs of media, and shipping and handling only.
- (2) Assist the Agency in advertising for and obtaining bid proposals for each separate prime contract, whether for construction, materials, equipment or services. Where applicable, issue Bid Documents, maintain a record of prospective bidders to whom the Bid Documents have been issued, attend pre-bid conferences, and receive and process deposits for Bid Documents.
- (3) Issue addenda, as appropriate, to interpret, clarify, or define the requirements of the Bid Documents. Each Addendum must show the 11-digit Project Code and Project Title and shall bear the A/E seal, signature, and date. All addenda shall be approved by the Agency prior to issuance.
- (4) Consult with and advise Agency as to the acceptability of Subcontractors, Suppliers, other persons or organizations proposed by the low bidder when such acceptability is required by the Bid Documents.
- (5) Requirements for pre-approval of materials proposed by bidders/Suppliers are not allowed to be specified. Substitutions are not allowed during the bidding process. The General Conditions give specific procedures for considering substitutions after the contract for construction is awarded. If the A/E determines that other materials are acceptable during the Bid Period, then the A/E shall issue an Addendum to modify the Specifications and any material that meets the Specifications as modified may be provided (but **"alternate bid items" are not permitted**).

- (7) When the lowest responsive and responsible bid exceeds the budgeted Project cost, A/E shall assist the Agency in negotiating with the low bidder, if applicable, and/or modify the Bid Documents, as appropriate, and assist the Agency in reissuing the IFB. If the Agency is allowed to negotiate with the low bidder to obtain a price acceptable for award of a contract, the A/E shall also prepare the modifications to the drawings, details, and specifications to document the changes made to the Contract Documents.
- (8) Consult with Agency on the acceptability of any substitute materials and equipment proposed by the low bidder when the Agency is authorized to negotiate with the low bidder. The acceptability of a substitute material, equipment, or Work must be documented on the CO-9b, Bid Modification. See CPSM Chapter 6 and the General Conditions.
- (9) Receive and inspect Bid Documents returned; issue refunds to bidders, as appropriate.

**Construction Phase Services Required to be Performed by the A/E  
(Submittal Review and Construction Administration Services)**

The following services are described in CPSM Chapter 7 and in General Conditions, Section 15, (a) through (h). They shall be provided by the A/E as part of Basic Services and shall not be delegated to others unless such delegation has been specifically approved in writing by the Director of DEB:

- (1) **Consultations.** A/E shall consult with and advise the Agency on all technical matters and act as the agency's representative in dealing with the Contractor on all such matters. The Agency's instructions to Contractor(s) will be issued through the A/E, who has authority to act on behalf of Agency to the extent provided in the General Conditions except as otherwise provided in writing.
- (2) **Interpretations and Clarifications.** The A/E shall issue all necessary interpretations and clarifications of the Contract Documents and in connection therewith prepare any necessary Field Orders and Construction Change Orders.
- (3) **Field and Construction Change Orders.** Issue Field Orders and assist the Agency in preparing and issuing Construction Change Orders. Where the Agency has obtained approval to modify the A/E Contract to reduce the A/E's Construction Phase services, the following shall apply:
  - a. Any matters of a technical nature which affect the integrity of the exterior architectural, structural or fire safety systems or which affect the integrity or operation of the mechanical, plumbing, or electrical systems shall be validated by the A/E before a Field Order or Construction Change Order is issued. Since technical matters constitute a change to the approved building permit documents, submittal to DEB for review is required.
  - b. Field Orders on non-technical matters such as landscaping, finishes, colors, and similar items which do not affect the exterior architectural appearance or the structural, fire safety, mechanical, or electrical system integrity may be handled by a qualified licensed professional from the Agency staff or by a licensed professional of the separate contractor engaged to provide such services.
  - c. The A/E shall notify the Owner before issuing a Field Order for Work that may impact code compliance and submit such documents as necessary for review by DEB.
- (4) **Shop Drawings.** The A/E shall review and approve (with or without conditions), reject or take other appropriate action on Shop Drawings and other submittals required of the Contractor. The A/E shall review for conformance with the Project design concept and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences or construction procedures or safety precautions and programs incident thereto. See General Conditions, Section 24.

- (5) **Equals.** The A/E shall evaluate and determine the acceptability of any equal materials or equipment proposed by Contractor. See General Conditions, Section 26.
- (6) **Structural and Special Inspections.** The A/E shall provide the services described in CPSM Chapter 7 relating to proper installation of structural systems on the Project, including the review of applicable inspection and test reports by the Agency's testing and inspection entity.
- (7) **Disputes between Agency and Contractor.** The A/E shall act as initial interpreter of the requirements of the Contract Documents, judge the acceptability of the Work thereunder, and make recommendations to the Agency on all Contractor claims relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the Work. The A/E is not authorized to alter or waive the requirements of the Contract Documents. The Agency shall have the final authority on disputes brought by the Contractor.

**Construction Visits, Inspection, and Closeout Services to be Performed by the A/E or by the Agency Project Management and Inspection Entity**

The following construction period services described in CPSM Chapter 7 and in the General Conditions shall also be provided by the A/E as part of its Basic Services unless specifically deleted in the A/E Contract or its MOU and delegated by the Agency to its Project Inspector or separate Construction Administrator entities. (Note: When the service(s) has been delegated to other than the A/E, the description below applies to the person or entity to which it has been delegated.)

- (1) **Visits to Site and Observation of Construction.** An A/E representative who is knowledgeable of the Project and competent in each discipline which has trade activities and stages of construction being performed shall visit the Site at intervals no less frequently than once per month to observe as an experienced and qualified design professional the progress and quality of the various aspects of the Contractor's Work. Based on information obtained during such visits and on such observations, the A/E shall endeavor to determine whether such Work is proceeding in accordance with the Contract Documents and shall keep the Agency informed of the general progress of the Work in relation to the overall schedule. The A/E shall document all Site visits in writing.
- (2) **Inspections of Work in progress by the A/E.** During its periodic visits to the Site to observe the Work in progress, the A/E (accompanied by the Project Inspector) shall, (a) as a minimum, spot check the Work installed and the Work in progress to determine compliance with the requirements of the Contract Documents and the codes and installation/workmanship standards listed therein (e.g. clearances and lap lengths for reinforcing bars per ACI; duct construction and installation conforming to SMACNA; pipe support terminals conforming to Code; wiring installation, anchorage and terminations conforming to NEC; and such); and (b) document its observations in writing (the "A/E's Inspection Report"). Defective and noncompliant Work shall be noted in the A/E's Inspection Report and pointed out to the Project Inspector and Contractor. The A/E shall identify for the Project Inspector any specific checks or inspections to be made. The results of these inspections shall be made a part of the Project Inspector's Daily Report.
- (3) **DEB Interim Inspections.** The A/E's licensed professional architect, mechanical engineer, and electrical engineer shall be present at all DEB interim inspections unless absent on an express written waiver by the Agency. The results of these inspections shall be made a part of the Project Inspector's Daily Report. The A/E shall document the inspection in writing.
- (4) **Supplemental Inspections and Tests.** For Work not in compliance with the Contract Documents, the A/E shall, with the Agency's approval, require additional or supplemental inspection or testing. The A/E shall receive and review all certificates of inspections, tests, and approvals required by laws, rules, regulations, ordinances, codes, orders, or the Contract Documents and shall determine whether their content complies with the requirements of each. The A/E shall also determine whether the results certified indicate compliance with the Contract Documents. The A/E shall document the inspection in writing.

- (5) **Defective Work.** During its monthly Site visits and based on its observation during such visits, the A/E may disapprove or reject Work, or any portion thereof, while the Work is in progress if A/E believes that such Work does not conform to the Contract Documents, including the approved shop drawings or other submittals (the “Defective Work”). The A/E may also recommend that the Agency reject any Work which it believes will not result in a completed Project that conforms generally to the Contract Documents or that it believes will prejudice the integrity of the design as reflected in the Contract Documents. The A/E shall document the Defective Work in writing.
- (6) **Contractor Applications for Payment (DGS Form DGS-30-104, CO-12).** Based on the A/E’s on-Site observations as an experienced and qualified design professional, information provided by the agency’s Project Inspector and review of applications for payment and the accompanying data and schedules, the A/E shall determine the amounts due to Contractor(s) and recommend in writing payments to the Contractor(s). Such recommendations will constitute a representation to Agency, based on such observations and review, that the Work has progressed to the point indicated and that to the best of the A/E’s present knowledge, information and belief, the quality of such Work is generally in accordance with the Contract Documents (subject to an evaluation of such Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents and any other qualifications stated in the recommendation). In the case of unit price Work, the A/E’s recommendations for payment will include final determinations of quantities and classifications of such Work subject to any subsequent adjustments allowed by the Contract Documents and approved by DEB.
- (7) **Substantial Completion Inspection.** Prior to scheduling a Substantial Completion inspection, the A/E shall verify that the Project is, in fact, ready for such an inspection as described in CPSM Chapter 7. The A/E shall document all Defective Work in writing. Then, at a minimum, the A/E’s licensed professional architect, mechanical engineer, and electrical engineer shall be present at the Substantial Completion inspection unless absent on an express written waiver by the Agency. The A/E shall document the Substantial Completion inspection in writing and provide the written results to the Agency and Contractor.
- (8) **Final Completion Inspection.** The A/E shall conduct a final inspection to determine if the completed Work is acceptable. The A/E shall notify the Agency in time to allow Agency and DEB representatives to participate in the inspections. If the final completion inspection is successful, the A/E may recommend, in writing, final payment to Contractor(s) and give written notice to the Agency and the Contractor(s) that the Work is acceptable. The A/E may, however, accept some portions of the Work and reject others or may accept some or all of the Work subject to certain conditions. The A/E shall document the results of its final completion inspection in writing and provide the written results to the Agency and Contractor.
- (9) **Contractor’s Completion Documents.** The A/E shall receive and review maintenance and operating instructions, schedules, guarantees, bonds, and certificates of inspection, tests and approvals which are to be assembled by Contractor(s) in accordance with the Contract Documents and shall transmit them to the Agency with written comments. The A/E shall receive the as-built drawing mark-ups required from the Contractor, prepare the Record Drawings of the Work, and submit the data to the Owner. The A/E shall submit Record Drawings to the Owner electronically in PDF format and in any other format(s) required by the Owner (e.g., BIM, electrostatic paper copies, microfilm, etc.).
- (10) **Project Closeout.** A/E shall provide Project closeout services as outlined in CPSM Chapter 7.
- (11) **Other:** The A/E shall perform all duties described in or reasonably implied by CPSM Chapter 7; the Construction Contract (including the Plans and Specifications); and the General Conditions.

#### 43. **WORK NOT INCLUDED IN THE SCOPE OF A/E BASIC SERVICES**

The following services are not considered to be included in the A/E’s Basic Services. If any of these services are included in the A/E’s Contract as Additional Services, they shall be set out separately with the

associated negotiated fees and included in the Total Contract Amount. If requested in writing after negotiation of the A/E Contract, they shall constitute Extra Services as described in CPSM Chapter 3 and shall be negotiated and authorized by A/E Change Order to the A/E Contract.

When, after approval of any stage of the design, it is determined that a substantial change in the overall scheme is advisable, and such change is ordered by the Agency with the authority of the Governor, the fixed-fee amount for the Extra Services shall be agreed upon and added to the A/E Contract by A/E Change Order.

When the A/E is directed to prepare applications and supporting documents for Federal government grants, loans, or advances, the fixed-fee amount for those services shall be agreed upon and included in the A/E Contract as Additional Services or added to the A/E Contract by A/E Change Order.

When the Agency authorizes or directs the A/E to provide information or data which is normally the Agency's responsibility, as described in Section 39 of this document, the fixed-fee amount for those services shall be agreed upon and included in the initial contract as Additional Services or added to the A/E Contract by A/E Change Order.

When the Agency requests changes to drawings and specifications after the Work is under construction, the fixed-fee amount for those A/E services shall be agreed upon and added to the A/E Contract by A/E Change Order.

When delinquency, insolvency, or failure of the Contractor to perform the Work requires extraordinary demands on the time of the A/E and the A/E has not contributed to such delays, the Agency may consider compensating the A/E for some portion of the time where documented and justified.

When extra A/E services are required as a result of damage by fire, unforeseen structural conditions, or other causes beyond the control of the A/E, the fixed-fee amount for those services shall be agreed upon and added to the A/E Contract by A/E Change Order.

When the Substantial Completion of construction is delayed beyond the Contract Completion Date for more than 30 days by the Contractor or the Agency and through no fault of the A/E, the A/E may be entitled to additional compensation for authorized additional periodic Site visits/inspections necessitated by the delay. Requests for such compensation shall include documentation naming the person(s) making the additional visit, date(s), time(s), etc. as may be required by the Agency.

When unforeseen conditions require special or continuous on-Site services for an approved period of time, such special or continuous on-Site services must be requested and approved in writing by the Agency in advance.

When the A/E is directed to prepare, document, and submit an environmental impact study or report, the fixed-fee amount for those services shall be agreed upon and included in the A/E Contract as Additional Services or added to the A/E Contract by A/E Change Order.

When the A/E is directed to perform interior design services to include assisting in the selection, specification, and procurement of furniture and furnishings that are not a part of the A/E's Basic Services as described above, the fixed-fee amount for those services shall be agreed upon and included in the initial contract as Additional Services or added to the A/E Contract by A/E Change Order.

If the Agency decides after execution of the A/E Contract that prequalification of contractors and/or subcontractors is required, the services required of the A/E to assist in evaluating the prequalification data will be considered Extra Services and a fee for same shall be negotiated prior to the A/E performing the A/E Services and added to the A/E Contract by A/E Change Order.

If the A/E is required to participate in the Value Engineering Study, the A/E's participation fee shall be included in the initial A/E Contract as an Additional Service or added to the A/E Contract by A/E Change Order.

**44. IDENTIFICATION OF DOCUMENTS AND MATERIALS**

The Agency and the A/E shall note the assigned 11-digit Project Code number on **all** Project documents, correspondence, memoranda, invoices, submittals, and other related material. The A/E shall require that the assigned 11-digit Project Code number be shown on all submittals, correspondence, and other documents generated by the Contractor, Subcontractors, Suppliers, Consultants, testing entities, or others associated with the Project.

**45. CONFLICTS; ORDER OF PRECEDENCE**

The A/E shall report any conflicts between the A/E Contract, the A/E Manual, the VUSBC, or any law, regulation, or technical code and allow Owner to clarify the Project requirements prior to A/E preparing Contract Documents. In the event of a conflict between or among the provisions of the A/E Contract, the conflict shall be resolved by giving precedence to the provisions in the following order, with the provision of higher precedence being controlling: (1) the A/E Contract; (2) the Project Order, if any; (3) the MOU; (4) the Terms and Conditions of the A/E Contract; then (5) A/E Change Order, if any.

**\* \* \* END OF TERMS AND CONDITIONS OF THE A/E CONTRACT \* \* \***